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REPORT BY THE

Comptroller General

OF THE UNITED STATES

Export Control Regulation Could Be Reduced Without Affecting National Security

Industry is required to obtain export licenses for many more products than is necessary to protect national security. In fiscal year 1981, almost 65,000 export applications were processed but only 1 of every 17 was carefully examined by the Government.

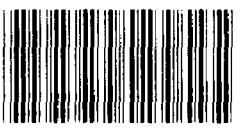
GAO found that:

--Almost half the export license applications received each year could be eliminated without affecting national security.

--There is strong possibility for further reducing license requirements to close U.S. allies.

On the other hand, some products now exempt from license requirements should require license approval before export.

The report also discusses inefficiencies in the licensing review process and Government efforts to curtail illegal export activity.



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

B-201919

The Honorable Edwin (Jake) Garn
The Honorable Harry F. Byrd, Jr.
United States Senate

This report is in response to your requests of February 26, 1980. It addresses weaknesses found in the U.S. commercial export control system.

As arranged with your offices, we are sending this report to various executive departments, appropriate congressional committees, and other interested parties.

Charles A. Bowsher

Comptroller General
of the United States

REPORT BY THE COMPTROLLER
GENERAL OF THE UNITED STATES

EXPORT CONTROL REGULATION COULD BE REDUCED WITHOUT AFFECTING NATIONAL SECURITY

D I G E S T

For more than a decade, controversy has surrounded U.S. export control policy. U.S. industry has continued to complain about cumbersome and inconsistent export regulations which unnecessarily restrict trade. Others contend that controls are too loose and allow Communist countries to enhance their military capabilities at the expense of U.S. national security interests.

Under the Export Administration Act, the Commerce Department is responsible for controlling certain commercial items in close consultation with other departments, most notably Defense, Energy, and State. It screens and acts on export applications based on its own authority and on delegations of authority from other departments. When review by another department is found necessary and no delegation has been made, Commerce must refer the application to the appropriate department for review. The Act authorizes Defense to review and to recommend denial of any proposed export which would contribute significantly to an adversary's military capability.

Senators Jake Garn and Harry Byrd asked GAO to examine how well the export control system is carrying out the Export Administration Act's national security goal of controlling exports of militarily significant technology and products to the Soviet Union and other Eastern bloc nations.

LICENSING REQUIREMENTS FOR LOW-TECHNOLOGY ITEMS CAN BE ELIMINATED

Export applications for dual-use items (commercial and military application) receive different levels of attention depending on the items' military significance and destinations. Those which might contribute significantly to an adversary's military capability, referred to as high-technology items, receive careful review when destined to Communist countries and little or no review when destined to non-Communist countries. Other dual-use applications, referred to as low-technology items, are routinely licensed to all destinations except the Soviet Union with little or no Government review.

Tear Sheet

ID-82-14
MAY 26, 1982

In fiscal year 1981, industry submitted more than 64,500 export license applications for items controlled for national security reasons. The Government, however, carefully reviewed only 3,735 of these applications. So few applications undergo close Government review because the Defense Department is concerned only with the export of technical data and high-technology products. Through delegations of authority, Defense tells Commerce which applications Defense wants to review. The delegations contain performance characteristics that act as a threshold above which Commerce must send an application to Defense for review. Commerce may unilaterally license exports below the threshold level to all countries except the Soviet Union and normally does so with little or no review. (See p. 7.)

The Government has implemented what amounts to a foreign policy control for the Soviet Union in response to the Afghanistan invasion and the recent events in Poland. Under the policy the Government will no longer approve any high or low-technology export applications for the Soviet Union. This policy does not apply to Soviet satellite countries or to other Communist destinations. As a result, high- and low-technology items are being approved for export to close allies of the Soviet Union. (See p. 8.)

Of the 60,783 export applications that Commerce reviewed unilaterally in fiscal year 1981, almost half could have been eliminated from licensing requirements and controlled in a less burdensome way because the products involved are not considered militarily significant. Such a large number of low-technology applications makes the licensing system more a paper exercise than a control process and detracts from the seriousness with which controls should be viewed. Submitting these applications costs industry approximately $6.1 million a year and the Government $1 million a year in unnecessary administrative costs. Other potential savings could be made by exploring various options to reduce or eliminate high-technology license requirements for exports to U.S. allies without totally relinguishing control over such items.

EXPORT LICENSING REVIEW PROCESS:
SOME CHANGES NEEDED

The Government's interagency review process for licensing high-technology exports can be made more efficient and economical. Commerce, by law, is required to develop a recommendation for each export application before consulting, as necessary, with other departments or agencies. In high-technology cases, Commerce cannot make a credible recommendation because it lacks the information necessary

to assess military risk. Defense is the agency responsible for and best able to identify risk. The requirement, therefore, is delaying decisionmaking by up to 30 days with no perceptible benefit and results in additional staff at Commerce. If Defense were permitted to make the initial recommendation for high-technology cases, Commerce could limit its detailed review to only those cases that Defense recommends denying or approving with conditions. (See pp. 16 and 17.)

The licensing review process can also be strengthened to better protect national security interests. Under current procedures and guidance, not all high-technology exports involving national security are receiving Defense review. Through errors in judgement and mistakes Commerce has licensed a few high-technology exports without consulting Defense. More significantly, Commerce has given industry authority to export militarily significant items embedded in commercial products without any requirement for Government review. (See pp. 19 and 20.)

CONSTRAINTS IN ENFORCEMENT

Although it would be both impossible and cost-prohibitive to prevent all illegal exports, the Government recognizes that it needs to provide a more credible deterrent. Some constraints faced by the United States in controlling exports include

--practical limits to cargo inspections;

--lengthy criminal investigations and a large backlog of uncompleted investigations;

--difficulty in obtaining criminal convictions; and

--no monitoring of conditional licenses to assure that conditions are being fulfilled

Government studies report that there has been a lack of coordination among enforcement agencies and that insufficient resources have been applied. They also found that this problem has occurred among U.S. allies. The Government has taken action to improve coordination and increase staffing and is also considering other actions designed to improve what will remain a modest effort in the enforcement area. (See p. 26.)

RECOMMENDATION TO THE CONGRESS

GAO recommends that the Congress amend the Export Administration Act to have Defense make the initial recommendation on export applications that must be

forwarded to Defense and have Commerce limit its review on these applications to those that Defense recommends denying or approving with conditions. (See p. 22.)

GAO's proposed legislative language is contained in appendix III.

Defense believes that GAO's recommendations have merit and should be pursued. State and Commerce disagree. (See p. 22 and 23.)

RECOMMENDATIONS TO THE EXECUTIVE DEPARTMENTS

GAO recommends that the Secretaries of Commerce and Defense (1) eliminate licensing requirements to non-Communist countries for low-technology products falling below the Communist country threshold level, (2) review the Commodity Control List to identify those few low-technology products that Defense wants to carefully examine before export to a Communist country and then eliminate the remaining low-technology products from licensing requirements, and (3) reexamine the need for licensing high-technology products to NATO, Japan, and other allies by exploring various alternatives that would satisfy control objectives and reduce or eliminate the burden of licensing. Foreign policy measures, such as those currently in effect for the Soviet Union, need not be affected by eliminating national security licensing requirements. (See p. 13.)

Defense and State believe that the recommendation to eliminate licensing requirements for most low-technology products has merit and that controls on sales of high-technology products can be reduced with a reciprocal tightening of controls on the product's underlying technology.

Commerce agrees with the principle that lower technology items should be removed from control but demurrs from supporting GAO's specific recommendations. Treasury objects to reducing controls for high-technology products to U.S. allies. (See pp. 13 and 14.)

Contents

ABBREVIATIONS

AEN	Administrative Exception Notes
CCL	Commodity Control List
CIA	Central Intelligence Agency
COCOM	Coordinating Committee
DDR&E	Department of Defense Research and Engineering
DOD	Department of Defense
FBI	Federal Bureau of Investigation
OEA	Office of Export Administration

CHAPTER 1

INTRODUCTION

For more than a decade, controversy has surrounded U.S. export control policy. U.S. industry has continued to complain about cumbersome, inconsistent, and unnecessarily rigid controls which, it believes, have caused sales to be lost and potential markets to be left dormant. Other critics contend that export controls are too loose and that inadequate safeguards are permitting the Communist countries to enhance their military capabilities through U.S. technology. In attempting to both promote and control exports, the Government is faced with a difficult dilemma. This dilemma is less acute when considering munitions exports, because there is general agreement that such items should be tightly controlled. This consensus, however, disappears when dealing with dual-use commercial exports--items that can have significant military applications.

Under the Export Administration Act of 1979, the United States controls certain commercial items for national security, foreign policy, and short supply purposes. Most commodities that are controlled, however, are controlled for national security purposes. Our review addresses congressional concerns about how well the control system is carrying out the act's national security goal of controlling exports of militarily significant technology and products to the Soviet Union and other Eastern bloc nations.

EXPORT CONTROL ADMINISTRATION

U.S. export controls are administered by the Department of Commerce in consultation with other departments and agencies, principally Defense, Energy, and State. The Central Intelligence Agency (CIA) and the Defense Intelligence Agency serve as advisors, and other agencies with special technical knowledge provide advice when asked to do so.

Commerce's Office of Export Administration (OEA) processes export license applications. The export control system's three principal functions are to (1) identify technologies and products that need to be controlled, (2) review and evaluate export license applications, and (3) enforce export controls.

Establishing controls

Recognizing that effective export control for Communist country destinations requires international cooperation, the United States carries out these controls in conjunction with its NATO partners (except Iceland) and Japan. An informal organization, referred to as the Coordinating Committee, or simply COCOM, establishes a common list of items, known as the COCOM list, which participating governments control for

reasons of mutual security. Currently, the COCOM commercial list contains 102 categories of items.

In addition to the items controlled by COCOM, the United States controls an additional 30 categories of items for national security reasons. These include technologies and products unique to the United States and items for which more control than that agreed to by COCOM has been deemed appropriate.

