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Before the Senate Committee on Homeland Security and Governmental Affairs hearing:

"Iran Sanctions: Why Does the U.S. Government Do Business With Companies Doing Business in Iran?"

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"Why does the United States government do business with companies doing business in Iran?" Simple answer: Because it can.

As the Department of Defense rightly noted in its commentary on the GAO report released today, the companies in question are qualified to bid on federal contracts and are not excluded by any U.S. law or regulation.

The New York Times reported earlier this year that 74 companies have done business with both the Islamic Republic of Iran and the United States Government over the past decade. Of those, 49 continue to do business there, according to the *Times,* and have no reported plans to stop their business with Iran. The GAO report makes clear that some of this business seems necessary for either logistical or financial reasons; fuel supplies, base building and similar endeavors can – though may not necessarily --- limit the choices available to the Department of Defense. But among the benefits that some of these companies receive have been $4.5 billion in loan guarantees and loans from the Export Import Bank – loans, which the Bank's leadership insist were fully vetted with the Department of State and other administration players.[1]

It was only in December of last year – more than 13 years after the passage of the Iran Libya Sanctions Act – that Exim put in place a rule requiring borrowers to certify they have no operations in Iran's energy sector. (That they did so is a testament to Congressional pressure; as late as December 2008, Exim was suggesting that it is "generally prohibited from taking foreign policy considerations into account when making credit decisions"[2].)

In terms of direct U.S. business, the total amount of U.S. government contracting going to these firms is not astronomical over five years: $879 million[3]. It's not peanuts – but it's not keeping most of these companies in business either.

The larger problem is that the United States government is for the most part indifferent as to whether beneficiaries of U.S. taxpayer dollars are doing business in Iran. And that is entirely in keeping with the underlying trouble: For the last decade and a half, the USG has not taken the Iran sanctions legislation passed by the Congress seriously.

Under the ISA, there is a full menu of measures available to sanction entities found to be doing business with Iran, which range from a slap on the wrist to punitive steps that could be "crippling" to a designated company. Indeed, Section 6 of the Act targets two of the focuses of recent articles and today's GAO report: The sanction in Paragraph (1) offers "denial of Export-Import Bank loans, credits, or credit guarantees for U.S. exports to the sanctioned entity;" and paragraph (5) offers a "prohibition on U.S. government procurement from the entity." Had there been designations in accordance with the Act by the Department of State, it would not have been necessary for the taxpayer to subsidize any of these Iranian business partners.

But since the passage of the Iran Libya Sanctions Act in 1996, only three companies taking part in one project have been designated for violating its terms. This occurred in 1998, and those sanctions were then immediately waived. At the time, Secretary of State Madeleine Albright stated that: "it is important to the national interest to waive the imposition of sanctions against the three firms involved.

[1] Letter to Senator Jon Kyl from James Lambright, Chairman and President, Export Import Bank, December 2, 2008
[2] Ibid.
[3] GAO Report, May 2010,
Firms Reported to Have Commercial Activity in the Iranian Energy Sector and U.S. Government Contracts

Among other factors, I considered the significant, enhanced cooperation we have achieved with the European Union and Russia in accomplishing ILSA's primary objective of inhibiting Iran's ability to develop weapons of mass destruction and support of terrorism."

In the wake of Albright's waiver, hundreds of companies poured into the breach, Russia stepped up nuclear cooperation with Iran and between 2000 and 2005, EU-Iran trade almost tripled.

In the years since the passage of ILSA, while numerous firms have done business in Iran's energy sector, no project bar the one example has merited more than an inconclusive and half-hearted investigation by the Department of State. The operative language in the law, as amended, states that: "The President should initiate an investigation into the possible imposition of sanctions under section 5(a) against a person upon receipt by the United States of credible information indicating that such person is engaged in investment activity in Iran as described in such section."

The operative word in that text is "should". An amendment to the law that would have required the President to make such a determination within a time certain was opposed by the White House, and was ultimately excluded from revisions to ILSA. Indeed, this is the history of what we now call the Iran Sanctions Act. Congress acts to force the Executive Branch to seriously pursue a stringent sanctions regime against Iran, and the Executive Branch – whether led by either a Democratic or a Republican administration – resists.

A brief review of the legislation's history under the last administration is instructive: After years of failed enforcement of the provisions of the original Act, ILSA was set to expire in 2001. That was fine with the Bush administration (I was in the briefings, and recall it well). Congress opposed expiration, and sought instead to tighten the Act's provisions, reducing the monetary threshold for designation of a sanctionable investment and requiring a report from the administration about the bill's implementation and effectiveness. The bill also changed the definition of investment to include amendments to existing contracts.

But the Congress's efforts to encourage administration implementation of the ISA were for naught. And the Bush administration was no more aggressive against firms investing in Iran than was the Clinton administration -- the intervention of 9/11, Iran's own progress toward a nuclear weapon, the election of Mahmoud Ahmadinejad, and Iran's complicity in attacks on our troops in Iraq notwithstanding.

