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**REPORT TO THE PERMANENT
SUBCOMMITTEE ON INVESTIGATIONS
COMMITTEE ON
GOVERNMENT OPERATIONS
UNITED STATES SENATE**

RELEASED

**Controls Over Importing And
Exporting Munitions Items** B-158368

Department of the Treasury
Department of Commerce
Department of State
Department of Defense

**BY THE COMPTROLLER GENERAL
OF THE UNITED STATES**

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-158368

The Honorable Henry M. Jackson, Chairman
Permanent Subcommittee on Investigations
Committee on Government Operations
United States Senate

Dear Mr. Chairman:

This is our report on controls over importing and exporting munitions items. Our work was done pursuant to your request of May 18, 1972.

In accordance with advice given to our representatives, we obtained official comments on our findings, conclusions, and recommendations from the Departments of State, the Treasury, and Commerce. Those Departments agreed generally with our conclusions and recommendations and cited actions taken or planned for correction. We have included comments from the Departments and our evaluation of their comments.

As agreed, we are not sending copies of this report to the agencies involved until you see the report.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

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ABBREVIATIONS

ATF	Bureau of Alcohol, Tobacco and Firearms
FEP	foreign excess property
GAO	General Accounting Office
OMC	Office of Munitions Control

*COMPTROLLER GENERAL'S REPORT
TO THE PERMANENT SUBCOMMITTEE
ON INVESTIGATIONS
COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES SENATE*

CONTROLS OVER IMPORTING AND
EXPORTING MUNITIONS ITEMS
Department of the Treasury
Department of Commerce
Department of State
Department of Defense
B-158368

D I G E S T

WHY THE REVIEW WAS MADE

The Permanent Subcommittee on Investigations, Senate Committee on Government Operations, is concerned that U.S. military equipment being disposed of could fall into the hands of undesirables in this country or be shipped to countries whose possession of such equipment would not be in the best interest of the United States. Therefore the Subcommittee asked the General Accounting Office (GAO) to review the controls over importing and exporting munitions items. The review was to include:

- An identification of the agencies involved.
- An analysis of the legislative purposes and responsibilities of the agencies.
- A determination of procedures devised by the agencies.
- An evaluation of how well procedures were working.
- An assessment of the munitions lists as documents to positively identify items.

FINDINGS AND CONCLUSIONS

No single law fully covers controls over importing and exporting munitions items. Responsibility for controlling these items is fragmented among various agencies. (See p. 8.)

The agencies have prescribed what appear to be reasonable procedures for controlling the importation and exportation of munitions items. Full and consistent application of these procedures would probably be an effective control, but actual practices vary and improvements are needed in implementing the procedures. (See p. 12.) For example:

- The program for licensing and approving importers' requests to bring munitions items into the United States falls short of providing the information needed by decisionmakers for effective control. (See p. 13.)
- Although manpower limitations restrict the number and scope of physical inspections by the Bureau of Customs, some of the weaknesses in control could be overcome through more effective management. (See p. 18.)

- Practices for insuring that only authorized items and quantities are actually imported and that permits are not used for purposes other than importing could be improved. (See p. 21.)
- Exports of munitions items are approved more on the basis of what country the items are going to rather than who will use the items. GAO believes that it is not enough to know where the items are going initially; where they will be used should also be known. Inspections made at ports are not adequate to determine whether prohibited items are being exported. (See p. 24.)

RECOMMENDATIONS OR SUGGESTIONS

The Secretaries of the Treasury and Commerce should determine which agency should inspect export cargo and obtain the most effective, economical organization and staffing necessary for increasing the number and scope of physical inspections of export shipments.

The Secretary of the Treasury should:

- Further emphasize investigations of licensed importers and dealers to insure that they meet the laws' criteria.
- Require importers to be more specific about the items being imported, especially foreign excess property.
- Maintain a file of licensed importers and dealers at the headquarters level.
- Further emphasize controlling munitions items and following the Customs procedures for importing

these items. To do this, the Secretary should determine the need for increased manpower and equipment.

- Insure timely receipt of release documents from both importers and Customs and follow up on discrepancies between types and quantities authorized and actually imported.
- Revise the procedures for controlling multiple shipments.
- Revise the procedures for issuing permits to identify items already in the United States.
- Develop procedures for the return of unused permits.

The Secretary of Commerce should:

- Require that items classified as foreign excess property be properly documented by Government sale numbers and that the numbers be verified.
- Develop procedures to insure proper coordination, with the Bureau of Alcohol, Tobacco and Firearms, of any request to import foreign excess property. This should include providing the Bureau with copies of the foreign excess property authorizations for munitions items.

The Secretary of State should:

- Further emphasize the procedures for determining the actual uses of exports of components and spare parts.

AGENCY ACTIONS AND UNRESOLVED ISSUES

The agencies involved generally agreed with the above conclusions and recommendations and cited actions taken or planned for correction.

CHAPTER 1

INTRODUCTION

The Permanent Subcommittee on Investigations, Senate Committee on Government Operations, examined the way U.S. military equipment was being disposed of in Europe. The Subcommittee is concerned that such equipment could fall into the hands of undesirable elements in this country or be shipped to countries whose possession of such equipment would not be in the best interest of the United States.

Therefore the Subcommittee asked the General Accounting Office (GAO) to review the controls over importing and exporting munitions items. The review was to include

- an identification of the agencies involved,
- an analysis of the legislative purposes and responsibilities of the agencies,
- a determination of procedures devised by the agencies,
- an evaluation of how well procedures were working, and
- an assessment of the munitions lists as documents to positively identify items.

EXTENT OF IMPORT AND EXPORT TRANSACTIONS

During fiscal year 1972 about \$67 million worth of munitions items were imported into the United States, according to Bureau of Alcohol, Tobacco and Firearms (ATF) records. Firearms, amounting to about \$44.2 million, made up the largest category of munitions items. Implements of war--which include such items as spare parts for military equipment--accounted for approximately \$18.9 million. Imports of ammunition amounted to about \$3.9 million.

According to the Department of State's Office of Munitions Control (OMC) records, commercial exports of munitions items during fiscal year 1972 were valued at about \$581 million. This figure does not include exports of foreign military sales, which are government-to-government transactions.

SCOPE OF REVIEW

We examined the applicable laws and evaluated the policies, procedures, and instructions for controlling the importing and exporting of munitions items, except those relating to government-to-government sales. Our work included discussions with officials of the agencies having responsibility for imports and exports.

We reviewed permits for imports and licenses for exports. At the various ATF regional offices, we examined the procedures used for licensing. We also examined ATF's comparison of release documents with import permits, which insures that only authorized items and quantities were imported.

We made our review at the following locations from May through September 1972.

Department of the Treasury:

Bureau of Alcohol, Tobacco and Firearms, Washington, D.C.

Bureau of Alcohol, Tobacco and Firearms regional offices in New York City, Chicago, Dallas, and San Francisco

Bureau of Customs regional offices in Boston, New York City, New Orleans, San Francisco, and Seattle.

Department of Commerce:

Bureau of Resources and Trade Assistance, Office of Import Programs, Special Import Programs Division, Washington, D.C.

Department of State:

Bureau of Politico-Military Affairs, Office of Munitions Control, Washington, D.C.

Department of Defense:

International Security Affairs, Directorate for Strategic Trade and Disclosure, Washington, D.C.

At the following selected ports and facilities, we reviewed shipping and receiving procedures and observed physical inspections of munitions items.

Boston area:

Logan International Airport
Castle Island Seaport

New York area:

Port of New York
Port of Newark
John F. Kennedy International Airport

New Orleans area:

Port of New Orleans
New Orleans International Airport

San Francisco area:

Port of Oakland
Port of San Francisco
U.S. Post Office, Oakland
U.S. Air Mail Facility, San Francisco International
Airport

Seattle area:

Port of Seattle

CHAPTER 2

LAWS AND AGENCY RESPONSIBILITIES FOR CONTROLLING

THE IMPORTING AND EXPORTING OF MUNITIONS ITEMS

No single law fully covers controls over importing and exporting munitions items. The Mutual Security Act of 1954 and the Gun Control Act of 1968 are the major laws dealing with the subject, although controlling the importing and exporting of munitions items is not the primary purpose of either of them. Other laws indirectly concerned are the Federal Property and Administrative Services Act of 1949, the Foreign Military Sales Act of 1968, and the Tariff Act of 1930.

The laws mentioned above, together with implementing executive orders, assign joint responsibilities to the Departments of State, Defense, Commerce, and the Treasury.

MUTUAL SECURITY ACT

To promote world peace, to insure the national security, and to further U.S. foreign policy, section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), authorizes the President to (1) control the importing and exporting of arms, ammunition, and implements of war, including related technical data, and (2) designate those articles to be controlled.

By Executive Order No. 10973 (22 U.S.C. 2381 note), the President delegated his authority to control the importing and exporting of munitions items to the Secretary of State. When the Gun Control Act was enacted in 1968, Executive Order No. 11432 (22 U.S.C. 1934 note) transferred responsibility for controlling the importing of munitions items from the Secretary of State to the Secretary of the Treasury. The Secretary of State, with the concurrence of the Secretary of Defense, is responsible for designating articles subject to export control, and the Secretary of the Treasury, with the concurrence of the Secretaries of State and Defense, is responsible for designating articles subject to import control.

