

Occasional Paper No. 13

Trafficking Networks for Chemical Weapons Precursors: Lessons from the Iran-Iraq War of the 1980s

Jonathan B. Tucker



James Martin Center for
Nonproliferation Studies

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ISBN 978-0-9798703-1-6 (PDF)

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November 2008

ACKNOWLEDGEMENTS

The James Martin Center for Nonproliferation Studies gratefully acknowledges the support of the Advanced Systems and Concepts Office of the Defense Threat Reduction Agency for the preparation and publication of this Occasional Paper. The author is grateful to Carol A. Kalinoski, Esq., for sharing her in-depth knowledge of the U.S. export licensing process.

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LIST OF ACRONYMS

ACEP	Advisory Committee on Export Policy
AES	Automated Export System
AG	Australia Group
AQI	Al Qaeda in Iraq
BIS	Bureau of Industry and Security, Department of Commerce
BWI	Baltimore-Washington International Airport
CBP	Bureau of Customs and Border Protection, DHS
CBRN	chemical, biological, radiological, or nuclear
CCL	Commerce Control List
CIA	Central Intelligence Agency
CNN	Cable News Network
CPI	Counter-Proliferation Investigations Unit, ICE
CW	chemical weapons
CWC	Chemical Weapons Convention
DMMP	dimethyl methylphosphonate
DHS	Department of Homeland Security
EAA	Export Administration Act
EAR	Export Administration Regulations
EPCI	Enhanced Proliferation Control Initiative
FBI	Federal Bureau of Investigation
ICE	Bureau of Immigration and Customs Enforcement, DHS
IEEPA	International Emergency Economic Powers Act
IPF	International Project Forwarding
KTI	Kinetics Technology International
MITI	Ministry of International Trade and Industry, Japan
NEECN	National Export Enforcement Coordination Network
OC	Operating Committee on Export Policy
OEE	Office of Export Enforcement, Department of Commerce
SEORGI	Iraqi State Establishment for Oil Refineries and Gas Industry
TDG	thiodiglycol
TMP	trimethyl phosphite
UNSCR	UN Security Council Resolution
USTR	U.S. Trade Representative's Office
WMD	weapons of mass destruction

INTRODUCTION

STATES SEEKING to produce chemical weapons (CW) typically rely on the importation of intermediate chemicals called “precursors,” which have legitimate industrial applications but can also be converted into military-grade CW agents, such as mustard gas or sarin. The dual-use nature of precursor chemicals poses challenges for policy makers seeking to prevent CW proliferation. Under U.S. Department of Commerce regulations, manufacturers planning to export CW precursors to certain countries must obtain prior government authorization in the form of an export license. Yet despite significant improvements over the past decade in the export-control systems of the United States and other industrialized countries, trafficking in precursors and other dual-use items relevant to CW production has continued.

Until recently, little open-source information was available about illicit trafficking networks for CW precursors. In 2005, however, the trial in the Netherlands of Frans van Anraat, a Dutch businessman who had served as a middleman for Iraq’s procurement of precursors for mustard gas and nerve agents during the Iran-Iraq War, led to the public release of court documents revealing new details about chemical trafficking operations. Additional insights were provided by the related case of Peter Walaschek, a German middleman who arranged shipments of CW precursors to Iran. This study reconstructs the two cases by drawing on information from a variety of sources, including indictments, oral arguments, and exhibits from the United States and the Netherlands; interviews with the key individuals involved in the U.S. and Dutch investigations; and contemporaneous media reports.

Although the Van Anraat and Walaschek cases are more than two decades old, the insights they provide are still relevant today because methods of illicit trafficking have not changed fundamentally in the intervening period. In addition to providing a detailed historical narrative of the cases, this paper describes the current U.S. system of dual-use export controls, indicates how it has changed since the 1980s, and identifies continuing gaps and weaknesses. The paper concludes with some recommendations to prevent the future trafficking of CW precursors.

Chemical Weapons Proliferation Today

Despite the entry into force in April 1997 of the Chemical Weapons Convention (CWC), a multilateral treaty banning the development, production, stockpiling, and use of CW, several states maintain clandestine CW programs and continue to import precursors from foreign manufacturers through covert procurement networks. Although the CWC now has more than 180 member states, some suspected CW possessors remain outside the treaty, including Egypt, Israel, Syria, and North Korea. In addition, the U.S. government has publicly accused three CWC parties—China, Iran, and Russia—of violating their treaty obligations.¹ Some of these countries do not appear to have active stockpiles but rather a rapid “breakout” capability for the production of CW in a crisis or war. In February 2008, for example, U.S. Director of National Intelligence Michael McConnell testified before the Senate that Iran “maintains dual-use facilities intended to produce CW agent in times of need.”²

A few terrorist organizations are also known to have acquired CW. During the early 1990s, the Japanese doomsday cult Aum Shinrikyo purchased chemical production equipment and tons of precursors, intending to manufacture 70 metric tons of sarin. The cult sought to carry out large-scale chemical attacks in Japanese cities with the aim of fulfilling its leader’s apocalyptic prophecies, inciting social upheaval, and seizing control of the Japanese government. Yet although Aum recruited university-trained chemists and built a three-story chemical production facility, it failed in its effort to manufacture sarin in multi-ton quantities. Instead, the cult produced lesser amounts of sarin and carried out rather crude attacks in the city of Matsumoto in June 1994 and on the Tokyo subway in March 1995, killing a total of 19 people and seriously injuring a few hundred.³

Al Qaeda has also pursued a CW capability, albeit without evident success. In August 2002, the Cable News Network (CNN) broadcast a videotape in which Al Qaeda operatives tested a lethal gas on dogs at a laboratory in Afghanistan.⁴ Also in 2002, a terrorist cell in Saudi Arabia developed a crude chemical dispersal device called a *mubtakkar* (the Arabic word for “invention”) which, when triggered remotely, caused different chemicals to mix and react to form deadly hydrogen cyanide gas.⁵ The terrorists planned to use this device in the New York City subway in the spring of 2003, but six weeks before the planned attack, Al Qaeda deputy leader Ayman al-Zawahiri personally called off the operation and ordered the terrorists to return home,

1. U.S. State Department, *Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments* (Washington, DC: State Department, August 2005), pp. 50–62.

2. J. Michael McConnell, “Annual Threat Assessment of the Director of National Intelligence for the Senate Select Committee on Intelligence,” February 5, 2008, p. 14.

3. David E. Kaplan, “Aum Shinrikyo (1995),” in Jonathan B. Tucker, ed., *Toxic Terror: Assessing Terrorist Use of Chemical and Biological Weapons* (Cambridge, MA: MIT Press, 2000), pp. 207–226.

4. Judith Miller, “Qaeda Videos Seem to Show Chemical Tests,” *New York Times*, August 19, 2002.

5. Ron Suskind, *The One Percent Doctrine* (New York: Simon & Shuster, 2006), p. 277.

explaining, “We have something better in mind.”⁶ Indeed, U.S. chemists who later examined the design of the *mubtakkar* concluded that the heat generated by the chemical reaction would have caused the device to blow apart, aborting the reaction before it went to completion and generating relatively little hydrogen cyanide.

During the first half of 2007, members of Al Qaeda in Iraq (AQI) carried out a series of attacks with truck bombs that combined explosives with canisters of chlorine gas, which is widely used in Iraq for water purification.⁷ Despite the fact that the explosions tended to burn the chlorine rather than disperse it, reducing its toxic effects, the use of a chemical weapon against Iraqi civilians had a deeply terrorizing effect. Over a series of attacks, the AQI insurgents adjusted the relative proportions of explosives and chlorine in an attempt to enhance the downwind lethality of the bombs. Although they failed and ultimately abandoned the tactic, the chlorine attacks suggest an abiding terrorist interest in chemical weapons.

Traffickers in CW precursors typically try to circumvent the requirement for an export license to countries of proliferation concern by providing misleading information on shipping manifests concerning the cargo, the prospective end-use, and the final destination. Another common ploy is to make use of circuitous shipping routes, listing an intermediate port as the final destination. Once the ship arrives at this location, the illicit cargo is transferred surreptitiously to another ship for transport to a third country for which it has not been approved. There are two ways of effectuating such transfers: “transit” means that the cargo remains in the same shipping containers, which are transferred to the new ship, whereas “transshipment” means that the containers are broken down and the cargo is reloaded into new containers, which are then shipped to the final destination. In recent years, the globalization of the chemical industry has greatly expanded the volume of legitimate chemical trade and complicated the task of tracking and interdicting illicit exports of dual-use precursors.⁸

Historical Background on the Van Anraat and Walaschek Cases

In late 1982, Iraq began to use CW as a force-multiplier against the numerically superior Iranian Army, whose massive “human-wave” infantry assaults were overrunning Iraqi positions. The principal CW agents employed by Iraq were mustard “gas,” actually a persistent, oily liquid that causes severe chemical burns and blisters on the skin; and tabun, a nerve agent that disrupts the functioning of the nervous system and causes convulsions, respiratory paralysis, and death. To manufacture mustard gas and tabun for its chemical arsenal, Iraq relied heavily on imports of foreign-made precursors and production equipment.

6. George Tenet with Bill Harlow, *At the Center of the Storm: My Years at the CIA* (New York: HarperCollins, 2007), p. 274.

7. Damien Cave and Ahmad Fadam, “Iraq Insurgents Employ Chlorine in Bomb Attacks,” *New York Times*, February 22, 2007.

8. Michael Moodie, “International Smuggling Networks: Weapons of Mass Destruction Counterproliferation Initiatives,” testimony before the U.S. Senate Committee on Governmental Affairs, June 23, 2004.

The immediate precursor of mustard gas is thiodiglycol (TDG), a chemical that is considered dual-use because it has legitimate applications as an ingredient in printing and ballpoint-pen ink and as a solvent in the drying of textiles and the processing of leather goods. Nevertheless, the only plausible use for large amounts of TDG is the production of mustard gas. A ton of TDG will react with a ton of chlorinating agent to yield a ton of mustard, a quantity sufficient to contaminate about half a square mile of territory.

Before 1984, Iraq was not a target of chemical export controls, enabling Baghdad to purchase dual-use chemicals for its CW program legally from foreign manufacturers. Iraqi government officials negotiated contracts with prospective suppliers, which shipped the goods directly to the recipient agency.⁹ The payment system involved operational accounts in the Central Bank of Iraq and corresponding accounts in overseas banks. In 1984, however, in response to repeated Iranian allegations of Iraqi CW use, the UN Secretary-General dispatched a group of technical experts to Iran to conduct a field investigation. Based on analyses of samples from unexploded chemical shells and medical examinations of injured Iranian soldiers, the UN team concluded that the Iraqi Army was using mustard and nerve agents on the battlefield.¹⁰ This finding caused many countries to restrict exports of CW precursors to Iraq. Still, by playing one supplier off against another, Baghdad was able to obtain most of the chemicals it needed.

In 1985, a group of 15 like-minded states led by Australia established an informal forum—later termed the Australia Group (AG)—to share intelligence on countries of CW proliferation concern and harmonize their national licensing guidelines for exports of CW precursors.¹¹ The members of the AG adopted a “core control list” of 50 precursor chemicals (later increased to 63), as well as a separate list of chemical production equipment. In response to the AG controls, the regime of Saddam Hussein modified its procurement strategy. Imports of CW precursors were no longer handled by military procurement agencies but rather by ostensibly civilian entities, such as the Iraqi Ministry of Oil. Moreover, instead of purchasing precursors directly from foreign manufacturers, Iraq began to do so indirectly, using seemingly legitimate front companies to disguise the true purpose and destination of the shipments. Iraq’s clandestine procurement system eventually evolved into a network of third-country brokers, middlemen, and bankers, creating an arms-length relationship between the Iraqi government and foreign chemical manufacturers.¹² Because each intermediary demanded a payment or commission, the trafficking network significantly increased procurement costs.

9. United Nations Monitoring, Verification and Inspection Commission, *Compendium Summary*, S/2006/420, June 21, 2006, p. 31.

10. UN Security Council, “Report of the Specialists Appointed by the Secretary-General to Investigate Allegations by the Islamic Republic of Iran Concerning the Use of Chemical Weapons: Note by the Secretary-General,” S/16433, March 26, 1984.

11. James I. Seevaratnam, “The Australia Group: Origins, Accomplishments, and Challenges,” *Nonproliferation Review* 13 (July 2006), pp. 401–415.

12. UN Special Commission, “Annex: Iraq’s Procurement for its Weapons of Mass Destruction Programmes,” S/2005/742, p. 10.

VAN ANRAAT AND IRAQ

During the 1980s, a Dutch businessman named Frans van Anraat became one of Iraq's most reliable suppliers of CW precursors. He was born on August 9, 1942, in the town of Den Helder in north Holland. The son of a Navy man, he studied to become a laboratory technician but ended his studies early and took a job with a Swiss-Italian engineering company called Ingeco International, which was building oil-related facilities in Iraq. In 1977, Van Anraat moved to Baghdad, where he spent three years as a branch manager for Ingeco, overseeing the construction of refineries and other petroleum installations. *A bon vivant*, he dressed well and enjoyed a luxurious lifestyle.

