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CAN U.S. SANCTIONS ON IRAN SURVIVE IRAN'S WORLD TRADE ORGANIZATION ACCESSION?

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INTRODUCTION

For decades, the United States has imposed trade restrictions on Iran due to concerns about Iran's nuclear program, human rights violations, and support for terrorism. These trade restrictions include a full embargo on all goods and services to and from Iran and the United States and sanctions barring third-country actors who engage in specified transactions with Iran from a range of activities with the United States.¹ In the mid-2000s, Iran's efforts toward a nuclear weapon spurred other nations and organizations around the world to impose their own trade restrictions on Iran in the hopes of shifting Iran's calculus to reject weaponization.² In 2015, after extensive multilateral negotiations, Iran committed to take concrete steps to guarantee that its nuclear program is used only for peaceful purposes.³ In response to these steps, many Western countries rolled back trade restrictions and revived their diplomatic missions to Iran.⁴ The United States lifted its sanctions on Iran's nuclear-related activities after Iran took the necessary steps, but it kept in place other trade restrictions based on Iran's human

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1. *Iran Sanctions*, U.S. DEP'T OF THE TREASURY, <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/iran.aspx> [<https://perma.cc/48KE-SR8H>].

2. See, e.g., *Iran Sanctions*, AUSTRALIAN GOV'T DEP'T OF FOREIGN AFF. & TRADE, <http://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/iran/pages/iran.aspx> [<https://perma.cc/6F9E-Z6SV>]; *EU Restrictive Measures Against Iran*, COUNCIL OF THE EUROPEAN UNION, <http://www.consilium.europa.eu/en/policies/sanctions/iran> [<https://perma.cc/RHL5-MQCA>].

3. U.S. DEP'T OF STATE, JOINT COMPREHENSIVE PLAN OF ACTION 2 (2015), <https://www.state.gov/documents/organization/245317.pdf> [<https://perma.cc/ZXK2-RPB9>].

4. Patrick Wintour, *UK and Iran Appoint Ambassadors for First Time Since 2011*, THE GUARDIAN (Sept. 5, 2016), <https://www.theguardian.com/world/2016/sep/05/britain-iran-appoint-first-ambassadors-since-2011-nazanin-zaghari-ratcliffe> [<https://perma.cc/48ZY-HN4C>].

rights violations and support for terrorism, including its full embargo on U.S. trade with Iran.⁵ Yet international pressure rose to welcome Iran back into the international community.⁶

Not long after the nuclear agreement, Iran reasserted its interest in joining the World Trade Organization (WTO), with European Union (EU) support.⁷ The WTO enforces and enables international agreements regarding trade amongst its members—most centrally the General Agreement on Tariffs and Trade (GATT).⁸ The GATT seeks to promote higher living standards and global growth through the “substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce.”⁹ WTO members, including the United States and EU, commit to set their trade policies in line with the substantive provisions of the GATT and related multilateral agreements.¹⁰ When a WTO member feels another member is violating the terms of WTO covered agreements, they must bring their case to the WTO dispute settlement mechanism to compel changes by the offending state and authorize punitive measures.¹¹ Members commit to comply with the rulings of the dispute settlement mechanism; the binding dispute settlement mechanism is the “central pillar of the multilateral trading system, and the WTO’s unique contribution to the stability of the global economy.”¹²

If Iran acceded to the WTO, it would be able to use the WTO dispute settlement mechanism to challenge the trade restrictions that the United States continues to impose on Iran as violations of its obligations to a fellow WTO member. A successful challenge would require the United States to either modify its policies regard-

5. *Iran Sanctions*, *supra* note 1.

6. *Marking Difference with U.S., France Urges Dialogue with Iran*, REUTERS (May 22, 2017), <http://www.businessinsider.com/r-marking-difference-with-us-france-urges-dialogue-with-iran-2017-5?r=UK&IR=T> [<https://perma.cc/V8FY-GLJ9>].

7. Bozorgmehr Sharafedin & Julia Fioretti, *Iran Seeks EU Leverage to Get Financial Concessions from U.S.*, REUTERS (Apr. 16, 2016), <http://www.reuters.com/article/us-iran-nuclear-usa-idUSKCN0XD0E3> [<https://perma.cc/8E75-NQUX>].

8. *Overview*, WORLD TRADE ORG. (2016), https://www.wto.org/english/thewto_e/whatis_e/wto_dg_stat_e.htm [<https://perma.cc/2GBX-G7LU>].

9. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT].

10. *Membership, Alliances, and Bureaucracy*, WORLD TRADE ORG. (2016), https://www.wto.org/english/thewto_e/whatis_e/tif_e/org3_e.htm [<https://perma.cc/ECC2-CDNV>].

11. *Understanding the WTO: Settling Disputes*, WORLD TRADE ORG. (2016), https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm [<https://perma.cc/5AHB-KFM9>].

12. *Id.*

ing Iranian trade or defy the foundational principles of the international trade system that ensures free markets for U.S. goods abroad. This Note assesses whether Iran could successfully convince WTO dispute resolution bodies that the major pillars of U.S. trade restrictions on Iran are prohibited by the GATT.

Part I of this Note establishes the background of U.S. trade restrictions on Iran and Iran's interest in WTO membership. Part II identifies core principles under the GATT that would govern U.S. policy toward Iran if Iran acceded to the WTO and analyzes whether the three distinct trade restrictions that the United States currently imposes on Iran—(1) the U.S. embargo on goods and services from Iran, (2) the secondary sanctions that punish third-party trade with Iran, and (3) the general license financing restrictions on permitted trade under the nuclear agreement—violate those principles based on current WTO case law. Part III analyzes whether exceptions apply that would allow the United States to preserve these restrictions even if they violate GATT principles. This Note concludes that WTO rulings to date indicate U.S. sanctions could survive a direct Iranian challenge under the WTO dispute resolution mechanism if Iran became a WTO member, but also recognizes that there are other ways Iran could use the WTO dispute settlement mechanism to change U.S. trade policy.

I.

THE HISTORY OF U.S. SANCTIONS ON IRAN

U.S. Sanctions on Iran from 1980 through 2014

The United States and Iran have not had direct diplomatic relations since 1980. In 1979, Iranian revolutionaries held more than fifty American diplomats and citizens hostage for 444 days.¹³ During the hostage crisis, the United States imposed the first of many sanctions regimes on Iran, freezing all Iranian assets until 1981, when the hostages were released.¹⁴ The Reagan administration reinstated trade restrictions in response to Iran's state sponsorship of terrorism, first barring weapons sales and foreign aid to Iran in

13. U.S. DEP'T OF STATE, U.S. RELATIONS WITH IRAN FACT SHEET (2015), <http://www.state.gov/r/pa/ei/bgn/5314.htm> [<https://perma.cc/Y39E-LB8L>].

14. Blocking Iranian Government Property, Exec. Order No. 12170, 44 Fed. Reg. 65729 (Nov. 14, 1979); Prohibiting Certain Transactions with Iran, Exec. Order No. 12,205, 45 Fed. Reg. 24,099 (Apr. 7, 1980) (amended by Exec. Order No. 12211, 45 Fed. Reg. 26,685 (Apr. 17, 1980) (rescinded by the Algiers Accords of 1981)).

1984¹⁵ and then in 1987 prohibiting nearly all imports from Iran to the United States.¹⁶

Iran continued to sponsor terrorism in the region into the 1990s, including Hamas militants opposed to the Middle East peace process.¹⁷ When Iran then revived its efforts to enrich uranium, President Clinton declared a national emergency with respect to Iran and imposed a full trade and investment embargo, barring all U.S. trade with Iran.¹⁸ Congress went a step further and passed the Iran and Libya Sanctions Act of 1996 (now known as the Iran Sanctions Act, or ISA), which, in its first iteration, imposed U.S. trade penalties on foreign companies determined to have invested more than \$20 million in Iranian petroleum development.¹⁹ These so-called “secondary sanctions” sought to deny funds to Iran from non-U.S. trade and investment and thereby constrict its ability to fund both its terrorist and nuclear ambitions.

However, the Clinton and then Bush administrations preferred to use diplomatic pressure to convince foreign companies to leave the Iranian market rather than impose sanctions using the ISA authorities. In part, this was because the EU strenuously objected that the secondary sanctions inappropriately extended U.S. law extraterritorially, punishing third-country nationals for trade legal under their own government’s laws and without a direct nexus to the U.S. market.²⁰ With no enforcement, foreign companies eventually began to consider the ISA sanctions defunct, and they began to rein-

15. *State Sponsors of Terrorism*, U.S. DEP’T OF STATE, <http://www.state.gov/j/ct/list/c14151.htm> [<https://perma.cc/52UG-E67U>].

16. Prohibiting Imports from Iran, Exec. Order No. 12,613, 52 Fed. Reg. 41940 (Oct. 30, 1987).

17. Rachel Brandenburg, *Iran and the Palestinians*, U.S. INST. OF PEACE (2010), <http://iranprimer.usip.org/resource/iran-and-palestinians> [<https://perma.cc/EPE3-AUMV>] (last updated Jan. 2016 by Cameron Glenn & Garrett Nada) (“[In 1990] Iran pledged military and financial support—reportedly \$30 million annually—as well as advanced military training for thousands of Hamas activists at Revolutionary Guard bases in Iran and Lebanon.”).

