

December 2006

# EXPORT CONTROLS

## Challenges Exist in Enforcement of an Inherently Complex System





Highlights of [GAO-07-265](#), a report to congressional committees

## Why GAO Did This Study

Each year, billions of dollars in dual-use items—items that have both commercial and military applications—as well as defense items are exported from the United States. To protect U.S. interests, the U.S. government controls the export of these items. A key function in the U.S. export control system is enforcement, which aims to prevent or deter the illegal export of controlled items.

This report describes the roles, responsibilities, and authorities of export control enforcement agencies, identifies the challenges these agencies face, and determines if information on enforcement outcomes is provided to the export control agencies. GAO's findings are based on an examination of statutes, interagency agreements, and procedures; interviews with enforcement officials at selected field locations and headquarters; and an assessment of enforcement information.

## What GAO Recommends

GAO is recommending that the enforcement agencies take several actions aimed at improving coordination and remedying other weaknesses in export control enforcement. The departments generally agreed with the need for coordination but noted some differences in possible approaches. They also indicated certain actions are under way to address some of our recommendations.

[www.gao.gov/cgi-bin/getrpt?GAO-07-265](http://www.gao.gov/cgi-bin/getrpt?GAO-07-265).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Ann Calvaresi-Barr at (202) 512-4841 or [calvaresi-barra@gao.gov](mailto:calvaresi-barra@gao.gov).

# EXPORT CONTROLS

## Challenges Exist in Enforcement of an Inherently Complex System

### What GAO Found

The enforcement of export control laws and regulations is inherently complex, involving multiple agencies with varying roles, responsibilities, and authorities. The agencies within the Departments of Commerce, Homeland Security, Justice, and State that are responsible for export control enforcement conduct a variety of activities, including inspecting items to be exported, investigating potential export control violations, and pursuing and imposing appropriate penalties and fines against violators. These agencies' enforcement authorities are granted through a complex set of laws and regulations, which give concurrent jurisdiction to multiple agencies to conduct investigations.

Enforcement agencies face several challenges in enforcing export control laws and regulations. For example, agencies have had difficulty coordinating investigations and agreeing on how to proceed on cases. Coordination and cooperation often hinge on the relationships individual investigators across agencies have developed. Other challenges include obtaining timely and complete information to determine whether violations have occurred and enforcement actions should be pursued, and the difficulty in balancing multiple priorities and leveraging finite human resources.

Each enforcement agency has a database to capture information on its enforcement activities. However, outcomes of criminal cases are not systematically shared with State and Commerce, the principal export control agencies. State and Commerce may deny license applications or export privileges of indicted or convicted export violators. Without information on the outcomes of criminal cases, export control agencies cannot gain a complete picture of an individual or a company seeking export licenses or discover trends in illegal export activities.

This report is a publicly releasable version of a law enforcement sensitive report we issued on November 15, 2006. Therefore, some examples that involved law enforcement techniques or methods and that support our findings have been removed from this version.

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## Abbreviations

AUSA	Assistant U.S. Attorney
CBP	Customs and Border Protection
FBI	Federal Bureau of Investigation
ICE	Immigration and Customs Enforcement
OEE	Office of Export Enforcement

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United States Government Accountability Office  
Washington, DC 20548

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December 20, 2006

The Honorable Henry J. Hyde  
Chairman  
Committee on International Relations  
House of Representatives

The Honorable F. James Sensenbrenner, Jr.  
Chairman  
Committee on the Judiciary  
House of Representatives

Each year, billions of dollars in “dual-use” items—which have both commercial and military applications—and defense items are exported from more than 300 U.S. sea, air, and land ports. To protect national security, foreign policy, and economic interests, the U.S. government controls the export of these items.<sup>1</sup> The Departments of Commerce and State are principally responsible for regulating the export of dual-use and defense items, respectively.

A key function in the U.S. export control system is enforcement, which consists of various activities that aim to prevent or deter the illegal export of controlled defense and dual-use items and can result in apprehending violators and pursuing and imposing appropriate criminal and administrative penalties, such as imprisonment, fines, denials of export privileges, or debarment. Enforcement activities—which include inspections, investigations, and punitive actions against violators of export control laws—are largely carried out by the Departments of Commerce, Homeland Security, Justice, and State. Enforcement activities can result in various outcomes. One recent case resulted in four business owners pleading guilty to illegally exporting defense items, including radars and smart weapons, to Chinese government-owned entities. Three were sentenced to prison, and all had to collectively forfeit almost \$400,000, which represents their revenue from the illegal exports.

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<sup>1</sup>For the purposes of this report, “items” refers collectively to commodities, software, technology, and services.

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Attempts continue to be made by individuals, companies, terrorist organizations, and countries of concern<sup>2</sup> to illegally obtain defense and dual-use items. In light of this, you asked us to review export control enforcement activities. In response, we (1) described the roles, responsibilities, and authorities of the agencies responsible for export control enforcement; (2) identified any challenges the agencies face in enforcing export control laws and regulations; and (3) assessed whether information on enforcement outcomes is provided to the export control agencies to inform the export control process and licensing decisions. This report is a publicly releasable version of a law enforcement sensitive report we issued on November 15, 2006. Therefore, some examples that involved law enforcement techniques or methods and that support our findings have been removed from this version.

To conduct our work, we identified enforcement roles, responsibilities, and authorities through an examination of export control statutes, regulations, formal interagency agreements, policies, procedures, and operating manuals. We interviewed agency officials at headquarters and selected field locations responsible for export enforcement—including inspectors<sup>3</sup> and investigators from the Department of Homeland Security, investigators from the Department of Commerce, investigators and criminal prosecutors from the Department of Justice, and compliance officers from the Department of State—about enforcement activities and challenges. We also identified export control enforcement information maintained at the various agencies and spoke with State licensing and policy officials and Commerce officials to assess whether they obtain this information for decision making. We performed our review from September 2005 through August 2006 in accordance with generally accepted government auditing standards. For more on our scope and methodology, see appendix I.

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## Results in Brief

Export control enforcement is inherently complex, involving multiple agencies that perform various functions using differing authorities. Several agencies within the Departments of Commerce, Homeland Security, Justice, and State are primarily responsible for export control

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<sup>2</sup>“Countries of concern” refers to those countries that the U.S. government believes may support terrorism or contribute to the proliferation of weapons of mass destruction.

<sup>3</sup>Inspections are primarily conducted by Homeland Security’s Customs and Border Protection officers.

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enforcement. These enforcement agencies conduct a variety of activities, including inspecting items to be exported, investigating potential export control violations, and pursuing and imposing appropriate criminal and administrative penalties. These agencies' enforcement authorities are granted through a complex set of laws and regulations, which give concurrent jurisdiction to Commerce, Homeland Security, and Justice's Federal Bureau of Investigation (FBI) to conduct investigations of potential violations of export control laws for dual-use items, and to Homeland Security and the FBI to investigate potential defense item violations.

Enforcement agencies face several challenges in enforcing export control laws and regulations. For example, agencies have had difficulty coordinating investigations and agreeing on how to proceed on cases. Agreements for coordinating investigations do not exist among all the various agencies, and coordination and cooperation often hinge on the relationships developed by individual investigators from the various agencies. Some enforcement activities have also been affected by license determinations, which are used to confirm whether an item is controlled and requires a license and thereby confirm whether an export violation has occurred. State and Commerce officials said they need complete and accurate information from inspectors and investigators to make correct determinations. In some instances, inspectors and investigators said the time it takes to obtain a determination or changes in determinations has affected their enforcement activities. Other challenges that enforcement agencies face include balancing priorities and leveraging finite resources.

Criminal indictments and convictions are key to informing the export control process and licensing decisions. While enforcement agencies have databases to capture information relating to their own export enforcement activities, neither State nor Commerce systematically receives from Justice notification of the outcomes of criminal cases, including indictments and convictions for both defense and dual-use items and, therefore, lacks the full scope of information on individuals and companies that have been prosecuted. Such information is needed, in part, because indicted or convicted exporters may have their license applications or export privileges denied. Without outcomes of criminal cases, export control agencies may not gain a complete picture of individuals or companies seeking export licenses or trends in illegal export activities.

We are recommending that the Departments of Commerce, Homeland Security, Justice, and State take a number of actions to improve

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coordination and licensing determination efforts and facilitate information sharing of enforcement outcomes with the export control agencies within State and Commerce. In commenting on a draft of this report, Commerce, Homeland Security, and State generally agreed with the need for coordination but some noted differences in possible approaches. In some instances, they indicated that actions to address our recommendations were already under way. Justice did not provide formal comments, and Defense had no comments on the draft report. Commerce, Homeland Security, Justice, and State provided technical comments, which we incorporated in this report as appropriate.

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## Background

The U.S. government's control over the export of defense and dual-use items is intended to ensure that U.S. interests are protected in accordance with the Arms Export Control Act and the Export Administration Act.<sup>4</sup> The U.S. government's control over the export of defense and dual-use items is primarily divided between two departments—State and Commerce, respectively (see table 1)—with support for enforcement activities primarily from Commerce, through its Bureau of Industry and Security's Office of Export Enforcement (OEE); Department of Homeland Security, through its Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE); and Justice, through the FBI and the U.S. Attorneys Office.<sup>5</sup>

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<sup>4</sup>22 U.S.C. § 2751 et seq. and 50 U.S.C. App. § 2401 et seq. The Export Administration Act is not permanent legislation. 50 U.S.C. App. § 2419. Authority granted under the act lapsed in August 2001. However, Executive Order 13222, Continuation of Export Control Regulations, which was issued in August 2001 under the authority provided by the International Emergency Economic Powers Act (50 U.S.C. §§1701 et seq.), continues the controls established under the act, and the implementing Export Administration Regulations. Executive Order 13222 requires an annual extension and was recently renewed by Presidential Notice on August 3, 2006. 71 Fed. Reg. 44551.

<sup>5</sup>Other departments, including Defense and Energy, may provide technical expertise on items to enforcement agencies. Also, Defense and the military services have investigative units that may provide support to the enforcement agencies.



**Table 1: Agencies, Laws, and Regulations Governing Export Control of Defense and Dual-Use Items**

	<b>Defense items</b>	<b>Dual-use items</b>
<b>Regulating agency</b>	State's Directorate of Defense Trade Controls	Commerce's Bureau of Industry and Security
<b>Enforcement agencies</b>	CBP, ICE, FBI, <sup>a</sup> and U.S. Attorneys Office	CBP, OEE, ICE, FBI, <sup>a</sup> and U.S. Attorneys Office
<b>Statute</b>	Arms Export Control Act	Export Administration Act /International Emergency Economic Powers Act
<b>Implementing regulations</b>	International Traffic In Arms Regulations	Export Administration Regulations
<b>Control list</b>	U.S. Munitions List specifies the defense articles, services, and related technical data to be controlled	Commerce Control List specifies dual-use items and technologies to be controlled

Source: GAO analysis of export control laws, regulations, and agency information.

