
Export Controls: Challenges Exist in Enforcement of an Inherently Complex System

**Report Prepared By
United States Government Accountability Office**

[The following are excerpts of the report presented to the House of Representatives, Washington, D.C., December 20, 2006. The report in its entirety is located at the following web site: <http://www.gao.gov/new.items/do7265.pdf>.]

Each year, billions of dollars in dual-use items which have both commercial and military applications and defense items are exported from more than 300 U.S. sea, air, and land ports. To protect national security, foreign policy, and economic interests, the U.S. government controls the export of these items.¹ The Department of Commerce and Department of State (DoS) are principally responsible for regulating the export of dual-use and defense items, respectively.

A key function in the U.S. export control system is enforcement, which consists of various activities that aim to prevent or deter the illegal export of controlled defense and dual-use items and can result in apprehending violators and pursuing and imposing appropriate criminal and administrative penalties, such as imprisonment, fines, denials of export privileges, or debarment. Enforcement activities which include inspections, investigations, and punitive actions against violators of export control laws are largely carried out by the Department of Commerce, Department of Homeland Security, Department of Justice, and DoS. The Department of Enforcement activities can result in various outcomes. One recent case resulted in four business owners pleading guilty to illegally exporting defense items, including radars and smart weapons, to Chinese government-owned entities. Three were sentenced to prison, and all had to collectively forfeit almost \$400,000, which represents their revenue from the illegal exports.

Attempts continue to be made by individuals, companies, terrorist organizations, and countries of concern to illegally obtain defense and dual-use items.² In light of this, [the committees] asked us to review export control enforcement activities. In response, we have the following.

- Described the roles, responsibilities, and authorities of the agencies responsible for export control enforcement
- Identified any challenges the agencies face in enforcing export control laws and regulations
- Assessed whether information on enforcement outcomes is provided to the export control agencies to inform the export control process and licensing decisions

This report is a publicly releasable version of a law enforcement sensitive report we issued on November 15, 2006. Therefore, some examples that involved law enforcement techniques or methods and that support our findings have been removed from this version.

1. For the purposes of this report, “items” refers collectively to commodities, software, technology, and services.
2. Countries of Concern refers to those countries that the U.S. government believes may support terrorism or contribute to the proliferation of weapons of mass destruction.

To conduct our work, we identified enforcement roles, responsibilities, and authorities through an examination of export control statutes, regulations, formal interagency agreements, policies, procedures, and operating manuals. We interviewed agency officials at headquarters and selected field locations responsible for export enforcement including inspectors³ and investigators from the Department of Homeland Security, investigators from the Department of Commerce, investigators and criminal prosecutors from the Department of Justice, and compliance officers from the DoS about enforcement activities and challenges. We also identified export control enforcement information maintained at the various agencies and spoke with DoS licensing and policy officials and Commerce officials to assess whether they obtain this information for decision making. We performed our review from September 2005 through August 2006 in accordance with generally accepted government auditing standards.

Results in Brief

Export control enforcement is inherently complex, involving multiple agencies that perform various functions using differing authorities. Several agencies within the Department of Commerce, Department of Homeland Security, Department of Justice, and DoS are primarily responsible for export control enforcement. These enforcement agencies conduct a variety of activities, including inspecting items to be exported, investigating potential export control violations, and pursuing and imposing appropriate criminal and administrative penalties. These agencies' enforcement authorities are granted through a complex set of laws and regulations, which give concurrent jurisdiction to the Department of Commerce, Department of Homeland Security, and the Department of Justice's Federal Bureau of Investigation (FBI) to conduct investigations of potential violations of export control laws for dual-use items, and to Homeland Security and the FBI to investigate potential defense item violations.

Enforcement agencies face several challenges in enforcing export control laws and regulations. For example, agencies have had difficulty coordinating investigations and agreeing on how to proceed on cases. Agreements for coordinating investigations do not exist among all the various agencies, and coordination and cooperation often hinge on the relationships developed by individual investigators from the various agencies. Some enforcement activities have also been affected by license determinations, which are used to confirm whether an item is controlled and requires a license and thereby confirm whether an export violation has occurred. DoS and the Department of Commerce officials said they need complete and accurate information from inspectors and investigators to make correct determinations. In some instances, inspectors and investigators said the time it takes to obtain a determination or changes in determinations has affected their enforcement activities. Other challenges that enforcement agencies face include balancing priorities and leveraging finite resources.

Criminal indictments and convictions are key to informing the export control process and licensing decisions. While enforcement agencies have databases to capture information relating to their own export enforcement activities, neither DoS nor the Department of Commerce systematically receives from the Department of Justice notification of the outcomes of criminal cases, including indictments and convictions for both defense and dual-use items and, therefore, lacks the full scope of information on individuals and companies that have been prosecuted. Such information is needed, in part, because indicted or convicted exporters may have their license applications or export privileges denied. Without outcomes of criminal cases, export control agencies may not gain a complete picture of individuals or companies seeking export licenses or trends in illegal export activities.

3. Inspections are primarily conducted by Homeland Security's Customs and Border Protection officers.

We are recommending that the Departments of Commerce, Homeland Security, Justice, and DoS take a number of actions to improve coordination and licensing determination efforts and facilitate information sharing of enforcement outcomes with the export control agencies within DoS and Commerce. In commenting on a draft of this report, Commerce, Homeland Security, and DoS generally agreed with the need for coordination but some noted differences in possible approaches. In some instances, they indicated that actions to address our recommendations were already under way. Justice did not provide formal comments, and Defense had no comments on the draft report. Commerce, Homeland Security, Justice, and DoS provided technical comments, which we incorporated in this report as appropriate.

Background

The U.S. government's control over the export of defense and dual-use items is intended to ensure that U.S. interests are protected in accordance with the *Arms Export Control Act* (AECA) and the *Export Administration Act*.⁴ The U.S. government's control over the export of defense and dual-use items is primarily divided between two departments, DoS, and Department of Commerce, respectively shown in Table 1 with support for enforcement activities primarily from the Department of Commerce, through its Bureau of Industry and Security's Office of Export Enforcement (OEE), Department of Homeland Security, through its Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE), Department of Justice, through the FBI, and the U.S. Attorneys Office.⁵

| Table 1. Agencies, Laws, and Regulations Governing Export Control of Defense and Dual-Use Items | | |
|--|---|---|
| Regulating Agency | Defense Items | Dual-Use Items |
| | DoS's Directorate of Defense Trade Controls | Commerce's Bureau of Industry and Security |
| Enforcement Agencies | CBP, ICE, FBI,* and U.S. Attorneys Office | CBP, OEE, ICE, FBI, and U.S. Attorneys Office |
| Statute | <i>Arms Export Control Act</i> | <i>Export Administration Act/ International Emergency Economic Powers Act</i> |
| Implementing Regulations | <i>International Traffic in Regulations</i> | <i>Export Administration Regulations</i> |
| Control List | <i>U.S. Munitions List</i> specifies | <i>Commerce Control List</i> specifies |
| <p>Source: GAO analysis of export control laws, regulations, and agency information</p> <p>*FBI investigates criminal violations of law in certain foreign counterintelligence areas.</p> | | |

4. 22 U.S.C. § 2751 et. seq. and 50 U.S.C. App. § 2401 et. seq. The *Export Administration Act* is not permanent legislation. 50 U.S.C. App. § 2419. Authority granted under the act lapsed in August 2001. However, Executive Order 13222, *Continuation of Export Control Regulations*, which was issued in August 2001 under the authority provided by the *International Emergency Economic Powers Act* (50 U.S.C. §§ 1701 et. seq.), continues the controls established under the act, and the implementing *Export Administration Regulations*. Executive Order 13222 requires an annual extension and was recently renewed by Presidential Notice on August 3, 2006. 71 Fed. Reg. 44551.

