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Exports of commercially available commodities are regulated by the Secretary of Commerce and a group of consulting departments and agencies. The Department of Commerce makes final licensing decisions unilaterally in some instances; in other instances, decisions are made only after the unanimous consent of consulted agencies is secured. The Government's administration of export licensing is characterized by diffused authority and a consequent lack of accountability to the public. Findings/Conclusions: The Department of Commerce's Office of Export Administration (OEA) issued 50,737 export licenses in 1977. It denied 348 applications, and 1,291 applications took 90 or more days to be approved. The number of applications taking more than 30 days to process increased by 47% between 1976 and 1977; those taking 90 days to process increased by 52%; and those taking 180 days increased by 50%. The export licensing system needs to be revised to strike a balance between the need for greater accountability and the Government's legitimate responsibility to control exports for national security, foreign policy, and short supply reasons. One alternative that might create a balance between accountability and licensing would be to establish a new export license management group which would be organizationally independent of existing export licensing agencies but which would oversee them. Responsiveness to exporters could best be increased by transferring export licensing management responsibility to the Department of Commerce. Recommendations: The Congress, in amending the Export Administration Act of 1969, should direct that export license application management be centralized in the OEA and that a multiagency "Export Policy Advisory Committee" be established at

an appropriate administrative level. The OEA should: establish a procedure for processing routine applications, locate all export-license-application management responsibility within the licensing divisions for problem export licenses, abolish Exporters' Services and transfer its functions to the licensing divisions, transfer the application review and multiagency referral routing functions to the licensing divisions, and establish a prelicensing decision "license application appeal committee." (RRS)

BY THE COMPTROLLER GENERAL 8223

Report To The Congress

OF THE UNITED STATES

Administration Of U.S. Export Licensing Should Be Consolidated To Be More Responsive To Industry

Government administration of export licensing is potentially damaging to the export business because management is spread among many agencies. The resulting lack of accountability and the delay and uncertainty in the decisionmaking process can cause exporters to lose sales even if a license is subsequently approved. To increase accountability, export license management responsibility should be concentrated in the Department of Commerce.

An export control policy which balances national security, foreign, and international trade policies should be developed by a high level multiagency committee. The Department of Commerce should apply this control policy in its review of export applications.

ID-78-60
OCTOBER 31, 1978

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

B-162222

To the President of the Senate and
the Speaker of the House of Representatives

This report on the administration of U.S. export licensing finds that an unintended consequence of the system is to increase uncertainty in export business relationships to the detriment of U.S. exporters.

We believe that the Government could be more responsive to U.S. industry if the Congress amended the Export Administration Act to direct that export control management responsibility be centralized in the Department of Commerce.

Copies of this report are being sent to the heads of executive agencies who participate in export licensing administration and to the Director, Office of Management and Budget.

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

ADMINISTRATION OF U.S. EXPORT LICENSING SHOULD BE CONSOLIDATED TO BE MORE RESPONSIVE TO INDUSTRY

D I G E S T

The licensing process for the export business is administered by many Federal agencies, diffusing management authority. The result is a lack of responsiveness to exporters and potential losses to them because of failure to meet commitments. Most applications for export licenses are approved, so it is particularly ironic for an exporter to suffer losses from the decisionmaking process rather than the licensing decision itself.

At the request of the Chairman, Subcommittee on International Economic Policy and Trade, House Committee on International Relations and of Congressman Don Edwards, House of Representatives, GAO reviewed the export licensing of commercially available commodities regulated by the Secretary of Commerce under the authority of the Export Administration Act of 1969, as amended. It states that controls may be used to (1) protect the national security, (2) further foreign policy, or (3) prevent excessive drain of scarce materials.

The Department of Commerce, through its Office of Export Administration, controls all exports from the United States except munitions and related technical data which are licensed by the Department of State, nuclear material and production facilities which are licensed by the Nuclear Regulatory Commission, and various other commodities licensed by other Government agencies.

The Office of Export Administration issued 50,737 licenses in 1977. It denied 348, and 1,291 applications took 90 or more days to be approved. While the total number of applications increased by 5 percent in 1977 over 1976, the number of applications taking more than (1) 30 days to process increased

by 47 percent, (2) 90 days to process increased by 52 percent, and (3) 180 days to process increased by 50 percent.

DIFFUSION OF EXPORT LICENSING AUTHORITY

The export licensing community consists of the Department of Commerce and a group of consulting agencies, such as the Departments of Defense, Energy, and State, the Central Intelligence Agency, and the National Aeronautics and Space Administration. Consultation by the Department of Defense for national security consideration is required by law. At each of these agencies, applications may be referred to a number of specialists for technical review.

At the Office of Export Administration, applications are managed and reviewed by the Operations Division, one of several licensing divisions, the Policy Planning Division, and Exporters' Services, which is responsible for notifying an exporter when the decisionmaking period will exceed 90 days.

Commerce makes final licensing decisions unilaterally in some instances; in other instances, decisions usually are made only after the unanimous consent of the consulted agencies is secured directly or indirectly through the multiagency Advisory Committee on Export Policy's Operating Committee.

CONCLUSIONS AND FINDINGS

GAO compiled 119 licensing histories, including 68 applications which took 90 or more days to approve and 51 applications which were denied for national security and foreign policy reasons. On the basis of these licensing histories and interviews with officials of the licensing community and with exporters, GAO believes that the export licensing system should be revised to strike a balance between the need for greater accountability and the Government's legitimate responsibility to control exports for national security, foreign

policy, and short supply reasons. The main obstacle to achieving this balance is the management of export licensing by many agencies and offices within the executive branch. There are several possible choices which might create a balance between accountability and licensing.

--Retain the current system of diffused export licensing responsibility while attempting to increase decisionmaking efficiency at each of the agencies comprising the export licensing community.

--Consolidate export licensing administration, including the Government's corps of technicians, in a single agency.

--Establish a new export license management group which would be organizationally independent of the existing export licensing agencies but which would oversee and direct decisionmaking at each of them.

--Consolidate management responsibility in one of the existing export licensing agencies while continuing to retain the Government's corps of technicians at each of the existing agencies.

GAO believes that the fourth choice should be implemented. Responsiveness to exporters can best be increased by transferring export licensing management responsibility to the Department of Commerce.

Responsibility for making technical evaluations should rest, as it does now, with technicians in each department and agency comprising the consulting system. The Office of Export Administration should coordinate all technical evaluations. In conjunction with this, export license decisionmaking within the Office of Export Administration needs to be centralized if accountability is to be increased.

This system would preserve, at the application review level, the multiagency nature of the export licensing structure; the

structure is preserved at the policy development level by a recommended export policy advisory committee. This policy should then be applied by the Department of Commerce in its review of export applications.

An exporter needs a better opportunity to respond to denial recommendations. GAO believes a prelicensing decision appeal committee within the Office of Export Administration would provide a necessary and sufficient forum for an exporter to defend his application before any dissenting licensing officials or technicians.

AGENCY COMMENTS

A few of the cognizant agencies, including the Department of Commerce, did not respond to our draft report. The agencies responding to our report did not disagree with our observations regarding the need for more responsiveness. In fact, a similar concern is reflected in a recently completed interagency review. However, the review rejected an option to consolidate management responsibilities and, instead, asked each agency to examine its own procedures further.

The agencies commented that consolidation is inappropriate since it would not allow them to apply national security, political, and economic considerations in their review of export applications. We believe their concern is unfounded. Our recommendations provide for Commerce to address these same considerations by applying a policy that the agencies have participated in developing.

The present system of diffused management responsibility dilutes accountability and no one office or agency can be criticized for not properly implementing export controls. In our view, the Government needs to pinpoint accountability for administering an export control system which is responsive to the needs of the business community while effectively controlling exports for national security and foreign policy reasons.

RECOMMENDATIONS

The Export Administration Act, as amended, states that the unwarranted restriction of exports has a serious effect on our balance of payments and uncertain policy toward certain types of exports has curtailed American business efforts to improve our trade balance. In view of GAO's findings, the Congress, in amending the act, should take action to ensure that the licensing process is not administered in a way that erodes the dependability of U.S. exporters. Specifically, it should direct that:

--export license application management responsibility be centralized in the Department of Commerce's Office of Export Administration and

--a multiagency "Export Policy Advisory Committee" be established at an appropriate administrative level.

In conjunction with this, the Secretary of Commerce should abolish the Advisory Committee on Export Policy structure and direct the Office of Export Administration to:

--Establish a procedure for processing routine applications in the Operations Division.

--Locate all export license application management responsibility within the licensing divisions for "problem" export licenses.

--Abolish Exporters' Services and transfer its functions to the licensing divisions.

--Transfer the application review and multiagency referral routing functions of the Policy Planning Division to the licensing divisions.

--Establish a prelicensing decision "license application appeal committee."

Tear Sheet

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ABBREVIATIONS

CIA	Central Intelligence Agency
NASA	National Aeronautics and Space Administration
OEA	Office of Export Administration
OST	Office of Strategic Technology and Munitions Control
ACEP	Advisory Committee on Export Policy
OC	Operating Committee
COCOM	Coordinating Committee of the Consultative Group
OMB	Office of Management and Budget

CHAPTER 1

CURRENT EXPORT LICENSING SYSTEM

The Government's administration of export licensing is characterized by diffused authority and a consequent lack of accountability to the public. The "public" most intimately concerned with export licensing is the exporters themselves. Both buyers and sellers must meet deadlines and, thus, are bound together in a complex mutual appreciation of time. This relationship is bound to be strained when buyer and seller are not sure whether an export license application will be approved and/or will meet deadlines that preserve or break a business relationship.

We are not suggesting that the Government has an obligation to approve an export license application or that there are no legitimate reasons for prolonging a decision. The authority to regulate exports lies absolutely with the Government, and the Government has an obligation to sellers to insure that the decisionmaking process itself does not damage a new or continuing business relationship. If the seller is left in uncertainty about how a decision is being made, then that uncertainty may be transferred to the buyer with damaging results. During the decisionmaking process the seller should be able to ask for and receive a timely and accurate accounting of the status of its export license application. A licensing system which shifts responsibility for managing applications within and between agencies makes it difficult for the Government to provide a meaningful response.

A possible unintended consequence of the present system is that a decisionmaking process which results in an approved export license application may ironically have over time the force of a denial decision. Although denial decisions have the effect of severing a specific export business relationship, an unaccountable decisionmaking process may erode a business relationship because the dependability of a seller is suspect in the eyes of a buyer, even though the export application is ultimately approved.

ACHIEVING ACCOUNTABILITY UNDER EXPORT CONTROL LAW

Exports of most commercially available commodities 1/ are regulated by the Secretary of Commerce under the authority of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 et seq.), which states that controls may be used to (1) protect the national security, (2) further foreign policy, or (3) prevent excessive drain of scarce materials.

The law, however, diffused licensing management authority by authorizing the Secretary of Defense to "review any proposed export of goods or technology" to certain countries if such exports will "make a significant contribution * * * to the military potential of any such country [and] * * * prove detrimental to the national security of the United States."