All items requiring U.S. export licenses are included in the Commodity Control List (CCL) published by the Department of Commerce. The CCL is a composite of unilaterally and COCOM-controlled items. U.S. exporters refer to the CCL to find out if commodities they intend to export require export licenses.

Export license processing

A stated intent of the Export Administration Act is that the Secretary of Commerce unilaterally process export control applications to the maximum extent possible. It also authorizes the Department of Defense (DOD) to review and approve applications for national security purposes as it considers appropriate. OEA relies on the advice and guidance of DOD and others to carry out its responsibilities; OEA, in effect, screens and acts on applications based on delegations of authority from DOD and other departments. These delegations tell Commerce which applications it can approve unilaterally and which applications require another department's review.

In fiscal year 1981, OEA processed 71,200 export applications, 64,518 of which involved proposed exports of items controlled for national security reasons. About 11 percent of these applications (7,306) were for Communist country destinations.

Enforcement of the act

OEA and certain other agencies enforce compliance with the law. OEA inspects exports to prevent unauthorized shipments, investigates suspected violations, processes administrative penalty actions, and refers cases to the Justice Department for criminal prosecution. OEA has a staff of 26 professionals to carry out its enforcement responsibilities. In addition, the U.S. Customs Service independently examines shipments for export control violations and provides Commerce with some investigative and inspection support on a reimbursable basis. The Federal Bureau of Investigation (FBI) also includes export control as part of its counterintelligence work.

INFLUENCE OF NATIONAL PRIORITIES

The controversial nature of export controls stems in large part from their use in implementing foreign policy. Export controls, as an important instrument of both foreign and domestic

policy, have changed with changes in national priorities. Such change, of course, has always been unsettling to either those who favor more control or those who favor less. Over the years, U.S. relationships with Communist countries have alternated between periods of confrontation and increased cooperation. U.S. export controls have clearly reflected policy shifts by becoming more or less restrictive--from a virtual trade embargo just after World War II to liberalized trade during the detente period and then recently back to a partial embargo on Soviet trade as a result of the Afghanistan invasion and recent events in Poland. The recent liberalizing of trade with the People's Republic of China is another policy shift which is affecting licensing decisions.

OBJECTIVES, SCOPE, AND METHODOLOGY

This report was initiated at the requests of Senators Jake Garn and Harry Byrd. Our review attempted to detemine whether

--the export control system was adequately protecting national security interests;

--export control criteria were properly focused;

--the licensing system was operating efficiently; and

--constraints were hindering export control enforcement efforts.

We focused on the national security aspect of the Export Administration Act and did not address its foreign policy or short supply objectives. We also did not examine commodities licensed by agencies other than Commerce, such as the Department of State's Office of Munitions Control, the U.S. Nuclear Regulatory Commission, or a number of other agencies which license different commodities.

Our findings and conclusions are based primarily on work done at Commerce and DOD in Washington, D.C. We also developed information on COCOM and on overseas compliance activities at the Department of State. Other agencies, including the Departments of Energy and Justice, and the CIA, FBI, and Bureau of Customs, were contacted as appropriate. We reviewed numerous licensing applications and files; export control criteria; enforcement case records; and appropriate policies, procedures, and regulations. This work included discussions with cognizant Government officials and congressional committee staffs. We also visited Commerce's Compliance Office in New York City and the international airports at New York and Boston to get an understanding of problems in monitoring compliance with high-technology exports.

To obtain a comprehensive understanding and formulate conclusions on the adequacy of the export licensing system, we randomly selected for review 100 of 923 licenses approved for Communist destinations in the period shortly before and after the Afghanistan invasion. We examined exporters' license applications, Government decision documents, and analyses and correspondence contained in license case files. We discussed 34 of these cases with Commerce officials and 14 with DOD officials to verify information and to get a better understanding of how licensing decisions had been made. These discussions focused not only on the cases under review but also on subsequent changes made in the licensing review process.

We also reviewed 110 non-Communist country license applications processed in May 1981 to determine how many would have required DOD review had they been destined for Communist countries. We requested licensing officials to review each application as if it pertained to a Communist country and to decide whether the level of technology would have required Commerce to send the application to DOD for review. This test was made to determine the number of non-Communist country applications that involved low-technology exports.

We also selected certain cases being investigated for potential violations of the Export Administration Act to review and evaluate the Government's enforcement efforts.

We made our review in accordance with our "Standards For Audit of Governmental Organizations, Programs, Activities, and Functions," revised February 27, 1981.

PRIOR REPORTS ON EXPORT CONTROLS

Over the past 5 years, we have issued four reports on export controls.

"U.S. Munitions Export Controls Need Improvement" Apr. 25, 1979 (ID-78-62)

"Export Controls: Need to Clarify Policy and Simplify Administration" Mar. 1, 1979 (ID-79-16)

"Administration of U.S. Export Licensing Should Be Consolidated To Be More Responsive To Industry" Oct. 31, 1978 (ID-78-60)

"The Government's Role in East-West Trade--Problems and Issues" Feb. 4, 1976 (ID-76-13A)

Three of these reports addressed commercial export controls. In general, the reports disclosed a need to clarify export policy and to simplify administration.

CHAPTER 2

LICENSING REQUIREMENTS FOR LOW-TECHNOLOGY ITEMS SHOULD BE ELIMINATED

The Government continues to require export licenses for more dual-use items than is necessary to protect national security. This practice, which is at odds with congressional efforts to eliminate unnecessary controls, results in a licensing system characterized more as a paper exercise than as an instrument of control.

WHAT SHOULD BE CONTROLLED?

Determining what dual-use items should be controlled within the COCOM community is a matter of collective judgment and a continuing process that occurs on a national and international level. While each member establishes a control system of its own design and controls items of its own choosing, effective control requires collective adherence to a given set of criteria. On a national level, each participating COCOM member periodically decides on revisions it considers appropriate to the control list. This involves developing positions on adding or deleting entire commodity categories and revising others to recognize advances in the state of the art. These positions are then elevated to the COCOM level and discussed in detail by the members, who once every 3 years agree to a revised set of controls. COCOM member governments currently control 102 categories of industrial items.

Because members must all agree on any change to the control list, compromise is a critical determinant of what is controlled; members do not get all they want--be it for more control or less. In the last COCOM review, 61 of the 102 categories were revised, and the United States, we were told, achieved most of what it wanted. No agreement was reached, however, on some of the more critical items, for which the United States wanted tighter controls than other COCOM members were willing to accept. These items include computers and numerically controlled production equipment. Controls on these items, therefore, continued to be based on agreements reached in the 1976 COCOM list review.

In addition to the items controlled by COCOM member governments, the United States exercises unilateral control over 30 other industrial commodities--technologies and products unique to the United States or items over which the Government desires to exert more control than agreed to in COCOM. The Secretary of Commerce is required to review these items annually to eliminate any unnecessary controls. During fiscal years 1980 and 1981 only one item was eliminated from unilateral controls.

Concern over what should be controlled has also prompted the Congress to require DOD to develop a list of militarily critical technologies for export control purposes. Both Congress and

private industry expected such a list to remove controls from nonstrategic items and thus enhance trade. Little progress, however, has been made in fulfilling these expectations. DOD has developed the list and it has been revised by Commerce and is being reviewed by industry and by COCOM. By DOD's own estimate, activity to incorporate critical technologies into export control regulations, including COCOM, will extend into 1983 and possibly beyond. (See app. I for a discussion of the development of the list.)

The Congress has also encouraged development of an indexing system that would provide for annual increases in the performance levels of goods and technology subject to export control. Such a system would facilitate removal of controls as goods and technology become outdated or obsolete. The use of indexing, however, has been limited. During the recent COCOM list review, the United States proposed two commodity indexing systems which were later withdrawn.

CURRENT EXPORT CONTROL CRITERIA

Within the COCOM community, or for that matter within the U.S. licensing system, there are two levels of control. For items which might significantly enhance an adversary's military capability, or items which we will refer to as high-technology items, unanimous approval must be given by all COCOM members before the items may be exported to a Communist destination. For items below this level of military significance, or low-technology items, members must simply be notified after such items have been exported to a Communist country. 1/ The distinction between high and low technology is made in Administrative Exception Notes (AENs) attached to certain commodities on the COCOM list. These AENs identify specific performance characteristics and limits for these characteristics above which an item is considered militarily significant. Computers, for example, involve 10 AENs and include such characteristics as speed and storage capacity. Presently, 48 of the 102 controlled industrial categories involve AENs. The remaining 54 categories require full COCOM review before export licenses can be approved.

U.S. export control criteria

The Government controls exports worldwide. The degree of control exercised depends upon the military significance of the items and their destination. Generally, the Government has divided the world into Communist and non-Communist countries, with different control criteria for each group. For Communist destinations the Government closely adheres to COCOM criteria

1/ COCOM members have agreed to check the appropriateness of the end user on only a few of these items.

and uses AENs to distinguish between high- and low-technology exports. For non-Communist destinations, more lenient standards apply; DOD reviews only four of the 102 commodity categories, and performance characteristics at a much higher level than the AENs have been established. Other agencies, most notably, the Department of Energy, screen additional commodities for potential nuclear applications.

All items which require U.S. export licenses to Communist and non-Communist destinations are identified in the Commodity Control List. CCL advisory notes identify the high/low-technology distinctions found in the AENs and the Government's non-Communist country review criteria; the notes inform industry what applications will receive favorable consideration but do not relieve the exporter from any licensing requirement.

FEW LICENSE APPLICATIONS RECEIVE INDEPTH REVIEW

To understand which industrial exports the Government controls for national security reasons, one must go beyond the CCL to identify which applications are reviewed by DOD. There is genuine concern with only a small percent of the total number of export applications received. In fiscal year 1981 for example, the U.S. licensing system processed 64,518 export applications for items controlled for national security reasons. Of this total, DOD reviewed 2,735 of 7,306 applications (37 percent) destined for Communist countries and about 1,000 of 57,212 applications (1.7 percent) destined for non-Communist countries.