18. Prohibiting Certain Transactions with Respect to Iran, Exec. Order 12959, 60 Fed. Reg. 24,757 (May 6, 1995); Prohibiting Certain Transactions with Respect to the Development of Iranian Petroleum Resources, Exec. Order No. 12957, 60 Fed. Reg. 14,615 (Mar. 17, 1995).

19. Iran Sanctions Act of 1996, 50 U.S.C. § 1701 (2016) (originally enacted as the Iran and Libya Sanctions Act of 1996).

20. BELFER CTR., HARVARD KENNEDY SCH., *SANCTIONS AGAINST IRAN: A GUIDE TO TARGETS, TERMS, AND TIMETABLES* 4 (Gary Samore ed., 2015), <http://belfercenter.ksg.harvard.edu/files/Iran%20Sanctions.pdf> [<https://perma.cc/VX2E-U2WF>] [hereinafter *SANCTIONS AGAINST IRAN*].

vest in Iran's oil sector despite ISA and concerns that the proceeds supported Iran's nuclear capabilities.²¹

By 2006, Iran's progress toward a nuclear weapon reached a crisis point.²² The global community responded from 2006 to 2010 with new United Nations (UN) sanctions on support to Iran's nuclear program in a series of UN Security Council Resolutions (UNSCRs).²³ Critically, UNSCR 1929 in 2010 recognized a "potential connection between Iran's revenues derived from its energy sector and the funding of Iran's proliferation-sensitive nuclear activities."²⁴ Claiming international legitimacy from the UNSCR language, the United States revived the ISA secondary sanctions regime and expanded it with new legislation aimed at cutting off all foreign support to Iran's energy sector (the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, also known as CISADA).²⁵ The U.S. State and Treasury Departments began to enforce the long-stagnant ISA sanctions along with the new CISADA restrictions by blocking foreign companies from the U.S. financial market that maintained investments in Iran's energy sector.²⁶ The EU's extraterritoriality concerns largely dissipated as the EU imposed its own penalties on EU companies investing in Iran's oil sector.²⁷ With an international consensus that more pressure was needed to stop Iran's march toward nuclear armament, concerns about restricting trade fell largely to the wayside.

*The Obama Administration and the Joint Comprehensive
Plan of Action (JCPOA)*

The Obama administration pursued a dual-track approach to counter Iran's nuclear ambitions: negotiations alongside the other members of the UN Security Council and Germany (the P5+1) and ever-increasing secondary sanctions through both executive orders

21. Kenneth Katzman, Cong. Research Serv., RS20871, *The Iran Sanctions Act (ISA) 3* (2007), <https://www.fas.org/sgp/crs/row/RS20871.pdf> [<https://perma.cc/T626-58DZ>].

22. Sanctions Against Iran, *supra* note 20, at 6.

23. *Id.* at 6–7.

24. S.C. Res. 1929, ¶ 17 (June 9, 2010).

25. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Pub. L. No. 111-195, 124 Stat. 1312 (codified as amended in scattered sections of 50 U.S.C.).

26. *See, e.g.*, Press Release, U.S. Dep't of State, *Persons on Whom Sanctions Have Been Imposed Under the Iran Sanctions Act of 1996* (Sept. 6, 2011), <http://www.state.gov/e/eb/rls/othr/2011/172350.htm> [<https://web.archive.org/web/20120113044651/http://www.state.gov/e/eb/rls/othr/2011/172350.htm>].

27. Sanctions Against Iran, *supra* note 20, at 8.

and legislation like CISADA.²⁸ By 2013, U.S. secondary sanctions extended to nearly all foreign trade with Iran's energy, banking, shipping, petrochemical, insurance, and automotive sectors, as well as transfers of Iranian currency.²⁹ That meant third-country companies that, among other things, bought Iranian petrochemicals, sold auto kits to Iran, or held Iranian rials risked being cut off from the U.S. banking system entirely;³⁰ and many were.³¹ Iranian oil sales, which accounted for 80 percent of the government's revenue before 2012, were cut in half as major importers like China, Turkey, India, and the EU replaced Iranian light crude with alternatives from Iraq and Saudi Arabia.³² The international community cooperated with American legislative requirements to keep the proceeds from the limited continuing oil sales in bank accounts in the purchasing country and only accessible to Iran for purchasing from local suppliers.³³

Then, the parallel track of negotiations reached a breakthrough. In November 2013, the P5+1 and Iran announced a Joint Plan of Action to freeze Iranian nuclear progress and relieve some sanctions pressure while the parties worked toward a final agreement.³⁴ Just over a year later, the parties announced the Joint Comprehensive Plan of Action (JCPOA): a ten-year timeline of steps to

28. *Reversing Iran's Nuclear Program: Hearing Before the S. Foreign Relations Comm.*, 113th Cong. (2013) (statement of Wendy Sherman, Under Sec'y for Pol. Affs., U.S. Dep't of State).

29. U.S. DEP'T OF STATE, OVERVIEW OF U.S. SANCTIONS ON IRAN PERTAINING TO ACTIVITIES AND TRANSACTIONS BY NON-U.S. INDIVIDUALS AND ENTITIES (July 23, 2013), <http://www.state.gov/documents/organization/212555.pdf> [<https://perma.cc/AP6j-TXTZ>] [hereinafter Overview of U.S. Sanctions on Iran].

30. *Id.*

31. *See, e.g.*, Media Note, U.S. Dep't of State, Companies Sanctioned Under the Iran Sanctions Act and the Iran Threat Reduction and Syria Human Rights Act (Mar. 14, 2013), <https://2009-2017.state.gov/r/pa/prs/ps/2013/03/206268.htm> [<https://perma.cc/7LS6-FR3Y>].

32. David Cohen, Under Sec'y for Terrorism and Financial Intelligence, U.S. Dep't of the Treasury, Remarks before the New York University School of Law on "The Law and Policy of Iran Sanctions" (Sept. 12, 2012), <https://www.treasury.gov/press-center/press-releases/Pages/tg1706.aspx> [<https://perma.cc/7LS6-FR3Y>]; Thomas Erdbrink, *Iran Staggers as Sanctions Hit*, N.Y. TIMES (Sept. 30, 2013), http://www.nytimes.com/2013/10/01/world/middleeast/iran-staggers-as-sanctions-hit-economy.html?_r=0 [<https://perma.cc/X3Z3-P5SP>].

33. National Defense Authorization Act for 2012, Pub. L. No. 112-81, § 1245 (2012).

34. *Joint Plan of Action*, WASH. INST. (Nov. 24, 2013), <http://www.washingtoninstitute.org/uploads/Documents/other/IranP5plusJointPlanofAction131124en.pdf> [<https://perma.cc/D2MS-K8N3>].

assure the international community that Iran would not reach nuclear capacity that includes a roll back of international sanctions.³⁵

On Implementation Day, January 16, 2016, the International Atomic Energy Agency (IAEA) confirmed that Iran met its obligations under the JCPOA to trigger sanctions relief.³⁶ The UN, EU, and United States concurrently announced a wide range of roll-backs.³⁷ The UN implemented its sanctions rollback by terminating the provisions of Security Council resolutions that imposed nuclear-related sanctions on Iran.³⁸ The EU lifted its embargo on Iranian oil and amended its regulations to rescind sanctions relating to ordinary non-nuclear trade with Iran.³⁹

But the Obama administration lacked the legal authority under U.S. law to fully rescind many of the secondary sanctions it committed to lift under the JCPOA.⁴⁰ On Implementation Day, the United States rescinded secondary sanctions authorized by executive order and removed designated individuals from blacklists.⁴¹ However, many sanctions authorized by legislation could not be rescinded without congressional action.⁴² Instead, the president executed a series of legal waivers of the imposition of sanctions on any foreign companies engaged in activities potentially violating the

35. Media Note, U.S. Dep't of State, Parameters for a Joint Comprehensive Plan of Action Regarding the Islamic Republic of Iran's Nuclear Program (Apr. 2, 2015), <http://www.state.gov/r/pa/prs/ps/2015/04/240170.htm> [<https://web.archive.org/web/20150403095736/http://www.state.gov/r/pa/prs/ps/2015/04/240170.htm>].

36. Press Release, Yukiya Amano, Director, IAEA Director General's Statement on Iran, Int'l Atomic Energy Agency (Jan. 16, 2016), <https://www.iaea.org/newscenter/statements/iaea-director-general%E2%80%99s-statement-iran> [<https://perma.cc/HZ4M-SHMJ>]. .

37. Statement by John Kerry, U.S. Sec'y of State (Jan. 16, 2016), <https://2009-2017.state.gov/secretary/remarks/2016/01/251336.htm> [<https://perma.cc/7TKZ-4574>].

38. S.C. Res. 2231, ¶ 5–9 (July 20, 2015) (establishing a trigger for sanctions rescission Implementation Day).

39. Council Implementing Regulation 2015/1862, 2015 O.J. (L 274) 161 (establishing a trigger for sanctions rescission Implementation Day).

40. Kenneth Katzman, Cong. Research Serv., RS20871, Iran Sanctions 19 (2017).

41. U.S. DEP'T OF THE TREASURY & U.S. DEP'T OF STATE, Guidance Relating to the Lifting of Certain U.S. Sanctions Pursuant to the Joint Comprehensive Plan of Action on Implementation Day (2016), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/implement_guide_jcpoa.pdf [<https://perma.cc/64EM-YEJP>] [hereinafter Guidance Relating to the Lifting of Certain U.S. Sanctions].

