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EXPORT CONTROLS

Opportunities for Improving Compliance With Export Administration Regulations



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United States
General Accounting Office
Washington, D.C. 20548

**National Security and
International Affairs Division**

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December 6, 1990

The Honorable Robert A. Mosbacher
The Secretary of Commerce

Dear Mr. Secretary:

This report presents the results of our review of the Department of Commerce's procedures for providing oral export administration advice to exporters. It also gives ways to improve the presentation and readability of the commodity control list. This review was made as part of our ongoing efforts to assess key parts of the national security export control program and because of congressional interest in the area.

This report contains recommendations to you in chapters 2 and 3. The head of a federal agency is required by 31 U.S.C. 720 to submit a written statement on actions taken on these recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations no later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to appropriate House and Senate Committees; the Director, Office of Management and Budget; and other interested parties.

Please contact me at (202) 275-4812 if you or your staff have any questions concerning the report. Other major contributors to this report are listed in appendix II.

Sincerely yours,

Allan I. Mendelowitz, Director
Trade, Energy, and Finance Issues

Executive Summary

Purpose

The United States controls the export of commercial products that could be of military use to the Soviet Union, Eastern European countries, and the People's Republic of China. Industry compliance with export controls requires that exporters be able to determine whether a product is subject to control and, if so, what type of export license is necessary. Because of the importance of export controls to U.S. national security, GAO examined industry concerns that (1) oral advice provided by the Commerce Department is sometimes inaccurate or inconsistent and (2) the commodity control list, an integral part of the Export Administration Regulations, is unnecessarily difficult to understand and use.

Background

The United States, its North Atlantic Treaty Organization allies (except Iceland), Australia, and Japan coordinate their export control policies to protect their national security through the Coordinating Committee on Multilateral Export Controls. Each member country implements export control policy agreements in the context of its own regulatory framework. In the United States, the Export Administration Regulations contain the list of products subject to export controls and the rules governing their export. The Department of Commerce is responsible for administering U.S. export controls, including maintaining the regulations and providing guidance to the business community. The regulations have become complex as changes have been made reflecting policy and legislative developments. This complexity results in thousands of requests annually for advice and clarification from exporters seeking to identify applicable export controls.

Results in Brief

Commerce does not always provide accurate or consistent advice in response to exporter inquiries. Factors impairing responses include the large number of staff providing advice with limited quality control, and operational problems affecting Commerce's telephone log system. The telephone log is Commerce's chief means of maintaining the quality of export guidance provided by the two offices designated as primarily responsible for providing oral advice. Commerce officials acknowledge that staff at times give inconsistent or inaccurate advice. However, sufficient data are not available to establish the magnitude of the problem.

The U.S. commodity control list, a key part of the export regulatory process, is unnecessarily difficult for U.S. exporters to understand and use. The list would be easier to use if explanations were more fully developed and the list's visual presentation were improved. The United States recently agreed to discontinue using the present control list and to

develop a new one focusing on a few core technologies. Commerce has a unique opportunity to incorporate visual improvements into the new list.

Principal Findings

Unreliable Oral Advice

Industry representatives say they sometimes receive inaccurate or inconsistent advice from Commerce in response to their export control inquiries. The resulting lack of confidence in Commerce's advice leads firms to make unnecessary follow-up calls to check the accuracy of guidance. It also sometimes leads to "shopping" by exporters, which occurs when exporters repeatedly call Commerce staff until they receive advice consistent with what they want to do. Inaccurate and inconsistent advice can prove costly for exporting firms and can compromise compliance with export control regulations.

Factors Impairing Oral Advice

While several factors contribute to the problem of inaccurate and inconsistent guidance, a major factor is the large number of Commerce staff authorized to give advice, coupled with the absence of effective quality control mechanisms.

In 1989, Commerce implemented a telephone log system that allows supervisory reviews of oral advice given to exporters. The system's use is limited to the approximately 30 people in the 2 Commerce offices whose chief responsibility is assisting exporters. It is not currently used by about 280 staff in other Commerce offices who may also respond to exporter inquiries. Commerce, therefore, has no way of accurately estimating the extent of oral advice provided by these other offices or of judging the quality of advice they provide.

Although the log system is a promising first step, it has limitations that reduce its effectiveness. These include the lack of staff time to log information into the system and its inability to sort logged telephone inquiries by subject matter. The system only allows inquiries to be sorted by caller, a capability that does not allow for checking the consistency and accuracy of advice given different callers. Even this feature, however, is not always used when staff respond to calls.

In addition, while Commerce's Office of Technology and Policy Analysis is responsible for maintaining the regulations and providing written interpretations, it does not review the telephone log to check the accuracy and consistency of responses. This review is performed instead by senior staff in the offices handling the telephone inquiries.

Other agencies have taken steps to improve the accuracy of information provided to callers. For example, to improve the accuracy of the oral advice it provides, the Internal Revenue Service has initiated a number of quality control efforts. These efforts include improving the staff's ability to probe callers for all relevant information and periodic testing of the accuracy of the staff's oral advice. GAO testified in March 1990 that these efforts have contributed to recent increases in the accuracy rate of responses to taxpayer inquiries. Commerce may be able to adopt some of these mechanisms to improve the quality of its export control inquiry responses.

Control List Readability Can Be Improved

A key section of the Export Administration Regulations, the commodity control list, also needs improvement. From initial product classification to identifying applicable licensing requirements, this list is central to regulatory compliance. However, numerous firms described the control list as difficult to understand and use. Export control managers at several high technology firms said that illogical formats and methods of presentation often created confusion. Commerce has made some improvements to the control list; however, its recent attempts to improve the list have been hampered by resource constraints and other agency priorities.

Commerce can make the control list easier to understand and more useful by rewriting it in simpler language, providing user-oriented explanations, and using a less complicated typographical design. This is a particularly opportune time to improve the list's presentation since the United States has recently agreed with its major Western allies to discontinue the current control list and develop a new one.

Recommendations

GAO recommends that the Secretary of Commerce direct the Under Secretary for Export Administration to ensure the accuracy of the oral advice provided on export regulations and has identified a number of actions the Secretary may wish to consider in implementing this recommendation. GAO also recommends that the Secretary improve the presentation of the new control list.

Agency Comments

The Department of Commerce concurred with GAO's recommendations. Regarding GAO's recommendation to ensure the accuracy of oral advice, Commerce identified several programs it has implemented over the past several months and believes that it has met the intent of GAO's recommendation. GAO agrees that Commerce has made significant progress in improving the accuracy of its oral advice but needs to continue focusing on this issue to ensure that planned actions are completed. Regarding GAO's recommendation to improve the new control list's presentation, Commerce stated it intends to incorporate as many of GAO's suggestions as practical and identified several improvements it has made recently.

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Abbreviations

BXA	Bureau of Export Administration
EAS	exporter assistance staff
EAR	Export Administration Regulations
GAO	General Accounting Office
IRS	Internal Revenue Service
ITA	International Trade Administration
WRO	Western Regional Office

Introduction

Since 1949, the United States and its allies have controlled exports of goods and technology with commercial and military uses to the Soviet Union, Eastern European countries, and the People's Republic of China. To prevent diversions to these countries, exports of militarily sensitive commercial products have also been controlled to most other destinations.