The Export Administration Act was in part amended in 1977 to make the licensing administration more accountable to exporters. The amendments require that if

--a decision to finally approve or disapprove an application has not been made within 90 days, the applicant for an export license is to be notified in writing of the "specific circumstances requiring * * * additional time and the estimated date when the decision will be made";

--a decision has not been made within 90 days, the applicant shall, to "the maximum extent consistent with the national security of the United States," be notified in writing of "questions raised and negative considerations or recommendations made by any agency * * * and shall be accorded an opportunity to respond to such questions * * * in writing * * *," prior to a final decision. The Government "shall take fully into account the applicant's response";

1/Exceptions include munitions, which are licensed by the Department of State, and nuclear material and production facilities which are licensed by the Nuclear Regulatory Commission; these items are not discussed in this report.

--an application is referred by the Department of Commerce to, another agency, the Government shall provide upon the applicant's request, "any documentation to be submitted * * * in order to determine whether such documentation accurately describes the proposed export"; and

--an application is denied, the applicant "shall be informed in writing of the specific statutory basis for such denial."

The House Committee on International Relations' report on the 1977 amendments noted that "all that is required [by these provisions] is that the administration be to some minimal degree accountable for its actions."

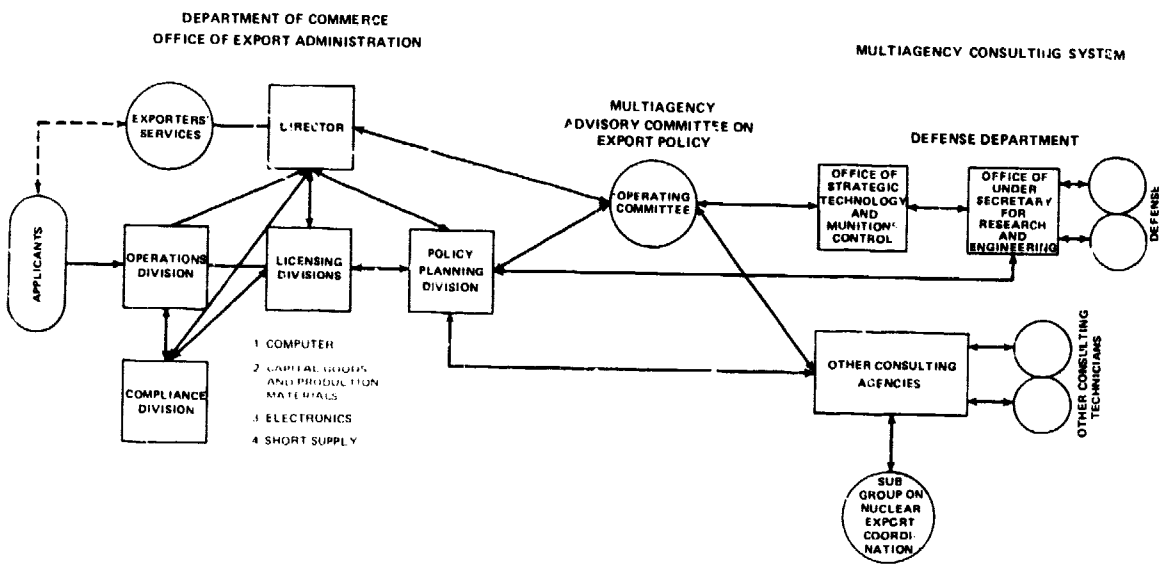
DIFFUSION OF EXPORT LICENSING AUTHORITY

The export licensing community consists of the Department of Commerce and a group of consulting departments and agencies. Commerce makes final licensing decisions unilaterally in some instances; in other instances, decisions usually are made only after the unanimous consent of the consulted agencies is secured directly or indirectly through a multi-agency advisory committee.

The principal consultants are the Departments of Defense, Energy, State, and to a lesser extent the National Aeronautics and Space Administration (NASA). The Central Intelligence Agency (CIA) serves as an intelligence advisor to the licensing community and as such does not normally make formal recommendations on license applications. Any other agency that has special technical knowledge considered pertinent to a particular export license application, including such Commerce agencies as the National Bureau of Standards, also give technical advice when asked to do so.

Export license applications are managed at Commerce by the Office of Export Administration (OEA). The current structure of OEA and the consulting agency system is shown on the following page.

FIGURE 1
THE CURRENT EXPORT LICENSING STRUCTURE



Applications referred to Defense are managed by the International Security Affairs' Office of Strategic Technology and Munitions Control (OST), and the Office of the Under Secretary of Defense for Research and Engineering.

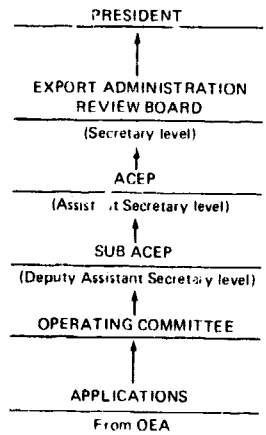
Referrals to Energy are managed by the Office of Politico-Military Security Affairs in the Division of International Security Affairs. Applications involving nuclear-related commodities and technology may also be reviewed by the National Security Council Subgroup on Nuclear Export Coordination, whose membership consists of representatives from Commerce, Defense, Energy, State, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission.

Referrals to NASA are managed by the Office of International Affairs, while referrals to State are managed by the Office of East-West Trade, although some types of applications are sent by OEA to State's individual geographic desk officers.

Referrals are also directly sent to the consulting agencies through the Advisory Committee on Export Policy (ACEP), which is structured as shown on the following page.

FIGURE 2

MULTIAGENCY
ADVISORY COMMITTEE ON EXPORT
POLICY STRUCTURE



The most active part of this structure is ACEP's Operating Committee (OC). Participation in the OC discussions was limited primarily to representatives from Commerce, Defense, Energy, and State for the referrals we reviewed. The Central Intelligence Agency also regularly sent a representative to the OC, during this period but did not normally make formal recommendations. Treasury is also a member, but it did not participate in discussions of the referrals we reviewed.

Interagency disagreements which cannot be resolved at the OC level, may be referred to the "sub ACEP." The Export Administration Review Board consists of cabinet secretaries from Commerce, Defense, State, and the Secretary of the Treasury in his capacity as Chairman of the East-West Foreign Trade Board.

The sub ACEP reviewed 5 OC referrals in 1977; the ACEP and Export Administration Review Board reviewed none.

OEA DECISIONMAKING

The OEA administers the export controls of most commercially available commodities and technical data through a licensing system. There are two general kinds of export licenses, a "general license" and a "validated license." A general license is a broad authorization which permits certain exports to be made under specified conditions; an

exporter shipping under a general license does not need to file an application for a license, so no license document is issued by Commerce. A validated license is a formal document issued to exporters by Commerce based on their applications; it authorizes exports of commodities or technical data within the specific limitations of the license document.

Licensing decisions are made in relation to a commodity control list consisting of a commodity description and the country groups to which controls apply. The control list comprises commodities unilaterally controlled by the U.S. Government as well as commodities voluntarily controlled by unanimous agreement of the Coordinating Committee of the Counsultative Group (COCOM) composed of the United States and 14 other countries.

Export license applications are generally first received in OEA's Operations Division where they are screened for completeness. If an application is not complete it may be returned to the applicant. Complete applications are referred to the appropriate licensing division or, in some cases, to the Compliance Division for investigation of possible violations of export control regulations.

Applications referred to one or more of the consulting agencies are first referred from a licensing division to OEA's Policy Planning Division, which in turn refers them directly to the consulting agencies or to them indirectly through the Operating Committee as discussed below.

Decision not to refer application

All applications for export licenses are submitted to OEA. Most of these applications--generally for exports to "free world" destinations--are approved without referral to another agency.

Decision to refer application directly

The Export Administration Act of 1969, as amended, requires the Secretary of Defense to "review any proposed export of goods or technology" to any country to which "exports are restricted for national security purposes." It also requires the Secretary of Defense, in consultation with OEA, to determine the types and categories of transactions he should review. Most applications for "restricted" exports were not determined to require Defense

review. For example, between April and September 1977, 2,403 such applications were processed, but only 690 (29 percent) were reviewed by Defense on a purely bilateral basis, while 312 (13 percent) were reviewed by Defense in the context of the Operating Committee. The remaining 1,401 (58 percent) applications were exempted from Defense review.

Aside from bilateral referrals to Defense, applications are referred directly to Energy or State if a foreign policy issue is involved.

Our random sample of 119 applications, which were drawn from applications which took more than 90 days to approve (68), or were denied (51), during the last 7 months of 1977, had the following interagency referral pattern:

Major consulting agencies	Number	Percent
Defense	17	14
Defense, Energy	8	7
Defense, State	12	10
Defense, Energy, State	7	6
Energy	13	11
Energy, State	6	5
State	11	9
Operating Committee	16	13
Waiver from OC consideration	19	16
No referral	10	8
Total	119	100

Decision to refer an application to OC

OEA has some discretion to decide whether or not an application should be referred to the Operating Committee. For example, of the 67 applications involving Communist countries in our sample, 16 (24 percent) were referred to the OC. If OEA believes an application does not warrant formal OC consideration, but should be considered by the OC agencies, it can refer the application to these agencies by "waiver memo." For applications involving Communist destinations in our samples, 19 (28 percent) were referred to the OC agencies by waiver memo.

Decision to recommend approval or denial

In referring an application, OEA must decide whether to recommend approval or denial. In our sample of

applications, it made recommendations in all but two of the OC and waiver memo cases. OEA is clearly more than a "mail-stop" for applications enroute to other agencies, since its recommendations often set the "tone" of the entire decision-making process on any given application. After review by the consulting agencies, OEA's recommendations were not sustained in only 6 of 69 applications in our sample.

Decision to accept recommendations of other agencies

Since OEA is the formal licensing authority, it must decide whether or not to accept a recommendation from another agency or from OC. If it decides not to accept a recommendation, the application can be referred first to the sub ACEP. The tendency is not to make this sort of referral but to seek unanimity at the initial level of recommendation.

CONSULTING AGENCY DECISIONMAKING

Each consulting agency determines whether or not to refer the application for technical evaluation.

The Office of Strategic Technology and Munitions Control (OST) at Defense decides whether to refer applications to technicians in the military services or various Defense agencies. Our examination of OST records showed that 33 percent of OEA's referrals in June 1977 were in turn referred by OST to various Defense agencies for technical review. The corresponding figures for October and December were 23 percent and 50 percent respectively. All "waiver memo" referrals from OEA were in turn referred from OST to other Defense agencies in these 3 months.

OST is responsible for reconciling any differences of opinion among these technicians in order to achieve an overall Defense position. A new policy was announced on November 21, 1977, to transfer this role from OST to the Office of the Under Secretary for Defense Research and Engineering, which will be responsible for managing technical evaluations of referrals from OST. OST's role will be to provide Defense "policy determinations [on] export control cases and related strategic trade control matters." This policy has not been implemented.

At Energy, the Office of Political-Military Security Affairs does not refer all applications to its technicians. Security Affairs sends some applications directly to Energy's technicians, and is responsible for resolving any differences they may have. In our sample of 10 applications for licenses to export semiconductors or semiconductor manufacturing equipment which were referred to Energy, Security Affairs referred four to technicians and made recommendations directly to OEA or indirectly to OEA through the Operating Committee for the other six.

At State, the Office of East-West Trade makes referral decisions. It may or may not refer an application to geographic desk officers or such other offices as the Bureau of Human Rights and Humanitarian Affairs, the Bureau of Oceans, and International Environmental and Scientific Affairs. Certain types of applications for exports to several countries are sent directly from OEA to State's geographic desk officers for those countries.