42. Sanctions Against Iran, *supra* note 20, at 20.

statutory provisions during the timeframe of the waiver.⁴³ The most potent forms of secondary sanctions, like penalties for buying oil from Iran and entering into contracts with Iran's energy industry, remain technically on the books in the United States.⁴⁴ The president will need to waive the application every six to twelve months for the duration of the JCPOA until Congress acts to lift the sanctions.⁴⁵ The United States has spun this legal formulation as an integral part of its public policy: keeping the laws technically on the books allows for a quick "snapback" of sanctions should Iran violate the terms of the JCPOA.⁴⁶

Not all sanctions on Iran were lifted under the JCPOA agreement. UN, US, and EU sanctions based on Iran's human rights record and support for terrorism remain in force under UN authorities, in the United States, and in Europe.⁴⁷ Moreover, the United States did not commit to lift its unilateral embargo on Iranian goods in the JCPOA.⁴⁸ As part of the JCPOA deal, the United States issued a series of general licenses allowing for the import of certain luxury goods like pistachios and carpets to the United States from Iran and certain aviation goods and services between the United States and Iran.⁴⁹ All other trade with Iran is still prohibited to Americans.⁵⁰ And as Iran continues to engage in concerning be-

43. Guidance Relating to the Lifting of Certain U.S. Sanctions, *supra* note 41.

44. *Id.* at 15.

45. See, e.g., Merrit Kennedy, *Trump Administration Upholds Iran Sanctions Waiver, Keeping Nuclear Deal Alive*, NPR (May 17, 2017, 4:57 PM), <http://www.npr.org/sections/thetwo-way/2017/05/17/528806647/trump-administration-upholds-iran-sanctions-waiver-keeping-nuclear-deal-alive> [https://perma.cc/X3QC-G84D].

46. Barack Obama, President, U.S., Remarks on the Iran Nuclear Deal (Aug. 5, 2015), <https://www.whitehouse.gov/the-press-office/2015/08/05/remarks-president-iran-nuclear-deal> [https://perma.cc/8XNT-SPRW].

47. Sanctions Against Iran, *supra* note 20, at 16 ("[A] small number of sanctions also target Iran's support for terrorism and violation of human rights. The April 2 joint statement confirmed that only 'nuclear-related' sanctions would be relieved, leaving other sanctions in place.").

48. U.S. DEP'T OF THE TREASURY, FREQUENTLY ASKED QUESTIONS RELATING TO THE LIFTING OF CERTAIN U.S. SANCTIONS UNDER THE JOINT COMPREHENSIVE PLAN OF ACTION (JCPOA) ON IMPLEMENTATION DAY (2016) ("U.S. persons continue to be generally prohibited from engaging in transactions or dealings involving Iran, including the Government of Iran and Iranian financial institutions, with the exception of specific activities that are exempt from regulation or authorized by OFAC.").

49. Guidance Relating to the Lifting of Certain U.S. Sanctions, *supra* note 41, at 29.

50. U.S. Dep't of the Treasury, *supra* note 48.

havior, like ballistic missile tests, the United States and others reserve the right to impose further penalties.⁵¹

Normalization and WTO Accession

While concerns with Iran's activities remain, the JCPOA has been widely hailed as an opportunity to normalize Iran's relations with the developed world more broadly.⁵² The chance to reinvest in Iran's economy after nearly a decade of barriers has piqued the interest of European companies no longer subject to EU restrictions or U.S. secondary sanctions risks.⁵³ Iran is trying to encourage global reengagement in its economy by liberalizing its trade policies and pursuing regional economic cooperation.⁵⁴

As part of its efforts to restore ties with the international economy, Iran is restarting its push for membership in the WTO.⁵⁵ Iran's industry minister Mohammad Reza Nematzadeh said in December 2015: "Finalizing WTO membership is therefore a priority for the Iranian government. As the largest non-member economy in the world, our full membership will be win-win for all and a significant step towards creating a truly universal organization."⁵⁶ Iran first applied for WTO membership in July 1996, but the WTO began to consider its membership only in 2005.⁵⁷ As international trust in Iran accrues under the JCPOA, American and global for-

51. See, e.g., Press Release, U.S. Dep't of the Treasury, Treasury Sanctions Those Involved in Ballistic Missile Procurement (Jan. 17, 2016), <https://www.treasury.gov/press-center/press-releases/Pages/jl0322.aspx> [<https://perma.cc/8767-KSTG>] (announcing the imposition of sanctions on Iranians involved in ballistic missile procurement).

52. Barbara Herman, *Historic Iran Nuclear Deal: World Leaders React*, INT'L BUS. TIMES (Apr. 2, 2015), <http://www.ibtimes.com/historic-iran-nuclear-deal-world-leaders-react-1868464> [<https://perma.cc/X8XT-D66L>]. .

53. Michael Birnbaum & Carol Morello, *While Congress Argues over Iran, Europe Rushes to Do Business There*, WASH. POST (Aug. 21, 2015), https://www.washingtonpost.com/world/europe/while-congress-argues-over-iran-europe-rushes-to-do-business-there/2015/08/21/4a715ab6-45b6-11e5-9f53-d1e3ddfd0cda_story.html [<https://perma.cc/6V2F-QUJH>].

54. Arthur MacMillan, *After Iran Elections, Rouhani Aims for Economic Reform*, YAHOO (Mar. 1, 2016), <https://www.yahoo.com/news/iran-elections-rouhani-aims-economic-reform-153747816.html?ref=gs> [<https://perma.cc/S3WF-9PLJ>].

55. Tom Miles, *Iran, Biggest Economy Outside WTO, Says It's Ready to Join*, REUTERS (Dec. 17, 2015), <http://www.reuters.com/article/us-iran-wto-idUSKBN0U02NZ20151217> [<https://perma.cc/EU4W-F69L>].

56. *Id.*

57. *Id.*

eign policy interests may shift in support of Iranian accession. Already, the EU has voiced its support for Iran's bid for accession.⁵⁸

The increased potential for Iran's WTO accession raises challenging questions about the future of U.S. trade policy toward Iran. WTO accession for Iran would likely take many years and require significant changes in Iranian policies.⁵⁹ However, a situation could arise where international pressure compels the United States to acquiesce to Iran's accession while the United States otherwise maintains its current trade restrictions with Iran. WTO members commit not to discriminate against each other's trade, favor their own products over those of other members, or continue non-tariff restrictions that limit free trade, subject to certain exceptions.⁶⁰ In this case, Iran could raise complaints about three distinct trade restrictions: (1) the U.S. embargo, which prohibits nearly all trade between Iranian and U.S. entities; (2) the general licensing regime, which limits financing options for the small category of trade allowed between the United States and Iran; and (3) the secondary sanctions, which remain on the books in the United States either in force or waived but available as "snapback" provisions if Iran violates the nuclear agreement.

II. CORE PRINCIPLES OF WTO MEMBERSHIP IMPLICATED BY U.S. TRADE RESTRICTIONS ON IRAN

Bringing a Complaint before the WTO

Iran, as a member of the WTO, would first be required to engage in formal consultations with the United States about the sanctions it felt violated WTO commitments.⁶¹ Assuming these consultations do not result in a mutually agreeable solution, Iran would then request the Dispute Settlement Body (DSB) to establish a panel of experts to rule on the dispute.⁶² All WTO members sit on the DSB, which has sole authority to establish panels of experts to

58. Bozorgmehr Sharafedin & Julia Fioretti, *Iran Seeks EU Leverage to Get Financial Concessions from U.S.*, REUTERS (Apr. 16, 2016), <http://www.reuters.com/article/us-iran-nuclear-usa-idUSKCN0XD0E3> [<https://perma.cc/SNV8-UR6N>].

59. WTO Accession on average takes nine and a half years and requires enactment of close to 300 items of domestic legislation to satisfy WTO requirements. *WTO Accessions*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/20y_e/acc_brochure2015_e.pdf [<https://perma.cc/F3BF-PZKK>].

60. GATT, *supra* note 9, arts. I, II, XI.

61. *Understanding the WTO: Settling Disputes*, *supra* note 11.

62. *Id.*

consider cases raised asserting violations of agreements overseen by the WTO.⁶³ Panels consist of three to five experts from different countries “who examine the evidence and decide who is right and who is wrong. The panel’s report is passed to the DSB, which can only reject the report by consensus.”⁶⁴ The panel would assess the legitimacy of the challenged trade practice—in this case, the U.S. embargo, general licensing regimes, and “snapback” suspensions of secondary sanctions—informed by past precedent of the DSB Appellate Body.⁶⁵ A claim by Iran against U.S. sanctions and secondary sanctions would likely implicate many, if not all, of the WTO-covered agreements.

This paper focuses solely on the potential claims Iran could raise under the GATT, which establishes some of the most foundational governing standards of WTO membership. GATT members agree not to discriminate against other members’ goods, favor their own producers, or maintain non-tariff barriers to trade. This Part considers whether each of the three U.S. trade restrictions violates these GATT principles. The next Part discusses whether violating U.S. policies might nevertheless be excused because they fall within recognized exceptions to the GATT.

