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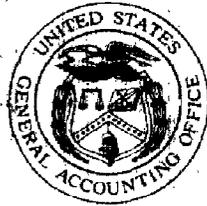
GAO

Report to the Chairman, Subcommittee  
on Economic Policy, Trade and the  
Environment, Committee on Foreign  
Affairs, House of Representatives

December 1993

# EXPORT CONTROLS

## Actions Needed to Improve Enforcement



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

150645

National Security and  
International Affairs Division

B-253769

December 30, 1993

The Honorable Sam Gejdenson  
Chairman, Subcommittee on Economic  
Policy, Trade and the Environment  
Committee on Foreign Affairs  
House of Representatives

Dear Mr. Chairman:

As you requested, we reviewed the U.S. government's enforcement of export controls over dual-use items. In this report, we discuss the tools and resources available to the Department of Commerce and the U.S. Customs Service to enforce export controls, how well these agencies are enforcing controls, and impediments to effective enforcement. We also present a number of options for improving the existing U.S. government enforcement organizational structure.

We plan no further distribution of this report until 30 days from the date of the report, unless you publicly announce its contents earlier. We are sending copies of this report to the Secretaries of Commerce, Justice, State, and Defense; the Commissioner of the U.S. Customs Service; and other interested parties. Copies will also be made available to others on request.

If you or your staff have any questions about this report, please call me on (202) 512-4128. Major contributors to this report are listed in appendix V.

Sincerely yours,

Joseph E. Kelley  
Director-in-Charge  
International Affairs Issues

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# Executive Summary

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## Purpose

The Persian Gulf War vividly revealed the dangers posed by countries such as Iraq gaining access to so-called dual-use equipment and technology needed to develop weapons of mass destruction. Controlling exports of such items is a key part of the U.S. strategy for preventing the spread of these weapons. To assess how well these controls are working, the Chairman, Subcommittee on Economic Policy, Trade and the Environment, House Committee on Foreign Affairs, asked GAO to review (1) the tools and resources available to the Department of Commerce and the U.S. Customs Service in carrying out their enforcement responsibilities; (2) how well they are enforcing export controls; (3) impediments to effective enforcement; and (4) options for modifying the current enforcement organizational structure.

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## Background

The goal of U.S. export control enforcement is to prevent or detect illegal exports of controlled items. The principal law for controlling the export of U.S. dual-use commodities and technology (i.e., those items, such as certain electronic equipment or various chemicals, that have both military and civilian uses) is the Export Administration Act of 1979, as amended. Under the act, Commerce has responsibility for licensing dual-use goods for export and shares responsibility with Customs for enforcing controls over these items. The 1985 amendments to the act explicitly recognized the two agencies' joint jurisdiction and sought to clarify their respective roles to improve their enforcement efforts.

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## Results in Brief

The enforcement program tools and authorities available to Commerce and Customs are generally complementary, with a key exception—criminal investigations, where overlap exists. Both agencies show a decline in the level of agent resources allocated to dual-use enforcement since fiscal year 1988, attributable in part to the relaxation of controls over items to the former Soviet bloc.

The effectiveness of Commerce and Customs enforcement efforts—measured in terms of case results—also shows a decline in arrests, criminal indictments, and convictions in fiscal year 1992, compared with earlier years. Department of Justice attorneys familiar with the two agencies' cases were generally satisfied with the level of competence displayed by Commerce and Customs agents.

Perhaps the most serious impediment to effective enforcement that GAO identified has been the continued poor cooperation between Commerce

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and Customs. Their failure to consistently work together despite congressional direction has hampered their investigative efforts and adversely affected individual cases.

As enforcement resources decline in an increasingly tight budgetary environment, alternative approaches to enforcing the Export Administration Act should be considered. GAO believes that, of several options that could improve U.S. enforcement efforts, two have relatively greater merit: (1) maintaining the split in Commerce and Customs responsibilities while ensuring that the agencies implement mechanisms to improve cooperation and achieve more efficient use of resources or (2) transferring criminal enforcement responsibility to Customs. Recent agreements between Commerce and Customs to improve cooperation represent a key first step towards adopting the first option.

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## Principal Findings

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### Tools and Resources

Criminal investigations and industry outreach efforts to educate exporters about U.S. export control laws are overlapping elements of both Commerce and Customs enforcement efforts. In other respects, Commerce and Customs authorities and programs vary. Unlike Commerce, Customs is authorized to conduct warrantless searches at ports and borders and overseas investigations. Commerce has sole authority to impose administrative sanctions, such as civil fines. Customs has an inspection program at various ports to examine cargo and seize illegal shipments; Commerce screens license applications to allow enforcement input to licensing decisions.

Customs has a more extensive network of resources available for investigations—137 domestic offices staffed with approximately 3,000 special agents responsible for enforcing various laws, plus 23 foreign offices. In contrast, Commerce maintains 8 domestic offices and has a staff of 66 special agents dedicated to export control enforcement. In fiscal year 1992, Commerce's Office of Export Enforcement, primarily comprised of special agents, had 79 staff on board, compared with 111 in fiscal year 1988—a 29-percent decline. In fiscal year 1992, Customs expended an estimated 89 agent staff years on illegal export cases (a category that primarily includes dual-use export cases)—down 31 percent.

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## Effectiveness of Enforcement Efforts

Between fiscal years 1988 and 1990, Customs recorded significantly higher criminal investigative results than Commerce—over four times as many arrests, indictments, and convictions. However, Customs results dropped sharply in later years: arrests, indictments, and convictions totaled 18 in fiscal year 1992, compared with 92 in fiscal year 1990. Total Commerce results also dropped from 20 to 14 over the same period. Both agencies attribute the decline in part to the relaxation of controls that occurred as a result of the breakup of the former Soviet bloc.

Other measures of Customs and Commerce enforcement efforts include detentions and seizures (trending downward) and industry outreach contacts (up from 350 to 966 for Commerce between fiscal years 1989 and 1992, and down from 1,282 to 464 for Customs). During this same period, the volume of some Commerce administrative sanctions and the proportion of total license applications reviewed generally increased.

Most Department of Justice attorneys GAO surveyed did not perceive significant differences in how Customs and Commerce investigated dual-use cases. Available data tend to bear out the attorneys' views: over the past 4 fiscal years, the proportion of cases/defendants that Justice accepted for prosecution has been relatively the same for both agencies.

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## Poor Cooperation Has Been Key Enforcement Impediment

Persistent Commerce and Customs disagreements in such areas as conducting overseas investigations, coordinating investigations and pooling resources, and sharing licensing information have hampered the agencies' investigative efforts. For example, in May 1992, ongoing investigations were delayed for months while the two agencies disputed the need for Commerce agents to travel overseas. Other than an exchange of case lists, the agencies have not established formal mechanisms to ensure greater cooperation; they do not coordinate outreach visits, and the number of joint cases has recently declined. In September 1993, the agencies finally concluded two agreements to help resolve their differences. The first provides for Customs' receipt of licensing data, and the second is intended to improve cooperation by providing guidance on a number of areas, including overseas investigations.

Increasing budget pressures—particularly at Commerce, where enforcement resources are expected to drop still further in fiscal year 1994—have raised concerns about the practicality of maintaining two separate units with overlapping jurisdictions. Justice Department

attorneys GAO surveyed generally viewed the current system as inefficient and wasteful.

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## Options for Change

GAO has identified several possible options for changing the current system; each has advantages and disadvantages. Any option must ensure that essential elements of enforcement remain intact and should capitalize as much as possible on the strengths and resources of the two agencies.

Under one option, to improve the current system, Commerce and Customs would retain their joint responsibilities, but would also be required to implement specific coordination mechanisms, including procedures for Customs' access to licensing data, and conduct more joint activities. The main advantage of this option is that it retains the strengths of both agencies; its primary drawback remains the possibility that the two agencies will be unable to overcome their long-standing inability to cooperate, notwithstanding their recently concluded agreements. Actions by Congress that could improve the chances of success for this option include (1) establishing mechanisms to monitor implementation and (2) directing the agencies to identify and pursue specific ways to eliminate duplicative activities and increase joint operations.

A second option would be to shift responsibility for all dual-use criminal investigations to Customs. This option would eliminate the existing overlapping jurisdiction and attendant coordination problems and also capitalize on Customs' strengths, such as its broad resource base. The major disadvantage of this option is the potential loss of key elements of effective enforcement—the linkage of licensing and enforcement and resources dedicated to dual-use enforcement. To address these drawbacks, Congress could (1) direct Commerce and Customs to devise procedures ensuring Customs access to data and input to licensing decisions and (2) direct Customs to track and report its dual-use caseload and to devote a set level of resources to dual-use enforcement.

Other options—transferring all criminal investigations to Commerce, expanding Commerce legal authority, or creating a new agency—are described in chapter 5. In GAO's view, these are generally less desirable options.

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## Matters for Congressional Consideration

The Congress should weigh the various options for improving export control enforcement, as well as the recent actions by the Commerce Department and the U.S. Customs Service, and then consider amending the Export Administration Act as needed to improve the U.S. government's ability to enforce controls over dual-use exports, preferably by (1) maintaining Commerce's and Customs' shared jurisdiction for dual-use export control enforcement and reinforcing their efforts to improve cooperation or (2) granting Customs primary responsibility for dual-use criminal investigations, with corresponding improvements in Customs' operations.

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## Agency Comments

The U.S. Customs Service acknowledged that poor cooperation has been a key impediment to effective enforcement and agreed that continued disagreements are unacceptable. The Commerce Department stated that the best option for improved enforcement would be to continue the current enforcement system while improving cooperation and coordination between the two agencies. Both agencies cited their recent agreements as key to improved cooperation and pledged to meet regularly to ensure that they are carried out.

GAO believes that Commerce and Customs, through these agreements, have taken a significant step towards adopting GAO's first option. However, careful monitoring of the agreements' implementation is needed to ensure that real progress is achieved, given the long-standing history of disagreements between the two agencies.

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**Abbreviations**

BXA	Bureau of Export Administration
COCOM	Coordinating Committee on Multilateral Export Controls
EAA	Export Administration Act
ECASS	Export Control Automated Support System
GAO	General Accounting Office
MOU	Memorandum of Understanding
TECS	Treasury Enforcement Communications System



# Introduction

Over the past few years, dramatic changes around the world have caused the United States to reassess the controls it imposes and enforces over the export of dual-use goods and technology, such as sensitive electronic equipment or chemicals, that have both military and civilian uses. The collapse of the Soviet bloc has led the West to relax controls over exports to Eastern Europe and the former Soviet republics. Conversely, the Persian Gulf War has heightened concerns over the risks posed by the proliferation of weapons of mass destruction, thereby emphasizing the importance of controls over items that could aid in the development of such weapons. This heightened emphasis on controlling proliferation items underscores the continued need for the U.S. government to have in place an effective export control enforcement system.

## Export Controls and How They Are Enforced

The principal law for controlling the export of U.S. dual-use commodities and technology is the Export Administration Act (EAA) of 1979, as amended. The purpose of this act is to control exports of dual-use goods and technologies for national security or foreign policy reasons or when commodities are in short supply. The Commerce Department has responsibility for administering controls over dual-use items; items subject to control are listed on the Commodity Control List, which specifies those items and destinations where exporters must obtain validated export licenses.

The EAA also establishes the authority for enforcing dual-use controls. Simply defined, the goal of enforcement is to prevent or detect the illegal export of items and technology. Under the act, the Commerce Department and the U.S. Customs Service share responsibility for dual-use export control enforcement; these agencies' prevention and detection activities, discussed in more detail in chapter 2, include investigations of potential violations of the EAA and programs to educate exporters about U.S. export law requirements.

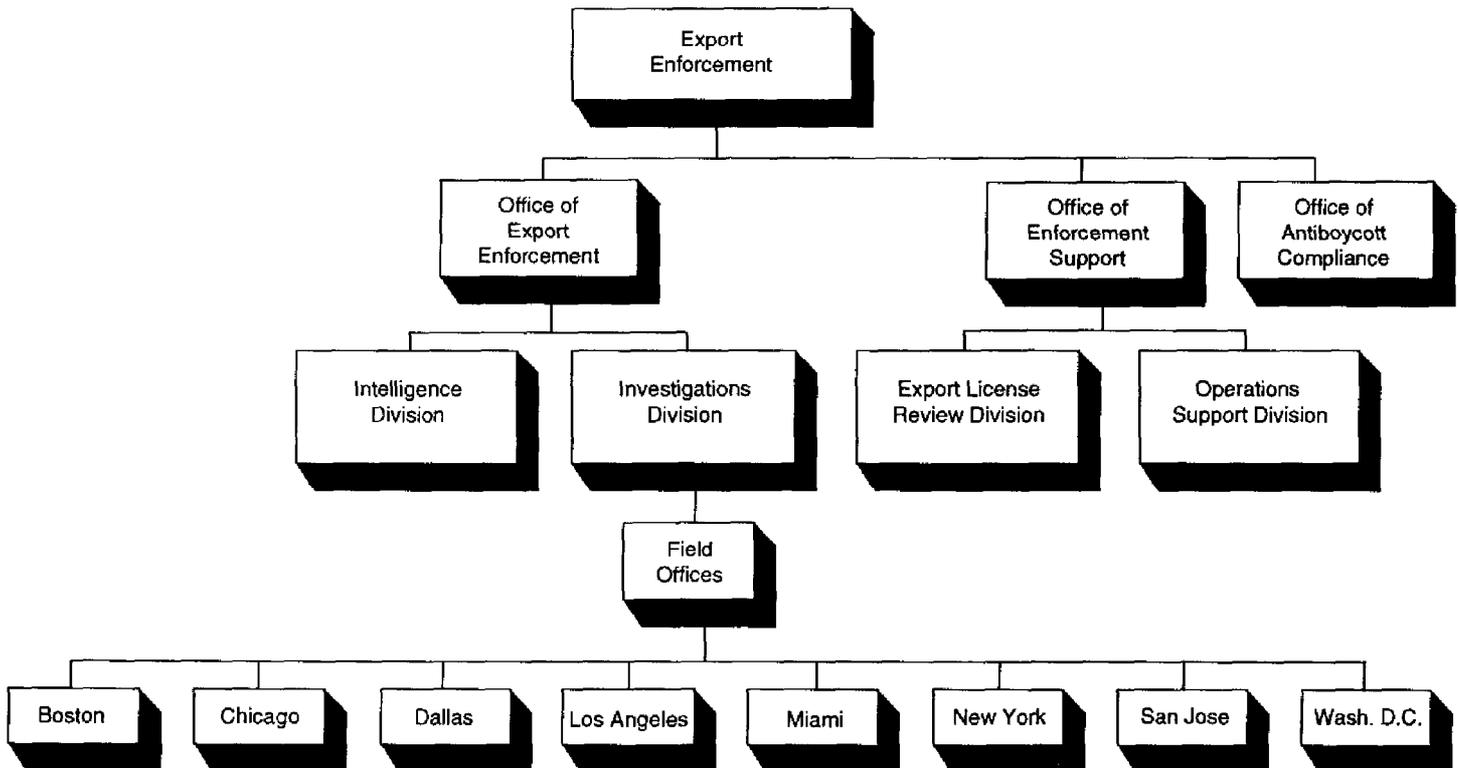
Congress amended the EAA in 1985 to clarify the respective enforcement responsibilities of Commerce and Customs in such areas as overseas investigations and investigations at U.S. ports and borders. Its intent was to ensure full cooperation between the two agencies as a basis for achieving effective enforcement of the statute.