5. Other departments, including Defense and Energy, may provide technical expertise on items to enforcement agencies. Also, defense and military services have investigative units that may provide support to the enforcement agencies.

The DoS and Department of Commerce require exporters to identify items that are on the departments' control lists and to obtain license authorization from the appropriate department to export these items, unless an exemption applies. Exemptions are permitted under various circumstances, such as allowing for the export of certain items to Canada without a license. Many dual-use items are exempt from licensing requirements. While items can be exempt from licensing requirements, they are still subject to U.S. export control laws. Because exporters are responsible for complying with export control laws and regulations, regulatory and investigative enforcement agencies conduct outreach to educate exporters on these laws and regulations. When shipping controlled items, exporters are required to electronically notify CBP officials at the port where the item will be exported, including information on the quantity and value of the shipment, the issued export license number, or an indication that the item is exempt from licensing requirements.⁶

Export enforcement aims to ensure U.S. controlled items do not fall into the wrong hands and to limit the possibility that illegal exports will erode U.S. military advantage. Export enforcement involves inspecting items to be shipped, investigating potential violations of export control laws, and punishing export control violators.⁷ When inspectors, investigators, and prosecutors have questions about whether an item is controlled and requires a license, they request a license determination.⁸ CBP and ICE request license determinations through ICE's Exodus Command Center,⁹ which refers the request to DoS and Department of Commerce; OEE requests determinations directly from Department of Commerce licensing officers. Some FBI agents request license determinations through the Exodus Command Center, while others make such requests directly to DoS or Department of Commerce.

In fiscal year 2005, Department of Justice data showed that there were more than forty individuals or companies convicted of over 100 criminal violations of export control laws.¹⁰ DoS reported over \$35 million and Department of Commerce reported \$6.8 million in administrative fines and penalties for fiscal year 2005.

For more than a decade, we have reported on a number of weaknesses and vulnerabilities in the U.S. export control system and made numerous recommendations, several of which have not been implemented. For example, in September 2002, we reported that Department of Commerce improperly classified some DoS-controlled items as the Department of Commerce controlled, increasing the risk that defense items would be exported without the proper level of review and control to protect national interests.¹¹ In June 2006, we reported that this condition remains unchanged and

6. Exporters are required to electronically notify CBP officers of items to be shipped through the Automated Export System, which is maintained by the Census Bureau.

7. Enforcement activities can also include reviewing disclosures by exporters of possible export control violations, prelicense checks, and post shipment verifications. See GAO, *Export Controls: Post-Shipment Verification Provides Limited Assurance That Dual-Use Items Are Being Properly Used*, GAO-04-357 (Washington, D.C.: Jan. 12, 2004), and GAO, *Defense Trade: Arms Export Control System in the Post September 11, 2001 Environment*, GAO-05-234, Washington, D.C.: Feb. 16, 2005.

8. The Department of Commerce, upon request, can provide an initial license determination based on a review of data gathered by licensing officers and investigators and inspectors to determine whether an item requires a license. Commerce will also provide a certified license determination for use as evidence such as in criminal trials. The Department of State, also upon request, can provide an initial license determination based on available information. DoS also undertakes a second-level or pretrial review, which is an in-depth examination of a commodity, defense service, or brokering activity to verify whether it is covered by the *Arms Export Control Act* or its implementing regulations. Finally, DoS can provide a trial certification for use in criminal proceedings.

9. The Exodus Command Center was established in 1982 as the single point of contact for investigators and inspectors in the field needing operational support from export control agencies. For example, it responds to inquiries for export licensing verifications by contracting export control agencies within the DoS or Department of Commerce.

10. Convictions may cover more than one violation.

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

that Department of Commerce has not taken the corrective actions that we recommended in 2002.¹² We have also reported on long-standing problems in enforcement, including poor cooperation among the investigative agencies.¹³

Export Control Enforcement Is Complex, Involving Varying Roles, Responsibilities, and Authorities Among Multiple Agencies

Enforcing U.S. export control laws and regulations is inherently complex.¹⁴ Multiple agencies are involved in enforcement and carry out various activities, including inspecting shipments, investigating potential export control violations, and taking punitive actions that can be criminal or administrative against violators of export control laws and regulations. Authorities for export control enforcement are provided through a complex set of laws and regulations. These authorities and some overlapping jurisdiction for conducting enforcement activities add to the complexity.

Multiple Agencies Are Responsible For Export Enforcement

Enforcement, which includes inspections, investigations, and punitive actions against violators of export control laws, is largely conducted by various agencies within Departments of Commerce, Homeland Security, Justice, and DoS depending on the facts and circumstances of the case. These agencies' key enforcement responsibilities are shown in Table 2.

| Table 2. Enforcement Agencies and Primary Activities | | | |
|---|--|----------------------|-------------------------------------|
| Agency | Inspection at U.S. Ports*¹ | Investigation | Punitive Action*² |
| Commerce | | | |
| Bureau of Industry and Security Office of Export Enforcement | | • | • |
| Homeland Security | | | |
| Customs and Border Protection Immigration and Customs Enforcement | • | • | |
| Justice | | | |
| U.S. Attorneys Office Federal Bureau of Investigation | | • | • |
| State | | | |
| Directorate of Defense Trade Controls | | | • |
| <p>*1 CBP and ICE both have the authority to conduct inspections at U.S. ports, but CBP has a primary role in this area.</p> <p>*2 For purposes of this report, punitive actions can be either criminal or administrative against potential violators of export control laws and regulations. Criminal actions taken against violators of export control laws and regulations can result in imprisonment, fines, forfeitures, and other penalties. Administrative actions against violators can include fines, suspension of an export license, or denial or debarment from exporting.</p> <p>Source: GAO analysis of information provided by each agency.</p> | | | |

12. GAO, *Export Controls: Improvement to Commerce's Dual-Use System Needed to Ensure Protection of U.S. Interests in the Post September 11, 2001 Environment*, GAO-06-638, Washington, D.C.: June 26, 2006.

13. GAO, *Export Controls: Actions Needed to Improve Enforcement*, GAO/NSIAD-94-28, Washington, D.C.: Dec. 30, 1993, and GAO, *Export Control Regulation Could be Reduced Without Affecting National Security*, GAO/ID-82-14, Washington, D.C.: May 26, 1982.

14. Adding to the complexity is the sale of defense items through the U.S. government's foreign military sales program, which are subject to a different process and inspection procedures than those items sold directly by the exporter and subject to DoS's export control system.

Inspections of items scheduled for export are largely the responsibility of CBP officers at U.S. air, sea, and land ports, as part of their border enforcement responsibilities. To help ensure that these items comply with U.S. export control laws and regulations, CBP officers check items against applicable licenses prior to shipment, selectively conduct physical examinations of cargo at the port and in warehouses, review shipping documents, detain questionable shipments, and seize items being exported illegally. As part of their responsibilities, CBP officers are required by DoS to decrement (reduce) the shipment's quantity and dollar value from the total quantity and dollar value authorized by the exporter's license.¹⁵ This process helps to ensure that the shipment does not exceed what is authorized and that the license has not expired. However, Department of Commerce does not require CBP officers to decrement Commerce licenses.¹⁶ Commerce officials said they have shipping tolerances that allow exporters to ship controlled items exceeding the quantity and value approved in a license, but this varies based on the controlled item. CBP officers do not currently have a formal means for determining if exporters have exceeded authorized license quantities and values for dual-use items within any shipment tolerances permitted for that controlled item. As a result, they cannot ensure accountability on the part of exporters or that Commerce regulations have been properly followed. CBP has an automated export system, which is used for decrementing DoS licenses. This system has built-in tolerances to allow the shipment to exceed the total value of a DoS license by 10 percent, as permitted by regulations.¹⁷

Investigations of potential violations of export control laws for dual-use items are conducted by agents from OEE, ICE, and FBI. Investigations of potential export violations involving defense items are conducted by ICE and FBI agents. FBI has authority to investigate any criminal violations of law in certain foreign counterintelligence areas.¹⁸ The investigative agencies have varying tools such as undercover operations and overseas investigations for investigating potential violations¹⁹ and establishing cases for potential criminal or administrative punitive actions.