The Export Control System

The Export Administration Act of 1979, as amended, authorizes controls over exports of commercial goods and technologies that could significantly contribute to the military capabilities of a potential adversary. It also authorizes export controls to achieve U.S. foreign policy goals and to ensure the domestic availability of resources in short supply.

The Department of Commerce is responsible for administering U.S. export controls. At the act's direction, Commerce established the Bureau of Export Administration (BXA) in 1987 to provide for high-level direction of the national export control policy. BXA's responsibilities include processing export license applications, developing and implementing policies for export licensing, and providing oral advice and technical guidance to the business community on a wide range of technology and country specific export control issues. While BXA is primarily responsible for export controls, the International Trade Administration (ITA), Commerce's export promotion arm, is also involved in disseminating information to exporters on export controls.

The United States controls the export of all goods and technology through two types of export licenses: general and validated. A general license is a broad grant of authority by the government to all exporters for certain categories of products to all or most destinations. Most U.S. exports are shipped abroad under general licenses and no application is required for their use. There are currently 22 different types of general licenses.

A validated license is a specific grant of authority from the government to a particular exporter to export a specific product to a certain destination. Special licenses may also be available to cover a range of products to several distributors.

Implementing U.S. Export Controls Results in Complex Regulations

The Export Administration Regulations (EAR) establishes the rules and procedures needed to carry out the provisions of the Export Administration Act. They contain the list of controlled products and specific provisions governing their export, such as how to obtain an export license, documentation requirements, and special commodity and country policies.

The EAR has become increasingly complex. To some degree, we believe this complexity is a function of the sophistication of the controlled technologies, the varying licensing requirements for different countries, and the constant change in regulations made to reflect policy and legislative developments. Changes are adopted through publication in the Federal Register, and later, through incorporation in the EAR itself.

Regulatory complexity is also related to the degree of flexibility found in the regulations. According to a Commerce official, the most straightforward form of export controls would be an inflexible system that required a license for all exports. However, a series of exceptions to this requirement have been implemented to avoid burdening U.S. exporters. While these exceptions increase flexibility for U.S. exporters, they also add to regulatory complexity, which can create problems, particularly for inexperienced exporters.

In the early 1980s, as a result of a congressional mandate for regulatory simplification, a major effort was made to rewrite the export control regulations. At the time, Commerce undertook a comprehensive planning exercise to prepare for a major rewrite of both the body of the regulations and the control list. Since the necessary resources were never committed, however, only limited success was achieved.

Beginning in 1988, a major effort was made to revise the export regulations for technical data and software, which industry users and government officials described as being among the most complex and difficult to understand. At the time of our review, BXA was circulating final drafts of the revised regulations internally for approval. Agency officials said because of its work load, BXA has not had the opportunity to begin revising the remainder of the EAR.

Export Control Depends on Exporters Determining Which Controls Apply

An essential part of the export control process involves exporters determining whether a product requires a general or a validated license. To accurately determine which license is required, exporters must not only be familiar with the EAR, but also with recent pertinent changes published in the Federal Register as well as unpublished interpretations and policy guidance. It is therefore critical that the EAR be both understandable and current.

For the exporter, the first step in the export licensing process is to determine a product's control status. This depends on what is being exported, where it is going, the end use, and the end user. Because the regulations are complex, exporters find that they must often rely on oral advice provided by Commerce specialists.

According to a 1987 report¹ on the national security control's affect on international technology transfer, the export control system's complexity imposes considerable costs on, and often undermines compliance by, exporting firms. The burden is heaviest on small- and medium-sized companies that cannot spread the costs of complying with constantly changing export control requirements over a large volume of export business. The study concludes that the EAR needs to be rewritten, simplified, and condensed.

Objectives, Scope, and Methodology

The objective of our review was to assess the accuracy and consistency of advice given exporters and to identify needed improvements to the EAR. Specifically, we (1) evaluated industry concerns regarding the quality of oral advice provided by Commerce and identified ways to improve its accuracy and consistency and (2) examined possible ways to improve the U.S. commodity control list's clarity.

To identify concerns regarding the quality of oral advice and guidance, we spoke with licensing specialists, exporting officials, senior management at exporting firms of various sizes, various trade association officers, private consultants, and the chairmen of seven BXA technical advisory committees.² We spoke with officials at the Departments of Commerce and State, to obtain agency views.

¹Balancing the National Interest—U.S. National Security Export Controls and Global Economic Competition, National Academy Press, Washington, D.C., 1987.

²The 1979 Export Administration Act establishes Technical Advisory Committees consisting of both U.S. government and industry representatives to advise Commerce on the evaluation of technical issues, worldwide availability, use, and production of technology and licensing procedures relating to specific industries.

We held extensive discussions with BXA staff to determine the procedures and policies involved in providing oral advice to the business community. We also reviewed BXA telephone logs used to record information on exporter queries, and then discussed procedures for creating, using, and monitoring the logs with BXA staff. We also reviewed BXA's budget report for fiscal year 1991.

To assess ITA's provision of export control information, we reviewed a June 1989 report, District Office Delivery of Export Administration Services, prepared by the accounting firm, Price Waterhouse,³ under contract to ITA. We also interviewed ITA officials in Washington, D.C., and in the San Francisco District Office regarding ITA's provision of oral advice on export controls.

To assess how quality control over the provision of export control information could be improved, we reviewed BXA's quality control procedures and identified weaknesses. We also compared BXA's procedures with information we previously developed on quality control mechanisms used by the Internal Revenue Service (IRS) to improve the quality of advice it provides to the public.

To identify possible shortcomings in the commodity control list, we first determined past changes to the list by reviewing Commerce files and BXA annual reports. We then identified possible ways of improving the control list by interviewing industry representatives, consultants, and government officials and by searching literature on "plain English" document design. Using a commodity identified as a good candidate for revision by both Commerce and industry, we assessed how well it incorporated commonly accepted graphic design principles, and compared it with the widely used British version of the list. We also obtained both Commerce and industry views on whether the potential improvements identified enhanced the control list's ease of use and clarity.

We conducted our review between May 1989 and March 1990 in accordance with generally accepted government auditing standards.

³This study was commissioned by Commerce to assess the quality of export administration services provided at 10 Commerce locations in the field. Other study objectives were to analyze future demand and recommend organizational structure and resources needed for the future delivery of export administration services.

Commerce Could Improve the Quality of Oral Advice Provided on Export Regulations

Exporters make tens of thousands of calls a year to Commerce for clarification and interpretation of the EAR. Commerce does not, however, always provide accurate or consistent advice. As a result, export control compliance may be adversely affected. Factors contributing to this problem include the large number of staff, with varying levels of experience, authorized to provide advice and limited quality control. Although Commerce has implemented a telephone log system to improve the quality of its oral advice, additional measures can be taken to make Commerce's oral advice more reliable.

Commerce Employees Respond to Hundreds of Exporter Inquiries Daily

BXA is the principal source of advice within Commerce on export control matters. Within BXA, the Office of Export Licensing's exporter assistance staff (EAS) and Western Regional Office (WRO) staff are responsible for responding to telephone questions posed by the exporting community regarding export regulations.