## Commerce Export Control Enforcement Organization

The Commerce Department's Bureau of Export Administration (BXA) is responsible for licensing exports of U.S. dual-use items and enforcing

controls over these items. BXA was created in 1987 in response to a congressional mandate to ensure adequate separation of Commerce's export control and export promotion roles. Prior to 1987, Commerce's export control functions were carried out by the International Trade Administration, which continues to be responsible for Commerce's broad trade promotion activities. Within BXA, licensing is handled by the Export Administration branch (and its Office of Export Licensing) and enforcement by the Export Enforcement branch. The latter branch has three offices, as shown in figure 1.1.

Figure 1.1: Organizational Structure for Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce



Source: Prepared by GAO from information provided by the Commerce Department.

The Office of Export Enforcement, the principal unit responsible for enforcing the EAA, has eight field offices located in major exporting centers throughout the country. Special agents located in these field offices are engaged primarily in investigating suspected export control violations and in pursuing criminal and administrative sanctions.

The Office of Enforcement Support, staffed primarily with export compliance specialists, supports the field offices by, for example, receiving and disseminating export control-related information to them. It also monitors licensing and export activity by specific commodity and destination based on the most current national security and foreign policy concerns (e.g., export of chemical precursors to the Middle East) and makes recommendations regarding licensing decisions when deemed appropriate.

The Office of Antiboycott Compliance administers and enforces the provisions of the EAA that prohibit U.S. companies from complying with unsanctioned foreign boycotts against countries friendly to the United States.

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## Customs Export Control Enforcement Organization

The U.S. Customs Service has responsibility for enforcing a wide range of laws governing various aspects of trade, including the Export Administration Act. As the principal border enforcement agency of the United States, Customs has inspection and investigative resources for enforcing approximately 400 laws, and, therefore, has multiple enforcement responsibilities including drug smuggling, money laundering, fraud, and import and export control.

In 1981, Customs began "Operation Exodus," a program specifically aimed at enforcing export control laws.<sup>1</sup> Customs' Strategic Investigations Division has overall responsibility for managing and overseeing this program, which is designed to prevent illegal exports of arms, munitions, and dual-use items and technologies to controlled destinations. Customs inspectors at various ports support the Exodus program by selectively examining cargo and reviewing shippers' export declarations. As part of Exodus, Customs enforces controls over arms and munitions items licensed by the Department of State.

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<sup>1</sup>In addition to the EAA, other export control laws covered by Operation Exodus include the Arms Export Control Act, Trading With the Enemy Act, International Emergency Economic Powers Act, the Comprehensive Anti-Apartheid Act, and the Motor Vehicles Theft Law Enforcement Act.

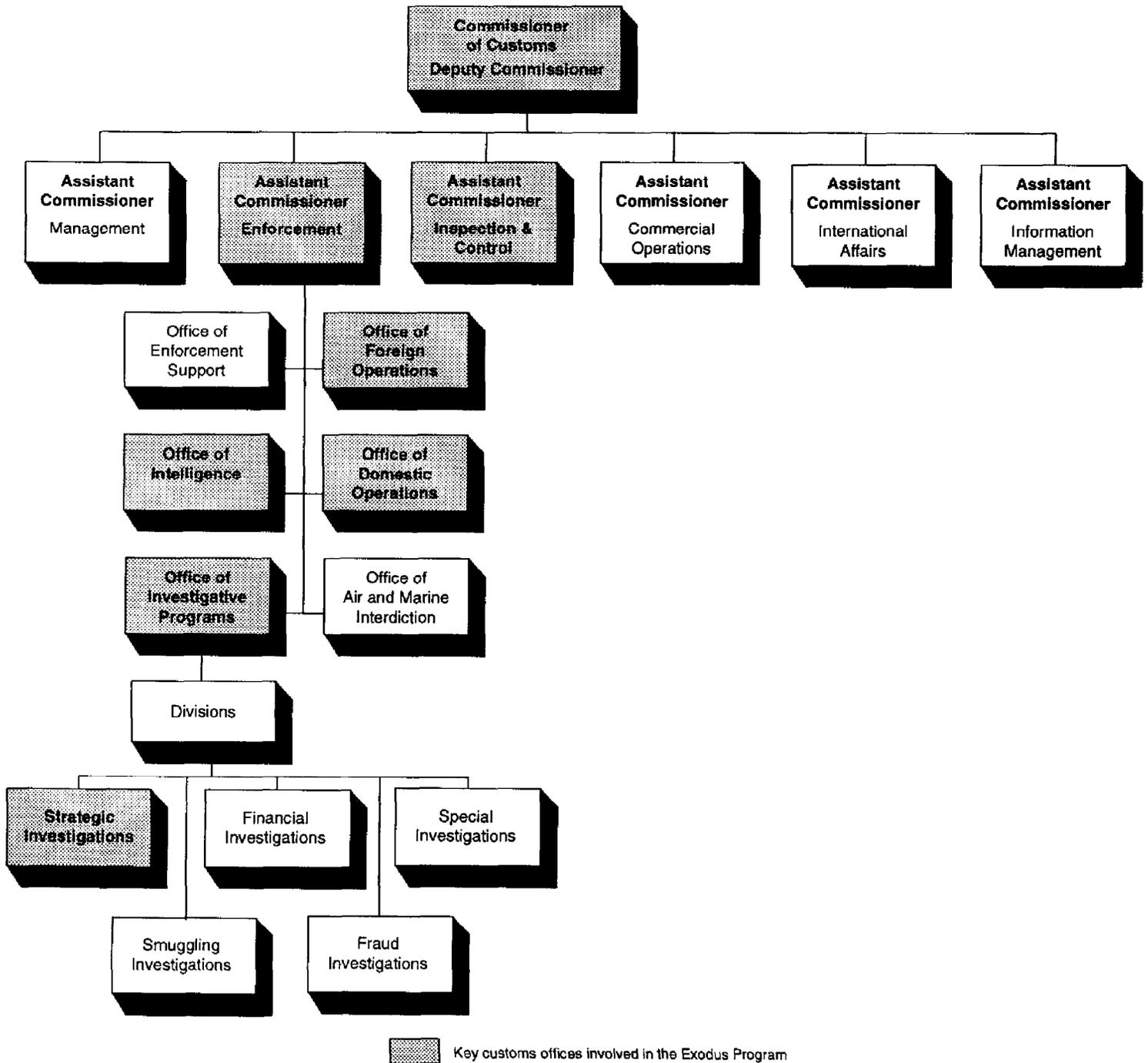
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**Chapter 1**  
**Introduction**

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The Exodus program has three basic components: criminal investigations, inspection and interdiction, and international cooperation. Key Customs offices involved in the Exodus program and in enforcing the EAA are highlighted in figure 1.2.

Figure 1.2: U.S. Customs Service Organizational Structure as It Relates to the Enforcement of Export Controls



(Figure notes on next page)

Source: Prepared by GAO from information provided by the U.S. Customs Service.

The Office of Domestic Operations oversees the investigative activities of Customs' network of over 100 domestic field offices staffed with special agents engaged in the agency's enforcement programs, including Exodus. The Office of Foreign Operations oversees Customs' offices in over 20 foreign locations that provide support to Exodus as well as other enforcement efforts. The Office of Intelligence provides intelligence support to the agency's operations, including enforcement and inspections. Lastly, the Office of Inspection and Control oversees a staff of over 6,000 inspectors who also assist in enforcing the myriad of laws for which Customs is responsible; 130 of these inspectors are assigned to export enforcement responsibilities, including Exodus.

## Changing Export Control Environment and Impact on Enforcement

Two developments over the past few years have altered the export control environment in which the Commerce Department and Customs Service enforce controls. The collapse of the Soviet bloc has led the United States and its western allies in the Coordinating Committee on Multilateral Export Controls (COCOM)<sup>2</sup> to ease controls over exports to Eastern Europe and the former Soviet Union. In 1990, COCOM agreed to an extensive liberalization of controls, resulting in the decontrol of significant numbers of items by the United States. As a result, the number of license applications submitted by exporters has substantially declined.

At the same time, renewed attention has focused on the threat posed by the proliferation of technologies of mass destruction—nuclear, biological, chemical, and missile. In late 1990, the United States announced an Enhanced Proliferation Control Initiative, to include the imposition of additional controls over exports of technologies and items useful to the development of weapons of mass destruction.

These changes represent a shift from controlling exports to a clearly defined hostile alliance (the Soviet bloc) to controlling exports to particular end-users for particular end-uses—for example, chemical precursors used to manufacture chemical weapons. They also represent a shift from controlling relatively higher technology items to controlling much lower level items that are more widely available. Taken together, these changes are likely to make dual-use controls more difficult to

<sup>2</sup>COCOM was established in 1949 to control exports to the Soviet Union and other communist states.

enforce, at a time when it remains important to U.S. interests to reduce the risks posed by the proliferation of weapons of mass destruction.

## Objectives, Scope, and Methodology

As requested by the Chairman, Subcommittee on Economic Policy, Trade and the Environment, House Committee on Foreign Affairs, we reviewed (1) the tools and resources available to Commerce and Customs to enforce the EAA, (2) how well these agencies are enforcing export controls, (3) impediments to effective enforcement, and (4) options for modifying the current enforcement organizational structure.

To assess Commerce's and Customs' enforcement responsibilities and the tools available to them, we (1) reviewed pertinent sections of the Export Administration Act, accompanying conference reports, and implementing regulations; (2) examined agency manuals, strategic plans, and other related documents; and (3) met with key agency officials in headquarters and field offices to determine the policies, procedures, and mechanisms used by both agencies to help prevent or detect export control violations.

To determine the specific resources allocated to enforcement, we obtained agency data on budgetary and staffing levels. Customs estimated the agent staff resources it spends on its Exodus program using agency data on enforcement hours charged to the two key components of the program (munitions and illegal export cases) as well as to certain administrative categories. The illegal exports category represents primarily dual-use export cases but also includes other types of cases. To calculate the number of agents dedicated to Exodus, we used per-agent regular hours and based our estimates on the assumption that a dedicated agent would charge at least 1,044 hours (50 percent of an agent staff year) to Exodus.

To assess how well agencies were conducting their enforcement responsibilities, we obtained and analyzed data on the results of each agency's enforcement efforts, such as the number of investigations opened and the number of convictions obtained. We also reviewed selected investigative files, reports prepared by the Department of Treasury's and Commerce's Offices of Inspector General, and other internal management reports. We contacted over 50 attorneys formerly or currently with the Department of Justice's U.S. Attorney's Office whom we identified from Justice records. We conducted extensive interviews with 36 of these attorneys who had sufficient experience with EAA cases to allow them to assess the relative merits of Commerce and Customs cases. Although the attorneys would not discuss specific cases in any identifying detail, they

were willing to give their views on the caliber of Commerce and Customs agents and investigations. We were not able to directly assess the effectiveness of Commerce and Customs in enforcing the EAA because data on the key variable in such an assessment—the volume of undetected illegal exports—are not available.

To assess impediments to effective enforcement, particularly with respect to coordination, we interviewed agency officials at both the headquarters and field office levels. We also reviewed pertinent documents, including various drafts of an interagency memorandum of understanding, correspondence between the two agencies, and documents from selected investigative case files. Finally, we obtained the views of Justice attorneys concerning potential and actual impediments to effective enforcement.

To identify and evaluate potential changes to the current enforcement structure, we met with Commerce, Customs, and Justice Department representatives as well as various individuals knowledgeable about export control enforcement issues. We identified these individuals by contacting industry and academic experts who participated in a National Academy of Science study<sup>3</sup> and a Congressional Research Service symposium<sup>4</sup> on export controls and through suggestions from Customs and Commerce officials.

We conducted fieldwork at Customs and Commerce headquarters offices. We also visited six of Commerce's eight field offices located in Boston, Chicago, Los Angeles, Miami, New York, and San Jose. We visited the corresponding Customs field offices in the same metropolitan areas as well as additional offices in San Diego and San Francisco. We selected these offices because they had a relatively high number of potential EAA violations referred to Justice or a high number of indictments, based on information provided by the Department of Justice.<sup>5</sup> We also visited two Customs inspection offices in Miami and New York.

We conducted our review between January 1992 and September 1993 in accordance with generally accepted government auditing standards.

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<sup>3</sup>Finding Common Ground: U.S. Export Controls in a Changed Global Environment, National Academy Press (Washington, D.C.: 1991).

<sup>4</sup>John P. Hardt and Jean F. Boone, Proceedings of the CRS Symposium on U.S. Export Control Policy and Competitiveness, Congressional Research Service (Washington, D.C.: Aug. 21, 1989).

<sup>5</sup>Information provided by Justice included selected data from the U.S. Attorneys' Case Tracking System, fiscal years 1989 to 1992, and the Department's List of Significant Export Control Cases, January 1981 to November 1991.

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**Chapter 1**  
**Introduction**

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We obtained written comments on a draft of this report from the Department of Commerce, U.S. Customs Service, and Department of Justice. These comments are presented and evaluated in chapters 3, 4, and 5 of the report as appropriate and are reprinted in appendixes II, III, and IV.

# Tools and Resources Available to Enforce Dual-Use Export Controls

The Commerce Department and U.S. Customs Service have varying tools available to them to discharge their joint responsibility for enforcing the Export Administration Act. Customs has the advantages of a broader range of enforcement authorities and a larger organization and resource base. Commerce's strengths, on the other hand, derive from the linkage of its enforcement and licensing activities and its sole authority to impose administrative sanctions. For both agencies, staff years allocated to dual-use export control enforcement have declined since fiscal year 1989.

## Complementary Tools to Enforce the EAA

Commerce and Customs have at their combined disposal a number of tools to enforce dual-use export controls, including their respective legislative authorities and various enforcement programs and activities. These tools are generally complementary, with a key exception—the critical area of criminal investigations.

## Enforcement Authority

As the principal border enforcement agency of the United States, Customs has a greater range of enforcement authorities than Commerce, which is primarily responsible for enforcing provisions of a single statute—the Export Administration Act. Table 2.1 compares the key authorities each agency has to enforce the EAA.

**Table 2.1: Key Customs and Commerce Enforcement Authorities**

Enforcement authority	Customs	Commerce
Warrantless search authority at domestic ports and borders	Yes	No
Authority to conduct overseas investigations	Yes, with agreement of foreign government	Only with Customs' concurrence
Forfeiture authority	Yes	No
Authority to conduct undercover operations	Yes, with additional special authorities	Yes, with no special authorities
Authority to impose administrative sanctions	No	Yes

Unlike Commerce, Customs is authorized to conduct searches without a warrant and to detain and seize goods at U.S. ports. Customs may examine any vehicle, vessel, aircraft, or person when there is reasonable cause to suspect their involvement in the illegal export of controlled goods or technology.

