

Testimony of Mr. Vann H. Van Diepen

“Transshipment and Diversion: Working Diplomatically to Reduce the Risks Posed to International Trade and Security”

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Introduction

Thank you, Mr. Chairman for the opportunity to speak on behalf of the Department of State about the important diplomatic efforts we are undertaking to address the risks to international trade and security posed by the diversion of sensitive items in transshipment. As Congress is keenly aware, this diversion poses a risk to our national security. We recognize this as a major weakness in trade security and therefore have been working for many years--and on many fronts--to properly address this problem and minimize the risk. We have had some success, but more work is necessary.

Let me begin by describing the problem. Major transshipment hubs with weak controls on imports, exports, and reexports represent an important vulnerability in the global framework of trade controls aimed at preventing illicit proliferation-related trade. In these hubs, brokers, front companies, and middlemen can facilitate proliferation-related activities, often operating from free

trade zones that are subject to few or no legal restrictions. Without proper regulation of such activities, these hubs present a high risk of contributing to the diversion of items to an unauthorized end use or end user. The A.Q. Khan network demonstrated how transshipment hubs could be abused to support the proliferation of the most sensitive nuclear technology. It is a good example of why it is important for countries to closely regulate transshipment-related activities.

Transshipment hubs typically have substantial commercial, logistical, and financial infrastructures, but poor regulatory controls. This gap provides an opportunity for proliferators to hide their relatively small number of proliferation-related transactions -- most of which involve dual-use items -- within a very large volume of fast-moving commercial goods. In order to prevent the concealment of such goods and stop such activities, a strong regulatory structure is necessary.

Our diplomatic engagement in this area is geared toward promoting global export control standards. We also work with countries to interdict specific proliferation-related shipments. Additionally, we conduct bilateral export control dialogues; through our membership focus on transshipment in multilateral export control regimes; and provide concrete assistance to countries to adopt and fully implement strong export control laws. Such assistance enables countries to develop strong enforcement and prosecution authorities to punish violators and deter future illicit activities.

Part of the challenge is a lack of political will to implement and enforce export and transshipment controls. This is due to the misperception that such controls are bad for legitimate business and this is particularly common in countries reliant on revenue from port operations. Therefore, we work hard to convince countries that trade controls encourage a secure trading environment that ultimately makes a transshipment hub more attractive to investors. The record speaks for itself. Hong Kong is a good example of a vibrant economy with an extensive export and transshipment control system in place for over a decade.

The Role of the State Department

Let me now turn to the approach the Department of State is taking to combat illicit transshipment and diversion. We have worked long and hard to reduce this vulnerability through various policy and programmatic efforts so as to build international support for controlling trade in proliferation-sensitive items, to encourage suppliers to play a greater role in preventing illicit transshipment, and to improve the regulation and enforcement of transshipment controls of key partners.

The United Nations Security Council's adoption of several Security Council resolutions aided our efforts by requiring countries to prevent transfers, including by transshipments through their seaports and airports, of prohibited items.

In April 2004, the UN Security Council adopted UN Security Council Resolution 1540. For the first time, this resolution established binding obligations on all UN Member States under Chapter VII of the UN Charter to establish domestic controls to prevent the proliferation of WMD, their means of delivery and related materials, including establishing export and transshipment controls over such items. This resolution spurred many countries to reconsider the adequacy of their transshipment controls and provided us with an avenue for increased engagement.

Additionally, the UN Security Council adopted a series of resolutions on both North Korea and Iran's nuclear and missile programs that require countries to prevent transfers of specified WMD and ballistic missile-related items and that contain provisions calling upon countries to exercise greater authority over suspected shipments of such items. This includes granting countries the authority to seize and dispose of items destined for proscribed programs, within their jurisdiction or and in cooperation with the nation under whose jurisdiction the good or items may fall. As a result, many countries are more willing, given these new authorities, have a basis in international law to take action to stop proliferation-related transactions. The recent adoption of UNSCR 1929 also notes that States, consistent with international law, may request inspections of vessels on the high seas with the consent of the flag State, and calls on all States to cooperate

in such inspections, similar to UNSCR 1874's approach for the DPRK. UNSCR 1929 also authorizes Member States to dispose of cargo that they have seized pursuant to the resolution, and was thus more specific about what Member States could do than comparable provisions in previous UN resolutions. UNSCR 1929 also extends the asset-freeze requirements of UNSCR 1737 to the designated entities of the Islamic Republic of Iran Shipping Lines (IRISL) and to any person or entity acting on their behalf or at their direction, and to entities owned or controlled by them, or determined by the Committee or the Council to have assisted them in evading sanctions or in violating the UNSCRs, while also singling IRISL out for cargo inspection vigilance when there is reason to believe its business could contribute to proliferation-related activity. IRISL, its various front companies, and its affiliates have long been a proliferation concern. The company was reported to the UNSCR 1737 Committee twice over the past two years for violations of UN resolutions. Therefore, UNSCR 1929 provides an important new tool to limit Iran's ability to ship dangerous goods with impunity, while further spotlighting Iran's use of private companies to further its proliferation goals.