Most Favored Nation Status (Article I)

The first commitment of WTO members is to treat no member’s goods more favorably than any other’s.⁶⁶ This “Most Favored Nation” (MFN) commitment applies to all customs duties, charges, advantages, favors, privileges, or immunities and ensures that products are not treated more or less favorably simply because of their national origin.⁶⁷ This is the first principle of Article I of the GATT and may be violated only with a valid exception.⁶⁸

63. *Id.*

64. *Id.*

65. *Id.* Either side of a dispute can appeal a panel’s ruling. Appeals are “heard by three members of a permanent seven-member Appellate Body set up by the Dispute Settlement Body and broadly representing the range of WTO membership. Members of the Appellate Body have four-year terms. They have to be individuals with recognized standing in the field of law and international trade, not affiliated with any government. The appeal can uphold, modify, or reverse the panel’s legal findings and conclusions The Dispute Settlement Body has to accept or reject the appeals within 30 days—and rejection is only possible by consensus.” *Id.*

66. GATT, *supra* note 9, art. I.

67. *Id.*

68. *Id.*; GATT, *supra* note 9, arts. XX, XI. See *infra* Part III for a discussion of relevant exceptions.

The U.S. embargo on products from Iran violates this MFN commitment on its face: goods and services from Iran are barred from U.S. markets solely on the basis of their national origin. Like products from other WTO members are treated more favorably than Iranian products on the face of the policy in clear violation of Article I of the GATT.

Iran could further argue that limitations on financing that apply uniquely to Iranian products and not like products from other WTO members violate the MFN treatment.⁶⁹ While pistachios and carpets may be imported into the United States under general license in the wake of the JCPOA, they may not be financed with letters of credit issued, advised, negotiated, paid, or confirmed by the government of Iran or any Iranian financial institution,⁷⁰ raising the costs of importation of these products as compared to like products from other countries without limitations on financing. The United States would argue that these financing limitations are not discrimination against the products on the basis of national origin, but simply limitations on trade financing. Any Iranian entity may engage in trade with the United States for these products as easily as entities from any other nation; it simply cannot finance that trade with letters of credit from certain entities in Iran. However, the de facto effect of this policy is to raise the cost nearly exclusively of importing the Iranian versions of these products as compared to other WTO-member imports. Prior WTO panels have found that such de facto discrimination violates MFN commitments.⁷¹

The secondary sanctions raise more difficult questions. Iran argues that the existence of the secondary sanctions, whether waived or in force, inhibit trade because companies fear being cut off from the U.S. market should the United States choose to enforce the laws, resulting in de facto discrimination against Iran even when

69. 31 C.F.R. § 560.535 (2016) (authorizing letters of credit in favor of beneficiaries in Iran for generally licensed activities “provided that such letters of credit are not advised, negotiated, paid or confirmed by the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211”).

70. *Id.*

71. See Appellate Body Report, *Canada—Certain Measures Affecting the Automotive Industry*, § 25, WTO Doc. WT/DS139/AB/R (2000) (finding import regime granting preferential treatment to a limited list of manufacturers constituted de facto advantage to countries of a certain national origin and so violated MFN principles).

the sanctions are officially unenforced.⁷² However, the secondary sanctions, even when in force, are not imposed in a manner that creates national origin-based trade restrictions: they threaten or impose penalties indiscriminately on any individuals or entities engaged in trade with certain sectors of the Iranian economy.⁷³ The immediate penalties of the laws apply only to further activities by third parties who have engaged in transactions with or for Iranian-origin goods or services. It is discrimination based on antecedent behavior, not toward products or specific countries, and so likely satisfies the MFN commitment because every individual and entity risks the trade restrictions equally, regardless of national origin.

Principle of National Treatment (Article III)

Alongside a commitment to MFN treatment comes a commitment not to impose internal regulations that result in discrimination between domestic and foreign like products.⁷⁴ The embargo precludes Iranian products from entering the United States in the first place and therefore is not likely to trigger Article III concerns about national treatment once products reach the United States. The limitations on general licenses apply before the goods enter the United States; the goods are subject to no additional taxes or treatment once they arrive in the United States as compared to domestic products. The secondary sanctions regime, as noted above, targets individuals and entities, not products or services, and so does not risk discrimination between domestic and foreign like products. It is unlikely that a panel would find that the U.S. sanctions regime violates Article III.

General Elimination of Quantitative Restrictions (Article XI)

WTO members also commit to eliminate non-tariff barriers to trade under Article XI of the GATT.⁷⁵ Quotas are specifically prohibited unless necessary to address a food shortage, classify commodities, or enforce agricultural or fishing regulations.⁷⁶ The U.S. embargo imposes a clear quantitative restriction on products from

72. See David Brunnstrom, *Kerry Seeks to Soothe European Bank Nerves over Iran Trade*, Reuters (May 12, 2016), <http://www.reuters.com/article/us-iran-banks-kerry-idUSKCN0Y30OJ> [<https://perma.cc/SQ52-8SEA>] (banks refuse to work with Iran because of “remaining uncertainties” over sanctions liability).

73. See Overview of U.S. Sanctions on Iran, *supra* note 30 (explaining the triggers and penalties under U.S. secondary sanctions).

74. GATT, *supra* note 9, art. III.

75. *Id.* at art. XI.

76. *Id.*

Iran: zero. A total ban on products is a quantitative restriction and so violates Article XI of the GATT.

Iran would argue that the secondary sanctions also create quantitative restrictions on trade with Iran because they prohibit any trade with entire sectors of the Iranian economy.⁷⁷ However, the secondary sanctions are directed at third-country nationals over whom the United States has no sovereignty. The United States has no authority to prohibit their behavior. Instead, the United States enforces the secondary sanctions by imposing trade restrictions on foreign individuals or entities that transact with certain sectors of Iran, including denying them access to the U.S. financial system. This enforcement mechanism is not a quantitative restriction on products; it applies on an individual-entity basis to preclude certain *individual entities* from trade with the United States. The threat of these penalties influences the decision-making of third countries in their dealings with Iran. Those third countries may impose quantitative restrictions in response to the secondary sanctions policy of the United States, which would violate Article XI, but the United States itself has not imposed such a restriction through the secondary sanctions. There is no U.S. policy creating a quantitative restriction in the secondary sanctions regime, just U.S. inducement of quantitative restrictions imposed by other countries. And when the secondary sanctions are waived, there may not even be an argument for inducement. Third countries that choose not to trade with Iran due to the waived sanctions that still technically remain on the books are making decisions based on a risk calculation of the future threat of the waivers expiring without renewal. There is real and substantive evidence to believe that the temporary nature of the waivers undermines the practical effects of their suspension,⁷⁸ but the individuals and countries declining to work with Iran are not under the control of the United States.

77. See Overview of U.S. Sanctions on Iran, *supra* note 29 (explaining the scope of prohibited activity under U.S. secondary sanctions). This section does not discuss general licensing because the general licensing regime does not by its terms provide for specific quantities of trade between Iran and the United States and is not intended to induce policies in third countries.

78. See, e.g., Stuart Levey, *Kerry's Peculiar Message about Iran for European Banks*, WALL ST. J. (May 12, 2016), <http://www.wsj.com/articles/kerrys-peculiar-message-about-iran-for-european-banks-1463093348> [<https://perma.cc/B2S6-X6M6>] (op-ed by HSBC's chief legal officer refusing to do business with Iran so long as it is illegal for American banks).

U.S. Direct Sanctions Violate the GATT; U.S. Secondary Sanctions Likely Do Not

Since the United States does not have ultimate control over the third-country trade policies implicated by its secondary sanctions regime, the secondary sanctions regime and its subsequent waiver likely do not violate the formal bounds of Articles I, III, or XI of the GATT. If Iran challenged the secondary sanctions under these articles, current case law indicates the challenge would fail and the United States would be able to keep its policies in place without violating its WTO obligations. However, the U.S. embargo certainly violates both MFN commitments and quantitative restriction prohibitions. The general licensing limitations likely also violate MFN. To survive the scrutiny of WTO dispute settlement, the embargo and general licensing restrictions must be justified by an enumerated exception to the GATT. The next section considers the exceptions to the GATT that might allow the United States to retain the embargo and general licensing restrictions despite their violations of GATT principles.

III.
EXCEPTIONS AUTHORIZING THE EMBARGO
AND GENERAL LICENSES

The WTO recognizes that there are certain situations in which national autonomy might conflict with GATT commitments.⁷⁹ The GATT therefore recognizes a series of exceptions that, if satisfied, exempt members from GATT rules.⁸⁰ There are ten general exceptions under Article XX and six security exceptions under Article XXI.⁸¹ This section considers the three exceptions that are most likely to encompass the U.S. embargo and general licensing regime for Iranian trade: the Article XX Public Morals and Life and Health exceptions and the Article XXI National Security exception. If the WTO panel finds that any one of these exceptions properly encompasses the U.S. policies at issue, they are exempt from compliance with WTO rules and may be maintained without penalty.

79. See, e.g., World Trade Org., WTO Rules and Environmental Policies: GATT Exceptions, https://www.wto.org/english/tratop_e/envir_e/envt_rules_exceptions_e.htm [<https://perma.cc/R9LJ-BGGX>].

