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United States Government Accountability Office  
Washington, DC 20548

November 16, 2010

The Honorable Jon Kyl  
Ranking Member  
Subcommittee on Terrorism and Homeland Security  
Committee on the Judiciary  
United States Senate

The Honorable Russell D. Feingold  
United States Senate

*Subject: Export Controls: Agency Actions and Proposed Reform Initiatives May Address Previously Identified Weaknesses, but Challenges Remain*

Each year, billions of dollars in arms and “dual-use” items—items that have both commercial and military applications—are exported to U.S. allies and strategic partners.<sup>1</sup> To further national security, foreign policy, and economic interests, the U.S. government controls the export of these items. Over the past 10 years, we have reported on numerous weaknesses in the export control system, including poor coordination among the multiple agencies involved, which have led to jurisdictional disputes and enforcement challenges, and the lack of systematic assessment of the overall effectiveness of the export control system.<sup>2</sup> As a result, since 2007 the arms and dual-use export control systems have been included as part of our high-risk area on ensuring the effective protection of technologies critical to U.S. national security interests.<sup>3</sup> We have also called for a strategic reexamination of existing programs within the U.S. export control system to identify needed changes and ensure the advancement of U.S. interests. In August 2009, the President announced that he had directed a comprehensive review of the U.S. export control system and, in April 2010, proposed a framework under which the current system would be streamlined to include a single export control list, a single licensing agency, a single primary enforcement coordination agency, and a single information technology system. The Administration has since provided updates on its reform initiatives, announcing specific actions that are being implemented using a phased approach.

<sup>1</sup> For the purposes of this report, the term arms refers to defense articles, defense services, and related technical data, as specified in 22 U.S.C. § 2778, and the term dual-use refers to items that have both commercial and military applications, such as high-performance computers, radars, and underwater television cameras.

<sup>2</sup> See enclosure I for a list of these reports.

<sup>3</sup> GAO, *High-Risk Series: An Update*, GAO-09-271 (Washington, D.C.: January 2009).

In response to your request, we identified the extent to which agencies' actions and the proposed export control framework address the findings of our previous reports on the U.S. export control system in the areas of control lists, licensing, enforcement, and information technology.

### Scope and Methodology

To identify U.S. export control agencies' actions addressing our prior report findings and to obtain a status of the Administration's reform efforts, we reviewed the findings and recommendations of 22 reports we issued over the past 10 years on the U.S. export control system.<sup>4</sup> We reviewed documentation on agency actions taken and interviewed U.S. government officials, including representatives of the Department of Commerce's Bureau of Industry and Security; the Department of Defense's (DOD) Defense Technology Security Administration; the Department of Homeland Security's Customs and Border Protection and Immigration and Customs Enforcement; the Department of Justice's Executive Office for U.S. Attorneys, Federal Bureau of Investigation, and the National Security Division; the Department of State's Directorate of Defense Trade Controls; and the Department of the Treasury's Office of Foreign Asset Control. We also spoke with export control reform task force members and reviewed recent White House press releases on the export reform initiatives. We aligned our key findings with the four categories in the proposed export control reform framework—control lists, licensing, enforcement, and information technology—to determine whether agency actions and proposed reform efforts address them.

We conducted this performance audit from July 2010 through November 2010 in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### Results in Brief

Agencies have taken actions to address several weaknesses in the U.S. export control system that we previously identified and the Administration's export control reform initiatives have the potential to address others if fully implemented. Specifically, agencies have taken actions in several areas, including reducing the time it takes to process arms licenses and making initial efforts to coordinate export control enforcement activities among multiple agencies. The export control reform framework—as proposed—has the potential to address weaknesses in the U.S. export control system related to control lists, licensing, enforcement, and information technology, including areas where agencies have not addressed prior findings. However, for a few areas, such as developing measures of effectiveness for the arms export control system, agencies have not addressed some of our prior findings and the reform framework does not contain specific initiatives to address them.

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<sup>4</sup> We excluded Foreign Military Sales—a U.S. government program to provide foreign governments or international organizations with U.S. defense articles and services—as it is not being addressed through the President's export control reform initiative.

Furthermore, the Administration may have challenges in implementing fundamental reform of the export control system—such as reaching interagency agreement on which items need to be controlled and obtaining congressional approval for implementing reforms. Enclosure I provides additional details on our reports from 2001 to 2010 related to U.S. export controls, including their key findings, agency actions in response to these findings, and whether the export control reform framework includes actions that may address these findings.

This report includes no new recommendations. We provided a copy of a draft of this report to Commerce, Defense, Homeland Security, Justice, State, and Treasury for comments. Commerce and Homeland Security provided technical comments, which we incorporated as appropriate.

### Background

The current U.S. export control system is governed by a complex set of laws, regulations, and processes, and involves multiple federal agencies in administering the regulatory framework and enforcement. The U.S. government's control over the export of arms and dual-use items is primarily divided between State and Commerce. Generally, unless an exemption applies, exporters may submit a license application to State if their items are controlled on the U.S. Munitions List or to Commerce if their items are controlled on the Commerce Control List to receive export approval. As part of the application review process, State and Commerce consult with other agencies, including DOD. Additionally, agencies within Commerce, Homeland Security, Justice, and State conduct enforcement activities. Treasury and Commerce administer the current sanctions program for selected countries.

Our past work highlighted the need for export control reform through reports to Congress and testimony at congressional hearings. Over the past 10 years, we issued 22 reports with key findings and recommendations directed to State, Commerce, DOD, Homeland Security, Justice, and Treasury, to improve the U.S. export control system. Some of the issues identified through these reports include poor interagency coordination, inefficiencies in the license application process, and a lack of systematic assessments.