<sup>a</sup>FBI investigates criminal violations of law in certain foreign counterintelligence areas.

State and Commerce require exporters to identify items that are on the departments' control lists and to obtain license authorization from the appropriate department to export these items, unless an exemption applies. Exemptions are permitted under various circumstances, such as allowing for the export of certain items to Canada without a license. Many dual-use items are exempt from licensing requirements. While items can be exempt from licensing requirements, they are still subject to U.S. export control laws. Because exporters are responsible for complying with export control laws and regulations, regulatory and investigative enforcement agencies conduct outreach to educate exporters on these laws and regulations. When shipping controlled items, exporters are required to electronically notify CBP officials at the port where the item will be exported, including information on the quantity and value of the shipment, the issued export license number, or an indication that the item is exempt from licensing requirements.<sup>6</sup>

Export enforcement aims to ensure U.S.-controlled items do not fall into the wrong hands and to limit the possibility that illegal exports will erode U.S. military advantage. Export enforcement involves inspecting items to be shipped, investigating potential violations of export control laws, and

<sup>6</sup>Exporters are required to electronically notify CBP officers of items to be shipped through the Automated Export System, which is maintained by the Census Bureau.

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punishing export control violators.<sup>7</sup> When inspectors, investigators, and prosecutors have questions about whether an item is controlled and requires a license, they request a license determination.<sup>8</sup> CBP and ICE request license determinations through ICE's Exodus Command Center,<sup>9</sup> which refers the request to State and Commerce; OEE requests determinations directly from Commerce licensing officers. Some FBI agents request license determinations through the Exodus Command Center, while others make such requests directly to State or Commerce.

In fiscal year 2005, Department of Justice data showed that there were more than 40 individuals or companies convicted of over 100 criminal violations of export control laws.<sup>10</sup> State reported over \$35 million and Commerce reported \$6.8 million in administrative fines and penalties for fiscal year 2005. See appendix II for a list of selected export control cases.

For more than a decade, we have reported on a number of weaknesses and vulnerabilities in the U.S. export control system and made numerous recommendations, several of which have not been implemented. For example, in September 2002, we reported that Commerce improperly classified some State-controlled items as Commerce-controlled, increasing the risk that defense items would be exported without the proper level of

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<sup>7</sup>Enforcement activities can also include reviewing disclosures by exporters of possible export control violations, prelicense checks, and postshipment verifications. See GAO, *Export Controls: Post-Shipment Verification Provides Limited Assurance That Dual-Use Items Are Being Properly Used*, [GAO-04-357](#) (Washington, D.C.: Jan. 12, 2004), and GAO, *Defense Trade: Arms Export Control System in the Post 9/11 Environment*, [GAO-05-234](#) (Washington, D.C.: Feb. 16, 2005.)

<sup>8</sup>Commerce, upon request, can provide an initial license determination based on a review of data gathered by licensing officers and investigators/inspectors to determine whether an item requires a license. Commerce will also provide a certified license determination for use as evidence such as in criminal trials. State, also upon request, can provide an initial license determination based on available information. State also undertakes a second-level or pretrial review, which is an in-depth examination of a commodity, defense service, or brokering activity to verify whether it is covered by the Arms Export Control Act or its implementing regulations. Finally, State can provide a trial certification for use in criminal proceedings.

<sup>9</sup>The Exodus Command Center was established in 1982 as the single point of contact for investigators and inspectors in the field needing operational support from export control agencies. For example, it responds to inquiries for export licensing verifications by contacting export control agencies within State and Commerce.

<sup>10</sup>Convictions may cover more than one violation.

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review and control to protect national interests.<sup>11</sup> In June 2006, we reported that this condition remains unchanged and that Commerce has not taken the corrective actions that we recommended in 2002.<sup>12</sup> We have also reported on long-standing problems in enforcement, including poor cooperation among the investigative agencies.<sup>13</sup>

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## Export Control Enforcement Is Complex, Involving Varying Roles, Responsibilities, and Authorities among Multiple Agencies

Enforcing U.S. export control laws and regulations is inherently complex.<sup>14</sup> Multiple agencies are involved in enforcement and carry out various activities, including inspecting shipments, investigating potential export control violations, and taking punitive actions that can be criminal or administrative against violators of export control laws and regulations. Authorities for export control enforcement are provided through a complex set of laws and regulations. These authorities and some overlapping jurisdiction for conducting enforcement activities add to the complexity.

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## Multiple Agencies Are Responsible for Export Enforcement

Enforcement—which includes inspections, investigations, and punitive actions against violators of export control laws—is largely conducted by various agencies within Commerce, Homeland Security, Justice, and State depending on the facts and circumstances of the case. These agencies' key enforcement responsibilities are shown in table 2.

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<sup>11</sup>GAO, *Export Controls: Processes for Determining Proper Control of Defense-Related Items Need Improvement*, [GAO-02-996](#) (Washington, D.C.: Sept. 20, 2002).

<sup>12</sup>GAO, *Export Controls: Improvement to Commerce's Dual-Use System Needed to Ensure Protection of U.S. Interests in the Post-9/11 Environment*, [GAO-06-638](#) (Washington, D.C.: June 26, 2006).

<sup>13</sup>GAO, *Export Controls: Actions Needed to Improve Enforcement*, [GAO/NSIAD-94-28](#) (Washington, D.C.: Dec. 30, 1993), and GAO, *Export Control Regulation Could Be Reduced Without Affecting National Security*, [GAO/ID-82-14](#) (Washington, D.C.: May 26, 1982).

<sup>14</sup>Adding to the complexity is the sale of defense items through the U.S. government's Foreign Military Sales program, which are subject to a different process and inspection procedures than those items sold directly by the exporter and subject to State's export control system.

**Table 2: Enforcement Agencies and Primary Activities**

Agency	Inspection at U.S. ports <sup>a</sup>	Investigation	Punitive action <sup>b</sup>
<b>Commerce</b>			
Bureau of Industry and Security			●
Office of Export Enforcement		●	
<b>Homeland Security</b>			
Customs and Border Protection	●		
Immigration and Customs Enforcement		●	
<b>Justice</b>			
U.S. Attorneys Office			●
Federal Bureau of Investigation		●	
<b>State</b>			
Directorate of Defense Trade Controls			●

Source: GAO analysis of information provided by each agency.

<sup>a</sup>CBP and ICE both have the authority to conduct inspections at U.S. ports, but CBP has a primary role in this area.

<sup>b</sup>For purposes of this report, punitive actions can be either criminal or administrative against potential violators of export control laws and regulations. Criminal actions taken against violators of export control laws and regulations can result in imprisonment, fines, forfeitures, and other penalties. Administrative actions against violators can include fines, suspension of an export license, or denial or debarment from exporting.

Inspections of items scheduled for export are largely the responsibility of CBP officers at U.S. air, sea, and land ports, as part of their border enforcement responsibilities. To help ensure that these items comply with U.S. export control laws and regulations, CBP officers check items against applicable licenses prior to shipment, selectively conduct physical examinations of cargo at the port and in warehouses, review shipping documents, detain questionable shipments, and seize items being exported illegally. As part of their responsibilities, CBP officers are required by State to decrement (reduce) the shipment’s quantity and dollar value from the total quantity and dollar value authorized by the exporter’s license.<sup>15</sup> This process helps to ensure that the shipment does not exceed what is authorized and that the license has not expired. However, Commerce does

<sup>15</sup>International Traffic in Arms Regulations, 22 C.F.R. §123.22 (a) and (c)(1) (2006).

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not require CBP officers to decrement Commerce licenses.<sup>16</sup> Commerce officials said they have shipping tolerances that allow exporters to ship controlled items exceeding the quantity and value approved in a license, but this varies based on the controlled item. CBP officers do not currently have a formal means for determining if exporters have exceeded authorized license quantities and values for dual-use items within any shipment tolerances permitted for that controlled item. As a result, they cannot ensure accountability on the part of exporters or that Commerce regulations have been properly followed. CBP has an automated export system, which is used for decrementing State licenses. This system has built-in tolerances to allow the shipment to exceed the total value of a State license by 10 percent, as permitted by regulations.<sup>17</sup>

Investigations of potential violations of export control laws for dual-use items are conducted by agents from OEE, ICE, and FBI. Investigations of potential export violations involving defense items are conducted by ICE and FBI agents. FBI has authority to investigate any criminal violations of law in certain foreign counterintelligence areas.<sup>18</sup> The investigative agencies have varying tools such as undercover operations and overseas investigations for investigating potential violations<sup>19</sup> and establishing cases for potential criminal or administrative punitive actions.

Punitive actions, which are either criminal or administrative, are taken against violators of export control laws and regulations. Criminal violations are those cases where the evidence shows that the exporter willfully and knowingly violated export control laws. U.S. Attorneys Offices prosecute criminal cases in consultation with Justice's National Security Division. These cases can result in imprisonment, fines, forfeitures, and other penalties. Punitive actions for administrative violations can include fines, suspension of an export license, or denial or

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<sup>16</sup>According to Commerce officials, exporters in the past were required to decrement Commerce licenses as shipments were made and submit the decremented licenses to the department. While Commerce no longer requires exporters to submit decremented licenses, Commerce requires exporters to retain shipment records for possible inspection by the department. State also requires exporters to retain shipment records.

<sup>17</sup>International Traffic in Arms Regulations, 22 C.F.R. §123.23 (2006).

<sup>18</sup>See 28 C.F.R. § 0.85(d), 69 Fed. Reg. 65542.

<sup>19</sup>OEE currently does not have the same investigative authorities as ICE and FBI. However, legislation has been proposed (H.R. 4572) that, if enacted, would provide OEE with additional investigative authorities.

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debarment from exporting, and are imposed primarily by State<sup>20</sup> or Commerce, depending on whether the violation involves the export of a defense or a dual-use item. In some cases, both criminal and administrative penalties can be levied against an export control violator.

The export control and investigative enforcement agencies also conduct outreach activities, primarily educating exporters on U.S. export control laws and regulations. For example, in fiscal year 2005, ICE agents conducted more than 1,500 industry outreach visits around the country. Outreach activities can include seminars and programs, specialized training, publications, advice lines, Web sites, and individual meetings with industry, academia, and other government agencies. These activities can result in companies self-disclosing violations, tips and reports of potential violations by others, and cooperation in investigations and intelligence gathering.

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### Enforcement Authorities Are Granted through Various Laws and Regulations

Authorities for export control enforcement are provided through a complex set of laws and regulations. For defense items, authorities are granted under the Arms Export Control Act, the Department of Justice Appropriations Act of 1965, the USA Patriot Improvement and Reauthorization Act, and the Foreign Wars, War Materials and Neutrality Act. These statutes and the regulations stemming from them give concurrent jurisdiction for investigations to ICE and FBI (see fig. 1).