ITA, the Commerce agency primarily responsible for promoting U.S. exports, also provides advice on export control matters. ITA's 67 district offices in the United States are listed at the beginning of the regulations as information sources on export controls, which makes ITA readily accessible to most firms nationwide.

Commerce representatives respond daily to a constant stream of telephone inquiries. BXA data show that EAS and WRO offices alone received a total of 160,000 export control-related inquiries during fiscal year 1989. Reliable data on the number of inquiries ITA district offices receive are not available, since only 72 percent of the district offices regularly reported their export control activity to BXA in fiscal year 1989. Available data, although limited, indicate that ITA district offices handled a much smaller number of inquiries—about 6,000 telephone inquiries and about 700 walk-in inquiries—in fiscal year 1989.

Firms Voice Complaints About Inconsistent and Inaccurate Advice

Industry representatives told us that Commerce staff sometimes give inaccurate or inconsistent advice in response to export control questions. Similarly, Price Waterhouse's study of Commerce's district offices found that inconsistent responses from Commerce staff cause problems for companies seeking definitive policy advice on which to base business decisions. Commerce officials also recognize the problem of inconsistent and inaccurate oral advice.

The export community's lack of confidence in Commerce's advice results in exporters making unnecessary follow-up calls to determine the accuracy of advice. We learned of many cases demonstrating this lack of confidence. For example, in one instance, an exporter telephoned Commerce to ask whether a letter of assurance¹ was necessary for the export of certain software under a general license. A Commerce employee told the exporter it was not needed. Concerned that this answer might be inaccurate, the exporter called a second time and was told by another Commerce employee that one was required. Because of the inconsistency, he called Commerce's Office of the Chief Counsel and was told that one was needed.

Inaccurate or inconsistent advice may also lead exporters to "shop" for desired responses, or in other words, make repeated calls to different Commerce staff until they receive advice consistent with what they want to do. In one such apparent instance, an exporter made repeated calls to ask Commerce employees whether, under an individual validated license, it was possible to export a product directly to a third party in a foreign country rather than to the consignee designated on the license for later shipment to the third party. Two Commerce offices told the exporter that the product should go to the designated consignee first. Apparently dissatisfied with these answers, the exporter called a policy level Commerce official, who provided a response that was more favorable. The advice was that the product could be shipped directly to the ultimate customer, provided that certain conditions were met.

Commerce officials acknowledge that oral advice provided to exporters is sometimes inaccurate and inconsistent and that it may result in exporters shopping for desired responses. Although Commerce officials do not consider this to be a major problem, they subsequently agreed with our observation that sufficient data are not available to establish its magnitude.

Reasons for Inaccurate or Inconsistent Advice

Several factors contribute to the problem of inaccurate or inconsistent advice. These include

- Commerce's limited control over the large number of staff providing oral advice,

¹A U.S. letter of assurance is often required from importers in other countries stating that the technical data will not be reexported to certain countries without prior U.S. authorization.

- the failure of Commerce staff to elicit all relevant information from callers before providing advice, and
- the high turnover of BXA staff primarily responsible for responding to exporters' telephone inquiries.

Limited Control Over Large Number of Staff Providing Advice

Recognizing the problem of inconsistent and inaccurate oral advice, BXA recently established a computerized telephone log system that allows ongoing reviews of oral guidance. The system is intended to monitor the inquiry work load as well as to improve the accuracy and consistency of advice. The system was first implemented in WRO during early 1989. EAS began implementing a similar system in Washington during October 1989. The telephone log system, however, is limited to the 16 EAS and 14 WRO staff within BXA who have direct responsibility for responding to telephone inquiries. The system does not cover the more than 130 other BXA professional staff who are authorized to, and who in fact do, respond to questions. These include engineers, export administration specialists, licensing and export compliance specialists, and senior level managers. In fact, with the exception of the telephone log system used by EAS and WRO staff, there are no procedures to ensure the accuracy and consistency of oral advice given by most BXA staff.

The system is not used to monitor the approximately 150 trade specialists located in the ITA district offices who also provide advice on export control matters. Although a memorandum of understanding with BXA stipulates that these offices are authorized to provide counseling and assistance on export control matters, they are not included in the telephone log system.

The ITA district offices do have a manual form that can be completed when advice is provided, but according to the Price Waterhouse study, forms are not completed regularly. In addition, BXA, the agency responsible for administering the export control system, does not review the completed forms for accuracy and consistency. However, as BXA adds regional offices recently mandated by the Congress, it expects to absorb much of the export administration services' work load now being handled by ITA.

Operational Problems With the Telephone Log System

Both WRO and EAS staff are limiting their detailed log entries to only the most "significant inquiries." The staff must rely on their own judgment for determining which inquiries are significant and for determining how much documentation is required in the log entry. Therefore, Commerce

has no assurance that all significant calls are properly included in the log.

According to BXA officials, if a conflict develops between establishing an extensive tracking system or being responsive to exporters and fielding more calls, the latter tends to take precedence. In WRO, about 40 percent of the incoming calls are recorded in detail in the computer log. According to a WRO staff member, this does not represent all significant inquiries since there is not always enough time to log in and document all such calls. To the extent the telephone log system is incomplete, BXA cannot fully monitor the quality of advice or check past queries to ensure consistency.

Due to the high volume of incoming calls, BXA staff are also not performing an immediate check of the calls logged into the system for shopping or for consistency of responses. In addition, the system, as it is currently programmed, only allows the sorting of inquiries according to caller and by the general nature of the calls, such as requests for regulatory information, classifications, or export control forms. While this sorting capability allows BXA staff to check on all advice provided to the same caller, it does not allow checking for consistency and accuracy between different callers. Sorting according to inquiry topic would allow BXA staff to quickly see if accurate and consistent advice is being provided to all exporters on a particular topic. According to the industry consultant who designed BXA's current system, this capability could be incorporated into the system at a relatively minor cost.

Finally, telephone log responses are not reviewed by BXA's Office of Technology and Policy Analysis, which as the office responsible for maintaining the EAR and providing written interpretations is the unit best suited to judge the accuracy of advice. Instead, senior staff in EAS and WRO review log entries to verify the accuracy and consistency of responses. Incorrect responses are brought to the attention of the responsible staff and the inquiring firm is contacted to correct any misinformation. A senior BXA official told us that while experienced EAS and WRO staff check telephone log responses, it is conceivable that they may also be mistaken, particularly in those cases where advice requires some interpretation.

**Commerce Does Not
Always Obtain All
Pertinent Information
When Responding to
Queries**

To provide accurate advice, Commerce must elicit all pertinent information from callers. A variety of factors affect export control requirements, including the technological sophistication of the commodity, the country of destination, and the use to which the commodity will be put. Commerce recognizes the importance of seeking all relevant information and assigns new employees to experienced staff for a period of time, in part, to observe probing techniques. In some cases, however, Commerce staff do not always receive or seek all pertinent information. In other instances, callers can provide inaccurate information despite Commerce's attempts to elicit all pertinent information.

An experience we had shows the importance of probing for information. We had occasion to call Commerce about whether a license was required to take a computer overseas. We described the computer and explained that we would be using it for business purposes. In responding to our inquiry, the Commerce employee gave a reply based on the information offered, but did not seek further information, such as whether our employer owned the computer. In retrospect, we were told by a senior Commerce licensing official that had we stated it was a government-owned computer, to be used for government business, it would have affected the response we received.