80. GATT, *supra* note 9, arts. XX, XXI.

81. *Id.*

Article XX: Public Morals and Life and Health Exceptions

Article XX(a) exempts measures “necessary to protect public morals” from the requirements of the GATT, while Article XX(b) exempts measures “necessary to protect human, animal, or plant life or health.”⁸² While the substantive requirements of these two exceptions differ, they impose parallel evidentiary burdens and require similar levels of justification before granting the exception’s protection to a measure. The defending party bears the burden of proving that its offending measure comes within the scope of an exception.⁸³ It must establish that the policy justifying the measure fell within the range of policies designed to meet the enumerated objective—either public morals or the protection of human, animal, or plant life or health—and the offending measure must be necessary to fulfill that policy objective.⁸⁴ Finally, the measure must be shown to conform with the requirements of the introductory clause, also known as the chapeau, of Article XX.⁸⁵ Only if all three requirements are met—scope, necessity, and compliance with the chapeau—can an otherwise GATT-offending measure be exempted.⁸⁶

The Scope of the Public Morals Exceptions (Article XX(a)) and Life and Health Exception (Article XX(b))

The first step is to determine whether the measure at issue is designed to promote an objective that falls within the scope of the exception. In 2014, the DSB Appellate Body explained the appropriate scope of the public morals exception in the *EC Seal Products* case. The Appellate Body accepted the standard applied by the panel that objectives are legitimate under the public morals prong where they reflect standards of right and wrong within the regulating community.⁸⁷ The Appellate Body rejected the idea that measures must establish a legitimate threat above and beyond the community’s ordinary tolerance of moral harms to be justified under the exception.⁸⁸ “Members should be given some scope to

82. GATT, *supra* note 9, art. XX(a), (b).

83. Panel Report, *United States—Standards for Reformulated and Conventional Gasoline*, WTO Doc. WT/DS2/R (adopted Jan. 29, 1996).

84. *Id.*

85. *Id.*

86. *Id.*

87. Appellate Body Report, *European Communities—Measures Prohibiting the Importation and Marketing of Seal Products*, ¶ 5.199, WTO Doc. WT/DS400/AB/R (adopted May 22, 2014).

88. *Id.* at ¶ 5.201.

define and apply for themselves the concept of public morals according to their own systems and scales of values.”⁸⁹ Moreover, “members may set different limits of protection even when responding to similar interests of moral concern.”⁹⁰ The history of public morals exceptions within the WTO reinforces the broad scope of this interpretation. Analyzing a similar provision in the General Agreement on Trade in Services (GATS), a WTO panel noted that the original public morals exception in the GATT was “well-understood” to include restrictions on lottery tickets, while the analogous measure in the GATS was interpreted to include “measures to curb obscenity.”⁹¹ The implication of the *EC Seal Products* decision, in light of the history of the exception, is that, to fall within the scope of the public morals exception, a measure simply must have been designed to protect a moral concern of the regulating community.

In contrast to the public morals exception, the Appellate Body tends to interpret the exception for human, animal, or plant life and health as requiring some demonstration of actual risk to life and health in order for a measure to fall within its scope.⁹² Expert and empirical evidence can be used to establish such a risk.⁹³ A measure designed to protect against such a risk will fall within the scope of the Article XX(b) exception.⁹⁴

Against What Risks Are the U.S. Policies Designed to Protect?

Both the U.S. embargo and the general licensing restrictions are designed under U.S. law as a means of depriving the Iranian regime of funds that could be used to support terrorism and human rights violations, as well as a signal of American intolerance

89. *Id.* at ¶ 5.199.

90. *Id.* at ¶ 5.200.

91. Panel Report, *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, ¶ 3.292, WTO Doc. WT/DS285/R (adopted Nov. 10, 2004).

92. Appellate Body Report, *European Communities—Measures Prohibiting the Importation and Marketing of Seal Products*, ¶ 5.197, WTO Doc. WT/DS400/AB/R (adopted May 22, 2014) (citing Appellate Body Report, *European Communities—Measures Affecting Asbestos and Asbestos-Containing Products*, WTO Doc. WT/DS135/AB/R (2001)).

93. *See, e.g.*, Appellate Body Report, *European Communities—Measures Affecting Asbestos and Asbestos-Containing Products*, ¶ 162, WTO Doc. WT/DS135/AB/R (2001) (finding appropriate reliance on expert witness evidence and international body findings in determining a health risk existed from asbestos).

94. *Id.* at ¶ 163.

of such behavior.⁹⁵ Before the JCPOA, Iran's nuclear program was also a core justification for the U.S. embargo.⁹⁶ However, trade sanctions on Iran predate concerns about the nuclear program⁹⁷ and continue in the wake of the JCPOA so long as Iran's destabilizing behavior does not change.⁹⁸

The United States considers only three countries to be state sponsors of terrorism: Iran, Sudan, and Syria.⁹⁹ Iran openly supports Hezbollah, a designated terrorist organization under U.S. law, and is actively providing troops and resources to bolster the Syrian government, another state sponsor of terrorism, in its civil war.¹⁰⁰ The elite Quds Force within the Iranian Revolutionary Guard Corps was designated by the U.S. Treasury Department in 2007 for its support of the Taliban in Afghanistan.¹⁰¹ The U.S. Defense Department attributes at least 500 American troop deaths in the past

95. *See, e.g.*, Iran Sanctions Act of 1996 § 3, 50 U.S.C. § 1701 (2012) (“The Congress declares that it is the policy of the United States to deny Iran the ability to support acts of international terrorism.”); Iran Freedom and Counterproliferation Act of 2012 § 8802, 22 U.S.C. § 95 (2012) (“Congress finds that the interests of the United States and international peace are threatened by the ongoing and destabilizing actions of the Government of Iran, including its massive, systematic, and extraordinary violations of the human rights of its own citizens It is the sense of Congress that the United States should deny the Government of Iran the ability to continue to oppress the people of Iran . . . fully and publicly support efforts made by the people of Iran to promote the establishment of basic freedoms . . . [and] help the people of Iran produce, access, and share information freely and safely.”)

96. *See, e.g.*, Iran Sanctions Act of 1996 §2, 50 U.S.C. § 1701 (2012) (“The objective of preventing the proliferation of weapons of mass destruction and acts of international terrorism through existing multilateral and bilateral initiatives requires additional efforts to deny Iran the financial means to sustain its nuclear, chemical, biological, and missile weapons programs.”).

97. Prohibiting Imports from Iran, Exec. Order No. 12,613, 52 Fed. Reg. 41940 (Oct. 29, 1987).

98. *See, e.g.*, Press Release, U.S. Dep’t of the Treasury, Treasury Sanctions Those Involved in Ballistic Missile Procurement (Jan. 17, 2016) (on file with author) (announcing the imposition of sanctions on Iranians involved in ballistic missile procurement).

99. U.S. DEP’T OF STATE, STATE SPONSORS OF TERRORISM (2016), <http://www.state.gov/j/ct/list/c14151.htm> [<https://perma.cc/JY9T-TQ7A>].

100. Najmeh Bozorgmehr, *Iran Deploys Army to Bolster Support for Syrian President*, FIN. TIMES (Apr. 16, 2016), <http://www.ft.com/intl/cms/s/0/1e8910d4-0194-11e6-99cb-83242733f755.html#axzz48Y6ZE6kG> [<https://perma.cc/F2C9-5QFT>].

101. *Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism*, U.S. DEP’T OF THE TREASURY (Oct. 25, 2007), <https://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx> [<https://perma.cc/U6T4-PDTV>].

decade to Iran's support for anti-American militants.¹⁰² The leaders of more than fifty Muslim nations have accused Iran of supporting terrorism as well.¹⁰³ While there are legitimate international disputes about the definition of terrorist organizations, under American definitions, Iran remains an active proponent and purveyor of resources to terrorist causes.

Iran's human rights record also remains concerning. Amnesty International reports that in 2016 Iran "heavily suppressed the rights to freedom of expression, association, peaceful assembly and religious belief, arresting and imprisoning peaceful critics and others after grossly unfair trials before Revolutionary Courts. Torture and other ill-treatment of detainees remained common and widespread, and were committed with impunity."¹⁰⁴ The U.S. Department of State *Human Rights Reports* for 2015 found that the Iranian government or its agents engaged in "arbitrary or unlawful killings" and politically motivated abductions.¹⁰⁵ Newspapers have been closed, Internet access disrupted, and women banned from many public places.¹⁰⁶ Homosexuality is a crime and gay Iranians are subject to arrest and invasive, humiliating treatment in custody.¹⁰⁷ Iran continues its repressive policies even as it makes overtures to the international community in trade and nuclear cooperation.¹⁰⁸ The EU, even as it repairs relations with Iran, has also raised serious concerns in light of "serious human rights violations."¹⁰⁹

102. Andrew deGrandpre & Andrew Tilghman, *Iran Linked to Death of 500 U.S. in Afghanistan*, MILITARY TIMES (July 14, 2015), <http://www.militarytimes.com/story/military/capitol-hill/2015/07/14/iran-linked-to-deaths-of-500-us-troops-in-iraq-afghanistan/30131097> [<https://perma.cc/PUK5-4PXA>].

103. Yesim Dikmen & Melih Aslan, *Muslim Nations Accuse Iran of Supporting Terrorism: Summit Communique*, REUTERS (Apr. 15, 2016), <http://uk.reuters.com/article/us-turkey-summit-idUKKCN0XC1LQ> [<https://perma.cc/ERF4-R797>].

104. AMNESTY INT'L, IRAN 2016/2017, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/iran/report-iran> [<https://perma.cc/ZKK8-Q3L2>].

105. U.S. DEP'T OF STATE, IRAN, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2015 2 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dclid=252923> [<https://perma.cc/N6L5-8JZ4>].

106. *Id.* at 16, 19, and 43, respectively.

107. *Id.* at 40.