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<sup>20</sup>In addition, State officials said a company, as part of the terms of an agreement with State, can conduct audits to ensure compliance or assign a special compliance officer to oversee remediation efforts and conduct in-depth reviews of violations at the company.

**Figure 1: Authorities for Defense Items**

<b>Arms Export Control Act (22 U.S.C. § 2751 et seq.)</b>	
<b>State</b>	<ul style="list-style-type: none"> <li>• Civil Penalties (22 U.S.C. § 2778(e) and (g) and § 2780(k))</li> </ul>
	<ul style="list-style-type: none"> <li>International Traffic in Arms Regulations (22 C.F.R. §§ 120-130)</li> </ul>
	<ul style="list-style-type: none"> <li><b>Directorate of Defense Trade Controls</b> <ul style="list-style-type: none"> <li>– Civil Penalties (22 C.F.R. Part 127)</li> <li>– Debarment or Suspension (22 C.F.R. Part 127)</li> <li>– License Prohibition for Terrorist Nations (22 C.F.R. § 126.1)</li> <li>– Denial, Revocation, Suspension, or Amendment of Licenses (22 C.F.R. Part 126)</li> </ul> </li> <li><b>Homeland Security<sup>a</sup></b> <ul style="list-style-type: none"> <li>– Inspection Authority (22 C.F.R. § 127.4(b))</li> <li>– Investigative Authority (22 C.F.R. § 127.4(b))</li> </ul> </li> <li><b>Justice<sup>b</sup></b> <ul style="list-style-type: none"> <li>– Criminal Penalties (22 C.F.R. § 127.3)</li> </ul> </li> </ul>
<b>Justice<sup>b</sup></b>	<ul style="list-style-type: none"> <li>• Criminal Violations (22 U.S.C. § 2778(c))</li> </ul>
<b>Department of Justice Appropriations Act of 1965 (28 U.S.C. § 533)</b>	
<b>Justice<sup>b</sup></b>	<ul style="list-style-type: none"> <li>• FBI Investigations (28 C.F.R. § 0.85(d), 69 Fed. Reg. 65542)</li> </ul>
<b>USA Patriot Improvement and Reauthorization Act (P.L. 109-177, § 311)</b>	
<b>Justice<sup>b</sup></b>	<ul style="list-style-type: none"> <li>• Criminal Penalty for Smuggling (codified at 18 U.S.C. § 554)</li> </ul>
<b>Homeland Security</b>	<ul style="list-style-type: none"> <li>• Seizure and Forfeiture (codified at 19 U.S.C. § 1595a(d))</li> <li>• Investigative Authority (Smuggling)(codified at 18 U.S.C. § 554)</li> </ul>
<b>Foreign Wars, War Materials and Neutrality Act (22 U.S.C. § 401)</b>	
<b>Homeland Security</b>	<ul style="list-style-type: none"> <li>• Seizure and Forfeiture</li> </ul>

Source: GAO analysis based on cited laws and regulations.

<sup>a</sup>CBP and ICE have authority to conduct inspections. ICE conducts investigations.

<sup>b</sup>The Department of Justice is responsible for prosecutions for federal crimes not otherwise specifically assigned. 28 C.F.R. § 0.55.

For dual-use items, authorities are granted under the Export Administration Act, the International Emergency Economic Powers Act, the Department of Justice Appropriations Act of 1965, the USA Patriot Improvement and Reauthorization Act, and the Foreign Wars, War Materials and Neutrality Act. These laws and their implementing regulations give investigative authority for dual-use items to OEE as well as to ICE and FBI, which also have investigative authority for defense items (see fig. 2).

**Figure 2: Authorities for Dual-Use Items**

<b>Export Administration Act (50 U.S.C. App § 2401 et seq.) (lapsed)</b>	
<b>Commerce</b>	<ul style="list-style-type: none"> <li>• Civil Penalties (50 U.S.C. App. §§ 2410 and 2411)</li> <li>• General Investigative Authority (50 U.S.C. App. § 2411)</li> </ul>
	Export Administration Regulations (15 C.F.R. §§ 730-774)
<b>Bureau of Industry and Security</b>	<ul style="list-style-type: none"> <li>• Administrative Sanctions (15 C.F.R. § 764.3) This includes civil penalties (fines), denial of export privileges, and exclusion from practice.</li> <li>• Denial of Export Privilege for Criminal Convictions (15 C.F.R. § 766.25)</li> <li>• Temporary Denial Order (15 C.F.R. § 766.24)</li> </ul>
	<p><b>OEE</b></p> <ul style="list-style-type: none"> <li>– Records Inspection/Subpoena (15 C.F.R. § 762.7)</li> <li>– Search of Exporting Carrier with Customs Concurrence (15 C.F.R. § 758.7(b)(5))</li> <li>– Detain Shipment for Review of Records or for Inspection of Items (15 C.F.R. § 758.7(b)(6))</li> </ul>
<b>Justice<sup>a</sup></b>	<ul style="list-style-type: none"> <li>• Criminal Sanctions as referred by OEE (15 C.F.R. § 764.3(b))</li> </ul>
<b>Justice<sup>a</sup></b>	<ul style="list-style-type: none"> <li>• Criminal Violations (50 U.S.C. App. § 2410)</li> </ul>
<b>Homeland Security<sup>b</sup></b>	<ul style="list-style-type: none"> <li>• Investigation (50 U.S.C. App. § 2411)</li> <li>• Search and Seizure (50 U.S.C. App. § 2411)</li> </ul>
<b>International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq.)<sup>c</sup></b>	
	<ul style="list-style-type: none"> <li>• Civil Penalties (50 U.S.C. § 1705(a))</li> <li>• Criminal Penalties (50 U.S.C. § 1705(b))</li> <li>• Inspections and Investigations (50 U.S.C. § 1702)</li> </ul>
<b>Department of Justice Appropriations Act of 1965 (28 U.S.C. § 533)</b>	
<b>Justice<sup>a</sup></b>	<ul style="list-style-type: none"> <li>• FBI Investigations (28 C.F.R. § 0.85(d), 69 Fed. Reg. 65542)</li> </ul>
<b>USA Patriot Improvement and Reauthorization Act (P.L. 109-177, § 311)</b>	
<b>Justice<sup>a</sup></b>	<ul style="list-style-type: none"> <li>• Criminal Penalty for Smuggling (codified at 18 U.S.C. § 554)</li> </ul>
<b>Homeland Security</b>	<ul style="list-style-type: none"> <li>• Seizure and Forfeiture (codified at 19 U.S.C. § 1595a(d))</li> </ul>
<b>Foreign Wars, War Materials and Neutrality Act (22 U.S.C. § 401)</b>	
<b>Commerce Homeland Security</b>	<ul style="list-style-type: none"> <li>• Seizure and Forfeiture</li> </ul>

Source: GAO analysis based on cited laws and regulations.

<sup>a</sup>The Department of Justice is responsible for prosecutions for federal crimes not otherwise specifically assigned. 28 C.F.R. § 0.55.



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<sup>b</sup>The law gives the authority to U.S. Customs Service in the Department of Treasury. Customs Service was subsumed by the Department of Homeland Security in March 2003. Homeland Security's CBP and ICE have authority to conduct inspections. ICE conducts investigations.

<sup>c</sup>In times of declared national emergency, various agencies receive a presidential delegation of authority by executive order.

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## Agencies Face Several Challenges in Enforcing Export Control Laws

Several key challenges exist in enforcing export control laws—challenges that potentially reduce the effectiveness of enforcement activities. First, overlapping jurisdiction for investigating potential export control violations and instances where coordination among the investigative agencies has not been effective have had an impact on some cases. Second, license determinations—which confirm whether an item is controlled by State or Commerce, and thereby help confirm whether a violation has occurred—are key to ensuring the pursuit of enforcement activities and are dependent on complete and specific information available at the time. Third, prosecuting export control cases can be difficult, since securing sufficient evidence to prove the exporter intentionally violated export control laws can represent unique challenges in some cases. Finally, multiple and sometimes competing priorities have made it difficult for enforcement agencies to maximize finite resources in carrying out export control enforcement responsibilities.

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## Coordination on Investigative Cases Has Been Limited in Some Instances

While ICE, OEE, and FBI have jointly coordinated on investigations, coordination can be challenging, particularly in terms of agreeing on how to proceed with a case. Formal agreements for coordinating investigations do not exist among all the investigative agencies. The extent to which agencies coordinate and cooperate on investigations is largely dependent on individual work relationships.

Agencies have sometimes not agreed on how to proceed on cases, particularly those involving foreign counterintelligence. For example, FBI and OEE agents disagreed as to whether certain dual-use items planned for export warranted an investigation.<sup>21</sup> Specifically, without coordinating with OEE and ICE, FBI pursued the investigation, arrested the exporter, and held the shipment of items, valued at \$500,000. Ultimately, criminal

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<sup>21</sup>Commerce determined that the item did not require a license. FBI asked for an opinion from the National Security Agency, which deemed the item high risk for national security. However, the National Security Agency did not have the authority to determine if the item was licensable.

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charges were not pursued because the items did not require a license. With respect to foreign counterintelligence cases involving export controls, investigators have not always been certain about their respective roles on these cases.

Formal agreements for coordination do not exist among all the investigative agencies. Specifically, ICE and FBI do not have a formal agreement to coordinate cases involving export control violations. Formal agreements that exist have not been updated in recent years. In 1983, Commerce entered into an agreement with the FBI dealing with certain headquarters-level coordination functions. In addition, a 1993 agreement between Customs and Commerce outlines the investigative responsibilities of each agency, but it does not reflect departmental changes that occurred as a result of the establishment of Homeland Security in March 2003. This agreement also directs these agencies to enter a joint investigation when it is determined that more than one agency is working on the same target for the same or related violations. However, it can be difficult to determine whether these conditions exist because these agencies do not always have full access to information on ongoing investigations. According to several agents we spoke with, sharing information on ongoing investigations in general can be challenging because of the agencies' varying and incompatible databases, the sensitivity of certain case information, and the agencies' varying protocols for classifying information.

The extent to which agencies coordinate their investigative efforts in the field can depend on individual work relationships and informal mechanisms that facilitate communication. Some field locations have established joint task forces to discuss investigative cases. For example, OEE, ICE, and FBI agents in one field location told us that they routinely collaborate on investigations as part of a joint task force that meets monthly. Agents in another location recently established a task force to locally coordinate export control investigations. In addition, some agencies have agents on detail to other investigative agencies. For example, in one field location, an ICE agent is detailed to FBI to coordinate cases and share export control information. FBI officials told us the detail has been useful because the ICE agent can readily provide FBI access to certain Homeland Security data, which saves critical investigative time for the FBI agents. At another field location, an OEE agent has been on detail at ICE for 7 years, which has facilitated information sharing and joint cases between the two agencies. According to several agents with whom we spoke, personalities can be a key factor in how well agents from different agencies work together on investigations.