Although Commerce lacks authority to conduct warrantless searches, it is authorized to conduct searches with a warrant and to detain and seize goods or technology at places within the United States other than ports where Customs has been given search and seizure authority. Under provisions of the EAA, Commerce must obtain Customs' concurrence to exercise its enforcement authority at ports where Customs has designated authority.

Customs also has primary enforcement responsibility overseas, particularly in countries where Customs has an enforcement agreement with the host government. By comparison, Commerce's overseas enforcement activities are limited to checks of firms prior to the issuance of a license, post-shipment verifications, and investigations of boycott violations. Commerce agents may travel overseas to pursue investigations with Customs' concurrence.

Another of Customs' strengths is the agency's forfeiture authority, which allows it to take title to property seized in connection with an EAA violation. Proceeds from seizures are deposited in an asset forfeiture fund for use in financing enforcement program expenses. Commerce lacks similar authority and must therefore rely on other enforcement agencies, such as Customs or the Marshals Service, to assume responsibility for its seizures.

Both Customs and Commerce have general authority to conduct undercover operations, but Customs has the added advantage of having certain special authorities that it may use during the course of such operations. For example, Customs may establish, acquire, and operate proprietary corporations or business entities and it may purchase property or buildings or lease space in facilities without regard to designated federal laws. According to Customs officials, these special authorities are important tools for conducting "sting" operations and identifying potential violations of the export control laws.

Commerce does not have these special authorities, although Congress has considered giving them to the agency. Congress passed an extension to the Export Administration Act in 1990 that extended these authorities as well as forfeiture authority to Commerce, but the President vetoed the legislation on grounds unrelated to these enforcement provisions.

**Range of Enforcement Activities**

Enforcement activities undertaken by Commerce and Customs to detect or prevent dual-use illegal exports are shown in table 2.2.

**Table 2.2: Key Commerce and Customs Enforcement Activities**

<b>Enforcement activities</b>	<b>Commerce</b>	<b>Customs</b>
Criminal investigations	Yes	Yes
Industry outreach	Yes	Yes
Inspectors program at ports and borders	No	Yes
Involvement in the review of export license applications	Yes	No
Administrative investigations	Yes	No
Safeguards program	Yes	No <sup>a</sup>
Automated post-shipment review of shippers documentation	Yes	No

<sup>a</sup>Although not part of a formalized program, Customs does engage in some activities similar to those included in Commerce's safeguards program, such as export control-related training and assistance to foreign governments.

Source: Generated by GAO based on information provided by the Customs Service and Commerce Department.

Criminal investigations and industry outreach efforts are key components common to both agencies' programs. Both Commerce and Customs have special agents with law enforcement backgrounds who pursue criminal investigations. Both also conduct outreach efforts—contacts with U.S. exporters intended to educate them concerning U.S. export control laws and to obtain tips on possible violations.

Other enforcement activities are generally complementary. Customs is the only agency with an established inspection program for enforcing export controls. Customs' inspectors at various ports selectively examine cargo, review shippers' export declarations, and detain and seize merchandise being exported illegally.

Unique components of Commerce's enforcement program include the following:

- The ability to take administrative action for violations of the EAA, leading to the imposition of fines of up to \$100,000 per violation and the denial of export privileges, which prevents parties subject to the denial from participating in any export transaction involving U.S.-origin goods. According to Commerce, administrative cases have a lower threshold

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burden of proof than criminal cases and are particularly important when the violator is a foreign individual or company that may be unwilling to submit to the jurisdiction of U.S. courts for criminal prosecution.

- Systematic review of license applications to identify unreliable end-users, determine the potential risk of diversion of proposed exports, and make recommendations to the Office of Export Licensing on whether to approve or deny applications.
- A "safeguards" program (first established in 1990 to help governments of the emerging democracies of Eastern Europe improve their export controls and since expanded to other countries), under which Commerce conducts pre-license checks and post-shipment verifications on site at overseas importers and end-users and assists countries in developing and implementing their own export control systems.
- An initiative begun in 1991 to automate the review of shippers' export declarations (submitted by exporters for virtually all export shipments and contained in a data base maintained by the Census Bureau) and compare them with Commerce licensing data to identify any discrepancies for possible investigative leads.

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## Resources Available to Export Control Enforcement

Commerce and Customs have varying organizational structures and resource bases to support their enforcement efforts. Although Customs has a much broader resource base, both it and Commerce have actually spent a declining amount of staff resources on dual-use export control enforcement activities. The number of staff in Commerce's Office of Export Enforcement (comprised primarily of special agents) dropped from 111 in fiscal year 1988 to 79 in fiscal year 1992; Customs agent staff years expended on dual-use enforcement declined from 129 to 89 over the same period. This decline is attributable at least in part to the corresponding relaxation of controls on items to the former Soviet bloc.

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## Organization and Resource Bases

Customs and Commerce use a network of offices and special agents to carry out their investigations and other enforcement activities. Customs has a much more extensive network of both domestic and international resources available for enforcement activities. It has 137 domestic offices staffed with about 3,000 special agents responsible for enforcing various import and export laws and 23 foreign offices. To illustrate this breadth of coverage, in fiscal year 1992, 107 of Custom's 137 domestic offices and 16 of its 23 foreign offices charged at least 100 hours to the export enforcement program.

In contrast, Commerce has a significantly smaller organizational and resource base from which to draw. Its headquarters and 8 domestic field offices are staffed with 66 special agents responsible for enforcing the EAA. Commerce currently has no special agents stationed overseas.

Agent experience in general law enforcement and with the Export Administration Act in particular also affect assessments of each agency's resource base. Commerce agent profiles show that its special agents have an average of more than 6 years experience as Commerce investigators and an additional 7 years with other law enforcement agencies such as Customs and the Drug Enforcement Agency. Over the years, Commerce's special agents have been able to develop this expertise primarily because of the agency's EAA enforcement focus, its dedication of staff to the area, and the linkage of its licensing and enforcement responsibilities.

According to Customs officials, Customs agents on average have over 20 years of investigative experience. Summary data on the extent of Customs agents' specific experience with export control cases is not readily available. Discussions with Customs field office staff indicate that Customs agents tend not to specialize for an extended period of time in an area such as export control enforcement; this is consistent with agency policy that favors generalized experience in a number of areas. According to a Customs official, this rotation program provides an extensive pool of well-rounded agents that allows the agency to respond to the needs of varying cases and programs, including Exodus.

Finally, both agencies have highlighted their ability to draw upon various specialized resources within their agencies to support their enforcement efforts. For example, Commerce officials point to their Office of Chief Counsel for Export Administration as a source of timely and effective legal support on licensing and enforcement matters, both to Commerce and Justice Department attorneys prosecuting EAA cases. Customs officials in turn emphasize the broad range of intelligence, computer, and inspection resources that support their agents in their enforcement activities.

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**Actual Commerce  
Resources Spent on Export  
Control Enforcement**

Commerce's enforcement budget has remained relatively stable over the past several years, but is expected to decline sharply in fiscal year 1994. Annual enforcement obligations<sup>1</sup> have averaged \$12.6 million in constant 1992 dollars, increasing only 4 percent between fiscal years 1988 and 1992.

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<sup>1</sup>Includes funds for the Office of Export Enforcement, the Office of Enforcement Support, and the former Office of Export Intelligence (now merged with the Office of Export Enforcement), as well as an estimated share of BXA overhead costs.

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Enforcement has also accounted for a relatively constant share of total Bureau of Export Administration funding—generally 29 percent. Table 2.3 shows dual-use export control enforcement obligations from fiscal years 1988 to 1992.

**Table 2.3: Commerce Obligations for  
 BXA and Export Enforcement**

Constant 1992 dollars in thousands

Fiscal year	Obligations		
	Export enforcement <sup>a</sup>	Bureau of Export Administration (BXA)	Percent of BXA funds for export enforcement
1988	\$11,939	\$42,207	28
1989	13,028	45,370	29
1990	12,651	44,577	28
1991	12,950	45,205	29
1992	12,429	42,713	29
<b>Total</b>	<b>\$62,997</b>	<b>\$220,072</b>	<b>29</b>

<sup>a</sup>Data for Export Enforcement exclude obligations for the Office of Antiboycott Compliance and the Office of the Assistant Secretary.

Source: Prepared by GAO based on data provided by the Bureau of Export Administration, Commerce Department.

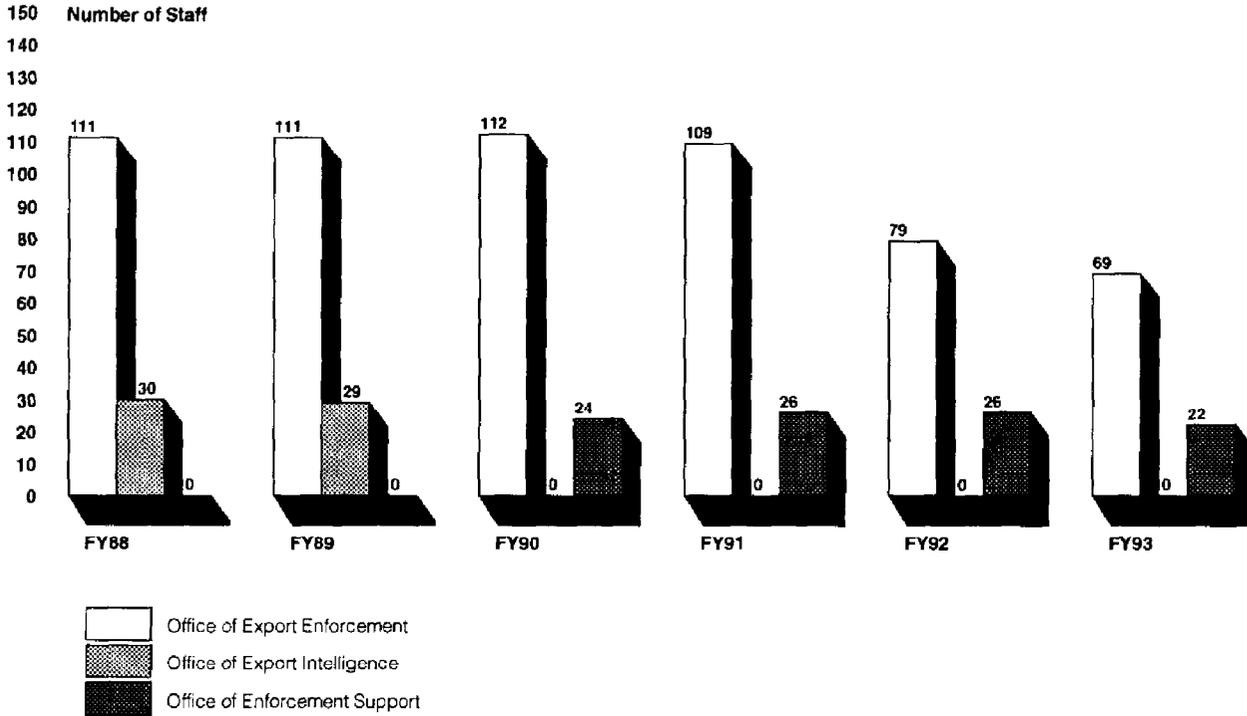
The level of funding for both BXA and export enforcement is expected to remain about the same for fiscal year 1993. However, Commerce officials told us they expect significantly fewer resources to be allocated to enforcement in fiscal year 1994. Commerce requested a 7.5-percent increase in funding for the Office of Export Enforcement in its 1994 budget submission to the Office of Management and Budget, but the increase was not approved. The office was instead directed to absorb a 9.5-percent cut from its fiscal year 1993 appropriated level. The bureau's 1994 budget request to Congress totaled less than \$35 million, with about \$14.5 million allocable to the Office of Export Enforcement.<sup>2</sup>

In contrast to funding levels, on-board enforcement staffing levels have decreased by 35 percent, from 141 staff in fiscal year 1988 to an estimated 91 in fiscal year 1993. As shown in figure 2.1, most of the staffing decline occurred in the Office of Export Enforcement, composed primarily of special agents.

<sup>2</sup>Includes funding for the Office of Export Enforcement, Office of Enforcement Support, Office of Antiboycott Compliance, and the Office of the Assistant Secretary.

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Figure 2.1: Staff Resources for Commerce's Enforcement Offices



Note 1: Commerce's Office of Antiboycott Compliance staff is not included.

Note 2: In 1989, Commerce reorganized its enforcement offices. The Office of Export Intelligence was disbanded and most of its staff was absorbed by a newly created office, the Office of Enforcement Support.

Source: Bureau of Export Administration, Commerce Department.

During this same period, Commerce was actually authorized by Congress to maintain an enforcement staff of some 30 positions greater than actual on-board strength, with the goal of expanding the role and level of resources for Commerce's Office of Export Enforcement. According to a Commerce budget and finance official, however, these additional positions were never funded and were finally dropped in fiscal year 1992.

Commerce officials advised us that the decline in on-board enforcement staff has been primarily due to increased personnel-related expenses.

These include substantial increases in the basis for computing overtime and locality pay for special agents. This has, in essence, reduced the amount of funding available to hire special agents. Thus, although overall funding levels have remained relatively constant, a greater proportion of Commerce enforcement funding has been absorbed by costs associated with maintaining a declining level of staff, and staffing levels are expected to decline still further. The Director of the Office of Export Enforcement advised us of plans to cut the number of special agents from 66 to about 50 to meet fiscal year 1994 budget requirements.