**High Turnover Lowers
Experience Level**

The high level of turnover among BXA staff primarily responsible for responding to exporters' telephone inquiries also contributes to the problem of inaccurate and inconsistent advice. For example, in 1988 and 1989, 12 of 16 EAS staff left the unit. As a result, in late 1989, almost 40 percent of the current staff of 16 providing regulatory advice had been in the area for 6 months or less. According to Commerce, one factor accounting for this high turnover is the low grade structure and pay of staff, as compared to the private sector. Commerce officials acknowledge the problem of high staff turnover and are attempting to raise the grade structure of EAS positions to make them more competitive with other government and private sector positions. In commenting on a draft of this report, Commerce stated that the grade structure has been changed and identified other efforts to reduce turnover.

Other Quality Control Mechanisms Are Potentially Available to BXA

To ensure the quality of advice they provide to the public, organizations, such as IRS, have developed a variety of quality control mechanisms that Commerce could potentially adopt. Although the IRS responds to a far greater number of telephone inquiries, it is similar to BXA in that both provide oral advice on numerous questions related to a complex body of regulations. Both also represent areas of government regulation with major implications for the United States.

The IRS has implemented a number of quality control efforts to improve the responsiveness, accuracy, and overall quality of taxpayer service. Specifically, these include (1) ongoing monitoring of calls, (2) sample testing of IRS service centers using hypothetical tax questions, and (3) the development of a probe and response guide and formal training in effective probing techniques. The guide directs IRS staff to elicit all necessary information before responding to tax inquiries.

The IRS has been successful in its recent efforts to improve its accuracy. For example, a survey of the IRS toll-free tax information number found that the accuracy rate of IRS responses to our test questions rose from 66 percent in tax year 1988 to 78 percent as of March 16, 1990. In testimony before the House Ways and Means Committee,² we reported that several factors contributed to the improved IRS accuracy this year. These factors include an increased emphasis on probing to obtain all the facts needed about a taxpayer's situation, greater managerial emphasis and involvement, and a more stable and experienced work force.

Conclusions

Both Commerce and industry agree that the oral advice Commerce provides the exporting community is not always accurate and consistent. Quality controls recently instituted in the form of a telephone log system only cover the two Commerce offices whose principal responsibility is providing exporter assistance. Commerce consequently has no mechanism to monitor the quality of oral advice provided by most of its other professional staff, who also provide advice to exporters.

One way to reduce the likelihood of staff providing inconsistent and inaccurate oral advice would be to limit the number of staff authorized to provide such advice. Attempting to limit the number of staff that can

²Statement of GAO Director for Tax Policy and Administration Issues before the Subcommittee on Oversight, Committee on Ways and Means, House of Representatives (GAO/T-GGD-90-26, Mar. 22, 1990).

respond to public inquiries would, however, reduce Commerce's responsiveness to the public. If Commerce considers it essential that all professional staff continue to be available to provide oral advice, it could expand the telephone log system to include all staff providing advice.

The telephone log system, however, has operational problems that limit its effectiveness. These problems include the

- inability to properly log all significant calls because of the high volume of calls and the lack of time available to make log entries;
- failure to use the system to immediately check responses previously given the caller and an inability to check responses given to other callers with similar questions; and
- failure to assign responsibility for reviewing the telephone log responses to the Office of Technology and Policy Analysis, the Commerce office directly responsible for the EAR.

Because of weaknesses in the log system and because it is not used by all Commerce staff, only limited quantitative data are available on the amount of inaccurate or inconsistent advice that is given, the types of questions that most often result in such advice, and the Commerce units that most often provide such advice.

Commerce may be able to adopt quality control mechanisms effectively used by the IRS to improve the quality of its advice. The IRS efforts in this area have shown some success as demonstrated by recent increases in the accuracy rate of its responses to taxpayer inquiries.

Recommendation

We recommend that the Secretary of Commerce direct the Under Secretary for Export Administration to ensure the accuracy of the oral advice provided on export regulations. To accomplish this, the Secretary may wish to

- undertake a pilot project to quantify the nature and extent of the provision of inaccurate and inconsistent advice and based on these results, take steps to increase accountability over staff currently providing oral advice, and if necessary, limit the number of staff authorized to provide advice or include them in the telephone log system;
- direct the Office of Technology and Policy Analysis to periodically review the accuracy of responses noted in the telephone log; and
- consider developing additional quality control mechanisms such as those used by the IRS that are potentially transferable to BXA's operations.

Agency Comments

The Department of Commerce concurred with our recommendation and elaborated on some of the difficulties we identified in this report. Commerce believes that it has met the recommendation's intent and has identified several programs implemented over the past several months to aid in giving accurate and consistent oral advice. It also stated its intention of soliciting advice from IRS. We agree that Commerce has made significant progress in improving the quality of the oral advice it provides, but it needs to continue focusing on this issue to ensure that planned actions are completed.

Improving the Readability of the Commodity Control List

An effective export control system requires that exporters be able to correctly interpret the commodity control list. However, U.S. industry representatives say the list is difficult to understand and use. Commerce has taken some steps to improve the list, but has been hampered by budgetary constraints and the press of day-to-day business. The list would be easier to understand and use if it were restructured, explanations were added, and it were typeset in a way that made entries less confusing. Industry user groups indicated that such improvements would promote their understanding of, and compliance with, export control regulations.

The United States, its North Atlantic Treaty Organization allies (except Iceland), Australia, and Japan, coordinate their export control policies to protect their national security through the Coordinating Committee on Multilateral Export Controls. Each member country implements export control policy agreements in the context of its own regulatory framework. Because the United States, in concert with its Coordinating Committee allies, has recently agreed to discontinue the existing control list and develop a new one, Commerce has a unique opportunity to improve the presentation of the new list.

Industry Finds the Control List Difficult to Read and Understand

Compliance with export control regulations depends on exporters being able to determine whether a commodity is subject to controls and, if so, what type of export license is needed. The control list is central to regulatory compliance, from the initial product classification to the identification of applicable licensing procedures. For this reason, the list needs to be understood by the exporting community.

However, industry specialists most familiar with its contents, including some members of Commerce's technical advisory committees, expressed varying levels of frustration in using the control list. One technical advisory committee chairman, for example, told us that technical experts who use the control list on a regular basis generally understand the entries, but acknowledged that periodic or infrequent users tend to have more problems understanding the entries and resolving ambiguities in its policies.

Other committee chairmen expressed frustration with the control list and advocated numerous improvements. For example, one of the chairmen would like to see the entire control list reformatted to improve its presentation and readability. The Chairman also favored eliminating what he termed convoluted language, double negatives, and extraneous

wording, described as having accumulated over the past 40 years with the constant addition of list amendments. Another chairman could not recall how the commodity control list entries were currently formatted because it had been so long since the U.S. list was last seen. Typical of many other industry and U.S. government officials we interviewed, the committee chairman regularly uses the British list, which is widely acknowledged to be much easier to understand and use. The United Kingdom, as with other members of the Coordinating Committee, produces its own list.