MAKING EXPORT LICENSING MORE ACCOUNTABLE TO THE SELLER

As described above, management responsibility for some applications is constantly changing during the time it takes to make a licensing decision. With authority so diffused, applicants do not always know what is happening to their applications during this period.

OEA's organizational answer to this problem is its Office of Exporters' Services, which is responsible for notifying an exporter in writing when the decisionmaking period will exceed 90 days, including an estimate of when a final decision will be made. This is important information since exporters have letters of credit with expiration dates, shipping schedules, and buyers' deadlines to honor.

Many exporters we talked with said that Exporters' Services has not always answered requests for information and that its written estimates of when final decisions will be made often prove inaccurate. Exporters who do not maintain representatives in Washington, D.C., and, therefore, have no direct access to the many members of the export licensing community, consider this lack of responsiveness a serious matter.

The basic problem, however, is that Exporters' Services faces the same sort of problems as exporters themselves;

multiple and shifting management responsibility for an application makes it difficult to discover the status of an application in the decisionmaking process.

For example, an application in our sample was received in OEA in February 1977 and referred to Defense in May. On July 1 the applicant notified Exporters' Services that the item had to be shipped by July 31. The licensing officer in the relevant OEA licensing division was apparently not notified of this fact until July 25, at which time he notified Defense. Defense recommended approval on the following day, and the license was formally approved on July 29, 1977.

OEA's licensing officers are not necessarily in any better position to respond to a seller's legitimate inquiries. The following licensing history from our sample illustrates the frustrations of trying to get an answer to what ought to be a simple request, namely the status of an application.

Case history of export application

August 1977: Applicant applied for a license to export semiconductor manufacturing equipment to an Asian country. Its letter of credit was due to expire in mid-October and the equipment was scheduled to be shipped by mid-September.

September 1977: The application was received in OEA. The value of the equipment was about $8,100. A licensing division reviewed the application for about 12 days, then it was referred to the Policy Planning Division. The Policy Planning Division referred the application to the Energy Department after 5 days, or 1 day after the scheduled shipping date.

October 1977: Since the application had not been approved by the scheduled shipping date, the applicant's letter of credit had to be extended, and a new shipping date for mid-December was arranged after consulting with the consignee. The applicant called an OEA licensing officer twice in the last 2 weeks of October to determine the status of the case; each time the licensing officer replied that he had no information on the status of the application. At the end of October, and after 42 days of review, Energy recommended approval.

November 1977: Four days after Energy recommended approval, the applicant again called the licensing officer,

who said he still had no information on the status of the application. The applicant asked an official in a Commerce regional office to inquire about the application; he did, but also to no avail. The applicant during this period mistakenly believed that the Defense Department was holding up the application, whereas the application had not been referred to Defense. In mid-November, OEA sent the application to the Sub Group on Nuclear Export Coordination, which recommended approval without controversy. Six days later, OEA's Policy Planning Division recommended approval, and the application was approved 8 days later, at the end of November. On the day after Policy Planning recommended approval, the applicant cabled the consignee asking him to send more information about the intended use of the equipment, stating that this information might help the Government make a favorable decision.

December 1977: On December 1, the applicant again asked the licensing officer for information about the application, but the officer again said he had nothing to report. Five days later the applicant received the license.

Our comment

OEA is making an effort to correct these kinds of problems. Exporters' Services was removed from the Operations Division and attached to the Director's office in late 1977. Requests for status checks are now being managed on a more systematic basis. Exporters' Services relies, however, on the Policy Planning Division to provide information on the status of applications which have been referred to the consulting agencies, and Policy Planning has no control over the nature and timeliness of the information these agencies may provide.

OEA's automated "License Accounting and Review System" can provide some help to Exporters' Services in determining when an application was sent to the Policy Planning Division or to the consulting agencies, but it cannot provide information about an application after a referral has been made.

The 90-day notification letter will probably continue to be a source of uncertainty for individual applicants, because the required estimate of when a final licensing decision will be made is not calculated for each application but is based on the history of each licensing decision for similar applications.

Applicants will continue to face a potentially costly and frustrating discovery game as long as export license applications are separately managed by several semiautonomous bureaucracies during the decisionmaking process. A balance needs to be struck between accountability and the Government's export licensing responsibilities. Such a balance does not and cannot exist until greater accountability is made a goal of export licensing and an administrative structure to make such a goal obtainable is established.

SCOPE OF REVIEW

We compiled licensing histories for 119 export license applications from those for which decisions were made between June 1 and December 31, 1977. The applications consisted of

--sixty-eight applications which were randomly selected from those which took 90 or more days to approve, or 9 percent of the total 781 applications for the period; and

--fifty-one applications which were randomly selected from those which were denied for national security and foreign policy reasons, or an estimated 25 percent of the total applications for the period (348 were denied during 1977).

We did not select for review any applications which were denied for short supply reasons or commodities licensed by other agencies such as State's Office of Munitions Control or the Nuclear Regulatory Commission.

To reconstruct the licensing history for each application, we examined reports, records, and interviewed licensing officials at the Departments of Commerce, Defense, Energy, and State, and at the National Aeronautics and Space Administration. We also discussed export licensing with individual exporters and officials and members of several trade associations.

CHAPTER 2

EXPORT LICENSING HISTORIES

OEA approved 50,737 licenses in 1977 and only 1,291 applications took 90 or more days to approve. Only 348 applications were denied; thus, about 3 percent of the 1977 applications caused "problems" in the sense that they took more than 90 days to approve or were denied.

Nevertheless, while the total number of applications increased by 5 percent between 1976 and 1977, between June and December 1976 and June and December 1977 the average number of applications taking more than

--30 days to process increased by 47 percent, (from 554 to 814),

--90 days to process increased by 52 percent, (from 305 to 464), and

--180 days to process increased by 50 percent (from 153 to 229).

WHY IS AN APPLICATION DENIED?

The Export Administration Act of 1969, as amended, states that export controls may be used to

--protect the national security of the United States,

--further the foreign policy of the United States, and

--prevent the excessive drain of scarce materials (short supply).

In our sample of export license applications, 51 were denied; 26 (51 percent) for national security reasons, 22 (43 percent) for foreign policy reasons; and 3 (6 percent) because OEA believed the commodities would be diverted from a West European to an East European country or be used in conjunction with previously diverted equipment. The average decisionmaking time for 49 denials was 158 calendar days. 1/

1/Adjusted to eliminate the effect of two applications implicated in a suspected diversion, which took 983 and 688 days, respectively, for decisionmaking.

National security reasons

The 26 applications denied for national security reasons had an average decisionmaking time of 200 days and had the following general characteristics.

Characteristics	Number	Percent	Average number of days for decisionmaking
Type of product:			
Semiconductor	8	31	155
Other	18	69	220
Destination:			
Communist countries	26	100	200
Decisionmaking time:			
More than 90 days	18	69	259
Less than 90 days	8	31	68
Type of interagency referral:			
Operating Committee	8	31	274
Waiver from OC	14	54	171
Other	4	15	155

Generally the consulting agencies concurred with OEA's licensing recommendation for these types of applications. OEA initially recommended denial for 18 (69 percent) of the 26 national security denials. No initial recommendation was made for 3 applications (12 percent). Approval was recommended for 5 applications (19 percent), but some of the consulting agencies took exception. These five applications represented all but one instance of this kind of controversy in our sample. The licensing history for three of these "controversial" denials follows.

Application to demonstrate semiconductor manufacturing equipment in a Communist country

March 1977: The application was received in OEA. The value of the equipment was about $19,000.

April 1977: The application was referred to the Operating Committee 23 days after receipt in OEA, which recommended its approval. The referral documentation noted that similar equipment was available from a non-COCOM West European

country. Between April and May 1977, the Operating Committee met five times on the application, deferring it without discussion at two meetings while Defense and Energy waited for their technical evaluations.

May 1977: Both Defense's and Energy's technicians recommended denial, notwithstanding the foreign availability of the equipment. Energy noted a history of denials for aspects of this type of equipment. The Operating Committee recommended denial.

June 1977: Denial of the application was authorized by the Director of OEA; the case was in the Operating Committee for 56 days.

July 1977: The application was denied; total decision-making time was 107 days.

Our comment

This application was denied shortly after the enactment of the "Export Administration Amendments of 1977," which state that:

> "The President shall not impose export controls for national security purposes on the export * * * of articles * * * which * * * are available without restriction from sources outside the United States * * * unless the President determines that the absence of such controls would prove detrimental to the national security of the United States."

The second part of this section was applied, since OEA's initial recommendation apparently was based on the foreign availability clause of the first section.

On August 26, 1977, Defense announced an interim policy statement on export controls, which drew on the recommendations of a 1976 report of the Defense Science Board task force on export control of U.S. technology. The Science Board's report said that "design and manufacturing know-how are the principal elements of strategic technology control." Defense's interim policy statement noted that, in making recommendations on export applications, Defense would place "primary emphasis" on "critical technology" defined as "information * * * that can be used * * * in the design, manufacture, utilization, testing, maintenance,

or reconstruction of articles or materials." The policy statement said that controlling critical technology means in part, controlling

> "* * * certain associated critical end products * * * that can contribute significantly in and of themselves to transfer of critical technology because they 1) embody extractable technology and/or 2) are equipment that completes a process line and allows it to be fully utilized."

In recommending a denial of this application, Defense and Energy technicians used this idea of "critical technology," apparently in reference to the idea that it would "complete a process line."

Application to export semiconductor manufacturing equipment to a Communist country

January 1977: The application was received in OEA. The value of the equipment was about $25,000.

February 1977: After 27 days, OEA's Capital Goods and Production Materials Division recommended to OEA's Policy Planning Division that the application be approved.

March 1977: Twenty-three days later, the application was distributed to the Operating Committee members. OEA recommended approval.

April and May 1977: Defense and Energy stated that their technicians disagreed with OEA's recommendation. At first Energy said the equipment was state-of-the-art, but at a later meeting it amended that view by saying that, although the proposed export was not state-of-the-art equipment, it could "replicate" state-of-the-art items, and therefore should be controlled. OEA and Defense disagreed over whether or not a "Technical Advisory Committee" 1/ was recommending decontrol of the item. The consensus that emerged in the Operating Committee described the item as important to semiconductor manufacturing, but not the most important part. It was, however, thought to be better than

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1/Six Government-industry Technical Advisory Committees currently advise the export licensing community on a variety of issues, including products that should and should not be controlled.

such items currently available in Eastern Europe. From this consensus description, Defense and Energy concluded the application should be denied. OEA, on the other hand, said there were no unacceptable risks in approving the commodity. State noted that the other COCOM countries would not agree with the U.S. Government interpretation of the COCOM definition of the commodity on the International Control List.

June 1977: The Operating Committee recommended denial after 103 days and the Director of OEA authorized denial of the application.

July 1977: The application was denied; total decision-making time was 167 days.

Our comment

These two applications illustrate the complexities involved in defining "critical" technology or know-how. Technology was defined in both cases as the manufacturing equipment itself, rather than manufacturing know-how in the sense of technical data, or as the end product of a manufacturing process. In the first case, the asserted criticalness of the equipment overrode concerns about foreign availability from a non-COCOM country. In the second case, it was asserted that, since "old" technology can help produce state-of-the-art end products, old technology should be considered critical.

Application to export
electronic measuring equipment
to an East European country

October 1976: The application was received in OEA. The value of the equipment was about $15,000.