After Iraq invaded Iran in September 1980, Ingeco evacuated its expatriate staff back to Europe. In 1981, Van Anraat joined a Dutch engineering firm called Kinetics Technology International (KTI), which supplied furnaces and boilers for refineries and petrochemical plants. The company sought new markets in Asia, particularly India and Indonesia, and invited Van Anraat to become the director of its Far East regional office in Singapore. He accepted the position and moved to Singapore with his Polish-born wife Romana, although he continued to maintain apartments in Milan, Italy, and Lugano, Switzerland.

In early 1984, Van Anraat received a telephone call at his Singapore office from Sadallah al-Fathi, the director of the Iraqi State Establishment for Oil Refineries and Gas Industry (SEORGI), whom he knew from his years in Baghdad.¹³ An agency within the Ministry of Oil, SEORGI was a front organization that procured dual-use chemicals for the Iraqi CW program by claiming to import them for the civilian oil industry. Al-Fathi asked Van Anraat if he would be willing to purchase certain chemicals for Iraq, and the Dutch businessman agreed. Rather than arrange the deals through his employer, he founded his own trading company, which he called "FCA Contractor" after the initials of his given names, Frans Cornelius Adrianus. Van Anraat later created two additional front companies, Companies, Inc., registered in Panama, and Oriac International, registered in Luxembourg, and operated them out of his apartments in Singapore, Milan, and Lugano.

Transactions with Japanese Manufacturers

In conducting transactions for the Iraqi government, Van Anraat often relied on intermediaries with special connections or expertise. One such individual was Hisjiro Tanaka, a Japanese businessman based in Osaka who ran a trading company in non-ferrous metals called Tanaka Kinzoku Kogyo (Tanaka Metals Corporation). Known to his American clients as "Charlie," Tanaka was willing to do almost anything to make money and was involved in a number of unusual business ventures. One of his sidelines was selling a chemical spray that made used cars smell as if they were brand new.

13. District Court of The Hague, Criminal Law Section, Three-Judge Division, *Sentence* (Van Anraat Case), LJN: AX6406, Rechtbank's-Gravenhage, 09/751003-04 [English translation], p. 36.

In the spring of 1984, Tanaka took a business trip to Portland, Oregon, where he met with a metals broker named Jacquie Michaud. During their conversation, Michaud told Tanaka that the regional manager of KTI Corporation in Singapore, a Dutch national, was looking to import certain chemicals from Japan. Michaud passed along Van Anraat's contact information. Although Tanaka knew little about the chemical trade, he jumped at the opportunity to expand his import-export business.

When Tanaka returned to Osaka in May 1984, he telephoned Van Anraat, who promptly returned the call. The Dutch businessman explained that he was interested in purchasing trimethyl phosphite (TMP) from Japan and exporting it to Iraq for the production of consumer goods. The Iraqi government was willing to pay a commission of 15–20 percent, much higher than the usual commission of 3 percent. Van Anraat explained that the TMP would be shipped to Iraq via Italy and Turkey, and cautioned that the final destination should be kept confidential. This request for secrecy made Tanaka suspicious: if the end-use was legitimate as Van Anraat claimed, there was no need to conceal the identity of the recipient country. The generous commission also suggested that the transactions involved a high level of risk. Although Tanaka knew that Van Anraat was not telling him the whole story, the deal promised to be so lucrative that he put his reservations aside and agreed to make inquiries with Japanese chemical companies.

As a newcomer to the chemical field, Tanaka asked a business associate which companies in Japan manufactured TMP and was referred to a large chemical concern called Kureha Kagaku Kogyo. In response to his inquiry, the company informed him that because TMP could be used to make nerve agents, all such exports had to be licensed by the Japanese Ministry of International Trade and Industry (MITI). Tanaka also learned that MITI had recently adopted new regulations banning the export of TMP and other CW precursors to Iraq.¹⁴ On September 1, 1984, he sent a telex to Van Anraat in Milan that included the following remarks:

We also have a duty to report to our Ministry of Industry and Trade Institute [*sic*] where the Tri-phosphate [*sic*] will be shipped to. And its end-use, like DDT. At least tell me the destination, because the Japanese Government fears that this substance might be used for the production of poison gas or gun powder. Therefore I would like to suggest to you that these materials are going to be used for the production of insecticides, like DDT. Please telex me the name of the end-user and the unloading port (I am OK that you tell us a necessary lie.)¹⁵

14. Government of Japan, Partial Amendment of the Administrative Policy on Export Trade, issued July 27, 1984. This amendment banned the export of six precursors for CW agents that were allegedly being used in the Iran-Iraq War.

15. District Court of The Hague, Criminal Law Section, Three-Judge Division, *Sentence* (Van Anraat Case), p. 33.

After receiving this telex, Van Anraat proposed “Trieste, Italy” as the final destination and “fuel additive” as the end-use.¹⁶ Van Anraat and Tanaka also tried to make the shipment appear legitimate by setting up a chain of transactions among domestic Japanese firms: a consignment of 80 metric tons of TMP manufactured by Kureha Kagaku Kogyo was sold to a Japanese trading company called Kawatetsu Shoji, which re-sold the consignment to Tanaka’s firm.¹⁷ Tanaka then hired a customs-forwarding agent called Trinteco Ltd. to file the required shipping documents. In October 1984, the cargo ship *Ever Forward*, carrying steel shipping containers filled with drums of TMP, left the port of Yokohama en route to Italy. After arriving at the port of Trieste, the containers were unloaded and transported over land by truck through Turkey to Iraq. This transaction was financed with a Letter of Credit, a financial instrument often used in international trade, which was issued by the Lugano branch of the Banca del Gottardo and made out to one of Van Anraat’s front companies with an address in Milan.¹⁸ Van Anraat’s banker was Jan Vink, a Dutch national who was the credit manager of the Lugano branch.¹⁹

A Letter of Credit involves a commitment by the importer’s bank to transfer payment to the exporter’s bank after the goods have been delivered as specified in the contract. In general, a Letter of Credit is not ideal for illicit transactions because it creates a paper trail that traffickers would rather avoid. Another problem from a trafficker’s standpoint is that a Letter of Credit lists the type and quantity of the cargo and its final destination. Because these conditions must be met for payment to be released, it is impossible to change the destination at the last minute to avoid detection or seizure. Although traffickers generally prefer cash or wire transfers, Van Anraat may have used a Letter of Credit because it would guarantee prompt payment on delivery, reducing the risk that he would be cheated. It is also possible that the Iraqi government insisted on a Letter of Credit rather than providing some of the money up front. Because the shipment was illegal, it would have been easy for a middleman like Van Anraat to take an advance payment and then disappear without delivering the product.

After the consignment of TMP had been delivered successfully to Iraq, Van Anraat asked Tanaka to find a Japanese supplier for the nerve agent precursor dimethyl methylphosphonate (DMMP). In November 1984, Tanaka sent a telex to Van Anraat in Singapore that read in part, “Now there is only one producer in north east Japan. However, this producer said the buyer should be inform [*sic*] the final usages of DMMP, because they are worry [*sic*] about to use a raw material as to make a poison gas. As soon as you can let me know the usages of DMMP, I will be able to obtain offer from producer.”²⁰ In March 1985, Van Anraat

16. *Ibid.*

17. Arnold Karskens, *Geen cent spijt* [No Remorse] (Amsterdam: J.M. Meulenhoff, 2006), p. 43.

18. District Court of The Hague, Criminal Law Section, Three-Judge Division, *Sentence* (Van Anraat Case), p. 39.

19. Karskens, *Geen cent spijt*, p. 61.

20. District Court of The Hague, Criminal Law Section, Three-Judge Division, *Sentence* (Van Anraat Case), p. 45.

visited several chemical manufacturers in Japan in search of other CW precursors. At Hashimoto Kasei Kogyo in Osaka, he placed an order for hydrogen fluoride, which is used to make sarin. At Mikuni Seiyaku Kogyo, also in Osaka, he ordered phosphorus trichloride, a precursor for sarin, and phosphorus oxychloride, a precursor for tabun. During a meeting with the company director, Van Anraat claimed that the two chemicals would be used to manufacture a flame retardant and a stabilizer for PVC plastic, respectively. He also negotiated with Toyo Kasei Kogyo, a large chemical producer, over the purchase of the mustard-gas precursor thiodiglycol (TDG). When company officials asked about the intended end-use, he explained that an Italian company planned to use TDG to dye textiles.

On May 23, 1985, the first consignment of TDG in 220-kilogram drums left the port of Yokohama en route to Trieste, Italy, where it would be transshipped to the port of Aqaba in Jordan.²¹ At Van Anraat's request, the drums were packed in non-returnable, 20-foot steel shipping containers that had been purchased at a cost of about \$5,000 apiece. Once the containers reached Iraq, they would be retained for storage or some other purpose. Normally, shipping lines used their own containers, which were marked with the company's name and registration number so they could be tracked and returned. For a trafficker planning to deliver an illicit cargo, however, the use of returnable containers was problematic because unloading them at the transshipment point would increase the risk of discovery, particularly if the Bill of Lading contained false information about the cargo. If the trafficker used his own shipping containers, however, he did not have to unload them.

Toward the end of May 1985, Van Anraat was fired from his position with KTI in Singapore because he had been devoting too much time to his own business and neglecting his work for the firm. He returned to Europe and continued to procure CW precursors for Iraq from Japanese suppliers. In early 1986, however, a rise in the value of the yen caused a significant spike in the price of chemicals imported from Japan. Another problem was that Toyo Kasei did not produce TDG in the large volumes that Iraq required. Thus, the thirteenth and last shipment of Japanese precursors to Iraq occurred on May 15, 1986. Van Anraat now instructed Tanaka to seek a new supplier in the United States, where the exchange rate was more favorable.

Deals with U.S. Chemical Manufacturers

In June 1987, Tanaka sent a letter to Alan Goldberg, the president of Technalloy Corporation, a trading company in non-ferrous metals based in San José, California, with whom he had done business in the past, asking for advice on U.S. manufacturers of TDG. Goldberg put him in contact with Cardinal Stabilizer, a specialty chemical firm in Charleston, South Carolina. To purchase TDG from Cardinal, Van Anraat and Tanaka knew they would have to circumvent U.S. export control regulations. Under the Export Administration

21. Karskens, *Geen cent spijt*, pp. 44–45.

Act (EAA) of 1979, the Department of Commerce prohibited the sale of CW precursors to any destination outside 18 specified countries without a validated export license. (Whereas a “general” export license requires a one-time review for repeated exports of the same commodity, a “validated” license involves a separate vetting for each transaction.) U.S. government policy was to deny validated licenses for the export of precursors to Iran, Iraq, and Syria, all of which were suspected of having CW programs.²²

During the summer of 1987, Van Anraat, Tanaka, and Technalloy vice president Irwin Stein met with the president and sales manager of Cardinal Stabilizer. Van Anraat told the two executives that he wanted to export TDG for a textile manufacturer in Belgium, and the negotiations were concluded the same day. Aware that the sale of TDG to a U.S. firm would attract less attention than one to a foreign client, Van Anraat arranged for Cardinal to sell the chemical to Technalloy in California, which in turn sold it to Companies, Inc., a front company established by Van Anraat.

On September 1, 1987, the first consignment of 162 metric tons of TDG from Cardinal Stabilizer, loaded into 55-gallon polymer-lined steel drums, left the port of Charleston, South Carolina, aboard the cargo ship *Belgium Senator*. The Bill of Lading stated that the goods had been licensed for export to final destination Rotterdam and that diversion was prohibited.²³ At the Dutch port, however, the containers were transferred to the *Al Karameh*, headed for the port of Aqaba. Once the ship arrived in Jordan, the drums were loaded onto trucks and driven across the desert to Baghdad. A second consignment of 79 metric tons of TDG left Charleston on September 28, 1987; this time the cargo transited in Antwerp, Belgium, before continuing on to Aqaba.

Before these shipments took place, Tanaka had concluded that Cardinal’s price for TDG was too high, and he had begun to search for an alternate U.S. supplier. In August he flew to New York to consult with Harold Greenberg, the president of United Steel & Strip Corporation, a metals trading company in Brooklyn. Tanaka knew Greenberg and his business partner, Nicholas Joseph Defino, because they sent metal parts to Tanaka’s firm in Japan to be galvanized. Greenberg was in his sixties and in poor health, while Defino was an aging ex-Marine who had seen better days. Both men had poor judgment and were blinded by the lure of the dollar.

Tanaka told Greenberg that he knew of a European middleman who was hoping to import chemicals from the United States. If the negotiations were successful, the commission for handling the transactions would be 3 cents per pound of cargo. To Greenberg, the deal looked like easy money, so he agreed. When

22. Author’s interview with Martin S. Himeles Jr., Baltimore, MD, September 20, 2007.

23. U.S. District Court for the District of Maryland, *United States of America v. Frans van Anraat and Charles Tanaka*, Superseding Indictment, July 13, 1989, p. 7.

