



Testimony

Before the Subcommittee on the Middle East and North Africa, Committee on Foreign Affairs, House of Representatives

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NONPROLIFERATION

State Needs to Establish a Reporting Process That Would Minimize the Delays That May Affect Sanctions on Trade with Iran, North Korea, and Syria

Statement of Thomas Melito, Director
International Affairs and Trade

Chairman Ros-Lehtinen, Ranking Member Deutch, and Members of the Subcommittee:

I am pleased to be here to discuss our work regarding the Department of State's (State) implementation of the Iran, North Korea, and Syria Nonproliferation Act, which is referred to as INKSNA.¹ The United States uses export control regimes and sanctions, such as those found in INKSNA, to combat weapons of mass destruction (WMD) proliferation by restricting exports of sensitive goods, services, and technologies and to punish those persons that violate such restrictions.² According to State officials, INKSNA is an important and flexible tool in their efforts to address the threat of WMD and missile proliferation.

INKSNA requires the President to transmit a report to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs every 6 months in which she or he identifies foreign persons for which there is credible information indicating that those persons have transferred to, or acquired from, Iran, North Korea, or Syria certain WMD or conventional or missile-related items.³ INKSNA also authorizes the President to impose sanctions on foreign persons identified in the reports. The President has delegated INKSNA authorities to the Department of State, and the Deputy Secretary of State is responsible for making sanctions determinations and authorizing delivery to the two cognizant congressional committees. From 2006 to May 2015, State imposed sanctions on 82 foreign persons located in 10 nations, including China,

¹Iran, North Korea, and Syria Nonproliferation Act (Pub. L. No. 106-178, §§ 1-7, 114 Stat. 38, Mar. 14, 2000 [codified as amended at 50 U.S.C. § 1701 note]).

²For purposes of INKSNA, a "person" is (1) a natural person that is an alien; (2) a corporation, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group, that is organized under the laws of a foreign country or has its principal place of business in a foreign country; (3) any foreign government, including any foreign governmental entity; and (4) any successor, subunit, or subsidiary of any entity described above, including any entity in which any entity described in any such subparagraph owns a controlling interest.

³These items include goods, services, or technology listed on four multilateral export control regimes and a treaty, as well as other goods, services, or technology having the potential to make a material contribution to the development of nuclear, biological, chemical, or conventional weapons, or of ballistic or cruise missile systems.

Iran, Syria, North Korea, Sudan, and Russia.⁴ Once imposed, INKSNA sanctions are in effect for 2 years at State's discretion.

My testimony summarizes our May 2015 report on State's implementation of INKSNA.⁵ In this report, we (1) examined State's timeliness in providing INKSNA reports, (2) reviewed State's reporting process, and (3) identified the potential impact of State's reporting timeliness on its imposition of sanctions. To do so, we reviewed INKSNA and related legislation, as well as the six INKSNA reports provided by State to the two cognizant committees between 2006 and the present time. We also obtained documents and interviewed officials from the office within State responsible for producing the reports—the Office of Missile, Biological, and Chemical Nonproliferation in the Bureau of International Security and Nonproliferation (ISN/MBC). All of our work was performed in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our review resulted in the following findings. State is not providing reports to congressional committees every 6 months as required by INKSNA and it has not established a process that would allow it to do so. State's current process limits its ability to minimize the time required to impose INKSNA sanctions.