December 1976: The application was referred to Energy, Defense, and State by "waiver memo" 41 days after receipt in OEA. OEA recommended approval based on what it believed to be the military's lack of concern for the specified frequency range of the equipment, a history of approval of similar commodities, and the apparent reasonableness of the stated end use.

January 1977: Both Energy and State replied that they concurred in OEA's recommendation.

February 1977: Defense had not yet given its position.

March 1977: Defense research and engineering technicians recommended denial of the application.

April 1977: Defense recommended denial to OEA, noting that the equipment is currently used in "antisubmarine warfare applications."

May and June 1977: OEA, confronted with a split recommendation, apparently was trying to decide what to do next.

July 1977: Defense sent an additional technical rationale in support of its April recommendation. OEA decided to accept Defense's arguments.

August 1977: A second waiver memo was sent to Energy, Defense, and State. OEA recommended denial based on Defense's arguments.

Within the month, Energy, Defense, and State concurred in OEA's recommendation.

September 1977: The application was denied; total decisionmaking time was 320 days.

Our comments

Assuming the validity of Defense's denial recommendation, this application can serve as a basis for several observations.

In the first referral memo, OEA asserted a "rule" of precedent. The speed--2 weeks--with which Energy and State concurred with OEA's approval recommendation suggests that they too were persuaded by a prior, and, therefore, precedent-setting application. Only Defense remained unconvinced. This three-to-one split in opinion also raises the question of whether or not a majority opinion should be the rule in referral decisionmaking. The question for the three consulting agencies in this case was, first, whether or not to accept a rule of precedent and, derivatively from that decision, whether or not to accept OEA's recommendation.

We believe that decisionmaking by majority opinion would be unwise. The four principal agencies do not and cannot review each application with equal knowledge about the proposed export, and this argues against the use of some tidy decisionmaking rule. The role, and impact,

of possible precedential information should be reviewed each time it is asserted. Licensing history information should and does accompany referrals. How that information is used should remain the prerogative of OEA and the consulting agencies.

OEA with one exception has no formal method for relating licensing history to a pending application. If licensing history is asserted as relevant to a pending application, it is because an individual licensing officer remembered a past application or has some informal retrieval system of his own. OEA's current automated "License Accounting and Review System" is not designed to relate licensing history to pending applications. OEA's Computer Division has a separate automated system which can relate the licensing history for computers to pending applications. A proposed revision of the "License Accounting and Review System" would give OEA an automated system for retrieving precedential information about other types of commodities.

Foreign policy reasons

The 22 applications denied for foreign policy reasons had an average decisionmaking time of 114 days, this was 86 days less than the average time spent on the national security denials. The applications had the following general characteristics.

Characteristics	Number	Percent	Average number of days for decisionmaking
Destination:			
Communist countries	4	18	96
Other	18	82	109
Decisionmaking time:			
More than 90 days	11	50	169
Less than 90 days	11	50	59

The denials can be grouped into several categories as exports which would be inconsistent with

--the Government's nuclear nonproliferation policy (nine applications);

--various unilateral and multilateral embargos (eight applications);

--the Government's support of the defensive military capability of an Asian country (four applications); and

--the Government's policy on human rights (one application).

Defense, with one exception played no role in these denials. For the nuclear nonproliferation denials, Energy made what turned out to be the crucial recommendations for the rest of the denials.

Only one denial was based on a policy of supporting human rights but this may be due to the fact that our 1977 sample period preceded the full implementation of the administration's human rights policy. However, some exporters we talked with expressed concern that the policy seems to them to be vaguely defined.

The human rights denial was based on a policy first announced in July 1974, and redefined in February 1978. In 1974, Commerce publicly announced that "validated export licenses will be required for each shipment of any instruments and equipment particularly useful in crime control and detection" to the Soviet Union, East Europe, and the People's Republic of China. In making this announcement, Commerce noted the Government's "continuing interest in the welfare of persons who seek to exercise their fundamental rights." The commodity denied in this application was about $100 worth of photographic film for an institute of criminology in a Communist country.

The human rights policy was redefined by Presidential Directive in early 1978. Applications may now be denied to the police and military forces of any government believed to be violating the fundamental rights of its citizens. There is no official list of such governments in current export administration regulations, so an exporter cannot be sure which governments are proscribed and which are not. However, U.S. export administration regulations were revised on February 16, 1978, in order to impose an embargo on exports and reexports of U.S. origin commodities and unpublished technical data for use by the Republic of South Africa and Namibia police and military.

While the end user in human rights denials has to be the police or military of the proscribed country, there is an inescapable dilemma with such a policy. By prohibiting the sale of commodities to a proscribed end user, that end user

may attempt to get the desired commodity indirectly through another end user in the same country. If the Government attempts to control such indirect access, then the country itself, rather than a specific end user would be the subject of export controls--a far more sweeping use of controls than was the intent of the policy in the first place. Not to do so, however, raises the possibility that the human rights policy will be undermined by diversion from a "legitimate" to a proscribed end user.

The only "controversial" foreign policy denials in our sample concerned exports to an Asian country. In one case, Energy recommended approval, while State was for denial; in another case, both State and Energy recommended denial, while Defense recommended approval based on the foreign availability of the item. Two interagency meetings on the application resulted in a recommendation that the "foreign policy concerns" of the case ought to override the foreign availability aspect.

Although the Export Administration Act of 1969, as amended, defines the relationship of foreign availability to national security, the law is mute with respect to a potential parallel relationship between foreign availability and foreign policy. Why foreign availability is thought, in a legal context, to have an impact on national security and not foreign policy is unclear. If the foreign availability of a commodity can potentially alter our national security policy, then conceivably it should have a similar potential impact on foreign policy.

WHY DOES IT TAKE SO LONG TO GET SOME APPLICATIONS APPROVED?

From an applicant's point of view, one of the most irksome aspects of export licensing administration is the lengthy time it takes the Government to make a decision. Since only a relatively small number of applications are denied, the questions often asked by exporters is: "Why do they take so long to say yes?" As mentioned previously, "they" do in fact say "yes" to most applications within 3 months.

The Export Administration Act of 1969, as amended, states:

> "It is the intent of Congress that any export license application required under this Act shall be approved or disapproved within 90 days of its receipt. Upon the expiration of the 90-day period beginning on the date of its receipt, any export license application required under this Act which has not been approved or disapproved shall be deemed to be approved and the license shall be issued unless the Secretary of Commerce * * * finds that additional time is required and notifies the applicant in writing of the specific circumstances requiring such additional time and the estimated date when the decision will be made."

In 1974, the Senate Committee on Banking, Housing, and Urban Affairs noted that delays in decisionmaking "cause uncertainty and ultimately impede United States export potential. * * * [T]he Committee expects the situation to be rectified." Four years later, the problem is still as intractable as ever. Indeed, as noted previously, it was getting worse, during the last 7 months of 1977.

Our sample of approved applications contained only those applications which took 90 or more days to issue licenses. The average decisionmaking time for 68 applications was 228 days; this average time was, however, distorted for two reasons.

Applications for exports to one European country were purposely delayed pending a satisfactory response from that Government to the U.S. Government's questions concerning the diversion of strategic goods. Some applications were delayed for a considerable time because the country's government at first did not, from the U.S. Government's point of view, satisfactorily respond to the U.S. authorities. In January 1977, an agreement was reached with the country's government, and in November 1977, action was taken on the backlog of applications. Coincidentally, some of these long-delayed applications were approved during our sample period; nine applications to that country, with an average decisionmaking time of 408 days, were included in our sample.

Our sample was also distorted because applications to export some commodities to particular end users in an Asian country were suspended for foreign policy reasons. Neither the applicants nor that country's government were officially told that a selective trade suspension had been established. After a foreign policy review in mid-1977 many of these suspended applications were approved; nine applications for export to that country with an average decisionmaking time of 216 days were included in our sample.

The export community has provided us with examples of business lost to competitors in other COCOM countries because of this selective trade suspension. COCOM does not collectively control exports for foreign policy reasons. As mentioned previously, there is no provision in U.S. law tying foreign availability to foreign policy-related controls.

When our sample of approved applications was adjusted by eliminating these 18 applications, the average decisionmaking time for 50 approvals was 198 days.

These applications had the following general characteristics.

Characteristics	Number	Percent	Average number of days for decisionmaking
Type of product:			
Semiconductor	5	10	144
Other	45	90	203
Destination:			
East Europe	35	70	221
Other countries	15	30	144
Type of interagency referral:			
Operating Committee	8	16	334
Waiver from OC	3	6	201
Other	32	64	178
No referral	7	14	127
Referred to COCOM	16	32	212
Not referred to COCOM	34	68	191

Aside from the two instances of selective trade suspension there were a number of other reasons why applications in our sample were delayed; some involved unusually controversial proposals, such as in the following case.

Application to export computer equipment to a Communist country

July 1975: The application was received in OEA. The value of the commodity was about $2 million.

August 1975: OEA's Operations Division referred the application to the Computer Division 26 days after it was received.

September 1975: No action was taken by the Computer Division, because the relevant licensing officer was out of town for 3 weeks.

October 1975: The applicant was asked to provide some additional technical information. The 90-day notification letter was sent to the applicant stating that the decision-making time was estimated to be an additional 3.5 months.

November 1975: The applicant was told that the technical requirements of the COCOM International Control List for this type of computer equipment had been revised. The applicant was asked to rate this proposed export in terms of the new specifications.

December 1975: The applicant visited OEA to discuss the new specifications.

January 1976: The applicant complied with OEA's November request, and the necessary documentation was prepared by the Computer Division so that the application could be submitted to the Operating Committee.

February 1976: The application was distributed to the Operating Committee members 197 days after it was received in OEA; OEA did not make a recommendation on the application.

March 1976: The case was deferred for 7 weeks in February, March, and April 1976 because the agencies were not prepared to discuss the application or because there was not enough time at the weekly meetings to discuss it. Defense did note, however, that the operating characteristics of the proposed system exceeded the revised International Control List requirements. Defense said it would favorably consider a reduction in the system.

April 1976: The CIA was asked to furnish more information on the end users. In a letter to the OC, NASA recommended denial because there was no satisfactory way to control the end use of the commodity; but also in a letter to the OC, the Department of Transportation said the commodity appeared to be an "off-the-shelf" item and that it was trying to encourage systems like the one proposed in the interest of transportation safety.

May 1976: Consideration of the application was deferred for 5 weeks in May and June, because Defense was waiting for one of the military services to complete its review. Defense noted, however, that the commodity exceeded by four times the permissible operating characteristics for this kind of item.

July 1976: Consideration of the application was deferred for 9 weeks in June, July, and August because Defense had not completed its review. At the end of August, Defense distributed a memorandum stating that its concern also centered on the size of the proposed system and that the system was close to the best U.S. military system. The CIA supported Defense's position.

September 1976: Defense recommended denial, and Energy deferred to Defense. Defense said again that the operating characteristics of the proposed system exceeded COCOM requirements. State and Commerce said they did not think these COCOM requirements should be interpreted as a "go" or "no go" situation. Defense said they might recommend approval of one system but not all.

October 1976: The Department of Transportation thought some aspects were excessive and should be reduced. Defense said that if the system could be reduced to meet COCOM requirements, it would recommend approval. State asked why it would be harmful if the COCOM requirements were exceeded; Defense replied that the COCOM requirements were themselves an exception and if the application was approved there would be virtually no restrictions left. The OC Chairman recommended approval with the condition that the number of end users be reduced and the computer system itself be reduced so as not to exceed COCOM requirements. Defense and Commerce concurred in the recommendation, energy deferred to Defense, and State delayed concurrence for one week.