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**Actual Customs Resources  
Spent on Export Control  
Enforcement**

The level of agent resources that Customs has allocated to export control enforcement has also declined since 1988, in absolute terms and also relative to other enforcement priorities. Spending estimates for investigations show a slight decrease in the amounts allocated to enforcing export controls.<sup>3</sup>

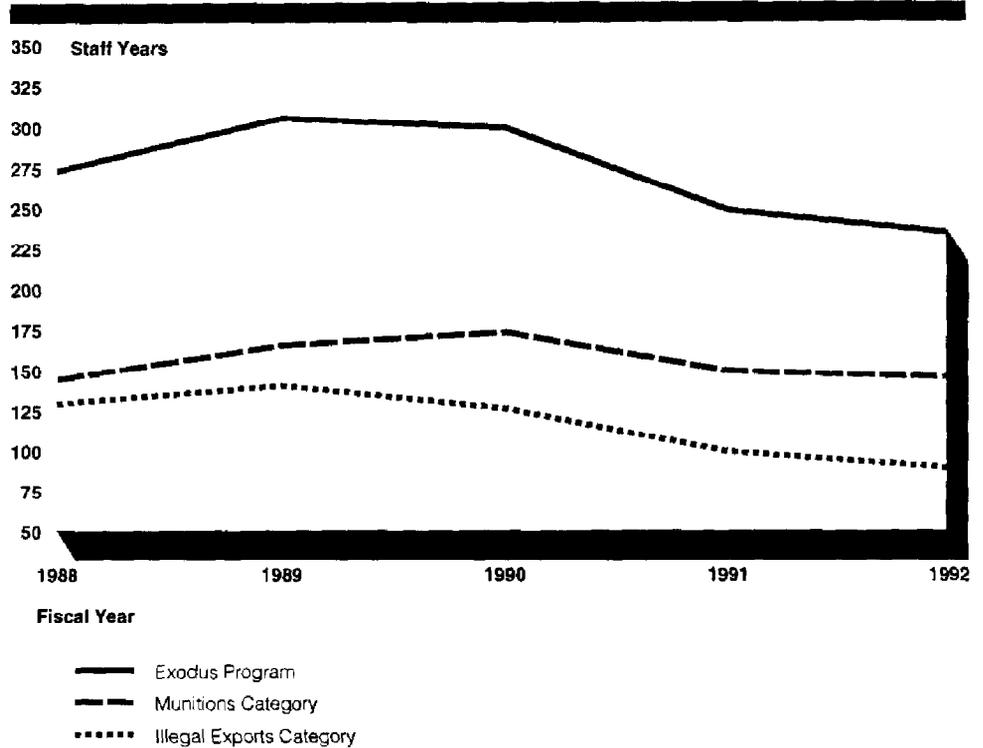
Overall, Customs expended 273 agent staff years investigating Exodus cases in fiscal year 1988, compared to 234 staff years in fiscal year 1992—a decline of 14 percent.<sup>4</sup> This decline is due to the marked drop in time charges to illegal export cases (a category that principally includes EAA cases), which fell 31 percent (from 129 to 89 staff years). Figure 2.2 depicts the trends in Customs staff years charged to export enforcement from fiscal year 1988 to fiscal year 1992.

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<sup>3</sup>These estimates exclude costs associated with Customs' Inspection and Control activities.

<sup>4</sup>Agent staff year estimates include regular hours only. If overtime is included, Customs expended 349 staff years on Exodus cases in fiscal year 1988, compared with 294 in fiscal year 1992.

**Figure 2.2: Total Enforcement Staff Years Spent on Exodus Program, U.S. Customs Service**



Source: Office of Enforcement, U.S. Customs Service.

According to Customs officials, the Exodus staff projection for fiscal year 1993 is similar to that for fiscal year 1992.

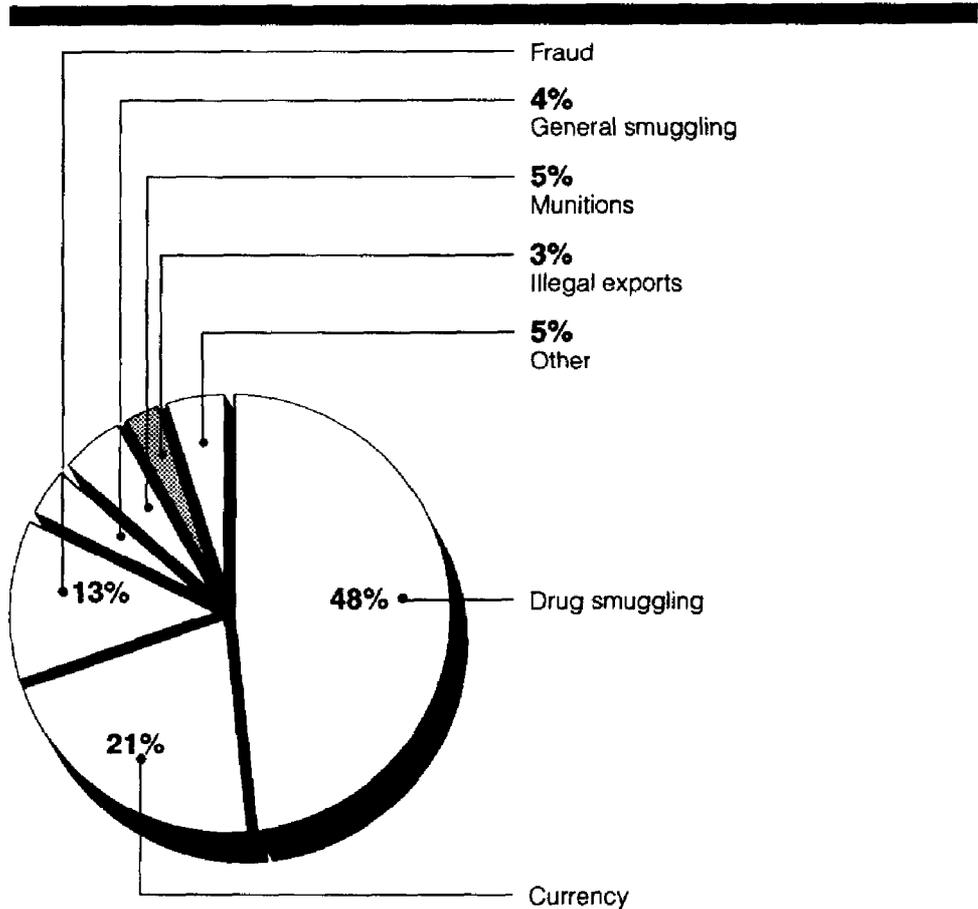
To obtain some indication of the level of agents dedicated to the Exodus program, we also reviewed data provided on a per agent basis. Using the assumption that agents who spent at least 1,044 hours (50 percent of an agent staff year) on Exodus cases could be considered “dedicated,” we calculated that an annual average of 111 agents was dedicated to the Exodus program.<sup>5</sup>

Customs’ broad enforcement jurisdiction and its multiple responsibilities result in competing demands on the agency’s available investigative resources. Customs has consistently ranked the Exodus program as one of its top five enforcement priorities. As shown in figure 2.3, in fiscal year

<sup>5</sup>If overtime hours are considered, an additional 46 agents could be categorized as dedicated to the Exodus program.

1992, the Exodus program (illegal export cases and munitions cases) accounted for approximately 8 percent of Customs' investigative hours. EAA cases account for the bulk of cases included in the illegal export category.

Figure 2.3: Proportion of Enforcement Time Spent on the Various Investigative Categories, U.S. Customs Service (Fiscal Year 1992)



Source: Strategic Investigations Division, U.S. Customs Service.

The current allocation of resources to Exodus cases represents a decline in the relative priority assigned to this program, as measured by time

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charges. Although Customs' total investigative hours<sup>6</sup> increased 32 percent from fiscal year 1988 to 1992, we calculated that hours charged to Exodus decreased 9 percent during the same period.

Customs' estimates of budgeted enforcement resources allocated to the Exodus program also indicate that program funding has declined in recent years, as shown in table 2.4.<sup>7</sup>

**Table 2.4: Estimated Enforcement Expenditures for Exodus Cases**

Constant 1992 dollars in millions

Type of case	Estimated expenditures per fiscal year					Percent change (1988 to 1992)
	1988	1989	1990	1991	1992	
Illegal exports	\$15.7	\$16.5	\$14.5	\$11.9	\$12.0	-23.6
Munitions	17.7	19.6	20.5	18.2	20.1	13.6
Exodus	\$33.4	\$36.1	\$35.0	\$30.1	\$32.1	-3.9

Source: Prepared by GAO based on data provided by the Office of Enforcement, U.S. Customs Service.

As shown above, overall expenditures, in constant 1992 dollars, dropped slightly from \$33.4 million to \$32.1 million—about a 4-percent decline. Expenditures for EAA cases (included in the illegal exports category) dropped more steeply—almost 24 percent.

<sup>6</sup>This includes overtime as well as regular hours.

<sup>7</sup>To estimate costs, Customs calculated average costs per full-time equivalent staff year based on its fiscal year budget submissions to the Office of Management and Budget and multiplied them by the amount of agent work years (using regular and overtime hours) expended on the two Exodus case categories. Average costs per staff year include direct and indirect costs associated specifically with enforcement activities in the budget submissions.

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# Similar Enforcement Results Achieved by Commerce and Customs in Recent Years

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The Commerce Department's and U.S. Customs Service's success in pursuing criminal investigations—a key element in their efforts to detect or prevent illegal exports of dual-use items—represents one measure of how well each agency is performing its enforcement mission. Over the past 5 years, Customs' EAA investigations have resulted in a greater number of arrests, criminal indictments, and convictions than Commerce's investigations. However, both agencies recorded very similar, and considerably lower, results in fiscal year 1992, which they attribute at least in part to fewer controls over dual-use items. In terms of the quality of investigations, Department of Justice attorneys who handle Commerce and Customs cases were generally satisfied with the level of investigative competence displayed by agents from both agencies and did not perceive any significant differences in how Customs or Commerce investigated EAA cases.

Other measures of Customs and Commerce enforcement efforts include detentions and seizures, which are generally down, and industry outreach contacts, which have increased for Commerce and decreased for Customs. Also, the volume of some Commerce administrative sanctions has increased, as has the proportion of total license applications reviewed by Commerce enforcement staff.

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## Results of Criminal Investigations

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### Drop in Criminal Investigative Results

As shown in table 3.1, Customs' EAA investigative results,<sup>1</sup> measured in terms of arrests, defendants indicted, and convictions obtained, remained fairly steady between fiscal years 1988 and 1990, then dropped precipitously in fiscal years 1991 and 1992. Customs recorded significantly higher results than Commerce in the earlier 3 years—more than four times as many arrests, indictments, and convictions—but later results are generally similar to Commerce's.

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<sup>1</sup>Appendix I contains results for Customs' Exodus program as a whole.

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**Table 3.1: Customs' Opened Illegal Export Criminal Cases and Arrests, Indictments, and Convictions for EAA Investigations**

Investigative results	Fiscal year				
	1988	1989	1990	1991	1992
Number of criminal cases opened <sup>a</sup>	659	547	467	401	333
Arrests	26	27	31	6	6
Defendants indicted	36	36	38	16	4
Convictions	31	23	23	13	8

<sup>a</sup>Total illegal export cases, including potential EAA violations.

Note: During this period, Customs reported an additional 51 arrests, indictments, and convictions resulting from cases conducted jointly with the Commerce Department.

Source: Data compiled by the Strategic Investigations Division, U.S. Customs Service.

Customs officials attribute the decline in criminal investigative results to the corresponding decontrol of dual-use items that took place beginning in 1990 as a result of the dramatic changes in Eastern Europe and the former Soviet Union. Customs officials noted that, as concerns over such exports have lessened, the level of attention that Customs devotes to EAA enforcement has likewise dropped. These officials also speculated that increasing difficulties in determining whether certain shipments are legally licensable adversely affects the general appeal of dual-use export control cases from an investigative as well as jury standpoint. Customs officials also noted the impact of the Enhanced Proliferation Control Initiative and its corresponding emphasis on end-use and end-user controls as complicating factors in pursuing criminal prosecutions.

The Commerce Department's investigative results also show a marked decline in defendants indicted and convictions obtained during fiscal year 1992, as shown in table 3.2.

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**Table 3.2: Opened Criminal Cases, Arrests, Indictments, and Convictions for Commerce EAA Investigations**

Investigative results	1988	Fiscal year			
		1989	1990	1991	1992
Number of criminal cases opened	<sup>a</sup>	347	487	307	541
Arrests	4	7	3	6	7
Defendants indicted	12	9	10	20	3
Convictions	8	3	7	13	4

Note: During this period, Commerce reported an additional 89 arrests, indictments, and convictions resulting from cases conducted jointly with the Customs Service.

<sup>a</sup>Data are not readily available.

Source: Office of Export Enforcement, U.S. Department of Commerce.

Commerce officials also acknowledged the impact of decontrol on enforcement results; they further noted the increasing difficulty in enforcing the EAA due to proliferation concerns and the changing focus to end-users and end-uses as the basis for determining "licensability." They also pointed out that, given the increased concern over the export of dual-use items capable of supporting the development of weapons of mass destruction, there is a continued need to emphasize dual-use export control enforcement efforts. In support of that effort, between October 1992 and July 1993, Commerce opened 236 criminal investigations and recorded 7 arrests, 15 indictments, and 2 convictions.

The data in tables 3.1 and 3.2 include some overlap in reported investigative results. For fiscal years 1988 through 1992, almost 10 percent of the total arrests, indictments, and convictions cited by Customs as the results of its own investigations were categorized as joint cases by Commerce. Conversely, 9 percent of Commerce's total arrests, indictments, and convictions were considered by Customs to be joint cases.

**Caliber of Investigations:**  
**Justice Attorneys Perceive**  
**No Significant Differences**

In addition to reviewing the results of Commerce and Customs criminal investigations, we also obtained the views of current and former Department of Justice attorneys on the quality of Commerce and Customs cases presented to them for prosecution. Most attorneys who had experience with either Commerce or Customs export control cases were generally satisfied with the level of investigative competence displayed by agents from each agency. For example, attorneys characterized both Commerce and Customs agents as professional, well-qualified, and highly

competent and also referred to them as being equally diligent in their investigative efforts.

In a few instances, attorneys criticized the performance of individual Commerce or Customs agents. A few attorneys observed that any noted variation in the quality of export cases referred to Justice should be evaluated on an agent-by-agent basis rather than on an agency basis. They considered an agent's level of investigative experience (not agency affiliation) the main determinant of the quality of case presentations and referrals.

Most of the attorneys interviewed who had experience working with both Customs and Commerce agents on EAA matters did not perceive any significant differences in how agents for either agency handled, developed, or presented EAA cases for prosecution. A few attorneys indicated that Customs agents present stronger cases, which they attributed to those agents' more extensive law enforcement experience.

Available data tend to bear out the attorneys' views on the comparatively similar caliber of Commerce and Customs cases. Justice data show that, although Customs referred a significantly higher number of EAA cases/defendants for criminal prosecution over the past 4 fiscal years, the proportion of referrals accepted for prosecution has been relatively the same for both agencies—32 to 35 percent.

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## Other Performance Measures

In concert with their criminal investigative responsibilities, Commerce and Customs agents may become involved in detaining and seizing goods and in visiting U.S. companies to enlist their cooperation in enforcement efforts. Commerce agents also pursue administrative cases and review license applications.

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## Decrease in EAA Detentions and Seizures

As part of its inspection and control program at U.S. ports and borders, Customs inspectors selectively examine cargo, review shippers' export declarations, and detain and seize illegally exported merchandise. Customs agents may also detain and seize goods in the course of conducting enforcement activities. Customs EAA-related detentions and seizures are shown in table 3.3.<sup>2</sup>

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<sup>2</sup>See appendix I for comparable data on the Exodus program as a whole.

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**Table 3.3: Detentions and Seizures  
 Related to EAA Enforcement**

Dollars in millions					
	Fiscal year				
	1988	1989	1990	1991	1992
Number of detentions	229	414	179	77	99
Number of seizures	162	325	104	40	53
Value of seizures	\$7.4	\$11.8	\$44.5	\$9.7	\$3.3

Source: Strategic Investigations Division, U.S. Customs Service.