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For example, an OEE agent in charge of one field location told us that the field agents work effectively on cases with ICE agents in one field location, but not with ICE agents in another field location because of disagreements stemming from 15 years ago about how to proceed with investigations.

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### Confirming Whether Items Are Controlled and Need a License Is Key to Pursuing Enforcement Activities

Confirming whether a defense or dual-use item is controlled and requires a license, known as a license determination, is integral to enforcement agencies' ability to seize items, pursue investigations, or seek prosecutions. However, confirmation can sometimes be difficult. Many inspectors and investigators told us that the time it takes to make determinations or sometimes changes to previously made determinations can affect some of their enforcement activities. According to Commerce and State officials, they depend on complete, specific, and pertinent information from the inspectors and investigators to make timely and correct determinations so that appropriate enforcement actions can be pursued. Moreover, new or additional information may become available as an investigation proceeds, which can affect a license determination.

Some inspectors and investigators—including OEE field agents who request license determinations directly from Commerce—stated that obtaining license determination decisions can be time consuming and has taken as much as several months. In several instances, State and Commerce licensing officers needed more information about the item before making a license determination, which added to the time it took to respond. In addition, State officials said they often request technical support from the Department of Defense when making determinations for defense items, which can add to the time it takes to make a license determination. We found that responses to requests for license determinations ranged from 1 day to 8 months during fiscal year 2005. While State established in September 2004 a goal of 30 days for processing license determinations, it revised this time frame to 60 days in April 2005 because of resource limitations. Commerce recently established a 35-day time frame to make a license determination requested by OEE agents. However, Commerce, in conjunction with the Exodus Command Center, has not established goals or a targeted time frame for responding to license determination requests. Goals help establish transparency and accountability in the process.

While some inspectors and investigators told us that their enforcement actions have been affected by unclear determinations or changes to previously made license determinations, Commerce and State officials

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said that determinations are dependent on such factors as the completeness and specificity of the information presented to them at the time of the request. In one instance, CBP officers were not given a clear determination as to whether the item was controlled, leaving officers to decide how to proceed. In other instances, investigators dropped their cases or pursued other charges based on changes made to the determination or inconsistent information provided to the exporter. For example, OEE agents executed search warrants based on a license determination that the equipment was controlled for missile technology and antiterrorism purposes. Subsequently, Commerce determined that no license was required for this equipment, and thereby the case was closed. In another example, licensing officers provided OEE agents with a license determination that differed from the commodity classification<sup>22</sup> provided to the exporter. As a result of the inconsistency between the license determination and classification, Commerce pursued a lesser charge against the exporter. In addition, in June 2005, ICE led a joint investigation of a Chinese national for allegedly exporting critical U.S. technology to China, and on the basis of an initial license determination review<sup>23</sup> by State that the item was controlled, ICE obtained search and arrest warrants. However, 9 months later, ICE agents requested a subsequent license determination to confirm that the item was controlled. It was determined that the item was not subject to State or Commerce export control, and therefore the case was dropped. Both State and Commerce headquarters officials stated that their ability to make license determinations is dependent upon several factors, including the completeness and accuracy of the information provided by the inspectors and investigators at the time of the request. These determinations can be subject to change as new or additional pertinent information becomes available as the case proceeds.

Commerce and ICE have recently taken actions to address problems in the license determination process. In June 2006, Commerce established new procedures on how to request and process license determinations internally and is currently revising and providing training for its licensing officers and OEE agents. In August 2006, ICE's Exodus Command Center

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<sup>22</sup>If exporters have determined that their items are Commerce controlled, but are uncertain of export licensing requirements, they may request a commodity classification from Commerce. See [GAO-02-996](#).

<sup>23</sup>In September 2004, ICE issued guidance to its investigators indicating that State strongly recommends a second-level review in cases that are heading toward indictment or a plea agreement. This review is an in-depth examination of items to verify that they are controlled by State.

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implemented a new system, known as the Exodus Accountability Referral System, to track license determination requests, provide enforcement agencies access to the status of their requests, and provide performance statistics to field agents, inspectors, and regulatory agencies. These actions recognize some of the problems with license determinations. However, it is too early to determine their impact on export enforcement activities.

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### Challenges Exist in Taking Criminal and Administrative Punitive Actions against Alleged Export Violators

When developing a case for criminal prosecution, Assistant U.S. Attorneys (AUSA) must obtain sufficient evidence of the exporter's intent to violate export control laws. Gathering evidence of intent is particularly difficult in export control cases, especially when the item being exported is exempted from licensing or the case requires foreign cooperation. For dual-use violations, Commerce officials said that the lapsed status of the Export Administration Act has made it cumbersome for prosecuting cases. When pursuing administrative cases, State, unlike Commerce, has limited access to attorneys and an Administrative Law Judge, making it challenging to pursue the full range of administrative actions against export control violators.

Several AUSAs who prosecute many different types of cases, told us that it can be challenging to secure sufficient evidence that an exporter intentionally violated export control laws. In particular, securing such evidence can be especially difficult when the items to be exported are exempted from licensing requirements. We previously reported similar concerns of officials from Customs (now within Homeland Security) and Justice about investigating and prosecuting violations when exemptions apply, noting that it is particularly difficult to obtain evidence of criminal intent since the government does not have license applications and related documents that can be used as proof that the violation was committed intentionally.<sup>24</sup>

Investigations and prosecutions that involve items and individuals in foreign locations can further complicate evidence-gathering efforts. According to ICE officials, a foreign government may or may not cooperate in an overseas export control investigation or arrest, and foreign and U.S. laws on export controls may differ as to what constitutes

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<sup>24</sup>GAO, *Defense Trade: Lessons to Be Learned from the Country Export Exemption*, GAO-02-63 (Washington, D.C.: Mar. 29, 2002).

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a violation. One OEE field office estimated that over half of its cases involve foreign persons or entities.

According to Commerce officials, enforcement of dual-use export controls under the expired Export Administration Act is a key challenge for them because it adds an element of complexity to cases and can encumber prosecutions. These officials said they have encountered difficulties convincing AUSAs to accept cases to prosecute under a set of regulations, promulgated under a lapsed statute and kept in force by emergency legislation. To counter these difficulties, Commerce, Homeland Security, and Justice officials said they support the renewal of the Export Administration Act. Commerce stated that renewal of this act would provide enforcement tools to OEE for conducting investigations and increase penalty provisions for violators.<sup>25</sup>

For administrative actions, export control regulations allow both State and Commerce to pursue administrative cases before an Administrative Law Judge, but State has never exercised this authority. Commerce officials stated that they bring cases before an Administrative Law Judge when an alleged export violator disputes the charges or objects to the administrative settlement actions proposed by Commerce. Commerce has a formal agreement with the Coast Guard Office of Administrative Law Judges, which is renewed annually, to hear its cases, and Commerce's attorneys bring about one to three administrative cases before an Administrative Law Judge each year.

State has never brought a case to an Administrative Law Judge and does not have attorneys with the experience needed to pursue such export control cases or a standing agreement with any agency to provide an Administrative Law Judge. In cases where an agreed settlement with the violating company appears unlikely and a formal hearing is needed, State would have to seek services from attorneys in the private sector or from other departments to help represent the government's interests. To obtain access to an Administrative Law Judge to hear a case, State officials told us they would need to first request the Office of Personnel Management to appoint a judge on a temporary basis. State would then need to establish an interagency memorandum of understanding with that agency to

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<sup>25</sup>Congress recently passed the USA Patriot Improvement and Reauthorization Act, which increased to \$50,000 per violation the maximum civil penalty and to 20 years the prison term for criminal convictions under the International Emergency Economic Powers Act.

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establish payment and other arrangements.<sup>26</sup> Without a formal agreement to access an Administrative Law Judge and ready access to attorneys to pursue such cases, State officials told us that it is challenging to proceed with administrative cases. State officials indicated that they are exploring various options on how to get access to attorneys with relevant experience to handle such cases, including seeking assistance from other departments on a temporary basis. However, State's options appear to rely on ad hoc interagency arrangements and would not build any internal expertise for handling such cases in the future.

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### Agencies Faced with Balancing Multiple Priorities and Leveraging Finite Human Resources

Each enforcement agency's priorities—and the resources allocated to those priorities—are influenced by the mission of the department in which the agency resides. At times, agencies have competing priorities, making it difficult to effectively leverage finite enforcement personnel. Limited training on export controls has further challenged agencies to use their enforcement personnel effectively. Some agencies have recently taken actions to target more resources to export enforcement activities. However, it may be too early to determine the impact these actions will have in the long term. In addition, priorities could shift and necessitate the reassignment of staff.

The investigative agencies have been particularly challenged to effectively leverage their resources.

- Commerce's overall mission is to promote U.S. economic development and technological advancements. OEE resides within Commerce's export control agency, and its priorities emphasize investigating potential violations of dual-use exports related to weapons of mass destruction, terrorism, and unauthorized military end use. In carrying out these priorities, some of OEE's nine field offices—which are responsible for conducting investigations in multiple states, ranging from 3 to 11 states—have had difficulty pursuing investigative leads outside their home state. Some OEE field agents told us that not having a physical presence in the other states adversely affects their ability to generate investigative leads, and that their caseload is largely within their home state.

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<sup>26</sup>State officials indicated that they have on occasion established such arrangements through the Office of Personnel Management but acknowledged that establishing such arrangements takes time.

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- Homeland Security's mission is to create a unified national effort to secure the country while permitting the lawful flow of immigrants, visitors, and trade. ICE is the largest investigative branch within Homeland Security. In addition to investigating potential defense and dual-use export violations, ICE investigates drug smuggling, human trafficking and smuggling, financial crimes, commercial fraud, document fraud, money laundering, child exploitation, and immigration fraud. ICE has recently taken action to expand its existing investigation workforce devoted to export control. As of September 2006, ICE data showed that total arrests, indictments, and convictions had surpassed the totals in each fiscal year since ICE's creation in 2003.
  - Justice's overall mission is to enforce U.S. laws, and FBI's mission is to protect the United States against terrorist and foreign intelligence threats and to enforce criminal laws. As the lead counterintelligence agency in the United States, FBI investigates potential dual-use and defense export violations that have a nexus with foreign counterintelligence. FBI has over 456 domestic offices. Fifty-six offices are required to have at least one team of agents devoted to counterintelligence. These teams cover all 50 states, and some agents are located within the 456 domestic offices. FBI agents are also responsible for conducting other investigations involving espionage and counterproliferation.