November 1976 to March 1977: During this period the applicant presumably negotiated the proposed U.S. Government amendment with his customer.

March 1977: The applicant resubmitted his application. Some of the information was not accurate and the applicant promised to correct it. Meanwhile, the application was again taken up in the Operating Committee, although discusssion was deferred for 4 weeks. At the end of March, OEA distributed a memorandum challenging Defense's (1) contention that several of the proposed end users were not acceptable and (2) procedural point that an item which does not exceed COCOM requirements does not have to be discussed in the Operating Committee.

April 1977: The applicant discussed the proposed amendment with the OC agencies. Discussion in OC was deferred for 8 weeks in May and June while the applicant made the required corrections to his amended application, and OEA drafted the necessary documentation.

July 1977: The corrected application was formally placed on the OC agenda. The Department of Transportation said that what the East European Government proposed to do had been done in the United States years ago.

August 1977: The OC Chairman recommended approval of the amended application and all the OC agencies concurred. The application was before the Operating Committee for 419 days and was formally approved 730 days after it was received in OEA.

Our comments

Although this application was more complex than most, the 2 years it took to reach a decision seems excessive. The need to make a timely referral from OEA to the consulting agencies is especially evident in this case. Defense's protracted analysis of the application is inconsistent with the fact that 3 weeks after the application was distributed to to the OC members, the Defense representative first raised what proved to be one of their major objections, the assertion that the operating characteristics of the system exceeded COCOM's requirements.

There is no indication that the applicant was given an opportunity to discuss the application with Government technicians or representatives of the OC agencies except in the December 1976 and April 1977 meetings.

Other reasons for delays

Decisionmaking time for some applications was prolonged because the applicant failed to provide the required documentation. For example, one application took 168 days to approve but the applicant took 143 days to submit a required international import certificate.

Some applications were mislaid in the bureaucracy. One application took 252 days to approve, because it was apparently mislaid for 5 months. Once the problem was discovered, Energy and Defense made their recommendations in about 1 week.

Not all applications received concurrent technical reviews within a consulting agency. Sequential reviews by consulting technicians can delay decisionmaking time. An application to export technical data to an East European country took 171 days to approve. It was referred to Defense in March 1977 and was recommended for approval by two separate Defense agencies within 14 days; 37 days later, the application was sent to technicians at an Air Force Base who recommended approval 34 days after it was sent to them. This sequential review process added 51 days to the decisionmaking time.

CHAPTER 3

PRIOR RECOMMENDATIONS TO CHANGE THE ADMINISTRATION OF EXPORT LICENSING

PRIOR GAO REPORT

We previously reviewed export licensing administration as part of a February 1976 report, "The Government's Role in East-West Trade--Problems and Issues." Although some of the report's recommendations concerned export control subjects not addressed in this report, a number were made to strengthen Commerce's role in upholding and licensing national security controlled commodity exports. Our recommendations in chapter 4 are designed to implement what the 1976 report termed "a lead role concept for the Department of Commerce."

Specifically the 1976 report recommended that the Secretary of Commerce:

--Provide additional personnel resources for and improve the operation of the Office of Export Administration.

--Remove responsibility for monitoring and licensing technology transfers from the Office by disbanding the Technical Data Division and requesting the East-West Foreign Trade Board to determine the most suitable agency for handling this function.

--Upgrade the Advisory Committee on Export Policy's Operating Committee by elevating its role in the Office of Export Administration with an expanded technical staff and require its work program to conform to COCOM approval timeframes and employ majority rather than unanimity rule decisionmaking.

--Improve the system for screening license applications by adding additional computerized data bases.

Since fiscal year 1976, OEA has added approximately 20 permanent positions to its staff. Its fiscal year 1979 congressional budget submission estimated that it will need 249 positions. OEA currently has 162 permanent positions.

Our recommendations in chapter 4 address the structure of the export licensing system rather than personnel requirements, since they necessarily depend on a particular licensing structure.

OEA's Technical Data Division has been abolished and its functions distributed among OEA's other licensing divisions.

No technical staff is specifically attached to the Operating Committee, and OEA continues to seek unanimous agreement from the consulting agencies. Chapter 2 indicates why the current decisionmaking rule is probably preferable to "majority decisionmaking." As noted, OEA is proposing to redesign its automated License Accounting and Reporting System in order to improve its flexibility by including among other things precedential information which might be relevant to any given application.

Our 1976 report also recommended that the Secretary of State direct the Office of East-West Trade to avail itself of the technical expertise offered by other State bureaus in order to participate effectively in ACEP deliberations on The National Security implications of strategic controls.

Our recommendations in chapter 4 of this report suggest a method by which State's technical expertise can be effectively used in the licensing process without requiring the direct participation of the Office of East-West Trade.

Our prior report also recommended that the Secretary of Defense direct the Office of Strategic Trade (now the Office of Strategic Technology and Munitions Control) to either narrowly redefine its review responsibilities or acquire sufficent staff to exercise its reviews promptly.

Chapter 1 of this report discusses Defenses's procedural changes for administering referrals from OEA or the Operating Committee. Our recommendations in chapter 4, if implemented, would substantially change the way Defense manages license application referrals.

INTERNAL REVIEWS BY THE ADMINISTRATION

Since our prior report was issued, at least two unpublished reports on export control administration have been written by a Presidential task force to improve export administration licensing procedures and the other by a Commerce study group. Both reports made a number of recommendations to change export licensing procedures; some of them

bear directly on the diffusion of authority and lack of accountability which characterize export licensing administration.

Relationship between policy-making and licensing

OEA's Policy Planning Division has day-to-day license application review responsibilities. Both the task force and study group's reports questioned the wisdom of the Policy Planning Division's routine involvement in applications which are referred to the consulting agencies. The task force thought the management responsibilities of the licensing division directors should be emphasized and recommended that OEA review the relationship between the Policy Planning Division and the licensing divisions. The study group report said that the Policy Planning Division had evolved into a "super licensing group" to the "detriment" of other responsibilities and recommended that the division be reconstituted as a "Policy Coordination Staff," but did not specifically recommend that it have no application review responsibilities.

Priority of technical review in consulting agencies

The task force report found that Defense's technical evaluations have an uncertain priority and noted that, with one exception, Defense technicians review license applications as an "additional" duty. The result, the report said, is that license applications "must often wait while higher priority tasks (in the technician's perspective) are being performed."

The task force recommended that Defense "clarify" the responsibilities of its consulting technicians and "assign appropriate staff priorities to assure timely action."

Separation of routine from problem applications at OEA

The study group report said that OEA must set a goal of "lowering the levels and numbers" of individual license application reviews. It stated that "no valid purpose is served by processing free-world applications through to licensing officers in the same manner designed to control export of strategic commodities."

The report recommended that a "front-door" licensing procedure for free world applications be established in OEA's

Operations Division, which would decrease the "paper flow" to the licensing divisions.

Making export control decisionmaking more responsive to exporters

The study group's report noted that Exporters' Services Section was established to expedite license applications and generally serve as an "in-between" with exporters and OEA. The report also noted that the section "encounters resistance and lack of cooperation because it tends to interfere with the routine."

The study group's report recommended that, since the section is "too removed from authority channels," it should be placed in OEA's Office of the Director "to be more responsive to the needs of the exporter." As noted previously, Exporters' Services has been transferred to the director's office.

Making better use of precedents

Both reports discussed the use of precedents. The task force recommended that OC "focus more attention on extrapolating broad policy guidance from individual decisions in a systematic manner."

The study group's report stated that OC is "bogged down with repetitive consideration of individual export transactions for which it has already set precedent tantamount to policy by approving the export of identical commodities to the same or other bloc countries." The report recommended that the ACEP should "consider" establishing a "first case principle" for issues coming before OC.

Our observations on these recommendations

Like the task force and study groups' reports, we believe that OEA's licensing divisions should be strengthened. Our recommendations in chapter 4 are designed to implement this view. We believe that the proper role of the Policy Planning Division is to represent Commerce in developing export policy. While policy development and licensing are not wholly separate activities, it ought to be possible for OEA's licensing divisions to implement export policy in relation to the applications they review without the current level of involvement by the Policy Planning Division.

Technical evaluations should not have an uncertain priority. Consulting technicans should not be allowed to jeopardize an export business relationship because they can independently give an application any priority they wish.

Technical evaluations could be given a more certain priority if this service were funded by OEA. This step could be implemented in conjunction with our recommendation in this report to centralize the management of the referral system in that Office.

OEA's Operations Division continues to refer all applications to the licensing divisions. We believe the "front door" licensing procedure concept should be implemented.

In chapter 1, we noted that Exporters' Services has made some procedural changes in order to be more responsive to the needs of the exporters. In chapter 4, we recommend additional changes which would strengthen the capability of the entire export licensing system to be more responsive to exporters.

In chapter 2, we discussed the use of precedents. After compiling licensing histories for 119 applications, we can appreciate the difficulty of extracting and weighing the possible importance of precedential information. Although this kind of information is important to the decisionmaking process, it is hard to see how case-by-case consideration can be entirely avoided. Precedential information may accelerate the licensing process, but it probably cannot be a substitute for it.

CHAPTER 4

CONCLUSIONS AND RECOMMENDATIONS

The Congress expressed its intent that export licensing be more accountable to exporters. This goal, however, cannot be obtained unless attention is paid to the kind of decision-making structure which makes greater accountability possible. In the absence of such a structure, this goal will probably remain elusive.

With the current licensing system, several organizations within OEA as well as the consulting departments and agencies of the export licensing community share management responsibility for some export license applications. This diffusion of authority makes it difficult for exporters to communicate meaningfully with their government about export licensing, and this difficulty in turn adds needless uncertainty to the export business.

The export licensing system should be revised to strike a balance between the need for greater accountability and the government's legitimate responsibility to control exports for national security, foreign policy, and short supply reasons. The main obstacle to achieving this balance is the management of export licensing by many agencies and offices within the executive branch. There are several possible choices which might create a balance between accountability and licensing.

1. Retain the current system of diffused export licensing responsibility while attempting to increase decisionmaking efficiency at each of the agencies comprising the export licensing community.

2. Consolidate export licensing administration, including the Government's corps of technicians in a single agency.

3. Establish a new export license management group which would be organizationally independent of the existing export licensing agencies but which would oversee and direct decisionmaking at each of them.

4. Consolidate management responsibility in one of the existing export licensing agencies while continuing to retain the Government's corps of technicians at each of the existing agencies.

We believe that the fourth choice should be implemented. Fundamentally, the semiautonomy exercised by some bureaucracies should be reduced by transferring export licensing management responsibility to the Department of Commerce.

This observation does not pertain to commodities licensed by agencies other than the Office of Export Administration such as State's Office of Munition Control, the Nuclear Regulatory Commission, or a number of other agencies which license particular kinds of commodities such as tobacco seed and plants.

ACCOUNTABILITY NEEDS TO BE INCREASED BY CONSOLIDATING MANAGEMENT RESPONSIBILITY IN OEA

In making the following recommendation, we are distinguishing between managing export applications and making technical reviews or evaluations. The responsibility for making technical evaluations should rest, as it does now, with technicians in OEA and in each department and agency comprising the consulting system. By "technical evaluations" we also mean review for foreign policy implications of a proposed export as well as review by CIA.