DOD reviews so few applications because it is primarily concerned with the export of technical data and high-technology products. The vast majority of low-technology products do not constitute significant military risks 1/ so DOD has delegated authority to Commerce to unilaterally approve all such applications except those involving the Soviet Union. Commerce routinely approves these low-technology applications with little or no review.

We estimate that almost half of the 60,783 export applications that Commerce reviewed unilaterally in fiscal year 1981 could have been eliminated from licensing requirements because the products are not considered militarily significant by the Government and other COCOM members. It cost industry an estimated $6.1 million to submit these applications. 2/ It also

1/ DOD, however, is concerned with the transfer of design and production technology related to these products.

2/ Industry sources estimate that it costs $150 to submit a non-Communist country export application and between $500 and $5,000 for a Communist application.

costs Commerce over $1 million a year to fund the 30 operations clerks, 13 licensing officers, and 10 other staff involved in processing these applications.

Special licensing procedures for the Soviet Union

Shortly after the Soviet invasion of Afghanistan, the U.S. Government implemented a more restrictive licensing policy for the Soviet Union, requiring that (1) Commerce forward all high- and low-technology export applications for the Soviet Union to DOD for review and (2) denial actions be forwarded to the State Department for review. This policy resulted in denial of all high-technology applications 1/ and 292 of the 1,147 low-technology applications involving the Soviet Union during the 18-month period ending September 30, 1981. The majority of the low-technology applications denied involved older generation electronic computing and test equipment.

The more restrictive policy was not applied to Soviet satellite countries or to other Communist destinations. As a result, the Government approved 1,815 of the 2,040 high-technology and 4,804 of the 4,808 low-technology applications processed for this group in fiscal year 1981.

The Government, in effect, established a foreign policy control for the Soviet Union designed to show displeasure with Soviet expansionist activities but not to unnecessarily restrict high-technology shipments to the Soviet bloc as a whole. Approval of many high-technology and all low-technology applications to Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, and Romania clearly indicates that national security was not at issue in the revised licensing policy.

The imposition of martial law in Poland and Soviet involvement in Poland's internal affairs have prompted the U.S. Government to implement a more restrictive export control policy for the Soviet Union and Poland. In January 1982, exporters were notified that the Government would no longer approve any high or low-technology exports requiring licenses to the Soviet Union. For Poland, the Government also intends to deny practically all high-technology export applications and to review low-technology applications more carefully. These new sanctions are again foreign policy measures which are not intended to unnecessarily restrict high-technology shipments to the Soviet bloc as a whole.

DELEGATIONS OF AUTHORITY

Through delegations of authority, DOD tells Commerce which applications DOD wants to review. Delegations of authority

1/ Two applications involving medical equipment and spare parts were approved.

contain performance characteristics much like the AENs. These characteristics act, in effect, as a threshold above which Commerce must send an application to DOD for review. For items whose capabilities fall below this limit, Commerce unilaterally reviews the application. To keep the delegations up to date, DOD has authorized Commerce to adjust the performance characteristics contained in the delegations of authority to the AEN level as the AEN level changes. Currently, 97 delegations of authority apply to Communist destinations and 4 to non-Communist destinations. The non-Communist delegations contain higher performance thresholds than those for Communist destinations.

The following hypothetical cases involving the same export to COCOM and other non-Communist countries and to Communist destinations illustrate how AENs and delegations of authority are applied in licensing determinations.

Table 1

Application of Export Control Criteria

Proposed export		Performance characteristics		Low-technology threshold		Reviewer
Item	Destination					
Computer	COCOM member	a/ CPU c/ PDR	b/100 mbs 40 mbs	CPU PDR	500 mbs 225 mbs	Unilaterally reviewed by Commerce
Computer	other non-communist countries	CPU PDR	100 mbs 40 mbs	CPU PDR	200 mbs 60 mbs	Unilaterally reviewed by Commerce
Computer	Communist countries	CPU PDR	100 mbs 40 mbs	CPU PDR	45 mbs 8 mbs	Must be reviewed by DOD

a/Central processing unit
b/Million bits per second
c/Processing data rate

By comparing the proposed export's performance characteristics to the AEN or delegation of authority, the licensing official can determine whether DOD must review the case. In the first two cases, Commerce can unilaterally approve the application because the performance characteristics do not exceed the low-technology threshold, even though the thresholds are significantly different. In the third case, where the threshold is much lower, the case requires Defense review.

WHY EXPORT LICENSES ARE STILL REQUIRED FOR LOW-TECHNOLOGY ITEMS

Under COCOM procedures, members apply national discretion in controlling low-technology items. Members must, however,

report to other members after a low-technology product has been exported. 1/

Although each COCOM member has adopted some form of a licensing system to control low-technology products, licensing is not necessary to control such products. Government officials readily admit that the United States can satisfy its COCOM obligation by simply requiring exporters to (1) report when a low-technology item has been shipped to a Communist destination and (2) provide assurance that the export will be used for peaceful purposes.

Government officials are reluctant, however, to unilaterally remove licensing requirements for all low-technology products and control them in a different way. They point out that a few low-technology products need to be strictly controlled to Soviet bloc countries. This recognition has prompted a current effort to convince other COCOM members to tighten national discretion controls. Accordingly, Government officials believe that it would be counterproductive at this time for the United States to unilaterally consider eliminating licensing requirements for low-technology products to the Soviet bloc.

EFFORTS TO ELIMINATE LICENSING REQUIREMENTS TO COCOM COUNTRIES

The Government has periodically considered eliminating licensing requirements for all exports to COCOM members and certain other allies. Each attempt has been ultimately rejected because of the likelihood of increased diversion of controlled commodities through Western Europe to the Soviet Union.

The most recent proposal to eliminate licensing requirements to COCOM members, Australia, and New Zealand was sponsored by Commerce and the U.S. Trade Representative. The proposal was made in consideration of the time and cost of preparing and processing export applications and the fact that the Government denied none of the 22,377 license applications processed for these countries in 1979. The sponsors believed that COCOM members, Australia, and New Zealand should be accorded the same treatment as Canada, to which (except for a few items) the United States permits sales of controlled commodities without license. Exporters must, however, obtain licenses for controlled commodities or technical data transiting Canada or intended for reexport from Canada to another foreign destination.

The proposal was not adopted because the Justice Department was concerned that removing the licensing requirement would

1/ COCOM requires its members to take some specific action on five low-technology items before export.

impair the Government's ability to bring criminal and other enforcement actions against persons violating export regulations. In a memorandum to the President on the issue, Justice stated that:

> "Our experience is that most diversions of strategic goods to the Soviets are obtained through exports to COCOM countries. The present Export Administration Act regulations require a license before export of strategic goods. This procedure provides the essential mechanism through which our regulatory agencies can determine, in advance of exportation, whether there is any likelihood that strategic goods might be diverted to the Soviets. Using the information supplied on the licensing application, the Commerce Department can examine the export control intelligence gathered by itself and the intelligence community to identify and prevent diversions. Moreover, the licensing provisions provide the foundation upon which criminal cases in this area are usually developed; namely, exportation without a license or false statements in the license application.
>
> "If there is no requirement for a validated license, then there will be no mechanism by which the United States can control such exportations to COCOM countries. In effect, we are turning over the control of U.S. strategic goods and technology to the COCOM countries. We will be relying on the abilities of the regulatory authorities in those countries to prevent the diversion of such goods to the Soviets and other unauthorized destinations. In our view, the proposed change is a fundamental one which goes to the core of the regulatory and enforcement scheme, and it could have serious implications on our ability to maintain an effective enforcement program."

Justice did not address whether the special status accorded Canada permitting exports to that country of strategic commodities without license has resulted in any diminution of control.

After the decision, Commerce attempted to develop other options which would reduce the licensing burden to the identified group and at the same time overcome Justice's objections. The option considered the most viable included eliminating low-technology licensing requirements to COCOM members, Australia, and New Zealand and controlling ~~hi~~gh-technology items through bulk licenses. A bulk license permits an exporter to ship controlled commodities to pre-cleared end users for normally up to one year without receiving separate authorization from Commerce for each shipment. Bulk licensing would reduce the time and cost of preparing and processing certain high-technology export applications. It would also permit Commerce to control shipments to unacceptable end users.

This alternative was set aside at Commerce because of higher priorities and has, therefore, never been discussed with Justice or other involved agencies.

CONCLUSIONS

The Government carefully examines less than 1 out of every 17 export applications it processes. This indicates that the system covers many more items than the Government really believes is necessary to protect national security. The licensing system, therefore, is more a paper exercise than a control mechanism.

The need to continue licensing requirements for high-technology products and design and production technology related to both high- and low-technology products to Communist destinations is clear. We find, however, that there is little justification for continuing to license the vast majority of low-technology products 1/ exported to Communist countries. Further, there is less justification for continuing to license low-technology products to non-Communist countries. Although the United States is obliged to continue control over these products, licensing requirements are really unnecessary. The U.S. obligation to COCOM could be satisfied by simply requiring the exporter to (1) report when he shipped such a product to a Communist destination and (2) provide documentation that the export will be used for peaceful purposes.

Licensing requirements could be eliminated by making the CCL advisory notes the technical threshold for obtaining export licenses. This would enable the Government to eliminate about 25,000 non-Communist country and 5,000 Communist country license applications a year and would save industry about $6.1 million a year in administrative costs. It could also save Commerce about $1 million a year by eliminating the 53 staff positions now necessary to handle low-technology applications.

Licensing requirements for high-technology exports to COCOM countries also appear excessive, considering that:

- --Some COCOM members do not require export licenses for high-technology exports to other COCOM members.
- --The Government denied only six high-technology export licenses to COCOM countries over the past 3 years, and in each case the denial was made because the U.S. exporter was restricted from further exporting.
- --The Justice Department has obtained only five criminal convictions involving export control violators in the past 3 years.

1/ As defined for Communist countries.

--The Defense Department supported the last proposal to eliminate export licenses to COCOM countries, Australia, and New Zealand but later withdrew its support after reviewing Justice Department objections.

--The Government does not require export licenses for shipments of high-technology items to Canada.

