United States General Accounting Office

GAO

Report to the Ranking Minority Member, Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, House of Representatives

July 2003

DEFENSE TRADE

Better Information Needed to Support Decisions Affecting Proposed Weapons Transfers

GAO-03-694

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Highlights

Highlights of GAO-03-694, a report to the Ranking Minority Member, Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, House of Representatives

Why GAO Did This Study

The heightened visibility of advanced U.S. weapons in military conflicts has prompted foreign countries to seek to purchase such weaponry. In 2001, transfers of U.S. weapons and technologies to foreign governments totaled over $12 billion. The potential loss of U.S. technological advantage has been raised as an issue in recently approved transfers of advanced military weapons and technologies—such as military aircraft that were reported in the media to contain superior radar and avionics than those in the Department of Defense's (DOD) inventory.

GAO looked at how releasability of advanced weapons is determined, how U.S. technological advantage is considered and protected, and what information is needed to make informed decisions on the potential release of advanced weapons.

What GAO Recommends

GAO is recommending that the Secretary of Defense direct the National Disclosure Policy Committee Executive Secretariat to take several actions to improve efforts for collecting and updating information needed for the review process. DOD concurred with some of GAO's recommendations but did not concur with others. DOD provided additional information about recent actions it has taken, which lead to the modification of some of GAO's recommendations.
www.gao.gov/cgi-bin/getrpt?GAO-03-694.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Katherine V. Schinasi at (202) 512-4841 or schinasik@gao.gov.

What GAO Found

Before transfers are approved, the U.S. government must first determine if classified weapons or technologies are releasable to the requesting country according to the National Disclosure Policy (NDP). The process for determining releasability is complex. A foreign government's request is first reviewed by the military department that owns the requested weapon or technology. In cases where the request exceeds NDP's approved classification level, the military department forwards the request to the National Disclosure Policy Committee for its review. For some sensitive technologies, such as stealth, the case is also forwarded to a special committee for review. The process requires coordination among different U.S. government entities—including DOD, the military departments, the State Department, and the intelligence community—which have varying perspectives. Adding to this complexity, determinations of releasability are governed by broad guidance, which allows latitude in interpreting the unique circumstances of each proposed transfer.

In determining the releasability of advanced weapons and technologies, a number of factors are considered, including how U.S. technological advantage would be affected. To protect U.S. technological advantage, safeguards—such as lowering the capability of a transferred weapon and withholding sensitive information on how the system operates—are considered for proposed transfers. However, the effectiveness of some individual safeguards may be limited. For example, one safeguard—the ability of the United States to deny spare parts to former allies—may not be effective if these countries are able to obtain spare parts through other means. While certain individual safeguards may not be as effective as desired, DOD officials said they consider various safeguards to ensure technological advantage is maintained.

Information needed to assess releasability is not always complete, up-to-date, or available. For example, DOD's centralized National Disclosure Policy System database that was used to make decisions during the last 4 years only contained information for that time period. DOD has recently deployed an upgrade to the system, but has not yet determined its effectiveness. Other information, such as Central Intelligence Agency risk assessments—which provide counterintelligence information and risks involved in releasing advanced weapons to a foreign country—are often outdated or nonexistent. Finally, some intelligence information that could have a direct bearing on whether an advanced weapon or technology should be released is prepared for other purposes and is not provided to decision makers involved in releasability determinations.

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Abbreviations

CIA	Central Intelligence Agency
DOD	Department of Defense
LO/CLO	Low Observable/Counter Low Observable
NDP	National Disclosure Policy
NDPC	National Disclosure Policy Committee

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Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

July 11, 2003

The Honorable Dennis Kucinich
Ranking Minority Member
Subcommittee on National Security, Emerging
Threats, and International Relations
Committee on Government Reform
House of Representatives

Dear Mr. Kucinich:

The heightened visibility of advanced U.S. weapons[1] in military conflicts over the last decade has prompted foreign countries to increasingly seek to purchase such weaponry. In 2001, transfers of weapons from the U.S. government to foreign governments totaled over $12 billion, or 46 percent of the world market share, representing a 15 percent increase in market share since 1997. According to the Department of Defense (DOD), such transfers can help strengthen defense coalitions and enhance interoperability between the United States and its allies, as well as extend production lines and lower unit costs for key weapon systems. Before transfers are approved,[2] the U.S. government must first determine if classified weapons or technologies are releasable to the requesting country according to policies and procedures stated in the National Disclosure Policy (NDP).[3]

The potential loss of U.S. technological advantage has been raised as an issue in recently approved transfers of advanced military weapons and technologies—such as those to the United Arab Emirates and South Korea of military aircraft that were reported by the media to contain superior radar and avionics than systems in DOD's inventory. Therefore, you asked

[1] For this report, advanced weapons primarily refer to the weapons and related technologies that DOD has designated as classified. Some DOD officials acknowledged that unclassified items can also contain advanced technology, such as night vision devices. However, this report does not focus on unclassified items that are subject to U.S. export control restrictions.

[2] Arms transfers can generally be approved through the U.S. government's Foreign Military Sales Program or the U.S. export control system.

[3] NDP governs the releasability of classified military information, including classified weapons.

us how the U.S. government protects technological advantage when considering the transfer of advanced weapons. This report (1) describes the process for determining the releasability of advanced weapons and technologies, (2) describes how U.S. technological advantage is considered and protected through this process, and (3) assesses the types of information needed to make informed decisions on the potential release of advanced weapons.

To conduct our work, we reviewed and analyzed policies and procedures and the relevant directives and guidance governing the potential release of advanced weapons and technologies. To identify safeguards to protect U.S. technological advantage, we reviewed and analyzed records for selected weapon systems approved for release. We also analyzed data on various assessments and information used in the releasability process. We spoke with officials in DOD, the military departments, the Joint Chiefs of Staff, the Department of State, and the intelligence community to understand how the process works, what safeguards are considered to protect U.S. technological advantage, and what information is used to support the decision-making process. Details on our scope and methodology are provided in appendix I.

Results in Brief

The process for determining the releasability of advanced weapons and technologies to foreign countries is complex because it involves several multilevel reviews and coordination among different U.S. government entities with varying perspectives. Each military department has its own process for reviewing foreign governments' requests for transfers. When the request exceeds the classification level approved for release in NDP,[4] the military department forwards the request for an exception to the National Disclosure Policy Committee (NDPC)—which includes members from DOD, the military departments, the State Department, and the intelligence community—for its review. For some sensitive technologies, such as stealth, the request is also forwarded to special committees for review. Further, the releasability process is governed by broad guidance, which allows latitude in interpreting the unique circumstances surrounding each proposed transfer.

[4] NDP provides the classification levels for various countries that may receive certain types of classified military information. If a foreign country's request for advanced weapons exceeds the classification level specified for the country, an exception to the policy is required. In addition, exceptions are required when the requested item is not covered in the NDP or does not comply with NDP criteria.

In determining the releasability of advanced weapons and technologies, NDPC members consider a number of factors, including how U.S. technological advantage would be affected if a weapon or technology were released. To protect U.S. technological advantage, committee members rely on safeguards, which include general safeguards to help accomplish military objectives and specific limitations and conditions that are placed on a transfer. Limitations and conditions generally include lowering the capability of a transferred weapon, withholding sensitive information on how the system operates, or time-phased delivery—that is, timing the contractual delivery date of a weapon system to follow the expected fielding of a more capable weapon. However, the effectiveness of some of these individual safeguards may be limited for various reasons. For example, as we have previously reported, projected time frames for fielding next generation weapons systems are consistently underestimated, resulting in unexpected delays. [5] Such delays could negate the effectiveness of time-phased delivery if the fielding of a more capable weapon or technology does not coincide with the advanced weapon's contractual delivery date to the foreign government. Some DOD officials told us that while the effectiveness of certain individual safeguards may be limited, various safeguards are considered to ensure that technological advantage is maintained.

Finally, release decisions may not be fully informed because information needed to assess the releasability of an advanced weapon or technology, such as information on a foreign government's ability to protect the weapon or technology, is not always complete, up-to-date, or available. For example, DOD's centralized National Disclosure Policy System database, which is intended to improve coordination by capturing information on proposed transfers, contained limited historical data and search capability needed to facilitate decision making. DOD has developed a system upgrade to provide more search capability and more historical data. After several delays, DOD had recently deployed the upgraded system but its effectiveness will not be known for some time. Other information, such as risk assessments and security surveys, that could be useful in making releasability decisions is either outdated or, in some cases, not prepared. In addition, some intelligence information, such as information on illegal transfers of U.S. weapons and technologies, could be germane to the decision-making process. This information is used

[5] *Major Management Challenges and Program Risks*: *Department of Defense*, GAO-03-98 (Washington, D.C.: January 2003).

primarily for nonproliferation purposes and is not provided to decision makers involved in the releasability process.