Within the Department of State, OMC of the Bureau of Politico-Military Affairs administers export controls, and within the Department of the Treasury, ATF administers import controls. Section 414 of the Mutual Security Act requires that exporters and importers of munitions items register with the administering agency; therefore, munitions exporters must register with OMC and munitions importers must register with ATF.

GUN CONTROL ACT

The Gun Control Act of 1968 (18 U.S.C. 923) requires, among other things, that firearms and ammunition importers, as well as dealers and manufacturers, be licensed by the Secretary of the Treasury and maintain records prescribed by the Secretary. The act is not intended to unduly restrict law-abiding citizens in their acquisition, possession, or use of firearms.

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT

The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 512) makes each agency responsible for disposing of its own foreign excess property (FEP). FEP is property outside the United States under the control of, but not needed by, a Federal agency.

FEP may be disposed of only if such disposal conforms to U.S. foreign policy. Importing nonagricultural FEP into the United States is forbidden unless the Secretary of Commerce determines that it would relieve a domestic shortage or would otherwise benefit the economy.

Although the Department of Defense is responsible for disposing of its FEP, which includes munitions items, the Department of Commerce is responsible for determining whether FEP munitions items may be imported.

FOREIGN MILITARY SALES ACT

Under the Foreign Military Sales Act, as amended (22 U.S.C. 2751-2793), the President is authorized to sell defense articles. The President has delegated certain responsibilities to the Secretaries of State, Defense, and the

Treasury. Within the Department of State, the Bureau of Politico-Military Affairs is primarily responsible for controlling military exports. The Department of Defense is responsible for insuring that foreign military sales proposals are properly coordinated with and approved by the Department of State and, in the case of credit sales, by the Department of the Treasury, before responding to a purchase request from a foreign government.

TARIFF ACT

The Tariff Act of 1930, as amended (19 U.S.C. 1202), authorizes Customs officers to prevent the unlawful introduction of merchandise into, or removal from, the United States. The act also made Customs responsible for insuring that import and export transactions are properly documented.

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Since the purposes of these laws were not solely to control munitions, several agencies are now involved in their administration and management responsibilities are divided. However, the agencies have prescribed what appear to be reasonable procedures for controlling the importation and exportation of munitions items. These procedures are discussed in chapter 3.

CHAPTER 3

PROCEDURES FOR CONTROLLING IMPORTS

To control the importing of munitions items, including those which are FEP, ATF authorizes people or firms to import and determines what items they can import. ATF has procedures to insure that only authorized items and quantities are imported. The Department of Commerce also has procedures to control imports of FEP.

AUTHORIZING PEOPLE TO IMPORT

Although the Mutual Security Act of 1954 requires that importers of munitions items be registered, it does not specify the criteria for such registration; registration requires only payment of a specified fee. Currently about 200 importers are registered with ATF.

Unlike the Mutual Security Act, the Gun Control Act lists the criteria for licensing. Among other things, the criteria allow licensing an applicant if he

- is 21 years of age or over,
- is not under indictment for or convicted of a crime punishable by imprisonment for a term exceeding 1 year,
- is not a fugitive from justice,
- is not an unlawful user of harmful drugs, and
- is not adjudged a mental defective or has not previously been committed to a mental institution.

ATF personnel investigate people to determine whether they meet these criteria. The Gun Control Act requires that an application for a license be approved or denied within 45 days of its receipt. If no action is taken within this time, the applicant may compel the Secretary of the Treasury to act.

DETERMINING THE TYPE AND QUANTITY WHICH CAN BE IMPORTED

When reviewing applications to import firearms--which include shotguns, rifles, and handguns--ATF considers, among other things, whether the firearms are for sporting purposes, whether they are military surplus, and whether they were manufactured in a country whose items are prohibited by regulations.

When reviewing applications to import items other than firearms and destructive devices, ATF considers only the country of origin. If the items are to be imported from a country whose items are prohibited by regulations, ATF must deny the import permit.

ATF does not consider quantities, except when the items are handguns. It approves applications for unlimited quantities of rifles and shotguns. ATF officials told us that the law does not restrict quantities and that therefore they have no grounds for denying applications on this basis. Likewise ATF does not consider the reasons for importing parts for military equipment because ATF claims that it has no legal basis for denying requests for specified uses.

ISSUING COPIES OF PERMITS FOR MULTIPLE SHIPMENTS

Many times the total quantities authorized to be imported consist of several shipments which arrive at different ports. Shipments are cleared either at the port or at the importer's place of business. To facilitate the importing of multiple shipments, ATF provides the importers with certified true copies of the permits. Moreover, ATF regulations allow the repeated use of permits during the 6-month periods that the permits are valid.

PROCEDURES FOR IMPORTING FOREIGN EXCESS PROPERTY

If munitions items to be imported are also FEP, permits from the Department of Commerce as well as from ATF are required. The Federal Property and Administrative Services Act of 1949 allows imports of nonagricultural FEP only if the Secretary of Commerce determines that the imports will relieve a domestic shortage or otherwise benefit the economy.

PROCEDURES FOR ITEMS
THAT HAVE BEEN IMPORTED

After ATF approves a permit, it sends the permit to the importer and sends a copy to the regional ATF office with jurisdiction over the area in which importer's business is located. ATF keeps a second copy in its central office in Washington, D.C.

To obtain physical possession of the items, the importer must present Customs with the original permit plus two copies of a release document. The importer retains the permit and sends one copy of the release document to the applicable ATF regional office. Customs sends the other copy to the same office.

The release document has three sections. The first section, completed by the importer, contains such information as the importer's name, his Federal license number, and the description and number of the items. The second section, completed by the Customs official, certifies that ATF authorized the items for importation. The importer completes the third section, a verification of importation, after he has received the items. The importer lists the permit number and the customs entry number, states whether there are any discrepancies in the quantity, and certifies that each fire-arm is marked and can be identified.

The ATF regional office compares the release document from the importer with the release document from Customs and compares both of these documents with the copy of the permit on file at the regional office. This matching process is a second check over the importer. (Customs officials make the first check.) These procedures should show whether (1) the importer had a valid permit and imported only the authorized items and quantity and (2) the authorized quantity was exceeded by an importer that received multiple shipments under the same permit.

ATF's procedures for controlling unused permits are very specific; they require that all unused, expired, suspended, or revoked permits be returned immediately to the Director of ATF.

CONCLUSIONS

In general, the procedures to control the importing of munitions items appear to be reasonable. Full and consistent application of these procedures, along with effective enforcement and investigations, would probably be an effective control. However, actual practices vary and improvements are needed in implementing the procedures.

CHAPTER 4

CONTROL PROCEDURES NOT EFFECTIVE TO INSURE

PROPER APPROVAL OF IMPORTS

The program for licensing and approving importers' requests to bring munitions items into the United States falls short of providing the information needed by decisionmakers for effective control.

In considering whether to approve a request for importing munitions items, the decisionmaker should know:

- Whether the person meets the criteria established by law.
- What items are to be imported and the reasons for importing.
- The source of the items.
- Intelligence from other Government agencies involved in approving requests.

INSUFFICIENT DATA ON IMPORTERS AND DEALERS

ATF had never investigated many importers and dealers which it had licensed to verify if they met qualifications established by law. For example, during fiscal year 1972 the ATF Dallas regional office issued over 28,000 licenses, of which at least 7,000 had not been investigated. At the ATF New York regional office, 9,009 licenses were in force as of December 28, 1971, and 4,334 had not been investigated.

We could not establish the precise number of licensed dealers and importers operating in the United States that ATF had never investigated. ATF regional offices issue the licenses and keep the only available records of them. The regional offices also keep records of investigations. No statistical reports are submitted to ATF headquarters, so we could not establish the number of licenses issued or investigations made. However, the condition in the three ATF regional offices we reviewed--where over 56,000 licensed importers and dealers were operating--apparently prevailed in other offices.

The Gun Control Act requires importers, dealers, and manufacturers of firearms to be licensed. (See p. 7.) Licensing is not required for importers of munitions items other than firearms, such as tank parts.

After an ATF regional office receives a request for a license, it checks its records on undesirable people and on people who violated gun control laws and regulations. ATF is authorized to investigate each applicant to insure that he meets qualifications established by law but has not always made these investigations due to manpower shortages.

ATF officials recognize that ATF should investigate all new applicants, except large chain stores and other known reputable firms, but ATF cannot do this within manpower ceilings. ATF does not expect to get the necessary manpower until the end of fiscal year 1974.

Import licenses not available
at activity approving permits

ATF headquarters approves or disapproves all permits to import munitions items. However, records on licensed importers are kept at the various regional offices. Although the detailed records can be kept in the field, it would be desirable to have a central list of all licensees at headquarters. This would give ATF a ready reference to assure itself that an importer holds a valid license before granting him a permit.

ATF issues about 2,000 import permits each month. We asked ATF officials how they assured themselves that a person had a valid license before approving an import permit. They told us that they made telephone calls to regional offices to establish this, but they acknowledged that records of licensed importers should be available at ATF headquarters for more effective control.

LACK OF ESSENTIAL CONTROL DATA IN
APPROVED IMPORT PERMITS

Import permits issued by ATF are used to control the entry of munitions items into the United States. To be effective control documents, the permits must contain specific quantities, item descriptions, and uses for approved imports.

Our analysis of import permits disclosed many conditions which, in our opinion, prevented their use as effective controls. Examples of these conditions follow.