Export control managers at several high technology firms said that illogical formats and methods of presentation and ambiguous expressions frequently create confusion. Shortcomings they cited included too much "legalese"; an illogical numbering system; confusing subparagraphs, notes, technical notes, and advisory notes; and ambiguous regulations that leave too much room for interpretation. As noted earlier, both the 1987 report on the impact of national security controls on international technology transfer and the Price Waterhouse study identified regulatory complexity as a major problem needing attention.

The Price Waterhouse study, for example, indicated that the increasing complexity of export regulations is a major factor adversely affecting exporters' compliance. It went on to suggest that Commerce rewrite the regulations and the control list in easy-to-understand language, using everyday industry terms. The study also suggested that typographic aids, such as shading to highlight particular topics, be adopted to make the list easier to use.

Commerce Efforts to Improve the Control List Presentation

As discussed earlier, the last major effort to rewrite the export control regulations occurred in the early 1980s. As part of that effort, Commerce made a number of changes to the control list that improved its ease of access, comprehensibility, and readability. These included (1) removing column headings, (2) creating a new paragraph format, (3) moving advisory notes to the control list from the supplement where they were previously located, (4) incorporating the contents of footnotes into regular text, and (5) consolidating export control-related information from other parts of the regulations.

More recent attempts at improving the control list presentation have been hampered by resource constraints and other Commerce priorities. For example, Commerce has recently had as few as two of the six regulation writer positions filled. According to a Commerce official, this staff

is generally kept busy with day-to-day responsibilities, such as writing implementing regulations resulting from new legislation and Coordinating Committee list reviews. This work has left little time for them to undertake major new improvements to the control list.

Even though a formal improvement program is not currently underway, Commerce does recognize the need to improve the control list and makes changes to it on an ad hoc basis, generally in response to industry pressure. For example, in response to industry complaints that various commodity control entries were difficult to follow, the agency reformatted the page typography¹ of the list for some key entries.

Commerce officials also believe that shaded coding, as found in the British list, is useful for highlighting specialized types of information. Therefore, Commerce has introduced the use of shaded advisory notes in the most recent edition of the U.S. control list.

The Commodity Control List Can Be Made Easier to Understand and Use

In addition to the improvements already made, Commerce can make the control list more understandable and useful by rewriting and reordering entries and by incorporating typographical formats that better show the subordinate relationships between subsections. Commerce will shortly have a unique opportunity to improve the control list. This opportunity resulted from a June 1990 agreement among members of the Coordinating Committee, including the United States, to “scrap” the present 116-item list of dual-use goods and replace it by mid-December with a new list. As Commerce develops the new list to comply with this agreement, it can maximize its efforts by also incorporating commonly accepted principles of typography and visual presentation to effectively improve the list’s readability.

The term “plain English” describes a number of document design principles that government agencies and major banking and insurance firms have applied to forms and documents in recent years to simplify use and improve comprehension. Based on our review of the control list, we believe that control list entries can be made easier to use by rewriting and reformatting them according to the plain English principles. For example, guidance can be expanded for inexperienced users, and sections can be restructured to present related material in a single location. Similarly, entries can be reformatted in keeping with plain English typographical principles to make them more readable and readily understood

¹The term typography refers to the style, arrangement, or appearance of typeset matter.

by using larger type face, standard indentation, and expanded use of shaded notes.

**Clearer Guidance and
Reorganization**

Control list entries would be easier to understand and use if they incorporated user-oriented directions and headings that require little or no experience in using the list. Figure 3.1 contains a sample of the introductory material found in each control entry. It contains a series of sections providing information on requirements for obtaining a license to export a particular controlled commodity.

Figure 3.1: Introductory Material for Commodity Control List Entry 1529A

1529A Electronic equipment for testing, measuring or for microprocessor/microcomputer development, as follows.

Controls for ECCN 1529A

Unit: Report in "number," parts and accessories in "\$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV \$ Value Limit: \$5,000 for all items in paragraph (b)(6) to Country Groups T & V, except \$0 to the People's Republic of China; \$3,000 for all other items to Country Groups T and V, except \$0 to the People's Republic of China; \$0 for all items to all other destinations.

Processing Code: MT for items in paragraph (b)(6); EE for all other items.

Reason for Control: National security; nuclear non-proliferation; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to commodities described in paragraph (c) and (d) under the List below for launch and ground support equipment usable for complete rocket systems and unmanned air vehicle systems described in § 776.18(a).

Special Licenses Available: No special licenses are available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 773 for special licenses available for other commodities defined in ECCN 1529A.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

GFW Eligibility: Commodities that meet technical specifications described in Advisory Note 2 under this entry regardless of end-use, subject to the prohibitions contained in § 771.2(c).

For example, each control list entry has a section entitled "Unit," specifying the unit of measurement exporters need to report on the export license application. Under our suggested approach, the heading "Unit" would be changed to read "Quantity to be Exported" so that even inexperienced exporters could understand the intended meaning. The list's usability can also be increased by reordering the commodity control entry contents with users' needs in mind. As also shown in figure 3.1, material relating to general and special licenses is scattered throughout the introductory material. Figure 3.2 shows that reordering the preliminary material consolidates guidance on general and special license eligibility into three consecutive sections. This revision also incorporates rewritten headings that show the relationship between the sections' subject matter.

Figure 3.2: Revised Introductory Material Consolidating General and Special License Eligibility

GLV license eligibility: A general license for limited value commodities (GLV license) is available for shipments valued at up to: \$5,000 for all items in paragraph 11. to country groups T & V, except \$0 to the People's Republic of China; \$3,000 for all other items to country groups T and V, except \$0 to the People's Republic of China; \$0 for all items to all other destinations.

GFW license eligibility: A general license known as a GFW license may be available for low level exports to certain countries for commodities that meet the technical specifications described in *Advisory Note 2* of this entry regardless of end-use, subject to the prohibitions described in § 771.2(c).

Special license eligibility: No special licenses are available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). Part 773 describes special licensing procedures that may be available in lieu of an individual validated license for certain other commodities covered by ECCN 1529A. (*see Part 773-pg. 1*)

Improvements to
Typographic Presentation

Although in recent years Commerce has improved the control list's usability and typographic presentation by adopting such features as shaded notes, further improvements can increase its ease of use. This is demonstrated in figure 3.3, which compares a British and U.S. control list entry. As can be seen from the figure, one potential way to improve the list's ease of use involves reformatting the list to distinguish between outline levels. At present, it is difficult to distinguish sections that are subsets of other sections because of the lack of uniform indentation in the U.S. list. As shown in the figure, using uniform indentation for all text in the outline entry, as is the case in the British list, more readily identifies sections that are subsets of other sections. Commerce, in commenting on a draft of this report, said that they have already adopted more consistent indenting.