Tanaka asked him to recommend a manufacturer of TDG, Greenberg suggested Alcolac International, a company in Baltimore, Maryland, that produced specialty chemicals for makers of cosmetics, shampoos, and other products. Founded in 1947, Alcolac had gross sales in 1987 of about \$50 million.²⁴ The firm manufactured TDG under the trade name “Kromfax” at a competitive price and in the large volumes that Iraq required.

In August 1987, Tanaka began discussions with Greenberg and Defino about purchasing TDG from Alcolac International. The two Americans agreed to funnel the transactions through Nu-Kraft Mercantile, a company they owned at the same Brooklyn address as United Steel & Strip. Although Nu-Kraft had been founded in the early 1980s and had briefly manufactured curtain rods, it had ceased operations and now consisted of little more than an empty warehouse and a mailbox.²⁵ In return for allowing Van Anraat to use Nu-Kraft as an intermediary in his transactions with Alcolac, Greenberg and Defino would receive a generous commission. The use of an existing U.S. company as a front for illicit chemical exports would attract less attention than creating a new business entity, which would have to be registered. If a U.S. Customs Service investigator decided to look into the TDG sales, he would see one American firm selling the chemical to another, which was far less suspicious than if a foreign entity was involved.

Alcolac Shipments to Iraq

On October 20, 1987, Nu-Kraft Mercantile ordered 126 metric tons of TDG from Alcolac International.²⁶ Despite the unusually large size of the order, Leslie Brown Hinkelman, the international sales manager, did not ask any questions. Since foreign sales accounted for only a small fraction of Alcolac’s business, Hinkelman was not a senior executive but rather a secretary who had risen through the company ranks. In her current position, she was clearly in over her head. Although she had been required to take a two-day training course on export controls, she later admitted that she had signed into the class and then gone shopping. Hinkelman was mystified when Nu-Kraft suddenly began ordering hundreds of barrels of TDG, when all previous orders had been for less than ten.²⁷

On October 22, the first consignment of TDG left Baltimore en route to the port of Antwerp. Nu-Kraft had declared the final destination of the TDG as Switzerland and the end-use as “textile additives.” To handle the arrival and transshipment of the cargo in Antwerp, Van Anraat had hired a company called International

24. Michael R. Gordon with Stephen Engelberg, “Iran is Expanding Chemical Stocks Used in Poison Gas,” *New York Times*, January 29, 1989.

25. PBS *Frontline*, “The Arming of Iraq,” September 11, 1990, transcript.

26. U.S. District Court for the District of Maryland, *United States of America v. Frans van Anraat and Charles Tanaka*, Superseding Indictment, p. 8.

27. Author’s interview with Bass.

Project Forwarding (IPF), owned by the Swiss businessman Lina Frangi.²⁸ IPF was colocated at Van Anraat's office building in Lugano and used the same telex number. At the port of Antwerp, the consignment of TDG was transshipped to the port of Aqaba, and then trucked across the desert to Baghdad.²⁹

A Letter of Credit for the TDG shipment, with a value of \$176,120, was drawn up by the Banque Continentale du Luxembourg. A notable advantage of the Banque Continentale was that Luxembourg had strict bank secrecy laws similar to those of Switzerland. When the consignment of TDG arrived in Iraq, it was transferred to the Muthanna State Establishment, Iraq's CW production complex near Samarra. There technicians converted the precursor into mustard gas, which was then delivered to the battlefield for use against Iran. Meanwhile, payment for the TDG was transferred to the New York bank account of Nu-Kraft Mercantile.³⁰

On November 18, 1987, Van Anraat, Tanaka, and Defino traveled to Alcolac's offices in south Baltimore to negotiate additional purchases of TDG. Van Anraat told Hinkelman that his client was a textile company located in Belgium, one of the 18 countries to which TDG could be exported without a validated license. In January and February 1988, Van Anraat arranged for three more consignments of TDG, weighing 126, 120, and 119 metric tons respectively, which were shipped in non-returnable containers to Antwerp and then on to Aqaba.³¹

On March 16, 1988, the Iraqi Air Force launched a devastating chemical attack with sarin and mustard gas against the Kurdish city of Halabja in northern Iraq, killing an estimated 5,000 civilians—men, women, and children. The atrocity was reported extensively in the world press and provoked widespread outrage. On May 9, 1988, the UN Security Council passed a resolution condemning the use of CW in the Iran-Iraq War and calling on all nations to “establish strict control of the export to the parties to the conflict of chemical products serving for the production of chemical weapons.”³²

Although Van Anraat was shocked by the horror of the attack on Halabja, he did not feel personally responsible and planned to continue trafficking for Iraq behind “smokescreens.” He decided to terminate

28. Karskens, *Geen cent spijt*, p. 59.

29. U.S. District Court for the District of Maryland, *United States of America v. Frans van Anraat and Charles Tanaka*, Superseding Indictment, p. 10–12.

30. *Ibid.*

31. *Ibid.*, p. 10.

32. UN Security Council, Resolution 612, May 9, 1988.

his business relationship with Greenberg and Defino and work instead with Tanaka to purchase CW precursors from Japan. To keep a low profile, Van Anraat made discreet inquiries through proxies like Benoit Schmit, an employee of the Banque Centrale du Luxembourg who contacted Toyo Kasei seeking information about TDG.³³

On July 9, 1988, Van Anraat asked Tanaka to negotiate the deal with Toyo Kasei. In a faxed letter, he wrote, “Please make sure that Toyo gives its very best price.” When Tanaka made an unrealistically low offer, however, the deal fell through. By this time, the Japanese businessman’s relationship with Van Anraat had reached the breaking point. In a telex to Greenberg, Tanaka complained, “His requesting price is too stupid low. ... I don’t like to spend a waste of time with him on these f---ing, tricky business anymore.”³⁴ All of the deals that Van Anraat tried to negotiate in the second half of 1988 were unsuccessful. Even so, he had shipped to Iraq four consignments of Alcolac TDG totaling about 500 metric tons, all of which had been converted into mustard gas.

WALASCHEK AND IRAN

Although the Iranian forces suffered hundreds of Iraqi chemical attacks during the Iran-Iraq War, Tehran’s repeated pleas for international sanctions against Iraq elicited no response from the United States or its European allies, which feared the strategic consequences of an Iranian victory. Tehran finally decided to take matters into its own hands by acquiring its own chemical arsenal as a deterrent. An Iranian diplomat named Sayed Kharim Ali Sobhani, stationed at the Iranian Embassy in Bonn, West Germany, was assigned the task of purchasing CW precursors from foreign suppliers.³⁵ In late 1986, Sobhani contacted Peter Walaschek at Colimex GmbH, a company in the nearby city of Cologne that imported and exported chemicals, cosmetics, pharmaceuticals, and medical equipment and supplies. A German citizen who had been born in 1942 in Brno, Czechoslovakia, Walaschek had trained as a pharmacist. Before his license was revoked for improprieties, he had sold medicines to Iran and gotten to know Sobhani and other diplomats at the Iranian Embassy in Bonn. Sobhani now asked Walaschek if he would be willing to procure certain chemicals for Iran.³⁶ When the German businessman agreed, Sobhani gave him a list of desired chemicals, of which the most important was TDG.

33. Karskens, *Geen cent spijt*, p. 105.

34. *Ibid.*, p. 103.

35. Wisconsin Project on Nuclear Arms Control, “Iran Chemical Weapon Update—1998,” *The Risk Report*, vol. 4, no. 1 (January/February 1998).

36. Scheuer und Gottschlich, “Deutsche Hilfe für den Giftgastod im Golfkrieg?” [German Help for Poison Gas Death in Gulf War?], *Die Tageszeitung*, June 29, 1989, pp. 1–2.

Walaschek went to a local library and found a directory of the world's leading chemical concerns and their products. Only six companies were listed as manufacturing TDG, including Phillips Petroleum and Alcolac International in the United States. Walaschek first contacted Phillips Petroleum but was rebuffed when company executives became suspicious. On January 15, he sent a telex to Alcolac International in Baltimore expressing interest in purchasing a large quantity of TDG and requesting price information. Leslie Hinkelman responded by telex, quoting a price of \$1.80 per kilogram. Sobhani approved the deal, and on January 20, 1987, Walaschek ordered 15 metric tons of TDG from Alcolac for shipment to a Greek company called Cy Savas Oikonomidis in Thessaloniki. The German middleman claimed that the intended end-use was to dye textiles and process leather goods. In fact, for a sizeable commission, Oikonomidis had agreed to accept the consignment of TDG and transship it to Iran.³⁷ In February, Sobhani increased the size of the order to 30 metric tons, at a total cost of \$50,000, and Walaschek passed this request on to Alcolac.

Alcolac Shipments to Iran

On February 26, 1987, 15 metric tons of Alcolac TDG left Baltimore on board a container ship headed for Greece, and the second half of the order was shipped a month later. In June 1987, Walaschek helped Oikonomidis arrange the transshipment of the 30 metric tons of TDG from Thessaloniki to the port of Bandar Abbas, Iran. In the meantime, however, the owner of the Greek company had guessed the real purpose of the cargo and demanded more money before he would release it. Because this act was tantamount to blackmail, Sobhani decided to terminate his dealings with Oikonomidis and hire a new intermediary, an import-export company in Singapore called Hallet Enterprises.

In June 1987, Sobhani asked Walaschek to obtain a price quote from Alcolac for another 50 metric tons of TDG. The Iranian diplomat also gave Walaschek the name, address, and phone number of Askari Taqi, a Hallet employee who would arrange all future shipments through Singapore. In August 1987, Sobhani increased the size of the second order of TDG to 60 metric tons, and on September 4, the consignment left Baltimore on board a container ship. The Bill of Lading stated that the final destination was Singapore and that diversion was prohibited. When the cargo arrived in Singapore in October 1987, however, the containers were transferred to another ship, which proceeded to Hong Kong and then Karachi, Pakistan, before reaching its final destination at Bandar Abbas.³⁸

In October 1987, Sobhani and Walaschek traveled from Bonn to Singapore, where they met with Taqi and discussed future shipments. The following month, Walaschek founded a company called Chemco GmbH to handle his international export business. On February 8, 1988, on instructions from Sobhani and Taqi,

37. U.S. District Court for the District of Maryland, *United States of America v. Seyed Kharim Ali Sobhani and Peter Walaschek*, Superseding Indictment, March 23, 1989, p. 8.

38. *Ibid.*, pp. 9–10.

Walaschek placed an order with Alcolac for another shipment of TDG to Iran via Singapore and Karachi. The initial order was for 60 metric tons, but in early March Sobhani increased it to 100 metric tons and then to 120 metric tons, with a value of \$198,860.

On March 21, Walaschek sent a telex to Alcolac instructing Hinkelman to modify the Bill of Lading to state “transshipment is allowed” and list the final destination as “Far East” rather than “Singapore.” Hinkelman included both requests in the letter of instructions she sent to Patron Services, the freight-forwarding company in Baltimore that prepared the shipping documents. An alert clerk at Patron noted that her instructions were inconsistent with the U.S. Export Administration Regulations (EAR) and sent her a copy of the relevant pages. In particular, he wrote, it was illegal to list “Far East” instead of a specific country, and the transshipment of TDG was prohibited. Hinkelman instructed the clerk to prepare the documents correctly and send them back to her rather than directly to the shipping line. When the documents arrived, Hinkelman proceeded to retype them, substituting “Far East” for “Singapore” and inserting the phrase “transshipment is allowed” with asterisks on either side. She also used the trade name “Kromfax” instead of TDG on the Bill of Lading. Although the clerk at Patron Services had gone out of his way to inform her about the export regulations, she had deliberately side-stepped them.³⁹

In early April 1988, a U.S. Customs Service inspector who monitored exports from the port of Baltimore called Customs Special Agent Dennis J. Bass and informed him about some anomalies in the shipping documents for a consignment of chemicals from Alcolac International. The inspector added that the cargo—seven shipping containers filled with 430 drums of TDG, weighing a total of 120 metric tons—was being loaded onto a barge for transport down the Chesapeake Bay to Norfolk Shipyard in Portsmouth, Virginia, where it would be transferred to a container ship for the trip across the Atlantic.⁴⁰

Bass was familiar with Alcolac International. Under an industry-outreach program called Gemini, he had visited the company in 1985 to determine if it sold licensable commodities. Bass told the customs inspector to fax him the suspicious documents. When the fax arrived, the errors in the Bill of Lading jumped out at him. Most serious was the fact that the shipment was marked as requiring only a general license, when the export of TDG to Singapore required a validated license. Alcolac’s failure to obtain the right license was a clear violation of the EAR. Bass also noted the incorrect use of the destination “Far East” and the trade name Kromfax. Finally, he noted that Alcolac was using its own shipping containers, a possible indicator of an illicit export.⁴¹

39. Author’s interview with Dennis J. Bass, Boynton Beach, FL, November 27–28, 2007.

40. Ibid.

41. Ibid.

Bass presented the evidence to his boss. “Right now the only thing I have is a technicality that the shipment appears headed to Singapore and should have a validated export license,” he said. He knew from experience that the Department of Commerce was often lax in enforcing the export regulations. Without strong evidence that the cargo would be diverted to a prohibited destination, Commerce might let Alcolac off the hook and rule that a validated license was not required in this case. Accordingly, instead of seizing the shipment before it left the port of Baltimore, Bass suggested that the Customs Service perform a “controlled delivery”—a sting operation in which special agents would replace the TDG with a harmless substitute and track the cargo to its final destination overseas, with the aim of catching the traffickers red-handed. “Let’s follow this shipment to wherever it’s going,” he said, “and then execute search warrants and do an investigation.”⁴²

The Customs Sting Operation

The sting operation would require a high level of secrecy to avoid tipping off Alcolac and the traffickers. Once the controlled delivery had been authorized, Bass called Norfolk Shipyard and instructed the customs agents there to take custody of the barge after it arrived from Baltimore. Unlike other federal agencies, the Customs Service did not require “probable cause” and a search warrant to inspect shipping containers, but only a “reasonable suspicion.”⁴³ Because the Alcolac containers would remain in port for about 24 hours, the cargo substitution had to be done quickly. On April 19, the seven containers were unloaded from the barge and left on the pier at Norfolk. Although it was clear that the drums inside held some type of chemical, Bass needed proof that it was TDG. After determining that the compound was safe to handle with basic precautions, he opened one of the drums, took a small sample of the liquid in a glass jar, and sent it to a commercial laboratory for analysis.

