

IN THE NAME OF GOD
INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING
ALLEGED VIOLATIONS OF THE 1955 TREATY OF AMITY,
ECONOMIC RELATIONS, AND CONSULAR RIGHTS**

(ISLAMIC REPUBLIC OF IRAN v. UNITED STATES OF AMERICA)

**MEMORIAL
OF THE ISLAMIC REPUBLIC OF IRAN**

24 May 2019

TABLE OF CONTENTS

PART I. INTRODUCTION AND FACTUAL BACKGROUND.....	1
CHAPTER I. INTRODUCTION	1
SECTION 1. THE SUBJECT-MATTER OF THE DISPUTE	1
SECTION 2. PROCEDURAL HISTORY: PROVISIONAL MEASURES AND THE U.S. REACTION TO THE COURT’S ORDER DATED 3 OCTOBER 2018	6
SECTION 3. JURISDICTION	10
SECTION 4. APPLICABLE LAW	12
SECTION 5. OUTLINE OF IRAN’S ARGUMENTS AND STRUCTURE OF THE MEMORIAL	14
CHAPTER II. THE RE-IMPOSITION OF THE SO-CALLED “NUCLEAR-RELATED” SANCTIONS BY THE UNITED STATES.....	18
SECTION 1. THE NUCLEAR-RELATED MEASURES RE-IMPOSED AS OF 7 AUGUST 2018	22
A. The nuclear-related measures re-imposed under E.O. 13846 and related statutory authorities	22
i. <i>Sanctions relating to support for the Government of Iran’s purchase or acquisition of U.S. dollar bank notes or precious metals</i>	23
ii. <i>Sanctions on transactions with Iran in precious metals, graphite, raw, or semi-finished metals, and industrial software</i>	24
iii. <i>Sanctions on transactions in the Iranian Rial</i>	29
iv. <i>Sanctions related to the issuance of Iranian sovereign debt</i>	31
v. <i>Sanctions on Iran’s automotive sector</i>	32
B. The revocation of authorizations under U.S. sanctions regarding Iran whereby the scope of permissible direct trade between the two countries had been expanded	34
i. <i>Sanctions concerning activities related to the export or re-export to Iran of commercial passenger aircraft and related parts and services</i>	34
ii. <i>Sanctions prohibiting the importation into the United States of Iranian-origin carpets and foodstuffs</i>	36
SECTION 2. THE NUCLEAR-RELATED MEASURES RE-IMPOSED AS OF 5 NOVEMBER 2018	36
A. The re-listing and listing on OFAC’s SDN List	37
B. The nuclear-related measures re-imposed under E.O. 13846 and related statutory authorities	41

i.	<i>Sanctions on Iran’s port operators, and shipping and shipbuilding sectors</i>	41
ii.	<i>Sanctions relating to petroleum-related transactions with, among others, NIOC, NICO, and NITC</i>	44
iii.	<i>Sanctions on Iran’s energy sector</i>	51
iv.	<i>Sanctions on transactions by foreign financial institutions with the CBI and designated Iranian financial institutions under section 1245 of NDAA 2012</i>	55
v.	<i>Sanctions on the provision of specialized financial messaging services</i>	58
vi.	<i>Sanctions on the provision of underwriting services, insurance, or reinsurance</i>	60
C.	The revocation of General License H issued pursuant to the JCPOA	62

CHAPTER III. THE PRACTICAL IMPACTS OF THE U.S. MEASURES ON IRAN, IRANIAN NATIONALS AND IRANIAN COMPANIES.....66

SECTION 1. THE 8 MAY SANCTIONS ARE TARGETING KEY SECTORS OF THE IRANIAN ECONOMY 67

A.	Freezing the Iranian Banking and Insurance Sectors	67
i.	<i>Closing the communication channels of the Iranian financial sector</i>	70
ii.	<i>Restrictions on international money transfers and payments involving Iranian nationals and companies</i>	72
iii.	<i>Restrictions on international financing involving Iranian nationals and companies</i>	73
iv.	<i>Isolation of Iranian nationals and companies from the international insurance market</i>	74
v.	<i>“Blocking” of assets and funds of Iranian nationals and companies held abroad</i>	76
vi.	<i>Conclusions on the practical impact of the U.S. measures on Iranian nationals and companies in the financial and banking and insurance sectors</i>	76
B.	Blockading the Iranian Energy Production	77
i.	<i>Closure of Foreign Export Markets</i>	80
ii.	<i>Disinvestment in the Energy Sector</i>	83
iii.	<i>Termination of Relationships with Foreign Suppliers and Service Providers</i>	85
iv.	<i>Conclusions on the practical impact of the U.S. measures on the Iranian energy sector</i>	87
C.	Grounding Iran Civil Aviation	88
i.	<i>Termination or suspension of aircraft sale and purchase agreements</i>	89

ii.	<i>Restrictions on commercial and operational services provided abroad</i>	90
iii.	<i>Impediments to the operation by Iranian airline companies of their fleet</i>	91
iv.	<i>The dire consequences of the U.S. measures on the safety of Iranian civil air transportation</i>	93
D.	The practical impact of the U.S. measures targeting the Iranian shipping, shipbuilding and port sectors	95
i.	<i>Withdrawal of foreign shipping companies from Iran</i>	96
ii.	<i>Restrictions on the operations of Iranian maritime trade activities</i>	97
iii.	<i>Restrictions on the operations of Iran's ports and fleet</i>	99
iv.	<i>Disruption of development plans for Iran's maritime industry</i>	100
v.	<i>Conclusions on the practical impact of the U.S. measures on the Iranian shipping and shipbuilding sectors</i>	101
E.	The practical impact of the U.S. measures on the Iranian Automotive Industry	102
i.	<i>As a result of the U.S. measures, foreign operators withdrew from the Iranian automotive sector</i>	104
ii.	<i>The U.S. measures have resulted in a downturn in the Iranian automotive industry</i>	105
	SECTION 2. THE ADVERSE CONSEQUENCES OF THE U.S. MEASURES FOR THE IRANIAN ECONOMY	106
A.	The U.S. measures resulted in a reversal of the growth trend of Iranian importations and exportations	108
B.	The U.S. measures have resulted in a dramatic depreciation of the Iranian currency	111
C.	The U.S. measures have resulted in disinvestment of the Iranian economy by foreign operators	113
	SECTION 3. THE ADVERSE CONSEQUENCES OF THE U.S. MEASURES FOR THE IRANIAN POPULATION	116
A.	The adverse practical impact of the U.S. measures on the health of the Iranian population	116
i.	<i>The previous U.S. measures had been shown to have jeopardised the health of the Iranian people</i>	117
ii.	<i>The Direct Link between U.S. Measures and Impairments to Healthcare</i>	119
iii.	<i>The adverse consequences of the U.S. measures on the health safety of the Iranian population</i>	122
B.	The U.S. measures have resulted in deteriorating living conditions for the Iranian people	125
i.	<i>The Increase of Consumer Prices</i>	125

ii. <i>Decrease in the availability of basic commodities</i>	127
iii. <i>Rise in unemployment</i>	130
C. The impairment of humanitarian relief and of the environmental safety of the Iranian population	131
i. <i>As a result of the U.S. measures, the implementation of humanitarian relief in Iran is being undermined</i>	131
ii. <i>The deterioration of the environmental situation in Iran</i>	133
PART II. THE BREACHES OF THE TREATY OF AMITY BY THE USA	136
CHAPTER IV. BREACH OF ARTICLES IV(1), IV(2) AND V(1) OF THE TREATY OF AMITY	136
SECTION 1. INTRODUCTION	136
SECTION 2. LEGAL OBLIGATIONS OF THE USA UNDER ARTICLES IV(1), IV(2) AND V(1) OF THE TREATY OF AMITY	136
A. The USA’s obligation to accord fair and equitable treatment (“FET”)	138
i. <i>Treatment that is arbitrary, grossly unfair, unjust or idiosyncratic</i>	143
ii. <i>Treatment that is discriminatory</i>	145
iii. <i>Treatment that leads to an outcome which offends juridical propriety</i>	146
iv. <i>Protection of legitimate expectations</i>	147
B. The USA’s obligation under Article IV(1) to refrain from unreasonable or discriminatory measures	147
C. The USA’s obligation under Article IV(1) to assure effective means of enforcement for lawful contractual rights	149
D. The USA’s obligations under Article IV(2) with respect to constant protection and security and the prohibition on taking	150
i. <i>Iran’s entitlement to the most constant protection and security of the property and interests in property of its nationals and companies</i>	151
ii. <i>Iran’s entitlement to freedom from expropriation of the property and interests in property of its companies and nationals</i>	152
E. The USA’s obligations under Article V(1) with respect to permitting the purchase and disposal of personal property of all kinds	153
SECTION 3. BREACHES OF ARTICLE IV(1), IV(2) AND V(1) OF THE TREATY OF AMITY	154
A. Breach of the fair and equitable treatment obligation in Article IV(1)	154
i. <i>Breach of the FET standard through conduct that is arbitrary, grossly unfair, unjust and idiosyncratic</i>	155

ii.	<i>Breach of the FET standard through conduct that is discriminatory</i>	184
iii.	<i>Breach of the FET standard through treatment leading to an outcome that offends juridical propriety</i>	185
iv.	<i>Breach of the FET standard through conduct that defeats the legitimate expectations of Iranian nationals and companies</i>	185
v.	<i>Conclusion</i>	186
B.	Breach of the obligation under Article IV(1) to refrain from unreasonable or discriminatory measures	186
C.	Breach of the obligation to assure effective means of enforcement of contractual rights	186
D.	Breaches of Article IV(2) by the United States	187
i.	<i>Breach by the USA of the obligation under Article IV(2) to accord most constant protection and security</i>	187
ii.	<i>Breach by the USA of the Article IV(2) prohibition on the taking of property</i>	187
E.	Breach of Article V(1) by the United States	189

CHAPTER V. ARTICLE VII(1) OF THE TREATY OF AMITY: BREACH BY THE USA OF ITS OBLIGATION NOT TO APPLY RESTRICTIONS ON MAKING PAYMENTS, REMITTANCES, AND OTHER TRANSFERS OF FUNDS190

SECTION 1. THE PROHIBITION OF FINANCIAL RESTRICTIONS SET FORTH BY ARTICLE VII(1) OF THE TREATY OF AMITY 190

A.	The prohibition of any financial restriction to or from the territories of the Parties	191
B.	The exceptions to the prohibition are of no application regarding the United States' measures	192

SECTION 2. THE U.S. RE-IMPOSED AND AGGRAVATED MEASURES IMPOSING RESTRICTIONS ON THE MAKING OF PAYMENTS, REMITTANCES, AND TRANSFERS OF FUNDS FROM OR TO IRAN'S TERRITORY 194

A.	The exclusion of Iran from the international banking system and from the transfers of funds	195
i.	<i>The measure</i>	195
ii.	<i>The breaches of Article VII(1) of the Treaty of Amity</i>	197
B.	Measures related to the Iranian Rial	197
i.	<i>The measure</i>	197
ii.	<i>The breaches of Article VII(1) of the Treaty of Amity</i>	198

C.	The re-listing and the listing of many entities on the OFAC’s SDN List	198
i.	<i>The measure</i>	198
ii.	<i>The breaches of Article VII(1) of the Treaty of Amity</i>	198
D.	The blocking of assets owned by persons taking part in the energy, shipping, or shipbuilding sectors of Iran and persons operating a port in Iran	200
i.	<i>The measure</i>	200
ii.	<i>The breaches of Article VII(1) of the Treaty of Amity</i>	201
E.	Measures related to the Iranian Sovereign debt	202
i.	<i>The measure</i>	202
ii.	<i>The breaches of Article VII(1) of the Treaty of Amity</i>	202
F.	“Menu-based sanctions” having a restrictive impact on transfers of funds from or to Iran	202

**CHAPTER VI. ARTICLES VIII(1) AND (2) OF THE TREATY OF AMITY:
BREACHES BY THE USA OF ITS OBLIGATIONS RELATED TO
IMPORTATIONS AND EXPORTATIONS TO AND FROM IRAN204**

SECTION 1. U.S. BREACHES OF ITS OBLIGATIONS TO ACCORD PRODUCTS IMPORTED FROM OR EXPORTED TO IRAN A “TREATMENT NO LESS FAVORABLE” WITH RESPECT TO IMPORTATION AND EXPORTATION (ARTICLE VIII(1)) 204

A.	Article VIII(1)	204
B.	Breaches of Article VIII(1)	206

SECTION 2. U.S. BREACHES OF ITS OBLIGATIONS NOT TO IMPOSE DISCRIMINATORY RESTRICTIONS OR PROHIBITIONS ON THE IMPORTATION FROM OR EXPORTATION TO IRAN (ARTICLE VIII(2)) 208

A.	Article VIII(2)	208
B.	Breaches of Article VIII(2)	209

**CHAPTER VII. ARTICLE IX(2) AND IX(3) OF THE TREATY OF AMITY:
BREACHES BY THE USA OF ITS OBLIGATIONS IN RESPECT TO ALL
MATTERS RELATING TO IMPORTATION AND EXPORTATION AND TO THE
PROVISION OF MARINE INSURANCE.....211**

SECTION 1. ARTICLE IX(2): BREACHES BY THE U.S.A OF ITS OBLIGATIONS IN RESPECT TO ALL MATTERS RELATING TO IMPORTATION AND EXPORTATION 211

A.	Article IX(2)	211
B.	Breaches of Article IX(2)	212

SECTION 2. ARTICLE IX(3): BREACHES BY THE U.S.A. OF ITS OBLIGATION TO REFRAIN FROM IMPOSING MEASURES OF A DISCRIMINATORY NATURE THAT HINDERS OR PREVENTS IMPORTER OR EXPORTER OF IRANIAN PRODUCTS FROM OBTAINING MARINE INSURANCE	212
A. Article IX(3)	212
B. Breaches of Article IX(3)	213
i. <i>Sanctions on the provision of underwriting services, insurance, or reinsurance for sanctioned activities or persons</i>	214
ii. <i>Sanctions on the provision of any service for sanctioned activities or persons</i>	215
CHAPTER VIII. THE BREACHES OF ARTICLE X(1) OF THE TREATY OF AMITY.....	216
SECTION 1. ARTICLE X(1) OF THE TREATY OF AMITY	216
SECTION 2. VIOLATION OF IRAN’S ENTITLEMENT TO FREEDOM OF COMMERCE BETWEEN THE TERRITORIES OF IRAN AND THE UNITED STATES UNDER ARTICLE X(1)	218
CHAPTER IX. THE IRRELEVANCE OF THE EXCLUSIONS LISTED IN ARTICLE XX(1).....	222
SECTION 1. ARTICLE XX OF THE 1955 TREATY CANNOT BE A BASIS FOR JURISDICTIONAL OBJECTIONS	222
SECTION 2. IRRELEVANCE OF ARTICLE XX(1)(B)	224
SECTION 3. IRRELEVANCE OF ARTICLE XX(1)(D)	228
PART III. CONCLUDING PART	233
CHAPTER X. REMEDIES.....	233
SECTION 1. SUBSTANTIAL LOSS HAS BEEN AND IS BEING CAUSED TO IRANIAN NATIONALS AND COMPANIES AND THEIR PROPERTY AND ENTERPRISES AND TO IRAN AS A RESULT OF THE VIOLATIONS BY THE UNITED STATES OF THE TREATY OF AMITY	233
A. Material losses suffered by Iranian nationals and companies	234
B. Injury to the Iranian State	235
SECTION 2. APPROPRIATE NATURE OF DECLARATIONS AND ORDERS SOUGHT	236
A. Cessation and non-repetition	237
B. Reparation	238
i. <i>Restitution</i>	240
ii. <i>Compensation</i>	241

<i>iii. Satisfaction</i>	241
SECTION 3. SUMMARY OF HEADS OF DAMAGES	241
SUBMISSIONS	245
LIST OF ANNEXES	249

LIST OF ABBREVIATIONS AND ACRONYMS

B.Y.B.I.L.	British Yearbook of International Law
CAO.IRI	Civil Aviation Organization of Islamic Republic of Iran
CBI	Central Bank of Iran
C.F.R.	(U.S.) Code of Federal Regulations
CII	Central Insurance of Iran
CISADA	Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010
CRS	(U.S.) Congressional Research Service
C.U.P.	Cambridge University Press
EAR	Export Administration Regulations
E.O.	Executive Order
EU	European Union
FCN	Friendship, Commerce and Navigation
FDI	Foreign Direct Investment
FET	Fair and Equitable Treatment
FMI	Financial Market Infrastructures
GOI	Government of Iran
GTCI	Government Trading Corporation of Iran
IA	Iran Application
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
I.C.J.	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
IEEPA	International Emergency Economic Powers Act
IFCA	Iran Freedom and Counter-Proliferation Act of 2012
IFSR	Iranian Financial Sanctions Regulations
I.L.C.	International Law Commission
I.L.M.	International Legal Materials
I.L.R.	International Law Reports
IM	Iran Memorial
IMF	International Monetary Fund
INARA	Iran Nuclear Agreement Review Act of 2015
IOOC	Iranian Offshore Oil Company
IRISL	Islamic Republic of Iran Shipping Lines
ISA	Iran Sanctions Act of 1996
ITSR	Iranian Transactions and Sanctions Regulations
IUSCT	Iran – United States Claims Tribunal
JCPOA	Joint Comprehensive Plan of Action
MPEPIL	Max Planck Encyclopedia of Public International Law

NDAA ...	National Defense Authorization Act for Fiscal Year ...
NICO	Naftiran Intertrade Company
NIGC	National Iranian Gas Company
NIOC	National Iranian Oil Company
NITC	National Iranian Tanker Company
NPC	(Iran) National Petrochemical Company
OECD	Organisation for Economic Co-operation and Development
OFAC	Office of Foreign Assets Control
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIETAI	Organization for Investment, Economic and Technical Assistance of Iran
OPEC	Organization of the Petroleum Exporting Countries
P&I	Protection and Indemnity
P.C.I.J.	Permanent Court of International Justice
PMO	(Iran) Ports and Maritime Organization
Pub. L.	Public Law
SDN	Specially Designated National
SLP	Statement of Licensing Policy
SRE	Significant Reduction Exemption
SWIFT	Society of Worldwide Interbank Financial Telecommunications
TRA	Iran Threat Reduction and Syria Human Rights Act of 2012
U.K.	United Kingdom
UNCC	United Nations Compensation Commission
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
U.N. doc.	United Nations documents
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNRIAA	United Nations Reports of International Arbitral Awards
UNSC	United Nations Security Council
U.N.T.S.	United Nations Treaty Series
U.S.	United States
U.S.A.	United States of America
U.S.C.	United States Code
USD	United States dollar
Y.I.L.C.	Yearbook of the International Law Commission

PART I.
INTRODUCTION AND FACTUAL BACKGROUND

CHAPTER I.
INTRODUCTION

- 1.1 On 10 October 2018 the Court issued an Order by which it fixed 10 April 2019 as the date for the filing of the Memorial of the Islamic Republic of Iran (“Iran”), and 10 October 2019 as the date for the filing of the Counter-Memorial of the United States of America (“United States” or “USA”). By an Order dated 8 April 2019, the President of the Court extended from 10 April 2019 to 24 May 2019 and from 10 October 2019 to 10 January 2020, respectively, the time-limits for the filing of the Memorial and the Counter-Memorial. This Memorial is submitted in accordance with that Order.

SECTION 1.
THE SUBJECT-MATTER OF THE DISPUTE

- 1.2 This case is about the limits that the Treaty of Amity, Economic Relations, and Consular Rights signed at Tehran on 15 August 1955 (the “Treaty of Amity”) imposes on the conduct of the USA in circumstances where, in order to coerce Iran into following certain policies against its will, the USA has deliberately set out to inflict harm on Iran, its nationals and companies and to cause injury to their rights and interests. The case concerns the Treaty of Amity, and nothing but that Treaty.
- 1.3 The United States declared on 8 May 2018, and is implementing, a strategy of unilaterally imposing increasingly harsh sanctions and restrictive measures – which will be referred to collectively as the “measures” – upon Iran and its nationals and companies for the stated purpose of compelling Iran to conform to the will of the USA. These measures violate provisions of the Treaty of Amity, which was and is binding upon the USA and Iran.

1.4 The USA's decision, announced by the U.S. President and reiterated by the U.S. Secretary of State on 8 May 2018 (the "8 May Decision"),¹ was to re-impose sanctions and restrictive measures targeting Iran and Iranian nationals and companies, which the USA had previously decided to lift in connection with the Joint Comprehensive Plan of Action (the "JCPOA") – an agreement on the nuclear programme of Iran reached on 14 July 2015 by Iran and the five permanent members of the United Nations Security Council, plus Germany and the European Union.

1.5 The 8 May Decision was made effective immediately. A wind-down programme for terminating previously concluded agreements with Iran and Iranian nationals and companies was announced; no new contracts were to be signed, and existing contracts were not to be renewed. Restrictive measures were scheduled to be reinstated on the expiry of two wind-down periods, of 90 and 3 days, respectively on 6 August, and 4 November 2018, and on other dates. It was also announced that the USA intended to "apply unprecedented financial pressure on the Iranian regime" and that the re-imposed sanctions were "just the beginning": new sanctions would be imposed on Iran, and

"[t]his sting of sanctions will be painful if the regime does not change its course from the unacceptable and unproductive path it has chosen to one that rejoins the league of nations. These will indeed end up being the strongest sanctions in history when we are complete."²

1.6 Both the 8 May measures that are already actually operative as a matter of U.S. law, and also the promises of further measures as yet unimplemented in law, violate the Treaty of Amity. Both are incompatible with the Treaty commitments concerning freedom of commerce; both violate other more specific Treaty commitments, including those relating to the treatment of nationals and companies of the High Contracting Parties, the protection of property rights, and rights to engage in the making of payments, and in importation, exportation and transportation. Thus, the acts

¹ U.S. Department of State, "Briefing on Iran Sanctions", Special Briefing, 2 November 2018 (IM, Annex 42).

² U.S. Department of State, "After the Deal: A New Iran Strategy", 21 May 2018 (IM, Annex 33).

of the USA violate Articles IV(1), IV(2), V(1), VII(1), VIII(1), VIII(2), IX(2), IX(3) and X(1) of the Treaty of Amity.³

1.7 The U.S. measures were, and are, opposed by the other Parties to the JCPOA and almost all other countries.⁴ The USA stands in isolation in propagating a policy intended to damage as severely as possible both Iran's economy and the businesses and wellbeing of Iranian nationals and companies.

1.8 The U.S. Secretary of State described something of the nature and purpose of the U.S. measures in a briefing on 2 November 2018:

“Earlier this year, President Trump withdrew from the fatally flawed nuclear deal and implemented a new campaign aimed at fundamentally altering the behavior of the Islamic Republic of Iran. This part of the campaign about which we're speaking today is simple. It is aimed at depriving the regime of the revenues that it uses to spread death and destruction around the world. Our ultimate aim is to compel Iran to permanently abandon its well-documented outlaw activities and behave as a normal country.

Today, Secretary Mnuchin and I will discuss one of the many lines of effort to achieve these fundamental changes in the Iranian regime's behavior as directed by the President. While important, these economic sanctions are just a part of the U.S. Government's total effort to change the behavior of the Ayatollah Khamenei, Qasem Soleimani, and the Iranian regime.

On November 5th, the United States will reimpose sanctions that were lifted as part of the nuclear deal on Iran's energy, ship building, shipping, and banking sectors. These sanctions hit at the core areas of Iran's economy. They are necessary to spur changes we seek on the part of the regime.”⁵

1.9 More recently, in an interview on 23 January 2019, the U.S. Secretary of State reiterated that the measures are “the largest set of sanctions ever emplaced on an economy” and stated that Iran “is likely to fall into recession by spring of this year”.⁶

³ Iran's Application referred to breaches of Articles IV (1), VII (1), VIII (1), VIII (2), IX (2) and X (1) of the Treaty of Amity. The same facts and legal grounds pertain to breaches of Articles IV(2), V(1), and IX(3) (IM, Annex 1).

⁴ See, e.g., High Representative of the EU and Foreign Ministers of E3, “Joint statement on the re-imposition of U.S. sanctions due to its withdrawal from the Joint Comprehensive Plan of Action (JCPOA)”, 6 August 2018 (IM, Annex 334); see also D. Herszenhorn, “Rebuking Trump, major powers reaffirm Iran nuclear deal”, *Politico*, 25 September 2018 (IM, Annex 335).

⁵ U.S. Department of State, “Briefing on Iran Sanctions”, Special Briefing, 2 November 2018 (IM, Annex 42).

⁶ U.S. Department of State, “Interview with Martha MacCallum of Fox News”, 23 January 2019 (IM, Annex 47).

- 1.10 The measures do indeed “hit at the core areas of Iran’s economy” and they are both comprehensive and wide in their range. Their aim, as the USA has made clear, is to cripple the economy of Iran. The measures include not only import and export bans that in effect require corporations in the USA and in other States around the world to sever contractual and other links with Iran, but also attempts to interfere with legal transactions in order to close down payment, insurance, transportation and other links with Iran that are the essential connections between Iran and the rest of the world. Any questions of establishing a link between each of the individuals and companies in Iran who bear the direct impact of sectorial measures,⁷ and any military or security concerns of the USA, and likewise any questions of controlling the proportionality of the sanctions or of applying the precautionary principle in relation to the effect of the measures in terms of their humanitarian impacts, seem to have been swept aside.
- 1.11 Indeed, the U.S. measures, including the sanctions imposed, are designed to affect the supply of even basic goods to individuals. Businesses are deprived of supplies and markets upon which their survival, and their ability to employ and pay personnel, depends. Despite the Court’s Order of 3 October 2018 on provisional measures, impediments to the free exportation to the territory of Iran of medicines and medical devices, foodstuffs and agricultural commodities, and spare parts, equipment and associated services necessary for the safety of civil aviation, remain in place. Those impediments are the direct and intended result of the U.S. programme. It is the modern equivalent of a medieval siege, designed to starve the State and its nationals into submission.
- 1.12 In this Memorial, Iran describes the initial impacts of the U.S. measures by reference to witness statements from Iranian officials and companies, correspondence from foreign suppliers terminating contracts or refusing to cooperate with Iranian entities as a result of the re-imposition of measures, as well as market reports by independent organizations indicating the impact of measures on Iran’s oil production and market

⁷ In addition to sectorial measures, the United States maintains a list of specially designated nationals and blocked persons (“SDN list”). As explained in Chapter 2, Section 2(A), the United States has decided to re-list and list more than 700 individuals, entities, aircraft, and vessels on the SDN List, which is available at www.treasury.gov/resource-center/sanctions/sdn-list/pages/default.aspx.

share. By the next round of written pleadings, the impacts will be even clearer and Iran will be able to supplement and expand upon these statements and reports.

- 1.13 Iran’s case is straightforward: the deliberate infliction of harm upon Iran, its nationals and companies by the USA through, and in implementation of, the 8 May Decision is subject to the specific, legally-binding obligations undertaken by the USA in the Treaty of Amity; and those obligations have been, and are being, violated by the USA by the measures. Iran maintains its long-standing position that the imposition and enforcement of all unilateral sanctions by the USA against Iran over the years has been, and continues to be, unlawful under international law. Iran has, through the resilience of its people, endured the hardship and survived those sanctions. But it has decided that it is necessary to take this action in respect of the measures announced in the 8 May Decision, with which this case is uniquely concerned.
- 1.14 The USA has attempted to redefine this case by saying that it is a case about the JCPOA, not the Treaty of Amity. That is incorrect and, as further discussed in Section 2 below, this argument was not accepted by the Court in its Order on provisional measures of 3 October 2018 (in the context of consideration of the Court’s jurisdiction *prima facie*).⁸ The USA also suggests that the Treaty of Amity is irrelevant, given the tensions between the United States and Iran. That argument is equally misconceived and was rejected by the Court in its Judgment on Preliminary Objections in *Certain Iranian Assets*, in which the Court observed that “applications that are submitted to it often present a particular dispute that arises in the context of a broader disagreement between parties”.⁹ The inescapable fact is that the Treaty of Amity has been sustained by the United States and Iran throughout the final years of the monarchy in Iran, throughout the Iranian Revolution, and throughout the four decades since the Revolution. Relations have not always been smooth; but the Parties have maintained the Treaty in force during the changing circumstances. The decision of the United States in 2018 to give notice of termination of the Treaty of Amity serves

⁸ *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Order of 3 October 2018, *I.C.J. Reports 2018*, paras. 34-35, 38.

⁹ *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 2019*, para. 36.

only to underline the fact that the Treaty has remained in full force up to the present time.

SECTION 2.

PROCEDURAL HISTORY: PROVISIONAL MEASURES AND THE U.S. REACTION TO THE COURT'S ORDER DATED 3 OCTOBER 2018

- 1.15 Iran instituted proceedings against the USA with regard to alleged violations of the Treaty of Amity by its Application filed in the Registry of the Court on 16 July 2018.
- 1.16 Also on 16 July 2018, Iran submitted a request for the indication of provisional measures pending the Court's final decision in the case. By a letter dated 23 July 2018, in accordance with Article 74, paragraph 4, of the Rules of Court, the President of the Court called the attention of the USA to the need to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effect. The USA did not respond to this call from the President. A hearing on Iran's request for provisional measures was held from 27 to 30 August 2018.
- 1.17 On 3 October 2018, the Court issued an Order in which it observed that it "must therefore verify *prima facie* two different requirements, namely that there exists a dispute between the Parties and that this dispute concerns the "interpretation or application" of the 1955 Treaty."¹⁰
- 1.18 The Court observed that the Parties do not contest that a dispute exists, but differ on the question whether this dispute relates to the "interpretation or application" of the Treaty of Amity, as is necessary in order for the Court to have jurisdiction in accordance with Article XXI(2) of the Treaty.¹¹ Accordingly, the Court noted that it was obliged to ascertain whether the acts complained of by the Applicant are *prima facie* capable of falling within the provisions of that instrument.

¹⁰ *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Order of 3 October 2018, *I.C.J. Reports 2018*, para. 27.

¹¹ *Ibid.*, para. 29.

- 1.19 The Court considered that “the fact that the dispute between the Parties arose in connection with and in the context of the decision of the United States to withdraw from the JCPOA does not in and of itself exclude the possibility that the dispute relates to the interpretation or application of the Treaty of Amity”;¹² and, having examined Iran’s Application and the provisions of the Treaty of Amity, the Court decided that it was satisfied that at least some of the measures complained of by Iran are indeed *prima facie* capable of falling within the material scope of the Treaty of Amity.¹³ Having also found that the dispute had not been adjusted by diplomacy prior to the filing of the Application, so that the remaining condition for the Court’s jurisdiction set out in Article XXI(2) of the Treaty of Amity, the Court concluded that “*prima facie*, it has jurisdiction pursuant to Article XXI, paragraph 2, of the 1955 Treaty to deal with the case, to the extent that the dispute between the Parties relates to the ‘interpretation or application’ of the said Treaty.”¹⁴
- 1.20 The Court then proceeded to consider whether the rights asserted by Iran are at least plausible and linked to the provisional measures requested, and the risk of irreparable prejudice to the rights at issue and the urgency of the need for the measures sought.¹⁵ Having satisfied itself that the applicable legal tests were met, the Court decided to indicate the provisional measures set out in its Order dated 3 October 2018:¹⁶

“(1) Unanimously,

The United States of America, in accordance with its obligations under the 1955 Treaty of Amity, Economic Relations, and Consular Rights, shall remove, by means of its choosing, any impediments arising from the measures announced on 8 May 2018 to the free exportation to the territory of the Islamic Republic of Iran of

(i) medicines and medical devices;

(ii) foodstuffs and agricultural commodities; and

(iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and inspections) necessary for the safety of civil aviation;

¹² *Ibid.*, para. 38.

¹³ *Ibid.*, para. 43.

¹⁴ *Ibid.*, paras. 50-52.

¹⁵ *Ibid.*, paras. 53-54, 75, 77-80.

¹⁶ *Ibid.*, para. 102.

(2) Unanimously,

The United States of America shall ensure that licences and necessary authorizations are granted and that payments and other transfers of funds are not subject to any restriction in so far as they relate to the goods and services referred to in point (1);

(3) Unanimously,

Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”

1.21 The response of the USA to the Order was reported as follows:

“The Trump administration walked back its commitment to two international agreements Wednesday [3 October 2018], withdrawing from a 63-year-old friendship treaty with Iran and limiting its exposure to decisions by the International Court of Justice.

Secretary of State Mike Pompeo announced Wednesday that the U.S. is withdrawing from a 1955 ‘Treaty of Amity’ with Iran after Tehran successfully made an international complaint that Washington had violated that accord.

And national security adviser John Bolton, citing Iran's ‘abuse of the ICJ,’ said the U.S. would withdraw from the ‘optional protocol’ under the Vienna Convention on Diplomatic Relations.

‘We will commence a review of all international agreements that may still expose the U.S. to purported binding jurisdiction dispute resolution in the International Court of Justice,’ Bolton said.”¹⁷

1.22 Consistent with these statements, on 3 October 2018, the U.S. State Department sent a Diplomatic Note to the Ministry of Foreign Affairs of Iran stating that “in accordance with Article XXIII, paragraph 3 of the Treaty and with its rights in light of the fundamental change in circumstances which has occurred with regard to those existing at the time of the conclusion of the Treaty, the United States hereby gives notice of the termination of the Treaty”.¹⁸

1.23 By Diplomatic Note dated 13 November 2018, Iran observed that:

“Regardless of the situation governing the relations between the two countries...[the Treaty of Amity] between the two countries comprises of

¹⁷ N. Gouette & J. Crawford, “U.S. blasts international court on Iran ruling, pulls out of 1955 treaty”, *CNN*, 3 October 2018 (IM, Annex 336).

¹⁸ Diplomatic Note from the U.S. Department of State to the Ministry of Foreign Affairs of I.R. Iran, 3 October 2018 (IM, Annex 57). See also U.S. Department of State, “Remarks to the Media”, 3 October 2018 (IM, Annex 39). Pursuant to Article XXIII(3) of the Treaty of Amity, “Either High Contracting Party may, by giving one year’s written notice to the other High Contracting Party, terminate the present Treaty at the end of the initial ten-year period or at any time thereafter.”

certain arrangements in support of the rights of economic and commercial activities of nationals and companies of the parties and as well as freedom of commerce and navigation between the territories of the parties; and since the entry into force of the treaty, commercial relations between the nationals, companies and territories of the parties have persisted for decades and during past years”.¹⁹

It further noted that the “shift in the position of the United States” regarding its obligations under the Treaty “in no way prejudices the already acquired rights of the Iranian government, nationals and companies as well as the legal claims made against the United States in accordance with the said Treaty”.²⁰ On 2 November 2018, contrary to the Court’s Order of 3 October 2018, the USA asserted that it was not obliged to take action to remove impediments to the free exportation of medicines and medical devices to Iran, or to ensure that payments and other transfers of funds are not subject to any restriction in so far as they relate to such goods. The U.S. special representative for Iran stated that:

“The burden is not on the United States to identify the safe channels. The burden is on the Iranian regime to create a financial system that complies with international banking standards to facilitate the sale and provision of humanitarian goods and assistance.”²¹

- 1.24 On 5 November 2018, the USA implemented a further wave of measures against Iran, as adumbrated in the 8 May Decision.
- 1.25 On 10 December 2018, the Agent of Iran wrote to the Agent of the United States noting “the situation has only been aggravated by the unprecedented tranche of sanctions imposed on 5 November 2018, and yet it appears that the USA is doing nothing by way of compliance with the Court’s Order”. He expressed deep concern that “rather than removing impediments to the sale of spare parts and equipment or services necessary for safety of Iranian civil aviation, the USA has added Iran Air, the national airline of Iran, and 67 aircraft operated by Iran Air to the SDN list”.²²

¹⁹ Diplomatic Note from the Ministry of Foreign Affairs of I.R. Iran to the U.S. Department of State, 13 November 2018 (IM, Annex 59).

²⁰ *Id.*

²¹ U.S. Department of State, “Briefing with special representative for Iran Brian Hook”, 2 November 2018 (IM, Annex 43).

²² Letter from the Agent of I.R. Iran to the Agent of the United States, 10 December 2018 (IM, Annex 60).

- 1.26 Having received no response to, or even an acknowledgment of receipt of, its 10 December letter, on 19 February 2019, Iran wrote to the Court requesting that it exercise its authority under Article 78 of the Rules of Court “to call on the USA to explain, as a matter of urgency, the specific steps that have been and are being taken to implement the Court’s Order of 3 October”.²³ The USA wrote to the Court on 12 March 2019, but failed to provide the necessary information.²⁴ In letters dated 8 and 9 May 2019, the Registrar informed Iran that the Court had fixed 4 June 2019 as the time-limit for the submission by the United States of information on the implementation of the Court’s Order of 3 October 2018 indicating provisional measures.²⁵ The same date applies to the submission by Iran of any information it may have in that regard.
- 1.27 As of the date of the submission of this Memorial, based on the information currently available to Iran, the USA has still not complied with the Court’s Order of 3 October 2018 on provisional measures.

SECTION 3.

JURISDICTION

- 1.28 This case is brought before the Court in accordance with Article 36(1) of the Statute of the Court and Article XXI(2) of the Treaty of Amity.
- 1.29 Article 36(1) of the Statute of the Court provides in material part that the Court has jurisdiction over “all cases which the parties refer to it and all matters specifically provided for ... in treaties or conventions in force.”

²³ Letter of the Agent of I.R. Iran to the International Court of Justice, 19 February 2019 (IM, Annex 61).

²⁴ Letter from the Agent of the United States to the International Court of Justice, 12 March 2019 (IM, Annex 62).

²⁵ Letter of the Registrar of the I.C.J. to the Agent of I.R. Iran, 8 May 2019 (IM, Annex 330); Letter of the Registrar of the I.C.J. to the Agent of I.R. Iran, 9 May 2019 (IM, Annex 331).

1.30 The Treaty of Amity came into force on 16 June 1957 and remains in force in respect of the current proceedings.²⁶ Article XXI(2) of the Treaty reads as follows:

“Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means.”

1.31 As noted in Section 1 above, this dispute concerns the application of the Treaty of Amity, and in particular of Articles IV(1), IV(2), V(1), VII(1), VIII(1), VIII(2), IX(2), IX(3) and X(1), and violations of that Treaty by the USA. The dispute has not been satisfactorily adjusted by diplomacy. The High Contracting Parties have not agreed to settlement of the dispute by a means other than submission to the Court.

1.32 On 11 June 2018, Iran notified the USA of the existence of a dispute and reserved its rights to pursue this matter in accordance with the legally binding treaties between the two Parties.²⁷ On 19 June 2018, Iran reiterated its challenge to the 8 May 2018 measures and to the threat of further measures, and informed the USA that it considered these to constitute breaches of international law, in particular of the Treaty of Amity.²⁸

1.33 As noted in Section 2 above, in its Order of 3 October 2018, the Court concluded that:

“[P]rima facie, it has jurisdiction pursuant to Article XXI, paragraph 2, of the 1955 Treaty to deal with the case, to the extent that the dispute between the Parties relates to the ‘interpretation or application’ of the said Treaty.”²⁹

²⁶ *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Order of 3 October 2018, I.C.J. Reports 2018.

²⁷ Note verbale No 381/289/4870056 from I.R. Iran to the Government of the United States, 11 June 2018 (IM, Annex 342). See also Letter from the Permanent Representative of the Islamic Republic of Iran to the United Nations to the Secretary-General, 11 May 2018 (UN Doc A/72/869-S/2018/453) (IM, Annex 341) and Official statement of I.R. Iran in reaction to the 8 May decision of the United States, IRNA, 11 May 2018 (IM, Annex 54).

²⁸ Note verbale No 381/210/4875065 from I.R. Iran to the Government of the United States, 19 June 2018 (IM, Annex 343). See also Iran’s Foreign Minister, “Zarif’s Response to Pompeo’s 12 demands”, *Iran Daily*, 20 June 2018, stating the position of Iran and expressly referring to the Treaty of Amity (IM, Annex 55).

²⁹ *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Order of 3 October 2018, I.C.J. Reports 2018, para. 52.

- 1.34 On 6 November 2018, Iran reiterated that the additional sanctions implemented on 4 November 2018 constituted breaches of international law, and in particular of the Treaty of Amity.³⁰

SECTION 4. APPLICABLE LAW

- 1.35 The principal sources of law to be applied in resolving the dispute are the Treaty of Amity, and, as secondary sources applicable to the interpretation and application of the Treaty of Amity, rules of customary international law and general principles of law.
- 1.36 It is undisputed that the Treaty of Amity was in force at the date of the filing of Iran’s Application, and that it is still in force today. As already noted, on 3 October 2018 – the same day the Order on provisional measures was issued – the U.S. Secretary of State announced the decision to terminate the Treaty of Amity.³¹ According to Article XXIII(3) of the Treaty, termination takes effect one year after notice is given. The U.S. decision has no impact on the jurisdictional basis of this case or the interpretation and application of the Treaty in respect of the present dispute.
- 1.37 In its 1996 Judgment on Preliminary Objections in the *Oil Platforms* case, the Court summarised the content of the Treaty of Amity as follows:

“[The 1955 Treaty is] a treaty of “Amity, Economic Relations and Consular Rights” whose object is, according to the terms of the Preamble, the “encouraging [of] mutually beneficial trade and investments and closer economic intercourse generally” as well as “regulating consular relations” between the two States. The Treaty regulates the conditions of residence of nationals of one of the parties on the territory of the other (Art. II), the status of companies and access to the courts and arbitration (Art. III), safeguards for the nationals and companies of each of the contracting parties as well as their property and enterprises (Art. IV), the conditions for the purchase and sale of real property and protection of intellectual property (Art. V), the tax system (Art.

³⁰ Note verbale No. 4969583 from I.R. Iran to the Government of the United States, 6 November 2018 (IM, Annex 58).

³¹ Diplomatic Note from the U.S. Department of State to the Ministry of Foreign Affairs of I.R. Iran, 3 October 2018 (IM Annex 57). See also U.S. Department of State, “Remarks to the Media”, 3 October 2018 (IM, Annex 39).

VI), the system of transfers (Art. VII), customs duties and other import restrictions (Arts. VIII and IX), freedom of commerce and navigation (Arts. X and XI), and the rights and duties of Consuls (Arts. XII-XIX).”³²

- 1.38 As to the applicable principles of treaty interpretation, neither Party has ratified the Vienna Convention on the Law of Treaties of 1969 (the “Vienna Convention”) but it is well-established that Articles 31 and 32 of the Vienna Convention reflect rules of customary international law.³³ Pursuant to the general rule of treaty interpretation reflected in Article 31(1) of the Vienna Convention: “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”
- 1.39 In *Oil Platforms*, the Court noted that the object and purpose of the Treaty, according to its Preamble, is “the ‘encouraging [of] mutually beneficial trade and investments and closer economic intercourse generally’ as well as ‘regulating consular relations’ between the two States”.³⁴ The Court also considered that “the objective of peace and friendship proclaimed in Article I of the Treaty of 1955 is such as to throw light on the interpretation of the other Treaty provisions”.³⁵ In *Certain Iranian Assets*, the Court emphasised that “the Treaty is aimed at guaranteeing rights and affording protections to natural and legal persons engaging in activities of a commercial nature”.³⁶
- 1.40 In application of the provisions of the Treaty, it may be necessary to refer to external sources of law. Article IV(1), for example, refers expressly to “lawful contractual rights” being “afforded effective means of enforcement *in conformity with the*

³² *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996, p. 803, at p. 813, para. 27.

³³ See e.g. *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2004, p. 12 at p. 48, para. 83; *Kasikili/Sedudu Island (Botswana/Namibia)*, Judgment, I.C.J. Reports 1999, p. 1045 at p. 1059, para. 18; *LaGrand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, p. 466 at p. 501, para. 99; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136 at p. 174, para. 94; and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43 at p. 60, para. 160.

³⁴ *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996, p. 803 at p. 813, para. 27.

³⁵ *Ibid.* at p. 815, para. 31.

³⁶ *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, para. 91.

applicable laws”, and Article IV(2) refers to “the most constant protection and security ... in no case less than that *required by international law*”.³⁷ In addition, rules of customary international law and general principles of law “may be useful in order to fill in possible lacunae of the Treaty, to ascertain the meaning of undefined terms in its text or, more generally, to aid interpretation and implementation of its provisions.”³⁸

- 1.41 The sources of applicable law for the current dispute before the Court thus consist, first of all, of the Treaty of Amity, whose provisions are to be interpreted and applied in line with the customary principles of treaty interpretation and the Court’s previous Judgments concerning the same Treaty. According to their express terms, specific provisions of the Treaty are to be applied with reference to the practice of the Parties, to treaties concluded between the United States and third States, and to rules of customary international law and general principles of international law, as will be explained in the following Chapters. Questions of the consequences of the breaches of the Treaty of Amity by the USA, and other incidental questions, are similarly governed by customary international law and in particular by the rules and principles concerning the responsibility of States.

SECTION 5.

OUTLINE OF IRAN’S ARGUMENTS AND STRUCTURE OF THE MEMORIAL

- 1.42 In the remainder of this **Part I**, in Chapters II and III below, Iran sets out the key aspects of the factual background.

³⁷ Emphasis added.

³⁸ *Amoco International Finance Corporation v. The Government of the Islamic republic of Iran, National Iranian Oil Company, National Petrochemical Company and Kharg Chemical Company Limited*, IUSCT Award No. 310-56-3, *I.L.M.* vol. 27, issue 5, p. 1320, at p. 1343, para. 112. See also *Short v. Iran*, IUSCT Award No 312-11135-3, (1987) 16 *IUSCT Rep.* 76; (1990) 82 *I.L.R.* 148, Dissenting Opinion of Judge Brower, at 16 *IUSCT Rep.* 89; 82 *I.L.R.* 164, finding that the principles regarding expulsion of aliens are “provided by the Treaty of Amity ... supplemented as necessary by resort to customary international law.”

- 1.43 **Chapter II** describes in some detail the U.S. measures at issue in this case, identifying those measures that took immediate effect on 8 May 2018 as well as the measures implemented on 7 August and 5 November 2018.
- 1.44 **Chapter III** examines the initial impacts of the measures on Iranian nationals and companies and on Iran more generally. The full impacts will of course only be known over time, but it is already clear that, as intended by the USA, the measures are having severely harmful effects upon Iran and the Iranian people and businesses.
- 1.45 Iran’s arguments on breach are developed in **Part II** of this Memorial. The disputed U.S. measures are incompatible with the provisions of the Treaty of Amity. The relevant Treaty provisions include the following:
- a. The obligation under **Article IV(1)** to accord at all times fair and equitable treatment to Iranian nationals and companies, and refrain from applying unreasonable or discriminatory measures that would impair their legally acquired rights and interests, and to assure that their lawful contractual rights are afforded effective means of enforcement, in conformity with the applicable laws;
 - b. The obligation under **Article IV(2)** to afford the property and property interests of Iranian nationals and companies the most constant protection and security, in no case less than that required by international law, as well as the prohibition on “taking” established by this provision;
 - c. The obligation under **Article V(1)** to permit Iranian nationals and companies to lease, purchase and dispose of property within the USA;
 - d. The obligation under **Article VII(1)** not to apply restrictions on the making of payments, remittances or other transfers of funds to or from Iran;
 - e. The obligation under **Article VIII(1)** to accord most favoured nation treatment to imports from and exports to Iran;
 - f. The obligation under **Article VIII(2)** not to impose restrictions or prohibitions on the importation of any product from or exportation of any product to Iran

unless the importation or exportation of like products from or to all third countries is similarly restricted or prohibited;

- g. The obligation under **Article IX(1)** to apply requirements of general application affecting importation or exportation in a uniform, impartial and reasonable manner;
- h. The obligation under **Article IX(3)** not to impose any measure of a discriminatory nature that hinders Iranian importers or exporters of products from obtaining marine insurance on such products in companies in Iran or the USA;
- i. The obligation under **Article X** that “[b]etween the territories of the two High Contracting parties there shall be freedom of commerce and navigation”.

1.46 Part II of the Memorial also addresses the main defence that the USA is expected – on the basis of what it has already argued at the provisional measures phase – to raise under the Treaty of Amity: the provision in Article XX(1) of the Treaty that the application of certain measures is not precluded by the Treaty. Chapter IX of the Memorial explains that Article XX does not provide any justification for the U.S. measures, or pose any obstacle to Iran’s claims in this case.³⁹

1.47 The structure of Part II is as follows:

- a. **Chapter IV** explains how the U.S. measures violate the obligations set out in three provisions of the Treaty of Amity that establish protections for Iranian nationals and companies, namely Articles IV(1), IV(2) and V(1).
- b. **Chapter V** explains how the contested United States’ measures violate the provisions of Article VII(1) of the Treaty.

1.48 **Chapter VI** explains how the contested U.S. measures violate the provisions of Article VIII(1) and VIII(2).

³⁹ It has been established that this provision does not go to jurisdiction: *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2019, paras. 45-47.

- 1.49 **Chapter VII** explains how the U.S. measures violate the provisions of Articles IX(2) and IX(3).
- 1.50 **Chapter VIII** proceeds to an analysis of Article X(1) of the Treaty of Amity, and explains how the U.S. measures violate that provision.
- 1.51 **Chapter IX** analyses the provisions of Article XX(1) of the Treaty of Amity, explaining that Article XX(1) does not provide any justification or excuse for the U.S. measures.
- 1.52 In **Part III** of the Memorial, **Chapter X** outlines the legal principles applicable to the ordering of remedies by the Court and explains the specific remedies that are appropriate and requested by Iran in this case.

CHAPTER II.
THE RE-IMPOSITION OF THE SO-CALLED “NUCLEAR-RELATED”
SANCTIONS BY THE UNITED STATES

- 2.1 As described in Chapter I, the measures announced in the 8 May Decision, which are breaches of the United States’ obligations under the Treaty of Amity, have been implemented in two steps: the first set of measures entered into force on 7 August 2018 and the second set on 5 November 2018.⁴⁰ The U.S. President has consistently qualified these measures as the re-imposition of “nuclear-related sanctions”.⁴¹
- 2.2 The stated purpose of these “nuclear-related sanctions” is to cripple the Iranian economy. They consist of multiple economic restrictions imposed on Iran focusing on the key sectors of the Iranian economy. They include authorizing the freezing of assets of Iranian nationals and entities and the far-reaching prohibition on certain commercial and economic activities carried out by U.S. and non-U.S. persons⁴² with Iranian companies or nationals, including banking transactions and relations.
- 2.3 The U.S. Congress and Executive acts designed to implement the “nuclear-related sanctions” and their re-imposition pursuant to the 8 May Decision are numerous and interrelated. They form a complex corpus of U.S. laws, regulations, and executive orders.
- 2.4 This Chapter describes in detail the re-imposed “nuclear-related sanctions” in order to clarify their purpose, scope, specific terms, and implementation.

⁴⁰ See *supra*, paras. 1.3-1.6.

⁴¹ In its “Statement on the reimposition of United States sanctions with respect to Iran” of 6 August 2018, the U.S. President declared that “Today, the United States is taking action to reimpose nuclear-related sanctions with respect to Iran” (IM, Annex 37). He also announced the second set of measures against Iran in a statement “Regarding the Reimposition of Nuclear-Related Sanctions on Iran” dated 2 November 2018 (IM, Annex 41).

⁴² In this Chapter, the term “U.S. Persons” is used in the same way as it is under U.S. sanctions laws and regulations, i.e., “any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States” (see for instance 31 CFR § 560.314 “United States person; U.S. person”, or Section 16(s) of E.O. 13846 of 6 August 2018).

- 2.5 The U.S. had previously imposed, then lifted, these measures in connection with the implementation of the JCPOA. The JCPOA provided for the lifting of a set of sanctions imposed by the UN Security Council, European Union, and the United States targeting Iran, Iranian nationals and companies in exchange for Iran’s commitment to adopt certain restrictive measures in relation to its nuclear activities, subject to the oversight and inspection of the International Atomic Energy Agency (“IAEA”).⁴³
- 2.6 On 20 July 2015, the UN Security Council endorsed the JCPOA⁴⁴ and tasked the Director General of the IAEA with monitoring and verifying Iran’s compliance with its nuclear-related commitments, including the set of commitments required for implementation of the JCPOA. On 16 January 2016, the IAEA confirmed that Iran had complied with all of its commitments under paragraph 15 of Annex V to the JCPOA.⁴⁵
- 2.7 Upon the IAEA’s confirmation, the United States in particular was committed “to cease the application of, and to seek such legislative action as may be appropriate to terminate, or modify to effectuate the termination of, all nuclear-related sanctions as specified in Sections 4.1-4.9 [of Annex II of the JCPOA], and to terminate Executive Orders 13574, 13590, 13622 and 13645, and Sections 5-7 and 15 of Executive Order 13628...”.⁴⁶
- 2.8 As of 16 January 2016, the United States lifted a number of sanctions imposed on Iran. It waived or modified the laws, regulations, and executive orders providing for such sanctions. Consequently, many entities designated in the JCPOA were “delisted” from U.S. sanctions lists, including the National Iranian Oil Company (“NIOC”), certain Iranian banks, and many energy and shipping-related institutions.

⁴³ See JCPOA – especially its Annex I listing the restrictive measures undertaken by Iran – in Annex A to UN Security Council, Resolution 2231 (2015), S/RES/2231 (2015), 20 July 2015 (IM, Annex 10).

⁴⁴ UN Security Council, Resolution 2231 (2015), S/RES/2231 (2015), 20 July 2015 (IM, Annex 10), para. 1.

⁴⁵ IAEA, Report by the Director General, “Verification and Monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015)”, 16 January 2016, GOV/INF/2016/1 (IM, Annex 11). See also Annex V to the JCPOA, para. 15 (IM, Annex 10).

⁴⁶ JCPOA, Annex 2, Section B, para. 4 (IM, Annex 10).

U.S. regulations were also relaxed to allow U.S. importation of certain Iranian goods (such as carpets, caviar, and nuts) and provide for a favourable licensing policy with respect to the sale and export of commercial passenger aircraft and related spare parts and services to Iranian airlines that were not designated for sanctions.⁴⁷

- 2.9 Numerous reports submitted to date by the IAEA Director General to the UN Security Council confirm full and continued implementation of Iran’s commitments under the JCPOA and UNSC Resolution 2231.⁴⁸ It is worth noting that the USA, prior to its withdrawal from the JCPOA, issued, on several occasions, the certification that Iran had fully implemented its commitments under the JCPOA.⁴⁹ Recently, U.S. intelligence authorities, contradicting the current U.S. President, admitted that Iran meets its JCPOA commitments.⁵⁰
- 2.10 Nonetheless, on 13 October 2017⁵¹ the United States launched a new policy against Iran, which culminated in the 8 May Decision, under the false pretext that Iran is in

⁴⁷ See U.S. Department of State, “Guidance Relating to the Lifting of Certain U.S. Sanctions Pursuant to the Joint Comprehensive Plan of Action on Implementation Day”, 16 January 2016 (IM, Annex 24).

⁴⁸ For the latest one, see IAEA, Report by the Director General, “Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)”, 12 November 2018, GOV/2018/47 (IM, Annex 13).

⁴⁹ Then-Secretary of State Rex Tillerson issued the certification required by INARA, P.L. 114-17 on 17 July 2017. Secretary of State Michael Pompeo stated during an 12 April 2018, Senate Foreign Relations Committee hearing that he had seen no evidence of Iranian noncompliance with the agreement (cited in Paul K. Kerr and K. Katzman, “Iran Nuclear Agreement and U.S. Exit”, Congressional Research Service, 20 July 2018, p. 19 – available at fas.org/sgp/crs/nuke/R43333.pdf).

⁵⁰ Daniel R. Coats, Director of National Intelligence, “Statement for the Record – Worldwide Threat Assessment of the U.S. Intelligence Community”, Senate Select Committee on Intelligence, 29 January 2019, p. 10 (mentioning “Iran’s continued implementation of the JCPOA”) – available at www.dni.gov/files/ODNI/documents/2019-ATA-SFR---SSCI.pdf; referred to in D. Sanger & J. Barnes, “On North Korea and Iran, Intelligence Chiefs Contradict Trump”, *The New York Times*, 29 January 2019 (IM, Annex 339).

⁵¹ On 13 October 2017, the U.S. President announced a new “strategy, along with several major steps” in order to “ensure that Iran never (...) acquires a nuclear weapon”, including refusing to certify the appropriateness of the lifting of U.S. sanctions: “When the agreement was finalized in 2015, Congress passed the Iran Nuclear Agreement Review Act to ensure that Congress’s voice would be heard on the deal. Among other conditions, this law requires the President, or his designee, to certify that the suspension of sanctions under the deal is “appropriate and proportionate” to measure – and other measures taken by Iran to terminate its illicit nuclear program. Based on the factual record I have put forward, I am announcing today that we cannot and will not make this certification” (U.S. President, “Remarks by President Trump on Iran Strategy”, 13 October 2017 – IM, Annex 30).

breach of the JCPOA.⁵² By this decision, the U.S. President instructed the Secretary of State and the Secretary of the Treasury to:

“immediately begin taking steps to re-impose all United States sanctions lifted or waived in connection with the JCPOA, including those under the National Defense Authorization Act for Fiscal Year 2012, the Iran Sanctions Act of 1996, the Iran Threat Reduction and Syria Human Rights Act of 2012, and the Iran Freedom and Counter-proliferation Act of 2012. These steps shall be accomplished as expeditiously as possible, and in no case later than 180 days from the date of this memorandum.”⁵³

- 2.11 The U.S. President declared that “[a]ny nation that helps Iran in its quest for nuclear weapons could also be strongly sanctioned by the United States,”⁵⁴ thus emphasizing the extraterritorial character of the re-imposed sanctions.
- 2.12 The U.S. sanctions lifted as a result of the implementation of the JCPOA were re-imposed after wind-down periods of 90 and 180 days respectively, as described in Sections 1 and 2 below.⁵⁵

⁵² Since 8 May 2018, the international community has been reiterating that Iran is implementing its commitments under the JCPOA. On 9 May 2018, the Director General of the IAEA made it clear that “Iran is subject to the world’s most robust nuclear verification regime under the JCPOA, which is a significant verification gain. As of today, the IAEA can confirm that the nuclear-related commitments are being implemented by Iran.” (IAEA, Statement by Director General Y. Amano, 9 May 2018, available at: www.iaea.org/newscenter/statements/statement-by-iaea-director-general-yukiya-amano-9-may-2018). On 25 May 2018, the JCPOA Participants, without the USA, held a special meeting in Vienna at which they adopted the conclusions of the 11th report by the IAEA of 24 May. The EU reported that the participants “welcomed the fact that the IAEA has again confirmed the continued adherence by Iran to its nuclear-related commitments” and “commended the professional and impartial role played by the IAEA, the only body charged with the monitoring and verification of the implementation by Iran of its nuclear-related commitments under the JCPOA and UN Security Council Resolution 2231 (2015)” (EU, “Chair’s statement following the 25 May 2018 meeting of the Joint Commission of the JCPOA”, Press release, 25 May 2018 – IM, Annex 14); see also EU, Statement by the Joint Commission of the Joint Comprehensive Plan of Action, 6 July 2018 (IM, Annex 12). Also see A. Zurcher, “Three reasons behind Trump ditching Iran deal”, *BBC News*, 8 May 2018 (IM, Annex 332); M. Bishara, “Trump, Iran and the ‘I.S.R.A.E.L.’ doctrine”, *Aljazeera.com*, 9 May 2018 (IM, Annex 333); S. Tisdall, “Regime change in Iran is Trump’s real motive for siding with the Saudis”, *The Guardian*, 18 October 2018 (IM, Annex 337).

⁵³ U.S. President, “Ceasing U.S. Participation in the JCPOA and Taking Additional Action to Counter Iran’s Malign Influence and Deny Iran All Paths to a Nuclear Weapon”, Presidential Memorandum, 8 May 2018, section 3 (IM, Annex 31).

⁵⁴ U.S. President, “Remarks by President Trump on the Joint Comprehensive Plan of Action”, 8 May 2018 (IM, Annex 32).

⁵⁵ A list of the statutory provisions which were waived by the U.S. as of 16 January 2016, to the extent they were nuclear-related measures and targeted non-U.S. nationals, is available in K. Katzman, “Iran Sanctions”, *Congressional Research Service*, RS20871, updated 22 April 2019, at pp. 44-45 (IM, Annex 329). The list is as follows: the blanket energy/economic-related provisions of ISA; Section 1245(d) of the National Defense Authorization Act for Fiscal Year 2012 (“NDAA 2012”), which imposes sanctions on foreign banks of countries that do not reduce Iran oil imports; Sections 212 and

SECTION 1.

THE NUCLEAR-RELATED MEASURES RE-IMPOSED AS OF 7 AUGUST 2018

2.13 The 90-day wind-down period following the 8 May 2018 decision to re-impose certain nuclear-related sanctions against Iran terminated on 6 August 2018. On that date the U.S. President issued Executive Order 13846 under the title “Reimposing Certain Sanctions With Respect to Iran”,⁵⁶ reinstating relevant provisions of five executive orders that had been revoked or amended by Executive Order 13716 on 16 January 2016, revoking and replacing Executive Order 13716 and Executive Order 13628, and expanding the scope of sanctions that had been in effect prior to 16 January 2016.⁵⁷ In addition, waivers under applicable U.S. legislation that had suspended nuclear-related sanctions were revoked, as detailed in Section A below. On the same date, certain general and specific licenses and a favourable licensing policy with respect to U.S. primary sanctions targeting Iran that were issued since implementation of the JCPOA were also revoked, as set out in Section B below.

A. The nuclear-related measures re-imposed under E.O. 13846 and related statutory authorities

2.14 E.O. 13846 entered into force on 7 August 2018. From this date, the following U.S. measures that were lifted pursuant to the JCPOA were re-imposed: (i) sanctions relating to support for the Government of Iran’s purchase or acquisition of U.S. dollar bank notes or precious metals; (ii) sanctions on the sale, supply, or transfer to or from Iran of precious metals, graphite, raw or semi-finished metals, coal, and software for

213 of TRA; Sections 1244, 1245, 1246, and 1247 of the IFCA. In addition, as noted by the Congressional Research Service, “the core provision of CISADA (P.L. 111-195) that sanctions foreign banks was not waived, but most listed Iranian banks were “delisted” to implement the JCPOA, thereby making this CISADA provision largely moot. The Administration will be relisting all delisted Iranian banks on November 5, 2018” (*ibidem*, p. 44).

⁵⁶ U.S. President, Executive order 13846, 6 August 2018, 83 Fed. Reg. 38939 (IM, Annex 35).

⁵⁷ As described by the OFAC, E.O. 13846 “broadens the scope of the sanctions that were in effect prior to January 16, 2016 and provides for greater consistency in the administration of Iran-related sanctions provisions” (OFAC FAQ’s: Iran sanctions, Question 601: “Does E.O. 13846 expand the scope of sanctions that were in effect prior to January 16, 2016 (Implementation Day of the JCPOA)?”, version as of 31 March 2019 (IM, Annex 50). See footnote 170 below for the enumeration of these “added measures”).

integrating industrial processes; (iii) sanctions on significant transactions related to the purchase or sale of the Iranian Rial or maintaining significant funds denominated in Iranian Rials outside Iran; (iv) sanctions related to the purchase or issuance of Iranian sovereign debt; and (v) sanctions on Iran’s automotive sector.⁵⁸

i. Sanctions relating to support for the Government of Iran’s purchase or acquisition of U.S. dollar bank notes or precious metals

2.15 U.S. sanctions relating to support for the Government of Iran’s purchase of U.S. dollar bank notes or precious metals was originally provided for in section 5(a) of E.O. 13622 of 30 July 2012. This prohibition was revoked by E.O. 13716 of 16 January 2016 implementing the lifting of nuclear-related sanctions pursuant to the JCPOA.⁵⁹ It has been re-imposed by E.O. 13846.

2.16 Subsection 1(a)(i) of E.O. 13846 provides that:

“(a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to impose on a person the measures described in subsection (b) of this section upon determining that:

(i) on or after August 7, 2018, the person has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the purchase or acquisition of U.S. bank notes or precious metals by the Government of Iran”.

2.17 The sanction to be imposed on such a person is the complete blocking of its assets – *property and interests in property* – which are or would be subject to the jurisdiction of the United States. Subsection 1(b) of E.O. 13846 reads:

“With respect to any person determined by the Secretary of the Treasury in accordance with this section [1] to meet any of the criteria set forth in subsections (a)(i)-(a)(iv) of this section, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States

⁵⁸ For the enumeration see OFAC FAQ’s: Iran sanctions, Question 606: “What activity will become sanctionable on or after August 7, 2018 under E.O. 13846 or other authorities?”, version as of 31 March 2019 (IM, Annex 50).

⁵⁹ E.O. 13716 is entitled “Revocation of Executive Orders 13574, 13590, 13622, and 13645 With Respect to Iran, Amendment of Executive Order 13628 With Respect to Iran, and Provision of Implementation Authorities for Aspect of Certain Statutory Sanctions Outside the Scope of U.S. Commitments Under the Joint Comprehensive Plan of Action of July 14, 2015”.

person of such person are *blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.*”⁶⁰

2.18 The Government of Iran is thus precluded from purchasing U.S. dollars or precious metals because any person, of whatever nationality, who provides assistance or support – including financial or technological support, or through the provision of goods or services, including financial services – for the acquisition of U.S. dollars or precious metals by the Government of Iran could be subject to draconian U.S. blocking sanctions. The term “Government of Iran” is broadly defined under E.O. 13846 to include the Central Bank of Iran (“CBI”), any agency or instrumentality of the Government of Iran, and any company owned or controlled by or acting on behalf of the Government of Iran.⁶¹

ii. Sanctions on transactions with Iran in precious metals, graphite, raw, or semi-finished metals, and industrial software

2.19 Section 1245 of the Iran Freedom and Counter-Proliferation Act of 2012 (“IFCA”)⁶² provides for the “Imposition of sanctions with respect to the sale, supply, or transfer of certain materials to or from Iran”. Its subsections (a)(1)(A) and (B) read:

“(1) IN GENERAL.—The President shall impose 5 or more of the sanctions described in section 6(a) of the Iran Sanctions Act of 1996 (Public Law 104-172; 50 U.S.C. 1701 note)(“ISA”)[⁶³] with respect to a person if the President

⁶⁰ Emphasis added.

⁶¹ Section 16 (e) of E.O. 13846 (IM, Annex 35).

⁶² U.S. Iran Freedom and Counter-Proliferation Act of 2012, Sections 1241 to 1255 of the U.S. National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat. 2004 (IM, Annex 19).

⁶³ Section 6(a) of U.S. Iran Sanctions Act of 1996, Pub. L. 104-172, 110 Stat. 1541, as amended through Pub. L. 114-277, 130 Stat. 1409 (“ISA” – IM, Annex 15) enumerates the following sanctions:

- “(1) EXPORT-IMPORT BANK ASSISTANCE FOR EXPORTS TO SANCTIONED PERSONS.—The President may direct the Export-Import Bank of the United States not to give approval to the issuance of any guarantee, insurance, extension of credit, or participation in the extension of credit in connection with the export of any goods or services to any sanctioned person.
- (2) EXPORT SANCTION.—The President may order the United States Government not to issue any specific license and not to grant any other specific permission or authority to export any goods or technology to a sanctioned person under—(i) the Export Administration Act of 1979; (ii) the Arms Export Control Act; (iii) the Atomic Energy Act of 1954; or (iv) any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.
- (3) LOANS FROM UNITED STATES FINANCIAL INSTITUTIONS.— The United States Government may prohibit any United States financial institution from making loans or providing credits to any sanctioned person totaling more than \$10,000,000 in any 12-month period unless such person

is engaged in activities to relieve human suffering and the loans or credits are provided for such activities.

- (4) PROHIBITIONS ON FINANCIAL INSTITUTIONS.—The following prohibitions may be imposed against a sanctioned person that is a financial institution:
- (A) PROHIBITION ON DESIGNATION AS PRIMARY DEALER.— Neither the Board of Governors of the Federal Reserve System nor the Federal Reserve Bank of New York may designate, or permit the continuation of any prior designation of, such financial institution as a primary dealer in United States Government debt instruments.
 - (B) PROHIBITION ON SERVICE AS A REPOSITORY OF GOVERNMENT FUNDS.—Such financial institution may not serve as agent of the United States Government or serve as repository for United States Government funds.

The imposition of either sanction under subparagraph (A) or (B) shall be treated as 1 sanction for purposes of section 5, and the imposition of both such sanctions shall be treated as 2 sanctions for purposes of section 5.

- (5) PROCUREMENT SANCTION.—The United States Government may not procure, or enter into any contract for the procurement of, any goods or services from a sanctioned person.
- (6) FOREIGN EXCHANGE.—The President may, pursuant to such regulations as the President may prescribe, prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest.
- (7) BANKING TRANSACTIONS.—The President may, pursuant to such regulations as the President may prescribe, prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the sanctioned person.
- (8) PROPERTY TRANSACTIONS.—The President may, pursuant to such regulations as the President may prescribe, prohibit any person from—
 - (A) acquiring, holding, withholding, using, transferring, withdrawing, transporting, importing, or exporting any property that is subject to the jurisdiction of the United States and with respect to which the sanctioned person has any interest;
 - (B) dealing in or exercising any right, power, or privilege with respect to such property; or
 - (C) conducting any transaction involving such property.
- (9) BAN ON INVESTMENT IN EQUITY OR DEBT OF SANCTIONED PERSON.—The President may, pursuant to such regulations or guidelines as the President may prescribe, prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person.
- (10) EXCLUSION OF CORPORATE OFFICERS.—The President may direct the Secretary of State to deny a visa to, and the Secretary of Homeland Security to exclude from the United States, any alien that the President determines is a corporate officer or principal of, or a shareholder with a controlling interest in, a sanctioned person.
- (11) SANCTIONS ON PRINCIPAL EXECUTIVE OFFICERS.—The President may impose on the principal executive officer or officers of any sanctioned person, or on persons performing similar functions and with similar authorities as such officer or officers, any of the sanctions under this subsection.
- (12) ADDITIONAL SANCTIONS.—The President may impose sanctions, as appropriate, to restrict imports with respect to a sanctioned person, in accordance with the International Emergency Economic Powers Act (50 U.S.C. 1701 and following).”

determines that the person knowingly⁶⁴, on or after the date that is 180 days after the date of the enactment of this Act, sells, supplies, or transfers, directly or indirectly, to or from Iran—

(A) a precious metal;

(B) a material described in subsection (d) [i.e., “graphite, raw or semi-finished metals such as aluminium and steel, coal, and software for integrating industrial processes”] determined pursuant to subsection (e)(1) to be used by Iran as described in that subsection [i.e., as a medium for barter, swap, or any other exchange or transaction or listed as an asset for purposes of Iran’s national balance sheet⁶⁵].

2.20 Subsection (a)(1)(C) of section 1245 of IFCA also targets generally any other “graphite, raw or semi-finished metals such as aluminium and steel, coal, and software for integrating industrial processes” if such material is (i) to be used in connection with the energy, shipping, or shipbuilding sector of Iran, or is resold, retransferred, or otherwise supplied to an end user in one or more such sectors; or (ii) is sold, supplied or transferred to or from any Iranian person included on the list of specially designated nationals and blocked persons maintained by the OFAC (the “SDN List”), or is resold, retransferred, or otherwise supplied to such person; or (iii) is determined pursuant to section 1245(e)(3) to be used in connection with the nuclear programme of Iran or is resold, transferred, or otherwise supplied for such programme.⁶⁶

⁶⁴ Section 1242(a)(9) of the IFCA defines “knowingly” as follows: “The term “knowingly”, with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result” (IM, Annex 19). The definition given by the Iranian Financial Sanctions Regulations (31 CFR Part 561) (“IFSR”) is the same (31 CFR §561.314) (IM, Annex 21). Also see OFAC FAQ’s: Iran sanctions, Question 289: “How will the following [IFCA] terms be interpreted...?”, version as of 31 March 2019 (IM, Annex 50).

⁶⁵ Subsection (e)(1) reads: “DETERMINATION WITH RESPECT TO USE OF MATERIALS— Not later than 180 days after the date of the enactment of this Act, and every 180 days thereafter, the President shall submit to the appropriate congressional committees and publish in the Federal Register a report that contains the determination of the President with respect to (1) whether Iran is—(A) using any of the materials described in subsection (d) as a medium for barter, swap, or any other exchange or transaction; or (B) listing any such materials as assets of the Government of Iran for purposes of the national balance sheet of Iran” (IM, Annex 19).