108. *Human Rights in Iran Are Still Atrocious*, THE ECONOMIST (Mar. 24, 2016), <http://www.economist.com/news/middle-east-and-africa/21695716-while-iran-reopens-west-repression-still-prevails-home-human-rights> [<https://perma.cc/RQQ7-X8XJ>].

109. *EU Prolongs Sanctions on Iran over Human Rights Violations*, REUTERS (Apr. 11, 2017), <https://www.reuters.com/article/us-iran-nuclear-eu/eu-prolongs-sanc>

*The U.S. Policies Are Designed to Protect Against U.S.
Moral Concerns (Article XX(a))*

Distaste for human rights violations and terrorism is a well-established American value that speaks to the core of the American community's standards of right and wrong. The U.S. embargo has been justified on these grounds since its inception.¹¹⁰ The financing restrictions on the general licenses are a logical extension of the long-standing U.S. policy to deprive Iran's government and financial sector of legitimacy and funding given their support for terrorism and human rights violations.¹¹¹ Under the broad, flexible definition of public morals established by the *EC Seal Products* case, the United States could persuasively establish that these trade-restrictive policies are designed to protect a moral interest of the American community, so long as Iran's policies have not substantively changed by the time of WTO accession.

*The U.S. Policies Are Designed to Protect against Actual Risk
to Human Life (Article XX(b))*

The public record of Iran's support for terrorism and egregious human rights violations also establishes an existing threat to human life and health. The U.S. embargo and limitations seek to protect against such a risk. While there are debates as to the extent to which this exception extends to the protection of human life and health beyond the jurisdiction of the defending member,¹¹² the record of Iranian responsibility for the deaths of Americans establishes a legitimate risk of terrorism within American jurisdiction. Further, the recent detentions of Americans in Iran without due process¹¹³ establish a nexus between Iran's human rights violations and American national interest. However, unlike the public morals

tions-on-iran-over-human-rights-violations-idUSKBN17D1U1 [https://perma.cc/X4EQ-A95K].

110. See, e.g., Statement of Defense of the United States at 14, *Iran v. United States* (Iran-U.S. Cl. Trib. 1997) (Claim No. A/30), <http://www.state.gov/documents/organization/65779.pdf> [https://perma.cc/SG8K-4CF5] ("Contrary to Iran's allegations, the measures described in the previous sections have been taken by the United States . . . to convince Iran to modify its unlawful behavior toward the United States and other governments, particularly with respect to its support for international terrorism.").

111. *Id.*

112. ANDREW GUZMAN & JOOST PAUWELYN, *INTERNATIONAL TRADE LAW* 376–79 (2d ed. 2012).

113. Felicia Schwartz, *Americans Held or Missing in Iran*, WALL ST. J. (Jan. 16, 2016), <http://www.wsj.com/articles/the-americans-held-missing-in-iran-1452956704> [https://perma.cc/BJ88-AACS].

exception, which is a subjective standard, Iran could seek to counter the U.S. expert and empirical evidence establishing Iranian responsibility for U.S. deaths with its own experts and data. The panel would have to decide which data to credit.

Within the scope of either Article XX(a) or Article XX(b), the animating objective of the U.S. embargo and general licensing restrictions is to inhibit Iran's state sponsorship of terrorism and human rights violations. Under Article XX(a) the trade restrictions promote the added objective of signaling American values in opposition to terrorism and human rights violations in U.S. trade policy.

Necessity under Article XX

Having established policy objectives within the scope of Article XX exceptions, the second step is then to determine if the measure is necessary for the objective for which it was designed. "Necessary" was first defined in the context of Article XX(d) exceptions;¹¹⁴ that definition was subsequently applied to determinations of the scope of both Article XX(a) and (b).¹¹⁵ A measure is "necessary" when it is indispensable or makes a material contribution to an established policy objective.¹¹⁶ The Appellate Body established a three-prong test for how "necessary" a measure is to an objective.¹¹⁷ First, the panel must assess the relative importance of the interests or values furthered by the measure.¹¹⁸ Then, the panel should weigh and balance other relevant factors, including the contribution of the measure to the objective versus the restrictive impact of the measure on international commerce.¹¹⁹ Finally, the panel will compare the challenged measure and alternatives to determine whether "an-

114. Appellate Body, *Korea—Measures Affecting Imports of Fresh, Chilled, and Frozen Beef*, ¶ 161, WTO Doc. WT/DS161/AB/R (adopted July 31, 2000).

115. See Appellate Body Report, *European Communities—Measures Affecting Asbestos and Asbestos-Containing Products*, WTO Doc. WT/DS135/AB/R (adopted Mar. 12, 2001) (defining necessary in an Article XX(b) determination); see also Appellate Body Report, *Brazil—Measures Affecting Imports of Retreaded Tyres*, ¶ 156, WTO Doc. WT/DS332/AB/R (adopted Dec. 17, 2007) (applying "necessary" in an Article XX(b) determination); Appellate Body Report, *European Communities—Measures Prohibiting the Importation and Marketing of Seal Products*, ¶ 2.3.3.2, WTO Doc. WT/DS400/AB/R (adopted May 22, 2014) (applying "necessary" in an Article XX(a) determination).

116. Appellate Body Report, *Brazil—Measures Affecting Import of Retreaded Tyres*, ¶¶ 141, 150, WTO Doc. WT/DS332/AB/R (adopted Dec. 17, 2007).

117. Appellate Body Report, *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, ¶¶ 306–08, WTO Doc. PP296-99, WT/DS285/AB/R (adopted Apr. 7, 2005).

118. *Id.*

119. *Id.*

other, WTO-consistent measure is ‘reasonably available.’”¹²⁰ The challenging party bears the burden of identifying the alternatives.¹²¹

*Assessing the Importance of the Interests Furthered by
U.S. Restrictions on Iran*

There is little question that the twin goals of inhibiting state sponsorship of terrorism and human rights violations would be deemed important interests in the first prong of the “necessity” test for both public morals and human life and health. While there is little guidance on how panels assess the relative importance of interests, a panel found maintaining public order to be a legitimate public morals interest in an analogous GATS case, along with combatting money laundering, organized crime, fraud, underage gambling, and pathological gambling.¹²² Given this wide scope, terrorism (which directly threatens lives and political orders) and human rights violations (including torture) would likely be recognized as important moral concerns to protect against established threats to human life and health. The proliferation of UN actions to counter terrorism¹²³ and human rights violations¹²⁴ establish international credibility to the concerns, indicating that the panels would likely consider them relatively important for Article XX to except.

*Weighing the Contribution of the U.S. Measures to Inhibiting
Terrorism and Human Rights*

The United States would then have to show that the U.S. embargo and general license restrictions make a significant enough contribution to these weighty interests to justify exception from GATT requirements. This analysis involves a “‘holistic’ weighing and balancing exercise ‘that involves putting all the variables of the equation together and evaluating them in relation to each other after having examined them individually, in order to reach an over-

120. *Id.*

121. *Id.* at ¶ 310.

122. *Id.* at ¶ 298.

123. *United Nations Action to Counter Terrorism*, UNITED NATIONS, <http://www.un.org/en/counterterrorism/index.shtml> [<https://perma.cc/E3PL-MGG8>].

124. *Protect Human Rights*, UNITED NATIONS (2016), <http://www.un.org/en/sections/what-we-do/protect-human-rights/index.html> [<https://perma.cc/QK2Y-RF76>].

all judgment.’”¹²⁵ The U.S. embargo would constitute a total ban on trade from another WTO member—an extreme restriction on international commerce—so in the balance its contribution to the goal ought to be well established and material to justify the measure. The Appellate Body recognizes that “when a measure produces restrictive effects on international trade as severe as those resulting from an import ban, it appears to us that it would be difficult for a panel to find that measure necessary unless it is satisfied that the measure is apt to make a material contribution to the achievement of its objective.”¹²⁶ The general license restrictions, in contrast, impose at most occasional additional transaction costs where Iranian exporters do not have non-Iranian banking relationships through which to finance their shipments to the United States. In *EC Seal Products*, the Appellate Body recognized that materiality may not always be required when a measure’s trade restrictiveness is less than a total import ban.¹²⁷ A panel could accept less than a material contribution from the general license restrictions as “necessary” in light of their limited effect on international commerce.

Unlike prior Article XX cases before the WTO, the U.S. trade embargo does not target a particular *product* that poses risks to public morals¹²⁸ or human life and health.¹²⁹ Instead it seeks to impact another nation state’s behavior through general economic pressure. The nexus between the trade restriction and the challenged behavior is less clearly established than the health effects of asbestos or the animal cruelty involved in seal products, and the effectiveness of sanctions regimes to actually change the targeted state’s behavior is hotly debated.¹³⁰ However, the United States can point to

125. Appellate Body Report, *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, ¶¶ 296–99, WTO Doc. PP296-99, WT/DS285/AB/R (adopted Apr. 7, 2005).

126. Appellate Body Report, *Brazil—Measures Affecting Import of Retreaded Tyres*, ¶ 150, WTO Doc. WT/DS332/AB/R (adopted Dec. 17, 2007).

127. Appellate Body Report, *European Communities—Measures Prohibiting the Importation and Marketing of Seal Products*, ¶¶ 5.215–16, WTO Doc. WT/DS400/AB/R (adopted May 22, 2014).

128. *Id.* at ¶ 5.225.

129. Appellate Body Report, *European Communities—Measures Affecting Asbestos and Asbestos-Containing Products*, ¶ 157, WTO Doc. WT/DS135/AB/R (adopted Mar. 12, 2001).