CBP, the sole border inspection agency, has also been challenged to leverage its resources. One of CBP's primary responsibilities is to detect and prevent terrorists and terrorist weapons from entering U.S. ports, and it devotes most of its resources to inspecting items and persons entering the country. For items leaving the United States, CBP uses an automated targeting system to identify exports for examination by its officers. The workload and the number of officers assigned to inspect exported cargo can fluctuate daily. For example, at one of the nation's busiest seaports, the CBP Port Director stated that there can be five officers assigned to inspecting exports one day and none the next. Export enforcement efforts are further challenged by the limited time officers have to review shipment documentation. State regulations require 24 hours' advance notification before shipment for ship or rail and 8 hours' advance notification for plane or truck. However, Commerce regulations do not have time frames specified other than Census Bureau requirements of notification prior to departure.<sup>27</sup> Moreover, some officers also spend some of their limited time

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<sup>27</sup>Census requirements also allow that, in certain circumstances, an exporter may transmit shipment information up to 10 working days from the date of exportation.



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hunting down items on planes or in shipping containers because documents, such as air waybills, cannot be located or information on items to be exported is incomplete. CBP officials stated that they have internal initiatives under way to address resources devoted to export control inspections.

U.S. Attorneys offices have many competing priorities, including prosecuting cases involving terrorism, counterterrorism, and government contractor fraud. Each of the U.S. Attorneys offices has attorneys who can work on cases involving potential export control violations. However, several investigators noted that the level of interest in and knowledge of export control laws varies among AUSAs.

According to several enforcement agency officials, they would like more advanced training on export controls that could help them use their time more efficiently—and thereby better leverage finite resources—but such training is limited. While some specialized training has been provided to officers in the field, CBP has reduced the number of training courses directly relating to export controls for the last quarter of fiscal year 2006 primarily because of budget constraints. CBP officials said they are considering restructuring the training curriculum. ICE and FBI investigators also said that they would like more opportunities for advanced training on export controls. While ICE headquarters has not funded its advanced strategic export controls course at the Federal Law Enforcement Training Center for the past 2 years, it reinstated this course in May 2006 and has subsequently trained over 100 agents. ICE officials also noted that training on weapons of mass destruction was provided to over 2,000 agents and analysts during fiscal years 2005 and 2006. Commerce plans additional training for OEE agents in fiscal year 2007. Justice, recognizing a need for training on export controls for its attorneys, provided a training conference in May 2006 for AUSAs, with presentations from Justice, Commerce, State, and the intelligence community. Commerce, State, and Justice have also recently sponsored training conferences for enforcement agencies covering topics such as export control laws and regulations, license determinations, and proving criminal intent.

## Criminal Outcomes Are Not Systematically Provided to Export Control Agencies

Criminal indictments and convictions are key to informing the export control process and licensing decisions. While Justice and the other enforcement agencies have databases to capture information relating to their own export enforcement activities (see table 3), outcomes of criminal cases are not systematically shared with State and Commerce.

**Table 3: Primary Enforcement-Related Databases at Enforcement Agencies**

Agency	Database	Description
<b>Justice</b>		
U.S. Attorneys Office	Legal Information Office Network System	Captures information on criminal cases, including outcomes and closure date
FBI	Automated Case Support	Captures details on investigative cases
Counterespionage Section	Significant Export Control Cases List	Captures outcome information on significant criminal export control cases
<b>Commerce</b>		
OEE	Investigative Management System	Captures details on investigative cases
<b>State</b>		
Directorate of Defense Trade Controls	Trade Registration, Enforcement and Compliance System	Captures compliance activities, including voluntary disclosures, and license determinations
<b>Homeland Security</b>		
CBP/ICE	Treasury Enforcement Communication System <sup>a</sup>	A system of records containing law enforcement information including suspects, ongoing investigations and enforcement actions
	Seized Asset and Case Tracking System	Captures activities associated with seizures and investigations
	Automated Targeting System/Anti-Terrorism	A system that automatically reviews electronically filed export documentation and compares it to inspector-defined criteria for high-risk shipments

Source: GAO analysis of information provided by above agencies.

<sup>a</sup>Many federal law enforcement agencies have certain access to the Treasury Enforcement Communication System.

State and Commerce officials stated that information on the outcomes of criminal cases, including indictments and convictions, is important to the export licensing process, particularly since indicted or convicted exporters may be denied from participating in the process. The Arms

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Export Control Act requires that appropriate mechanisms be developed to identify persons who are the subject of an indictment or have been convicted of an export control violation. Specifically, if an exporter is the subject of an indictment or has been convicted under various statutes, including the Export Administration Act, State may deny the license application. Further, Commerce can deny export privileges to an exporter who has been criminally convicted of violating the Export Administration Act or Arms Export Control Act. According to both State and Commerce officials, information on indictments and convictions is gathered through an informal process. For example, an ICE agent, who serves as a liaison with State and is colocated with State's export control officials, compiles criminal statistics from ICE field offices in a monthly report that is shared with State compliance officials. Information on criminal export control prosecution outcomes could help inform the export control process by providing a complete picture of the individual or company seeking an export license or trends in illegal export activities.

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## Conclusions

Agencies responsible for enforcement have to operate within the construct of a complex export control system, which offers its own set of challenges from the outset. Further compounding this situation is the failure to coordinate some investigations and address a host of other challenges that can lead to a range of unintended outcomes, such as the termination of investigative cases. At a minimum, limited resources available for enforcement efforts may not be used effectively. Consequently, there is a need to ensure that enforcement agencies maximize finite resources and efforts to apprehend and punish individuals and companies who illegally export sensitive items that may be used to subvert U.S. interests.

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## Recommendations for Executive Action

To enhance coordination in the current system, we recommend that the Secretary of Commerce direct the Under Secretary for Industry and Security, the Secretary of Homeland Security direct the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement, and the Attorney General direct the Director of the FBI in conjunction with the Assistant Attorney General in charge of the National Security Division to take the following two actions:

- establish a task force to evaluate options to improve coordination and cooperation among export enforcement investigative agencies, such as creating new or updating existing operating agreements between and among these agencies, identifying and replicating best practices for routinely collaborating on or leading investigations, and establishing a

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mechanism for clarifying roles and responsibilities for individual export control cases involving foreign counterintelligence, and

- report the status of task force actions to Congress.

To ensure discipline and improve information needed for license determinations, we recommend that the Secretary of Homeland Security direct the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement and the Secretary of Commerce direct the Under Secretary for Industry and Security to establish goals for processing license determinations. We also recommend that that Secretary of Homeland Security direct the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement, the Secretary of Commerce direct the Under Secretary for Industry and Security, and the Secretary of State direct the Deputy Assistant Secretary for Defense Trade Controls to coordinate with licensing officers, inspectors, investigators, and prosecutors to determine what additional training or guidance is needed on license determinations, including the type of information needed to make license determinations.

To ensure systematic reconciliation of shipments with Commerce licenses, we recommend that the Secretary of Commerce direct the Under Secretary for Industry and Security, in consultation with the Commissioner of Homeland Security's U.S. Customs and Border Protection, to determine the feasibility of establishing a requirement for CBP to decrement Commerce licenses and an action plan for doing so.

To ensure that State and Commerce have complete information on enforcement actions, we recommend that the Attorney General direct the Director of the Executive Office for U.S. Attorneys, in consultation with the Assistant Attorney General in charge of the National Security Division, to establish formal procedures for conveying criminal export enforcement results to State's Directorate of Defense Trade Controls and Commerce's Bureau of Industry and Security.

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## Agency Comments and Our Evaluation

The Departments of Commerce, Homeland Security, and State provided comments on a draft of this report. Justice and Defense did not provide formal comments. Commerce, Homeland Security, Justice, and State also provided technical comments, which we incorporated in this report as appropriate. Overall, the departments providing comments agreed with the need for coordination, but in some instances, noted some differences in possible approaches. They also indicated that certain actions were

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already under way to address some of our recommendations. We modified one recommendation accordingly.

In commenting on our first recommendation—to establish a task force to improve coordination and cooperation among export enforcement investigative agencies and report the status of task force actions to the Congress—Commerce stated that it was already taking action to improve coordination through various work groups and acknowledged that it will continue to seek ways to improve coordination. Commerce also commented that the draft report does not provide the data and analysis to support that there is a lack of coordination. We disagree. We spoke with numerous agents in the field who cited coordination as a challenge. The examples we provided were illustrations of some of the types of coordination challenges that existed. Our evidence indicates that coordination is a challenge given that three agencies with differing approaches have concurrent jurisdiction to investigate potential violations of export control laws. At times, these agencies have competing priorities, making it difficult to leverage finite enforcement personnel for oftentimes complex cases.

Homeland Security agrees in principle with our first recommendation, but believes the establishment of an Export Enforcement Coordination Center within ICE would address coordination concerns in the most immediate and comprehensive manner. Homeland Security's solution is one option for improved coordination. However, it would need to work with the other enforcement agencies to determine the viability of this option. Our recommendation for a joint task force is the means by which to do so. In its technical comments related to coordination, Justice commented that FBI looks forward to working closely with other export enforcement agencies.

In its comments on our second recommendation—to establish goals for the processing of license determinations and coordinate with other enforcement officials to determine what additional training or guidance is needed on license determinations—Commerce noted it was already taking action to improve license determination efforts through developing procedures and leading and participating in training conferences on export enforcement. However, these actions do not fully address our recommendation on establishing goals. Specifically, Commerce has not established formal license determination response times in conjunction with the Exodus Command Center, which is a key means by which license determination requests are processed. Homeland Security agreed to support goal setting by providing input from a law enforcement

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perspective. In its comments on our draft report, State indicated that it had already established goals for processing license determinations in conjunction with the Exodus Command Center. As a result, we revised our recommendation to direct that Commerce and Homeland Security establish goals for processing license determinations. State concurred with our recommendation to determine what additional training or guidance is needed on license determinations. Specifically, State has agreed with Homeland Security to update and clarify its guidance on license determinations. State further noted that consulting with FBI and ICE regarding additional training for coordinating State's support to their criminal investigations would build upon its past and ongoing work in this area.

Regarding our third recommendation—to determine the feasibility of having Homeland Security's Customs and Border Protection officers decrement Commerce export licenses—Commerce expressed some reservation. Specifically, Commerce stated that it has seen no data to indicate that the underlying issue is of sufficient enforcement concern and that automated systems would need to be developed within CBP to support this effort. We do not believe that Commerce should dismiss this recommendation without further analysis. We previously reported that Commerce has not conducted comprehensive analyses of items that have been exported;<sup>28</sup> therefore it is not in a position to know whether it is an enforcement concern. In addition, while resources devoted to outbound enforcement are limited within CBP, it has an automated export system, which is used for decrementing State licenses. This allows CBP officers to ensure accountability on the part of exporters and that State regulations have been properly followed. Homeland Security commented that CBP officials are prepared to act when contacted by Commerce regarding our recommendation.