To ensure that decisions to release advanced weapons and technologies are better informed, we are recommending that DOD take several actions to collect and update information needed for the review process. In commenting on a draft of this report, DOD concurred with several of our recommendations but did not agree with others. Specifically, DOD concurred with our recommendations to evaluate the upgraded system, prioritize risk assessments, and identify additional information for the process. However, DOD did not concur with other recommendations regarding the upgraded system and a plan for security surveys. DOD provided additional information in its comments about recent actions it has taken, which led to modification of some of our recommendations. The Department of State chose not to provide formal written comments.

Background

The Arms Export Control Act, as amended,[6] is the primary statute governing exports of U.S. defense articles and services, including advanced weapons and technologies, to eligible countries through the government-to-government Foreign Military Sales program and sales made directly by U.S. companies.[7] The act also includes a statement of conventional arms transfer policy, which provides that sales of defense items be consistent with U.S. national security and foreign policy interests. The Conventional Arms Transfer Policy, a Presidential Decision Directive last updated in 1995, provides policy for weapons transfers.[8] In addition to stipulating that transfer decisions be made on a case-by-case basis, the policy has several key goals that must be considered when transferring weapons:

- Ensure U.S. military forces maintain technological advantage over their adversaries.

[6] 22 U.S.C. § 2751 et seq.

[7] According to DOD Directive 2040.2, International Transfers of Technology, Goods, Services, and Munitions, dated January 1984, direct commercial and government sales are two methods for transferring weapons and military technology to foreign governments. Other methods include licensing and data exchange agreements, codevelopment and coproduction agreements, and international meetings and symposia on advanced technology.

[8] The Conventional Arms Transfer Policy is classified; however, details of the policy were made publicly available through White House Fact Sheets in February 1995.

- Help allies and friends deter or defend against aggression, while promoting interoperability with U.S. forces when combined operations are required.
- Promote stability in regions critical to U.S. interests, while preventing the proliferation of weapons of mass destruction and their missile delivery systems.
- Promote peaceful conflict resolution and arms control, human rights, democratization, and other U.S. foreign policy objectives.
- Enhance the ability of the U.S. defense industrial base to meet U.S. defense requirements and maintain long-term military technological superiority at lower costs.

While the Conventional Arms Transfer Policy generally covers all arms transfers, NDP[9] specifically governs the releasability of classified military information, including classified weapons and military technologies.[10] NDP establishes a framework for policy decisions on proposed transfers to foreign recipients and is key in governing the release of an advanced weapon or technology. These decisions are made before weapons or technologies are approved for transfer. As implemented by DOD Directive, this policy specifies that releasability decisions must satisfy five criteria.[11] For example, the proposed transfer must be consistent with U.S. military and security objectives and be protected by the foreign recipient in substantially the same manner as the United States. The DOD Directive also requires department officials to enter NDP case data, including releasability decisions, into a centralized database to facilitate the coordination and review of potential transfers of weapons.[12]

In November 2002, the White House announced that it had begun a comprehensive assessment of the effectiveness of U.S. defense trade policies to identify changes needed to ensure that these policies continue to support U.S. national security and foreign policy goals. It also aims to assess how U.S. technological advantage can be maintained. The

[9] NDP was established by National Security Decision Memorandum 119, Disclosure of Classified Military Information to Foreign Governments and International Organizations, July 20, 1971, as approved by the President. It was amended by a White House memorandum dated June 6, 1978.

[10] There are eight categories of classified military information, including military materiel and munitions, which covers advanced weapons and technologies; intelligence information; and research and development information.

[11] DOD Directive 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations, June 16, 1992, enclosure 3.

[12] DOD Directive 5230.11, section 4.7.

assessment is expected to cover such topics as the Arms Export Control Act and the military departments' technology release policy, as well as a determination of the effectiveness of the Defense Trade Security Initiatives.[13] The assessment is also expected to cover issues related to the NDP process.

Process to Determine the Releasability of Advanced Weapons and Technologies Is Inherently Complex

The process governing the release of advanced weapons and technologies is inherently complex because it involves multiple, multilevel reviews by various U.S. government entities and individuals with varying perspectives. A country's request for an advanced system initially is sent to the military department that is responsible for—or "owns" the weapon or technology, which then coordinates with various functional units to arrive at a decision on whether to fulfill the request. Depending on the circumstances of the request and the outcome of this initial review, the request may be submitted to an interagency committee and other special committees for additional review. Further, because the reviewers represent different agencies, they bring varying perspectives to the process and must reconcile differences to reach a unanimous decision on each request. Finally, the guidance governing the process is broad and applied on a case-by-case basis, allowing decision makers to use judgment and interpretation when considering each foreign country's request for the release of an advanced weapon or technology.

Multiple Reviews Are Conducted

A foreign government's request for the transfer of an advanced weapon or technology is directed to the military department that is responsible for the particular weapon or technology. Each military department has its own review process for determining whether the weapon or technology should be released (see fig. 1). To develop a position, the military department receiving the request coordinates with and obtains input from military experts[14] in various offices and divisions within those offices. For example, we were told that the Air Force coordinates a proposed transfer of an Air Force fighter aircraft to a foreign government with subject matter experts in functional offices, such as acquisition, plans, operations, and weapons systems division. These experts, in turn, may consult with other

[13] For a discussion of the initiatives see *Defense Trade: Analysis of Support for Recent Initiatives*, GAO/NSIAD-00-191 (Washington, D.C.: Aug. 31, 2000.)

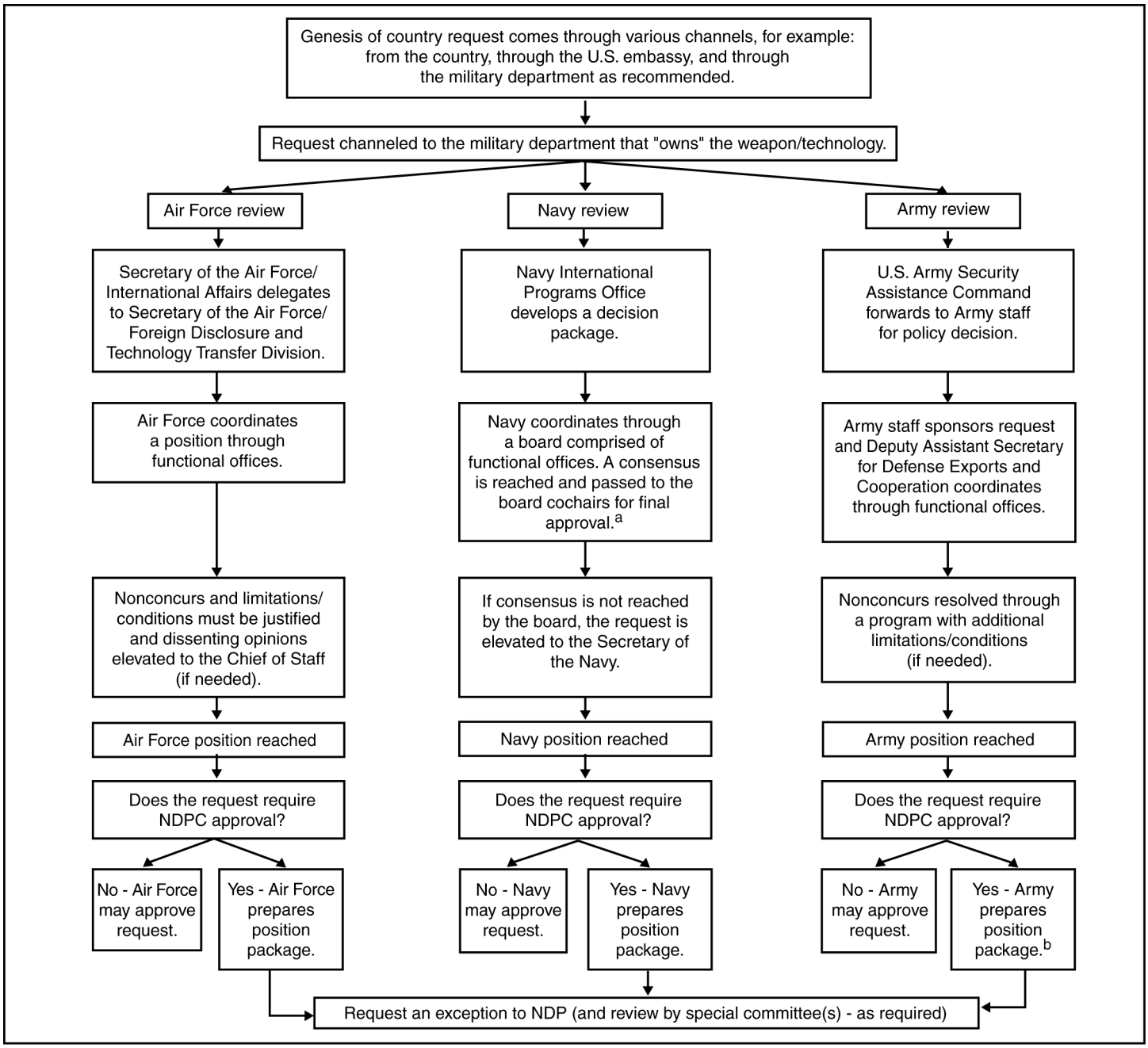
[14] Military experts are officials from various functional units such as acquisition, plans, and weapons systems division that provide technical input on proposed transfers.

experts within their divisions. For instance, the weapons systems division may coordinate with its electronic warfare staff, its radar staff, or both to obtain input.