Punitive actions, which are either criminal or administrative, are taken against violators of export control laws and regulations. Criminal violations are those cases where the evidence shows that the exporter willfully and knowingly violated export control laws. U.S. Attorneys Offices prosecute criminal cases in consultation with Justice's National Security Division. These cases can result in imprisonment, fines, forfeitures, and other penalties. Punitive actions for administrative violations can include fines, suspension of an export license, or denial or debarment from exporting, and are imposed primarily by DoS²⁰ or Commerce, depending on whether the violation involves the export of a defense or a dual-use item. In some cases, both criminal and administrative penalties can be levied against an export control violator.

The export control and investigative enforcement agencies also conduct outreach activities, primarily educating exporters on U.S. export control laws and regulations. For example, in fiscal year 2005, ICE agents conducted more than 1,500 industry outreach visits around the country. Outreach

15. *International Traffic in Arms Regulations*, 22 C.F.R. § 123.22 (a) and (c) (1) (2006).

16. According to Commerce officials, exporters in the past were required to decrement Commerce licenses as shipments were made and submit the decremented licenses to the department. While Commerce no longer required exporters to submit decremented licenses, Commerce requires exporters to retain shipment records for possible inspection by the department. DoS also requires exporters to retain shipment records.

17. *International Traffic in Arms Regulations*, 22 C.F.R. § 123.23 (2006).

18. See 28 C.F.R. § 0.85(d), 69 Fed. Reg. 5542.

19. OEE currently does not have the same investigative authorities and ICE and FBI. However, legislation has been proposed (H.R. 4572) that, if enacted, would provide OEE with additional investigative authorities.

20. In addition, DoS officials said a company, as part of the terms of an agreement with DoS can conduct audits to ensure compliance or assign a special compliance officer to oversee re-mediation efforts and conduct in-depth reviews of violations at the company.

activities can include seminars and programs, specialized training, publications, advice lines, web sites, and individual meetings with industry, academia, and other government agencies. These activities can result in companies self-disclosing violations, tips and reports of potential violations by others, and cooperation in investigations and intelligence gathering.

Enforcement Authorities Are Granted through Various Laws and Regulations

Authorities for export control enforcement are provided through a complex set of laws and regulations. For defense items, authorities are granted under the *Arms Export Control Act*, the *Department of Justice Appropriations Act of 1965*, the *USA Patriot Improvement and Reauthorization Act*, and the *Foreign Wars, War Materials and Neutrality Act*. These statutes and the regulations stemming from them give concurrent jurisdiction for investigations to ICE and FBI.

| Figure 1. Authorities for Defense Items | | | | | | | | | | | | | | | | | | | | | | |
|---|--|---|---|--------------------------------------|--|---|---|--|---|---|--|---|---|---------------------------------------|---|---|--|---|--|-----------------------------|---|--|
| <i>Arms Export Control Act (22 U.S.C. § 2751 et. seq.)</i> | | | | | | | | | | | | | | | | | | | | | | |
| State | <ul style="list-style-type: none"> Civil Penalties (22 U.S.C. § 2778(e) and (g) and § 2780(k)) <p><i>International Traffic in Arms Regulations (22 C.F.R. §§ 120-130)</i></p> <table border="0"> <tr> <td>Directorate of Defense Trade Controls</td> <td>-</td> <td>Civil Penalties (22 C.F.R. Part 127)</td> </tr> <tr> <td></td> <td>-</td> <td>Department or Suspension (22 C.F.R. Part 127)</td> </tr> <tr> <td></td> <td>-</td> <td>License Prohibition for Terrorist Nations (22 C.F.R. § 126.1)</td> </tr> <tr> <td></td> <td>-</td> <td>Denial, Revocation, Suspension, or Amendment of Licenses (22 C.F.R. Part 126)</td> </tr> <tr> <td>Homeland Security^{*a}</td> <td>-</td> <td>Inspection Authority (22 C.F.R. § 127.4(b))</td> </tr> <tr> <td></td> <td>-</td> <td>Investigative Authority (22 C.F.R. § 127.4(b))</td> </tr> <tr> <td>Justice^{*b}</td> <td>-</td> <td>Criminal Penalties (22 C.F.R. § 127.3)</td> </tr> </table> | Directorate of Defense Trade Controls | - | Civil Penalties (22 C.F.R. Part 127) | | - | Department or Suspension (22 C.F.R. Part 127) | | - | License Prohibition for Terrorist Nations (22 C.F.R. § 126.1) | | - | Denial, Revocation, Suspension, or Amendment of Licenses (22 C.F.R. Part 126) | Homeland Security^{*a} | - | Inspection Authority (22 C.F.R. § 127.4(b)) | | - | Investigative Authority (22 C.F.R. § 127.4(b)) | Justice^{*b} | - | Criminal Penalties (22 C.F.R. § 127.3) |
| Directorate of Defense Trade Controls | - | Civil Penalties (22 C.F.R. Part 127) | | | | | | | | | | | | | | | | | | | | |
| | - | Department or Suspension (22 C.F.R. Part 127) | | | | | | | | | | | | | | | | | | | | |
| | - | License Prohibition for Terrorist Nations (22 C.F.R. § 126.1) | | | | | | | | | | | | | | | | | | | | |
| | - | Denial, Revocation, Suspension, or Amendment of Licenses (22 C.F.R. Part 126) | | | | | | | | | | | | | | | | | | | | |
| Homeland Security^{*a} | - | Inspection Authority (22 C.F.R. § 127.4(b)) | | | | | | | | | | | | | | | | | | | | |
| | - | Investigative Authority (22 C.F.R. § 127.4(b)) | | | | | | | | | | | | | | | | | | | | |
| Justice^{*b} | - | Criminal Penalties (22 C.F.R. § 127.3) | | | | | | | | | | | | | | | | | | | | |
| Justice^{*b} | <ul style="list-style-type: none"> Criminal Violations (22 U.S.C. § 2778(c)) | | | | | | | | | | | | | | | | | | | | | |
| <i>Department of Justice Appropriations Act of 1965 (28 U.S.C. § 533)</i> | | | | | | | | | | | | | | | | | | | | | | |
| Justice^{*b} | <ul style="list-style-type: none"> FBI Investigations (28 C.F.R. § 0.85(d), 69 Fed. Reg. 65542) | | | | | | | | | | | | | | | | | | | | | |
| <i>USA Patriot Improvement and Reauthorization Act (P.L. 109-177, § 311)</i> | | | | | | | | | | | | | | | | | | | | | | |
| Justice^{*b} Homeland Security | <ul style="list-style-type: none"> Criminal Penalty for Smuggling (codified at 18 U.S.C. § 554) Seizure and Forfeiture (codified at 19 U.S.C. § 1595a(d)) Investigative Authority (Smuggling) (codified at 18 U.S.C. § 554) | | | | | | | | | | | | | | | | | | | | | |
| <i>Foreign Wars, War Materials and Neutrality Act (22 U.S.C. § 401)</i> | | | | | | | | | | | | | | | | | | | | | | |
| Homeland Security | <ul style="list-style-type: none"> Seizure and Forfeiture | | | | | | | | | | | | | | | | | | | | | |
| <p>*a CBP and ICE have authority to conduct inspections, IE Conducts investigations.</p> <p>*b The Department of Justice is responsible for prosecutions for federal crimes not otherwise specifically assigned. 28 C.F.R. § 0.55.</p> <p>Source: GAO analysis based on cited laws and regulations</p> | | | | | | | | | | | | | | | | | | | | | | |

For dual-use items, authorities are granted under the *Export Administration Act*, the *International Emergency Economic Powers Act*, the *Department of Justice Appropriations Act of 1965*, the *USA Patriot Improvement and Reauthorization Act*, and the *Foreign Wars, War Materials and Neutrality Act*. These laws and their implementing regulations give investigative authority for dual-use items to OEE as well as to ICE and FBI, which also have investigative authority for defense items.