130. Compare Anu Bradford & Omri Ben-Shahar, *Efficient Enforcement in International Law*, 12 CH. J. INT’L L. 375 (2012) (arguing sanctions are costly, difficult, and often ineffective), with Kathryn Stoner-Weiss, Opinion, *Sanctions Against Russia Are Working, Don’t Give Them Up*, N.Y. TIMES (Dec. 10, 2015), <http://www.nytimes.com/roomfordebate/2015/12/10/trade-an-end-to-sanctions-for-putins-help->

the JCPOA as evidence that sanctions can result in positive change in Iran's policies, even if their general effectiveness is questionable. The Iranian nuclear agreement grew out of the enormous economic pressure that international sanctions placed on Iran's government to change its nuclear program to meet international demands.¹³¹

Iran may respond that the duration of the U.S. trade embargo undermines its validity as a tool for change: the Iranian economy has adapted to the effects of preclusion from U.S. markets so the embargo no longer operates as pressure on the regime. The effectiveness of sanctions in bringing about the JCPOA lay in the trade policies of third countries.¹³² All the U.S. embargo does on its own is limit trade with no contribution to its stated objectives. The government is not meaningfully constrained in providing weapons or resources to whomever it chooses because it has fully substituted the U.S. market with other international markets. Iran would say the Iran embargo is like the Cuba embargo: a relic of an earlier time that has lost its power and should be discarded. The only practical effect of the U.S. embargo, besides significantly impairing free commerce, is to preclude life-saving U.S. products from Iranians. Medicine shortages,¹³³ rickety passenger jets,¹³⁴ and food shortfalls¹³⁵ have created risks to human lives and health in Iran over the last five years.

against-isis/sanctions-against-russia-are-working-dont-give-them-up [https://perma.cc/T6CF-LFER] (arguing the U.S. sanctions against Russia are changing its calculus).

131. See, e.g., John Cassidy, *The Iran Deal is a Victory for Reason and Economic Sanctions*, THE NEW YORKER (Sept. 3, 2015), <http://www.newyorker.com/news/john-cassidy/the-iran-deal-is-a-victory-for-reason-and-economic-sanctions> [https://perma.cc/8E39-Z22B] (arguing Iran deal vindicates sanctions regime).

132. See, e.g., Suzanne Maloney, *Why "Iran Style" Sanctions Worked Against Tehran (and Why They Might Not Succeed with Moscow)*, BROOKINGS (Mar. 21, 2014), <http://www.brookings.edu/blogs/markaz/posts/2014/03/21-iran-sanctions-russia-crimea-nuclear> [https://perma.cc/YUS9-KT5Q] (arguing broad multilateralism was key to Iran sanctions pressure).

133. Julian Borger & Saeed Kamali Dehghan, *Iran Unable to Get Life-Saving Drugs Due to International Sanctions*, THE GUARDIAN (Jan. 13, 2013), <http://www.theguardian.com/world/2013/jan/13/iran-lifesaving-drugs-international-sanctions> [https://perma.cc/L6D9-M3C4].

134. Amri Handjani, *Sanctions Cause Iranian Airplane Crashes*, THE HILL (Aug. 20, 2014), <http://thehill.com/blogs/congress-blog/foreign-policy/215406-sanctions-cause-iranian-airplane-crashes> [https://perma.cc/7MA6-FSRX].

135. Niluksi Koswanage & Parisa Hafezi, *Sanctions on Iran: Iranians Face Shortages of Rice, Corn, and Cooking Oil*, CHRISTIAN SCI. MONITOR (Feb. 8, 2012), <http://www.csmonitor.com/World/Latest-News-Wires/2012/0208/Sanctions-on->

The United States will respond that there are humanitarian exceptions to the U.S. embargo, and a general license for airplane safety to protect against such harms,¹³⁶ and most of those shortfalls were the result of international sanctions that will be lifted under the JCPOA. That these shortfalls will be resolved through renewed international trade strengthens Iran's argument that the U.S. embargo does no work as a pressure tool in itself: Iran can get everything it needs elsewhere. The WTO is fairly flexible on its determination of contributions to an objective. Under *EC Seal Products*, a measure may be upheld if it is "capable of making and does make some contribution to its objective."¹³⁷ However, the long track record of the U.S. embargo failing to effect change in Iran's policies over decades makes it hard to believe a panel could find that the U.S. embargo meets such a standard with respect to the objective of inhibiting terrorism and human rights violations under Articles XX(a) and XX(b).

However, the United States can argue that the embargo also serves the non-instrumental purpose of incorporating core American values in opposition to terrorism and human rights violations into its trade policy. Regardless of whether the policy actually changes Iran's behavior, it is important that the United States declines to contribute its own resources to Iran's nefarious causes. The value of this signal does not fade over time and does not rely on proof of effects on Iranian behavior. The steady consistency of U.S. messaging over the past thirty years establishes that taking this symbolic stand against Iran's behavior is central to the U.S. conception of itself as a bastion of freedom and human rights, regardless of whether Iran changes. The U.S. embargo may not be making a demonstrable contribution to the objective of inhibiting terrorism and human rights violations, but it helps signal deeply held U.S. values to the world under Article XX(a).

The general licensing restrictions similarly signal distaste, but, in contrast to the embargo, also likely exert pressure on Iran. They cause immediate complications for Iranian exporters seeking to enter a new market and deny a revenue stream to participants in the activities the United States wants to inhibit. The financing limi-

Iran-Iranians-face-shortages-of-rice-corn-and-cooking-oil [https://perma.cc/FB7N-U6KB].

136. Guidance Relating to the Lifting of Certain U.S. Sanctions, *supra* note 41, at 29.

137. Appellate Body Report, *European Communities—Measures Prohibiting the Importation and Marketing of Seal Products*, ¶ 5.228, WTO Doc. WT/DS400/AB/R (adopted May 22, 2014).

tations force exporters to find alternatives outside of Iran in order to sell to the United States, undermining the government's control over its pistachio and carpet industries. Iran will argue that the nexus between these restrictions and the asserted objective of inhibiting terrorism and human rights violations is even more tenuous than the general U.S. embargo: there is no evidence that private pistachio and carpet financing has any impact on the Iranian government's policies regarding torture or Hezbollah. However, the United States will argue that precluding the government and banks from revenue streams they would otherwise access deprives them of funds they could route toward more nefarious activities. These restrictions demonstrate to Iran's private sector that there is a market available, but Iran's banks and government may not participate without changes in their policies. The general licensing restrictions plausibly could effect change in Iran's behavior over time and signal U.S. distaste for the behavior of Iran's government and banks: both Article XX(a) and XX(b) exceptions could apply.

Comparing the U.S. Measures to Less Trade-Restrictive Alternatives

Once the responding party makes a prima facie case that its trade restrictive measure is necessary to further its objective on balance, the last step is to determine if there are less trade-restrictive alternatives that would be as effective at furthering the identified objective. Iran would be responsible for identifying alternatives, if it so chooses. A reasonably available alternative (1) must be one the responding member is capable of taking, (2) does not impose an undue burden like prohibitive costs or substantial technical difficulties, and (3) must allow the member to achieve its desired level of protection.¹³⁸ In assessing the U.S. objective of inhibiting terrorism and human rights violations with its policies, Iran could argue that there already exist internationally recognized mechanisms to do so in response to demonstrated wrongs by individual parties: UN sanctions and aggressive financial sector compliance oversight.¹³⁹ Many other countries share the U.S. concern about Iran's behavior but further this objective through diplomacy, oversight, and UN-ap-

138. Appellate Body Report, *European Communities—Measures Affecting Asbestos and Asbestos-Containing Products*, ¶¶ 172–74, WTO Doc. WT/DS135/AB/R (adopted Mar. 12, 2001).

139. Iran frequently asserts that U.S. sanctions are contradictory to the spirit and text of UN resolutions. See, e.g., *Foreign Ministry Slams U.S. New Sanctions Against Iran*, MINISTRY OF FOREIGN AFF., ISLAMIC REPUBLIC OF IRAN (Apr. 2, 2017), <http://en.mfa.ir/index.aspx?fkeyid=&siteid=3&pageid=2025&newsview=438213> [<https://perma.cc/L73J-XRDN>].

proved actions, rather than blanket bans on trade or financing mechanisms by national origin. However, the United States will be able to argue that these other mechanisms, which it also engages in, do not adequately replace the level of protection afforded by the U.S. embargo and the general licensing restrictions. The UN does not sanction all the entities the United States considers bad actors, compliance sometimes fails, and diplomacy is not reasonably available given the current state of U.S. foreign policy: the United States does not have official relations with the government of Iran and cannot be forced to restart them by the WTO. Further, if one objective of the restrictive measures is to signal U.S. intolerance of state sponsorship of terrorism and human rights violations, a full embargo is the only way to achieve that goal. Only a total bar on trade communicates that the United States refuses to be a party to such bad behavior. Less restrictive alternatives would also be less effective at signaling American values, and so insufficient to fulfill U.S. needs.