With respect to our last recommendation—that Justice establish formal procedures for conveying export enforcement results to State and Commerce—Commerce agreed, citing that it supports efforts to improve coordination and communication. Justice indicated support for sharing such information. State also supports this recommendation and noted that it welcomed any additional information that Justice can provide regarding the outcomes of criminal cases involving export control and related violations to help State carry out its regulatory responsibilities.

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<sup>28</sup>See [GAO-06-638](#).

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Formal written comments provided by Commerce, Homeland Security, and State are reprinted in appendixes III, IV and V, respectively.

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We are sending copies of this report to interested congressional committees, as well as the Secretaries of Commerce, Defense, Homeland Security, and State; the Attorney General; the Director, Office of Management and Budget; and the Assistant to the President for National Security Affairs. In addition, this report will be made available at no charge on the GAO Web site at <http://www.gao.gov>.

Please contact me at (202) 512-4841 or [calvaresibarra@gao.gov](mailto:calvaresibarra@gao.gov) if you or your staff have any questions concerning this report. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Others making key contributions to this report are listed in appendix VI.



Ann Calvaresi-Barr  
Director  
Acquisition and Sourcing Management

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# Appendix I: Scope and Methodology

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To describe the roles, responsibilities, and authorities of the agencies responsible for export control enforcement of defense and dual-use items, we interviewed cognizant officials, examined relevant documents, and analyzed export control statutes. We interviewed officials about their enforcement roles and responsibilities at the headquarters of the Departments of Commerce, Homeland Security, Justice, and State. We also discussed with Department of Defense officials their role in providing investigative support to agencies responsible for export control enforcement. We developed and used a set of structured questions to interview over 115 inspectors, investigators, and prosecutors in selected locations and observed export enforcement operations at those locations that had air, land, or seaports. We selected sites to visit based on various factors including geographic areas where all enforcement agencies were represented and areas with a mix of defense and high-tech companies represented; field offices with a range of investigative tools available to agents; and experience levels inspectors, agents, and prosecutors had in enforcing export control laws and regulations. On the basis of these factors, we visited Irvine, Long Beach, Los Angeles, Oakland, Otay Mesa, San Diego, San Francisco, and San Jose, California; Fort Lauderdale and Miami, Florida; Boston, Massachusetts; Newark and Trenton, New Jersey; and New York, New York. Additionally, we examined agent operating manuals, inspector handbooks, and a *Federal Register* notice, which further define the roles and responsibilities of enforcement agencies. To describe export enforcement authorities, we analyzed various statutes and identified the varying enforcement requirements promulgated through implementing regulations.

Our structured interviews with officials also enabled us to identify challenges agencies faced in enforcing export control laws and regulations. We documented examples of coordination challenges among the investigative agencies and obtained and summarized information on significant export control cases identified by these agencies. We also examined existing memorandums of understanding and agency guidance on coordinating investigations. To document the impact that license determinations have on enforcement activities, we obtained examples of license determinations through Commerce's Office of Export Enforcement and conducted a case file review of license determinations for fiscal year 2005 at Homeland Security's Exodus Command Center based on available information on-site. We selected a cross-section of license determination files to review that included requests for defense and dual-use items and that varied in response times. We discussed with Commerce and Homeland Security officials efforts to improve the license determination process. Through our interviews, we also identified challenges with



criminal prosecutions and confirmed with headquarters the difficulties in obtaining sufficient evidence. Finally, we identified challenges with agencies' priorities and human resources and obtained information on staffing levels and priorities for assigning resources. We also reviewed agency training materials to identify export control training available to enforcement personnel.

To assess whether information on criminal enforcement outcomes is provided to export control agencies, we identified export control enforcement information maintained at the various agencies, such as criminal convictions and indictments for violations of export control laws. We also spoke with State licensing and policy officials and Commerce officials to assess whether they received and used this information for informing licensing or other decisions for defense or dual-use items. We also spoke with Justice officials to determine whether the department systematically provided criminal export control prosecution outcome information to State and Commerce export control agencies.

# Appendix II: Summary of Selected Export Control Enforcement Cases

For fiscal year 2005, investigative agencies identified several examples of export control enforcement cases, as shown in table 4.

**Table 4: Selected Export Control Cases for Fiscal Year 2005**

Description	Punitive action
<b>Polygraph machines to China</b>	
A company and its president illegally exported polygraph machines to China without required export licenses.	The company and its president were sentenced to probation and a criminal fine for criminal export violations. They also agreed to pay administrative penalties, and the company agreed to a suspended denial of export privileges.
<b>U.S. fighter jet components to Iran</b>	
A businessman pled guilty to Arms Export Control Act and money laundering violations. The businessman sought to obtain gunnery systems for fighter jets for export to Iran, and in meetings with undercover agents attempted to acquire several fully assembled F-14 fighter jet aircraft for future shipment to Iran.	The businessman was sentenced to a 57-month incarceration and a 2-year supervised release.
<b>Night vision technology and electronics components to China</b>	
Two individuals violated the Arms Export Control Act by attempting to obtain U.S. night vision equipment, military grade power converters, and traveling wave tubes used in satellite and radar applications for export to China.	The individuals were arrested and indicted for conspiring to violate the Arms Export Control Act. One individual was found not guilty by jury trial, while the other was sentenced to 24 months in prison and a 3-year supervised release.
<b>U.S. fighter jet and military helicopter components to Malaysia, Belgium, and United Arab Emirates</b>	
A Pakistani national illegally exported military aircraft parts to various countries. The individual had a previous 1987 conviction for illegally exporting HAWK missile components to Iran.	The Pakistani national was indicted on four counts of violating the Arms Export Control Act. He was convicted and sentenced to 150 months' imprisonment.
<b>Assault rifles to Colombian terrorist organization</b>	
During meetings with undercover agents, a Colombian national negotiated and attempted to purchase assault rifles and machine guns for illegal export to a U.S.-designated terrorist organization in Columbia. A subsequent investigation identified two coconspirators.	The Colombian national was arrested and pled guilty to violating the Arms Export Control Act. One coconspirator has been arrested; the other remains at large.
<b>Missile and fighter jet components to China</b>	
An individual conspired to illegally export parts for the F-14 fighter jet and components for various missile systems to China. Agents arrested the individual and her husband as a result of a lengthy undercover investigation targeting U.S. companies that illegally sold defense articles over the Internet to foreign buyers.	The individual and her husband were each sentenced to a 30-month imprisonment, and the individual was also fined \$6,000.
<b>Components with nuclear weapons applications to Pakistan and India</b>	
An individual from Pakistan was charged with illegally exporting oscilloscopes with nuclear weapons applications, as well as plotting to illegally export 66 nuclear detonator devices to Pakistan. An Israeli national pled guilty to helping to export the oscilloscopes and nuclear triggers, and illegally exporting sensitive U.S. electronics to facilities in India that are involved in that nation's nuclear and missile development program.	The individual currently remains at large. The Israeli national pled guilty and was sentenced to a 36-month imprisonment.

**Appendix II: Summary of Selected Export  
Control Enforcement Cases**

<b>Description</b>	<b>Punitive action</b>
<b>Military night vision equipment to China</b>	
An individual attempted to illegally export plastic optical filters suitable for night vision lighting, night vision goggles with helmet mounts for fixed-wing and rotary aircraft, as well as liquid crystal displays that can be integrated into avionics. A U.S. citizen conspired to obtain night vision goggles.	The individual pled guilty to one count of conspiracy and will be sentenced at a later date. The U.S. coconspirator pled guilty to one count of violating the Export Administration Act for his role.
<b>Weapons to Colombian terrorist group</b>	
An individual plotted to provide arms to a Colombian terrorist group in violation of the Arms Export Control Act.	The individual pled guilty and was sentenced to a 25-year federal imprisonment.
<b>Military laser sights to foreign locations</b>	
A Japanese national conspired to purchase and illegally export military laser sights to Japan in violation of the Arms Export Control Act.	The individual was sentenced to a 15-month incarceration and was subsequently deported from the United States for conspiracy.
<b>U.S. fighter jet components to Iran</b>	
A Tehran-based broker attempted to purchase and illegally export U.S. F-14 fighter jet components to the Iranian military. The individual—who asserted he worked on behalf of the Iranian Ministry of Defense—also negotiated with undercover agents over the illegal export of complete military helicopters and C-130 military aircraft electrical and avionic upgrades to Iran.	The broker was sentenced to a 41-month federal imprisonment.
<b>U.S. military night vision systems to Iranian military</b>	
U.S. agents and Austrian authorities thwarted a plot to illegally supply the Iranian military with thousands of advanced military night vision systems from the United States. U.S. agents learned that an arms broker in Tehran was seeking U.S. military night vision goggles for the Iranian military from vendors in the United States. Austrian authorities arrested one of the individuals and another coconspirator after the pair took possession of the first night vision system.	A grand jury indicted the individuals with conspiracy, violating the Arms Export Control Act, money laundering, forfeiture, and aiding and abetting. These individuals remain at large.
<b>Military antenna controls to Spain</b>	
An individual attempted to illegally export radar antenna control boxes to Spain for use by the Spanish Air Force without the required export license in violation of the Arms Export Control Act.	The individual was sentenced to 2 years' probation and fined \$2,500.
<b>Military helicopter engines and night vision systems to China</b>	
A South Korean citizen attempted to illegally export Black Hawk helicopter engines and other military items to China. Agents arrested the individual as he attempted to board a plane bound for China with military night vision equipment in his luggage. The South Korean government worked closely with U.S. agents on the investigation.	The South Korean citizen pled guilty to violating the Arms Export Control Act and was sentenced to a 32-month federal imprisonment, to be followed by deportation from the United States.

