

Informal Views – Department of State

S. 2641, Substitute amendment for Promoting American National Security and Preventing the Resurgence of ISIS Act of 2019, (Risch, Menendez +17, 10/17/19)

Position: The substitute amendment continues to warrant strong opposition from the Department for the reasons described below. While somewhat improved in some respects, the legislation is regrettably seriously worsened in certain others and does not address many of the Department's key, previously stated concerns.

The ANS for S. 2641 continues to lack the basic flexibility Department of State officials have repeatedly emphasized is necessary to conduct effective foreign policy.

- Under Secretary Hale testified to the need for flexibility and reversibility publicly last week, as previous State officials have briefed to bicameral, bipartisan staff. The situation in northeast Syria remains fluid. Sanctions, restrictions, and directives are only effective if they are agile tools that can be imposed and lifted quickly to incentivize changes in behavior.

- Specifically, the Department would be compelled to oppose any legislation without the following changes:

- The waiver in Section 331 must extend to Sections 202, 312, 313, 322, 323, 324, 325, and 326 to avoid harm to U.S. national security interests and U.S. jobs.
 - For example, Section 312 would require 30-day advanced congressional notification for all Turkey foreign military cases and commercial defense exports (instead of the usual 15 days for NATO plus), even if the value of such a case was valued at \$1. In the absence of a waiver, the impact of this provision is to effectively terminate US-Turkey defense trade, which includes parts and components for final integration into US platforms.

 - The Administration believes this provision would undermine NATO and increase Turkey's reliance on Russian or other adversary arms providers, two outcomes that are detrimental to the national security interests of the United States. Yet, without the flexibility afforded by a waiver, the Department would not be able to mitigate or address these negative consequences for the national security interests of the United States or the collective defense of NATO.

 - In addition, the Administration has a strong record of creating new U.S. jobs, including in the defense sector, and strongly opposes a provision that could have negative ramifications for U.S. jobs without the flexibility afforded by a waiver. As drafted, this bill favors foreign arms suppliers over U.S. suppliers and the jobs associated with them, because the bill's waiver in Section 331 currently only extends to the provision that requires sanctions against foreign suppliers of arms to Turkey (Section 315), but not to the US defense trade ban (Sec.312). Thus, the extensive new CN requirements on all U.S. arms sales and exports (plus the ban on US defense trade) to Turkey do not benefit from the same waiver.

 - Section 313. In the event of a financial crisis in which Turkey required an IMF financial bailout, Section 313 purports to require the USG to oppose a bailout package necessary to maintain the integrity of global financial markets/economy that could have ripple effects into the U.S. economy. The Administration strongly opposes a provision that lacks the flexibility for the Department to address these detrimental consequences for U.S. jobs and the U.S. economy.

- The waiver and renewal periods (90 days) for the waiver provided for in Section 331 are so short in duration and so resource-intensive that the effect of these provisions is to eliminate the practical use of the waiver or to undermine ongoing activity to enforce U.S. sanctions regimes by diverting resources from enforcement to compliance efforts. The case-by-case requirement in Section 331 suffers the same defect. When both characteristics are combined, as in Section 331 of the amendment, this negative effect is compounded in an even more problematic manner.
 - The short duration of the waiver/renewal periods and the case-by-case review would harm existing and future enforcement efforts by diverting limited resources for sanctions activity to paperwork related to compliance of repetitious waivers, certifications, and reports rather than the work of enforcing U.S. sanctions.
 - The waiver and renewal periods should last for at least one year/365 days, and the waiver authority should be available more flexibility for these and other restrictions and directives, and not only on a case-by-case basis.
- The waiver authority in Section 331 is set at too high of a bar to fully protect U.S. national interests.
 - As drafted, the waiver can only be exercised if it is “important to the national security interests” of the United States. The waiver should be permitted to be exercised if it is in the “national interests” of the United States.
 - If that is not possible, the waiver should be permitted to be exercised if it is in the “national security interests” of the United States -- which is a known, recognized standard for the Department to evaluate and exercise compared to the “important to the national security interests” or the “vital to the national security interests.”
- An acceptable waiver would at a minimum (1) have a duration of no less than 180 days, (2) apply to any provision in Title II or III, (3) would not be required on a case-by-case basis, and (4) would have a threshold of such a waiver being in the “national interest” of the United States. Such a waiver could read: “The President may waive for renewable periods of not more than 1 year, any provision of this act [imposing sanctions, restrictions or other directives], if the President determines and reports to Congress that such waiver is in the national interest [national security interest] of the US.”