Consistency with Article XX Chapeau

Once a measure has been found justified by an Article XX provisional exception, it still must be considered in light of the overarching requirement that “such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.”¹⁴⁰ The burden of establishing that the measure does not conflict with the Article XX chapeau restrictions rests with the defending party—the United States.¹⁴¹

A measure constitutes a means of arbitrary or unjustifiable discrimination when the relevant conditions that justify the restrictive measure are also present in other countries and the defending member cannot explain the difference satisfactorily.¹⁴² One of the most important factors is “whether the discrimination can be reconciled with, or is rationally related to, the policy objective with respect to which the measure has been provisionally justified.”¹⁴³ Iran will argue that there is no compelling reason why they are subject to a total embargo while other state sponsors of terrorism and human

140. GATT, *supra* note 9, art. XX.

141. Appellate Body Report, *European Communities—Measures Prohibiting the Importation and Marketing of Seal Products*, ¶ 5.297, WTO Doc. WT/DS400/AB/R (adopted May 22, 2014).

142. *Id.* at ¶¶ 5.299–303.

143. *Id.* at ¶ 5.306.

rights violators are not. The United States will rebut that the trade embargo is justified by Iran's unique status as *both* a state sponsor of terrorism and a human rights violator. Only two other countries share that status in U.S. law: Sudan and Syria.¹⁴⁴ Sudan is also subject to a full embargo.¹⁴⁵ Syria is subject to extensive sanctions but not a total embargo.¹⁴⁶ Syria's civil war complicates trade policy on a nation-to-nation basis because only some parts of the country are under the control of the state sponsoring terrorism. Syria is the nation being treated exceptionally, not Iran, and the different approach to Syria is well justified by its internal instability. Further, the United States has unique concerns about Iran's behavior above and beyond that of Sudan and Syria. Even after a decade of crippling international sanctions, Iran's sheer capacity to support terrorism dwarfs the capabilities of Syria and Sudan and justifies unique treatment.¹⁴⁷

Article XXI: National Security Exception

The national security exception to the GATT in Article XXI(b) has not been litigated through the WTO dispute mechanism, so there is no case law to predict WTO implementation.¹⁴⁸ However, on the face of the text, the exception appears to grant broad discretion to member states to self-judge what actions fall within its scope. The relevant text states:

144. *State Sponsors of Terrorism*, U.S. DEP'T OF STATE (2016), <http://www.state.gov/j/ct/list/c14151.htm> [<https://perma.cc/UG9U-6436>]; *U.S. Relations with Sudan Fact Sheet*, U.S. DEP'T OF STATE (2017), <http://www.state.gov/r/pa/ei/bgn/5424.htm> [<https://perma.cc/HAW9-LX8V>]; *U.S. Relations with Syria Fact Sheet*, U.S. DEP'T OF STATE (2014), <http://www.state.gov/r/pa/ei/bgn/3580.htm> [<https://perma.cc/YA7F-E2KS>].

145. OFF. OF FOREIGN ASSET CONTROL, U.S. DEP'T OF TREASURY, SUDAN SANCTIONS PROGRAM (2013), <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/sudan.pdf> [<https://perma.cc/ED9Z-NEY4>].

146. OFF. OF FOREIGN ASSET CONTROL, U.S. DEP'T OF TREASURY, SYRIA SANCTIONS PROGRAM (2013), <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/syria.pdf> [<https://perma.cc/FG75-RCVM>].

147. *See, e.g.*, Eli Lake, *Iran Spends Billions to Prop Up Assad*, BLOOMBERG (June 9, 2011), <http://www.bloomberg.com/view/articles/2015-06-09/iran-spends-billions-to-prop-up-assad> [<https://perma.cc/X2DF-G6QN>] (quoting a U.N. official estimating Iran spends \$6 billion annually propping up the Syrian regime).

148. The WTO has published an interpretation and application of Article XXI detailing the history of the exception's drafting and invocation by members in unilateral trade embargoes over the years. The historical gloss of the exception's use by member states indicates those who invoke it have implied that the exception is broadly self-judging. WTO SECRETARIAT, ANALYTICAL INDEX OF THE GATT: ARTICLE XXI SECURITY EXCEPTIONS (2012), https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art21_e.pdf [<https://perma.cc/R9WG-FGMB>].

Nothing in this Agreement shall be construed . . . (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests . . . (ii) relating to the traffic in arms, ammunition, and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment.¹⁴⁹

State sponsorship of terrorism is rationally related to the traffic in goods and materials for supplying a military establishment and well within an objective interpretation of “essential” security interests. If the WTO applied the Article XX case law to necessity under Article XXI, the U.S. embargo might fail as insufficiently contributing to the protection of U.S. security interests. However, the text protects any action which the member *considers* necessary; while the exception has never been formally tested, many believe it likely would protect measures like sanctions in response to military threats by WTO members regardless of their actual track record because it leaves the decision of necessity in the hands of the member states.¹⁵⁰ The U.S. embargo and licensing restrictions are then likely also encompassed by the Article XXI(b) exception for measures considered necessary to protect essential security interests relating to trade in military-related goods and services.

IV. IRAN’S LIKELIHOOD OF SUCCESS AND ALTERNATIVES TO A CLAIM AGAINST THE UNITED STATES

The prior analysis indicates that the United States could acquiesce to Iran’s accession to the WTO without changing its trade policies toward Iran. A direct challenge to U.S. sanctions policy by Iran would likely fail in WTO dispute settlement because even if determined to be violations of the GATT, the sanctions likely would be considered excepted under Article XX(a) or Article XXI(b).

The secondary sanctions regime likely is not a violation of the GATT by the United States because the trade restrictions imposed by the United States do not target Iranian products or services. The United States simply restricts access to U.S. markets to any individual anywhere in the world engaged in certain kinds of prohibited

149. GATT, *supra* note 9, art. XXI.

150. See, e.g., Jeff Colgan, *The Foreign Policy Essay: Could Energy Sanctions on Russia Work?*, LAWFARE (May 4, 2014), <https://www.lawfareblog.com/foreign-policy-essay-could-energy-sanctions-russia-work> [<https://perma.cc/TK23-J48J>].

behavior. The United States is not responsible for trade restrictive policies that third countries, individuals, or entities adopt that target Iran, even if those policies are adopted to avoid U.S. penalties.

However, the U.S. embargo constitutes a *de jure* violation of Article I and Article XI, and the general licensing restrictions likely constitute a *de facto* violation of Article I. These measures might still be beyond Iran's reach if they are covered by an Article XX exception. The United States will argue that the measures are necessary to protect human life and health and to protect public morals. They will say the measures protect public morals and human life and health by inhibiting Iran's state sponsorship of terrorism and human rights violations, and also protect public morals by signaling U.S. intolerance for such activities. The U.S. embargo likely could not be justified as an Article XX(b) measure necessary for human life and health because its long-established history indicates that Iran has adapted to the lack of a U.S. market and so the measure no longer contributes to the objective of inhibiting Iran's behaviors. However, the U.S. embargo would be justifiable under Article XX(a) as a signal of U.S. intolerance if the panel considers non-instrumental objectives like this validly within the scope of Article XX(a). The general licensing restrictions likely could be justified under both Article XX(a) and (b) because they are capable of contributing to the inhibition of Iran's bad behavior and also signal U.S. intolerance. Iran's unique status as a stable state sponsor of terror justifies singling it out for these restrictions. Even if the WTO declines to grant Article XX(a) protection to policies purely intended to express a nation's policy without instrumental effect, the United States could likely successfully invoke the Article XXI(b) national security exception to preserve its trade restrictions.

However, Iran could use the WTO dispute settlement mechanism to pressure the United States to change its regime indirectly. As noted above, foreign companies and banks avoid transactions with Iran, even in the wake of the JCPOA, out of fear that the transactions will run afoul of U.S. sanctions and cut them off from the U.S. financial markets. If Iran can establish these decisions are based on government guidance, Iran can raise WTO claims against third countries for discriminating against Iran. Successful claims would force countries to choose between WTO compliance and access to U.S. markets, threatening the legitimacy of the WTO system simply because of a U.S. policy. Countries like China and Turkey always resisted the U.S. sanctions policy and will not appreciate being forced to defend it at the WTO or risking WTO efficacy because

of American intransigence.¹⁵¹ These countries would likely bring diplomatic pressure against the United States to change its sanctions regime to avoid an existential threat to the WTO. So even if Iran might not succeed in defanging the U.S. sanctions through direct WTO litigation, it could still leverage its WTO membership to neutralize the U.S. regime through targeted third-party claims.

WTO membership would be a significant step back into the international community for Iran. That step might not directly threaten the U.S. trade policy toward Iran, but it would change its stakes. American policymakers considering whether to acquiesce to Iranian membership will need to balance the benefits of Iran's compliance with WTO agreements against the need for continued sanctions to combat terrorism and human rights violations. Even if U.S. sanctions do not directly conflict with Iran's membership in the WTO, they might be politically costly. Thus, while the GATT will unlikely bar U.S. embargoes on Iran, it may nevertheless become a powerful tool for Iran to combat U.S. sanctions.

151. See, e.g., Charles Clover, *China Hits Out at US Sanctions on ZTE*, FIN. TIMES (Mar. 8, 2016), <http://www.ft.com/intl/cms/s/0/1e060a62-e516-11e5-a09b-1f8b0d268c39.html#axzz48puftNqr> [<https://perma.cc/A787-BJZQ>]; Paul Richter, *Turkey Rebuffs U.S. Pressure to Slash Trade with Iran*, L.A. TIMES (Oct. 21, 2010), <http://articles.latimes.com/2010/oct/21/world/la-fg-turkey-iran-20101021> [<https://perma.cc/Y6FN-8BQ8>].