In April 2010, the Administration announced a reform framework to create an export control system that is more effective, transparent, and predictable by creating a single control list, licensing agency, enforcement agency, and information technology system for licensing. Based on the Administration's interagency review, it found that the U.S. export control system has a complicated structure involving multiple agencies with separate control lists, leading to jurisdictional confusion, and has hindered the ability of allies to cooperate with U.S. forces. For example, while Commerce and State manage their respective export controls lists, there has been ambiguity, confusion, and jurisdictional disputes over the items controlled on these lists. In addition, licensing procedures and conditions are not consolidated or uniform across agencies, and various agencies have responsibility for monitoring and enforcing export controls. The current process relies on separate information systems, some of which are paper-based, which are not accessible to all agencies involved.

The reform framework is structured in a three-phased approach. Phases I and II are focused on establishing criteria for creating parallel control lists, harmonizing licensing policies and processes, creating an export enforcement coordination center, expanding outreach and compliance, and consolidating Commerce, DOD, and State on a single information technology platform to process licenses. Phase III focuses on implementing the reform proposals that would require congressional action, such as creating a single licensing agency. The President signed an Executive Order in November 2010 directing the Department of Homeland Security to establish the Export Enforcement Coordination Center and has announced that agencies will begin issuing proposed revisions to the control lists and licensing policies later this year.

Agencies' Actions Address Several Previously Identified Weaknesses, Reform Proposals Have the Potential to Address Others, but a Few Areas Remain to be Addressed

Control Lists: Agencies have taken action to improve time frames for responding to requests for clarification of classification and jurisdiction issues related to control lists, but have not addressed our prior findings relating to the jurisdictional disputes that exist between State and Commerce control lists. While the reform initiative announced that agencies will apply new criteria for determining jurisdiction, several potential challenges remain before aligning the State and Commerce control lists.

- Key findings: Companies seeking to export arms and dual-use items are responsible for determining whether these items are regulated by State or Commerce and the applicable export requirement. An exporter may request a commodity jurisdiction determination from State, if in doubt about whether an item is controlled by State or Commerce. An exporter may also request a commodity classification decision from Commerce if it is uncertain how a dual-use item is classified on the Commerce Control List. However, we reported that State was not complying with existing time frames established for responding to jurisdiction requests to determine proper control of defense-related items. Similarly, Commerce was not meeting time frames for classification requests. In most cases, Commerce's controls over dual-use items—which include most items in the U.S. economy—are less restrictive than State's controls over arms. State-controlled items generally require a license for most destinations unless an exemption applies; Commerce-controlled items do not require a license unless general prohibitions apply or the export qualifies for certain other restrictions. Because State and Commerce have different restrictions on the items they control, determining which agency controls exported items is fundamental to the U.S. export control system's effectiveness. In some cases, both departments have claimed jurisdiction over the same items, such as certain missile-related technologies. Such jurisdictional disagreements and problems in the past have often been rooted in the departments' differing interpretations of the regulations and in minimal or ineffective coordination among the departments. Unresolved disagreements ultimately allow exporters to effectively decide which restrictions apply and the type of governmental review that will occur since exporters decide whether to approach Commerce or State for approval. Not only does this create a competitive disadvantage—because some companies obtain access to markets that others do not, depending on which system they use—but it also increases the

risk that critical items will be exported without the appropriate review and resulting protections. In our recent review of selected countries' export control systems, we found that five of six allied countries use a consolidated control list and a single licensing agency to determine which controls apply.<sup>5</sup>

- Agency Actions: State and Commerce have taken action to decrease processing times for jurisdiction and classification requests, respectively. In June 2009, the National Security Council issued guidelines on commodity jurisdiction reviews and established a dispute resolution mechanism to ensure timely adjudication of cases. According to State officials, it has increased its staff from one to five persons to process commodity jurisdiction requests and as of July 2010, the median processing time was 36 days, down from 118 days in 2002. In addition, State officials also reported that they developed a new electronic commodity jurisdiction form to allow applicants to file and State offices to process forms electronically. According to Commerce, it now tracks and reports timeliness of commodity classifications and has recently amended its regulations to clarify that Commerce commodity classification determinations may not be relied upon as commodity jurisdiction determinations—which can only be made by State. However, prior to the reform initiative, State and Commerce did not take actions to eliminate overlap between their respective control lists.<sup>6</sup>
- Proposed Action in the Reform Initiative: A recent White House update on the reform initiative states that a task force will create new export control criteria to determine which items and technologies should be controlled by Commerce or by State, thus helping to reduce uncertainty. According to Commerce officials, the Administration has reached agreement on new export control criteria and will revise each control list to clearly delineate items controlled under it. Each list will also be divided into three tiers based on the types of items and how much control the United States needs over these items. Commerce, State, and Defense officials involved in the reform initiative will need to reach agreement on the appropriate controls over items contained in 21 categories of arms and 10 categories of dual-use items. So far, the task force has reached agreement on only one of these categories—tanks and military equipment—after several months of effort. Some of the remaining categories, such as satellites and optical equipment, are among those that Commerce and State have disagreed on which control list certain items belong. Given this, reaching agreement under the new tiered system may take considerable time and effort. DOD has set a goal to work with State and Commerce to revise the U.S. Munitions List, in conjunction with corresponding categories in the Commerce Control List, by June 2011.

Licensing: Agencies have taken action to address our findings related to the U.S. export control licensing system. The reform initiative also proposes changes to the system that have the potential to address our findings, but it is not clear how certain

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<sup>5</sup> We reviewed the export control systems of Australia, Canada, France, Germany, Japan, and the United Kingdom. Each of these countries had a single licensing agency except for France. More information can be found in GAO, *Export Controls: Observations on Selected Countries' Systems and Proposed Treaties*, GAO-10-557 (Washington, D.C.: May 27, 2010).

<sup>6</sup> According to Commerce officials, agencies have devoted significantly greater time, since 2009, to processing commodity jurisdiction requests, which has the potential to reduce overlap between State and Commerce control lists. However, the processing of commodity jurisdiction requests is completed on a case-by-case basis.

aspects of the system will be implemented, such as whether the new licensing system will contain measures of effectiveness.