To be fair to the Bush administration, while the State Department continued to aggressively ponder the value of diplomacy with Iran, the Department of the Treasury began what has been the most successful efforts to isolate Iran since the mid-1990s, the financial sanctions effort led by Undersecretary Stuart Levey. Using provisions of the Patriot Act and Executive Orders targeting proliferators and sponsors of terrorism, Levey's office has designated more than 100 entities supporting Iran's illicit programs, and was the first in the U.S. government to initiate targeted efforts against the Iranian Revolutionary Guard Corps. Needless to say, his efforts have been dogged by reluctant foreign service bureaucrats since the beginning.

By 2006, it became clear to many in the Congress that the loopholes in Iran sanctions legislation sufficed to accommodate a State Department convoy driving through. The Iran Freedom and Support Act tried to close those loopholes, fund democracy activities in Iran and sanction companies transferring WMD and conventional weaponry. It also set a 90 day time limit on a sanctions determination – a clear Congressional response to State's failure to comply in good faith with the ISA. The House version of the bill was tougher still, with a ban on foreign assistance to countries whose nationals violated the terms of

the bill and an amendment closing the loophole allowing subsidiaries of U.S. companies to operate in Iran.

The Bush administration opposed the stronger language with the stock claim that the bill failed to afford the President sufficient flexibility. As a result, a watered down version was ultimately passed -- one that did not require a determination about violators, but notably did provide support for promotion of democracy in Iran (an activity largely discontinued by the Obama administration) and suggested the administration not conclude nuclear agreements with countries known to have provided nuclear technology to Iran. This last was a swipe at Russia, and yet another ignored signal. The Bush administration transmitted a so-called 123 nuclear cooperation agreement with Russia to the Congress in May of 2008, rescinding it in the wake of the Russian attack on Georgia three months later. The Obama administration reportedly retransmitted the agreement to Congress yesterday.

As members of this Committee are aware, Congress is once again considering legislation intended to strengthen and expand the Iran Sanctions Act. And once again, the Administration in power is seeking to weaken the provisions of this legislation. I note the familiar sounding plaint in Deputy Secretary of State Jim Steinberg's SAP letter on S. 908 in which he writes: "It is our hope that any legislative initiative would preserve and maximize the President's flexibility, secure greater cooperation from our partners in taking effective action, and ultimately facilitate a change in Iranian policies."

I understand that State is playing an active role behind the scenes in conference seeking to weaken key provisions of the new Iran sanctions legislation, including demands to create an exemption for so-called "cooperating countries," raise thresholds for sanctioning suppliers to Iran's gas refining industry, and finally keep open the loophole that allows the State Department to avoid serious investigations of ISA violators, and more.

There is no silver bullet to address Iran's nuclear weapons program. No single bill and no single set of sanctions can "deliver" the government of the IRI. But in light of this rather pathetic history of Executive Branch evasion, one may legitimately wonder what would have happened had the White House had less latitude to ignore decades of investment in Iran's energy sector.

Successive administrations will argue that the track record for discouraging investment in Iran is a good one. Indeed, by the count at AEI's IranTracker project, 18 companies have pulled out of Iran in the last couple of years, including some that are key to Iran's refining and energy production sectors. But I would suggest that many of those decisions have been prompted by aggressive divestment legislation now passing in U.S. states (and I commend Representative Ted Deutch for his outstanding leadership on divestment), the terror-free investment movement, Iran's own mafia-like business environment, growing fear of an Israeli military strike and changing perceptions in European countries (several of which now see themselves as tougher on Iran than the Obama administration).

Looking at the list of companies that have reportedly ceased business in Iran, it is striking that the vast majority – 13 – are located in the U.S. or Europe. Attitudes have not changed elsewhere, and between April 1, 2001 and today, our IranTracker team has identified new international energy deals with Iran that include:

- Iranian and Venezuelan plans to launch a joint are to launch a refinery in Syria, including a joint company to take advantage of oil deposits in third countries.

- Continuing discussions about a new pipeline between Kuwait and Iran (Kuwait and Iran have discussed building a 570-kilometer pipeline that will carry Iranian gas to Kuwait. Negotiations continue, and the final terms of the deal have not been finalized.)
- A uranium deal between Iran and Zimbabwe (A mutually beneficial deal for both nations, Zimbabwe will reap the economic benefits of increased export trade with Iran. Iran will utilize the uranium for its nascent nuclear program and replenish its diminishing stockpiles of the material.)
- An increase in Turkmen gas exports to Iran.

Moreover, as the pattern of overall investment in Iran shifts away from our European allies toward less responsible stakeholders in the international system such as China, there will be continuing opportunities to implement the Iran Sanctions Act—and a growing imperative to do so.

The General Accounting Office has cautioned that its standards do not equate to a determination by the Department of State. Fair enough. Determinations by State will need to be careful; companies should be required to certify that they are not engaged in sanctionable transactions with Iran under the ISA. If they are not asked, they will certainly never tell.

Your efforts, Mr. Chairman, and those of your colleagues who have pursued the question of U.S. indirect subsidies to Iran and more effective sanctions legislation, are the beginning of an important process. We can no longer rely on the good faith of a well-intentioned Executive to ensure that Iran is isolated using all means available. Rather, it must be the Congress that sets the agenda, identifies the problems, closes the loopholes and guarantees enforcement of the law of the land.

Thank you.