A Customs official commented that the significant decline in detentions and seizures may be due in part to the increasing difficulty inspectors face in determining whether specific goods require individual licenses, given the increased emphasis on controlling lower technology items with a variety of legitimate uses.

The above detention and seizure statistics include seizures resulting from Commerce requests for Customs assistance as well as those resulting from Commerce/Customs joint investigations. During the 5-year period, six seizures valued at \$740,762 resulted from Commerce requests and another five seizures valued at \$89,091 resulted from joint investigations.

During the course of an investigation, Commerce agents may also detain and/or seize shipments without the assistance of Customs. Available data indicate that Commerce detained 127 shipments valued at almost \$50 million and made about 20 seizures from fiscal year 1991 through March 1993; Commerce has not kept data for earlier years.

**Outreach Efforts**

Both Customs and Commerce agents conduct outreach activities to increase industry awareness of U.S. export controls and to elicit cooperation in preventing illegal exports. Agency records indicate that Commerce's program has grown over the years, while Customs' has become less active, as shown in table 3.4.

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**Table 3.4: Number of Outreach Contacts**

Fiscal year	Number of outreach contacts	
	Customs <sup>a</sup>	Commerce <sup>b</sup>
1988	821	
1989	1,282	350
1990	638	793
1991	350	528
1992	464	966

<sup>a</sup>Customs data represent Exodus program contacts.

<sup>b</sup>Data were not available.

Source: Strategic Investigations Division, U.S. Customs Service and Office of Export Enforcement, U.S. Department of Commerce.

While agency officials indicated that it would be difficult to quantify the extent to which outreach efforts directly result in improved enforcement, they recognized the importance of these contacts and noted that industry willingness to report potential leads and to cooperate with investigations has had a positive impact on the effectiveness of enforcement efforts. In Commerce's view, outreach efforts will become increasingly important as other enforcement tools, such as application reviews, necessarily decline with decontrol. Although Customs has decreased its level of company contacts, an agency official stated that Customs relies on other sources of information as well, such as undercover operations.

**Commerce Administrative Sanctions**

As shown in table 3.5, during the past 5 years, Commerce has increased the level of civil fines imposed and the number of warning letters issued; the number of parties denied export privileges has slightly decreased.

**Table 3.5: Results of Department of Commerce Administrative Investigations**

Administrative results	Fiscal year				
	1988	1989	1990	1991	1992
Civil fines	\$1,025	\$261	\$1,815	\$419	\$3,609
Number of denied export privileges	57	61	44	103	53
Number of temporary denial orders	7	3	0	4	10
Number of warning letters	61	100	246	151	348

Source: Office of Export Enforcement, U.S. Department of Commerce.

According to Customs data, during fiscal years 1988 through 1992, Customs referred 149 cases to Commerce for administrative action. In reviewing Commerce's list of parties sanctioned (contained in BXA's annual reports for fiscal years 1988 through 1991), Customs identified 40 referrals that had resulted in administrative actions (such as fines) reflected in Commerce statistics.

**Commerce Review of License Applications**

Commerce enforcement staff review license applications and provide input to Commerce's licensing office on whether a license should be approved. This link between licensing and enforcement represents a key element that permits enforcement considerations, such as the reliability of a particular end-user, to be factored into licensing decisions. Since 1988, as the annual number of license applications received by Commerce has decreased owing to decontrol, the proportion of total license applications reviewed by Export Enforcement has generally increased, as shown in table 3.6.

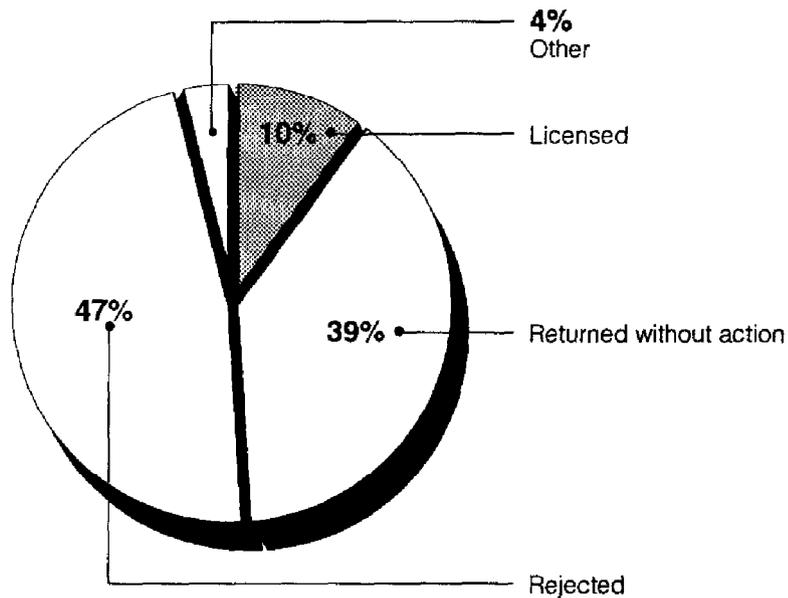
**Table 3.6: Results of Export Enforcement's Review of License Applications**

Activities Associated with License Applications	Fiscal year				
	1988	1989	1990	1991	1992
Number of applications					
Received	97,902	84,694	64,968	38,369	25,631
Reviewed	9,680	11,704	6,770	7,410	3,659
Percent reviewed	9.9	13.8	10.4	19.3	14.3
Number of reviewed applications recommended for denial	121	153	201	142	228
Percentage of reviewed recommended for denial	1.3	1.3	3.0	1.9	6.2

Sources: Office of Export Enforcement, U.S. Department of Commerce and BXA annual reports for fiscal years 1988 to 1992.

Office of Export Enforcement recommendations have not always been followed by Commerce licensing officials. As depicted in figure 3.1, Commerce records showed that 10 percent of applications recommended for denial by enforcement staff were actually approved. A number of these were approved subject to more stringent licensing conditions.

Figure 3.1: Licensing Actions Taken on Applications Recommended for Denial by Office of Export Enforcement Staff



Note: "Other" includes applications which were administratively closed out, canceled, suspended, or pending.

Source: Office of Export Enforcement, Department of Commerce.

We asked Commerce's Offices of Export Licensing and Export Enforcement to review 54 licensing cases<sup>3</sup> where enforcement recommendations were not followed to determine why enforcement staff's judgments were overruled. Commerce representatives advised us that, based on consultations between the Offices of Export Licensing and Enforcement, the latter office had changed its recommendations to more favorable ones of "consider on merits" or "consider on merits with conditions" for 38 of the 54 cases reviewed. Updates to the system, however, were not always made to reflect these changes in enforcement recommendations. For the remaining 16 applications, Commerce was unable to find any record that the Office of Export Licensing had consulted with the Office of Export Enforcement prior to approving the applications.

<sup>3</sup>The licenses were from fiscal years 1990 to 1992; Commerce officials advised us that detailed information on earlier licensing decisions would be more difficult and time-consuming to reconstruct.

According to Commerce officials, actions have recently been taken to ensure that Office of Export Enforcement recommendations are adequately addressed during the licensing review process. Commerce has modified its automated licensing system to ensure that decisions on license applications are not made until all outstanding issues (e.g., conflicting recommendations) have been resolved. This entails an automated “lock” that precludes license approval until enforcement issues are addressed.

Further, in March 1993, the Offices of Export Licensing and Enforcement signed a memorandum of understanding clarifying their respective roles and setting forth an escalation procedure for resolving any disagreements. The Office of Export Enforcement has also recently issued guidelines to its agents for making recommendations on export license applications.

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## Conclusions

How well Commerce and Customs enforce the EAA is at least partly reflected in the results of their enforcement activities, particularly criminal investigations. Relative comparisons, however, should be made cautiously since many factors external to the control of either enforcing agency can affect the outcome of a case. On the basis of criminal case statistics, Commerce and Customs have achieved similar results during the past 2 years; these results have also declined for both over preceding years. This similarity is paralleled by their performance as assessed by their key “customers”—Department of Justice attorneys who weigh their cases for potential prosecution and see relatively no differences in their performance.

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## Agency Comments and Our Evaluation

The U.S. Customs Service commented that our report, by primarily focusing on enforcement of the Export Administration Act, fails to recognize the inherent overlap and interdependence between enforcement of the EAA and other export laws. In Customs’ view, any assessment of how well Customs enforces the EAA must be made in the context of how well it enforces all of the export laws under its jurisdiction; the quantity and quality of Customs’ enforcement results, as well as resource commitments, demonstrates the caliber of Customs’ efforts in export control enforcement.

Because the central objective of our review was to assess enforcement of the Export Administration Act, we did focus our analyses on EAA-related enforcement resources and investigative results. However, throughout the

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report we also provide the broader context for Customs' enforcement activities by noting Customs' range of enforcement responsibilities (see ch. 1) and providing various information and data on Custom's Exodus program (see chs. 2 and 3). In addition, appendix I provides data on Customs' overall Exodus program, including the export control investigative results cited by Customs in its comments.

# Commerce and Customs' Failure to Cooperate Has Been Key Impediment to Better Enforcement

Over the past several years, the Commerce Department and the U.S. Customs Service have engaged in ongoing disputes over their overlapping jurisdiction in enforcing dual-use export controls. Significant disagreements have focused on (1) responsibilities for pursuing overseas investigations; (2) coordinating investigations and pooling resources; (3) authority in ports and border areas; and (4) sharing licensing information. Problems in these areas have hampered agency enforcement efforts, and initiatives to resolve them have, until recently, proved unavailing. Congress has recognized the seriousness of the problems between the two agencies, but legislative remedies have been unsuccessful in correcting them.

The inability of Commerce and Customs to consistently work together to enforce the Export Administration Act compounds the inherent difficulties they face in effectively enforcing export controls in a changing export control environment. Limited efforts to coordinate enforcement activities can lead to duplication of effort and in some instances have adversely affected individual investigations. Poor cooperation becomes an increasingly ill-affordable liability in a period of decreasing budgetary resources.

## Disagreements Over Authority for Overseas Investigations

In an effort to improve cooperation between Commerce and Customs, in 1985, Congress sought to clarify their respective enforcement responsibilities in a number of areas, including overseas investigative jurisdiction. The Export Administration Amendments Act of 1985 authorized the Customs Service to conduct investigations and the Commerce Department to conduct pre-license checks and post-shipment verifications outside the United States. The conference report accompanying the legislation noted Congress' intent that "the Customs Service have primary enforcement responsibility, particularly in countries where the Customs Service has an enforcement agreement with the host government." The implementing regulations for the 1985 amendments further stipulated that Customs would be responsible for EAA investigations outside the United States; Commerce may assist in such investigations with Customs' concurrence and subject to coordination by Customs.

The two agencies have interpreted this guidance differently. Commerce has not viewed the legislative history as precluding all overseas investigative activities on its part. According to a Commerce legal representative, the conference report's references to Customs' "primary"

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Better Enforcement**

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role, "particularly" in certain countries, implies a secondary investigative role for Commerce. Further, Commerce officials have stated that they do not believe they need to seek Customs' permission to conduct overseas work. The Director of the Office of Export Enforcement stated that a request from a U.S. Attorney's office, for example, may be a sufficient basis for seeking State Department authorization to travel overseas.

Customs' position has been that the law and implementing regulations clearly grant Customs the responsibility for overseas investigations; Commerce's role is specifically limited to pre-license checks and post-shipment verifications. Customs has taken the position that Commerce must obtain Customs' concurrence before undertaking any overseas investigative activities (including pre-license checks and post-shipment verifications), emphasizing the need to coordinate the overseas activities of the two enforcement agencies.

This disagreement between the two agencies has resulted in repeated complaints about each other's investigative activities. For example:

- In early 1988, Customs charged that a Commerce agent's unauthorized telephone contact with a foreign company had compromised an ongoing investigation and resulted in failure to prevent a diversion of export items. The foreign government also complained about Commerce's interference, which it characterized as unwarranted and a serious setback. Commerce acknowledged that the agent's action violated policy, but also noted that it resulted from U.S. Customs' lack of responsiveness to Commerce inquiries.
- In May 1988, Commerce charged that Customs was abusing its authority to investigate Commerce-developed leads overseas by failing to turn over requested information for several weeks and then by attempting to take over the investigation.
- In January 1989, Customs criticized Commerce's "counterproductive" actions in asking U.S. companies to make inquiries of foreign-based firms, thereby attempting to "subvert" congressional intent on overseas investigations.
- In March 1991, Customs challenged Commerce's request to U.S. embassy staff to conduct post-shipment verifications for certain items, noting that Customs was engaged in a parallel investigation and that Commerce had not directed its request for information to Customs as required.

Even more recently, ongoing investigations were delayed while the two agencies disputed the need for Commerce agents to conduct overseas

investigations. In May 1992, Commerce requested Customs' concurrence for its agents to travel overseas to several countries. In June, Customs orally denied the request and asked Commerce to forward its investigative leads to Customs; according to Customs, Commerce refused to do so. In early July, Commerce advised Customs that, in the absence of any written response to the travel request, it was sending cables directly to U.S. embassies seeking country clearance for Commerce agents. Commerce also obtained letters from U.S. Attorneys' offices supporting Commerce's travel plans. Customs then complained to State Department officials, resulting in State's withdrawal of Commerce agent country clearances until the matter could be resolved. By late 1992, the two agencies had agreed to pursue the cases jointly. According to Commerce officials, the criminal phases of these investigations would have already been completed had it not been for the disagreement.

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## **Coordination and Cooperation on Individual Cases Has Been Mixed**

Because Commerce and Customs share jointly in the enforcement of the Export Administration Act, it is important for the two agencies to coordinate their efforts, both to avoid jeopardizing cases and to maximize the effective use of resources. Congress recognized this in the 1985 amendments to the act; the conference report language stipulated that "effective enforcement of the Act will depend on close cooperation between the Customs Service and the Department of Commerce."

In an effort to improve coordination, Commerce and Customs agreed some years ago to exchange lists of ongoing cases. However, various agents told us that these lists are not particularly useful because they are outdated, incomplete, or not always sent to field offices.

Other than the exchange of case lists, Commerce and Customs have not established any formal mechanisms to ensure greater collaboration. The two agencies do not coordinate their outreach efforts, nor do they conduct joint outreach visits to companies in the same geographic areas. Customs agents from one field office noted that there has been some overlap in conducting outreach activities, which creates confusion on the part of industry representatives.

Cooperation on individual cases has been mixed. At the field office level, individual Commerce and Customs agents cite examples of collaborative relationships, which they generally attribute to the goodwill of the individual agents rather than institutional incentives to work together. Conversely, both sides have recorded instances of failures to coordinate.

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For example, in 1990, Customs' Miami office charged that Commerce had rebuffed its attempt to work jointly on a case, quoting a Commerce agent as unwilling to either coordinate or share information. Commerce registered a similar complaint about Customs' failure to advise them of a sting operation on what was supposed to be a joint case.