The cargo substitution took place under the cover of darkness. In the middle of the night, trucks arrived at the shipyard to transport the containers to a nearby warehouse, where the 430 drums of TDG were unloaded. Customs had purchased an equal number of empty 55-gallon drums, which the Norfolk Volunteer Fire Department had filled with water, and the water-filled drums were loaded into the shipping containers in place of the original cargo and trucked back to the pier. The next morning, the seven containers were hoisted aboard the freighter *Oriental Friendship*, which left for Singapore on April 22.

Because the international shipping rules required the freighter to report its ports of call, Bass was able to track the ship throughout its voyage. He worried about the possibility that the Alcolac containers might be

42. Ibid.

43. “Reasonable suspicion” means that specific, articulable facts, when taken together with reasonable inferences from those facts, would lead a reasonable officer to suspect that a person might have merchandise contrary to law. See U.S. Supreme Court, *National Treasury Employees Union v. Von Raab, Commissioner, United States Customs Service*, 489 U.S. 656 (1989).

transferred to another vessel on the high seas, but because the *Oriental Friendship* was carrying cargo for several other customers, that scenario seemed unlikely. After making deliveries at a few European ports, the ship continued on to Singapore. Bass learned from the Customs attaché at the U.S. Embassy in Bangkok, who covered Singapore, that Hallet Enterprises—the stated recipient of the cargo—was located on a high floor of a downtown skyscraper and thus would probably not be accepting delivery of 430 drums of TDG.

Meanwhile, an administrative error back in Washington nearly foiled the entire operation. Although controlled deliveries were exempt from disclosure, one of the agents involved in the seizure of the TDG containers had mistakenly filled out a standard reporting form, which was sent to the Fines, Penalties, and Forfeiture Office at Customs Service headquarters. This office duly notified Alcolac International that its shipment had been seized at Norfolk Shipyard and that the company had the right to petition for its release. Fortunately, Bass managed to salvage the operation. When Alcolac called to inquire about the reported seizure, he explained that the notification had been in error and that the TDG shipment was on its way to its destination.

After the substituted cargo arrived in Singapore, Hallet Enterprises arranged for the containers to be loaded aboard another ship, the *Ocean Sincerity*, bound for Karachi, Pakistan. Because the Customs Service did not have an attaché office in Pakistan, Bass worried that the shipment might be picked up at the dock in Karachi and trucked secretly to Iran. Having worked on many drug-smuggling investigations, he contacted the Drug Enforcement Administration's field office in Karachi. The DEA agents there had good relations with Pakistani Customs and promised to keep an eye on the Alcolac shipment.

After a layover in Karachi, the Alcolac containers departed in late June 1988 aboard an Iranian vessel, the *Iran Ekram*. U.S. Navy aircraft patrolling the Persian Gulf monitored the ship's progress to the port of Bandar Abbas. There the Alcolac containers were off-loaded onto trucks and transported to Tehran. Their final destination was a company called M/S Ray Textile Industries, which U.S. intelligence had identified as an Iranian government front for the purchase of CW precursors.⁴⁴ Needless to say, Iranian officials were extremely upset when they discovered that the 430 drums contained only water. Because payment for the shipment had already gone through when the discovery was made, the Iranians demanded their money back from Walaschek, who was equally puzzled and angry.

Although Bass had suspected all along that the real destination of the TDG was Iran, the controlled delivery gave him the hard evidence he needed. If Customs had seized the cargo in Baltimore or Norfolk Shipyard, it would have been much harder to prove the case. Whether or not the chemical was intended for the

44. Gordon with Engelberg, "Iran is Expanding Chemical Stocks Used in Poison Gas."

production of mustard gas, its export to Pakistan and Iran was a clear violation of the Export Administration Act. Not only did the sting operation give Bass a compelling reason to search Alcolac's records, but the diversion of precursors to Iran offered sufficient "jury appeal" for the U.S. Attorney's Office in Baltimore to prosecute the case.

Execution of Search Warrants

Even before the *Iran Ekram* docked at Bandar Abbas, Bass had written up search warrants for Alcolac International, which he now had signed by a judge and proceeded to execute. Accompanied by a team of special agents, Bass conducted surprise document searches at Alcolac's manufacturing plant in Baltimore and its offices near Baltimore-Washington International (BWI) Airport. When the customs agents arrived at the door, Leslie Hinkelman looked scared to death. "Oh, my God, what's wrong? Why are you doing this?" she asked. Bass explained that they were investigating a shipment of Alcolac TDG that had been diverted to an unauthorized location.⁴⁵

Although Hinkelman cooperated with the document search, Bass found that the company's records were in considerable disarray. He and several other customs agents spent the entire day combing through the files and seizing dozens of faxes and telexes related to Walaschek and the shipments of TDG to Iran. When Bass asked if the quantities ordered by the German were typical, Hinkelman admitted that they had been unusually large. Indeed, she recalled wondering what Walaschek intended to do with such a huge amount of TDG. For comparison, she showed Bass some typical orders, which were for one or two drums.⁴⁶

"These people were buying a lot, too," Hinkelman remembered suddenly and handed Bass a thick file containing orders and correspondence from Nu-Kraft Mercantile.⁴⁷ Bass browsed through the documents and saw the voluminous fax and telex messages from Tanaka and Van Anraat. He also noted some uncanny similarities between the Walaschek and Nu-Kraft files. Both contained shipping documents with vague destinations like "Western Europe" or "Far East" and the phrase "transshipment is allowed." These red flags persuaded Bass to investigate the Nu-Kraft case as well.

A few days after the search of Alcolac's offices, Hinkelman called Bass and said, "I found a few more documents dealing with the thio [TDG] shipments that I think you'll be interested in. You missed them when you did the search."⁴⁸ Bass drove over to the company office and picked up the additional documents. One was a telex to Hinkelman from Walaschek asking for a price quote on 120 metric tons of TDG for delivery to

45. Author's interview with Bass.

46. Ibid.

47. Ibid.

48. Ibid.

Singapore. At first glance, this document did not seem particularly significant because Singapore had already been listed as the final destination on the shipping documents. Only later did Bass realize its importance.

As part of the investigation, Bass requested a number of document searches overseas under mutual assistance agreements with foreign governments. The West German police searched Walaschek's residence and business address in Cologne. One of the documents seized during this search provided Bass with a "smoking gun." It was a telex from Hallet Enterprises in Singapore referring to arrangements for "future cargos" and urging Walaschek to "take this up with Sobhani when you see him next week."⁴⁹

Even though Walaschek had conducted all of his deals from German soil and had never set foot in the United States, under the extraterritorial provisions of U.S. law he could still be arrested, prosecuted, and imprisoned for trafficking in controlled items of U.S. origin. Thus, the next step in the Customs Service investigation was to lure Walaschek to the United States so that he could be indicted and tried. Aware that the German middleman was a typical trafficker for whom money was the chief motivation, Bass asked Hinkelman to send a fax inviting Walaschek to Baltimore to discuss future business opportunities with Alcolac. When the German responded that he would be happy to visit someday, Bass had Hinkelman follow up with, "We're thinking of making you our agent in Europe," but the German middleman still did not bite.⁵⁰ Finally, Bass instructed Alcolac to offer to pay Walaschek's travel expenses to the United States, at which point the middleman accepted. Because legal venue would attach to the first place where he entered the United States, Bass told Hinkelman to book Walaschek a flight to BWI Airport, noting that the cost of the plane ticket would be reimbursed by the U.S. government.

In July 1988, the German middleman arrived in the United States. As soon as he passed through immigration control, U.S. Customs agents placed him under arrest. Faced with the prospect of a lengthy prison term, Walaschek agreed to plea-bargain with federal prosecutors from the U.S. Attorney's Office in Baltimore. During a series of proffer sessions, the details of his trafficking activities gradually emerged. He said that he had known the chemical shipments were going to Iran because his point of contact worked at the Iranian Embassy in Bonn, but that he had purchased the TDG without knowing its real purpose. "I swear to you, I didn't know that they were going to use it to make mustard gas," he said. "Because if I did, I would have charged them more money."⁵¹

In return for the promise of a light prison sentence, Walaschek agreed to plead guilty in Federal District Court to one count of violating the EAA. He also pledged to cooperate with federal prosecutors and

49. Gordon with Engelberg, "Iran is Expanding Chemical Stocks Used in Poison Gas."

50. Author's interview with Bass.

51. *Ibid.*

work as an undercover operative for the Customs Service, including wearing a hidden microphone. His sentencing hearing was set for December 20, 1988.⁵² After the German's family paid the \$350,000 bond, the district court released him to a halfway house in Washington, DC. The judge did not consider export violations to be a serious crime and assumed that because Walaschek had pleaded guilty, he was unlikely to jump bail. Nevertheless, Bass was concerned that Walaschek had been allowed to move to Washington, where he would be difficult to monitor.

A Falsified Document

Meanwhile, Bass received an important document that had been seized by the West German authorities at the offices of Chemco GmbH, Walaschek's trading company in Cologne. It was a copy of the telex that Walaschek had sent to Hinkelman at Alcolac International requesting a price quote for 120 metric tons of TDG for export to Singapore. When Bass compared the German's copy of the telex with the one he had received from Hinkelman, he discovered a small but significant discrepancy. Instead of stating only Singapore as the intended destination, Walaschek's copy also listed Pakistan, which was a clear violation of U.S. export regulations. Suspecting that Hinkelman had doctored the telex to remove the reference to Pakistan, Bass went to the U.S. Attorney's Office in Baltimore and met with the two prosecutors assigned to the case, Assistant U.S. Attorneys Martin S. Himeles Jr. and Gregg L. Bernstein.

Himeles and Bernstein both believed that Hinkelman was a naïve person who had been unwittingly caught up in the Sobhani-Walaschek conspiracy. But Bass countered, "Look, she doctored the telex, which suggests that she knew what she was doing." Himeles objected, "How do you know that Walaschek didn't doctor his version?"⁵³ Bass replied that Walaschek lived in Germany and never suspected that someone might search his records.

To resolve the controversy, Himeles obtained a warrant to request a copy of the original telex from the Western Union switching center in St. Louis. The company normally retained telexes for six months, and although the deadline had recently passed, a copy of the original telex was still available. It turned out to be identical to the one confiscated from Walaschek's office in Germany, making it clear that Hinkelman had doctored her copy.

To send a telex, Hinkelman normally sat at the machine and typed a message, which was then transmitted through a switch to another telex machine in the recipient's office. To alter the document, she had re-typed the entire message, including the date-time group but deleting the reference to Pakistan. Instead of transmitting the telex, she had simply torn the hard copy off the machine and retained it in place of the

52. Gordon with Engelberg, "Iran is Expanding Chemical Stocks Used in Poison Gas."

53. Author's interview with Bass.

original. For Bass, it was clear that Hinkelman had made a deliberate attempt to mislead. She later admitted to doctoring the telex and pleaded guilty to making a false statement to a government investigator, an offense for which she received 18 months probation.

INVESTIGATING VAN ANRAAT

In parallel with the Walaschek case, Bass started to look into the Nu-Kraft file. Once the U.S. Attorney's Office in Baltimore launched a grand jury investigation, Bass subpoenaed documents related to the purchases of Alcolac TDG. He also persuaded the U.S. Customs Service and the Department of Justice to request additional document searches overseas. The Swiss authorities executed search warrants at Van Anraat's apartment and office in Lugano, while U.S. Customs attachés obtained information from the shipping lines that had transported the consignments of TDG to Rotterdam and Antwerp. These various sources yielded thousands of pages of telexes, faxes, invoices, and other documents.