- ATF issued permits for unlimited quantities of rifles and shotguns.
- Even though the quantities of imports seemed excessively high, ATF issued 122 permits to one west coast importer during fiscal year 1972, authorizing the importation of 41,852 shotguns and 719,500 revolvers. ATF records showed, however, that only 710 shotguns and 27,033 revolvers had been imported.
- ATF issued permits with vague descriptions. For example, it issued one permit to import "500 tons" of "miscellaneous used spare parts for M47 tank."
- ATF issued permits to the larger importers who consistently used the same reasons for importing military equipment. One importer usually gave the reason as "Recondition and stock for resale to U.S. Government and/or Foreign Military Mission." Some of this equipment was being imported for reconditioning even though it was new. Another usually gave the explanation "Resale to NATO countries after reconditioning in the United States."

When permits are not more descriptive than those described above, Customs has no basis for knowing if only approved munitions items are being imported and ATF has no assurance that the items are being imported for purposes permitted by law.

INADEQUATE CONTROLS OVER MUNITIONS ITEMS IMPORTED AS FOREIGN EXCESS PROPERTY

When munitions items were imported as FEP, appropriate action was not taken to

- establish that the items were owned and sold by a U.S. Government agency in a foreign country or
- prevent the FEP authorizations from being used instead of the import permits issued by ATF.

Source not established

The instructions for authorizing FEP imports require adequate evidence that the FEP was, in fact, owned and sold by a U.S. Government agency in a foreign country. Imports of munitions items, however, were approved without such evidence.

Some importers specifically identified the U.S. Government agency from which they bought the items. Others contended that they had bought the items from a U.S. Government agency but did not furnish adequate information to support their contentions. For example, several approved authorizations stated simply that the items had been bought from "U.S. Government Surplus Sale - Europe." Other approved applications stated only that "We have made efforts to obtain the documentary evidence that the above (items) is FEP but have been unable to do so. Our supplier assures us that the above material is of U.S. origin."

Approved actions not coordinated

The requirement that munitions items have FEP authorizations and ATF import permits has caused confusion and, in fact, has created a situation in which munitions items could be imported without ATF permits.

At two ports we asked Customs officials if they would allow imports of munitions items with only FEP authorizations. One official told us that he would require ATF import permits. Another official stated that he would allow munitions items to be imported without ATF permits.

Beginning in March 1972, to alert Customs officials, Department of Commerce officials began stating on FEP authorizations, whenever it appeared that munitions items were involved, that ATF permits might also be required. As far as we could determine, there is no formal procedure for notifying ATF that an importer has been granted an FEP authorization when it is known that munitions items are being imported.

CONCLUSIONS

Approving importers' requests to import munitions items is the cornerstone in effectively controlling the items. We believe that this phase needs to be strengthened because, without effective controls, people who do not meet the legal requirements could import and sell items and prohibited items could enter the country for unknown purposes.

Since many munitions items are FEP, it is important to know the sources of the items. Without adequate information to establish that the items were actually owned and sold by a U.S. Government agency, the munitions items could be from sources which may not have the same restrictions on selling that the U.S. Government has.

RECOMMENDATIONS

We recommend that the Secretary of the Treasury:

- Further emphasize investigations of licensed importers and dealers to insure that they meet the laws' criteria.
- Require importers to be more specific about the items being imported, especially FEP.
- Maintain a file of licensed importers and dealers at the headquarters level.

We recommend that the Secretary of Commerce:

- Require that items classified as FEP be properly documented by Government sale numbers and that the numbers be verified.
- Develop procedures to insure proper coordination with ATF of any request to import FEP. This should include providing ATF with copies of the FEP authorizations for munitions items.

CHAPTER 5

IMPROVED CONTROLS NEEDED OVER

ARRIVAL OF MUNITIONS ITEMS

The principal functions of Customs are to assess and collect import duties. The Tariff Act of 1930 made Customs responsible for preventing the unlawful introduction of merchandise into, or removal from, the United States. In carrying out this responsibility, Customs safeguards agriculture, business, health, security, and related consumer interests for other Government agencies.

These functions include working with the Bureau of Narcotics and Dangerous Drugs in suppressing illegal narcotics traffic, enforcing laws and regulations on agriculture and plant quarantines, and insuring that imported motor vehicles conform to lawful safety standards, as well as enforcing munitions control.

The tasks assigned to Customs are broad and the volume of of imports increases each year, but the manpower available to accomplish these tasks is rather limited. Although we recognize these limitations, we believe some of the weaknesses in control could be overcome through improved management.

PHYSICAL INSPECTION PROCEDURES

The Tariff Act of 1930 requires Customs to examine at least 1 case from every shipment and 10 percent of the cases in shipments containing more than 10 cases. According to Customs officials, manpower limitations prevent them from adhering to the 10-percent criterion. Customs tries to inspect one case for every invoice of a formal entry at the ports visited in New Orleans, San Francisco, and New York. Customs also tries to inspect 100 percent of the informal entries--those entries valued at \$250 or less or those imported for personal use.

The ports we visited received a limited number of shipments containing munitions items, but we observed several physical inspections of the items. Generally inspectors do not count the entire contents of the case selected for inspection; rather, they compare the items with the descriptions

on the permits. We also noted two instances in which Customs officials did not count the number of cases in the shipments. In some cases items were brought in under expired permits.

At each port visited Customs required both permits and release documents. Procedures varied, however, for sending the release documents to regional ATF offices. We noted that many release documents had been completed but had not been sent to ATF.

Customs does not retain copies of the permits or note on the permits the quantities received through partial shipments. Thus the control over importing authorized quantities rests with the importers until ATF compares the permits with the release documents. (See p. 11.)

MUNITIONS LISTS AS CONTROL DOCUMENTS

Two lists control the importing and exporting of munitions items: the U.S. Munitions List for regulating exports, maintained by the Department of State, and the U.S. Munitions Import List, maintained by ATF. The two lists are essentially the same, except the latter omits articles which do not require import control. These omissions were made with the concurrence of the Departments of State and Defense.

Both lists categorize the items that may be imported or exported. The categories include firearms, ammunition, launch vehicles, vessels of war, tanks and military vehicles, aircraft, toxicological agents, nuclear weapons designs, and oceanographic equipment.

Customs officials stated that they could readily identify major munitions items and components, but they admitted to difficulties in identifying spare parts for munitions items. For example, commodity specialists at one port said that they would have difficulty in identifying as munitions items electronic components of missiles and machine parts for timing devices.

CONCLUSIONS

Additional manpower could alleviate restrictions on the number and scope of Customs physical inspections. However,

as long as adequate manpower for the total inspection task is not available, munitions items should receive more attention than ordinary imports.

Such deficiencies as not returning release documents, allowing items to be imported under expired permits, and certifying that quantities had been received before their importation are not due to a lack of manpower. Those deficiencies could be eliminated if management closely monitored procedures and practices at the ports.

In view of the limited physical inspections of imports (see p. 18) and the limited inspections of exports (see p. 24), we question whether more detailed or descriptive munitions lists would provide additional control. Regardless of the degree of detailed descriptions, an inspector would have difficulty in determining if machine parts are tank parts and are therefore munitions list items, unless the importer identifies such items as munitions items.

Treasury officials agreed that closer management monitoring was needed but stated that additional manpower was required.

RECOMMENDATIONS

We recommend that the Secretary of the Treasury further emphasize controlling munitions items and following the Customs procedures for importing the items. Because improvement in those areas may require increased resources, we recommend also that the Secretary of the Treasury determine the need for increased manpower and equipment.

CHAPTER 6

IMPROVED CONTROLS NEEDED OVER ITEMS AFTER IMPORTATION

ATF practices for insuring that only authorized items and quantities are imported and that permits are used only for importing are not effective because:

1. Customs and importers do not always send release documents to ATF for comparison with permits.
2. ATF issues permits to import munitions items after they have already entered the country.
3. Unused permits are not always returned to ATF.

Without effective controls, prohibited items could enter the United States and permits could be used to divert shipments to other countries.

MATCHING PROCESS NOT AN EFFECTIVE CONTROL

In theory the matching process should show whether an importer used his permit to import only authorized items and quantities. Since not all release documents are sent to ATF, ATF cannot be certain whether the items were imported. (See ch. 3.)

In most cases ATF received only one copy of the release document. For example, the files for 4 importers at the ATF New York regional office contained no release documents from the importers on 205 of 218 shipments authorized. The San Francisco office had received only 1 copy of the release document for 272 shipments. At the time of our review, release documents received had been on file at the office more than 60 days. About one-half of the documents were from importers, and the other half were from Customs.

ATF generally does not attempt to obtain release documents from Customs when it determines that the Customs copy is missing. The followup procedure to obtain the importers' release documents varies among the ATF regional offices visited. The San Francisco and Dallas offices requested the importers to submit their copies, whereas the New York office did not attempt to obtain the copies.

Multiple shipments

To facilitate importing, ATF allows importers to use the same permits or certified true copies for multiple shipments. ATF officials believe that the matching process should disclose imports of quantities in excess of those authorized.

Customs regulations do not require that Customs officials indicate on the permits the quantities received. Customs officials told us that, for multiple shipments, they did not have any procedures to insure that the total quantities of firearms received did not exceed the amounts authorized.