Military department reviews can result in one of three outcomes: concurrence, concurrence with limitations and conditions, or nonconcurrence. If a consensus to approve a request cannot be reached, the request is elevated within the military department for a final decision. If the requested item (1) is not covered in NDP, (2) exceeds the NDP classification level specified for a particular foreign country, or (3) does not comply with NDP criteria, the military department may seek an exception to NDP from the National Disclosure Policy Committee, an interagency review forum.[15] Timelines for military departments' reviews of requests can vary. For example, Army officials stated that some cases can be handled quickly while others may require a major investment of time and resources.

[15] National Security Decision Memorandum 119 gives implementing responsibility for controlling the release of classified military information to the Secretaries of State and Defense, consulting as appropriate with other agency heads, including the Director of Central Intelligence.

Figure 1: U.S. Military Departments' Review Processes for Determining the Releasability of Proposed Advanced Weapons and Technologies Transfers



Source: GAO based on discussions with and documents from military department officials.

[a]The Navy board cochairs are the Assistant Secretary of the Navy for Research, Development, and Acquisition and the Vice Chief of Naval Operations or the Assistant Commandant of the Marine Corps (for issues specific to the Marine Corps).

[b]The Deputy Chief of Staff for Intelligence finalizes the position package and serves as the Army's representative on NDPC.

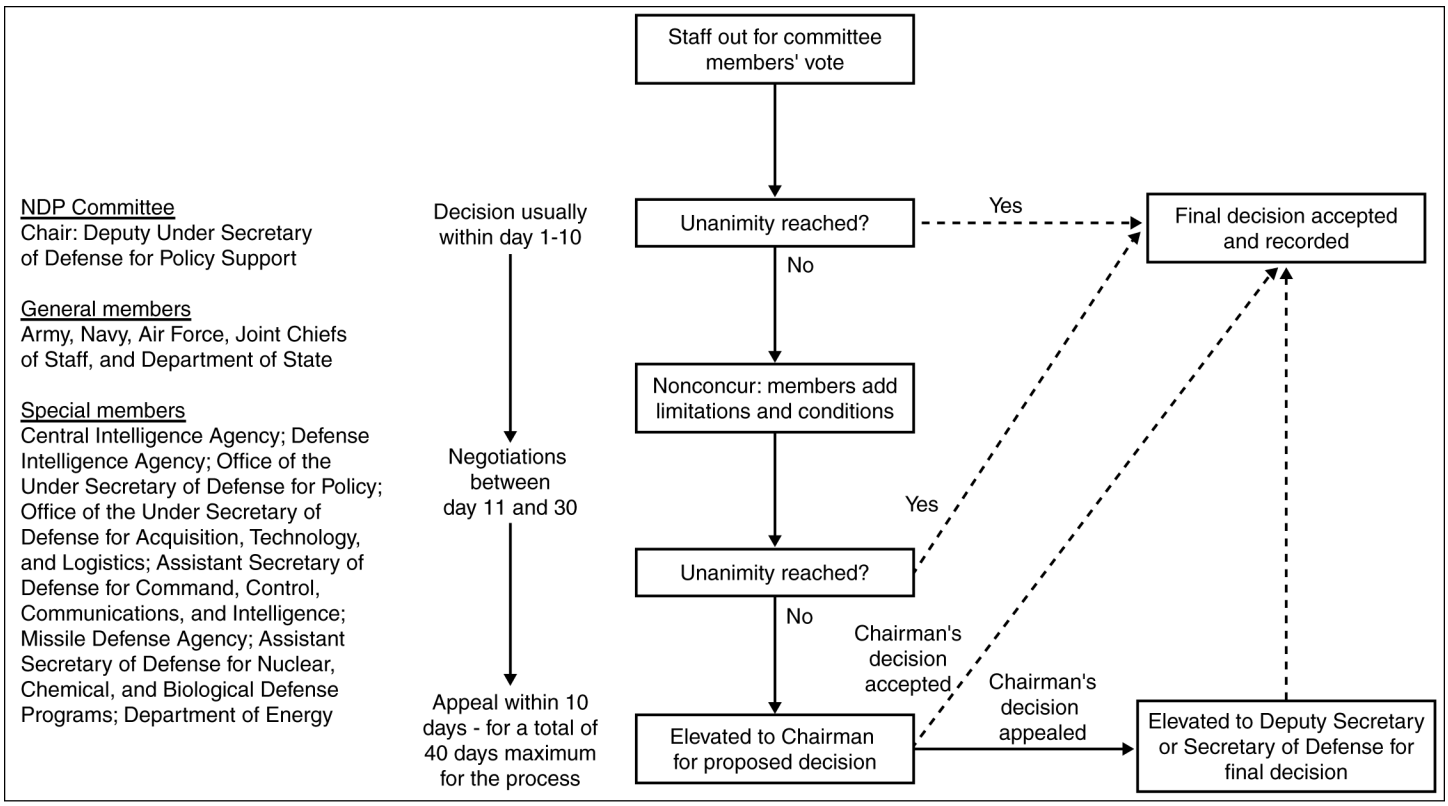
When NDPC receives a request for an exception, the Executive Secretariat distributes the request to committee members and seeks a unanimous vote within 10 days (see fig. 2). Each committee member coordinates a position with various experts. For example, the Joint Staff sends the request to the Combatant Command that has responsibility for the country requesting the advanced weapon or technology. The Combatant Command, in turn, coordinates the request with various units within the Command, which may include the Scientific Advisor, plans and operations division, weapons systems division, and intelligence division to provide input on such issues as the impact of the transfer on the region. These units may further coordinate with other offices within their units. A final coordinated Command position is then provided to the Joint Staff NDPC member.

If any NDPC member votes not to approve a request for an exception, there is a negotiation period for no more than 20 days. During this time, the member that has requested the exception may propose or accept placing different or additional conditions on the request to gain unanimity. If agreement cannot be reached, the request is elevated to the Chairman for a decision. Members have 10 days to appeal the Chairman's decision or it is accepted. If a committee member appeals the decision, the request is elevated to the Deputy Secretary or Secretary of Defense. However, of the 330 exceptions reviewed over the last 4 years, only 1 had been appealed and 2 denied.[16] The appeal and denials covered requests for weapons and technologies and intelligence information. In addition, 5 requests for exceptions related to weapons and technologies were withdrawn before a decision was reached.[17] According to DOD officials, most exceptions are approved with limitations and conditions.

[16] The majority of these exceptions cover requests for weapons and technologies. The remainder includes other categories of classified military information covered by NDP.

[17] According to DOD officials, requests are withdrawn when additional information is needed or concerns cannot be addressed during the review process.