Figure 3.3: Comparison of British and U.S. Control Lists

<u>U.S. List</u>	<u>British List</u>
<p>1529A Electronic equipment for testing, measuring or for microprocessor/microcomputer development, as follows.</p>	<p>IL 1529 Electronic equipment for testing, measuring or for microprocessor/microcomputer development, as follows, and specially designed "software" therefor:</p>
<p>Controls for ECCN 1529A</p>	
<p>List of Equipment Controlled by ECCN 1529A</p>	
<p>(a) Any testing or measuring equipment:</p> <ol style="list-style-type: none">(1) Not described in any other ECCN in the Commodity Control List; and(2) Designed for use at frequencies exceeding 18 GHz;	<p>(a) Any testing or measuring equipment:</p> <ol style="list-style-type: none">(1) Not described in any other Item in this List; and(2) Designed for use at frequencies exceeding 18 GHz;
<p>Note: This paragraph (a)(2) does not control the following equipment having a maximum specified operating frequency of 26.5 GHz or less:</p>	<p>NE: This sub-item does not embargo the following equipment having a maximum specified operating frequency of 26.5 GHz or less:</p>
<ol style="list-style-type: none">(a) Power meters;(b) Broadband noise sources; or(c) Noise figure meters;	<ol style="list-style-type: none">(1) Power meters;(2) Broadband noise sources; or(3) Noise figure meters;
<p>(b) Logic analysers having any of the following characteristics, and specially designed accessories and specially designed components therefor:</p>	<p>(b) Logic analysers having any of the following characteristics, and specially designed accessories and specially designed components therefor:</p>
<ol style="list-style-type: none">(1) More than a total of 64 channels;(2) A synchronous (state) channel sampling rate of more than 50 MHz;(3) An asynchronous (timing) channel sampling rate of more than 200 MHz;	<ol style="list-style-type: none">(1) More than a total of 64 channels;(2) A synchronous (state) channel sampling rate of more than 50 MHz;(3) An asynchronous (timing) channel sampling rate of more than 200 MHz; or
<p>(4) Probe interfaces and inverse assemblers, <i>except those designed for use with a microprocessor or microcomputer microcircuit "family" that contains at least one microprocessor or microcomputer microcircuit not controlled by ECCN 1564A;</i></p>	<ol style="list-style-type: none">(4) Probe interfaces and inverse assemblers, <i>except those designed for use with a microprocessor or microcomputer microcircuit "family" which contains at least one microprocessor or microcomputer microcircuit that is not embargoed by Item IL 1564;</i>
<p>(c) Frequency standards having both of the following characteristics:</p>	<p>(c) Frequency standards having both of the following characteristics:</p>
<ol style="list-style-type: none">(1) Designed as reference standards for laboratory use; and	<ol style="list-style-type: none">(1) Designed as reference standards for laboratory use; and
<ol style="list-style-type: none">(2) Either of the following:	<ol style="list-style-type: none">(2) Either of the following:
<ol style="list-style-type: none"><ol style="list-style-type: none">(i) A long-term drift (aging) over 24 hours or more of 1 part in 10^{10} or less; or	<ol style="list-style-type: none"><ol style="list-style-type: none">(A) A long-term drift (ageing) over 24 hours or more of 1 part or less in 10^{10} or
<ol style="list-style-type: none"><ol style="list-style-type: none">(ii) A short-term drift (instability) over a period from 1 to 100 seconds of 1 part in 10^{12} or less;	<ol style="list-style-type: none"><ol style="list-style-type: none">(B) A short-term drift (instability) over a period from 1 to 100 seconds of 1 part or less in 10^{12}
<p>(d) Equipment containing frequency standards, having any of the following characteristics:</p>	<p>(d) Equipment containing frequency standards, having any of the following characteristics:</p>
<ol style="list-style-type: none">(1) Designed for mobile use and having a long-term drift (aging) over 24 hours or more of 1 part in 10^9 or less;	<ol style="list-style-type: none">(1) Designed for mobile use and having a long-term drift (ageing) over 24 hours or more of 1 part or less in 10^9
<ol style="list-style-type: none">(2) Designed for fixed ground use and having a long-term drift (aging) over 24 hours or more of 5 parts in 10^{10} or less; or	<ol style="list-style-type: none">(2) Designed for fixed ground use and having a long-term drift (ageing) over 24 hours or more of 5 parts or less in 10^{12} or

Using a larger typeface than is currently used in both the headings and body of the U.S. list is another way to improve the list's ease of use. According to research into the factors that affect legibility, text type that is too small makes reading difficult. Small type basically reduces visibility, which in turn, hampers word recognition. Research further proposes that the most legible sizes of text type range from 9 to 12 point.² The British list, which uses 9 point type appears easier to read than the U.S. list, which uses 8 point type.

Improved typography, such as greater use of highlighted shading, can also help eliminate the confusion coming from the large number of notes, technical notes, and advisory notes that appear throughout the list. In 1989, Commerce attempted to adopt the British list's use of shading to distinguish advisory notes for Soviet Bloc countries and the People's Republic of China. Initial attempts to print this shading were less than successful due to publication problems, but a Commerce official stated that the problems have since been solved. Once it is clear that these technical problems have been fully eliminated, Commerce can expand the use of shading or other methods of highlighting to further distinguish between the commodity control list text and the text associated with the many notes that users describe as confusing. In commenting on a draft of this report, Commerce said that in revisions to the control list published in late summer 1990 it had placed explanatory and technical notes within box outlines to separate them both from the main text and from the already shaded advisory notes.

Also, since legibility research shows that the overuse of italics impairs readability and comprehension, a revised version could also restrict the use of italics to cross references in explanatory items and to exceptions in the list. Commerce's current format uses italics for subject headings in addition to these functional highlighting purposes, which results in a large amount of italics type. Consistently limiting the use of italics to only a few typographic highlighting functions can help some readers better understand and use the list.

²Rob Carter, Ben Day, and Philip Meggs, *Typographic Design: Form and Communication* (New York: Vos Nostrand Reinhold and Company, 1985, p. 86).

Commerce and Industry Agree That the Control List Can Be Improved

The Commerce official responsible for the control list's publication and an industry representative agreed that the control list could be improved by incorporating some of our suggested formats and presentational revisions. This Commerce official further indicated that there are no operational constraints against making these improvements. The official responsible for managing the formatting and presentation of the list said that our suggestions for typographical and format changes represent a substantial visual improvement. However, the official expressed some reservations about the effect the changes had on the size of the regulations, adding that the list is already criticized as excessively large. However, with the recent agreement to substantially reduce the list, length should not be an inhibiting factor.

Both the Commerce official and the industry representative said that they favored our suggestion that the information be reorganized to reflect the sequence of a user's need for information and guidance. They said they liked setting off notes with various types of shading, although the Commerce official expressed reservations about users being able to distinguish between various types of shading.

Conclusions

The U.S. control list is unnecessarily difficult for U.S. exporters to use and understand. Over the years, Commerce has made improvements to the list, but exporters continue to experience problems in using the list. Commerce now has a unique opportunity to improve the list as it develops a new list pursuant to a recent agreement between the United States and its allies. In developing the new list, Commerce should seek to make its presentation clearer and more readable. This can be done by incorporating plain English features, such as user-oriented rewording and typographical redesign. Knowledgeable Commerce and industry officials confirmed that such changes would promote the control list's usability. Subsequently, senior Commerce export control policy officials told us that they intend to improve the control list's clarity while developing the new list.

Recommendation

We recommend that the Secretary of Commerce direct the Under Secretary for Export Administration to incorporate into the development of the new commodity control list design principles such as the ones described above that will improve the list's presentation.