⁶⁶ In full, subsection (a)(1)(C) of section 1245 of IFCA reads: “(C) any other material described in subsection (d) if—

(i) the material is— (I) to be used in connection with the energy, shipping, or shipbuilding sectors of Iran or any sector of the economy of Iran determined pursuant to subsection (e)(2) to be controlled directly or indirectly by Iran’s Revolutionary Guard Corps; (II) sold, supplied, or transferred to or from an Iranian person included on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury (other than an Iranian financial institution described in subsection (b)); or (III) determined pursuant to subsection (e)(3) to be used in connection with the nuclear, military, or ballistic missile programs of Iran; or

2.21 Furthermore, section 5 of E.O. 13846 provides OFAC and the U.S. Treasury Department with the authority to implement the following applicable menu-based sanctions in order to strengthen the ban on such trade with Iran:

“(i) prohibit any United States financial institution from making loans or providing credits to the sanctioned person totalling [*sic*] more than \$10,000,000 in any 12-month period, unless such person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities;

(ii) prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest;

(iii) prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the sanctioned person;[⁶⁷]

(iv) block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the sanctioned person, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in;

(v) prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person;

(vi) restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from the sanctioned person; or

(vii) impose on the principal executive officer or officers, or persons performing similar functions and with similar authorities, of a sanctioned person the sanctions described in subsections (a)(i)–(a)(vi) of this section, as selected by the President or Secretary of State or the Secretary of the Treasury, as appropriate.”⁶⁸

2.22 Subsection (c) of section 1245 of IFCA also provides for sanctions on non-U.S. financial institutions who conduct or facilitate significant financial transactions for the trade with Iran of the foregoing materials, prohibiting or imposing strict conditions on

(ii) the material is resold, retransferred, or otherwise supplied—(I) to an end-user in a sector described in subclause (I) of clause (i); (II) to a person described in subclause (II) of that clause; or (III) for a program described in subclause (III) of that clause.” (IM, Annex 19)

⁶⁷ The sanctions provided in (ii) and (iii) have very broad application and are potentially of significant impact because virtually *all* transactions denominated in U.S. dollars are processed through U.S. financial institutions and are therefore subject to the jurisdiction of the United States.

⁶⁸ OFAC and the U.S. Treasury Department may implement these menu-based sanctions when implementing sanctions imposed against a person pursuant to ISA, CISADA, TRA, IFCA or subsections (a)(i)–(a)(iv) of Section 3 of E.O. 13846.

such institutions opening or maintaining correspondent or payable-through accounts in the USA. In full, Section 1245 (c) reads:

“FACILITATION OF CERTAIN TRANSACTIONS.—The President shall prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by a foreign financial institution that the President determines knowingly, on or after the date that is 180 days after the date of the enactment of this Act, conducts or facilitates a significant financial transaction for the sale, supply, or transfer to or from Iran of materials the sale, supply, or transfer of which would subject a person to sanctions under subsection (a).”

2.23 Such sanction is particularly threatening for foreign (i.e., non-U.S.) financial institutions⁶⁹ because it is critical, for any significant foreign financial institution, to be able to handle transactions denominated in U.S. dollars. Handling such U.S. dollar transactions is only possible if the said foreign financial institution has a correspondent account or a payable-through account⁷⁰ open in the United States.

⁶⁹ The term “foreign financial institution(s)”, typical of the U.S. statutes and regulations relevant to the present case and herein described, is used in this Chapter as a synonym for “non-U.S. financial institution(s)”.

⁷⁰ Section 1242(a)(4) of IFCA defines the terms “correspondent account” and “payable-through account” by reference to section 5318A of title 31 U.S. Code, subparagraph (e)(1) of which - *Bank Definitions* - reads: “The following definitions shall apply with respect to a bank:

- (A) Account.—The term “account”— (i) means a formal banking or business relationship established to provide regular services, dealings, and other financial transactions; and (ii) includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.
- (B) Correspondent account.— The term “correspondent account” means an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution.
- (C) The term “payable-through account” means an account (...), opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.”

In practice, correspondent banking is an arrangement whereby a so-called “service-providing” bank makes or receives payments – and can perform other additional banking services – on behalf of a “customer” bank. This account held by the customer bank on the books of the service-providing bank pursuant to this arrangement is a correspondent account. It is called a “Nostro account” by the customer bank while the service-providing bank regards it as a “Loro account” or “Vostro account”. Foreign banks open correspondent accounts with service-providing banks of a given State to be able to pay and receive the domestic currency; correspondent accounts allow foreign banks to hold funds in currencies which are outside the jurisdictions where it has a branch or affiliate.

“Payable-through accounts”, or “pass through accounts” or “pass by accounts”, are used as an account service offered by U.S. banking entities to foreign banks consisting in the opening of a checking account for the foreign bank, which can then provide its customers (referred to as “sub-account holders”) with the means to conduct banking transactions in the United States, typically with checks enabling these customers to draw on the foreign bank’s account at the U.S. banking entity. By contrast,

- 2.24 In sum, the foregoing corpus of law introduced in 2012 aims to preclude the direct or indirect importation or exportation to or from Iran of graphite, raw or semi-finished metals such as aluminium and steel, coal, and software for integrating industrial processes. The related sanctions target any person who sells, supplies, or transfers, directly or indirectly, to or from Iran, the said materials as well as any foreign financial institution which conducts or facilitates a significant transaction for such sale, supply or transfer.⁷¹
- 2.25 These sanctions directed at non-U.S. persons had been waived as of 16 January 2016.⁷² However, on 8 May 2018 the U.S. announced the re-instatement of these sanctions, subject to a 90-day wind-down period, i.e., until 6 August 2018. They have been since implemented with full force as of 7 August 2018.
- 2.26 These sanctions relating to transactions with Iran in precious metals, in graphite, raw or semi-finished metals, coal, and industrial software, having extraterritorial effect and applying to individuals and companies of all countries, are set to seriously and adversely affect Iran's metals and minerals trade because several countries have become increasingly important trading partners since 2016. Since the U.S. decision to re-impose sanctions, foreign buyers of Iran's metals practically have no other choice than to switch to other suppliers to avoid highly damaging U.S. sanctions.

iii. Sanctions on transactions in the Iranian Rial

- 2.27 Section 6 of E.O. 13846 re-imposes sanctions previously contained in section 1 of E.O. 13645 – revoked by E.O. 13716 – with respect to the purchase or sale or holding of Iranian Rials or certain derivative financial products by “foreign financial institutions”.

in the context of a corresponding relationship, the customers are not aware of the relationship their bank has with other financial institutions.

⁷¹ Section 1242(b) of IFCA reads: “DETERMINATIONS OF SIGNIFICANCE.—For purposes of this subtitle, in determining if financial transactions or financial services are significant, the President may consider the totality of the facts and circumstances, including factors similar to the factors set forth in section 561.404 of title 31, Code of Federal Regulations (or any corresponding similar regulation or ruling)” (IM, Annex 19).

⁷² U.S. Secretary of State, “Waivers Determinations and Findings”, 18 October 2015 (IM, Annex 23).

2.28 Aiming to deprive Iran of any access to its currency reserves located outside of its territory, section 6 authorizes the Secretary of the Treasury to impose sanctions on any foreign financial institution – broadly defined to cover a large variety of companies providing financial services⁷³ – upon determining that such an institution, on or after 7 August 2018:

“(i) knowingly conducted or facilitated any significant transaction related to the purchase or sale of Iranian rials or a derivative (...) or other similar contract whose value is based on the exchange rate of the Iranian rial; or

(ii) maintained significant funds or accounts outside the territory of Iran denominated in the Iranian rial”.⁷⁴

2.29 Pursuant to section 6(b) of E.O. 13846, any foreign financial institution engaging in the abovementioned activities would be subject to (i) prohibition or strict conditions on it opening or maintaining correspondent or payable-through accounts in the United States, or, in the alternative, (ii) the blocking of its assets – property and interests in property – which are or become subject to U.S. jurisdiction or come within the possession or control of U.S. persons.⁷⁵

2.30 Regardless of the interpretation by the Secretary of the Treasury of the term “significant” in this provision,⁷⁶ the very object of the sanctions is completely to bar

⁷³ According to Section 16(d) of E.O. 13846, “the term ‘foreign financial institution’ means any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes, but is not limited to, depository institutions, banks, savings banks, money service businesses, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and holding companies, affiliates, or subsidiaries of any of the foregoing (...)” (IM, Annex 35).

⁷⁴ E.O. 13846, section 6(a)(i) and (ii) (IM, Annex 35).

⁷⁵ In full, section 6(b) of E.O. 13846 provides: “With respect to any foreign financial institution determined by the Secretary of Treasury in accordance with this section to meet the criteria set forth in subsection (a)(i) or (a)(ii) of this section, the Secretary of the Treasury may: (i) prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable through account by such foreign financial institution; or (ii) block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of such foreign financial institution, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in” (IM, Annex 35).

⁷⁶ The U.S. Department of Treasury explains that “[a]s a general matter, in determining for purposes of IFCA and relevant Executive orders whether transactions, financial transactions, or financial services are significant, the Department of the Treasury will rely on the interpretation set out in §561.404 of the IFSR. The IFSR provide that the Department of the Treasury may consider the totality of the facts and

cross-border capital transactions denominated in the Iranian currency, both from Iran (e.g. the sale of Rials) and to Iran (e.g. the purchase of Rials, or the transfer to Iran of accounts in Rials maintained outside the territory).

iv. Sanctions related to the issuance of Iranian sovereign debt

2.31 Section 9 of E.O. 13846 re-imposes, as of 7 August 2018, the application to non-U.S. nationals of section 213(a) of TRA regarding the issuance of Iranian sovereign debt. The application of this provision was waived by the United States pursuant to its obligations under the JCPOA, but the waiver was revoked on 8 May 2018, subject to the 90-day wind-down period.

2.32 Section 213(a), which is therefore back in full effect since 7 August 2018, targets all activities related to the issuance of sovereign debt by Iran. It provides that:

“The President shall impose 5 or more of the sanctions described in section 6(a) of the Iran Sanctions Act of 1996, as amended by section 204 [see footnote 63 above for a complete list of such menu-based sanctions], with respect to a person if the President determines that the person knowingly, on or after the date of the enactment of this Act [i.e., 10 August 2012], purchases, subscribes to, or facilitates the issuance of

(1) sovereign debt of the Government of Iran issued on or after such date of enactment, including governmental bonds; or

(2) debt of any entity owned or controlled by the Government of Iran issued on or after such date of enactment, including bonds”.

circumstances set forth a list of broad factors that can play a role in the determination whether transactions, financial services, and financial transactions are significant, including: (a) the size, number, and frequency of the transactions, financial services, or financial transactions; (b) the nature of the transactions, financial services, or financial transactions, including their type, complexity, and commercial purpose; (c) the level of awareness of management and whether the transactions are part of a pattern of conduct; (d) the nexus of the transactions, financial services, and financial transactions and blocked persons; (e) the impact of the transactions, financial services, and financial transactions on statutory objectives; (f) whether the transactions, financial services, and financial transactions involve deceptive practices; (g) whether the transactions solely involve the passive holdings of Central Bank of Iran (CBI) reserves or repayment by the CBI of official development assistance or the transfer of funds required as a condition of Iran’s membership in an international financial institution; and (h) other relevant factors that the Secretary of the Treasury deems relevant. We anticipate adopting a similar approach to interpreting the term “significant” as it applies to goods or services. (31 C.F.R. §561.404)” (OFAC FAQ’s: Iran sanctions, Question 289: “How will the following Iran Freedom and Counter-Proliferation Act (IFCA) terms be interpreted: “Iran,” “knowingly,” “significant,” and “transfer”?”, version as of 31 March 2019 (IM, Annex 50)). The IFSR are in IM, Annex 21.

- 2.33 Section 5 of E.O. 13846 also provides OFAC and the U.S. Department of the Treasury with the authority to impose menu-based sanctions (described in para. 2.21 above) on persons determined to have engaged in the foregoing activities relating to Iranian sovereign debt.
- 2.34 This sanction aims to preclude the Government of Iran from accessing the international financial market. It forces all persons, regardless of their nationality, to decline to provide financial services or support in this regard.

v. Sanctions on Iran's automotive sector

- 2.35 E.O. 13846 re-imposes, as of 7 August 2018, sanctions on Iran's automotive sector which were previously contained in subsections 3(a)(ii) and section 5 of E.O. 13645 of 3 June 2013 that had been revoked by E.O. 13716.
- 2.36 E.O. 13846 has a broad definition of the "automotive sector of Iran" as "the manufacturing or assembling in Iran of light and heavy vehicles including passenger cars, trucks, buses, minibuses, pick-up trucks, and motorcycles, as well as original equipment manufacturing and after-market parts manufacturing relating to such vehicles".⁷⁷
- 2.37 Section 3(a)(i) of E.O. 13846 imposes so-called "menu-based" ISA-related sanctions – "any of the sanctions described in section 4 or 5 of this order"⁷⁸ – on persons determined by the Secretary of State as having, on or after 7 August 2018, "knowingly engaged in a significant transaction for the sale, supply, or transfer to Iran of

⁷⁷ E.O. 13846, Section 16(a) (IM, Annex 35).

⁷⁸ E.O. 13846, Section 3(a), "Menu-based Sanctions Relating to Iran's Automotive Sector and Trade in Iranian Petroleum, Petroleum Products, and Petrochemical Products" (IM, Annex 35)

Section 4 of E.O. 13846 offers the U.S. Secretary of State a large range of additional actions to penalize persons sanctioned under Section 3 in the context of their relations to U.S. agencies, including, *inter alia*: the denial of issuance of any guarantee, insurance, extension of credit in connection with the export of any goods or services to the sanctioned person (Section 4(a)), the refusal to grant specific licenses for the export/reexport of goods or technology to the sanctioned person (Section 4(b)), the denial of procurement contracts with U.S. government agencies (Section 4(d)), the denial of visa and exclusion from the U.S. territory of any alien that is a corporate officer or a principal of, or a controlling shareholder in, a sanctioned person (Section 4(e)). Section 5 enumerates seven categories of additional sanctions that have been set forth above – see para. 2.21.

significant goods or services used in connection with the automotive sector of Iran”.⁷⁹

OFAC has stated that it anticipates forthcoming regulations will broadly define “goods or services used in connection with the automotive sector of Iran” to include:

“goods or services that contribute to (i) Iran’s ability to *research, develop, manufacture, and assemble light and heavy vehicles, and (ii) the manufacturing or assembling of original equipment and after-market parts used in Iran’s automotive industry*”.⁸⁰

- 2.38 In addition, E.O. 13846 excludes foreign banks from the U.S. market if they knowingly conducted or facilitated any significant financial transactions on or after 7 August 2018, for the sale, supply, or transfer to Iran of goods or services used in connection with Iran’s automotive sector. More specifically, section 2(a)(i) authorizes the Secretary of the Treasury to prohibit the opening or maintaining of, or impose strict conditions on, a correspondent or payable-through account in the United States by any such financial institution.⁸¹
- 2.39 According to these provisions, the only “significant” automotive-related export transactions that are not subject to U.S. sanctions appear to be “the export of *finished* vehicles to Iran if no further assembly or manufacturing is required”,⁸² or goods or services used only for the maintenance of these finished vehicles exported to Iran⁸³ – provided that these transactions are otherwise consistent with U.S. sanctions.

⁷⁹ E.O. 13846, Section 3(a)(i) (IM, Annex 35). According to the U.S. Department of Treasury, the term “significant” applied to goods and services in this provision is to be interpreted in the same way as when it qualifies “transactions”, “financial transactions”, or “financial services” as being significant,” (OFAC FAQ’s: Iran sanctions, Question 289: “How will the following Iran Freedom and Counter-Proliferation Act (IFCA) terms be interpreted: “Iran,” “knowingly,” “significant,” and “transfer?””, version as of 31 March 2019 – IM, Annex 50) (see above fn 76). See IFSR §561.404 (IM, Annex 21).

⁸⁰ OFAC FAQ’s: Iran sanctions, Question 611: “What are goods or services used in connection with Iran’s automotive sector for purposes of E.O. 13846?”, version as of 31 March 2019 (IM, Annex 50 – emphasis added).

⁸¹ Definitions of “correspondent account” and “payable through account” for the purpose of E.O. 13846 are not provided by the EO itself. However, since section 2 of E.O. 13846 is an implementation of NDAA 2012, which defines “account”, “correspondent account” and “payable-through account” by reference to section 5318A of title 31 U.S. Code, these terms should be understood as defined in that section 5318A: see footnote 70 above.

⁸² OFAC FAQ’s: Iran sanctions, Question 612: “Is the sale, supply, or transfer of finished vehicles or “auto kits” to Iran sanctionable under [E.O. 13846]?”, version as of 31 March 2019 (IM, Annex 50 – emphasis added).

⁸³ OFAC FAQ’s: Iran sanctions, Question 613: “Is the sale, supply, or transfer of goods or services for the maintenance of finished vehicles sanctionable under E.O. 13846?”, version as of 31 March 2019 (IM, Annex 50).

2.40 In sum, this re-imposed measure bars any importation of the material that could contribute to the research, development, manufacturing, or assembly of all kinds of vehicles in Iran, as well as original equipment, after-market parts, and any provision of related services, including financial services, critical to this industrial sector of Iran's economy.

B. The revocation of authorizations under U.S. sanctions regarding Iran whereby the scope of permissible direct trade between the two countries had been expanded

2.41 On 7 August 2018, the revocation of certain authorizations implemented pursuant to the JCPOA that had allowed greater, even if still limited, direct trade between the U.S. and Iran entered into full effect. These authorizations concerned (i) the export or re-export to Iran of commercial passenger aircraft and related parts and services, and (ii) importation into the United States of Iranian luxury goods.⁸⁴

i. Sanctions concerning activities related to the export or re-export to Iran of commercial passenger aircraft and related parts and services

2.42 The United States revoked, as of 7 August 2018, the Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services ("SLP") that the U.S. Department of the Treasury had issued on 16 January 2016. Under this SLP, and consistent with U.S. obligations under the JCPOA, requests by U.S. and non-U.S. persons for specific authorization from OFAC to engage in transactions for the sale and export of commercial passenger aircraft and related parts and services to Iran that would otherwise be prohibited under the ITSR (31 C.F.R. Part 560) would be subject to a favourable licensing policy.⁸⁵ In the same context, Iran Air – Iran's largest state-

⁸⁴ Generally, see U.S Department of Treasury, OFAC, "Frequently Asked Questions Regarding the Re-Imposition of Sanctions Pursuant to the May 8, 2018 National Security Presidential Memorandum Relating to the Joint Comprehensive Plan of Action (JCPOA)", 8 May 2018, updated on 6 August 2018 (IM, Annex 38).

⁸⁵ U.S Department of Treasury, OFAC, Statement of licensing policy for activities related to the export or re-export to Iran of commercial passenger aircraft and related parts and services, 16 January 2016, revoked as of 8 May 2018 (IM, Annex 26).

owned airline – had been delisted from the SDN List,⁸⁶ and therefore could benefit from the SLP.

2.43 Provided that no licensed aircraft, goods or services were re-sold or re-transferred to any person on the SDN list, this SLP had served as the legal basis to grant specific licenses

“on a case-by-case basis to authorize U.S. persons and, where there is a nexus to U.S. jurisdiction, non-U.S. persons to (1) export, re-export, sell, lease, or transfer to Iran commercial passenger aircraft for exclusively civil aviation end-use, (2) export, re-export, sell, lease, or transfer to Iran spare parts and components for commercial passenger aircraft, and (3) provide associated services, including warranty, maintenance, and repair services and safety-related inspections, for all the foregoing, provided that licensed items and services are used exclusively for commercial passenger aviation”.⁸⁷

2.44 As of 7 August 2018, the United States revoked General License I that the OFAC had issued on 24 March 2016 as a complement to the SLP, to authorize U.S. persons to

“enter into, and to engage in all transactions ordinarily incident to the negotiation of and entry into, contracts for activities eligible for authorization under the [SLP], provided that the performance of any such contract is made expressly contingent upon the issuance of a specific license by the [OFAC] authorizing the activities to be performed (“contingent contracts”).”⁸⁸

2.45 In connection with the 8 May Decision, OFAC indicated that it was also revoking all specific licenses issued by it since 16 January 2016 pursuant to the SLP for activities

⁸⁶ Iran Air had been designated as a sanctioned entity on the SDN List pursuant to E.O. 13382 of 29 June 2005 (“*Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters*”). Designations under E.O. 13382 prohibit all transactions between the designees and any U.S. person, and freeze any assets the designees may have under U.S. jurisdiction. Consequently, it was impossible for Iran Air, until Implementation Day of the JCPOA, to obtain a license to purchase commercial aircraft or parts with more than 10% U.S. content.

⁸⁷ U.S. Department of Treasury, OFAC, Statement of licensing policy for activities related to the export or re-export to Iran of commercial passenger aircraft and related parts and services, 16 January 2016, revoked as of 8 May 2018, p. 1 (IM, Annex 26).

⁸⁸ U.S. Department of the Treasury, OFAC, General License I Authorizing Certain Transactions Related to the Negotiation of, and Entry Into, Contingent Contracts for Activities Eligible for Authorization Under the Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services, 24 March 2016, revoked as of 27 June 2018, para. (a) (a 90-day wind-down period permitted the transactions authorized under General License I be carried out until 6 August 2018) (IM, Annex 29). General License I defines “contingent contracts” as including “executory contracts, executory pro forma invoices, agreements in principle, executory offers capable of acceptance such as bids or proposals in response to public tenders, binding memoranda of understanding, or any other similar agreement”.

relating to the export or re-export to Iran of commercial passenger aircraft and related parts and services, and that it would no longer consider any such applications.⁸⁹

2.46 These measures are directed toward U.S. and non-U.S. persons and apply on a broad basis if the aircraft or parts of aircraft or related services to be exported to Iran contain 10% or more U.S. content. Following this revocation, all agreements that Iranian airline companies including Iran Air, Iran Aseman Airlines, Kish Air and Qeshm Airlines had concluded with Boeing and Airbus under specific licenses were cancelled or postponed.⁹⁰ Iran Air, in particular, has been relisted on the SDN List.

ii. Sanctions prohibiting the importation into the United States of Iranian-origin carpets and foodstuffs

2.47 The 8 May Decision also resulted in the reversal of the easing of the ITSR that had allowed, effective 21 January 2016, the importation into the United States of Iranian-origin luxury goods including carpets, caviar, nuts, and other foodstuffs, as well as certain related financial transactions.⁹¹ Such importation is again prohibited under Section 201 of the ITSR.

SECTION 2.

THE NUCLEAR-RELATED MEASURES RE-IMPOSED AS OF 5 NOVEMBER 2018

2.48 The 180-day wind-down period following the 8 May Decision to re-impose the remaining “nuclear-related” sanctions against Iran ended on 4 November 2018. The U.S. Treasury announced the full re-imposition as of 5 November 2018 of the sanctions on Iran that had been lifted or waived in 2016 as follows:

⁸⁹ U.S. Department of Treasury, OFAC, “Frequently Asked Questions Regarding the Re-Imposition of Sanctions Pursuant to the May 8, 2018 National Security Presidential Memorandum Relating to the Joint Comprehensive Plan of Action (JCPOA)”, 8 May 2018, updated on 6 August 2018 (IM, Annex 38).

⁹⁰ See para. 3.50 below.

⁹¹ U.S. Department of Treasury, OFAC, Final Rule amending the Iranian Transactions and Sanctions Regulations, 21 January 2016, 81 Fed. Reg. 3330 (adding general licenses authorizing the importation into the United States of, and dealings in, certain Iranian-origin foodstuffs and carpets and related transactions) (IM, Annex 27).

“These are the toughest U.S. sanctions ever imposed on Iran, and will target critical sectors of Iran’s economy, such as the energy, shipping and shipbuilding, and financial sectors. The United States is engaged in a campaign of maximum financial pressure on the Iranian regime and intends to enforce aggressively these sanctions that have come back into effect.”⁹²

2.49 The re-imposition as of 5 November 2018 of remaining “nuclear-related” U.S. sanctions on Iran includes the re-listing and listing of more than 700 individuals, entities, aircraft, and vessels on the SDN List⁹³ (set out in section A below), the re-imposition of secondary sanctions (detailed in section B below),⁹⁴ and the revocation of OFAC’s General License H (described in section C below).

A. The re-listing and listing on OFAC’s SDN List

2.50 In January 2016, and in accordance with its commitments under the JCPOA, the United States removed almost 500 persons, mostly Iranian, from the SDN List.⁹⁵

2.51 The 8 May Decision resulted in the re-listing of these persons on the SDN List, which now includes persons identified as the “Government of Iran”, including the CBI, the majority of Iranian financial institutions (encompassing all Iranian banks), the main Iranian operators in the field of aeronautics, oil and shipping sectors, and other persons including aircraft and vessels.⁹⁶ As a result of their re-listing, the assets of all such persons are blocked pursuant to §560.211 of the ITSR, which reads:

⁹² U.S. Department of Treasury, Resource Center, Webpage “Iran Sanctions” (IM, Annex 20).

⁹³ U.S. Department of Treasury, Resource Center, Webpage “Publication of Updates to OFAC’s Specially Designated Nationals and Blocked Persons List and 13599 List Removals”, available at www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20181105_names.aspx (last visited 31 March 2019).

In this context, OFAC moved persons identified as meeting the definition of the terms “Government of Iran” or an “Iranian financial institution” from the List of Persons Blocked Pursuant to E.O. 13599 (the “E.O. 13599 List”) to the SDN List and removed the E.O. 13599 List.

⁹⁴ For the general listing of the sanctions that snapped back on 5 November 2018 see OFAC FAQ’s: Iran sanctions, Question 607: What activity will become sanctionable on or after November 5, 2018 under E.O. 13846 or other authorities?”, version as of 31 March 2019 (IM, Annex 50).

⁹⁵ See Annex 2, Attachment 3 to the JCPOA for a complete list of all such persons (IM, Annex 10).

⁹⁶ The relisted SDNs included those that had been blocked solely pursuant to E.O. 13599 and with which U.S. Persons were prohibited from having any dealings. As explained by the research service of the U.S. Congress, “The Treasury Department announced on May 8, 2018 (...) that almost all of the 13599-designated entities that were delisted as SDNs will be relisted as SDNs on November 5, 2018. On November 5, 2018, the Treasury Department published an updated list of SDNs in concert with

“(a) All property and interests in property of the Government of Iran, including the Central Bank of Iran, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(b) All property and interests in property of any Iranian financial institution, including the Central Bank of Iran, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(c) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to paragraphs (a) through (c)(1) of this section;⁹⁷

2.52 Significantly, pursuant to OFAC’s “50% Rule”, any entities that are owned 50% or more (directly or indirectly) in the aggregate by one or more SDN entities or persons are themselves deemed to be SDN entities, regardless of whether their name is specifically incorporated into the SDN list, and are equally subject to the foregoing blocking sanctions described above.⁹⁸

2.53 Following the entry into force of E.O. 13846 on 7 August 2018, §560.211 of the ITSR was amended, in order to reinstate the regulatory provisions implementing the authorities that were previously in section 5 of E.O. 13622 and now are in section 1 of E.O. 13846, by adding the following provision to paragraph (c):

redesignating “delisted” SDNs that were previously added to the designees blocked “solely pursuant to E.O 13599.” See K. Katzman, “Iran Sanctions”, *Congressional Research Service*, RS20871, updated 22 April 2019, at p. 4 (Footnote omitted) (IM, Annex 329).

⁹⁷ The Iranian Transactions and Sanctions Regulations (“ITSR”) are included in Part 560 of Title 31 (Money and Finance: Treasury) of the Code of Federal Regulations.

⁹⁸ U.S. Department of Treasury, “Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property Are Blocked”, 13 August 2014 (IM, Annex 22).

“[or] (ii) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) To have, on or after August 7, 2018, materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the purchase or acquisition of U.S. bank notes or precious metals by the Government of Iran; or

(B) To have, on or after November 5, 2018, materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the National Iranian Oil Company (NIOC); the Naftiran Intertrade Company (NICO); any entity owned or controlled by, or operating for or on behalf of, NIOC or NICO; or the Central Bank of Iran⁹⁹. (...)”

2.54 The SDN List currently includes, as regards sanctions against Iran, almost 700 names.¹⁰⁰

2.55 The designation on the SDN List results in the blocking of the assets of the Iranian listed person that are or come within the United States’ jurisdiction, including assets that come within the possession or control of any U.S. companies and banks and their foreign branches, so that it becomes impossible to transfer, pay, export, or withdraw these assets or otherwise deal in them. As Iran will demonstrate below, the object and effect of SDN listings is to restrict the transfer of funds “to or from” Iran.¹⁰¹

2.56 Inclusion on the SDN List precludes any U.S. or non-U.S. person from doing any kind of business with, or related to, the listed individual, entity, vessel or aircraft – except if the listed entity is an Iranian depository institution or part of the Government of Iran designated only pursuant to E.O. 13599, in which case only U.S. persons are prohibited from engaging in any transactions or dealings with them.

2.57 Indeed, according to subsection 1(a)(iii) of E.O. 13846 read in conjunction with subsection 1(b), the Secretary of the Treasury can block the assets of persons determined, on or after 5 November 2018, to have “materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in

⁹⁹ NIOC, NICO and CBI of Iran are back on the SDN List since 5 November 2018.

¹⁰⁰ The SDN List is available at www.treasury.gov/resource-center/sanctions/sdn-list/pages/default.aspx.

¹⁰¹ See Chapter V below, paras. 5.23-5.27.

support of” (A) Iranian persons included on the SDN List or (B) any other persons included on the SDN List whose property and interests in property are blocked pursuant to Executive Order 13599 or subsection 1(a) of E.O. 13846.¹⁰²

2.58 In addition, non-U.S. financial institutions (“foreign financial institutions”) can be prohibited from opening or maintaining a correspondent or payable-through account in the U.S. if they “knowingly conducted or facilitated any significant transaction on or after November 5, 2018, on behalf of any Iranian person included on the SDN List (...) or any other person included on the SDN List whose property and interests in property are blocked pursuant to subsection 1(a) of [E.O. 13846] or Executive Order 13599”.¹⁰³ In other words, Iranian SDNs other than those solely listed pursuant to E.O. 13599 cannot use any financial services, whatever the nationality or domicile of the provider, to carry out a significant transaction unless the provider is prepared to be blocked from any access to the U.S. banking system, meaning they cannot, in fact, carry out any transaction important to their business.

2.59 U.S. and non-U.S. persons whose assets are blocked pursuant to E.O. 13846 are also prohibited from providing or receiving any contributions, funds, goods, or services. Specifically, section 12 of E.O. 13846 provides that

“the prohibitions in subsections 1(b), 5(a)(iv), 6(b)(ii) and 7(b) of this order include (a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and (b) the receipt of any contribution or provision of funds, goods, or services from any such person”.

2.60 In sum, the designation on the SDN List equates to an effective ban from the economic and financial sphere in which the United States operates directly or indirectly. The U.S. measures effectively bar the listed entity from any kind of business relationship with U.S. as well as non-U.S. persons.

¹⁰² E.O. 13846, Section 1(a)(iii) read in conjunction with Section 1(b). Iranian depository institutions whose assets are blocked solely pursuant to Executive Order 13599 are excluded from the category of persons subject to clauses (A) and (B) (IM, Annex 35).

¹⁰³ E.O. 13846, Section 2(a)(ii) read in conjunction with Section 2(b). Iranian depository institutions whose assets are blocked solely pursuant to Executive Order 13599 are excepted from the application of this provision (IM, Annex 35).

B. The nuclear-related measures re-imposed under E.O. 13846 and related statutory authorities

2.61 As of 5 November 2018 and following a 180-day wind-down period, the United States revoked waivers issued as of 16 January 2016 in accordance with U.S. commitments under the JCPOA,¹⁰⁴ re-instating the application to non-U.S. persons of the statutory authorities providing nuclear-related sanctions with respect to the following: (i) transactions with Iran’s port operators, and shipping and shipbuilding sectors, (ii) petroleum-related transactions with, among others, NIOC, Naftiran Intertrade Company (“NICO”), and the National Iranian Tanker Company (“NITC”), (iii) transactions with Iran’s energy sector in general, (iv) transactions by foreign financial institutions with the CBI and designated Iranian financial institutions, (v) provision of specialized financial messaging services to Iranian banks, and (vi) provision of underwriting services, insurance, or reinsurance relating to Iran.

i. Sanctions on Iran’s port operators, and shipping and shipbuilding sectors

2.62 Section 1(a)(iv) of E.O. 13846 authorizes the U.S. Secretary of the Treasury to “impose blocking sanctions described in subsection (b) of this section^[105] upon determining that:

pursuant to authority delegated by the President and in accordance with the terms of such delegation, sanctions shall be imposed on such person pursuant to sections 1244(c)(1)(A) of IFCA because the person:

- (A) is part of the energy, shipping, or shipbuilding sectors of Iran;
- (B) operates a port in Iran; or
- (C) knowingly provides significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of a person determined under section 1244(c)(2)(A)

¹⁰⁴ U.S. Secretary of State, “Waivers Determinations and Findings”, 18 October 2015 (IM, Annex 23). For a brief list of these statutory authorities waived as of 16 January 2016, see footnote 55 above.

¹⁰⁵ Section 1(b) of E.O. 13846 provides “With respect to any person determined by the Secretary of the Treasury in accordance with this section to meet any of the criteria set forth in subsections (a)(i)–(a)(iv) of this section, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of such person are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.” (IM, Annex 35) This provision is to be applied in accordance with Section 12 of E.O. 13846 (see para. 2.59 above).

of IFCA to be a part of the energy, shipping, or shipbuilding sectors of Iran; [or] a person determined under section 1244(c)(2)(B) of IFCA to operate a port in Iran.”

2.63 Section 1244(d) of IFCA provides additional sanctions, requiring the President to choose 5 or more of the menu-based sanctions described in section 6(a) of ISA 1996¹⁰⁶ to impose on persons who knowingly sell, supply, or transfer to or from Iran significant goods or services used in connection with its shipping or ship building sectors. Section 5 of E.O. 13846 enumerates additional implementation authorities for such “menu-based” sanctions to be imposed on persons determined to have engaged in the foregoing activities.¹⁰⁷

2.64 This set of sanctions is similar in scope and implementation to the blocking and menu-based sanctions analysed at paras. 2.51-2.60 above, but specifically applies to persons involved in or providing support to the shipping or shipbuilding sectors of Iran – including the Islamic Republic of Iran Shipping Lines (“IRISL”), South Shipping Line Iran, or their affiliates, which are all on the SDN List. The shipping and shipbuilding sectors are crucial to Iran’s economy and are being specifically targeted by the United States. As explained above, these SDN-designated persons and, more generally, these critical sectors of Iran’s economy, are *de jure* deprived from doing any business with any U.S. or non-U.S. counterparty.

2.65 The scope of these sanctions is far-reaching as a result of the following applicable terms being broadly defined by OFAC:

- “shipping sector of Iran” includes “activities involving the transportation of goods by seagoing vessels, including oil tankers and cargo vessels, flying the flag of the Islamic Republic of Iran, or owned, controlled, chartered, or operated directly or indirectly by the Government of Iran”, and “shipbuilding sector of Iran” includes “activities involving the construction of seagoing vessels, including oil tankers and cargo vessels, in Iran”;¹⁰⁸

¹⁰⁶ See fn 63 above.

¹⁰⁷ For the detail of these additional implementation authorities see para. 2.21 above.

¹⁰⁸ See OFAC FAQ’s: Iran sanctions, Question 293, “What will the “energy, shipping, and shipbuilding sectors of Iran” mean for the purposes of IFCA?”, version as of 31 March 2019 (IM, Annex 50).

- “goods and services” used in support of Iran’s shipping and shipbuilding sectors includes a very large range of items and services that these sectors are dependent on for their daily activity as well as necessary long-terms investments;¹⁰⁹
- “knowingly” includes actual knowledge but also if the person “should have known of the conduct, the circumstance, or the result”;¹¹⁰
- “significant”, when used to qualify any kind of support to persons who operate ports in Iran or are part of Iran’s shipping and shipbuilding sectors, is determined on a case-by-case basis, consider[ing] the totality of the facts and circumstances, including wide-ranging factors such as the nature, purpose, size, number, frequency, and impact of transactions in question, as well as “other relevant factors that the Secretary of the Treasury deems relevant”.¹¹¹

2.66 The object of these measures is, in sum, to paralyze the infrastructure, the networks and the economic actors on which Iran’s trade at sea and ports rely.

¹⁰⁹ Replying to the question “What are goods or services used in connection with Iran’s energy, shipping, or shipbuilding sectors for purposes of IFCA section 1244(d)(3)?”, OFAC explained:

“We anticipate that regulations to be promulgated will define goods and services used in connection with Iran’s energy, shipping and shipbuilding sectors to include:

b. Shipping Sector: (...) the provision of crude and product tankers to Iran; the provision of registry, flagging, or classification services of any kind; the supervision of and participation in the repair of ships and their parts; the inspection, testing, and certification of marine equipment materials and components; the carrying out of surveys, inspections, audits and visits, and the issuance, renewal or endorsement of the relevant certificates and documents of compliance, as they relate to ships and shipping; and any other goods or services relating to the maintenance, supply, bunkering, and docking of vessels flying the flag of the Islamic Republic of Iran, or owned, controlled, chartered, or operated directly or indirectly by, or for or on behalf of the Government of Iran (GOI) or an Iranian person.

c. Shipbuilding Sector: the building and refit of vessels; the provision or refit of items such as (i) steam turbines and their parts for marine propulsions, (ii) marine propulsion engines and parts used solely or principally with them, (iii) other gas turbines for marine propulsion, (iv) ship or boat propellers and blades, and (v) direction finding compasses and other navigational instruments and appliances solely for the maritime industry; other goods used in connection with building and propulsion of vessels; and technical assistance and training relating to, and financing of, the building, maintenance or re-fitting of vessels.” (OFAC FAQ’s: Iran sanctions, Question 295, version as of 31 March 2019 (IM, Annex 50).

¹¹⁰ OFAC FAQ’s: Iran sanctions, Question 289: “How will the following Iran Freedom and Counter-Proliferation Act (IFCA) terms be interpreted: “Iran,” “knowingly,” “significant,” and “transfer”?”, version as of 31 March 2019 (IM, Annex 50).

¹¹¹ *Ibidem*. See above footnote 76, and IFRS §561.404 (IM, Annex 21).

*ii. Sanctions relating to petroleum-related transactions
with, among others, NIOC, NICO, and NITC*

- 2.67 As petroleum and petroleum products are a major source of revenues – including hard currency – for Iran, a significant part of the U.S. sanctions that came back into effect on 5 November 2018, including the full array of blocking sanctions, correspondent and payable-through account sanctions, and menu-based sanctions, targets Iran’s trade in petroleum, petroleum products, and petrochemical products, as well as the key Iranian actors involved in the production, distribution and trade of petroleum and petroleum-based products. These actors include NIOC, a company responsible for the exploration, drilling, production, distribution and export of crude oil and natural gas; NICO, a subsidiary of NIOC on behalf of which it handles trading and swap arrangements, acting as a broker for Iran’s oil and gas sector; NIOC International Affairs, a subsidiary of NIOC also in charge of the import/export of crude oil and petroleum products; National Petrochemical Company (“NPC”), Iran’s main producer and exporter of petrochemicals; and NITC, a subsidiary of NIOC which transports Iranian crude oil to export markets and crude oil from other origins in cross-trade transactions.
- 2.68 Among others, these five companies, as well as some of their executive officers, were relisted on the SDN List as of 5 November 2018.¹¹² Their assets within U.S. jurisdiction were accordingly blocked and U.S. persons are prohibited from engaging in *any* transactions or dealings with them.
- 2.69 As described below, not only are these entities sanctioned, but *any person* of whatever nationality who does business with or provides financial services to NIOC, NICO, or any entity owned or controlled by them, or operating for them or on their behalf,¹¹³ is now subject to the re-imposed U.S. sanctions.

¹¹² *Op. cit.* footnote 93.

¹¹³ Section 16 of E.O. 13846 specifically defines NIOC and NICO to include “any entity owned or controlled by or operating for or on behalf of” such entity.

2.70 Section 1(a)(ii) of E.O. 13846 provides that the U.S. Secretary of the Treasury is authorized to impose blocking sanctions on any person determined to have on or after 5 November 2018:

“materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of” NIOC, NICO, or the Central Bank of Iran;¹¹⁴

2.71 Similarly, section 2(a)(iii) of E.O. 13846 provides that the U.S. Secretary of the Treasury is authorized to impose on a foreign financial institution’s U.S. correspondent or payable-through account sanctions (prohibiting them from opening or maintaining, or imposing strict conditions on, any such accounts in the United States)¹¹⁵ upon determining that the foreign financial institution has knowingly conducted or facilitated any significant financial transaction (...) on or after 5 November 2018, with NIOC or NICO. This section is subject to the limited exception for the sale or provision to NIOC or NICO of refined petroleum products provided that the fair market value of such products is lower than \$1,000,000 or \$5,000,000 in the aggregate during a twelve-month period”.¹¹⁶

2.72 The scope of the re-imposed correspondent and payable-through account sanctions against the Iranian petroleum sector is even broader, and encompasses non- U.S. financial institutions determined as having, on or after 5 November 2018, “knowingly conducted or facilitated any significant transaction for the purchase,

¹¹⁴ Subsection 1(a)(ii) of E.O. 13846 (IM, Annex 35).

¹¹⁵ Subsection (2)(b) of E.O. 13846 (IM, Annex 35).

¹¹⁶ Subsection (2)(a)(iii) of E.O. 13846. This sanction was originally provided under Section 1 of E.O. 13622 of 30 July 2012 (revoked by E.O. 13716 of 16 January 2016), which also barred banks from the U.S. financial system if they had conducted or facilitated any significant financial transactions for the purchase of oil, other petroleum, or petrochemical products from Iran, and transactions with NIOC or NICO. It is worth noting that foreign financial institutions dealing with NIOC, NICO and their affiliates are also sanctionable under subsection (2)(a)(ii) of E.O. 13846, which is in fact similar to subsection 2(a)(iii) but concerns transactions with SDN entities, including NIOC, NICO and their affiliates (IM, Annex 35). The excepted transactions are as provided in Section 5(a)(3)(A)(i) of ISA (IM, Annex 15).

acquisition, sale, transport, or marketing of” petroleum, petroleum products,¹¹⁷ or petrochemical products¹¹⁸ from Iran.¹¹⁹

- 2.73 The expansion of petroleum-related sanctions on Iran is, according to OFAC, intended to “deter[] Iran or any other country or institution from establishing workaround payment mechanisms for the purchase of Iranian oil to circumvent the NDAA 2012 oil sanctions”.¹²⁰ Thus, non-U.S. financial institutions face sanctions if they assist, in whatever manner – the language “conduct or *facilitate*” is particularly broad – a “significant” transaction relating to Iran’s petroleum or petrochemical sectors. Given the volumes usually at stake in these sectors, an insignificant transaction is barely imaginable for *any* kind of activity related to petroleum or petrochemical businesses – from the trade itself to transportation or *marketing* of these products.
- 2.74 In sum, as a result of the re-imposition of sanctions on Iran, non-U.S. financial institutions are effectively precluded from any kind of intervention in any business relating to petroleum, petroleum products or petrochemical products in or relating to

¹¹⁷ The term “petroleum products”, as defined in section 16(o) of E.O. 13846, includes unfinished oils, liquefied petroleum gases, pentanes plus, aviation gasoline, motor gasoline, naphtha-type jet fuel, kerosene-type jet fuel, kerosene, distillate fuel oil, residual fuel oil, petrochemical feedstocks, special naphthas, lubricants, waxes, petroleum coke, asphalt, road oil, still gas, and miscellaneous products obtained from the processing of: crude oil (including lease condensate), natural gas, and other hydrocarbon compounds. The term does not include natural gas, liquefied natural gas, biofuels, methanol, and other non-petroleum fuels (IM, Annex 35).

¹¹⁸ The term “petrochemical products” as defined in section 16(m) of E.O. 13846, includes any aromatic, olefin, and synthesis gas, and any of their derivatives, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea (IM, Annex 35).

¹¹⁹ Subsections 2(a)(iv)-(a)(v) of E.O. 13846 (IM, Annex 35).

¹²⁰ OFAC FAQ’s: Iran sanctions, Question 614: “What does E.O. 13846 do with respect to Iran’s energy, petroleum and petrochemical sectors?”, version as of 31 March 2019 (IM, Annex 50).

Section 1245(d)(4)(C) of the U.S. National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, 125 Stat. 1647 (“NDAA 2012”), which went back into effect on 5 November 2018, provides that, except if a “Significant Reduction Exception” applies (see below para. 2.80 et seq.), sanctions imposed under paragraph (1)(A) [i.e., prohibitions on the opening or maintaining in the U.S. of a correspondent or payable-through account] shall apply *with respect to a financial transaction conducted or facilitated by a foreign financial institution (...) for the purchase of petroleum or petroleum products from Iran* if the President determines pursuant to subparagraph (B) that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions” (IM, Annex 17 – emphasis added).

Such presidential determination was last made on 31 October 2018. See U.S. President, Presidential Determination No. 2019-04, 31 October 2018, 83 Fed. Reg. 57673 (IM, Annex 40). The sanctions laid down in subsection 1245(d)(1)(A) of NDAA 2012 therefore apply with respect to petroleum transactions.

Iran. Iran’s petroleum – *lato sensu* – sector is therefore cut-off from the international financial market on which it relies for the exportation of its production since the trade in petroleum ordinarily requires financing by banks of importers, given the volumes concerned in any transaction.

2.75 Beyond financial service providers, the participants in a “significant” transaction for the purchase, acquisition, sale, transport, or marketing of petroleum, petroleum products, or petrochemical products are themselves targeted by U.S. sanctions re-imposed by E.O. 13846. Subsections 3(a)(ii) and 3(a)(iii) provide the U.S. Secretary of the Treasury with authority to impose “menu-based” sanctions – i.e., sanctions provided in sections 4 and 5 of E.O. 13846¹²¹ – on persons determined to have engaged in any such significant transactions.¹²²

2.76 Pursuant to section 3(b) of E.O. 13846, menu-based sanctions relating to transactions concerning petroleum and petroleum products from Iran, as provided in section 3(a)(ii) thereof, apply only if at the time of purchase, pursuant to subsection 1244(g) of IFCA, and except as provided in paragraph (2),¹²³ a determination has been made by the U.S. President that:

“the price and supply of petroleum and petroleum products produced in countries other than Iran is sufficient to permit purchasers of petroleum and petroleum products from Iran to reduce significantly their purchases from Iran.”

2.77 Such a determination by the U.S. President was last made on 31 October 2018.¹²⁴ Since then, sanctions imposed pursuant to section 1244 of IFCA apply to exports of petroleum and petroleum products from Iran.

2.78 In sum, whatever their nationality, importers and exporters of petroleum, petroleum products, and petrochemical products from Iran; participants in “significant” transactions for the purchase, acquisition, sale, transport, or marketing of petroleum,

¹²¹ See above footnote 78 (Section 4 of E.O. 13846) and para. 2.21 (Section 5 of E.O. 13846).

¹²² Also note that pursuant to subsection 1244(d) of IFCA, any person that sells, supplies, or transfers to or from Iran significant goods or services used in connection with Iran’s energy sector, is exposed to men-based sanctions listed in section 6(a) of ISA (see footnote 63) and in section 5 of E.O. 13846.

¹²³ The exception referred to here is the “Significant Reduction Exception”; see below para. 2.80 et seq.

¹²⁴ See above footnote 120.

petroleum products, or petrochemical products from Iran; traders or providers of any kind of assistance or support, including goods or financial or other services to NIOC, NICO, and their affiliates or the CBI, are potentially subject to a host of draconian U.S. measures.

2.79 The scope of sanctions against Iran’s petroleum and petrochemical sectors is so broadly construed that even non-cash trade transactions, such as barter arrangements, involving these products are targeted. As the OFAC has made clear:

“To the extent a financial institution is involved, that financial institution could be sanctioned under E.O. 13846 for a barter arrangement, on or after November 5, 2018, related to the purchase or acquisition of petroleum, petroleum products, or petrochemical products from Iran. In addition, barter transactions knowingly conducted with NIOC, NICO, or the CBI also could result in sanctions — regardless of whether a financial institution is involved — to the extent that those transactions constitute material support for, or services to, NIOC, NICO, or the CBI.”¹²⁵

2.80 In fact, the only way Iran’s trade partners could continue to purchase petroleum and petroleum products from Iran without being subjected to sanctions under E.O. 13846 and related statutory authorities was to obtain from the U.S. Government a “signification reduction exception” (“SRE”) under subsection 1245(d)(4) of NDAA 2012.¹²⁶ Subparagraph (D)(i) of this provision reads:

“IN GENERAL.—Sanctions imposed pursuant to paragraph (1) shall not apply with respect to a financial transaction described in clause (ii) conducted or facilitated by a foreign financial institution if the President determines and reports to Congress, not later than 90 days after the date on which the President makes the determination required by subparagraph (B), and every 180 days thereafter, that the country with primary jurisdiction over the foreign financial institution—

(I) has significantly reduced its volume of crude oil purchases from Iran during the period beginning on the date on which the President submitted the last report with respect to the country under this subparagraph; or

¹²⁵ OFAC FAQ’s: Iran sanctions, Question 619: “Are barter arrangements or other non-cash trade transactions involving petroleum, petroleum products, or petrochemical products originating from Iran sanctionable under the terms of E.O. 13846?”, version as of 31 March 2019 (IM, Annex 50).

¹²⁶ This safe harbour does not apply to petrochemical products.

(II) in the case of a country that has previously received an exception under this subparagraph, has, after receiving the exception, reduced its crude oil purchases from Iran to zero.”¹²⁷

2.81 Subsection 1245(h)(3) of NDAA 2012 (“Definitions”) does not provide a precise definition of “significant reduction” with respect to purchases from Iran of petroleum and petroleum products, but merely states that this term “include[s] a reduction in such purchases in terms of price or volume toward a complete cessation of such purchases”.

2.82 The granting of an SRE to a State exempts any person, including a financial institution, who is under the primary jurisdiction of the said State, as well as the transactions in which these persons are involved, from the following sanctions on Iran’s petroleum sector:

- Subsection 1245(d) of NDAA 2012 (sanctions with respect to the CBI and other Iranian financial institutions);¹²⁸
- Subsections 2(a)(ii)-(a)(iv) of E.O. 13846 (sanctions with respect to foreign financial institutions determined as having conducted or facilitated any significant financial transaction on behalf of Iranian and certain non-Iranian SDNs, with NIOC or NICO, or for the trade in petroleum or petroleum products from Iran);¹²⁹

¹²⁷ It is worth noting that Iran is prevented by this system from receiving liquid funds in exchange for the petroleum and petroleum products it sells to countries holding an SRE: subsection 1245(d)(4)(D)(ii) of NDAA 2012 restrictively describes the financial transactions authorized under SREs as those conducted or facilitated by a foreign financial institution if—“(I) the financial transaction is only for trade in goods or services between the country with primary jurisdiction over the foreign financial institution and Iran; and (II) any funds owed to Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the foreign financial institution” (IM, Annex 17 – emphasis added).

As the research service of the U.S. Congress put it, this provision “essentially prevents Iran from repatriating to its Central Bank any hard currency Iran held in foreign banks around the world. Most of Iran’s funds held abroad are in banks located in Iran’s main oil customers. The provision largely compels Iran to buy the products of the oil customer countries. Some press reports refer to this arrangement as an “escrow account,” but State Department officials describe the arrangement as “restricted” accounts” (K. Katzman, “Iran Sanctions”, *Congressional Research Service*, RS20871, updated 22 April 2019, at p. 24 (IM, Annex 329)).

¹²⁸ Subsection 1245(d)(4)(D)(i) of NDAA 2012 (IM, Annex 17).

¹²⁹ Subsection 2(c) of E.O. 13846, which reads “Subsections (a)(ii)-(a)(iv) of this section shall apply with respect to a significant financial transaction conducted or facilitated by a foreign financial institution for the purchase of petroleum or petroleum products from Iran only if: (i) the President determines under subparagraphs (4)(B) and (C) of subsection 1245(d) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81) (2012 NDAA) (22 U.S.C. 8513a) that there is a sufficient

- Subsection 3(a)(ii) of E.O. 13846 (sanctions against a person knowingly engaged in a significant transaction for the trade in petroleum or petroleum products from Iran);¹³⁰
- Subsection 1244(g) of IFCA (sanctions with respect to the purchase of petroleum or petroleum products from Iran).¹³¹

2.83 On 5 November 2018, eight States received an SRE: China, India, Italy, Greece, Japan, South Korea, Taiwan, and Turkey.¹³² These SREs are reviewed every 180 days, and the States in question are required to reduce their oil purchases from Iran, relative to the previous 180-day period. The stated rationale of this system of exemption-granting is to progressively push these States to *completely cease* purchasing Iran’s petroleum and petroleum products. This demonstrates the all-encompassing and potentially devastating impact on Iran’s petroleum sector of the U.S. sanctions regime, which aims to ultimately block any trade in petroleum, petroleum products, and petrochemical products from Iran.

supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions; *and (ii) an exception under subparagraph 4(D) of subsection 1245(d) of the 2012 NDAA from the imposition of sanctions under paragraph (1) of that subsection does not apply.*” (IM, Annex 35 – emphasis added).

¹³⁰ Subsection 3(b) of E.O. 13846, which reads “Subsection (a)(ii) of this section shall apply with respect to a person only if: (i) the President determines under subparagraphs (4)(B) and (C) of subsection 1245(d) of the 2012 NDAA that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions; and (ii) an exception under subparagraph 4(D) of subsection 1245(d) of the 2012 NDAA from the imposition of sanctions under paragraph (1) of that subsection does not apply.” (IM, Annex 35).

¹³¹ Subsection 1244(g)(2) of IFCA provides: “(2) EXCEPTION FOR CERTAIN COUNTRIES.—

(A) EXPORTATION.—This section shall not apply with respect to the exportation of petroleum or petroleum products from Iran to a country to which the exception under section 1245(d)(4)(D)(i) of the National Defense Authorization Act for Fiscal Year 2012 (22 U.S.C. 8513a(d)(4)(D)(i)) applies at the time of the exportation of the petroleum or petroleum products.

(B) FINANCIAL TRANSACTIONS.—(i) IN GENERAL.—This section shall not apply with respect to a financial transaction described in clause (ii) conducted or facilitated by a foreign financial institution if, at the time of the transaction, the exception under section 1245(d)(4)(D)(i) of the National Defense Authorization Act for Fiscal Year 2012 (22 U.S.C. 8513a(d)(4)(D)(i)) applies to the country with primary jurisdiction over the foreign financial institution. (...)” (IM, Annex 19).

¹³² K. Katzman, “Iran Sanctions”, *Congressional Research Service*, RS20871, updated 22 April 2019, at p. 23 (IM, Annex 329).

2.84 However, on 22 April 2019, the United States, while acknowledging that the re-imposition of its sanctions had already “taken Iran’s oil exports to historic lows”, went even further by deciding that they “will not issue any additional [SRE] to existing importers of Iranian oil”.¹³³ As a result, once the current 180-day SRE waivers expire, nobody will be able to purchase petroleum and petroleum products from Iran without being subjected to sanctions under E.O. 13846 and related statutory authorities.

iii. Sanctions on Iran’s energy sector

2.85 The energy sector, generating about 20% of Iran’s GDP and as much as 30% of government revenue,¹³⁴ is at the heart of Iran’s economy. Well aware that the effects of restrictions on Iran’s energy sector would be devastating, the U.S. re-imposed wide-ranging blocking sanctions on this sector as of 5 November 2018. The scope and potential ramifications of these measures resemble those imposed on the petroleum, shipping and shipbuilding sectors.

2.86 Subsection 1(a)(iv) of E.O. 13846 authorizes the U.S. Secretary of the Treasury to impose on a person the blocking of its assets under U.S. jurisdiction¹³⁵ upon determining that

“pursuant to authority delegated by the President and in accordance with the terms of such delegation, sanctions shall be imposed on such person pursuant to section 1244(c)(1)(A) of IFCA because the person:

(A) is part of the energy, shipping, or shipbuilding sectors of Iran;

(B) operates a port in Iran; or

(C) knowingly provides significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of a person determined under section 1244(c)(2)(A) of IFCA to be a part of the energy, shipping, or shipbuilding sectors of Iran; (...).”

¹³³ U.S. Department of State, “Decision on Imports of Iranian Oil”, Press Statement, 22 April 2019 (IM, Annex 52). See generally on this decision J. Rogin, “No more waivers: The United States will try to force Iranian oil exports to zero”, *Washington Post*, 21 April 2019 (IM, Annex 251).

¹³⁴ *Ibid.*

¹³⁵ Pursuant to section 12 of this E.O., the prohibitions provided by subsection 1(b) to transfer, pay, export, withdraw, or otherwise deal in the blocking assets include “(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and (b) the receipt of any contribution or provision of funds, goods, or services from any such person.” (IM, Annex 35).

- 2.87 Iran has already analyzed this provision with respect to the shipping and shipbuilding sectors.¹³⁶ The application and mechanism of sanctions as regards the energy sector is the same.
- 2.88 Section 1244(d) of IFCA, read in conjunction with section 6(a) of ISA 1996, and Section 5 of E.O. 13846 provide for additional menu-based sanctions to be imposed on the person subject to the determination of Subsection 1(a)(iv) of E.O. 13846 in connection with Iran’s energy sector. Section 5(a) of ISA 1996 also gives authority for imposing menu-based sanctions on persons determined to have engaged in a variety of far-reaching activities relating to Iran’s energy sector.¹³⁷
- 2.89 The object of this sanction, which is all the more encompassing as “Iran’s energy sector” is very broadly construed by the U.S. Secretary of the Treasury,¹³⁸ is to paralyze that sector by discouraging U.S. and non-U.S. persons, including banks, from dealing with, or in any way supporting the most important sector of Iran’s economy as well as the individuals and entities within this sector.
- 2.90 This object is confirmed by the other relevant statutory authorities, which came back into full effect on 5 November 2018, providing for sanctions targeting Iran’s energy sector in the broadest sense, as set out below.
- 2.91 Various provisions of the IFCA target Iran’s energy sector, its actors, or the financing of their activities:

¹³⁶ See above, paras. 2.62-2.66.

¹³⁷ Sanctionable activities under section 5(a) of ISA include: the “development of petroleum resources of Iran” (subsection 5(a)(1)), the “production of refined petroleum products” (subsection 5(a)(2)), the “exportation of refined petroleum products to Iran” (subsection 5(a)(3)), “joint-ventures with Iran relating to developing petroleum resources” (subsection 5(a)(4)), the “support for the development of petroleum resources and refined petroleum products in Iran” (subsection 5(a)(5)), the “development and purchase of petrochemical products from Iran” (subsection 5(a)(6)), “transportation of crude oil from Iran” (subsection 5(a)(7)), the “concealing [of] Iranian origin of crude oil and refined petroleum products” (subsection 5(a)(8)) (IM, Annex 15).

¹³⁸ OFAC defines the “energy sector of Iran” to include “activities involving the exploration, extraction, production, refinement, or liquefaction of petroleum, natural gas, or petroleum products in Iran”. See OFAC FAQ’s: Iran sanctions, Question 293: “What will the “energy, shipping, and shipbuilding sectors of Iran” mean for the purposes of IFCA?”, version as of 31 March 2019 (IM, Annex 50).

- Subsection 1244(c)(1), in relevant part, imposes blocking sanctions on any person who is part of the energy sector of Iran or who “knowingly provides significant financial, material, technological or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of”, *inter alia*, a person who is part of Iran’s energy sector or who is included on the SDN List;¹³⁹
- In relevant part, Subsection 1244(d) imposes:
 - o Menu-based sanctions described in section 6(a) of ISA¹⁴⁰ on any person, either U.S. or non-U.S., that, on or after 5 November 2018, “sells, supplies, or transfers” to or from Iran significant goods or services used in connection with Iran’s energy, shipping, or shipbuilding sectors, including NIOC, NITC, and IRISL;¹⁴¹
 - o correspondent or payable-through accounts sanctions (prohibiting the opening or maintaining such accounts in the U.S. or placing strict conditions thereon) on non-U.S. financial institutions that conduct or facilitate, on or after 5 November 2018, a “significant” financial transaction for the sale, supply, or transfer to or from Iran of the said goods and services;¹⁴²
- Subsection 1244(h)(2) of IFCA imposes the sanctions provided for under section 1244 to foreign (non-U.S.) financial institutions that conduct or facilitate a financial transaction for the sale, supply or transfer to or from Iran of natural gas, unless:

“(A) the financial transaction is only for trade in goods or services – (i) not otherwise subject to sanctions under the law of the United States; and (ii) between the country with primary jurisdiction over the foreign financial institution and Iran; and

¹³⁹ Subsection 1244(c)(1) of the IFCA read in conjunction with subsection 1244(c)(2) (IM, Annex 19).

¹⁴⁰ For the listing of these sanctions see fn 63 above.

¹⁴¹ Subsection 1244(d)(1) of the IFCA (IM, Annex 19).

¹⁴² Subsection 1244(d)(2) of the IFCA (IM, Annex 19).

(B) any funds owed to Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the foreign financial institution;”

- Subsection 1246(a) of IFCA, in relevant part, imposes 5 or more of the menu-based sanctions described in section 6(a) of ISA on any U.S. or non-U.S. person who knowingly provides underwriting services or insurance or reinsurance (i) for any *activity* with respect to Iran for which sanctions have been imposed under any relevant provision of U.S. law, i.e., for instance, activity in connection with Iran’s energy sector¹⁴³ and (ii) to or for any *person* with respect to or for the benefit of any activity in Iran’s energy sector for which sanctions are re-imposed pursuant to the IFCA;¹⁴⁴
- Subsection 1247(a) of IFCA generally imposes sanctions prohibiting the opening or maintaining of correspondent or payable-through accounts in U.S. territory, or imposing strict conditions on the same, with respect to non-U.S. financial institutions that knowingly facilitate, as of 5 November 2018, a “significant” financial transaction on behalf of any Iranian SDN¹⁴⁵ – a number of SDNs are persons or companies involved in the Iranian energy sector, including major companies such as NIOC, NICO, and their affiliates.

2.92 Finally, section 212(a) of TRA specifically targets NIOC and NITC, which are the major actors in Iran’s energy sector and ensure the exportation of Iran’s oil and gas. It provides that, subject to two very limited exceptions, the U.S. President:

“shall impose 5 or more of the sanctions described in section 6(a) of the Iran Sanctions Act of 1996, as amended by section 204, with respect to a person if the President determines that the person knowingly, on or after such date of enactment, provides underwriting services or insurance or reinsurance for the National Iranian Oil Company, the National Iranian Tanker Company, or a successor entity to either such company”

¹⁴³ Subsection 1246(a)(1)(A) of the IFCA (IM, Annex 19).

¹⁴⁴ Subsection 1246(a)(1)(B)(i) of the IFCA (IM, Annex 19; emphasis added).

¹⁴⁵ See below fn 147.

2.93 As will be explained below, this last sanction is particularly detrimental to exports by Iran’s energy sector because (marine) insurance is mandatory for the shipment of the major part of Iran’s oil and gas exports.¹⁴⁶

2.94 In sum, the vast array of sanctions targeting Iran’s energy sector is comprehensive, complex and detailed. The measures effectively preclude any trade in goods or services, particularly any trade in oil and gas, with – or any kind of support, including the provision of financial or insurance services, to – the actors in Iran’s energy sector, whether SDNs or not.

iv. Sanctions on transactions by foreign financial institutions with the CBI and designated Iranian financial institutions under section 1245 of NDAA 2012

2.95 Section 1245 of NDAA 2012, titled “Imposition of sanctions with respect to the financial sector of Iran”, which went back into full effect as of 5 November 2018, provide in relevant part:

“(c) FREEZING OF ASSETS OF IRANIAN FINANCIAL INSTITUTIONS.—The President shall, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), block and prohibit all transactions in all property and interests in property of an Iranian financial institution if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

(d) IMPOSITION OF SANCTIONS WITH RESPECT TO THE CENTRAL BANK OF IRAN AND OTHER IRANIAN FINANCIAL INSTITUTIONS.—(1) IN GENERAL.—Except as specifically provided in this subsection, beginning on the date that is 60 days after the date of the enactment of this Act, the President—

(A) shall prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by a foreign financial institution that the President determines has knowingly conducted or facilitated any

¹⁴⁶ See below, paras. 2.106-2.108. In addition to the domestic regulations by which some States specifically limit access to their waters and ports to ships covered by certain types and level of insurance, international law provides for compulsory marine insurance regimes. Among such regimes relevant to oil and gas shipping are for instance the Nairobi International Convention on the Removal of Wrecks of 18 May 2007, under which all vessels over 300 MT tonnage which are either flagged by a State party or navigating within the waters of State party must maintain insurance for wreck recovery; the 1992 International Convention on Civil Liability for Oil Pollution Damage (“CLC Convention”), which requires owners of ships carrying more than 2,000 tons of oil cargo to maintain insurance to cover their liability for oil pollution damage; or the International Convention on Civil Liability for Bunker Oil Pollution Damage of 23 March 2001, which requires that ships over 1,000 GT using oil as fuel maintain insurance for spillage of such “bunker oil”.

significant financial transaction with the Central Bank of Iran or another Iranian financial institution designated by the Secretary of the Treasury for the imposition of sanctions pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.); and

(B) may impose sanctions pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) with respect to the Central Bank of Iran.”¹⁴⁷

- 2.96 This section requires the U.S. President to block the assets subject to U.S. jurisdiction of *all* Iranian financial institutions, including the CBI. It aims to reduce Iranian oil revenues in particular, and to discourage generally transactions with the CBI or with any Iranian financial institution included on the SDN List, by providing for sanctions on foreign financial institutions – i.e., any kind of companies providing financial services¹⁴⁸ – that knowingly conduct or facilitate *any* “significant financial transactions”, whatever the economic sector concerned, with these entities.¹⁴⁹ Significantly, the correspondent and payable-through account sanctions may even be

¹⁴⁷ Similarly, Section 1247(a) of the IFCA (“Imposition of sanctions with respect to foreign financial institutions that facilitate financial transaction on behalf of specially designated nationals”), which also went back into effect as of 5 November 2018, provides: “Except as provided in this section, the President shall prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by a foreign financial institution that the President determines has, on or after the date that is 180 days after the date of the enactment of this Act, knowingly facilitated a significant financial transaction on behalf of any Iranian person included on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury (other than an Iranian financial institution described in subsection (b)).”

Subsection (b) of Section 1247 of the IFCA specifies: “An Iranian financial institution described in this subsection is an Iranian financial institution that has not been designated for the imposition of sanctions in connection with—(1) Iran’s proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction; (2) Iran’s support for international terrorism; or (3) Iran’s abuses of human rights.” (IM, Annex 19).

Complementing subsection 1247(a) of the IFCA, section 5 of E.O. 13846 provides 7 additional prohibitions – aiming generally at barring the sanctioned person’s, as well as its executive personnel’s, access to U.S. financial institutions, traders and investors – among which the Secretary of the Treasury may choose to sanction a person whose targeted by Section 1247(a) of IFCA (IM, Annex 35). For a detailed description of the content of Section 5 of E.O. 13846, see para. 2.21 above.

¹⁴⁸ Section 16(d) of EO 13846 defines the term “foreign financial institution” very broadly as ranging from a bank to an investment company to a clearing corporation (IM, Annex 35). See fn 73 above.

Section 1245 of NDAA 2012 includes to a certain extent foreign central banks within the foreign financial institutions it targets: the prohibition on the opening of an account in the U.S. and the strict limitation on the maintaining of existing accounts apply to a foreign central bank only if the transaction with CBI is for oil purchases.

¹⁴⁹ For the interpretation of “significant”, see fn 76 above.

imposed on third country central banks if they engage in financial transactions for the sale or purchase of petroleum or petroleum products to or from Iran.¹⁵⁰

- 2.97 As explained above,¹⁵¹ the prohibition on opening or maintaining correspondent or payable-through accounts in the U.S. is a particularly threatening sanction to non-U.S. financial institutions since such accounts represent the only way to handle transactions denominated in U.S. dollars, which is essential given the current state of the global banking system and economy.
- 2.98 Since 5 November 2018, all the Iranian banks capable of accessing the international financial market, on which the financing of the Iranian economy depends, have been designated on the SDN List.¹⁵² The Iranian financial sector as a whole is effectively cut off from all third country financial markets and third country financial institutions that have any relations with the United States, as well as from the international financial market as a whole.
- 2.99 In a similar way to, yet with a broader scope than section 1245 NDAA 2012, section 1(a)(ii) and (iii) of E.O. 13846 aims to render impossible any transaction or relation by *any* person – not only foreign financial institutions – with the CBI or with designated Iranian financial institutions.
- 2.100 Pursuant to these provisions, the Secretary of the Treasury is authorized to impose blocking sanctions on any person determined to have, on or after 5 November 2018, “materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of”:

- the CBI;¹⁵³

¹⁵⁰ Section 1245(d)(3) of the NDAA 2012 (IM, Annex 17).

¹⁵¹ See para. 2.23 above.

¹⁵² See the SDN List, available at www.treasury.gov/resource-center/sanctions/sdn-list/pages/default.aspx. All the Iranian banks – including state-owned and private banks –, and most of the Iranian credit institutions, are included on this list; the only Iranian credit institutions the U.S. did not designate on the SDN List are entities which are not involved in major international transactions, if any. The names of all Iranian banks and credit institutions can be found on the website of the Central Bank of Iran at cbi.ir/simplelist/1462.aspx (last consulted on 10 May 2019).

¹⁵³ Subsection 1(a)(ii) of E.O. 13846 (IM, Annex 35).

- any Iranian person – including financial institutions – included on the SDN List, or any other person included on the SDN List whose property and interests in property are blocked pursuant to Executive Order 13599 or subsection 1(a) of E.O. 13846.¹⁵⁴

2.101 Section 1(a)(ii) and (iii) of E.O. 13846 thus isolate the Iranian financial sector – the CBI and those Iranian banks designated as SDNs not solely pursuant to E.O. 13599 – from any persons maintaining business relations with the United States. This in effect isolates the Iranian financial sector from the global market.

v. *Sanctions on the provision of specialized financial messaging services*

2.102 Section 220(b) of TRA, which came back into full effect on 5 November 2018, requires periodic reporting to the U.S. Congress of the list of all persons, such as SWIFT,¹⁵⁵ identified as having provided specialized financial messaging services to CBI or certain other Iranian financial institutions, or facilitating their access to such services. Furthermore, section (c)(1) of the same section grants the U.S. President a general authorization¹⁵⁶ to impose menu-based sanctions on any such person:

“if, on or after the date that is 90 days after the date of the enactment of this Act, a person continues to knowingly and directly provide specialized financial messaging services to, or knowingly enable or facilitate direct or indirect access to such messaging services for, the Central Bank of Iran or a financial institution described in paragraph (2)(E)(ii) of section 104(c) of the Comprehensive Iran

¹⁵⁴ E.O. 13846, Section 1(a)(iii). Iranian depository institutions whose assets are blocked solely pursuant to Executive Order 13599 are excluded from the category of persons subject to the clauses of this Section 1(a)(iii) (IM, Annex 35). For the purposes of E.O. 13846, a depository institution is a type of “financial institution”, defined by reference to section 3(c)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(1)), i.e. meaning any bank or savings association, and including a branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) (12 U.S.C. 3101(7)) (see E.O. 13846, Section 16 (c)).

¹⁵⁵ Society of Worldwide Interbank Financial Telecommunications (“SWIFT”) is a global cooperative owned by its members, i.e., banks and other financial institutions, which runs a messaging network used by the said members to securely transmit information and instructions – such as money or security transfers – through a standardized system of codes. There are other secure financial messaging services in the market – notably Fedwire, Ripple, and CHIPS. However, with 11,000 members/users in more than 200 countries, SWIFT enjoys a dominant position due to the possibility it offers to transmit not only payment instructions but also other financial transactions, including security transactions and treasury transactions. Since they enable their users to communicate securely, quickly and accurately, specialized financial messaging services facilitate international and domestic financial flows, thus supporting global trade.

¹⁵⁶ See K. Katzman, “Iran Sanctions”, *Congressional Research Service*, RS20871, updated 22 April 2019, at p. 77 and p. 80 (IM, Annex 329).

Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8513(c)),[("CISADA")¹⁵⁷] (...).¹⁵⁸

2.103 As of today, the imposition of sanctions is merely “authorized” by Section 220(c)(1) of TRA. However, the United States is in the process of possibly enacting a law that would make this imposition mandatory rather than voluntary.¹⁵⁹

2.104 The research service of the U.S. Congress itself acknowledged the devastating effect of potential sanctions on SWIFT, noting that

“[i]n March 2012, SWIFT acceded to an EU request to expel sanctioned Iranian banks. Some Iranian banks were still able to conduct electronic transactions with the European Central Bank via the “Target II” system. EU diplomats indicated they would not comply with U.S. requests to ask SWIFT to expel Iranian banks again, and no EU request to SWIFT to again expel sanctioned Iranian banks was made. However, SWIFT is run by an independent board and seeks to avoid risk of U.S. penalties. In late 2018, the system again disconnected the Iranian banks that were “relisted” for U.S. sanctions as of November 5, 2018.”¹⁶⁰

2.105 SWIFT’s decision demonstrates the objective and practical effect of section 220 of TRA, namely to pressure SWIFT and other providers of specialized financial messaging services into excluding the CBI and other Iranian financial institutions from access to the international banking system. Significantly, this exclusion in turn impacts the capacity of the customers of these banks to execute financial transactions with their foreign counterparts.

¹⁵⁷ Section 104(c)(2)(E)(ii) CISADA reads: (c) *Prohibitions and Conditions With Respect to Certain Accounts Held by Foreign Financial Institutions (...)* (2) A foreign financial institution engages in an activity described in this paragraph if the foreign financial institution (...) (E) facilitates a significant transaction or transactions or provides significant financial services for (...) (ii) a person whose property or interests in property are blocked pursuant to that Act in connection with (I) Iran’s proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction (...)” (IM, Annex 16).

¹⁵⁸ OFAC and the U.S. Treasury Department, when implementing such sanctions imposed against a person pursuant to TRA, may in addition implement the menu-based sanctions provided by section 5 of E.O. 13846: see para. 2.21 above.

¹⁵⁹ H.R. 3728, titled “EMPOWER Act”; the bill passed the House of Representatives and was submitted to the Senate on 24 July 2018.