Although Customs officials do not allow any leeway for quantities in excess of those authorized for individual shipments, records at the ATF regional offices show that authorized quantities for multiple shipments have been exceeded. For example, when ATF matched the permits with copies of the release documents submitted by Customs, it found that on six occasions an importer in the ATF Dallas region had imported more firearms than authorized.

APPROVAL OF PERMITS AFTER IMPORTATION

Importers can obtain import permits after the items have entered the United States without advising ATF that the items have already been imported. For example, in November 1971 Customs allowed tank parts to be imported on the basis of an importer's claim that a permit was not required. Later, Customs established that a permit was needed and demanded the return of the parts. The importer did not comply with the Customs order, but in January 1972 he obtained a valid import permit from ATF. After Customs brought this matter to the attention of ATF in the latter part of January 1972, ATF began an investigation which was continuing at the time of our review.

In commenting on our draft report, Treasury informed us that, even though a permit had been issued after the fact, Customs had charged the importer with submitting a false document and had assessed liquidated damages in the amount of \$4,554.

We believe this action by Customs does not correct the weakness in procedures, and we suggest that in the future ATF ascertain whether items have already entered the United States before it approves import requests.

LACK OF CONTROL OVER UNUSED PERMITS

Release documents received from either Customs or the importer definitely indicate that the munitions items were brought into the United States. However, few release documents are received from either source. For example, in the New York area we found no evidence that 75 of 143 permits issued to 4 importers from January 1971 through January 1972 had ever been used. At the time of our review at the ATF Dallas regional office, approximately 700 permits issued to dealers and servicemen had expired. Since ATF had never received any release documents for these permits, it is reasonable to assume that they were never used.

CONCLUSIONS

Opportunities exist for more effectively controlling munitions items. We believe that knowing how much is being imported, as well as the time and place of importation, is basic to effective control. Therefore ATF needs to change certain procedures and to more rigorously monitor import permits.

RECOMMENDATIONS

We recommend that the Secretary of the Treasury:

- Insure timely receipt of release documents from both importers and Customs and follow up on discrepancies between types and quantities authorized and actually imported.
- Revise the procedures for controlling multiple shipments. Customs should note on permits when partial shipments are received, and ATF should match permits relating to use of multiple ports.
- Revise the procedure for issuing permits to identify items already in the United States.
- Develop procedures for the return of unused permits.

CHAPTER 7

IMPROVED CONTROLS NEEDED OVER

EXPORTING MUNITIONS ITEMS

The main objective in controlling the exporting of munitions items is to insure that they are not exported to a country whose possession of them would not be in the best interest of the United States or consistent with U.S. foreign policy.

Exports are approved more on the basis of what country the items are going to rather than who will use them. This approach controls the initial exports; however, since controls over the end use of the items are weak, they could be reexported. In our opinion, it is not enough to know where the items are going initially; where they will be used should also be known.

The physical inspections of declared munitions cargo are not sufficient to determine that the exports are, in fact, the items authorized and that the approved quantities are not exceeded. The inspections of general cargo are so limited that prohibited items or munitions items without valid licenses could be exported.

PROCEDURES

Articles which are clearly military are on the U.S. Munitions List with the concurrence of the Departments of Defense and State. Articles having both military and commercial applications are subject to discussions between applicable U.S. Government agencies, and decisions on them are based on the sensitivity of the articles. For example, a truck without guns or armor is not on the U.S. Munitions List but a truck with mounts for weapons or a water-fording capability is on the list.

OMC processes all requests to export U.S. Munitions List articles commercially. An export license is required whenever a private concern wants to export a U.S. Munitions List article. An export license is not required for government-to-government sales unless the articles are transported by common carrier or unless a forwarding agent is involved.

Export licenses are not required for most munitions items exported to Canada or U.S. territories. OMC officials told us that the Canadian Government had agreed to get U.S. approval before allowing military equipment of U.S. origin to be exported from Canada to another country. Since the Panama Canal Zone is considered part of the United States, munitions items shipped to the Canal Zone do not require OMC licensing, but shipments from there do require licensing.

OMC licenses are valid for 1 year. According to OMC, licenses may be denied, revoked, suspended, or revised under the Code of Federal Regulations whenever

--such action is advisable to promote world peace or the security or foreign policy of the United States or

--OMC officials have reason to believe that section 414 of the Mutual Security Act (see p. 6) or applicable regulations have been violated.

CHECKS SELDOM MADE ON USE OF EXPORTS

OMC considers that applications to export munitions items to sensitive areas have foreign policy implications and therefore subjects them to extensive reviews before approval. This procedure is also followed for exports of end items, such as fighter aircraft, to any country. OMC does not normally consider exports of other munitions items, such as minor components and spare parts, to allied countries to have foreign policy implications and therefore does not subject them to extensive reviews.

Many times when OMC granted export licenses, the purchaser of the components or spare parts was a private firm in a foreign country, rather than the government of that country. Sometimes the exporter stated that the purchaser would resell to military establishments in the country where his business was located; at other times the exporter stated that he would sell to foreign dealers but did not designate the use to be made of the items. For example:

--Spare parts for M41 and M46 tanks were sent to a private firm in Belgium with the purpose of resale to the Belgium Army.

--OMC approved an intransit license for antiaircraft ammunition drums to be exported to England. The only purpose identified on the license was resale to a private firm in England.

OMC has two methods to determine whether munitions items were actually received and used by the designated foreign sources but rarely uses these methods.

One method is to ask American officials assigned to U.S. Embassies to make checks, which usually consist of confirming sales and establishing the reliability of firms through foreign government representatives. Although OMC calls this method end-use checks, these checks are made before shipments and do not determine the actual uses of the items.

OMC does not keep statistics on the number of times that it has requested end-use checks. We examined the files of 34 companies which exported munitions items in fiscal years 1971 and 1972 and found no evidence of end-use checks. At our request, OMC researched other files and furnished us with files on four instances when it had asked American officials to confirm specific transactions. It did not, however, ask them to verify actual deliveries of the items.

Under the other method, OMC asks foreign countries to certify that the importers have complied with import regulations and, if necessary, to verify the actual deliveries of the goods. We could not find any statistics on or evidence of the use of this method. OMC claimed that it uses this method less frequently than the end-use checks and only when the transactions involve unfamiliar parties or are questionable or significant.

CARGO NOT ADEQUATELY CONTROLLED
TO PREVENT UNAUTHORIZED EXPORTS

Physical inspections of export cargo are not adequate to prevent shipments of munitions items without valid licenses. Also, Customs is allowing these items to be exported on the basis of verbal statements that valid licenses exist.

Exporters of munitions items must submit customs declarations, from which Customs selects specific cargo for inspections. This policy, however, is not followed at all ports.

In the San Francisco area, Customs selected for inspection all export shipments of munitions items which went through the large seaports. However, it did not inspect all selected shipments. For example, Customs inspected only 8 of 24 selected shipments at a large seaport in July 1972. Customs officials told us the remaining 16 shipments either had left port or were too securely packed to be inspected. Munitions items shipped from airports in that area are not inspected.

At the seaport in New Orleans, Customs officials very rarely inspect exports of munitions items because they assume that, if exporters took the trouble to get licenses, they would ship only what they had declared.

In the New York and Boston areas, Customs officials claimed that they physically inspected exports of munitions items through seaports but generally only visually inspected exports from airports to see if the cargo markings agreed with the customs declarations.

Beginning in July 1972, Customs officials were no longer responsible for inspecting exports licensed by the Department of Commerce. According to Customs officials, Department of Commerce personnel now inspect these exports, which account for 95 percent of all exports. Department of Commerce inspection procedures are designed to prevent strategic commodities, such as computer and electronic equipment, from reaching prohibited destinations. Since manpower is extremely limited, Commerce has concentrated these inspections at certain locations.

Customs officials allow the shipment of munitions items from a port where a valid export license is not on file if an exporter claims that a valid license is on file at another port. The officials forward a copy of the Customs declaration to the port holding the license after the shipment has left. Customs officials agreed that this procedure could lead to unauthorized exports, but they contend that eventually the condition would be discovered and the exporter

would be asked to present a valid license. If the exporter did not have a license, he would be subject to legal action and the shipment might be impounded at its destination and returned to the United States.

CONCLUSIONS

We recognize the difficulty in physically controlling exports after they have left the United States. The integrity of the foreign government and/or firm is extremely important for insuring compliance with OMC's export regulations. In view of the sensitivity of the munitions items, OMC should obtain every reasonable assurance, before approving exports, that the importing government and/or foreign firm will not divert the munitions for purposes which may not be in the best interest of the United States.

OMC must rely on Customs for insuring that munitions are exported in accordance with their licenses. Although we recognize Customs' manpower limitations for this function, we believe the inspections at the ports are inadequate.

The inspections of shipments not classified as munitions items cannot be overemphasized. In our opinion, the only way to insure that these shipments do not contain munitions items or any other prohibited items is to physically inspect them. We recognize that it is not practical to physically inspect every shipment; however, these inspections are almost nonexistent.

RECOMMENDATIONS

We recommend that:

- The Secretary of State further emphasize the procedures for determining the actual uses of exports.
- The Secretaries of the Treasury and Commerce determine which agency should inspect export cargo and obtain the most effective, economical organization and staffing necessary for increasing the number and scope of physical inspections of export shipments.