- Key Findings: Our findings on the export licensing system centered on licensing inefficiencies, lack of clear guidance on export exemptions, and State's and Commerce's lack of measures of effectiveness in their export control systems. We reported that State had a backlog of license applications of over 10,000 cases at the end of fiscal year 2006, with an average processing time of 43 days. We also found that DOD issued guidance to the military services regarding certification of export exemptions in support of DOD activities, but non military service components—that were not subject to this guidance—were also certifying the use of export exemptions. DOD uses the term certify to confirm that an exemption to State export license regulations is being used pursuant to an official written request, directive, or approval from DOD. The exemption guidelines were also unclear and State and DOD lacked comprehensive data to oversee the use of DOD-certified exemptions. In addition, for country export exemptions, we found that there needs to be up-front agreement on such issues as what items are to be controlled, who can have access to controlled items, and how to control these items through each country's respective export laws and regulations—and that these agreements need to be monitored. We found that neither State nor Commerce has systematically assessed their priorities and approaches to determine the overall effectiveness of their licensing programs, nor identified corrective actions that may be needed to fulfill their missions—despite heightened terrorism and increased globalization, which have significantly changed the national security environment.
- Agency Actions: In response to our key findings and recommendations, State restructured its workforce and revised its procedures to reduce license processing times and decrease the number of open cases. In September 2010, State reported an average processing time of about 15 calendar days, down from an average of 43 days in 2006, and a reduction of the number of cases in process (i.e., open cases) from 10,000 to 3,500—despite a 20 percent increase in the number of cases received annually. To address our findings for license exemptions, DOD and State officials began a working group to discuss changes to State licensing regulations and to draft new exemption guidance; however, these actions are on hold pending export control reform. For country exemptions, State officials established a new division focusing on licensing officer training, including training on exemptions. As part of the development of the Defense Trade Cooperation Treaties with the United Kingdom and Australia, State worked with agencies, including Justice and Homeland Security, to evaluate aspects of the Canadian exemption. In addition, Commerce has taken steps to review its dual-use system to increase its effectiveness, including instituting a quality assurance program to ensure that Commerce policies and procedures have been thoroughly followed by licensing officers and conducting assessments of the impact of export controls on U.S. economic interests. In addition, Commerce officials noted that they have begun to review export data to determine the extent of exporter compliance with its regulations, which they stated has increased exporter compliance. However, State has not taken steps to assess the effectiveness of its

arms licensing process.

- Proposed Action in the Reform Initiative: The reform initiative proposes a single licensing agency, which is consistent with our finding in five of six selected allied countries. Such action has the potential to simplify the U.S. export licensing system, and may also result in fewer licenses and a greater number of exemptions for exported goods. However, merging the existing licensing responsibilities for arms and dual-use items into a single agency will require legislative changes. Also, the reform initiative does not currently include actions related to country exemptions or treaties with the United Kingdom and Australia that were recently approved by the Senate and that will allow certain arms to be exported to approved entities in those countries without a license. While the Administration's proposed single licensing agency is intended to eliminate gaps and make the export control system more effective by focusing controls on the most sensitive items, the reform framework is silent on how it will assess the effectiveness of the licensing process.

Enforcement: Export control agencies have taken action to address our findings related to challenges in carrying out their enforcement responsibilities. However, agencies have not fully addressed our findings relating to monitoring and compliance activities. While the export control reform initiative includes actions to improve enforcement coordination, the Administration has not announced specific actions for monitoring and compliance.

- Key Findings: U.S. export control enforcement agencies have faced considerable challenges in carrying out their respective inspection, investigation, and prosecution responsibilities. We found that agencies had difficulty coordinating investigations and agreeing on how to proceed on cases. We also found that the licensing agencies lacked the ability to adequately conduct monitoring and compliance activities. For example, we found that Commerce staff lacked the awareness of license conditions and the training needed to monitor exporters' compliance with these conditions. Further, we found that Commerce had not reached an agreement for conducting on-site reviews of facilities approved for the Validated End-User program in China and that Commerce had not targeted its outreach for release of controlled technology to foreign nationals in the United States.
- Agency Actions: In response to our findings and recommendations, Justice established a task force in 2007 with other agencies responsible for enforcing export controls to address overlapping jurisdiction for investigating potential violations and poor interagency coordination. For compliance and monitoring, Commerce updated its agent manual, changed its post shipment verification checklist, and updated the training of enforcement personnel. According to Commerce officials, they conduct several hundred end-use checks annually. Commerce officials noted that its analysts research and cross-reference threat information found in multiple sources and then focus on a smaller set of applications of high national security interest. Commerce also revised its regulations to require exporters to inform end-users in writing of export license conditions, and Commerce officials told us that they reached an agreement with

China in 2009, and have begun on-site reviews of facilities in the Validated End-User program to confirm their compliance with program requirements. However, while Commerce instituted a program to improve monitoring and compliance when exporting controlled technologies to foreign nationals, according to Commerce officials, it has not maintained this program due to budgetary constraints.

- Proposed Action in the Reform Initiative: The reform initiative includes the creation of the Export Enforcement Coordination Center to coordinate enforcement efforts across all export agencies. According to Department of Homeland Security officials, Phase III of the reform initiative will examine opportunities to merge export enforcement resources. While co-location of the export control agencies in a single headquarters'-based facility may help agencies share information, further action may be needed to fully coordinate export enforcement cases throughout the country. To address compliance and monitoring, the reform initiative states that enforcement will include additional end-use assurances against diversion by foreign consignees and will increase outreach and on-site visits both domestically and abroad. At this point, the Administration has not announced specific actions on the number and types of monitoring and compliance activities that will be conducted.