¹⁶⁰ K. Katzman, “Iran Sanctions”, *Congressional Research Service*, RS20871, updated 22 April 2019, p. 51 (IM, Annex 329). Footnote omitted. See also “What SWIFT is and why it matters in the US-Iran spat”, *Al Jazeera News*, 5 November 2018, reporting that “Belgium-based SWIFT financial messaging service said it was suspending access for some Iranian banks after U.S. sanctions” (IM, Annex 201).

vi. *Sanctions on the provision of underwriting services, insurance, or reinsurance*

2.106 Section 1246(a) of IFCA, which came back into effect on 5 November 2018, requires the imposition of 5 or more sanctions described in section 6(a) of ISA¹⁶¹ on “persons” – i.e., either U.S. or non-U.S. persons – who knowingly provide underwriting services or insurance or reinsurance:

- for any activity with respect to Iran for which sanctions have been imposed under any relevant provision of U.S. law;¹⁶² i.e., as explained in this chapter, with respect to almost all trade sectors in which Iran is significantly active;
- to or for any person (i) with respect to, or for the benefit of any activity in the energy, shipping or shipbuilding sectors of Iran for which sanctions are imposed under IFCA or (ii) for the sale, supply or transfer to or from Iran of graphite, raw or semi-finished metals, coal, and software for integrating industrial processes for which sanctions are imposed under IFCA or (iii) designated for the imposition of sanctions pursuant to the IEEPA “in connection with (I) Iran’s proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction or (II) Iran’s support for international terrorism”;¹⁶³
- to an Iranian SDN other than an Iranian financial institution designated for the imposition of sanctions in connection with Iran’s alleged proliferation of weapons of mass destruction or delivery systems for weapons of mass

¹⁶¹ For the listing of these sanctions see footnote 63 above. The application of 5 or more of these 12 sanctions is also required, as far as insurance is concerned, by Section 5(a)(7) of ISA (“SEC. 5. IMPOSITION OF SANCTIONS. (A) SANCTIONS RELATING TO THE ENERGY SECTOR OF IRAN. (...) (7) TRANSPORTATION OF CRUDE OIL FROM IRAN.—(A) IN GENERAL.—Except as provided in subsection (f), the President shall impose 5 or more of the sanctions described in section 6(a) with respect to a person if the President determines that— (i) the person is a controlling beneficial owner of, or otherwise owns, operates, or controls, or *insures*, a vessel that, on or after the date that is 90 days after the date of the enactment of the Iran Threat Reduction and Syria Human Rights Act of 2012, was used to transport crude oil from Iran to another country; and (ii)(I) in the case of a person that is a controlling beneficial owner of the vessel, the person had actual knowledge the vessel was so used; or (II) in the case of a person that otherwise owns, operates, or controls, or *insures*, the vessel, the person knew or should have known the vessel was so used.” (IM, Annex 15 – emphasis added).

¹⁶² Subsection 1246(a)(1)(A) of the IFCA (IM, Annex 19).

¹⁶³ Subsection 1246(a)(1)(B)(i)-(iii) of the IFCA (IM, Annex 19).

destruction or support for international terrorism or abuses of human rights.¹⁶⁴

2.107 In addition, Sections 211(a) and 212(a) of TRA provide respectively that, in general, a person will face sanctions if it

- “knowingly (...) provides insurance or reinsurance or any other shipping service for the transportation to or from Iran of goods that could materially contribute to the activities of the Government of Iran with respect to the proliferation of weapons of mass destruction or support for acts of international terrorism”;
- “knowingly (...) provides underwriting services or insurance or reinsurance for the National Iranian Oil Company, the National Iranian Tanker Company, or a successor entity to either such company”.

2.108 In sum, this set of provisions, viewed as a whole, exposes U.S. and non-U.S. persons, including insurance companies, to menu-based sanctions if they knowingly provide insurance or reinsurance, first, on shipping of a very wide range of goods – encompassing the energy,¹⁶⁵ automotive, aeronautics, shipbuilding, commodities,¹⁶⁶ luxury goods sectors, and any goods that could be related to the conduct of nuclear research in Iran – to or from Iran; and second, on shipping of *any* goods to or from Iran designated for the imposition of U.S. “nuclear-related” sanctions.

¹⁶⁴ Subsection 1246(a)(1)(C) of the IFCA, read in conjunction with Subsection 1246(b) (IM, Annex 19). Pursuant to section 5 of E.O. 13846, when implementing these sanctions imposed against a person pursuant to IFCA (or TRA), OFAC and the U.S. Treasury Department may in addition implement the menu-based sanctions listed in the said section: see para. 2.21 above.

¹⁶⁵ With NIOC and NITC, the major Iranian exporters of oil and petroleum products, being specifically targeted by Section 212(a) of U.S. Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158, 126 Stat. 1229 (‘ITRSHRA 2012’ – IM, Annex 18).

¹⁶⁶ The commodities targeted here are graphite, raw or semi-refined metals, and coal.

C. The revocation of General License H issued pursuant to the JCPOA

2.109 As of 5 November 2018 and following the 180-day wind-down period,¹⁶⁷ the United States revoked General License H and therefore ceased to generally license and authorize non-U.S. entities that are owned or controlled by U.S. persons from conducting transactions with Iran that U.S. persons are generally prohibited from under the ITSR and pursuant to primary U.S. sanctions on Iran (i.e., with few limited exceptions mentioned below, almost all forms of civilian trade and commercial activities relating to Iran).

2.110 The authorization set out by General License H was twofold:

“(a) Except as provided in paragraph (c), an entity owned or controlled by a United States person and established or maintained outside the United States (a “U.S.-owned or -controlled foreign entity”) is authorized to engage in transactions, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran that would otherwise be prohibited by 31 C.F.R. § 560.215.”¹⁶⁸

¹⁶⁷ OFAC FAQ’s: Iran sanctions, Question 623: “Is there a wind-down or safe harbor provision for Section 8 of E.O. 13846?”, version as of 31 March 2019 (IM, Annex 50), explaining that “section 560.537 of the ITSR authorizes — through 11:59 p.m. EST on November 4, 2018 — all transactions and activities ordinarily incident and necessary to the wind down of activities that had been authorized under the now-revoked Iran General License H”.

¹⁶⁸ Department of the Treasury, OFAC, General License H, 16 January 2016, revoked as of 27 June 2016 (IM, Annex 25), paras. (a) and (b). Paragraph (c) provides eight exceptions to this licensing policy, which does not authorize transactions involving (1) the exportation, reexportation, sale or supply, from the U.S., of goods, technology, or services to Iran prohibited by 31 C.F.R. § 560.204 without separate authorization from the OFAC; (2) any transfer of funds to, from, or through a United States depository institution or a United States-registered broker or dealer in securities; (3) any person on OFAC’s SDN List or any activity that would be prohibited by any part of chapter V of 31 C.F.R. other than part 560 if engaged in by a United States person or in the United States; (4) any person identified on the List of Foreign Sanctions Evaders pursuant to E.O. 13608; (5) any activity involving any item (including information) subject to Export Administration Regulations, 15 C.F.R. parts 730-774 (EAR), that is prohibited by, or otherwise requires a license under, part 744 of the EAR, or participation in any transaction involving a person whose export privileges have been denied pursuant to part 764 or 766 of the EAR, without authorization from the Department of Commerce; (6) any military, paramilitary, intelligence, or law enforcement entity of the Government of Iran, or any official, agent, or affiliate thereof; (7) any activity that is sanctionable under E.O. 12938 or 13382, E.O. 13224, E.O. 13572 or 13582, E.O. 13611, or E.O. 13553 or 13606 or section 2 or 3 of E.O. 13628; (8) any nuclear activity involving Iran that is subject to the procurement channel established pursuant to paragraph 16 of the United Nations Security Council Resolution 2231 (2015) and Section 6 of Annex IV to the Joint Comprehensive Plan of Action of July 14, 2015 and that has not been approved through that procurement channel process.

And

“(b) A United States person is authorized to engage in the following activities that would otherwise be prohibited by 31 C.F.R. part. 560:

(1) activities related to the establishment or alteration of operating policies and procedures of a United States entity or a U.S.-owned or -controlled foreign entity, to the extent necessary to allow a U.S.-owned or -controlled foreign entity to engage in transactions authorized in paragraph (a); and

(2) activities to make available to those foreign entities that the U.S. person owns or controls any automated and globally integrated computer, accounting, email, telecommunications, or other business support system, platform, database, application, or server necessary to store, collect, transmit, generate, or otherwise process documents or information related to transactions authorized in paragraph (a);”

2.111 As a result of this revocation, as of 5 November 2018, the application to non-U.S. entities owned or controlled by U.S. Persons of broad and far-reaching prohibitions relating to trade and commerce with or relating to Iran, as provided by the ITSR (31 C.F.R. 560), came back into full effect.¹⁶⁹

2.112 In sum, as a result of the re-imposition of U.S. sanctions on Iran and the revocation of General License H, and with very limited exceptions, non-U.S. entities owned or controlled by U.S. persons are prohibited from engaging in most commercial activities in or relating to Iran, including (i) dealings with the Government of Iran or SDNs, (ii) exporting goods or services to Iran, (iii) importing Iranian-origin goods or services to the U.S., (iv) other dealings in Iranian-origin goods or services, (v) new investments in Iran, (vi) facilitating any of the foregoing transactions undertaken by non-U.S. persons, or (vii) entering into any executory or other contracts concerning any of the foregoing transactions to be undertaken in the future.

2.113 Finally, sanctions that entered into force on 5 November 2018 go beyond the mere re-imposition of “nuclear-related” sanctions removed in 2016 pursuant to

¹⁶⁹ Similarly, Section 8(a) of E.O. 13846 provides that “No entity owned or controlled by a United States person and established or maintained outside the United States may knowingly engage in any transaction, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran, if that transaction would be prohibited by Executive Order 12957, Executive Order 12959 of May 6, 1995, Executive Order 13059 of August 19, 1997, Executive Order 13599, or sections 1 or 15 of this order, or any regulation issued pursuant to the foregoing, if the transaction were engaged in by a United States person or in the United States.” (IM, Annex 35)

U.S. obligations under the JCPOA. As the OFAC put it, E.O. 13846 “broadens the scope of the sanctions that were in effect prior to January 16, 2016”.¹⁷⁰

¹⁷⁰ OFAC FAQ’s: Iran sanctions, Question 601: “Does E.O. 13846 expand the scope of sanctions that were in effect prior to January 16, 2016 (Implementation Day of the JCPOA)?”, version as of 31 March 2019 (IM, Annex 50). In its reply, OFAC enumerates the measures “added” (as opposed to “re-imposed”) by E.O. 13846:

- i. Subsection 1(a)(iii)(B): Providing new authority for blocking sanctions on persons determined, on or after November 5, 2018, to have provided material support for, or goods and services in support of, persons blocked for:
 - a. Providing material support for, or goods and services in support of, the purchase or acquisition of U.S. bank notes or precious metals by the GOI (i.e., persons designated pursuant to subsection 1(a)(i));
 - b. Providing material support for, or goods and services in support of, NIOC, NICO, or CBI (i.e., persons designated pursuant to subsection 1(a)(ii)); or
 - c. Being part of the energy, shipping, or shipbuilding sectors of Iran or a port operator in Iran or knowingly providing significant support to certain other persons blocked pursuant to section 1244(c)(1)(A) of IFCA or to an Iranian person on the SDN List (i.e., persons blocked pursuant to subsection 1(a)(iv) for meeting the criteria of section 1244(c)(1)(A) of IFCA).
- ii. Subsection 2(a)(ii): Providing new authority for correspondent and payable-through account sanctions on FFIs determined to have, on or after November 5, 2018, knowingly conducted or facilitated any significant financial transaction on behalf of the persons blocked under the new authorities in subsection 1(a)(iii)(B) described above (i.e., any person blocked pursuant to subsections 1(a)(i), 1(a)(ii), or 1(a)(iv) and included on the SDN List).
- iii. Sections 4 and 5: Expanding the menu of sanctions available to impose on persons determined to have, on or after November 5, 2018, knowingly engaged in certain significant transactions relating to petroleum, petroleum products, or petrochemicals from Iran (i.e., persons determined to meet the criteria in subsections 3(a)(ii)-(a)(iii) or to be a derivative thereof pursuant to subsections 3(a)(iv)-(a)(vi)) by authorizing the imposition of:
 - a. Visa restrictions on corporate officers, principals, or controlling shareholders of a sanctioned person (subsection (4)(e));
 - b. Any of the sanctions from the menu set forth in subsections 4(a)-(e) on principal executive officers of a sanctioned person (subsection 4(f));
 - c. Prohibitions on U.S. persons investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person (subsection 5(a)(v)); or
 - d. Any of the sanctions from the menu set forth in subsections 5(a)(i)-(a)(vi) on principal executive officers of a sanctioned person (subsection 5(a)(vii)).
- iv. Section 8: Expanding the prohibition on U.S.-owned or -controlled foreign entities previously contained in section 4 of E.O. 13628 (see FAQs 621-623) by prohibiting transactions with persons blocked for:
 - a. Providing material support for, or goods and services in support of, Iranian persons on the SDN List and certain other designated persons (i.e., persons designated pursuant to subsection 1(a)(iii)); or
 - b. Being part of the energy, shipping, or shipbuilding sectors of Iran or a port operator in Iran or knowingly providing significant support to certain other persons blocked pursuant to section 1244(c)(1)(A) of IFCA or to an Iranian person on the SDN List (i.e., persons blocked pursuant to subsection 1(a)(iv) for meeting the criteria of section 1244(c)(1)(A) of IFCA)”

2.114 This expansion of applicable U.S. sanctions is consistent with the United States' announcement, on 21 May 2018, that it "will apply unprecedented financial pressure on the Iranian regime" to target what it called Iran's "malign behavior",¹⁷¹ and it seems that it does not intend to stop there. John Bolton, U.S. National Security Advisor, has declared in very discourteous terms that "Iran will be squeezed 'Until the Pips Squeak'".¹⁷² It also appears that the USA will not be satisfied with the imposition of economic and financial measures. Brian Hook, Director for Policy Planning of the U.S. State Department, has affirmed that "the military option is on the table".¹⁷³

¹⁷¹ U.S. Department of State, "After the Deal: A New Iran Strategy", 21 May 2018 (IM, Annex 33). As part of this so-called "new Iran strategy", the U.S. Secretary of State listed a number of elements for a new nuclear-related agreement, twelve requirements that *per se* can be considered rather elements of intervention in Iranian domestic affairs in violation of the fundamental principles of international legal order as enshrined in UN Charter and customary international law.

¹⁷² J. Koutsoukis, "Bolton Says Iran Will Be Squeezed 'Until the Pips Squeak'", *Bloomberg*, 13 November 2018 (IM, Annex 338). Most recently, on 8 May 2019, as part of this policy of ever-increasing pressure on Iran, the United States issued an Executive Order on Imposing Sanctions with to the Iron, Steel, Aluminum, and Copper Sectors of Iran, effective upon signing (IM, Annex 53). Expanding upon existing sanctions under section 1245 of IFCA on the sale, supply, or transfer, directly or indirectly, to or from Iran of certain materials, including raw and semi-finished metals such as aluminum and steel (see above paras. 2.19-2.24), this E.O. notably authorizes blocking sanctions on any person determined by the U.S. Treasury to be operating in, or engaged in a significant transaction with, the iron, steel, aluminum, and copper sectors of Iran (Section 1) and correspondent and payable-through account sanctions on foreign financial institutions determined to have knowingly conducted or facilitated any significant transaction related to these sectors (Section 2).

¹⁷³ See U.S. Department of State, "The Iranian Regime's Transfer of Arms to Proxy Groups and Ongoing Missile Development", Special Briefing, 29 November 2018 (IM, Annex 45).

CHAPTER III.
THE PRACTICAL IMPACTS OF THE U.S. MEASURES ON IRAN,
IRANIAN NATIONALS AND IRANIAN COMPANIES

- 3.1 The 8 May 2018 measures, and further U.S. measures, have had immediate consequences on Iran, its companies and its people. Section 1 will highlight the adverse effects on the sectors of Iran’s economy which are directly targeted by certain U.S. measures. Section 2 will demonstrate that, far from being limited to some specific economic sectors, the U.S. measures have had direct or indirect negative consequences on the Iranian economy as a whole. Section 3 will show that, as a result, the main victim of the negative impact of the U.S. measures is the Iranian people, whose living conditions (including health and safety) have been compromised by ongoing U.S. measures even before those measures have taken full effect.
- 3.2 Indeed, there is no doubt that the practical impacts of the U.S. measures on Iranian society and economy will continue to escalate. At the time of the filing of this Memorial, a year has passed since 8 May 2018,¹⁷⁴ and the second so-called “wind-down” period expired only 6 months ago.¹⁷⁵ As a result, the following assessment is necessarily provisional and illustrative only. It is provisional because the damages are only starting to build up throughout the Iranian economy and society and some of the U.S. measures are yet to fully bear down on the concerned economic operators. The examples contained in this Chapter are illustrative only because assessing the consequences of the “most aggressive sanctions campaign in history”¹⁷⁶ is a complex and long-lasting objective and because Iranian operators are anxious not to publicly reveal their economic difficulties or to expose their foreign business partners to further potential complications vis-à-vis the U.S. administration. Nevertheless, the statements and the illustrative evidence and elements gathered by Iran to provide the following

¹⁷⁴ U.S. President, “Remarks by President Trump on the Joint Comprehensive Plan of Action”, 8 May 2018 (IM, Annex 32); U.S. President, “Ceasing U.S. Participation in the JCPOA and Taking Additional Action to Counter Iran’s Malign Influence and Deny Iran All Paths to a Nuclear Weapon”, Presidential Memorandum, 8 May 2018 (IM, Annex 31).

¹⁷⁵ OFAC FAQ’s: Iran Sanctions, “Question # 607 : What activity will become sanctionable on or after November 5, 2018 under E.O. 13846 or other authorities?”, version as of 31 March 2019 (IM, Annex 50).

¹⁷⁶ U.S. Department of State, Bureau of Economic and Business Affairs, “Comprehensive Iran Fact Sheet”, 18 December 2018 (IM, Annex 46).

assessment already give a clear insight into the widespread extent of the serious economic problems currently being experienced by Iran, Iranian nationals and Iranian companies as a result of the U.S. measures.

SECTION 1.

THE 8 MAY SANCTIONS ARE TARGETING KEY SECTORS OF THE IRANIAN ECONOMY

A. Freezing the Iranian Banking and Insurance Sectors

- 3.3 As in any other modern economy, Iranian business activities are very heavily dependent on the country's banking and insurance sectors.¹⁷⁷ Iranian nationals and companies need banking services to finance their activities and to secure the fluidity and liquidity of their transactions, and rely on Iranian banks to finance and guarantee their international exchanges. They also need insurance to cover their business-related risks, both for their domestic operations and for their international exchanges.
- 3.4 For instance, before 8 May 2018, the CBI facilitated foreign trade¹⁷⁸ – including the import of basic commodities, medicines and pharmaceutical equipment, etc. – by providing Iranian economic operators with foreign currencies (except U.S. Dollars). To this end, the CBI had established a network of foreign correspondent banks who would hold accounts in its name for it to deposit the funds to be made available to Iranian nationals and companies for the purchase of goods and services to be imported into Iran, or to receive the payment of funds owing to them for goods and services exported from Iran.
- 3.5 Likewise, most Iranian commercial banks also had developed a network of foreign correspondent banks that was essential, not only to hold foreign currencies on behalf

¹⁷⁷ There are 30 banks and 5 financial/credit institutions active in Iran, with the Iranian banking industry representing 2.5% of the country's GDP. There are 27 active insurance companies in Iran as well as 2 reinsurance companies, providing insurance and reinsurance services in the Iranian market.

¹⁷⁸ Witness statement of Mr A. Laktabriz, Director General for International Affairs of the Central Bank of the Islamic Republic of Iran, 8 April 2019 (“CBI 8 April 2019 Statement”), p. 3 (IM, Annex 150).

of their clients, but also to be able to issue the financial instruments (i.e., bank guarantees, such as letters of credit or letters of guarantee) that are required to secure the performance of international obligations and transactions.¹⁷⁹

3.6 Similarly, as explained by the Central Insurance of Iran (“CII”),¹⁸⁰ an Iranian state-owned company which is responsible for supervising and monitoring the insurance and reinsurance market in Iran,¹⁸¹ before 8 May 2019, foreign insurance companies had become increasingly involved in international trade with Iran and were expressing an interest in covering Iranian investment projects.¹⁸² The CII itself, had resumed its business relationships with major foreign reinsurance companies and, as a result, was able to transfer abroad a share of its own reinsurance risk.¹⁸³

3.7 However, following the re-imposition of the U.S. measures, several of which target Iran’s banking and insurance sectors,¹⁸⁴ the international business relations of Iranian banks and insurers were terminated or frozen. As a result of the U.S. measures, various leading banks from all over the world withdrew from financing agreements or suspended cooperation with Iranian banks,¹⁸⁵ including, by way of illustrative

¹⁷⁹ Witness statement of Mr M. R. Hoseinzade, Chairman of the Board and Managing Director of Bank Mellī Iran, 1 May 2019 (“Bank Mellī 1 May 2019 Statement”), para. 2, p. 1 (IM, Annex 151).

¹⁸⁰ Witness statement of Dr S. J. Mirghassemi, Director of Legal Affairs of Central Insurance of IR Iran and Mr A. Esmailipour, Director of Marine Department of Central Insurance of IR Iran, 1 May 2019 (“CII 1 May 2018 Statement” – IM, Annex 152).

¹⁸¹ CII 1 May 2019 Statement, paras. 5 to 7, pp. 2-3 (IM, Annex 152).

¹⁸² CII 1 May 2019 Statement, para. 4, p. 2 (IM, Annex 152).

¹⁸³ CII 1 May 2019 Statement, para. 3, p. 2 (IM, Annex 152).

¹⁸⁴ See *supra*, Chapter II, and notably “Sanctions on Transactions in the Iranian Rial”, paras. 2.27-2.30, “Sanctions Related to the Issuance of Iranian Sovereign Debt”, paras. 2.31-2.34, “Sanctions on Transactions by Foreign Financial Institutions with the CBI and designated Iranian Financial Institutions under Section 1245 of NDAA 2012”, paras. 2.95-2.101, “Sanctions on the Provision of Specialized Financial Messaging Services”, paras. 2.102-2.105 and “Sanctions on the Provision of Underwriting Services, Insurance, or Reinsurance”, paras. 2.106-2.108.

¹⁸⁵ See notably, CBI 8 April 2019 Statement, para. 1, pp. 5-6 and para. 2–1, p. 6 (IM, Annex 150).

example, Austria,¹⁸⁶ Belgium,¹⁸⁷ China,¹⁸⁸ Denmark,¹⁸⁹ France,¹⁹⁰ Germany,¹⁹¹ Hungary,¹⁹² India,¹⁹³ Italy,¹⁹⁴ Japan,¹⁹⁵ Oman,¹⁹⁶ Poland,¹⁹⁷ Singapore,¹⁹⁸ Sweden,¹⁹⁹ Switzerland,²⁰⁰ Taiwan,²⁰¹ and Turkey.²⁰² As noted by the Director General for International Affairs of the CBI,

“[F]ear and concern of the central and commercial banks of other countries due to direct and indirect U.S. threats as well as their refrain from establishing correspondence relations and making banking contracts and implementation of the already-made contracts are among the other relevant effects of the

-
- ¹⁸⁶ Letter from Raiffeisen Bank to Bank Melli, 29 May 2018 (IM, Annex 160); see also, K. Knolle & A. Schwarz-Goerlich, “Austria's Oberbank withdraws from Iran”, *Reuters*, 13 June 2018 (IM, Annex 192).
- ¹⁸⁷ SWIFT message from KBC Bank to Bank Markazi, 17 October 2018 (IM, Annex 180); see also J. Saul, “Belgium's KBC to limit Iran transactions after U.S. sanctions move”, *Reuters*, 7 June 2018 (IM, Annex 191).
- ¹⁸⁸ Email from Bank of Gansu (China) to Export Development Bank of Iran (EDBI), 23 October 2018 (IM, Annex 181); see also C. Aizhu & S. Zhang, “As U.S. sanctions loom, China's Bank of Kunlun to stop receiving Iran payments”, *Reuters*, 23 October 2018 (IM, Annex 200).
- ¹⁸⁹ Email from Danske Bank to EDBI, 15 October 2018 (IM, Annex 178); Email from Danske Bank, 30 May 2018 (IM, Annex 161).
- ¹⁹⁰ Letter from La Banque Postale to Bank Melli, 19 July 2018 (IM, Annex 168).
- ¹⁹¹ Email from DZ Bank to its branches, 16 May 2018 (IM, Annex 156); see also, A. Cremer, “Germany's DZ Bank to halt Iran transactions in July”, *Reuters*, 18 May 2018 (IM, Annex 188).
- ¹⁹² Letter from Eximbank Hungary to Export Development Bank of Iran (EDBI), 27 November 2018 (IM, Annex 183).
- ¹⁹³ N. Verma, “Indian banks ask exporters to close Iran deals due to sanctions”, *Reuters*, 29 May 2018 (IM, Annex 189); “India's top bank to stop handling Iran oil payments”, *India Economic Times*, 15 June 2018 (IM, Annex 193).
- ¹⁹⁴ Email from Banca Popolare di Sondrio to EDBI, 14 November 2018 (IM, Annex 182), Email from Banco BPM to Bank Pasargad Iran, 16 July 2018 (IM, Annex 165); Email from Banca Popolare di Sondrio to Bank Pasargad Iran, 30 July 2018 (IM, Annex 172).
- ¹⁹⁵ SWIFT messages from Mitsubishi UFG Bank to Bank Maskan, 28 January 2019 (IM, Annex 184).
- ¹⁹⁶ SWIFT message from Bank Sohar to Bank Markazi, 6 August 2018 (IM, Annex 174).
- ¹⁹⁷ SWIFT message from PKO Bank to Bank Pasargad, 28 May 2018 (IM, Annex 159).
- ¹⁹⁸ SWIFT message from DBS Bank (Singapore) to Bank Markazi, 17 July 2018 (IM, Annex 166).
- ¹⁹⁹ SWIFT message from Skandinaviska Enskilda Banken (SEB) to Bank Melli, 9 June 2018 (IM, Annex 164).
- ²⁰⁰ SWIFT message from BCP Bank to Bank Markazi, 17 October 2018 (IM, Annex 179), Email from BCP Bank to Export Development Bank of Iran (EDBI), 23 July 2018 (IM, Annex 169), SWIFT Message from BCP Bank to Bank Pasargad Iran, 7 June 2018 (IM, Annex 163), Email from BCP bank to EDBI, 31 May 2018 (IM, Annex 162), Email from BCP Bank to Bank Pasargad Iran, 22 May 2018 (IM, Annex 158); Email from BCP Bank to EDBI, 16 May 2018 (IM, Annex 157); see also, J. Saul, “Swiss bank BCP says halt all new business with Iran”, *Reuters*, 29 May 2018 (IM, Annex 190).
- ²⁰¹ “Taiwan's Mega Int'l Commercial Bank plans to end Taiwan-Iran clearing mechanism after Nov”, *Reuters*, 13 August 2018 (IM, Annex 199).
- ²⁰² SWIFT message from Aktif Bank to DAY Bank, 26 July 2018 (IM, Annex 171), SWIFT message from Aktif Bank (Turkey) to EDBI, 25 July 2018 (IM, Annex 170).

imposition of sanctions which are affecting the lives of Iranian in all dimensions”.²⁰³

3.8 The practical impact of this is that the Iranian nationals and companies operating in the financial and banking sector are (i) barred from effectively communicating with their foreign partners, (ii) no longer able to make or receive international payments, (iii) unable to provide financing or (iv) obtain insurance cover for international trade or operations and (v) have had their assets held abroad effectively “blocked”.

i. Closing the communication channels of the Iranian financial sector

3.9 As a consequence of the re-imposition of the U.S. measures, Iranian financial and banking institutions have been isolated from the international financial community. Since 8 May 2018, most Iranian banks have been suspended from the SWIFT financial messaging service. This is highly significant. SWIFT has been described by the IMF as “a critical service provider for FMIs [financial market infrastructures] across the world”²⁰⁴ and, by one French Senator, in an October 2018 report devoted to the extraterritoriality of U.S. sanctions, as “a key element of international trade”²⁰⁵ which:

“most banks and many non-bank operators are members of ... and this network and these messages are standards to such an extent that other public or private market infrastructures (*TARGET2*, *Euroclear* or *Clearstream*) rely on them”.²⁰⁶

3.10 From the beginning of November 2018, the U.S. administration placed significant pressure on SWIFT (a Belgium-based entity) to comply with the then forthcoming U.S. measures which were designed to deny Iranian financial and banking institutions access to financial messaging services.²⁰⁷ On 2 November 2018, U.S. Secretary of the Treasury indicated that “to continue intense economic pressure on the Iranian regime”,

²⁰³ CBI 8 April 2019 Statement, paras. 2–4, p. 7 (IM, Annex 150).

²⁰⁴ IMF, “Belgium – Financial System Stability Assessment”, IMF Country Report No. 18-67, 6 March 2018, p. 10 (IM, Annex 153).

²⁰⁵ French Senator P. Bonnacarrère, “Rapport d’information fait au nom de la commission des affaires européennes sur l’extraterritorialité des sanctions américaines”, French Senate, 4 October 2018, p. 23 (IM, Annex 154) – translation of “un élément clé des échanges internationaux”.

²⁰⁶ *Ibid.*, p. 23 – translation of “[I]a plupart des banques et nombre d’acteurs non bancaires en sont adhérents et ce réseau et ces messages sont des standards au point que d’autres infrastructures de place publiques ou privées (*TARGET2*, *Euroclear* ou *Clearstream*) s’appuient sur eux”.

²⁰⁷ See Chapter II, paras. 2.102-2.105.

the U.S. had advised SWIFT that it “would be subject to U.S. sanctions if it provides financial messaging services to certain designated Iranian financial institutions” and that it “must disconnect any Iranian financial institution that [the U.S. Treasury] designate as soon as technologically feasible to avoid sanctions exposure”.²⁰⁸ SWIFT responded to this threat and, in 5 November 2018, decided to suspend all the Iranian banks that had been relisted on the OFAC SDN list.²⁰⁹

3.11 As a result, Iranian banks and financial institutions can no longer use the secure communication channel used by all the other banking institutions throughout the world to send transfer instructions, set up or execute bank guarantees or simply exchange information. As noted by one author:

“...SWIFT has, reluctantly, agreed to remove sanctioned Iranian banks—including Iran’s central bank—from its systems, cutting them off from one of the core mechanisms of global finance and making it exceedingly difficult technically for them to engage in financial transactions with most of the world’s mid-sized and large financial entities”.²¹⁰

3.12 The practical impact of the U.S. measures also includes the exclusion of Iranian financial and banking institutions from the main international professional organisations and groups. According to the Directors of Legal Affairs and of Marine Department of the CII:

“following the re-imposition of the U.S. sanctions, the aviation pool of the Federation of Afro-Asian Insurers and Re-Insurers (“FAIR”) changed the status of Iran from “full member” to observer of this pool.

We are now involved in many problems due to the sanction against Iranian banks which do not allow the green card bureau of Iran transfer the money requested by other green card members.

All the significant foreign (re)insurance companies, i.e. those having an international reputation, have left the Iranian market”.²¹¹

²⁰⁸ U.S. Department of State, “Briefing on Iran Sanctions”, Special Briefing, 2 November 2018 (IM, Annex 42).

²⁰⁹ K. Katzman, “Iran Sanctions”, *Congressional Research Service*, RS20871, updated 22 April 2019, p. 49 (IM, Annex 329); see also U.S. Department of State, Department Press Briefing, 2 April 2019, p. 1 (IM, Annex 51).

²¹⁰ S. Zable, “INSTEX: A Blow to U.S. Sanctions?”, *Lawfareblog*, 6 March 2019 (IM, Annex 204).

²¹¹ CII 1 May 2019 Statement, para. 11, p. 3 (IM, Annex 152).

*ii. Restrictions on international money transfers and payments involving
Iranian nationals and companies*

- 3.13 As a result of the U.S. measures, most foreign banks and insurers are now refusing to process any payment transactions with Iranian financial or banking institutions. For example, DZ Bank, Germany's second largest lender, stated as early as 16 May 2018, that it would "completely suspend [its] foreign payment transactions related to Iran starting [1 July 2018]".²¹²
- 3.14 The practical impacts of the U.S. measures include, as illustrative examples, the fact that it has become extremely difficult for Iranian nationals and companies:
- to issue payment for the services or goods they import from abroad or to receive payment for the sale of goods and services which they export. For instance, as noted in press reports, the decision of Chinese banks to withdraw services to Iranian banks "basically means [that] Iran will have to stop importing from China";²¹³ and in sectors with strong international ties such as the oil and gas sector, civil aviation or maritime shipping, such a situation is highly problematic;²¹⁴
 - to receive the payments to which they are entitled under their international insurance or reinsurance contracts and to give an undertaking to foreign clients and counterparts that Iranians insurers and reinsurers will be able to execute their own insurance coverage;²¹⁵ and
 - to defend or enforce their rights through international dispute settlement mechanisms outside of Iran, since, for instance, it is now impossible for an

²¹² Email from DZ Bank to its branches, 16 May 2018 (IM, Annex 156); see also A. Cremer, "Germany's DZ Bank to halt Iran transactions in July", *Reuters*, 18 May 2018 (IM, Annex 188).

²¹³ C. Aizhu & S. Zhang, "As U.S. sanctions loom, China's Bank of Kunlun to stop receiving Iran payments - sources", *Reuters*, 23 October 2018, p. 2 (IM, Annex 200). This press report also states that "China is the top buyer of Iranian oil and nearly all of its oil payments go through Kunlun" (*ibidem*, p. 1).

²¹⁴ O. Tsukimori & T. Aranaka, "Japanese banks MUFG, Mizuho to stop Iranian transactions", *Reuters*, 12 July 2018 (IM, Annex 195). It was reported that "[t]he move by MUFG is likely to force a halt in Iranian crude oil purchases by Japanese companies as its banking unit handles the bulk of those imports, industry sources have told Reuters".

²¹⁵ CII 1 May 2019 Statement, para. 10, p. 3 (IM, Annex 152).

Iranian entity which is a party to an arbitration before the International Chamber of Commerce to fulfil the payment of arbitration costs.²¹⁶

3.15 Foreign banks have also terminated their corresponding relationships with Iranian banking and financial institutions.²¹⁷ For instance, on 29 May 2018, Raiffeisen Bank, the third largest Austrian bank, terminated all of its accounts relationships with Iranian banks on the basis that “[t]he actual international political and legal environment imposes restrictions on us which do not permit us anymore to maintain [these] account relationship[s]”.²¹⁸ The termination of such relationships further prevents Iranian economic operators from pursuing their business relationships with foreign partners, since correspondent banks play an essential role in international financial transactions where payments are to be made in a local currency.

iii. Restrictions on international financing involving Iranian nationals and companies

3.16 As a result of the U.S. measures, foreign banks are also refusing to execute new international banking guarantees with Iranian nationals and companies and, in some cases, refusing to perform their own obligations under previously executed guarantees. As an illustrative example explained in a witness statement relating to Bank Melli:

“There are many cases of non-fulfilment of undertaken liabilities of foreign counter-guarantors including non-payment of claimed guarantees amounts, outstanding commissions and charges and delayed interests. For example, BNP Paribas, as the counter-guarantor, has refused to pay Bank Melli the amounts claimed by the Iranian beneficiary for 2 bank guarantees issued by Bank Melli totaling EUR 808k and therefore, Bank Melli has paid them out of its own resources”.²¹⁹

²¹⁶ Letter from the ICC addressing the banking restrictions impeding the payments from an Iranian entity for arbitration costs as a result of the U.S. secondary sanctions, 3 April 2019 (redacted) (IM, Annex 185).

²¹⁷ A correspondent bank is a bank that provides services on behalf of another financial institution, usually a foreign one. Such services may include facilitating wire transfers, conducting business transactions, accepting deposits, and gathering documents. See e.g. SWIFT message from PKO Bank to Bank Pasargad, 28 May 2018 (IM, Annex 159).

²¹⁸ Letter from Raiffeisen Bank to Bank Melli, 29 May 2018 (IM, Annex 160).

²¹⁹ Bank Melli 1 May 2019 Statement, para. 4, p. 1 (IM, Annex 151).

3.17 The U.S. measures have not only frustrated the performance of guarantees issued by Iranian banks but also, by interfering with the issuance of international financing agreements such as letters of credit or letters of guarantee, created a direct impediment to all major economic relationships between Iranian banking and financial institutions and foreign operators.²²⁰

iv. Isolation of Iranian nationals and companies from the international insurance market

3.18 As a result of the U.S. measures, most foreign insurers and reinsurers with an international reputation have terminated their insurance/reinsurance agreements with Iranian nationals and companies.²²¹ It has therefore become extremely difficult for a foreign entity to finance and insure any operation in Iran. Among cases publicised, illustrative examples include the following:

- On 17 May 2018, the Italian steel manufacturer Danieli announced that it had halted work on finding financial coverage for orders in Iran worth €1.5 billion, with the Chief Executive Officer explaining that “the banks are no longer ready to fund Iranian projects for fear of secondary sanctions”;²²²
- On 13 June 2018, Austria’s Oberbank announced that it was withdrawing from financing business in Iran, including a September 2017 agreement to provide project finance to Iran worth €1 billion, stating that “the threat posed to European companies by U.S. secondary sanctions is forcing us to retreat”;²²³

²²⁰ See e.g. below para. 3.33, para. 3.51, para. 3.53, para. 3.68, para. 3.100, paras. 3.111-3.112, para. 3.122, paras. 3.133-3.134 and para. 3.141.

²²¹ S. Evans, “AIG winds down underwriting linked with Iran to comply with U.S. sanctions”, *Reinsurance News*, 7 November 2018 (IM, Annex 202).

²²² “Italy’s Danieli Iranian orders blocked after U.S. decision on nuclear deal”, *Reuters*, 17 May 2018 (IM, Annex 187).

²²³ K. Knolle & A. Schwarz-Goerlich, “Austria’s Oberbank withdraws from Iran”, *Reuters*, 13 June 2018 (IM, Annex 192); see also official statement of OberBank on its policy toward Iran following the re-imposition of U.S. Sanctions: “Business policy measures regarding Iran business”, 2 January 2019 (IM, Annex 155).

- On 29 October 2018, South Korea’s Hyundai Engineering & Construction cancelled a deal to build a USD 521 million petrochemicals complex in Iran, because the “Iranian customer’s ability to fund it had been hit by the prospect of U.S. economic sanctions against Tehran”.²²⁴

3.19 The CII saw many of its non-U.S. partners abruptly end their business relationship with Iranian nationals and companies as a consequence of the U.S. measures. As expressed by these partners themselves, the termination of such business relationships was motivated:

- *directly*, by the “snapping-back” of the U.S. measures preventing non-U.S. persons from conducting (re)insurance business in Iran or from providing such services to any Iranian entity designated on the SDN list, there being no possibility of obtaining a waiver from the U.S. administration;²²⁵
- *indirectly*, by the refusal of the banking partners of these (re)insurance companies to process payments to and from Iran, “effectively preventing [the said companies from] receiving agreed premiums and making required claim payments”²²⁶ and thus rendering void any (re)insurance service.²²⁷

3.20 In these circumstances, as explained by CII, the impossibility of transferring some of its reinsurance risk on to international markets means that “[i]t is now extremely

²²⁴ J. Park and H. Yang, “South Korea’s Hyundai E&C cancels \$521 million petrochemicals deal, cites Iran financing failure”, *Reuters*, 29 October 2018 (IM, Annex 246).

²²⁵ See, e.g. Letter from SCOR Global P&C to Central Insurance of Iran, 18 July 2018 (IM, Annex 167); see also Email from Partner Re to Central Insurance of Iran, 3 August 2018 (“Effective August 6, 2018, we will no longer be in a position to provide (re)insurance coverage for any risks/activity types to which sanctions will be re-imposed from this date”) (IM, Annex 173) and Letter from J.B. Boda to Central Insurance of Iran, 24 September 2018, citing that they “are left with no option but compelled to refrain from offering our services to the Iran market with immediate effect until the relaxation in sanctions” (IM, Annex 177).

²²⁶ Letter from SCOR Global P&C to Central Insurance of Iran, 18 July 2018 (IM, Annex 167). See also Letter from Chedid Re to Central Insurance of Iran, 18 September 2018, terminating reinsurance relationships because “the lack of decent reinsurance capacities and the inability to find banking channels in the near future to honor the financial transactions. We deeply regret being unable to continue with the placement of our order on both the Risk and Cat XL Programs” (IM, Annex 175).

²²⁷ See, e.g. Email from UIB to Central Insurance of Iran, 24 September 2018: “UIB has no choice but to withdraw from the intermediation of Iranian business. We cannot in good faith be effective reinsurance brokers when we cannot present accounts, claims, premiums for our clients” (IM, Annex 176).

vulnerable, as [is] the Iranian insurance sector as a whole, to a risk of systemic failure”.²²⁸

v. *“Blocking” of assets and funds of Iranian nationals and companies held abroad*

3.21 As a consequence of the termination of correspondent banking relationships arising from the U.S. measures, foreign financial institutions have also closed the bank accounts they had opened in the name of Iranian banks.²²⁹ Since financial transfers in Rials are subject to specific U.S. measures after the expiry of the first so-called “wind-down period”,²³⁰ most of the funds held in correspondent bank accounts are now “blocked” and cannot be returned to their Iranian owners. This both interferes with the property rights of the Iranian nationals and companies who own these funds and deprives the Iranian banking industry of much needed assets.²³¹

3.22 Such “blocked” assets cannot even be used locally in the place where the relevant bank account is held because the (former) correspondent banks refuse to process financial transactions on behalf of Iranian banks. This situation resulted in absurd consequences, in which, for instance, Bank Melli Iran is unable to use its “blocked” assets abroad to pay the costs and expenses related to the operations of its foreign branches²³² or to settle its own financial obligations such as the payment of loans’ instalments.²³³

vi. *Conclusions on the practical impact of the U.S. measures on Iranian nationals and companies in the financial and banking and insurance sectors*

3.23 The force of the U.S. measures targeting Iran’s financial and banking sector derives, in part, from the central role played by the U.S. clearing system for all banking institutions holding bank accounts or performing financial transactions in U.S. dollars.

²²⁸ CII 1 May 2019 Statement, pts. 7-8, p. 3 (IM, Annex 152).

²²⁹ See e.g., Letter from La Banque Postale to Bank Melli Iran, 19 July 2018 (IM, Annex 168).

²³⁰ See Chapter II, “Sanctions on transactions in the Iranian Rial”, paras. 2.27-2.30.

²³¹ Bank Melli 1 May 2019 Statement, para. 3, p. 1 (IM, Annex 151).

²³² *Ibid.*, para. 5, p. 1 (IM, Annex 151).

²³³ *Ibid.*, para. 6(vi), p. 2 (IM, Annex 151).

The practical impact of these measures is that even when no sanctioned persons or activities are involved, foreign banks generally refuse to enter into any banking relationship with Iranian counterparts.

- 3.24 Thus, it is becoming difficult or impossible for Iranian companies and nationals to engage in international financial transactions and to purchase even items which are supposedly exempt from the U.S. measures such as food²³⁴ or medical supplies.²³⁵ The point is a simple one: because the access of Iranian nationals and companies to the international banking and insurance sectors is being severely restricted, imports and exports will likewise be severely affected, with consequent serious and adverse impact on trade, investment and on the ability of the Iranian people to obtain the necessities of life that cannot be manufactured or produced in Iran.
- 3.25 The U.S. measures targeting the financial sector will even impact on Iran's ability to repay its sovereign debt and, as explained by Mr Mehdizadeh of the CBI, this will result in defaults and the downgrading of Iran's credit-worthiness,²³⁶ which will in turn exacerbate the difficulties and costs of obtaining long-term financing from foreign sources.²³⁷

B. Blockading the Iranian Energy Production

- 3.26 Before 8 May 2018, the removal of the previous sanctions targeting Iran's energy production and trade had helped restore some of the country's capacity to produce oil and gas and to raise revenues from the export of such products.
- 3.27 The production data for the period from January 2016 to August 2017 point to robust growth in Iranian oil production. Daily production increased from 3.3 million barrels

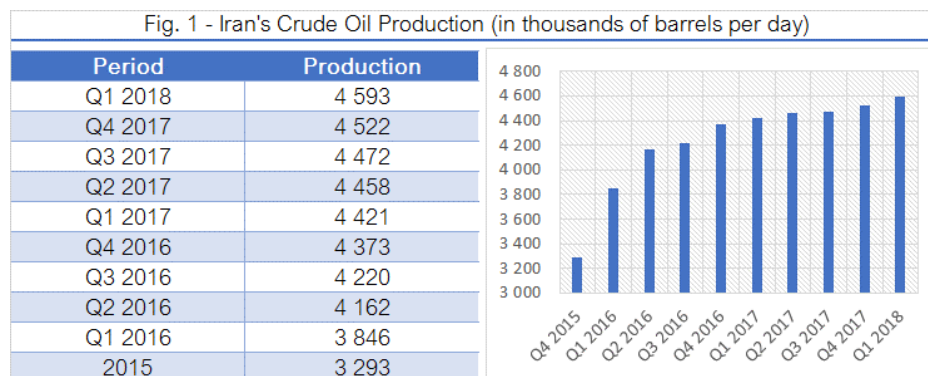
²³⁴ "Iran sanctions hurt French cattle farmers", *RFI*, 9 August 2018 (modified on 11 August 2018) (IM, Annex 198). As to reinsurance, see e.g. I. Landauro, "Scor says will not sign or renew Iran contracts", *Reuters*, 13 July 2018 (IM, Annex 196).

²³⁵ Email from BCP Bank to Bank Pasargad Iran, 22 May 2018 (IM, Annex 158).

²³⁶ The export credit risks rating of Iran with the OECD was already downgraded from 5 to 6, on 26 June 2018; see "OECD Downgrades Iran Credit Rating", *Financial Tribune*, 1 July 2018 (IM, Annex 194).

²³⁷ Witness statement of Mr J. Mehdizadeh, Director of Economic Research and Policy Department of the Central Bank of Iran, 21 August 2018, para. 8 (IM, Annex 149).

per day (“bpd”) in 2015 (the last year of the previous oil embargo) to 4.6 million bpd during the first quarter of 2018 (a 40 % increase).²³⁸ The graph below shows the evolution of Iran’s daily production of crude oil over this period.²³⁹



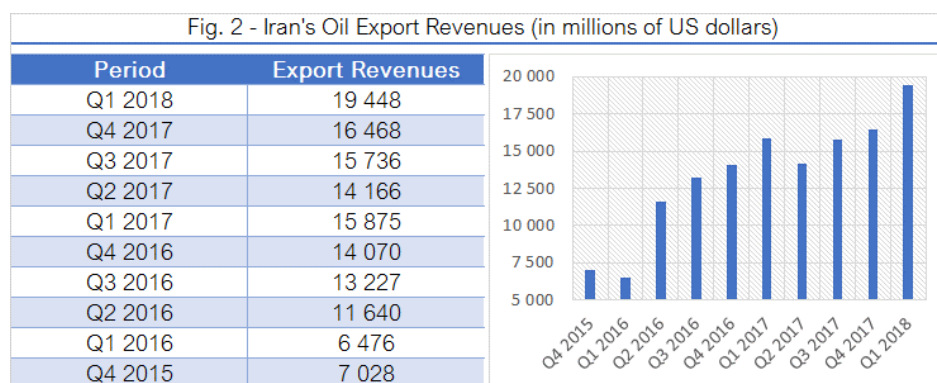
3.28 In conjunction with increased production, Iran’s oil exports and revenue also experienced a sharp rise.²⁴⁰ Although Iran’s higher levels of exports in 2016 coincided with lower oil prices, its oil and gas export revenue rose from USD 7.03 billion during the fourth quarter of 2015 (the last quarter of the previous oil embargo) to USD 19.45 billion during the first quarter of 2018 (a 180 % increase),²⁴¹ as shown in the following graph.

²³⁸ U.S. Energy Information Administration, “April 2019 Monthly Energy Review”, 25 April 2019, p. 194 “Table 11.1a - World Crude Oil Production: Selected OPEC Members” (IM, Annex 217). The Organization of the Petroleum Exporting Countries (OPEC) allowed Iran to return to its pre-sanctions output levels. By doing so, OPEC implicitly confirmed Iran’s claim that its lower production during sanctions was an “unjust” anomaly. At the same time, the total world production reached an average 98.05 million barrels per day, while the U.S. domestic production was twice that of Iran at 9.47 million barrel per day.

²³⁹ *Id.*

²⁴⁰ Witness statement of Mr H. Salari, Deputy Director of International Affairs at National Iranian Oil Company, 23 April 2019 (“NIOC 23 April 2019 Statement”), para. 5 (IM, Annex 205).

²⁴¹ Central Bank of Iran, “Selected Economic Indicators, Balance of Payment”, Persian years 1394 (21 March 2015 – 19 March 2016), 1395 (20 March 2016 – 20 March 2017) and 1396 (21 March 2017 – 20 March 2018) (IM, Annex 123); see also U.S. Energy Information Administration, “OPEC Revenues Fact Sheet”, last updated 21 August 2018, p. 3 (IM, Annex 213), in which the rise in Iran’s net oil export revenues is estimated at 44 % between 2016 and 2017.



3.29 This growth trend was predicted to continue, with the existing and potential energy resources of Iran becoming the subject of increasing attention by foreign investors. Throughout 2016, a large number of international oil and gas companies signed memoranda of understanding to develop Iran's extensive energy reserves. Such companies included, for example, American-Dutch Schlumberger, British-Dutch Shell, Chinese CNPC, German Wintershall, Italian Saipem, Japanese Inpex, Norwegian DNO and Russian Gazprom.²⁴² One major investment agreement had already been executed before 8 May 2018: the agreement between NIOC and the French company Total and the Chinese company CNPC to develop the phase 11 of South Pars gas field which was signed in November 2016.²⁴³

3.30 However, this positive trend came to a complete halt after 8 May 2018, with the re-imposition of the U.S. measures and, in particular, the measures targeting Iran's energy sector.²⁴⁴ The dire consequences of the U.S. measures for the Iranian energy sector include (i) the loss of international markets, to (ii) the withdrawal of foreign investors, and (iii) the termination or suspension of essential agreements with foreign suppliers.

²⁴² The Oxford Institute for Energy Studies, "Iranian Energy: a comeback with hurdles", University of Oxford, January 2017 (IM, Annex 208).

²⁴³ Total SA, "Iran: Total and NIOC sign contract for the development of phase 11 of the giant South Pars gas field", 3 July 2017 (IM, Annex 209).

²⁴⁴ See above, Chapter II, para. 2.85-2.94.

i. Closure of Foreign Export Markets

- 3.31 In the words of a U.S. State Department official, the aim the re-imposed U.S. measures targeting the Iranian energy sector, was to “get[] as many countries importing Iranian crude down to zero as soon as possible” and “reduc[e] to zero [Iran’s] revenue from crude oil sales”.²⁴⁵
- 3.32 The U.S. decision to re-impose the U.S. measures had an immediate practical impact on Iran’s oil and gas exports from 8 May 2018,²⁴⁶ even before those measures specifically targeting the energy sector (which were scheduled to be reinstated at the end of the second so-called “wind-down period”) had come into force. In the new international environment created by the 8 May Decision, both NIOC²⁴⁷ and the National Iranian Gas Company (“NIGC”)²⁴⁸ (both of which are Iranian companies) immediately experienced serious restrictions on the sale of their products abroad including:
- The termination or non-renewal of purchase agreements by international oil companies;²⁴⁹
 - Difficulties in arranging payments for the oil or gas exported, with such payments having to take place in local currencies and being at risk of being “blocked” in foreign bank accounts.²⁵⁰ For example, on 6 August 2018, Bloomberg reported that, in Japan “[r]efiners were told that the banks won’t handle transactions for Iran-related deals that were signed on or after May 8,

²⁴⁵ U.S. Department of State, “Briefing with an Iran Diplomacy Update”, Special Briefing, 2 July 2018 (IM, Annex 34); see also “U.S. Toughens Stance on Future Iran Oil Exports”, *The Wall Street Journal*, 26 June 2018 (IM, Annex 238); “U.S. pushes allies to halt Iran oil imports, waivers unlikely”, *Reuters*, 27 June 2018 (IM, Annex 240).

²⁴⁶ U.S. Energy Information Administration, “Iran has produced and exported less crude oil since sanctions announcement”, 23 October 2018 (IM, Annex 214).

²⁴⁷ NIOC 23 April 2019 Statement (IM, Annex 205).

²⁴⁸ Witness statement of S. M. Hossein Hosseini, Financial Director of National Iranian Gas Company, 30 April 2019 (“NIGC 30 April 2019 Statement”) (IM, Annex 206).

²⁴⁹ NIOC 23 April 2019 Statement, para. 6(i), p. 1 (IM, Annex 205).

²⁵⁰ NIOC 23 April 2019 Statement, para. 6(ii), p. 1 (IM, Annex 205); NIGC 30 April 2019 Statement, paras. 6-8, pp. 1-2 (IM, Annex 206).

and that those signed before that period will be dealt with ‘on [a] case-by-case basis’;”²⁵¹ and

- problems in arranging shipment of oil products due to the refusal of foreign tankers to transport Iranian cargo and of foreign insurers to provide cover for such cargo.²⁵²

3.33 With the end of the second so-called “wind-down period”, the situation deteriorated further. As reported by Bloomberg,²⁵³ by 2 November 2018, Iran “[had] lost key buyers”, including:

- the refiners of France, Spain, Japan or South Korea who stopped all importations of Iranian crude oil;
- China’s Sinopec and Indian refiners who had halved their importations compared to the levels observed before 8 May 2018; and
- and others, such as Emirati refiners who were looking for solutions alternative to Iranian oil.

3.34 The result of this withdrawal of the main purchasers of Iranian oil,²⁵⁴ as shown on the following graph which provides a snapshot of the situation as at October 2018,²⁵⁵ was a decrease of Iran’s oil exports by nearly 50 % even before the U.S. measures targeting Iran’s energy sector²⁵⁶ went back into force.

²⁵¹ “Iran’s Oil Market Realities: How India, Others Are Preparing for U.S. Sanctions”, *The Times of India*, 16 August 2018 (IM, Annex 244); see also, e.g., “European refiners winding down purchases of Iranian oil”, *Reuters*, 6 June 2018 (IM, Annex 236).

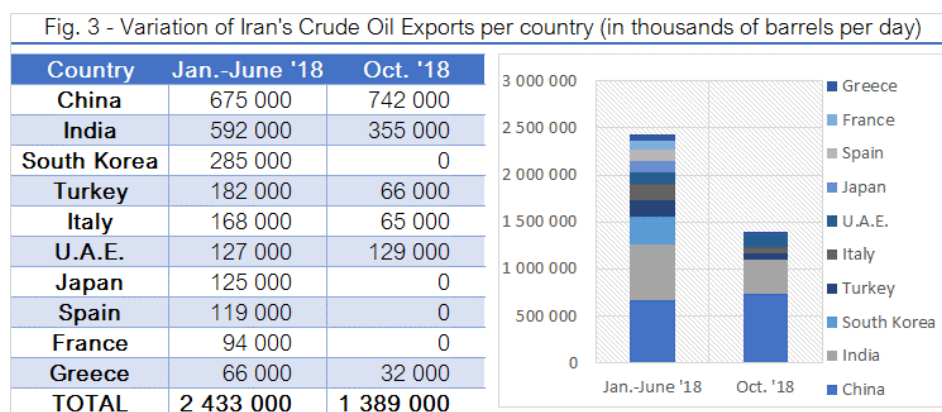
²⁵² NIOC 23 April 2019 Statement, para. 6(iii), p. 2 (IM, Annex 205); see also, e.g., “India’s HPCL cancels Iran oil shipment after insurer excludes coverage”, *Reuters*, 26 July 2018 (IM, Annex 241).

²⁵³ J. Lee & I. Garcia Perez, “Buyers of Iranian Oil to Get Waivers: Sanctions Wrap”, *Bloomberg*, 6 August 2018 (updated 2 November 2018) (IM, Annex 242).

²⁵⁴ China, India, South Korea, Turkey, the European Union and the U.A.E. represented nearly 95 % of Iran’s oil exports during the first semester of 2018.

²⁵⁵ Data from J. Lee & I. Garcia Perez, “Buyers of Iranian Oil to Get Waivers: Sanctions Wrap”, *Bloomberg*, 6 August 2018 (updated 2 November 2018) (IM, Annex 242).

²⁵⁶ See above, Chapter II paras. 2.67-2.94.



- 3.35 In less than a year, between April 2018 and February 2019, oil shipments from Iran had dropped drastically from at least 2.5 million bpd to only 1.1 million bpd.²⁵⁷
- 3.36 The downward trend is bound only to worsen as a result of the recent decision by the U.S. to aggravate and extend the U.S. measures, which are designed to asphyxiate the Iranian energy sector, by ceasing to renew existing “sanctions waivers” or to issue new “waivers”.²⁵⁸ All of the countries that were still importing Iranian oil after the 5 November 2019²⁵⁹ had previously benefited from such “sanctions waivers” from the U.S. administration.²⁶⁰ With the termination of these “waivers”, it is expected that Iranian oil exports will fall even further.²⁶¹

²⁵⁷ International Energy Agency, “IEA statement on global oil markets”, 23 April 2019 (IM, Annex 216); see also D. Hudson, “Despite sanctions, Iran’s oil exports rise in early 2019: sources”, *Reuters*, 19 February 2019 (IM, Annex 248); “Sources: Iran’s Oil Exports Hit 2019 Low in April”, *Reuters*, 16 April 2019 (IM, Annex 250).

²⁵⁸ See above, Chap. II, paras. 2.80-2.84.

²⁵⁹ See above, fn 254, for the list of the main importers of Iranian oil. Note that the United Arab Emirates were not granted an SRE but it is believed that they did not request one and have stop importing Iranian petroleum on or shortly after the 5 November 2019; see B. Scheid, “Questions remain over UAE imports of Iranian condensate amid US sanctions”, *S&P Global*, 15 November 2018 (IM, Annex 247).

²⁶⁰ The United States granted SREs to 8 countries: China, India, Italy, Greece, Japan, South Korea, Taiwan and Turkey: see K. Katzman, “Iran Sanctions”, *Congressional Research Service*, RS20871, updated 22 April 2019, at p. 23 (IM, Annex 329).

²⁶¹ D. Zhdannikov, “Iran’s oil exports to slide in May, but not to zero: sources”, *Reuters*, 3 May 2019 (IM, Annex 252).

ii. *Disinvestment in the Energy Sector*

3.37 As a result of the 8 May Decision, several important foreign investors in Iran’s energy sector immediately decided to withdraw their investments from Iran and terminate their contractual relations with Iranian companies and nationals. By way of illustrative example:

- On 16 May 2018, Total announced that it would pull out of the billion-dollar agreement deal it had concluded with NIOC and the Chinese company CNPC over the South Pars gas field;²⁶²
- On 18 May 2018, PGNiG, Poland’s dominant gas company, announced plans to suspend its gas project in Iran, stating: “[t]here is not much we can do about the contract in Iran. Any moment the sanctions will be put in place and nobody wants to take a risk”;²⁶³
- On 29 May 2018, Lukoil, which was to develop oil fields in Iran, decided at that it would no longer pursue any joint ventures with Iranian oil companies due to the impending U.S. measures;²⁶⁴ and
- On 26 June 2018, the Indonesian government decided to freeze the state-owned company Pertamina’s deal to operate the Mansouri oil field in Iran.²⁶⁵

3.38 With regard to another illustrative example, the upgrade of the Abadan Refinery, the reasons given by the different foreign companies for withdrawing from or terminating their previous commitments related to this project provide a clear insight into to the effects of the re-imposition of the U.S. measures targeting the Iranian energy sector.

²⁶² See above para. 3.29; see also Total, “U.S. withdrawal from the JCPOA: Total’s position related to the South Pars 11 project in Iran”, 16 May 2018 (IM, Annex 210); S. Kar-Gupta & J. Irish, “France’s Total to quit Iran gas project if no sanctions waiver”, *Reuters*, 16 May 2018 (IM, Annex 231) and “L’Iran annonce officiellement que Total a quitté le projet South Pars”, *L’Usine Nouvelle*, 20 August 2018 (IM, Annex 245).

²⁶³ N. Tzur, “Poland’s PGNiG plans to suspend gas project in Iran because of U.S. sanctions”, *Reuters*, 18 May 2018, (IM, Annex 232).

²⁶⁴ V. Soldatkin, “Lukoil puts Iran plans on hold due to threat of U.S. sanctions”, *Reuters*, 29 May 2018 (IM, Annex 234).

²⁶⁵ R. Valdmanis, “Indonesia’s Pertamina says Iran oil field deal frozen over U.S. sanctions”, *Reuters*, 26 June 2018 (IM, Annex 239).

This project, which was worth one billion U.S. dollars, had been awarded to the Chinese engineering company Sinopec.²⁶⁶ But after 8 May 2018, all of Sinopec's suppliers in this project decided to back away, invoking as motives:

- The reinstatement of “U.S. sanctions”²⁶⁷, the so-called U.S. “secondary sanctions”²⁶⁸ and the risk of “new sanctions”²⁶⁹;
- The revocation of General Licence H;²⁷⁰ and
- and more generally, the “May 8th announcement”²⁷¹ and the “current U.S. government attitude toward Iran”.²⁷²

3.39 The U.S. measures have not only damaged Iran's oil and gas markets. They have also caused renewable energy companies to terminate their activities in Iran, including, by way of illustrative example, the UK solar company Quercus which had intended to invest €500 million to build the sixth largest solar plant in the world.²⁷³ This practical impact of the U.S. measures seriously jeopardises Iran's aim, linked to the commitments it has accepted under the Paris Agreement, to add at least 5 gigawatt of generation capacity by 2022 as well as Iran's aim to also reduce air pollution.²⁷⁴

3.40 The U.S. has publicly celebrated the significance and speed of the practical impact its measures have had on disinvestment in Iran's energy sector. For example, by 6 August 2018, a U.S. State Department official declared that the United States was “very

²⁶⁶ H. Tunnicliffe, “Sinopec to upgrade Iran's Abadan refinery”, *The Chemical Engineer*, 9 July 2018 (IM, Annex 230).

²⁶⁷ See Letter from Phocéenne to Sinopec, 7 June 2018 (IM, Annex 220); Letter from Wuxi Compressor to Sinopec, 19 June 2018 (IM, Annex 222); Letter from EagleBurgmann Dailian Co. Ltd to Sinopec, 26 June 2018 (IM, Annex 227); Letter from Beijing Kelitong Instrument Technology Development Co. LTD to Sinopec, 26 July 2018 (IM, Annex 228).

²⁶⁸ Letter from Sulzer to Sinopec, 19 June 2018 (IM, Annex 223).

²⁶⁹ Letter from EEW China Marketing & Services to Sinopec, 31 May 2018 (IM, Annex 219).

²⁷⁰ Letter from Howden to Sinopec, 19 June 2018 (IM, Annex 224).

²⁷¹ E-mail from Honeywell (China) to Sinopec, 18 May 2018 (IM, Annex 218).

²⁷² E-mail from Kelvion China to Sinopec, 21 June 2018 (IM, Annex 226). See also E-mail from Roots Systems to Sinopec, 18 June 2018 (IM, Annex 221); Letter from GEA to Sinopec, 20 June 2018 (IM, Annex 225).

²⁷³ See e.g. “Exclusive: UK's Quercus pulls plug on \$570 million Iran solar plant as sanctions bite”, *Reuters*, 14 August 2018 (IM, Annex 243).

²⁷⁴ See below para. 3.147.

pleased that nearly 100 international firms have announced their intent to leave the Iranian market, particularly in the energy and the finance sectors”.²⁷⁵

iii. Termination of Relationships with Foreign Suppliers and Service Providers

3.41 The re-imposition of the U.S. measures also led major suppliers of services and equipment in the oil and gas industry to sever or limit their ties with their Iranian counterparts. According to the Iranian Offshore Oil Company (“IOOC”), one of the world largest offshore oil and gas producing companies, the consequence of the U.S. measures is that it:

“can no longer procure an important part of the installations, machinery, equipment, spare parts, and other materials required for its offshore operations in Persian Gulf and Oman Sea which have to be purchased from European and American sources [and] may not receive from foreign companies the licenses and technical knowledge for keeping the maximum efficient rate of recovery of Iran’s oil and gas reservoirs”.²⁷⁶

3.42 Such components and services are, however, essential to Iran’s oil and gas production. Not only is the Iranian energy sector under-equipped and in need of foreign technology after years of previous sanctions²⁷⁷ but, even under normal operating conditions, it depends upon large volumes of highly technical equipment and knowledge for which the domestic suppliers are either insufficient or absent.²⁷⁸

²⁷⁵ U.S. Department of State, “Senior Administration Officials Previewing Iran Sanctions”, Special Briefing, 6 August 2018 (IM, Annex 36).

²⁷⁶ Witness statement of Mr H. Bovard, Managing Director of Iranian Offshore Oil Company, 1 May 2019 (“IOOC 1 May 2019 Statement”), p. 1 (IM, Annex 207).

²⁷⁷ F. Mohamedi, “The Oil and Gas Industry”, *The Iran Primer*, August 2015 (IM, Annex 229).

²⁷⁸ IOOC 1 May 2009 Statement, para. B(1), p. 2 about IOOC’s machinery relying mostly on “spare parts and repair & maintenance services ... directly or indirectly provided by western companies” or para. B(2), pp. 2-3 about IOOC’s 3,000 kilometres of pipelines for which “[t]he necessary spare parts including clamps, smart flanges, etc. are manufactured and provided by Iranian companies only in a very limited level and scale which does not satisfy even the basic needs of IOOC operational activities”.

According to IOOC, the different adverse impacts of the re-imposition of the U.S. measures on its activities include, notably:

- refusal by foreign suppliers and manufacturers to participate in IOOC's tenders for services or goods or to enter into purchase agreement with IOOC;²⁷⁹
- severe restrictions on, and in some cases impossibility in, obtaining certain indispensable equipment and parts;²⁸⁰
- impossibility in organising and insuring shipments of equipment from foreign ports and in obtaining the necessary classification of IOOC's ships;²⁸¹ and
- difficulties in transferring funds in order to make payments to foreign suppliers and manufacturers and in setting up bank guarantees;²⁸² etc.

3.43 As a consequence, and as shown in the following graph, Iran's oil production has fallen dramatically from an average 3.825 million bpd during the second quarter of 2018 to 2.3 million bpd in April 2019.²⁸³ And this will only worsen, since the continuous aggravation of the U.S. pressure on this key sector of the Iranian economy continues to limit severely the export market for these products.²⁸⁴

²⁷⁹ *Ibid.*, para. B(6), p. 3, para. C(4), p. 5

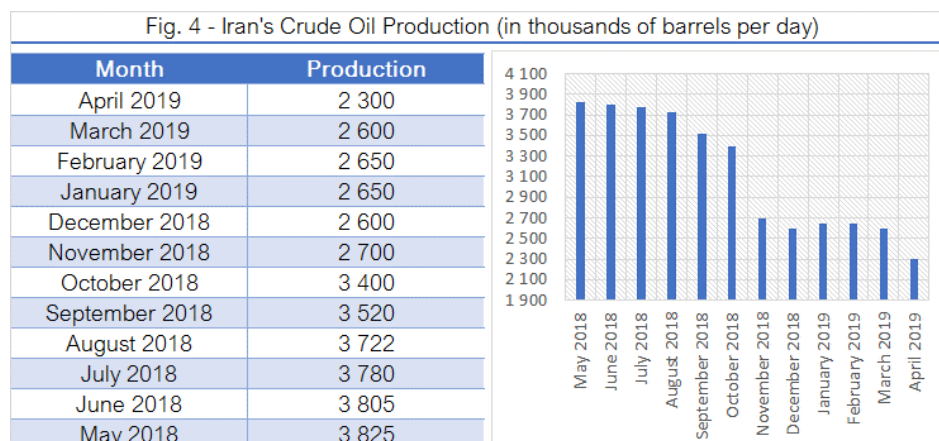
²⁸⁰ *Ibid.*, para. B(1), p.2, para. B(2), pp. 2-3, para. B(3), p. 3, para. B(4), p. 3 and para. B(5), p. 3.

²⁸¹ *Ibid.*, para. A(10), p. 2, para. B(7), p. 3-4 and para. B(8), p. 4

²⁸² *Ibid.*, para. D, p. 5 and para. E(5), p. 6

²⁸³ Source from the U.S. Energy Information Administration, "Crude Oil Production, Iran, Monthly", available at: www.eia.gov/odata (last consulted 9 May 2019); see also, OPEC, "Monthly Oil Market Report", 14 March 2019, p. 60 (IM, Annex 215).

²⁸⁴ See above, para. 3.36.



*iv. Conclusions on the practical impact of the U.S. measures
on the Iranian energy sector*

3.44 The practical impact of the U.S. measures amounts not only to a blockade on the Iranian energy industry, with Iranian companies being put out of business, their employees out of work, and the resulting impairment of the economic development of the regions in which such enterprises are located. The indirect effects of the U.S. measures are far more wide-reaching and negatively impact on the whole of the Iranian population, since almost 32 percent of government budget sources (including for basic public services) are financed by revenue generated from the export of crude oil and natural gas condensate.²⁸⁵ The U.S. measures are expected to have further devastating economic consequences, as the CBI explains:

“Low government revenue and pressure on government expenditure, due to inflationary impacts of reinforced sanctions, increase budget deficit which deteriorates uncertainties related to budget deficit financing. Therefore, *it is highly expected* that the vicious circle of budget deficit, Central Bank financing, higher liquidity, and higher inflation would take a new bout which may lead to hyperinflation”.²⁸⁶

²⁸⁵ Witness statement by Mr M. Akhbari, Assistant Director of the Economic Research and Policy Department of the Central Bank of Iran, 16 February 2019 (“CBI 16 February 2019 Statement”), p. 9 (IM, Annex 121).

²⁸⁶ CBI 16 February 2019 Statement, pt. 12, pp. 9-10 (IM, Annex 121 – emphasis added).

C. Grounding Iran Civil Aviation

3.45 Because they operate mostly aircraft of U.S. or European origin, purchase of which had been restricted under previous sanctions regimes, Iranian airline companies (both state-owned and privately-owned), have been forced to use an increasingly aging fleet.²⁸⁷ The adoption of the SLP by the U.S. OFAC on 16 January 2016 represented a significant change since U.S. and non-U.S. persons were now able to:

“request specific authorization from OFAC to engage in transactions for the sale of commercial passenger aircraft and related parts and services to Iran, provided such transactions do not involve any person on OFAC’s Specially Designated Nationals and Blocked Persons List (“SDN List”).”²⁸⁸

3.46 Relying on OFAC authorisations, several Iranian airline companies committed to purchase 140 Boeing commercial aircraft (80 for Iran Air,²⁸⁹ 60 for Iran Aseman Airlines,²⁹⁰ 10 for Kish Air²⁹¹ and 20 for Qeshm Airlines²⁹²) for a total catalogue value of USD 27 billion. At around the same time, Airbus had entered into discussions for the sale of 171 aircraft to Iranian companies (98 to Iran Air²⁹³, 28 to Zagros Airlines²⁹⁴

²⁸⁷ See, for example, the result of the independent audit experts at para. 3.2 of ICAO, “Continuity of the U.S. Trade Embargo on the Civil Aviation of the Islamic Republic of Iran and the Safety Deficiencies Arising Out of it”, Information Paper, 15 March 2006, DGCA/06-IP/31 (IM, Annex 256).

²⁸⁸ U.S Department of Treasury, OFAC, Statement of licensing policy for activities related to the export or re-export to Iran of commercial passenger aircraft and related parts and services, 16 January 2016, revoked as of 8 May 2018 (IM, Annex 26).

²⁸⁹ Witness statement of Mr M. Mahini, Director General of Legal Department of Iran Air, 30 April 2019 (“Iran Air 30 April 2019 Statement”), para. 4, p. 1 (IM, Annex 255); see also T. Hephher, “Factbox – Iran’s \$38 billion airplane purchases under nuclear deal”, *Reuters*, 8 May 2018 (IM, Annex 281).

²⁹⁰ “Iranian airline finalizes deal to purchase 60 Boeing planes”, *AP*, 10 June 2017 (IM, Annex 278).

²⁹¹ T. Hephher, “Factbox – Iran’s \$38 billion airplane purchases under nuclear deal”, *Reuters*, 8 May 2018 (IM, Annex 281).

²⁹² *Ibid.*

²⁹³ Iran Air 30 April 2019 Statement, para. 4, p. 1 (IM, Annex 255).