CHAPTER 8

AGENCY COMMENTS AND OUR EVALUATION

By letter dated January 16, 1973, the Assistant Secretary for Budget and Finance, Department of State, endorsed our recommendation for increased physical inspections of items being exported. (See app. II.) Although he described in detail extensive procedures for retransfer controls of exports, these procedures were admittedly used only for complete end items, such as aircraft, tanks, and artillery. The Assistant Secretary stated "In practice, it is true that the Office of Munitions Control has not required such undertakings insofar as components and spare parts are concerned."

The Assistant Secretary said that the Department's procedures for determining actual users of exports and implementation of the procedures are adequate. Nevertheless he agreed to carefully consider our recommendation that those procedures be further emphasized. We believe that, since the control procedures are used exclusively for end items, any emphasis by the Department should be on control procedures over the actual use of components and spare parts.

The Assistant Secretary of the Treasury, in a letter dated January 16, 1973, generally agreed with our conclusions and recommendations. (See app. III.) He stated that our report "is carefully researched, penetrating in its analyses, and balanced in its judgements." He further stated:

"The report recognizes that Treasury's established procedures are reasonable, but highlights the need for Treasury to increase the care with which documentation is handled. It is Treasury's intention to tighten discipline in executing each step more carefully."

The Assistant Secretary said that Treasury accepted our recommendations as a valid set of guidelines. However, Treasury took exception to our proposal to discontinue the practice of issuing permits for items already in the United States on the basis that it would be an unnecessary burden on Commerce to require exportation of material imported before a permit was issued. Treasury also objected to

revising the procedures for issuing more than one copy of a permit (i.e., issuing a separate permit for each shipment), since this would substantially increase the administrative workload without appreciably increasing controls.

Although these objections have merit, we believe that knowing how much is being imported, as well as the time and place of importation, is necessary for effective control. Therefore ATF should control multiple shipments by at least requiring Customs to note on permits when a partial shipment is received and by matching permits relating to the use of multiple ports. Also ATF should know whether items have already entered the United States when approving import requests. With that type of control, ATF would not be put in the position of issuing an import permit for material which had already been imported and which could become the subject of a dispute between the importer and Customs. (See p. 22.)

In commenting on the need for increasing physical inspections of export cargo, Treasury suggested that it would be more effective and economical to increase the Customs staff already at the ports than to increase the Commerce staff. In this way, Treasury claimed, when not inspecting export cargo, the increased Customs staff could inspect import cargo, for which there is also a need for a larger staff.

There is merit to that argument, but Commerce has the responsibility for inspecting 95 percent of all exports. Therefore we believe that the Secretaries of the Treasury and Commerce should determine and obtain the most effective, economical organization and staffing necessary for increasing the number and scope of physical inspections of cargo.

By letter dated January 31, 1973, the Acting Assistant Secretary for Administration, Department of Commerce, agreed generally with our findings and conclusions and outlined corrective actions taken or planned. (See app. IV.)

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COMMITTEE ON
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 SENATE PERMANENT SUBCOMMITTEE
 ON INVESTIGATIONS
 (PURSUANT TO SEC. 4, S. RES. 258, 92D CONGRESS)
 WASHINGTON, D.C. 20510

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 CHIEF COUNSEL TO THE MINORITY

May 18, 1972

My dear Mr. Comptroller General:

In its current examination of the U. S. military property disposal system in Europe, the Permanent Subcommittee on Investigations has noted instances which suggest the possibility that excess military equipment sold in Europe and imported to the United States, or sold here initially, is exported with insufficient control over such transactions or the ultimate destination of the material. I am concerned that such equipment could fall either into the hands of undesirable elements in this country or be shipped to countries whose possession of such equipment would not be in the best interest of this Government. Therefore, I am requesting the General Accounting Office to initiate a review of the controls over import and export of munitions list items.

The review should be adequate to obtain (1) an identification of the agencies involved in import or export of munitions list items and their legislative purposes and responsibilities pertaining to those activities; (2) an assessment of the adequacy of the munitions list as positive identification of items to be controlled; (3) a determination of the organizational and procedural systems established for controlling the import and export of munitions list items; and (4) an analysis of those procedures as implemented, including an examination of selected transactions.

I understand that after your staff has done some preliminary work you will be better able to tell how extensive an examination is necessary. We can then make any necessary adjustments to the scope of the review to enable you to establish a reporting date appropriate to the needs of the Subcommittee. I am making copies of this letter available to the Secretary of Defense,

APPENDIX I

the Secretary of State, the Secretary of the Treasury, and the Secretary of Commerce, together with a request for their cooperation in the undertaking.

I am very grateful for the work you and your staff have performed for the Subcommittee in the past and hope that our close cooperation can continue. With best regards.

Sincerely yours,


John L. McClellan
Chairman

The Honorable Elmer B. Staats
The Comptroller General
of the United States



DEPARTMENT OF STATE

Washington, D.C. 20520

January 16, 1973

Mr. Oye V. Stovall
Director, International Division
United States General Accounting Office
Washington, D. C.

Dear Mr. Stovall:

I am replying to your December 22, 1972 letter to the Secretary of State requesting comments on your draft report to the Senate Permanent Subcommittee on Investigations concerning controls over importing and exporting munitions items.

(See GAO note, p. 38.)

(See GAO note, p. 38.)

Chapter 7 of your report notes that "The physical inspections of declared munitions cargo is not sufficient to determine that the exports are, in fact, the items authorized and that the approved quantities are not exceeded. The inspections of general cargos are so limited that prohibited munitions list items without a valid license could be exported". The Department agrees that inspections made at ports of exit are not sufficiently frequent to insure, with reasonable certitude, that prohibited items are not being exported. Accordingly, the Department endorses the report's recommendations that "The Secretary of the Treasury emphasize the need for customs officials to physically inspect munitions items being exported to insure that they are properly authorized"; and that "The Secretary of Commerce obtain the necessary manpower to physically inspect shipments to insure that prohibited items are not being exported".

Chapter 7 of your report further recommends that "The Secretary of State further emphasize the procedures for determining the actual uses of exports". As noted in the report, the Office of Munitions Control has available to it the import certificate-delivery verification (IC/DV) procedures for participating COCOM countries. The Office of Munitions Control also utilizes "end use" type checks by U.S. Missions abroad in advance of license approval where the circumstances of an export proposal so indicate. The so called "end use" check procedure is used rather extensively. However, this procedure as well as the IC/DV procedure are directed at the initial transaction, rather than the control over diversion or retransfer. In the latter connection, the conclusions in Chapter 7 of your report state that "the Office of Munitions Control should obtain

every reasonable assurance, before approving exports, that the importing government and/or foreign firm will not divert the munitions for purposes which may not be in the best interests of the United States". In light of this statement the Department wonders whether your review and report have taken full account of the procedures and actions now in effect with regard to "third" and "Nth" country retransfer restrictions. For your information I would like to detail the precautions now taken in this regard.

§123.10 of the International Traffic in Arms Regulations (copy enclosed) provides that the country designated on the export license application as the country of ultimate destination shall be the country in which the equipment shall ultimately receive end use, and that such equipment shall not be diverted from that country even though it might have been incorporated through an intermediate process into other end items. The prior written approval of the Department of State must be obtained before munitions list items previously exported from the United States under license may be resold, diverted, transferred, transshipped, reshipped or reexported to, or disposed of in any country other than the country of ultimate destination as stated in the export license. This provision of the regulations is made a specific condition of issuance of the export license and is so noted on the reverse side of the license (see copy DSP-5 enclosed). Moreover, §123.10 requires exporters to incorporate in the shippers export declaration, the bill of lading and the invoice the following statement: "These commodities are licensed by the United States Government for export to (country of ultimate destination). Diversion contrary to U.S. law is prohibited".

Additionally, under the provision of §123.10(d) application for the export of significant combat equipment shall be accompanied by a Consignee-Purchaser Transaction Statement (Form DSP-83, copy enclosed) which must be submitted by the foreign importer to the U.S. applicant for export license. The transaction statement provides that, except as specifically authorized by prior written

approval of the Department of State, the ultimate consignee (and purchaser if not the same as the ultimate consignee) will not reexport, resell, or otherwise dispose of the equipment enumerated in the application outside the country named in the application as the location of the ultimate consignee. If the export application is for significant combat equipment, or if it is determined that a Consignee-Purchaser Transaction Statement should be furnished and both the ultimate consignee and purchaser are non-governmental entities, the Department of State may require a Non-retransfer Assurance (DSP-83, Item 8) from the appropriate authority of the foreign importer's government. This non-retransfer assurance shall provide that the foreign importer's government undertakes not to authorize the reexport, resale, or other disposition of the equipment enumerated in the application without obtaining the prior written consent of the U.S. Government. Thus it should be noted that, where the items being exported are significant combat equipment, the DSP Form 83 procedure provides the means for engaging the government of the foreign importer to utilize its export control regulations not to authorize the reexport of articles licensed for export without first obtaining the approval of the United States Government.