Information Technology: Export control agencies have not yet taken actions to address our findings that they operate with disparate, sometimes antiquated information technology systems, pending reform efforts. While the reform initiative has proposed that DOD's USXPORTS system be the single information technology system, it does not include a specific action to incorporate the enforcement agencies into this single system or identify other options to improve information management for enforcement activities.

- Key Findings: We previously found that State and DOD lacked comprehensive data to oversee the use of DOD-certified exemptions from State export license regulations. We also found that Treasury's ability to retrieve and provide timely and accurate information about its Iran-related licensing decisions is limited. Further, we found that export control enforcement agencies lack a system to identify all parties that engage in nuclear proliferation and are impaired from judging their progress in preventing nuclear networks because they cannot readily identify basic information on the number, nature, or details of all their enforcement activities involving nuclear proliferation. In addition, we recently found that Congress does not have a complete picture of defense exports under current reporting. State—which has overall responsibility for regulating arms exports—and DOD, report to Congress in response to various requirements. However, their annual reports on exports have several information gaps and inconsistencies in part, because of the differing purposes of the agencies' data systems and different reporting methodologies.
- Agency Actions: DOD and State actions in response to our finding that they lacked comprehensive data to oversee the use of DOD-certified exemptions are on hold, pending export control reform. Treasury is in the process of improving its ability to track exports approved to embargoed countries, such as Iran. However,



Commerce and Treasury did not modify their data collection processes to clearly identify when enforcement activities involved nuclear proliferation. In addition, State does not plan to take action on its reporting of defense exports, stating that the resources necessary to change reporting formats are not merited given that Congress has not requested any change to the substance of its current reporting structure.

- Proposed Action in the Reform Initiative: The reform initiative proposes a single information technology system to administer the export control system. According to DOD and State officials, DOD's USXPORTS database will eventually serve as the single electronic system to administer export licensing. The reform initiative is proposing a single export license application form for exporters to use when submitting Commerce, State, and Treasury export license applications. In addition, USXPORTS is currently used by some DOD components to record export exemptions. If fully implemented, other DOD components could use this system to record their exemptions, which could potentially address our finding on the use of DOD-certified exemptions. Further, Treasury is expected to enter an agreement with DOD to use the USXPORTS database for approving export licenses to embargoed countries and DOD has signed separate agreements with State and Commerce to adopt DOD's USXPORTS system to improve communication and coordination in the export licensing process. However, the reform initiative does not propose actions for identifying enforcement activities relating to nuclear proliferation. While the reform initiative proposes a single information technology system for licensing, it does not specifically address reporting of arms export data.

#### Agency Comments and Our Evaluation

We provided a draft of this report to the Departments of Commerce, Defense, Homeland Security, Justice, State, and Treasury for their review and comment. Defense, Justice, State, and Treasury did not comment on our draft. Commerce and Homeland Security provided technical comments, which we incorporated as appropriate. In its technical comments, Commerce noted that a review of the current U.S. export control system, based on a variety of sources, identified areas for enhanced effectiveness. Commerce also noted that it is continually evaluating the effectiveness of its dual-use export control system and making adjustments as appropriate. We have revised the report to reflect actions that Commerce has reported taking, such as Commerce's review of export data to determine the extent of exporter compliance with its regulations.

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As arranged with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. At that time, we will send copies of this report to appropriate congressional committees; the Secretaries of Commerce, Defense, Homeland Security, Justice, State, and Treasury, as well as to other interested parties. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>. Contact points

for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report.

If you have any questions or need additional information, please contact me at (202) 512-4841 or [martinb@gao.gov](mailto:martinb@gao.gov). Key contributors to this report were Joseph Christoff, Director; John Neumann, Assistant Director; Jeffrey Phillips, Assistant Director; Kelly Bradley; Morgan DelaneyRamaker; Lisa Gardner; Sherrice Kerns; Jungjin Park; Kenneth Patton; Hai Tran; and Alyssa Weir.

A handwritten signature in black ink that reads "Belva M. Martin". The signature is written in a cursive style with a large initial 'B'.

Belva M. Martin  
Acting Director  
Acquisition and Sourcing Management

Enclosure

**GAO Reports on U.S. Export Controls Issued from 2001 through 2010: Key Findings, Agency Actions, and Export Control Reform Proposed Actions**

GAO report number and title	Key findings	Agency action in response to key findings	Does reform initiative propose actions that may address findings?
<p><a href="#">GAO-10-952</a>: <i>Defense Exports: Reporting on Exported Articles and Services Needs to Be Improved</i> September 21, 2010</p>	<p><u>Information technology</u>: Congress does not have a complete picture of defense exports under current reporting. State—which has overall responsibility for regulating defense exports—and DOD, report to Congress in response to various requirements. However, their annual reports on exports have several information gaps and inconsistencies in part because of the differing purposes of the agencies’ data systems and different reporting methodologies.</p>	<p><u>Not addressed</u> State, as the agency with overall responsibility for this reporting requirement, does not plan to address this finding, stating that the additional resources necessary to change reporting formats are not merited given that Congress has not requested any change to the substance of its current reporting structure.</p>	<p>No. While the reform initiative proposes a single information technology system for licensing, it does not specifically address reporting of defense export data.</p>
<p><a href="#">GAO-10-918</a>: <i>Persian Gulf: U.S. Agencies Need to Improve Licensing Data and to Document Reviews of Arms Transfers for U.S. Foreign Policy and National Security Goals</i> September 20, 2010</p>	<p><u>Licensing</u>: For selected GAO cases, State and DOD did not consistently document how arms exports to Gulf countries advanced U.S. foreign policy and national security goals.  <u>Information technology</u>: The total value of arms transfers State authorized to Gulf countries’ governments could not be determined, in part because its data also included arms transfers authorized for U.S. military units stationed in the Gulf countries. Additionally, because State’s data system does not have capability to separate multiple authorizations that cover the same</p>	<p><u>Ongoing</u> In response to our findings, State and DOD plan to take action to better document arms export decisions. State noted that it may require additional resources to do so.</p>	<p>No. While the reform initiative proposes a single information technology system for licensing, it does not specifically address reporting of defense export data.</p>

