

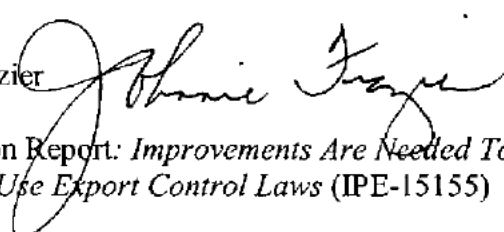


UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

March 31, 2003

FOR OFFICIAL USE ONLY

MEMORANDUM FOR: Kenneth I. Juster
Under Secretary for Industry and Security

FROM: Johnnie E. Frazier 

SUBJECT: Final Inspection Report: *Improvements Are Needed To Better Enforce Dual-Use Export Control Laws (IPE-15155)*

As a follow up to our March 4, 2003, draft report, attached is our final report on export enforcement, the fourth report required by the National Defense Authorization Act for Fiscal Year 2000. As you know, this legislation mandates that by March 30 of each year through 2007, we issue a report to the Congress on the policies and procedures of the U.S. government with respect to the export of technologies and technical information to countries and entities of concern. This fourth report focuses on BIS's export enforcement program, including its efforts to prevent the illegal export of dual-use items and to investigate and assist in the prosecution of violators of the Export Administration Regulations. The report includes comments from your March 25, 2003, written response to our draft report. A copy of your entire response is included as an appendix to this report. This report will also be issued as part of an interagency OIG report on federal export enforcement efforts.

The report highlights our major concern that Export Enforcement's investigative process produces few criminal prosecutions and administrative sanctions. It also outlines specific areas that need attention and improvement to strengthen BIS' export enforcement program, including (1) management of the investigative process and cases, (2) internal coordination between Export Enforcement and Export Administration (3) cooperation with other federal agencies involved in export enforcement, (4) monitoring of license conditions, (5) outreach efforts, and (6) end-use checks. The report offers a number of recommendations that we believe, if implemented, will help BIS' and the U.S. government's efforts to enforce export controls.

We are pleased to note that BIS, in its written response to our draft report, indicated that it has already taken or plans to take action on many of our recommendations. In addition, after carefully considering your response, we have made some adjustments in our final report, as appropriate. We request that you provide an action plan within 60 calendar days for those recommendations that we still consider open.

We would like to thank you and your staff for the assistance and courtesies extended to us during our evaluation. If you would like to discuss this report or the requested action plan, please call me at (202) 482-4661 or Jill Gross, Assistant Inspector General for Inspections and Program Evaluations, at (202) 482-2754.

Attachment

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EXECUTIVE SUMMARY

The National Defense Authorization Act for Fiscal Year 2000 directs the Inspectors General of the Departments of Commerce, Defense, Energy, and State, in consultation with the Directors of Central Intelligence and the Federal Bureau of Investigation, to assess the adequacy of export controls and counterintelligence measures for preventing countries and entities of concern from acquiring militarily sensitive U.S. technology and technical information.¹ The legislation further mandates that the Inspectors General report their findings to Congress by March 30 of each year until 2007.

For 2003, the Inspectors General agreed to conduct an interagency review of the federal government's enforcement of export controls.² Each OIG also examined its own agency's efforts to enforce these controls. Our review at Commerce focused on the Bureau of Industry and Security's (BIS) export enforcement program, including its efforts to prevent the illegal export of dual-use items (goods and technologies that have both civilian and military applications) and to investigate and assist in the prosecution of violators of the Export Administration Regulations. Specifically, we reviewed BIS' activities related to its (1) conduct of investigations (including agent training and the administrative remedy process); (2) interactions with the law enforcement community (e.g., U.S. Customs Service and Federal Bureau of Investigation), the intelligence community, U.S. Postal Service, and U.S. Attorneys' Offices; (3) monitoring of license conditions; (4) outreach; and (5) end-use checks.

The Under Secretary of Commerce for Industry and Security has addressed the importance of export controls on numerous occasions. In particular, at the BIS Update West 2002 Conference,³ he said:

"The terrorist attacks of September 11 simply reinforced the importance of our mission. We will vigorously administer and enforce export controls to stem the proliferation of weapons of mass destruction and the missiles to deliver them, to halt the spread of advanced conventional weapons to terrorists or countries of concern, and to further important U.S. foreign policy objectives. Where there is real and credible evidence suggesting that the export of a dual-use item threatens our national security, we must act to combat that threat."⁴

To be effective, export controls must be enforced, and companies or individuals who conspire to evade those controls or commit illegal exporting must be detected and prosecuted accordingly. However, our evaluation disclosed deficiencies within several key areas of BIS' export

¹Public Law 106-65, October 5, 1999.