Section 124.10 of the International Traffic in Arms Regulations provides, with respect to agreements between U.S. firms and foreign entities to manufacture munitions list items abroad, that such agreements shall contain a statement as follows: "(m)(1) With respect to all manufacturing license agreements, a statement that 'no export, sale, transfer, or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the United States Government'". Further, with respect to manufacturing licensing agreements for significant combat equipment, the Department may require that the prospective foreign licensee furnish an Nth Country Control Statement (Form DSP-83a-copy enclosed) to the Office of Munitions Control. The Nth Country Control Statement shall provide

that the licensee agrees to ensure that any contract or other transfer arrangement with a recipient of the licensed article in any country within the licensed sales territory will include the following provision: "The recipient shall obtain the approval of the United States Government prior to entering into a commitment for the transfer of the licensed article by sale or otherwise to another recipient in the same or any other country in the world". This obligation may be provided to the Office of Munitions Control as set forth in Form DSP-83a or may be included in the manufacturing license agreement itself, at the option of the parties. For your information, significant combat equipment is defined in footnote #3 to §123.10(d) and footnote #1 to §124.10(m)(2).

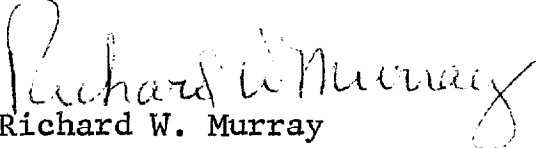
It should be noted that the Office of Munitions Control has reserved the right to require a Consignee-Purchaser Transaction Statement with respect to the export of any munitions list article, as well as the right to require an Nth Country Control Statement or similar undertaking in the license agreement, in connection with the foreign manufacture of any U.S. munitions list article. In practice, it is true that the Office of Munitions Control has not required such undertakings in so far as components and spare parts are concerned. However, complete end items, such as aircraft, tanks, artillery, etc., have been subjected to retransfer controls.

It is important to note that the Office of Munitions Control imposes various other special "end use" type controls as warranted by the circumstances of a particular case. For example, exports of most munitions list articles to Portugal are approved only after receipt of assurances from the Government of Portugal against use of such articles outside the NATO area; and exports to Japan of space equipment and technology in furtherance of the U.S.-Japanese Space Agreement of 1969 are approved only after receipt from the Government of Japan of assurances as to peaceful end use, as well as assurances against retransfer without prior USG approval.

APPENDIX II

The Department believes that its "procedures for determining actual users of exports", and the implementation thereof, are adequate. Nevertheless, the Department will give very careful consideration to the recommendation in your report that these procedures should be further emphasized.

Sincerely yours,


Richard W. Murray
Deputy Assistant Secretary
for Budget and Finance

Enclosures:

1. International Traffic in Arms Regulations
2. Form DSP-83
3. Form DSP-83a
4. Form DSP-5

GAO note: The deleted comments relate to matters discussed in the draft report but omitted from this report.



THE DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

JAN 16 1973

Dear Mr. McAuley:

This is in response to your letter to Secretary Shultz asking for our comments on your draft report to the Senate Permanent Subcommittee on Investigations on "Controls over Importing and Exporting Munitions Items".

Our general impression is that the report is carefully researched, penetrating in its analyses, and balanced in its judgments. Because our detailed comments, involving the work of two bureaus, are extensive, I am submitting them as an attachment.

Sincerely yours,



Eugene T. Rossides

Mr. Charles P. McAuley
Assistant Director
General Government Division
United States General Accounting Office
Washington, D. C. 20548

COMMENTS
OF THE
DEPARTMENT OF THE TREASURY
ON
THE
REPORT TO THE PERMANENT
SUBCOMMITTEE ON INVESTIGATIONS
COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES SENATE
ON
CONTROLS OVER IMPORTING AND
EXPORTING MUNITIONS ITEMS
BY
THE COMPTROLLER GENERAL
OF THE UNITED STATES

January 12, 1973

Treasury
January 12, 1973

Introduction

The Treasury comments contained herein are in two parts. The first, General Comments, discusses the over-all problem of control of importing and exporting munitions. It approaches the problem from the broad policy point-of-view.

The second part, Specific Comments, explains, amplifies, and clarifies the specific points raised in the body of the report. In many instances the legal aspects and restrictions are referenced.

General Comments

It appears that the G.A.O. report should distinguish more clearly between the "munitions items" listed in the Mutual Security Act of 1954 and "firearms and ammunition" as set forth in the Gun Control Act of 1968. The legislative authority incorporated in the two acts is quite different. Consequently, the procedures governing the importation of the commodities are quite different. The report seems to merge the two. The fact is that the treatment of firearms and ammunition in the Gun Control Act is quite precise, whereas the requirements under the Mutual Security Act permit much greater latitude in the importer's actions.

Should the Subcommittee on Investigations elect to recommend new legislation, they might choose to examine the disparity between the two Acts.

The Gun Control Act of 1968 regulates interstate and foreign commerce only in firearms and ammunition

(A firearm is defined therein as a weapon (or its parts) designed to expel a projectile by use of an explosive (18 U.S.C. 921(a)(3)); and ammunition as propellant powder, cases, primers or bullets (18 U.S.C. 921(a)(7))

whereas the Mutual Security Act of 1954 exercises certain control over the foreign commerce not only in firearms and

APPENDIX III

ammunition as defined above but over other items such as launch vehicles, warships, amphibious warfare vessels, floating dry docks, turrets and gun mounts, minesweeping equipment, naval nuclear propulsion plants, tanks, military vehicles, aircraft, spacecraft, nuclear weapons, toxicological agents, etc. (26 CFR 180.3) as well.

The criteria for issuing import permits or licenses under each of the above Acts administered by ATF are the same only when firearms or ammunition are the items to be imported. For all other munitions the criteria are established only by the Mutual Security Act.

The report recognizes that Treasury's established procedures are reasonable, but highlights the need for Treasury to increase the care with which documentation is handled. It is Treasury's intention to tighten discipline in executing each step more carefully.

The report notes that the total workload for both Customs and ATF strains their limited resources of manpower. This is certainly true in every aspect of Customs' work. One recommendation made by the study group to the Secretary of Commerce is that he "obtain the necessary manpower to physically inspect shipments to insure that prohibited items are not being exported." Until July 1972, as the report notes, Customs Officers performed the physical inspection of export cargo licensed by the Department of Commerce. The report states,

"According to Customs officials, Department of Commerce personnel now inspect these shipments....."

It is not clear that Commerce personnel are physically inspecting export cargo. According to reports from the field, Commerce officials are only spot-checking records after the fact. Therefore, if it were to be decided that additional personnel were needed to inspect cargo for export, Treasury suggests it would be more effective and economical to have the additions made to the Customs force, for they are at the ports anyway. When not inspecting export cargo, they could be inspecting import cargo, for which there is also a need for more personnel. We strongly urge that the inspecting force be Customs.

The report suggests that there may be merit in consolidating all activities. The Treasury Department believes there is merit in utilizing a single agency for the ministerial function of physically inspecting exports and imports. As noted above, Treasury believes strongly that the only economical way to perform these tasks, which occur very irregularly, is by the Bureau of Customs.

On the matter of approvals, the different Departments involved-- State, Defense, Commerce, and Treasury--administer different aspects of U. S. policy. It seems, therefore, unwise to eliminate the participation in this area of any of the Departments. Interdepartmental coordination is working.

The basic problems appear to be (1) the disparity between the two governing Acts and (2) the limited resources to insure compliance.

Concerning the specific recommendations on page 3, Treasury accepts them as a valid set of guidelines with one exception. However, as noted in the Specific Comments below, several recommendations will require changes in the governing Acts. The one recommendation to which exception is taken is,

"Discontinue the practice of issuing permits for items already in the United States."

This recommendation is not suitable in light of traditional trade practices and Customs laws. A commodity may be landed on U. S. soil but it is not released from Customs custody to the commerce of the United States until all import requirements are met. These include payment of Customs duties, excise taxes, and presentation of all required permits. It is not a legal import until Customs releases the commodity from its custody. In these occasional instances where the commodity arrives in the U. S. port before a permit has been obtained, it would be an unnecessary burden on commerce to require its exportation before a permit could be issued. Actually, storage charges while awaiting a permit are an inducement to importers to obtain a permit in advance of arrival.

APPENDIX III

Specific Comments

Page 14 In addition to the sporting purpose criteria and the importation restrictions on importation of articles on the U. S. Munitions List from communist controlled countries, there are several other criteria considered. Chapter 44, 18 U.S.C. specifically excludes the importation of surplus military firearms and is a factor considered in acting upon applications to import firearms. Also, 26 CFR 180.47 prohibits the importation of U. S. military firearms and ammunition for sale in the U. S. (other than for the U. S. Armed Forces and its allies or for any State or local law enforcement agency) if such firearms or ammunition were furnished to foreign governments under a U. S. foreign assistance program, or on a grant basis to, or for which payment in full was not made by, a foreign government under any foreign assistance program of the United States. This latter restriction was pointed out to GAO representatives and a copy of Part 180, 26 CFR, was furnished them.

Pages 17 In GAO's comments on insufficient data on importers and
& 18 dealers, they include over 150,000 federally licensed dealers in firearms and ammunitions who are in no way involved in the importation of or traffic in implements of war. These dealers deal in firearms and ammunition which are used by the citizens of this Country in lawful hunting and sporting activities. It is true that some of these firearms do fall into the hands of the criminal element in this Country, but it does not appear to serve any purpose to co-mingle statistics concerning ATF's investigations of such dealers with the approximate 200 importers of Munitions List Items simply because all firearms, other than conventional

shotguns, are technically included on the U. S. Munitions Import List. The firearms imported for and sold by these dealers certainly do not include the "surplus military equipment" referred to in paragraph 1 of Senator McClellan's letter of May 18, 1972, to the Comptroller General, since no surplus military firearms have been authorized for importation into the U. S. for sale or distribution to the public since October 22, 1968, which is the date the importation provisions of the Gun Control Act became effective. It is true that manpower limitations have prevented this Bureau from conducting an investigation of all licensed firearms dealers in the United States. However, priority is given to making an investigation of those dealers who have not been subject of a previous investigation and progress is being made in this regard. This office does receive from our regions a Monthly Firearms and Explosives Report which indicates the number of license applications investigations made and licenses issued each month.