According to Justice Department data, Commerce and Customs have jointly participated in only 21 of the total 108 significant EAA cases<sup>1</sup> reported from 1981 through 1992. Also, there appears to be a decline in the number of joint cases; in the last 2 years, none of the seven significant cases indicted by Justice were jointly investigated by Customs and Commerce.

By early 1993, Customs headquarters officials had become increasingly pessimistic about the ability of the two agencies to effectively cooperate. Customs' Director of the Strategic Investigations Division noted that the working relationship was getting worse and that Commerce was not interested in cooperating with Customs. Another Customs representative added that an overhaul of the system was clearly needed. In turn, Commerce's Director of the Office of Export Enforcement commented that coordination was "not that bad," but should be a two-step process that requires management commitment; in his view, one of the problems was that Customs has been unwilling to compromise.

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## **Disagreement Over Authority at Ports and Borders**

The Export Administration Amendments Act of 1985 gives Customs primary responsibility for enforcement at ports and borders. It authorizes Customs to search, detain, and seize dual-use goods or technology at those ports of entry or exit from the United States where Customs officers are authorized by law to conduct enforcement activities. The act gives Commerce similar authority at those places within the United States other than those ports specified as under Customs' jurisdiction. To exercise certain enforcement authorities at ports of entry and exit, Commerce must obtain Customs' concurrence.

A key issue of contention between the two agencies has been what constitutes "ports and borders." Customs officials have taken the position that Customs is authorized to conduct searches and seizures at ports of exit or their "functional equivalent." Specifically, they have argued that the premises of a freight forwarder can meet the functional equivalent

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<sup>1</sup>The Justice Department maintains data on what it classifies as "significant" cases, but no formal definition of what constitutes a significant case exists.

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definition and therefore seizures at these locations should be effected by a Customs officer, or at least performed with Customs' concurrence.

On the other hand, Commerce officials have argued that the term "ports of entry and exit" from an EAA enforcement perspective refers strictly to actual ports and borders. They cite the conference report accompanying the 1985 EAA legislation, which specifically states that, ". . . for purpose of defining the area within the United States where the Commerce Department must seek the concurrence of the Customs Service in order to engage in export enforcement operations, the conferees intend that the term be narrowly construed so as to apply to actual borders and ports of entry and exit from the United States."

Commerce does not have forfeiture authority and must therefore rely on other law enforcement agencies such as Customs to "adopt" its seizures and initiate forfeiture procedures. Because of conflicting views regarding the definition of ports and borders and related concerns over the legal authority of Commerce to search and detain goods at ports and borders without a search warrant or without Customs' concurrence, Customs has on occasion refused to assume responsibility for Commerce-detained goods or to initiate forfeiture proceedings. According to Customs representatives, their reluctance in these cases has stemmed from concerns about admissibility of evidence for prosecutive purposes as well as the liability to the agency from seizing illegally searched and detained goods.

Commerce officials stated that agents have attempted to minimize the number of requests for Customs assistance because of past delays in receiving responses from Customs and a general belief that Customs is resistant to supporting such requests. In one case, for example, more than 7 months elapsed before the shipment in question was placed under formal seizure. In another instance, 2 years after a shipment was detained, Customs upheld its initial decision to decline assistance to Commerce based on legal concerns.

Resolving such ports and border conflicts can be a time-consuming process that sometimes leads to delays and inefficiencies in handling cases. In addition to contributing to interagency inefficiency, these conflicts add to the already strained nature of the relationship between the two enforcing agencies.

## Dispute Over Customs Access to Dual-Use Licensing Data

One of the most contentious and long-standing disputes between Commerce and Customs has been the extent to which Customs has had access to Commerce's licensing data base, the Export Control Automated Support System (ECASS). The Export Administration Act states that Commerce and Customs, upon request, "shall exchange any licensing and enforcement information with each other which is necessary to facilitate enforcement efforts and effective license decisions." According to the conference report accompanying 1985 amendments to the act, Congress' intent was to foster an open and free exchange of information so that the activities of these agencies complement each other. Implementing regulations further state that Commerce and Customs will routinely and promptly exchange licensing and enforcement information.

Since the early 1980s, Customs has been attempting to gain full access to Commerce licensing data to aid its inspection and investigative activities. According to Customs officials, Customs inspectors located at various ports and borders must quickly decide if export shipments being examined are valid exports; because they have been denied expedient access to this licensing database, inspectors have been hampered in making quick, intelligent decisions about the legality of imminent dual-use exports. Customs agents can also benefit from licensing information: it can help target investigative efforts and supplement export control-related intelligence information.

Customs has historically had limited access to Commerce's database. At its headquarters Command Center, Customs has had on-line access to ECASS and could verify license numbers. With a valid number, Customs could then access the corresponding application information. Licensing histories, on the other hand, which show how many licenses have been denied or issued to a company or the types of commodities exported, had to be requested through a separate manual referral procedure. According to Customs officials, such limited access was inadequate and untimely for both inspection and investigative purposes.

Commerce has been reluctant to extend full access to Customs because of concerns over (1) costs associated with upgrading the system to handle direct on-line Customs access; (2) the potential impact on Commerce's ability to handle license applications by slowing computer response times; and (3) the need to safeguard licensing information in accordance with its obligations under section 12(c) of the EAA to protect such information from unauthorized disclosure. During meetings in January 1992, Commerce and Customs technical representatives attempted to address

the first two concerns by recommending that export license application information be incorporated into the Treasury Enforcement Communications System (TECS), an existing computer system managed and used by Customs to, among other things, support investigations.

Commerce officials, however, rejected the proposal because it did not, in their view, address their third concern over the security of the licensing data. Customs officials responded by citing the security measures already built into TECS, which they believed would adequately safeguard all information. The two agencies were unable to resolve this impasse and broke off negotiations. However, in September 1993, the two agencies reached agreement on Customs' access to licensing data.

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## **Efforts to Resolve Problems Have Proved Unavailing Until Recently**

The problems outlined above have proven very intractable. Congressional hearings beginning in the early 1980s highlighted continued problems with Customs-Commerce cooperation in areas such as information sharing and overseas jurisdiction. Congress' 1985 attempt to address these problems was intended to

clarify as precisely as possible in statutory language the relationship between the Department of Commerce and the Customs Service in enforcing the Act. Enforcement has been hampered by unresolved questions about the nature of that relationship and the inability of the two agencies to develop procedures for sharing information better to assist each agency in its enforcement responsibilities.

As noted above, the 1985 legislation did not succeed in improving the coordination and cooperation between the two agencies.

The agencies themselves have sought to resolve their differences through a memorandum of understanding (MOU) and other negotiated agreements. Since 1985, the two sides have met periodically to negotiate an MOU, but with limited success. In 1987, Commerce and Customs developed independent versions of procedures governing such areas as overseas investigations. Customs treated its version as an official agreement between the two agencies; Commerce's position was that no agreement had ever been reached.

Subsequent discussions led to a "letter of understanding" between the two agencies in 1989 that recognized the existence of major problem areas and the need to resolve them by negotiating an MOU. The letter also spelled out some minor agreements related to coordination and information-sharing.

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By December 1989, several negotiating sessions had produced a fifth draft of an MOU that still contained major points of disagreement. Unresolved issues included the definition and handling of pre-license checks and post-shipment verifications; overseas jurisdiction and investigative activities; and conduct of joint cases. According to a Commerce official, negotiations failed at that time, due primarily to a fundamental disagreement over whether Commerce could conduct overseas investigations.

In April 1991, in an attempt to resume negotiations, Customs forwarded a copy of another draft MOU to Commerce. Commerce's response noted that the draft essentially represented Customs' original negotiating position in mid-1989 and suggested that discussions resume using the latest, December 1989 version. Customs agreed; both sides also agreed to address the issue of Customs access to the ECASS database.

These negotiations, which continued into 1992, ultimately also failed to resolve the fundamental disagreements between the two sides. A separate attempt to conclude an "Office Director's Memorandum" dealing just with procedures for concurrence and coordination of overseas travel likewise failed. Commerce officials told us in late 1992 that the MOU was essentially "dead," and any reopening of negotiations would have to await the new administration.

Commerce and Customs subsequently did reopen negotiations, leading to the successful conclusion of two agreements in September 1993. The first covers the exchange and protection of licensing information, with Commerce agreeing to give Customs licensing data on a daily basis. The second memorandum of understanding provides guidance on cooperation in a variety of areas, including overseas investigations, pre-license checks and post-shipment verifications, investigations at ports and borders, joint investigations, and administrative case referrals. According to the Commissioner of Customs, these agreements represent the two agencies' efforts to enter into a new era of cooperation and mutual support.

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**Resources in  
Environment of Poor  
Cooperation**

The number of Commerce special agents pursuing investigations has dropped significantly over the past several years, and budget allocations have affected other enforcement activities. Commerce special agents-in-charge cited such things as higher caseloads and curtailed outreach visits as impacts of budgetary cutbacks. These agents also cited morale problems, stemming from budget concerns and uncertainty about

the continued existence of Commerce's enforcement unit. The Director of the Office of Export Enforcement has indicated that his office is at a point where further reductions could significantly degrade Commerce's export enforcement capabilities.

Customs is similarly allocating a declining level of resources to EAA enforcement, accompanied by a decrease in EAA-related investigative results. The Director of Strategic Investigations explained that when a change in U.S. foreign policy causes a dramatic reduction in the enforcement workload associated with a particular export law, as it has with EAA, then Customs redeploys its enforcement resources to enforcing other laws.

Increasing budget pressures have been cited as a concern with respect to maintaining two organizations with overlapping responsibilities. A significant number of Justice attorneys with whom we spoke, as well as some experts, viewed the current shared system as inefficient and wasteful.

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## Conclusions

Commerce and Customs have remained, at least until recently, at an impasse in their efforts to resolve their disagreements. Without an MOU, issues pertaining to overseas investigations, ports and border authority, and sharing of information have remained unresolved and contentious. From a legal standpoint, these issues should not have been difficult to resolve. In our view, the law and accompanying legislative history clearly give Customs lead responsibility for overseas investigations; Commerce must obtain Customs' consent to engage in overseas investigations. Similarly, the Export Administration Act encourages sharing of information; nothing in the act bars the Commerce Department from providing on-line database access to Customs, providing that Customs takes adequate steps to safeguard the information.

What has prevented Commerce and Customs from working collaboratively has been the lack of incentive to do so. Ongoing disputes associated with their overlapping jurisdiction for EAA enforcement have cultivated a competitive rather than cooperative spirit between the two. They have had few incentives to share information and coordinate their enforcement efforts; to the contrary, they have competed for criminal statistics as a measure of their performance. The result has been an inefficient use of resources and, in some instances, an adverse impact on the development of specific EAA cases.

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The recent successful conclusion of MOUs between Commerce and Customs is a significant step forward. However, the commitment of both agencies to effective implementation of these agreements is essential, given the long-standing nature of the disputes between them. Continued disagreements between the two agencies are unacceptable given current resource constraints and the real need to ensure that available funds are spent wisely.

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**Agency Comments**  
**and Our Evaluation**

The U.S. Customs Service acknowledged that there is little doubt that poor cooperation between Commerce and Customs has been one of the key impediments to effective export control enforcement and agreed that continued disagreements are unacceptable. The Commerce Department stated that the best way to increase the effectiveness of the export control program would be to continue current enforcement authorities while improving coordination and cooperation between Commerce and Customs. Both Customs and Commerce cited the recent conclusion of two memorandums of understanding—covering all the areas of disagreement cited in our report—as key to improved cooperation and coordination. Both agencies also noted their commitment to meet regularly to ensure that these agreements are carried out.

We are pleased that Commerce and Customs have finally succeeded in concluding agreements to resolve their long-standing disagreements and have pledged to implement those agreements. We believe that these actions represent the key first steps to creating an environment of effective enforcement cooperation. However, we also believe that careful monitoring of the implementation of these agreements is needed to ensure that progress is actually achieved, given the history of problems between the two agencies.

# Alternative Approaches for Enforcing the EAA

To be effective, the current system of Commerce and Customs sharing responsibility for export control enforcement should capitalize on the complementary strengths of both agencies. In practice, wasteful disagreements between the two have persisted despite the efforts of the Congress. These disagreements raise questions about their ability to work effectively together without some changes in their current structures and operations. As enforcement resources decline in an increasingly tight budgetary environment, alternative approaches to enforcing the Export Administration Act should be considered to ensure that controls over proliferation items in particular are effectively enforced.

In this chapter, we present several options for changing the current system. These options are intended to address the impediments and resource constraints outlined in the preceding chapters, while at the same time retaining essential elements of an effective enforcement system. Each has advantages and disadvantages; the key is to develop specific actions to minimize any critical disadvantages. We believe that two options have relatively greater merit: (1) modifying the existing system to ensure greater cooperation or (2) transferring all responsibility for criminal investigations to Customs.

## Elements of an Effective Export Enforcement System

The strength of the current approach to dual-use export control enforcement is that it ensures the presence of essential elements of an effective system by taking advantage of the various complementary strengths of both Commerce and Customs. Our discussions with Commerce and Customs agents, Department of Justice attorneys and various experts, and our review of the two agencies' operations suggest that several key structural components should be retained to the extent possible in any organizational realignment. Thus, options for changing the existing enforcement system need to be measured against how well they retain such elements, to include the following:

- ability to pursue criminal investigations,
- ability to pursue and impose administrative sanctions,
- linkage of licensing and enforcement,
- sufficient and expert investigative and inspection resources, and
- capability to conduct domestic and overseas investigations.

Each of these elements serves an important function in either preventing or detecting the EAA violations. The ability to pursue criminal investigations is an obvious requirement; administrative sanctions offer an

additional means of deterring violations and penalizing violators. The linkage of licensing and enforcement—making sure that enforcement has a voice in licensing decisions—can improve the effectiveness of the licensing system in preventing exports injurious to the United States.

Sufficient and appropriately placed resources are also needed to effectively identify and pursue the EAA violations. A network of domestic investigative offices with trained and experienced agents allows for more effective pursuit of the EAA investigations. Inspectors at ports and borders are also needed to identify, search, and seize illegal exports. An overseas investigative capability is also important, given the nature of export control cases.

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## Options for Changing Dual-Use Export Control Enforcement

Several options for changing how the U.S. government enforces dual-use export controls exist. These range from retaining the current system of shared enforcement, with improvements in how Customs and Commerce work together, to creating an entirely new agency that would marry both licensing and enforcement. Other options, falling between these two extremes, include shifting primary responsibility for enforcement to either Customs or Commerce or expanding Commerce's legal authority to conduct enforcement operations. Each of these options, if adopted, would require amending the Export Administration Act and/or agency actions to implement the changes.

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### Option: Improve Current System

Under this option, Commerce would retain its authority to pursue both criminal and administrative investigations of the EAA cases, while Customs would continue to pursue criminal the EAA investigations and retain its position as lead agency for overseas investigations. However, both agencies would be required to (1) implement specific mechanisms for coordinating and cooperating on investigations, including a successfully negotiated memorandum of understanding demarcating their respective responsibilities and an effective means of sharing case information; (2) reach agreement on and institute procedures to ensure Customs access to Commerce licensing data; and (3) conduct joint operations whenever feasible, to include joint investigations and jointly conducted or coordinated outreach activities.