It was clear from the confiscated documents that the key link between Nu-Kraft and Van Anraat was Charlie Tanaka, who had been an active and knowing participant in the chemical trafficking operations. In August 1988, Bass lured the Japanese middleman to the United States under false pretenses. Tanaka had recently gone into business with a man whose son served on the Baltimore Police Force, seeking to market a new type of fingerprint machine that did not require ink. Because Bass worked in law enforcement, he felt comfortable approaching the Baltimore policeman and requesting his assistance. He told the young man about the case and asked him to set up an appointment for Tanaka with the Baltimore Police to demonstrate the inkless fingerprint machine. The Japanese businessman was taken in by this ploy, and as soon as he arrived at BWI Airport, Bass placed him under arrest. Facing up to five years in prison on trafficking and money-laundering charges, Tanaka agreed to negotiate a plea bargain. In exchange for his full cooperation with the Customs investigation, he received a reduced sentence of 27 months in prison.

Meanwhile, Walaschek was having second thoughts about his upcoming sentencing hearing. On December 1, after four months at the halfway house in Washington, DC, he jumped bail and flew home to Cologne, forfeiting the \$350,000 in bond money.⁵⁴ Local prosecutors investigated Walaschek at the U.S. government's request, but they could not indict him because West Germany did not recognize the U.S. legal concept of extraterritorial jurisdiction. To be subject to penal sanctions under German law, an export violation had to have a direct connection to a domestic company. Since Walaschek's illicit

54. Gordon with Engelberg, "Iran is Expanding Chemical Stocks Used in Poison Gas."

transactions had involved firms outside the country, the West German government could not seek charges against him.⁵⁵ Furthermore, West Germany's constitution (Basic Law) did not permit the extradition of its citizens, so Walaschek could not be forced to return to the United States. Bass was furious that the middleman had escaped his grasp, although Walaschek was now an international fugitive and could not travel outside of West Germany without fear of arrest.

The Case against Van Anraat

In January 1989, Bass and other Customs special agents in Baltimore conducted a document search at Nu-Kraft Mercantile in Brooklyn. After incriminating documents were found, Greenberg and Defino surrendered to federal officials. The two men were charged with three counts of illegally exporting TDG, three counts of listing false destinations on export declarations, and one count of conspiracy to violate the Export Administration Act.⁵⁶ The conspiracy charge involved “willful blindness,” meaning that both men had consciously avoided knowledge of Van Anraat's trafficking activities. According to former Assistant U.S. Attorney Himeles, “They were sad cases—not venal like Van Anraat but enablers of his crimes.”⁵⁷ Greenberg pleaded guilty to one count of violating the EAA and received two years probation and a \$27,000 fine; Defino pleaded guilty and received six months home detention, two years probation, and a \$15,000 fine.⁵⁸

The federal prosecutors in Maryland also filed criminal charges against Van Anraat for export violations, including diversion and filing false declarations. Based on this indictment, an international warrant was issued for his arrest. On January 26, 1989, the Italian police burst into Van Anraat's luxury apartment in Milan and took him into custody; his bags were packed and he was preparing to leave the country. At the request of the U.S. government, the Italian and Swiss authorities conducted document searches at Van Anraat's homes and offices in Milan and Lugano and found dozens of incriminating faxes and telexes relating to his transactions with Iraq.

Informed of Van Anraat's arrest in Milan, the U.S. Attorney's Office in Baltimore requested his extradition to the United States for trial. While awaiting a decision by the Italian courts, U.S. federal prosecutors began to prepare a detailed case against him for violations of the EAA. After Van Anraat had been imprisoned in Milan for seven months, however, an Italian appeals court judge ruled that the charges against him were politically motivated and ordered him released. Several months later, the Italian Supreme Court overruled this decision and upheld the extradition order, but by then Van Anraat had fled to Iraq. This outcome

55. Federal Republic of Germany, “Extraterritorial Application of German Penal Legislation Regarding Activities Related to Biological Weapons,” Fourth Meeting of Biological Weapons Convention Experts, BWC/MSP/2007/MX/WP.5, August 7, 2007.

56. Michael R. Gordon, “U.S. Companies Tied to Chemical Sales,” *New York Times*, January 31, 1989.

57. Author's interview with Himeles.

58. *Ibid.*

was another bitter setback for Dennis Bass, who considered the Dutch middleman to be a cold-blooded mercenary.

Prosecution of Alcolac

Alcolac International cooperated fully with the federal investigation, but Assistant U.S. Attorneys Himeles and Bernstein found no evidence of a conspiracy by senior company executives to engage in illicit trafficking to Iraq and Iran. Indeed, no company officer above Hinkelman's rank had sufficient knowledge of the transactions to support even a charge of "willful blindness." Although Alcolac's exports of TDG had soared to more than 800 drums in 1988, senior management had largely ignored foreign sales.⁵⁹ Hinkelman was openly bitter that she was the only Alcolac employee to be charged with a crime, while more senior executives escaped punishment. Yet in testimony before the grand jury, she admitted having authorized the exports of TDG on her own initiative. Himeles and Bernstein were sympathetic to her plight and only charged her for making a false statement to a federal agent (Bass).⁶⁰

Rather than focus on individual culpability, the prosecutors decided to indict the company as a whole for its collective knowledge and responsibility for the illicit shipments. As Himeles later observed, "Alcolac turned a blind eye to abundant evidence in its files that the chemical was not going to the final destination that its customers stated in the documents they filed with Customs."⁶¹ In February 1989, the company pleaded guilty to a single count of violating the EAA because it had "knowledge or reason to know" that Singapore was not the ultimate destination of the TDG shipments. This guilty plea obviated the need for a trial. Although the fine for the export violation could have been as high as \$900,000, the judge was lenient and cut the penalty in half. As a result, Alcolac ended up paying a one-time fine of \$437,594 and foregoing any future exports of TDG.⁶²

Meanwhile, Walaschek remained at large in West Germany. In June 1989, the United States sent a *démarche* (diplomatic message) to the government of chancellor Helmut Kohl urging that Sobhani be declared *persona non grata* and expelled for his role in procuring materials for the production of CW. Although the United States had already expressed concerns about Sobhani a few months earlier, it was not until U.S. officials raised the issue again in strong terms that the West German government finally agreed to request the Iranian diplomat's departure.⁶³

59. Under the Sarbanes-Oxley Act [Public Law 107-204 of July 30, 2002], higher levels of management in a publicly traded company must assume liability for the actions of the firm and can no longer claim ignorance.

60. Author's interview with Bass.

61. Eric Rich, "Baltimore Firm Part of Probe of Poison Gas," *Washington Post*, November 9, 2005, p. B01.

62. Author's interview with Himeles.

63. Ferdinand Protzman, "Bonn Acts in Iran Chemical-Sale Case," *New York Times*, June 28, 1989.

Van Anraat's Exile in Iraq

After his arrival in Baghdad, Van Anraat was unemployed and in financial straits. On May 7, 1990, he sent a letter to Saddam Hussein requesting Iraqi citizenship. "Dear Mr. President," it read. "I first came to your country in 1977 and lived in Baghdad for three years. I have come to love your people and your country, which I now consider my second country. I am proud of what I did for this country."⁶⁴ On June 4, 1990, Saddam Hussein granted Van Anraat citizenship and an Iraqi passport, both highly unusual for a foreigner. The Dutch businessman converted to Islam and was given the Arabic name Faris Mansour Rasheed al-Bazaaz, meaning "the courageous and intelligent fabric salesman." Less than a year later, on March 31, 1991, Van Anraat married Hanan Muhamed Mahmood, a Jordanian woman of Palestinian descent, and the couple took up residence in an expensively decorated apartment on Haifa Street in Baghdad. Shortly after his marriage, however, Van Anraat began to suspect his wife of passing information to the CIA and the couple divorced in September 1991. Following the divorce, Van Anraat's first wife Romana and his son came to live with him in Baghdad.

On January 8, 1992, the Iraqi Muqhabarat intelligence service sent a letter to the head of the Military Industrial Commission requesting financial assistance for Van Anraat, who had supplied Iraq with "banned and difficult to obtain chemical substances, at great risk to himself. And at reasonable prices compared to earlier quotes from other countries."⁶⁵ The letter from the Muqhabarat asked that Van Anraat be paid 1,000 dinars per month (the salary of the average Iraqi civil servant at the time was about 200 dinars) and given a house for himself and his family. In addition, his divorce settlement was to be expedited in the courts, and his son was to be admitted to the international school in Baghdad without paying the normal admission fees. Saddam Hussein agreed to all of these requests.⁶⁶ Despite the generosity of the Iraqi regime, however, Van Anraat decided to hedge his bets a few years later. In 1995, he became a confidential source on Iraq's unconventional weapons programs for the Dutch intelligence service AIVD (Algemene Inlichtingen en Veiligheidsdienst, or General Intelligence and Security Service) and traveled a few times to Amman for debriefings.⁶⁷

On November 11, 1994, Peter Walaschek, now 52, was arrested at the Esplanade Hotel in Zagreb, Croatia, on an Interpol warrant. Local police had spotted his name by chance in the hotel guest book during a periodic check for "mafia types." Walaschek had been in Zagreb for less than a day and it was not clear why he was there, although arms dealers often used the hotel as a meeting place. After his arrest, the U.S. Department of Justice began extradition proceedings.

64. Radio Netherlands, "New Evidence Against Van Anraat (Supplying Chemicals to Saddam)," April 4, 2007.

65. Ibid.

66. Ibid.

67. Author's interview with Fred Teeven, The Hague, Netherlands, March 19, 2007.

As a brand-new country, Croatia did not yet have an extradition treaty with the United States. Although the Croatian court agreed to honor a 1901 extradition treaty between the United States and Yugoslavia, the agreement did not cover export violations. Given these facts, the judge declined to issue a ruling and asked the Croatian Supreme Court to take the case.⁶⁸ On February 28, 1995, the Supreme Court ruled against the extradition request, on the grounds that the offense for which Walaschek had been convicted in the United States was not a crime under Croatian law. This decision came despite intense pressure from the U.S. government, which bombarded the tribunal with faxes and telephone calls.⁶⁹ According to Bass, “Had it been a drug crime, we probably could have got him, but export violations simply weren’t part of the 1901 treaty.”⁷⁰

Three days later, after seven months in a Croatian jail, Walaschek was released and allowed to return to Germany, where he was safe from extradition. Reached in Bonn by an American journalist, Walaschek taunted, “Tell Dennis Bass to give me a call. Tell him we should have a talk and that if he ever comes to Germany, we simply must get together for a drink.”⁷¹ On May 25, 2000, the U.S. Federal Bureau of Investigation placed Walaschek and Van Anraat on its “Most Wanted List” of international fugitives, further constraining their ability to travel.⁷² Ironically, if Walaschek had stayed in the United States to serve his sentence, he would have spent at most a year and a half in prison and been allowed to return to Germany with no further constraints on his freedom.

Later in 2000, the U.S. Attorney’s Office in Baltimore dismissed the indictments against Walaschek and Van Anraat because of an administrative error. At the time, the acting prosecutor, who was temporarily replacing a woman on maternity leave, decided to go through the list of old cases and clean out the inactive ones without consulting interested federal agencies, such as the Customs Service. By then, Himeles and Bernstein had left government service and gone into private practice, and no one in the U.S. Attorney’s Office remembered the Walaschek and Van Anraat cases. A friend in the U.S. Marshals Office tipped off Dennis Bass that the Walaschek case had been dismissed. Furious, Bass moved quickly to have the indictment reinstated, but he was unaware that the Van Anraat case had also been dropped. That fact would not emerge for several more years, by which time it would be too late to reverse the decision.

The Dutch Investigation

In March 2003, the U.S.-led invasion of Iraq toppled the regime of Saddam Hussein. Frans van Anraat, now 62, fled Baghdad by car and escaped with the flow of refugees over the Syrian border. Although his Dutch

68. Michael James, “Merchant of Death Evades U.S. Justice in Croatian Jail,” *Baltimore Sun*, February 23, 1995, p. 1A.

69. Raymond Bonner, “Croatia Bars Extradition of a Fugitive in U.S. Poison-Gas Case,” *New York Times*, March 19, 1995.

70. Author’s interview with Bass.

71. Michael James, “Mustard Gas Fugitive Escapes Extradition,” *Baltimore Sun*, March 7, 1995, p. 1A.

72. Hans De Vreij, “Dutch Arrest Key Supplier of Chemicals to Saddam Hussein,” *Radio Netherlands Worldwide*, December 7, 2004.

passport had expired, he obtained a *laisser-passer* from the Netherlands Embassy in Damascus. He then flew to Amsterdam, where the Dutch intelligence service AIVD, for whom he had worked as an informant, provided him with an apartment in an agency safe house.

AIVD officials encouraged Van Anraat to speak out publicly that Iraq had not possessed stocks of chemical or biological weapons before the Iraq War. Apparently believing that if he went along with this request, the intelligence agency would shield him from prosecution, Van Anraat agreed to be interviewed by the Dutch television program *Netwerk* on November 6, 2003.⁷³ Appearing nervous but unemotional during the interview, he admitted having provided “certain products which the Iraqi Ministry of Oil needed. As I had excellent relations with them, I satisfied their asking.” Van Anraat expressed no remorse for his actions, arguing that if he had not supplied the chemicals, someone else would have. “This was not my main business,” he added. “This was something I did in passing.”⁷⁴ His statements reflected the classic rationalization of the international arms dealer: Armies will buy weapons from somewhere, so why shouldn’t I be the one making the money?