GAO report number and title	Key findings	Agency action in response to key findings	Does reform initiative propose actions that may address findings?
	equipment, some license values were counted more than once. In addition, the system does not separate authorization data by end-users, such as the host government or U.S. government entities operating in the host country.		
<p><a href="#">GAO-10-557</a>: <i>Export Controls: Observations on Selected Countries' Systems and Proposed Treaties</i> May 27, 2010</p>	<p><u>Control list and licensing</u>: Five of the six selected allied countries reviewed have a single agency in charge of administering export control regulations for arms and dual-use items. <u>Enforcement</u>: Four of the six selected allied countries have one agency in charge of enforcing export controls. <u>Information technology</u>: Some of the selected allied countries have the capability for agencies to access a single electronic licensing system when reviewing licenses.</p>	<p>Report findings did not require action from U.S. export control agencies.</p>	<p>Yes. While report findings did not require action from U.S. export control agencies, Commerce and State officials noted that the reform initiative is considering other countries' export control practices.</p>
<p><a href="#">GAO-10-375</a>: <i>Iran Sanctions: Complete and Timely Licensing Data Needed to Strengthen Enforcement of Export Restrictions</i> March 4, 2010</p>	<p><u>Licensing and information technology</u>: Treasury's ability to retrieve and provide timely and complete information about its Iran-related licensing decisions is limited. Treasury uses two paper-based information systems to record data on all Iran-related licensing decisions. The systems are not integrated with one another, and neither can</p>	<p><u>Ongoing</u> Treasury is in the process of improving its ability to track exports to sanctioned countries.</p>	<p>Yes. The reform initiative announced a single licensing agency and enforcement coordination center that will continue U.S. government sanctions programs directed towards specific countries such as Iran. According to Defense officials, Treasury is expected to enter an agreement with Defense to use the USXPORTS</p>

GAO report number and title	Key findings	Agency action in response to key findings	Does reform initiative propose actions that may address findings?
	<p>be searched to specifically identify licenses for the export of goods to Iran. As a result, Treasury has been unable to consistently provide timely responses to requests for complete information on such licenses.</p> <p><u>Enforcement:</u> Despite the sanctions that have been imposed on Iran, U.S. officials reported both actual and attempted illegal transshipment of U.S. military and dual-use goods through intermediaries in third-party nations such as United Arab Emirates, Malaysia, and Singapore.</p>		<p>database.</p>
<p><a href="#">GAO-08-1095</a>: <i>Export Controls: Challenges with Commerce's Validated End-User Program May Limit its Ability to Ensure That Semiconductor Equipment Exported to China is Used as Intended</i></p> <p>September 25, 2008</p>	<p><u>Enforcement:</u> Commerce has not reached a Validated-End-User-specific agreement with the Chinese government for conducting on-site reviews of validated end users.</p>	<p><u>Addressed</u></p> <p>Commerce stated that it has reached an agreement with China and has begun on-site reviews.</p>	<p>Yes.</p> <p>The reform initiative proposes that agencies focus on and strengthen enforcement efforts and notes that there will be additional end-use assurances against diversion from foreign consignees, increased outreach and on-site visits, both domestically and abroad, as well as enhanced compliance and enforcement.</p>
<p><a href="#">GAO-08-89</a>: <i>Defense Trade: State Department Needs to Conduct Assessments to Identify and Address Inefficiencies and Challenges in the Arms Export Process</i></p>	<p><u>Licensing:</u> State does not systematically analyze licensing data to identify inefficiencies and develop solutions to manage its processes and more effectively structure the workforce.</p>	<p><u>Addressed</u></p> <p>State performed analysis of available licensing data to identify root causes of inefficiencies and has significantly improved license processing</p>	<p>Yes.</p> <p>The reform initiative proposes tiered control lists that may result in fewer licenses, potentially allowing agencies to focus their resources on protecting</p>

GAO report number and title	Key findings	Agency action in response to key findings	Does reform initiative propose actions that may address findings?
November 30, 2007		times.	the items and technologies most critical to national security.
<p><a href="#">GAO-08-21</a>:  <i>Nonproliferation: U.S. Efforts to Combat Nuclear Networks Need Better Data on Proliferation Risks and Program Results</i>                      October 31, 2007</p>	<p><u>Enforcement</u>: The impact of export control assistance to foreign countries to combat the sale of illicit nuclear-related technology through proliferation networks is difficult to determine because State evaluated neither the proliferation risk for the countries in which network activities are alleged to have occurred nor the results of its assistance programs. Also, while State's assessments characterize a country's export control system and its weaknesses, State does not assess how U.S. training efforts contributed to correcting weaknesses.</p> <p><u>Information technology</u>: U.S. agencies collect information, maintain lists of companies and individuals that they sanction, and maintain investigation case files on suspected violations of U.S. law. However, most of these agencies cannot readily identify which enforcement activities involve nuclear proliferation as they cannot ensure that searching their case file databases for words, such as nuclear, would reveal all relevant cases.</p>	<p><u>Ongoing</u></p> <p>State disagreed with the finding, stating that it used various means to assess its assistance programs.</p> <p>Homeland Security and Justice took action to address findings related to information technology; Commerce and Treasury disagreed with our finding and did not modify their data collection processes to clearly identify when enforcement activities involved nuclear proliferation.</p>	<p>No.</p> <p>While the reform initiative includes actions to improve export enforcement coordination, it has not announced actions to improve agencies' ability to assess foreign country nuclear proliferation risks or to address data on nuclear proliferation enforcement activities.</p>