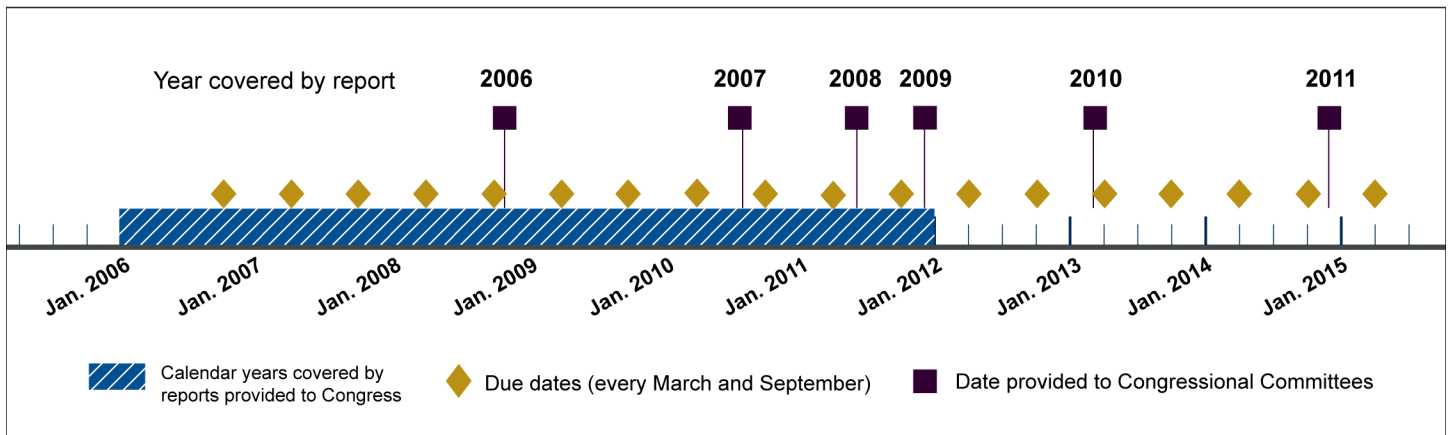
⁴The measures include prohibitions on U.S. government (1) procurement of goods or services from the person and a ban on imports of products produced by that person, except to the extent the Secretary of State otherwise may determine; (2) provision of assistance, except to the extent the Secretary of State otherwise may determine; and (3) sales of any item on the U.S. Munitions List, and the termination of any ongoing sales of any defense articles, defense services, or design and construction services controlled under the Arms Export Control Act.

⁵GAO, *Nonproliferation: State Should Minimize Reporting Delays That May Affect Sanctions on Trade with Iran, North Korea, and Syria*, [GAO-15-519](#) (Washington, D.C.: May 22, 2015).

State Is Not Providing Reports to Congressional Committees Every 6 Months as Required by INKSNA

State is not providing reports to congressional committees in accordance with INKSNA's 6-month reporting requirements. Since 2006, it has provided six reports covering a 6-year period (2006 through 2011), instead of the 18 reports covering a 9-year period (2006 through 2014) required by INKSNA. State provided these six reports at irregular intervals averaging 16 months. It provided its most recent report in December 2014, 22 months after its prior report (see fig. 1).

Figure 1: Timeliness of State's INKSNA Reports, 2006-2015



Source: GAO analysis of State data. | GAO-15-703T

State's Process Requires on Average More than 2 Years to Complete a Report

State has not established a process that would allow it to comply with INKSNA's 6-month reporting cycle. It uses a complex and lengthy process that involves multiple interagency and internal reviews to compile credible information about a group of reportable transfers that first came to its attention in a single calendar year, and to determine whether to impose sanctions on foreign persons associated with those transfers.

According to officials in ISN/MBC, State's process for implementing INKSNA begins every December, when ISN/MBC, working with other agencies and the Intelligence Community, compiles a list of transfers that first came to the attention of four State-led interagency working groups during the previous calendar year. Next, State provides the list to the Intelligence Community and then to other involved government agencies, who then provide advice at an interagency meeting. Following reviews by