The Department continues to oppose provisions, such as Section 325 and Section 312, that, regardless of the authors’ intent, could have the practical consequence of accelerating or increase Turkey’s reliance on Russia or other adversaries. These provisions establish a terrible precedent for a NATO Ally.

- The substitute amendment adopts defense trade restrictions and directives that are seriously damaging to the U.S.-Turkey defense relationship and NATO’s collective defense. The new CN requirement for all defense sales and exports in Section 312 (as well as the ban on all US defense trade on items that “are likely to be used” by Turkey in Syria) would devastate the U.S.-Turkey defense relationship.
- Section 312. The new language requiring 30-day advanced Congressional Notification for all Turkey foreign military cases would effectively terminate US-Turkey defense trade. In the absence of the provision of U.S. arms, these defense trade restrictions could prompt Turkey to seek an alliance with Russia as its primary source of defense articles, impacting NATO’s collective defense.

- Section 312 would treat Turkey as a pariah in NATO, feeding a narrative that the Russian Federation would likely seek to amplify and exploit.
 - Arms sales and defense exports to all other NATO allies are subject to congressional notification (CN) of only 15 days and only for items valued at \$25 million for major defense equipment and \$100 million for other defense articles and services. Under Section 312 of this legislation, such notification could be required for the sale of either such items to Turkey, even if the value of such case was a \$1.
 - In addition, all other NATO allies would continue to benefit from a CN review period of 15 days while Turkey alone would be subject to a CN review period of 30 days.
 - Beyond the damage to the U.S.-Turkey defense trade, such an outcome could have the result of preventing or deterring other U.S. partners and NATO allies from relying on the U.S. defense industry.
- Section 325. As DoD reported in its NDAA report last year, the S-400 poses no technological security threat to the F-16. Although the monetary value of such sales is minor compared to the purchase of new aircraft, F-16 upgrades are one of the best remaining U.S. tools to maximize Turkey's NATO interoperability and discourage further purchases of Russian equipment.

The Department continues to oppose any provision, such as Section 311, that provides the ODNI veto authority over determinations or certifications that automatically trigger significant foreign policy actions, as outlined in Title III of the bill.

- The trigger in Section 311(b) permits a host of provisions to go into effect simply if one of three principals, including the DNI, refuses to make the recurring certification required in section 311(a)(2).
- Such determinations should rest solely with the President or with the Secretary of State after coordination or consultation with the other officials, as is routine in legislation with determinations. Even if Turkey's conduct is satisfactory, either of the other officials can prevent the determination to delay sanctions based upon the provision as drafted.
- In this regard, Section 311 is similar to a trigger provision in the DETER Act, which the ODNI itself has already briefed to Congress that it does not support.

The Department continues to oppose provisions that fail to account for aggressive action the Administration has already taken to address the issue in question.

- The Administration has sought repeatedly and strenuously to deter Turkey's incursion and remains committed to an enduring defeat of ISIS, which includes some U.S. military presence in Syria.
- The Administration seeks do accomplish both objectives in a way that preserves, rather than weakens or undermines, the U.S.- Turkish relationship.
- Many of the proposed measures in the bill are duplicative of existing authorities:

- Title I of the bill purports to promote stability in Syria, yet Title I is unnecessary because the Administration, through diplomacy led by the Vice President and the Secretary of State and sanctions exercised pursuant to Executive Order 13894, largely achieved a halt of Turkey's incursion into Syria since the October 17 U.S.-Turkey Joint Statement.
- Section 105 would seek to mandate bimonthly briefings to Congress on Turkey's October incursion into Syria, but has no element for reversibility if the situation has not materially changed or if Turkey withdrew from Syria. This would require more than 120 briefings over five years on the same topic.
- Section 304 and the sanctions on Halkbank are unnecessary because the Department of Treasury already possesses the authority to designate Halkbank, if appropriate. Purporting to require the President to impose sanctions on Halkbank, constrains the President's authority to conduct foreign relations.
- Section 324 is unnecessary because the Administration has already barred the co-existence of the F-35 and the S-400 in Turkey.

The Department continues to oppose Title II, which undermines and constrains the President's authority to determine which refugees are to be admitted to the United States, by compelling admission.

- The President has been clear on this Administration's approach to refugees as reflected in the National Security Strategy of the United States.
- If retained, the Department would continue to object unless it were made permissive, substantially narrowed, and, if retained would need to be subject to the broader, flexible, unconditioned waiver authority the Department seeks for the entire bill.

The Department continues to oppose provisions that would make the bill difficult or impossible to implement.