Figure 2. Authorities for Dual-Use Items

| Export Administration Act (50 U.S.C. App § 2401 et. seq.) (lapsed) | |
|--|--|
| Commerce | <ul style="list-style-type: none"> • Civil Penalties (50 U.S.C. App. §§ 2410 and 2411) • General Investigative Authority (50 U.S.C. App. § 2411) <p><i>Export Administration Regulations</i> (15 C.F.R. §§ 730-774)</p> |
| Bureau of Industry | <ul style="list-style-type: none"> • Administrative Sanctions (15 C.F.R. § 764.3) This includes civil penalties (fines), denial of export privileges, and exclusion from practice. • Denial of Export Privilege for Criminal Convictions (15 C.F.R. § 766.25) • Temporary Denial Order (15 C.F.R. § 766.24) |
| | <p>OEE</p> <ul style="list-style-type: none"> - Records Inspection and Subpoena (15 C.F.R. § 762.7) - Search of Exporting Carrier with Customs Concurrence (15 C.F.R. § 758.7(b)(5)) - Detain Shipment for Review of Records or for Inspection of Items (15 C.F.R. § 758.7 (b)(6)) |
| Justice^a | <ul style="list-style-type: none"> • Criminal Sanctions referred by OEE (15 C.F.R. § 764.3(b)) |
| Justice^a | <ul style="list-style-type: none"> • Criminal Violations (50 U.S.C. App. § 2410) |
| Homeland Security^b | <ul style="list-style-type: none"> • Investigation (50 U.S.C. App § 2411) • Search and Seizure (50 U.S.C. Ap § 2411) |
| International Emergency Economic Powers Act (50 U.S.C. § 1701 et.seq.)^c | |
| | <ul style="list-style-type: none"> • Civil Penalties (50 U.S.C. § 1705(A)) • Criminal Penalties (50 U.S.C. § 1705 (b)) • Inspections and Investigations (50 U.S.C. § 1702) |
| Department of Justice Appropriations Act of 1965 (28 U.S.C. § 533) | |
| Justice^a | <ul style="list-style-type: none"> • FBI Investigations (28 C.F.R. § 0.85(d), 69 Fed. Reg. 65542) |
| USA Patriot Improvement Reauthorization Act (P.L. 109-177, § 311) | |
| Justice^a | <ul style="list-style-type: none"> • Criminal Penalty for Smuggling (codified at 18 U.S.C. § 554) |
| Homeland Security | <ul style="list-style-type: none"> • Seizure and Forfeiture (codified at 19 U.S.C. § 1595a(d)) |
| Foreign Wars, War Materials and Neutrality Act (22 U.S.C. § 401) | |
| Commerce Homeland Security | <ul style="list-style-type: none"> • Seizure and Forfeiture |
| <p>Source: GAO analysis based on cited laws and regulations.</p> <p>*a CBP and ICE have authority to conduct inspections. ICE conducts investigations.</p> <p>*b The Department of Justice is responsible for prosecutions for federal crimes not otherwise specifically assigned. 28 C.F.R. § 0.55.</p> <p>*c In times of declared national emergency, various agencies receive a presidential delegation of authority by executive order.</p> | |

Agencies Face Several Challenges in Enforcing Export Control Laws

Several key challenges exist in enforcing export control laws challenges that potentially reduce the effectiveness of enforcement activities. First, overlapping jurisdiction for investigating potential export control violations and instances where coordination among the investigative agencies has not been effective have had an impact on some cases. Second, license determinations which confirm whether an item is controlled by DoS or Commerce, and thereby help confirm whether a violation has occurred are key to ensuring the pursuit of enforcement activities and are dependent on complete and specific information available at the time. Third, prosecuting export control cases can be difficult, since securing sufficient evidence to prove the exporter intentionally violated export control laws can represent unique challenges in some cases. Finally, multiple and sometimes competing priorities have made it difficult for enforcement agencies to maximize finite resources in carrying out export control enforcement responsibilities.

Coordination on Investigative Cases Has Been Limited in Some Instances

While ICE, OEE, and FBI have jointly coordinated on investigations, coordination can be challenging, particularly in terms of agreeing on how to proceed with a case. Formal agreements for coordinating investigations do not exist among all the investigative agencies. The extent to which agencies coordinate and cooperate on investigations is largely dependent on individual work relationships.

Agencies have sometimes not agreed on how to proceed on cases, particularly those involving foreign counterintelligence. For example, FBI and OEE agents disagreed as to whether certain dual-use items planned for export warranted an investigation.²¹ Specifically, without coordinating with OEE and ICE, FBI pursued the investigation, arrested the exporter, and held the shipment of items, valued at \$500,000. Ultimately, criminal charges were not pursued because the items did not require a license. With respect to foreign counterintelligence cases involving export controls, investigators have not always been certain about their respective roles on these cases.

Formal agreements for coordination do not exist among all the investigative agencies. Specifically, ICE and FBI do not have a formal agreement to coordinate cases involving export control violations. Formal agreements that exist have not been updated in recent years. In 1983, Commerce entered into an agreement with the FBI dealing with certain headquarters-level coordination functions. In addition, a 1993 agreement between Customs and Commerce outlines the investigative responsibilities of each agency, but it does not reflect departmental changes that occurred as a result of the establishment of Homeland Security in March 2003. This agreement also directs these agencies to enter a joint investigation when it is determined that more than one agency is working on the same target for the same or related violations. However, it can be difficult to determine whether these conditions exist because these agencies do not always have full access to information on ongoing investigations. According to several agents we spoke with, sharing information on ongoing investigations in general can be challenging because of the agencies' varying and incompatible databases, the sensitivity of certain case information, and the agencies' varying protocols for classifying information.

The extent to which agencies coordinate their investigative efforts in the field can depend on individual work relationships and informal mechanisms that facilitate communication. Some field locations have established joint task forces to discuss investigative cases. For example, OEE, ICE, and FBI agents in one field location told us that they routinely collaborate on investigations as part

21. Commerce determined that the item did not require a license. FBI asked for an opinion from the National Security Agency, which deemed the item high risk for national security. However, the National Security Agency did not have the authority to determine if the item was licensable.

of a joint task force that meets monthly. Agents in another location recently established a task force to locally coordinate export control investigations. In addition, some agencies have agents on detail to other investigative agencies. For example, in one field location, an ICE agent is detailed to FBI to coordinate cases and share export control information. FBI officials told us the detail has been useful because the ICE agent can readily provide FBI access to certain Homeland Security data, which saves critical investigative time for the FBI agents. At another field location, an OEE agent has been on detail at ICE for seven years, which has facilitated information sharing and joint cases between the two agencies. According to several agents with whom we spoke, personalities can be a key factor in how well agents from different agencies work together on investigations. For example, an OEE agent in charge of one field location told us that the field agents work effectively on cases with ICE agents in one field location, but not with ICE agents in another field location because of disagreements stemming from fifteen years ago about how to proceed with investigations.