Pages 18
& 19

It is true that records of importer's licenses issued under the Gun Control Act are maintained in ATF regional offices. However, records of importers of articles on the U. S. Munitions Import List who are registered under the Mutual Security Act are maintained in Bureau Headquarters and readily available for reference. Whenever a question arises concerning an applicant's licensed status under the GCA, calls are made to the respective regional office to determine the status. Copies of the importer's license maintained in Bureau Headquarters would eliminate the necessity for these calls, in most cases. However, we do not feel this presents a problem since import permits are not issued without the licensed status of the applicant being definitely established.

Pages 10
& 20

Since neither the Gun Control nor the Mutual Security Act contain any provision which restricts the quantities of items to be imported, we feel that any attempt to enforce a quantity control under these Acts would have no legal basis. Also, quite probably it would create problems under the General Agreement on Tariffs and Trade (GATT). The sporting purpose importation criteria under the GCA has already caused objections under GATT to be raised by different foreign governments. In addition, 26 CFR 178.112(c) provides that the Director, ATF, may compile an Importation List of firearms and ammunition which as provided in 26 CFR, Section 178.112(d) may be imported by a licensed importer without an import permit. However, to date such a list has not been compiled and placed into effect. In regard to permits being issued with vague descriptions, this is not true in the case of firearms and ammunition since a complete description of the firearm and ammunition to be imported must be included on the application for a determination to be made as to whether the firearm or ammunition qualifies for importation under the criteria and exclusions contained in the Gun Control Act of 1968. The same is not true in respect to articles, other than firearms and ammunition, on the U. S. Munitions List because the Mutual Security Act and the regulations promulgated thereunder do not specify which articles, including component parts thereof, may or may not be imported. Consequently, a detailed listing of tank parts is not required on an application to import because it would serve no useful purpose. However, any permit issued for miscellaneous tank parts bears a restriction to prohibit Customs from releasing any tank cannon or other firearms since the cannon or firearms would have to meet the qualifications for importation under the Gun Control Act. Even GAO, on page 26, par. 1, of their draft report states, "In view of the limited physical inspections of imports (see p. 23) and the limited inspections of exports (see p. 32) we question whether a more detailed or descriptive lists would provide additional control.

Regardless of the degree of detailed descriptions, an inspector would have difficulty in determining if machine parts are tank parts and are therefore munitions list items, unless the importer identifies such items as munitions items."

In regard to GAO's comments that the purpose of importation is not a factor for consideration in acting on import applications, we must say again this is not true in respect to firearms and ammunition. The purpose of importation is very important under the Gun Control Act, e.g., a licensed importer may import firearms for sale or distribution--a licensed dealer may not; surplus military firearms and other firearms which do not qualify for importation for sale to the public may be imported when it is established such firearms are being imported for use by the United States, a State or political subdivision thereof, when it is established such firearms are being imported for scientific or research purposes, is an unserviceable firearm (other than a machine gun) being imported as a curio or museum piece, etc. Conversely, the Mutual Security Act and those regulations contain no purpose for importation requirements. Consequently, we do not know what law GAO refers to in their comment on page 20, par. 2. In regard to that same comment, Customs would know an importation is authorized if the importer presents a permit issued by ATF. If such an importation is not authorized, the shipment should be detained until such time as a proper import permit is presented.

Page 21 In accordance with an agreement reached with Department of Commerce officials on November 20, 1972, ATF is now placing a notice on import permits issued, which involve possible FEP, alerting the importer to the FEP licensing requirements of the Department of Commerce. Also,

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Commerce included in their proposed FEP regulations, which were published in the Federal Register on December 19, 1972, a notice to alert importers of FEP to the ATF import permit requirements applicable to munitions list items.

Page 22 In regard to GAO's recommendations, (1) ATF is increasing the priority of investigations of licensed importers and dealers who have not been previously investigated to ensure that they meet the criteria for licensing under the Gun Control Act of 1968. Without additional manpower, however, we will not be able to effect complete coverage. (2) ATF will continue to require specific descriptions of firearms and ammunition included on import applications since this is of primary importance in acting on such applications. Also, ATF will require importers to be more specific about items being imported or requiring them to indicate on the application that no major components are included in the lot of miscellaneous parts to be imported. (3) ATF does have a long range plan to centralize in Bureau Headquarters the issuance of all licenses under the Gun Control Act of 1968 utilizing an electronic data processing system. Until this system is established, however, ATF will continue to exercise the care it has in the past in making certain that a permit is not issued until the licensed status of an applicant has been established.

Pages 23 This section of the report deals with Customs
-26 responsibilities. It indicates deficiencies in Customs control because of the inadequate physical inspections conducted and because of alleged deficiencies in handling permits, licenses and certifying requirements.

As the report recognizes, Customs has insufficient manpower to provide thorough physical inspection of all importations and exportations. The G.A.O. report also recognizes that Customs enforces the requirements of other government agencies. However, the agencies identified by the G.A.O. report are only the tip of the iceberg. Customs performs many more responsibilities

than those listed. In fact, Customs performs enforcement responsibilities for many other laws administered by other agencies. Munitions are sensitive items but so are flammable fabrics, chemical poisons, pollutants and many, many other commodities which Customs has responsibility for regulating. To do an effective job in all of these areas, Customs must receive the additional manpower which has been consistently requested with each budget submission.

The report cites incidents not due to manpower shortages in the processing of documentation relating to importation and exportation of munitions. The Bureau of Customs has prepared and will shortly issue a revised handbook on processing of such transactions which should clarify and improve the documentation processing. Customs believes that the deficiencies cited in the G.A.O. report are isolated incidents. However, it will certainly emphasize the importance of the proper handling of this documentation.

The report recommends the institution of a determined effort to inspect large numbers of exportations made under the Munitions Control licenses to insure that the contents of the exported packages in fact consist only of items which have been licensed. This recommendation appears to proceed on the assumption that most, if not all, illegal exportations of arms and ammunition are made through shipments made under licenses which authorize some exportations, but not those which are in fact being made.

We know of no factual evidence to support this assumption. Annually the United States exports well in excess of \$40 billion worth of goods which are sent forward in millions of individual shipments. It would appear probably that illegal exportations of arms and munitions are more likely to be hidden among these millions of shipments, than among the relatively few for which a munitions control export license is obtained.

Any attempt to inspect physically samples of all export shipments made from the United States would require the addition of an enormous manpower force. To accomplish inspection on this scale the Bureau of Customs would probably have to more than double its present inspectional staff. The Bureau of Customs could not undertake such a program unless adequate funding were first provided for it. Even then a considerable period of time for recruitment and training would be required as lead time.

Page 27 Treasury cannot agree with GAO's comment that, "ATF procedures for insuring that only authorized items and quantities are imported and that permits are used only for importing are not effective." Under the Gun Control Act, the importation of cheap nonsporting purpose handguns is prohibited. The import permit procedure employed by ATF and enforced at the various ports of entry by the Bureau of Customs has proven so effective that companies in this Country have resorted to importing parts for such handguns, exclusive of frames or receivers, and assembling these foreign parts to frames or receivers made in this Country, in order to meet the demand for the so called "Saturday Night Specials" in the United States. Only complete firearms and frames or receivers for these firearms come under the Gun Control Act controls. Prior to the effective date of that Act's importation provisions, on October 22, 1968, these "Saturday Night Specials" were imported as complete pistols or revolvers. Many bills have been introduced in Congress to curb the production of cheap handguns utilizing either foreign or U. S. made parts.

- Page 27 GAO's observation that ATF's matching of Forms 6A (Firearms) with import permits issued is not working does have merit. In fact this is a problem which was recognized internally within ATF before the GAO investigation commenced. An ATF management project was initiated on March 16, 1972, to study the feasibility of having Forms 6A submitted to Bureau Headquarters by Customs and centralizing the matching process. On April 12, 1972, the study was completed and it was recommended that Form 6A be centralized. However, due to the July 1, 1972 reorganization of ATF and the necessity for giving higher priorities to other reorganizational changes, the centralization of Forms 6A has not been instituted to date.
- Page 28 The instance of a Dallas region importer importing more firearms than authorized, mentioned by GAO, is an isolated case. The firm involved in this was Jana International, Denver, Colorado, and the matter was corrected with a warning letter issued by the then Assistant Regional Commissioner, ATF, for the Southwest Region. Although Jana International was careless in adhering to the regulations, the overage of firearms they imported were new shotguns and rifles which qualified for importation. Again, there is no statutory control over the number of firearms which may be imported and, therefore, the situation here was not as serious as it might have been.
- Page 29 NAPCO Industries, Hopkins, Minnesota, is the firm referred to by GAO which obtained an import permit after they had gained release from Customs of articles on the U. S. Munitions Import List. Even though a permit was issued after the fact, NAPCO was charged by Customs with submitting a false document and failure to comply with a notice for redelivery and assessed

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liquidated damages in the amount of \$4554.00. NAPCO has filed petitions for relief from the assessment which are being considered by the Bureau of Customs at the present time.