²⁹⁴ “Zagros Airlines places a commitment for 28 new Airbus aircraft”, Airbus, 22 June 2017 (IM, Annex 257).

and 45 to Iran Air Tours²⁹⁵) and ATR²⁹⁶ had agreed to sell 20 aircraft to Iran Air (with an option for an additional 20 aircraft).²⁹⁷

3.47 In line with the planned expansion of their fleets, Iranian airline companies had also engaged in vast investment programs which included the development of their maintenance, repair and overhaul capacities, the conclusion of new professional relationships with foreign maintenance operators and suppliers and the upgrade of training equipment.²⁹⁸

3.48 With recorded annual growth of air transportation at nearly 10 %, ²⁹⁹ such investment was considered to be essential in order to rebuild and expand the Iranian civil aviation industry. However, as a result of the re-imposition of the U.S. measures: (i) foreign companies have terminated or suspended all major aircraft sale agreements with Iranian airline companies, (ii) the Iranian civil aviation sector is experiencing serious restrictions on access to essential foreign services abroad, (iii) the operation of Iranian airline companies in Iran have been impeded and (iv) the safety of Iranian civil aviation transportation has been jeopardised.³⁰⁰

i. Termination or suspension of aircraft sale and purchase agreements

3.49 Immediately after the 8 May Decision, the U.S. OFAC revoked all the specific licences that had been issued to aircraft and engines manufacturers, and issued new

²⁹⁵ “Iran Airtour commits to 45 A320neo aircraft”, Airbus, 22 June 2017 (IM, Annex 258).

²⁹⁶ Airbus and ATR are European companies, but their aircraft are constituted of more than 10% of U.S. components, meaning that Airbus’ and ATR’s aircraft are subject to U.S. Treasury approval, and therefore to the 8 May sanctions.

²⁹⁷ Iran Air 30 April 2019 Statement, para. 4, p. 1 (IM, Annex 255); see also A. Feitz, “ATR passe entre les gouttes de l’embargo iranien”, *Les Echos*, 6 August 2018 (IM, Annex 284).

²⁹⁸ Iran Air 30 April 2019 Statement, para. 4, p. 2 (IM, Annex 255).

²⁹⁹ Witness statement of Mr A. Abedzade, President of the Civil Aviation Organization of Iran, 24 April 2019 (“CAO.IRI 24 April 2019 Statement”), paras. 4-14 (IM, Annex 254); see also “Iran Airport Traffic Expands 8 Percent”, *Financial Tribune*, 7 Avril 2018 (IM, Annex 280).

³⁰⁰ Witness statement by Mr M. Asaadi Samani, Secretary of the Association of Iranian Airlines (AIA), 18 August 2018 (“AIA 18 August 2018 Statement”) (IM, Annex 253).

“wind down licences” which did not allow the export of commercial passenger aircraft, parts and services to Iran after the first “wind down” period.³⁰¹

3.50 As summarised in the table below,³⁰² the result of this abrupt change of policy is that all of the agreements for the purchase of new aircraft by Iranian airline companies have been cancelled³⁰³ or postponed indefinitely³⁰⁴ (save for 3 Airbus aircraft and 13 ATR aircraft that had been delivered before 8 May 2018).³⁰⁵

Iranian airline co.	Aircraft manufacturer	Subject-matter	Value (B\$)
Iran Air	Boeing	Sale of 80 Aircraft	17.5
Iran Air	Airbus	Sale of 100 Aircraft	21.2
Iran Air	ATR	Sale of 20 Aircraft	0.4
Iran Aseman Airlines	Boeing	Sale of 60 Aircraft	6.7
Zagros Airlines	Airbus	Planned sale of 28 Aircraft	4.3
Kish Air	Boeing	Planned sale of 10 Aircraft	1.1
Qeshm Airlines	Boeing	Planned sale of 20 Aircraft	2.1
Iran Air Tours	Airbus	Planned sale of 45 Aircraft	5.0
TOTAL			58.3

ii. Restrictions on commercial and operational services provided abroad

3.51 The re-imposed U.S. measures are also preventing Iranian airline companies from pursuing their commercial operations outside of Iran. Illustrative examples of the issues now facing Iran Air and other Iranian airline companies on their international routes include:

- impossibility in collecting financial payments for services rendered due to the restrictions on the Iranian financial and banking sectors and currency,³⁰⁶ and the

³⁰¹ Letter from a U.S. company to Iran Air, 10 July 2018 (IM, Annex 265); see also D. Lawder, “U.S. Treasury’s Mnuchin: Revoking Boeing, Airbus licenses to sell jets to Iran”, *Reuters*, 8 May 2018 (IM, Annex 282).

³⁰² The values indicated in this table are the catalogue values of the different aircraft bought by Iranian airline companies, which have yet to be delivered.

³⁰³ Email from Boeing to Zagros Airlines, 20 November 2018 (IM, Annex 274); see also C. Charpentreau, “Boeing confirms passing \$20B Iran deal”, *AeroTime News*, 7 June 2018 (IM, Annex 283).

³⁰⁴ P. Hafezi, “Iran urges EU to press Washington on Airbus deliveries: ISNA”, *Reuters*, 17 December 2018 (IM, Annex 287).

³⁰⁵ For ATR, only 8 aircraft had been delivered before the withdrawal of the United States from the JCPOA. ATR then obtained a new so-called ‘wind down’ licence authorising for the delivery of the 5 remaining aircraft provided it took place before the end of the first “wind down period”: see A. Feitz, “ATR passe entre les gouttes de l’embargo iranien”, *Les Echos*, 6 August 2018 (IM, Annex 284).

³⁰⁶ Set of letters from a non-U.S. airline company to Iran Air, 31 January 2019 (IM, Annex 276).

withdrawal of the International Air Transport Association (IATA) from engaging in any settlement or other financial activities in Iran “until the sanctions are lifted”,³⁰⁷

- refusal by fuel service providers in Europe and some other countries to provide Iranian airlines with jet fuel because of the “new US sanctions”,³⁰⁸ leading to otherwise unnecessary situations where Iranian aircraft must have an extra landing and take-off in order to supply the fuel from a third country;³⁰⁹ and
- difficulties in obtaining ground handling services at airports abroad.³¹⁰

3.52 To continue to operate international routes, Iranian airline companies have had to limit their route network and resort to complex and costly solutions, such as carrying additional fuel to avoid refuelling abroad and ferrying qualified technicians to perform the mandatory maintenance checks abroad.³¹¹

iii. Impediments to the operation by Iranian airline companies of their fleet

3.53 As a result of the U.S. measures, Iranian airline companies are also barred from receiving critically-needed aircraft engines and spare parts and maintenance services, from foreign companies including the foreign manufacturers of the aircraft and engines currently used by the Iranian companies.³¹² Following the 8 May Decision,

³⁰⁷ Letter from IATA to Iran Air, 14 September 2018 (IM, Annex 270).

³⁰⁸ Email from a fuel supplier to Iran Air, 5 November 2018 (IM, Annex 272); Letter from a non-U.S. oil company to Iran Air, 18 July 2018 (IM, Annex 267); see also N. Alipour, “Obstruction Against Iranian Aircraft; From Europe to Persian Gulf”, *Iranian Students’ News Agency (ISNA)*, 23 April 2019, (IM, Annex 291), “Europeans refusing fuel to Iranian aircraft”, *presstv.com*, 18 December 2018 (IM, Annex 288); and “Tehran Slams Ankara for Refusing to Refuel Iranian Aircraft”, *Iran Front Page News*, 3 November 2018 (IM, Annex 285).

³⁰⁹ N. Alipour, “Obstruction Against Iranian Aircraft; From Europe to Persian Gulf”, *Iranian Students’ News Agency (ISNA)*, 23 April 2019, p. 1 (IM, Annex 291).

³¹⁰ Letter from a non-U.S. service provider to Iran Air, 17 July 2018 (IM, Annex 266).

³¹¹ CAO.IRI 24 April 2019 Statement, paras. 4-9, p. 2 (IM, Annex 254), Iran Air 30 April 2019 Statement, para. 10, p. 3 (IM, Annex 255).

³¹² Set of letters from a non-U.S. airline company to Iran Air, 31 January 2019 (IM, Annex 276); Letter from a non-U.S. company to Iran Air, 22 May 2018 (IM, Annex 261).

foreign parties have terminated or suspended agreements for the provision of such goods and services, citing grounds such as, for example:

- the revocation of the general licence H, which removed the possibility for U.S.-owned companies to provide parts (such as, for instance, tyres³¹³) and services to Iranian companies;
- the location in the United States of the headquarters of the original equipment manufacturer (OEM), which prevented a European supplier from delivering parts despite the aircraft being in an “aircraft on ground” situation;³¹⁴
- the non-renewal³¹⁵ or revocation³¹⁶ of the specific U.S. OFAC licences that had been granted to U.S. and European companies for the exportation of spare parts and services;
- the U.S. export control regulations, preventing U.S. companies and European companies³¹⁷ alike, from working with Iran, such as a manufacturer of pushback tractors who explained that it was “threatened by the so-called secondary sanctions in case [it does] further business with any Iranian company”³¹⁸; and
- payment issues, since the restrictions on Iran’s financial and banking sector are affecting the Iranian civil aviation industry as badly as all the other sectors of the economy.³¹⁹

³¹³ Email from a non-U.S. aircraft tyres supplier to Iran Air, 6 June 2018 (IM, Annex 263); Letter from Dunlop to Kish Air, 22 May 2018 (IM, Annex 260).

³¹⁴ Letter from a non-U.S. aircraft part supplier to Iran Air, 25 June 2018 (IM, Annex 264)

³¹⁵ Email from Boeing to Zagros Airlines, 20 November 2018 (IM, Annex 274).

³¹⁶ Email from a non-U.S. aircraft engine parts supplier to Iran Air, 31 May 2018 (IM, Annex 262); Letter from a non-U.S. aircraft part supplier to Iran Air, 25 June 2018 (IM, Annex 264); Letter from a U.S. company to Iran Air, 10 July 2018 (IM, Annex 265).

³¹⁷ Letters from Airbus to Zagros Airlines, 11 November 2018 (IM, Annex 273) and 13 December 2018 (IM, Annex 275); Email from a non-U.S. aviation service provider to Iran Air, 24 July 2018 (IM, Annex 268).

³¹⁸ Email from Honeywell to Kish Air, 9 April 2019 (IM, Annex 277); Letter from a non-U.S. equipment supplier to Iran Air, 30 August 2018 (IM, Annex 269).

³¹⁹ Iran Air 30 April 2019 Statement, para. 11, p. 4 (IM, Annex 255); CAO.IRI 24 April 2019 Statement, para. 13, p. 4 (IM, Annex 254). See also Letter from a French bank to Iran Air, 17 September 2018 (IM, Annex 271).

3.54 As the President of the Civil Aviation Organization of Iran (“CAO.IRI”) explains in a witness statement³²⁰ the termination of agreements by foreign operators or the limitation of their relationships with Iranian airline companies is having crippling impacts on this sector, since the “restriction on purchasing [of] aircraft engine, landing gear, APU [auxiliary power unit] and propeller, spare parts, and or repairing them by major companies has crippled the operational activities of the fleet”³²¹ and the volume of air passenger transport in Iran has declined markedly since 8 May 2019, estimated at -13 %.³²²

iv. The dire consequences of the U.S. measures on the safety of Iranian civil air transportation

3.55 As a result of the re-imposition of the U.S. measures, more and more Iranian aircraft must be grounded for airworthiness issues³²³ and for the remainder of the fleet, the President of the CAO.IRI explains that:

“due to the re-imposition of the U.S. sanctions, maintaining the safety has become very difficult, very complicated and very expensive for our administration and for Iranian airlines companies”.³²⁴

3.56 Indeed, leaving aside those aircraft which have been grounded due to identified airworthiness issues, Iranian civil airlines and passengers are therefore left to use an aging fleet, with limited access to maintenance information, services and spare parts. Thus, even where no specific airworthiness issue has been identified, the practical impact of U.S. measures includes creating a material risk to civil aviation safety and security.³²⁵ Indeed, as the President of CAO.IRI explains in his statement:

“Iranian airline companies have been barred or restricted from access to services and parts including the updated books and related checklists of aircraft manufactures as well as the technical and specialized documents, necessary for

³²⁰ CAO.IRI 24 April 2019 Statement, paras. 7, 8 and 9, p. 3 (IM, Annex 254).

³²¹ *Ibid.*, para. 4-3, p 3 (IM, Annex 254).

³²² CAO.IRI 24 April 2019 Statement, para. 4-14, p. 4 (IM, Annex 254).

³²³ Out of a fleet of around 53 aircraft, Iran Air only operates 20 aircraft, as of April 2019: see Iran Air 30 April 2019 Statement, para. 2, p. 1 (IM, Annex 255).

³²⁴ *Ibid.*, para. 6, p. 4 (IM, Annex 254).

³²⁵ E. Batmanghelidj, “For Iranian Passengers, Old Planes and Few Parts Make Air Travel 5.5 More Times Deadly”, *Bourse & Bazaar*, 5 December 2018 (IM, Annex 286).

the safety and airworthiness of the aircraft of their fleets; a situation that led the Civil Aviation Organization of Iran to request the grounding of a growing number of these aircraft;

[...] [A]ccess to technical services and information necessary to operate aircraft and maintain their airworthiness has been terminated.

[...] Restrictions on access to simulator by large companies has damaged both the pilot courses and the initial training for issuing and renewing their licenses.”³²⁶

3.57 The inability to import spare parts essential to the safety of civil aviation has led to absurd situations. As an illustrative example, for three months from 14 December 2018, an aircraft operated by the airline company Norwegian was stranded in Iran following an emergency landing at Shiraz Airport because the required repair parts were not available locally and could not be imported into the country.³²⁷

3.58 The practical impact of the U.S. measures extends far beyond matters of convenience and creates a risk to the safety of Iranian civil aviation with potentially tragic consequences. In his witness statement, the Secretary of the Association of Iranian Airlines, refers to some of the impacts on safety of the previous U.S. measures targeting the civil aviation sector and concludes that:

“If the international community fails to prevent the U.S. from giving full effect to its sanctions, the lives of Iranian passengers and crew and other customers of Iranian airlines will be placed in danger.”³²⁸

3.59 This conclusion draws, as an illustrative example, on the crash of Iran Aseman Airlines’ aircraft on 18 February 2018, killing all 66 persons on board.³²⁹ As a further illustrative example, reference may also be made to the 39-year-old Boeing 707 cargo aircraft, which crashed on 14 January 2019 near Tehran, with a failure in the navigation system being identified as the likely reason for this accident.³³⁰

³²⁶ CAO.IRI 24 April 2019 Statement, paras. 4-2, 4-3 and 4-4, pp. 2-3 (IM, Annex 254).

³²⁷ M. Kraft, “Boeing 737 MAX 8 stuck in Iran since December 14, a real headache for Norwegian”, *Airlive*, 29 January 2019 (IM, Annex 290).

³²⁸ AIA 18 August 2018 Statement, para. 8, p. 4 (IM, Annex 253).

³²⁹ “Iran Aseman Airlines crash: Years of sanctions have left passengers with one of oldest air fleets in the world”, *The Independent*, 18 February 2018 (IM, Annex 279).

³³⁰ S. Shahrabi, “Plane Crash in Iran: Failed Navigation System Was to Blame”, *Aircraft Rescue & Fire Fighting Working Group*, 14 January 2019 (IM, Annex 289).

D. The practical impact of the U.S. measures targeting the Iranian shipping, shipbuilding and port sectors

3.60 Owing to geographical and geopolitical considerations, Iran's international trade is critically dependent upon its maritime shipping activities: it is estimated that more than 80 % of the volume of Iran's imports of goods have been handled by maritime transportation during recent years.³³¹

3.61 The Iranian maritime shipping industry is structured around three main actors:

- the Ports and Maritime Organization of Iran ("PMO"), a governmental agency which is responsible for managing all issues related to sea ports and commercial and coastal shipping activities in Iran on behalf of the Iranian Government;³³²
- IRISL, Iran's state-owned shipping company, which, at the beginning of March 2017, had the nineteenth largest merchant fleet in the world;³³³ and
- NITC, a private-owned Iranian company and one of the major oil transportation companies, which is responsible for all of Iran's oil exports.³³⁴

3.62 Prior to the 8 May Decision, each of these actors had launched massive investment plans to rebuild Iran's maritime shipping capacities. For instance, the PMO had signed a series of investment contracts worth USD 1 billion, as part of Iran's 2025 strategic economic plan.³³⁵ Likewise, NITC had resumed its operations with foreign clients,³³⁶ ending up with "85 % of NITC's shipping services ... provided to foreign oil

³³¹ Witness statement by Mr A. Saman Torabizadeh, Technical and Commercial Director of IRISL, 10 March 2019, p. 3 ("IRISL 10 March 2019 Statement") (IM, Annex 292).

³³² Witness statement by Mr. M. Rastad, Managing Director of the Ports and Maritime Organization, 17 March 2019 ("PMO 17 March 2019 Statement"), para. 1, p. 1 (IM, Annex 294).

³³³ "IRISL to Experience a Boom", *Mana*, 12 March 2017 (IM, Annex 300).

³³⁴ Witness statement of Captain S. Farahbod, Commercial Director of NITC, 17 March 2019 ("NITC 17 March 2019 Statement") (IM, Annex 293).

³³⁵ UK Government, Webpage "Doing business in Iran: trade and export guide", updated 5 November 2018, at "4.4 Infrastructure in Iran" (IM, Annex 296).

³³⁶ "Iran Secures Insurance, Classification and New Loan for Tankers", *Marine Executive*, 19 February 2016 (IM, Annex 297).

companies and operators”.³³⁷ IRISL had also initiated a USD 2.5 billion modernisation plan to restore its past activities and to develop Iran’s shipping capacities,³³⁸ which included, for example:

- the resumption of IRISL’s Persian Gulf-Europe Line, with the Iranian ship *Azargoun* resuming in March 2016 shipments to the port of Hamburg following an interruption of nearly six years;³³⁹ and
- the signing of a deal worth around USD 760 million for the building of four container ships and six 49,000-ton tankers for petrochemical products.³⁴⁰

3.63 These investments have been frustrated as a result of the U.S. measures re-imposed after 8 May 2018 targeting the Iranian shipping and shipbuilding sectors.³⁴¹ The U.S. measures are also seriously impeding the business activities of Iranian nationals and companies involved in those sectors since they have led to (i) the withdrawal of foreign shipping companies from Iran, (ii) the termination or suspension of relationships and the provision of essential services between the Iranian shipping and shipbuilding sectors and foreign partners, (iii) technical burdens arising from the refusal of foreign suppliers to trade with Iran and, finally, (iv) industrial complications resulting from disinvestment by foreign investors.

i. Withdrawal of foreign shipping companies from Iran

3.64 As a result of the U.S. measures, none of the 16 largest liner companies that used regularly to serve Iranian ports before 8 May 2018 – including the first four container

³³⁷ NITC 17 March 2019 Statement, Sec. 4.1, p. 5 (IM, Annex 293).

³³⁸ “IRISL to Experience a Boom”, *Mana*, 12 March 2017 (IM, Annex 300).

³³⁹ *The Port of Hamburg Magazine*, Port of Hamburg, March 2018, p. 40 (IM, Annex 301). Note that the Port of Hamburg also stated that “[t]he volume of Iranian cargo in Hamburg has since climbed steeply again. Container volume rose from 600 to over 11,700 TEU in 2016, and indeed to over 16,000 TEU in the first three quarters of 2017”.

³⁴⁰ “IRISL signed shipbuilding order with Hyundai Heavy Industries Group”, *Hellenic Shipping News*, 13 December 2016 (IM, Annex 299). See also, I. Nam, “Hyundai Heavy Gets \$700 Million Deal to Build 10 Ships for Iran Shipping Lines”, *Wall Street Journal*, 10 December 2016 (IM, Annex 298).

³⁴¹ See Chapter II, “Sanctions on Iran’s port operators, and shipping and shipbuilding sectors”, paras. 2.62-2.66.

shipping operators: Maersk, MSC, CMA CGM and Hyundai Merchant Marine³⁴² – are now coming to Iran.³⁴³

3.65 The specific reasons for this abrupt departure of foreign operators lie principally in payment issues arising from the U.S. measures targeting the Iranian financial and banking sector, the refusal by majors insurers and P&I clubs³⁴⁴ to insure vessels in the territorial waters and ports of Iran arising from the U.S. measures targeting marine insurance and, ultimately, the risk of serious penalties under U.S. law for any foreign company that is considered to have fallen foul of the U.S. measures. The attitude of foreign shipping companies is exemplified in the statement of the Chief Executive of Maersk, as reported by Reuters on 17 May 2018, that:

“With the sanctions the Americans are to impose, you can’t do business in Iran if you also have business in the U.S., and we have that on a large scale.”³⁴⁵

ii. Restrictions on the operations of Iranian maritime trade activities

3.66 Iranian shipping companies, including IRISL and NITC, are unable to compensate for the departure of foreign shipping companies, since a further result of the U.S. measures is that their own activities are being hindered by the termination of most of their business relationships with foreign entities. As representatives of IRISL and NITC have explained in their witness statements, illustrative examples of the practical impact of the U.S. measures include the following:³⁴⁶

- Foreign clients, shipping companies and charterers are now refusing to use IRISL’s and NITC’s shipping services, while at the same time Iranian shipping

³⁴² G. Knowler, “Container lines end Iran services ahead of US sanctions”, *JOC webpage*, 9 July 2019 (IM, Annex 305). See also S. Jacobsen and J. Gronholt-Pedersen, “Maersk latest company to shun Iran as EU scrambles to save nuclear deal”, *Reuters*, 17 May 2018, (IM, Annex 302); “Re-imposition of U.S. sanctions on Iran”, *Mediterranean Shipping Company (MSC)*, 16 May 2018 (IM, Annex 295).

³⁴³ PMO 17 March 2019 Statement, para. 5, p. 2 (IM, Annex 294). See also IRISL 10 March 2019 Statement, para. 2, p. 2 (IM, Annex 292).

³⁴⁴ P&I Clubs are mutual insurance associations instituted between shipowners, ship operators or charterers to cover maritime risks that traditional insurers are reluctant to cover.

³⁴⁵ S. Jacobsen and J. Gronholt-Pedersen, “Maersk latest company to shun Iran as EU scrambles to save nuclear deal”, *Reuters*, 17 May 2018, (IM, Annex 302).

³⁴⁶ IRISL 10 March 2019 Statement, pp. 5-9 (IM, Annex 292); NITC 17 March 2019 Statement (IM, Annex 293).

companies no longer have access to feeder and slot sharing services offered by foreign container shipping companies.

- Agency networks which are responsible for cargo booking, cargo forwarding and other shipping related matters have withdrawn their cooperation.
- Iranian ships are being denied access to services – such as berthing or bunkering services – and, in some cases, are even being refused access to foreign ports.³⁴⁷ Foreign companies such as Alfa Laval, Wärtsilä and Pres Vac (part of G&O Maritime Group) which supply industrial equipment have also terminated their business relations with NITC.³⁴⁸
- IRISL and NITC can no longer insure their vessels or the cargo loaded onto them with insurers and P&I groups of international reputation. This practical impact began to be felt shortly after the 8 May Decision. As an illustrative example, on 29 June 2018, the P&I club Skuld removed from its insurance cover all of IRISL’s and NITC’s vessels due to the “withdrawal of the U.S. from the JCPOA”.³⁴⁹ Similarly, Georg Duncker, one of NITC’s most important insurance brokers, also terminated all business relationships with NITC from 22 May 2018.³⁵⁰
- Finally, Iranian seafarers are being discriminated against in some countries and barred from accessing shore-based facilities.³⁵¹

³⁴⁷ “Ports deny the docking to Iranian vessels, official supports”, *Safety4Sea*, 10 January 2019 (IM, Annex 306).

³⁴⁸ NITC 17 March 2019 Statement, Annexes B-P1, B-P5, B-P7 and A-P1 (IM, Annex 293).

³⁴⁹ IRISL 10 March 2019 Statement, Annex 5 (IM, Annex 292); NITC 17 March 2019 Statement, Annexes C-P1, C-P2, C-P3, C-P4 (IM, Annex 293).

³⁵⁰ NITC 17 March 2019 Statement, Annex C-P8 (IM, Annex 293).

³⁵¹ *Ibid.*, section 4.5, p. 8 (IM, Annex 293).

iii. Restrictions on the operations of Iran's ports and fleet

3.67 A further result of the U.S. measures is that Iranian port operators and shipping companies are also being hindered in the operation of their own installations and fleets. Illustrative examples include:

- the refusal of certain key suppliers of services and components to work with Iranian port operators and shipping companies or in relation to vessels that have been designated on the OFAC SDN List; and
- the restrictions on the Iranian financial and banking sector, including the issuance of international payments and banking guarantees, which has presented a major obstacle to any transaction between Iranian shipping operators such as IRISL and NITC and their foreign counterparts.³⁵² For instance, on 19 July 2018, TTS informed IRISL that their bank would “not process and accept any new orders after 06.08.2018” in order “to be in compliance with the U.S. economic sanctions laws towards Iran”.³⁵³

3.68 The main restrictions arising from the U.S. measures which are being suffered by Iranian companies such as PMO, IRISL and NITC include, for example:

- Difficulties in obtaining marine classification of Iranian vessels;³⁵⁴ after the 8 May Decision, the major classification companies have terminated their agreements with Iranian entities.

As an illustrative example, Lloyd's London has ceased its cooperation with PMO with respect to certifying, through classification, the compliance of Iranian vessels with Iran flag state rules.³⁵⁵ A second illustrative example is that

³⁵² IRISL 10 March 2019 Statement, section B, p. 7 and Annex 8 (IM, Annex 292); NITC 10 March 2019 Statement, section 4.6, pp. 8-9 (IM, Annex 293).

³⁵³ IRISL 10 March 2019 Statement, Annex 8.4 “Letter from TTS to ROD Management Co., 19 July 2018” (IM, Annex 292).

³⁵⁴ The main purpose of marine classification is to rank a vessel by reference to a regulatory framework for the construction and operation of ships, which includes the International Maritime Organization conventions and regulations: see NITC 17 March 2019 Statement, section 4.2, pp. 5-6 (IM, Annex 293).

³⁵⁵ PMO 17 March 2019 Statement, Annex B “Letter from Lloyd's Register to Ports and Maritime Organization, 29 July 2018; Letter from Bureau Veritas to Ports and Maritime Organization, 2 August 2018” (IM, Annex 294).

Bureau Veritas and DNV.GL have ceased their classification services with regard to IRISL's³⁵⁶ and NITC's³⁵⁷ vessels because of the "reintroduction of the U.S. sanctions list".³⁵⁸

- Numerous foreign companies have terminated or suspended agreements and relationships with Iranian companies for the supply of essential goods and services. For example, suppliers of marine spare parts and equipment (such as TTS, Wärtsilä, MacGregor or MPI³⁵⁹) have withdrawn their services due to the re-designation of IRISL and NITC (and numerous related entities) on the SDN List, difficulties in processing payments through the international banking system and the "re-imposition of the [so-called] secondary sanctions".³⁶⁰

Foreign providers of marine services, such as Marlink and Inmarsat, the largest technology-independent satellite communication providers, have also withdrawn or limited their services to IRISL³⁶¹ and NITC,³⁶² on the basis that they were no longer authorised to provide communication services toward clients with an Iranian nexus, "in light of the evolution of U.S. sanctions against Iran".³⁶³

iv. Disruption of development plans for Iran's maritime industry

- 3.69 As a further consequence of the U.S. measures arising from the withdrawal of foreign investors from Iran and the fact that it has become impossible for Iranian companies to obtaining certain essential equipment, the PMO's planned development has been

³⁵⁶ IRISL 10 March 2019 Statement, section C.2, p. 9 (IM, Annex 292).

³⁵⁷ NITC 17 March 2019 Statement, section 4.2, pp. 5-6 (IM, Annex 293).

³⁵⁸ IRISL 10 March 2019 Statement, Annex 10-2, p. 84 "Letter from Bureau Veritas to ROD Management Co., 10 July 2018" (IM, Annex 292).

³⁵⁹ IRISL 10 March 2019 Statement, Annex 9 (IM, Annex 292).

³⁶⁰ IRISL 10 March 2019 Statement, Annex 9.3 "Letter from MacGregor to ROD Management Co., 4 November 2018" (IM, Annex 292).

³⁶¹ IRISL 10 March 2019 Statement, Section C.3 p. 8 and Annex 9.5 "Letter from Marlink to ROD Ship Management Company, 24 September 2018" (IM, Annex 292).

³⁶² NITC 17 March 2019 Statement, section 4.3 *in fine*, p. 7 (IM, Annex 293).

³⁶³ IRISL 10 March 2019 Statement, Annex 9.5 "Letter from Marlink to ROD Ship Management Company, 24 September 2018" (IM, Annex 292).

frustrated.³⁶⁴ Likewise, IRISL's³⁶⁵ and NITC's³⁶⁶ plans to upgrade and renew their fleets have been prevented. To give just one illustrative example, Hyundai refused to deliver the ships ordered by IRISL,³⁶⁷ explaining that:

“[a]ll we can do now is take a wait-and-see approach. Not a single ship has been delivered to IRISL. It is impossible for us to deliver the ships with U.S. sanctions back in position.”³⁶⁸

v. *Conclusions on the practical impact of the U.S. measures on the Iranian shipping and shipbuilding sectors*

3.70 Ultimately, the U.S. measures have resulted in a sharp decline in the country's maritime international trade. According to PMO:

“[Iran's] port capacities are now underused: since the 8 May 2018, the value of the traffic (loading/unloading) in dry cargo – i.e., non-oil – decreased by 15 % since the 8 May 2018: -10 % in exports, -19 % in imports. Other relevant statistics shows that re-imposition of the U.S. sanction has an important impact on container throughput in the Iranian ports, as the imports and exports volume of container cargos respectively have declined by 80 % and 6 % on September 2018 compared to September 2017. The decrease in container international transit and transshipment procedures were also equal to 74 % and 58 %”.³⁶⁹

3.71 The U.S. measures have also caused large-scale disruption of the commercial shipping routes available to the Iranian shipping sector, since, for example, Iranian shipping and shipbuilding companies have been directly targeted by the U.S. measures, Iranian vessels have been barred from certain foreign ports and foreign shipping companies have also withdrawn from Iran. Iranian as well as foreign economic operators looking to ship goods to and from Iran face a highly complex situation and are forced to go through secondary hub ports and to use lower class carriers with aging fleets.

³⁶⁴ PMO 17 March 2019 Statement, section III, pp. 2-3 (IM, Annex 294).

³⁶⁵ IRISL 10 March 2019 Statement, section D, p. 9 (IM, Annex 292).

³⁶⁶ NITC 17 March 2019 Statement, section 4.3, p. 6-7 (IM, Annex 293).

³⁶⁷ See above, para. 3.62.

³⁶⁸ Reported in “Mazda, Hyundai Leave Iranian Market, Affecting Cars and Shipping”, *Radio Farda*, 13 June 2018 (IM, Annex 303).

³⁶⁹ PMO 17 March 2019 Statement, para. 4, p. 1. (IM, Annex 294).

E. The practical impact of the U.S. measures on the Iranian Automotive Industry

- 3.72 Iran's automotive industry is the country's second largest industry (following the oil and natural gas sector), and accounts for about 10% of the nation's GDP and 4% of the labour force.³⁷⁰ The automotive industry employs around 1 million people, half of them indirectly, i.e., through companies which supply the necessary goods and services (such as automotive parts, petrochemicals, steel and copper, and shipping, logistics, banking services, and insurance coverage of both the car makers and the cars) to Iranian manufacturers.³⁷¹
- 3.73 Iran's automotive industry is dominated by two main Iranian companies: Iran Khodro – a subsidiary of the state-owned Industrial Development and Renovation Organization (“IDRO”) – and SAIPA. These two groups produce all kinds of passenger and commercial vehicles (cars, trucks, buses, etc.), and together represent more than 90 % of the automotive manufacturing in Iran. In light of its dependence on imports and foreign exchange transactions with foreign partners, the automotive industry has been seriously adversely affected by the US measures.³⁷²
- 3.74 Prior to the 8 May Decision, non-U.S. entities had invested in the Iranian automotive sector.³⁷³ Indeed, 2016 had proved transformative for Iran's automotive industry: from March to December of that year, roughly 950,000 four-wheeled vehicles were produced in Iran, a 39.1 % growth in the number of domestically-manufactured

³⁷⁰ K. Ashtarian, “Iran's Automatic Industry: a potential draw for investors”, UNESCO, 27 January 2016 (IM, Annex 311).

³⁷¹ Witness statement by Mr S. Hessameddin Zegordi, Vice Deputy for Strategy and Planning of Iran Khodro, 19 March 2019 (“Iran Khodro 19 March 2019 Statement”), p. 1 (IM, Annex 309) and Witness statement by Mr H. Gharehe, Deputy of Strategic Planning & ICT Center of Saipa Group, 2 May 2019 (“SAIPA 2 May 2019 Statement”), para. 1, p. 1 (IM, Annex 310).

³⁷² CBI 16 February 2019 Statement, p. 7 (IM, Annex 121).

³⁷³ U.S Department of Treasury, OFAC, “Frequently Asked Questions Relating to the Lifting of Certain U.S Sanctions Under the Joint Comprehensive Plan of Action (JCPOA)”, 16 January 2016, updated 15 December 2016, p. 24: excluded from implementation of the JCPOA are U.S.-origin finished vehicles and auto parts, which still cannot be exported to Iran (IM, Annex 28).

vehicles.³⁷⁴ In 2017-2018, both Iran Khodro and SAIPA each achieved an average daily production of 3,000 vehicles.³⁷⁵

3.75 Additionally, numerous deals between foreign and Iranian firms had been agreed.³⁷⁶ Some of these agreements allowed Iranian carmakers to produce foreign vehicles – Suzuki’s, Peugeot’s and Renault’s models for Iran Khodro³⁷⁷ and Kia Motors’, Brilliance’s, Zotye’s, Changan’s, Dongfeng’s, Foton’s and Iveco’s models for SAIPA³⁷⁸ – locally under licencing. Other agreements provided for foreign direct investments, with illustrative examples such as:

- in January 2016, the French carmaker PSA Group signing a € 400-million deal to produce “Peugeot” model cars with Iran Khodro³⁷⁹ and entering into a joint venture with SAIPA to produce “Citroën” model vehicles;³⁸⁰ and
- in August 2017, the French carmaker Renault, IDRO and SAIPA concluding a joint venture agreement for the annual production of 150,000 Renault vehicles in Iran.³⁸¹

³⁷⁴ “Iran’s Auto Production Jumps by about 40% in 9 Months”, *Tasnim News Agency*, 16 December 2016 (IM, Annex 313).

³⁷⁵ Iran Khodro 19 March 2019 Statement, para. 4, p. 1 (IM, Annex 309). Iran Khodro had also announced an agreement with Datsun, a subsidiary of Nissan; see “Iran Khodro to finalize deal with Nissan Motor for Datsun cars”, *ISNA*, 30 August 2017 (IM, Annex 317).

³⁷⁶ K. Ashtarian, “Iran’s Automatic Industry: a potential draw for investors”, UNESCO, 27 January 2016 (IM, Annex 311).

³⁷⁷ SAIPA 2 May 2019 Statement, para. 4, p. 2 (IM, Annex 310).

³⁷⁸ Iran Khodro 19 March 2019 Statement, para. 3, p. 1 (IM, Annex 309) and SAIPA 2 May 2019 Statement, para. 3, p. 1 (IM, Annex 310)

³⁷⁹ Iran Khodro 19 March 2019 Statement, para. 6, p. 1 (IM, Annex 309). See also “Iran Auto Sector 2016: Playing for High Stakes”, *Financial Tribune*, 1 January 2017 (IM, Annex 315); K. Ashtarian, “Iran’s Automatic Industry: a potential draw for investors”, UNESCO, 27 January 2016 (IM, Annex 311).

³⁸⁰ SAIPA 2 May 2019 Statement, para. 4, p. 1 (IM, Annex 310).

³⁸¹ *Ibid.* See also E. Bergerolle, “Renault renforce la position exceptionnelle des Français en Iran”, *Challenges*, 7 August 2019 (IM, Annex 316).

3.76 In light of such factors, Iran was on track to reach its goal of producing 2 to 3 million cars per year by 2025.³⁸² Moreover, the automotive industry was projected to export around USD 6 billion in car-related products and USD 25 billion in car parts.³⁸³

i. As a result of the U.S. measures, foreign operators withdrew from the Iranian automotive sector

3.77 Following the 8 May Decision, a large number of foreign companies withdrew or announced that they would withdraw from Iran. This is the case, for example, for Peugeot-Citroen who decided to quit the Iranian market,³⁸⁴ resulting in a very substantial loss to Iran since, following the opening of a new plant, more than 230,000 of their cars were manufactured under licence in Iran in 2016. Similarly, numerous other foreign automotive companies – such as Mazda and Hyundai,³⁸⁵ Renault,³⁸⁶ Scania,³⁸⁷ Daimler,³⁸⁸ Volvo³⁸⁹ and the German automotive supplier, Duerr³⁹⁰ – have announced their withdrawal from Iran or the suspension of their local operations.

3.78 In addition to this massive foreign disinvestment, Iran’s automotive sector is suffering from the refusal by foreign suppliers, since May 2018, to provide Iranian nationals and companies engaged in the automotive sector with complete knock-down kits,

³⁸² “Nuclear deal appears to help Iran’s car making industry, *Azer News*, 23 December 2016 (IM, Annex 314). E. Bergerolle, “Renault renforce la position exceptionnelle des Français en Iran”, *Challenges*, 7 August 2019 (IM, Annex 316).

³⁸³ *Ibid.*

³⁸⁴ See also “France’s PSA suspends joint ventures in Iran to avoid U.S. sanctions”, *Reuters*, 4 June 2018 (IM, Annex 318).

³⁸⁵ “Mazda, Hyundai Leave Iranian Market, Affecting Cars and Shipping”, *Radio Farda*, 13 June 2018 (IM, Annex 303); see also “U.S. Sanctions on Iran leave European companies with difficult choice”, *The Arab Weekly*, 25 June 2018 (IM, Annex 319).

³⁸⁶ “French Carmaker Likely to Halt Iran Operations as Other Companies Leave”, *Radio Farda*, 28 July 2018 (IM, Annex 321).

³⁸⁷ “Scania says U.S. sanctions put entire Iran truck sales in ‘jeopardy’”, *Reuters*, 3 August 2018 (IM, Annex 322).

³⁸⁸ C. Riley, “Daimler abandons its Iran plans over US sanctions”, *CNN*, 7 August 2018 (IM, Annex 324); see also “Iran sanctions: Trump warns trading partners”, *BBC News*, 7 August 2018 (IM, Annex 323).

³⁸⁹ E. Vaish, “Volvo halts Iran truck assembly due to U.S. sanctions”, *Reuters*, 24 September 2018 (IM, Annex 326).

³⁹⁰ “Auto supplier Duerr stops Iran business due to sanctions: Boersen-Zeitung”, *Reuters*, 11 August 2018 (IM, Annex 325).

spare parts, raw materials and equipment due to the refusal of the banks used by foreign suppliers to process such transactions.³⁹¹ In these circumstances, the Iranian automotive sector is faced not only with soaring production costs, but also with shortages in parts, leading to production delays³⁹² and a sharp decrease in the daily production volume of fully assembled – i.e. marketable – cars.³⁹³ The severity of the practical impact of the U.S. sanctions and the burden placed on the Iranian automotive sector is evident, for example, from the absurdity that “the price of some spare parts can sometimes equal the value of the maintained car itself.”³⁹⁴

ii. The U.S. measures have resulted in a downturn in the Iranian automotive industry

- 3.79 According to data produced by the Iranian Ministry of Industry, Mines and Commerce, between March 2018 and March 2019, the production of motor vehicles in Iran has decreased by 37.8%, with the production of passenger cars alone having fallen by 38.2%.³⁹⁵
- 3.80 In summary, as a result of the U.S. measures, Iran is currently producing far fewer cars than before May 2018, at a greater cost and thus for a greater sale price.³⁹⁶ This situation is adversely affecting the entirety of the Iranian automotive sector from car manufacturers to the suppliers of parts and services. This downturn also represents very serious losses to Iran’s economy and to its people in terms of their employment and prosperity. To give just one illustrative example, in a statement a representative of Iran Khodro explains that a “significant part of IKCO’s employees are *de facto*

³⁹¹ Iran Khodro 19 March 2019 Statement, para. 9, p. 2 (IM, Annex 309) and SAIPA 2 May 2019 Statement, para. 5.i, p. 2 (IM, Annex 310).

³⁹² Iran Khodro 19 March 2019 Statement, para. 10, p. 2 (IM, Annex 309) and SAIPA 2 May 2019 Statement, paras. 5.ii and 5.iii, p. 2 (IM, Annex 310).

³⁹³ Iran Khodro 19 March 2019 Statement, para. 18, p. 3 (IM, Annex 309) and SAIPA 2 May 2019 Statement, para. 5.iv, pp. 2-3 (IM, Annex 310).

³⁹⁴ Iran Khodro 19 March 2019 Statement, para. 12, p. 2 (IM, Annex 309).

³⁹⁵ Iran’s Ministry of Industry, Mine and Commerce, “Comparative Statistics of the Production of the types of motor vehicle – Year 1396-1397 [21 March 2018 – 21 March 2019]”, 25 February 2019 (IM, Annex 312) and CBI 16 February 2019 Statement, p.8 (IM, Annex 121)

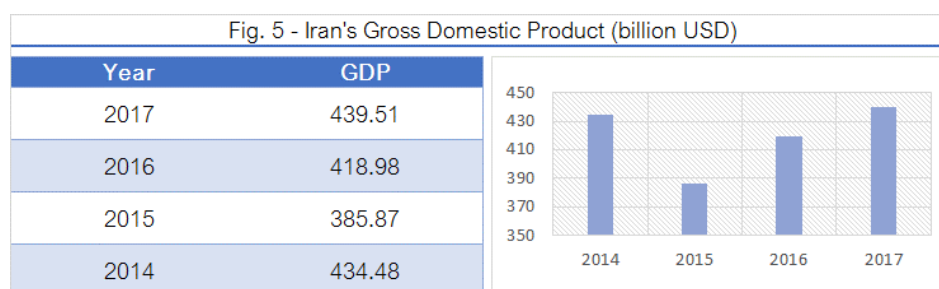
³⁹⁶ SAIPA 2 May 2019 Statement, para. 5.vi, p. 3 (IM, Annex 310).

unemployed due to the decline in production; it would be necessary to lay off a third of its employees to remain beneficiary”.³⁹⁷

SECTION 2.

THE ADVERSE CONSEQUENCES OF THE U.S. MEASURES FOR THE IRANIAN ECONOMY

3.81 Prior to 8 May 2018, Iran’s economy had entered into what was seen as a long-term cycle of growth and industrialisation.³⁹⁸ Whereas Iran had technically been in recession during the period from 2012 to 2015,³⁹⁹ its GDP grew by 8.6 % in 2016 – two thirds more than the initial prediction of the World Bank – and by further 4.9 % in 2017.⁴⁰⁰



3.82 In the first six months from 16 January 2016, Iran gained access to USD 4.2 billion in assets and increased export earnings by over USD 7 billion.⁴⁰¹ The restoration of a normal level of exportation for Iranian petroleum products,⁴⁰² in particular, was seen by many observers as a chance for Iran to release the budget resources necessary to finance public investment.⁴⁰³

³⁹⁷ Iran Khodro 19 March 2019 Statement, para. 14, p. 3 (IM, Annex 309).

³⁹⁸ S. Mufson, “What ending sanctions on Iran will mean for the country’s economy”, *The Washington Post*, 12 August 2015 (IM, Annex 134).

³⁹⁹ World Bank, “Q&A on the key economic impacts of Iran deal”, 10 August 2015 (IM, Annex 133).

⁴⁰⁰ The World Bank Open Data, available at: data.worldbank.org.

⁴⁰¹ M. Schwartz, K. Reddy, Dr R. Ghorashi, “The Effects of the JCPOA on the Iranian Economy”, *American Iranian Council*, 17 April 2017 (IM, Annex 137). Moreover, Iran was projected to recover to over \$100 billion in formerly frozen monetary assets overseas; “Impacts of the Lifting Sanctions on Iran’s Environment”, *The Real Iran*, 13 August 2015 (IM, Annex 108).

⁴⁰² See above, Chapter III, section 1 (B), paras. 3.26-3.30.

⁴⁰³ A. Sadeghi, “How Public Investment Could Help Strengthen Iran’s Growth Potential: Issues and Options”, *IMF Working Paper*, WP/18/129, 8 June 2018 (IM, Annex 129).

- 3.83 This positive trend continued into 2017. For example, on 15 January 2017, a 5-year economic development plan was agreed by the Iranian Parliament,⁴⁰⁴ which was designed around a medium-term strategy to capitalise on the economic benefits of the shift in Iran’s international environment to fuel the growth of the Iranian economy. With the lifting of previous sanctions, this was a realistic goal: at the end of 2016, McKinsey Global Institute estimated that Iran was in a position to “increase [its] GDP by \$1 trillion and create nine million jobs by 2035”.⁴⁰⁵
- 3.84 However, the threat to re-impose the U.S. measures and the ultimate re-imposition and aggravation of those measures has not only frustrated these projections but reversed the progress achieved since 2016. As early as 2017, the World Bank considered that “the prolonged discussions around the future of the JCPOA and the U.S. policy towards new sanctions on Iran” were the “major external risk[s] in the near future” for the Iranian economy.⁴⁰⁶ Likewise, by March 2018, the IMF had identified the potential re-imposition of the U.S. measures as one of the high risks threatening the Iranian economy, stating that:
- “Growth and exports would be negatively affected by the reimposition of sanctions or countermeasures that would lower direct investment and capital inflows, and disconnect Iran from the global financial system.”⁴⁰⁷
- 3.85 These concurring assessments proved to be sadly accurate, and with the re-imposition of the U.S. measures from 8 May 2018, the Iranian economy suffered immediately from a reduction in international trade (subsection A), severe deflation in the value of the Rial (subsection B) and foreign disinvestment (subsection C).

⁴⁰⁴ Iranian Parliament, Sixth 5-Year Economic, Social, and Cultural Development Plan Act of the Islamic Republic of Iran (Persian years 1396-1400) (21 March 2017-20 March 2022), Articles 3 and 4 (IM, Annex 126).

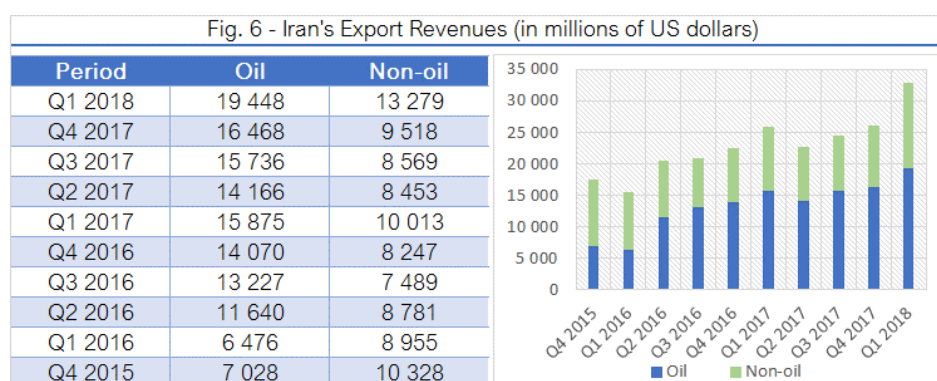
⁴⁰⁵ McKinsey Global Institute, “Iran: the \$1 Trillion Growth Opportunity”, June 2016, p. 11 (IM, Annex 125); see also “Iran without Sanctions: What has changed?”, *Knowledge at Wharton*, 13 December 2016 (IM, Annex 136).

⁴⁰⁶ World Bank Group, “Iran Economic Monitor – Sustaining Growth: the Challenge of Job Creation”, 2017, p. iv (IM, Annex 127).

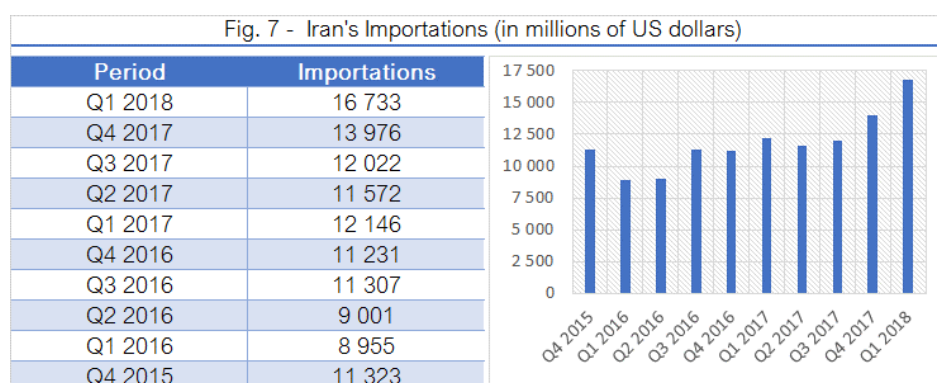
⁴⁰⁷ IMF, “Islamic Republic of Iran: 2018 Article IV Consultation”, IMF Country Report No. 18/93, March 2018, p. 27 (IM, Annex 327).

A. The U.S. measures resulted in a reversal of the growth trend of Iranian importations and exportations

3.86 Following the lifting of the previous sanctions, Iran’s levels of foreign trade increased. Concurrently with the sharp increase in exports of petroleum products,⁴⁰⁸ Iran’s non-oil-related exports also increased to around USD 39.9 billion in the Persian year that ended in March 2018, as compared with USD 35.8 billion two years earlier,⁴⁰⁹ as is shown in the table and graph below:



As for importations, as shown in the table and graph below, the growth rate was an average annual increase of nearly 15 % during the two years preceding the 8 May Decision.



⁴⁰⁸ See also above, Chapter III, para. 3.28.

⁴⁰⁹ Central Bank of Iran, “Selected Economic Indicators, Balance of Payment”, Persian years 1394 (21 March 2015 – 19 March 2016), 1395 (20 March 2016 – 20 March 2017) and 1396 (21 March 2017 – 20 March 2018) (IM, Annex 123). See also A. Paivar, “Nuclear Deal: Is Iran’s economy better off now?”, *BBC*, 4 May 2018 (IM, Annex 139); and N. Habibi, “The Iranian Economy Two Years after the Nuclear Agreement”, *Middle East Brief*, February 2018, No. 115 (IM, Annex 138).

3.87 The United States has been very clear as to the intention behind the re-imposition of the U.S. measures: it aims to place the Iranian economy under a global embargo, by beseeching all economic operators, whether they are linked with the U.S. or not, to cease their commercial relationships with Iran. As the U.S. President explained on 7 August 2018 the U.S. policy is simply that:

“Anyone doing business with Iran will NOT be doing business with the United States.”⁴¹⁰

3.88 As has been explained, each of the sectors of Iran’s economy which are directly targeted by the U.S. measures – the financial and banking, energy, civil aviation, shipping and shipbuilding, automotive and insurance sectors – have experienced a sharp decrease in their activities.⁴¹¹ However, the practical impact of the U.S. measures does not stop there since all commercial and industrial trade with Iran has been and is being affected. Indeed, as a representative of the CBI explains in a statement:

“Based on preliminary data released by Islamic Republic of Iran Customs Administration, the value of imports decreased by 21.5 percent in the first eleven months of 2018/19 compared with the respective period in the previous year. Moreover, the imports of ‘raw materials and intermediate goods’ and ‘capital goods’ declined by 10.5 and 18.0 percent, respectively, in the first nine months of 2018/19 compared with the corresponding period in 2017/18.”⁴¹²

This is highly significant because:

“Intermediate goods and raw materials as well as capital goods comprise a very high share of Iran's total imports (75 percent of total imports in 2017 /18 and 81 percent in the first 6 months of 2018/19).”⁴¹³

3.89 But most importantly, some of Iran’s key commercial partners have already experienced a decline in their respective exports and imports. As an illustrative example, the level of exports from Dubai to Iran dropped by 15 % between the second and third quarter of 2018.⁴¹⁴ Meanwhile, according to a press report, “exports of

⁴¹⁰ M. Milliken & P. Graff, “Trump says firms doing business in Iran to be barred from U.S. as sanctions hit”, *Reuters*, 7 August 2018 (IM Annex 143)

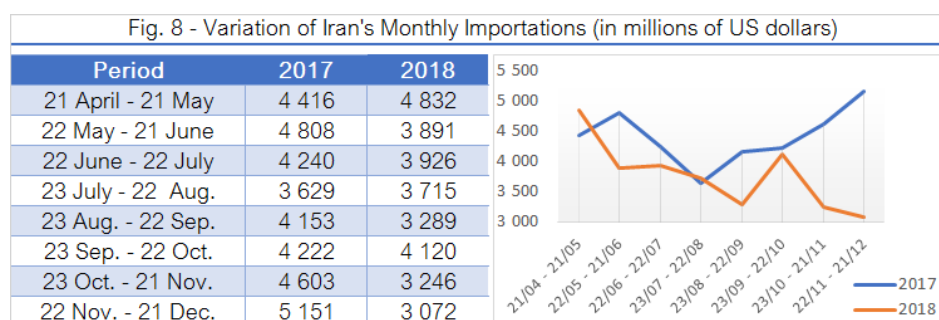
⁴¹¹ See above, Chapter III, section 1, paras. 3.3-3.80.

⁴¹² CBI 16 February 2019 Statement, p. 9 (IM, Annex 121).

⁴¹³ *Ibid.*

⁴¹⁴ D. Bowman, “Dubai exports to Iran plummet”, *Arabian Business*, 18 November 2018 (IM, Annex 145).

pharmaceutical products [from Europe] to Iran have fallen considerably on a year-on-year basis”.⁴¹⁵ Overall, during the 8 months following the 8 May Decision, Iran’s total imports have decreased by 13 % from the previous year, as shown in the graph below:⁴¹⁶



3.90 The marked fall in Iran’s international trade is clearly linked to the re-imposition of the U.S. measures. A foreign operator looking to exchange products with Iran will face numerous and strong impediments to its activities, including the following:

- any operator which is a U.S. entity or is controlled by a U.S. entity, is prohibited from engaging in export activities with most Iranian counterparties and can no longer import even the very limited goods that were authorised before the 8 May Decision;⁴¹⁷
- extreme difficulties in making or receiving any payment to or from an Iranian entity, since the relevant funds cannot be converted at any time into United States dollars and nearly all the major financial institutions have severed their ties with Iranian banks;⁴¹⁸

⁴¹⁵ E. Batmanghelidj, “European Pharmaceutical Exports to Iran Fall Sharply”, *Bourse & Bazaar*, 6 December 2018 (IM, Annex 115); see also below paras. 3.117-3.119.

⁴¹⁶ Central Bank of Iran, “Selected Economic Indicators, Balance of Payment”, Persian Month of Azar 1397 (22 November 2018 – 21 December 2018) (IM, Annex 124) and Central Bank of Iran, “Selected Economic Indicators, Balance of Payment”, Persian years 1394 (21 March 2015 – 19 March 2016), 1395 (20 March 2016 – 20 March 2017) and 1396 (21 March 2017 – 20 March 2018) (IM, Annex 123).

⁴¹⁷ See above, Chapter II paras. 2.109-2.114.

⁴¹⁸ See above, Chapter III, paras. 3.3-3.25.

- similarly, it may be impossible to obtain bank guarantees, either covering payment of goods, or securing the performance of international obligations, such as delivery of goods to or from Iran;⁴¹⁹
- insurance coverage will not necessarily be available to guarantee shipments to and from Iran, and if cover is available it will usually be provided by different insurers depending on whether the goods are within the territory of Iran or outside;⁴²⁰ and
- international shipping routes to and from Iran have been seriously restricted, meaning that there are fewer operators and they are less reliable.⁴²¹

B. The U.S. measures have resulted in a dramatic depreciation of
the Iranian currency

3.91 The mere suggestion that the U.S. measures might be re-imposed triggered a steep fall in the value of the Rial, the Iranian currency. By way of background context, Iran operates a two-tier currency system with two exchanges rates:

- the first exchange rate, which is set by the Iranian government and implemented by the CBI, applies to 25 groups of basic commodities and is used to guarantee control over the import prices of such goods;
- the second exchange rate – the “free market rate” – applies to all other imported or exported goods and varies depending on market forces.

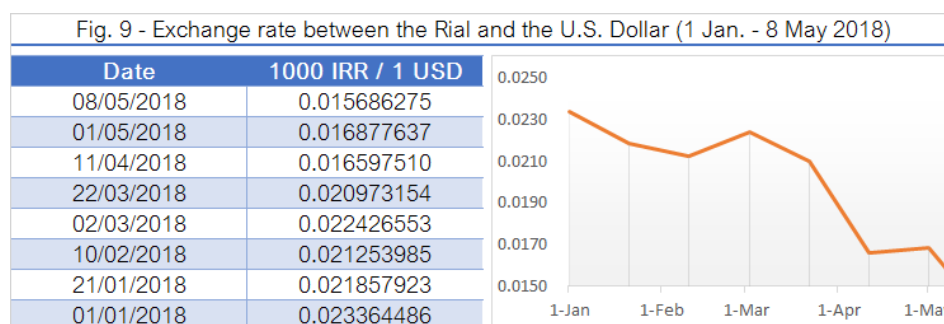
3.92 Between 13 October 2017 – when the U.S. President refused to re-certify the JCPOA – and 8 May 2018, the value of the Iranian Rial on the free market vis-à-vis the U.S. dollar decreased by more than 30 %.⁴²²

⁴¹⁹ *Ibid.*

⁴²⁰ *Ibid.*

⁴²¹ See above, Chapter III, paras. 3.60-3.71.

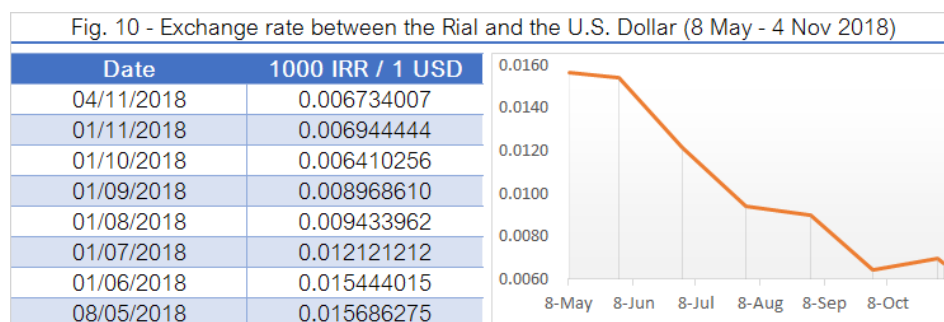
⁴²² “Live IRR exchange rates in Iran's free market”, www.bonbast.com/historical, 29 March 2019 (IM, Annex 147); the value of the Rial with regard the European Euro (the EUR/IRR rate was 5,850 on 1 January 2018 and 16,810 on 27 June 2018, hence a 187 % increase, source available at



3.93 The depreciation of the Rial only accelerated after the 8 May Decision. According to the statement of Mr Mehdizadeh, Director of Economic Research and Planning at the CBI:⁴²³

“From May 1 to August 20, 2018, [the] rial depreciated against [the U.S.] dollar [and the] euro by 78.5% [and] 68.6% in parallel exchange market.”

By 26 September 2018, the Iranian currency had thus lost nearly 80 % of its value in one year with 1 U.S. dollar worth nearly 190,000 Rials.⁴²⁴



3.94 This extreme depreciation in the value of the Rial – which is commonly referred to as a “death spiral”⁴²⁵ – has had dramatic consequences, as the price of all imported goods

www.bonbast.com/historical) (IM, Annex 148) and the increase of the price of gold on Iranian markets shows a similar trend.

⁴²³ Witness statement of Mr J. Mehdizadeh, Director of Economic Research and Policy Department, Central Bank of Iran, 21 August 2018, paras. 6 and 3 (“CBI’s 21 August 2018 Statement”) (IM, Annex 149).

⁴²⁴ “Live IRR exchange rates in Iran's free market”, *www.bonbast.com/historical/usd*, 29 March 2019 (IM, Annex 147).

⁴²⁵ S. Hanke, “Iran's Rial Is In A Death Spiral, Again”, *Forbes*, 29 July 2018 (IM, Annex 142).

rose concurrently, impacting all sectors of the Iranian economy and the Iranian people as a whole. As explained by Mr Mehdizadeh in his statement:

“The U.S. sanctions would have and are currently having many negative effects on various macroeconomic indicators such as GDP growth, employment, inflation, and various welfare indicators of households.”⁴²⁶

3.95 Indeed, in the words of senior U.S. Administration officials in a briefing of 6 August 2018, this was precisely the goal pursued through the re-imposition of the U.S. measures:

“The riyal is tanking, unemployment in Iran is rising, and there are widespread protests over social issues and labor unrest. ... in the last 90 days we have seen company after company after company announce that they are getting out, so there’s no question that this pressure is already working.”⁴²⁷

C. The U.S. measures have resulted in disinvestment of the Iranian economy by
foreign operators

3.96 Foreign direct investment (“FDI”) in Iran is promoted and protected by the Organization for Investment, Economic and Technical Assistance of Iran (“OIETAI”), which operates pursuant to the Foreign Investment Promotion and Protection Act of 2002.⁴²⁸

3.97 The number of new FDI projects increased dramatically following the lifting of previous sanctions. Whereas there were only three new FDI projects in 2013, eight in 2014, and nine in 2015, in the first quarter of 2016 alone there were 22 new FDI projects with a total of USD 2.15 billion committed.⁴²⁹ Over the next period, the

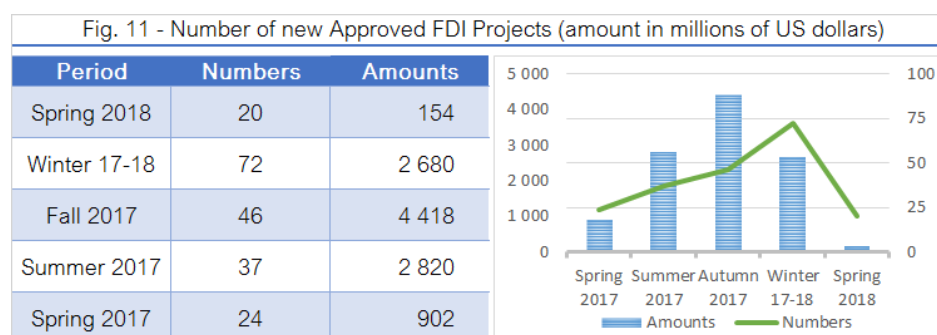
⁴²⁶ CBI 21 August 2018 Statement, para. 6 (IM, Annex 149).

⁴²⁷ U.S. Department of State, “Senior Administration Officials Previewing Iran Sanctions”, Special Briefing, 6 August 2018, p. 1 & p. 4 (IM, Annex 36).

⁴²⁸ Witness statement of Dr A. Jamali, President of the Organization of Investment and Technical Assistance of Iran, 26 March 2019 (“OIETAI 26 March 2019 Statement”), paras. 1-2, p. 1 (IM, Annex 122).

⁴²⁹ C. Lyttle, “FDI in Iran soars with sanctions relief”, *Financial Times*, 20 June 2016 (IM, Annex 135).

OIETAI reported a consistent growth in the number of approved foreign investments (until the 8 May Decision put an abrupt halt to this trend):⁴³⁰



3.98 These new FDI projects were not limited to the energy sector with foreign investment increasing by 145% from USD 2.05 billion in 2015 to USD 5,02 billion in 2017.⁴³¹ Indeed, as a representative of OIETAI explains:

“All sectors of the Iranian economy and all regions of the Iranian territory benefited from this surge of foreign investments. Levels of foreign investments after the implementation of the JCPOA were actually above [OIETAI’s] own expectations.”⁴³²

3.99 After 8 May 2018, numerous foreign companies and individuals, whether of U.S. or non-U.S. origin, have announced the withdrawal of their activities in Iran including the termination of their contractual relations with Iranian companies and nationals.⁴³³ As recorded by the OIETAI, and shown in the table and graph below, requests for investments authorisations fell by 80 % after 8 May 2018:⁴³⁴

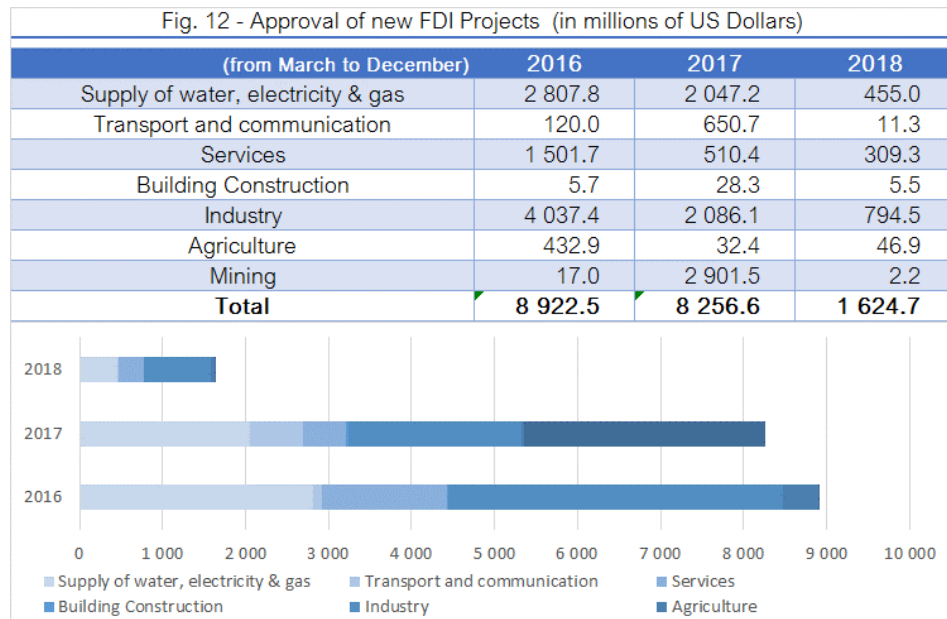
⁴³⁰ OIETAI, “Report on a Decrease in Foreign Investment Due to the Re-imposition of the U.S. Sanctions”, December 2018 (IM, Annex 131); see also, N. Habibi, “The Iranian Economy Two Years after the Nuclear Agreement”, *Middle East Brief*, February 2018, No. 115 (IM, Annex 138).

⁴³¹ United Nations Conference on Trade and Development (UNCTAD), “World Investment Report 2018 – Investment and New Industrial Policies”, 2018, p. 186 (IM, Annex 128).

⁴³² OIETAI 26 March 2019 Statement, para. 3, p. 1 (IM Annex 122).

⁴³³ For other illustrative examples of U.S. companies that have withdrawn from Iran, see for instance, A. Fitch and I. Talley, “U.S. Companies Wind Down Iran Business After Nuclear Deal Pullout”, *The Wall Street Journal*, 5 June 2018, (IM, Annex 140); for other examples of non-U.S. companies, see for instance, E. Wald, “10 Companies Leaving Iran As Trump’s Sanctions Close In”, *Forbes*, 6 June 2018 (IM, Annex 141).

⁴³⁴ OIETAI 26 March 2019 Statement, para. 4, p. 2 (IM, Annex 122).



3.100 In the same witness statement, the representative of OIETAI explains that after 8 May 2018:

“major foreign investors, such as multinational companies, have ceased or suspended their investments in Iran, indicating that they did not want to jeopardize their other activities, notably in the U.S., or even be themselves the subject of U.S. sanctions. Smaller investors have also reduced or stopped their investments because of issues related to transfer of funds and revenues through the international banking system and to transportation of equipment [to Iran]”.⁴³⁵

3.101 The cancellation and suspension of numerous existing FDI projects, and the decision of foreign investors to refrain from launching new FDI projects in Iran, is having and will have an adverse impact on not only the relevant Iranian industries but lead to the unemployment of tens of thousands of Iranian nationals which will naturally affect the entire Iranian social equilibrium.

⁴³⁵ OIETAI 26 March 2019 Statement, para. 6, p. 2 (IM, Annex 122). See also U.S. Department of State, Department Press Briefing, 2 April 2019, p. 2 stating that “[m]ore than 100 major corporations withdrew from business in Iran. Companies like Total and Siemens have exited the Iranian market, taking with them billions of dollars in investment.” (IM Annex 51)

SECTION 3.
THE ADVERSE CONSEQUENCES OF THE U.S. MEASURES FOR THE
IRANIAN POPULATION

3.102 According to the UN Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights:

“These unjust and harmful [U.S.] sanctions are destroying the economy and currency of Iran, driving millions of people into poverty and making imported goods unaffordable.”⁴³⁶

Indeed, the U.S. measures are also affecting the lives of the millions of Iranians and Iranian residents, by jeopardising their health and security (subsection A), living conditions (subsection B) and humanitarian relief and environmental safety (subsection C).

A. The adverse practical impact of the U.S. measures on the health of the Iranian population

3.103 In light of the past difficulties that were endured by the Iranian people during the last period of sanctions, between 2010 and 2015, it was well-known (including by Iran) that the re-imposition of the U.S. measures would have a significant adverse impact on its health system, notwithstanding the exemption regime that is supposed to apply to medicine and medical supplies.⁴³⁷

3.104 As a result of the U.S. measures, as warned, Iran is already experiencing shortages of key medical products and medicines, jeopardising the health of the Iranian people.

⁴³⁶ OHCHR, “Iran sanctions are unjust and harmful, says UN expert warning against generalised economic war”, 22 August 2018 (IM, Annex 130).

⁴³⁷ U.S Department of Treasury, OFAC, “Frequently Asked Questions Regarding the Re-Imposition of Sanctions Pursuant to the May 8, 2018 National Security Presidential Memorandum Relating to the Joint Comprehensive Plan of Action (JCPOA)”, 8 May 2018, updated on 6 August 2018, para. 2.7, p. 3 (IM, Annex 38).

i. The previous U.S. measures had been shown to have jeopardised the health of the Iranian people

3.105 In its Application⁴³⁸ and during the hearing of its Request for Provisional Measures,⁴³⁹ Iran established that a sanctions regime, of the kind that the United States has re-imposed since 8 May 2018, would have serious adverse impacts on the health and safety of the Iranian people. To this end, Iran recalled the suffering of the Iranian people between 2012 to 2015 as a result of the previous “nuclear-related” sanctions. Prior to 8 May 2018, the fact that sanctions had a serious negative impact on the health of the Iranian people had been widely recognised, for example, in reports adopted by sources as reliable as the UN Secretary-General,⁴⁴⁰ the UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran⁴⁴¹ and the UN Human Rights Council.⁴⁴²

⁴³⁸ IA, para. 37.

⁴³⁹ I.C.J., *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Pleadings on Provisional Measures, CR 2018/16 (27 August 2018), pp. 63-65, paras. 35-42 (Wordsworth) and CR 2018/18 (29 August 2018), pp. 33-35, paras. 33-39 (Wordsworth).

⁴⁴⁰ United Nations, Report of the Secretary-General, “Situation of human rights in the Islamic Republic of Iran”, UN Doc. A/67/327, 22 August 2012, paras. 42-43; United Nations, Report of the Secretary-General, “Situation of human rights in the Islamic Republic of Iran”, UN Doc. A/68/377, 10 September 2013; at paras. 37-38; United Nations, Report of the Secretary-General, “Human Rights and unilateral coercive measures”, UN Doc. A/69/97, 27 June 2014, para. 10; and United Nations, Report of the Secretary-General, “Situation of human rights in the Islamic Republic of Iran”, UN Doc. A/70/352, 31 August 2015, para. 5.

⁴⁴¹ United Nations, Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, UN Doc. A/68/503, 04 October 2013, paras. 68-69; and United Nations, Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, UN Doc. A/69/356, 27 August 2014, paras. 90-95.

⁴⁴² United Nations, Human Rights Council, “Research-based progress report of the Human Rights Advisory Council Committee containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability”, UN Doc. A/HRC/28/74, 10 February 2015 (IM, Annex 75).

3.106 These UN sources, together with countless international⁴⁴³ academic⁴⁴⁴ and independent sources,⁴⁴⁵ described a country in which, as a result of the sanctions, “foreign made medicine became difficult to find in 2010”⁴⁴⁶, where the “domestic market [was] also struggling”⁴⁴⁷ and where “[t]he purchas[e] of medical equipment [was] also becoming increasingly difficult”.⁴⁴⁸ In 2015, the UN Human Rights Council gave a comprehensive description of the critical shortage of medical supplies in Iran, as follows:

“The import of medicines containing antibiotics (of types not produced inside the country) has decreased by 20.7 per cent, and prices have increased by more than 300 per cent. The estimated 20,000 persons suffering from thalassemia in the country receive only a few days of their monthly medicinal needs. Survivors of chemical weapons used during the war with Iraq in the 1980s, in need of medicine and equipment, including cornea transplants and inhalers, similarly suffer from a shortage or lack of medical supplies. In general, the medicines used to treat haemophilia, cancer, thalassemia, multiple sclerosis and kidney transplant and dialysis are not produced domestically, and of those that are, most are not as effective as those imported from Europe and North America. The shortage of medicine for such chronic diseases often leads to the death of the patient. In addition, every year, 85,000 Iranians are diagnosed with some form of cancer; the facilities for providing them with chemotherapy and radiotherapy are however scant.”⁴⁴⁹

⁴⁴³ World Health Organization, “Iran – Country Cooperation Strategy”, May 2017 (IM, Annex 79).