We, therefore, believe that various alternatives should be explored for satisfying control objectives and reducing or eliminating the burden of licensing high-technology products to COCOM members and other close allies. The Government, at a minimum, should evaluate the merits of:

--Commerce's bulk licensing alternative for high-technology exports.

--Selectively (country by country) eliminating high-technology product licensing requirements for those allies who have demonstrated a continuing commitment to control and who cooperate most closely with the United States in a uniform system of enforcement.

--Eliminating high-technology product licensing requirements to COCOM countries as a group.

RECOMMENDATIONS

We recommend that the Secretaries of Commerce and Defense:

--Eliminate licensing requirements to non-Communist countries for low-technology products falling below the Communist country threshold level.

--Review the Commodity Control List to identify those few low-technology products that Defense wants to carefully examine before export to Communist countries and then eliminate the remaining low-technology products from licensing requirements.

--Reexamine the need for licensing of high-technology products to COCOM countries and other allies by exploring various alternatives that would satisfy control objectives and reduce or eliminate the burden of licensing.

Foreign policy measures, like those in effect for the Soviet Union, need not be affected by eliminating national security license requirements.

AGENCY COMMENTS

The Commerce Department agreed in principle that lower technology items should be removed from licensing control. It

did not, however, address our specific recommendations other than to say that the report "greatly over simplifies the issue".

The State Department did not originally concur in our recommendations because it believed we were advocating unilateral decontrol of low-technology products and related design and production technology. After clarifying that we were not recommending unilateral decontrol but simply a less burdensome method of controlling products, State agreed that our recommendations had merit. However, it pointed out that the United States is currently attempting to get its COCOM partners to strengthen controls over certain low-technology products.

State and Defense officials also believed that controls over high-technology products to COCOM countries could be reduced with a reciprocal tightening of controls on the product's underlying technology.

Defense added that the recommendation to eliminate most low-technology products had merit. It told us that the Government is considering (1) raising the dollar threshold license requirement on many high- and low-technology products and (2) reducing license requirements to certain COCOM countries.

The Treasury Department objected to reducing licensing requirements for high-technology products to COCOM countries. It believed that the now difficult job of enforcement would become almost impossible without a licensing requirement and the attendant documentation. It also said that the United States cannot depend on other COCOM countries to police exports from their respective areas without U.S. assistance.

We believe that Treasury has exaggerated the importance of a licensing requirement. Clearly there are other, less burdensome means available to obtain the same documentation now provided in a license application and the same degree of protection. While we agree that a licensing requirement should be continued for high-technology exports to those COCOM countries where enforcement remains less than acceptable, the case for requiring licenses to all COCOM destinations is less compelling. Certainly there are some COCOM members who have demonstrated a strong commitment to control high-technology exports and to prosecute violators. To continue a license requirement to these countries appears unnecessary in light of their enforcement efforts.

CHAPTER 3

EXPORT LICENSING REVIEW PROCESS: SOME CHANGES NEEDED

The Government's interagency review process for licensing high-technology exports can be made more efficient and economical. Commerce is now required to develop a recommendation for each high-technology export application before forwarding it to other departments or agencies. This delays decisionmaking by up to 30 days with no perceptible benefit and results in additional staff at Commerce. In fiscal year 1981, Commerce reviewed in detail 3,735 high-technology applications before forwarding them to DOD for review.

The licensing review process can also be strengthened to better protect national security interests. Under current procedures and guidance not all high-technology exports involving national security are receiving DOD review. Through errors in judgement and mistakes, Commerce has licensed high-technology exports without consulting DOD. More significantly, Commerce has given industry authority to export militarily significant items embedded in commercial products, with no requirement for Government review.

THE REVIEW PROCESS

By law, the Commerce Department is required to review each license application, make a recommendation, and determine whether the application should be referred to any other concerned department or agency. The extent of review and consultation with other departments depends on the sophistication and destination of the proposed export. As discussed earlier, most applications are approved quickly and with little review because the items involved are not considered militarily significant. For high-technology cases involving national security, however, Commerce must forward its analyses and recommendations to DOD for review. The review may also involve the Departments of State, Energy, and others as appropriate.

The Office of Export Administration's review consists of (1) researching past licenses for similar type cases, (2) examining whether comparable equipment could be provided by other countries, (3) obtaining information on the end user, and (4) identifying, in certain cases, the economic impact of the transaction. Although OEA's review also attempts to assess the military risk of the export, it is at a distinct disadvantage in this area because it is not normally in direct contact with DOD technicians that identify and assess risk. Commerce has up to 30 days to complete its analysis and forward its recommendation to DOD for review.

Within DOD, the Under Secretary for Defense Research and Engineering (DDR&E) is responsible for reviewing export license applications. 1/ DOD's review focuses on whether the export will contribute significantly to an adversary's military capability. DDR&E also considers industry arguments supporting the license application by independently examining past license approvals, foreign availability, and end user.

To assess military risk, DDR&E normally forwards the application to the technical commands and the Defense Intelligence Agency for review. The technical commands identify how they use the item and whether the export could compromise any important military advantage that the United States now holds. The Defense Intelligence Agency comments on the activities of the end user and the possibility of the export being diverted for military purposes. In some cases, DDR&E is aware of the risk involved and handles the cases without internal coordination.

DDR&E is responsible for reaching a coordinated decision and works with the commands to resolve any differences of opinion. DOD may recommend either approval or denial of the entire application or approval with conditions. A recommendation of approval with conditions involves either derating or safeguards. Derating is a strategy that lowers one or more of the proposed export's performance characteristics; safeguards normally apply to computers and are designed to discourage diversion and unauthorized uses.

DOD's recommendation is sent back to Commerce, and if there is disagreement at this point further interagency discussion ensues. If the parties cannot agree on a course of action, the matter may be escalated to the Secretary level. If disagreement persists, the President may be asked to resolve the case.

COMMERCE'S REVIEW UNNECESSARY IN MOST CASES

There is no advantage in having Commerce review and make recommendations on high-technology export applications before consulting with other departments. Because national security is at issue in 9 out of 10 cases, approval of an application hinges on whether the export will significantly contribute to an adversary's military capability, and DOD, not Commerce, is in the best position to address this question. By requiring Commerce to make its review before DOD, the Export Administration Act has placed

1/ More recently, the Assistant Secretary of Defense (International Security Policy) has been given responsibility for coordinating the DOD position, but DDR&E continues to examine the military significance of the item to be licensed. The cases selected for our review were all processed prior to the time the Office of International Security Policy became responsible for coordination.

Commerce in the awkward position of making recommendations with only limited knowledge of military risk. While this requirement is not harmful in terms of the final decision reached, it does unnecessarily delay decisionmaking and results in additional staff at Commerce.

Our case studies and discussions with licensing officers confirm that Commerce is severely limited in identifying military risk. There is little or no discussion between Commerce licensing officers and DOD technicians, and Commerce's knowledge of risk stems almost exclusively from past licensing actions. Licensing officers admit that they have little basis upon which to identify military risk and that they must rely on DOD's later review to accurately identify risk. It is not surprising, therefore, that Commerce's reviews focus on providing an industry perspective and that its recommendations are contingent on DOD's assessment of military risk.

Based on Commerce's limitations and the fact that DOD approves many more licenses than it denies or approves with conditions, it would appear more reasonable to permit Commerce to defer its reviews until it receives DOD's recommendations and to limit its reviews to applications for which DOD favors either denial or conditional approval. If this were done, Commerce could eliminate up to 65 percent of the detailed reviews it now makes. This would save up to 30 days in review time for most applications forwarded to DOD and eliminate the need for 19 staff persons. Commerce currently has 48 licensing officers and other staff persons involved in reviewing high-technology export applications.

Although this reversal in procedure would considerably lighten Commerce's workload, it will still remain important that Commerce provide a quality review. At present, the quality is less than it should be; our case studies show that the licensing officers gave casual attention to detail in developing and analyzing information and in citing past precedent and rarely provided substantive discussion of how the previous case related to the application under review. Their examination of whether a foreign manufacturer would make the sale if the United States were to deny a particular application was normally limited to identifying a country where similiar equipment might be procured. The lack of detail may, in part, stem from the fact that Commerce has not yet developed a foreign availability information capability, as required by law. Review of the end user was normally limited to checking the end user against a list of identified risks, and only rarely was the CIA asked for additional information about the end-user.

EXPORTERS SHOULD BE REQUIRED TO PROVIDE TECHNICAL SPECIFICATIONS

One of the current difficulties in the review process is identifying an export's performance characteristics. Commerce has overcome this problem in the computer field by requiring the

applicant to provide the equipment's technical specifications. There is no similar requirement for non-computer-related exports. As a result, licensing officers must spend a great deal of time developing specifications through their own knowledge, referring to company brochures, or telephoning the applicant for the information. When the officer cannot obtain the information, the application is returned to the applicant without action.

Considering the importance of the information and the time and effort it takes to develop it, it would seem appropriate for all exporters to identify proposed exports' performance characteristics as part of export license applications.

NOT ALL HIGH-TECHNOLOGY EXPORTS HAVE RECEIVED DOD REVIEW

Despite having primary responsibility for exports involving national security, DOD is not receiving all high-technology applications for review. Through errors in judgement and mistakes, Commerce has exceeded DOD's delegations of authority and licensed high-technology exports without consulting DOD. However, our test cases did not indicate any adverse consequences. More significantly, Commerce has given industry authority to export high-technology items embedded in commercial products, with no requirement for Government review.

Commerce exceeds delegations of authority

Under the present system of licensing low- and high-technology items, Commerce sends high-technology cases to DOD for review by matching the proposed exports' performance characteristics with the limits specified by DOD. In the cases we studied, about 10 percent (3 of 31) that should have been reviewed by DOD did not receive such reviews. In two of the cases, Commerce officials claimed that precedent was involved and that their interpretation of the delegations of authority allowed them to approve the cases without referral. The delegations of authority, however, did not permit such unilateral decisionmaking. In the third case, Commerce mistakenly licensed an item that should have been reviewed by DOD.