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As stated above, ATF recognizes the need for improving the procedure in matching Form 6A release documents with import permits issued. In this regard, ATF recently transferred the responsibility for controlling imports in the regions from Criminal Enforcement to the Technical Services Branch in Regulatory Enforcement. We are also in the process of issuing a directive to all regional offices emphasizing the need for more rigid compliance with existing instructions in matching Forms 6A received from Customs and importers with copies of permits forwarded to the regions by Bureau Headquarters, to detect any discrepancies or irregularities and to require the return of unused permits. We feel that the above steps will allow us to control more effectively import procedures, including the use of permits for multiple shipments. GAO's recommendation that ATF issue a separate permit for each shipment would substantially increase the administrative workload without an appreciable increase in controls.

In drafting the regulations implementing Title I of the Gun Control Act, it was recognized that a shipment may enter the United States without an import permit having previously been obtained by the importer. Therefore, 26 CFR 178.111(b)(1) provides that the importer shall, "Store, at his expense, such firearm or ammunition at a facility designated by U. S. Customs or the Assistant Regional Commissioner of Customs to await the issuance of the required authorization or other disposition". In such cases, if an import permit is not obtained the regulations provide that the importer may abandon the firearms or ammunition

or export same. In view of these regulatory provisions, we cannot discontinue the practices of issuing permits in cases where the items have been off-laded in the United States without an import permit having been previously issued. Since Customs detains articles requiring an import permit until such time as a proper permit is presented, we feel the protection here is adequate.

GAO note: The pages referred to are those of our draft report, not this report.



THE ASSISTANT SECRETARY OF COMMERCE
Washington, D.C. 20230

January 31, 1973

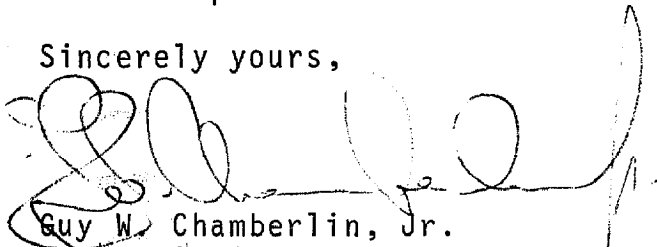
Mr. Oye V. Stovall
Director,
International Division
General Accounting Office
441 G Street, N. W.
Washington, D. C. 20548

Dear Mr. Stovall:

This is in reply to your letter of December 22, 1972 requesting comments on a draft report entitled "Controls Over Importing and Exporting Munitions Items."

We have reviewed the comments of the Domestic and International Business Administration and believe that they are appropriately responsive to the matter discussed in the report.

Sincerely yours,



Guy W. Chamberlin, Jr.
Acting Assistant Secretary
for Administration

Attachment

· DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION

COMMENTS ON GAO DRAFT REPORT

"CONTROLS OVER IMPORTING AND
EXPORTING MUNITIONS ITEMS"

DECEMBER 1972

APPENDIX IV

Subject: GAO Report on Controls Over Importing and Exporting Munitions Items

Pursuant to your request the following comments are submitted by the Office of Import Programs on the subject report as it relates to Commerce Department administration of controls on the importation of foreign excess property (FEP):

We are pleased to note that there are only a few points of criticism in the report that deal with the FEP Program. In any case it should be noted that munitions items form only a part of the foreign excess property imported into the U. S. under our program.

We have one correction and two substantive comments for inclusion in the Department's comments on the GAO report. The latter two deal with actions we have taken or are taking which are relevant to the GAO's findings as presented in its report.

1. On page 7 of the report the Special Import Programs Division is incorrectly shown as being a part of the Bureau of Domestic Commerce. This citation should read as follows

Department of Commerce:

Bureau of Resources and Trade Assistance, Office of
Import Programs, Special Import Programs Division
Washington, D. C.

2. On page 20 of the report it is stated that "When munitions items were imported as foreign excess property, appropriate action was not taken to establish that the items were owned and sold by a United States Government agency in a foreign country . . ."

2.

In this connection the Department has taken the following action to correct this situation

- (a) The Department published in the Federal Register of December 22, 1972 proposed rules (copy attached) which provide in pertinent part under Section 702.9 that a photocopy of the government's bill of sale of property covered by an application be provided to the Foreign Excess Property Officer .
- (b) In order to alert future purchasers of foreign excess property of the necessity for providing such documentation when making application for FEP import authorization, the Department has arranged with the Defense Supply Agency to amend the terms of sale for all such property to include this requirement.

3. Also on page 20 of the report it is stated that "... appropriate action was not taken to ... prevent the FEP authorizations from being used in lieu of the import permits issued by ATF. "

This Department initiated action in March, 1972 (see page 21 of report) to alert Customs officials at ports of entry and importers of FEP that such property may also be subject to the controls of the Bureau of Alcohol, Tobacco and Firearms (ATF). In addition, we subsequently developed, in cooperation with ATF, the following procedures to insure coordination of requests for importing munitions FEP items:

- (a) Each department notifies the other by telephone when either receives an application which would appear to require action by the other department.
- (b) Commerce now also provides ATF a copy of any FEP import determination and/or authorization which we issue that appears to involve a munitions list item.
- (c) In accordance with an agreement reached between Commerce and ATF on November 20, 1972, ATF now places a notice on all of its import permits which

APPENDIX IV

3.

appear to involve FEP that the articles may also be subject to Commerce FEP import controls.

- (d) Additionally, we have advised officials of the Bureau of Customs (Washington) of the above procedures agreed upon by Commerce and ATF, to insure that importers and Customs officials at the ports of entry are aware of the dual licensing requirements for munitions FEP items. We understand that a Customs Circular will be distributed on this subject to Customs Officials at U.S. ports of entry.

The above-noted changes in administrative procedures in the processing of all FEP applications and the additional safeguards introduced in the handling of munitions list items should largely meet the recommendations on the FEP program addressed to the Commerce Department.

REPORT ON CONTROLS OVER IMPORTING AND EXPORTING MUNITIONS ITEMS
PREPARED BY UNITED STATES GENERAL ACCOUNTING OFFICE - DECEMBER 1972

The following comments are made in response to the fourth action recommended to be taken by the Secretary of Commerce appearing on page 4 of subject report -- "Obtain the necessary manpower to physically inspect shipments to insure that prohibited items are not being exported." This recommendation also appears on page 38 of the report, Chapter 7, "Improved Controls Needed Over Exporting Munitions Items."

The new simplified export clearance system which provides for the physical inspection of exports subject to Department of Commerce licensing jurisdiction by Office of Export Control personnel became effective on July 3, 1972. Since that time there has been physical inspection of exports subject to Department of Commerce licensing jurisdiction by Office of Export Control personnel at all major ports and airports. However, the amount of effort expended on the cargo inspection function at the different ports and airports has varied. This has been intentional and, in part, has been due to manpower and fiscal limitations. Other considerations are the ultimate destination of the merchandise and the likelihood that strategic items have been mis-described.

As a part of the inspection effort, the Office of Export Control reviews export documents and documentation procedures at the offices of foreign freight forwarders, carriers, and at U.S. Customs Offices. Since a shipper's export declaration is prepared for shipments licensed by the Office of Munitions Control, and normally they can be so identified, a certain number of these declarations appear during the course of the Office of Export Control document examination. In those instances where such declarations have been found not to be in order, the Office of Munitions Control has been contacted and the questionable declarations have been forwarded to that Office. A shipment identifiable as one subject to Office of Munitions Control licensing that appeared to be in order would not be inspected by the Office of Export Control. However, a shipment consisting of readily recognizable munitions material but not so identified, would come within the purview of an Office of Export Control inspection. Any irregularity found in connection therewith would be referred to the Office of Munitions Control.

Coupled with its physical inspection of export shipments, the Office of Export Control also makes a post-shipment review of computer-selected shipper's export declarations. The selection is designed to reveal shipments potentially in violation of the Export Control Regulations. It focuses on shipments designated by exporters or forwarders as not requiring a validated export license (general license shipments). While this review is made after shipments have taken place it has been clearly productive.

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We are satisfied that the over-all inspection effort represents a distinct improvement over the inspection procedure in effect prior to the adoption of the new simplified export clearance system. We consider the inspection effort to be adequate. Of course, if we were in a position to assign additional resources to the function, there would be an improvement in its effectiveness.

Recent history of the Export Administration Act has been one of reduced controls and declining budget. While we have assumed the export cargo inspection function of Department of Commerce controlled items from Customs as of July 3, 1972, we have a limited number of personnel available to perform this mission.

Briefly, the recommendation on page 4 of the General Accounting Office draft that the Secretary of Commerce should -- "obtain the necessary manpower to physically inspect shipments to insure that prohibited items are not being exported" would require more manpower and financial resources during a period in which the resources with which to perform the entire export administration function are severely limited. The report also tends to disregard the fact that the State Department rather than the Commerce Department has the statutory responsibility for control of munitions exports.

Therefore, under existing circumstances we do not concur in the General Accounting Office recommendation mentioned above.

GAO note: The pages referred to are those of our draft report, not this report.