We believe, however, that Defense's Office of Strategic Technology and Munitions Control, Energy's Office of Politico-Military Security Affairs, State's Office of East-West Trade, and NASA's Office of International Affairs should not have application review and referral responsibilities. The information about which technicians are best suited to review particular applications is not unique to any one office and could be readily transferred from these offices to OEA. Applications referred for technical consultation should be sent directly to the reviewing technician(s) by OEA's proposed license application management teams. The technical evaluation(s), in turn, would be sent directly from the technician(s) to the same management teams. Defense's Office of the Under Secretary of Defense for Research and Engineering should not have responsibility for coordinating Defense's technical evaluations. Coordinating all technical evaluations should be the responsibility of OEA.

An office designated by the Secretary of Defense would be provided with copies of OEA's requests for evaluations by Defense technicians and also copies of the technicians responses. Thus, Defense would be provided the means to monitor the activity regarding those applications which are to be reviewed by the Department pursuant to law. OEA would

subsequently provide Defense with the proposed licensing decision to allow for its required response in a designated, brief period of time. This procedure would not be part of the direct licensing management system but yet would enable Defense to assure itself that national security interests are properly considered.

Each OEA application management team should also be responsible for implementing foreign policy and national security policy issues for applications they are responsible for. Developing these issues, however, should be the joint responsibility of OEA's Policy Planning Division and the above named offices at each consulting agency in conjunction with our proposed Export Policy Advisory Committee.

RECOMMENDATION

We recommend that the Congress direct that export license application management responsibilities be centralized in the Department of Commerce's Office of Export Administration.

BETTER SYSTEM FOR DEVELOPING EXPORT CONTROL POLICY NEEDS TO BE ESTABLISHED

Currently, some applications are reviewed by the multiagency Advisory Committee on Export Policy and particularly by ACEP's Operating Committee. Our recommendations make the ACEP structure redundant. Our recommended technical consultation system preserves, at the application review level, the current multiagency nature of the export licensing structure. The multiagency structure is also preserved at the policy development level by a recommended export policy advisory committee.

Our departure from the ACEP format is that we are recommending that the juncture of technical and policy comment take place within OEA's licensing divisions rather than in the Operating Committee or at the consulting agencies themselves.

If OEA's recommendations to the consulting agencies were routinely overturned by them, that fact would reflect adversely on the quality of OEA's licensing staff. In our sample, OEA's recommended decisions were almost always sustained by the consulting agencies. If it were otherwise, then one might argue that a continued diffusion of management responsibility would be necessary to balance the inadequacies of the OEA staff.

Our recommended export policy advisory committee should be responsible for developing and recommending export control policy to the Export Administration Review Board in light of the Government's foreign trade, national security, and foreign policies. This committee should not review export license applications except in the most unusual circumstances.

Commerce's Technical Advisory Committees, the National Security Council's Sub Group on Nuclear Export Coordination, and the various committees formed to develop the Government's position for the periodic COCOM list reviews should, in effect, become subcommittees of this advisory committee.

We recognize that the distinction between technical and policy issues is not always clear. As our licensing case studies and examples showed, specific licensing decisions involved a mixture of these considerations. The question we are raising is whether or not a recommended multiagency export policy advisory committee can develop policy guidelines of sufficient clarity to be useful on an application-by-application basis, and whether or not technical advice and policy advice need be joined at each of the consulting agencies before referral to OEA; or whether this joining can take place for the most part at OEA.

RECOMMENDATIONS

We recommend that the Congress direct that a multiagency "Export Policy Advisory Committee" be established at an appropriate administrative level.

In conjunction with this, we recommend that the Secretary of Commerce abolish the Advisory Committee on Export Policy, consisting of the Operating Committee, sub ACEP, and ACEP.

PROBLEM APPLICATIONS NEED TO BE SEPARATED FROM ROUTINE APPLICATIONS

Within Commerce's Office of Export Administration, several organizations have export license application management responsibilities. This responsibility is shared by the licensing divisions and the Policy Planning Division for some applications. Exporters' Services is also responsible for managing information about export control decisionmaking.

The first step in making an export licensing decision needs to be a separation of "routine" from "problem" applications. Although the Commerce study group report referred to a "front door" licensing procedure for free world applications, some so called free world applications are "problems." In our opinion, applications which should be referred to a proposed export license application management team in an OEA licensing division should be separate from those deemed so routine that OEA's Operations Division can approve them without referral to a licensing division.

RECOMMENDATION

We recommend that the Secretary of Commerce have the Director of OEA establish a procedure to process routine applications in OEA's Operations Division.

LICENSE MANAGEMENT RESPONSIBILITY NEEDS TO BE CENTRALIZED WITHIN OEA'S LICENSING DIVISIONS

Export license decisionmaking within OEA needs to be centralized if accountability is to be increased. Each "problem" application should be assigned to a management team under a team manager located in the licensing divisions. These management teams should have the following responsibilities:

--Answer requests for information from applicants and regularly inform applicants about the status of their applications during the decisionmaking process.

--Decide within the constraints of existing law whether or not an application needs to be referred to technicians at other agencies.

--Prepare all necessary documentation to accompany referrals for technical review.

--Make recommendations for applications which do not need technical reviews and forward such recommendations to the director of their licensing division and OEA's Director for review and decision.

--Implement policy guidance from the "Export Policy Advisory Committee."

--Coordinate technical evaluations from the consulting agencies.

RECOMMENDATION

We recommend that the Secretary of Commerce have the Director of OEA locate all "problem" export license application management responsibility within OEA's licensing divisions. To facilitate this, we also recommend that (1) the Exporters' Services be abolished and its functions be transferred to the licensing divisions and (2) the Policy Planning Division's application review and referral routing functions be transferred to the licensing divisions.

EXPORTERS NEED BETTER OPPORTUNITY TO RESPOND TO DENIAL RECOMMENDATIONS

If an OEA licensing division director recommends denial for an application the applicant would be invited to defend his application before a "license application appeal committee." The committee would consist of officials from OEA's Policy Planning and Licensing divisions. The consulting technician(s) or the OEA application manager who recommended the denial would be directed to support and defend the recommendation and answer any rebuttal the applicant might make. The committee would seek a compromise acceptable to both applicant and the dissenting technician(s). If no compromise is possible, the committee would be directed to make a recommendation to approve or deny the application to the Director, OEA, who would make the final licensing decision, unless the Secretary of Defense appealed the proposed decision to the President under current law.

We recognize that it is not always prudent to discuss with applicants the basis for some denials. For this reason, discussion before the proposed appeal committee might be limited to issues not considered sensitive to the Government.

The ACEP structure, at least theoretically, is a prelicensing decision appeal structure. Our proposed "license application appeal committee" preserves this appeal concept in the decisionmaking process. We believe that the number of possible appeal levels is less important than the creation of a single forum where an applicant can address negative considerations raised by the Government about the technical aspects of a proposed export. The proposed license application appeal committee is a necessary and sufficient prelicensing decision appeal structure.

RECOMMENDATION

We recommend that the Secretary of Commerce have the Director, OEA, establish a prelicensing decision "license application appeal committee" in OEA.

INCREASING ACCOUNTABILITY AND TIMELINESS OF EXPORT LICENSE DECISIONMAKING

The time it takes to make an export licensing decision depends in part on the structure of the decisionmaking process. It does not make sense, in our opinion, to address decisionmaking timeliness without considering the kind of structure that would make more timely decisions possible.

We cannot say that revising the structure of export licensing administration will make decisionmaking more timely; strictly speaking, that is an empirical question that would need to be tested. In the absence of such a test, there are several reasons these revisions ought to make decisionmaking more timely.

By fixing management responsibility in OEA and directly linking OEA application management teams with their consulting technicians in other agencies, a number of existing review groups in OEA and the consulting agencies can be eliminated. This sort of linkage should reduce the paper flow between agencies, since applications which OEA refers to the consulting agencies but are not now being, in turn, referred for technical reviews, should, under our proposal, remain in OEA. The paper flow within OEA would be reduced since the Policy Planning Division would not be directly involved in the license application decisionmaking process.

Several possible sources of delay in the decisionmaking process remain, however, at the technical review level within OEA's licensing divisions, and in the proposed license application appeal committee. They would be reduced, however, and should be more identifiable to both Government personnel and exporters alike.

EVALUATION OF AGENCY COMMENTS

A draft of this report was sent to nine departments and agencies for their review and comment. Responses were received from six--the Office of Management and Budget, the Departments of State, Defense, and Energy, the Central Intelligence Agency, and the National Aeronautics and Space

Administration. Written comments were not received from the Departments of Commerce and the Treasury, and the Office of Science and Technology Policy. We did discuss the draft report, however, with officials of the Commerce Department.

None of the agencies disagreed with our findings that the dependability of U.S. exporters is eroded by the current licensing system. The executive branch is also concerned about this matter and has recently completed an interagency review of export control policy for East-West trade. OMB said that, as a result of the executive branch review, several options are being implemented to address the problems cited in our report. However, centralization of management responsibilities in any one agency was deemed inappropriate, and, instead, a principal recommendation was to direct the applicable agencies to review their procedures with a view toward streamlining them. We question whether a study which recommends further study will accomplish sufficient improvement without addressing the fundamental problems of a diffused management structure and the lack of adequate policy guidance.

The agencies' basic disagreement with our recommendation to provide for centralized management in Commerce is that each agency should be allowed to apply national security and political and economic considerations in their review of applications. We believe their concern is unfounded. Our recommendations provide for Commerce to address these same considerations by applying a policy that the agencies have participated in developing.

The present system of diffused management responsibility dilutes accountability and no one office or agency can be criticized for not properly implementing export controls. In our view, the Government needs to pinpoint accountability for administering an export control system which is responsive to the needs of the business community while effectively controlling exports for national security and foreign policy reasons.

APPENDIX I

DON EDWARDS
10TH DISTRICT, CALIFORNIA

DISTRICT OFFICES:
1625 THE ALAMEDA
SAN JOSE, CALIFORNIA 95126
(408) 292-0143

38750 PASEO PADRE PARKWAY
FREMONT, CALIFORNIA 94536
(415) 792-5320

WASHINGTON OFFICE:
(202) 225-3072

Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEE ON JUDICIARY

CHAIRMAN
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

COMMITTEE ON VETERANS' AFFAIRS

May 27, 1977

Mr. Elmer B. Staats
Comptroller General of the
United States
General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Staats:

The electronic-semiconductor center of the United States is located in the San Jose-Sunnyvale-Palo Alto-Cupertino area of California. There are dozens of plants employing more than 100,000 persons.

For several years, I have received complaints from these industries regarding the Department of Commerce Office of Export Control. Sales of equipment to communist bloc nations and Arab nations must be approved by this office. The Defense Department, the State Department and the CIA apparently have a veto power over each and every sale, which they frequently use. Some of the companies are becoming so distressed that they are planning to move to Europe.

The attached memo, unsigned because of fear of the Office of Export Control, was prepared for me by the president of one of these companies. I believe it describes accurately the deplorable situation.

I request that the GAO examine the practices of the Department of Commerce Office of Export Control to determine if it is damaging American companies' opportunities to export their manufactured goods. I am personally of the belief that many of the export license refusals are not based on accurate national security considerations.