**Appendix II: Summary of Selected Export  
Control Enforcement Cases**

Description	Punitive action
<b>Restricted electronic equipment to China</b>	
Four individuals conspired to illegally export more than \$500,000 in restricted electronic components to China. The components in question could be used in a wide variety of military radar and communications applications.	The four individuals were charged with conspiring to violate the International Emergency Economic Powers Act, the Export Administration Regulations, and money laundering violations. One individual was sentenced to 6 months' time served and fined \$1,500. Another was sentenced to a 46-month federal imprisonment and fined \$2,000. A different individual was convicted at trial for five counts of violating the International Emergency Economic Powers Act, conspiracy, money laundering, and false statements and sentenced to a 60-month incarceration and a \$50,000 fine. Another coconspirator was sentenced to a 42-month incarceration and was ordered to pay a \$50,000 fine.
<b>Sensitive military technology to China</b>	
Seven individuals were indicted on export violations alleging they used their two companies to illegally export sensitive national-security controlled items to state-sponsored institutes in China. According to the complaints, the individuals were illegally exporting millions of dollars worth of items used in a variety of defense weapons systems, including smart weapons, radar, and electronic warfare and communications systems.	Four of the coconspirators pled guilty to violating the Arms Export Control Act, the International Emergency Economic Powers Act, conspiracy to violate the Export Administration Regulations, aiding and abetting, and providing false statements.
<b>Military night vision technology to China</b>	
Two individuals and a company were indicted for illegally brokering the sale of military and commercial-grade night vision technology to China. Court documents in the case alleged the pair had entered into a contract with the Chinese military to produce technology for night vision equipment in China.	A jury failed to reach a unanimous verdict in the trial of one coconspirator and a new trial is scheduled.

Source: GAO analysis of information provided by investigative agencies.

# Appendix III: Comments from the Department of Commerce

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Under Secretary for Industry and Security**  
Washington, D.C. 20230

October 3, 2006

Ms. Ann Calvaresi-Barr  
United States Government Accountability Office  
Washington, DC 20548

Dear Ms. Calvaresi-Barr:

The Bureau of Industry and Security (BIS) welcomes the opportunity to provide comments on the draft report, "Export Controls: Challenges Exist in Enforcement of an Inherently Complex System," GAO-07-13.

Our comments are provided in two sections: first, on the recommendations made in the report; and second, on technical comments and clarifications to the text.

Please direct any inquiries regarding these comments to Julissa Hurtado at (202) 482-8093 or [jhurtado@bis.doc.gov](mailto:jhurtado@bis.doc.gov).

Sincerely,

A handwritten signature in cursive script that reads "Mark Foulon".

Mark Foulon, Acting

Enclosure



**BIS Comments on Draft Report**  
***Export Controls: Challenges Exist in Enforcement of an***  
***Inherently Complex System, GAO-07-13.***

**Recommendation 1:** That the Departments of Commerce, Justice, State, and Homeland Security establish a task force to consider options of improved coordination of export enforcement efforts; and report the status of task force actions to Congress

Commerce's Bureau of Industry and Security (BIS) believes good coordination currently exists among agencies involved in export enforcement. For example, of the 48 cases cited on BIS's Major Cases List dated August 2006 (attached), 24 involved coordination with one or more partner agencies. BIS's Office of Export Enforcement (OEE) Headquarters staff and Special Agents in Charge of OEE's field offices routinely meet and interact with their counterparts at the Federal Bureau of Investigation (FBI) and Immigration and Customs Enforcement (ICE) to coordinate, conduct, and oversee joint enforcement efforts. Moreover, OEE currently participates in a number of interagency working groups, task forces, and joint efforts with the FBI and ICE addressing joint export enforcement efforts, including interagency working groups at the Headquarters level, and the Joint Terrorism Task Forces and Regional Counter Intelligence Working Groups in the field. OEE meets quarterly with ICE to coordinate cases and issues under the 1993 Memorandum of Understanding between BIS and ICE, and has designated points of contact to coordinate and discuss issues on an as-needed basis.

The draft report does not provide compelling data and analysis to the contrary, as it cites only three limited, anecdotal examples of less than optimal coordination between agencies. Of the two examples involving BIS, the one involving the FBI does not in fact involve a lack of coordination. The other involves an instance in which BIS prevented the commission of an export violation. This action was consistent with the high premium that BIS places on preventing violations of the Export Administration Regulations (EAR) and keeping sensitive items out of dangerous hands.

However, it is always possible to improve coordination, and BIS will continue to seek ways to do so.

**Recommendation 2:** That the Departments of Commerce, State, and Homeland Security establish goals for the processing of license determinations and coordinate with stakeholders on training and guidance.

As noted in the draft report, BIS has already implemented steps to improve the processing of BIS license determinations. During the past year, BIS has developed a procedures template to guide Export Administration (EA) and Export Enforcement (EE) officers in the processing of licensing determinations, and BIS's Fiscal Year 2007 Game Plan establishes a goal for average processing time of 35 days for license determinations (excluding Exodus). EA licensing officers and representatives from the Office of Chief Counsel for Industry and Security have conducted training sessions on these new procedures with the OEE Field Offices in Boston, Chicago, Dallas, Virginia, Houston, Miami, Los Angeles, San Jose, and New York. Additionally, BIS is

See comment 1.

See comment 2.

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**Appendix III: Comments from the Department  
of Commerce**

finalizing guidance to partner agencies on the submission of license determination requests sufficient to support sustainable determinations, and welcome the input of our interagency partners in this process.

BIS has also led and participated in training conferences during the past year for Special Agents and attorneys of the Departments of Commerce, Justice, State, and Homeland Security on export enforcement prosecutions, including license determination requirements and procedures. This training has included the Department of Justice training noted in the draft report, which was presented at Justice's National Advocacy Center (NAC); as well as training jointly prepared and presented with the Departments of State and Justice in four other locations in Fiscal Year 2006 (Boston, Los Angeles, San Jose, and Chicago). BIS plans to continue this training, with sessions at the NAC and field sites, in Fiscal Year 2007.

**Recommendation 3:** That the Departments of Commerce and Homeland Security determine the feasibility of Customs and Border Protection's (CBP's) decrementing Commerce export licenses.

BIS has reservations regarding this recommendation, which has been proposed in the past. BIS has seen no data to indicate that the underlying issue - verification that the quantities of items otherwise authorized for export do not exceed tolerable limits - is of sufficient enforcement concern to justify the burdens that would be placed on U.S. exporters, CBP, and BIS, when compared to enforcement concerns such as those regarding exports of materials with Weapons of Mass Destruction (WMD) and other applications to proliferators, rogue states, and terrorists. Few if any significant enforcement cases or diversions have occurred as a result of legitimate exporters exceeding those limits. Moreover, automated systems to support CBP's decrementing BIS licenses would have to be developed to support this function. Finally, the draft report notes that CBP currently devotes a limited number of personnel to outbound examinations; it is not clear that this would be sufficient to meet the needs of this recommendation.

**Recommendation 4:** That the Justice Department establish formal procedures to convey criminal enforcement results to Commerce and State.

BIS supports efforts to improve coordination and communication.

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The following are GAO's comments from the Department of Commerce letter dated October 3, 2006.

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## **GAO Comments**

1. While OEE and ICE had prior contact with FBI before it pursued this case, the agencies did not act together in a concerted way to determine the best way to proceed with this case.
2. Commerce believed that its actions prevented the commission of an export violation. However, its lack of coordination in taking this action undermined enforcement activities.



# Appendix IV: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

October 10, 2006

Ms. Ann Calvaresi-Barr  
Director  
Acquisition and Sourcing Management  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Calvaresi-Barr:

RE: Draft Report GAO-07-13, Export Controls: Challenges Exist In Enforcement of an Inherently Complex System (GAO Job Code 120489)

The Department of Homeland Security (DHS) appreciates the opportunity to review and comment on the draft report referenced above. The Government Accountability Office (GAO) makes four recommendations, three of which regard or affect DHS components.

The Department and U.S. Immigration and Customs Enforcement (ICE) officials agree that federal agencies could better coordinate efforts to address the proliferation of licensable U.S. technologies to terrorists and other criminals. The draft report, however, does not specifically address a significant source of coordination conflicts relating to Federal Bureau of Investigation (FBI) export enforcement authorities where a nexus to foreign counterintelligence (FCI) exists. Furthermore, federal agencies do not agree on a uniform definition of FCI. We address these concerns, in the context of the first two specific GAO recommendations, in greater detail below.

**Recommendation 1:** To enhance coordination in the current system, [GAO] recommends that the Secretary of Commerce direct the Under Secretary for Industry and Security, the Secretary of Homeland Security direct the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement, and the Attorney General direct the Director of the Federal Bureau of Investigation in conjunction with the Assistant Attorney General in charge of the Criminal Division to take the following two actions:

- establish a task force to evaluate options to improve coordination and cooperation among export enforcement investigative agencies, such as creating new or updating existing operating agreements between and among these agencies; identifying and replicating best practices for routinely collaborating on investigations; and establishing a mechanism for clarifying roles and responsibilities for individual export control cases involving foreign counterintelligence, and
- report the status of task force actions to the Congress.

[www.dhs.gov](http://www.dhs.gov)

ICE officials concur in part. ICE personnel are responsible for export enforcement investigations within DHS. The Department and ICE agree in principle that greater cooperation and coordination are crucial to the most effective U.S. government response to the proliferation of U.S. technology and arms to terrorists and other criminals. For reasons detailed below, ICE officials believe the establishment of an Export Enforcement Coordination Center (EECC) within ICE would address coordination concerns in the most immediate and comprehensive manner.

ICE has the broadest export enforcement authorities of any U.S. law enforcement agency and has been exercising these authorities for over 100 years through a legacy agency. A notice published in November 2004 modified 28 CFR Part 0.85(d) to indicate that the Attorney General's delegation of authority to the FBI included lead investigatory role for Arms Export Control Act (AECA), the Trading with the Enemy Act (TWEA), the Export Administration Act (EAA), and the International Emergency Economic Powers Act (IEEPA) violations related to foreign counterintelligence matters. Shortly after this action, DHS and DOJ issued a joint public statement to reaffirm the traditional lead investigatory role of DHS through ICE in export control cases and that of the FBI in foreign counterintelligence investigations. The modification did not define FCI or determine what represents a nexus to FCI, which creates significant interagency differences in interpretation. This issue is further exacerbated by the variation in FBI interpretation depending upon the representative or venue. In one instance, FBI management told ICE officials that they consider every technology transfer investigation involving the People's Republic of China to have a nexus to FCI, whether or not a definitive link to espionage, sabotage, or assassinations (FCI activities as defined under 50 U.S.C. 401) is present. Based upon ICE's significant experience and expertise, ICE officials believe that very few investigations result in the identification of FCI targets as most proliferators of technology are businessmen or brokers solely motivated by illicit profits.

As noted in the GAO report, ICE has existing export enforcement coordination procedures with the Department of Commerce (DOC) that have been in effect for over 20 years, and has provided cohesive and consistent coordination guidance to both organizations. The existing coordination procedures require, in part, that DOC seek ICE concurrence and coordination prior to any searches, seizures and detentions at ports of entry. In addition, DOC must allow ICE attachés to pursue investigative leads outside the United States, except under limited circumstances as delineated in the coordination procedures. In ICE's view, the existing protocols work, as evidenced by the lack of specific examples of coordination challenges. Accordingly, ICE does not object to updating the procedures to include appropriate agency identification; for instance, the document currently references the U.S. Customs Service's Office of Investigations, but should instead identify ICE's Office of Investigations (OI). However, ICE does not agree to any substantive changes that would modify existing protocols among relevant parties.