The key advantages of this option are that it retains the strengths of both agencies while creating opportunities to improve coordination and, through greater joint operations, reduce inefficient or duplicative

activities. Conversely, the major drawback remains the possibility that Commerce and Customs will be unable to overcome their long-standing inability to effectively cooperate. Most of the Department of Justice attorneys with whom we spoke were unenthusiastic about maintaining the current shared system of investigative responsibilities, viewing it as inefficient and wasteful.

As noted in chapter 4, Commerce and Customs have taken some steps in line with this recommended option. Recently concluded memorandums of understanding seek to address the exchange of licensing information and improve coordination and cooperation on investigations. Actions by Congress could further improve the chances of success for this option, including (1) establishing mechanisms to monitor the agreements' implementation; (2) further clarifying each agency's enforcement responsibilities; and (3) directing the agencies to identify specific ways to eliminate duplicative activities and increase joint operations.

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### Option: Grant Customs Primary Responsibility for the EAA Investigations

Under this option, Customs would assume responsibility for investigating and obtaining all information necessary for both criminal and administrative violations of the act. Responsibility for imposing administrative sanctions could either be retained by Commerce or transferred to Customs, depending on the most appropriate disposition of this function.

A significant advantage of this option is that it eliminates the overlapping jurisdiction of Commerce and Customs in criminal investigations and the accompanying coordination problems and potential for duplication of effort. For example, there would no longer be a duplication of Commerce and Customs investigative offices in the same city, because Commerce's field offices could be eliminated or subsumed by Customs. Most of the Department of Justice attorneys we spoke with favored this option on the grounds that it represents a more efficient utilization of government resources.

This option would offer additional advantages. First, it would capitalize on Customs' strengths, including its extensive domestic resource base, overseas investigative capability, and unique enforcement tools such as warrantless search authority. Second, it would respond to the views of some individuals familiar with the export control system who prefer a reduced role for Commerce due to perceived concerns about the agency's

potential conflicts of interest stemming from its role in both trade promotion and control.

The major disadvantage of this option is the potential loss of some elements of an effective enforcement system—the linkage of licensing and enforcement and sufficient and knowledgeable resources applied to Export Administration Act enforcement. Customs agent resources allocated to illegal export (EAA) cases have declined over the past few years, raising concerns about a continued level of commitment to dual-use export control enforcement relative to the agency's other enforcement priorities.

Actions by the Congress that could assist in implementing this option and addressing its drawbacks are as follows:

- To ensure that licensing and enforcement remain linked and Customs agents and inspectors have necessary licensing information, Congress could direct Commerce to provide Customs with on-line database access and require both agencies to establish procedures to ensure Customs' input on pending licensing decisions.
- To ensure a sufficient Customs commitment to the EAA investigations, Congress could direct Customs to develop a means to track and report its the EAA workload, because it currently has no easy or precise way of knowing the resources it specifically devotes to dual-use cases or the results of its the EAA enforcement efforts. Congress may also wish to consider directing Customs to dedicate a specified number of staff or amount of funding to the EAA enforcement for as long as it is deemed to be a critical area of concern relative to Customs' other competing enforcement demands.
- To build Customs' expertise in the EAA cases, Congress could direct Customs to consider specific ways to enhance agents' level of the EAA expertise, including building upon their current level of export enforcement training and dedicating agents for longer periods of time to the Exodus program. Congress could also consider transferring Commerce special agents to Customs to ensure continuity on the EAA investigations.

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**Option: Grant Commerce  
Primary Responsibility for  
the EAA Enforcement**

Under this option, Commerce would assume full responsibility for both criminal and administrative investigations. Customs would refer the EAA investigative leads to Commerce and, in line with its broad enforcement authorities and presence at U.S. ports and overseas locations, would assist Commerce when requested.

This option has the same advantage as the previous option: elimination of overlapping jurisdiction and consequent poor cooperation. Further, it retains Commerce's key strengths—the linkage of licensing and enforcement and knowledgeable agents and resources dedicated to the EAA enforcement.

A key disadvantage of this option is Commerce's limited resource base. Unlike Customs, Commerce lacks an extensive domestic network of both investigators and inspectors, overseas resources, and key enforcement tools such as warrantless border search authority. In addition, Commerce agent resources allocated to enforcement have declined over the past few years, raising questions about its ability to expand its enforcement operations. A second disadvantage would be Commerce's continued need to rely on Customs for key enforcement support, with a concomitant need for effective cooperation—which has been heretofore noticeably lacking in the existing shared enforcement structure.

Congressional actions to implement this option could include (1) adjusting Commerce funding or staffing to recognize the shift in dual-use export control enforcement responsibility from Customs to Commerce and (2) mandating that Commerce and Customs negotiate procedures to ensure that coordination takes place when needed. For example, Customs would provide timely investigative assistance to Commerce, and Commerce would provide licensing information to Customs inspectors to allow them to identify illegal exports.

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### Two Other Options: Increase Commerce Authority or Create New Agency

We briefly examined two other options for improving the EAA enforcement, but concluded that they were not as viable as the ones already discussed. The first of these would retain Commerce's and Customs' overlapping jurisdiction, but provide Commerce with additional legal authority commensurate with that of Customs. For example, this option could entail authorizing Commerce to conduct overseas investigations and expanding its search and seizure authorities at ports and borders. This option is predicated on the idea that if an agency is given responsibility for enforcing the EAA, it should also have the tools necessary to fully carry out that responsibility.

Expanding Commerce authority would minimize the need to obtain concurrence from Customs for specific enforcement activities, thereby minimizing any related coordination problems. However, the significant disadvantages to implementing this option appear to outweigh this benefit.

Competition between the two agencies could intensify, with the added possibility of complicating U.S. investigative activities in certain foreign countries as well as domestically. Moreover, implementing this option would require Congress to expand the number of U.S. agencies with warrantless border search authority. Finally, a majority of Justice attorneys we surveyed opposed this option, with some noting that it would tend to exacerbate existing turf battles and, by maintaining completely redundant investigative programs, result in an inefficient use of resources.

The second option, creating a separate agency for administering and enforcing dual-use export controls, would involve transferring these responsibilities from both Commerce and Customs. This option would eliminate overlapping jurisdiction and the attendant coordination problems. It would also maintain the link between licensing and enforcement, assuming that Commerce's licensing database would be transferred to this new agency. Finally, establishing a new agency devoted exclusively to controlling dual-use exports would reduce concerns about the level of institutional commitment to export control. In this case, a separate agency would not have Commerce's potentially conflicting trade promotion and control roles or Customs' competing enforcement priorities.

However, this option would also have several drawbacks in comparison to other alternatives. Many Justice attorneys were opposed to creating a new agency because they viewed it as one more layer of bureaucracy. Several attorneys also believed a new agency would be too small to effectively administer and enforce dual-use controls. A new agency could also entail significant start-up costs, even assuming the transfer of experienced staff from Commerce and Customs. Overcoming such difficulties does not appear feasible, especially in the currently restricted budgetary climate.

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## Conclusions

Although all the options presented have advantages that may warrant their consideration, two appear to have the greatest potential for successful implementation: maintain the current system with improved coordination or provide Customs with lead authority for the EAA investigations. Both are broadly responsive to the need to provide for essential components of effective enforcement, assuming they are effectively implemented. Commerce and Customs, by their recent conclusion of two agreements to improve information-sharing and cooperation, have taken a significant step toward adopting the first option—maintaining two separate enforcement organizations. It remains to be seen whether the two

agencies can substantially improve cooperation or achieve the operational efficiencies, such as increased joint activities, that are envisioned in this option.

The other options discussed have serious drawbacks that may be difficult or impractical to overcome. For instance, given Commerce's limited and declining enforcement budget, Commerce is not adequately equipped to take on complete responsibility for the EAA enforcement. Also, providing Commerce with powers similar to Customs' could increase coordination problems and reduce Customs' ability to control activities in its area of operation. Lastly, creating a separate agency for dual-use control could entail substantial start-up costs and would require extensive licensing and enforcement resources that may not be readily available in the current budgetary climate.

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## Matters for Congressional Consideration

Congress should weigh the various options for improving export control enforcement, as well as the recent actions taken by the Commerce Department and the U.S. Customs Service, and then consider amending the Export Administration Act as needed to improve the U.S. government's ability to enforce controls over dual-use exports, preferably by

- maintaining Commerce's and Customs' shared jurisdiction for dual-use export control enforcement and reinforcing efforts to improve cooperation or
- granting Customs primary responsibility for the EAA criminal investigations, with corresponding improvements in Customs' operations.

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## Agency Comments and Our Evaluation

The Commerce Department supported the first option—to continue current enforcement authorities while improving coordination and cooperation—as the best way to increase the effectiveness of the export control program.

The Customs Service did not explicitly support any of the options, but did comment on the various recommendations linked to the first and second options. In line with the need to link licensing and enforcement and improve case tracking, Customs noted that the agency (1) will be able, based on the agreements reached with Commerce, to link Customs enforcement information to the Commerce licensing process and (2) is planning to implement a case management system improvement that will better capture export control case data. Customs disagreed with the idea

of dedicating a specified number of staff or resources to the EAA enforcement on the grounds that this would not be a wise investment of scarce resources at a time when more items are being decontrolled. Customs also pointed out that the agency remains committed to improving the level of its expertise in all laws it enforces, including the EAA; the test of that expertise is in the quantity and quality of investigations presented for prosecution, where Customs has had many successes.

Our proposal that Congress might wish to consider directing Customs to dedicate a specified number of staff or funding to the EAA enforcement is linked to the selection of the enforcement option that would place primary responsibility for the EAA investigations with Customs. Under that circumstance, we continue to believe that it would be prudent to consider establishing some level of commitment to the EAA investigations, given the loss of Commerce coverage and the continued likely concern over the proliferation of weapons of mass destruction and need for enforcement attention to this area.

# Customs Exodus Program Results

Tables I.1 and I.2 show overall data on Exodus program results, including arrests, indictments, convictions, detentions, and seizures. These data include Export Administration Act cases as well as cases undertaken pursuant to other export control laws such as the Arms Export Control Act.

**Table I.1: Opened Criminal Cases, Arrests, Indictments, and Convictions for All Exodus Investigations**

Investigative results	Fiscal year				
	1988	1989	1990	1991	1992
Number of criminal cases opened	1,397	1,174	1,090	1,051	960
Arrests	180	190	249	153	273
Indictments	193	169	246	142	150
Convictions	125	112	193	133	193

Note: Data include joint cases.

Source: Office of Enforcement, U.S. Customs Service.

**Table I.2: Exodus-Related Detentions and Seizures**

	Fiscal year				
	1988	1989	1990	1991	1992
Dollars in millions					
Number of detentions	817	1,536	1,339	807	791
Number of seizures	724	1,427	1,287	718	689
Value of seizures	\$81.5	\$105.8	\$129.4	\$96.0	\$52.6

Source: Office of Enforcement, U.S. Customs Service.

# Comments From the Department of Commerce

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



**UNITED STATES DEPARTMENT OF COMMERCE**  
Chief Financial Officer  
Assistant Secretary for Administration  
Washington, D.C. 20230

SEP 28 1993

Mr. Frank C. Conahan  
Assistant Comptroller General  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Conahan:

Thank you for the opportunity to review your draft report entitled, "Export Controls: Actions Needed to Improve Enforcement."

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Gloria Gutiérrez".

Gloria Gutiérrez  
Acting Chief Financial Officer and  
Assistant Secretary for Administration

Enclosure

**Appendix II  
Comments From the Department of  
Commerce**



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

September 21, 1993

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

Re: Draft GAO report  
GAO Code 468302

Dear Mr. Conahan:

Your letter of August 24, 1993, to Secretary Brown has been referred to me for reply. We welcome the opportunity to comment on the draft report you enclosed for his review. We recognize the hard work that the General Accounting Office has put into this study, which focuses on the challenges of enforcing export controls. It illuminates an important, complex, and difficult set of issues. We hope that the GAO's report, once it is in final form, will receive the close attention it deserves.

We endorse the main thrust of the report's analysis. That is, the best way to increase the effectiveness of the export control program is to continue current enforcement authorities while improving coordination and cooperation between the Department of Commerce and the U.S. Customs Service. We are thus particularly pleased to inform you that we have recently reached two agreements intended to do just that. They incidentally make some points of the report's analysis out of date.

The agreements, dated September 9, 1993, include a Memorandum of Understanding (MOU) concerning the exchange and protection of licensing information. Under this MOU, Customs will receive licensing information from Commerce on a daily basis. The information will be placed into Customs's automated Treasury Enforcement Communications Systems (TECS), where it will be available to the Customs inspectors and special agents who are authorized to enforce the Export Administration Act and the Export Administration Regulations.

The other agreement is known as the Export Enforcement Coordination Procedures (EECP), which will facilitate cooperation between the agencies by providing comprehensive guidance in such matters as foreign investigative assistance, pre-license and post-shipment checks, investigations at U.S. ports and borders, joint investigations, seizures, exchanges of information, referrals of cases for administrative action, and global settlements resolving both criminal and administrative charges.



**Appendix II  
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Commerce**

These agreements will ensure a flow of licensing and enforcement information between the agencies and will remove impediments to more effective enforcement of the Export Administration Act. Commerce and Customs have committed to meet regularly to assess how well we are implementing the agreements. Copies are attached for your review and reference in making final revisions to the report.

I would also ask that you consider revising the draft report to take into account a few other points.

First, the draft report understandably focuses on criminal enforcement efforts, as criminal cases provide a common point of reference for Commerce and Customs. We believe that in doing so, however, the report understates the important work that Commerce does in the administrative enforcement area. The limited discussion of Commerce's administrative sanctions does not, in our view, adequately reflect their significance, particularly the significance of Commerce's authority to deny export privileges. For example, when the violator is a foreign individual or company, it is most often the case that denial of export privileges is the only sanction effectively available, because a foreign violator is usually not willing to submit to the jurisdiction of U.S. courts for criminal prosecution. In addition, as the draft report recognizes, the changing nature of dual use export controls may well make criminal cases more difficult from the standpoint both of proof and of jury appeal. If that happens, administrative cases (which have a lower threshold burden of proof) will become even more critical to the overall enforcement effort. Accordingly, we would urge that you revise the draft report to include additional discussion of Commerce's significant administrative enforcement role.

Second, the draft report fails to note an important resource available to the Bureau of Export Administration, namely the Office of Chief Counsel for Export Administration. The attorneys in that office, working as an integrated unit on legislative and regulatory matters, as well as on licensing and enforcement issues, provide timely and effective legal services to BXA on a host of licensing and enforcement matters. They are also frequently called on by Justice Department attorneys prosecuting criminal cases to provide their expertise in interpreting the Export Administration Act and Regulations, regardless of whether Commerce or Customs was the investigating agency. This expertise is unique to Commerce and BXA, and we believe the draft report should be revised to take note of it.