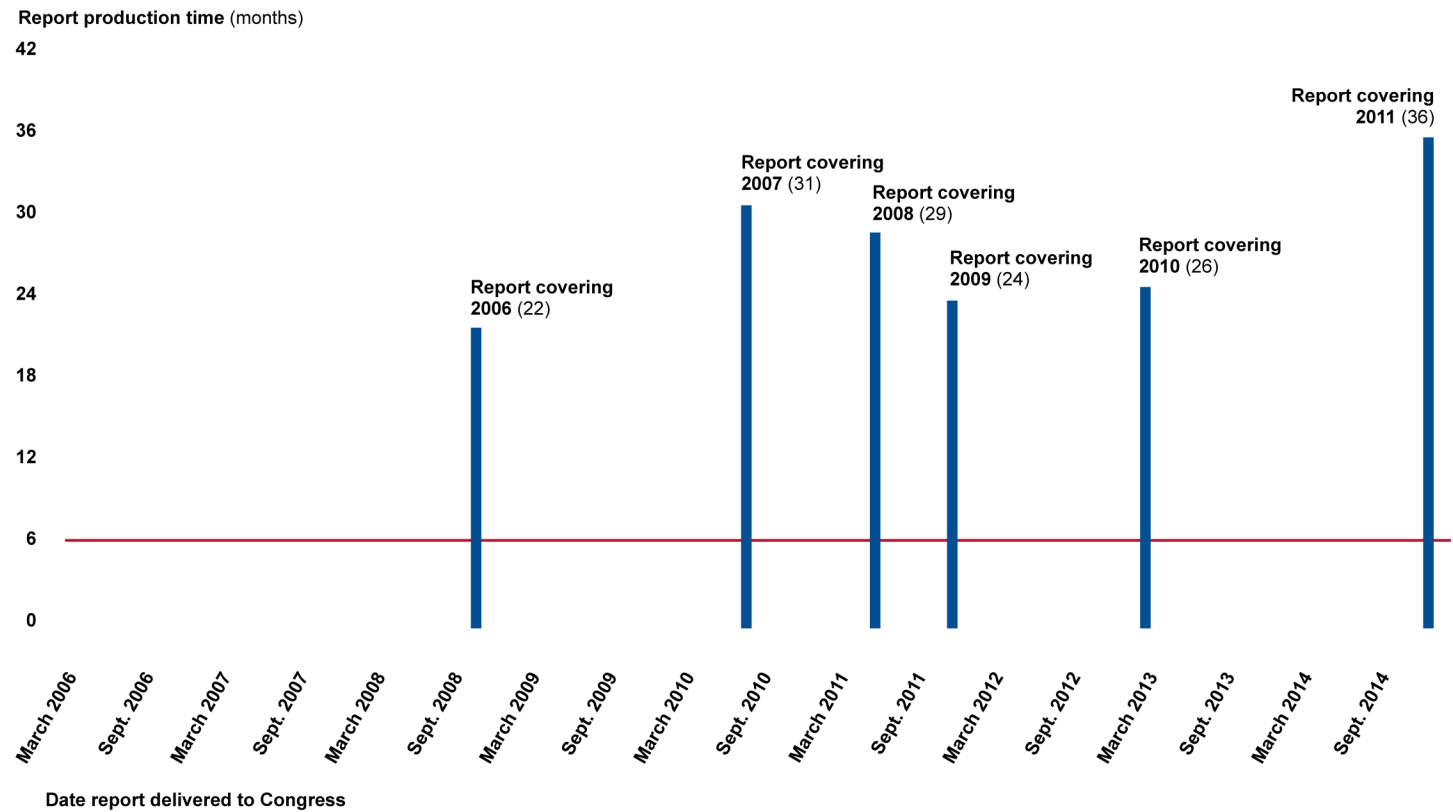
State's geographic and functional bureaus, ISN/MBC sends an action memo to the Deputy Secretary of State for his or her final determination as to which transfers to include in the report and which persons to sanction in connection with those transfers.⁶ State officials then complete the report, provide it to the cognizant congressional committees, and arrange to have sanctions notices published in the Federal Register.

Under this process, State does not provide a report to the committees until it has resolved concerns it may have regarding any of the transfers in the annual group covered in the report and determined whether to sanction persons associated with any of those transfers. As a result, a single problematic case can delay State's provision of a report, which may include other INKSNA-reportable transfers that State may be otherwise ready to report to Congress. Moreover, State's process requires officials to begin preparing a new report every December, regardless of whether they have completed and provided all previous reports. As a result, they must manage the preparation of a backlog of multiple draft reports, each addressing a different year. For example, State data indicate that in the last 6 months of 2014, State officials were simultaneously managing the preparation of three draft reports, covering calendar years 2011, 2012, and 2013. State officials have told us that they sometimes must delay work on one report to work on another.

State's delays in reporting on transfers and acquisitions have recently increased. As shown in figure 2, State provided its report on transfers that first came to its attention in 2010, 26 months after the end of 2010, while it provided its report on transfers that first came to its attention in 2011, 36 months after the end of 2011. State's draft report on transfers it first learned of in 2012 is now in its 31st month of preparation and, as of April 2015, had fallen 9 months behind the pace set by its predecessor.

⁶State also may take other actions, such as sending notices (démarches) or cables alerting countries where the sanctioned entities reside or are located.