We also work with other countries to halt specific proliferation-related transactions. As we have done for years, we approach relevant countries to request that they investigate and take necessary measures to stop transactions of concern. We also routinely approach other countries to alert them to activities by entities

within their borders that may be involved in the transaction, such as brokers, intermediaries, transportation companies, and financers. Transshipment countries have often played key roles in stopping proliferation-related transactions.

These interdiction efforts are greatly facilitated by the Proliferation Security Initiative (PSI), a global effort that aims to stop trafficking of WMD, their delivery systems, and related materials to and from states and non-state actors of proliferation concern. PSI partner countries agree to the PSI Statement of Interdiction Principles, which commit them to interdict shipments of WMD and related materials, as allowed under applicable domestic and international law, and to cooperate with other PSI partners. They also commit to build their capacity to conduct interdictions through training and exercises, sharing best practices, and strengthening interdiction authorities.

Many key transshipment countries are PSI partners. For example, Singapore hosted Exercise Deep Sabre II, a PSI maritime interdiction exercise, last October. Last January, the UAE co-hosted with the United States the maritime interdiction exercise Leading Edge. These exercises send a strong message to proliferators that PSI partner countries are actively seeking to halt the illicit trafficking of WMD and related materials through major transshipment hubs. For those transshipment countries that have not endorsed the PSI Statement of Interdiction Principles, we will continue to encourage them to do so. President Obama strongly supports the

PSI. In his 2010 National Security Strategy and in his address on April 5, 2009 in Prague, the President reiterated the importance of making PSI a "durable international effort."

The Department of State also leads dialogues with key suppliers and transshipment states to discuss and expand our bilateral nonproliferation and export control activities. We meet regularly with various countries to discuss procurement by proliferants, export and transshipment control, the implementation and enforcement of proliferation-related United Nations Security Council Resolutions, proliferation finance, and other relevant issues. We encourage our partners to take practical steps during these dialogues and to send strong signals about the importance of countering proliferation. These dialogues have proven to be effective way to improve overall cooperation. Given these benefits, we are seeking to establish more such dialogues with emerging transshipment countries.

Additionally, for many years the multilateral export control regimes have taken steps to address the risk of diversion during shipment. For instance, in 2006, the Missile Technology Control Regime (MTCR) Partners decided “that the risk of diversion during transit or transshipment, including the application of effective export, transit, and transshipment controls in intermediary states, be taken into account as appropriate in the evaluation of transfer application of Annex items.”

The Australia Group (AG)--which controls chemical and biological related materials, equipment and technology--incorporated similar language into a best practices paper. The AG also publishes a manual for the enforcement officers of participating countries that explains transshipment concepts and provides a list of indicators of diversion during transit or transshipment. As this remains a critical issue, we will continue to work within the export control regimes to raise awareness of the risks of diversion and encourage suppliers to take greater responsibility in ensuring that controlled items are not diverted to unauthorized end users.

Additionally, the Export Control and Related Border Security Assistance (EXBS) program is the United States Government's premier initiative to help other countries improve, or, as appropriate, develop their export control systems. The EXBS program is designed to help prevent the proliferation of WMD, their delivery systems, advanced conventional weapons, and related items. The EXBS program does this by assisting foreign governments in the establishment and implementation of effective export control systems that meet international standards. The EXBS program has been focused on the threat to national security posed by illicit transshipment and diversion for years.

For instance, from 2001-2004, EXBS funded the Transshipment Export Control Initiative (TECI). Through this initiative the U.S. worked with its counterpart trade and export control agencies in key transshipment hubs to assist them in the adoption of export and trade control regimes tailored for their transshipment-oriented economies. Within TECI, we worked with nine key transshipment hubs and several close allies towards establishing best practices for transshipment hubs.

After 2004, EXBS modified TECI to make it broader in scope and participation. TECI ultimately evolved into an annual Global Transshipment Conference. This conference provides a forum for supplier countries and transshipment hubs to collectively discuss challenges and solutions. We are planning to have the next Global Transshipment Conference this winter.

Additionally, in the past 24 months, EXBS delivered 98 bilateral trainings to 37 countries on transit- and transshipment-related topics. Such trainings included Targeting and Risk Management, Cargo Interdiction, International Seaport Interdiction, and legal and regulatory guidance on the development of transit and transshipment controls. In the next 24 months, EXBS has scheduled over 70 such bilateral trainings with 39 countries. EXBS will also continue to update existing training curriculum and will create new approaches over time to address transit and transshipment concerns as they emerge.

Finally, the Office of Export Control Cooperation, which administers the EXBS Program, chairs an Interagency Working Group on export control and related border security that encompasses all key U.S. Government agencies that provide capacity-building assistance related to transit and transshipment. This forum is used to encourage coordination of long term assistance plans and funding levels. It is also used to coordinate new U.S. Government-wide transshipment efforts.

Conclusion

In summary, the Department of State has for some time recognized the threat to international trade posed by the diversion of sensitive items in transshipment. We have developed many important tools and programs to help counter this threat. Many of these programs and initiatives have been notable successes, but we are always considering new ways to tackle this problem. The Department of State looks forward to working with Congress, other U.S. government departments and agencies, and our international partners as we continue to counter this threat.

Thank you.