⁴⁴⁴ F. Kokabisaghi, “Assessment of the Effects of Economic Sanctions on Iranians’ Right to Health by Using Human Rights Impact Assessment Tool: A Systematic Review”, *International Journal of Health Policy and Management*, 20 January 2018 (IM, Annex 81); M. Kheirandish, V. Varahrami, A. Kebriaeezadeh and A. Majid Cheraghali, “Impact of economic sanctions on access to noncommunicable diseases medicines in the Islamic Republic of Iran”, *East Mediterranean Health Journal*, Vol. 24 No. 1, 2018 (IM, Annex 82); M. Aloosh, “How economic sanctions compromise cancer care in Iran”, *The Lancet*, Vol. 19, July 2018 (IM, Annex 86); S. Setayesh and T. K. Mackey, “Addressing the impact of economic sanctions on Iranian drug shortages in the joint comprehensive plan of action: promoting access to medicines and health diplomacy”, *Globalization and Health*, 2016, 12 (IM, Annex 77); G. Ghiasi, A. Rashidian, A. Kebriaeezadeh and J. Salamzadeh, “The Impact of the Sanctions Made Iran on Availability to Asthma Medicines in Tehran”, *Iranian Journal of Pharmaceutical Research*, 2016, 15(3) (IM, Annex 78); and A. M. Cheraghali, “Impacts of international sanctions on Iranian pharmaceutical market”, *DARU Journal of Pharmaceutical Sciences*, 2013 (IM, Annex 74)

⁴⁴⁵ ICAN, “What the Women Say: Killing them Softly: The Stark Impact of Sanctions on the Lives of Ordinary Iranians”, Brief 3, July 2012 (IM, Annex 72).

⁴⁴⁶ *Ibid.*, p. 2.

⁴⁴⁷ D. Mohammadi, “US-led economic sanctions strangle Iran's drug supply”, *The Lancet*, 26 January 2013 (IM, Annex 73).

⁴⁴⁸ *Ibid.*

⁴⁴⁹ Human Rights Council, “Research-based progress report of the Human Rights Advisory Council Committee containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability”, UN Doc. A/HRC/28/74, 10 February 2015, para. 34 (IM, Annex 75).

3.107 Thus, prior to 8 May 2018, it was well-understood that merely formally exempting medicines and medical products from the scope of a re-imposed sanctions regime against Iran would be insufficient to protect the domestic population from significant adverse impacts on the healthcare system.

ii. The Direct Link between U.S. Measures and Impairments to Healthcare

3.108 Iran’s Food and Drug Administration (“FDA”) has assessed the impact of the U.S. measures on the importation of medicines and medical supplies as follows:

“The US decision of 8th May 2018 to the effect of re-imposition of unilateral sanctions against Islamic Republic of Iran and threatening foreign companies to punishment in case of dealing with Iran caused to be repudiated many of the contracts which had already been concluded with foreign companies for importation of health-oriented goods ...; it caused the said companies to refrain from cooperation in the course of equipping the health and treatment centers, and supplying special and urgently needed medicines, and transferring the industrial machinery in the field of medicine production and laboratory equipment”.⁴⁵⁰

3.109 The practical impact of the U.S. measures on Iran’s health system and in particular on the importation of medicines and medical products, notwithstanding the protection supposedly afforded by formal exemptions under U.S. law, is obvious once one takes into account the general and indiscriminate nature of the restrictions imposed on the financial and banking sector, constraints on international trade (including shipping and insurance) and, more generally, the fear of foreign suppliers who perceive the existence of a risk of being subjected to severe penalties under U.S. law.

3.110 First, already in 2015, the UN Human Rights Council had noted that:

“While the financial sanctions imposed on the Islamic Republic of Iran do not, in principle, cover medicine and medical equipment, they make it almost impossible for Iranian importers to finance the import of medical equipment and medicine. In particular, depriving the country of SWIFT services has made international payments to Western companies almost impossible”.⁴⁵¹

⁴⁵⁰ Witness statement of Dr M. Pirsalehi, President of the Food & Drug Administration of Iran in the Ministry of Health, Treatment and Medical Education, 1 May 2019 (“FDA 1 May 2019 Statement”), para. 6, p. 2 (IM, Annex 71).

⁴⁵¹ Human Rights Council, “Research-based progress report of the Human Rights Advisory Council Committee containing recommendations on mechanisms to assess the negative impact of unilateral

- 3.111 Predictably, this is precisely the situation resulting from the re-imposition of the U.S. measures since 8 May 2018. As an illustrative example, Sina Bank (an Iranian bank) has informed Iran that “[t]he opening of letters of credit and the issuance of bank drafts in Rupee by our bank, for the purpose of the importation of medicine from India, [has] dramatically reduced”.⁴⁵²
- 3.112 Second, this situation has also arisen, in part, from the specific targeting by the U.S. of the main Iranian banks whose involvement is critical to the financing of the import of medicine and medical products and equipment. As reported by *The Washington Post*, this is notably the case with respect to the re-designation of Parsian Bank on the SDN List in October 2018;
- “The administration last month imposed sanctions on Parsian Bank, one of Iran's most reputable private-sector institutions (...). Policy analysts and sanctions experts, however, say Parsian processed much of Iran's humanitarian trade transactions and was trusted by European firms”.⁴⁵³
- 3.113 As an illustrative example, on 25 September 2018, a non-U.S. bank refused to handle the payment for a transaction of “pharmaceutical manufacturing” on the ground that it would be “prohibited as per Iran sanctions”.⁴⁵⁴ In another instance, a non-U.S. pharmaceutical company informed its Iranian client that it had “no choice than

coercive measures on the enjoyment of human rights and to promote accountability”, UN Doc. A/HRC/28/74, 10 February 2015, para. 34 (IM, Annex 75).

⁴⁵² Statement from Mr M. Reza Pishro, Managing Director of Sina Bank, 1 December 2018 (IM, Annex 64). See also E. Cunningham, “Fresh sanctions on Iran are already choking off medicine imports, economists say”, *The Washington Post*, 17 November 2018, p. 1: “[t]he trade of humanitarian goods is allowed under U.S. sanctions, according to Treasury Department guidelines, permitting Iran to import food, medicine and medical devices without punishment. But the far-reaching sanctions on Iranian financial firms reimposed two weeks ago could endanger the flow of humanitarian goods as foreign banks and outside suppliers abandon business ties with their partners in Iran, analysts and experts warn. In recent months, some European banks have refused to process payments even from Iranian firms that are exempt from sanctions out of fear of U.S. penalties, according to people familiar with the transactions” (IM Annex 112).

⁴⁵³ E. Cunningham, “Fresh sanctions on Iran are already choking off medicine imports, economists say”, *The Washington Post*, 17 November 2018 (IM Annex 112).

⁴⁵⁴ Email from a non-U.S. bank to a non-U.S. pharmaceutical company, 25 September 2018 (IM, Annex 103).

stopping business now”, since there were “no way (logistic and financial flux) to continue the business with Iran for [it]”.⁴⁵⁵

3.114 Third, restrictions on the importation of foreign medicines and medical supplies also result from the U.S. measures targeting the Iranian shipping and insurance sectors. With fewer foreign airlines and shipping companies serving Iran and being willing to enter into contractual relationships with Iranian entities, it has become increasingly difficult to import medicines and medical products and equipment. As the FDA explains in a statement:

“On the one hand, upon the re-imposition of sanctions, some of the international transportation companies, including the airlines have refrained from transportation of health-oriented goods; on the other hand, insurance companies have encountered problems in the course of insurance coverage of these consignments. Such restrictions, in its turn, have affected the Iranian companies and as a consequence the end-users’ accessibility to the said goods, and have ultimately caused the increase of health costs.”⁴⁵⁶

3.115 As an illustrative example, on 25 July 2018, a non-U.S. distributor of pharmaceutical products informed Darou Pakhsh, a major pharmaceutical company in Iran, that “[d]ue to recent sanctions system from US” it was “not able to ship this consignment [a 20 tons of raw pharmaceutical materials] from Meggle USA [their manufacturer]”.⁴⁵⁷

3.116 Finally, like all other sectors of the Iranian economy, the health sector is suffering from the withdrawal of foreign operators, deterred by the risks of being subjected to severe penalties under U.S. law if they pursue their relationship with Iranian entities. As an illustrative example, on 14 January 2019, an Iranian importer of raw materials for pharmaceutical products indicated that it had lost two contract worth several millions of U.S. dollars with U.S. and non-U.S. parties and that the reasons given were both related to the “compliance with the US sanctions”.⁴⁵⁸ In a third example, a

⁴⁵⁵ Email from a non-U.S. pharmaceutical company to an Iranian customer, 15 June 2018 (IM, Annex 99).

⁴⁵⁶ FDA 1 May 2019 Statement, para. 8, p. 2 (IM, Annex 71).

⁴⁵⁷ Letter from a non-U.S. company to Darou Pakhsh Pharmaceutical Mfg Co., 25 July 2018 (IM, Annex 102).

⁴⁵⁸ Statement by Mr R. Javadi, Deputy Managing of Donya e Saziba e Pouya, 14 January 2019 (IM, Annex 66).

Swedish manufacturer of medical supplies responded to an Iranian importer who had emphasised that “[h]umanitarian products, in particular health care[, are under] exemption on US New Economic sanctions” by stating that:

“Unfortunately, due to the US Economic sanctions in force Mölnlycke Healthcare have decided not to conduct any business in relation to Iran for the time being. *This also applies to business conducted under any form of exemption to the US Economic sanctions*”.⁴⁵⁹

iii. The adverse consequences of the U.S. measures on the health safety of the Iranian population

3.117 As the UN Special Rapporteur warned in 2017, the “resumption of the unilateral sanctions regime in force against the Islamic Republic of Iran”, would necessary be accompanied by “all its adverse human rights consequences”.⁴⁶⁰ In the context of Iran’s Request for Provisional Measures, Iran’s Minister of Health shared the same analysis, stating that the U.S. measures were then:

“expected, once again, to cause shortages of medicines (including essential medicines), raw materials, medical supplies and medical equipment, which will result in a significant rise in suffering among patients and an increase in the mortality rate.”⁴⁶¹

3.118 There can be no doubt that the United States was fully aware of this situation. On 18 April 2018, the research service of the U.S. Congress, in its report on “Iran sanctions” expressly acknowledged that:

“[Previous] sanctions produced significant humanitarian-related effects, particularly in limiting the population’s ability to obtain expensive Western-made medicines, such as chemotherapy drugs. Some of the scarcity was caused by banks’ refusal to finance such sales, even though doing was not subject to any sanctions.”⁴⁶²

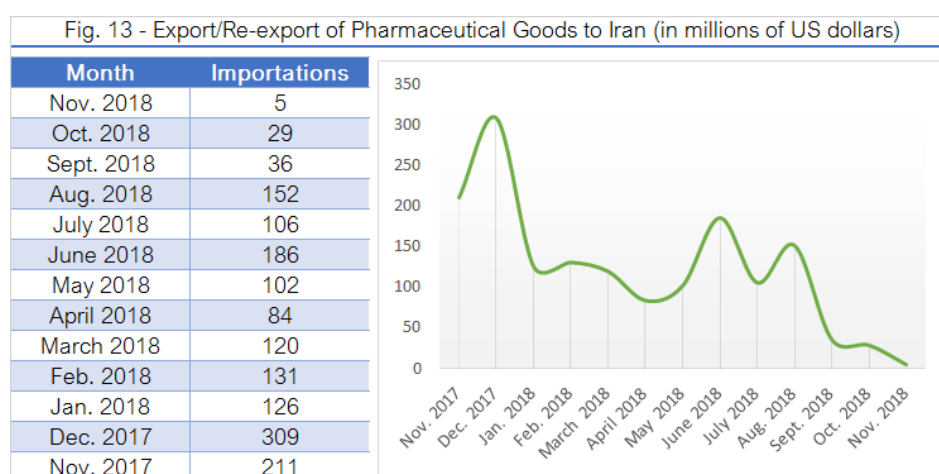
⁴⁵⁹ Letter from EB Home to Mölnlycke, 25 February 2019, and undated reply (IM, Annex 104 – emphasis added).

⁴⁶⁰ United Nations, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, UN Doc. A/72/370, 29 August 2017 (IM, Annex 80).

⁴⁶¹ Witness statement of Mr H. Hashemi, Minister of Health and Medical Education of the I.R. of Iran, 19 August 2018, para. 29 (IM, Annex 63). See also e.g. “LG [Chem] Joined the Entities that Comply with the Pharmaceutical Sanctions against Iran”, *Itabnak*, 23 July 2018 (IM, Annex 110).

⁴⁶² K. Katzman, “Iran Sanctions”, *Congressional Research Service*, RS20871, updated 18 April 2018, p. 65 (IM Annex 328).

3.119 Yet, this did not stop the United States from re-imposing all of the measures that had been lifted in 2016. Regrettably, it can have come as no surprise that, shortly after the expiry of the last so-called “wind-down period”, the certain medicines and medicine supplies were once again in short supply.⁴⁶³ As show on the following table and graph,⁴⁶⁴ the total exportation to Iran of pharmaceutical products fell dramatically by more than 97% between June and November 2018 from USD 186 million to a mere USD 5 million.



3.120 The collapse in the level of imported pharmaceutical raw materials and medicines is all the more damaging because such imported products represent a significant part of the medicines used and processed in Iran.⁴⁶⁵ As the President of the Food and Drug Administration of Iran explains, more than 60 percent of the drug effective materials are imported:

“The sanctions have blocked and caused problems in the course of supplying tens of items of necessary material required for the medicine production and supply. Aside from the machinery, some 60 percent of the drug effective materials including the main and subsidiary materials, also packaging materials are provided through importation.

⁴⁶³ N. Tabrizy, “Iranians Fear Medicine Shortages as U.S. Tightens Sanctions”, *The New York Times*, 11 November 2018 (IM, Annex 111).

⁴⁶⁴ Source from UN Comtrade Databa (available at : comtrade.un.org).

⁴⁶⁵ See, e.g., Human Rights Council, “Research-based progress report of the Human Rights Advisory Council Committee containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability”, UN Doc. A/HRC/28/74, 10 February 2015 (IM, Annex 75), para. 34, p. 11: “Western pharmaceutical companies – often the sole producers of these medicines – have all but stopped exporting to the Islamic Republic of Iran” (emphasis added).

[...] There exist disturbances in the course of production due to the fact that the majority of the material for production of vaccines are also provided from the foreign sources [...].”⁴⁶⁶

3.121 In its statement, the Food and Drug Administration explains that:

“In the wake of re-imposition of sanctions, hospitals are also encountering shortage of the vitally important medicines; also, shortage of parts (which have dual purpose application) and are required for the repair and maintenance of medical equipment have seriously impacted the accessibility of health-care professionals and hospitals in their application of such kind of equipment.”⁴⁶⁷

3.122 On 26 November 2018, the American Society of Haematology summed up the emerging crisis as follows:

“The [U.S.] administration has stated that trade in humanitarian items like life-saving medications should remain unaffected. However, because there are no clear guidelines for pharmaceutical companies doing business in Iran, importation of medications manufactured abroad has been frozen for months and severe medicine shortages loom.

In addition, the absence of reliable financial institutions due to re-imposition of harsh banking restrictions and fear of secondary sanctions makes it impossible for multinational pharmaceutical companies to operate in Iran.”⁴⁶⁸

3.123 Certain patients suffering from potentially life-threatening conditions are heavily dependent on foreign medicine and medical supplies. For instance, individuals suffering from Epidermolysis Bullosa, a group of genetic skin diseases that can be life-threatening, were formerly treated using medical supplies produced and provided by a single Swedish pharmaceutical company, which has stopped exporting its products in Iran as a result of the re-imposition of the U.S. measures.⁴⁶⁹ As reported by EB Home, a non-governmental organisation concerned with the protection of Iranian Epidermolysis Bullosa patients,

⁴⁶⁶ FDA 1 May 2019 Statement, paras. 10 and 13, pp. 3-4 (IM, Annex 71).

⁴⁶⁷ *Ibid.*, para. 16, p. 4 (IM, Annex 71).

⁴⁶⁸ “Medicine Shortages Loom in Iran as U.S. Reinstates Sanctions”, *ASH Clinical News*, 26 November 2018 (IM, Annex 114).

⁴⁶⁹ Letter from EB Home to Mölnlycke, 25 February 2019 and answer from Mölnlycke to EB Home, undated (IM, Annex 104).

“There is no alternative product possessing appropriate compatibility with the physiology of Iranian patients to be used in replacement of the above-mentioned dressing.”⁴⁷⁰

As a consequence, the death rate among individuals affected by Epidermolysis Bullosa has risen dramatically, since the U.S. measures were re-imposed. Indeed, 7 Epidermolysis Bullosa patients have died since the re-imposition of the sanctions.⁴⁷¹

B. The U.S. measures have resulted in deteriorating living conditions for the Iranian people

3.124 Whereas, on their face, the U.S. measures may appear to comprise economic and financial measures⁴⁷², they are undoubtedly having severe adverse effects more generally on the Iranian people as a whole whose living and working conditions have deteriorated. The hardships arising from the U.S. sanctions which are affecting the lives of the millions of Iranian nationals include but are not limited to (i) the increase of consumer prices, (ii) the restriction of available commodities and (iii) the rise of unemployment.

i. The Increase of Consumer Prices

3.125 Perhaps the most obvious indirect effect of the U.S. measures is the sharp depreciation of the Iranian Rial⁴⁷³ which, in turn, means that the cost of all imported products, including many essential food items, has increased dramatically. As reported by the World Bank:

“Since April 2018, the US withdrawal from the Joint Comprehensive Plan of Action (JCPOA) and domestic speculation on the rial led to a sharp depreciation

⁴⁷⁰ Statement from S. Hashemi Golpayegabni, Founder and Managing Director of EB Home, 29 April 2019 (IM, Annex 70).

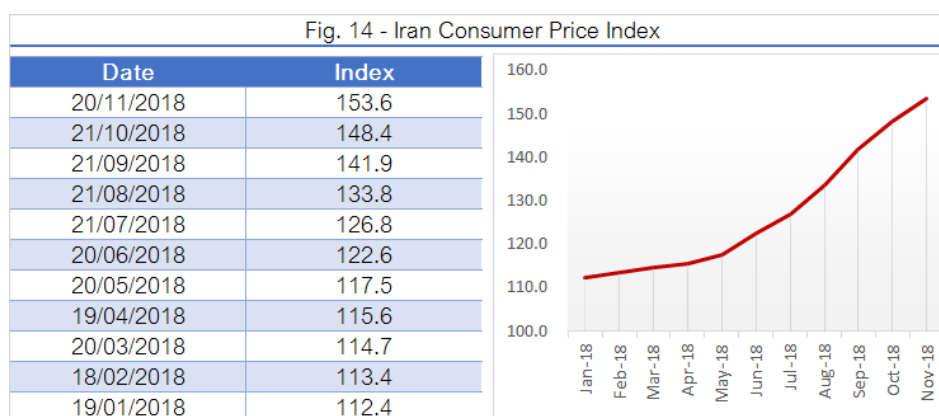
⁴⁷¹ *Ibid.*

⁴⁷² U.S. Department of Treasury presents the U.S. measures as follows: “[t]hese are the toughest U.S. sanctions ever imposed on Iran, and will target critical sectors of Iran’s economy, such as the energy, shipping and shipbuilding, and financial sectors. The United States is engaged in a campaign of maximum financial pressure on the Iranian regime and intends to enforce aggressively these sanctions that have come back into effect” (U.S. Department of Treasury, Resource Center, Webpage “Iran Sanctions” – IM, Annex 20).

⁴⁷³ See Chapter III, paras. 3.91-3.95.

of the unofficial exchange rate, which has increased import costs and fed inflationary expectations of consumers. Within 4 months, CPI inflation had more than tripled, reaching 24.2 percent in August 2018, the highest Iran has experienced since 2013 and the largest monthly increase in prices (5.5 percent month on month) in at least 200 months (16 years)—since inflation data began being published accessibly in January 2002.”⁴⁷⁴

3.126 Indeed, the consumer price index monitored by the CBI has recorded an increase of more than 36 % during the first eleven months of 2018,⁴⁷⁵ as shown in the table and graph below:



3.127 As the CBI explains in its statement, the situation is expected to worsen since “[i]t is highly expected that the CPI increasing trend will continue over the coming months, as the exchange rate developments will affect the prices.”⁴⁷⁶ The Statistical Center of Iran has recorded that the category of “food, beverages and tobacco” has been the subject of considerable inflation:

“The national inflation rate for the month of Esfand of the year 1397 stood at 26.9 percent, fluctuating between 25.9 percent for the first decile (those with the lowest income) and 28.9 percent for the tenth decile (those with the highest income), among the expenditure deciles. The range of the twelve-month inflation changes in the major group of ‘food, beverages and tobacco’ was between 34.9 percent for the first decile and 38.9 percent for the tenth decile. The major group of “non-food items and services” also saw these fluctuations

⁴⁷⁴ World Bank Group, “Iran Economic Monitor – Weathering Economic Challenges – Special Focus Topic: Understanding the latest poverty trends in Iran (2009-2016)”, Fall 2018, p. 12 (IM, Annex 87).

⁴⁷⁵ Central Bank of I.R. Iran, General Directorate of Economic Statistics, “Consumer Price Index for All Urban Consumers Farvardin 1397 (March 21, 2018 – April 20, 2018)”, May 2018 (IM, Annex 83), “Consumer Price Index for All Urban Consumers Ordibehesht 1397 (April 21, 2018 – May 21, 2018)”, June 2018 (IM, Annex 84) and “Consumer Price Index for All Urban Consumers Khordad 1397 (May 22 – June 21, 2018)”, July 2018 (IM, Annex 85).

⁴⁷⁶ CBI 16 February 2019 Statement, p. 3 (IM, Annex 121).

ranging from 18.7 percent for the first decile to 26.7 percent for the tenth decile.”⁴⁷⁷

3.128 The statistics also show a drastic rise in the national household’s inflation rates:

“In this month [Farvardin 1398 (21 March - 20 April 2019)], the percentage of change in the general index, *compared to the corresponding month in the previous year, is 51.4 percent*; that means national households have, on average, spent 51.4 percent more than Farvardin 1397 [21 March 2018-20 April 2018] for the purchase of a “*same set of goods and services.*”⁴⁷⁸

3.129 For the director of the IMF’s Middle East and Central Asia department, the conclusion is that:

“[c]learly the re-imposition of sanctions and the removal of the waivers will have additional negative impact on the Iranian economy both in terms of growth and in terms of inflation, where inflation could reach 40 percent or even more this year”.⁴⁷⁹

ii. Decrease in the availability of basic commodities

3.130 As a result of the U.S. measures, including those targeting the Iranian financial and banking restrictions and shipping sectors, the availability of basic commodities has been affected. According to the Government Trading Corporation of Iran (“GTCI”):

“after the 8 May 2018, the GTCI witnessed an abrupt disaffection in its main sellers for participating in the GTCI’s tenders. All of sudden, the once first grade suppliers and providers of our substantial food stuff are now relegated to less reliable second-class sellers. This swift evolution has had several adverse effects on the performance of the GTCI in discharging its national mandate and function:

- i. in the aftermath of the said sanction, the prices for the basic commodities purchased by the GTCI have considerably increased due to limited number of the bids for our tenders and the far lower competition among bidding participants.
- ii. usually, the second-class sellers will not provide banking performance bond guarantees due to international bank’s reluctance to issue any such bonds. GTCI performance in providing necessary letter of credit to its

⁴⁷⁷ Statistical Center of Iran, “National Consumer Price Index by Expenditure Deciles in the Month of Esfand 1397”, 15 April 2019, p. 1 (IM, Annex 94).

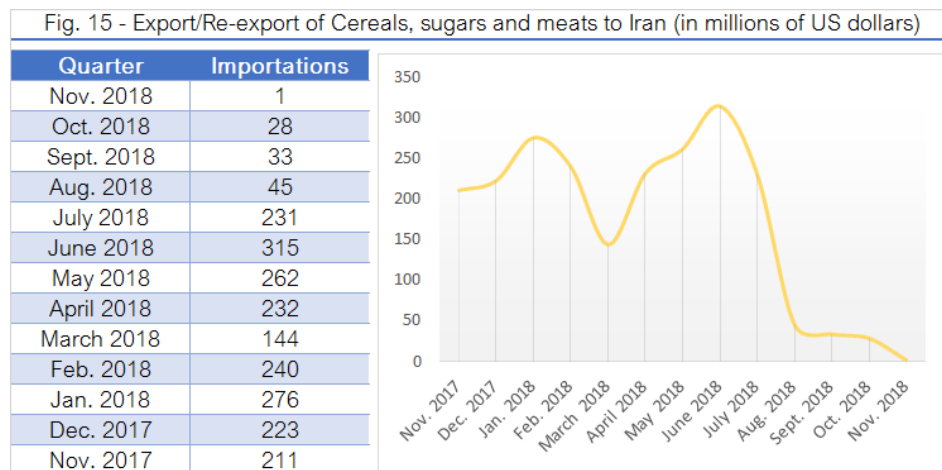
⁴⁷⁸ Statistical Center of Iran, “Report on the Consumer Price Index and Inflation – Farvardin 98”, 23 April 2019, p. 5 (IM, Annex 95 – emphasis in the text).

⁴⁷⁹ D. Barbuscia, “Iran inflation could reach 40 percent this year as economy shrinks further – IMF”, *Reuters*, 28 April 2019 (IM, Annex 120).

suppliers is also getting tougher and tougher day by day due to the fear of the foreign banks in accepting and negotiating documents issued by Iranian banks arising from US sanctions. ...;

- iii. the shipping conditions of our cargoes also have drastically worsened and our expensive goods tends to be the subject of far bigger marine accidents and risks associated to the deployment over-aged vessels. Because of the fear of US comprehensive sanctions against Iran, GTCI has no longer easy and uninterrupted access to young and operative vessels, that tend to refrain from entering into our waters due to lack of proper P&I and appropriate insurances, and/or require ships less than 20 years old;
- iv. Among other problems, it has become more difficult and costly for the GTCI to procure insurance coverage from Iranian insurance companies for deliveries of the basic commodities it buys on the international markets as most of them tend to be subject to US SDN list.”⁴⁸⁰

3.131 As a result of the U.S. measures, the importation of some of the most basic – and essential – commodities has collapsed. As reported by the Trade Statistics Branch of the United Nations Statistics Division, and as shown in the graph below,⁴⁸¹ the combined import of cereals, sugars, and meats has fallen from USD 315 million in June 2018 to a negligible level of USD 1 million only at the expiry of the second so-called “wind-down period”.



⁴⁸⁰ Witness statement of Mr A. H. Shahmir, Advisor to the President of the Government Trading Corporation of Iran & Deputy Minister of Agriculture, 18 March 2019 (“GTCI 18 March 2019 Statement”) (IM, Annex 69).

⁴⁸¹ Source from UN Comtrade Databa (available at : comtrade.un.org).

3.132 Similarly, as reported by the President of the FDA of Iran, the U.S. measures are substantially affecting young children:

“There are problems in importation of special food items, such as powder milk, food supplementary and child special food, especially foods for the patient children with metabolic disorder such as celiac diseases; the materials for production of these items are fully imported items and are mainly produced and imported from the countries such as China, France, the Netherlands and Belgium.”⁴⁸²

3.133 To give just one illustrative example of the difficulties being experienced in securing imports of basic foodstuffs, on 9 January 2019, the Iran-Brazil Joint Chamber of Commerce alerted the Iranian Chamber of Commerce that it was experiencing difficulties in finding a shipping company willing to accept cargo of meat for shipping to Iran and difficulties in securing the transfer of funds for such shipments.⁴⁸³

3.134 The U.S. measures are not only threatening Iran’s food security by restricting importation of basic commodities, but also by hampering domestic agriculture industry. As explained by the Bred Seed Importers Association of Iran, importation of high quality and productive seeds needed by the Iranian agriculture sector is restricted by a combination of restrictions arising from the U.S. measures with respect to payment, insurance, transportation and the termination of relations with foreign suppliers.⁴⁸⁴

3.135 As a direct consequence of these difficulties, food prices have surged.⁴⁸⁵ As noted by the World Bank:

“Food price inflation reached the highest level in 4 years at 36 percent year on year in August 2018 with broad increases across the components. The largest increases were by fruits and nuts which increased by 85 percent and contributed to more than half the increase of food inflation. Food inflation is three times the

⁴⁸² FDA 1 May 2019 Statement, para. 11, p. 3 (IM, Annex 71).

⁴⁸³ Statement by Mr K. Zargaran, Chairman of the Board of the Iran-Brazil Joint Chamber of Commerce, 9 January 2019 (IM, Annex 65).

⁴⁸⁴ Bred Seeds Importers Association of Iran, “The Importance of Importation of Bred Seeds in the Agriculture”, 3 February 2019 (IM, Annex 67).

⁴⁸⁵ GTCI 18 March 2019 Statement, para. 4, p. 3 (IM, Annex 69).

rates it was 12 months ago and will have a disproportionate impact on low income households who spend more of their household income on food.”⁴⁸⁶

As the GTCI explains, a crisis looms on the horizon:

“an imminent and ominous shortage of essential food stuff is very likely to occur in near future ... because it has become more and [more] difficult for GTCI to replenish its strategic stocks of some of the most required basic commodities through the fear-stricken network of international suppliers and bankers”.⁴⁸⁷

iii. Rise in unemployment

- 3.136 The U.S. measures have also severely impacted the Iranian labour market, both as a result of the contraction of the Iranian economy and of foreign disinvestments. As noted in an Iranian Parliamentary report dated September 2018, the rate of unemployment, which is already at 12 %, could rise to 26 % if GDP growth over the next five years does not exceed 5 % per annum.⁴⁸⁸ In this connection, the latest report produced by the IMF noted a GDP drop of -3.9% in 2018 and an unemployment rate raise of 13.9%.⁴⁸⁹
- 3.137 A striking illustrative example of the effect of the U.S. measures on employment in Iran is the situation in the automotive sector. As previously mentioned by Iran Khodro, “A significant part of IKCO's employees are de facto unemployed due to the decline in production; it would be necessary to lay off a third of its employees to remain beneficiary.”⁴⁹⁰
- 3.138 In its World Economic Outlook for 2018, the IMF forecasted that the unemployment rate would rise from 11.8 per cent in 2017, to 12.8 per cent in 2018 and 14.3 per cent

⁴⁸⁶ World Bank Group, “Iran Economic Monitor – Weathering Economic Challenges – Special Focus Topic: Understanding the latest poverty trends in Iran (2009-2016)”, Fall 2018, p. 12 (IM, Annex 87).

⁴⁸⁷ GTCI 18 March 2019 Statement, para. 4, p. 3 (IM, Annex 69).

⁴⁸⁸ B. Sharafedin, “Iranian jobs go as US sanctions start to bite”, *The Business Times*, 19 November 2018 (IM, Annex 113).

⁴⁸⁹ IMF, *World Economic Outlook*, April 2019, p. 50 (IM, Annex 96).

⁴⁹⁰ Witness Statement by S. Hessameddin Zegordi, Vice Deputy for Strategy & Planning of Iran Khodro, 19 March 2019, para. 14, p. 3 (IM, Annex 309).

in 2019.⁴⁹¹ Combined with a sharp increase in consumer goods prices,⁴⁹² which rose by 31.2% in 2018, according to the IMF,⁴⁹³ this situation implies that a larger and larger part of the Iranian society is suffering and will suffer from economic insecurity and, eventually, poverty.⁴⁹⁴

3.139 The worsening of the situation of the labour market will have some disruptive effects on the social fabric of the Iranian society. The same Parliamentary report concluded its analysis of the rising unemployment rate in Iran with the observation that:

“If we believe that the country’s economic situation was the main driver for the recent protests, and that an inflation rate of 10 per cent and an unemployment rate of 12 per cent caused the protests, we cannot imagine the intensity of reactions caused by the sharp rise of inflation rate and unemployment”⁴⁹⁵.

C. The impairment of humanitarian relief and of the environmental safety of the Iranian population

i. As a result of the U.S. measures, the implementation of humanitarian relief in Iran is being undermined

3.140 The re-imposition of the U.S. measures proved to be extremely harmful on the implementation of humanitarian relief in Iran. As the International Committee of the Red Cross explained to the UN Security Council in general terms:

“Neutral and impartial humanitarian action moreover is hindered by elaborate sanctions regimes and counter-terrorism measures.”⁴⁹⁶

⁴⁹¹ IMF, “World Economic Outlook: Challenges to Steady Growth”, October 2018, Annex Table 1.1.5, p. 65 (IM, Annex 132).

⁴⁹² G. Golshiri, « En Iran, l’économie accuse le coup des sanctions américaines », *Le Monde*, 17 September 2018 (IM, Annex 144).

⁴⁹³ IMF, *World Economic Outlook*, April 2019, p. 50 (IM, Annex 96).

⁴⁹⁴ “Two More Income Brackets Dropped Below Poverty Line”, *Iran International*, 19 November 2018 (IM, Annex 146).

⁴⁹⁵ B. Sharafedin, “Iranian jobs go as U.S. sanctions start to bite”, *The Business Times*, 19 November 2018 (IM, Annex 113).

⁴⁹⁶ International Committee of the Red Cross, “ICRC Remarks to the UN Security Council on the promotion and strengthening of the rule of law: international humanitarian law: “Safeguarding Humanitarian Space””, 1 April 2019 (IM, Annex 92).

3.141 The serious adverse practical impact of the U.S. measures has been highlighted by the recent efforts to relieve the Iranian population of the suffering caused by unprecedented floods⁴⁹⁷ which affected most of the country.

- First, the International Federation of Red Cross and Red Crescent Societies indicated that several rescue helicopters were not operational due to the unavailability of spare parts caused by the U.S. measures,⁴⁹⁸ making it even more difficult for emergency teams to rescue the Iranian victims in the flooded areas.
- Secondly, the International Federation of Red Cross and Red Crescent Societies was not able to receive any funds from abroad as a result of the U.S. measures targeting the Iranian financial and banking sectors. Foreign banks refused to perform the payments imposing limits on the resources available to the organisation and, in turn, its ability to respond to the emergency situation and to help victims.⁴⁹⁹

3.142 Additionally, the United Nations Office for the Coordination of Humanitarian Affairs explained that even the action of the United Nations was expected to be hindered by the U.S. measures:

“challenges caused by unilateral sanctions will affect the UN response and the accountability of UN to deliver the appropriate support.”⁵⁰⁰

⁴⁹⁷ “Unprecedented flooding hits Iran forces village evacuations”, *Reuters*, 26 March 2019 (IM, Annex 117).

⁴⁹⁸ International Federation of Red Cross and Red Crescent Societies, “Emergency Appeal n° MDRIR002”, 7 April 2019, p. 5 (IM, Annex 93).

⁴⁹⁹ “Flood-hit Iran getting no financial aid from abroad because of US sanctions”, *Middle East Eye*, 7 April 2019 (IM, Annex 119). See also International Federation of Red Cross and Red Crescent Societies, “Emergency Appeal n° MDRIR002”, 7 April 2019, p. 5 (IM, Annex 93); International Federation of the Red Cross and Red Crescent Societies, “Emergency Plan of Action (EPoA) – Iran: Floods”, 29 March 2019, p. 3 (IM, Annex 91); and “Iranian Red Crescent says US sanctions impeding flood relief”, *Al-Monitor*, 1 April 2019 (IM, Annex 118).

⁵⁰⁰ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), “Iran: Golestan and Fars provinces floods”, Flash Update No. 1, as of 25 March 2019, p. 2 (IM, Annex 90).

ii. The deterioration of the environmental situation in Iran

3.143 The U.S. measures have also jeopardised efforts being taken by Iran to combat increasingly difficult environmental issues including with regard to water treatment and air pollution.

3.144 Water and wastewater management in Iran with is now hampered by the refusal of foreign companies to provide the necessary equipment, such as centrifugal pumps, control valves or process pumps.⁵⁰¹ As a result, Iran is unable to renew, maintain or repair its water and wastewater management systems, and this poses a direct threat to the health of the Iranian people.⁵⁰² As explained by the General Director, Legal and Contracts Office of the National Water and Wastewater engineering company, the re-imposition of the U.S. measures has had significant consequences,

“rendering, continuation and completion of social and public services of the water and wastewater industry have encountered issues and problems, which have actually affected the safety, health and life of strata of the society. The most important of these issues [being]:

- Failure to import to the country of equipment for water and wastewater treatment plants, consequently endangering public health and the environment, as well as the closure of construction projects and plans.”⁵⁰³

3.145 During the period of the previous sanctions air pollution in Iran drastically increased since the Iranian petrochemical industry was prevented from accessing the technology necessary to meet the modern standard of refining. In 2013, the World Health Organization identified four Iranian cities (Ahwaz, Sanandaj, Kermanshah and

⁵⁰¹ Email from Kitz Corporation to Fan Niroo Co., 8 July 2018 (IM, Annex 101); Email from Pompe Garbarino S.P.A. to Fan Niroo Co., 2 July 2018 (IM, Annex 100); and Email from Ebara Corporation to Fan Niroo Co., 12 June 2018 (IM, Annex 98).

⁵⁰² In this connection, it is likely that the impossibility for Iran to obtain new equipment, and thus to repair or renew its wastewater systems, including dams, contributed to the aggravation of the floods that occurred in early April 2019. See for instance U.S. Department of State, Department Press Briefing, 2 April 2019, p. 6 (IM, Annex 51).

⁵⁰³ Statement by Mr S. Norouzi, General Director of the Legal and Contracts Office of the National Water and Wastewater Engineering Company, 6 February 2019 (IM, Annex 68).

Yasouj) as among the ten most polluted cities in the world.⁵⁰⁴ According Dr. Ebtekar, former Head of Iran Environmental Protection Organization:

“Iran has passed hard times due to sanctions and lack of access to new technologies in the fields of environment and green technology. Sanctions have had numerous and destructive impacts on Iran’s environment.”⁵⁰⁵

3.146 The consequence of such chronic air pollution on the health of the Iranian people has also been documented. Air pollution in Tehran has been reported as being “directly responsible for 25 % of deaths in the city”,⁵⁰⁶ while another source indicated that:

“Pollution has been directly linked to 11.6 percent more hospital emergency room visits every year, and to the rising rates of acute asthma, heart disease, lung cancer, and more. It’s estimated that roughly 35 percent of children in Tehran have developed asthma or allergies as a result of man-made air pollutants.”⁵⁰⁷

3.147 Before 8 May 2019, Iran’s government sought to reverse this trend.⁵⁰⁸ In November 2015, Iran presented its Intended Nationally Determined Contribution to the UN Framework Convention on Climate Change, in view of the coming climate conference in Paris.⁵⁰⁹ In this document, Iran unconditionally committed to mitigate its greenhouse gas emissions by 4 % between 2021 and 2030.⁵¹⁰ Iran also indicated that it could triple this mitigation level, up to 12 %, if the sanctions were lifted.⁵¹¹

3.148 The re-imposition of the U.S. measures now constitutes an almost insurmountable obstacle to this stretch goal as well as a hindering Iranian industrial actors from achieving better environmental performance. As an illustrative example, Iran Khodro

⁵⁰⁴ N. Rayman, “The 10 Most Polluted Cities in the World: Four of them are in Iran”, *Time*, 18 October 2013 (IM, Annex 105).

⁵⁰⁵ “Impacts of the Lifting Sanctions on Iran’s Environment”, *The Real Iran*, 13 August 2015 (IM, Annex 108).

⁵⁰⁶ N. Soroush and K. Madani, “Every breath you take: the environmental consequences of Iran sanctions”, *The Guardian*, 21 November 2014 (IM, Annex 107).

⁵⁰⁷ A. Ghorayshi, “Choking to Death in Tehran”, *Newsweek*, 20 March 2014 (IM, Annex 106).

⁵⁰⁸ K. Madani & S. Hakim, “Iran: Reversing the environmental damages of sanctions”, *Tehran Times*, 18 July 2018 (IM, Annex 109).

⁵⁰⁹ I.R. Iran, Department of Environment, “Intended Nationally Determined Contribution”, 19 November 2015 (IM, Annex 76).

⁵¹⁰ *Ibid.*, page 4.

⁵¹¹ *Ibid.*

and SAIPA who were expecting from their joint-ventures and partnerships with European carmakers to receive spare parts kits to produce low-emission “Euro 5” and “Euro 6” labels vehicles, have had to resort to more polluting “Euro 3” and “Euro 4” model.⁵¹²

3.149 The United States unilaterally reintroduced what it, itself, considers as the “strongest sanctions in history”. This was done in less than six months, shutting down financial transactions and communication with Iran, restricting its maritime trade and isolating its civil aviation, barring its main export products from finding markets abroad, stopping supply of key industrial materials and technology from entering. But, as the UN Special Rapporteur on negative impact of the unilateral coercive measures rightfully noted:

“Sanctions that extend beyond national borders, and which seek to block a country’s trade altogether, amount to economic warfare against civilians”.⁵¹³

3.150 By targeting key sectors of Iran’s economy fabric, the U.S. sanctions are affecting the whole of its economy and, as a result, the main victims of these actions is the Iranian population which is exposed to harsher living conditions.⁵¹⁴ The illegality of such behavior was clearly highlighted by the UN Special Rapporteur who states that “[w]hile the right of States to disagree with each other should be respected, harming the human rights of ordinary civilians should not be resorted to as a means of political pressure on a targeted Government. ... This is illegal under international human rights law.”⁵¹⁵ The 2nd Part of this Memorial will demonstrate that the re-imposition of the U.S. sanctions is also in breach with the commitments this State has taken when it concluded the 1955 Treaty of Amity.

⁵¹² Iran Khodro 19 March 2019 Statement, para. 17, p. 3 (IM, Annex 309) and SAIPA 2 May 2019 Statement, para. 6, p. 3 (IM, Annex 310).

⁵¹³ OHCHR, “Civilians caught in sanctions crossfire need Geneva Convention protection says UN expert”, 8 November 2018 (IM, Annex 88).

⁵¹⁴ See, for instance, the letter sent by 14 Members of the U.S Congress, to the U.S Secretary of State on 21 December 2018, referring to the International Court of Justice ’s Order and requesting that information be provided on the steps taken to mitigate the humanitarian impact of the U.S. measures (IM, Annex 89).

⁵¹⁵ OHCHR, “Civilians caught in sanctions crossfire need Geneva Convention protection says UN expert”, 8 November 2018 (IM, Annex 88).

PART II.
THE BREACHES OF THE TREATY OF AMITY BY THE USA

CHAPTER IV.
BREACH OF ARTICLES IV(1), IV(2) AND V(1) OF
THE TREATY OF AMITY

SECTION 1.
INTRODUCTION

- 4.1 The Treaty of Amity contains a series of protections for Iranian companies and nationals, namely as contained in Articles IV(I), IV(2) and V(1), which are engaged in this case. In this Chapter, Iran identifies the relevant standards and protections contained in these three Articles (section 2 below) and then identifies the breaches (section 3).
- 4.2 In considering the issue of breach, although at this stage Iran is in a position to identify the U.S. measures that violate the individual provisions of the Treaty, and likewise the U.S. intent to cause massive and indiscriminate harm to Iranian nationals and companies and their property, the precise scale of that harm is still emerging. It is only at the stage of the Reply that Iran may be in a position to put forward a reasonably comprehensive picture of that harm, and how it evidences a breach by the USA of Articles IV(I), IV(2) and V(1).

SECTION 2.
LEGAL OBLIGATIONS OF THE USA UNDER ARTICLES IV(1), IV(2) AND V(1) OF
THE TREATY OF AMITY

- 4.3 Article IV(1) of the 1955 Treaty of Amity establishes three discrete but related protections for Iranian nationals and companies. It provides:

“Each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party, and

to their property and enterprises; shall refrain from applying unreasonable or discriminatory measures that would impair their legally acquired rights and interests; and shall assure that their lawful contractual rights are afforded effective means of enforcement, in conformity with the applicable laws.”

4.4 Thus, pursuant to the express terms of Article IV(1):

- a. fair and equitable treatment must be accorded to Iranian nationals and companies as well as to their property and enterprises;
- b. the United States must refrain from applying unreasonable or discriminatory measures that would impair the legally acquired rights (including contractual rights) and interests of Iranian nationals and companies; and
- c. the United States must assure that the lawful contractual rights of Iranian nationals and companies are afforded effective means of enforcement, in conformity with applicable laws.

4.5 These elements of Article IV(1) are examined in turn in subsections (A) to (C) below. As then identified in section 3 below, there has been breach by the USA of all three of the protections contained within Article IV(1), and such breach is ongoing.

4.6 Article IV(2) establishes two further discrete protections for Iranian companies and nationals. It provides:

“Property of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less than that required by international law. Such property shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.”

4.7 Thus, pursuant to the express terms of Article IV(2):

- a. The most constant protection and security must be afforded to the property and interests in property of Iranian nationals and companies, in no case less than that required by international law; and

- b. The United States must refrain from taking the property of Iranian nationals and companies.

4.8 These elements of Article IV(2) are examined in subsection (D) below, with issues of breach by the USA addressed in section 3.

4.9 Each element of protection under Articles IV(1) and IV(2) is afforded to nationals and “companies” as broadly defined in Article III(1), and without qualification. Thus, the protection is afforded to companies including those that are wholly or partly owned or controlled by one of the High Contracting Parties. A further protection to nationals and companies is established by Article V(1) with respect to permitting the purchase and disposal of personal property of all kinds. This is examined in subsection (E) below, while Iran’s case on breach of Article V(1) is set out in section 3.

A. The USA’s obligation to accord fair and equitable treatment (“FET”)

4.10 Obligations of fair and equitable treatment have been the subject of much arbitral and academic focus in recent years. While the terms “fair” and “equitable” do have an ordinary meaning, recourse to synonyms (such as “just”) has appeared to be of limited assistance, and in certain arbitral awards there has been a tendency to turn to such synonyms without paying due regard to other tools of interpretation.

4.11 So far as concerns the specific obligation of fair and equitable treatment (“FET”) as contained in the first clause of Article IV(1), it is initially to be noted, giving the terms their ‘ordinary meaning’ in accordance with Article 31(1) of the Vienna Convention, that –

- a. Fair and equitable treatment is to be accorded “at all times” both to Iranian nationals and companies and to the property and enterprises of such companies. The term “property” is not qualified in any way and would naturally include all forms of property, whether tangible or intangible (as would be the case for other references to “property” in Article IV of the 1955 Treaty).

- b. The standard of fair and equitable treatment established is not qualified, whether by reference to the customary international law minimum standard of treatment or otherwise. This suggests that, unlike other treaties which the United States has concluded,⁵¹⁶ there was no intention to restrict the Article IV(1) standard of fair and equitable treatment to the customary international law minimum standard. By contrast, in Article IV(2), the Treaty Parties did choose to refer to “international law” in formulating the protection afforded to national companies.
- c. The Treaty Parties have used a well-known generic phrase (“fair and equitable treatment”), the precise meaning of which they must have known was likely to evolve over time throughout the lifetime of the 1955 Treaty, which was intended to be of continuing duration in order to guarantee “enduring peace” and which the Treaty Parties elected to keep in force for more 60 years. In *Costa Rica v Nicaragua*, the Court explained that:

“where the parties have used generic terms in a treaty, the parties necessarily having been aware that the meaning of the terms was likely to evolve over time, and where the treaty has been entered into for a very long period or is ‘of continuing duration’ the parties must be presumed, as a general rule, to have intended those terms to have an evolving meaning.”⁵¹⁷

In the present case, the meaning of “fair and equitable treatment”, which is to be accorded “at all times”, is to be understood by reference to the elaboration of the content of this standard as it has evolved over time, including in decisions subsequent to the entry into force of the 1955 Treaty.⁵¹⁸

- d. The “treatment” to be accorded is not limited or qualified in any way, and includes treatment through the acts and omissions of the legislative, executive or judicial branches of government.

⁵¹⁶ See, e.g., NAFTA, Article 1105, as interpreted by the NAFTA Commission: see NAFTA Free Trade Commission, *Statement on NAFTA Article 1105 and the Availability of Arbitration Documents*, 31 July 2001. For analogous reasoning; see also *Liman Caspian Oil BV and Dutch Investment BV v. Republic of Kazakhstan*, ICSID Case No. ARB/07/14, Award, 22 June 2010, at para. 263.

⁵¹⁷ *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment, I.C.J. Reports 2009, p. 213 at p. 243, para. 66.

⁵¹⁸ See e.g. *Arbitration regarding the Iron Rhine (“Ijzeren Rijn”) Railway (Belgium v. Netherlands)*, UNRIIAA, vol. XXVII, p. 35, at pp. 73-74, paras. 79-81; *Philip Morris v. Uruguay*, paras. 318-319.

- e. The treatment to be accorded is also not restricted by any territorial limitation on the place where the ‘treatment’ occurs. By contrast, where the Treaty Parties wished to establish some form of territorial nexus, as for example in Article X(1), they did so in express terms. In *Oil Platforms* the Court observed that “unlike other paragraphs of the same Article, [Article IV(1)] does not include any territorial limitation”.⁵¹⁹

4.12 As to context:

- a. The obligation to accord fair and equitable treatment in Article IV(1) is immediately followed by a prohibition in respect of certain unreasonable or discriminatory measures. It may thus be inferred that, in requiring fair and equitable treatment, the Treaty Parties were doing more than proscribing unreasonable or discriminatory measures that impair legally acquired rights and interests. Any other interpretation would require that the different elements of Article IV(1) were merely duplicative, and would cut across the principle of effectiveness.⁵²⁰
- b. The treatment is to be accorded *inter alia* to the “property” of nationals and companies. In Article IV(2), it is stated that “property” includes “interests in property”. The phrase “interests in property” is not qualified in any way and, according to its ordinary meaning, encompasses all types of such interests that may fall short of a right to complete ownership which are nonetheless capable of being enjoyed and upon which it is possible to place a monetary value. This includes, for example, indirect ownership (including minority shareholding), possession, use and enjoyment and contractual interests. In this context, the reference to property in Article IV(1) is also therefore correctly interpreted as including interests in property.
- c. The treatment is also to be accorded *inter alia* to the “enterprises” of nationals and companies. In Article XI(4), consistent with the broad definition of

⁵¹⁹ *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996, p. 803, at p. 816, para. 35.

⁵²⁰ As recognised in, e.g., *Territorial Dispute (Libyan Arab Jamahiriya v. Chad)*, Judgment, I.C.J. Reports 1994, p. 6 at p. 23, para. 47.

“companies” in Article III(1), it is stated that “enterprises” include “corporations, associations, and government agencies and instrumentalities, which [are] publicly owned or controlled...[or] privately owned and controlled”. The 1955 Treaty also recognises that nationals and companies may “have invested” (Art. II(1)) or be in the process of investing in (Art. XX(4)) in an “enterprise”, which carries out activities or “operations” (Art. II(1)). Article XI(3) refers specifically to “trading or manufacturing enterprises” and, in this context, the generic reference to “enterprises” in Article IV(1) includes but is not limited to trading or manufacturing enterprises. The term “enterprise” therefore encompasses all forms of businesses and business deals entered into by nationals and companies. The context also shows that where the Treaty Parties wished to establish some form of territorial nexus between an enterprise and a Treaty Party, as for example in Article IV(4), they did so in express terms.

4.13 As to the object and purpose of the Treaty, in the light of which the terms of Article IV(1) must be interpreted, one of the key points of emphasis in the Preamble is “encouraging mutually beneficial trade and investments and closer economic intercourse generally between their peoples”. This suggests that one object and purpose of the Treaty is to establish, so far as concerns protected nationals and companies, an important degree of stability and predictability in the legal and regulatory regimes of each Party so far as concerns trade and investment. Without such stability and predictability, mutually beneficial trade and investment would be discouraged, not encouraged.

4.14 Supplementary means of interpretation confirm that the formulation “fair and equitable treatment” was intended to afford a broad standard of protection which “may not be susceptible of precise definition”.⁵²¹ The U.S. position was apparently that the standard was intended as “a guiding principle to which resort may be had in situations where no specific rule of the treaty is applicable or in reference to which the specific

⁵²¹ Memorandum dated March 28, 1947, from Vernon Setser to Seymour Rubin, NARA, Record Group 59, Department of State Lot Files, Walter Hollis Papers, quoted in K. Vandeveld, *The First Bilateral Investment Treaties*, 406.

rules of the treaty do not provide an adequate standard of treatment.”⁵²² Additionally, Vandeveld records that:

“the provision was intended ‘to suggest a general policy of liberal, rather than of narrow construction of the provisions of the treaty.’ Where more than one construction of the treaty language was equally possible, the construction that would lead to an equitable result was to be preferred. That is, it provided an interpretive principle for the remaining provisions of the treaty.”⁵²³

4.15 Turning to the cases that have considered the meaning of the term ‘fair and equitable treatment’, within the many arbitral awards of the past 10-15 years there have been various differing views expressed as to whether the fair and equitable treatment standard has its own autonomous meaning, what the standard comprises, and whether it is merely a reformulation of the customary international law minimum standard of treatment or whether, even if distinct, it is materially different. Iran’s position is that, so far as concerns the issues relevant to the current case, *on any view* the fair and equitable treatment standard in Article IV(1) will certainly be breached by conduct of the United States that:

- a. is arbitrary, grossly unfair, unjust or idiosyncratic, as to which a consideration of the proportionality of a given measure is appropriate; and/or
- b. is discriminatory;
- c. involves a lack of due process leading to an outcome which offends juridical propriety; and/or
- d. defeats the legitimate expectations of Iranian nationals and companies.⁵²⁴

⁵²² Instruction dated October 30, 1953, from the Department of State to the U.S. High Commissioner in Bonn, NARA, Record Group 59, Department of State File No. 611.62A4/10-653 quoted in K. Vandeveld, *The First Bilateral Investment Treaties*, 403.

⁵²³ K. Vandeveld, *The First Bilateral Investment Treaties*, 405-406, citing Instruction dated October 30, 1953, from the Department of State to the U.S. High Commissioner in Bonn, NARA, Record Group 59, Department of State File No. 611.62A4/10-653; Despatch dated February 26, 1954, from the U.S. High Commissioner in Bonn to the Department of State, NARA, Record Group 59, Department of State File No. 611.62A4/ 2-2654; Airgram dated December 31, 1951, from the Department of State to the U.S. Political Adviser in Tokyo, NARA, Record Group 59, Department of State File No. 611.944/12-751.

⁵²⁴ See, e.g., *Perenco Ecuador Limited v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Decision on Remaining Issues of Jurisdiction and Liability, 12 September 2014; *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004; *Philip Morris v. Uruguay*, paras. 320-324, 409-410, 419-420; *Blusun S.A., Jean-Pierre Lecorcier and Michael Stein v. Italian*

4.16 This interpretation finds considerable support in cases where the fair and equitable treatment standard is linked in a treaty provision to the customary international minimum standard,⁵²⁵ as well as in those cases where it is not.⁵²⁶ Each of the elements identified above is also supported by consideration of the object and purpose of the Treaty (see Chapter I above).

i. Treatment that is arbitrary, grossly unfair, unjust or idiosyncratic

4.17 As to treatment that is arbitrary, grossly unfair, unjust or idiosyncratic, these descriptors are largely self-explanatory. In a well-known passage from the *Elettronica Sicula S.p.A. (ELSI)* case, the term “arbitrary” was interpreted as meaning:

“not so much something opposed to a rule of law, as something opposed to the rule of law. ... It is a wilful disregard of due process of law, an act which shocks, or at least surprises, a sense of juridical propriety.”⁵²⁷

Although formulated with respect to an express treaty prohibition of arbitrary conduct,⁵²⁸ this test has been accepted and applied by many international arbitral tribunals in the context of the fair and equitable treatment standard.⁵²⁹

Republic, ICSID Case No. ARB/14/3, Final Award, 27 December 2016, paras. 318, 319(5); *Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/1-9, Award, 25 November 2015, paras. 179-180.

⁵²⁵ *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004, para. 98.

⁵²⁶ See, e.g., *Perenco Ecuador Limited v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Decision on Remaining Issues of Jurisdiction and Liability, 12 September 2014, para. 558; *Quiborax S.A. and Non-Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Award, 16 September 2015, para. 291; *Liman Caspian Oil BV and Dutch Investment BV v. Republic of Kazakhstan*, ICSID Case No. ARB/07/14, Award, 22 June 2010, para. 263, para. 285.

⁵²⁷ *Elettronica Sicula S.p.A. (ELSI)*, Judgment, *I.C.J. Reports 1989*, p. 15 at p. 76, para. 128.

⁵²⁸ The treaty provision in question is quoted by the Court in its Judgment in the *ELSI* case, *ibid*, at pp. 71-72, para. 120 and reads:

“The nationals, corporations and associations of either High Contracting Party shall not be subjected to arbitrary or discriminatory measures within the territories of the other High Contracting Party resulting particularly in: (a) preventing their effective control and management of enterprises which they have been permitted to establish or acquire therein; or, (b) impairing their other legally acquired rights and interests in such enterprises or in the investments which they have made, whether in the form of funds (loans, shares or other-wise), materials, equipment, services, processes, patents, techniques or otherwise”.

⁵²⁹ See, e.g., *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002, para. 127; *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Award, 31 October 2011, para. 319; *Duke Energy Electroquil Partners and Electroquil S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award, 18 August 2008,

4.18 It is well established that a measure will not be arbitrary for the purposes of the fair and equitable treatment standard if it is reasonably related to a rational policy. This, however, requires a consideration both as to the existence of a rational policy and the reasonableness of the act of the State in relation to the policy, as to which it is appropriate to consider the proportionality of the given measure. As noted by the arbitral tribunal in the *Electrabel* case:

*“Standard for ‘Arbitrariness’: ... this Tribunal agrees with the Saluka, AES, and Micula tribunals in that a measure will not be arbitrary if it is reasonably related to a rational policy. As the AES tribunal emphasised, this requires two elements: ‘the existence of a rational policy; and the reasonableness of the act of the state in relation to the policy. A rational policy is taken by a state following a logical (good sense) explanation and with the aim of addressing a public interest matter. Nevertheless, a rational policy is not enough to justify all the measures taken by a state in its name. A challenged measure must also be reasonable. That is, there needs to be an appropriate correlation between the state’s public policy objective and the measure adopted to achieve it. This has to do with the nature of the measure and the way it is implemented.’ In the Tribunal’s view, this includes the requirement that the impact of the measure on the investor be proportional to the policy objective sought. The relevance of the proportionality of the measure has been increasingly addressed by investment tribunals and other international tribunals, including the ECtHR. The test for proportionality has been developed from certain municipal administrative laws, and requires the measure to be suitable to achieve a legitimate policy objective, necessary for that objective, and not excessive considering the relative weight of each interest involved.”*⁵³⁰

4.19 The fair and equitable standard under Article IV(1) is of course intended to provide a measure of real protection and not only to indicate the Parties’ approval of fair and equitable treatment; and in seeking to identify whether the U.S. measures at issue are arbitrary, grossly unfair, unjust or idiosyncratic (i.e. grossly idiosyncratic⁵³¹) and/or

para. 378; *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, 18 September 2009, para. 291.

⁵³⁰ *Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/1-9, Award, 25 November 2015, para. 179, fns omitted, emphasis added.

⁵³¹ See *Perenco Ecuador Limited v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Decision on Remaining Issues of Jurisdiction and Liability, 12 September 2014, para. 599 (“The inclusion of words such as ‘arbitrary,’ the use of the adjectival modifiers ‘grossly’ in relation to ‘unfair, unjust or idiosyncratic’...implies a search for the ‘something more’ that distinguishes an act in violation of international law from the perceived unfairness occasioned by many governmental actions that do not give rise to a breach of international law. The challenge is to discern between the two.”)

proportionate, it is appropriate to consider the scope and impact of the measures, including so far as concerns their extra-territorial scope and impact:

- a. Where a given measure impacts on all nationals or companies of a particular State indiscriminately, regardless of any evidence or even suggestion that such nationals or companies are implicated in the alleged behaviour of which a given State complains, this is an obvious indication that the measure will be arbitrary, grossly unfair, unjust or idiosyncratic.
- b. Where a given measure is inconsistent with the general practice of States, or in breach of other standards of international law,⁵³² this will indicate that the measure is to be characterised as grossly unfair, unjust or idiosyncratic.⁵³³

ii. Treatment that is discriminatory

4.20 As to the second element identified at paragraph 4.15 above, there is an important distinction to be drawn between ‘discrimination’ and ‘differential treatment’: only ‘differential treatment’ that is not justifiable by differences in the circumstances in which the treatment occurs is ‘discriminatory’. Article IV(1) of the 1955 Treaty forbids only ‘discriminatory treatment’. The fair and equitable treatment standard in Article IV(1) does not require that Iranian nationals and companies be treated in precisely the same ways as their counterparts of U.S. or third party origin. However,

⁵³² As to the ability to have reference to such international law see e.g. ILC, Report of a study group on Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, UN doc. A/CN.4/L.682, para. 423 (13 Apr. 2006), quoted in *Tulip Real Estate and Development Netherlands B.V. v. Turkey*, ICSID Case No. ARB/11/28, Decision on Annulment, 30 Dec. 2015, para. 89. See also *Amoco International Finance Corporation v. The Government of the Islamic Republic of Iran, National Iranian Oil Company, National Petrochemical Company and Kharg Chemical Company Limited*, IUSCT Award No. 310-56-3, *I.L.M.* vol. 27, issue 5, p. 1320, at p. 1343, para. 112. See also *Short v. Iran*, IUSCT Award No 312-11135-3, (1987) 16 IUSCT Rep. 76; (1990) 82 *I.L.R.* 148, Dissenting Opinion of Judge Brower, at 16 IUSCT Rep. 89; 82 *I.L.R.* 164. See also *Chagos Arbitration*, Award, para. 219, available at files.pca-cpa.org/pcadocs/MU-UK%2020150318%20Award.pdf, referring to *Certain German Interests in Polish Upper Silesia, Preliminary Objections, Judgment of 25 August 1925, P.C.I.J. Series A, No. 6*, p. 18).

⁵³³ See e.g. *Noble Ventures Inc. v. Romania*, ICSID Case No. ARB/01/11, Award, 12 October 2005, paras. 177-178; *ADF Group Inc v. United States of America*, ICSID Case No. ARB(AF)/00/1, Award, 9 January 2003, para. 188. Note that in *ADF* the USA argued that such practice was relevant to the assessment of breach of Article 1105 of the NAFTA as a “review of the development of ‘relevant rules of international law applicable in the relations between the parties’”: Counter-Memorial of Respondent United States of America on Competence and Liability, 29 November 2001, p. 30.

any differential treatment of a national or company of the other party must not be based on unreasonable distinctions and demands.⁵³⁴

iii. Treatment that leads to an outcome which offends juridical propriety

4.21 As to the third element identified at paragraph 4.15 above, there will be a breach of the fair and equitable standard in Article IV(1) where there is a lack of due process leading to an outcome which offends juridical propriety, and in particular where there is conduct that would support a complaint of a denial of justice. According to the well-known definition of denial of justice in Article 9 of the Harvard Law School, Draft Convention on the Law of the Responsibility of States for Damages Done in Their Territory to the Person or Property of Foreigners:

“A state is responsible if an injury to an alien results from a denial of justice. Denial of justice exists when there is a denial, unwarranted delay or obstruction of access to courts, gross deficiency in the administration of judicial or remedial process, failure to provide those guarantees which are generally considered indispensable in the proper administration of justice, or a manifestly unjust judgment. An error of a national court which does not produce manifest injustice is not a denial of justice.”⁵³⁵

4.22 Paulsson explains that “Once it is established that the relevant act or omission imputable to the state, it simply cannot matter whether the doors to justice were blocked by executive fiat, legislative overreaching, or judicial obstreperousness.”⁵³⁶ It is, of course, not sufficient that the relevant measure was undertaken in compliance with municipal law and procedure. Further, it is not only the conduct of the domestic courts that can lead to a denial of justice in the current context, but also the conduct of any U.S. administrative or executive body that makes determinations relative to the rights of Iranian nationals or companies.

⁵³⁴ See, e.g., *Saluka Investments BV (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, para. 307, considering the fair and equitable treatment standard in the 1991 BIT between the Netherlands and the Czech and Slovak Federal Republic).

⁵³⁵ Harvard Law School, *Draft Convention on the International Responsibility of States for Injuries to Aliens* (Cambridge, Mass., 1961) and (1961) 55 *American Journal of International Law*, at pp. 548-584. Applied e.g. in *Liman Caspian Oil BV and Dutch Investment BV v. Republic of Kazakhstan*, ICSID Case No. ARB/07/14, Award, 22 June 2010, at para. 277; also quoted at J. Paulsson, *Denial of Justice in International Law* (Cambridge: C.U.P., 2005), at p. 96.

⁵³⁶ J. Paulsson, *Denial of Justice in International Law*, at p. 53.

iv. Protection of legitimate expectations

4.23 As to the final element (as identified at paragraph 4.15 above), i.e. protection of the legitimate expectations of Iranian nationals and companies, there are many recent statements as to the importance of this element within ‘fair and equitable treatment’ provisions such as Article IV(1),⁵³⁷ including where such provisions are being interpreted as synonymous with or by reference to the customary international law minimum standard.⁵³⁸

B. The USA’s obligation under Article IV(1) to refrain from unreasonable or discriminatory measures

4.24 Pursuant to the second part of Article IV(1) of the 1955 Treaty, the United States is subject to the further obligation that it “shall refrain from applying unreasonable or discriminatory measures that would impair [the] legally acquired rights and interests” of Iranian nationals and companies.⁵³⁹

4.25 The language employed by the Treaty Parties demonstrates the intention that the prohibition be broad in scope:

- a. It is “unreasonable *or* discriminatory” measures that are prohibited.
- b. The prohibition is of “unreasonable” measures, as opposed to “arbitrary” measures. A prohibition of arbitrary measures would have suggested a more stringent threshold of deficiency although even that higher threshold is met in the present case.

⁵³⁷ Cf. *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Judgment of 1 October 2018, p. 50, para. 162, finding that outside of the context of “treaty clauses providing for fair and equitable treatment” it had not been established that “there exists in general international law a principle that would give rise to an obligation on the basis of what could be considered to be a legitimate expectation.”

⁵³⁸ *Perenco Ecuador Limited v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Decision on Remaining Issues of Jurisdiction and Liability, 12 September 2014, para. 560, referring to *Saluka Investments BV (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006.

⁵³⁹ This is again a formulation that has been the subject of considerable arbitral and academic scrutiny in recent years. However, there may be considerable variation in the forms of provision that prohibit unreasonable or discriminatory measures, including to the effect that it is often arbitrary as opposed to unreasonable measures that are prohibited.

- c. Consistent with the object and purpose of the 1955 Treaty, what is unreasonable is to be assessed by reference to the friendly relations between the High Contracting Parties that the Treaty aims to secure and develop. This is confirmed by the fact that situations in which it is necessary to take measures to protect essential security interests are addressed separately in Article XX(1)(d), which affords a potential defence on the merits.
- d. As to the term “measures”, “in its ordinary sense the word is wide enough to cover any act, step or proceeding, and imposes no particular limit on their material content or on the aim pursued thereby”.⁵⁴⁰
- e. While it is not necessary for Iran to show a discriminatory intent on the part of the United States, evidence of such an intent may be taken into account when assessing breach such that differential treatment may not be justified on some legitimate basis.
- f. There is no qualification in terms of the severity of impairment.
- g. Protection is established in respect of both “rights” and “interests”, so long as these are legally acquired (e.g. not acquired through theft or fraud). The term “interest” naturally encompasses interests in property,⁵⁴¹ as is also consistent with the description of “property” in Article IV(2) (as “including interests in property”).
- h. The protection is not restricted by any territorial limitation on the place where the relevant “measures” are taken or where the legally acquired rights and interests of Iranian nationals and companies are located.

4.26 The determination of whether a given measure is reasonable requires consideration of (a) the existence of a rational policy, and (b) the reasonableness of the measure in relation to that policy.

⁵⁴⁰ *Fisheries Jurisdiction (Spain v. Canada)*, *Jurisdiction of the Court, Judgment*, *I.C.J. Reports 1998*, p. 432 at p. 460, para. 66.

⁵⁴¹ See e.g. *Sedco, Inc v. Iran*, Award 309-129-3, 15 IUSCT 34, footnote 14.

- a. For a policy to be rational, the State adopting it must be following a logical (i.e. coherent and articulated) explanation and with the aim of addressing a public interest matter. A relevant factor in assessing whether a policy is rational will be whether the measures are consistent with rules of customary international law or contrary to the practice of other States;⁵⁴² and
- b. For an action to be reasonable, there must be an appropriate correlation between the state's public policy and the measure adopted to achieve it and, in the implementation of that policy, the state's acts must have been appropriately tailored to the pursuit of that rational policy with due regard for the consequences imposed on those entitled to the treaty protection.⁵⁴³ This entails consideration of whether the given measure is proportionate, including whether it is necessary.⁵⁴⁴

C. The USA's obligation under Article IV(1) to assure effective means of enforcement for lawful contractual rights

- 4.27 Pursuant to the final protection of Article IV(1), each High Contracting Party "shall assure [with respect to nationals and companies of the other High Contracting Party] that their lawful contractual rights are afforded effective means of enforcement, in conformity with the applicable laws".
- 4.28 Application of this provision in Article IV(1) requires as an initial step the identification of relevant "lawful contractual rights". Insofar as such rights are identified, it is to be noted that there is a positive obligation. The Article stipulates that each Party must "assure" that such rights are "afforded effective means of

⁵⁴² See e.g. *Noble Ventures Inc. v. Romania*, ICSID Case No. ARB/01/11, Award, 12 October 2005, paras. 177-178; *ADF Group Inc v. United States of America*, ICSID Case No. ARB(AF)/00/1, Award, 9 January 2003, para. 188. Note that in *ADF* the USA argued that such practice was relevant to the assessment of breach of Article 1105 of the NAFTA as a "review of the development of 'relevant rules of international law applicable in the relations between the parties'": Counter-Memorial of Respondent United States of America on Competence and Liability, 29 November 2001, p. 30.

⁵⁴³ See e.g. *Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania, Final Award, 11 December 2013 (ICSID Case No. ARB/05/20)*, para. 525.

⁵⁴⁴ See e.g. *Electrabel S.A. v. Hungary, Award, 25 November 2015 (ICSID Case No. ARB/07/19)*, para. 179. As to the test for proportionality, see further para. 4.18 above.

enforcement”: it is not restricted to merely stipulating a negative obligation, such as an obligation not to engage in conduct that would interfere with the means of enforcement. Nor is the provision restricted to any specific means of enforcement such as judicial enforcement. The requirement is that the means of enforcement be “effective”.

4.29 The protection to be accorded is also not restricted by any territorial limitation. It follows from the essentially territorial nature of enforcement jurisdiction under international law that, in practice, the protection will generally concern such enforcement in the territory of the other High Contracting Party. That does not, however, exclude the possibility that a Party might purport to exercise enforcement jurisdiction extra-territorially, and that such extra-territorial measures could actively undermine the enforcement of the lawful contractual rights of Iranian nationals and companies.

4.30 Both as a matter of its ordinary meaning, and as follows from the context of this provision alongside, but separate from, the obligation to accord fair and equitable treatment, the obligation to afford “effective means of enforcement” is not merely a restatement of the prohibition on denial of justice (one of the elements of the fair and equitable treatment standard): it is a provision of broader scope, that requires a legal framework that positively enables, and does not actively undermine, effective means of enforcement (whether executive, legislative or judicial in nature) in conformity with the applicable laws.

D. The USA’s obligations under Article IV(2) with respect to constant protection and security and the prohibition on taking

4.31 Article IV(2) of the 1955 Treaty of Amity provides, so far as relevant:⁵⁴⁵

“Property of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less

⁵⁴⁵ Article IV(2) of the Treaty of Amity falls within the claim set out by Iran in its Application of 16 July 2018 and forms part of the legal grounds on which the claim is based, though this provision was not mentioned expressly in Iran’s Application.

than that required by international law. Such property shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.”

4.32 Article IV(2) thus contains two separate limbs, the first establishing a right to most constant protection and security, the second establishing a prohibition of takings. Under both limbs, the protection is (again) afforded to “companies” as broadly defined and without qualification.

4.33 The two limbs of Article IV(2) are considered further below.

i. Iran’s entitlement to the most constant protection and security of the property and interests in property of its nationals and companies

4.34 As follows from the ordinary meaning of the words “most constant protection and security”, the first sentence of Article IV(2) entitles the property of Iranian nationals and companies to a high level of physical and legal protection. The language used is not qualified in any way, and whilst there is reference to the level of protection “required by international law”, this operates as a “floor”, i.e. in no case can the level of protection afforded be less than that required as a matter of international law.

4.35 That the protection extends to legal as well as physical protection is confirmed by the approach of the Chamber in the *ELSI* case by reference to the “most constant protection and security” provision in the 1948 Italy-United States FCN Treaty.⁵⁴⁶ At the minimum, and consistent with the approach of the Chamber in the *ELSI* case, the Treaty of Amity requires that the property of Iranian nationals and companies must receive protection as required by international law, i.e. legal protection as well as

⁵⁴⁶ *Elettronica Sicula S.p.A. (ELSI), Judgment, I.C.J. Reports 1989*, p. 15 at p. 66, para. 111, applying Article V(1) of the 1948 Italy-United States FCN Treaty. That provision may be seen as a less stringent standard than Article IV(2) of the Treaty of Amity in that the requirement is that:

“The nationals of each High Contracting Party shall receive, within the territories of the other High Contracting Party, the most constant protection and security, and shall enjoy in this respect the full protection and security required by international law.”

physical protection, including through protection against any executive or legislative measures formulated specifically to remove legal protections.

ii. Iran's entitlement to freedom from expropriation of the property and interests in property of its companies and nationals

- 4.36 The second sentence of Article IV(2) of the 1955 Treaty protects property from being “taken”, with the term “property” expressly stated to include interests in property (as is implicit in the reference to “property” elsewhere in Article IV).
- 4.37 The term “taking” may be understood as synonymous with “expropriation” and, as a matter of its ordinary meaning, comprises any form of taking, whether direct or indirect. What matters for the purposes of the provision is whether the property or interest in property is “taken”, not how it is “taken”; and in this respect the prohibition in Article IV(2) is consistent with the prohibition of both direct and indirect takings that has developed as a matter of customary international law.⁵⁴⁷
- 4.38 There is no restriction as to the identity of the actors to whom the prohibition applies. So far as concerns the facts of the instant case, the prohibition is applicable (at least) to acts of the executive, the legislature and the judiciary.
- 4.39 The context of the second sentence of Article IV(2) is important to its interpretation.
- a. The prohibition of taking forms one element in a series of protections accorded to qualifying nationals and companies. The correct starting point must be that it is intended to form an element of protection differing from but complementary to the other protections set out in the Treaty, including the protection with respect to most constant protection and security.
 - b. On this basis, by reference to the prohibition of impairment in Article IV(1), Article IV(2) is correctly construed as requiring something more than mere impairment of legally acquired rights and interests, i.e. Article IV(2) requires

⁵⁴⁷ See, e.g., G. C. Christie, ‘What constitutes a taking of property under international law?’ 38 *B.Y.B.I.L.* 307 (1962); R. Higgins, *The taking of property by the state: recent developments in international law*, Recueil des cours, 1982 III, Vol. 176, Chapter IV, at p. 322 *et seq.*

some form of actual or substantial taking. However, whereas in the case of the prohibition on impairment, the nature of and intent behind the impairment is critical, (i.e., the impairment must result from unreasonable or discriminatory measures), there is no such requirement in the second sentence of Article IV(2). All that matters is that property has been “taken”.