Confirming Whether Items Are Controlled and Need a License Is Key to Pursuing Enforcement Activities

Confirming whether a defense or dual-use item is controlled and requires a license, known as a license determination, is integral to enforcement agencies' ability to seize items, pursue investigations, or seek prosecutions. However, confirmation can sometimes be difficult. Many inspectors and investigators told us that the time it takes to make determinations or sometimes changes to previously made determinations can affect some of their enforcement activities. According to the Commerce Department and DoS officials, they depend on complete, specific, and pertinent information from the inspectors and investigators to make timely and correct determinations so that appropriate enforcement actions can be pursued. Moreover, new or additional information may become available as an investigation proceeds, which can affect a license determination.

Some inspectors and investigators, including OEE field agents who request license determinations directly from Commerce, stated that obtaining license determination decisions can be time consuming and has taken as much as several months. In several instances, DoS and Commerce licensing officers needed more information about the item before making a license determination, which added to the time it took to respond. In addition, DoS officials said they often request technical support from the Department of Defense when making determinations for defense items, which can add to the time it takes to make a license determination. We found that responses to requests for license determinations ranged from one day to eight months during fiscal year 2005. While DoS established in September 2004 a goal of 30 days for processing license determinations, it revised this time frame to 60 days in April 2005 because of resource limitations. Commerce recently established a 35-day time frame to make a license determination requested by OEE agents. However, the Commerce Department, in conjunction with the Exodus Command Center, has not established goals or a targeted time frame for responding to license determination requests. Goals help establish transparency and accountability in the process.

While some inspectors and investigators told us that their enforcement actions have been affected by unclear determinations or changes to previously made license determinations, the Commerce Department and DoS officials said that determinations are dependent on such factors as the completeness and specificity of the information presented to them at the time of the request. In one instance, CBP officers were not given a clear determination as to whether the item was controlled, leaving officers to decide how to proceed. In other instances, investigators dropped their cases or pursued other charges based on changes made to the determination or inconsistent information provided to the exporter. For example, OEE agents executed search warrants based on a license determination that the equipment was controlled for missile technology and antiterrorism purposes. Subsequently, Commerce determined that no license was required for this equipment, and thereby the case was

closed. In another example, licensing officers provided OEE agents with a license determination that differed from the commodity classification²² provided to the exporter. As a result of the inconsistency between the license determination and classification, Department of Commerce pursued a lesser charge against the exporter. In addition, in June 2005, ICE led a joint investigation of a Chinese national for allegedly exporting critical U.S. technology to China, and on the basis of an initial license determination review²³ by DoS that the item was controlled, ICE obtained search and arrest warrants. However, nine months later, ICE agents requested a subsequent license determination to confirm that the item was controlled. It was determined that the item was not subject to DoS or Department of Commerce export control, and therefore the case was dropped. Both DoS and Department of Commerce headquarters officials stated that their ability to make license determinations is dependent upon several factors, including the completeness and accuracy of the information provided by the inspectors and investigators at the time of the request. These determinations can be subject to change as new or additional pertinent information becomes available as the case proceeds.

Commerce and ICE have recently taken actions to address problems in the license determination process. In June 2006, Commerce established new procedures on how to request and process license determinations internally and is currently revising and providing training for its licensing officers and OEE agents. In August 2006, ICE's Exodus Command Center implemented a new system, known as the Exodus Accountability Referral System, to track license determination requests, provide enforcement agencies access to the status of their requests, and provide performance statistics to field agents, inspectors, and regulatory agencies. These actions recognize some of the problems with license determinations. However, it is too early to determine their impact on export enforcement activities.

Challenges Exist in Taking Criminal and Administrative Punitive Actions against Alleged Export Violators

When developing a case for criminal prosecution, Assistant U.S. Attorneys (AUSA) must obtain sufficient evidence of the exporter's intent to violate export control laws. Gathering evidence of intent is particularly difficult in export control cases, especially when the item being exported is exempted from licensing or the case requires foreign cooperation. For dual-use violations, Commerce officials said that the lapsed status of the *Export Administration Act* has made it cumbersome for prosecuting cases. When pursuing administrative cases, DoS, unlike the Department of Commerce, has limited access to attorneys and an Administrative Law Judge, making it challenging to pursue the full range of administrative actions against export control violators.

Several AUSAs who prosecute many different types of cases, told us that it can be challenging to secure sufficient evidence that an exporter intentionally violated export control laws. In particular, securing such evidence can be especially difficult when the items to be exported are exempted from licensing requirements. We previously reported similar concerns of officials from Customs (now within Homeland Security) and Justice about investigating and prosecuting violations when exemptions apply, noting that it is particularly difficult to obtain evidence of criminal intent since the government does not have license applications and related documents that can be used as proof that the violation was committed intentionally.²⁴

22. If exporters have determined that their items are Commerce controlled, but are uncertain of export licensing requirements, they may request a commodity classification from Commerce. See GAO-02-996.

23. In September 2004, ICE issued guidance to its investigators indicating that DoS strongly recommends a second-level review in cases that are heading toward indictment or a plea agreement. This review is an in-depth examination of items to verify that they are controlled by DoS.

24. GAO, *Defense Trade: Lessons to Be Learned from the Country Export Exemption*, GAO-02-63, Washington, D.C.: Mar. 29, 2002.

Investigations and prosecutions that involve items and individuals in foreign locations can further complicate evidence gathering efforts. According to ICE officials, a foreign government may or may not cooperate in an overseas export control investigation or arrest, and foreign and U.S. laws on export controls may differ as to what constitutes a violation. One OEE field office estimated that over half of its cases involve foreign persons or entities.

According to Commerce officials, enforcement of dual-use export controls under the expired *Export Administration Act* is a key challenge for them because it adds an element of complexity to cases and can encumber prosecutions. These officials said they have encountered difficulties convincing AUSAs to accept cases to prosecute under a set of regulations, promulgated under a lapsed statute and kept in force by emergency legislation. To counter these difficulties, Commerce Department, Homeland Security, and Justice officials said they support the renewal of the *Export Administration Act*. The Commerce Department stated that renewal of this act would provide enforcement tools to OEE for conducting investigations and increase penalty provisions for violators.²⁵

For administrative actions, export control regulations allow both DoS and Commerce to pursue administrative cases before an Administrative Law Judge, but DoS has never exercised this authority. Commerce officials stated that they bring cases before an Administrative Law Judge when an alleged export violator disputes the charges or objects to the administrative settlement actions proposed by Commerce. The Commerce Department has a formal agreement with the Coast Guard Office of Administrative Law Judges, which is renewed annually, to hear its cases, and Commerce's attorneys bring about one to three administrative cases before an Administrative Law Judge each year.