Van Anraat’s TV appearance attracted the attention of the International Crimes Department at the Dutch National Police Agency. Headed by Martin van de Beek, the department normally investigated foreign asylum seekers who had a history of involvement in torture, crimes against humanity, and war crimes. But Van de Beek believed that the unit also had the responsibility to pursue Dutch citizens who were implicated in similar acts. The police had already looked into one such case involving a Dutch arms trader who had sold guns to the regime of Liberian strongman Charles Taylor.⁷⁵ The day after the *Netwerk* interview, the International Crimes Department launched an inquiry into the Van Anraat case.⁷⁶

At first, the odds that Van Anraat would be prosecuted seemed low. He had not violated Dutch export-control laws because all of his shipments of CW precursors to Iraq had originated in Japan or the United States. Van de Beek also learned that 15 years earlier, American prosecutors had indicted Van Anraat for violations of U.S. export-control laws but that the indictment had been dismissed in 2000 because of an administrative error. By now the statute of limitations had expired, so Van Anraat could no longer be prosecuted in the United States. Despite these setbacks, the Dutch public prosecutor, Fred Teeven, decided to pursue Van Anraat for complicity in Iraqi war crimes and genocide, which are not subject to a statute of limitations.

73. Court of Appeals, The Hague, *Judgment in a Defended Action*, May 9, 2007, LJN: BA6734, Gerechtshof’s-Gravenhage, 2200050906-2 [English translation], p. 9.

74. BBC News, “Saddam’s ‘Dutch Link,’” December 23, 2005.

75. Author’s interview with Martin van de Beek, The Netherlands, July 11, 2007.

76. *Ibid.*

Because Department of Justice officials could not prosecute Van Anraat, they had an interest in helping their Dutch colleagues to do so successfully. In March 2004, Fred Teeven and his legal team flew to Baltimore and met with U.S. federal prosecutors. Assistant U.S. Attorneys Harvey E. Eisenberg and Philip Jackson were authorized to turn over to Teeven any evidence relevant to the case, including several boxes of seized documents.⁷⁷ To learn more about the role of Alcolac International in supplying TDG to Iraq, the Dutch prosecution team asked to interview Dennis Bass, who had retired in 2001. Bass traveled to Baltimore from his new home in Boynton Beach, Florida, to help the Dutch investigators sort through the documents.

Teeven and his colleagues also questioned former Alcolac employees and spent three days interviewing Gary B. Pitts, a Houston lawyer representing sick Persian Gulf War veterans in a lawsuit against Alcolac and other U.S. companies that had sold CW precursors to Iraq.⁷⁸ (The veterans believed that their chronic symptoms had been caused by low-level exposures to Iraqi chemical weapons during the 1991 Gulf War.) After the U.S. trip, the members of the Dutch prosecution team took additional depositions from witnesses in Britain, Denmark, Jordan, and the Netherlands, including former Iraqi Army officers who had witnessed the use of CW against Iranian troops and Kurdish civilians. Government authorities in Switzerland and Iran also cooperated with the Dutch investigation.

Van Anraat's Arrest and Trial

Having lived quietly in Amsterdam for a year and a half since his return from Iraq, Van Anraat was beginning to feel more relaxed about his legal status. In late 2004, however, someone tipped him off that he was under active police surveillance. On the morning of December 6, Van Anraat called his ex-wife Romana and told her that he had packed his bags and was preparing to leave the country. The call was monitored by the Dutch National Police, who had tapped Van Anraat's telephone. A short time later, several policemen arrived at his apartment and took him into custody.

Because Van Anraat had clearly intended to flee the Netherlands, Public Prosecutor Teeven moved quickly to indict him under three Dutch statutes: the Wartime Offenses Act of 1952, the Genocide Convention Implementation Act of 1964, and the Act Implementing the Convention Against Torture of 1988.⁷⁹ The main counts against him were having been an accessory to genocide, a crime punishable with a maximum sentence of life imprisonment; and violations of the Wartime Offenses Act, for which he faced up to 20 years.

77. Cynthia di Pasquale, "Baltimore Lawyer Keeps Watch on Overseas Trial," *The Daily Record*, November 21, 2005, p. 2.

78. Rich, "Baltimore Firm Part of Probe of Poison Gas."

79. For timing reasons, the Van Anraat case could not be prosecuted under a more recent law, the Dutch International Crimes Act of June 2003, which empowers the Dutch courts to exercise "universal jurisdiction" over cases involving genocide, war crimes, crimes against humanity, and torture, provided the accused was present in the Netherlands and the crimes were committed after the entry into force of the act on October 1, 2003.

Van Anraat's arrest and indictment triggered an internal debate within the Dutch government. The Interior Ministry argued that the middleman should be granted immunity from prosecution because he had served as an AIVD informant in Iraq from 1995 to 2003. But Public Prosecutor Teeven countered that the case against Van Anraat focused exclusively on his illicit trafficking activities from 1985 to 1989, before he had started working for Dutch intelligence, and this argument ultimately prevailed.

Still, when the Van Anraat trial began at the District Court in The Hague on November 21, 2005, Teeven faced an uphill battle in obtaining a conviction. First, he had to prove to the court that Van Anraat had been aware of the illicit end-use of the chemicals he had acquired for Iraq. Second, Teeven had to demonstrate a complex causal chain, namely that the Iraqis had converted the imported precursors into mustard gas and nerve agents and employed them on the battlefield against Iran and the Kurds. Third, he had to prove that Iraq's use of CW had resulted in death and serious bodily harm to Iranian troops and Kurdish civilians in violation of the laws and customs of armed conflict, as enshrined in the Geneva Protocol of 1925 (banning the use in war of chemical and biological weapons), the Fourth Geneva Convention of 1949 (prohibiting the deliberate targeting of civilians in warfare), and the Genocide Convention of 1948. Although Van Anraat's attorneys did not dispute that he had sold chemicals to the Iraqi Ministry of Oil, they insisted that he had been unaware of their intended military use. Van Anraat himself told a reporter that "the images of the gas attack on the Kurdish city Halabja were a shock. But I did not give the order to do that."⁸⁰

The key witness for the prosecution was Charlie Tanaka, who traveled from Japan to The Hague to testify. Having served more than two years in a U.S. prison for export violations, he was bitter that Van Anraat had escaped punishment. Tanaka testified that the Dutch middleman had known full well that TDG and the other precursors were intended for the production of CW, an allegation backed up by numerous incriminating telexes and faxes. Also testifying for the prosecution were 15 Kurdish survivors of the Iraqi chemical strikes on Halabja who suffered from chronic skin, eye, and lung injuries. In an all-day closing statement that made extensive use of charts, photographs, and other exhibits, Teeven argued that Van Anraat knew that the TDG he delivered to Iraq was destined for the production of mustard gas, yet had shown no remorse for his actions.⁸¹

On December 23, 2005, the District Court in The Hague found Van Anraat guilty of complicity in war crimes, but not guilty of having been an accessory to genocide. The reason for the split judgment was that although Van Anraat had clearly facilitated Iraq's use of CW against Iranian troops, the prosecution had

80. BBC News, "Dutchman in Iraq Genocide Charges," March 18, 2005.

81. Teeven closing statement at Van Anraat trial, District Court, The Hague, November-December 2005 [Requisitoir van het Openbaar Ministerie in de strafzaak tegen Frans Cornelius Adrianus van Anraat (09/751003-04), Den Haag, 21 t/m 30 november, 1 t/m 9 en 23 december 2005].

not proven that he was aware of Saddam Hussein's intent to use CW against Kurdish civilians. Van Anraat received a sentence of 15 years in prison, the maximum penalty sought by the prosecution. In the words of the presiding judge, Roel van Rossum, the middleman's deliveries of CW precursors to Iraq constituted "a very serious war crime. Even the maximum sentence is not enough to cover the seriousness of the acts."⁸²

Van Anraat appealed his conviction on the grounds that he had been singled out unfairly for prosecution. He also claimed that he had not delivered the chemicals to Iraq but had left them "in transit" without knowing the final destination.⁸³ The Appeals Court in The Hague heard the case in April 2007. Although the judges did not overturn the not-guilty verdict on the genocide charge, they reaffirmed the guilty verdict for war crimes and added two years to the prison sentence, for a total of 17 years.⁸⁴ Several months later, the Netherlands also filed a dispossession claim against Van Anraat for 2.2 million euros (\$3.2 million) under a 1993 law enabling the Dutch government to seize assets obtained through criminal activity.⁸⁵ The Van Anraat case was precedent-setting because he was the first middleman involved in procuring materials for a foreign CW program to be prosecuted successfully for international crimes.⁸⁶

LESSONS FROM THE CASE STUDIES

Despite the passage of more than two decades, the lessons of the Van Anraat and Walaschek cases remain relevant today. Although U.S. export controls on dual-use materials and equipment related to nuclear, biological, and chemical weapons of mass destruction (WMD) have improved significantly since the 1980s, important weaknesses still exist that demand solution. The following sections describe the current status of U.S. dual-use export controls, identify gaps in the system, and suggest some possible remedies.

Current U.S. Dual-Use Export Controls

The key statute underlying U.S. export controls, the Export Administration Act of 1979, expired in August 2001 and has not been reauthorized by Congress. In the absence of an EAA, the U.S. dual-use export-control system relies on the president's invocation of emergency powers under the International Emergency Economic Powers Act (IEEPA), although the penalties for export violations are substantially less than they would be under a renewed EAA.⁸⁷

82. Reuters UK, "Dutchman Jailed Over Iraq Poison Gas," May 9, 2007.

83. Toby Sterling, "Dutch Man Appeals War Crimes Conviction," Associated Press, *Seattle Post-Intelligencer*, April 2, 2007.

84. Court of Appeals, The Hague, *Judgment in a Defended Action*, May 9, 2007, p. 28.

85. "Netherlands Pursues Funds from Iraqi CW Supplier," Global Security Newswire, February 6, 2008.

86. Santiago Oñate, Brigitta Exterkate, Lisa Tabassi, and Erwin van der Borgh, "Lessons Learned: Chemicals Trader Convicted of War Crimes," *Chemical Disarmament Quarterly* 4 (December 2006), pp. 19–31.

87. International Emergency Economic Powers Act, *U.S. Code*, Title 50, Sec. 1701 et. seq.

The lead U.S. government agency responsible for regulating the export of sensitive dual-use commodities is the Department of Commerce's Bureau of Industry and Security (BIS).⁸⁸ For dual-use items requiring an export license, Executive Order 12981, as amended, mandates time frames for an interagency licensing review process involving the Departments of Commerce, State, Defense, Energy, and Justice (for encryption items only).⁸⁹ Other federal departments may be invited on a case-by-case basis to provide an opinion on an application under review.

The licensing review process examines the *bona fides* of the shipper and the end-user. Factors that determine whether or not an entity must obtain an export license include: (1) the type of item to be exported, (2) the country of ultimate destination, (3) the individual parties involved in the export, (4) the parties' involvement in proliferation activities, (5) the planned end-use of the exported item, and (6) the justification for the quantity of the item to be exported.⁹⁰ BIS screens export-license applications against a "watch list" of individuals and companies to identify exporters and end-users who are either ineligible to receive an export license or who warrant greater scrutiny. The reviewing agencies also assess the risk of diversion if the item is shipped to the intended consignee, check prior compliance with license terms and conditions, identify past export violations, and consider the likelihood that recipients of sensitive U.S.-origin commodities will comply with the terms and conditions of the license. After conducting this analysis, the reviewing agencies make recommendations to the BIS licensing officer as to whether the license application should be approved or denied.

If the voting agencies do not agree on a particular case, the licensing review is "escalated" to a higher-level interagency body called the Operating Committee on Export Policy (OC). After considering information available on the record and discussed in previous meetings, the OC chair decides whether or not to approve the license application, with the chair not representing Commerce but serving as a neutral broker in the contentious interagency process. Within a specified time frame, any of the reviewing and voting agencies may appeal the OC decision to the next higher-level body, the Advisory Committee on Export Policy (ACEP), which is chaired by the assistant secretary of commerce for export administration and includes officials of the same rank from the Departments of State, Defense, and Energy.⁹¹ Only about 5 percent of license applications reviewed by the OC are escalated to the ACEP. The chairman of the ACEP has no authority to overturn the licensing decision of the OC chairman but must work to get a majority vote of the ACEP members. At this time, the ACEP chairman has no authority to break a tie.

88. The State Department leads the regulation of exports of weapons and other militarily relevant items on the Munitions List.

89. Administration of William J. Clinton, Executive Order 12981—Administration of Export Controls, December 5, 1995.

90. U.S. Government Accountability Office, "Export Controls: Improvements in Commerce's Dual-Use System Needed to Ensure Protection of U.S. Interests in the Post-9/11 Environment," GAO-06-638, June 2006, p. 5.