- c. Thus the focus in this provision is on the impact of the measure, not its nature or the intent behind it.
- d. As with Article IV(1), and in contradistinction to the first sentence of Article IV(2) which is by definition concerned with acts within the territorial jurisdiction of a State, there is no territorial limitation with respect to the prohibition of takings.

4.40 As is very frequently the case with treaty prohibitions of expropriation, Article IV(2) establishes an exception with respect to a limited category of takings, i.e. takings for a public purpose that are accompanied by the prompt payment of just compensation. It follows that an expropriation under Article IV(2) is not inevitably wrongful. There is, however, no need to dwell on the precise nature of these exceptions: there is in no question of compensation having been (or being) paid to Iranian nationals or companies.⁵⁴⁸

E. The USA’s obligations under Article V(1) with respect to permitting the purchase and disposal of personal property of all kinds

4.41 Article V(1) of the 1955 Treaty of Amity provides, so far as relevant:⁵⁴⁹

“Nationals and companies of either High Contracting Party shall be permitted, within the territories of the other High Contracting Party: ... (b) to purchase or

⁵⁴⁸ See, e.g., U.S. Department of State, *Memorandum of the U.S. Department of State Legal Adviser on the Application of the Treaty of Amity to Expropriations in Iran*, 13 October 1983 (IM, Annex 5):

“the Treaty of Amity expressly requires Iran to pay compensation for the expropriation of property owned by U.S. nationals. Such compensation must represent the full equivalent of the expropriated property and must be paid within a reasonable time after expropriation in a readily convertible currency.”

⁵⁴⁹ Article V(1) of the Treaty of Amity falls within the claim set out by Iran in its Application of 16 July 2018 and forms part of the legal grounds on which the claim is based, though this provision was not mentioned expressly in Iran’s Application.

otherwise acquire personal property of all kinds; and (c) to dispose of property of all kinds of sale, testament or otherwise. The treatment accorded in these respects shall in no event be less favorable than that accorded to nationals and companies of any third country.”

- 4.42 As follows from the ordinary meaning of the words “personal property of all kinds”, Article V(1) is intended to confer a broad obligation to ensure that Iranian nationals and companies are permitted to purchase or acquire property in the U.S.
- 4.43 The words “purchase or otherwise acquire” are stated without limitation to any particular method of purchase or acquisition and, as follows from the ordinary meaning of the term “otherwise”, no such limitation was intended. The obligation in Article V(1) therefore extends to all means of purchase or acquisition of personal property of all kinds by Iranian nationals and companies, including indirect purchase of acquisition through an agent or representative in the U.S.
- 4.44 Additionally, Article V(1) imposes a related obligation of most favoured nation treatment, i.e. the treatment afforded to Iranian nationals and companies “shall in no event be less favourable than that accorded to nationals and companies of any third country”.

SECTION 3.

BREACHES OF ARTICLE IV(1), IV(2) AND V(1) OF THE TREATY OF AMITY

A. Breach of the fair and equitable treatment obligation in Article IV(1)

- 4.45 The acts of the USA have, and continue to, cut across a number of the elements of fair and equitable treatment identified in paragraph 4.15 above, and have thereby breached this first limb of Article IV(1).

i. Breach of the FET standard through conduct that is arbitrary, grossly unfair, unjust and idiosyncratic

4.46 The section below outlines how the U.S. measures are arbitrary and grossly unfair, unjust and idiosyncratic and therefore breach the obligation of fair and equitable treatment owed with respect to Iranian nationals and companies. There is a particular focus on the specifically targeted sectors of Iran’s economy including oil and gas and energy, civil aviation, automotive, financial and banking, shipping and shipbuilding, and insurance. This section also examines certain other areas of particular impact, namely impacts on the Rial and on health.

4.47 At the outset, Iran makes three overarching points.

4.48 First, the effect of the U.S. sanctions is to destroy, remove and harm the property and enterprises of Iranian nationals and companies (including State-owned or controlled companies and any person acting for or on behalf of Iran⁵⁵⁰) through, *inter alia*, compelling the cancellation or suspension of and otherwise interfering with contractual rights and business deals concluded with U.S. and non-U.S. nationals and companies, and ensuring that U.S. and non-U.S. companies are no longer prepared to invest in, or to trade with Iran. Indeed, the U.S. measures have led to and/or are leading to the very destruction of Iranian companies and businesses. For example, a press report dated 19 November 2018 states that “Reuters interviews with dozens of business owners across Iran show hundreds of companies have suspended production and thousands of workers are being laid off because of a hostile business climate mainly caused by new U.S. sanctions.”⁵⁵¹

4.49 Second, the overt objective of the U.S. measures is to cause serious harm to the economy of the State of Iran and to force a change in the alleged behaviour of Iran

⁵⁵⁰ E.O. 13846, section 16(e) defines the “Government of Iran” as including “the Government of Iran, any political subdivision, agency, or instrumentality thereof, including the [CBI], and any person owned or controlled by, or acting on behalf of, the Government of Iran.” (IM, Annex 35)

⁵⁵¹ B. Sharafedin, “Iranian jobs go as U.S. sanctions start to bite”, *The Business Times*, 19 November 2018 (IM, Annex 113).

(and no doubt a change of the government) in a way that the U.S. considers would be to its advantage. While Iranian nationals and companies have been singled out, since the ultimate target is the State of Iran, the measures are indiscriminate and exorbitant by nature:

- a. The U.S. measures targeting Iranian nationals and companies amount to a form of collective punishment against the Iranian people, imposed by the USA through executive fiat, in respect of alleged acts of Iran.
- b. Through the sectoral measures identified in Chapter II (i.e. those measures of general application through which specific sectors of Iran's economy are targeted), Iranian nationals and companies have been targeted without distinction and, in disregard of their separate juridical status, they have been assimilated to Iran on the grounds of their nationality and their importance to Iran's economy.
- c. The operation of the U.S. measures is not confined to attempts to regulate the property and enterprises of Iranian nationals and companies in the territory of the U.S., or their activities with U.S. companies. They are also specifically aimed at interfering with the property and enterprises of *all* Iranian nationals and companies wherever located and their economic relations and activities with non-U.S. nationals and companies.

4.50 Third, that the U.S. measures at issue in the present case are indeed arbitrary, grossly unfair, unjust and idiosyncratic is evident from, for example:

- a. The fact that the imposition of such U.S. sanctions was contrary to the clearly expressed view of many other States, including the other parties to the JCPOA.
- b. The statement of the UN Special Rapporteur on the negative impact of unilateral coercive measures, in August 2018, that the U.S. sanctions are “unjust and harmful”.⁵⁵²

⁵⁵² OHCHR, “Iran sanctions are unjust and harmful, says UN expert warning against generalised economic war”, 22 August 2018 (IM, Annex 130).

- c. The statement of the UN Special Rapporteur, in his 30 August 2018 Report to the Human Rights Council that “there is a general understanding that extraterritorial sanctions disregard commonly accepted rules governing the jurisdiction of States under international law and consequently that such measures are unlawful”.⁵⁵³ In this context, the Special Rapporteur “noted with satisfaction the principled position of the European Union, which consistently considers the extraterritorial application of national legislation on unilateral sanctions as a breach of international law”.⁵⁵⁴
- d. The statement of the UN Special Rapporteur, in a statement issued on 6 May 2019, that “[t]he extraterritorial application of unilateral sanctions is clearly contrary to international law ... I am deeply concerned that one State can use its dominant position in international finance to harm ... the Iranian people”.⁵⁵⁵
- e. The initiatives which have or are being taken by the international community to seek to mitigate their harmful effects, including by means of the EU ‘blocking regulation’ and the INSTEX Special Purpose Vehicle for trade.

(a) Oil and gas and energy

4.51 As explained in Chapter II, the U.S. measures specifically target, directly and indirectly, *all* Iranian nationals and companies who are determined by the USA to be part of the “energy sector of Iran”. So far as Iran is aware, despite re-imposing the measure in August 2018, the USA has not yet adopted a definition of “energy sector of Iran”, leading to even greater uncertainty. However, OFAC has indicated that it expects to adopt a very broad definition “to include activities involving the

⁵⁵³ UN Doc. A/HRC/39/54 (30 August 2018), para. 35.

⁵⁵⁴ UN Doc. A/HRC/39/54/Add.1 (17 July 2018), para. 33. See also GA Res. 47/19 (1992), “Calls upon all States to refrain from promulgating and applying laws and measures of the kind referred to in the preamble to the present resolution *in conformity with their obligations under the Charter of the United Nations and international law* and with the commitments that they have freely entered into in acceding to international legal instruments that, inter alia, reaffirm the freedom of trade and navigation...” (emphasis added).

⁵⁵⁵ OHCHR, “US sanctions violate human rights and international code of conduct, UN expert says”, 6 May 2019 (IM, Annex 97).

exploration, extraction, production, refinement, or liquefaction of petroleum, natural gas, or petroleum products in Iran”.⁵⁵⁶

4.52 By their design and effect, these measures require U.S. and non-U.S. persons to interfere with the property and enterprises of Iranian nationals and companies who the USA has determined to be part of the “energy sector of Iran”.⁵⁵⁷ In summary:

- a. All property (including interests in property) of such persons that is or comes to be either in the U.S. or in the possession/control of a U.S. person are “blocked”: E.O. 13846, section 1(a)(iv).
- b. U.S. and non-U.S. persons are prohibited from knowingly providing significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of a person who is part of the “energy sector of Iran”: IFCA, section 1244(c)(1).⁵⁵⁸
- c. U.S. and non-U.S. persons are prohibited from knowingly selling, supplying or transferring to or from Iran of significant goods and services used in connection with the energy sector, including specifically NIOC, NITC and IRISL: IFCA, section 1244(d). Additionally, foreign financial institutions are prohibited from knowingly conducting or facilitating such transactions: IFCA, section (d)(2).
- d. U.S. and non-U.S. persons are prohibited from selling, supplying or transferring (directly or indirectly) graphite, raw or semi-finished metals such as aluminium and steel, coal and industrial software which is to be used in connection with the energy sector: IFCA, section 1245(a). Additionally, foreign financial institutions are prohibited from conducting or facilitating such transactions: IFCA, section 1245(c).
- e. U.S. and non-U.S. persons are prohibited from knowingly engaging in significant transactions for the purchase, acquisition, sale, transport, or marketing of petroleum, petroleum products or petrochemical products from

⁵⁵⁶ OFAC FAQ’s: Iran sanctions, Question 293 version as of 31 March 2019 (IM, Annex 50).

⁵⁵⁷ The only exception identified in E.O 13846 concerns certain specified natural gas projects: see section 10 (IM, Annex 35). See also subsection 1247(e) of the IFCA (IM, Annex 19).

⁵⁵⁸ See also section 5 of ISA (IM, Annex 15).

Iran: E.O. 13846, sections 3(a)(ii)-(iv). Additionally, foreign financial institutions are prohibited from knowingly conducting or facilitating such transactions: E.O. 13846, sections 2(a)(iv)-(v).

- 4.53 Additional measures specifically target NIOC and NICO, both of which are Iranian “companies”. U.S. and non-U.S. personas are prohibited from materially assisting, sponsoring, or providing financial, material or technological support for, or goods or services in support of, NIOC or NICO (including any entity owned or controlled by, or operated on behalf of, those companies): E.O. 13846, section 1(a)(ii). Further, foreign financial institutions are prohibited from knowingly conducting or facilitating any significant financial transaction with NIOC or NICO, subject only to limited exceptions: E.O. 13846, section 2(a)(iii).
- 4.54 Additional measures apply with respect to the provision of insurance services to any activity in the energy sector (see para. 4.77 below).
- 4.55 Moreover, the re-designation of numerous Iranian oil, petroleum and petrochemical companies (including NIOC, NICO, NITC and NPC) on the SDN List, triggered numerous sanctions which impose severe penalties on U.S. and non-U.S. persons for dealing with those companies. In summary:
- a. U.S. and non-U.S. persons are prohibited from materially assisting, sponsoring, or providing financial, material, or technological support for, or goods and services to or in support of, those companies: E.O. 13846, section 1(a)(iii).
 - b. U.S. and non-U.S. persons are prohibited from knowingly providing significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of those companies: E.O. 13846, section 1(a)(iv).
 - c. Foreign financial institutions are penalised for knowingly conducting or facilitating any significant financial transaction on behalf of those companies: E.O. 13846, section 2(a)(ii); IFCA, section 1247(a).

4.56 As explained in Chapter III, the U.S. measures have – as intended – radically and adversely impacted on the property and enterprises of Iranian nationals and companies involved in the oil and gas and energy sector. This impact has been celebrated by the USA. In summary, as a result of the U.S. measures:

- a. Numerous non-U.S. companies – including by way of example Total SA (French), PGNiG (Polish), Lukoil and Zarubezhneft (both Russian), Pertamina (Indonesian) and CNPC (Chinese) – have terminated or suspended (or otherwise failed to perform) contracts entered into or business deals with Iranian companies and nationals (see para. 3.37 above). As was stated by Total in explaining its withdrawal on 7 July: “There’s not a single international company like Total who can work in any country with secondary sanctions. ... It’s impossible, let me be clear, to run an international company like Total without having access to U.S. financing or to U.S. shareholding”.⁵⁵⁹
- b. Major suppliers of essential services and equipment have refused to participate in tenders for Iranian companies and nationals, including IOOC, as is explained, for example, in the witness statement of the Managing Director of the IOOC (see para. 3.42 above).⁵⁶⁰ For example, all of Sinopec’s suppliers for a project to upgrade the Abadan Refinery (including Chinese companies) have withdrawn, citing the U.S. measures (see para. 3.38 above). Similarly, the French energy company Engie announced that it would end its engineering contracts in Iran by November 2018.⁵⁶¹
- c. International oil companies have terminated or failed to renew agreements concluded with Iranian national and companies for the purchase of oil. For example, in order to comply with the U.S. measures, the refiners of France, Spain, Japan and South Korea have reduced imports of Iranian oil to zero (see para. 3.33 above). Even non-U.S. companies that may be willing to deal with Iran are unable to do so due to the impact in precluding access to the

⁵⁵⁹ T. Di Christopher & S. Sedgwick, “U.S. sanctions mean no big oil company can risk doing business with Iran, Total CEO says”, *CNBC*, 20 June 2018 (IM, Annex 237).

⁵⁶⁰ IOOC 1 May 2019 Statement, p. 1 (IM, Annex 207). See also NIOC 23 April 2019 Statement, para. 6 (IM, Annex 205).

⁵⁶¹ G. De Clercq, “Engie says to end engineering contracts in Iran by November”, *Reuters*, 18 May 2018 (IM, Annex 233).

international banking,⁵⁶² shipping and insurance markets. For example, in June 2018, the South Korean company Daelim cancelled a USD 2 billion contract for the Esfahan Refinery Upgrading Project because, as a result of the U.S. measures, it was impossible to procure financing.⁵⁶³ According to a recent statement of a senior U.S. State Department official, around USD 10 billion in revenue has been lost since November 2018.⁵⁶⁴ A recent statement of the International Energy Agency confirms that the volume of Iranian shipments of crude and condensates is around 1.7 million barrels per day lower than in May 2018.⁵⁶⁵

(b) Financial and banking

4.57 The U.S. measures also specifically target the Iranian financial sector, and in particular Iranian banks including the CBI. By their design and effect, in an effort to cut the Iranian financial and banking sectors off from international markets, the U.S. measures require U.S. and non-U.S. persons to interfere with the property and enterprises of Iranian nationals and companies which are part of those sectors. As further explained in Chapter II:

- a. All property (including interests in property) of an Iranian financial institution which is in or comes within either the U.S. or the possession/control of a U.S. person, is blocked and all transactions are prohibited: NDAA 2012, section 1245(c).
- b. Foreign financial institutions are prohibited from knowingly conducting or facilitating any significant financial transaction with the CBI or any other Iranian financial institution on the SDN list: NDAA 2012, section 1245(d); IFCA, section 1247(a).

⁵⁶² See e.g. NIGC 30 April 2019 Statement, paras. 5-10 (IM, Annex 206); NIOC 23 April 2019 Statement, para. 6(ii), (IM, Annex 205).

⁵⁶³ H. Choi, "South Korea's Daelim industrial says \$2.08 billion order from Iran cancelled", *Reuters*, 1 June 2018 (IM, Annex 235).

⁵⁶⁴ F. Tan, "U.S. says Iran has lost \$10 billion in oil revenue due to sanctions", *Reuters*, 13 March 2019 (IM, Annex 249).

⁵⁶⁵ International Energy Agency, "IEA statement on global oil markets", 23 April 2019 (IM, Annex 216).

- c. U.S. and non-U.S. persons are prohibited from materially assisting, sponsoring, or provided financial, material, or technological support for, or goods or services in support of, the purchase or acquisition of U.S. bank notes by the Government of Iran (defined very broadly to include any state-owned company, including specifically the CBI): E.O. 13846, section 1(a)(i). A similar prohibition applies with respect to support or goods or services for the CBI specifically: E.O. 13846, section 1(a)(ii).
- d. Foreign financial institutions are specifically penalised for enabling or facilitating direct or indirect access to specialised financial messaging services for the CBI or a designated financial institution: TRA, section 220. In this context, Iran recalls that all Iranian banks have been included on the SDN List.

4.58 In addition to seeking to block all forms of cash transactions, the U.S. measures also seek to prevent other forms of transactions. U.S. and non-U.S. persons are prohibited from selling, supplying or transferring (directly or indirectly), to or from Iran, graphite, raw or semi-finished metals such as aluminium and steel, coal, and industrial software which is to be used by Iran as a medium for barter, swap or any other exchange or transaction: s.1245(a)(1)(B) IFCA. Additionally, foreign financial institutions are prohibited from conducting or facilitating such financial transactions: IFCA, section 1245(c).

4.59 As follows from the above, certain of the U.S. measures specify that they apply with respect to the CBI. Certain of the measures apply irrespective of any SDN designation of the CBI, whilst the ability of the CBI to engage in international transaction is of course essential to the functioning of the economy of Iran.

4.60 Moreover, the addition of the majority of Iranian financial institutions (each of which is a “company” within the meaning of the Treaty of Amity), including for example the CBI and Parsian Bank, to the SDN List triggered numerous sanctions which impose severe penalties on U.S. and non-U.S. persons for dealing with those companies. In summary:

- a. U.S. and non-U.S. person are prohibited from materially assisting, sponsoring, or providing financial, material, or technological support for, or goods and services to or in support of, those banks: E.O. 13846, section 1(a)(iii).
- b. U.S. and non-U.S. persons are prohibited from knowingly providing significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of those banks: E.O. 13846, section 1(a)(iv).
- c. Foreign financial institutions are prohibited from knowingly conducting or facilitating any significant financial transaction on behalf of those banks: E.O. 13846, section 2(a)(ii); IFCA, section 1247(a).

4.61 As explained in Chapter III, the U.S. measures have radically and adversely impacted on the property and enterprises of Iranian nationals and companies involved in the financial and banking sector. In summary, as a result of the U.S. measures:

- a. Iranian banking institutions have been cut off from the international banking community and expelled from the SWIFT financial messaging system (see paras. 3.9-3.11 above).
- b. Numerous non-U.S. banks across the world have withdrawn from financing agreements or suspended cooperation with Iranian banks (see paras. 3.13-3.17 above), meaning that they are refusing to accept transfers or to provide correspondent services.
- c. Iranian banks are radically hampered in their ability to issue or receive payment of funds for goods and services purchased or sold by Iranian nationals and companies which are to be imported into or exported from Iran (see paras. 3.13-3.15 above).
- d. Multiple foreign banks are refusing to execute new international banking guarantees and letters of credit with Iranian counterparts and, in some cases, refusing to perform obligations previously assumed under executed guarantees and letters of credit (see paras. 3.16-3.17 above).

- e. Foreign financial institutions have closed bank accounts in the name of Iranian banks, which are unable to access the funds (see 3.21-3.22 above).

4.62 The practical impact of the U.S. measures targeting the financial and banking sectors spreads much further, affecting Iranian nationals and companies generally. For example, the Secretariat of the International Chamber of Commerce has stated that “[a]s a consequence [of the U.S. measures] the processing of payments made directly or indirectly on behalf of Iranian legal and physical persons is no longer possible at the banks level” and that without a licence issued by OFAC “the ICC Secretariat will not be in a position to receive ... payment” from any Iranian company or national.⁵⁶⁶

(c) Civil aviation

4.63 As explained in Chapter II, the U.S. measures also specifically target the Iranian civil aviation sector. By their design and effect, the U.S. measures require U.S. and non-U.S. persons to interfere with the property and enterprises of Iranian nationals and companies who are part of that sector. In summary, the combined effect of the revocation of the SLP and General License I is that since August 2018:

- a. All specific licenses for the export or reexport of commercial passenger aircraft and related parts and services to Iran which had been issued pursuant to the SLP have been revoked.
- b. U.S. persons are unable to request specific authorisation to engage in transactions for the export or reexport of commercial passenger aircraft and related parts and services to Iran. The same restriction applies to non-U.S. persons insofar as 10% of the products comprising the aircraft or parts to be exported originate from the U.S.
- c. U.S. persons are no longer authorised to engage in activity ordinarily incident to entering into contracts authorised under the SLP.

⁵⁶⁶ Letter from the ICC dated 3 April 2019 (redacted) (IM, Annex 185).

4.64 Moreover, the designation of Iran Air and Zagros Airlines, together with other Iranian civil aviation companies and civil aircraft, pursuant to E.O. 13382, triggers numerous sanctions which impose severe penalties on U.S. and non-U.S. persons for dealing with those companies or aircraft. In summary:

- a. U.S. and non-U.S. persons are prohibited from materially assisting, sponsoring, or providing financial, material, or technological support for, or goods and services to or in support of, such entities: E.O. 13846, section 1(a)(iii).
- b. U.S. and non-U.S. persons are prohibited from knowingly providing significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of such entities: E.O. 13846, section 1(a)(iv); IFCA, section 1244(c)(1).
- c. Foreign financial institutions are prohibited from knowingly conducting or facilitating any significant financial transaction on behalf of such entities: E.O. 13846, section 2(a)(ii); IFCA, section 1247(a).

4.65 As explained in Chapter III, the U.S. measures have radically and adversely impacted on the property and enterprises of Iranian nationals and companies involved in the civil aviation sector. In summary, as a result of the U.S. measures:

- a. Numerous agreements concluded by Iranian companies (including Iran Air, Iran Aseman Airlines, Zagros Airlines, Kish Air, Qeshm Airlines and Iran Air Tours) for the purchase of civil aircraft with an estimated total value of USD 58 billion have been terminated or indefinitely postponed (see para. 3.50 above).
- b. Numerous foreign companies have ceased cooperation with Iranian airlines (including Iran Air and Zagros Airlines) and terminated or suspended contractual agreements for the supply of fuel,⁵⁶⁷ spare parts⁵⁶⁸ and equipment and services (including repair and maintenance, pilot and personnel training,

⁵⁶⁷ Letter from Dunlop to Kish Air dated 22 May 2018 (IM, Annex 260).

⁵⁶⁸ Email from a jet fuel supplier to Iran Air, 5 November 2018 (redacted) (IM, Annex 272).

ground handling, on-airport fuelling and airworthiness information), both in Iran and abroad (see para. 3.51-3.54 above).⁵⁶⁹

- c. Iranian airline companies are unable to receive transfers of payments for services rendered⁵⁷⁰ and they are also unable to access any financial settlement services through the IATA (see para. 3.51 above).⁵⁷¹

4.66 On 11 November 2018, the Civil Aviation Organization of Iran filed a statement with the ICAO Council regarding the U.S. measures targeting the civil aviation sector, stating that “such restrictions will ... block the access of peoples and nations of the world to safe, economical, efficient and regular air transport”.⁵⁷²

4.67 Further, it is recalled that the Court’s Order of 3 October 2018 specifically required the USA to “remove, by means of its choosing, any impediments arising from the measures announced on 8 May 2018 to the free exportation to the territory of the Islamic Republic of Iran of ... spare parts, equipment and associated services (including warranty, maintenance, repair services and inspections) necessary for the safety of civil aviation”, and to “ensure that licences and necessary authorizations are granted and that payments and other transfers of funds are not subject to any restriction in so far as they relate to [such] goods and services”. As appears from the Introduction above, the USA has failed to provide any information as to any specific steps taken

⁵⁶⁹ See e.g. email from a non-U.S. company to Iran Air dated 22 May 2018 stating “[s]ince 8th May 2018 we are no longer able to offer to sell you any item ... that means that all orders which have not been delivered by 31st July 2018 have to be canceled” (IM, Annex 261); email from a non-U.S. aircraft engine parts supplier to Iran Air dated 31 May 2018 (redacted) stating that it “must suspend all exportations, including but not limited to technical clarifications, engine health monitoring and spare parts” (IM, Annex 262); email from a non-U.S. aircraft tyres supplier to Iran Air dated 6 June 2018 stating “we have been notified by our U.S. Owners, and Lawyers, that we currently cannot supply further Tyres to Iran Air” (IM, Annex 263); letter from a non-U.S. service provider to Iran Air dated 17 July 2018 (IM, Annex 266); email from a non-U.S. aviation service provider to Iran Air dated 24 July 2018 (IM, Annex 268); letter from a non-U.S. equipment supplier to Iran Air dated 30 August 2018 stating “[d]ue to the new US sanctions against ... Iran ... we are threatened by the so-called secondary sanctions in case we do further business with any Iranian company!” (IM, Annex 269).

⁵⁷⁰ See e.g. letter from a French bank to Iran Air dated 17 September 2018 (IM, Annex 271) closing Iran Air’s account.

⁵⁷¹ Letter from IATA to Iran Air dated 14 September 2018 (IM, Annex 270): “In short, the re-imposed U.S. sanctions will make it impossible for IATA to offer any financial settlement services to Iranian entities, whether in or outside of Iran, for travel agent, interline or other transactions”.

⁵⁷² Letter from Civil Aviation Organization of Iran to ICAO dated 11 November 2018, enclosing official statement dated 27 October 2018, p. 3 (IM, Annex 259).

so as to comply with this Order. So far as Iran is aware, based on the information available to it, the USA is in breach thereof. Notwithstanding the Court's Order, numerous foreign companies have refused to supply Iranian airlines (including Iran Air and Zagros Airlines) with goods and services, citing the U.S. measures.⁵⁷³ For example, on 17 November 2018, Zagros Airlines wrote to Boeing, noting the Court's Order of 3 October 2018, and requesting maintenance data. In its reply of 20 November 2018, Boeing stated:

“the export license that Boeing had been using to provide conditional support to Iranian airlines expired in June 2017 and has not been renewed by the United States Government. ... Boeing cannot respond to your request because at the present time we are not authorized to provide any technical support or technology exports to Iran.”⁵⁷⁴

4.68 As the President of the Iranian Civil Aviation Organization explains in his witness statement:

“[D]ue to the re-imposition of the U.S. sanctions, maintaining the safety [of civil aircraft] has become very difficult, very complicated and very expensive for our administration and for Iranian airlines companies. ...the U.S. sanctions are directly impeding the Civil Aviation Organization of Iran [from] guarantee[ing] and ensur[ing] the safety of the lives of passengers, crews and other customers of Iranian airlines.”⁵⁷⁵

(d) The automotive sector

4.69 The U.S. measures also specifically target the “automotive sector of Iran”, which is defined very broadly as meaning “the manufacturing or assembling in Iran” of all heavy and light vehicles as well as original equipment and after-market parts: E.O. 13846, section 3(a)(i). By their design and effect, the U.S. measures require U.S.

⁵⁷³ See email from a fuel supplier to Iran Air dated 5 November 2018 (redacted) (IM, Annex 272) (“[d]ue to the imposed sanctions against Iran, our supplier ... will not carry out any further fuel deliveries at Hamburg Airport ... our hands are tied”); letter from Airbus to Zagros Airlines dated 11 November 2018 (IM, Annex 273) (citing “Export Control Restrictions”); letter from Boeing to Zagros Airlines dated 20 November 2018 (IM, Annex 274); letter from Airbus to Zagros Airlines dated 13 December 2018 (IM, Annex 275) (“We regret to inform you that due to export control sanctions and embargoes regulations, we are not in a position to provide you with the requested information”); email from Honeywell to Kish Air dated 9 April 2019 (IM, Annex 277) (“will not be proceeded with further as Honeywell will not pursue, enter into or participate in business or financial activities, directly or indirectly in any way, with any Iran[ian] legal entity or with any business located in Iran, due to commercial and other business reasons”).

⁵⁷⁴ Email from Boeing to Zagros Airlines dated 20 November 2018 (IM, Annex 274).

⁵⁷⁵ CAO.IRI 24 April 2019 Statement, paras. 6-7 (IM, Annex 254).

and non-U.S. persons to interfere with the property and enterprises of Iranian nationals and companies who are engaged in such activities. As explained in Chapter II:

- a. U.S. and non-U.S. persons are prohibited from knowingly engaging in significant transactions for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector (which is defined very broadly): E.O. 13846, section 3(a)(i).
- b. Foreign financial institutions are prohibited from knowingly conducting or facilitating any significant financial transaction for the sale, supply or transfer to Iran of significant goods or services used in connection with the automotive sector: E.O. 13846, section 2(a)(i).

4.70 As explained in Chapter III, the U.S. measures have directly and indirectly impacted on the property and enterprises of Iranian nationals and companies involved in the automotive sector. In summary, as a result of the U.S. measures:

- a. According to data produced by the Office of Motor Vehicles and Driving Force Industries, the total production of motor vehicles fell by around 37% between March 2018 and March 2019.⁵⁷⁶
- b. Numerous international companies (such as Mazda, Hyundai, Renault, Scania, Daimler and Duerr) have withdrawn from business arrangements in Iran. For example, PSA has suspended all joint ventures with Iranian companies, including a Euro 300 million agreement with SAIPA and a Euro 400 million agreement to modernise a car factory.⁵⁷⁷
- c. Foreign suppliers of spare parts, raw materials and equipment have refused to supply Iranian companies and nationals due to the inability to receive payments.⁵⁷⁸

⁵⁷⁶ Iran's Ministry of Industry, Mine and Commerce, "Comparative Statistics of the Production of the types of motor vehicle – Year 1396-1397 [21 March 2018 – 21 March 2019]", 25 February 2019 (IM, Annex 312).

⁵⁷⁷ "France's PSA suspends joint ventures in Iran to avoid U.S. sanctions", *Reuters*, 4 June 2018 (IM, Annex 318).

⁵⁷⁸ See e.g. Statement from Arya Diesel Company dated 31 December 2018 reporting the refusal of Renault (French) and C&C Trucks (Chinese) to perform transactions (IM, Annex 308).

- d. Around 400 Iranian producing plants have closed due to bankruptcy since 8 May 2018. This includes the closure of the factory of the Headlights Modern Car Industries Co, which manufactured car parts for Peugeot and other cars, whose Financial Manager explained that it is “not able to pay the salary of our over 700 workers in Ordibehesht and Khordad”.⁵⁷⁹

(e) Shipping and shipbuilding

4.71 As explained in Chapter II, the U.S. measures target, directly and indirectly, *all* nationals and companies who are determined by the USA to be part of the “shipping or shipbuilding sectors” of Iran or who operate a port in Iran. So far as Iran is aware, despite re-imposing the measure in August 2018, the USA has not yet adopted a definition of the “shipping sector of Iran” or the “shipbuilding sector of Iran”, leading to even greater uncertainty. However, OFAC has indicated that it expects to adopt a very broad definition of these terms:

- a. The “shipping sector of Iran” is expected “to include activities involving the transportation of goods by seagoing vessels, including oil tankers and cargo vessels, flying the flag of the Islamic Republic of Iran, or owned, controlled, chartered, or operated directly or indirectly by the Government of Iran”.⁵⁸⁰
- b. Similarly, the “shipbuilding sector of Iran” is expected “to include activities involving the construction of seagoing vessels, including oil tankers and cargo vessels, in Iran.”⁵⁸¹

4.72 By their design and effect, the U.S. measures require U.S. and non-U.S. persons to interfere with the property and enterprises of *all* Iranian nationals and companies who the USA has determined to be part of the shipping or shipbuilding sectors or to operate a port in Iran. In summary:

⁵⁷⁹ Iran Khodro 19 March 2019 Statement (IM, Annex 308). See also “With non-procuring raw materials, the activities of Headlight Modern Car Industries Co. with more than 700 workers stopped / Indirect loss of 5000 people job”, *ILNA*, 12 July 2018 (IM, Annex 320).

⁵⁸⁰ OFAC FAQ’s: Iran sanctions, Question 293, version as of 31 March 2019 (IM, Annex 50).

⁵⁸¹ *Ibid.*

- a. The property and interests in property of such persons that are or come to be either in the U.S. or in the possession/control of a U.S. person are “blocked”. The same penalty is imposed on any U.S. or non-U.S. person who knowingly provides significant financial, material, technological, or other support to, or goods and services in support of any activity or transaction on behalf of such an Iranian person: E.O. 13846, section 1(a)(iv); ICFA, section 1244(c)(1).
 - b. U.S. and non-U.S. persons are prohibited from knowingly selling, supplying or transferring to or from Iran of significant goods and services used in connection with the shipping or shipbuilding sectors, including NITC and IRISL. Additionally, foreign financial institutions are prohibited from knowingly conducting or facilitating such transactions: IFCA, section 1244(d) and (d)(2).
 - c. U.S. and non-U.S. persons are prohibited from knowingly selling, supplying or transferring (directly or indirectly) graphite, raw or semi-finished metals such as aluminium and steel, coal and industrial software which are to be used in connection with the shipping or shipbuilding sectors. Additionally, foreign financial institutions are prohibited from conducting or facilitating such transactions: IFCA, sections 1245(a) and (c).
- 4.73 Additional measures apply with respect to persons who engage in transactions for the transport (including shipping) of petroleum, petroleum products or petrochemical products (see paras. 4.52-4.55 above) and the provision of insurance services with respect to any activity in the shipping or shipbuilding sectors or to NITC (see para. 4.76 below).
- 4.74 Further measures are stated to be restricted to penalising any person who knowingly sells, leases or provides a vessel or any other shipping service for the transportation to or from Iran of goods that the U.S. considers could materially contribute to the activities of the Government of Iran with respect to the proliferation of weapons of mass destruction or support for acts of international terrorism: TRA, section 211(a).
- 4.75 Moreover, the inclusion of numerous Iranian shipping and shipbuilding companies and vessels on the SDN list, triggers numerous sanctions which impose severe

penalties on U.S. and non-U.S. persons for dealing with Iranian shipping and shipbuilding companies and port operators. In summary:

- a. U.S. and non-U.S. persons are prohibited from materially assisting, sponsoring, or providing financial, material, or technological support for, or goods and services to or in support of, such Iranian entities: E.O. 13846, section 1(a)(iii)
- b. U.S. and non-U.S. persons are prohibited from knowingly providing significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of such Iranian entities: E.O. 13846, section 1(a)(iv); IFCA, section 1244(c)(1)
- c. Foreign financial institutions are prohibited from knowingly conducting or facilitating significant financial transactions on behalf of such Iranian entities: E.O. 13846, section 2(a)(ii); IFCA, section 1247(a).

4.76 As explained in Chapter III, the U.S. measures have directly and indirectly impacted on the property and enterprises of Iranian nationals and companies involved in the shipping and shipbuilding sector. In summary, as a result of the U.S. measures:⁵⁸²

- a. International companies (such as Hyundai) have terminated or suspended agreements for the purchase of vessels (see para. 3.69 above).
- b. U.S. and non-U.S. container shipping companies (including Maersk and the Mediterranean Shipping Company⁵⁸³) have ceased carrying the cargo of Iranian nationals and companies, as well as providing access to feeder and slot sharing services (see paras. 3.64-3.66 above). In the words of the CEO of Maersk, “[w]ith the sanctions ... you can’t do business in Iran if you also have business in the U.S.”⁵⁸⁴

⁵⁸² See generally IRISL’s 10 March 2019 Statement (IM, Annex 292) and NITC’s 17 March 2019 Statement (IM, Annex 293).

⁵⁸³ “Re-imposition of U.S. Sanctions on Iran”, *Mediterranean Shipping Company (MSC) website*, 16 May 2018 (IM, Annex 295).

⁵⁸⁴ S. Jacobsen and J. Gronholt-Pedersen, “Maersk latest company to shun Iran as EU scrambles to save nuclear deal”, *Reuters*, 17 May 2018 (IM, Annex 302).

- c. U.S. and non-U.S. agencies have ceased cooperation with Iranian companies and nationals with respect to cargo booking, cargo forwarding and other shipping related services. For example, in July 2018, the French shipping company CMA CGM announced that it had decided to suspend a cooperation agreement with IRISL “[d]ue to the Trump administration”.⁵⁸⁵
- d. U.S. and non-U.S. companies have removed the rights of Iranian ships with respect to berthing, bunkering, access to foreign ports and shore-based facilities. For example, in early February 2019, around 60 Iranian vessels (mostly tankers) were removed from the Panama Ship Registry, the largest ship registry in the world, meaning that they have been expelled from Panama and payment for taxes and fees will not be accepted.⁵⁸⁶
- e. International classification companies (including Lloyd’s London and Bureau Veritas) have terminated their agreements with Iranian entities (including PMO, IRISL and NITC) (see para. 3.68 above).
- f. U.S. and non-U.S. suppliers of marine spare parts and equipment, and satellite communication providers, have terminated their relationships with Iranian companies and nationals (including Marlink and Inmarsat) (see para. 3.68 above).
- g. International marine insurers and P&I clubs have terminated agreements with Iranian companies and nationals, including IRISL and NITC, for the insurance of vessels and cargo (see para. 3.66 above).⁵⁸⁷ In the words of a senior U.S. State Department official, “[i]f Iranian tankers make calls at your ports or transit through your waterways, this comes at great risk ... Our strong message to any entity considering doing business with these Iranian tankers is to rethink your decision.”⁵⁸⁸

⁵⁸⁵ L. Thomas, “French shipping firm CMA CGM ends Iran ops due to U.S. sanctions threat”, *Reuters*, 7 July 2018 (IM, Annex 304).

⁵⁸⁶ M. Labrut, “Panama Registry to expel 60 Iranian vessels to avoid U.S. sanctions”, *Seatrade Maritime News*, 3 February 2019 (IM, Annex 307).

⁵⁸⁷ See generally IRISL’s 10 March 2019 Statement (IM, Annex 292) and NITC’s 17 March 2019 Statement (IM, Annex 293).

⁵⁸⁸ U.S. Department of State, “Department Press Briefing”, 7 November 2018 (IM, Annex 44).

(f) The insurance sector

4.77 The U.S. measures specifically seek to ensure that all Iranian nationals and companies who come within the scope of the sanctions are deprived access to insurance, reinsurance and underwriting services. By their design and effect, the U.S. measures require U.S. and non-U.S. persons to interfere with the property and enterprises of all such Iranian nationals and companies. As further explained in Chapter II, U.S. and non-U.S. persons are prohibited from knowingly:

- a. Providing underwriting services or insurance or reinsurance (a) for “any activity with respect to Iran for which sanctions have been imposed with respect to Iran” under U.S. law, (b) to or for any person with respect to, or for the benefit of any activity in the energy, shipping, or shipbuilding sectors, (c) to or for any person for the sale, supply, or transfer to or from Iran of materials for which sanctions are imposed, or (d) to an Iranian national or company included on the SDN List: IFCA, section 1246(a); see also ISA, section 5(3)(A).
- b. Providing insurance or reinsurance for the transportation to or from Iran of goods that the U.S. considers could contribute to the activities of the Government of Iran with respect to the proliferation of weapons of mass destruction or support for acts of international terrorism: TRA, section 211(a).
- c. Providing underwriting services or insurance or reinsurance for NIOC, NITC or a successor to either company: TRA, section 212(a).

4.78 Moreover, the inclusion of numerous Iranian insurance companies on the SDN List, triggers numerous sanctions which impose severe penalties on U.S. and non-U.S. persons for dealing with those companies, including for:

- a. Materially assisting, sponsoring, or providing financial, material, or technological support for, or goods and services to or in support of, such Iranian companies: E.O. 13846, section 1(a)(iii).
- b. Knowingly providing significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on

behalf of or for the benefit of such Iranian companies: E.O. 13846, section 1(a)(iv); IFCA, section 1244(c)(1).

- c. Foreign financial institutions who knowingly conduct or facilitate significant financial transactions on behalf of such Iranian companies: E.O. 13846, section 2(a)(ii); IFCA, section 1247(a).

4.79 As explained in Chapter III, the U.S. measures have radically and adversely impacted on the property and enterprises of Iranian nationals and companies involved in the insurance sector. In summary, as a result of the U.S. measures:⁵⁸⁹

- a. Iranian nationals and companies are unable to receive payment of their claims under international insurance or reinsurance contracts. Similarly, Iranian companies involved in the insurance sector are unable to execute their obligations towards foreign clients due to the inability to make payments.
- b. Foreign insurances and reinsurance companies have terminated their agreements with Iranian nationals and companies, including the Central Insurance of Iran. For example, the French company SCOR (one of the world's largest reinsurers) announced in July 2018 that it would not renew an agreement with the Central Insurance of Iran to cover catastrophic excess of loss reinsurance.⁵⁹⁰
- c. Iranian companies and nationals involved in the insurance sector are unable to transfer risk on the international market and, as a result, the whole sector is at risk of systematic failure.⁵⁹¹
- d. Foreign insurers and P&I clubs have terminated agreements with Iranian nationals and companies (including IRISL and NITC) to insure vessels. According to senior U.S. State Department officials, “[s]hould there be an accident involving an Iranian tanker, there is simply no way ... Iranian insurance

⁵⁸⁹ See generally PMO's 17 March 2019 Statement (IM, Annex 294).

⁵⁹⁰ “Iran, SCOR SE Reach Reinsurance Agreement”, *Financial Tribune*, 1 October 2017 (IM, Annex 186) and R. Lough & I. Landauro, “U.S. rejects French request for Iran exemptions as reinsurer Scor pulls out”, *Reuters*, 13 July 2018 (IM, Annex 197).

⁵⁹¹ CII 1 May 2019 Statement, paras. 7-8, p. 3 (IM, Annex 152).

companies can cover the loss.”⁵⁹² Since marine insurance is mandatory for the shipment of the major part of Iran’s oil and gas exports, the withdrawal of cover creates a major obstacle.

(g) Damage to property in the form of holdings of Iranian Rial as a result of inflation; general adverse impacts

4.80 As explained in Chapter III, the U.S. measures are a significant cause of high inflation and substantial depreciation of the Iranian Rial, causing a dramatic reduction in the value of the property (including holdings in Rial and assets generally) and the economic viability of enterprises of Iranian nationals and companies. On 23 January 2019, the U.S. Secretary of State stated his understanding that as a result of “the largest set of sanctions ever emplaced on an economy ... [the Iranian economy] is likely to fall into recession by the spring of this year”.⁵⁹³ As a result of inflation, the prices of essential foodstuffs has increased dramatically (see paras. 3.125-3.129 above).

4.81 The general impact of the U.S. measures is as aptly described by the UN Special Rapporteur, as reported by the OHCHR on 8 November 2018:

“GENEVA (8 November 2018) – Sanctions that extend beyond national borders, and which seek to block a country’s trade altogether, amount to economic warfare against civilians, an independent expert appointed by the Human Rights Council says.

‘These civilians deserve the same protections provided by the Geneva Conventions to people in war,’ said Idriss Jazairy, the Special Rapporteur on the effect of sanctions on human rights.

‘There is a need for differences between States to be resolved through peaceful means as advocated by the UN Charter, while avoiding exposing innocent civilians to collective punishment. Causing hunger and disease through economic instruments should not be accepted in the 21st century.’

Referring to Iran, Jazairy said while U.S. sanctions included humanitarian exemptions, there were reports that aid is on hold as banks, insurance and logistics companies await clarification. It has even been said that the source country of sanctions will block the SWIFT technical mechanism of international interbank financial transfer which may make such exemptions inoperative.

⁵⁹² U.S. Department of State, “Department Press Briefing”, 7 November 2018 (IM, Annex 44).

⁵⁹³ U.S. Department of State, “Interview with Martha MacCallum of Fox News”, 23 January 2019 (IM, Annex 47).

‘There can be no justification for not including blanket protections for the importation of food, medicine, and other necessities of life without first requiring lengthy and complex approval processes,’ the expert said. The International Court of Justice had recently made two preliminary rulings that reiterate the obligation of States to ensure effective humanitarian exemptions while sanctions are in force.

‘I am deeply concerned that it is the poor who are bearing the brunt of these actions,’ Jazairy said, adding that the rial currency had lost more than 70 percent of its value in the past year, and food prices had risen by half. ‘More people are losing their jobs as the economy suffers,’ he said.

‘While the right of States to disagree with each other should be respected, harming the human rights of ordinary civilians should not be resorted to as a means of political pressure on a targeted Government,’ he said. ‘This is illegal under international human rights law.’⁵⁹⁴

- 4.82 Of course, since this statement was made, the situation has only been aggravated by the U.S. measures having increased effect, including by reference to the cessation of SWIFT financial services. The Consumer Price Index for March 2019 prepared by the Statistical Center of Iran, inflation for “food, beverages and tobacco” was between 34.9% and 38.9%.⁵⁹⁵ The price of such items has continued to rise since March 2019.⁵⁹⁶

(h) Health and agriculture

- 4.83 As noted in Chapter II, in theory, medicine, medical products and medical are exempt from the scope of the U.S. measures.

- 4.84 As explained in Chapter III, the U.S. measures have directly and indirectly impacted on the property and enterprises of Iranian nationals and companies involved in the health and agriculture sectors. According to the UN Special Rapporteur in his statement of 20 August 2018:

“‘These unjust and harmful sanctions are destroying the economy and currency of Iran, driving millions of people into poverty and making imported goods

⁵⁹⁴ OHCHR, “Civilians caught in sanctions crossfire need Geneva Convention protection, says UN expert”, 8 November 2018 (IM, Annex 88).

⁵⁹⁵ Statistical Center of Iran, “National Consumer Price Index by Expenditure Deciles in the Month of Esfand 1397”, 15 April 2019 (IM, Annex 94).

⁵⁹⁶ Statistical Center of Iran, “Report on the Consumer Price Index and Inflation – Farvadin 98”, 23 April 2019 (IM, Annex 95).

unaffordable,' Mr. Jazairy stressed, while questioning whether the United States would provide food and medicines to the millions of Iranians no longer able to afford them.

'The current system creates doubt and ambiguity which makes it all but impossible for Iran to import these urgently needed humanitarian goods. This ambiguity causes a 'chilling effect' which is likely to lead to silent deaths in hospitals as medicines run out, while the international media fail to notice,' Mr. Jazairy said.

'I appeal to the United States to demonstrate its commitment to allow agricultural commodities, food, medicine, and medical devices into Iran by taking real and concrete steps to ensure that banks, financial institutions and companies can quickly and freely be assured that relevant imports and payments are permitted,' he said.⁵⁹⁷

4.85 In summary, as a result of the U.S. measures, and as predicted, reference may be made to the following illustrative examples:

- a. As explained by Iran's Food and Drug Administration (FDA), Iranian companies and nationals face very significant problems in obtaining services for the import of medicines, medical products and equipment due to the refusal of various foreign airlines and shipping companies to carry any cargo bound for Iran and the refusal of insurers to insure such cargo, leading to shortages.⁵⁹⁸ The FDA also states that certain European technology companies suspended joint ventures for the production of certain medical productions (including blood collecting bags) as a result of the U.S. measures,⁵⁹⁹ and that those measures targeting the banking and financial sector have resulted in the cancellation of finance deals for the purchase of medical equipment by Iranian hospitals (including for the early diagnosis and treatment of certain cancers and cardiovascular diseases).⁶⁰⁰
- b. Foreign companies have ceased the supply of medicines, medical products and medical equipment to Iranian companies and nationals.⁶⁰¹ Additionally, by way

⁵⁹⁷ OHCHR, "Iran sanctions are unjust and harmful, says UN expert warning against generalised economic war", 22 August 2018 (IM, Annex 130).

⁵⁹⁸ FDA 1 May 2019 Statement, para. 8, p. 2 (IM, Annex 71).

⁵⁹⁹ FDA 1 May 2019 Statement, para. 12, p. 3 (IM, Annex 71).

⁶⁰⁰ *Ibid.*, para. 14, p. 4 (IM, Annex 71).

⁶⁰¹ E. Cunningham, "Fresh sanctions on Iran are already choking off medicine imports, economists say", *The Washington Post*, 17 November 2018: "The trade of humanitarian goods is allowed under U.S. sanctions, according to Treasury Department guidelines, permitting Iran to import food, medicine and

of further specific example, Mölnlycke Health Care (Swedish) has informed EB Home (a non-profit Iranian company supporting patients with Epidermolysis bullosa, a potentially life-threatening genetic disease) that, with sincere regret, “due to the US Economic sanctions in force Mölnlycke Healthcare have decided not to conduct any business in relation to Iran for the time being. This also applies to any business conducted under any form of exemption to the US Economic sanctions”.⁶⁰² As a result, patients suffering from EB have been unable to obtain the special dressings they require for alleviating their pains.⁶⁰³

- c. On 1 December 2018, Sina Bank notified Iran that, as a result of the U.S. measures, the inability to transfer funds had led to “serious restrictions” on “the importation of foodstuffs and agricultural products” from Europe, difficulties in transporting such goods from the CIS region, a “dramatic” reduction in the opening of letters of credit and the issuance of bank drafts in Rupee for the purpose of importing medicine from India.⁶⁰⁴ Sina Bank also explained that the decision by Bank of Kunlun (Chinese) to cease cooperation, including its refusal to issue new financial instruments, has impeded the importation of medicine from China.
- d. The total importation of pharmaceutical goods fell dramatically between June and November 2018 from USD 186 million to 5 million (see para. 3.119 above). As the American Society of Haematology recognised in November 2018, “importation of medicines manufactured abroad has been frozen for months and severe medicine shortages loom ... harsh banking restrictions and fear of

medical devices without punishment. But the far-reaching sanctions on Iranian financial firms reimposed two weeks ago could endanger the flow of humanitarian goods as foreign banks and outside suppliers abandon business ties with their partners in Iran, analysts and experts warn. In recent months, some European banks have refused to process payments even from Iranian firms that are exempt from sanctions out of fear of U.S. penalties, according to people familiar with the transactions” (p. 1) (IM, Annex 112). See also e.g. Statement by Mr R. Javadi, Deputy Managing of Donya e Saziba e Pouya, 14 January 2019 (IM, Annex 66).

⁶⁰² Letter from EB Home to Mölnlycke, 25 February 2019 and answer from Mölnlycke to EB Home, undated (IM, Annex 104).

⁶⁰³ *Ibid.*, the letter explains that the Mepilex dressings are imported exclusively by Deyateb Company. See also Statement from S. Hashemi Golpayegabni, Founder and Managing Director of EB Home, 29 April 2019 (IM, Annex 70).

⁶⁰⁴ Statement from Mr M. Reza Pishro, Managing Director of Sina Bank, 1 December 2018 (IM, Annex 64).

secondary sanctions makes it impossible for multinational pharmaceutical companies to operate in Iran”.⁶⁰⁵

- e. As confirmed by the National Water and Wastewater Engineering Company, it has not been possible to import equipment for water and wastewater treatment plants, leading to a risk to public health and the environment as well as the closure of construction projects.⁶⁰⁶
- f. As explained by the Bred Seeds Importers Association of Iran, Iranian companies face very significant problems in obtaining services for the import of agricultural products due the U.S. measures targeting the financial, shipping and insurance sectors.⁶⁰⁷ The Iran-Brazil Joint Chamber of Commerce has also confirmed that international shipping companies and corresponding banks have refused to provide services for the import of meat from Paraguay and Brazil.⁶⁰⁸
- g. On 19 January 2019, an Iranian company which supplies raw materials for pharmaceutical products informed the Head of the Iran and Oman Joint Chamber of Commerce, Industries, Mines and Agriculture that “*due to [the] re-imposition of the US sanctions, two of the contracts concluded by this company [by suppliers in France and USA/The Netherlands] ... have been cancelled*”.⁶⁰⁹ Press reports confirm that shipments of foodstuffs to Iran have been delayed, and in some instances cancelled, due to difficulties in making payments to global trading companies.⁶¹⁰

4.86 The Court will recall that, at paragraph 89 of its Order of 3 October 2018, it recognised that “it has become difficult if not impossible for Iran, Iranian companies and nationals

⁶⁰⁵ “Medicine Shortages Loom in Iran as U.S. Reinstates Sanctions”, *ASH Clinical News*, 26 November 2018 (IM, Annex 114).

⁶⁰⁶ Statement by Mr Sh. Norouzi, General Director of the Legal and Contracts Office of the National Water and Wastewater Engineering Company, 6 February 2019 (IM, Annex 68).

⁶⁰⁷ Bred Seeds Importers Association of Iran, “The Importance of Importation of Bred Seeds in the Agriculture”, 3 February 2019 (IM, Annex 67).

⁶⁰⁸ Statement by Mr K. Zargaran, Chairman of the Board of the Iran-Brazil Joint Chamber of Commerce, 9 January 2019 (IM, Annex 65).

⁶⁰⁹ Statement by Mr R. Javadi, Deputy Managing of Donya e Saziba e Pouya, 14 January 2019 (IM, Annex 66).

⁶¹⁰ “Exclusive: Global traders halt new Iran food deals as U.S. sanctions bite – sources”, *Reuters*, 21 December 2018 (IM, Annex 116).

to engage in international financial transactions that would allow them to purchase items not covered, in principle, by the measures, such as foodstuffs, medical supplies and medical equipment”. In the *dispositif*, the Court ordered the USA to “(1) ... remove, by means of its choosing, any impediments arising from the measures announced on 8 May 2018 to the free exportation to the territory of the Islamic Republic of Iran of (i) medicines and medical devices; (ii) foodstuffs and agricultural commodities”, and also ordered the USA (2) to “ensure that licences and necessary authorizations are granted and that payments and other transfers of funds are not subject to any restriction in so far as they relate to the goods and services referred to in point (1)”.

4.87 Despite Iran’s requests, the USA then failed to reveal any specific steps that have been and are being taken by it to implement the Court’s Order of 3 October 2018 including with respect to the extreme difficulty experienced by Iran, Iranian companies and nationals in engaging in international financial transactions that would enable them to purchase items which are supposedly exempt from the U.S. measures.

4.88 So far as Iran has been able to establish, based on the information currently available to it, the USA has in fact taken no specific measures in compliance with this Order. It is in breach thereof.

(i) Other trade

4.89 In addition to the measures referred to above, further U.S. measures interfere, by design and by effect, with the property and enterprises of Iranian national and companies engaged in activities other than those specified in subsections (i) to (viii) above. As explained in Chapter II:

- a. On 8 May 2018, the USA re-imposed the ban on the importation into the U.S. of Iranian-origin luxury goods including carpets, caviar and nuts.
- b. On 5 November 2018, as a result of the revocation of General License H, measures prohibiting U.S. persons and foreign entities that are owned/controlled by U.S. persons from dealing with Iran or Iranian national or company (referred

to in E.O. 13846 as falling within the definition of “any person subject to the jurisdiction of Iran”): ITSR; E.O. 13846, section 16(q).

4.90 As a result, the only products for which export from the U.S. to Iran is not formally prohibited are agricultural commodities, foodstuffs, medicine and medical devices. However, as explained in Chapter III, the effect of the U.S. measures is to render trade in even these “exempted” products impossible and to deny them to Iranian nationals and companies.

4.91 As explained in Chapter III, the U.S. measures have radically and adversely impacted on the property and enterprises of Iranian nationals and companies involved in trade between Iran and the U.S.⁶¹¹

(h) Conclusions as to the arbitrary, grossly unfair, unjust and idiosyncratic nature of the U.S. measures outlined above

4.92 As follows from the above, the U.S. measures at issue in the present case are intended by the USA to have, and are having, a massive but largely indiscriminating adverse impact on the key sectors of Iran’s economy and Iran’s companies and nationals more generally. The USA is, moreover, acting almost entirely alone, whilst the broader international community is seeking to alleviate – to the extent that this is feasible – the damage that is being inflicted upon Iran, its nationals and companies. Yet both third States and the companies of such States are being faced with a largely inescapable ultimatum from the USA – do business with the USA, or do business with Iran, but not both.

4.93 It is not just that the U.S. measures are arbitrary, grossly unfair, unjust and idiosyncratic so far as concerns the treatment of Iranian companies and nationals: they are manifestly so.

4.94 The sectoral U.S. measures are inherently indiscriminate. They are designed to harm the property and enterprises of all Iranian companies and nationals engaged in

⁶¹¹ See paras. 3.86-3.90 above.

multiple key sectors of Iran's economy, irrespective of any alleged involvement in alleged acts of the State of Iran. In a statement of policy dated 13 February 2019, the U.S. Administration (in a statement from the White House) explained the rationale for the U.S. measures as follows:

“Under the President’s direction, we have prioritized the maximum pressure campaign placing unprecedented stress on Iran’s economy, forcing Tehran to make increasingly difficult choices.”⁶¹²

- 4.95 The massive adverse impact of the U.S. measures is felt not only in the large-scale damage to property and enterprises but also, for example, the destruction of entire companies and the inability of the Iranian people to access life-saving medicines and medical equipment.
- 4.96 As follows from their indiscriminate nature, and their unjust and harmful nature as has been highlighted by the UN Special Rapporteur,⁶¹³ the U.S. measures bear no reasonable relation to a rational policy.
- 4.97 As to the absence of a rational policy, prior to 8 May 2018, the USA did not consider that the measures it has since imposed were required by any rational policy. Indeed, it considered that a rational policy required the lifting of U.S. sanctions and measures against Iran. As is accepted by the international community, there was no change in Iran’s behaviour justifying any change in approach.⁶¹⁴ What changed in 2017 was the composition of the U.S. Government and, with that, a change in the attitude of the most senior U.S. officials who have openly displayed increasing hostility towards Iran (and by extension Iranian nationals and companies). This shift in policy appears to have been driven by the requirements of a domestic political agenda.
- 4.98 As to the absence of any reasonable relation to a rational policy (had there been one), the indiscriminate nature of the U.S. measures means that by definition they fail to

⁶¹² U.S. National Security Council, “A Look at the U.S. Strategy for Iran”, 13 February 2019 (IM, Annex 49).

⁶¹³ OHCHR, “Iran sanctions are unjust and harmful, says UN expert warning against generalised economic war”, 22 August 2018 (IM, Annex 130).

⁶¹⁴ Cf. the views expressed by the IAEA. Cf. also the initiatives which have or are being taken by the international community to seek to mitigate their harmful effects, including by means of the EU ‘blocking regulation’ and the INSTEX Special Purpose Vehicle for trade.

have a reasonable relation to any stated policy. This is all the more so given the extraterritorial impact of the U.S. measures.⁶¹⁵

4.99 The U.S. measures are also manifestly disproportionate, not only by reason of the above factors but also due to their imposing a radically excessive burden on the Iranian people, whose property and enterprises are being destroyed, and whose lives, health and wellbeing are being put at risk. This results both from the nature of the U.S. measures (including through their extraterritorial impact) and the way they are implemented (including via tweets and press briefings by senior U.S. officials aimed at discouraging, in blunt terms, all U.S. and non-U.S. companies from engaging in any business with Iranian companies and nationals; whereas, at the same time, key elements relating to the intended scope of the U.S. measures remain undefined, such that the broadest possible application is likely to result).⁶¹⁶

4.100 The arbitrary, grossly unjust, unfair and idiosyncratic nature of the U.S. measures is also evident from the USA's unexplained and inexplicable failure to take any specific steps to implement the Court's Order of 3 October 2018. In its Order, the Court expressly made clear to the USA the serious adverse impacts of its measures upon the Iranian people. Although the USA claims that such consequences are unintended, it has acted with nothing but capricious disregard for the Court's Order – in a context where it has been told in plain terms that “it has become difficult if not impossible ... to engage in international financial transactions that would allow them to purchase ... foodstuffs, medical supplies and medical equipment.”⁶¹⁷ That is shocking to a sense of juridical propriety.

⁶¹⁵ UN Doc. A/HRC/39/54/Add.1 (17 July 2018), paras. 33 and 35. See also GA Res. 47/19 (1992), “Calls upon all States to refrain from promulgating and applying laws and measures of the kind referred to in the preamble to the present resolution *in conformity with their obligations under the Charter of the United Nations and international law* and with the commitments that they have freely entered into in acceding to international legal instruments that, inter alia, reaffirm the freedom of trade and navigation...” (emphasis added).

⁶¹⁶ Cf. *Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/1-9, Award, 25 November 2015, para. 179.

⁶¹⁷ *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Order of 3 October 2018, I.C.J. Reports 2018, para. 89.

ii. *Breach of the FET standard through conduct that is discriminatory*

4.101 The U.S. measures at issue in this case are discriminatory, and therefore incompatible with the FET standard. It is specifically *Iranian* nationals and companies (and their property and enterprises) that are the focus of U.S. measures that are, according to the highest U.S. officials –

- a. “the toughest sanctions ever imposed on a country”;⁶¹⁸
- b. “the largest set of sanctions ever emplaced on an economy”.⁶¹⁹

4.102 It is precisely the intention of the USA that the harm arising from the termination by U.S. or non-U.S. nationals and companies of economic and commercial relations, activities, operations or transactions with Iranian nationals and companies, as mandated by the U.S. measures, should be suffered by the *Iranian* party to any given transaction. With respect to the U.S. steps to reimpose sanctions, the U.S. Presidential Memorandum of 8 May 2018 states:

“Those steps should be accomplished in a manner that, to the extent reasonably practicable, shift the financial burden of unwinding any transaction or course of dealing primarily onto Iran or the Iranian counterparty.”⁶²⁰

4.103 Thus Iranian nationals and companies are being adversely impacted by reason of their nationality and, as follows from the preceding subsection, that differential treatment is based on distinctions that are unreasonable.⁶²¹ This follows inevitably from the absence of any reasonable relationship to a rational policy, but also from the obvious point that

⁶¹⁸ U.S. President, “President Donald J. Trump’s State of the Union Address”, 5 February 2019, p. 17 (IM, Annex 48).

⁶¹⁹ U.S. Department of State, “Interview with Martha MacCallum of Fox News”, 23 January 2019 (IM, Annex 47). See also U.S. Department of State, “After the Deal: A New Iran Strategy”, 21 May 2018 (IM, Annex 33); also the declaration on 4 November 2018 of the U.S. President that the measures are “the strongest sanctions that our country has ever issued”. See e.g. edition.cnn.com/videos/politics/2018/11/04/trump-to-georgia-before-midterms-iran-sanctions-sot-nr-vpx.cnn (last visited on 31 March 2019).

⁶²⁰ U.S. President, Presidential Memorandum, “Ceasing U.S. Participation in the JCPOA and Taking Additional Action to Counter Iran’s Malign Influence and Deny Iran All Paths to a Nuclear Weapon”, 8 May 2018, (IM, Annex 31).

⁶²¹ See, e.g., *Saluka Investments BV (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, para. 307.

it is uniquely Iranian nationals and companies that have been and are being singled out for this uniquely unfavourable treatment.

iii. Breach of the FET standard through treatment leading to an outcome that offends juridical propriety

4.104 Iranian nationals and companies have no practical means of challenging, or seeking compensation from the USA in relation to, the U.S. sectoral measures and the harm that they cause. In effect, justice is denied. As to the U.S. measures that follow from inclusion on the SDN list, the nature of the designation, and the absence of any transparent or meaningful appeal (including before the U.S. courts) means that, once again, in practical terms justice is being denied.

iv. Breach of the FET standard through conduct that defeats the legitimate expectations of Iranian nationals and companies

4.105 Many Iranian companies and nationals have, pursuant to specific licences and authorisations of the U.S., entered into contracts and business dealings with U.S. nationals and others that have, as a result of the U.S. measures, been termination or rendered inoperable. Where, for example, Iranian companies such as Iran Air entered into the Boeing contract, pursuant to U.S. license, making payments or committing funds in reliance on and pursuant to such license, they legitimately expected that the relevant transactions would be permitted to proceed and effected, at least absent any material change in the factual background against which the license had been granted. However, such expectations were defeated and, in the circumstances, there was a denial of fair and equitable treatment. Licenses and authorisations have been revoked, and contracts and business dealings brought to an end, in a situation where, as noted in subsection (a) above, there was no material change of any kind as to the factual background. A change in U.S. policy, and all the more so an irrational policy, could not count as such a change.

v. Conclusion

4.106 As identified above, the U.S. measures are inconsistent with and controvert each element of the FET standard in Article IV(1) and, whether each such element is taken individually or the elements are looked at cumulatively, the USA has violated the FET standard in Article IV(1).

B. Breach of the obligation under Article IV(1) to refrain from unreasonable or discriminatory measures

4.107 Unreasonable and discriminatory measures not only breach the FET standard in Article IV(1): they also breach the separate and express prohibition on unreasonable and discriminatory measures in Article IV(1). The U.S. measures have targeted, and continue to target, Iranian nationals and companies (and their property and enterprises) in order specifically to impair the legally acquired rights and interests of such nationals and companies in an attempt to cause serious harm to Iran's economy.

4.108 As follows from what has already been said above, the U.S. measures are unreasonable and discriminatory.

C. Breach of the obligation to assure effective means of enforcement of contractual rights

4.109 As outlined in Chapter II above, the effect of the U.S. measures is that Iranian nationals and companies are unable to make and receive payment of debts or goods and services which they have contracted for.

4.110 The U.S. measures have been and are, directly or indirectly, negating the rights of Iranian nationals and companies to be afforded effective means of enforcing their lawful contractual rights to payment and receipt of the sums, goods and services.

D. Breaches of Article IV(2) by the United States

i. Breach by the USA of the obligation under Article IV(2) to accord most constant protection and security

4.111 The property of Iranian nationals and companies (including interests in property) has been and is being deprived of the entitlement under Article IV(2) to most constant protection and security within the USA.

4.112 The treatment that has been or is currently being accorded to the property of Iranian companies, as outlined in Chapter III above, breaches Article IV(2). The property at issue includes funds of Iranian companies and nationals within the USA, including payments made to U.S. companies for goods and services that cannot be returned in circumstances where the underlying transaction has been terminated or rendered inoperable as a result of the U.S. measures. In this respect, it is recalled that Article IV(2) accords an entitlement to legal as well as physical protection.

ii. Breach by the USA of the Article IV(2) prohibition on the taking of property

4.113 The acts of the USA, as identified in Chapter II above, have also resulted in a series of prohibited takings of the property of Iranian nationals and companies, in violation of Article IV(2).

4.114 As to takings outside the USA, the U.S. measures have led to a multiplicity of takings, where the effect of the U.S. measures has been that Iranian nationals and companies have in substance lost their property. This is the case where, for example, contractual rights have been rendered nugatory, businesses destroyed, companies rendered insolvent. As identified in the Introduction to this Chapter, it is only at the stage of the Reply that Iran may be in a position to put forward a reasonably comprehensive picture of those rights, businesses and companies that have indirectly been taken.

4.115 As regards property within the USA, the property taken includes approximately USD 17.6 million in “blocked assets” owed by Visa Inc. and Franklin Resources Inc. to the Iranian company, Bank Melli, for the use of Visa credit cards in Iran. These assets

have been “blocked”. This property is blocked pursuant to, inter alia, section 1245 of the NDAA 2012 on the basis that it is property of an Iranian financial institution which is in the U.S. or the possession/control of a U.S. person.⁶²²

- 4.116 There is no question of such takings falling within the exception to Article IV(2). The acts at issue were not accompanied by payment of any compensation. Further, they cannot be regarded as acts done for a legitimate public purpose, since the takings were arbitrary and discriminatory.
- 4.117 The United States may argue that certain regulatory acts of a State are not expropriatory in nature because they constitute an exercise of “police powers”. This position is reflected for example in the U.S. *Restatement (Third) of Foreign Relations Law*,⁶²³ as well as in various treaties to which the USA is a party,⁶²⁴ but not in the 1955 Treaty of Amity. In any event, and on any analysis, an exercise of “police powers” must be non-discriminatory and designed and applied to achieve legitimate public welfare objectives, i.e. proportionate and not in violation of other applicable principles of international law.⁶²⁵ Such criteria could never be satisfied so far as concerns the instant case.

⁶²² The property is also “blocked” pursuant to other U.S. measures which are not at issue in the present case, and is the subject of attachment proceedings in *Bennett et al v. The Islamic Republic of Iran et al.*

⁶²³ American Law Institute, *U.S. Restatement of the Law (Third), Foreign Relations Law of the United States* (Washington DC: American Law Institute Publishers, 1987), § 712 comment (g).

⁶²⁴ See e.g. Australia-United States FTA of 18 May 2004, signed 18 May 2004 entered into force on 1 January 2005, at Annex 11B., as follows:

“The Parties confirm their shared understanding that Article 11.7.1 [the AUSFTA Chapter 11 provision on expropriation] is intended to reflect customary international law concerning the obligation of States with respect to expropriation. ... 4 (b) Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety, and the environment, do not constitute indirect expropriations.”

⁶²⁵ Iran considers that the element of proportionality is implicit, but notes that this is supported by various cases also: see e.g. *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Award, paras. 87-88, referring to *Fireman's Fund Insurance Company v. Mexico*, ICSID Case No. ARB(AF)/02/1, Award, para. 196.

E. Breach of Article V(1) by the United States

- 4.118 The acts of the USA, as identified in Chapter II above, constitute an ongoing breach of the obligation to permit Iranian nationals and companies to “purchase or otherwise acquire personal property of all kinds” in the United States in violation of Article IV(2).
- 4.119 This includes the purchase or acquisition in the United States, directly or indirectly, of civil aircraft, equipment and spare parts. That Iranian companies are not permitted to purchase or otherwise acquire such goods in the U.S. is evident, for example, from:
- a. The cancellation of the contracts for the sale of a total of 170 aircraft by Boeing to Iranian companies (Iran Air (80), Iran Aseman Airlines (60), Kish Air (10) and Qeshm Airlines (20)) with a combined value of around USD 27.4 billion (see para. 3.50 above);
 - b. The refusal by Boeing to provide any goods to Zagros Airlines (see para. 3.53 above).
- 4.120 Again, it is only at the stage of the Reply that Iran may be in a position to put forward a reasonably comprehensive picture of the numerous instances where the entitlement of Iranian nationals and companies to “purchase or otherwise acquire personal property” has been defeated.

CHAPTER V.

ARTICLE VII(1) OF THE TREATY OF AMITY: BREACH BY THE USA OF ITS OBLIGATION NOT TO APPLY RESTRICTIONS ON MAKING PAYMENTS, REMITTANCES, AND OTHER TRANSFERS OF FUNDS

- 5.1 As explained in Chapter II above, the re-imposition and aggravation of sanctions against Iran and Iranian nationals and companies serve the United States' declared purpose of strangling Iran's economy by disconnecting the country's economy from the global trade and financial system. The unlawfulness of this conduct in so far as it bars any exportation to, and importation from, Iran's territory, will be addressed in Chapters VI and VII. In this Chapter, Iran will demonstrate that through the measures decided pursuant to the United States' policy of exclusion of Iran and Iranian nationals and companies from the international financial system, the United States has been restricting, and still restricts, financial transfers of funds to and from Iran's territory and therefore has violated, and continues to violate, Article VII(1) of the Treaty of Amity.
- 5.2 This Chapter is structured as follows. First, Iran will recall what financial restrictions the United States and Iran are prohibited from applying under Article VII(1) of the Treaty of Amity (Section 1). Secondly, Iran will demonstrate that some of the re-imposed U.S. measures described in Chapter II, above, are breaches of Article VII(1) of the Treaty of Amity (Section 2).

SECTION 1.

THE PROHIBITION OF FINANCIAL RESTRICTIONS SET FORTH BY ARTICLE VII(1) OF THE TREATY OF AMITY

- 5.3 Article VII(1) of the Treaty of Amity provides that:

“Neither High Contracting Party shall apply restrictions on the making of payments, remittances, and other transfers of funds to or from the territories of the other High Contracting Party, except (a) to the extent necessary to assure the availability of foreign exchange for payments for goods and services essential to the health and welfare of its people, or (b) in the case of a member of the International Monetary Fund, restrictions specifically approved by the Fund.”