- The restriction on arms transfers in Section 312 that "are likely to be used" in Syria is overly broad and should be replaced with "for use" in Turkey's incursion. As drafted, this formulation will likely prove difficult, if not impossible, to enforce as it could capture a far broader swath of U.S. arms transfers to Turkey than those just "for use" in Turkey; further, it is impossible to predict future contingencies.
- The imprecise wording of this provision could have a chilling effect of limiting transfers to only those defense articles and services that Turkey could affirmatively establish would be used in NATO-approved military operations.
- Even absent a clear cut nexus to the Syrian operation the bill could have a chilling effect on defense trade as banks are wary of certifying transactions with Turkish companies that work both with U.S. companies and Turkey's Ministry of National Defence or in this case the broadly defined "defense industry".
- As previously requested, an acceptable change would be to replace "are likely to be used" with "for use." This also affects Section 315.
- The bill includes multiple provisions requiring reports, determinations, certifications, renewals, briefings, and other action in an unrealistic period of time. The Department would suggest that the initial waiver and subsequent waivers pursuant to Section 331, the certification and subsequent certifications required in Section 311, and related waiver be applicable for 1

year/365 days, and 180 days should be provided for all other reports, notifications, and briefings.

- The bill also provides authority for Special Immigrant Visas that purports to require that the Department ensure that these SIV applicants have passports for admission to the United States; however, the USG cannot compel a foreign government to do so such that this passage should be stricken, as supported by USCIS as well. Of great concern too is that the SIV provision imposes an unrealistic 9-month processing timeline that fails to accommodate vital national security screening. A similar time constraint in the Iraqi and Afghan SIV program authority has proven to be extremely challenging to implement, and even though that authority is also permissive, this issue has become the subject of protracted litigation that diverts valuable Department resources away from the critical case processing mission. **The Department continues to oppose provisions that would increase costs to the USG or harm military readiness with no clear, corresponding benefit to U.S. national security.**
- Turkey is part of the supply chain for multiple critical U.S. defense systems, and certain defense export cases includes parts and components for final integration into US platforms. This bill would directly affect U.S. military readiness, risking the delay of some critical programs by years and expanding their costs to the Department of Defense by hundreds of millions of dollars.
- Sanctions and restrictions proposed in the bill would also affect significant contracts of U.S. companies directly while the Turkish government may also choose to retaliate and target other U.S. companies indiscriminately. The restrictions in the bill could lead to significant contract penalties for the USG and U.S. defense industry.

The Department does not support a bill that is out of sync with Transatlantic allies.

- **Sec. 315:** Sanctions imposed on foreign persons providing arms to Turkey in Syria may impact European companies significantly. Turkey is a NATO ally and significantly integrated into NATO defense production mechanisms.
- European countries are unlikely to go nearly as far as this bill does on any sanctions or other measures against Turkey. At the conclusion of the Foreign Affairs Council session of the European Union (EU) on Monday, October 14, 2019, High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission Federica Mogherini noted that the EU deliberately stopped short of an arms embargo against a NATO Ally:
 - *“European Union countries agreed on Monday to limit arms exports to Turkey over its offensive in northern Syria, prompting condemnation from Ankara, even as they stopped short of a bloc-wide embargo against a NATO Ally.”*
- EU interlocutors have had serious issues with mandatory sanctions and often reference prior CAATSA § 231 actions (merely listing, but not sanctioning, all entities in the Russian defense and intelligence sectors) which had unforeseen negative consequences on the economy in Europe.

Many of these provisions could be expected to devastate the U.S.-Turkish mil-to-mil relationship, the Turkish banking sector, and bilateral ties including in the areas of counterterrorism and trade.

- **Sec. 314:** The inclusion of the Minister of Treasury and Finance on the SDN list, combined with financial restrictions being placed on Turkey, will make it difficult for U.S. businesses to engage effectively with the Government of Turkey and promote trade and U.S. business interests.

- Subjecting senior Turkish officials to harsh visa restrictions without the usual exceptions, including for complying with the UN Headquarters Agreement and other US international obligations, is extremely problematic. The restriction should be made permissive and a special waiver “in the national interest” as appropriately provided in other legislation for such restriction is needed here.

- **Sec. 316(b):**

Providing in a menu of sanctions penalties designed for greater flexibility, options that would cut off offending foreign financial institution’s access to foreign exchange transactions and all banking relations with the US, are neither flexible nor realistic options. Cutting off these banks from global financial markets potentially threatens the integrity of Turkish financial systems. This sanctions provision should be permissive. ###