Figure 2: State’s Delays in Reporting on Transfers and Acquisitions Reportable under the Iran, North Korea, and Syria Nonproliferation Act (INKSNA), 2006-2014



Source: GAO analysis of State data. | GAO-15-703T

The longest stages of State’s process largely involve its internal reviews (see table 1). For example, the Deputy Secretary required more than a year to review the action memo for transfers State learned of in 2011 and to make sanctions determinations. As a result, State did not provide the report addressing those transfers until December 2014.

Table 1: Iran, North Korea, and Syria Nonproliferation Act (INKSNA) Report Production Time (months)

Period covered in report	Transfer evaluation and compilation ^a	Intelligence Community fact check and clearance	Transfer package distribution and interagency discussion ^a	State bureaus' review and drafting of action memo ^a	Deputy Secretary review and determination ^a	Report finalized, sent to Congress; sanctions notice published ^a	Total production time
2007	13	3	10	4	3	<1	32
2008	8	3	8	6	4	<1	30
2009	16	2	2	2	1	1	25
2010	10	2	3	6	4	2	27
2011	5	2	10	4	13	5	37
Average 2007-2011	10	2	7	4	5	1	30

Source: GAO analysis of State data. | GAO-15-703T

Note: Production times have been rounded to the nearest month.

^aReport production step that is wholly or largely within State's internal review process.

State's Process Limits Its Ability to Minimize the Time Required to Impose INKSNA Sanctions

By not complying with INKSA's 6-month reporting cycle, State may have limited its ability to minimize delays in choosing to impose INKSNA sanctions. INKSNA requires State to identify foreign persons in a report before it can impose sanctions on them. INKSNA's time frames would allow State to impose such sanctions between 6 and 12 months after it first obtained credible information of a foreign person's involvement in a reportable transfer. For example, if State decided to sanction a person for a reported transfer or acquisition it had first learned about between January 1 and June 30 of 2011, the sanction would be effective no later than December 2011, if State had identified that person in a report provided to the committees in September 2011—as required by INKSNA. Under State's process, however, the actual interval between the transfer and the opportunity to impose a sanction has been considerably longer. For example, State did not impose sanctions on 23 foreign persons for transfers it first learned of in calendar year 2011 until December 2014. It could not do so earlier because it did not provide its report addressing all 2011 transfers until December 2014, between 36 and 48 months later.

Our Recommendation and State's Response

Our recommendation is that the Secretary of State should reconsider State's INKSNA process to ensure that it (1) complies with INKSNA's 6-month reporting cycle and (2) minimizes delays in its ability to opt to impose sanctions. State officials concurred with our recommendation. However, in commenting on our findings, they expressed three concerns:

First, State officials commented that our report does not take into account the inherent difficulties of meeting what they characterized as the law's tight deadlines and the substantial increase in scope of reportable activity. In response, we note that INKSNA's scope has not changed since 2006 and that the time State's process requires to provide the reports to the committees has increased since 2006. Our report demonstrates that State should consider more efficient processes for meeting INKSNA's deadlines. Under its current process, for example, State's practice of reporting transfers in entire groups could allow a single problematic transfer to delay the reporting of other transfers that State may have already investigated and vetted.

Second, State officials commented that our report does not place sufficient priority on the need for careful preparation and thorough vetting. We recognize that State must carefully prepare and thoroughly vet each INKSNA report and that some transfers may require several years to investigate and vet. Again, we note that State's process can allow a single problematic transfer to delay State's reporting of other transfers that it may have already investigated and vetted.

Finally, State officials commented that our report assumes that State's expedient of reporting annually instead of every 6 months is a key driver of the backlog. Our response is that while the report highlights State's decision to attempt to submit reports annually instead of every 6 months as required by INKSNA, it does not assume that that decision is the key driver of State's growing backlog. The report instead calls attention to State's current process, which could allow a single problematic case in a group to delay its reporting on other transfers within that group.

Chairman Ros-Lehtinen, Ranking Member Deutch, Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

GAO Contact and Staff Acknowledgments:

For further information about this testimony, please contact Thomas Melito, Director, International Affairs and Trade at (202) 512-9601 or melitot@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Pierre Toureille (Assistant Director), B. Patrick Hickey, Jennifer Young, Ashley Alley, Tina Cheng, Debbie Chung, Justin Fisher, and Judy McCloskey.

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