Figure 2: NDPC Review Process for Considering Exceptions to NDP



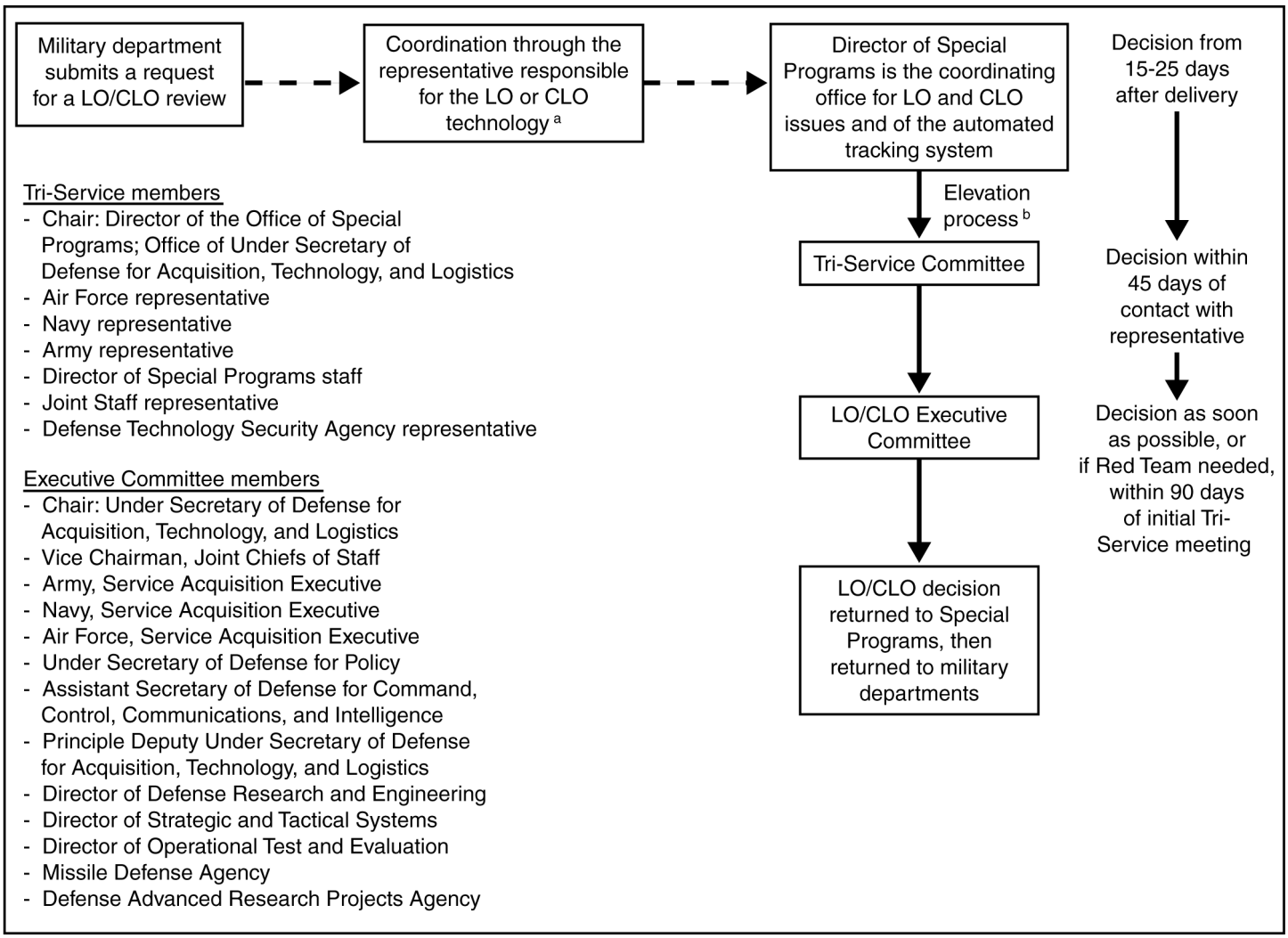
Source: GAO based on discussions with and documents from the Office of Secretary of Defense for Policy Support.

In addition to the military departments' reviews and the NDPC exception process, special committee processes are set up to review requests for sensitive technologies that may be included in a proposed transfer. For example, if a proposed transfer includes a stealth component, the military department submits the case to the Director of Special Programs within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics who manages low observable/counter low observable (LO/CLO) issues (see fig. 3). Precedent decisions, which are contained in a database, are used to determine the releasability of the technology. Based on the level of sensitivity of the technology involved, the case may be elevated to the Tri-Service Committee[18] for further review. Some

[18] The Tri-Service Committee consists of colonel-level officers that meet weekly to discuss any sensitive cases that need to be elevated to the LO/CLO Executive Committee.

controversial or extraordinarily complex cases may require exceptions to precedent LO/CLO policy and further elevation to the LO/CLO Executive Committee for final decision. If needed, the Tri-Service Committee can charter a "Red Team," which, according to DOD officials, is composed of subject matter experts, including those from industry, academia, and the military department laboratories. The Red Team is convened to assess the risks associated with the proposed transfer. The Tri-Service Committee and the Executive Committee make their decision based on their assessment of the information provided by the military department that is responsible for the technology and the pros and cons presented by the Red Team, if convened.

Figure 3: Example of a Special Committee Process: Low Observable/Counter Low Observable



Source: GAO based on discussions with and documents from the Office of Special Programs, Under Secretary of Defense for Acquisition, Technology, and Logistics.

[a]Low Observable (LO) cases are referred to the Air Force; Counter Low Observable (CLO) and ship LO cases are referred to the Navy; and ground vehicle cases are referred to the Army.

[b]DOD Instruction S-5230.28, Low Observable, and Counter Low Observable Programs, October 2, 2000, governs the LO/CLO process and determines which cases to elevate.

Varying Perspectives and Broad Guidance Governing Potential Transfers Add to the Complexity of the Review Process

The multilayered reviews involved in the process for determining the releasability of an advanced weapon or technology can be particularly complex because individual entities and decision makers have varying perspectives. For example, the combatant commanders' position may concentrate on such issues as the effects the proposed transfer could have on coalition warfare, political-military relations in a region, and their plans and operations. The State Department, concerned with U.S. foreign policy goals, tends to focus on issues such as the proposed transfer's potential effect on the stability of the region of the requesting country. Others may deliberate the benefits and risks of the proposed transfer. In addition, we were told that resource issues, including turnover of officials involved in the releasability process, can affect the reviews. As we previously reported, military personnel rotate, on average, every 2 years.[19]

The guidance governing releasability adds further complexity to the review process because it is broad and implemented on a case-by-case basis, allowing for judgment and interpretation of the unique circumstances surrounding each transfer. Specifically, decisions on the release of advanced weapons or technologies must satisfy five broad NDP criteria that are subject to interpretation. (See app. II for a discussion of all five criteria and examples of information to be considered for each.) For example, one criterion decision makers must consider is whether the proposed transfer is consistent with U.S. military and security objectives. In examining this criterion, decision makers must address multiple factors, including how technological advantage would be protected if the weapon or technology were sold or transferred. According to NDPC members, the broad criteria allow for a certain level of flexibility that is needed in determining whether an advanced weapon should be released to a foreign country. Some NDPC members further pointed out that this flexibility is especially critical in the current foreign policy environment in which many different countries are working with the United States in the war on terrorism.

[19] *Military Personnel: Longer Time Between Moves Related to Higher Satisfaction and Retention*, GAO-01-841 (Washington, D.C.: Aug. 3, 2001).

Technological Advantage and Various Safeguards Are Considered When Determining Releasability

One criterion NDPC must consider when determining the releasability of advanced weapons and technologies is that the transfer must be consistent with U.S. military and security objectives. In satisfying this criterion, military experts involved in the NDP coordination and review process told us they consider the effect the transfer could have on U.S. technological advantage, along with various safeguards—both case-specific and general—to protect this advantage.[20] The effectiveness of individual safeguards may be limited; however, a variety of safeguards may be considered.

In considering technological advantage, military experts said that they first review relevant military department documents and policies to determine if the requested weapon or technology exceeds the technology thresholds specified for the country making the request. If the requested weapon or technology exceeds this threshold, the experts may consult and coordinate with military engineers, the contractor that manufactures the weapon or technology, the system program office, and other operational experts to incorporate appropriate safeguards—typically in the form of case-specific limitations and conditions—to protect U.S. technological advantage. These include (1) sanitized or export variants, where the released weapon or technology has a lower operational capability or less advanced technology than what the United States has in its inventory; (2) anti-tamper measures, where features are built into the weapon to prevent reverse engineering such as code encryption, and protective coatings on internal weapon components; (3) time-phased release, where the advanced weapon or technology is not released until the United States has fielded a better capability; and (4) withheld information and data, where the transfer does not include information such as software source codes. Military experts said that program offices, in some cases, conduct verification tests and the Defense Contract Management Agency works with contractors to ensure that limitations and conditions are implemented before the weapon is transferred.

Military department officials told us that in addition to case-specific limitations and conditions, they also consider other general safeguards to preserve U.S. military superiority. These include (1) superior U.S. tactics and training, where military tactics for maneuvers and operations may not be shared with other nations; (2) control of system spare parts, where the

[20] U.S. military superiority is also addressed when NDP officials assess criteria on U.S. military and security objectives.

United States can stop providing spare parts to former allies; and (3) countermeasure awareness, where the United States has the ability to develop measures to defeat the released system because of its knowledge of how the system functions.

However, the effectiveness of certain individual safeguards used to protect technological advantage may be limited for various reasons. For example, a time-phased release may not be effective if the fielding of a more capable weapon or technology is delayed and does not coincide with the contractual delivery date of the weapon to be released to the foreign government. As we reported in January 2003, schedule delays have been pervasive in certain major acquisition programs.[21] The Air Force's F/A-22, the next generation fighter aircraft, for example, was initially expected to be fielded in September 1995. As development proceeded, the estimated fielding date was pushed out 8 years to September 2003. According to a current estimate, the F/A-22 projected fielding date has slipped another 2 years to December 2005. In addition, factors outside of U.S. control can diminish the effectiveness of certain individual safeguards. For example, the United States may stop providing spare parts to former allies, but these countries may obtain needed parts through other means, such as "cannibalizing" parts from other weapons or obtaining parts from other countries at a higher cost through the "grey market." Some DOD officials told us that while certain individual safeguards may not be as effective as desired, they consider various safeguards for each proposed transfer to ensure technological advantage is maintained.