DOD officials told us that each of these cases would have received approval, but they expressed concern at what had happened because of the possibility that a truly sensitive item could have been licensed. In another case related to but not a part of our sample, this almost happened. Commerce unilaterally approved an advanced oscilloscope which was an integral part of U.S. military radar systems to an Eastern bloc destination; it was only by accident that Commerce learned of the mistake and requested the applicant to substitute a less sophisticated item before the shipment was made.

Such errors could be eliminated by removing licensing requirements on low-technology items as recommended in chapter 2. Decisions as to which Communist country cases require DOD review would no longer be made, because all such cases would go to DOD.

Commerce authorizes high-technology exports without DOD concurrence

Commerce, without consulting DOD, has unilaterally authorized exporters to ship products incorporating embedded high-technology items without requiring Government review. These embedded items if exported separately would require review and some, according to DDR&E, would not be approved.

In May 1977, Commerce issued guidelines which permitted exporters to use a product's central character as the determinant of whether it required a validated license. In other words, a computerized sewing machine containing an advanced microprocessor would not require a license under Commerce's guidelines. The guidelines were issued in an effort to eliminate exporters' confusion as to specifically what items required export licenses.

DDR&E has been critical of this unilateral action because it created a loophole which has permitted the export of high-technology items without Government review. For example, in late 1977 a U.S. manufacturer met with Commerce representatives to determine whether he could export a computerized x-ray scanner which included an embedded array transform processor. 1/ He was informed that the equipment did not require a license. This confused the manufacturer because he knew that another company had been denied a license to ship an array transform processor. He, therefore, requested another technical evaluation. Commerce informed him that a product's central character was the critical factor in approval and that because it was considered an x-ray scanner and not a computer the equipment could be shipped without license under the embedded technology guidelines.

The embedded technology issue was studied at the direction of the National Security Council in 1978. The participants disagreed as to what the U.S. position should be on embedded technology and came up with two options, both calling for more control of embedded technology than that in Commerce's guidance. To this day, no agreement has been reached on what the U.S. position should be on the issue of embedded technology.

DDR&E has on three separate occasions asked Commerce to rescind or suspend its embedded technology guidance without success. It has not, however, elevated the matter to the

1/ Array transform processors are specialized computers that permit the manipulation of large arrays of data at very high speeds; they can be used in anti-submarine warfare.

President, as provided for in the act. Because of the complexity of the issue, DDR&E believes that the problem should be resolved at the operating level. It is concerned because state-of-the-art items, such as high-speed disc drives, computer assisted tomographic (CAT) scanners, satellite communication and navigation equipment, and computerized flight simulators embedded in non-military-related products are now being exported with no Government review.

Although it makes no sense to impose controls on readily available advanced technologies, certain essential technologies should be protected. This was recognized in the study made at the direction of the National Security Council but never fully accepted by Commerce. By providing exporters with authority to ship products which incorporate advanced technology, Commerce has created a loophole which could compromise national security. Its guidance does eliminate confusion over which items require export licenses, but it should be revised to incorporate specific DOD concerns.

DOD's CRITICAL ROLE

The Export Administration Act authorizes the Secretary of Defense to review and to recommend denying any proposed export which would contribute significantly to an adversary's military capability. This authority puts the burden of proof on DOD to demonstrate that the export represents a significant risk.

Our case studies and discussions with DOD officials revealed that DOD is effective in identifying military risk. It has difficulty, however, in demonstrating that a given risk is of overriding concern relative to foreign policy and international economic considerations.

DDR&E coordinates DOD position

The military risk associated with a given export is normally identified at the technical command level. DDR&E forwarded 12 of the 14 cases we reviewed in detail to the technical commands; in each case, one or more of the commands identified the military use of the export and in four cases, one or more of the commands considered the military use sensitive enough to recommend denial. For the other 2 cases, DDR&E had sufficient information from previous contact with the commands to understand the risk involved.

DDR&E examines the industry arguments supporting proposed exports with the assistance of the Defense Intelligence Agency. Generally, the Defense Intelligence Agency's comments address the risk of providing the export to the stated end user and, in certain cases, whether there is foreign availability for the export. Currently, the Defense Intelligence Agency is commenting on about 100 export applications a month.

Using this information and its own technical knowledge of the proposed export, DDR&E works with the commands to reach a coordinated position. DDR&E sometimes rejects a command's position because it fails to demonstrate that a significant military risk exists. DDR&E also, on occasion, recommends denial where the technical command recommended approval.

In the four cases for which one or more of the commands recommended denial, DDR&E overcame the objections to two cases by agreeing to recommend approval on condition that the exporters limit the performance specifications of the exports. In the other two cases, DDR&E overruled the objections because the commands did not demonstrate that there was significant risk.

Demonstrating significance is difficult

According to DDR&E officials, demonstrating that a given export involves a significant risk requires that DOD evidence that the export could dangerously narrow a critical U.S. military advantage, that an adversary has a critical military need for the export, and that it would be diverted from its stated civilian use. In the absence of hard evidence in these areas, the question of risk becomes uncomfortably subjective and opens positions to criticism.

The problem is further complicated by past licensing decisions, which influence what is considered significant. A Presidential decision to license important state-of-the-art technology to an adversary, for example, has the effect of raising the level of what will be considered significant in the future at the operating level.

Recognizing the difficulty in sustaining a denial recommendation, DOD appears to have adopted a strategy of compromise. Instead of simply approving or denying the entire export, it focuses on the critical elements involved and attempts to get the exporter to either substitute a lower performance item for the item of concern or limit the export's capabilities to that needed for the stated civilian end use. DDR&E officials estimate that 25 percent of the cases they review are resolved by recommending license approvals with conditions.

CONCLUSIONS

There is no advantage in requiring Commerce, before it consults with DOD, to develop license recommendations on export applications that must be reviewed by DOD. This requirement simply delays decisionmaking by up to 30 days and results in additional staff at Commerce. It would be more efficient and cost effective if DOD, not Commerce, made the initial recommendation on such applications and Commerce limited any detailed review to those

applications for which DOD favors either denial or conditional approval.

Export control regulations could be made more effective by closing the loophole that now permits high-technology items embedded in other products to be exported without Government review. Commerce's guidance to exporters on embedded technology should be replaced with specific product-by-product guidelines developed in consultation with the Secretary of Defense.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress amend the Export Administration Act to have Defense make the initial recommendation on export applications that must be forwarded to Defense and have Commerce limit its review on these applications to those that Defense recommends denying or approving with conditions. Proposed legislative language is contained in appendix III.

RECOMMENDATIONS TO THE SECRETARY OF COMMERCE

We recommend that the Secretary of Commerce:

--Revise the current embedded technology guidelines in consultation with the Secretary of Defense to incorporate specific Defense concerns.

--Require exporters to provide performance specifications and backup information as part of their export licensing application packages.

--Direct Commerce reviewing officials to include a full discussion of (1) how any citation of past precedent relates to the case under review, (2) foreign companies capable of providing a similar product, how that product compares to the proposed export, and the willingness of the foreign manufacturer to sell if the United States were to deny an export license, and (3) intelligence information on the end user obtained from the intelligence agencies in support of Commerce's licensing recommendation. If our recommendation to the Congress is adopted, review, of course, would be necessary only when Defense favors either denial or conditional approval.

AGENCY COMMENTS

The Departments of Commerce and State disagreed with our recommendation to change Sections 10(d) and (f) of the Export Administration Act. Commerce believed that the change would undermine congressional intent to maintain a locus of control over technology transfer within the Government. Both Commerce and State argued that the change could damage the balance that now exists

in license decisionmaking while merely shifting the burden from one agency to another.

We do not believe that the locus of control over technology transfer or balance of perspectives would be lost by simply altering review procedures to permit a more efficient handling of export applications.

Under our proposal, Commerce would retain all of its current responsibilities, including administration, coordination, and approving and denying applications. Considering Commerce's trade orientation, it is not logical that Commerce would want to review export applications that Defense must review and ultimately wants to approve.

Defense thought that the recommended legislative change had merit and should be pursued. It argued, however, that simply modifying the act without providing adequate resources to carry out the process would be fruitless.

If Sections 10(d) and (f) were changed as the report recommends, DOD would not receive any more export applications than it has in the past--it would just receive them earlier. DDR&E officials have historically maintained that they lack the permanent resources necessary to fully discharge all their export control responsibilities. It, therefore, is not surprising that Defense would argue for more resources with any change in licensing procedures.

Chapter 4

CONSTRAINTS TO ENFORCEMENT

Export controls rely on the basic integrity of the export community and its willingness to abide by the law. To be effective, controls must be backed by a credible enforcement program; Government studies, however, have shown a lack of coordination among enforcement agencies and insufficient resources.

Other constraints to implementing a credible enforcement program include

--practical limits to cargo inspections;

--lengthy criminal investigations and a large backlog of uncompleted investigations;

--difficulty in obtaining criminal convictions;

--no monitoring of conditional licenses to assure that conditions are being fulfilled; and

--a lack of enforcement coordination among COCOM members.

The Departments of Commerce, Justice, and Treasury report that enforcement coordination has improved and that the Government has recently expanded its efforts to detect illegal diversions of critical technology. They point out that

--Customs has significantly increased its export inspection and investigation activities;

--the intelligence community has increased support for export control investigations;

--the Government has solicited and received improved cooperation from industry and foreign governments in detecting and investigating unauthorized exports; and

--all potentially prosecutable investigations are being promptly referred to Justice and the appropriate U.S. Attorney's Office.

ENFORCEMENT DIFFICULT

Identifying and prosecuting export violators is a difficult and growing problem. Intelligence agencies have reported that detected diversions to the Soviet bloc countries amount to an estimated $38 million a year. Rapid changes in technology have

increased the desirability of Western products, and miniaturization of computers and other electronic products have made clandestine shipment easier. Post-Afghanistan trade restrictions have also made the Soviet's desire to obtain Western technology more profitable for violators. In addition, a growing volume of exports traveling through some 300 U.S. ports of exit restricts the usefulness of cargo inspections.