5.4 This provision reflects the Parties' common intent and commitment not to impose any financial restriction of any kind on the other Party's territory, save in specific cases of balance-of-payments difficulties. It lays down a general principle of prohibition of "restrictions on the making of payments, remittances, and other transfers of funds to or from the territories of the other High Contracting Party" (A), with only two exceptions, which are irrelevant here (B).

A. The prohibition of any financial restriction to or from the territories of the
Parties

5.5 The obligation in Article VII(1) does not require any particular interpretative effort under Article 31 of the Vienna Convention since its ordinary meaning in its context stems clearly from its terms, intended to ensure the broadest coverage:

- The term "restrictions" is neither defined nor limited by any other terms in Article VII or other provisions of the Treaty. In its ordinary meaning, it covers any act that restricts, i.e. any act which has a limiting object or effect. It includes any governmental action, whether of a formal or informal nature, that impedes the making of payments, remittances, and other transfers of funds.
- The conduct which must be free from such restrictions is "the making of payments, remittances, and other transfers of funds". The language "*and other transfers of funds*" shows that *any* transfer of funds benefits from the prohibition of restrictions, whatever the medium through which such transfer is performed, and whatever the nature of the funds transferred. In this regard, the notion of "funds" has a broad meaning. It includes "payments", meaning the granting of money to pay for something, "remittances", which are transfers of money including for other reasons than for payment, and more generally all forms of transfers of funds.
- The "payments, remittances, transfers of funds" benefiting from the protection of Article VII(1) are those made "to or from the territories of the other" Party. The plain meaning of these terms is that the conduct that should

not be restricted is not only operations *between* the territories of the Parties (from the territory of one Party to the territory of the other), but also payments, remittances and transfers of funds operated from a third State to the Parties' territories, and conversely, from the Parties' territories to a third State.⁶²⁶

- There is no qualification as to the author of the “payments, remittances, and transfers of funds”. The prohibition on restrictions thus applies to transfers made by the Parties, by their organs, by their nationals and by their companies as well as by third States and foreign nationals and companies.

5.6 In sum, according to the general prohibition formulated in Article VII(1) of the Treaty of Amity, the United States' obligation is to refrain from restricting all kinds of payments, remittances, and transfers of funds to the territory of Iran or from the territory of Iran, regardless, respectively, of the origin or of the destination of the operation. None of the two exceptions contained in Article VII(1) are available to the United States in the present case, as explained below.

B. The exceptions to the prohibition are of no application regarding the United States' measures

5.7 Article VII(1) of the Treaty of Amity may be contrasted with the provision in the standard FCN treaty entitled “exchange restrictions”. Like Article VII(1) of the Treaty

⁶²⁶ Some FCN Treaty provisions are drafted differently but cover also payments, remittances and transfers of funds between the Parties territories and third States. For example, the Treaty of Friendship and Commerce between Pakistan and the United States of America signed on 12 November 1959 provides, in its article 12(1), a national treatment and most favoured nation treatment “with respect to payments, remittances and transfers of funds or financial instruments between the territories of the two Parties as well as between the territories of such other Party and of any third country” (IM, Annex 8); See also Article XII(1) of the Treaty of Friendship, Commerce and Navigation between the Republic of Korea and the United States of America signed on 28 November 1956 (IM, Annex 7), Article XI(1) of the FCN between Luxemburg and the United States of America signed on 23 February 1962, Department of State, United States Treaties and other international agreements, *Vol 14*, Part 1, 1963, p. 259; Article XII(1) of the FCN Treaty between the United States of America and Japan, signed on 2 April 1953; C. J. Tams, C. Tietje (eds), *Documents in International Economic Law, Trade, Investment and Finance*, OUP, 2012, p. 352; Article 10(1) of the Treaty of Friendship, Establishment and Navigation between the United States of America and the Kingdom of Belgium, signed on 21 February 1961 (IM, Annex 9); Article XII(1) of the Treaty of Friendship, Commerce and Navigation between Denmark and the United States of America, signed on 1 October 1951, (IM, Annex 6).

of Amity, the “exchange restrictions” provision covers “all restrictions, regulations, charges, taxes, or other requirements imposed by either Party which burden or interfere with payments, remittances, or transfers of funds or of financial instruments”.⁶²⁷ But the Standard FCN treaty provides that such restrictions can be imposed by the Parties, to the extent that it is not “in a manner unnecessarily detrimental or arbitrarily discriminatory to the claims, investments, transport, trade, and other interests of nationals and companies of the other Party, nor to the competitive position thereof”.⁶²⁸

5.8 By contrast, the Treaty of Amity authorises no restriction other than those specifically covered by one of two exceptions. Indeed, the Treaty provides for two alternative exceptions, related to the occurrence of balance-of-payments difficulties, according to which a Party may lawfully impose restrictions on transfers of funds to or from the territory of the other Party.

5.9 The first exception applies “to the extent necessary to assure the availability of foreign exchange for payments for goods and services essential to the health and welfare of its people”. This exception refers to the situation where the mere authorisation by a Party of the making of payments, remittances or transfers of funds from its territory would result for this Party in such a decrease of its monetary reserves that its own ability to pay for “goods and services essential to the health and welfare of its people” would be jeopardized. As regards the assessment of the “necessary” character of such restrictions, the Parties intended to make their own judgment as to their essential import requirements.⁶²⁹

5.10 In the present case, this exception is obviously irrelevant.

⁶²⁷ C. H. Sullivan, *Standard draft Treaty of Friendship, Commerce and Navigation*, U.S. Department of State, 1962, p. 24 (Article XII(5)) (IM, Annex 4).

⁶²⁸ *Ibid.*, p. 23 (Article XII(4)) (IM Annex 4).

⁶²⁹ See U.S. Department of State comment in the margin of the Proposed reviewed draft of the Iran-U.S. Treaty of Amity, 2 January 1955, p. 12: “With regard to paragraph 1(a) the Department observed that the procedure applicable to the treaty as a whole would also apply here, namely that each party would be free to make its own judgment as to whether or not contemplated actions on its part were consistent with the provisions of the treaty. The other party would be free to question and consult if it considered such actions to be inconsistent with the treaty. This interpretation seems to conform with that which Dr. Abdoh [Director General of Political Affairs, Ministry of Foreign Affairs of Iran] made with regard to this treaty provision” (IM, Annex 3).

- 5.11 The second exception applies to “restrictions specifically approved by the [IMF]”; this is equally irrelevant in the present case. The United States did not obtain any “specific approval” from the IMF of any of the measures re-imposed against Iran.
- 5.12 The two exceptions being irrelevant in the present case, the general prohibition contained in Article VII(1) of the Treaty of Amity fully applies to the conduct of the United States with respect to Iran’s territory. Therefore, in so far as they are restrictions on the making of payments, remittances, and transfers of funds, the U.S. measures are in breach of Article VII(1).

SECTION 2.

THE U.S. RE-IMPOSED AND AGGRAVATED MEASURES IMPOSING RESTRICTIONS ON THE MAKING OF PAYMENTS, REMITTANCES, AND TRANSFERS OF FUNDS FROM OR TO IRAN’S TERRITORY

- 5.13 As the Court noted in its Order on Provisional Measures of 3 October 2018:
- “the decision announced on 8 May 2018 appears to have already had an impact ... on the payments and transfer of funds between [the two Parties], and that its consequences are of a continuing nature.”⁶³⁰
- “as a result of the measures, certain foreign banks have withdrawn from financing agreements or suspended co-operation with Iranian banks. Some of these banks also refuse to accept transfers or to provide corresponding services. It follows that it has become difficult if not impossible for Iran, Iranian companies and nationals to engage in international financial transactions that would allow them to purchase items not covered, in principle, by the measures, such as foodstuffs, medical supplies and medical equipment.”⁶³¹
- 5.14 Indeed, multiple aspects of the 8 May sanctions are “restrictions” prohibited by Article VII(1) of the Treaty, all of them aiming to deprive Iran, Iranian nationals and Iranian companies from access to hard currency resources, currency reserves and assets located outside Iran, and to the international financial system. The U.S.

⁶³⁰ *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Order of 3 October 2018, *I.C.J. Reports 2018*, para. 88.

⁶³¹ *Ibid.*, para. 89.

measures which interfere with, and indeed preclude, the making of payments, remittances, and transfers of funds “to and from” the territory of Iran include:

- The exclusion of Iran from the international banking system and from the transfers of funds it enables (A);
- Measures related to the Iranian Rial (B);
- The re-listing and listing of many entities on the OFAC’s SDN List (C);
- The blocking of assets owned by persons taking part to the energy, shipping, or shipbuilding sectors of Iran and persons operating a port in Iran (D);
- Measures related to the Iranian sovereign debt (E);
- “Menu-based sanctions” having a restrictive impact on transfers of funds from or to Iran (F).

A. The exclusion of Iran from the international banking system and from the transfers of funds

i. The measure

5.15 As explained in Chapter II,⁶³² pursuant to Section 2 of E.O. 13846, foreign financial institutions – broadly defined to cover a large variety of companies providing financial services⁶³³ – are threatened with being subject to damaging U.S. measures if they are found to have “knowingly conducted or facilitated any significant transaction” related,

⁶³² See paras. 2.38, 2.71-2.74, 2.78-2.79.

⁶³³ See E.O. 13846, section 16(d) provides: “the term “foreign financial institution” means any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes, but is not limited to, depository institutions, banks, savings banks, money service businesses, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and holding companies, affiliates, or subsidiaries of any of the fore-going. The term does not include the international financial institutions identified in 22 U.S.C. 262r(c)(2), the International Fund for Agricultural Development, the North American Development Bank, or any other international financial institution so notified by the Secretary of the Treasury” (IM, Annex 35).

inter alia, to the trade in goods and services used in connection with the automotive sector of Iran and in Iranian petroleum, petroleum products and petrochemicals products.⁶³⁴

- 5.16 Also, under section 1245 of NDAA 2012, the President of the United States can impose the same damaging measure – explained below – on a foreign financial institution which has conducted a “significant financial transaction” with the CBI or with any sanctioned Iranian bank.⁶³⁵ This measure had been waived in 2015, because it was “vital to the national security of the United States to waive the imposition of [this measure], to the extent necessary to implement the Joint Comprehensive Plan of Action (JCPOA)”.⁶³⁶ This measure was fully re-imposed on 6 November 2018.⁶³⁷
- 5.17 Section 220, paragraph (c)(1) of TRA permits the United States to adopt damaging measures against any person providing, or facilitating access to, specialized financial messaging services – such as SWIFT⁶³⁸ – for the CBI or other Iranian financial institutions.⁶³⁹ The United States had committed not to apply the measures under section 220 of the TRA with respect to the CBI or any financial institution listed in Attachment 3 to Annex II of the JCPOA. This measure was fully re-imposed on 6 November 2018.⁶⁴⁰
- 5.18 In all these cases, the damaging measure precludes the foreign financial institutions concerned from opening or maintaining in the United States a correspondent or a payable-through account.⁶⁴¹

⁶³⁴ E.O. 13846, section 2(a)(i)-(a)(v) (IM, Annex 35).

⁶³⁵ See para. 2.95, above.

⁶³⁶ U.S. Secretary of State, “Waivers Determinations and Findings”, 18 October 2015 (IM, Annex 23).

⁶³⁷ See U.S. Department of Treasury, OFAC, “Frequently Asked Questions Regarding the Re-Imposition of Sanctions Pursuant to the May 8, 2018 National Security Presidential Memorandum Relating to the Joint Comprehensive Plan of Action (JCPOA)”, 8 May 2018, updated on 6 August 2018, p. 3 (IM, Annex 38).

⁶³⁸ For a description of SWIFT see footnote 155 above.

⁶³⁹ See para. 2.101-2.105, above.

⁶⁴⁰ See “What SWIFT is and why it matters in the US-Iran spat”, *Al Jazeera News*, 5 November 2018 (IM, Annex 201).

⁶⁴¹ See *supra* e.g. paras. 2.22, 2.29, 2.38, and paras. 2.95-2.97. For the definition of “account”, “correspondent account”, and “payable-through account” see footnotes 70 and 81.

ii. The breaches of Article VII(1) of the Treaty of Amity

5.19 The effect of this measure is not only to close access to the U.S. banking system to Iran but also to discourage any significant foreign bank Iran would need to move its funds from or to its territory from providing any service to Iran, Iranian nationals or Iranian companies. This is true in the major sectors of Iran's economy (automotive and energy) as well as with respect to its entire economy. Section 2 of E.O. 13846, as well as the re-imposition of the sanctions pursuant to section 1245 of NDAA 2012 and Section 220, paragraph (c)(1) of TRA, preclude any international payment, remittance, and transfer of funds, to or from Iran, and are therefore restrictions prohibited under Article VII(1) of the Treaty of Amity.

B. Measures related to the Iranian Rial

i. The measure

5.20 Section 6 of E.O. 13846 authorizes the Secretary of the Treasury to impose damaging measures on a foreign financial institution upon determining that it "(i) knowingly conducted or facilitated any significant transaction related to the purchase or sale of Iranian rials or a derivative (...) or other similar contract whose value is based on the exchange rate of the Iranian rial; or (ii) maintained significant funds or accounts outside the territory of Iran denominated in the Iranian rial".⁶⁴² Becoming effective on 7 August 2018, the aim of this measure is to strangle Iran by depriving it of any access to its currency reserves located outside its territory.⁶⁴³ Moreover, by precluding any transaction in Rial, this measure leads to a huge depreciation of this currency with the Rial losing most of its international value since it can no longer be used in international transactions.

5.21 The damaging measures consist in the blocking of the assets located within the U.S. jurisdiction of the foreign financial institutions and the interdiction on them to open

⁶⁴² E.O. 13846, section 6(a)(i) and (ii) (IM, Annex 35).

⁶⁴³ See paras. 2.27-2.30, above.

or maintain in the United States a correspondent account or a payable-through account.

ii. The breaches of Article VII(1) of the Treaty of Amity

5.22 The very object of this measure is to completely bar financial transactions denominated in the Iranian currency from Iran (e.g. the sale of Rials) or to Iran (e.g. the purchase of Rials, or the transfer to Iran of accounts in Rials maintained outside of the territory). Since any transfer of funds denominated in Rials is thus restricted, Article VII(1) of the Treaty of Amity is breached.

C. The re-listing and the listing of many entities on the OFAC's SDN List

i. The measure

5.23 As explained in Chapter II,⁶⁴⁴ the re-imposition of “nuclear-related” sanctions decided on 8 May 2018 has resulted in the re-listing of many entities and properties on the SDN List, and the listing of additional entities. These re-listed and listed entities include persons and companies identified as the Government of Iran, the CBI, the majority of Iranian financial institutions, including all Iranian banks, the main Iranian companies active in the field of aeronautics, shipping, oil, gas and petrochemicals, and a large number of Iranian aircraft and vessels.

ii. The breaches of Article VII(1) of the Treaty of Amity

5.24 The object and effect of the registration, or threat of registration, on the SDN list are to restrict the making of payments, remittances, and transfers of funds “to or from” Iran, in breach with Article VII(1) of the Treaty, in at least three different ways.

5.25 First, the Iranian persons on the SDN list are under the following restrictions: (i) the blocking of their assets (“property and interests in property”) that are or will come

⁶⁴⁴ See *supra*, paras. 2.50-2.60.

within the United States’ territorial or personal jurisdiction⁶⁴⁵ and (ii) the prohibition on *transferring, paying with, exporting, or withdrawing* these assets or otherwise dealing with them.⁶⁴⁶ There is no doubt that the object and effect of the listing of Iranian persons and entities on the SDN list are to restrict their ability to “mak[e] payments, remittances, and other transfers of funds” from the United States to Iran, contrary to Article VII(I) of the Treaty of Amity.

5.26 Secondly, the reasons for the United States to re-list or list new entities provided for by Section 1, paragraph (a), (i) and (ii) of E.O. 13846, are themselves direct and serious restrictions on the making of payments, remittances, and other transfers of funds “from or to” Iran. Indeed, a person can be re-listed or listed if “the person has materially assisted, sponsored, or provided financial, material or technological support for, or goods or services in support of, the purchase or acquisition of U.S. bank notes or precious metals by the Government of Iran”, or if “the person has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), or the Central Bank of Iran”.⁶⁴⁷ Thus, the U.S. measure is threatening:

- any person or entity supporting, in any manner, the obtaining of U.S. bank notes by the “Government of Iran” – as defined in E.O. 13846 as including the CBI, any agency or instrumentality of the Government of Iran, and any state-owned company. This measure is evidently a restriction on transfers to Iran’s territory of funds in the form of U.S. bank notes. Moreover, since U.S. bank notes are themselves of use for making payments, remittances, and transfers of funds, this measure qualifies as a restriction on the making of payments, remittances and transfers of funds from Iran’s territory, in breach of Article VII(1);

⁶⁴⁵ See *supra*, para. 2.55.

⁶⁴⁶ §560.211 ITSR, paragraphs (a)-(c), emphasis added; see *supra*, para. 2.51.

⁶⁴⁷ Emphasis added. Before its lifting following the JCPOA, this sanction was originally provided by E.O. 13622 (30 July 2012), which also barred banks from the U.S. financial system for the purchase of oil, other petroleum, or petrochemical products from Iran, and transactions with NIOC and NICO. These two sanctions have been re-imposed, as of 5 November 2018, pursuant to E.O. 13846.

- any person or entity supporting financially the CBI, NIOC and NICO, which are located on the territory of Iran, including persons or entity facilitating the making of payments, remittances, and transfers of funds to the CBI, NIOC, and NICO. This is a restriction on the making of payment, remittances, and transfers of funds, to the territory of Iran, in breach of Article VII(1).

5.27 Thirdly, any third party is prohibited from, *inter alia*, providing financial support to the persons and entities on the SDN list,⁶⁴⁸ or carrying out any transfer of funds from and to persons or entities on the list.⁶⁴⁹ Non-U.S. financial institutions are prohibited from conducting or facilitating significant financial transactions on behalf of listed entities and persons. In so far as listed entities and persons are located in Iran, this prohibition is a restriction on the making of payments, remittances, and transfers of funds to the territory of Iran. It is also a restriction on the making of payments, remittances, and transfers of funds from Iran since persons or entities located in Iran, threatened by this prohibition, abstain from transferring funds to SDNs located outside Iran. In both cases, it is a breach of Article VII(1).

D. The blocking of assets owned by persons taking part in the energy, shipping, or shipbuilding sectors of Iran and persons operating a port in Iran

i. The measure

5.28 As explained in Chapter II,⁶⁵⁰ Section 1(a)(iv) of E.O. 13846, read in conjunction with paragraph (b) of the same Section, imposes the blocking of assets owned by any person, Iranian or not, taking part in the energy, shipping, or shipbuilding sectors of Iran and persons operating a port in Iran.⁶⁵¹ Further, it imposes the same measure on

⁶⁴⁸ E.O. 13846, Section 1(a)(iii) and Section 2(a)(ii) (IM, Annex 35); see *supra*, Chapter II, para. 2.57-2.58.

⁶⁴⁹ Section 12 of E.O. 13846 provides that “the prohibitions in subsections 1(b), 5(a)(iv), 6(b)(ii) and 7(b) of this order include (a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and (b) the receipt of any contribution or provision of funds, goods, or services from any such person”. (IM, Annex 35)

⁶⁵⁰ See *supra*, paras. 2.62-2.66.

⁶⁵¹ Section 12 of E.O. 13846, mentioned above, applies as well in respect of this measure (IM, Annex 35).

any person knowingly providing significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of a person determined to be a part of the energy, shipping, or shipbuilding sectors of Iran, or to operate a port in Iran.

ii. The breaches of Article VII(1) of the Treaty of Amity

- 5.29 This measure creates at least three restrictions that breach Article VII(1) of the Treaty of Amity.
- 5.30 First, by blocking the assets of the direct and indirect actors, Iranian or non-Iranian, involved in the key economic sectors of energy, shipping, shipbuilding and the operation of ports, this measure precludes transfers of funds, remittances or payments to Iran, out of these assets blocked in the United States.
- 5.31 Secondly, by threatening to block the assets of any person, Iranian or non-Iranian, who would provide financial support to persons and entities taking part in the energy, shipping, or shipbuilding sectors of Iran or operating a port in Iran, and who are located in Iran, the United States precludes such “financial support”, and thus violates its obligation not to restrict the making of payments, remittances, and other transfers of funds to the territory of Iran.
- 5.32 Thirdly, this measure precludes any third party from carrying out any transfer of funds from and to persons or entities sanctioned because of their direct or indirect involvement in the energy, shipping or shipbuilding sectors, or operating a port. In so far as these persons and entities are located in Iran, this prohibition is a restriction on the making of payments, remittances, and transfers of funds to the territory of Iran. It is also a restriction on the making of payments, remittances, and transfers of funds from the territory of Iran when persons or entities located in Iran, threatened by this prohibition, abstain from transferring funds to persons or entities involved in the said sectors but who are located outside Iran.

E. Measures related to the Iranian Sovereign debt

i. The measure

5.33 As explained above,⁶⁵² Section 213 of TRA aims to preclude the Government of Iran from accessing to the international financial market by forcing all persons to stop providing, or refuse to provide, financial services or support in this regard. This measure had been waived in 2015 consistent with the U.S. commitments under the JCPOA because it was “vital to the national security interest” of the U.S.⁶⁵³ It has been fully re-imposed after the withdrawal of the waiver by the U.S. Administration as of 7 August 2018.

ii. The breaches of Article VII(1) of the Treaty of Amity

5.34 Since the terms “transfer of funds” in Article VII(1) of the Treaty of Amity refers to all kinds of financial transactions, including speculative ones such as the purchase of sovereign or corporate debt, measures threatening persons with a sanction if they do proceed to make such a transfer of funds qualify as restrictions on transfers of funds, in breach of Article VII(1) of the Treaty of Amity.

F. “Menu-based sanctions” having a restrictive impact on transfers of funds from
or to Iran

5.35 Section 5 of E.O. 13846 adds to the “Menu-based” sanctions contained in the United States’ legal arsenal against Iran a series of supplementary damaging measures among which the Secretary of the Treasury may choose when implementing measures imposed against a person pursuant to ISA, CISADA, TRA, IFCA, or subsections (a)(i)-(a)(iv) of section 3 of that E.O. Besides the blocking of assets mentioned above, 4 out of 7 categories of such additional prohibitions qualify as restrictions in breach of Article VII(1) of the Treaty of Amity to the extent that they bar different kinds of

⁶⁵² See *supra*, paras. 2.31-2.34.

⁶⁵³ U.S. Secretary of State, “Waivers Determinations and Findings”, 18 October 2015 (IM, Annex 23).

transfers of funds subject to the U.S. jurisdiction involving persons located in Iran. The 4 categories are loans and credits; transactions in foreign exchange; transfers of credit or payments between financial institutions or by, through or to any financial institution; and the investment in or the purchase of “significant amounts of equity or debt instruments from the sanctioned person” by a U.S. person.⁶⁵⁴

⁶⁵⁴ E.O. 13846, Section 5(a)(i)-(a)(v) (IM, Annex 35).

CHAPTER VI.
ARTICLES VIII(1) AND (2) OF THE TREATY OF AMITY: BREACHES BY
THE USA OF ITS OBLIGATIONS RELATED TO IMPORTATIONS AND
EXPORTATIONS TO AND FROM IRAN

- 6.1 As demonstrated in the preceding Chapter, most of the financial and monetary sanctions or restrictive measures that the United States have re-imposed since 8 May 2018 are breaches of Article VII(1) of the Treaty of Amity.
- 6.2 As will be shown in this Chapter, the same sanctions also fall, together with other re-imposed sanctions which focus mainly on Iranian trade, within the scope of Articles VIII(1) and (2) of the Treaty, under which the Parties have to respect obligations with respect to the manner they treat importations and exportations.
- 6.3 Indeed, most of the “nuclear-related” re-imposed sanctions constitute breaches, both direct and indirect, of the United States’ obligations:
- to accord to products imported from or exported to Iran a “treatment no less favourable” with respect to importation and exportation (Section 1); and
 - not to impose discriminatory restrictions or prohibitions on the importation from or exportation to Iran (Section 2).

SECTION 1.
U.S. BREACHES OF ITS OBLIGATIONS TO ACCORD PRODUCTS IMPORTED FROM OR
EXPORTED TO IRAN A “TREATMENT NO LESS FAVORABLE” WITH RESPECT TO
IMPORTATION AND EXPORTATION (ARTICLE VIII(1))

A. Article VIII(1)

- 6.4 Paragraph 1 of Article VIII reads as follows:
- “1. Each High Contracting Party shall accord to products of the other High Contracting Party, from whatever place and by whatever type of carrier arriving, and to products destined for exportation to the territories of such other High

Contracting Party, by whatever route and by whatever type of carrier, treatment no less favourable than that accorded like products of or destined for exportation to any third country, in all matters relating to: (a) duties, other charges, regulations and formalities, on or in connection with importation and exportation; and (b) internal taxation, sale, distribution, storage and use. The same rule shall apply with respect to the international transfer of payments for imports and exports”.

- 6.5 Article VIII(1) lays down the obligation for the United States to accord (i) to products of Iran a treatment not less favourable than the better treatment the U.S. accords to products of any third Party, and (ii) to any product destined for exportation to Iran a treatment not less favourable than the treatment accorded by the U.S. to like products exported to any third country. These Treaty obligations are more favourable than the classical most-favoured-nation treatment, since the obligation to accord a “no less favourable treatment” opens the way to a treatment *more* favourable than the better treatment accorded.
- 6.6 Under Article VIII(1), (a) and (b), the United States must accord to Iranian products destined to be imported to the United States, regardless of the territory they are imported from and the shipping mode, and to any product destined to be exported to the territory of Iran, by whatever route, a treatment no less favourable than that accorded to like products of, or destined for export to, any third country, in “all matters relating to duties, other charges, regulations and formalities, on or in connection with import and export”, and with respect to “internal taxation, sale, distribution, storage and use”.
- 6.7 These obligations, according to the terms of Article VIII(1), encompass any U.S. “regulation” “on” import from, and export to, Iran. Thus, a regulation prohibiting or interfering with import and/or export would fall under its scope. Such prohibition, or interference, if applied by the United States to Iranian products or to products destined to be exported to the Iranian territory, is a breach of the Treaty of Amity, if it is a less-favourable treatment than the treatment accorded by the United States to any like product of third countries.
- 6.8 Under Article VIII(1) second sentence, “the same obligation”, i.e., the United States’ obligation to accord a no less favourable treatment, applies “with respect to the

international transfer of payments for imports and exports” from or to Iran. The aim of this provision is to avoid a situation where even if a no less favourable treatment is accorded to importation or exportation as such, some sort of less favourable treatment would be reintroduced through the international transfer of payments for these import or export. This is confirmed by the *travaux* of the 1955 Treaty of Amity, which clarify that the United States regarded this provision as “designed to round out the basic treaty rule of unconditional most-favoured-nation treatment in matters affecting the goods trade”.⁶⁵⁵ It derives from its terms that this obligation concerns all international transfers of payment for any imports and exports from and to Iran. In particular:

- It is not limited to international transfers of payments between the United States and Iran, since Article VIII(1) provides that the obligation applies with respect to “international transfer of payments” with no qualification; and
- It is not limited to imports and exports between the territories of the Parties, since it applies “to the international transfer of payments for imports and exports” of products of both parties without qualification.

B. Breaches of Article VIII(1)

6.9 The treatment accorded by the United States to Iranian products in matters relating to “other charges, regulations and formalities” is notoriously less favourable than the one accorded to other products, and is thus violating Article VIII(1) since Iranian products have been singularized vis-à-vis any other product by the U.S. sanctions interfering with their importation.

6.10 In this regard, the re-imposition of U.S. sanctions concerning the importation into the United States of Iranian-origin carpets and foodstuffs is a clear breach.⁶⁵⁶

⁶⁵⁵ U.S. Department of State, Instruction to U.S. Embassy, 23 July 1954, p. 3 of the Memorandum “Brief Comparison of Draft Treaty for Iran with Treaty of 1951 with Ethiopia” enclosed to the instruction (IM, Annex 2).

⁶⁵⁶ See *supra*, para. 2.47.

- 6.11 Likewise, insofar as it is prohibiting exportation to, or importation from Iran, the treatment accorded by the United States to products destined for exportation to or for importation from Iran in matters relating to “other charges, regulations and formalities” is less favourable than the one accorded to like products destined for exportation to or importation from third countries, and is therefore in breach with Article VIII(1) of the Treaty.
- 6.12 In this category of breaches are the re-imposition of sanctions on transactions with Iran in graphite, raw, or semi-finished metals such as aluminium and steel, coal, and industrial software,⁶⁵⁷ the re-imposition of sanctions concerning activities related to the export or re-export to Iran of commercial passenger aircraft and related parts and services,⁶⁵⁸ and of the sanctions in connection with the automotive sector.⁶⁵⁹ All these sanctions preclude exportations of products to Iran.
- 6.13 In this category are also, insofar as they preclude exportations from Iran, the re-imposition of sanctions on petroleum-related transactions with, among others, NIOC, NICO, and NITC.⁶⁶⁰
- 6.14 Finally, since it precludes exportations to and exportation from Iran, the treatment accorded by the United States with respect to the international transfer of payments for imports from and exports to Iran, in matters relating to “other charges, regulations and formalities”, is less favourable than the treatment accorded to international transfers of payment for import from and exports to third countries, and is therefore in breach of Article VIII(1). In this category of sanctions are those already described above at paras. 5.21-5.22 and paras. 5.24, 5.29, as well as those mentioned at paras. 2.67-2.79 above insofar as they apply to financial institutions.

⁶⁵⁷ See *supra*, paras. 2.19-2.26.

⁶⁵⁸ See *supra*, paras. 2.42-2.45.

⁶⁵⁹ See *supra*, paras. 2.35-2.39.

⁶⁶⁰ See *supra*, paras. 2.67-2.79.

SECTION 2.

U.S. BREACHES OF ITS OBLIGATIONS NOT TO IMPOSE DISCRIMINATORY RESTRICTIONS OR PROHIBITIONS ON THE IMPORTATION FROM OR EXPORTATION TO IRAN (ARTICLE VIII(2))

A. Article VIII(2)

6.15 Article VIII(2) provides that

“Neither High Contracting Party shall impose restrictions or prohibitions on the importation of any product of the other High Contracting Party or on the exportation of any product to the territories of the other High Contracting Party, unless the importation of the like product of, or the exportation of the like product to, all third countries is similarly restricted or prohibited.”

6.16 Article VIII(2) of the Treaty of Amity prohibits U.S. restrictions or prohibitions on importations from Iran and exportations to Iran, if such restrictions or prohibitions are discriminatory according to the origin or to the destination of the products. The United States is therefore conventionally precluded from imposing specific restrictions or prohibitions on import to or export from Iran, which would not be equally imposed on like products imported from or exported to any other country.

6.17 This prohibition applies:

- “on the importation of any product of the other [Party]”. It follows that the United States cannot lawfully adopt “discriminatory” restrictions or prohibitions on “importation of any products of” Iran. This provision does not specify the territory with respect to which the United States may not impose restrictions or prohibitions on the importation of products of Iran, which means that any territory of importation is concerned. The United States is therefore not allowed, under this Treaty provision, to impose restrictions or prohibitions on the importation of products of Iran in any territory, including, but not limited to, the United States’ territory;
- “on the exportation of any product to the territories of the other [Party]”. The origin of the product is not limited to a qualified territory. Therefore, the

prohibition applies to the exportation of products from any territory, without limitation. The United States is thus not allowed, under the Treaty, to impose restrictions or prohibitions on the exportation from any territory, including, but not limited to, the territory of the United States, to the territory of Iran.

B. Breaches of Article VIII(2)

- 6.18 In its Order on Provisional Measures, the Court noted that
- “the decision announced on 8 May 2018 appears to have already had an impact on import and export of products originating from the two countries”.⁶⁶¹
- 6.19 The United States is in breach of Article VIII(2) through the re-imposition of “nuclear-related” sanctions.
- 6.20 This includes sanctions such as the revocation of the relevant Licenses under which entities were able to enter into economic relations with Iran and Iranian nationals or companies, as well as licenses issued by OFAC which allowed entities to engage in the sale and export to Iran of, among other things, commercial aircraft and related parts and services,⁶⁶² and the importation of Iranian products to the USA including Iranian food and carpets.⁶⁶³ This also includes virtually all the U.S. measures described in Chapter II, above, insofar as they prohibit, or restrict, in a including in imposing financial restrictions, in a discriminatory manner, exportations and importations of products to Iran and from Iran.
- 6.21 The trade restrictions and prohibitions on importations of Iranian products in the United States or in other countries and exportations of products from third countries to Iran, which are the object and effect of the United States’ “nuclear-related” sanctions, are discriminatory since the importation of the like products of, and the

⁶⁶¹ *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Order of 3 October 2018, *I.C.J. Reports 2018*, para. 88.

⁶⁶² Preventing the sale by non-U.S. entities such as European company Airbus of aircraft to Iran is also a violation of Article VIII (1) of the Treaty; see *supra*, paras. 2.42-2.45.

⁶⁶³ See e.g. U.S. Department of Treasury, OFAC, General License H, 16 January 2016, revoked as of 27 June 2018 (IM, Annex 25); U.S. Department of Treasury, OFAC, General License I, 24 March 2016, revoked as of 27 27 June 2018 (IM, Annex 29).

exportation of the like products to, all third countries are not similarly restricted or prohibited. Iran is the sole target of these restrictions and prohibitions. The United States does not generally restrict or prohibit the importation or exportation to or from third countries of “like products”, for example oil and petroleum-related products, commercial aircraft and related parts, materials for the shipbuilding or automotive sector, raw or semi-refined metals, foodstuffs and carpets.

CHAPTER VII.

ARTICLE IX(2) AND IX(3) OF THE TREATY OF AMITY: BREACHES BY THE USA OF ITS OBLIGATIONS IN RESPECT TO ALL MATTERS RELATING TO IMPORTATION AND EXPORTATION AND TO THE PROVISION OF MARINE INSURANCE

7.1 In the same manner as has been shown in the preceding Chapter, this Chapter will show that most of the “nuclear-related” re-imposed sanctions constitute breaches, both direct and indirect, of the United States’ obligations as set forth in Article IX(2) and IX(3) of the Treaty of Amity:

- to accord to Iranian nationals and companies national and most-favoured nation treatment with respect to all matters relating to importation and exportation (Section 1); and
- to refrain from imposing measures of a discriminatory nature that hinders or prevents importer or exporter of Iranian or United States’ product from obtaining marine insurance from U.S. companies (Section 2).

SECTION 1.

ARTICLE IX(2): BREACHES BY THE U.S.A OF ITS OBLIGATIONS IN RESPECT TO ALL MATTERS RELATING TO IMPORTATION AND EXPORTATION

A. Article IX(2)

7.2 Article IX(2) of the Treaty of Amity provides that :

“Nationals and companies of either High Contracting Party shall be accorded treatment no less favorable than that accorded nationals and companies of the other High Contracting Party, or of any third country, with respect to all matters relating to importation and exportation.”

While Article VIII, mentioned above, addresses the treatment that must be accorded by either Party to *products* imported from, or exported to, the territory of the other Party, Article IX(2) of the Treaty of Amity requires the Parties to accord to the other

Party's *nationals and companies* treatment no less favourable than that accorded to its own nationals and companies or to nationals and companies of any third country, with respect to all matters relating to importation and exportation. Pursuant to their ordinary meaning, the term "treatment" and the phrase "all matters relating to importation and exportation", neither of which is qualified in any way in the text, show that the intended scope of this provision is broad. The provision contains no territorial limitation. On its terms, that provision applies to all Iranian nationals and companies engaged in activities of importation from or exportation to any territory, including, but not limited to, the U.S. territory.

B. Breaches of Article IX(2)

7.3 The U.S. measures re-imposing sanctions on Iranian nationals and companies with the object and effect to preclude them from carrying out international trade are in breach with Article IX(2) of the Treaty of Amity. They include the U.S. measures specifically targeting Iranian nationals and companies, as listed in the SDN List,⁶⁶⁴ and those targeting in particular NIOC, NICO, NITC,⁶⁶⁵ IRISL.⁶⁶⁶

SECTION 2.

ARTICLE IX(3): BREACHES BY THE U.S.A. OF ITS OBLIGATION TO REFRAIN FROM IMPOSING MEASURES OF A DISCRIMINATORY NATURE THAT HINDERS OR PREVENTS IMPORTER OR EXPORTER OF IRANIAN PRODUCTS FROM OBTAINING MARINE INSURANCE

A. Article IX(3)

7.4 Article IX(3) provides that:

“Neither High Contracting Party shall impose any measure of a discriminatory nature that hinders or prevents the importer or exporter of products of either

⁶⁶⁴ See *supra*, paras. 2.50-2.60.

⁶⁶⁵ See *supra*, paras. 2.67-2.79.

⁶⁶⁶ See *supra*, paras. 2.85-2.92.

country from obtaining marine insurance on such products in companies of either High Contracting Party”.

7.5 Pursuant to this provision, the United States cannot lawfully impose any measure of a discriminatory nature that hinders or prevents any importer and exporter of Iranian or U.S. products from obtaining marine insurance from U.S. or Iranian companies. The terms “any measure” cover any sort of measures, whether direct or indirect. The terms “that hinders or prevents ... from obtaining” has also a broad meaning and refer to any sort of hurdles rendering the possibility of contracting a marine insurance administratively difficult, more expensive, restricted, or impossible. As for the terms “importer or exporter of products of either country”, they refer, first, to any importer or exporter, notwithstanding their nationality or the country from which or toward which they operate, since “importer or exporter” is not qualified, and, secondly, to “products of either country”, which means products from the United States or from Iran.

7.6 It follows that the United States cannot lawfully prohibit the provision by U.S. companies of marine insurance to companies importing or exporting U.S. or Iranian products, if this is in a discriminatory manner, which means if the same prohibition does not apply with respect to importers or exporters of like products of any third country.

B. Breaches of Article IX(3)

7.7 “Nuclear-related” sanctions re-imposed by the United States following the 8 May Decision are in breach with Article IX(3) in at least two distinct ways: first, by prohibiting the provision of underwriting service, insurance, or reinsurance for sanctioned activities or persons and also more generally (i); secondly, by prohibiting the provision of any service to a large range of entities or whole sectors which activities completely depends on maritime transport and therefore on marine insurance (ii).

i. Sanctions on the provision of underwriting services, insurance, or reinsurance for sanctioned activities or persons

7.8 The U.S. re-imposition of sanctions on the provision of underwriting services, insurance or reinsurance for sanctioned activities or persons is explained in Chapter II, above.⁶⁶⁷ To the extent that shipping of the vast majority of goods concerned, especially petroleum and petroleum products, is made by sea, *marine* insurance is specifically targeted. This sanction radically prevents Iranian importers or exporters of products of Iran or the United States from obtaining marine insurance on such products from U.S. companies.

7.9 The detrimental effect of these sanctions on the level of Iran’s exportations, which crucially need shipping insurance, is all the more serious since, as lawyers with the Congress of the United States noticed:

“A pool of 13 major insurance organizations, called the International Group of P & I Clubs, dominates the shipping insurance industry and is based in New York. The U.S. presence of this pool renders it subject to the U.S. trade ban (...). On January 16, 2017, the Obama Administration issued waivers of Sections 212 and 213 of the ITRSHRA to allow numerous such insurers to give Iranian ships insurance. However, this waiver ended on August 6, 2018 (90-day wind-down).”⁶⁶⁸

7.10 This prevention from obtaining marine insurance from U.S. insurance companies prevents the importers of Iranian products and the exporters of U.S. products to Iran to carry out their activity. It is exclusively imposed on importers and exporters of Iranian and U.S. products and does not target importers and exporters of products of other countries, and is therefore discriminatory, in breach with Article IX(3) of the Treaty of Amity.

⁶⁶⁷ See *supra*, paras. 2.106-2.108.

⁶⁶⁸ K. Katzman, “Iran Sanctions”, *Congressional Research Service*, RS20871, updated 22 April 2019, pp. 9-10 (Footnote omitted) (IM, Annex 329). The 13 P&I clubs, between them, provide marine liability cover for approximately 90% of the world’s ocean-going tonnage. See “Marine: International Group of P&I Clubs warns about insurance cover for Iran-related shipping”, *Asianinsurancereview.com*, 29 November 2018 (IM, Annex 203).

ii. Sanctions on the provision of any service for sanctioned activities or persons

- 7.11 Section 1 of E.O. 13846, which specifically sanctions any person, including U.S. persons, which provides “financial, material, or technological support for, or goods or services in support of [inter alia] the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO)”⁶⁶⁹ or “knowingly provides significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of [inter alia] a person determined under Section 1244(c)(2)(A) of IFCA⁶⁷⁰ to be a part of the energy, shipping, or shipbuilding sectors of Iran (...)”,⁶⁷¹ is unlawful in view of the conditions laid down in Article IX(3) of the Treaty of Amity.
- 7.12 Indeed, this measure is preventing, in a discriminatory manner, access of exporters and importers of the products of Iranian companies mentioned above to marine insurance provided by U.S. companies. Indeed, the “services” referred to in Section 1 of E.O. 13846 are not qualified and therefore cover all categories of services, including (marine) insurance. This Section 1, in conjunction with section 1244(c)(1) of IFCA, constitutes therefore a violation of the right to a marine insurance enshrined in Article IX(3) of the Treaty of Amity.

⁶⁶⁹ Section 1(a)(ii) of E.O. 13846 (IM, Annex 35 – emphasis added).

⁶⁷⁰ “(c) Blocking of Property of Entities in Energy, Shipping, and Shipbuilding Sectors (...) (2) Persons described – A person is described in this paragraph if the President determines that the person, on or after the date that is 180 days after the date of the enactment of this Act – (A) is part of the energy, shipping, or shipbuilding of Iran”.

⁶⁷¹ Section 1(a)(iv)(C) of E.O. 13846 (IM, Annex 35 – emphasis added).

CHAPTER VIII.
THE BREACHES OF ARTICLE X(1) OF THE TREATY OF AMITY

SECTION 1.

ARTICLE X(1) OF THE TREATY OF AMITY

8.1 Pursuant to Article X(1) of the Treaty of Amity:

“Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation.”

8.2 This is a provision that has already received the scrutiny of this Court in the *Oil Platforms* case. As with Article VII(1), Article X(1) entitles Iran itself (as opposed to Iranian nationals and companies) to the specified treatment, i.e. the entitlement to freedom of commerce and navigation.

8.3 There are three key elements to the provision so far as concerns the facts of the current case, each of which was the focus of attention in *Oil Platforms*.

8.4 First, as to the meaning of “commerce”, the Court has found that the term “commerce” in Article X(1) “includes commercial activities in general – not merely the immediate act of purchase and sale, but also the ancillary activities integrally related to commerce”.⁶⁷² The Court also noted that: “the expression ‘international commerce’ designates, in its true sense, ‘all transactions of import and export, relationships of exchange, purchase, sale, transport, and financial operations between nations’ ...”.⁶⁷³

8.5 Secondly, as to “freedom of commerce”, the Court has found that:

“Any act which would impede that ‘freedom’ is thereby prohibited. Unless such freedom is to be rendered illusory, the possibility must be entertained that it

⁶⁷² *Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996*, p. 803 at p. 819, para. 49, quoted in *Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, I.C.J. Reports 2003*, p. 161 at p. 200, para. 80. The Court also rejected the U.S. contentions to the effect that the term was restricted to maritime commerce.

⁶⁷³ *Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996*, p. 803 at p. 818, at para. 45; see also the consideration given to the term “for the purposes of commerce” in Article VI of the Treaty of 15 April 1958 in *Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2009*, p. 213 at pp. 240-244, paras. 57-71.

could actually be impeded as a result of acts entailing the destruction of goods destined to be exported, or capable of affecting their transport and storage with a view to export.”⁶⁷⁴

8.6 Thirdly, the Court has emphasised that Article X(1) protects “freedom of commerce” that is “[b]etween the territories of the two High Contracting Parties”. On the (very different) facts of the *Oil Platforms* case, the Court found that a series of discrete and independent sales and resales of an Iranian product via actors in third States, which product ultimately enters the United States, was “not ‘commerce’ between Iran and the United States, but commerce between Iran and an intermediate purchaser; and ‘commerce’ between an intermediate seller and the United States”.⁶⁷⁵ The Court’s reasoning is to be understood in the context of the specific facts then before it, which did not concern transactions which were from the outset intended to involve the delivery of a product between the territories of Iran and the United States through an intermediary in a third country.

8.7 As follows from the above, “freedom of commerce” within Article X(1) is a broad concept, and is apt to protect against measures by one of the Treaty Parties that result in the termination, cancellation or non-renewal of commercial transactions such as the sale of aircraft and spare parts, medical products, agricultural products and carpets. Such measures may impact directly on individual acts of commerce or, more broadly, may render many forms of commerce impossible, including where commerce is dependent on (a) the ability of Iranian banks and the willingness of foreign banks to process payments for transactions affected by the U.S. measures, or (b) the ability of Iranian nationals and companies to obtain insurance from foreign companies for shipments required to complete such transactions.

⁶⁷⁴ *Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996*, p. 803 at p. 819, para. 50, quoted in *Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, I.C.J. Reports 2003*, p. 161 at p. 201, para. 83. See also at p. 203, para. 89.

⁶⁷⁵ *Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, I.C.J. Reports 2003*, p. 161 at p. 207, para. 97.

SECTION 2.

VIOLATION OF IRAN'S ENTITLEMENT TO FREEDOM OF COMMERCE BETWEEN THE TERRITORIES OF IRAN AND THE UNITED STATES UNDER ARTICLE X(1)

- 8.8 The current treatment of Iran, and Iranian nationals and companies, including Iranian financial institutions, and their respective property and enterprises (including businesses and business deals), radically and self-evidently interferes with Iran's right to freedom of commerce between the territories of Iran and the United States under Article X(1). The sanctions that the United States imposed on Iran prior to May 2018 adversely impacted (and continue to impact) trade between the two States; but so far as concerns many forms of commerce, trade between Iran and the United States continued, albeit at a reduced rate. Trade continued, for example, with respect to telecommunications, carpets and agricultural products as well as with respect to the well-publicised agreements for the purchase of new aircraft and related parts and services. As follows from the above, the U.S. measures outlined in Chapter II operate as a separate and additional barrier to commerce and thereby breach Article X(1).
- 8.9 Multiple elements of the U.S. measures impact directly on individual acts of commerce between the territories of the two States, such as the import into Iran of aircraft, aircraft spares and equipment (through the revocation of the SLP and General License I), medicines and medical equipment, food and agricultural products, and also the export from Iran of carpets as well as foodstuffs (via the re-imposition of the ITSR). The combined effect of the U.S. measures, including the revocation of General License H, amounts to an almost total ban on commerce between the U.S. and Iran.
- 8.10 These measures, individually and in combination, have interfered, and are interfering, with freedom of commerce between the territories of Iran and the United States. It is unsurprising that U.S. companies and nationals have ceased trading with Iran, having heeded the USA's warnings that "[a]nyone doing business with Iran will NOT be doing business with the United States",⁶⁷⁶ and that "the rules may change and may

⁶⁷⁶ M. Milliken & P. Graff, "Trump says firms doing business in Iran to be barred from U.S. as sanctions hit", *Reuters*, 7 August 2018 (IM, Annex 143).

change quickly ... [t]omorrow, next week or next month you may find yourself conducting business that may be legal today that isn't in the future.”⁶⁷⁷

- 8.11 Other elements of the U.S. measures impact indirectly and more broadly by making commerce (including commerce in goods and services which are supposedly exempt from the U.S. measures) between the territories of the two States impossible in practice by denying Iran and/or Iranian nationals and companies access to the international financial and payment, shipping and insurance systems.
- 8.12 The measures which deny Iran and Iranian nationals and companies access to the international financial and payment system, and thereby interfere with commerce between the territories of Iran and the USA in every sector of the economy, have been referred to in Chapter II and paragraphs 4.57-4.60 above. In the words of a senior U.S. State Department official, Iran “is facing a liquidity crisis”.⁶⁷⁸ In particular:
- a. Nearly all of the major international financial institutions have ceased all cooperation with Iranian banks, both with respect to processing transactions and issuing guarantees and letters of credit, irrespective of whether the goods which are the subject of those transactions are facially exempt from the U.S. measures.
 - b. All property of any Iranian financial institution which is or comes within the U.S. or the possession/control of a U.S. person (including U.S. banks worldwide) is and will be “blocked”: NDAA 2012, section 1245(c).
 - c. Iran, all state-owned and controlled Iranian companies, including the CBI, have been and are being denied access to U.S. bank notes: E.O. 13846, section 1(a)(i).
 - d. It is impossible for Iran and Iranian nationals and companies to access currency reserves in Iranian Rial located outside of Iran or to conduct international transactions to and from Iran using or based on the Iranian Rial: E.O. 13846, section 6.

⁶⁷⁷ B. Slavin, “Trump officials warn more Iran sanctions are coming”, *Al-Monitor*, 14 March 2019 (IM, Annex 340).

⁶⁷⁸ U.S. Department of State, “Department Press Briefing”, 7 November 2018 (IM, Annex 44).

- e. The Iranian Rial has fallen dramatically in value.
- f. Non-U.S. financial institutions, and companies providing financial messaging services (such as SWIFT), have withdrawn their cooperation with the CBI and numerous other Iranian financial institutions which have been included on the SDN List.
- g. U.S. and non-U.S. persons have refused to provide support or goods or services to the CBI: E.O. 13846, section 1(a)(ii).
- h. Iran and Iranian state-owned and controlled companies have been denied the benefit of debt financing: TRA, section 213(a).
- i. Iran has been prevented from obtaining materials which may be used as a medium for non-cash transactions or “used as an asset of the Government of Iran for the purposes of the national balance sheet of Iran”: IFCA, section 1245(a).
- j. Iran will be unable to make payments necessary to prevent defaults on its sovereign debt, leading to downgrading of its credit-worthiness.

8.13 The measures which deny Iran and Iranian nationals and companies access to the international shipping system, and thereby interfere with commerce between the territories of Iran and the USA in every sector of the economy, have been referred to in Chapter II and paragraphs 4.71-4.75 above. Those measures include that all property is “blocked” that is, or comes to be, in the U.S. or in the possession/control of a U.S. person, of persons who are determined to be part of the “shipping or shipbuilding sectors of Iran” (defined very broadly) or to operate a port in Iran: E.O. 13846, section 1(a)(iv). Further, although certain measures may not impact on U.S. persons, they may nonetheless impact on the ability of Iran to engage in free commerce with the USA.

8.14 The measures which deny Iran and Iranian nationals and companies access to the international insurance system, and thereby interfere with commerce between the

territories of Iran and the USA in every sector of the economy, have been referred to in Chapter II and paragraphs 4.76-4.77 above. They include sweeping measures prohibiting U.S. and non-U.S. persons from providing underwriting services or insurance or reinsurance for any sanctionable activity and any Iranian nationals or companies falling within the scope of the relevant U.S. sectoral measures (including, for example, NIOC and NITC) and any person included on the SDN list.

- 8.15 In short, the impact of the U.S. measures at issue in this case is that commerce between the territories of the two States is very severely impeded, contrary to Article X(1). At the stage of the Reply, Iran may be in a position to put forward a reasonably comprehensive picture of the extent of the interference with its right to freedom of commerce.

CHAPTER IX.

THE IRRELEVANCE OF THE EXCLUSIONS LISTED IN ARTICLE XX(1)

9.1 During its pleadings on the provisional measures Iran had requested, the United States had focused “primarily on the key role of Article XX, paragraph 1, of the Treaty of Amity ...”⁶⁷⁹ On this occasion, Counsel for the U.S. asserted that

“That article reflects the Parties’ agreement to exclude from the Treaty’s scope the very type of national security measures at issue here – measures necessary to protect essential security interests and measures related to nuclear materials. By adopting these exclusions, the Parties expressly reserved their paramount, sovereign rights to take actions in these sensitive areas.”⁶⁸⁰

9.2 However, in her discussion of this provision, Counsel limited herself to explaining “why subparagraphs (1) (b) and (1) (d), respectively, operate as bars to *prima facie* jurisdiction over all of Iran’s claims.”⁶⁸¹

9.3 In this section Iran will establish that these sub-paragraphs of Article XX, paragraph 1, of the Treaty, which, as the Court recalled on several occasions does not limit its jurisdiction but constitutes a substantive provision (Section 1), cannot justify the United States’ claims. To this end, Iran shall also establish successively (Sections 2 & 3), the irrelevance of paragraphs (b) and (d) of this provision.

SECTION 1.

ARTICLE XX OF THE 1955 TREATY CANNOT BE A BASIS FOR JURISDICTIONAL OBJECTIONS

9.4 In its letter of 27 July 2018 communicating to the Court certain observations regarding Iran’s Request for provisional measures, the United States strongly objected to the jurisdiction of the Court notably because “[t]he matters of which Iran complains are [...] outside the scope of the Treaty of Amity [...] and beyond the limited jurisdictional

⁶⁷⁹ I.C.J., *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Pleadings on Provisional Measures (hereafter “*Sanctions, PM, pleadings*”), CR 2018/17 (28 August 2018), p. 32, para. 1 (Grosh).

⁶⁸⁰ *Ibid.*

⁶⁸¹ *Ibid.*, p. 33, para. 3.

grant provided by Article XXI(2), read in conjunction with Article XX(I), of the Treaty.”⁶⁸² In its Order of 3 October 2018, the Court rejected this argument in a way that leaves no room for doubt:

“41. As the Court has had the opportunity to observe in the *Oil Platforms* case, the 1955 Treaty contains no provision expressly excluding certain matters from its jurisdiction. The Court took the view that Article XX, paragraph 1, subparagraph (d), did ‘not restrict its jurisdiction’ in that case. It considered instead that that provision was ‘confined to affording the Parties a possible defence on the merits to be used should the occasion arise’ (see *Oil Platforms (Islamic Republic of Iran United States of America)*, *Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 811, para. 20).

42. The Court observes that Article XX, paragraph 1, defines a limited number of instances in which, notwithstanding the provisions of the Treaty, the Parties may apply certain measures. Whether and to what extent those exceptions have lawfully been relied on by the Respondent in the present case is a matter which is subject to judicial examination and, hence, forms an integral part of the material scope of the Court’s jurisdiction as to the ‘interpretation or application’ of the Treaty under Article XXI, paragraph 2 (see also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment, I.C.J. Reports 1986*, p. 116, para. 222).”⁶⁸³

9.5 Iran does not underestimate the fact that the Court has only ruled *prima facie* on this matter.⁶⁸⁴ However, it must be noted that the Court’s reasoning is based entirely on the approach it had taken in the *Oil Platforms* case and in that case, the Court had taken this firm view not in an Order indicating provisional measures, but in a Judgment on preliminary objections. While it is of course “true that, in accordance with Article 59, the Court’s judgments bind only the parties to and in respect of a particular case [...t]he real question is whether, in this case, there is cause not to follow the reasoning and conclusions of earlier cases.”⁶⁸⁵

⁶⁸² Letter from the Agent of the United States to the International Court of Justice, 27 July 2018 (IM, Annex 56).

⁶⁸³ *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, *Order of 3 October 2018, I.C.J. Reports 2018* (‘*Alleged Violations*’), paras. 41-42.

⁶⁸⁴ See *ibid.*, para. 52.

⁶⁸⁵ *Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 292, para. 28. See also e.g.: *Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, pp. 171-172, para. 14; or *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*; *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, *Provisional Measures, Order of 22 November 2013, I.C.J. Reports 2013*, p. 360, para. 28.

- 9.6 Moreover, on 13 February 2019, in its Judgment on preliminary objections in the case relating to *Certain Iranian Assets*, the Court declared that it “sees no reason in the present case to depart from its earlier findings” that “Article XX, paragraph 1, subparagraph (*d*), ‘[did] not restrict its jurisdiction’ in that case ‘but [was] confined to affording the Parties a possible defence on the merits to be used should the occasion arise’.”⁶⁸⁶ The Court then clarified that “this same interpretation also applies to Article XX, paragraph 1, subparagraph (*c*), of the Treaty since, in this regard, there are no relevant grounds on which to distinguish it from Article XX, paragraph 1, subparagraph (*d*).”⁶⁸⁷
- 9.7 The Court’s finding is so clear that there is no need to elaborate more on this issue at this stage: if the argument based on Article XX, paragraph 1, could have any relevance, it could only be with regard to the merits of the case. As Iran will show below, it has no such relevance either.

SECTION 2.

IRRELEVANCE OF ARTICLE XX(1)(B)

- 9.8 According to the U.S.:
- “The measures at issue here are sanctions that all the participants in the JCPOA, including Iran, acknowledged as ‘nuclear-related’, meaning they were imposed in relation to Iran’s nuclear programme. As such, Article XX, paragraph 1 (*b*) is engaged. It excludes the challenged measures ‘relating to’ fissionable materials.”⁶⁸⁸
- 9.9 Paragraph 1(b) of Article XX of the Treaty of Amity provides that the “Treaty shall not preclude the application of measures [...] relating to fissionable materials, the radio-active by-products thereof, or the sources thereof.”

⁶⁸⁶ *Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment of 13 February 2019*, para. 45.

⁶⁸⁷ *Ibid.*, para. 46.

⁶⁸⁸ *Alleged Violations, Pleadings on Provisional Measures*, CR 2018/17 (28 August 2018), p. 41, para. 28 (Grosh).

9.10 In the present case, the Parties have on the one hand undertaken to promote and encourage trade and investments between them and, on the other hand, excluded the question of fissionable materials from the field *covered by the Treaty* (i.e., insofar as it relates to trade and investments concerning these materials) from the scope of the Treaty. The United States cannot now come before the Court by claiming that the scope of their mutual commitments is broader and include other commitments on other matters, coming outside the field of the Treaty, on the pretext that these other matters relate to “sensitive issues”.

9.11 In any event, it turns out that the contested sanctions relate to restrictions on economic relations between the two States and not to any subject-matter concerning fissionable materials linked with the subject-matter of the Treaty, namely “trade and investments and closer economic intercourse generally”. In other words, sub-paragraph 1(b) of Article XX must be interpreted in view of the object and purpose of the Treaty as defined by the Court itself which clearly implies that only trade in relation to fissionable materials, investment in relation to fissionable materials and, more generally, economic activity in relation to fissionable activity are excluded from the scope of the Treaty by the provision at stake, not a remote and indirect purpose invoked by means of justification.

9.12 An interpretation in good faith of the ordinary meaning to be given to the terms of this provision, in their context and in the light of its object and purpose, is sufficient to show that it does not apply to the present case. This provision which is also present in the other FCN treaties signed by the U.S. during this period, comes from the U.S. national law. It uses the exact same terms as in the 1946 Atomic Energy Act⁶⁸⁹ in which it is explained that:

“the term ‘fissionable material’ means plutonium, uranium enriched in the isotope 235, any other material which the Commission determines to be capable of releasing substantial quantities of energy through nuclear chain reaction of the material, or any material artificially enriched by any of the foregoing;”

9.13 Similarly, the term “source material” is defined as meaning:

⁶⁸⁹ U.S. Atomic Energy Act of 1946, Pub. L. No. 585-79, available at: www.legisworks.org/congress/79/publaw-585.pdf.

“uranium, thorium, or any other material which is determined by the Commission, with the approval of the President, to be peculiarly essential to the production of fissionable materials; but includes ores only if they contain one or more of the foregoing materials in such concentration as the Commission may by regulation determine from time to time.”

9.14 Finally,

“the term ‘byproduct material’ means any radioactive material (except fissionable material) yielded in or made radioactive by exposure to the radiation incident to the processes of producing or utilizing fissionable material.”

9.15 The Treaty excludes from its scope the measures that relate to these materials which are clearly defined and should not be confused with measures relating to nuclear activity broadly speaking. None of the sanctions re-imposed on 8 May 2018 relate “to fissionable materials, the radio-active by-products thereof, or the sources thereof.”⁶⁹⁰

9.16 Furthermore, the provision cannot be isolated from the rest of the Treaty of Amity in such a way that the Treaty would be deprived of its object and purpose. The specific nature of the Treaty whose object is, according to the terms of the Preamble recalled by the Court in its 1996 Judgment in the *Oil Platforms* case “the ‘encouraging [of] mutually beneficial trade and investments and closer economic intercourse generally’ [...] between the two States. [...] It follows that the object and purpose of the Treaty of 1955 was not to regulate peaceful and friendly relations between the two States in a general sense.”⁶⁹¹ The Court reached this conclusion after citing a number of specific articles of the Treaty, several of which are precisely those which are invoked by Iran in the present case, namely those regulating “safeguards for the nationals and companies of each of the contracting parties as well as their property and enterprises (Art. IV), (...) the system of transfers (Art. VII), customs duties and other import restrictions (Arts. VIII and IX), freedom of commerce and navigation (Arts. X and XI)...”⁶⁹²

⁶⁹⁰ See below para. 9.17.

⁶⁹¹ *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996, pp. 813-814, paras. 27-28.

⁶⁹² *Ibid.*, para. 27.

- 9.17 It follows that, like Article I (the object of the above-mentioned passage from the 1996 Judgment), Article XX(1) “cannot be interpreted as incorporating into the Treaty all of the provisions of international law concerning such relations”. It says what it means and means what it says: it concerns – but is limited to – the measures “relating to fissionable materials, the radio-active by-products thereof, or the sources thereof”.
- 9.18 However, *none* of the measures the legality of which is challenged by Iran in the present case, relates to these matters. The contested measures are very varied and cover a very large number of transactions and activities of various kinds, but none relates to fissionable materials, the radio-active by-products⁶⁹³ – the trade in which is subject to other sanctions which are maintained and are not the subject of Iran’s Application of 16 July 2018.
- 9.19 This is the case with respect to the measures included in the *Iran Nonproliferation Act* of 2000, today known as the *Iran, North Korea and Syria Nonproliferation Act*.⁶⁹⁴ In certain respects, these measures by nature may seem not to be very different from some of the measures which are the subject matter of the case submitted to the Court. They prohibit the U.S. Administration from producing or entering into any contract for the procurement of some goods and services and also prohibit the importation into the U.S. of some products. They also prohibit the sales of certain items and services to these sanctioned persons.
- 9.20 However, the content of the 2000 measures is very different. They can be taken against “every foreign person with respect to whom there is credible information indicating that that person, on or after January 1, 1999, transferred to Iran:
- (1) goods, services, or technology listed on:
- (A) *the Nuclear Suppliers Group Guidelines for the Export of Nuclear Material, Equipment and Technology* (published by the International Atomic Energy Agency as Information Circular INFCIRC/254/ Rev.3/ Part 1, and subsequent revisions) and *Guidelines for Transfers of Nuclear-Related Dual-Use Equipment*,

⁶⁹³ For a description of the contested measures see Chapter II above, paras. 2.13-2.114.

⁶⁹⁴ Available at: www.congress.gov/106/plaws/publ178/PLAW-106publ178.pdf. It was renamed *Iran, North Korea and Syria Nonproliferation Act* by Iran Nonproliferation Amendments Act of 2005 (available at www.congress.gov/109/plaws/publ112/PLAW-109publ112.pdf) and the North Korea Nonproliferation Act of 2006 (available at www.congress.gov/109/plaws/publ353/PLAW-109publ353.pdf).

Material, and Related Technology (published by the International Atomic Energy Agency as Information Circular INFCIRC/254/Rev.3/ Part 2, and subsequent revisions); [...]

(2) goods, services, or technology not listed on any list identified in paragraph (1) but which nevertheless would be, if they were United States goods, services, or technology, prohibited for export to Iran *because of their potential to make a material contribution to the development of nuclear, biological, or chemical weapons*, or of ballistic or cruise missile systems.”⁶⁹⁵

9.21 The very object of these measures is related to fissionable materials. On the contrary, the JCPOA lifted sanctions whose motivation was related to an alleged Iranian military nuclear programme but whose object was not related to fissionable materials. It must be noted that none of the measures relating to fissionable materials had been affected by the JCPOA – and are not therefore within the scope of Iran’s claim.

SECTION 3.

IRRELEVANCE OF ARTICLE XX(1)(D)

9.22 In reality, the same is true with regard to the second part of Article XX(1)(d) on which the United States relies: if the issue is examined in a logical and reasonable manner, it is clearly not arguable that considerations related to essential security interests justify, in any way, the disputed measures.

9.23 Article XX(1)(d) reads as follows:

“1. The present Treaty shall not preclude the application of measures:

[...]

d. necessary to fulfill the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests.”

9.24 The U.S. considers that “[w]ith regard to the question of whether the measures are “necessary” to protect essential security interests, [its] own determination in this

⁶⁹⁵ Iran Nonproliferation Act of 2000, Pub. L. No. 106-178, 114 Stat. 38, section 2(a) – emphasis added; read in conjunction with section 3(a) of this Act (available at www.congress.gov/106/plaws/publ178/PLAW-106publ178.pdf).

regard is to be accorded substantial deference”⁶⁹⁶ and that “[t]hese measures, and the U.S. decision to reimpose them, fall squarely within the essential security provision.”⁶⁹⁷

9.25 As the Court pointed out in its 2003 Judgment in the *Oil Platforms* case, on the basis of Article XX(1)(d) of the Treaty of Amity:

“a party to the Treaty may be justified in taking certain measures which it considers to be ‘necessary’ for the protection of its essential security interests. As the Court emphasized, in relation to the comparable provision of the 1956 United States/Nicaragua Treaty in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, ‘the measures taken must not merely be such as tend to protect the essential security interests of the party taking them, but must be ‘necessary’ for that purpose’; and whether a given measure is ‘necessary’ is ‘not purely a question for the subjective judgment of the party’ (*I.C.J. Reports 1986*, p. 141, para. 282), and may thus be assessed by the Court.”⁶⁹⁸

These passages were both expressly referred to in *Djibouti v. France* as establishing “the competence of the Court in the face of provisions giving wide discretion”.⁶⁹⁹

9.26 The emphasis put by the Court on its duty to assess the reality of the necessity to protect essential security interests is all the more noticeable in this last case that Article 2(c) of the Convention concerning judicial assistance in criminal matters of 27 September 1986 between Djibouti and France provides that “[j]udicial assistance may be refused [...] [i]f the requested State considers that execution of the request is likely to impair its sovereignty, security, public policy or other essential interests”.⁷⁰⁰ The italicized expression, which, symptomatically, is also included, for example, in Article 32.2 of the recent United States-Mexico-Canada Agreement (“USMCA”),⁷⁰¹

⁶⁹⁶ *Alleged Violations, Pleadings on Provisional Measures*, CR 2018/17 (28 August 2018), p. 37, para. 18 (Grosh).

⁶⁹⁷ *Alleged Violations, Pleadings on Provisional Measures*, CR 2018/17 (28 August 2018), p. 39, para. 23 (Grosh).

⁶⁹⁸ *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, *I.C.J. Reports 2003*, p. 183, para. 43.

⁶⁹⁹ See *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, Judgment, *I.C.J. Reports 2008*, p. 229, para. 145.

⁷⁰⁰ Convention concerning judicial assistance in criminal matters of 1986 between France and Djibouti, 1695 U.N.T.S. 297 at 304. (Emphasis added).

⁷⁰¹ United States–Mexico–Canada Agreement, signed on 30 November 2018, available at: ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between,

does not appear in Article XX(1)(d), which can therefore be considered all the less as conferring on the Parties a power of self-assessment.

9.27 This was the position in the 2013 Partial Award rendered in *Indus Waters Kishenganga* in which the Court of Arbitration considered that “the limiting phrase ‘if necessary’” served to indicate that the appreciation of the situation “had to be justified by the exigencies of each particular case.”⁷⁰² And it added:

“This interpretation does not, however, reduce necessity to a mere test of what is desirable, nor does it become a self-judging matter for India alone to evaluate.”⁷⁰³

9.28 The fact that Article XX(1)(d) is not self-judging has been highlighted by Judge *ad hoc* Brower in its Separate Opinion, joined to the Court’s Judgment of 13 February 2019 in the *Certain Iranian Assets* case:

“In 1955, the United States thus was very well aware of, and capable of drafting, self-judging clauses, which strongly suggests that, had the intention been that of making Article XX of the Treaty of Amity self-judging, the United States and Iran would have done so. The United States, however, manifested no such intention, even on its own part, while negotiating with Iran, according to the drafting history of the Treaty of Amity that has been made available to the Court in this proceeding.”⁷⁰⁴

9.29 It is therefore for the Court to assess the probative value of the arguments put forward by the United States in support of the implementation of Article XX(1)(d) and to determine on that basis whether it can reasonably be considered that the grounds on which they rely establish the necessity of the contested measures to preserve their essential security interests. This is not the case.

Art. 32.2 (*Essential Security*): “1. Nothing in this Agreement shall be construed to: a. require a Party to furnish or allow access to information the disclosure of which *it determines* to be contrary to its essential security interests; or b. preclude a Party from applying measures that *it considers* necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests”.

⁷⁰² PCA, Partial Award, 18 February 2013, *Indus Waters Kishenganga Arbitration (Pakistan v. India)*, PCA Case No. 2011-01, para. 395.

⁷⁰³ *Ibid.*, para. 398.

⁷⁰⁴ Separate Opinion of Judge *ad hoc* Brower attached to *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, *Preliminary Objection, Judgment of 13 February 2019*, para. 10.

- 9.30 In the present case, there can be no doubt that the re-imposition or aggravation of sanctions suspended or abandoned following the adoption of the JCPOA by the United States cannot, in any way, be considered “necessary [...] to protect its essential security interests”.
- 9.31 The situation is as follows: until 8 May 2018, the United States took for granted not only that its security was preserved as long as Iran respected certain voluntary commitments with regard to its nuclear activities – which the IAEA has consistently confirmed⁷⁰⁵ – but also that such respect for the JCPOA was a condition for its security. It therefore considered that the sanctions lifted under JCPOA were appropriate. As Iran’s Foreign Minister Dr. Zarif recalled in his response to Secretary of State Pompeo’s 12 conditions, the JCPOA “was the result of hundreds of hours of arduous bilateral and multilateral negotiations, in which the highest ranking U.S. foreign affairs official participated, and which was submitted to the Security Council by the U.S. and adopted unanimously as an international commitment under Article 25 of the Charter”.⁷⁰⁶
- 9.32 On 8 May 2018, in the absence of any new developments and contrary to the opinion of “the international community and even [of] its closest allies, including the European Union⁷⁰⁷, Britain⁷⁰⁸, France⁷⁰⁹ and Germany”,⁷¹⁰ the United States invoked an imaginary risk to its security to re-impose sanctions on a purely fantasized Iranian nuclear programme, whereas a few weeks earlier, the same measures did not seem necessary at all to protect their essential security interests.

⁷⁰⁵ See all the reports of IAEA on the IAEA website: <https://www.iaea.org/newscenter/focus/iran/iaea-and-iran-iaea-reports>.

⁷⁰⁶ Iran’s Foreign Minister Dr. J. Zarif, “Response to Pompeo’s 12 demands”, *Iran Daily*, 20 June 2018 (Iran, Annex 55).

⁷⁰⁷ Iran’s Foreign Minister, “Zarif’s Response to Pompeo’s 12 demands”, *Iran Daily*, 20 June 2018, fn 4: “eeas.europa.eu/headquarters/headquarters-homepage/44238/remarks-hrvp-mogherini-statement-us-president-trump-regarding-iran-nuclear-deal-jcpoa_en” (IM, Annex 55).

⁷⁰⁸ *Ibid.*, fn 5: “www.gov.uk/government/news/joint-statement-from-prime-minister-may-chancellor-merkel-and-president-macron-following-president-trumps-statement-on-iran”.

⁷⁰⁹ *Ibid.*, fn 6: “www.diplomatie.gouv.fr/en/french-foreign-policy/disarmament-and-non-proliferation/events/article/jcpoa-joint-statement-by-france-the-united-kingdom-and-germany-08-05-18”.

⁷¹⁰ *Ibid.*

9.33 In discharging its function of assessing the reality of the necessity invoked by the United States to protect its essential security interests, the Court cannot fail to note that this reality is by no means established. Therefore, the invocation by the United States of paragraph 1(d) of Article XX is unfounded and abusive and, consequently, the measures re-imposed on 8 May and on 7 August and 4 November 2018 are unlawful and violate its obligations under the Treaty of Amity.

PART III.
CONCLUDING PART

CHAPTER X.
REMEDIES

SECTION 1.

SUBSTANTIAL LOSS HAS BEEN AND IS BEING CAUSED TO IRANIAN NATIONALS AND COMPANIES AND THEIR PROPERTY AND ENTERPRISES AND TO IRAN AS A RESULT OF THE VIOLATIONS BY THE UNITED STATES OF THE TREATY OF AMITY

- 10.1 As the preceding Chapters of this Memorial have shown, the U.S. measures have violated the obligations owed by the United States to Iran under the Treaty of Amity. In particular, the measures have violated and continue to violate:
- a. The rights and protections accorded to Iranian nationals and companies and their property⁷¹¹ and enterprises under the Treaty, including the rights under Article IV(1), Article IV(2), and Article V(1);
 - b. The obligation under Article VII(1) not to apply restrictions on the making of payments, remittances, and other transfer of funds to or from the territory of Iran;
 - c. The obligation under Article VIII(1) to accord most favoured nation treatment to products of Iran and to products destined for export to Iran, and also with respect to the international transfer of payments for imports and exports;
 - d. The obligation under Article VIII(2) not to impose restrictions or prohibitions on the importation on any territory of any product of Iran and not to impose any restrictions and prohibitions on the exportation of any product of any territory

⁷¹¹ The term “property” is used in this Chapter to mean all property, including interests in property. See *supra* Chapter IV, Sections 2(D) and (E) and 3(D) and (E).

to Iran, unless the importation from or exportation to all third countries is similarly restricted or prohibited;

- e. The obligation under Article IX(2) to accord most favoured nation treatment with respect to all matters relating to importation and exportation;
- f. The obligation under Article IX(3) not to take discriminatory measures that hinder or prevent Iranian importers and exporters from obtaining marine insurance from U.S. companies; and
- g. The commitment to freedom of commerce secured by Article X of the Treaty of Amity, thus radically undermining the Treaty's declared aim of encouraging mutually beneficial trade and investments and closer economic intercourse generally between their peoples.