Agency Comments

Commerce concurs with our recommendation. In developing the new control list, Commerce has stated that it will incorporate as many of our suggestions as practical. It has also identified a number of improvements it has recently made to the control list's readability.

Comments From the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Administration
Washington, D.C. 20230

24 SEP 1990

Mr. Frank C. Conahan
Assistant Comptroller General
National Security and International
Affairs Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Conahan:

Thank you for your letter requesting comments on the draft report entitled "Export Controls: Opportunities for Improving Compliance with Export Administration Regulations."

We have reviewed the enclosed comments of the Under Secretary for Export Administration and believe they are responsive to the matters discussed in the report.

Sincerely,


Thomas J. Collamore
Assistant Secretary
for Administration

Enclosure

Appendix I
Comments From the Department
of Commerce



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for Export Administration
Washington, D.C. 20230

September 7, 1990

Mr. Frank C. Conahan
Assistant Comptroller General
U.S. General Accounting Office
National Security and
International Affairs Division
Washington, D.C. 20548

Dear Mr. Conahan:

Thank you for your letter to the Secretary affording the Department of Commerce an opportunity to review and comment on your draft report entitled, Export Controls: Opportunities for Improving Compliance with Export Administration Regulations.

In the report, GAO recommends that the Secretary of Commerce direct the Under Secretary for Export Administration to ensure the accuracy of the oral advice provided on export regulations. We concur with this recommendation.

To aid in giving accurate and consistent advice, we have implemented several programs over the past several months. For our assessment of the findings relating to this recommendation and details on these programs, please see Enclosure A. We believe the intent of this recommendation has been met.

GAO also recommends that the Secretary of Commerce direct the Under Secretary for Export Administration to incorporate into the development of the new commodity control list design principles such as the ones described in the report that will improve the list's readability. We concur with this recommendation and we appreciate GAO's suggestions. Upon the development of the new control list, we will incorporate as many of these suggestions as practical. A detailed assessment of the findings relating to this recommendation are included as Enclosure B.

We appreciate this opportunity to comment on the draft report.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Kloske".

Dennis Kloske

Enclosures



ENCLOSURE A

I. GAO Recommendation that the Secretary of Commerce Direct the Under Secretary for Export Administration to Ensure the Accuracy of the Oral Advice Provided On Export Regulations

A. Pages 17-19: Firms Voice Complaints About Inconsistent and Inaccurate Oral Advice

Through day-to-day hands on experience, and discussions with their colleagues, BXA's Exporter Counselling Division (ECD) and regional offices are able to provide the most accurate responses to exporters' inquiries. In addition, our Computer Phone Log helps ensure that ECD and the regional offices provide the same correct answer each time. The counselor simply checks the phone log for a record of when that exporter called last, what the question was and what the counselor's response was. This not only ensures that we provide the same response, but it provides a quality control function by allowing the staff to discuss the questions and answers given to exporters. The "One-Voice Program" also helps to ensure that we are providing consistent information to the public. The Office of Export Licensing (OEL) meets once a month to interpret and discuss new regulations to assure that consistent and accurate guidance is provided to the exporting community. This information is communicated to the regional offices after each meeting so they too speak with one voice.

The report talks about exporters "shopping" for the desired response. Exporters sometimes do shop around for the most favorable answer, but shopping around is not the result of inconsistent advice. Rather, it is a result of exporters hearing what they do not want to hear. In addition, exporters will often change their export scenarios when they call more than once. Even a slight change in the facts can change our answer to their questions. We are concerned that GAO did not question exporters to determine whether they described the exact same transactions every time they called and the methods GAO used to measure the quality of responses from exporters interviewed.

B. Pages 20-21: Limited Control Over Large Number of Staff Providing Advice

The report discusses the limited control over the large number of staff providing advice to the public, and how the phone log system is only used by a minority of Commerce staff. ECD and the regional offices are the primary offices responsible for answering exporters' questions. Exporters are aware that information regarding export regulations is obtained through ECD or our regional offices. This message is conveyed through our brochures, BXA's newsletter the OEL Insider, and at our nationwide seminar programs. Even the ITA District Offices refer exporters to BXA for

Now on pp. 12 and 13.

Now on p. 14

- 2 -

complex licensing questions. ECD and the regional offices may refer the exporter to the appropriate OEL strategic trade officer for information on a specific case, or to BXA's Office of Technology and Policy Analysis (OTPA) for a technical interpretation, such as a commodity classification.

The report also states that the phone log system is not used by the more than 130 other BXA professional staff who respond to questions, or by the 150 ITA Trade Specialists located in the District Offices. For the reasons stated above, it would not be beneficial for them to be connected to the phone log system. They do not routinely provide advice on export regulations.

Pages 21-23: Operational Problems With the Telephone Log System

The report states that the ECD and the Western Regional Office limit their phone log entries to only the most "significant inquiries," and that the staff uses its own judgment to determine what is considered significant. Our offices seek to record all calls into the phone log with the exception of routine status questions. However, because we handle hundreds of calls per day, we do not always have time to record each call into the phone log. To help us achieve the goal of logging all calls, we continue to encourage exporters to use our electronic services to handle matters that do not require regulatory interpretation. Staff will then be able to concentrate on the more complex questions, and have the time to use the phone system to record these calls. We have recently developed a brochure that explains how to use our electronic services. We hope that exporter awareness of these services will lighten the load on our counselors so they have the time they need to utilize fully the phone log.

The report further states that we can only sort calls recorded in the phone log according to caller. This is not true. The reports which are generated from the phone log can be sorted by type of caller and nature of the call. In addition, we can print out the comment field which will give the question asked and the answer given. In this way, we monitor the accuracy and consistency of our advice to the exporting community.

The report also implies that OTPA should have the responsibility for ensuring accurate and consistent advice to the exporting community because they maintain the Export Administration Regulations and provide written interpretations, such as commodity classifications and advisory opinions. The ECD and the regional offices are the primary offices responsible for providing oral advice to the exporting community. Moreover, although OTPA writes the regulations, they do so with the consultation and clearance of other offices in BXA. The ECD regularly advises the Regulations Branch of OTPA regarding changes that should be made to the regulations based on contacts with the exporting community.

Now on pp. 14 and 15

- 3 -

Now on p. 16.

Pages 23-24: Commerce Does Not Always Obtain All Pertinent Information When Responding to Queries

We recognize the importance of asking the exporter the right questions, and do so to the extent possible. To ensure that new employees get the proper training needed to work in ECD or the regional offices, they are assigned to an experienced counselor. The new employees spend several days just listening in on calls to ensure that they become familiar with our "probing techniques." However, consulting over the phone does have its limitations. Without written documentation in front of us as we speak, we must rely on what the exporter chooses to tell us in response to our questions.

Now on p. 16.

Page 24: High Turnover Lowers Experience Level

ECD does have a history of high turnover. One of the reasons was the low grade structure. This was changed early this year, and will most certainly aid in retaining good employees. However, ECD employees are often young, well-educated and in a position to enhance their careers after mastering the regulations in ECD. They move on to jobs which build on the expertise they developed working for ECD. Another reason for high turnover is job burnout. ECD staff answer dozens of calls a day. We have made some changes which should help prevent job burnout. Counselors no longer answer the phone eight hours a day. Rather, they are on the phones for part of the day, and then they are given time to work on other projects including writing articles for the OEL Insider, preparing for seminars where they will participate as speakers, and working on a wide variety of other assignments.