In order to further improve coordination, ICE officials propose the creation of an EECC at ICE Headquarters within the National Security Investigations Division. The EECC would function as a clearinghouse for de-conflicting and coordinating all export enforcement matters, with an ICE official serving as the Unit Chief of the EECC. In doing so, ICE would be exercising its leadership position within export enforcement and leveraging unique authorities, assets and

experience. The FBI and DOC would designate one official each to serve as Associate Unit Chiefs of the EECC. Other organizations would be provided an opportunity to participate in the EECC including Customs and Border Protection (CBP), Defense Criminal Investigative Service, Defense Security Service, Naval Criminal Investigative Service.

ICE, DOC and FBI personnel, who would have unfettered access to the relevant ICE, DOC and FBI databases, would staff the EECC. The EECC would conduct reviews of all participating agencies' export investigations to determine the most appropriate interagency response, to include creating an acceptable definition of FCI. The EECC would coordinate and direct new investigative leads to field components of each agency for response by all participating agencies. Further, the EECC would assure that agencies coordinate on existing investigations as well. Under an option like this, the goal of the GAO recommendation would be met and U.S. government export enforcement and FCI efforts would improve significantly.

**Recommendation 2:** To ensure discipline and improve information needed for license determinations, [GAO] recommends that the Secretary of Homeland Security direct the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement, the Secretary of Commerce direct the Under Secretary for Industry and Security, and the Secretary of State direct the Deputy Assistant Secretary for Defense Trade Controls, to take the following two actions:

- establish goals for processing license determinations and
- coordinate with licensing officers, inspectors, investigators, and prosecutors to determine what additional training or guidance is needed on license determinations, including the type of information needed to make license determinations.

ICE officials concur in part. In regard to establishing goals for processing license determinations, the ICE Exodus Command Center (ECC) acts as a conduit for licensing requests from CBP officers and ICE special agents. ICE is not a licensing agency. The ECC directs licensing requests to licensing agencies including Commerce, State, the Nuclear Regulatory Agency, the Department of Treasury Office of Foreign Assets Control (OFAC), and others. The licensing agencies are responsible for the actual determinations and the length of time necessary to render those decisions. ICE would support licensing agencies in goal setting through input from a law enforcement perspective, in order to support timely and accurate licensing determinations and the viability of export enforcement investigations.

ICE officials created the Exodus Accountability Referral System (EARS) operated within the ECC to increase effectiveness and efficiency. EARS is an intranet based automated system to initiate, track and manage licensing determinations sent to the ECC by CBP and ICE field components. EARS facilitates timely submissions, decisions and resolutions through electronic alerts and processing. EARS also supports information sharing and reporting capabilities and provides users with the capability to evaluate and measure export enforcement results. Finally, it provides an effective method to assure uniformity is maintained in the referral process.

ICE agents receive timely training related to the licensing determination process through the Strategic Investigations Training Seminar (SITS). SITS is a two-week advanced export enforcement training course offered at the Federal Law Enforcement Training Center (FLETC) and at seven ICE Special Agent in Charge offices in the field. Approximately 125 agents and analysts received this training. OI personnel have provided written guidance to field offices relating to obtaining “second-level reviews” from the Department of State, to include identifying all information required to make a most complete licensing determination possible. Further, OI officials have provided training through conferences detailing the licensing process and required information. ICE employees also provide training to other agencies, including the Department of Commerce, the Federal Bureau of Investigation, Department of Defense agencies and the Department of Justice. ICE officials will continue to emphasize the need for the most accurate and complete specifications available from field offices in order to obtain licensing determinations during all training events and related conferences.

**Recommendation 3:** To ensure systematic reconciliation of shipments with Commerce licenses, [GAO] recommends that the Secretary of Commerce direct the Under Secretary for Industry and Security, in consultation with the Commissioner of Homeland Security’s U.S. Customs and Border Protection, to determine the feasibility of establishing a requirement for CBP to decrement Commerce licenses and an action plan for doing so.

The recommendation is directed to the Department of Commerce because the affected business processes are owned by Commerce. CBP officials are aware that Commerce personnel will contact them to assist in responding to the recommendation and are prepared to act when contacted.

The fourth and final recommendation does not involve the Department of Homeland Security or its components and we have no comments thereon.

We have provided technical comments separately and believe that their inclusion will enhance the accuracy of the report.

Sincerely,



Steven J. Pecinovsky  
Director  
Departmental GAO/OIG Liaison Office

# Appendix V: Comments from the Department of State



United States Department of State

*Assistant Secretary for Resource Management  
and Chief Financial Officer*

*Washington, D.C. 20520*

NOV 3 2006

Ms. Jacquelyn Williams-Bridgers  
Managing Director  
International Affairs and Trade  
Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548-0001

Dear Ms. Williams-Bridgers:

We appreciate the opportunity to review your draft report, "EXPORT CONTROLS: Challenges Exist in Enforcement of an Inherently Complex System," GAO Job Code 120489.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact David Trimble, Director, Bureau of Political and Military Affairs at (202) 663-2807.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradford R. Higgins".

Bradford R. Higgins

cc: GAO – Anne-Marie Lasowski  
PM – John Hillen  
State/OIG – Mark Duda

Department of State Comments on GAO Draft Report

EXPORT CONTROLS: Challenges Exist In Enforcement of  
an Inherently Complex System  
(GAO-07-13/GAO Code 120489)

We appreciate the opportunity to comment on the GAO's draft report entitled "EXPORT CONTROLS: Challenges Exist in Enforcement of an Inherently Complex System."

The Department of State is pleased that the draft GAO report highlights the complexities inherent in export control enforcement and the steps the Department has taken to address these challenges. Recognizing this complexity and the need for effective interagency coordination, earlier this year the Department co-sponsored with the Department of Commerce a successful multi-agency export enforcement conference to train and educate the key players from the law enforcement and regulatory communities on the criminal enforcement of export cases. Also providing critical support and coordination in this area are the permanent liaisons from Immigration and Customs Enforcement (ICE) and Federal Bureau of Investigation (FBI) assigned to the Department to coordinate and support criminal investigations. These efforts are producing results. In fiscal year 2006, there was a 50% jump in the Department's direct support to investigations and criminal trials from the previous year, as well as large increases in the number of Arms Export Control Act (AECA) related arrests and indictments.

While the Department has a strong record of imposing civil penalties for violations of the regulations, the GAO report correctly notes that the Department has never brought formal civil charges before an Administrative Law Judge as provided for in the law. While we do not believe there are a significant number of civil enforcement cases that merit being brought before an Administrative Law Judge, we are currently examining options for providing the necessary legal support and access to Administrative Law Judges to make it possible to pursue such cases.

The Department concurs with the report's recommendations to consult with the FBI and ICE regarding additional training for coordinating State's support to their criminal investigations. This will build upon our past and ongoing work in this area. The Department also welcomes any additional information the Department of Justice (DOJ) can provide regarding the outcomes of criminal cases

- 2 -

involving export control and related violations to help the Department carry out its regulatory responsibilities. The Department already established goals in 2004 for providing regulatory support to the enforcement community within specified time periods. Based on the one incident cited in the report of confusion over this guidance, the Department has already reached agreement with Immigration and Customs Enforcement to update and clarify this guidance.

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# Appendix VI: GAO Contact and Staff Acknowledgments

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**GAO Contact:**

Ann Calvaresi-Barr (202) 512-4841 or calvaresibarra@gao.gov

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**Acknowledgments:**

In addition to the contact name above, Anne-Marie Lasowski, Assistant Director; Matthew Cook; Lisa Gardner; Arthur James, Jr.; Karen Sloan; Lillian Slodkowski; Suzanne Sterling; and Karen Thornton made key contributions to this report.



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# Related GAO Products

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*Defense Technologies: DOD's Critical Technologies List Rarely Informs Export Control and Other Policy Decisions.* [GAO-06-793](#). Washington, D.C.: July 28, 2006.

*Export Controls: Improvements to Commerce's Dual-Use System Needed to Ensure Protection of U.S. Interests in the Post-9/11 Environment.* [GAO-06-638](#). Washington, D.C.: June 26, 2006.

*Defense Trade: Arms Export Control Vulnerabilities and Inefficiencies in the Post-9/11 Security Environment.* [GAO-05-468R](#). Washington, D.C.: April 7, 2005.

*Defense Trade: Arms Export Control System in the Post-9/11 Environment.* [GAO-05-234](#). Washington, D.C.: February 16, 2005.

*Foreign Military Sales: DOD Needs to Take Additional Actions to Prevent Unauthorized Shipments of Spare Parts.* [GAO-05-17](#). Washington, D.C.: November 9, 2004.

*Nonproliferation: Improvements Needed to Better Control Technology Exports for Cruise Missiles and Unmanned Aerial Vehicles.* [GAO-04-175](#). Washington, D.C.: January 23, 2004.

*Export Controls: Post-Shipment Verification Provides Limited Assurance That Dual-Use Items Are Being Properly Used.* [GAO-04-357](#). Washington, D.C.: January 12, 2004.

*Nonproliferation: Strategy Needed to Strengthen Multilateral Export Control Regimes.* [GAO-03-43](#). Washington, D.C.: October 25, 2002.

*Export Controls: Processes for Determining Proper Control of Defense-Related Items Need Improvement.* [GAO-02-996](#). Washington, D.C.: September 20, 2002.

*Export Controls: Department of Commerce Controls over Transfers of Technology to Foreign Nationals Need Improvement.* [GAO-02-972](#). Washington, D.C.: September 6, 2002.

*Export Controls: More Thorough Analysis Needed to Justify Changes in High-Performance Computer Controls.* [GAO-02-892](#). Washington, D.C.: August 2, 2002.

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**Related GAO Products**

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*Export Controls: Rapid Advances in China's Semiconductor Industry Underscore Need for Fundamental U.S. Policy Review.* [GAO-02-620](#). Washington, D.C.: April 19, 2002.

*Defense Trade: Lessons to Be Learned from the Country Export Exemption.* [GAO-02-63](#). Washington, D.C.: March 29, 2002.

*Export Controls: Issues to Consider in Authorizing a New Export Administration Act.* [GAO-02-468T](#). Washington, D.C.: February 28, 2002.

*Export Controls: Actions Needed to Improve Enforcement.* [GAO/NSIAD-94-28](#). Washington, D.C.: December 30, 1993.

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U.S. Government Accountability Office, 441 G Street NW, Room 7125  
Washington, D.C. 20548

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Paul Anderson, Managing Director, [AndersonP1@gao.gov](mailto:AndersonP1@gao.gov) (202) 512-4800  
U.S. Government Accountability Office, 441 G Street NW, Room 7149  
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