The DoS has never brought a case to an Administrative Law Judge and does not have attorneys with the experience needed to pursue such export control cases or a standing agreement with any agency to provide an Administrative Law Judge. In cases where an agreed settlement with the violating company appears unlikely and a formal hearing is needed, DoS would have to seek services from attorneys in the private sector or from other departments to help represent the government's interests. To obtain access to an Administrative Law Judge to hear a case, DoS officials told us they would need to first request the Office of Personnel Management to appoint a judge on a temporary basis. DoS would then need to establish an interagency memorandum of understanding with that agency to establish payment and other arrangements.²⁶ Without a formal agreement to access an Administrative Law Judge and ready access to attorneys to pursue such cases, DoS officials told us that it is challenging to proceed with administrative cases. DoS officials indicated that they are exploring various options on how to get access to attorneys with relevant experience to handle such cases, including seeking assistance from other departments on a temporary basis. However, DoS's options appear to rely on ad hoc interagency arrangements and would not build any internal expertise for handling such cases in the future.

Agencies Faced with Balancing Multiple Priorities and Leveraging Finite Human Resources

Each enforcement agency's priorities and the resources allocated to those priorities are influenced by the mission of the department in which the agency resides. At times, agencies have competing priorities, making it difficult to effectively leverage finite enforcement personnel. Limited training on export controls has further challenged agencies to use their enforcement personnel effectively. Some agencies have recently taken actions to target more resources to export enforcement activities.

25. Congress recently passed the *USA Patriot Improvement and Reauthorization Act*, which increases to \$50,000 per violation, the maximum civil penalty and to 20 years in prison term for criminal convictions under the *International Emergency Economic Powers Act*.

26. DoS officials indicated that they have on occasion established such arrangements through the Office of Personnel Management but acknowledged that establishing such arrangements takes time.

However, it may be too early to determine the impact these actions will have in the long term. In addition, priorities could shift and necessitate the reassignment of staff. The investigative agencies have been particularly challenged to effectively leverage their resources.

- Commerce's overall mission is to promote U.S. economic development and technological advancements. OEE resides within Commerce's export control agency, and its priorities emphasize investigating potential violations of dual-use exports related to weapons of mass destruction, terrorism, and unauthorized military end use. In carrying out these priorities, some of OEE's nine field offices which are responsible for conducting investigations in multiple states, ranging from three to eleven states have had difficulty pursuing investigative leads outside their home state. Some OEE field agents told us that not having a physical presence in the other states adversely affects their ability to generate investigative leads, and that their case load is largely within their home state.
- Homeland Security's mission is to create a unified national effort to secure the country while permitting the lawful flow of immigrants, visitors, and trade. ICE is the largest investigative branch within Homeland Security. In addition to investigating potential defense and dual-use export violations, ICE investigates drug smuggling, human trafficking and smuggling, financial crimes, commercial fraud, document fraud, money laundering, child exploitation, and immigration fraud. ICE has recently taken action to expand its existing investigation workforce devoted to export control. As of September 2006, ICE data showed that total arrests, indictments, and convictions had surpassed the totals in each fiscal year since ICE's creation in 2003.
- Justice's overall mission is to enforce U.S. laws, and FBI's mission is to protect the United States against terrorist and foreign intelligence threats and to enforce criminal laws. As the lead counterintelligence agency in the United States, FBI investigates potential dual-use and defense export violations that have a nexus with foreign counterintelligence. FBI has over 456 domestic offices. Fifty-six offices are required to have at least one team of agents devoted to counterintelligence. These teams cover all fifty states, and some agents are located within the 456 domestic offices. FBI agents are also responsible for conducting other investigations involving espionage and counter proliferation.

CBP, the sole border inspection agency, has also been challenged to leverage its resources. One of CBP's primary responsibilities is to detect and prevent terrorists and terrorist weapons from entering U.S. ports, and it devotes most of its resources to inspecting items and persons entering the country. For items leaving the United States, CBP uses an automated targeting system to identify exports for examination by its officers. The workload and the number of officers assigned to inspect exported cargo can fluctuate daily. For example, at one of the nation's busiest seaports, the CBP Port Director stated that there can be five officers assigned to inspecting exports one day and none the next. Export enforcement efforts are further challenged by the limited time officers have to review shipment documentation. DoS regulations require 24 hours' advance notification before shipment for ship or rail and 8 hours' advance notification for plane or truck. However, the Commerce Department regulations do not have time frames specified other than Census Bureau requirements of notification prior to departure.²⁷ Moreover, some officers also spend some of their limited time hunting down items on planes or in shipping containers because documents, such as air waybills, cannot be located or information on items to be exported is incomplete. CBP officials stated that they have internal initiatives under way to address resources devoted to export control inspections.

27. Census requirements also allow that in certain circumstances an exporter may transmit shipment information up to ten (10) working days from the date of exportation.

U.S. Attorneys offices have many competing priorities, including prosecuting cases involving terrorism, counterterrorism, and government contractor fraud. Each of the U.S. Attorneys offices has attorneys who can work on cases involving potential export control violations. However, several investigators noted that the level of interest in and knowledge of export control laws varies among AUSAs.

According to several enforcement agency officials, they would like more advanced training on export controls that could help them use their time more efficiently and thereby better leverage finite resources, but such training is limited. While some specialized training has been provided to officers in the field, CBP has reduced the number of training courses directly relating to export controls for the last quarter of fiscal year 2006 primarily because of budget constraints. CBP officials said they are considering restructuring the training curriculum. ICE and FBI investigators also said that they would like more opportunities for advanced training on export controls. While ICE headquarters has not funded its advanced strategic export controls course at the Federal Law Enforcement Training Center for the past two years, it reinstated this course in May 2006 and has subsequently trained over 100 agents. ICE officials also noted that training on weapons of mass destruction was provided to over 2,000 agents and analysts during fiscal years 2005 and 2006. Commerce plans additional training for OEE agents in fiscal year 2007. Justice, recognizing a need for training on export controls for its attorneys, provided a training conference in May 2006 for AUSAs, with presentations from the departments of Justice, Commerce, DoS, and the intelligence community. Justice, Commerce, and DoS, have also recently sponsored training conferences for enforcement agencies covering topics such as export control laws and regulations, license determinations, and proving criminal intent.

Criminal Outcomes Are Not Systematically Provided to Export Control Agencies

Criminal indictments and convictions are key to informing the export control process and licensing decisions. While the Justice Department and the other enforcement agencies have databases to capture information relating to their own export enforcement activities, outcomes of criminal cases are not systematically shared with DoS and Department of Commerce. (Table 3 on next page.)

The DoS and Department of Commerce officials stated that information on the outcomes of criminal cases, including indictments and convictions, is important to the export licensing process, particularly since indicted or convicted exporters may be denied from participating in the process. The *Arms Export Control Act* requires that appropriate mechanisms be developed to identify persons who are the subject of an indictment or have been convicted of an export control violation. Specifically, if an exporter is the subject of an indictment or has been convicted under various statutes, including the *Export Administration Act*, DoS may deny the license application. Further, the Commerce Department can deny export privileges to an exporter who has been criminally convicted of violating the *Export Administration Act* or *Arms Export Control Act*. According to both DoS and Commerce Department officials, information on indictments and convictions is gathered through an informal process. For example, an ICE agent, who serves as a liaison with DoS and is co-located with DoS's export control officials, compiles criminal statistics from ICE field offices in a monthly report that is shared with DoS compliance officials. Information on criminal export control prosecution outcomes could help inform the export control process by providing a complete picture of the individual or company seeking an export license or trends in illegal export activities.