More Complete, Current, or Available Information Would Better Support Determinations of Releasability

In addition to considering technological advantage when making releasability decisions, NDPC considers other criteria such as a foreign government's capability to protect U.S. classified military information, including weapons or technologies. Information such as Central Intelligence Agency (CIA) risk assessments and NDPC security surveys can be used to validate a country's capability to provide such protection. DOD's centralized database contains some of this information, as well as historical case data; however, it is not always complete, up-to-date, or easy to access. In addition, some information such as end-use monitoring reports, which may identify countries that have not protected U.S. military information, is not provided to NDPC.

[21] GAO-03-98.

DOD's Centralized NDP Database Was Not Complete and the Effectiveness of the Upgrade Is Unknown

DOD requires that NDP exception cases be recorded in a centralized automated system to assist committee members in reviewing, coordinating, and reaching decisions on proposals to release classified military information.[22] This centralized system contains several databases, including the National Disclosure Policy System, which tracks and assigns exception cases, records releasability decisions, and contains historical data on exceptions.[23] Historical data are important for identifying weapons or technologies that have been released to the requesting country, as well as its neighboring countries. However, the National Disclosure Policy System that was used to make decisions during the last 4 years contained data only for decisions made during that time period. It did not contain data on exceptions that were decided in prior years. In addition, it did not allow users to conduct full text searches or to search for specific data elements, such as exceptions by country, weapon system, or date.[24]

Because of limited historical data in the National Disclosure Policy System, NDPC members told us that they could not always use it to analyze precedent cases. To obtain historical data and other information, the military departments have relied on their own separate databases containing information on their departments' prior requests for transfers. Unlike the military departments, other NDPC members do not have their own databases. For example, the State Department has relied on manual reviews of paper files and discussions with country experts or other officials with knowledge of prior cases—assuming the files still exist and the experts and officials still work at the State Department. Because of limitations in the National Disclosure Policy System, the NDPC Executive Secretariat has also relied on manual file reviews to identify information

[22] DOD Directive 5230.11, last updated in 1992, requires the use of the Foreign Disclosure and Technical Information System, now called the Security Policy Automation Network.

[23] Other databases include the Foreign Visit System, which contains requests by foreign governments to visit U.S. government facilities, and the Classified Military Information database, which contains decisions made by disclosure officials on classified information or material. However, the Classified Military Information database is not kept up-to-date.

[24] Full text search capability will allow users to enter keywords and retrieve documents on the system containing those words, thus providing a wider search capability.

necessary for preparing its annual NDP report to the National Security Council.[25]

To add more capability to the National Disclosure Policy System, DOD's Policy Automation Directorate developed an upgrade that is expected to provide historical data from 1960 to the present and enhance data query ability. According to NDPC officials, the upgrade has taken over 3 years to develop because of other priorities, technical issues, and limited input requested from users on the requirements and improvements for the upgraded database. In addition, deployment of the upgraded system was delayed several months because the upgrade had been experiencing technical problems. For example, NDP exception cases have been mislabeled as "current" when they were 2 years old, some cases were missing from the system, and certain queries did not always provide accurate results. While the upgrade has recently been deployed, the NDPC Executive Secretariat stated that it may take about 3 to 4 months to assess its effectiveness.

CIA Risk Assessments and NDPC Security Surveys Are Often Outdated

As part of the NDP process, the DOD Directive requires[26] decision makers to determine whether foreign recipients of classified military information are capable of providing substantially the same degree of security protection given to it by the United States.[27] In addition to historical precedence, decision makers can rely on CIA risk assessments and NDPC security surveys to make these determinations.[28] The National Disclosure Policy System includes information such as security surveys, but it does not include CIA risk assessments. CIA risk assessments provide counterintelligence risk information, including the assessment of risks

[25] This annual report discusses the effectiveness of NDP and exceptions granted to the policy. For example, it enumerates disclosures of classified military information to foreign recipients that were known not to possess the capability to protect classified military information in a manner comparable to the United States.

[26] DOD Directive 5230.11. This requirement is also specified in U.S.C. section 2753 (a)(3) and the National Security Decision Memorandum 119.

[27] DOD Directive 5230.11 also requires that decision makers determine the foreign government's intent for protecting classified military information. To establish this intent, the U.S. government enters into a General Security of Information Agreement or a similar security arrangement with the foreign government.

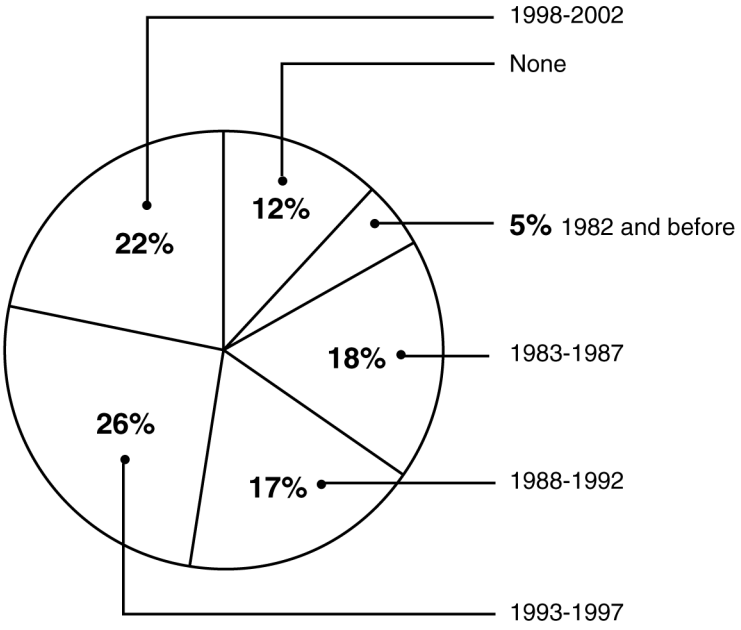
[28] DOD Directive 5230.11 also indicates that embassy security assessments can be used to make these determinations. However, NDPC officials we spoke with said that these assessments have not been used because they are often not prepared.

involved in releasing classified material to a foreign government. NDPC security surveys consist of reviews of the foreign government's security laws, regulations, and procedures for protecting classified information. These reviews include making certain that recipients (1) have procedures to provide clearances to personnel, restrict access to properly cleared individuals, and report promptly and fully to the United States any known or suspected compromises and (2) agree not to reveal to a third party any U.S. classified military information without prior consent of the U.S. government.

Our analysis shows that of the approximately 70 percent of countries covered by NDP that had exceptions approved for advanced weapons and technologies between 1997 and 2002, most have outdated or no CIA risk assessments.[29] Specifically, of these, 66 percent were conducted more than 5 years ago and 12 percent have not been completed (see fig. 4). And while 22 percent of CIA risk assessments are currently up-to-date, our analysis shows that an overwhelming majority of these risk assessments will be out of date by the end of 2003.

[29] Based on discussions with NDPC officials, we define outdated assessments to be those that are 5 years or older.

Figure 4: Dates of CIA Risk Assessments for Countries with Exceptions Approved between 1997 and 2002

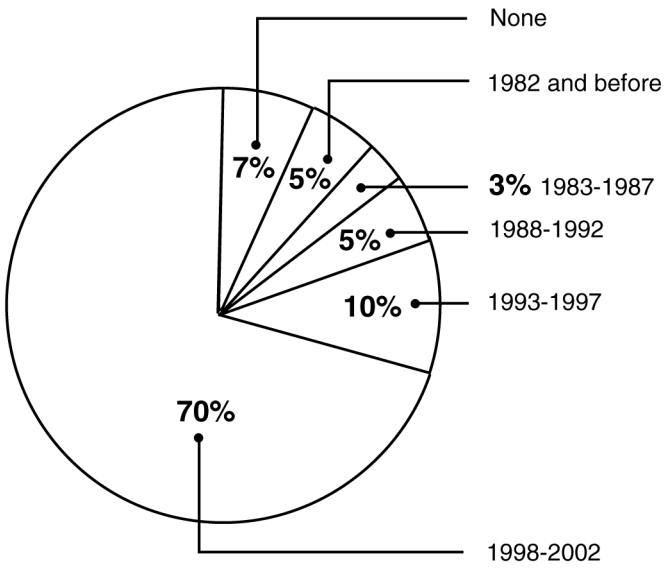


Source: GAO's analysis of DOD data.

According to the NDPC Executive Secretariat, CIA officials have been unable to respond to some requests to update risk assessments because of resource reductions and other agency priorities. Responding to a CIA request, the Secretariat prioritized the top four or five assessments that were needed in 1999. However, NDPC would like to have all assessments updated every 2 years.