APPENDIX I

Please advise me if your office is willing to do this work.

Sincerely,

Don Edwards

Member of Congress

DE:dl
ENCLOSURE: Unsigned Descriptive Memo

APPENDIX II

Congress of the United States
Committee on International Relations
House of Representatives
Washington, D.C. 20515

December 30, 1977

The Honorable Elmer B. Staats
Comptroller General of the
United States
General Accounting Office
441 G Street, N.W.
Washington, D. C. 20548

Dear Mr. Staats:

I refer to a letter dated May 27 from Congressman Don Edwards, in which he requests that the General Accounting Office "examine the practices of the Department of Commerce Office of Export Control to determine if it is damaging American companies' opportunities to export their manufactured goods."

As this matter falls within the jurisdiction of the Subcommittee on International Economic Policy and Trade, I hereby request that the General Accounting Office undertake this investigation for the Subcommittee as well as for Congressman Edwards, and report directly to the Subcommittee as well as to Congressman Edwards.

Congressman Edwards is amenable to this request.

Sincerely,

Jonathan Bingham

Jonathan B. Bingham
Chairman
Subcommittee on International
Economic Policy and Trade

JBB:vjcr

APPENDIX III

National Aeronautics and
Space Administration

Washington D C
20546

AUG 2 4 1978

L-1

Mr. Jerome H. Stolarow
Director
Procurement and Systems Acquisition
Division
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Stolarow:

Thank you for the opportunity to comment on GAO's proposed report entitled "U.S. Export Licensing Administration Should Be More Responsive To Industry" which was prepared by the International Division, (Code 48238), per your letter dated July 14, 1978.

The enclosed comments relate to that portion of GAO's suggested revised procedures which impacts NASA directly. We will be pleased to discuss our views further if you wish.

Sincerely,

Arnold W. Frutkin
Acting Associate Administrator
for External Relations

Enclosure

cc: GAO/Mr. J. K. Fasick

NASA COMMENTS ON

GAO's DRAFT REPORT -- U.S. LICENSING

ADMINISTRATION SHOULD BE MORE RESPONSIVE

DATED JULY 14, 1978

We agree with many of GAO's conclusions regarding the inefficiencies in current export licensing procedures. Every effort should be made to streamline the licensing process. However, we do not agree with the GAO suggestion, on page 50 of the draft report, that NASA's International Affairs Division should not have export licensing review responsibilities. This proposal would only exacerbate the present situation, as discussed below.

The International Affairs Division has served as NASA's central coordinator, not only for export license applications from the Department of Commerce, but for the State Department munitions list cases as well. Cases from either Department are controlled by this Division and referred to appropriate offices for technical review only. The technical offices are not aware, for the most part, of political or policy matters relating to exports. The International Affairs Division adds to the technical evaluation any policy-related input before dispatch to the Commerce Department, Office of Export Administration (OEA).

Some cases are referred to more than one NASA technical office for review, depending upon the content of the application. The judgment to assign cases to a particular office(s) resides best in the agency concerned, not in an OEA licensing office. Implementation of GAO's proposal for license application referral from OEA directly to NASA technical offices would circumvent NASA management practices, and not produce a complete, coordinated agency position on any particular case.

We suggest consideration of a more centralized OEA system of record-keeping and follow-up. All government agencies and exporters could benefit; more accurate, up-to-date information on the status of particular cases would be readily available. Continuation of the International Affairs Division as the central point of contact in NASA would be compatible with this consolidated OEA system.

APPENDIX III

In summary, better record-keeping systems and greater accountability are needed. However, the proposed revision of the export licensing structure should not be implemented at the expense of NASA's effective management of export application reviews, or its efficient control over its own agency resources.

Norman Terrell
Director, International
Affairs Division

APPENDIX IV

Department of Energy
Washington, D.C. 20545

August 28, 1978

Mr. Monte Canfield, Jr.
Director, Energy and Minerals Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Canfield:

Thank you for the opportunity to review and comment on the GAO draft report entitled "U. S. Export Licensing Administrat[illegible] Should Be More Responsive To Industry."

Our views with respect to the text of the report and the GAO recommendations are discussed below.

While we are sympathetic with GAO's interest in streamlining the administration of the U. S. export licensing process, we do not agree with the recommendation on page 50 to eliminate agency policy review of export applications and have their review function reside solely in Commerce. Such a recommendation fails to recognize the Department of Energy's (DOE) statutory responsibilities set forth in the Atomic Energy Act, as amended by the Nuclear Non-Proliferation Act of 1978. Also, having applications referred for technical consultation sent directly by Commerce to DOE technicians is, in our opinion, managerially unsound in that DOE policy considerations presently built into our present licensing review would be eliminated. Our present review process ensures that in addition to technical aspects, our decisions on export licenses will be based not only upon DOE policy considerations, but also upon policies that are established by the President and by the Congress.

The report recommends significant organizational changes in the Executive Branch's export administration activities based upon a random sampling of 119 export cases and some interviews with persons associated with export control matters. This sampling of cases points out to a limited extent the procedures of Commerce employees to seek advice on certain cases from other agencies and the time it takes to secure agency views. There is nothing in the report to indicate that policy review by other agencies is unneeded or undesirable except that it takes time. The recommendation to remove DOE's, as well as other advisory agencies' prerogatives, which are based on statutory requirements, to review nuclear and nuclear-related exports from a policy as well as a technical standpoint is not, in our opinion, supported or justified by the findings in the report.

APPENDIX IV

Furthermore, we question whether the proposed recommendation would result in a more efficient review process. Under present procedures, the DOE Office of Politico-Military Security Affairs (OPMSA) is able to complete its evaluations in a timely manner on many export license requests without the need to coordinate with technical personnel in our various field organizations as sufficient expertise and information are centrally located within OPMSA. Under the GAO proposal, the Department of Commerce Office of Export Administration (OEA), because of lack of technical expertise found in our Office of Politico-Military Security Affairs, would refer license requests, including those of a routine nature, to appropriate DOE field technicians located in numerous facilities. This would be less efficient than the present review procedure. It should be noted that most applications reviewed by DOE are not sent to DOE, but are reviewed at Commerce by our OPMSA staff.

The report does not, in our opinion, respond to the request of Representative Edwards to examine the practices of the OEA to determine if it is damaging American companies' opportunities, particularly the electronic/semiconductor industries of California, to export their manufactured goods to Communist bloc and Arab nations. Representative Edwards indicates that he personnally believes that many of the export license refusals are not based on accurate national security considerations.

The draft report does not effectively examine whether accurate national security considerations are brought to bear on bloc and Arab State exports. Also, there is no recitation of U. S. export policy over electronic/semiconductor equipment, no discussion over the merits of this policy, no observations whether technical reviews are being undertaken in the U. S. by qualified technicians, and no information on foreign availability. The report cites a few isolated cases, the time it took to consider these cases, and the positions taken by the advisory agencies. There is nothing definitive in the report to substantiate or refute that the U. S. is making correct national security judgments with regard to this type of equipment.

The report also fails to set forth the statutory responsibilities of DOE as well as other Commerce advisory agencies to review export applications from a policy as well as a technical point of view. The Nuclear Non-Proliferation Act of 1978 establishes, among other things, interagency review procedures for nuclear and nuclear-related exports, and specifies agency responsibilities. These were Congressionally directed procedures which should be recognized and reflected in the considerations of the report, particularly with regard to recommendations to change these requirements and procedures.

Some comments of a more editorial nature were furnished on an informal basis to your staff.

Sincerely,

for Fred L. Hiser, Director
Division of GAO Liaison

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

August 28, 1978

Victor L. Lowe
Director, General
Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Lowe:

This letter is in reply to your request for comment on the GAO draft report, "U.S. Export Licensing Administration Should Be More Responsive to Industry."

As you may know, the Executive Branch recently completed an interagency review of export control policy on technology transfer in East-West trade. An issue which was considered during the review was reorganization of the export licensing functions including centralizing application review and license issuing responsibilities in the Department of Commerce. The option of centralizing export management responsibilities in one location was examined but deemed inappropriate for accommodating the diverse and rapidly changing nature of technology. The export control system needs the flexibility allowed with interagency review to ensure that national security, political and economic considerations are taken into account. Additionally, and as noted in your report, existing legislation requires a Department of Defense determination of the national security implications of a proposed export of technology subject to export controls.

The interagency review on export control policy recommended several options, now being implemented, designed to address the problems cited in your report. The principal recommendations include a directive to the agencies involved in the management of export controls to review internal procedures and make recommendations with a view toward streamlining these procedures in order to reduce the time required for reviewing applications.

Regarding your second recommendation, that of "establishing a multiagency 'Export Policy Advisory Committee' at the appropriate level," the interagency review group recommended a revision of the membership of the Operating Committee and of the Advisory Committee on Export Policy in order to ensure that all necessary views are taken into account.

APPENDIX V

Additionally, other recommendations by the review group include improvement in the representation from more sectors of industry in the Technical Advisory Committees of the Department of Commerce; reducing requirements of individual agency's application review responsibilities; streamlining procedures in reviewing cases; and more delegation of authority in the system in order to respond directly on cases upon which clear precedent has been established.

We believe that implementation of these recommended changes will improve the management of the export licensing system, without necessitating the reorganization and centralization of functions within the Department of Commerce as recommended in your report.

Sincerely,

Daniel H. Taft

Daniel H. Taft
Deputy Associate Director
Special Studies Division
National Security and International Affairs

APPENDIX VI

The Deputy Director
Central Intelligence Agency

Washington, D.C. 20505

1 September 1978

Mr. J. Kenneth Fasick, Director
International Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Fasick:

This is in response to your request for Admiral Turner's comments on the draft General Accounting Office report entitled "U.S. Export Licensing Administration Should be More Responsive to Industry."

We are pleased to note the report's recognition that the export licensing system must continue to take into account the Government's legitimate responsibility to control exports for national security reasons. In this connection, we offer the following specific comments on the draft report:

--With regard to the discussion of recommended appeal procedures on pages 54-55, we believe the report should note that specific discussions of denials are likely to be impossible in some cases where national security considerations are involved. The statutory responsibility of the Director of Central Intelligence for the protection of intelligence sources and methods could preclude full public disclosure of the reasons for a particular denial.

--Page 3 of the draft report contains a misstatement with respect to the CIA's role in the present export licensing system. CIA is listed as a consultant along with the Departments of Energy, State and Justice. This implies that the roles of the four agencies are the same. Unlike the other agencies, however, the CIA does not normally have voting powers in the current inter-agency committees that deal with export controls; the Agency is officially designated as an intelligence advisor, and it votes only on items that might affect intelligence collection operations.

APPENDIX VI

In this connection, you may wish to inform Congressman Edwards that the contention in his 27 May 1977 letter to the Comptroller General that the CIA is among those frequently using a veto power over semiconductor exports is inaccurate.

Please note that it is our understanding that implementation of the recommendations contained in the draft report would in no way affect current procedures related to Department of State licensing of munitions exports. We appreciate the opportunity to comment on this study.

Sincerely,

Frank C. Carlucci

APPENDIX VII

DEPARTMENT OF STATE

Washington, D.C. 20520

September 12, 1978

Mr. J. K. Fasick
Director
International Division
U.S. General Accounting Office
Washington, D. C.

Dear Mr. Fasick:

I am replying to your letter of July 14, 1978, which forwarded copies of the draft report: "U.S. Export Licensing Administration Should Be More Responsive To Industry".