Now on p. 17.

C. Pages 24-25: Other Quality Control Mechanisms Are Potentially Available to BXA

GAO's references to IRS efforts to improve its accuracy in advice to the public are interesting. We will solicit advice from IRS on the costs and benefits experienced to date.

Moreover, we agree that probing to obtain all the facts needed about a situation and a stable and experienced workforce are important factors in assuring the accuracy of information given to the public. We are aware of this and, as stated above, have taken steps to address problems that have arisen in the past.

ADDITIONAL PROGRAMS TO ACHIEVE ACCURATE ORAL ADVICE

Through the opening of our regional offices, expanding the Exporter Counselling Division (ECD), and adding automation aids, we are increasing our responsiveness to exporters. In addition, we have implemented several programs over the past several months, including:

One-Voice Program: OEL meets once a month to discuss new regulations and their implications for licensing activities. This allows OEL to speak with "One-Voice" to the exporting community. A summary of the meeting is transmitted to the regional offices through OEL's network, so that the offices provide the same information as provided in Washington.

On-Line Regulations: ECD staff with access to the Local Area Network can review the export regulations on their computer in the course of their counselling activities. Electronic access to the Export Administration Regulations (EAR) keeps the staff up-to-date on the latest changes and developments in the regulations.

On-Line Federal Register: Network users also can review new Federal Register notices to ensure that they are informed about regulations as soon as they are published. BXA also sends advance notice of regulations to BXA and ITA staff domestically and abroad.

Electronic Mail: Users of the network may transmit all significant information to BXA offices (including the regional offices) the same day in hard copy format. E-Mail is also used to inform users of unique licensing questions, and enables the ECD staff to discuss the question and provide an answer.

Clipping Service: ECD is a part of a Commerce newspaper clipping service that keeps the staff up-to-date on current events which may affect export controls and licensing.

We are always seeking ways to increase the public's awareness and understanding of the EAR. In addition to our exporter counselling services, we have an ambitious seminar program including 24 seminars per year--a one-day and three-day program each month. US&FCS Trade Specialists participate in these seminars.

BXA has made great strides in improving its services to the public. Reaction from the Congress and business community has been very favorable. Complaint calls are virtually non-existent. However, we are always willing to look at ways to achieve additional improvements.

ENCLOSURE B

II. GAO's Recommendation That the Secretary Improve the Presentation of the Commodity Control List

Now on p. 20.

A. Page 29: Improving the Commodity Control List's Readability

Australia should be added to the list of COCOM members given in the report.

Now on pp 20 and 21.

B. Pages 30-32: Industry Finds the Control List Difficult to Read and Understand

The comment from the TAC Chairman that he uses the British list instead of the Control List is not surprising. Some exporters claim that the British list is easier to follow than the more bulky COCOM International List, and it is not classified. However, the TAC Chairman could not rely on the British list to determine properly U.S. legal requirements. In addition, most of the industry complaints would not be completely eliminated by formatting improvements. Most of the confusion is caused by COCOM agreed technical wording, which is negotiated by a 17 member organization.

Now on pp. 21 and 22.

C. Pages 32-33: Commerce Efforts to Improve the Control List Presentation

The changes to the regulations published in August 1990 will place the various technical and explanatory notes in boxes, so they can be more clearly distinguished from the main text.

Now on pp. 22 to 29.

D. Page 33-42: The Commodity Control List Can Be Made Easier To Understand and Use

Now on p. 22.

The reference at the top of page 34 to "eight simple categories" is misleading. The current list is in ten simple categories; the complexity comes within each of the ten categories. It is too soon to know if the goal of simplicity in the core list exercise will be fully realized.

Now on p. 28.

Figure 3.3 on page 40 is intended to display the benefits of larger type, it instead shows a difference in overall formatting. What is striking is not the negligible difference in type size, but rather the differences in indenting and use of open space. BXA has already adopted the more consistent indenting and will review spacing and suggested formatting in formulating the new list. Along with uniform indentation, BXA has also responded to the need for distinguishing various explanatory and technical notes from the main text. Substantial revisions to the Control List published in late Summer 1990 place these notes within box outlines to separate them both from the main text and from the already shaded Advisory Notes.

- 2 -

Now on p. 30.

E. Page 42-43: Commerce and Industry Agree That the Control List Can Be Improved

Until we have an agreed core list for COCOM controlled items (i.e., items controlled multilaterally for national security reasons), we will not know how complex the core list will be or how it might influence the size of the complete Control List, which contains foreign policy and nuclear controls as well. However, BXA is committed to working with industry to develop ways of improving the organization and structure of the Control List.

The following are GAO's comments on the Department of Commerce's letter dated September 24, 1990.

GAO Comments

1. We agree that to provide consistent advice involving a specific export Commerce officials must be provided with the same set of facts. Chapter 2 of our report discusses the importance of obtaining all pertinent information when providing oral advice. Regarding Commerce's concern that we did not ascertain whether exporters were describing the same exact transaction, we had no indication from our discussions with exporters, as well as from our own experience with Commerce, that there was any alteration of the basic facts of a situation. Regarding Commerce's concern about our method of measuring the quality of responses, we obtained Commerce's position as to the appropriate response to a given question. This was based on our belief that Commerce, as the agency responsible for administering export controls over dual-use goods and technology, is the appropriate party to assess the accuracy of its responses. In the course of our work, Commerce officials acknowledged that oral advice is sometimes inaccurate and inconsistent and that it may result in exporters shopping for advice.

2. As discussed in chapter 2 of our report, ITA's district offices handle several thousand calls each year, albeit far fewer than BXA. No data are available on how much oral advice is provided by BXA professional staff outside WRO and EAS. We concluded that BXA may wish to include these staff in the telephone log system to improve accountability after assessing the nature and extent of the provision of inaccurate and inconsistent advice.

3. We are aware that Commerce is capable of generating reports from its telephone log system that can be sorted by the general nature of the calls, such as requests for regulatory information, classifications, or export control forms, and have revised the report to include this information. However, a Commerce manager involved in providing oral advice, as well as the industry consultant who designed the log system, told us that it is not possible to sort responses according to subject matter.

4. We have revised the report to include Australia.

5. We agree that the U.S. control list must be used to determine U.S. legal requirements. However, the British list is regularly used by both U.S. government and industry officials for quick and easy reference.

6. We have revised the report to state that the Coordinating Committee has agreed to develop a new list, which offers the opportunity to improve the list's readability. We agree that it is too soon to know if the goal of simplicity in this list will be fully realized.

7. We have revised the report to emphasize the benefit of indenting and using open space. We have also recognized BXA's improvements.

Major Contributors to This Report

**National Security and
International Affairs
Division, Washington,
D.C.**

Steven H. Sternlieb, Project Director

**San Francisco
Regional Office**

Kane Wong, Issue Area Manager
Evelyn E. Aquino, Project Manager
Robert R. Tomcho, Evaluator
Gerhard C. Brostrom, Report Analyst

**Office of Publishing
and Communication**

Sharon Ferguson, Publishing Consultant
Kim Wheeler, Publishing Consultant

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