In addition, while NDPC has set a goal to perform security surveys every 5 years, some of them are outdated while others were not conducted. Specifically, 23 percent of these surveys are 5 years or older and 7 percent have not been completed for countries that had exceptions approved for advanced weapons and technologies between 1997 and 2002, (see fig. 5). And while 70 percent of security surveys are currently up-to-date, our analysis shows that over half of these surveys will be out of date by the end of 2003.

Figure 5: Dates of NDPC Security Surveys for Countries with Exceptions Approved between 1997 and 2002



Source: GAO's analysis of DOD data.

Some NDPC security surveys have not been completed in a timely manner because of lack of foreign government cooperation, and other unforeseen circumstances, such as country unrest and limited resources. According to NDPC officials, the scheduling of NDPC security surveys is a time-consuming effort performed by one staff member who has other responsibilities. In addition, security surveys are performed as a collateral duty by the Executive Secretariat. Depending on their availability, committee members also volunteer to assist the Executive Secretariat in conducting the surveys.

NDPC officials also noted that in some cases, assessments and surveys may not be needed because the system or technology requested is not significant and the country makes infrequent requests. For example, a country may request one weapon requiring an exception in a 20-year time frame, negating the need for expending resources to regularly update or conduct a CIA risk assessment or security survey for that country.

However, NDPC members told us that the CIA risk assessments and the NDPC security surveys provide different information that is often important for making NDPC decisions. CIA risk assessments are particularly important for exception cases because they provide an

evaluation of a country's security forces and the risk environment of a country that will potentially receive U.S. advanced weapon systems. However, because the assessments are outdated, they likely do not reflect the current conditions of the countries and therefore cannot be relied on for deciding exception cases. Further, the upgraded National Disclosure Policy System does not include CIA risk assessments—which NDPC members have said would be useful to have in the new upgraded system. According to some NDPC members, having outdated or no NDPC security surveys may hamper efforts to determine whether a country could protect advanced weapons and technologies from compromise. Specifically, without these surveys, NDPC members may not be able to identify weaknesses in the country's current systems or areas that need improvement. In addition, the NDPC Executive Secretariat said, in some cases, when security surveys were not prepared, decisions were made to grant exceptions because benefits were deemed to outweigh risks.

Some Intelligence and Other Information Not Currently Provided to NDP Decision Makers

Once weapons have been transferred to other countries, the State Department and the intelligence community track information on their use and disposition. For example, a State Department-chaired committee collects intelligence information on the illegal transfers of weapons to third parties and transfers of non-U.S. weapons among foreign countries. However, according to some NDPC members, this information is used by the State Department primarily for nonproliferation purposes and is not provided to NDPC. This information could assist NDPC members in determining the releasability of a weapon or technology to a foreign country because it indicates how well the country has protected previously transferred advanced weapons and technologies. Further, this information can provide a more accurate assessment of the types of weapons the country receiving the illegal transfers has in its arsenal.

In addition, information from DOD's recently initiated end-use monitoring program[30] could also be useful in making releasability decisions.[31] The program will include monitoring of sensitive defense articles, services, and

[30] End-use monitoring refers to the procedures used to verify that foreign governments are using and controlling U.S. defense articles and services in accordance with U.S. terms and conditions of the transfer. Verification measures range from contacting the appropriate foreign government representative for information to physical inspection by U.S. personnel.

[31] *Foreign Military Sales: Changes Needed to Correct Weaknesses in End-Use Monitoring Program*, GAO/NSIAD-00-208 (Washington, D.C.: Aug. 24, 2000).

technologies that have special conditions placed on them when transferred through the Foreign Military Sales program. However, DOD has not yet determined the resources needed to conduct the end-use monitoring requirements outlined in the program's policy. The end-use monitoring program manager is expected to provide reports on end-use violations to NDPC. Committee officials said that this information would be useful because it would indicate how well a country is protecting the weapons and technologies that have been transferred through the Foreign Military Sales program.

Finally, the intelligence community sometimes obtains derogatory information on countries that may be of interest to NDPC in making determinations of releasability. For example, NDPC officials said that in a recent instance an intelligence agency discovered that a country requesting the release of an advanced weapon system did not have the security capabilities to protect U.S. classified military information, but did not provide this information to NDPC during the review process. These officials stated that while such cases are not typical, this type of information would have been useful in evaluating whether the country provided the same degree of protection that would be provided by the United States—a key criterion governing NDP decisions.

Conclusions

The U.S. government has invested hundreds of billions of dollars in the research and development of advanced weapons and technologies. To protect this investment, it is important for decision makers to be fully informed of the benefits and risks associated with the release of such weaponry. The process for determining the releasability of advanced weapons and technologies is necessarily complex because the integrity of the process relies on multiple layers of decision makers who consider numerous factors in assessing the risks involved if a weapon is compromised or ends up in unfriendly hands. To minimize the risks, it is critical that the decision makers have ready access to reliable and complete information on such factors as the recipient country's ability to protect the advanced weapon or technology. Yet the process does not always include a systematic sharing of up-to-date information with NDPC members. Given the turnover of military officials involved in the NDPC process, it is especially critical that complete and readily accessible data from the National Disclosure Policy System database, up-to-date CIA assessments and NDPC security surveys, and relevant intelligence information from other agencies are available to make fully informed decisions.

Recommendations for Executive Actions

To ensure that NDPC members have complete and accurate information in a centralized database that facilitates coordination and decision making on the potential release of advanced weapons and technologies, we are recommending that the Secretary of Defense direct the NDPC Executive Secretariat to

- evaluate the accuracy and effectiveness of the upgraded National Disclosure Policy System,
- determine with NDPC members the additional capabilities, such as inclusion of CIA risk assessments, needed for the upgraded National Disclosure Policy System, and
- work with the DOD Policy Automation Directorate to address user comments and technical problems related to the upgraded system as they arise.

To ensure that useful and timely information is available for making informed release decisions, we are recommending that the Secretary of Defense direct the NDPC Executive Secretariat to

- work with CIA to prioritize risk assessments that need to be updated, establish a schedule for performing these assessments, and systematically distribute the assessments to NDPC members through the automated system or other means;
- develop a plan to be used as a business case for determining the appropriate level of resources required to conduct needed security surveys or if a survey cannot be conducted, ensure that an alternative analysis of or information on the foreign government's security capability is made available to NDPC members; and
- identify what additional information, such as end-use monitoring reports, would be useful to NDPC members, and establish a mechanism for requesting this information from appropriate sources, and systematically distribute it to NDPC members.

Agency Comments and Our Evaluation

In written comments on a draft of this report, DOD agreed with a number of our findings and recommendations but did not agree with others. Specifically, DOD concurred with our recommendations to evaluate the upgraded National Disclosure Policy System, prioritize CIA risk assessments that need to be updated or conducted, and identify additional information needed to facilitate decision making. DOD did not concur with our recommendations to investigate further the capabilities of the upgraded National Disclosure Policy System or establish a firm schedule for addressing technical problems with the upgrade. DOD also did not

concur with our recommendation to develop a plan for NDPC security surveys. Further, DOD stated that our depiction of the NDP process appears to mislead the reader about the information available to committee members when making decisions.

At the time of our review, DOD had taken 3 years to develop an upgraded system primarily because of limited input requested from users, which resulted in a major redesign of the system. In addition, deployment of the upgrade was delayed a number of times because of technical problems. This system was deployed after our review was completed, and we have since modified our recommendations to reflect the current situation. In commenting on our original recommendations, DOD stated that improvements to the upgrade cannot be identified at this time. However, in our discussions with NDPC members, they have already identified capabilities they would like to have in the upgrade, such as inclusion of CIA risk assessments. Additionally, DOD stated that NDPC personnel will identify problems with the system and bring them to the attention of the software developers. We believe all users of the system, including committee members and not just NDPC personnel, should participate in the identification of technical problems to ensure that the system is meeting user needs. Further, DOD said that developers have quickly fixed minor software problems. We, therefore, are no longer recommending that a firm schedule be established but rather that technical problems be addressed as they arise.

With regard to our recommendation on a plan for NDPC security surveys, DOD stated that it already develops a schedule for completion of such surveys. Implementation of the schedule is largely dependent on committee members volunteering to conduct the surveys. However, the plan we envisioned in our recommendation would include not only a schedule but also information such as the reason each security survey is needed and the level of resources necessary to schedule and conduct the survey. We believe the plan would provide an opportunity to develop a business case to determine if dedicated resources are needed to complete security surveys on a prioritized basis, instead of largely relying on committee volunteers. We have modified our recommendation to clarify its intent.