10.2 In consequence, the United States has breached its obligations to Iran, *inter alia*, under Articles IV(1), IV(2), V(1), VII(1), VIII(1), VIII(2), IX(2), IX(3) and X(1) of the Treaty of Amity.

A. Material losses suffered by Iranian nationals and companies

10.3 The impact of the U.S. measures is observed most immediately and most obviously in the instances where these have caused the termination of specific contracts and business dealings between Iranian nationals and companies and U.S. or non-U.S. nationals or companies. In cases such as this, specific, identifiable property and other rights have been destroyed, and the value of the damage and associated costs to Iranian companies arising from the U.S. measures can be computed.

10.4 Iranian companies have also suffered, and continue to suffer, losses that are less easily quantifiable. These include the losses caused by U.S. measures in so far as they diminish the value of the property owned by the Iranian companies, but without actually imposing measures on the property that constitute a "taking" of that property within the meaning of Article IV(2) of the Treaty of Amity. They also include the losses caused by contracts not renewed or not made because of the deterrent effect on

Iran-U.S. trade which is a primary element of the intended purpose of the U.S. measures.

- 10.5 Similarly, restrictions upon the transfer of funds and goods and services by U.S. and non-U.S. nationals and companies to or from Iran entail trading costs for affected companies, which are real and quantifiable losses. If the U.S. measures in question were legitimate regulatory measures, these would be legitimately-imposed costs of compliance. The U.S. measures are, however, not legitimate. They violate international law. The costs are damage caused by U.S. measures imposed in breach of its obligations under the Treaty of Amity.
- 10.6 Restitution or, if that is not possible, monetary compensation is in principle the appropriate form of reparation in international law in respect of the heads of damage referred to in Section 3 below. The calculation of the amount of such losses, and of less specific losses such as those arising as ‘lost opportunities’ resulting from U.S. measures, is, however, a matter reserved in the Application for a later stage in these proceedings.

B. Injury to the Iranian State

- 10.7 In addition to the material losses sustained by Iranian nationals and companies as a result of the U.S. measures, there is also the question of the direct injury to the State of Iran itself arising from the violation of its rights under the Treaty of Amity by the United States. In part that injury is the damage caused by the loss of commercial opportunities: in part it is what the ILC Articles on State Responsibility call ‘non-material’ or ‘moral’ damage.⁷¹²
- 10.8 Iran thus claims both in its own right and also on behalf of the Iranian nationals and companies⁷¹³ impacted by the U.S. measures at issue in this case. As to the former, it

⁷¹² See ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, in Y.I.L.C., 2001, vol. II, Part Two, at Article 31 together with paras. 7 and 8 of its commentary, and Article 37 together with para. 3 of its commentary.

⁷¹³ In this connection, Iran notes that it is obvious that there are no available and effective local remedies against the intended effect of the U.S. measures.

is emphasised that the harm inflicted by the U.S. measures on Iran is qualitatively different from the harm inflicted upon individual Iranian companies. The harm arises from the attempt to cripple the economy of the State of Iran by causing harm to Iranian nationals and companies upon whom the Iranian economy depends, in breach of various U.S. obligations under the Treaty.

- 10.9 The question of the form of reparation that is appropriate in relation to each of these kinds of damage is discussed in the following section.

SECTION 2.

APPROPRIATE NATURE OF DECLARATIONS AND ORDERS SOUGHT

- 10.10 The two essential aims of remedies in a case before the Court are the cessation and non-repetition of the breach of the Treaty of Amity, and the reparation of that breach. The duties of cessation and non-repetition and reparation are corollaries of the breach.⁷¹⁴
- 10.11 The request for relief included in Iran's Application refers to several kinds of relief.⁷¹⁵ Sub-paragraph (a) of Iran's Application requests declaratory relief; sub-paragraphs (b) and (c) request orders that the United States terminate both the 8 May sanctions and also its threats with respect to announced further sanctions (cessation); sub-paragraph (d) requests guarantees of non-circumvention and non-repetition; and sub-paragraph (e) requests full compensation in an amount to be determined by the Court at a subsequent stage in these proceedings.

⁷¹⁴ As the ILC Commentary puts it, “[t]he core legal consequences of an internationally wrongful act ... are the obligations of the responsible State to cease the wrongful conduct (article 30) and to make full reparation for the injury caused by the internationally wrongful act (article 31)”: ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, in *Y.I.L.C.*, 2001, vol. II, Part Two, at commentary on Article 28, para. 2.

⁷¹⁵ IA, para. 50.

A. Cessation and non-repetition

- 10.12 The duty to cease and not to repeat the violations of the Treaty of Amity is axiomatic, as is recognised in Articles 29–30 of the ILC Articles on State Responsibility.⁷¹⁶ A finding of breach of a legal obligation does not extinguish the obligation to fulfil that obligation. An order for cessation of the breach makes explicit the legal obligations of the Respondent State that arise automatically from the breach of international law.
- 10.13 Iran accordingly requests the Court to order the cessation of the violations.
- 10.14 Although, as a general rule, the Court presumes that a State whose conduct has been declared wrongful by the Court will not repeat that conduct in the future,⁷¹⁷ Iran submits that the situation in the present case falls in the category of ‘special circumstances’ that give cause to believe that the Respondent will repeat the violations. The U.S. measures were adopted very deliberately, in pursuit of a clear and explicit policy, and there has been no sign whatsoever of any willingness (let alone intention) of the U.S. to step back from either the specific measures or its policy towards Iran. The U.S. reaction to the provisional measures ordered by the Court on 3 October 2018 confirms that these are ‘special circumstances’.⁷¹⁸ Accordingly, Iran also requests the Court order a guarantee of non-repetition.
- 10.15 The precise manner in which such an order for cessation and/or non-repetition would be implemented in U.S. law is a matter for the United States to determine. Iran thus also requests the Court to order that: “the United States shall, by means of its own choosing, cease such conduct and provide Iran with an assurance that it will not repeat its unlawful acts.”⁷¹⁹

⁷¹⁶ As regards cessation, see also *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, *Judgment*, *I.C.J. Reports 2012*, p. 99 at pp. 153-154, para. 137. As regards non-repetition, see also *Jurisdictional Immunities*, at p. 154, para. 138.

⁷¹⁷ See Chapter I, Section 2 *supra*.

⁷¹⁸ See Chapter I, Section 2 *supra*.

⁷¹⁹ *Navigational and Related Rights (Costa Rica v. Nicaragua)*, *Judgment*, *I.C.J. Reports 2009*, p. 267, para. 150. See also IA, para. 50(b) and (d):

“b. The USA shall, by means of its own choosing, terminate the 8 May sanctions without delay; (...)

B. Reparation

10.16 Sub-paragraphs (b) to (f) of the request for relief in Iran's Application request declarations of the scope of the obligations of the United States under the Treaty of Amity and declarations that the United States has violated its obligations under the Treaty and is under an obligation to make full reparation for those violations.

10.17 While the question of the amount due to Iran by way of reparation is reserved for a later stage in these proceedings, the basis of U.S. liability to make reparation is already clear. Article 31 of the ILC Articles on State Responsibility provides:

*“Article 31
Reparation*

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.”⁷²⁰

10.18 The ILC Articles then provide that:

*“Article 34
Forms of reparation*

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.”⁷²¹

10.19 The ILC explained, echoing the Permanent Court of International Justice in the *Chorzów Factory* case,⁷²² that “because restitution most closely conforms to the general principle that the responsible State is bound to wipe out the legal and material consequences of its wrongful act by re-establishing the situation that would exist if that act had not been committed, it comes first among the forms of reparation.”⁷²³

d. The USA shall ensure that no steps shall be taken to circumvent the decision to be given by the Court in the present case and will give a guarantee of non-repetition of its violations of the Treaty of Amity.”

⁷²⁰ *ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, in Y.I.L.C., 2001, vol. II, Part Two.*

⁷²¹ *Ibid.*

⁷²² *Case concerning the Factory at Chorzów, Merits, Judgment, P.C.I.J. Series A. – No. 17, p. 4, at p. 47.*

⁷²³ *ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, in Y.I.L.C., 2001, vol. II, Part Two, commentary on Article 35, at para. 3.*

- 10.20 There are thus three components to the reparations due to Iran: (a) restitution of assets and property lost due to the U.S. measures; (b) compensation for actual and expected material losses; and (c) satisfaction, which is “the remedy for those injuries, not financially assessable, which amount to an affront to the State.”⁷²⁴
- 10.21 Each of the three components of reparation (considered further below) must be assessed with reference to the principles of causation and remoteness that establish the scope of the damage for which the United States must make full reparation.
- 10.22 The ILC Articles do not set out a specific standard or test of causation. The commentary to ILC Article 31 explains that “the subject-matter of reparation is, globally, the injury resulting from and ascribable to the wrongful act, rather than any and all consequences flowing from an internationally wrongful act”.⁷²⁵
- 10.23 Various formulations have been used to describe the link between the wrongful act and the injury in order for the obligation of reparation to arise, including ‘direct’, ‘proximate’, ‘foreseeable’, and ‘consequential’, or the statement that the loss must not be too ‘remote’, ‘speculative’, or ‘uncertain’.⁷²⁶ The most commonly-used formulation is “proximate cause”.⁷²⁷
- 10.24 Bin Cheng discerns in international judicial decisions two criteria to determine proximate causality: (a) “that the consequences should be normal”,⁷²⁸ and (b) that the

⁷²⁴ *Ibid.*, Commentary on Article 37, para. 3.

⁷²⁵ *Ibid.*, Commentary on Article 31, para. 9 at p. 92.

⁷²⁶ Stephan Wittich, ‘Compensation’ (2008) MPEPIL, para. 17.

⁷²⁷ See e.g. The Mixed Claims Commission (United States and Germany) (1 November 1923 – 30 October 1939), VII, p 1 at pp. 29-30; Cheng, *General Principles of Law as applied by International Courts and Tribunals* (1987, 1993), p. 244, citing the Portugo-German Arbitral Tribunal. See also Eritrea-Ethiopia Claims Commission (“EECC”), Decision No. 7 of July 2007, para. 13 cited in Natalie Klein, ‘Eritrea-Ethiopia Claims Commission’ (2013) MPEPIL, para. 39: “particular damage reasonably should have been foreseeable to an actor committing the international delict in question.”

⁷²⁸ Cheng, *General Principles of Law as applied by International Courts and Tribunals* (1987, 1993), pp. 245-246 (citing *Life Insurance Claims* (1924), p. 103 at 133-4), 249 (citing *Cape Horn Pigeon* USF (1902), Appendix I, p. 467, at pp. 470-1). See also Gray, *Judicial Remedies in International Law* (1987), p. 23 citing *Naulilaa* cases and *Heirs of Jean Maninat*; the *Antippa (The Spyros) Case* (1926), Greco-German Mixed Arbitral Tribunal, 7 TAM p. 23 at p. 28. For an overview of proximity, see Whiteman, *Damages in International Law* (Vol. III, 1943), pp. 1791-1835 citing and quoting, for example, the *Trail Smelter* Arbitration: “The Tribunal is of opinion that damage... [must not be] too indirect, remote, and uncertain... [as to be] purely speculative” (3 UNRIAA 1905, p. 1931). For more recent applications of the proximate cause test see e.g. *Application of the Convention on the Prevention*

consequences “could and should have [been] foreseen”.⁷²⁹ “Remote or speculative loss of income which cannot be linked to such activities and conditions ought to be excluded from the determination of compensation.”⁷³⁰

10.25 Where harm is deliberate, the need to establish proximate causation is obviated. This was accepted as settled law by both disputing parties in *Methanex v United States*⁷³¹ and by the United States in its submissions in *Bilcon v Canada*.⁷³²

10.26 In application of the above principles, and by reference to whether the harm in question was deliberate or, if not, was proximate, Iran asks the Court to declare that the United States is liable to make full reparation for all the consequences of the measures adopted in breach of its obligations under the Treaty of Amity.

i. Restitution

10.27 Iran asks for the property of Iranian nationals and companies that has been removed or otherwise interfered with, to be restored to the Iranian nationals and companies from which it was taken. Iran also asks the Court to order that an effective remedy be provided by the United States for breach of any contractual obligations caused by its measures, including provision for redressing the effects of the U.S. measures upon the legality of contracts made by Iranian nationals or companies with third-State companies.

and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007, p. 43 at p. 233, para. 462 (considering whether the genocide at Srebrenica would have taken place even if Serbia had attempted to prevent it by employing all means in its possession); Governing Council of the United Nations Compensation Commission (UNCC), Decision 15, at para. 3, cited in Thomas A. Mensah, ‘United Nations Compensation Commission’ (2011) MPEPIL, para. 53.

⁷²⁹ Cheng, pp. 250-251. See also Gray, *Judicial Remedies in International Law* (1987), p. 23, citing *Samoan claims*.

⁷³⁰ *Dispute concerning responsibility for the deaths of Letelier and Moffitt (United States, Chile)*, XXV RIAA 1 (11 January 1992), 1 at 15.

⁷³¹ Reply of Claimant Methanex Corporation to the United States Amended Statement of Defence, pp. 112-114; United States Memorial on Jurisdiction, pp. 19, 25-27, 30; Rejoinder Memorial of Respondent United States of America on Jurisdiction, Admissibility and The Proposed Amendment, pp. 2-10.

⁷³² Submissions of the United States of America, *Bilcon v Canada*, PCA Case No. 2009-04, p. 11.

ii. Compensation

10.28 In circumstances where the property of Iranian nationals and companies has been destroyed or removed, or is no longer identifiable, or for some other reason cannot be restored to the Iranian nationals and companies from which it was taken, compensation must be paid by the United States. Iran is also entitled to compensation for the damaging effects on the Iranian economy caused by the U.S. measures, including the devaluation of the Rial, the extra costs incurred due to the U.S. measures on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt and the resulting interference with the repayment of Iranian sovereign debt, and the impact on key industrial sectors such as oil and gas and transportation.

iii. Satisfaction

10.29 In addition to the financial losses sustained by Iranian nationals and companies and Iran as a result of the U.S. actions, the State of Iran has itself sustained non-material or moral damage. Specifically, Iran has had its rights under the Treaty of Amity ignored and treated as nugatory by the United States. For that affront, reparation in the form of satisfaction is due.⁷³³

SECTION 3.

SUMMARY OF HEADS OF DAMAGES

10.30 Paragraph 50(e) of Iran’s Application states that:

“The USA shall fully compensate Iran for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings. Iran reserves the right to submit and present to the Court in due course a precise evaluation of the compensation owed by the USA.”

10.31 Iran does not at this stage in these proceedings identify and quantify the damage caused by the U.S. measures, which is in any event increasing daily. The Court is

⁷³³ See IA, para. 50(a): “The USA, through the 8 May and announced further sanctions referred to in the present Application, with respect to Iran, Iranian nationals and companies, has breached its obligations to Iran under Articles IV (1), VII (1), VIII (1), VIII (2), IX (2) and X (1) of the Treaty of Amity.”

asked at this stage only to adjudge, order and declare that the USA is obliged to compensate Iran for the damage caused by the violations of the Treaty of Amity of which Iran here complains.

- 10.32 The scope and extent of the damage is wide and severe, as intended by the United States. The United States has claimed that the very objective of these measures is to cause maximum damage to Iran with the U.S. Secretary of State asserting that “[a]fter [the U.S.] sanctions come in force, [Iran] will be battling to keep its economy alive”.⁷³⁴ The UN Special Rapporteur on the negative impact of the unilateral coercive measures stated in August 2018 that the U.S. sanctions are “unjust and harmful” and are “destroying the economy and currency of Iran, driving millions of people into poverty and making imported goods unaffordable”, including “urgently needed humanitarian goods”.⁷³⁵
- 10.33 This paragraph sets out a non-exhaustive, illustrative list of the heads of damages that may be particularised and quantified at a later stage in these proceedings.
- a. Material losses suffered by Iranian nationals and companies, which include actual loss of revenue and profits from contracts and business dealings being terminated or rendered inoperable; increase in the costs of obtaining supplies and services from alternative suppliers not subject to the U.S. measures; increase in trading costs, and loss of customers, due to currency and transfer restrictions; insolvencies of Iranian companies.
 - b. Loss of commercial opportunities (‘non-material’ or ‘moral’ damage⁷³⁶) with third parties suffered by Iranian nationals and companies including in each sector of the Iranian economy specifically targeted by the U.S. measures – energy and oil and gas, financial and banking, shipping and shipbuilding, and

⁷³⁴ U.S. Department of State, “After the Deal: A New Iran Strategy”, 21 May 2018 (IM, Annex 33).

⁷³⁵ OHCHR, “Iran sanctions are unjust and harmful, says UN expert warning against generalised economic war”, 22 August 2018 (IM, Annex 130).

⁷³⁶ See *ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, in *Y.I.L.C., 2001, vol. II, Part Two*, at Article 31 together with paras. 7 and 8 of its commentary, and Article 37 together with para. 3 of its commentary.

insurance –, including the non-renewal or non-conclusion of contracts and business dealings and the non-implementation of joint ventures.

- c. Damage to the State of Iran, including injury resulting from interference with freedom of commerce, drop in consumer and investor confidence; climate of uncertainty and instability; loss of revenue from taxation and other sources; and increased costs of, and interference with the repayment of, sovereign debt.
- d. Harm to the health and safety of citizens and foreigners living in Iran, including the undermining of the safety of civil aviation due to the ageing fleet and the lack of servicing and spare parts; impediments to access to medicines, medical products and medical equipment; and the inability of individuals to afford basic goods including foodstuffs.
- e. Loss of investment, which includes not only the actual withdrawal of investments but also the decline in confidence of foreign and domestic investors in the Iranian economy.
- f. Drops in the value of the Rial, which has impacts on general inflation and on investment as well as the property of Iranian nationals and companies.
- g. Losses to Iranian nationals and companies in the oil and gas industry, including loss of revenue, loss of market share (e.g., India, South Korea and Japan), loss of investment, and impact on production and employment.
- h. Losses to Iranian nationals and companies in the renewable energy industry, including the termination of activities in Iran (e.g., cancellation of a solar plant).
- i. Losses to Iranian nationals and companies in the financial and banking sectors caused by the impediments in making and receiving transfers and difficulties in issuing letters of credit and bank guarantees.
- j. Losses to Iranian nationals and companies in the shipping and shipbuilding sector, including a decline in the demand for shipbuilding, difficulties in obtaining vessels and parts and services both in Iran and abroad.

- k. Losses to Iranian nationals and companies in the insurance sector due to the inability to obtain insurance for any person or material which is subject to the U.S. measures, including shipments of Iranian oil and other Iranian exportation and importation transactions.
- l. Losses to Iranian nationals and companies in the civil aviation sector, including the loss of the Boeing and Airbus deals, the loss of market share and the increased risk of potential accidents due to the lack of servicing and spare parts.


10.34 As follows from the above, the losses from the heads of damage may be to the State of Iran itself as well as to Iranian companies and nationals. The U.S. measures cause harm to an individual who cannot access lifesaving medicine, a company that becomes insolvent, an industrial sector that loses market share, and the State facing a devalued currency, dropping consumer and investor confidence, and declining taxation revenues. Iran accordingly requests the Court to make an Order for appropriate remedies, in accordance with the submissions, below.

SUBMISSIONS

On the basis of the foregoing, and while reserving the right to supplement, amend or modify the present Memorial in the course of further proceedings in the case, Iran respectfully requests the Court to adjudge, order and declare that:

- a. The United States, through the measures that were implemented pursuant to or in connection with the U.S. Presidential Memorandum of 8 May 2018 and announced further measures, with respect to Iran, Iranian nationals and companies, has breached its obligations to Iran under Articles IV (1), IV(2), V(1), VII (1), VIII (1), VIII (2), IX (2), IX(3) and X (1) of the Treaty of Amity;
- b. The United States shall, by means of its own choosing, terminate the measures that were implemented pursuant to or in connection with the U.S. Presidential Memorandum of 8 May 2018 and announced further measures without delay;
- c. The United States shall immediately terminate its threats with respect to announced further sanctions;
- d. The United States shall ensure that no steps shall be taken to circumvent the decision to be given by the Court in the present case and will give a guarantee of non-repetition of its violations of the Treaty of Amity;
- e. The United States shall fully compensate Iran for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings. Iran reserves the right to submit and present to the Court in due course a precise evaluation of the compensation owed by the United States.

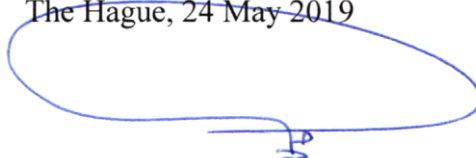
Respectfully submitted,

M. H. Zahedin Labbaf 
Co-Agent of the Government of the
Islamic Republic of Iran

CERTIFICATION

I, the undersigned, Mohsen Mohebi, Agent of the Islamic Republic of Iran, hereby certify that the copies of this Memorial and the documents annexed in Volumes of Annexes are true copies and conform to the original documents and that the translations into English are accurate translations.

The Hague, 24 May 2019



M. H. Zahedin Labbaf

Co-Agent of the Government of the
Islamic Republic of Iran

LIST OF ANNEXES

VOLUME I

PART I – TREATIES AND AGREEMENTS

1.1 Treaty of Amity of 1955

Annex 1	Treaty of Amity, Economic Relations, and Consular Rights of 1955 between the United States of America and Iran, 284 U.N.T.S. 93	p. 1
Annex 2	U.S. Department of State, Instruction to U.S. Embassy, 23 July 1954	p. 33
Annex 3	U.S. Department of State, Proposed reviewed draft of the Iran-U.S. Treaty of Amity, 2 January 1955	p. 45
Annex 4	C. H. Sullivan, <i>Standard draft Treaty of Friendship, Commerce and Navigation</i> , U.S. Department of State, 1962 (<i>excerpts</i>)	p. 49
Annex 5	U.S. Department of State, <i>Memorandum of the U.S. Department of State Legal Adviser on the Application of the Treaty of Amity to Expropriations in Iran</i> , 13 October 1983	p. 55

1.2 Other Treaties

Annex 6	Treaty of Friendship, Commerce and Navigation between Denmark and the United States of America, signed on 1 October 1951 (<i>excerpts</i>)	p. 63
Annex 7	Treaty of Friendship, Commerce and Navigation between the Republic of Korea and the United States of America signed on 28 November 1956 (<i>excerpts</i>)	p. 69
Annex 8	Treaty of Friendship and Commerce between Pakistan and the United States of America signed on 12 November 1959 (<i>excerpts</i>)	p. 75
Annex 9	Treaty of Friendship, Establishment and Navigation between the United States of America and the Kingdom of Belgium, signed on 21 February 1961 (<i>excerpts</i>)	p. 81

1.3 Resolutions of the United Nations Security Council

Annex 10	United Nations Security Council, Resolution 2231 (2015), S/RES/2231 (2015), 20 July 2015	p. 87
-----------------	--	-------

1.4 Other International Sources

Annex 11	IAEA, Report by the Director General, “Verification and Monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015)”, 16 January 2016, GOV/INF/2016/1	p. 193
Annex 12	EU, Statement by the Joint Commission of the Joint Comprehensive Plan of Action, Statement, 6 July 2018	p. 201
Annex 13	IAEA, Report by the Director General, “Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)”, 12 November 2018, GOV/2018/47	p. 207
Annex 14	EU, “Chair's statement following the 25 May 2018 meeting of the Joint Commission of the JCPOA”, Press release, 25 May 2018	p. 215

PART II – U.S. LEGISLATIVE ACTS

Annex 15	U.S. Iran Sanctions Act of 1996, Pub. L. 104-172, 110 Stat. 1541, as amended through Pub. L. 114-277, 130 Stat. 1409	p. 219
Annex 16	U.S. Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, Pub. L. 111-195, 124 Stat. 1312, as amended through Pub. L. 112-239, 126 Stat. 1632	p. 245
Annex 17	Section 1245 of the U.S. National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, 125 Stat. 1647	p. 295
Annex 18	Section 212 of the U.S. Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158, 126 Stat. 1229	p. 303
Annex 19	U.S. Iran Freedom and Counter-Proliferation Act of 2012, Sections 1241 to 1255 of the U.S. National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat. 2004	p. 309

VOLUME II

PART III – U.S. EXECUTIVE ACTS

Annex 20	U.S. Department of Treasury, Resource Center, Webpage “Iran Sanctions”	p. 1
Annex 21	U.S. Iranian Financial Sanctions Regulations, 31 CFR Part 561	p. 15

Annex 22	U.S. Department of Treasury, “Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property Are Blocked”, 13 August 2014	p. 51
Annex 23	U.S. Secretary of State, “Waivers Determinations and Findings”, 18 October 2015	p. 55
Annex 24	U.S. Department of State, “Guidance Relating to the Lifting of Certain U.S. Sanctions Pursuant to the Joint Comprehensive Plan of Action on Implementation Day”, 16 January 2016	p. 63
Annex 25	U.S. Department of Treasury, OFAC, General License H, 16 January 2016, revoked as of 27 June 2018	p. 117
Annex 26	U.S. Department of Treasury, OFAC, Statement of licensing policy for activities related to the export or re-export to Iran of commercial passenger aircraft and related parts and services, 16 January 2016, revoked as of 8 May 2018	p. 123
Annex 27	U.S. Department of Treasury, OFAC, Final Rule amending the Iranian Transactions and Sanctions Regulations, 21 January 2016, 81 Fed. Reg. 3330	p. 127
Annex 28	U.S. Department of Treasury, OFAC, “Frequently Asked Questions Relating to the Lifting of Certain U.S Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day”, 16 January 2016, updated 15 December 2016	p. 133
Annex 29	U.S. Department of Treasury, OFAC, General License I, 24 March 2016, revoked as of 27 June 2018	p. 139
Annex 30	U.S. President, “Remarks by President Trump on Iran Strategy”, 13 October 2017	p. 143
Annex 31	U.S. President, “Ceasing U.S. Participation in the JCPOA and Taking Additional Action to Counter Iran’s Malign Influence and Deny Iran All Paths to a Nuclear Weapon”, Presidential Memorandum, 8 May 2018	p. 155
Annex 32	U.S. President, “Remarks by President Trump on the Joint Comprehensive Plan of Action”, 8 May 2018	p. 163
Annex 33	U.S. Department of State, “After the Deal: A New Iran Strategy”, 21 May 2018	p. 173
Annex 34	U.S. Department of State, “Briefing with an Iran Diplomacy Update”, Special Briefing, 2 July 2018	p. 189
Annex 35	U.S. President, Executive Order 13846, 6 August 2018, 83 Fed. Reg. 38939	p. 197
Annex 36	U.S. Department of State, “Senior Administration Officials Previewing Iran Sanctions”, Special Briefing, 6 August 2018	p. 211

Annex 37	U.S. President, “Statement from the President on the Reimposition of United States Sanctions with Respect to Iran”, 6 August 2018	p. 221
Annex 38	U.S. Department of Treasury, OFAC, “Frequently Asked Questions Regarding the Re-Imposition of Sanctions Pursuant to the May 8, 2018 National Security Presidential Memorandum Relating to the Joint Comprehensive Plan of Action (JCPOA)”, 8 May 2018, updated on 6 August 2018	p. 227
Annex 39	U.S. Department of State, “Remarks to the Media”, 3 October 2018	p. 241
Annex 40	U.S. President, Presidential Determination No. 2019-04, 31 October 2018, 83 Fed. Reg. 57673	p. 249
Annex 41	U.S. President, “Statement by the President regarding the Reimposition of Nuclear-Related Sanctions on Iran”, 2 November 2018	p. 253
Annex 42	U.S. Department of State, “Briefing on Iran Sanctions”, Special Briefing, 2 November 2018	p. 259
Annex 43	U.S. Department of State, “Briefing with special representative for Iran Brian Hook”, Special Briefing, 2 November 2018	p. 269
Annex 44	U.S. Department of State, “Department Press Briefing”, 7 November 2018	p. 281
Annex 45	U.S. Department of State, “The Iranian Regime’s Transfer of Arms to Proxy Groups and Ongoing Missile Development”, Special Briefing, 29 November 2018	p. 303
Annex 46	U.S. Department of State, Bureau of Economic and Business Affairs, “Comprehensive Iran Fact Sheet”, 18 December 2018	p. 315
Annex 47	U.S. Department of State, “Interview with Martha MacCallum of Fox News”, 23 January 2019	p. 321
Annex 48	U.S. President, “President Donald J. Trump’s State of the Union Address”, 5 February 2019	p. 329
Annex 49	U.S. National Security Council, “A Look at the U.S. Strategy for Iran”, 13 February 2019	p. 351
Annex 50	U.S. Department of Treasury, OFAC, “OFAC FAQs: Iran Sanctions”, as of 31 March 2019	p. 357
Annex 51	U.S. Department of State, Department Press Briefing, 2 April 2019	p. 403
Annex 52	U.S. Department of State, “Decision on Imports of Iranian Oil”, Press Statement, 22 April 2019	p. 425

Annex 53	U.S. President, “Executive Order on Imposing Sanctions with respect to the Iron, Steel, Aluminum, and Copper Sectors of Iran”, 8 May 2019	p. 429
-----------------	---	--------

PART IV – DIPLOMATIC EXCHANGES AND STATEMENTS

Annex 54	Official statement of I.R. Iran in reaction to the 8 May decision of the United States, <i>IRNA</i> , 11 May 2018	p. 439
Annex 55	Iran’s Foreign Minister, “Zarif’s Response to Pompeo’s 12 demands”, <i>Iran Daily</i> , 20 June 2018	p. 445
Annex 56	Letter from the Agent of the United States to the International Court of Justice, 27 July 2018	p. 465
Annex 57	Diplomatic Note from the U.S. Department of State to the Ministry of Foreign Affairs of I.R. Iran, 3 October 2018	p. 469
Annex 58	Note verbale No. 4969583 from I.R. Iran to the Government of the United States, 6 November 2018	p. 473
Annex 59	Diplomatic Note from the Ministry of Foreign Affairs of I.R. Iran to the U.S. Department of State, 13 November 2018	p. 477
Annex 60	Letter from the Agent of I.R. Iran to the Agent of the United States, 10 December 2018	p. 481
Annex 61	Letter from the Agent of I.R. Iran to the International Court of Justice, 19 February 2019	p. 485
Annex 62	Letter from the Agent of the United States to the International Court of Justice, 12 March 2019	p. 493

VOLUME III

PART V – THE ADVERSE CONSEQUENCES OF THE U.S. MEASURES FOR THE IRANIAN POPULATION

5.1 Witness Statements

Annex 63	Witness statement of Mr H. Hashemi, Minister of Health and Medical Education of the I.R. of Iran, 19 August 2018	p. 1
Annex 64	Statement from Mr M. Reza Pishro, Managing Director of Sina Bank, 1 December 2018	p. 15
Annex 65	Statement by Mr K. Zargaran, Chairman of the Board of the Iran-Brazil Joint Chamber of Commerce, 9 January 2019	p. 19

Annex 66	Statement by Mr R. Javadi, Deputy Managing of Donya e Saziba e Pouya, 14 January 2019	p. 23
Annex 67	Bred Seeds Importers Association of Iran, “The Importance of Importation of Bred Seeds in the Agriculture”, 3 February 2019	p. 27
Annex 68	Statement by Mr Sh. Norouzi, General Director of the Legal and Contracts Office of the National Water and Wastewater Engineering Company, 6 February 2019	p. 35
Annex 69	Witness statement of Mr A. H. Shahmir, Advisor to the President of the Government Trading Corporation of Iran & Deputy Minister of Agriculture, 18 March 2019	p. 39
Annex 70	Statement from S. Hashemi Golpayegabni, Founder and Managing Director of EB Home, 29 April 2019	p. 45
Annex 71	Witness statement of Dr M. Pirsalehi, President of the Food & Drug Administration of Iran in the Ministry of Health, Treatment and Medical Education, 1 May 2019	p. 53

5.2 Official and Academic Sources

Annex 72	ICAN, “What the Women Say: Killing them Softly: The Stark Impact of Sanctions on the Lives of Ordinary Iranians”, Brief 3, July 2012	p. 59
Annex 73	D. Mohammadi, “US-led economic sanctions strangle Iran's drug supply”, <i>The Lancet</i> , 26 January 2013	p. 69
Annex 74	A. M. Cheraghali, “Impacts of international sanctions on Iranian pharmaceutical market”, <i>DARU Journal of Pharmaceutical Sciences</i> , 2013	p. 73
Annex 75	United Nations, Human Rights Council, “Research-based progress report of the Human Rights Advisory Council Committee containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability”, UN Doc. A/HRC/28/74, 10 February 2015	p. 79
Annex 76	I.R. Iran, Department of Environment, “Intended Nationally Determined Contribution”, 19 November 2015	p. 101
Annex 77	S. Setayesh and T. K. Mackey, “Addressing the impact of economic sanctions on Iranian drug shortages in the joint comprehensive plan of action: promoting access to medicines and health diplomacy”, <i>Globalization and Health</i> , 2016, 12	p. 113
Annex 78	G. Ghiasi, A. Rashidian, A. Kebriaeezadeh and J. Salamzadeh, “The Impact of the Sanctions Made Iran on Availability to Asthma Medicines in Tehran”, <i>Iranian Journal of Pharmaceutical Research</i> , 2016, 15(3)	p. 129

Annex 79	World Health Organization, “Iran – Country Cooperation Strategy”, May 2017	p. 137
Annex 80	United Nations, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, UN Doc. A/72/370, 29 August 2017	p. 141
Annex 81	F. Kokabisaghi, “Assessment of the Effects of Economic Sanctions on Iranians’ Right to Health by Using Human Rights Impact Assessment Tool: A Systematic Review”, <i>International Journal of Health Policy and Management</i> , 20 January 2018	p. 165
Annex 82	M. Kheirandish, V. Varahrami, A. Kebriaeezadeh and A. Majid Cheraghali, “Impact of economic sanctions on access to noncommunicable diseases medicines in the Islamic Republic of Iran”, <i>East Mediterranean Health Journal</i> , Vol. 24 No. 1, 2018	p. 185
Annex 83	Central Bank of I.R. Iran, General Directorate of Economic Statistics, “Consumer Price Index for All Urban Consumers Farvardin 1397 (March 21, 2018 – April 20, 2018)”, May 2018	p. 197
Annex 84	Central Bank of I.R. Iran, General Directorate of Economic Statistics, “Consumer Price Index for All Urban Consumers Ordibehesht 1397 (April 21, 2018 – May 21, 2018)”, June 2018	p. 207
Annex 85	Central Bank of I.R. Iran, General Directorate of Economic Statistics, “Consumer Price Index for All Urban Consumers Khordad 1397 (May 22 – June 21, 2018)”, July 2018	p. 217
Annex 86	M. Aloosh, “How economic sanctions compromise cancer care in Iran”, <i>The Lancet</i> , Vol. 19, July 2018	p. 227
Annex 87	World Bank Group, “Iran Economic Monitor – Weathering Economic Challenges – Special Focus Topic: Understanding the latest poverty trends in Iran (2009-2016)”, Fall 2018	p. 231
Annex 88	OHCHR, “Civilians caught in sanctions crossfire need Geneva Convention protection, says UN expert”, 8 November 2018	p. 297
Annex 89	Letter from 14 Members of the U.S Congress to the U.S. Secretary of State, 21 December 2018	p. 301
Annex 90	United Nations Office for the Coordination of Humanitarian Affairs (OCHA), “Iran: Golestan and Fars provinces floods”, Flash Update No. 1, as of 25 March 2019	p. 307

Annex 91	International Federation of the Red Cross and Red Crescent Societies, “Emergency Plan of Action (EPoA) – Iran: Floods”, 29 March 2019	p. 313
Annex 92	International Committee of the Red Cross, “ICRC Remarks to the UN Security Council on the promotion and strengthening of the rule of law: international humanitarian law: “Safeguarding Humanitarian Space” ”, 1 April 2019	p. 323
Annex 93	International Federation of Red Cross and Red Crescent Societies, “Emergency Appeal n° MDRIR002”, 7 April 2019	p. 329
Annex 94	Statistical Center of Iran, “National Consumer Price Index by Expenditure Deciles in the Month of Esfand 1397”, 15 April 2019	p. 341
Annex 95	Statistical Center of Iran, “Report on the Consumer Price Index and Inflation – Farvadin 98”, 23 April 2019	p. 345
Annex 96	IMF, <i>World Economic Outlook</i> , April 2019 (<i>excerpts</i>)	p. 353
Annex 97	OHCHR, “US sanctions violate human rights and international code of conduct, UN expert says”, 6 May 2019	p. 357

5.3 Private Sources

Annex 98	Email from Ebara Corporation to Fan Niroo Co., 12 June 2018	p. 361
Annex 99	Email from a non-U.S. pharmaceutical company to an Iranian customer, 15 June 2018 (<i>redacted</i>)	p. 365
Annex 100	Email from Pompe Garbarino S.P.A to Fan Niroo Co., 2 July 2018	p. 369
Annex 101	Email from Kitz Corporation to Fan Niroo Co., 8 July 2018	p. 373
Annex 102	Letter from a non-U.S. company to Darou Pakhsh Pharmaceutical Mfg Co., 25 July 2018 (<i>redacted</i>)	p. 377
Annex 103	Email from a non-U.S. bank to a non-U.S. pharmaceutical company, 25 September 2018 (<i>redacted</i>)	p. 381
Annex 104	Letter from EB Home to Mölnlycke, 25 February 2019 and answer from Mölnlycke to EB Home, undated	p. 385

5.4 Other Sources

Annex 105	N. Rayman, “The 10 Most Polluted Cities in the World: Four of them are in Iran”, <i>Time</i> , 18 October 2013	p. 389
Annex 106	A. Ghorayshi, “Choking to Death in Tehran”, <i>Newsweek</i> , 20 March 2014	p. 393

Annex 107	N. Soroush and K. Madani, “Every breath you take: the environmental consequences of Iran sanctions”, <i>The Guardian</i> , 21 November 2014	p. 405
Annex 108	“Impacts of the Lifting Sanctions on Iran’s Environment”, <i>The Real Iran</i> , 13 August 2015	p. 411
Annex 109	K. Madani & S. Hakim, “Iran: Reversing the environmental damages of sanctions”, <i>Tehran Times</i> , 18 July 2018	p. 415
Annex 110	“LG [Chem] Joined the Entities that Comply with the Pharmaceutical Sanctions against Iran”, <i>Itabnak</i> , 23 July 2018	p. 421
Annex 111	N. Tabrizy, “Iranians Fear Medicine Shortages as U.S. Tightens Sanctions”, <i>The New York Times</i> , 11 November 2018	p. 425
Annex 112	E. Cunningham, “Fresh sanctions on Iran are already choking off medicine imports, economists say”, <i>The Washington Post</i> , 17 November 2018	p. 431
Annex 113	B. Sharafedin, “Iranian jobs go as US sanctions start to bite”, <i>The Business Times</i> , 19 November 2018	p. 437
Annex 114	“Medicine Shortages Loom in Iran as U.S. Reinstates Sanctions”, <i>ASH Clinical News</i> , 26 November 2018	p. 443
Annex 115	E. Batmanghelidj, “European Pharmaceutical Exports to Iran Fall Sharply”, <i>Bourse & Bazaar</i> , 6 December 2018	p. 447
Annex 116	“Exclusive: Global traders halt new Iran food deals as U.S. sanctions bite – sources”, <i>Reuters</i> , 21 December 2018	p. 457
Annex 117	“Unprecedented flooding hits Iran forces village evacuations”, <i>Reuters</i> , 26 March 2019	p. 463
Annex 118	“Iranian Red Crescent says US sanctions impeding flood relief”, <i>Al-Monitor</i> , 1 April 2019	p. 467
Annex 119	“Flood-hit Iran getting no financial aid from abroad because of US sanctions”, <i>Middle East Eye</i> , 7 April 2019	p. 471
Annex 120	D. Barbuscia, “Iran inflation could reach 40 percent this year as economy shrinks further – IMF”, <i>Reuters</i> , 28 April 2019	p. 475

VOLUME IV

PART VI – THE ADVERSE CONSEQUENCES OF THE U.S. MEASURES FOR THE IRANIAN ECONOMY

6.1 Witness Statements

Annex 121	Witness statement by Mr M. Akhbari, Assistant Director of the Economic Research and Policy Department of the Central Bank of Iran, 16 February 2019	p. 1
Annex 122	Witness statement by Mr A. Jamali, President of the OIETAI, 26 March 2019	p. 13

6.2 Official and Academic Sources

Annex 123	Central Bank of Iran, “Selected Economic Indicators, Balance of Payment”, Persian years 1394 (21 March 2015 – 19 March 2016), 1395 (20 March 2016 – 20 March 2017) and 1396 (21 March 2017 – 20 March 2018)	p. 19
Annex 124	Central Bank of Iran, “Selected Economic Indicators, Balance of Payments”, Persian Month of Azar 1397 (22 November 2018 – 21 December 2018)	p. 43
Annex 125	McKinsey Global Institute, “Iran: the \$1 Trillion Growth Opportunity”, June 2016 (<i>excerpts</i>)	p. 47
Annex 126	Iranian Parliament, Sixth 5-Year Economic, Social, and Cultural Development Plan Act of the Islamic Republic of Iran (Persian years 1396-1400) (21 March 2017-20 March 2022), Articles 3 and 4	p. 55
Annex 127	World Bank Group, “Iran Economic Monitor – Sustaining Growth: the Challenge of Job Creation”, 2017	p. 59
Annex 128	UNCTAD, “World Investment Report 2018 – Investment and New Industrial Policies”, 2018 (<i>excerpts</i>)	p. 97
Annex 129	A. Sadeghi, “How Public Investment Could Help Strengthen Iran’s Growth Potential: Issues and Options”, <i>IMF Working Paper</i> , WP/18/129, 8 June 2018	p. 101
Annex 130	OHCHR, “Iran sanctions are unjust and harmful, says UN expert warning against generalised economic war”, 22 August 2018	p. 129
Annex 131	OIETAI, “Report on a decrease in foreign investment due to the re-imposition of the U.S. sanctions”, December 2018	p. 133

Annex 132	IMF, “World Economic Outlook: Challenges to Steady Growth”, Oct. 2018 (<i>excerpts</i>)	p. 137
------------------	---	--------

6.3 Other Sources

Annex 133	World Bank, “Q&A on the key economic impacts of Iran deal”, 10 August 2015	p. 141
Annex 134	S. Mufson, “What ending sanctions on Iran will mean for the country’s economy”, <i>The Washington Post</i> , 12 August 2015	p. 145
Annex 135	C. Lyttle, “FDI in Iran soars with sanctions relief”, <i>Financial Times</i> , 20 June 2016	p. 151
Annex 136	“Iran without Sanctions: What has changed?”, <i>Knowledge at Wharton</i> , 13 December 2016	p. 155
Annex 137	M. Schwartz, K. Reddy, Dr. R. Ghorashi, “The Effects of the JCPOA on the Iranian Economy”, <i>American Iranian Council</i> , 17 April 2017	p. 165
Annex 138	N. Habibi, “The Iranian Economy Two Years after the Nuclear Agreement”, <i>Middle East Brief</i> , February 2018, No. 115	p. 181
Annex 139	A. Paivar, “Nuclear Deal: Is Iran’s economy better off now?”, <i>BBC</i> , 4 May 2018	p. 193
Annex 140	A. Fitch and I. Talley, “U.S. Companies Wind Down Iran Business After Nuclear Deal Pullout”, <i>The Wall Street Journal</i> , 5 June 2018	p. 201
Annex 141	E. Wald, “10 Companies Leaving Iran As Trump’s Sanctions Close In”, <i>Forbes</i> , 6 June 2018	p. 207
Annex 142	S. Hanke, “Iran’s Rial Is In a Death Spiral, Again”, <i>Forbes</i> , 29 July 2018	p. 213
Annex 143	M. Milliken & P. Graff, “Trump says firms doing business in Iran to be barred from U.S. as sanctions hit”, <i>Reuters</i> , 7 August 2018	p. 217
Annex 144	G. Golshiri, “En Iran, l’économie accuse le coup des sanctions américaines”, <i>Le Monde</i> , 17 September 2018	p. 223
Annex 145	D. Bowman, “Dubai exports to Iran plummet”, <i>Arabian Business</i> , 18 November 2018	p. 229
Annex 146	“Two More Income Brackets Dropped Below Poverty Line”, <i>Iran International</i> , 19 November 2018	p. 233
Annex 147	“Live IRR exchange rates in Iran's free market”, www.bonbast.com/historical/usd , 29 March 2019	p. 237
Annex 148	“Euro to Rial rate 2018-01” and “Euro to Rial rate 2018-11”, www.bonbast.com , 13 May 2019	p. 241

PART VII – CONSEQUENCES OF THE U.S. SANCTIONS ON THE FINANCIAL SECTOR

7.1 Witness Statements

Annex 149	Witness statement of Mr J. Mehdizadeh, Director of Economic Research and Policy Department, Central Bank of Iran, 21 August 2018	p. 249
Annex 150	Witness statement of Mr A. Laktabriz, Director General for International Affairs, Central Bank of Iran, 8 April 2019	p. 255
Annex 151	Witness statement of Mr M. R. Hoseinzade, Chairman of the Board and Managing Director, Bank Melli Iran, 1 May 2019	p. 291
Annex 152	Witness statement of Dr S. J. Mirghassemi, Director of Legal Affairs, and Mr A. Esmailipour, Director of Marine Department, Central Insurance of IR Iran, 1 May 2019	p. 295

7.2 Official and Academic Sources

Annex 153	IMF, “Belgium - Financial System Stability Assessment”, IMF Country Report No. 18-67, 6 March 2018 (<i>excerpts</i>)	p. 311
Annex 154	French Senator P. Bonnacarrère, “Rapport d’information fait au nom de la commission des affaires européennes sur l’extraterritorialité des sanctions américaines”, French Senate, 4 October 2018 (<i>excerpts</i>)	p. 317
Annex 155	OberBank, “Business policy measures regarding Iran business”, 2 January 2019	p. 321

7.3 Private Sources

Annex 156	Email of DZ Bank to its branches, 16 May 2018	p. 325
Annex 157	Email from BCP Bank to Export Development Bank of Iran (EDBI), 16 May 2018	p. 333
Annex 158	Email from BCP Bank to Bank Pasargad Iran, 22 May 2018	p. 337
Annex 159	SWIFT message from PKO Bank to Bank Pasargad, 28 May 2018	p. 341
Annex 160	Letter from Raiffeisen Bank to Bank Melli, 29 May 2018	p. 345
Annex 161	Email from Danske Bank, 30 May 2018	p. 349
Annex 162	Email from BCP bank to Export Development Bank of Iran (EDBI), 31 May 2018	p. 353
Annex 163	SWIFT Message from BCP Bank to Bank Pasargad Iran, 7 June 2018	p. 359

Annex 164	SWIFT message from Skandinaviska Enskilda Banken (SEB) to Bank Melli, 9 June 2018	p. 363
Annex 165	Email from Banco BPM to Bank Pasargad Iran, 16 July 2018	p. 367
Annex 166	SWIFT message from DBS Bank (Singapore) to Bank Markazi, 17 July 2018	p. 371
Annex 167	Letter from SCOR Global P&C to Central Insurance of Iran, 18 July 2018	p. 375
Annex 168	Letter from La Banque Postale to Bank Melli, 19 July 2018	p. 379
Annex 169	Email from BCP Bank to Export Development Bank of Iran (EDBI), 23 July 2018	p. 383
Annex 170	SWIFT message from Aktif Bank (Turkey) to Export Development Bank of Iran (EDBI), 25 July 2018	p. 387
Annex 171	SWIFT message from Aktif Bank to DAY Bank, 26 July 2018	p. 391
Annex 172	Email from Banca Popolare di Sondrio to Bank Pasargad Iran, 30 July 2018	p. 395
Annex 173	Email from Partner Re to Central Insurance of Iran, 3 August 2018	p. 399
Annex 174	SWIFT message from Bank Sohar to Bank Markazi, 6 August 2018	p. 403
Annex 175	Letter from Chedid Re to Central Insurance of Iran, 18 September 2018	p. 407
Annex 176	Email from UIB to Central Insurance of Iran, 24 September 2018	p. 411
Annex 177	Letter from J.B. Boda to Central Insurance of Iran, 24 September 2018	p. 415
Annex 178	Email from Danske Bank to Export Development Bank of Iran (EDBI), 15 October 2018	p. 419
Annex 179	SWIFT message from BCP Bank to Bank Markazi, 17 October 2018	p. 423
Annex 180	SWIFT message from KBC Bank to Bank Markazi, 17 October 2018	p. 427
Annex 181	Email from Bank of Gansu (China) to Export Development Bank of Iran (EDBI), 23 October 2018	p. 431
Annex 182	Email from Banca Popolare di Sondrio to Export Development Bank of Iran (EDBI), 14 November 2018	p. 435
Annex 183	Letter from Eximbank Hungary to Export Development Bank of Iran (EDBI), 27 November 2018	p. 439

Annex 184	SWIFT messages from Mitsubishi UFG Bank to Bank Maskan, 28 January 2019	p. 443
Annex 185	Letter from the ICC to Iranian parties and to the CILA, 3 April 2019 (<i>redacted</i>)	p. 451

7.4 Other Sources

Annex 186	“Iran, SCOR SE Reach Reinsurance Agreement”, <i>Financial Tribune</i> , 1 October 2017	p. 457
Annex 187	“Italy’s Danieli Iranian orders blocked after U.S. decision on nuclear deal”, <i>Reuters</i> , 17 May 2018	p. 461
Annex 188	A. Cremer, “Germany’s DZ Bank to halt Iran transactions in July”, <i>Reuters</i> , 18 May 2018	p. 465
Annex 189	N. Verma, “Indian banks ask exporters to close Iran deals due to sanctions”, <i>Reuters</i> , 29 May 2018	p. 469
Annex 190	J. Saul, “Swiss Bank BCP says halts all new business with Iran”, <i>Reuters</i> , 29 May 2018	p. 473
Annex 191	J. Saul, “Belgium’s KBC to limit Iran transactions after U.S. sanctions move”, <i>Reuters</i> , 7 June 2018	p. 477
Annex 192	K. Knolle & A. Schwarz-Goerlich, “Austria’s Oberbank withdraws from Iran”, <i>Reuters</i> , 13 June 2018	p. 481
Annex 193	“India’s top bank to stop handling Iran oil payments”, <i>India Economic Times</i> , 15 June 2018	p. 485
Annex 194	“OECD Downgrades Iran Credit Rating”, <i>Financial Tribune</i> , 1 July 2018	p. 489
Annex 195	O. Tsukimori & T. Aranaka, “Japanese bank MUFG, Mizuho to stop Iranian transactions”, <i>Reuters</i> , 12 July 2018	p. 493
Annex 196	I. Landauro, “Scor says will not sign or renew Iran contracts”, <i>Reuters</i> , 13 July 2018	p. 497
Annex 197	R. Lough & I. Landauro, “U.S. rejects French request for Iran exemptions as reinsurer Scor pulls out”, <i>Reuters</i> , 13 July 2018	p. 501
Annex 198	“Iran sanctions hurt French cattle farmers”, <i>RFI</i> , 9 August 2018	p. 505
Annex 199	“Taiwan’s Mega Int’l Commercial Bank plans to end Taiwan-Iran clearing mechanism after Nov”, <i>Reuters</i> , 13 August 2018	p. 509
Annex 200	C. Aizhu & S. Zhang, “As U.S. sanctions loom, China’s Bank of Kunlun decision to stop receiving Iran Payments - sources”, <i>Reuters</i> , 23 October 2018	p. 513
Annex 201	“What SWIFT is and why it matters in the US-Iran spat”, <i>Al Jazeera News</i> , 5 November 2018	p. 519

Annex 202	S. Evans, “AIG winds down underwriting linked with Iran to comply with U.S. sanctions”, <i>Reinsurance News</i> , 7 November 2018	p. 523
Annex 203	“Marine: International Group of P&I Clubs warns about insurance cover for Iran-related shipping”, <i>Asianinsurancereview.com</i> , 29 November 2018	p. 527
Annex 204	S. Zable, “INSTEX: A Blow to U.S. Sanctions?”, <i>Lawfareblog</i> , 6 March 2019	p. 531

VOLUME V

PART VIII – CONSEQUENCES OF THE U.S. SANCTIONS ON THE ENERGY SECTOR

8.1 Witness Statements

Annex 205	Witness statement of Mr H. Salari, Deputy Director of International Affairs at National Iranian Oil Company, 23 April 2019	p. 1
Annex 206	Witness statement of Mr S. M. Hossein Hosseini, Financial Director of National Iranian Gas Company, 30 April 2019	p. 7
Annex 207	Witness statement of Mr H. Bovard, Managing Director of Iranian Offshore Oil Company, 1 May 2019	p. 11

8.2 Official and Academic Sources

Annex 208	The Oxford Institute for Energy Studies, “Iranian Energy: a comeback with hurdles”, University of Oxford, January 2017	p. 19
Annex 209	Total SA, “Iran: Total and NIOC sign contract for the development of phase 11 of the giant South Pars gas field”, 3 July 2017	p. 31
Annex 210	Total SA, “U.S. withdrawal from the JCPOA: Total’s position related to the South Pars 11 project in Iran”, 16 May 2018	p. 35
Annex 211	U.S. Department of State, “Briefing with an Iran Diplomacy Update”, Special Briefing, 2 July 2018	p. 39
Annex 212	U.S. Department of State, “Senior Administration Officials Previewing Iran Sanctions”, Special Briefing, 6 August 2018	p. 47
Annex 213	U.S. Energy Information Administration, “OPEC Revenues Fact Sheet”, 21 August 2018	p. 57

Annex 214	U.S. Energy Information Administration, “Iran has produced and exported less crude oil since sanctions announcement”, 23 October 2018	p. 63
Annex 215	OPEC, “Monthly Oil Market Report”, 14 March 2019 (<i>excerpts</i>)	p. 69
Annex 216	International Energy Agency, “IEA statement on global oil markets”, 23 April 2019	p. 73
Annex 217	U.S. Energy Information Administration, “April 2019 Monthly Energy Review”, 25 April 2019 (<i>excerpts</i>)	p. 77

8.3 Private Sources

Annex 218	E-mail from Honeywell (China) to Sinopec, 18 May 2018	p. 83
Annex 219	Letter from EEW China Marketing & Services to Sinopec, 31 May 2018	p. 87
Annex 220	Letter from Phocéenne to Sinopec, 7 June 2018	p. 91
Annex 221	E-mail from Roots Systems to Sinopec, 18 June 2018	p. 95
Annex 222	Letter from Wuxi Compressor to Sinopec, 19 June 2018	p. 99
Annex 223	Letter from Sulzer to Sinopec, 19 June 2018	p. 103
Annex 224	Letter from Howden to Sinopec, 19 June 2018	p. 107
Annex 225	Letter from GEA to Sinopec, 20 June 2018	p. 111
Annex 226	E-mail from Kelvion China to Sinopec, 21 June 2018	p. 115
Annex 227	Letter from EagleBurgmann Dailian Co. Ltd to Sinopec, 26 June 2018	p. 119
Annex 228	Letter from Beijing Kelitong Instrument Technology Development Co. LTD to Sinopec, 26 July 2018	p. 123

8.4 Other Sources

Annex 229	F. Mohamedi, “The Oil and Gas Industry”, <i>The Iran Primer</i> , August 2015	p. 127
Annex 230	H. Tunnicliffe, “Sinopec to upgrade Iran’s Abadan refinery”, <i>The Chemical Engineer</i> , 9 July 2018	p. 137
Annex 231	S. Kar-Gupta & J. Irish, “France's Total to quit Iran gas project if no sanctions waiver”, <i>Reuters</i> , 16 May 2018	p. 141
Annex 232	N. Tzur, “Poland’s PGNiG plans to suspend gas project in Iran because of U.S. sanctions”, <i>Reuters</i> , 18 May 2018	p. 145

Annex 233	G. de Clercq, “Engie says to end engineering contracts in Iran by November”, <i>Reuters</i> , 18 May 2018	p. 149
Annex 234	V. Soldatkin, “Lukoil puts Iran plans on hold due to threat of U.S. sanctions”, <i>Reuters</i> , 29 May 2018	p. 153
Annex 235	H. Choi, “South Korea's Daelim industrial says \$2.08 billion order from Iran cancelled”, <i>Reuters</i> , 1 June 2018	p. 157
Annex 236	“European refiners winding down purchases of Iranian oil”, <i>Reuters</i> , 6 June 2018	p. 161
Annex 237	T. Di Christopher & S. Sedgwick, “U.S. sanctions mean no big oil company can risk doing business with Iran, Total CEO says”, <i>CNBC</i> , 20 June 2018	p. 165
Annex 238	“U.S. Toughens Stance on Future Iran Oil Exports”, <i>The Wall Street Journal</i> , 26 June 2018	p. 169
Annex 239	R. Valdmanis, “Indonesia's Pertamina says Iran oil field deal frozen over U.S. sanctions”, <i>Reuters</i> , 26 June 2018	p. 177
Annex 240	“U.S. pushes allies to halt Iran oil imports, waivers unlikely”, <i>Reuters</i> , 27 June 2018	p. 181
Annex 241	“India’s HPCL cancels Iran oil shipment after insurer excludes coverage”, <i>Reuters</i> , 26 July 2018	p. 185
Annex 242	J. Lee & I. Garcia Perez, “Buyers of Iranian Oil Get Waivers: Sanctions Wrap”, <i>Bloomberg</i> , 6 August 2018	p. 189
Annex 243	“Exclusive: UK’s Quercus pulls plug on \$570 million Iran solar plant as sanctions bite”, <i>Reuters</i> , 14 August 2018	p. 197
Annex 244	“Iran’s Oil Market Realities: How India, Others Are Preparing for U.S. Sanctions”, <i>The Times of India</i> , 16 August 2018	p. 203
Annex 245	“L’Iran annonce officiellement que Total a quitté le projet South Pars”, <i>L’Usine Nouvelle</i> , 20 August 2018	p. 209
Annex 246	J. Park and H. Yang, “South Korea's Hyundai E&C cancels \$521 million petrochemicals deal, cites Iran financing failure”, <i>Reuters</i> , 29 October 2018	p. 213
Annex 247	B. Scheid, “Questions remain over UAE imports of Iranian condensate amid US sanctions”, <i>S&P Global</i> , 15 November 2018	p. 217
Annex 248	D. Hudson, “Despite sanctions, Iran’s oil exports rise in early 2019: sources”, <i>Reuters</i> , 19 February 2019	p. 221
Annex 249	F. Tan, “U.S. says Iran has lost \$10 billion in oil revenue due to sanctions”, <i>Reuters</i> , 13 March 2019	p. 225
Annex 250	“Sources: Iran's Oil Exports Hit 2019 Low in April”, <i>Reuters</i> , 16 April 2019	p. 229

Annex 251	J. Rogin, “No more waivers: The United States will try to force Iranian oil exports to zero”, <i>Washington Post</i> , 21 April 2019	p. 235
Annex 252	D. Zhdannikov, “Iran's oil exports to slide in May, but not to zero: sources”, <i>Reuters</i> , 3 May 2019	p. 239

PART IX – CONSEQUENCES OF THE U.S. SANCTIONS ON THE AVIATION SECTOR

9.1 Witness Statements

Annex 253	Witness statement by Mr M. Asaadi Samani, Secretary of the Association of Iranian Airlines (AIA), 18 August 2018	p. 245
Annex 254	Witness statement of Mr A. Abedzade, President of the Civil Aviation Organization of Iran, 24 April 2019	p. 251
Annex 255	Witness statement of Mr M. Mahini, Director General of Legal Department of Iran Air, 30 April 2019	p. 261

9.2 Official and Academic Sources

Annex 256	ICAO, “Continuity of the US trade embargo on the civil aviation of the Islamic Republic of Iran and the safety deficiencies arising out of it”, Information Paper, 15 March 2006	p. 267
Annex 257	“Zagros Airlines places a commitment for 28 new Airbus aircraft”, Airbus, 22 June 2017	p. 275
Annex 258	“Iran Airtour commits to 45 A320neo aircraft”, Airbus, 22 June 2017	p. 279
Annex 259	Letter from Civil Aviation Organization of Iran to ICAO, 11 November 2018 (enclosing official statement dated 27 October 2018)	p. 283

9.3 Private Sources

Annex 260	Letter from Dunlop to Kish Air, 22 May 2018	p. 291
Annex 261	Letter from a non-U.S. company to Iran Air, 22 May 2018 (<i>redacted</i>)	p. 299
Annex 262	Email from a non-U.S. aircraft engine parts supplier to Iran Air, 31 May 2018 (<i>redacted</i>)	p. 303
Annex 263	Email from a non-U.S. aircraft tyres supplier to Iran Air, 6 June 2018 (<i>redacted</i>)	p. 307
Annex 264	Letter from a non-U.S. aircraft part supplier to Iran Air, 25 June 2018 (<i>redacted</i>)	p. 311

Annex 265	Letter from a U.S. company to Iran Air, 10 July 2018 (<i>redacted</i>)	p. 315
Annex 266	Letter from a non-U.S. service provider to Iran Air, 17 July 2018 (<i>redacted</i>)	p. 319
Annex 267	Letter from a non-U.S. oil company to Iran Air, 18 July 2018 (<i>redacted</i>)	p. 323
Annex 268	Email from a non-U.S. aviation service provider to Iran Air, 24 July 2018 (<i>redacted</i>)	p. 327
Annex 269	Letter from a non-U.S. equipment supplier to Iran Air, 30 August 2018 (<i>redacted</i>)	p. 331
Annex 270	Letter from IATA to Iran Air, 14 September 2018	p. 335
Annex 271	Letter from a French bank to Iran Air, 17 September 2018 (<i>redacted</i>)	p. 339
Annex 272	Email from a fuel supplier to Iran Air, 5 November 2018 (<i>redacted</i>)	p. 343
Annex 273	Letter from Airbus to Zagros Airlines, 11 November 2018	p. 347
Annex 274	Email from Boeing to Zagros Airlines, 20 November 2018	p. 351
Annex 275	Letter from Airbus to Zagros Airlines, 13 December 2018	p. 355
Annex 276	Set of letters from a non-U.S. airline company to Iran Air, 31 January 2019 (<i>redacted</i>)	p. 359
Annex 277	Email from Honeywell to Kish Air, 9 April 2019	p. 367

9.4 Other Sources

Annex 278	“Iranian airline finalizes deal to purchase 60 Boeing planes”, <i>AP</i> , 10 June 2017	p. 373
Annex 279	“Iran Aseman Airlines crash: Years of sanctions have left passengers with one of oldest air fleets in the world”, <i>The Independent</i> , 18 February 2018	p. 377
Annex 280	“Iran Airport Traffic Expands 8 Percent”, <i>Financial Tribune</i> , 7 April 2018	p. 381
Annex 281	T. Hepher, “Factbox – Iran’s \$38 billion airplane purchases under nuclear deal”, <i>Reuters</i> , 8 May 2018	p. 385
Annex 282	D. Lawder, “U.S. Treasury's Mnuchin: Revoking Boeing, Airbus licenses to sell jets to Iran”, <i>Reuters</i> , 8 May 2018	p. 391
Annex 283	C. Charpentreau, “Boeing confirms passing \$20B Iran deal”, <i>AeroTime News</i> , 7 June 2018	p. 395
Annex 284	A. Feitz, “ATR passe entre les gouttes de l’embargo iranien”, <i>Les Echos</i> , 6 August 2018	p. 399

Annex 285	“Tehran Slams Ankara for Refusing to Refuel Iranian Aircraft”, <i>Iran Front Page News</i> , 3 November 2018	p. 403
Annex 286	E. Batmanghelidj, “For Iranian Passengers, Old Planes and Few Parts Make Air Travel 5.5 More Times Deadly”, <i>Bourse & Bazaar</i> , 5 December 2018	p. 409
Annex 287	P. Hafezi, “Iran urges EU to press Washington on Airbus deliveries: ISNA”, <i>Reuters</i> , 17 December 2018	p. 413
Annex 288	“Europeans refusing fuel to Iranian aircraft”, <i>presstv.com</i> , 18 December 2018	p. 417
Annex 289	S. Shahrabi, “Plane Crash in Iran: Failed Navigation System Was to Blame”, <i>Aircraft Rescue & Fire Fighting Working Group</i> , 14 January 2019	p. 423
Annex 290	M. Kraft, “Boeing 737 MAX 8 stuck in Iran since December 14, a real headache for Norwegian”, <i>Airlive</i> , 29 January 2019	p. 427
Annex 291	N. Alipour, “Obstruction Against Iranian Aircraft; From Europe to Persian Gulf”, <i>Iranian Students’ News Agency (ISNA)</i> , 23 April 2019	p. 431

VOLUME VI

PART X– CONSEQUENCES OF THE U.S. SANCTIONS ON THE SHIPPING SECTOR

10.1 Witness Statements

Annex 292	Witness statement by Mr A. Saman Torabizadeh, Technical and Commercial Director of IRISL, 10 March 2019	p. 1
Annex 293	Witness statement of Captain S. Farahbod, Commercial Director of NITC, 17 March 2019	p. 87
Annex 294	Witness statement by Mr M. Rastad, Managing Director of the Ports and Maritime Organization, 17 March 2019	p. 117

10.2 Official and Academic Sources

Annex 295	“Re-imposition of U.S. sanctions on Iran”, <i>Mediterranean Shipping Company (MSC)</i> , 16 May 2018	p. 127
Annex 296	UK Government, Webpage “Doing business in Iran: trade and export guide”, updated 5 November 2018	p. 131

10.3 Other Sources

Annex 297	“Iran Secures Insurance, Classification and New Loan for Tankers”, <i>Marine Executive</i> , 19 February 2016	p. 161
Annex 298	I. Nam, “Hyundai Heavy Gets \$700 Million Deal to Build 10 Ships for Iran Shipping Lines”, <i>Wall Street Journal</i> , 10 December 2016	p. 165
Annex 299	“IRISL signed shipbuilding order with Hyundai Heavy Industries Group”, <i>Hellenic Shipping News</i> , 13 December 2016	p. 171
Annex 300	“IRISL to Experience a Boom”, <i>Mana</i> , 12 March 2017	p. 175
Annex 301	<i>The Port of Hamburg Magazine</i> , Port of Hamburg, March 2018 (excerpts)	p. 179
Annex 302	S. Jacobsen & J. Gronholt-Pedersen, “Maersk latest company to shun Iran as EU scrambles to save nuclear deal”, <i>Reuters</i> , 17 May 2018	p. 183
Annex 303	“Mazda, Hyundai Leave Iranian Market, Affecting Cars and Shipping”, <i>Radio Farda</i> , 13 June 2018	p. 187
Annex 304	L. Thomas, “French shipping firm CMA CGM ends Iran ops due to U.S. sanctions threat”, <i>Reuters</i> , 7 July 2018	p. 193
Annex 305	G. Knowler, “Container lines end Iran services ahead of US sanctions”, <i>JOC webpage</i> , 9 July 2018	p. 197
Annex 306	“Ports deny the docking to Iranian vessels, official supports”, <i>Safety4Sea</i> , 10 January 2019	p. 201
Annex 307	M. Labrut, “Panama Registry to expel 60 Iranian vessels to avoid U.S. sanctions”, <i>Seatrade Maritime News</i> , 3 February 2019	p. 205

PART XI – CONSEQUENCES OF THE U.S. SANCTIONS ON THE AUTOMOTIVE SECTOR

11.1 Witness Statements

Annex 308	Statement from Arya Diesel Company, 31 December 2018	p. 209
Annex 309	Witness statement of Mr S. Hessameddin Zegordi, Vice Deputy for Strategy & Planning of Iran Khodro, 19 March 2019	p. 215
Annex 310	Witness statement of Mr H. Gharehe, Deputy Strategic Planning and Information Technology of the SAIPA Group, 2 May 2019	p. 221

11.2 Official and Academic Sources

- Annex 311** K. Ashtarian, “Iran’s Automatic Industry: a potential draw for investors”, UNESCO, 27 January 2016 p. 227
- Annex 312** Iran’s Ministry of Industry, Mine and Commerce, “Comparative Statistic of Auto Production between 20 March-20 April 2018 and 20 March-20 April 2019”, 25 February 2019 p. 233

11.3 Other Sources

- Annex 313** “Iran’s Auto Production Jumps by about 40% in 9 Months”, *Tasnim News Agency*, 16 December 2016 p. 237
- Annex 314** “Nuclear deal appears to help Iran’s car making industry”, *Azer News*, 23 December 2016 p. 241
- Annex 315** “Iran Auto Sector 2016: Playing for High Stakes”, *Financial Tribune*, 1 January 2017 p. 245
- Annex 316** E. Bergerolle, “Renault renforce la position exceptionnelle des Français en Iran”, *Challenges*, 7 August 2017 p. 251
- Annex 317** “Iran Khodro to finalize deal with Nissan Motor for Datsun cars”, *ISNA*, 30 August 2017 p. 257
- Annex 318** “France’s PSA suspends joint ventures in Iran to avoid U.S. sanctions”, *Reuters*, 4 June 2018 p. 261
- Annex 319** “U.S. Sanctions on Iran leave European companies with difficult choice”, *The Arab Weekly*, 25 June 2018 p. 265
- Annex 320** “With non-procuring raw materials, the activities of Headlight Modern Car Industries Co. with more than 700 workers stopped / Indirect loss of 5000 people job”, *ILNA*, 12 July 2018 p. 271
- Annex 321** “French Carmaker Likely to Halt Iran Operations as Other Companies Leave”, *Radio Farda*, 28 July 2018 p. 275
- Annex 322** “Scania says U.S. sanctions put entire Iran truck sales in ‘jeopardy’”, *Reuters*, 3 August 2018 p. 279
- Annex 323** “Iran sanctions: Trump warns trading partners”, *BBC News*, 7 August 2018 p. 283
- Annex 324** C. Riley, “Daimler abandons its Iran plans over US sanctions”, *CNN*, 7 August 2018 p. 291
- Annex 325** “Auto supplier Duerr stops Iran business due to sanctions: Boersen-Zeitung”, *Reuters*, 11 August 2018 p. 295

Annex 326	E. Vaish, “Volvo halts Iran truck assembly due to U.S. sanctions”, <i>Reuters</i> , 24 September 2018	p. 299
------------------	---	--------

PART XII - OTHER DOCUMENTS

12.1 Official and Academic Sources

Annex 327	IMF, “Islamic Republic of Iran: 2018 Article IV Consultation”, IMF Country Report No. 18/93, March 2018, (<i>excerpts</i>)	p. 303
Annex 328	K. Katzman, “Iran Sanctions”, <i>Congressional Research Service</i> , RS20871, updated 18 April 2018 (<i>excerpts</i>)	p. 307
Annex 329	K. Katzman, “Iran Sanctions”, <i>Congressional Research Service</i> , RS20871, updated 22 April 2019	p. 313
Annex 330	Letter from the Registrar of the International Court of Justice to the Agent of I.R. Iran, 8 May 2019	p. 417
Annex 331	Letter from the Registrar of the International Court of Justice to the Agent of I.R. Iran, 9 May 2019	p. 421

12.2 Press and Media

Annex 332	A. Zurcher, “Three reasons behind Trump ditching Iran deal”, <i>BBC</i> , 8 May 2018	p. 425
Annex 333	M. Bishara, “Trump Iran and the ‘I.S.R.A.E.L’ doctrine”, <i>Aljazeera.com</i> , 9 May 2018	p. 431
Annex 334	High Representative of the EU and Foreign Ministers of E3, “Joint statement on the re-imposition of U.S. sanctions due to its withdrawal from the Joint Comprehensive Plan of Action (JCPOA)”, 6 August 2018	p. 439
Annex 335	D. Herszenhorn, “Rebuking Trump, major powers reaffirm Iran nuclear deal”, <i>Politico</i> , 25 September 2018	p. 443
Annex 336	N. Gouette & J. Crawford, “US blasts international court on Iran ruling, pulls out of 1955 treaty”, <i>CNN</i> , 3 October 2018	p. 447
Annex 337	S. Tisdall, “Regime change in Iran is Trump’s real motive for siding with the Saudis”, <i>The Guardian</i> , 18 October 2018	p. 453
Annex 338	J. Koutsoukis, “Bolton Says Iran Will Be Squeezed Until the Pips Squeak”, <i>Bloomberg</i> , 13 November 2018	p. 459

- Annex 339** D. Sanger & J. Barnes, “On North Korea and Iran, Intelligence Chiefs Contradict Trump”, *The New York Times*, 29 January 2019 p. 463
- Annex 340** B. Slavin, “Trump officials warn more Iran sanctions are coming”, *Al-Monitor*, 14 March 2019 p. 469

12.3 Other documents appended to the Application of I.R. Iran

- Annex 341** Letter from the Permanent Representative of the Islamic Republic of Iran to the United Nations to the Secretary-General, 11 May 2018 (UN Doc A/72/869-S/2018/453) p. 475
- Annex 342** Note verbale No. 381/289/4870056 from I.R. Iran to the Government of the United States, 11 June 2018 p. 483
- Annex 343** Note verbale No. 381/210/4875065 from I.R. Iran to the Government of the United States, 19 June 2018 p. 489