Summary

Agencies responsible for enforcement have to operate within the construct of a complex export control system, which offers its own set of challenges from the outset. Further compounding this situation is the failure to coordinate some investigations and address a host of other challenges that can lead to a range of unintended outcomes, such as the termination of investigative cases. At a minimum,

limited resources available for enforcement efforts may not be used effectively. Consequently, there is a need to ensure that enforcement agencies maximize finite resources and efforts to apprehend and punish individuals and companies who illegally export sensitive items that may be used to subvert U.S. interests.

| Table 3. Primary Enforcement-Related Databases at Enforcement Agencies | | |
|--|---|---|
| Agency | Database | Description |
| Justice | | |
| U.S. Attorneys Office | Legal Information Office Network System | Captures Information on criminal cases, including outcomes and closure data |
| FBI | Automated Case Support | Captures details on investigative cases |
| Counterespionage Section | Significant Export Control Cases List | Captures outcome information on significant criminal export control cases |
| Commerce | | |
| OEE | Investigative Management System | Captures details on investigative cases |
| State | | |
| Directorate of Defense Trade Controls | Trade Registration, Enforcement and Compliance System | Captures compliance activities, including voluntary disclosures, and license determinations |
| Homeland Security | | |
| CBP and ICE | Treasury Enforcement Communication System* | A system of records containing law enforcement information including suspects, ongoing investigations and enforcement actions |
| | Seized Asset and Case Tracking System | Captures activities associated with seizures and investigations |
| | Automated Targeting System and Anti-Terrorism | A system that automatically reviews electronically filed export documentation and compares it to inspector-defined criteria for high-risk shipments |
| *Many federal law enforcement agencies have certain access to the Treasury Enforcement Communication System. | | |
| Source: GAO analysis of information provided by above agencies. | | |

Recommendations for Executive Action

To enhance coordination in the current system, we recommend that the Secretary of Commerce direct the Under Secretary for Industry and Security, the Secretary of Homeland Security direct the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement, and the Attorney General direct the Director of the FBI in conjunction with the Assistant Attorney General in charge of the National Security Division to take the following two actions:

- Establish a task force to evaluate options to improve coordination and cooperation among export enforcement investigative agencies, such as creating new or updating existing operating agreements between and among these agencies, identifying and replicating best practices for routinely collaborating on or leading investigations, and establishing a

mechanism for clarifying roles and responsibilities for individual export control cases involving foreign counterintelligence.

- Report the status of task force actions to Congress.
 - To ensure discipline and improve information needed for license determinations, we recommend that the Secretary of Homeland Security direct the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement and the Secretary of Commerce direct the Under Secretary for Industry and Security to establish goals for processing license determinations. We also recommend that Secretary of Homeland Security direct the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement, the Secretary of Commerce directs the Under Secretary for Industry and Security, and the Secretary of State direct the Deputy Assistant Secretary for Defense Trade Controls to coordinate with licensing officers, inspectors, investigators, and prosecutors to determine what additional training or guidance is needed on license determinations, including the type of information needed to make license determinations.
 - To ensure systematic reconciliation of shipments with Commerce licenses, we recommend that the Secretary of Commerce direct the Under Secretary for Industry and Security, in consultation with the Commissioner of Homeland Security's U.S. Customs and Border Protection, to determine the feasibility of establishing a requirement for CBP to decrement Commerce licenses and an action plan for doing so.
 - To ensure that DoS and Commerce have complete information on enforcement actions, we recommend that the Attorney General direct the Director of the Executive Office for U.S. Attorneys, in consultation with the Assistant Attorney General in charge of the National Security Division, to establish formal procedures for conveying criminal export enforcement results to DoS's Directorate of Defense Trade Controls and Commerce's Bureau of Industry and Security.

Agency Comments and Our Evaluation

The Departments of Commerce, Homeland Security, and DoS provided comments on a draft of this report. The Justice and Defense Departments did not provide formal comments. Commerce, Homeland Security, Justice, and DoS also provided technical comments, which we incorporated in this report as appropriate. Overall, the departments providing comments agreed with the need for coordination, but in some instances, noted some differences in possible approaches. They also indicated that certain actions were already under way to address some of our recommendations. We modified one recommendation accordingly. In commenting on our first recommendation to establish a task force to improve coordination and cooperation among export enforcement investigative agencies and report the status of task force actions to the Congress, the Commerce Department stated that it was already taking action to improve coordination through various work groups and acknowledged that it will continue to seek ways to improve coordination. Commerce also commented that the draft report does not provide the data and analysis to support that there is a lack of coordination. We disagree. We spoke with numerous agents in the field who cited coordination as a challenge. The examples we provided were illustrations of some of the types of coordination challenges that existed. Our evidence indicates that coordination is a challenge given that three agencies with differing approaches have concurrent jurisdiction to investigate potential violations of export control laws. At times, these agencies have competing priorities, making it difficult to leverage finite enforcement personnel for complex cases.

Homeland Security agrees in principle with our first recommendation, but believes the establishment of an Export Enforcement Coordination Center within ICE would address coordination concerns in the most immediate and comprehensive manner. Homeland Security's solution is one option for improved coordination. However, it would need to work with the other enforcement agencies to determine the viability of this option. Our recommendation for a joint task force is the means by which to do so. In its technical comments related to coordination, Justice commented that the FBI looks forward to working closely with other export enforcement agencies.

In its comments on our second recommendation, to establish goals for the processing of license determinations and coordinate with other enforcement officials to determine what additional training or guidance is needed on license determinations, the Commerce Department noted it was already taking action to improve license determination efforts through developing procedures and leading and participating in training conferences on export enforcement. However, these actions do not fully address our recommendation on establishing goals. Specifically, the Commerce Department has not established formal license determination response times in conjunction with the Exodus Command Center, which is a key means by which license determination requests are processed. Homeland Security agreed to support goal setting by providing input from a law enforcement perspective. In its comments on our draft report, DoS indicated that it had already established goals for processing license determinations in conjunction with the Exodus Command Center. As a result, we revised our recommendation to direct that Commerce and Homeland Security establish goals for processing license determinations. DoS concurred with our recommendation to determine what additional training or guidance is needed on license determinations. Specifically, DoS has agreed with Homeland Security to update and clarify its guidance on license determinations. The DoS further noted that consulting with FBI and ICE regarding additional training for coordinating DoS's support to their criminal investigations would build upon its past and ongoing work in this area.

Regarding our third recommendation to determine the feasibility of having Homeland Security's Customs and Border Protection officers decrement Commerce export licenses Commerce expressed some reservation. Specifically, the Commerce Department stated that it has seen no data to indicate that the underlying issue is of sufficient enforcement concern and that automated systems would need to be developed within CBP to support this effort. We do not believe that Commerce should dismiss this recommendation without further analysis. We previously reported that Commerce has not conducted comprehensive analyses of items that have been exported;²⁸ therefore, it is not in a position to know whether it is an enforcement concern. In addition, while resources devoted to outbound enforcement are limited within CBP, it has an automated export system, which is used for decrementing DoS licenses. This allows CBP officers to ensure accountability on the part of exporters and that DoS regulations have been properly followed. Homeland Security commented that CBP officials are prepared to act when contacted by Commerce regarding our recommendation.

With respect to our last recommendation that Justice establish formal procedures for conveying export enforcement results to DoS and Commerce. Commerce agreed, citing that it supports efforts to improve coordination and communication. Justice indicated support for sharing such information. DoS also supports this recommendation and noted that it welcomed any additional information that Justice can provide regarding the outcomes of criminal cases involving export control and related violations to help DoS carry out its regulatory responsibilities.

Appendix II: Summary of Selected Export Control Enforcement Cases

For fiscal year 2005, investigative agencies identified several examples of export control enforcement cases, as shown in Table 4.