We disagree that our report misleads the reader about the sufficiency of the information available to make decisions. Committee members we spoke with stated that information, such as more timely CIA risk assessments and security surveys, would allow them to make more informed decisions. Our recommendations are intended to enhance the

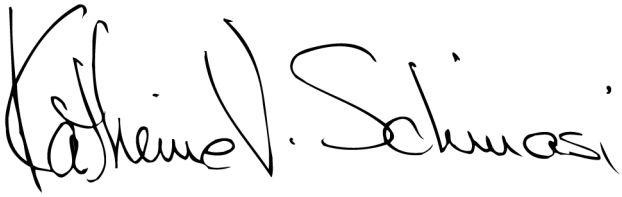
information needed for the decision making process. DOD's letter and our detailed evaluation of its comments are reprinted in appendix III.

The Department of State did not provide formal written comments; however, a senior State official said that the report was informative.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of this report until 30 days after its issuance. At that time, we will send copies of this report to the Chairmen and Ranking Minority Members of the House Committees on Government Reform, on International Relations, and on Armed Services and Senate Committees on Governmental Affairs, on Foreign Relations, and on Armed Services. We will also send copies to the Secretaries of Defense and State and the Director, Office of Management and Budget. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov.

Please contact me at (202) 512-4841 or Anne-Marie Lasowski at (202) 512-4146 if you or your staff have any questions concerning this report. Major contributors to this report are listed in appendix IV.

Sincerely yours,



Katherine V. Schinasi
Director, Acquisition and Sourcing Management

Appendix I: Scope and Methodology

To ascertain the process for determining the releasability of an advanced weapon or technology, we conducted a literature search, reviewed the related law and regulations, and analyzed policy, directives, and guidance governing the process. We interviewed officials in the Departments of Defense and State, the military departments, the Joint Chiefs of Staff, three Combatant Commands, and the intelligence community to understand how the interagency committee process works for reviewing exceptions to the National Disclosure Policy (NDP). We also obtained briefings on special committee processes such as the Low Observable/Counter Low Observable Executive Committee process. We analyzed military department policies and procedures for reviewing requests for the transfer of weapons and technologies and discussed the review and coordination processes with pertinent military officials.

To determine if U.S. technological advantage is considered and protected in the review process, we reviewed selected weapons transfers records, including pertinent initial country requests; military department, Joint Staff, and other National Disclosure Policy Committee (NDPC) members' input and positions on the requests; and limitations and conditions included in the final committee positions. We analyzed the types of limitations and conditions used to protect technological advantage and discussed these and their effectiveness with military department experts, as well as Joint Staff officials. Through discussions with these officials, we also identified other safeguards that committee members consider to preserve U.S. military advantage. We reviewed GAO and Department of Defense (DOD) reports related to these various safeguards and specific limitations and conditions.

To identify and assess the types of information used in the process, we reviewed the NDP and DOD's and the military departments' releasability regulations. We interviewed officials in the Executive Secretariat for the NDPC, the military departments, Joint Staff, and State Department to obtain their perspectives on information required for NDP exception decisions. We also obtained a briefing and demonstration on DOD's centralized National Disclosure Policy System database and its upgrade and discussed the capability of this system with various users. We analyzed data on Central Intelligence Agency risk assessments and NDPC security surveys performed over the last 25 years. We determined the number of assessments and surveys that were performed more than 5 years ago or were not completed for countries that had received exceptions to NDP for potential weapons transfers during 1997 through 2002. We identified additional information that may be useful to the

National Disclosure Policy Committee and discussed this with committee members.

We performed our review from June 2002 through May 2003 in accordance with generally accepted government auditing standards.

Appendix II: National Disclosure Policy Criteria

The National Disclosure Policy Committee (NDPC) considers five criteria when determining the releasability of classified military information, including weapons and technologies. These criteria are broad and are implemented on a case-by-case basis. Table 1 provides the criteria and the types of information that decision makers consider when assessing each criterion.

Table 1: NDP Criteria and Examples of Information to Consider for Each Criterion

NDP criterion	Examples
Proposed transfer must be consistent with U.S. foreign policy and national security objectives.	Officials must reference presidential, National Security Council, or other high-level policy decisions to justify how this criterion would be met. These officials can consider how: • The prospective recipient government cooperates with the United States in pursuit of foreign policy and political objectives. • A specific U.S. national, diplomatic, or military purpose will be served. • The proposed release will be used in support of mutual defense objectives.
Proposed transfer must be consistent with U.S. military and security objectives.	Officials must explain how the transfer, if compromised, will not constitute an unreasonable risk to U.S. military technology and operational capabilities, regardless of the intended recipient. If officials determine that risks outweigh gains, alternatives are considered to minimize or prevent damage to U.S. technological advantage. They consider such issues as: • The type of technology involved. • The impact of possible compromise. • The susceptibility of the item to reverse engineering. • The capability of the foreign recipient to reverse engineer the item. • The foreign availability of the technology or equipment involved, as well as other governments to whom similar equipment or technology has been released.
Proposed transfer must result in benefits to the U.S. equivalent to the value of the transfer.	Officials must consider contributions to U.S. political, military, or economic objectives. They consider such contributions as: • Standardization and interoperability of equipment or increased defensive capability for an ally. • Access to bases and ports owned by the recipient nation. • Positive impacts on the U.S. industrial and technology bases when the recipient nation funds research and development of an advanced weapon or technology that the United States can also use. • A foreign government's support or participation in a specified military objective that is advantageous to the United States.
Proposed transfer must depend on the foreign recipient providing the items substantially the same degree of protection as provided by the United States.	Officials must evaluate the proposed recipient government's intent and capability to protect U.S. classified military information. To establish a recipient government's intent, the U.S. government enters into a General Security of Information Agreement or a similar security arrangement with the recipient government. To validate the capability of the recipient government to provide the necessary degree of protection, DOD relies on • embassy security assessments, • historical precedence, • Central Intelligence Agency risk assessments, and/or • NDPC security survey reports. In the absence of an NDPC security survey, efforts shall be made to obtain, through intelligence channels, a counterintelligence risk assessment or security analysis of the foreign government's security capabilities.

NDP criterion	Examples
Proposed transfer must be limited solely to information needed to fulfill the purpose for which the transfer is made.	Officials must limit the transfer of the weapon to information for operating and maintaining that weapon, as well as for training on the equipment. However, other information, such as research and development data and production data, would not be provided.

Source: DOD Directive 5230.11, Office of the Deputy Under Secretary of Defense for Policy Support International Programs Security Handbook, and discussions with NDPC members.

Appendix III: Comments from the Department of Defense

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

OFFICE OF THE UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, DC 20301–2000

POLICY

In reply refer to:
I-03/008742-IS
June 24, 2003

Ms. Katherine V. Schinasi
Director, Acquisition and Sourcing Management
U.S. General Accounting Office
441 G Street, N.W.
Washington, DC 20548

Dear Ms. Schinasi:

This is the Department of Defense (DoD) response to the GAO draft report GAO-03-694, "DEFENSE TRADE: Better Information Needed to Support Decisions Affecting Proposed Weapons Transfers," dated May 28, 2003 (GAO CODE 120151).

The National Disclosure Policy (NDP) serves as effective guidance for developing U.S. Government positions on requests from foreign governments and international organizations for U.S. classified information and weapon systems. It has proven to be flexible in responding to changes in U.S. foreign policy objectives and international security developments by providing general guidance and specific policy statements to the DoD Components. It is reviewed annually by the interagency National Disclosure Policy Committee (NDPC) to ensure that it conforms with changes to United States foreign policy and that it is responsive to current international developments.

See comment 1.

While the GAO report in general provides good marks to both the arms transfer process and the NDP process, it appears to mislead the reader. It indicates that the NDP process is seriously lacking an effective automated database and updated reports and that information needed to assess releasability is not always complete, up-to-date, or available. This is far from true. Every request that the National Disclosure Policy Committee (NDPC) considers during its deliberations must stand on its own merits. All required supporting information on the issue must be furnished to each member of the Committee for review. Issues considered by the Committee that do not have sufficient information on which Committee members can base a decision are returned to the requestor without action.

See comment 2.

In addition, the GAO report indicates that the DoD's centralized National Disclosure Policy System database, which captures information on proposed transfers, only contains historical data from the past four years. The report fails to indicate that the system is a follow-on system to a database which has been around in one form or another since 1975 with the last update activated on May 23, 2003. The GAO report does not indicate that during its investigation that this most recent version of the automated system was in development and had not even been accepted for operational use. Therefore, it can only be expected that there were glitches or problems. For the most part, many of the system pre-deployment problems have been solved.

In view of the above, it is suggested that your team meet again with my Director, International Security Programs to resolve any omissions or to correct differences concerning this report. Please see the enclosed for more detailed comments. If you have any questions concerning this matter please contact Mr. Peter R. Batten at (703) 695-7141 or via e-mail at battenp@osd.pentagon.mil.