GAO report number and title	Key findings	Agency action in response to key findings	Does reform initiative propose actions that may address findings?
<p><a href="#">GAO-07-1103</a>: <i>Defense Trade: Clarification and More Comprehensive Oversight of Export Exemptions Certified by DOD Are Needed</i></p> <p>September 19, 2007</p>	<p><u>Licensing</u>: DOD uses the term, certify, to confirm that an exemption to State's International Traffic in Arms Regulations is being used pursuant to an official written request, directive, or approval from DOD. DOD non military service components—that are not subject to relevant DOD guidelines—are certifying the use of license exemptions in support of international activities, and some components had created or were creating their own guidelines, which could lead to inconsistent certification practices. In addition, State has raised several concerns to DOD about its guidelines, including the use of one exemption by contractors.</p> <p><u>Information technology</u>: State and DOD lack comprehensive data to oversee the use of DOD-certified exemptions.</p>	<p><u>On Hold</u></p> <p>Defense and State officials noted that actions to address this finding are on hold pending export control reform.</p>	<p>Yes.</p> <p>The reform initiative proposes that after aligning the control lists, items will be authorized for export to multilateral partners and allies under license exemptions or general authorizations.</p> <p>The reform initiative also announced that the U.S. government is transitioning to a single information technology system to administer its export control system.</p>
<p><a href="#">GAO-07-265</a>: <i>Export Controls: Challenges Exist in Enforcement of an Inherently Complex System</i></p> <p>December 20, 2006</p>	<p><u>Enforcement</u>: Enforcement agencies have had difficulty coordinating investigations and agreeing on how to proceed on cases; and neither State nor Commerce systematically receives notification of the outcomes of criminal</p>	<p><u>Addressed</u></p> <p>Justice formed an interagency working group to enhance export control coordination among agencies responsible for enforcing export controls; and Justice is providing quarterly reports to the licensing agencies on criminal</p>	<p>Yes.</p> <p>The reform initiative proposed establishing an Export Enforcement Coordination Center that will coordinate enforcement efforts—and potentially eliminate gaps and duplication—across all relevant departments and agencies. In November</p>

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	<p>cases from Justice.</p> <p><u>Licensing</u>: For State licenses, CBP tracks the quantity and dollar value of shipments made under the license to help ensure that the exporter does not exceed authorized amounts and that the license has not expired. CBP does not similarly track shipments under Commerce licenses.</p>	<p>export enforcement results to better inform licensing decisions.</p> <p><u>Not Addressed</u></p> <p>Commerce has not required that CBP track the quantity and dollar value of shipments made under Commerce licenses.</p>	<p>2010, the President issued an Executive Order directing the Department of Homeland Security to establish the center.</p> <p>While the reform initiative does not contain actions relating to tracking the quantity and dollar value of shipments made under licenses, according to Commerce officials, this is being discussed as part of the reform effort.</p>
<p><a href="#">GAO-07-70</a>: <i>Export Controls: Agencies Should Assess Vulnerabilities and Improve Guidance for Protecting Export-Controlled Information at Universities</i></p> <p>December 5, 2006</p>	<p><u>Enforcement</u>: State and Commerce have not conducted an overall assessment of available trend data on technology development research and foreign participation in such research at U.S. universities to identify potential vulnerabilities. Universities we visited indicated that government-provided training and guidance on export control regulations is limited in informing their efforts to manage and protect export-controlled information in the university environment.</p>	<p><u>Ongoing</u></p> <p>According to State and Commerce officials, they have increased outreach activities. State acknowledged that it currently does not have the resources to strategically assess research on college campuses, but that it had participated in a recent workshop with academia. Commerce also stated that it includes deemed exports in every seminar and holds an annual seminar to address concerns of the academic community.</p>	<p>Yes.</p> <p>The reform initiative does not list actions relating to deemed export licenses. However, according to Commerce officials, comprehensive reform of deemed exports (including compliance), is planned for Phase II of the reform initiative.</p>
<p><a href="#">GAO-07-69</a>: <i>Export Controls: Agencies Should Assess Vulnerabilities and Improve Guidance for Protecting Export-Controlled Information at Companies</i></p> <p>December 5, 2006</p>	<p><u>Enforcement</u>: State and Commerce have not fully assessed the risks of companies using a variety of means to protect export-controlled information. Increased knowledge of the risks associated with protecting such information could</p>	<p><u>Ongoing</u></p> <p>According to State and Commerce officials, they have increased outreach activities to companies. State assesses the defense industry's protection of export-controlled information through its license reviews and</p>	<p>Yes.</p> <p>The reform initiative does not list actions relating to deemed export licenses. However, according to Commerce officials comprehensive reform of deemed exports (including compliance), is planned for Phase II</p>



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	<p>improve agency outreach and training efforts, which now offer limited assistance to companies to mitigate those risks. Commerce's and State's communications with companies do not focus on export-controlled information.</p>	<p>monitoring and compliance activities and has a website for defense exporters. Commerce officials also stated that they include deemed exports in every seminar.</p>	<p>of the reform initiative.</p>
<p><a href="#">GAO-07-197R</a>: <i>Analysis of Data for Exports Regulated by the Department of Commerce</i>  November 13, 2006</p>	<p><u>Licensing and information technology</u>: Less than 1 percent of exports subject to Commerce regulations were licensed in 2005. This data analysis further supported GAO's prior recommendation to Commerce that it use available data to evaluate the effectiveness of its export control system. Commerce officials told us that they periodically use portions of the data for enforcement activities, but currently do not use the data to evaluate the system's effectiveness.</p>	<p>Report was a companion report to GAO-06-638.</p>	<p>See response for GAO-06-638.</p>
<p><a href="#">GAO-06-638</a>: <i>Export Controls: Improvements to Commerce's Dual-Use System Needed to Ensure Protection of U.S. Interests in the Post-9/11 Environment</i>  June 26, 2006</p>	<p><u>Control List and licensing</u>: Commerce has not systematically evaluated the dual-use export control system to determine whether it is meeting its stated goal of protecting U.S. national security and economic interests. GAO found omissions in the watch list Commerce uses to screen export license applications. Commerce has implemented several but not all of</p>	<p><u>Addressed</u>  Commerce has stated that it tracks and reports timeliness of export licenses and commodity classifications and has developed a Quality Assurance program to measure the quality and efficiency of both processes. It also has an annual process to review the Commerce Control List to ensure that sensitive items are controlled.</p>	<p>No.  The reform initiative does not contain actions to measure the effectiveness of the dual-use export control system in protecting U.S. interests.</p>