28. See GAO-06-638.

Table 4. Selected Export Control Cases for Fiscal Year 2005

| Description | Punitive Action |
|---|--|
| Polygraph Machines to China A company and its president illegally exported polygraph machines to China without required export licenses. | The company and its president were sentenced to probation and a criminal fine for criminal export violations. They also agreed to pay administrative penalties, and the company agreed to a suspended denial of export privileges. |
| U.S. fighter jet components to Iran A businessman pled guilty to <i>Arms Export Control Act</i> and money laundering violations. The businessman sought to obtain gunnery systems for fighter jets for export to Iran, and in meetings with undercover agents attempted to acquire several fully assembled F-14 fighter jet aircraft for future shipment to Iran. | The businessman was sentenced to a 57 month incarceration and a 2 year supervised release. |
| Night vision technology and electronics components to China Two individuals violated the <i>Arms Export Control Act</i> by attempting to obtain U.S. night vision equipment, military grade power converters, and traveling wave tubes used in satellite and radar applications for export to China. | The individuals were arrested and indicted for conspiring to violate the <i>Arms Export Control Act</i> . One individual was found not guilty by jury trial, while the other was sentenced to 24 months in prison and a 3 year supervised release. |
| U.S. fighter jet and military helicopter components to Malaysia, Belgium, and United Arab Emirates A Pakistani national illegally exported military aircraft parts to various countries. The individual had a previous 1987 conviction for illegally exporting HAWK missile components to Iran. | The Pakistani national was indicted on four counts of violating the <i>Arms Export Control Act</i> . He was convicted and sentenced to 150 months imprisonment. |
| Assault rifles to Colombian terrorist organization During meetings with undercover agents, a Colombian national negotiated and attempted to purchase assault rifles and machine guns for illegal export to a U.S. designated terrorist organization in Columbia. A subsequent investigation identified two coconspirators. | The Colombian national was arrested and pled guilty to violating the <i>Arms Export Control Act</i> . One coconspirator has been arrested; the other remains at large. |
| Missile and fighter jet components to China An individual conspired to illegally export parts for for the F-14 fighter jet and components for various missile systems to China. Agents arrested the individual and her husband as a result of a lengthy undercover investigation targeting U.S. companies that illegally sold defense articles over the internet to foreign buyers. | The individual and her husband were each sentenced to a 30 month imprisonment, and the individual was also fined \$6,000. |

Table 4. Selected Export Control Cases for Fiscal Year 2005 (Continued)

| Description | Punitive Action |
|--|---|
| Components with nuclear weapons applications to Pakistan and India | |
| <p>An individual from Pakistan was charged with illegally exporting oscilloscopes with nuclear weapons applications, as well as plotting to illegally export 66 nuclear detonator devices to Pakistan. An Israeli national pled guilty to helping to export the oscilloscopes and nuclear triggers, and illegally exporting sensitive U.S. electronics to facilities in India that are involved in that nations nuclear and missile development program.</p> | <p>The individual currently remains at large. The Israeli national pled guilty and was sentenced to a 36 month imprisonment.</p> |
| Military night vision equipment to China | |
| <p>An individual attempted to illegally export plastic optical filters suitable for night vision lighting, night vision goggles with helmet mounts for fixed wing and rotary aircraft, as well as liquid crystal displays that can be integrated into avionics. A U.S. citizen conspired to obtain night vision goggles.</p> | <p>The individual pled guilty to one count of conspiracy and will be sentenced at a later date. The U.S. coconspirator pled guilty to one count of violating the <i>Export Administration Act</i> for his role.</p> |
| Weapons to Colombian terrorist group | |
| <p>An individual plotted to provide arms to a Colombian terrorist group in violation of the <i>Arms Export Control Act</i>.</p> | <p>The individual pled guilty and was sentenced to a 25-year federal imprisonment.</p> |
| Military laser sights to foreign locations | |
| <p>A Japanese national conspired to purchase and illegally export military laser sights to Japan in violation of the <i>Arms Export Control Act</i>.</p> | <p>The individual was sentenced to a 15 month incarceration and was subsequently deported from the United States for conspiracy.</p> |
| U.S. fighter jet components to Iran | |
| <p>A Tehran-based broker attempted to purchase and illegally export U.S. F-14 fighter jet components to the Iranian military. The individual-who asserted he worked on behalf of the Iranian Ministry of Defense also negotiated with undercover agents over the illegal export of complete military helicopters and -130 military aircraft electrical and avionic upgrades to Iran.</p> | <p>The broker was sentenced to a 41 month federal imprisonment.</p> |
| U.S. military night vision systems to Iranian military | |
| <p>U.S. agents and austrian authorities thwarted a plot to illegally supply the Iranian military with thousands of advanced military night vision systems from the United States. U.S. agents learned that an arms broker in Tehran was seeking U.S. military night vision goggles for the Iranian military from vendors in the United States. Austrian authorities arrested one of the individuals and another coconspirator after the pair took possession of the first night vision system.</p> | <p>A grand jury indicted the individuals with conspiracy, violating the <i>Arms Export Control Act</i>, money laundering, forfeiture, and aiding and abetting. These individuals remain at large.</p> |

Table 4. Selected Export Control Cases for Fiscal Year 2005 (Continued)

| Description | Punitive Action |
|--|---|
| <p>Military antenna controls to Spain</p> <p>An individual attempted to illegally export radar antenna control boxes to Spain for use by Spanish Air Force without the required export license in violation of the <i>Arms Export Control Act</i>.</p> | <p>The individual was sentenced to 2 years probation and fined \$2,500.</p> |
| <p>Military helicopter engines and night vision systems to China</p> <p>A South Korean citizen attempted to illegally export Black Hawk helicopter engines and other military items to China. Agents arrested the individual as he attempted to board a plane bound for China with military night vision equipment in his luggage. The South Korean government worked closely with U.S. agents on the investigation.</p> | <p>The South Korean citizen pled guilty to violating the <i>Arms Export Control Act</i> and was sentenced to 32 month federal imprisonment, to be followed by deportation from the United States.</p> |
| <p>Restricted electronic equipment to China</p> <p>Four individuals conspired to illegally export more than \$500,000 in restricted electronic components to China. The components in question could be used in a wide variety of military radar and communications applications.</p> | <p>The four individuals were charged with conspiring to violate the <i>International Emergency Economic Powers Act</i>, the <i>Export Administration Regulations</i>, and money laundering violations. One individual was sentenced to 6-months time served and fined \$1,500. Another was sentenced to a 46-month federal imprisonment and fined \$2,000. A different individual was convicted at trial for five counts of violating the <i>International Emergency Economic Powers Act</i>, conspiracy, money laundering, and false statements and sentenced to a 60-month incarceration and a \$50,000 fine. Another conspirator was sentenced to a 42-month incarceration and was ordered to pay a \$50,000 fine.</p> |
| <p>Sensitive military technology to China</p> <p>Seven individuals were indicted on export violations alleging they used their two companies to illegally export sensitive national security controlled items to state-sponsored institutes in China. According to the complaints, the individuals were illegally exporting millions of dollars worth of items used in a variety of defense weapons systems, including smart weapons, radar, and electronic warfare and communications systems.</p> | <p>Four of the coconspirators pled guilty to violating the <i>Arms Export Control Act</i>, the <i>International Emergency Economic Powers Act</i>, conspiracy to violate the <i>Export Administration Regulations</i>, aiding and abetting, and providing false statements.</p> |
| <p>Military night vision technology to China</p> <p>Two individuals and a company were indicted for illegally brokering the sale of military and commercial-grade night vision technology to China. Court documents in the case alleged the pair had entered into a contract with the Chinese military to produce technology for night vision equipment in China.</p> | <p>A jury failed to reach a unanimous verdict in the trial of one co-conspirator and a new trial is scheduled.</p> |