We also agree with the draft report's underlying premise that overall enforcement efforts should be improved. In that regard, we would note that Congress provided Commerce, in 1990 legislation to extend and amend the Export Administration Act, important additional enforcement tools, including forfeiture and

See comment 1.

See comment 2.

See comment 3.

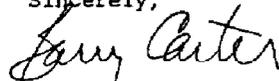
Appendix II  
Comments From the Department of  
Commerce

undercover operations authority. The legislation, which passed both the House and Senate, was vetoed on grounds unrelated to its enforcement provisions. We think it would be appropriate for the report to reflect this fact.

Finally, the draft report relies heavily on the views of Justice Department attorneys with experience in Export Administration Act cases. We, of course, respect and welcome the opinions of those attorneys concerning the cases they have prosecuted and their experiences with Commerce and Customs. We question, however, whether their experience in the wide range of matters that make up the total export enforcement picture--such as administrative enforcement, license application screening, outreach and the various personnel, budget and other management issues--is sufficient to enable them to make an informed choice among the "options for change" that the report offers. Therefore, we ask that the Justice Department attorneys' comments on the various options be deleted from the report.

Again, I applaud the GAO auditors' unstinting efforts to clarify the issues in this complex and important area of law enforcement and public policy. I know your auditors put a great deal of hard work into it, not only in collecting information and interviewing officials but also in analyzing practical options for resolving the problems. If we can be of further assistance to the GAO in this matter, please let us know.

Sincerely,



Barry E. Carter  
Acting Under Secretary

Enclosures

See comment 4.

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The following are GAO's comments on the Department of Commerce's letter dated September 28, 1993.

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## GAO Comments

1. We agree that the ability to pursue administrative remedies is a key enforcement tool, as we noted in our discussion of enforcement authorities and activities in chapter 2. We have also expanded our description of administrative sanctions to better reflect their importance to enforcement.
2. We have added a reference to the Department's Office of Chief Counsel for Export Administration in the chapter 2 discussion on resources available to the Commerce Department and U.S. Customs Service in carrying out their enforcement responsibilities.
3. We have noted the draft legislation in chapter 2 of the report.
4. We solicited the views of various Justice Department attorneys because of their involvement in and knowledge of Commerce and Customs export control enforcement investigations that are ultimately turned over to the Justice Department for prosecution. As customers of Commerce's and Customs' work, these attorneys are in a unique position to provide valuable insights on the performance of both agencies as well as on options for improvement. We have clarified language in the report to ensure that the attorneys' views are presented in the proper context of their knowledge of the agencies' investigative responsibilities.

# Comments From the U.S. Customs Service

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



**THE COMMISSIONER OF CUSTOMS**

WASHINGTON, D.C.

October 6, 1993

ENF-1-IV-ST:JLB

Mr. Frank C. Conahan  
Assistant Comptroller General  
United States General Accounting Office  
Washington, D.C. 20548

Dear Mr. Conahan:

I am pleased to respond to the General Accounting Office (GAO) report of August 24, 1993, on export enforcement. The receipt of this report comes at an appropriate time for Customs as we are in the process of reviewing our export control enforcement program. I also appreciate your evaluators' efforts in identifying means of improving the overall U.S. Government export enforcement efforts.

The foundation of U.S. export enforcement rests on the control of dual-use technology (enforced under the Export Administration Act - (EAA)); the control of munitions and defense articles (enforced under the Arms Export Control Act - (AECA)); the implementation of foreign policy sanctions (enforced under the Trading with the Enemy Act - (TWEA); the International Emergency Economic Powers Act - (IEEPA), and the Comprehensive Anti-Apartheid - (CAAT). Customs is the primary border law enforcement agency, and as such it is responsible for enforcing all export laws. The direction and substance of our export control program is centered on the control of the components of weapons of mass destruction.

The purpose of the GAO report was to assess how well Commerce and Customs enforce only the EAA, especially as it relates to the control of dual-use equipment and technology which includes components in the development of these weapons. However, I wish to point out that by primarily focusing on enforcement of the EAA, the draft report fails to recognize the inherent overlap and interdependence between enforcement of the EAA and enforcement of the remaining export laws. For example, some components of weapons of mass destruction may be controlled depending on their specification by either the EAA or the AECA. Violations of the EAA and AECA may occur when an exporter illegally exports different items - some controlled by the EAA and some controlled by the AECA; or

Appendix III  
Comments From the U.S. Customs Service

violations of numerous export laws may occur (AECA/CAAT or EAA/TWEA, etc.) when an exporter exports the same items to a proscribed destination.

Any assessment of how well Customs enforces the EAA must be made in the context of how well it enforces all of the above listed export laws, especially those laws controlling the export of components of weapons of mass destruction. Before I address the specific issues in the report, let me briefly describe our resource commitment and the quantity and quality of our results.

Overall Export Enforcement Resources and Results

Customs devoted an average of 270 agent staff years per fiscal year to export enforcement during the 1988-92 period. Customs secured on average of 180 indictments per fiscal year. These indictments, due in part to our outstanding working relationship with the Departments of Defense, State, Justice and the intelligence community, led to the successful prosecution of individuals and organizations attempting to export: Beryllium (used in the manufacture of weapons grade uranium) to Pakistan - an EAA violation; carbon-carbon missile products to Egypt - an AECA violation; mustard gas chemical precursors to Iran - an EAA violation; Sarin (nerve gas) to Iran - an AECA violation; gyroscopes used in missiles to South Africa - an AECA and CAAT violation; Contam computer software relating to missile research and development to South Africa - an AECA and CAAT violation; and missile warhead detonation capacitors to Iraq - an AECA violation.

During each of the 5 years covered by the GAO study, Customs devoted approximately 130 inspectors to export enforcement and secured an average of 970 seizures valued at \$93 million per fiscal year. Customs has made many seizures including significant proliferation components such as, in June 1990, a skull furnace capable of casting highly enriched uranium for nuclear bomb cores as well as melting titanium for fabricating ballistic missile components destined for Iraq.

Customs established expertise as demonstrated in the quantity and quality of our enforcement results, has led Customs into the position of conducting extensive training for U.S. agencies involved in non-proliferation control. Customs also conducts comprehensive non-proliferation export training for foreign law enforcement officials including foreign Customs Services, especially in Eastern European countries and in the former Soviet Union.

In addition, Customs continues to send inspectors and

special agents to administer the Sanctions Assistance Missions (SAM) to Croatia, Serbia, and Montenegro in order to enforce United Nations Security Council resolutions imposing trade embargoes.

Enforcing the EAA

The report correctly notes that indictments, arrests, convictions, seizures, and resources devoted to EAA enforcement dropped during FY 1991 and 1992. Customs attributes this decline to: (1) relaxation of East-West country to country controls; and (2) the emergence of end-user and end-use (Enhanced Proliferation Control Initiatives).

Relaxation of East-West Country to Country Controls

During the past 4 years there has been a 70-75 percent reduction in the number of license applications processed by the Department of Commerce according to its testimony in budget hearings for FY 1994. There appears to be a strong likelihood that there will be further substantial reductions in license applications resulting from still deeper cuts in multi-lateral (COCOM) and unilateral (U.S.) controlled items listed on the Export Administration Regulations (EAR) Commodity Control List (CCL).

Emergence of End-Users and End-Use Controls

End-user and end-use controls fit under the umbrella of the Enhanced Proliferation Control Initiatives (EPCI). These initiatives were designed to solidify control of the export of commodities (otherwise free of license requirements) to end-users who intend to use them in the manufacture or enhancement of chemical, biological, or nuclear weapons. However, the names of these unsuitable end-users are not published in the EAR. As a result, the exporter typically does not know that an item (free of license requirements) will be used by an end-user for the manufacture or enhancement of these weapons. Generally, it is only when Commerce notifies the exporter in writing that the end-user is unsuitable and the exporter then decides to export (despite the written notification) that there can be a potential criminal prosecution. Very few notifications letters have been sent to exporters by Commerce.

In an attempt to overcome this hurdle, Customs is actively engaged in the acquisition and the exchange of both strategic and tactical intelligence concerning non-proliferation issues. Customs participates in all of the

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Comments From the U.S. Customs Service

policy and working groups established by the CIA's Non-Proliferation Center (NPC). Customs representatives sit on the Proliferation Interdiction Policy Board as well as actively participating in various technology monitoring groups.

Cooperation between Commerce and Customs

There is little doubt that poor cooperation between Commerce and Customs over the past 11 years has been one of the key impediments to effective enforcement of the EAA. I wholeheartedly agree with the report statement that "continued disagreements between the two agencies are unacceptable given current resource constraints and the real need to ensure that available funds are spent wisely." As Commissioner of Customs, I took immediate steps to end the years of dispute between Commerce and Customs. On September 9, 1993, two Memoranda of Understanding (enclosed) were signed by the Deputy Assistant Secretary for Policy Planning, Bureau of Export Administration and myself.

The two Memoranda of Understanding cover all the areas of disagreement discussed in the draft report including the sharing of licensing information and the coordination of overseas and domestic investigations. In addition, Customs and Commerce have clarified investigative procedures in order to enter into a new era of cooperation and mutual support. Deputy Assistant Secretary Sue Eckert and I will meet quarterly to insure that the letter and spirit of the agreements are met by both agencies.

GAO Recommendations

Finally, the report lists several recommendations, in options 1 and 2, which if adopted, could improve our overall export controls program.

1. GAO RECOMMENDS LINKING LICENSING WITH ENFORCEMENT

Customs will now be able to link Customs enforcement information to the Commerce licensing process.

2. GAO RECOMMENDS REDESIGNING THE CASE TRACKING DATABASE IN ORDER TO BETTER CAPTURE THE INFORMATION RELATING TO ENFORCEMENT OF THE EAA.

Our sophisticated case management system captures labor distributions in over 150 subcategories and is considered a model for Federal law enforcement by the White House Drug Policy Office and others. However,

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Comments From the U.S. Customs Service

it does not capture EAA statistics. As of October 1, 1993, a case management system redesign will be implemented to better capture EAA, AECA, and sanctions data (IEEPA, TWEA and CAAT).

There is a technical difference our staffs have been unable to resolve. The draft report inaccurately asserts that 111 (versus 152) Customs agents are "dedicated" (spend at least 50 percent of their time on export enforcement). The error is due to the failure to include administrative time in the computation of "dedicated" agents. This is especially troubling because your staff has included administrative investigative time in all other computations of our agent staff years, including the computations of Commerce's staff years.

See comment 1.

3. GAO RECOMMENDS DEDICATING A SPECIFIED NUMBER OF STAFF OR AMOUNT OF FUNDING TO EAA ENFORCEMENT.

Customs remains committed to enforcing the EAA. However, we remain convinced that dedicating a specified number of staff or amount of funding to EAA enforcement when more and more controlled items are being decontrolled is not a wise investment of scarce agency resources. Nonetheless, we will continue to concentrate our resources on exporters who willfully export components of weapons of mass destruction, regardless of the laws they violate. Our present system, as measured by indictments, arrests, convictions and seizures, is an effective system and is as effective as Commerce's system that dedicates agent staffing and funding exclusively to EAA enforcement.

4. GAO RECOMMENDS THAT CUSTOMS CONSIDER SPECIFIC WAYS TO ENHANCE AGENTS LEVEL OF EAA EXPERTISE INCLUDING BUILDING UPON ITS CURRENT LEVEL OF EXPORT ENFORCEMENT AND DEDICATING AGENTS FOR LONGER PERIODS OF TIME TO ITS EXODUS PROGRAM.

Customs strives to improve its level of EAA expertise as well as expertise in all laws it enforces. For Customs, expertise means knowing the laws and applying its enforcement provisions to those individuals or organizations who violate them. The test of expertise is the quantity and quality of investigations presented for prosecution. A review of Justice's significant Export Control Case List indicates that Customs has had many successes especially in cases involving the illegal export of weapons of mass destruction.

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Comments From the U.S. Customs Service

Increasing agent resources to levels preceding the break-up of the Soviet Union will likely yield a poor return on resource investment. For example, in FY 1992, Customs and Commerce together devoted approximately 155 agent staff years to EAA enforcement, yet achieved only seven indictments. In contrast, in FY 1992, Customs devoted 145 staff years to AECA enforcement (where there has been little decontrol of munitions items requiring licenses) and achieved 120 indictments. We expect the linkage of enforcement information to the license process will make us more effective because fewer subjects under investigations will get approved export licenses, and inspectors at the border will now be able to screen export shipments against the Commerce licensing database. If it appears that Customs will be able to present more investigations to the U.S. Attorney's office for prosecution as a result of enhanced cooperation between Commerce and Customs, then Customs will devote more resources toward EAA enforcement.

Again, thank you for the opportunity to review and comment on this draft report. We welcome the insights that the GAO evaluation of Customs programs brings to our agency. Should you have any questions concerning any of the information contained in this letter, please feel free to contact John E. Hensley, Assistant Commissioner, Office of Enforcement at 202-927-1600.

Sincerely,



George J. Weise  
Commissioner

Enclosures

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The following are GAO's comments on the U.S. Customs Service's letter dated October 6, 1993.

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## GAO Comments

1. As explained in chapter 1, we estimated the average number of Customs agents "dedicated" to the Exodus program by determining the number of agents who had charged at least 1,044 hours (50 percent of total hours per staff year) to Exodus. We believe that using a 50-percent cut-off provides a reasonable basis for estimating dedicated staff—administrative time charges (for such things as leave or training) and other, non-Exodus enforcement activities were considered, in that they are accounted for in the remaining 50 percent of an agent's time. Using Customs' methodology, which assumes that agents charge 37 percent of their time to administrative matters, we calculated that an agent would have had to charge a minimum of 657 hours, or only 31 percent of his or her total time, to Exodus to qualify as a dedicated agent, which we believe is too low a basis for this estimate.

# Comments From the Department of Justice



U. S. Department of Justice

Washington, D.C. 20530

SEP 27 1993

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

Dear Mr. Conahan:

In response to your request to the Attorney General, dated August 24, 1993, for comments on the General Accounting Office (GAO) draft report entitled, "EXPORT CONTROLS: Actions Needed to Improve Enforcement," the Department has reviewed the draft report. As you are aware, the report reviews the activities of the Department of Commerce and the U.S. Customs Service in controlling the export of U.S. dual-use commodities and technologies. The Department was consulted during this study regarding its opinion of the quality of the investigations of these two agencies and potential impediments to effective enforcement of the Export Administration Act of 1979.

The report notes that Department attorneys were generally satisfied with the level of investigative competence displayed by agents from each agency. It also notes that Department attorneys believed that the current shared system of responsibilities between the Department of Commerce and U.S. Customs Service was inefficient. As you know, the Department is not able to verify the accuracy of these statements because the identities of the persons to whom the statements may be attributed are not known.

We appreciate the opportunity to review the draft report.

Sincerely,

  
Stephen R. Colgate  
Assistant Attorney General  
for Administration

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