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	<p>GAO's prior recommendations for ensuring that export controls on sensitive items protect U.S. interests, including recommendations related to the lack of clarity as to which items are controlled by Commerce.</p>		
<p><a href="#">GAO-05-234</a>: <i>Defense Trade: Arms Export Control System in the Post-9/11 Environment</i>  February 16, 2005</p>	<p><u>Licensing</u>: Since the September 2001 terror attacks, the arms export control system has not undergone fundamental changes. While the system essentially remains unchanged, new trends have emerged in the processing of arms export cases. The median processing time for export license applications and related cases at State began increasing in fiscal year 2003. State has sought limited coordination with the agencies responsible for enforcing U.S. export laws regarding initiatives designed to streamline arms export licensing.</p>	<p><u>Addressed</u>  According to State, it has significantly improved the processing time for export control licenses.</p>	<p>Yes.  The reform initiative proposes a single licensing system and tiered control lists that may result in fewer licenses and potentially allow the government to focus its resources on protecting the items and technologies most critical to national security.</p>
<p><a href="#">GAO-04-175</a>: <i>Nonproliferation: Improvements Needed To Better Control Technology Exports For Cruise Missiles And Unmanned Aerial Vehicles</i>  January 23, 2004</p>	<p><u>Enforcement</u>: A gap in U.S. export control regulations could allow missile proliferators or terrorists to acquire U.S. cruise missiles or Unmanned Aerial Vehicles dual-use technology without violating U.S. export control laws or regulations.  The U.S. government</p>	<p><u>Addressed</u>  Commerce changed its export control regulations to close the gap we had identified and modified policy guidance and targeting criteria for future selection of cruise missile and unmanned aerial vehicle items for post shipment verification.</p>	<p>Yes.  The reform initiative proposes that agencies will focus and strengthen enforcement efforts and that there will be additional end-use assurances against diversion from foreign consignees, increased outreach and on-site visits both domestically and abroad, and</p>

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	<p>seldom uses its end-use monitoring programs to verify compliance with the conditions placed on items that could be used to develop cruise missiles or Unmanned Aerial Vehicles. Thus, the U.S. government does not have sufficient information to know whether recipients of these exports are effectively safeguarding equipment and technology in ways that protect U.S. national security and nonproliferation interests.</p>	<p>According to State officials, as part of an ongoing effort to improve targeting of end-use checks, Unmanned Aerial Vehicles, cruise missiles, and other especially sensitive commodities are routinely subject to Blue Lantern end-use checks at a level much higher proportionally than other commodities.</p>	<p>enhanced compliance and enforcement.</p>
<p><a href="#">GAO-04-357</a>: <i>Export Controls: Post Shipment Verification Provides Limited Assurance That Dual-Use Items Are Being Properly Used</i> January 12, 2004</p>	<p><u>Enforcement</u>: We identified three key weaknesses in the Commerce post shipment verification process: (1) U.S. officials frequently do not check license conditions, they often lack the technical training to assess compliance, and end users may not be aware of the license conditions. (2) Some countries of concern, most notably China, limit the U.S. government's access to facilities where dual-use items are shipped, making it difficult to conduct a post shipment verification. (3) Verification results have only a limited impact on future licensing decisions.</p>	<p><u>Addressed</u></p> <p>Commerce updated its special agent manual, changed its post shipment verification checklist, and updated the training of enforcement personnel. Commerce also amended their regulations to require exporters to inform end users in writing of export license conditions.</p>	<p>Yes.</p> <p>The reform initiative proposes that agencies focus and strengthen enforcement efforts and that there will be additional end-use assurances against diversion from foreign consignees, increased outreach and on-site visits both domestically and abroad, and enhanced compliance and enforcement.</p>

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<p><a href="#">GAO-03-694</a>: <i>Defense Trade: Better Information Needed To Support Decisions Affecting Proposed Weapons Transfers</i></p> <p>July 11, 2003</p>	<p><u>Information technology and control list</u>: To protect U.S. technological advantage, safeguards—such as lowering the capability of a transferred weapon and withholding sensitive information on how the system operates—are considered for proposed transfers. However, the effectiveness of some individual safeguards may be limited. Information needed to assess releasability is not always complete, up-to-date, or available. For example, DOD’s centralized database contains some of this information, as well as historical case data; however, it is not always complete, up-to-date, or easy to access. Further, some intelligence information that could have a direct bearing on whether an advanced weapon or technology should be released is not provided to decision makers involved in releasability determinations.</p>	<p><u>Addressed</u></p> <p>The National Disclosure Policy System was reviewed and received upgrades. DOD has added data to the upgraded system and has made additional user-suggested modifications to the system.</p>	<p>No.</p> <p>The reform initiative has not proposed planned actions relating to National Disclosure Policy System data.</p>
<p><a href="#">GAO-03-43</a>: <i>Nonproliferation: Strategy Needed To Strengthen Multilateral Export Control Regimes</i></p> <p>October 25, 2002</p>	<p><u>Control list and information technology</u>: Multilateral export control regimes cannot effectively limit or monitor efforts by countries of concern to acquire sensitive technology without more complete and timely reporting of licensing information and without</p>	<p><u>Ongoing</u></p> <p>According to State officials, the Missile Technology Control Regime and the Nuclear Suppliers Group have agreed to share catch-all denials and have adopted a best practices guide for using and sharing Regime</p>	<p>No.</p> <p>While the reform initiative proposes that the U.S. government transition to a single information technology system to administer its export control system, it does not specifically address reporting of license data to</p>