Identifying illegal, high-technology shipments is like looking for a needle in a haystack. Inspectors can look only at a small portion of the total volume of exports moving through a given port and, even then, often cannot determine whether a shipment requires a license because it takes an expert to determine the sophistication of such items as computers or other electronic devices. For this reason, inspectors often have to refer questions to Commerce licensing officers in Washington.

Physical inspection is also made more difficult by the increasing trend toward containerization, which makes physical inspection of seagoing vessels and some air cargo impractical. Another argument against an extensive physical inspection system is the fact that most illegal exports become illegal only after unauthorized reexport from a foreign country.

COCOM members have evidenced a continued concern for enforcement, but it remains below the level that is considered appropriate by the United States. Generally, COCOM countries devote fewer resources to enforcement than does the United States and do not have laws to effectively penalize violators. This has forced the U.S. Government to take on some of the responsibilities of some of its COCOM partners by investigating foreign violations, using authority stemming from requiring foreign firms to obtain reexport licenses to ship U.S. technology to Communist destinations. Investigations are like putting together a complex puzzle, because most violations occur abroad and investigators must obtain critical information in some foreign countries where they may get little help from the government.

ENFORCEMENT RESPONSIBILITIES

Commerce has had primary responsibility for enforcement. This consists of inspecting cargo, identifying and investigating violations, administering civil penalties, and forwarding criminal cases to Justice for prosecution. Currently, Commerce has a staff of 26 professionals assigned to these activities.

The U.S. Customs Service, FBI, CIA, and Department of State are also part of the enforcement effort. Customs independently examines shipments for export control violations and is also under contract with Commerce to provide 7 staff years of inspection, investigation, and administration support. The FBI investigates cases involving export control violations as part of

its counterintelligence and other law enforcement responsibilities. The CIA provides information on violations to the extent permitted by law, and the State Department assists on enforcement matters involving foreign nations.

Enforcement problems identified

During the past few years, interagency studies of export control enforcement problems have shown that there needs to be more coordination among the enforcement agencies and that more resources need to be applied to detect illegal diversions of critical technology. These studies also found that there is a lack of enforcement coordination among COCOM members; unless enforcement practices are uniform, the effectiveness of U.S. controls is reduced.

Based on these studies' conclusions, Commerce has taken a number of actions to improve enforcement. It has (1) requested additional staff and funding to expand geographic coverage, (2) established better lines of communication with the CIA, (3) increased coordination with other enforcement agencies, and (4) reduced the administrative burden of its inspection and investigation staff.

CARGO INSPECTION

The Government until recently mounted only a token cargo inspection program in an effort to deter unauthorized exports. It seems that it would be impractical and cost prohibitive to maintain a fully effective cargo inspection program. At present, Commerce has only seven cargo inspectors, and we found that they spend most of their time at only one airport (John F. Kennedy in New York City) and usually work daylight hours. The Government's program does not cover other major export points, border points, or the mails.

Commerce believes that cargo inspection efforts should be increased to provide a more credible deterrent and it plans to add more staff and increase geographic coverage. The enforcement group within Commerce has recently received an allocation of six inspector slots which will be assigned to new suboffices in San Francisco and Los Angeles. Commerce is requesting another six inspectors for planned offices in Miami, Chicago, and Houston, and it plans to expand its hours of coverage beyond the normal workday at John F. Kennedy Airport.

The Customs Service has recently increased its surveillance of exports, assigning about 200 officers to conduct cargo inspections in 12 cities based on standard diversion profiles and tips from business and other sources. The officers are organized into teams consisting of patrol officers and cargo inspectors; criminal investigators, auditors, and export control specialists will be used when needed. Customs believes that this effort will

make it more difficult to divert strategic technology and will result in a greater number of prosecutions. Customs has also established similar export control programs in other districts.

COMMERCE INVESTIGATIONS

More than 50 percent of Commerce's major investigations involve violations by foreign firms that should be adjudicated by another COCOM partner. Commerce pursues many of these foreign violations itself because the U.S. Government is reluctant to rely on the enforcement efforts of most COCOM members. This results in unnecessarily lengthy and inefficient reviews in which violators often go unpunished or receive weak penalties. This situation will continue unless the COCOM community agrees on a coordinated enforcement effort.

Penalties imposed

Commerce, through its inspection program and information provided by shippers and trade sources, identifies about half the export violators its investigative staff later pursues. Other violators are identified by information provided by the U.S. intelligence community and other sources--business firms and individuals, military attaches, and paid informants. Information arrives in bits and pieces and when enough is gathered, Commerce starts an investigation.

Most export violations are minor and are settled fairly quickly by sending warning letters to the violators. For example, an exporter may have shipped more than the licensed quantity or may have used an expired license. Such violations demand little investigative time.

Major violations involve cases in which a foreign firm or individual has illegally reexported U.S.-controlled technology to the Eastern bloc from a foreign location or a domestic firm has shipped controlled items without obtaining a license. Domestic violators are subject to criminal prosecution and administrative penalties, including fines and possible suspension of export privileges. Foreign violators can be punished only administratively by denying them access to further U.S.-controlled items for a specified period of time; such a remedy is easily circumvented as a firm may reincorporate under another name or buy U.S. products through another corporation.

Commerce admits to closing a high percentage of cases with warning letters instead of stricter penalties due to the length of investigations and a growing backlog of cases. During fiscal year 1981, for example, Commerce issued 145 warning letters and imposed administrative sanctions in 19 instances while the Department of Justice obtained criminal penalties against three individuals; in 1978, 68 warning letters were issued, 11 administrative sanctions were imposed, and two criminal penalties were obtained.

Length of investigations results in growing backlog

The backlog of unresolved cases has grown steadily, from 95 in fiscal year 1976 to 311 in 1981. This is due in part to the time and effort required to investigate major cases overseas. Commerce estimates that it requires 2,000 hours to complete a criminal investigation and 225 hours for an administrative case. Cases frequently run up against the 5-year statute of limitations because of the time required to develop information overseas. In conducting investigations abroad, Commerce relies on U.S. personnel in foreign service posts. Most investigations are conducted by cables in which Commerce attempts to lead Embassy staff step-by-step through the investigation; it asks them to conduct interviews, obtain documents, and forward the information to Washington. These individuals have little or no training and experience to conduct investigations. Such work is also considered a low priority by Embassy staff. As a result, investigative cases languish.

Commerce rarely makes use of the Customs Service in conducting overseas investigations. Customs investigators are located in several major countries and work through mutual assistance agreements with other countries' customs and police organizations. They are trained professionals, capable of performing investigations without detailed instructions from Commerce. Working out an arrangement with Customs investigators could reduce the time required to fully investigate a case. Commerce should do this before stationing staff overseas.

Quality of investigative effort questioned

Our review shows that about 50 percent of Commerce's ongoing investigations involve illegal exports or reexports of low-technology items. However, Commerce's investigations have led to few prosecutions. This has caused concern within the executive branch. There is a general perception that Commerce investigators lack training and are performing desk-type investigations with little or no fieldwork. Other criticisms are that Commerce does not have enough investigators, that investigators are being used for non-investigative purposes, and that Commerce does not have investigators located overseas.

Commerce has made a number of administrative and other changes to strengthen its investigative capabilities. It has reallocated 13 slots to its enforcement effort, 5 of which will be used to hire investigators for planned offices in San Francisco and Los Angeles. (An existing investigative slot will be transferred from Headquarters to the West Coast, for a total of six.) In its fiscal year 1983 budget request, Commerce is requesting another three investigators for planned offices in Miami, Chicago,

and Houston. Commerce has also reorganized its compliance activities to make better use of staff and establish better lines of communication with Justice and the CIA. Commerce's investigators have also been directed to get more actively involved in investigations by performing fieldwork.

The Government is also making a concerted effort to strengthen the enforcement efforts of other COCOM countries. Three major discussions on the enforcement issue have been held during the last 18 months within COCOM. Government officials believe progress is being made with a number of the COCOM countries.

It is important to note that Commerce's investigation workload could be cut in half if low-technology items were eliminated from licensing requirements as recommended in chapter 2.

Licensing conditions not enforced

Many licenses are approved with conditions imposed by the Government to keep the performance limits of the proposed exports within acceptable bounds and to control the use of the equipment. Commerce is responsible for assuring that exporters and end users comply with license conditions. It is not carrying out this responsibility. As a result, no one in the Government knows if license conditions are being fulfilled. We criticized this deficiency 2 years ago and corrective action was promised, but Commerce has not yet acted to improve the situation.

CONCLUSIONS

Practical and administrative constraints hinder establishment of a credible deterrent to illegal exports. The Government has studied the enforcement issue in detail and has taken some actions and is considering others to strengthen U.S. and COCOM enforcement activities.

Two areas where insufficient concern has been raised are enforcing licensing conditions and using Customs investigators overseas. The Government is not making tests to ensure that licensing conditions are being satisfied by both the exporter and the ultimate consignee. Consequently, the benefit derived from attaching conditions to certain export licenses is less than it could be. To the extent that professional investigators already stationed abroad are available, the Government should use them to assist in export investigative efforts.

RECOMMENDATIONS

We recommend that the Secretary of Commerce establish a system for identifying high-technology licenses with conditions and then make tests to ensure that licensing conditions are being satisfied. We further recommend that the Secretary of Commerce

consider additional use of Customs attaches overseas in enforcement investigations.

AGENCY COMMENTS

Commerce agreed with our recommendation that enforcement efforts can be enhanced by obtaining further assistance for investigations by Customs attaches overseas. It did not comment on our other recommendation concerning ensuring that licensing conditions are being satisfied.

The Departments of State, Defense, Treasury, and Justice did not comment on these recommendations.

MILITARILY CRITICAL TECHNOLOGY LIST UPDATE

The Congress, in the Export Administration Act of 1979, directed DOD to develop and publish a list of militarily critical technologies whose export should be controlled to adversary countries. The requirement reflected a growing recognition that export controls should focus on critical technologies rather than on end items. Expectations were that such a list would remove controls on a large number of products.