Kenneth E. deGraffenreid
Deputy Under Secretary of Defense
(Policy Support)

Enclosure
As stated

GAO DRAFT REPORT - DATED MAY 28, 2003
GAO CODE 120151/GAO-03-694

"DEFENSE TRADE: Better Information Needed to Support Decisions Affecting Proposed Weapons Transfers"

DEPARTMENT OF DEFENSE COMMENTS TO THE RECOMMENDATIONS

Now on p. 23.

RECOMMENDATION 1: The GAO recommended that the Secretary of Defense direct the National Disclosure Policy Committee (NDPC) Executive Secretariat to determine with NDPC members what additional capabilities and enhancements are needed for the upgraded National Disclosure Policy System. (Page 21/GAO Draft Report)

See comment 3.

DoD RESPONSE: Nonconcur. The deployment of the upgraded National Disclosure Policy system occurred on May 23, 2003. As NDPC Executive Secretariat personnel have used the system, they have encountered only minor technical problems related to the system or its database. As Committee members use the software, there is expected to be needed improvements but those cannot be identified at this time. Overall the system is proving to be very reliable and efficient and it has very advanced capabilities that will help decisionmakers.

Now on p. 23.

RECOMMENDATION 2: The GAO recommended that the Secretary of Defense direct the NDPC Executive Secretariat to establish a firm schedule with the DoD automation office for addressing technical problems and user comments related to the upgrade that have not been addressed before deployment. (Page 21/GAO Draft Report)

See comment 4.

DoD RESPONSE: Nonconcur. The deployment of the upgraded National Disclosure Policy System occurred on May 23, 2003. There were many difficulties encountered in achieving deployment of the system, (i.e., communicating and translating needs into software, reconciling multiple databases, and personnel recalled to active duty for the war with Iraq). However, the system employs a high integrity database and is user-friendly. As NDPC personnel work with the system and identify problems or required fixes, these will be brought to the attention of the software developers. It is anticipated that the first formal post-deployment review will be held the first week in September 2003. In the interim, the developers have quickly fixed minor software problems.

Now on p. 23.

RECOMMENDATION 3: The GAO recommended that the Secretary of Defense direct the NDPC Executive Secretariat to evaluate the accuracy and effectiveness of the upgraded system once deployed. (Page 22/GAO Draft Report)

DoD RESPONSE: Concur. The first formal NDPS post-deployment review is scheduled for the first week of September 2003.

Now on p. 23.

RECOMMENDATION 4: The GAO recommended that the Secretary of Defense direct the NDPC Executive Secretariat to work with the Central Intelligence Agency to prioritize assessments that need to be updated, establish a schedule for performing those assessments, and distribute the assessments to NDPC members through the automated system or other means. (Page 22/GAO Draft Report)

ENCLOSURE

DoD RESPONSE: Concur. CIA Risk Assessments can be an important tool in determining a country's capability to protect classified information. These counterintelligence risk assessments are prepared by the Central Intelligence Agency as an adjunct to the security surveys. These assessments, which provide an evaluation of a country's security forces, the threat and a prognosis of the risk involved in releasing classified material, are of great assistance to the NDPC Members during the disclosure decisionmaking process. Should resource or political constraints preclude the NDPC from sending an NDPC security survey team to a particular country, these risk assessments may be used as a basis for disclosure decisions.

Now on p. 23.

RECOMMENDATION 5: The GAO recommended that the Secretary of Defense direct the NDPC Executive Secretariat to develop a plan to identify the number of surveys to be conducted annually and assess what resources are needed to conduct the surveys or if a survey cannot be conducted, ensure that an alternative analysis of the foreign government's security capability be performed and made available to NDPC members. (Page 22/GAO Draft Report)

See comment 5.

DoD RESPONSE: Nonconcur. The NDPC sends teams of counterintelligence and security professionals from member agencies and departments on official visits to foreign countries to assess the basis for the protection of classified information in the recipient country and to determine whether the country has the capability to protect U.S. classified military information in a manner that is substantially equivalent to the protection afforded it by the United States. Security surveys are updated periodically in order that they provide a current basis on which the NDPC can make decisions to delegate levels of authority to disclose classified military information. Further, security surveys are used in formulating specific disclosure policies pertaining to individual nations and in evaluating requests for exception to the National Disclosure Policy. As a goal, the NDPC seeks to survey foreign government security programs every five years. If personnel are not available, or a mutually acceptable time for a survey cannot be agreed upon, the period between surveys might be extended. In cases where significant new U.S. disclosure programs with a foreign country are taking place, or, for instance, when there are significant changes in a foreign government's laws or political leadership, the NDPC may seek to advance the survey schedule. The National Disclosure Policy Committee establishes a schedule of proposed security survey visits annually. The list of proposed security survey visits includes the country to be visited, and the NDPC members required to support the visit. The proposed security survey schedule covers a two-year period. At the current time there is no known alternative analysis that can be done that would parallel or be of similar content and use as the NDPC security survey.

Now on p. 23.

RECOMMENDATION 6: The GAO recommended that the Secretary of Defense direct the NDPC Executive Secretariat to identify what additional information, such as end-use monitoring reports, would be useful to NDPC members and establish a mechanism for requesting this information from appropriate sources and distributing it to NDPC members. (Page 22/GAO Draft Report)

DoD RESPONSE: Concur. However, it should be understood that every issue presented to the NDPC for decision must stand on its own merits. All required supporting information on each issue must be furnished to each member of the Committee before an issue can be deliberated. End Use Monitoring reports and other specially prepared intelligence reports would be a good supplement to assist in Committee deliberations on some but not all issues.

The following are GAO's comments on the Department of Defense's (DOD) letter dated June 24, 2003.

GAO Comments

1. We disagree with DOD's statement that our depiction of the National Disclosure Policy (NDP) process appears to mislead the reader about the sufficiency of the information available to make decisions. We accurately describe the process, but found that the information supporting the decisions was not always complete, up-to-date, or easy to access. We further acknowledge in the report that each request is reviewed on a case-by-case basis. While DOD states that supporting information must be furnished to each member of the Committee for review, committee members we spoke with stated that information such as more timely National Disclosure Policy Committee (NDPC) security surveys and Central Intelligence Agency (CIA) risk assessments would facilitate the process, thus allowing members to make more informed decisions.

2. The National Disclosure Policy System that was used to make decisions during the last 4 years contained data only for decisions made during that time period. DOD indicated that this system was a follow-on to another database containing historical data. However, some committee members and officials told us that this older database is not easy to use and contains only summary information. In addition, one committee member does not have access to this database. The report clearly states that an upgraded system has been developed. DOD asserted that glitches and technical problems are to be expected for a system in development. We understand that such technical problems can occur with an upgrade. However, at the time of our review, the system had taken over 3 years to develop, and deployment was delayed a number of times because of technical problems and limited input requested from users. As DOD has acknowledged, the effectiveness of the upgrade is yet to be determined.

3. We believe that it is too early for DOD to assert that the upgraded system has proven to be reliable and efficient, given that it will not formally assess the effectiveness of the system until September 2003. DOD's response acknowledges that improvements are expected but cannot be identified at this time. However, NDPC members told us about capabilities they wanted included in the upgrade, such as inclusion of CIA risk assessments. We believe that DOD should be proactive in seeking input from users about such additional capabilities needed for the upgraded system. We have clarified our recommendation to indicate that this information should be obtained

from members after they have had an opportunity to use the system and can assess the need for improvements.

4. DOD acknowledged that as NDPC personnel identify problems with the upgraded system, they will bring these problems to the attention of the software developers. However, our recommendation was directed toward obtaining input from all NDPC members who are users of the system, not just NDPC personnel, to ensure that user needs are met. In addition, DOD said that developers have quickly fixed minor software problems. We, therefore, are no longer recommending that a firm schedule be established but rather that technical problems be addressed as they arise.

5. While DOD indicates that it already develops a schedule for completion of NDPC security surveys, our recommendation is intended to include not only a schedule but also additional information. Specifically, we believe that a plan should also identify surveys to be conducted and the reasons each survey is needed; establish time frames for completing these surveys; and estimate the resources needed to schedule and conduct these surveys. Based on this information, DOD can develop a business case to determine if dedicated resources, instead of committee volunteers, are needed to ensure that surveys are completed on a prioritized basis. We have modified our recommendation to clarify this point.

   Finally, DOD states that no known alternative analysis currently exists that would provide information comparable to that provided through the security surveys. However, the department has acknowledged that the CIA risk assessments may be used as the basis for decisions when a security survey cannot be conducted. This is the type of alternative analysis that we are referring to in our recommendation.

Appendix IV: Staff Acknowledgments

Acknowledgments

Anne-Marie Lasowski, Marion Gatling, John Ting, Ella Mann, Shelby S. Oakley, Karen Sloan, Marie Ahearn, and Stan Kostyla made key contributions to this report.

Related GAO Products

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

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