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	<p>information on when and how members adopt and implement agreed-upon export controls. Several obstacles limit the options available to the United States in strengthening the effectiveness of multilateral export control regimes. The requirement to achieve consensus in each regime allows even one member to block action in adopting needed reforms. Because the regimes are voluntary and non binding, they cannot enforce members' compliance with regime commitments.</p>	<p>denial information.</p>	<p>multilateral regimes.</p>
<p><a href="#">GAO-02-996</a>: <i>Export Controls: Processes for Determining Proper Control of Defense-Related Items Needs Improvement</i> September 20, 2002</p>	<p><b>Control List:</b> State did not comply with existing time frames established for responding to commodity jurisdiction requests to determine proper control of defense-related items. In addition, Commerce and Defense did not provide their recommendations to State within the existing time frames. In some cases, both Commerce and State have claimed jurisdiction over the same items, such as certain missile-related technologies. Such jurisdictional disagreements and problems in the past have often been rooted in the departments' differing interpretations</p>	<p><u>Addressed</u></p> <p>In June 2009, the National Security Council issued guidelines on commodity jurisdiction reviews and established a dispute resolution mechanism to ensure timely adjudication of cases.</p> <p>State and Commerce have taken action intended to decrease processing times for jurisdiction and classification requests, respectively.</p> <p><u>Not Addressed</u></p> <p>However, State and Commerce did not take actions to eliminate</p>	<p>Yes.</p> <p>The reform initiative proposes that agencies will apply new criteria for determining what items need to be controlled and a common set of policies for determining when an export license is required. The control list criteria will be based on transparent rules and controls and will use objective parameters. This is intended to greatly reduce the uncertainty faced by U.S. allies, industry, and foreign partners, and to allow the government to focus on the most sensitive items to enhance national security.</p>

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	of the regulations and in minimal or ineffective coordination between the departments. Similarly, Commerce was not meeting time frames for classification requests.	overlap between their respective control lists.	
<p><a href="#">GAO-02-972</a>: <i>Export Controls: Department of Commerce Controls over Transfers of Technology to Foreign Nationals Need Improvement</i></p> <p>September 6, 2002</p>	<p><u>Enforcement</u>: Vulnerabilities in Commerce’s deemed export control system could help China and other countries of concern improve their military capabilities. Commerce’s screening process does not include thousands of immigration change-of-status applications from foreign nationals already in the United States who may seek work in U.S. high-tech firms. Commerce does not have an effective monitoring program in place to determine whether firms comply with security conditions for deemed export licenses.</p>	<p><u>Ongoing</u></p> <p>Commerce stated that the Immigration and Naturalization Service was consulted and suggested a referral, for Commerce review, of any change-of-status Visa applications that may involve foreign nationals seeking employment with access to sensitive technology.</p>	<p>Yes.</p> <p>The reform initiative does not list actions relating to deemed export licenses. However, according to Commerce officials, comprehensive reform of deemed exports (including compliance), is planned for Phase II of the reform initiative.</p>
<p><a href="#">GAO-02-63</a>: <i>Lessons to Be Learned From the Country Export Exemption</i></p> <p>March 29, 2002</p>	<p>Based on the experience with the Canadian exemption, some areas need to be addressed when negotiating and executing license exemptions with other countries.</p> <p><u>Licensing</u>: There needs to be up-front agreement on such issues as what items are to be controlled, who can have access to controlled items, and</p>	<p><u>Addressed</u></p> <p>According to State officials, a new division focusing primarily on licensing officer training (which includes training on exemptions) and outreach was formed in 2009. As part of the development of the Defense Trade Cooperation Treaties with the UK and Australia, State worked with agencies, including Justice and Homeland</p>	<p>No.</p> <p>The reform initiative does not contain actions relating to specific country exemptions or the other treaties with the United Kingdom and Australia that were recently approved by the Senate.</p>

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	<p>how to control these items through each country's respective export laws and regulations. State needs to review guidance and training.</p> <p><u>Enforcement:</u> The U.S. government needs to monitor agreements to assess their effectiveness and ensure that unanticipated problems have not arisen. Enforcement mechanisms need to be in place to monitor exporters' compliance with the exemption and enable prosecution of violators.</p>	<p>Security, to evaluate what aspects of existing exemptions, including the Canadian exemption, should be included in the treaties.</p> <p>According to Customs and Border Protection, it has conducted threat assessments for its Northern and Southern Borders. It is in the process of updating its export control handbook.</p>	
<p><a href="#">GAO-02-120</a>: <i>Export Controls: Clarification of Jurisdiction for Missile Technology Items Needed</i> October 9, 2001</p>	<p><u>Control list:</u> Commerce and State have not clearly established which department has jurisdiction for almost 25 percent of the items the United States agreed to control as part of its Missile Technology Control Regime commitments. Some exporters did not fully understand the export control system or certain terms in the regulations, thereby making it sometimes difficult to determine where to apply for a license to export Regime items.</p>	<p><u>Not Addressed</u></p> <p>Commerce and State have not addressed findings. According to State, it updated the U.S. Munitions List and corresponding regulations in 2006 and 2008 and began a comprehensive review. According to both Commerce and State, further action on this issue is pending due to export control reform.</p>	<p>Yes.</p> <p>The reform initiative proposes that agencies will apply new criteria for determining what items need to be controlled and a common set of policies for determining when an export license is required. The control list criteria will be based on transparent rules to reduce the uncertainty faced by U.S. allies, industry, and foreign partners, and to allow the government to focus on the most sensitive items in order to enhance national security.</p>

Source: GAO analysis.

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