DOD started developing an initial list in January 1980, with the help of the Institute of Defense Analysis. DOD also obtained separate opinions on what the list should contain from other agencies, the military services, and industry. DOD published an initial list, in classified form, on October 1, 1980. This list, according to DOD, was never intended to be the final document. The list was used as guidance within DOD to review export license applications to Warsaw Pact countries. Commerce, however, refused to use the list as a basis for licensing decisions.

LIST REVISION

Many reservations were expressed by the Departments of Commerce and State and by private industry regarding the initial list. The chief concern raised was that the list should not be used by DOD as a guide for licensing decisions in its imperfect form. Many believed that the list was not specific enough to be useful as a practical daily guide for licensing. Industry was concerned that exports would be adversely affected because the list was not subjected to a complete analysis by industry and was classified. It was believed that the United States should first obtain COCOM agreement on the list before using it in the U.S. export control system.

DOD revised the militarily critical technology list during 1981. The more important revisions involved:

--Incorporating industry and agency comments on the initial list.

--Integrating critical technologies identified by the Energy Department.

--Increasing the specificity of the list entries to support the export control process.

--Identifying products with intrinsic military utility.

--Identifying critical technologies associated with Munitions List items.

DOD published a revised list, again in classified form, in November 1981. This list was developed with the assistance of industry technical advisory groups and is currently being reviewed by industry association groups and U.S. COCOM partners. DOD is using the list in export license decisionmaking, but Commerce still has not adopted it for use in export license decisions.

IMPLEMENTATION OF LIST WILL BE SLOW

While many agree that the revised militarily critical technology list was an improvement, they also agree that much more needs to be done to provide practical guidelines for using it in export control decisionmaking. Concerns still exist regarding the list's lack of specificity and the need to obtain COCOM cooperation before the list is incorporated in the CCL. Implementation will therefore be slow and complex. DOD estimates that activity to incorporate critical technologies into the export control system will extend into 1983 or beyond.

COMPARISON OF PRE- AND POST-AFGHANISTAN CONTROL ACTIONS

On January 4, 1980, 8 days after the Soviet invasion of Afghanistan, President Carter announced his intention of curtailing high-technology exports to the Soviet Union. At the President's direction, Commerce suspended all outstanding validated licenses to the Soviet Union and stopped reviewing all new applications pending a review of the export control criteria. In March 1980, new export control criteria was established whereby no high-technology exports would be approved to the Soviet Union except possibly those involving health and safety equipment or spare parts.

From April through September 1980, Commerce reviewed 666 new or outstanding licenses using the new criteria and 454 of these licenses, which involved low-technology items, were approved or reinstated. It rejected or revoked 110 cases and returned 102 cases to the applicants without action. The total value of dual-use exports to the Soviet Union declined from about $208 million in 1979 to $131 million in 1980.

The new export control criteria was not applied to other Warsaw Pact countries. Licenses to these countries were not suspended or reexamined. New applications, however, were to be given more careful review considering the possibility that high-technology items exported to one Warsaw Pact nation could be diverted to Soviet use. Notwithstanding the closer scrutiny, U.S. dual-use exports to other Pact countries increased significantly during the Post-Afghanistan period. During 1980 the United States approved $340 million worth of high-technology licenses for exports to Warsaw Pact countries, excluding the Soviet Union. In 1979 the comparable figure for approvals to these same countries was $127 million.

It should also be noted, however, that more national security sensitive applications for the Warsaw Pact are usually denied than is commonly perceived. Although less than 1 percent of the total applications processed by Commerce are denied, this figure increases significantly when one examines the situation regarding Warsaw Pact destinations. For example, in the last quarter of 1979, and prior to the invasion of Afghanistan, 7.7 percent of the requests for export to the Warsaw Pact countries were denied. Furthermore, if only the high-technology exports to the Pact are considered, DOD has historically denied approximately one out of every four cases. In addition, our sample cases indicated that about 7 percent of the approved Warsaw Pact cases were modified to reduce the technical capabilities of the items before they could be exported.

PROPOSED LEGISLATIVE LANGUAGE

To improve the efficiency of export regulation

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Export Administration Amendments Act of 1982."

SEC. 2. Section 10(d) of the Export Administration Act of 1979 (50 U.S.C.App. § 2409(d)) is amended --

(a) by inserting "(1)" after "(d) REFERRAL TO OTHER DEPARTMENTS AND AGENCIES;"

(b) by striking "(1)" and "(2)" and inserting in lieu thereof "(A)" and "(B)";

(c) by adding at the end thereof the following new paragraph:

"(2) Nothwithstanding paragraph (1) of this subsection, in each case in which the Secretary determines, pursuant to subsection (g) of this section, that it is necessary to refer an application to the Secretary of Defense, the Secretary shall, upon receipt of a properly completed application, refer the application to the Secretary of Defense together with all information supplied by the applicant. The Secretary concurrently may refer an application to any other department or agency for its information and recommendations. The Secretary shall defer his review, analysis, and recommendation on

the application until after receiving recommendations from other departments or agencies but, in any case, shall review only those applications where the Secretary of Defense has recommended that the request for export be denied or be approved subject to specified conditions."

Changes Proposed In Existing Law 1/

SECTION 10.

(d) Referral To Other Departments and Agencies.--

(1) In each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, within 30 days after the submission of a properly completed application--

[(1)] (A) refer the application, together with all necessary analysis and recommendations of the Department of Commerce, concurrently to all such departments or agencies; and

[(2)] (B) if the applicant so requests, provide the applicant with an opportunity to review for accuracy any documentation to be referred to any such department or agency with respect to such application for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

"(2) Notwithstanding paragraph (1) of this subsection, in each case in which the Secretary determines, pursuant to subsection (g) of this section, that it is necessary to refer an application to the Secretary of Defense, the Secretary shall, upon receipt of a properly completed application, refer the application to the Secretary of Defense together with all information supplied by the applicant. The Secretary concurrently may refer

1/ Existing law proposed to be omitted is enclosed in brackets; new matter is underlined.

an application to any other department or agency for its information and recommendations. The Secretary shall defer his review, analysis, and recommendations on the application until after receiving recommendations from other departments or agencies but, in any case, shall review only those applications where the Secretary of Defense has recommended that the request for export be denied or be approved subject to specified conditions."

UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

March 10, 1982

Mr. Henry Eschwege
Director, Community and Economic
Development Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Eschwege:

This is in reply to your letter of January 12, 1982, requesting comments on the draft report entitled "Export Control Regulation Could Be Reduced Without Affecting National Security."

We have reviewed the enclosed comments of the Under Secretary for International Trade for the Department of Commerce and believe they are responsive to the matters discussed in the report.

Sincerely,

Sherman M. Funk
Inspector General

Enclosure

MAR 8 1982

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

Mr. Henry Eschwege
Director, Community and Economic Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

Thank you for your letter to Secretary Baldrige giving us the opportunity to comment on the draft of the proposed GAO report, "Export Control Regulation Could be Reduced Without Affecting National Security." I am responding on his behalf.

We appreciate the time and effort which went into the report's preparation and welcome the spirit of constructive criticism in which it was written. We heartily agree with most of the final conclusions and recommendations, especially those which call for increasing enforcement and reducing the paper work burden on U.S. industry. Some of the more specific suggestions made in the body of the report have been under consideration by myself and Assistant Secretary for Trade Administration Lawrence J. Brady, and have already been implemented.

There are, however, some misconceptions in the report which warrant your attention prior to preparation of the final draft. I have outlined these in the attachment.

The report distinguishes between "high" and "low" technology and concludes that "low" technology exports should not be subject to controls. "Low" technology is defined in the report as that class of cases which DOD does not want to review because it is concerned with "high technology" exports and "lower technology exports do not constitute a significant military risk." Admittedly, some exports pose a lesser threat to national security than others, and we agree with the principle that lower technology items should be removed from control. The Administration is committed to pursue that goal. However, we believe that the report greatly oversimplifies the issue. The difficulty encountered in developing the Militarily Critical Technologies List (MCTL) is evidence of the issue's complexity.

In addition, the report appears to underestimate the consideration given to the end-use and to the reliability of the end-user when licensing decisions are made. The Department of Commerce assesses these factors, the potential risk of diversion and the technical aspects of each license application regardless of whether the application is or is not referred to DOD. Pre-licensing checks help us gather intelligence to identify high-risk consignees.

In light of the foregoing, and of our attached comments, I recommend that your staff reconsider several recommendations. They include:

(1) The recommendation that the Export Administration Act be amended to give the Department of Defense the responsibility of first review on dual-use license applications would not be appropriate. Such an action would undermine Congressional intent to maintain a locus of control over technology transfer within the federal government. It could damage the balance we now have between strategic, economic, and policy perspectives while merely shifting the burden from one agency to another. The recommendation is driven implicitly by a desire to expedite license processing, however, it is unwarranted on those grounds since we are processing licenses on time. The January 1981 backlog of some 2000 cases is down to virtually zero today.

(2) The report states that the Commerce technical staff is weak in assessing the strategic implications of a proposed export. Recently we have hired additional qualified technical staff and we are increasing the expertise of those now on board through training.

(3) In several parts of the report the statement is made that Commerce unilaterally processes cases and merely "rubber stamps" them. Some cases do receive more scrutiny than others, but that depends on the nature of the technology or equipment proposed for export. All are reviewed for the appropriateness of the end-use and end-user. This is also true in those cases for which we have received a delegation of authority (DOA) from Defense.

I hope that my comments are useful. If you would like to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Lionel H. Olmer

Attachment

GAO note: Attachment not included since comments contained therein have been incorporated in the report as appropriate.

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

MAR 11 1982

Dear Mr. Anderson:

Enclosed are the Department of the Treasury's comments on the draft of a proposed report by the General Accounting Office entitled "Export Control Regulation Could be Reduced Without Affecting National Security." Both the U.S. Customs Service and this office have reviewed the draft, and the enclosed comments reflect our mutual views. Our comments are presented from the Customs Service's perspective since that agency's investigative efforts are the heart of Treasury's export control enforcement role.