91. *Ibid.*, p. 7.

With respect to chemical exports, the U.S. government requires a license for shipments of controlled dual-use precursors to countries that are not members of the Australia Group. BIS may also inform an individual exporter or re-exporter by written communication or publication in the *Federal Register* that a license is required for specific items; in this case, all U.S. competitors must also be notified in order to keep the playing field level. Finally, under the “catch-all” provision in Part 744 of the EAR, dual-use items and technologies that are not on the Commerce Control List (CCL) may still require an export license.⁹² The catch-all provision originated as part of the Enhanced Proliferation Control Initiative (EPCI), which the administration of President George H.W. Bush launched in December 1990.⁹³ Under the catch-all rule, exports and re-exports of dual-use items or technologies not listed on the CCL require a license if the exporter or re-exporter has reason to believe that the item is intended for the development, production, or delivery of nuclear, biological, or chemical weapons.

To determine if the catch-all provision applies to an unlisted dual-use item, exporters must assess whether or not the volume, routing, and packaging are consistent with the stated purpose. Any plausible suspicion of illegality creates an “obligation to inquire.” Although exporters must decide whether or not to apply the catch-all rule, the U.S. government may hold them legally liable for failing to do so. Thus, when any suspicion exists about a foreign customer, companies tend to err on the side of caution by applying for an export license. In such cases, BIS reviews the available intelligence on the end-use and end-user and notifies the applicant with a decision. When BIS determines that a license is required for a particular non-controlled item, it must inform all of the exporter’s U.S. competitors of this decision to ensure a level playing field.

Export Investigations and Enforcement

Responsibility for export investigations and enforcement is currently divided between the Departments of Commerce and Homeland Security, as described below.

Role of the Department of Commerce

In addition to licensing exports of dual-use items, BIS has an Office of Export Enforcement (OEE) that investigates illegal exports to entities involved in WMD proliferation. OEE special agents have traditional police powers, such as the ability to execute search warrants and to make arrests. They are also authorized to issue administrative subpoenas, conduct pre-license checks and post-shipment reviews, and detain and seize goods. OEE special agents are based at nine field offices in cities across the United States: Boston, Chicago, Dallas, Houston, Los Angeles, Miami, New York, San José, and Washington.⁹⁴

92. Export Administration Regulations, Part 744: Control Policy: End-User and End-Use Based, pp. 5–6.

93. President George H.W. Bush put EPCI into effect through Executive Order 12735, “Chemical and Biological Weapons Proliferation,” issued on November 16, 1990.

94. Department of Commerce, “An Introduction to the BIS Export Enforcement Program.”

OEE gives priority to measures to prevent export-control violations, such as outreach to the export community and detaining suspect shipments. OEE special agents also conduct end-user verifications to ensure that U.S.-origin dual-use goods are delivered to the approved final consignee and utilized for the intended purpose at the authorized location. Such checks occur mainly through the Sentinel Program, which places trained OEE investigators as export-control attachés at the U.S. embassies in China, Hong Kong, India, Russia, and the United Arab Emirates. In fiscal 2006, OEE agents performed 942 end-use verifications in 72 different countries.⁹⁵ Some of the checks are carried out randomly, while others are triggered by an intelligence tip or the export of high-risk items. Foreign entities for which OEE cannot conduct a pre-licensing check or a post-shipment verification are placed on the Unverified List. All future export license applications involving these entities will either receive greater scrutiny or be subjected to a presumption of denial until such time as OEE completes its review and affirms their *bona fides*.⁹⁶

Before the terrorist attacks of September 11, 2001, export monitoring in the United States was fairly lax: a company had up to 48 hours after a shipment left port to submit the relevant paperwork to the U.S. Customs Service. Since 9/11, however, exporters are required to submit shipping documents before a consignment leaves port, making it easier for federal agents to seize and inspect suspicious cargo in a timely manner. An important step in improving the U.S. export-control system is the Automated Export System (AES), which enables exporters to file the Shipper's Export Declaration online. Data entered on each shipment include the commodity code, exporter, quantity, value of the cargo, port of export, consignee, and final destination. OEE officials review the electronic records both before and after the export of a dual-use item. In addition, under the AES Review Program, it is possible to search the export database retrospectively for destinations of concern and dual-use items related to WMD, flagging past shipments that may have violated export regulations and referring them for investigation.

Role of the Department of Homeland Security

For many years, the U.S. Customs Service was part of the Treasury Department, but in November 2002 it was folded into the newly created Department of Homeland Security (DHS). As part of this reorganization, the Customs Service was split into two units: the Bureau of Customs and Border Protection (CBP) and the Bureau of Immigration and Customs Enforcement (ICE). Whereas CBP employs uniformed customs inspectors at airports and seaports who inspect luggage, check import-export documents, and search shipping containers for contraband, ICE is responsible for the criminal investigation of export violations involving sensitive dual-use items and technologies.

95. U.S. Department of Commerce, Bureau of Industry and Security, *Annual Report for Fiscal Year 2006*, p. 10.

96. U.S. Department of Commerce, Bureau of Industry and Security, "Office of Export Enforcement," www.bis.doc.gov/complianceandenforcement/index.htm#oe.

ICE's Counter-Proliferation Investigations (CPI) Unit employs about 300 special agents who are empowered to seize suspected illicit shipments of controlled technology and munitions, investigate export violations, and pursue the arrest, prosecution, and conviction of violators. CPI priority programs address trafficking in chemical, biological, radiological, or nuclear (CBRN) materials and technologies sought by proliferant states and terrorist groups. ICE special agents have powerful tools at their disposal, including the authority to conduct warrantless searches of persons, conveyances, mail, and cargo at U.S. ports and borders to facilitate enforcement actions and to correlate intelligence information.

To investigate export violations, ICE special agents make extensive use of undercover operations in the United States and overseas.⁹⁷ As occurred in the Van Anraat and Walaschek cases, traffickers often set up seemingly legitimate front companies to conduct their illicit transactions. ICE can insert undercover operatives into these companies to collect real-time information from inside the criminal organization, making it possible to block the export of sensitive dual-use commodities. Undercover operations also provide hard evidence of the trafficker's knowledge of the export regulations and willful intent to violate them, a key element in the prosecution of export-related crimes.

Enforcing export-control laws and regulations related to sensitive dual-use commodities is a complex task, involving multiple government agencies with differing roles and responsibilities. In July 2007, ICE, in partnership with the DHS Office of Intelligence and Analysis, established the National Export Enforcement Coordination Network (NEECN). The mission of this network is to coordinate operations by homeland security, law enforcement, intelligence, and foreign officials to prevent potential adversaries from acquiring U.S. munitions and dual-use technologies, including components for chemical, biological, and nuclear weapons. Based at DHS headquarters, the NEECN serves as the hub for 10 coordination groups at ICE field offices across the United States, as well as in five attaché offices in high-risk transshipment countries: Britain, Italy, Singapore, Austria, and the United Arab Emirates.

Another important mission of ICE is to educate U.S. industry about export controls. The vast majority of American companies that sell dual-use commodities abroad have no desire to supply them to WMD proliferators or terrorists, but they may be unfamiliar with dual-use export controls or confused by the patchwork-quilt nature of the regulations. ICE's Arms and Strategic Technology Investigations unit has an industry outreach program called Project Shield America that sends special agents to visit thousands of U.S. companies.⁹⁸ These outreach visits have several functions: they enable ICE to educate companies about export laws, determine which firms are manufacturing and exporting controlled dual-use commodities,

97. U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, "Fact Sheet: ICE Office of Investigations," <www.ice.gov/pi/news/factsheets/investigation_FS.htm>.

98. U.S. Department of Commerce, Bureau of Industry and Security, *Annual Report for Fiscal Year 2006*, p. 10.

gather intelligence from exporters about suspicious orders, and solicit industry's assistance in preventing illegal exports. One approach is to teach companies about "red flags" that may be indicative of illicit activity, such as when an importer asks to pay in cash or declines a free warranty (see Table 1). Project Shield America creates personal contacts between U.S. manufacturers and ICE special agents, making it more likely that companies that receive a suspicious foreign order will notify ICE before closing the deal. Such tips often lead to the opening of a criminal investigation.⁹⁹

International cooperation is vital for effective export enforcement. With respect to dual-use chemicals, the chief coordinating mechanism is the Australia Group, whose members share intelligence on countries of CW proliferation concern and harmonize their national export controls on lists of precursors and dual-use production equipment. As an informal body that is not treaty-based, however, the AG has a number of weaknesses: all decisions must be made by consensus, which tends to delay or water down policies; the decisions are not legally binding; and the group has no powers of enforcement.¹⁰⁰ The effectiveness of the AG in preventing exports of CW precursors to countries of concern has also diminished because of the growing volume of chemical trade and the fact that some important exporting countries are not members, such as China, India, and Russia. In recent years, India and China have taken the positive step of modeling their domestic export controls for dual-use chemicals and production equipment after the AG lists and licensing guidelines, but the enforcement capabilities of these two countries are too weak and under-resourced to ensure effective compliance.

Civil and Criminal Prosecution

When the prevention of illicit exports fails, the U.S. government pursues civil or criminal penalties against violators. Prosecuting export violations is a challenging task that involves obscure laws, sensitive international issues, overlapping agency authorities, unresolved jurisdictional conflicts, and classified intelligence. BIS works with the Department of Commerce's Office of Chief Counsel for Industry and Security on civil litigation and with the Department of Justice on criminal prosecutions. Because civil prosecution requires only a "preponderance of the evidence" standard without the need to prove intent, such cases can be brought fairly easily. Criminal cases, in contrast, demand a higher standard of proof, usually based on actionable intelligence, and informants are known to recant their testimony. Until fairly recently, U.S. courts treated the trafficking of dual-use commodities as a white-collar crime for which the penalties were relatively mild—far lower than for importing and distributing illicit drugs. The Export Enforcement Act of 2007, however, significantly toughened the criminal and civil penalties for export violations. For example, the act increased the maximum corporate penalties for criminal

99. Author's interview with Bass.

100. Moodie, "International Smuggling Networks."

Table 1: “Red Flags” Indicative of Illicit Exports

- The customer is willing to pay cash for a high-value order rather than use a standard method of payment, which usually involves a Letter of Credit.
- The customer is willing to pay well in excess of market value for the commodities.
- The purchaser is reluctant to provide information on the end-use or end-user of the product.
- The end-use information provided is incompatible with the customary purpose for which the product is designed.
- The final consignee is a trading company, freight forwarder, export company, or other entity with no apparent connection to the purchaser.
- The customer appears unfamiliar with the product, its application, support equipment, or performance.
- The packaging requirements are inconsistent with the shipping mode or destination.
- The customer orders products or options that do not correspond with their line of business.
- The customer has little or no business background.
- Firms or individuals from foreign countries other than the country of the stated end-user place the order.
- The order is being shipped via circuitous or economically illogical routing.
- The customer declines the normal service, training, or installation contracts.
- The product is inappropriately or unprofessionally packaged (e.g., odd-sized or re-taped boxes, hand lettering in lieu of printing, altered labels, or labels that cover old ones). The size or weight of the package does not fit the product described.
- “Fragile” or other special markings on the package are inconsistent with the commodity described.

SOURCE: U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, PROJECT SHIELD AMERICA, MARCH 17, 2006.

violations from \$50,000, as provided for in IEEPA, to \$5 million or 10 times the value of the exports involved, whichever is greater.¹⁰¹

Since 9/11, the U.S. government has sought to improve coordination among the agencies involved in export control, strengthen the prosecution of export violations, and deter illicit activity. Under the National Export Enforcement Initiative, launched in October 2007, the Department of Justice is working with BIS and the State Department to train federal prosecutors in export-control matters and improve the quality and consistency of their work.¹⁰² One element of this initiative has been the formation of 15 multi-agency Counter-Proliferation Task Forces at U.S. Attorney’s Offices across the country to ensure that investigations, prosecutions, and enforcement are fully coordinated. The task forces also forge ties with exporting

101. U.S. Department of Commerce, Bureau of Industry and Security, “Fact Sheet: Export Enforcement Act of 2007,” <www.bis.doc.gov/enforcement/eaarenewalbillfactsheet.pdf>.

102. U.S. Department of Justice, “Justice Department and Partner Agencies Launch National Counter-Proliferation Initiative,” press release, October 11, 2007.

industries and share information to prevent the illicit foreign acquisition of U.S. goods and technologies. In fiscal year 2008, the National Export Enforcement Initiative resulted in criminal charges against more than 145 defendants, with roughly 43 percent of these cases involving illicit exports of munitions or restricted dual-use technologies to Iran or China.¹⁰³

Continuing Gaps in Dual-Use Export Controls

Despite the significant improvements since 9/11 in the dual-use export-control systems of the United States and other industrialized countries, much still remains to be accomplished. Many countries either do not share U.S. concerns about the need to prevent the diversion of dual-use materials and equipment to WMD programs or lack the resources to perform this task effectively. Global supply-chain pressures, such as “just-in-time” inventory practices, give exporters a strong financial incentive to minimize delays in customs clearance. For this reason, companies prefer to use ports and transit hubs where customs enforcement is minimal or lax, making them easier and faster to transit. Moreover, free-trade zones, such as those established by the United Arab Emirates, are essentially designed to circumvent most export-control regulations.¹⁰⁴ A further challenge is that throughout the Asia-Pacific region, information on cargo manifests is considered proprietary and few details must be declared.