The enclosed comments were prepared by the Deputy Assistant Secretary for International Trade Policy.

We appreciate having had the opportunity to review and comment on the draft report. If I may be of further assistance, I trust you will let me know.

Sincerely,

Roger B. Feldman

Roger B. Feldman
Deputy Assistant Secretary
for Budget and Finance

Enclosure:
As Stated.

APPENDIX VII

GAO DRAFT REPORT: "U.S. EXPORT LICENSING ADMINISTRATION SHOULD BE MORE RESPONSIVE TO INDUSTRY"

The Department of State supports the objective in the title of the report of making the administration of U.S. export licensing more responsive to industry. State also supports the general thrust of the entire report that inter-agency review of export control cases should be limited.

However, State does not concur with the two recommendations which would directly affect agencies other than Commerce, namely, to transfer all export license application management responsibilities to Commerce (page 50) and to replace the present Advisory Committee on Export Policy (ACEP) with a new Export Policy Advisory Committee (EPAC) (page 52). Both recommendations appear to be related to the idea of discontinuing procedures for formal inter-agency review of export control cases "except in the most unusual circumstances" (page 51). Because there will be some circumstances warranting inter-agency review, the mechanisms for such review will continue to be needed.

State agrees with the suggestion that there be "more attention on extrapolating broad policy guidance from individual decisions in a systematic manner" (page 46). One possibility would be to have:

1) Agencies identify categories of cases they wish to review rather than stipulate a desire to review all cases except those they do not want to review and

2) Within the categories so identified, the agency with managerial responsibility (Commerce for the Commodity Control List and State for COCOM cases) refer to other agencies for review only significant cases raising new issues, notifying other agencies of their intention to act on other cases on the basis of precedents unless the other agencies, within a short set time period, show cause why a review is needed.

APPENDIX VII

However, when the agency with managerial responsibility needs advice from other agencies, a degree of formality is required to assure that the advice given is properly coordinated within the advising agency.

Foreign policy advice is the principal role of the Department of State in the export licensing process. We do not concur that OEA teams should evaluate foreign policy (page 50). Neither do we concur that State's foreign policy advice can be effectively used "without requiring the direct participation of the Office of East-West Trade" (page 44). Because several different parts of the Department normally have constructive inputs to make, the Office of East-West Trade (EWT) plays a useful role in coordinating and expediting the development of a State position. EWT is more familiar with international trade policy and with export licensing procedures than are other parts of the Department. EWT is the responsible office for developing and coordinating U.S. positions on COCOM issues and cases. Accordingly, EWT is the logical principal office within State to maintain contact with OEA and to convey to OEA coordinated State Department positions. OEA cannot and should not be expected to coordinate views within State.

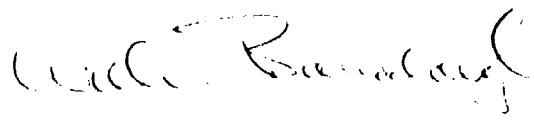
The ACEP structure provides a means for Commerce to bring together the views of the various agencies on Commerce cases. Even if ACEP were eliminated, its function would have to continue to be performed in some other way so that Commerce could continue to benefit from needed advice. If Commerce were to act in ways which other agencies considered to be arbitrary, more delays would result as agencies appealed up the ladder. Contrary to the statements on pages 7 and 54, other agencies besides Defense may appeal ACEP or Commerce recommendations to the President.

The draft report decries "diffused export licensing responsibility" (page 48) and "diffusion of management authority" (first page of draft cover letter). However, in instances where advice from other agencies is needed, the proposal that Commerce obtain advice informally from

APPENDIX VII

technicians at each of the existing agencies (page 49) would lead to more rather than less diffusion. Technicians in other agencies not agreeing with the advice being given by those technicians selected by Commerce would find ways to provide conflicting advice.

The suggestion that a new EPAC develop the Government's position for periodic COCOM List Reviews (page 52) would also further diffuse responsibility. The representation of the United States Government at international organizations, such as COCOM, is a part of the State Department's role of conducting foreign relations. Accordingly, it is reasonable that State continue to chair the inter-agency Economic Defense Advisory Committee (EDAC), which provides the framework for other agencies to advise State on COCOM issues. Consistency between ACEP and EDAC actions is easily achieved because all participating agencies use the same staffs for representation on both committees.



William Barraclough
Deputy Assistant Secretary
for International Trade Policy

APPENDIX VIII

DEFENSE SECURITY ASSISTANCE AGENCY
WASHINGTON, D. C. 20301

14 SEP 1978

In reply refer to:
I-7483/78

Mr. J. K. Fasick
Director, International Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Fasick:

This is in reply to your letter to the Secretary of Defense regarding your draft report dated 14 July 1978, "U.S. Export Licensing Administration Should be More Responsive to Industry" (OSD Case Number 4950) (GAO Code 48293).

In general, the report is a worthwhile attempt to devise ways to expedite USG export license review in response to the needs of exporters. It points out areas where procedures need to be improved and offers recommendations to alleviate some problems. On the other hand, it does not address some areas adequately. Our detailed comments follow:

(1) Page 3, last paragraph. Applications are not "jointly managed" at Defense by ISA(ST&MC)--referred to in the document as OST--and USDR&E. ISA provides the point of contact for DOD review of export applications as well as the Department's economic and policy review. USDR&E provides the technical evaluation for the export applications.

(2) Page 40, last paragraph. Sequential reviews are the exception to the rule and occur so infrequently as to be inconsequential. When this does happen it is usually through oversight or because facts received subsequent to the original dissemination of export applications to Defense elements made it necessary. Ordinarily, documents are transmitted expeditiously and concurrently to all Defense elements whose appraisal is considered necessary.

APPENDIX VIII

(3) Page 48, first sentence. We can find no evidence that it is the intent of Congress that export licensing be accountable to exporters. As set forth in the Export Administration Act's Declaration of Policy in Section 3, it is the intent of Congress that, those departments and agencies participating in export control processes be accountable to the USG in terms of national security, foreign policy, and short supply. The fact that USG licensing action favorable to U.S. exporters whenever possible is encouraged as a matter of policy does not make the government officials involved accountable to exporters. In this connection, since the primary policy goals are national security, foreign policy, and short supply considerations, it would be helpful if this report addressed them i.e., if it examined measures for arriving at sound decisions in support of these goals as well as in making more expeditious decisions.

(4) Page 50, first paragraph. The recommendation to refer applications directly from OEA to Defense technicians, with neither ST&MC or USDR&E having application review responsibilities, is highly questionable inasmuch as

(a) the recommendation implies that ST&MC while no longer processing cases would continue to have export policy responsibilities; yet export policy is generally determined on a case-by-case review basis where precedents are set which evolve into policy judgments. Furthermore, there are many unknown factors which crop up in individual license applications which keep even broad policy decisions from covering all eventualities. New policy determinations require an intimate knowledge of past and current export applications as well as near future plans for exporters.

(b) It appears inconsistent with the will and intent of Congress which assigned responsibilities to the Secretary of Defense in the Export Administration Act (Section 4(h)(1) and (2) to maintain vigilance over the national security aspects of individual license applications.

(c) To have OEA application management teams confer directly and only with Defense technicians selected solely to these teams would destroy the accountability and responsibility of the Defense Department for the security assessments which resulted. Without continued oversight by knowledgeable policy offices, the Defense technical advice and guidance could degenerate into a welter of conflicting, inconsistent and possibly distorted responses, reflecting the thoughts and personal biases of individual technicians. There is no reason to believe that OEA management teams would be in a better position than the Secretary of Defense to determine which are the most qualified Defense technical experts on evaluating various items of equipment and technology. Technicians, who have many duties other than providing license application advice, cannot be expected to become knowledgeable regarding export policy matters or the effect that their advice might have on them. As a result, overall Defense policies, plans, and concerns, as well as U.S. or COCOM export control agreements and regulations could be nullified.

(5) Page 51, third sentence. It is true that the vast majority of OEA's recommendations are sustained by the consulting agencies. It is also true that many of their original recommendations, as well as supporting data, are modified as a result of interagency review.

(6) Page 52, Recommendations, second paragraph. We believe that abolishment of the ACEP structure (although not specifically stated, we assume the recommendation also includes the abolishment of the EARB also) would be injudicious. While it could result in speedier license processing, it could

also result in the diminution of an adequate review by Defense and State of national security and foreign policy implications. Going back from the present Export Administration Act of 1969 and its amendments to its predecessor, the Export Control Act of 1949, and even to earlier war-time and post-war export controls, the administering agencies (Commerce and others) found that they were not competent on their own to make final decisions on the national security and foreign policy factors involved in determining which commodities and technologies should be embargoed, to which destinations, and which export licenses should be approved or denied. Commerce has historically felt the need for this interagency advisory committee structure. Commerce's chief and permanent statutory responsibility in this area has and continues to be to promote foreign trade. This fact exposes Commerce, as controller of exports to a potential conflict of interest, i.e., the risk that, without the advice and guidance of Defense, State, and other USG agencies concerned with national security and foreign policy Commerce might approve for trade promotion reasons licenses it should deny on strategic or foreign relations grounds. As a matter of fact, during the Eisenhower Administration, Commerce was subjected to severe Congressional and public criticism for approving export applications over the objections of Defense in the ACEP Operating Committee (OC); this led to the then Secretary of Commerce's decision never again to overrule Defense or State within the ACEP structure in areas of their primary concerns. Without regular interagency committee review, Commerce would have considerable difficulty in complying with the statutory requirement for interdepartmental consultation. The OC carefully and painstakingly prepares minutes, memoranda, and other records of its recommendations and of the Commerce decisions. The chronicled give-and-take of interagency debate at an interagency meeting offers greater prospect for arriving at the proper decision than could be reached by telephone or memoranda polling of interagency technicians far removed from policy knowledge. The OC and its written records may be viewed as providing an auditor and an audit trail on Commerce's issuance of licenses for export of commodities and technologies possessing strategic capabilities. Dispensing with the OC and

APPENDIX VIII

the ACEP structure would not eliminate disagreements with export control advisory departments, but could leave them no recourse other than to air their differences at the White House or the National Security Council levels. It is obviously preferable to settle interagency disagreements insofar as possible below those levels. As a matter of fact, only most infrequently has it been necessary over the years to refer cases over the ACEP and EARB levels. Finally, it should be understood that only the most important and controversial applications are referred to the OC. A stud prepared in the early 1970's by the then OC Chairman showed that 390 of the 5,800 export applications received by Commerce (approximately seven percent) were reviewed in the OC; we have no reason to believe that this ratio is any higher today.

(7) Page 54, second paragraph. The theme of this paragraph is unrealistic. It presupposes the right of an exporter to receive from the Defense technician, who recommended denial of his license application, the explicit rationale for the recommendation regardless of the classification or security implications involved in this rationale. It assumes the competence, authority, as well as the responsibility of the Defense technician to bargain or compromise with the exporter to arrive at a mutually satisfactory resolution of their differences. This, in our view, bespeaks a fundamental misunderstanding of the function of technicians in this process as well as of the responsibility of licensing authorities to speak for the government.

It is requested that these comments be reflected in the final draft of the report.

Sincerely,

Ernest Graves

ERNEST GRAVES
LIEUTENANT GENERAL, USA
DIRECTOR
DEFENSE SECURITY ASSISTANCE AGENCY

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