In summary, we believe that the draft GAO report has been overtaken by events and, therefore, no longer accurately reflects the government's export control enforcement efforts. There has been a vast improvement in this area, and we expect that the continuing improvements and coordination will have a significant impact on illegal diversion activity

We see no need to comment on the classified portion of the draft; and, therefore, our comments are unclassified in their entirety.

Sincerely,

John M. Walker, Jr.
Assistant Secretary
(Enforcement and Operations)

Mr. William J. Anderson
Director
General Government Division
General Accounting Office
Washington, D.C. 20548

Enclosure

INTRODUCTION

The first two sections of the report cover licensing requirements and reviews for export of critical technology. We are in general agreement with the GAO comments and recommendations, except for the specific recommendations of dropping or severely reducing controls for exports of high technology items to COCOM nations. We believe such action would make the now difficult job of enforcement almost wholly impossible and would put a severe burden on our allies' export control enforcement agencies. Concerning the enforcement section, we believe that the report does not accurately reflect the present enforcement efforts presently being conducted by the government. We believe that this section should be carefully reviewed and rewritten to more accurately portray the present enhanced enforcement program being conducted. Specific comments follow.

LICENSING REQUIREMENTS AND REVIEWS

Concerning GAO's recommendation that items destined to COCOM countries be largely removed from licensing control, we disagree for several reasons. It has been our experience that most illicit transfers of high technology move through COCOM countries. Although the present licensing procedures have inconsistencies and are often inadequate in stopping such diversions, they are better than none at all; the solution GAO would recommend. Our investigations of such diversions are mainly built on document review and collation; and without licensing and the attendant documentation, many violations could not be adequately investigated or, worse, even discovered. Furthermore, many of our COCOM allies are earnestly making efforts to stem these types of diversions and to work closely with us in this endeavor. Many of their investigations originate from information provided by us, which we, in turn, gain from our investigations. We cannot depend on other COCOM countries, particularly those having gateway status, in policing exports from their respective areas without assistance from us.

CURRENT ENFORCEMENT ENDEAVORS

We feel that the GAO report does not fairly reflect the enforcement effort presently being conducted by the government. To explain, we would like to cite several specific points made in the report and offer our comment.

Page 36, second paragraph

Although it is true that in the past the Intelligence Community did not always provide the quantity and type of information that we desired concerning export violations, this is no longer accurate. We have recently experienced greatly

increased help from the CIA in the provision of both strategic and tactical intelligence. Furthermore, we are confident that this cooperation will continue and will increase.

The GAO statement that we obtain little or no help from foreign governments is not generally true. We have had and continue to have excellent cooperation and liaison with our sister agencies, particularly in areas where diversion is significant. We feel that the GAO statement, if placed in a report for public distribution, could seriously hamper the present excellent relations we enjoy with our foreign sister services.

Page 37, last paragraph and page 39, middle paragraph

We believe that the GAO report does not fairly reflect the current export control program concerning critical technology. Stemming the illicit transfer of critical technology is one of Customs' highest priorities. Consequently, we have launched a major program, Operation EXODUS, incorporating inspections of export cargo, investigations of alleged violations concerning illicit technology transfer, establishment of an intelligence base, liaison with intelligence and enforcement agencies, and close cooperation with Commerce. The program is focused on 12 ports of exit and includes numerous field teams of Customs officers plus a Headquarters staff. In addition to the 12 Exodus areas, other Customs districts have established export control programs that are patterned after EXODUS. Furthermore, Customs is soliciting and receiving cooperation from industry as well as foreign governments.

In conclusion, we believe that the present enforcement efforts being devoted to illicit diversions of critical technology, while not yet adequate, are a vast improvement over what they were in the past; and as Customs becomes more experienced in this area, a significant dent should be made in this diversion activity. The current Administration is giving both moral and tangible support for this critical area of law enforcement and will continue to do so.

We believe the GAO should make a review of the present enforcement program being conducted by Customs, with coordination from Commerce and other agencies so that the final GAO report will more accurately reflect the government's current export control enforcement program.

U.S. Department of Justice

MAR 15 1982

Washington, D.C. 20530

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This letter is in response to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "Export Control Regulation Could Be Reduced Without Affecting National Security."

The General Accounting Office (GAO) report is based on a study undertaken in September 1980, at the request of Senators Jake Garn and Harry Byrd, to determine how well the Government is carrying out the Export Administration Act's national security goal of controlling exports of militarily significant technology and products to the Soviet Union and other Eastern Bloc nations. The review attempted to determine whether:

"--the export control system was adequately protecting national security interests,

--export control criteria were properly focused,

--the licensing system was operating efficiently,

--we also sought to ascertain the constraints to export control enforcement efforts."

The report deals with three major areas. First, it examines the licensing system administered by the Department of Commerce (Commerce) and the Department of Defense (Defense) under the Export Administration Act. The report recommends that the Secretaries of Commerce and Defense consider eliminating licensing requirements worldwide for low technology items, and re-examine the need for licensing high technology exports to Coordinating Committee (COCOM) countries and other allies.

The second major area of review in the report deals with the export licensing review process performed by Commerce and Defense for processing applications to export national security related technology. GAO recommends that Congress amend Section 10(d) of the Export Administration Act to permit Commerce to defer developing a recommendation on applications that must receive Defense review until after receiving Defense's recommendation, and to develop a recommendation on only those applications on which Defense favors either denial or conditional approval.

The third and final section of the report deals with the enforcement program for the Export Administration Act. GAO recommends that the Secretary of Commerce establish a system to identify high technology licenses with conditions, and

then make tests to ensure that licensing conditions are being satisfied. The report further recommends that the Secretary of Commerce consider contracting with the U.S. Customs Service (Customs) to use Customs Attaches overseas in enforcement investigations.

The first two sections of the report deal with subjects which are within the jurisdiction of Commerce and Defense, and, as the letter requesting our comments notes, these departments have been asked to review the report and submit their comments. Until we receive and study their comments, we will be unable to provide comments on these sections of the report.

The third section of the report notes that Commerce has primary responsibility for enforcement under the Export Administration Act, and the report focuses primarily on its enforcement program.

The report states that the "findings and conclusions [of the report] are based primarily on work done in Washington, D.C. at Commerce and Defense from September 1980 to June 1981." The Departments of Commerce, Treasury and State have been asked to review and comment on the report, and we will review carefully their comments on the findings, conclusions and recommendations on this section of the report before making our own comments in greater detail.

The report notes that there have been a number of recent actions designed to improve coordination among the enforcement agencies and the intelligence community, and that additional resources are being devoted to enforcement. Since the report relies mainly on the work done between September 1980 and June 1981, we anticipate that the Departments of Commerce, Treasury and State will furnish comments on the recent actions undertaken by them to improve the enforcement program. For example, in January 1982, Customs began a major program, called "Operation Exodus," to increase its efforts to enforce the Export Administration Act. If the report is to reflect accurately the current export control enforcement program, it should incorporate a detailed discussion of this program. An important part of Operation Exodus is to make increased use of relevant export control intelligence developed by the enforcement and intelligence communities to create a credible enforcement program. In this regard, we note that the report makes a concerted effort to develop the argument that cargo inspections at air and sea ports are an impractical and useless effort. GAO may wish to reconsider its position on this point after it has had an opportunity to analyze the full scope of Operation Exodus.

Moreover, the report does not accurately reflect the recent actions taken by the intelligence community to improve the support which it provides to the enforcement community. We have been informed that the Central Intelligence Agency will furnish GAO with a report detailing the actions taken by the intelligence community to improve its efforts in this area.

The Departments of Commerce, Treasury and State will undoubtedly address the report's comments which are critical of the enforcement efforts of our COCOM allies. The statement that we obtain little or no help from foreign governments is inaccurate and could adversely affect the excellent relations we enjoy with some foreign countries in the enforcement area. At the present time, there are high level efforts which could result in strengthening our COCOM allies' efforts in this area. We believe that GAO should reconsider its comments as they relate to the COCOM nations and other cooperating foreign governments.

The report deals extensively with the investigative program of Commerce, and it conflicts with our understanding of some of the current procedures on the referral of cases for prosecutive consideration. On numerous occasions, this Department has informed Commerce of our concern that all potential criminal violations of the Export Administration Act be investigated promptly and thoroughly by Commerce, or be referred to Customs for appropriate investigation. Commerce has informed us that it reports promptly to the Internal Security Section of the Criminal Division and to the appropriate United States Attorney's office all investigations which have prosecutive potential.

The Internal Security Section has supervisory responsibility for the prosecution of cases developed under the Act, and we have vigorously pursued the cases which have been referred to us for prosecution. Currently, the Criminal Division and the U.S. Attorneys' offices are directing the grand jury investigation and prosecution of several significant cases which have been referred to us by both Commerce and Customs. At present there is no backlog of pending cases at the Department, and we have adequate resources to handle the cases which are referred to us by the investigative community.

Commerce has assured us that there are no unreported cases which have significant potential for criminal prosecution. The unresolved cases mentioned in the report refer to matters which require preliminary inquiry but do not represent an ongoing national security type violation which requires prompt investigative action. Commerce has assured us that it will address this matter in its comments to GAO.

Page 37 of the draft report refers to the Federal Bureau of Investigation's responsibilities with respect to export control violations. It is recommended that the last full sentence on this page be amended to delete the word industrial, and substitute the words other law. Further, we recommend addition of the following comments to follow the above sentence:

> These investigations, although supportive of the Commerce Department's program, are not technology transfer investigations as such. Each would have been conducted irrespective of the possible export control violation, based on the FBI's foreign counterintelligence or law enforcement responsibilities.

Inasmuch as each agency concerned with this report is responding separately, the need for extensive coordination of the comments may be necessary. The FBI and Criminal Division would be willing to participate in this process.

We appreciate the opportunity to comment on the draft report. Should you desire any additional information pertaining to our response, please feel free to contact me.

Sincerely,

Kevin D. Rooney

Kevin D. Rooney
Assistant Attorney General
for Administration

(483250 & 483260)

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