At ports in many parts of the world, economic pressures to expedite transits and transshipments trump nonproliferation concerns. To maximize efficiency, port operations at leading logistics hubs like Singapore and Dubai are fully automated, and shippers are required to transmit customs documents electronically three days prior to arrival. Because it is impossible to inspect more than a small fraction of the transiting containers, however, Singapore uses a risk-assessment matrix to identify shippers, consignees, and transfer points that pose the greatest risk of diversion. At the same time, because of competition with other ports to speed the flow of cargo, the average container that arrives in Singapore stays on the ground for less than 24 hours.¹⁰⁵ In addition to intense economic pressures, the lack of a global consensus on “best practices” for customs inspections has hampered the development of international standards.

Because of these shortcomings, illicit trade in WMD-related items continues. Traffickers still use many of the same strategies to circumvent national export controls that Van Anraat and Walaschek employed two decades ago, such as providing a false destination and end-use. The continued success of these venerable ploys has exposed serious weaknesses in the export-control systems of the United States and other

103. U.S. Department of Justice, “More than 145 Defendants Charged in National Export Enforcement Initiative During Past Fiscal Year,” press release, October 28, 2008.

104. Wisconsin Project on Nuclear Arms Control, “United Arab Emirates Transshipment Milestones, 1971–2005,” *The Risk Report*, vol. 11, no. 4, July/August 2005.

105. Author’s interview with Bass.

advanced industrialized countries. In March 2008, for example, an international electronics executive named Parthasarathy Sudarshan pleaded guilty in federal court to shipping U.S.-manufactured parts for missiles, space-launch vehicles, and fighter jets to Singapore and transshipping them illegally to India.¹⁰⁶ In another case, MTS Systems Corp. of Minnesota pleaded guilty and was fined \$400,000 for falsifying documents so that it could export U.S. equipment to the Indian nuclear program.¹⁰⁷

Other major industrialized countries have faced similar difficulties in controlling exports of sensitive dual-use technologies. In recent years, several Japanese entities have been implicated in export violations. Beginning in 2003, a series of government raids and arrests revealed that a Tokyo-based association of scientists and engineers of North Korean origin, the Korean Association of Science and Technology, had made numerous unauthorized transfers of dual-use technologies to North Korea, including a Japanese-made jet milling machine and information on missile guidance systems and plutonium separation.¹⁰⁸ Between 2001 and 2005, Mitutoyo Corporation was implicated in illicit exports of precision measuring devices, which were used to manufacture centrifuges for uranium enrichment. The company shipped these devices to its subsidiaries in Malaysia and Singapore, which were not targets of stringent export controls, and re-exported them illegally to countries seeking nuclear arms. Although the Japanese government charged four Mitutoyo executives with export violations, they received suspended sentences.¹⁰⁹

Australia has also reported a large number of export violations. In August 2008, the Ministry of Defence disclosed 41 known cases in 2005–08 in which Australian companies made illicit sales of sensitive equipment and technology to China, Iran, North Korea, or Russia. Seventeen of these breaches involved the export of dual-use chemicals suitable for the manufacture of chemical weapons, explosives, or missile propellants. Despite the high number of violations, only two cases were prosecuted, both related to the export of military equipment.¹¹⁰

Several recent export violations have involved the smuggling of materials and equipment related to CW production. The U.S. government has sanctioned a Chinese national named Q.C. Chen six times since the late 1990s for exporting CW precursors to Iran in violation of the EAR and the Iran Nonproliferation Act.¹¹¹ On August 9, 2005, BJ Services Company of Texas received an administrative penalty for making 13

106. Glenn Kessler, "Indian Embassy Worker Tied to Arms Conspiracy," *Washington Post*, March 14, 2008, p. A12.

107. *Ibid.*

108. Katsuhisa Furukawa, "Japanese Authorities Target Illicit North Korean Technology Procurement," *WMD Insights*, November 2007, <www.wmdinsights.com/PDF/WMDInsights_Nov07Issue.pdf>.

109. Stephanie Lieggi and Masako Toki, "The Mitutoyo Case: Will Japan Learn from its Mistakes or Repeat Them?" Issue Brief, July 31, 2007, Nuclear Threat Initiative Research Library, <www.nti.org/e_research/e3_90.html>.

110. Philip Dorling, "Firms in Defence Export Breaches," *Canberra Times*, August 16, 2008.

111. Masakatsu Ota, "U.S. Closely Monitoring Asian Chemical Black Market," *Kyodo News International*, June 4, 2007.

shipments of dual-use items related to chemical and biological weapons to various countries without obtaining export licenses.¹¹² In October 2008, Nalco Co. of Naperville, Illinois, was fined \$115,000 for illegal exports of triethanolamine (a precursor of the blister agent nitrogen mustard) to Angola, the Bahamas, and the Dominican Republic in 2003–2006.¹¹³

The difficulty of prosecuting export violations has also persisted. Of the dozens of businessmen, agents, and scientists implicated in the A.Q. Khan nuclear trafficking network, only a small minority have been convicted and sent to prison for their crimes. In October 2008, a German court sentenced engineer Gotthard Lerch to five and a half years in prison for supporting the development of a uranium enrichment plant for Libya's nuclear weapons program, but at least 19 other individuals implicated in the Khan network have been cleared of all charges, released from temporary detention, or—in the case of Khan himself—granted an official pardon.¹¹⁴ In September 2007, Gerhard Wisser, a German engineer living in South Africa, pleaded guilty to participating in the Khan network and agreed to cooperate fully with the investigation. In return, his jail sentence of 18 years was suspended and replaced with three years of house arrest.¹¹⁵ Similarly, in May 2008, the Swiss government announced that it had destroyed electronic files linked to the case against three Swiss nationals implicated in the Khan network, Urs Tinner and his brother and father. The files, including an advanced nuclear weapons design of Pakistani origin, were reportedly destroyed to prevent them from falling into the hands of terrorists, but their absence may undermine the criminal prosecution of the Tinner.¹¹⁶

Given the huge profits to be made through WMD-related trafficking, the light penalties imposed on most members of the Khan network are not sufficient to deter similar violations in the future. Moreover, governments have yet to take legal action against the dozens of second-tier players involved in the Khan network, such as air-freight services, traders, brokers, and banks. Some of these entities were fully aware of the nuclear-trafficking scheme and deserve to be prosecuted.

Policy Recommendations

The persistent gaps in export-control mechanisms described above continue to hamper efforts to prevent the illicit trafficking of WMD-related commodities. The following recommendations aim to enhance the effectiveness of the current system.

112. U.S. Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement, "Major Cases List," April 2008, pp. 4, 6.

113. "Company Fined for Chemical Precursor Exports," *Global Security Newswire*, October 6, 2008.

114. Kenley Butler, Sammy Salama, and Leonard S. Spector, "Special Report: The Khan Network: Where is the Justice?" *Bulletin of the Atomic Scientists*, November/December 2006, p. 27.

115. Deutsche Presse Agentur, "German Engineer Pleads Guilty in South Africa to Nuclear Smuggling," September 4, 2007.

116. Peter Crail, "Swiss Destroy Key A.Q. Khan Evidence," *Arms Control Today*, July/August 2008.

Explore new types of remedies for export-control violations. The demanding legal standard for proving criminal violations of the EAR suggests that new types of remedies are needed in an age of economic globalization. One alternative involves imposing extrajudicial sanctions against entities that traffic in sensitive dual-use commodities. The Iran Nonproliferation Act of 2000, for example, authorizes the U.S. president to levy financial penalties against individuals or organizations known to have provided material aid to Iran's WMD programs.¹¹⁷ Under the act, the Treasury Department has sanctioned several Chinese companies and the middleman Q.C. Chen for exporting dual-use chemicals to Iran and other countries of proliferation concern. In addition, Executive Order 13382, issued in June 2005, allows the Treasury Department, working with other government agencies, to block the U.S. assets of entities that engage in WMD proliferation and those that assist them, as well as the U.S. assets of foreign banks that do not cooperate with such efforts. Other possible sanctions against companies and persons involved in the trafficking of CW precursors could include the denial of export rights to the United States or restrictions on individual travel.

Reform national laws and extradition treaties to cover WMD-related export-control violations. UN Security Council Resolution (UNSCR) 1540 of April 2004, which requires all UN member states to adopt national legislation preventing criminals and terrorists from acquiring WMD, delivery systems, and the materials needed to produce them, may offer a vehicle for stronger export-control measures. To comply fully with UNSCR 1540, states should enact legislation banning trade with non-state actors in WMD-relevant materials and equipment, and amend their extradition treaties to cover export violations. In addition, because UNSCR 1540 was adopted under Chapter VII of the UN Charter, export violations involving WMD or WMD-related materials may be evolving into a definable component of the international crime of aggression, although there is not yet any international consensus on this point.

Amend U.S. law to facilitate undercover operations. As demonstrated by the Walaschek case, undercover operations are an effective means of gathering evidence of export violations. Current U.S. law creates significant hurdles to undercover operations by requiring presidential approval for the export of licensable goods to the subject of an investigation. Often a trafficker who is the target of a sting operation wants to conduct a transaction involving a less sensitive commodity to test the ability of a supplier to provide the desired goods. In such cases, the fact that ICE undercover agents may not deliver the item in question without obtaining approval at the highest level, which is difficult and time-consuming, leads them to arrest and prosecute the small fish (middlemen and brokers) rather than the big fish (end-users and financiers). Allowing undercover agents to deliver licensable technologies under certain circumstances would enhance ICE's ability to dismantle entire proliferation

117. Matthew Rice, "Clinton Signs 'Iran Nonproliferation Act,'" *Arms Control Today*, April 2000.

networks. Moreover, delegating approval authority to the secretary of DHS would significantly streamline the process.

Reorganize the U.S. bureaucracy for licensing exports of dual-use commodities. Many specialists believe that the current interagency process for reviewing export license applications, which divides review authority among the Departments of Commerce, State, Defense, and Energy, is overly complex and ineffective because it is plagued by persistent interagency conflicts and turf battles. Given these drawbacks, it would be desirable to centralize responsibility for export administration in a single U.S. government agency. Since the late 1990s, proposals have been made to consolidate the export licensing process in the U.S. Trade Representative's Office (USTR), which is responsible for macroeconomic trade policy and negotiations. But although USTR has no conflicts of interest with respect to export controls, it does not appear to have the necessary expertise. Another option would be to create a U.S. Department of Trade that develops and implements trade policies on both a macro and micro level. This department could include a new export-control agency that is responsible for licensing civil nuclear, dual-use, and Munitions List items and integrates resources, budgets, and technical expertise that are currently scattered throughout the U.S. government.

Reorganize the U.S. government bureaucracy for enforcing export regulations. When the former U.S. Customs Service was incorporated into DHS in November 2002, it was split into two separate bureaus, ICE and CBP. Both bureaus have other high-profile missions that constrain their ability to enforce export controls effectively—ICE is responsible for immigration control and CBP for border protection. In addition, ICE must enforce import duties and tariffs, which often take priority because they generate revenue for the federal government, whereas export enforcement does not. Seasoned ICE investigators draw on years of experience to ferret out export violations amid the huge volume of legitimate chemical trade. As a result of the DHS reorganization, however, many experienced customs agents have become demoralized and left the federal service, and others are waiting to retire. One solution to this problem would be to reunite the two halves of the former U.S. Customs Service into a specialized agency that is separate from the immigration and border-protection missions of DHS.

Improve cooperation with foreign customs services. The United States cannot prevent CW proliferation on its own but must cooperate with other like-minded states—both inside and outside the Australia Group—to limit the availability of dual-use chemicals and production equipment. U.S. customs investigators often work closely with foreign law enforcement agencies when conducting overseas document searches, arrests, and extradition requests. The more countries are aware of the trafficking of CW precursors and have effective laws in place to counter it, including criminal sanctions and extradition treaties, the better the

odds of success. Multilateral bodies such as the World Customs Organization and the International Air Transport Association can also play a useful role in coordinating export-control practices and procedures.

Show greater U.S. leadership on export controls. For the past several years, the United States has failed to demonstrate international leadership in the effective enforcement of chemical export controls. The next administration should cooperate more effectively with other members of the Australia Group to implement fully the “catch-all” and “no-undercut” policies, share actionable intelligence on trafficking networks, and be responsive to what other countries bring to the table.

Conclusions

The historical cases of Frans van Anraat and Peter Walaschek provide insights into the nature of international trafficking networks for CW precursors, including the strategies that traffickers use to circumvent export controls and avoid detection. Although the cases are now two decades old, traffickers continue to use the same basic ploys, which are surprisingly effective. In order to counter these techniques and prevent CW proliferation, the United States and other like-minded countries must take practical steps at both the national and international levels to strengthen controls on the export of dual-use chemicals.

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