²Because the Department of the Treasury's U.S. Customs Service is a key player in the enforcement of export controls, Treasury's OIG participated in this year's review. In addition, the U.S. Postal Service's OIG joined the review to assess the Postal Service's efforts to assure that users of the U.S. mail service comply with the export control laws and regulations.

³BIS' Update West Conference is an annual meeting held in California that brings together representatives of industry and government to discuss current and upcoming export control issues.

⁴Keynote Address by Kenneth I. Juster, Under Secretary of Commerce for Industry and Security, at Update West 2002 in Pasadena, CA, on April 16, 2002.

enforcement program, which hinder its ability to achieve these goals. Our specific observations are as follows:

Export Enforcement's Investigative Process Produces Few Criminal Prosecutions and Administrative Sanctions

Export Enforcement's mission is to advance U.S. national security, foreign policy, and economic interests by enforcing the export control provisions of the Export Administration Regulations. To this end, it endeavors to identify, investigate, and apprehend violators, and seeks criminal and administrative sanctions against them. We examined in detail Export Enforcement's investigative process and identified weaknesses in several critical areas, which negatively impact its ability to achieve its mission and need to be addressed:

- ❖ **Stronger management oversight of the investigatory process is needed.** Neither case development nor case leads are consistently monitored or evaluated by Export Enforcement managers.
- ❖ **The processing of license determinations needs to be improved.** Inconsistent and untimely determinations sometimes terminate or postpone investigations.
- ❖ **The administrative remedy process needs to be more transparent and timely.** The rationale with regard to how administrative penalties are determined is not transparent. In addition, the Office of Chief Counsel's processing of cases can be untimely.
- ❖ **Delinquent administrative penalty accounts need to be followed up.** The Office of Export Enforcement does not take enforcement action against companies and individuals who fail to pay monetary penalties.
- ❖ **Better case management guidance and agent training should improve enforcement capabilities.** The new *Special Agent Manual* lacks sufficient policies and procedures to guide agents in conducting investigations, and training is not consistently provided.
- ❖ **Better cooperation with other federal law enforcement and intelligence agencies could strengthen its investigative process.** Export Enforcement's cooperation with U.S. Attorneys, U.S. Customs Service, Federal Bureau of Investigation, Central Intelligence Agency, and U.S. Postal Service could be enhanced to help it better prevent, detect, and assist in prosecuting illegal export transactions.

We recognize that some of these weaknesses are partly dependent upon external factors. For example, BIS must rely on the Department of Justice's U.S. Attorneys to criminally prosecute its cases. However, we were told that some U.S. Attorneys, or their Assistant U.S. Attorneys (AUSAs), are sometimes reluctant to accept these cases because (1) dual-use export control cases can be very complex, (2) there is currently no strong export control legislation, and (3) these cases can lack jury appeal. Some AUSAs stated that it is difficult for a jury to grasp the importance of export controls because new legislation has not been approved by the Congress to

replace the lapsed Export Administration Act. We have noted that, in an effort to increase AUSA interest in pursuing these cases and to better educate them on dual-use export control laws and regulations, senior BIS Export Enforcement officials have, on occasion, conducted outreach visits with AUSAs.

BIS managers agree that their enforcement priorities are to increase criminal prosecutions and administrative sanctions. However, we found that, cumulatively, the weaknesses listed above have hampered the investigative process, in that it produces few cases, which result in successful prosecutions. Out of an average yearly caseload of 1,038 cases, for example, just 3 criminal cases were successfully prosecuted (i.e., convictions) and 25 administrative enforcement cases were closed with sanctions in FY 2002.



BIS' Other Enforcement Efforts Need Improvements

To help prevent and detect illegal exports, BIS (1) monitors export licenses to ensure that companies comply with all license conditions, and (2) conducts outreach to help educate industry about dual-use export controls as well as encourage reporting of potential control violations. Both endeavors require the combined efforts of BIS' two principal operating units – Export Administration and Export Enforcement.

Of the 54 standard license conditions, only 7 require the licensee to submit export documentation to BIS regarding the shipment of a controlled commodity. Export Administration is responsible for monitoring 6 of these conditions, and Export Enforcement the remaining one. We found that Export Administration and Export Enforcement are not adequately monitoring licenses with reporting conditions—a problem we previously identified in our 1999 export licensing report.⁵ When license conditions are not carefully monitored, BIS cannot be certain that goods were not diverted to unauthorized end users or that exporters who fail to comply with conditions are being denied subsequent licenses. Therefore, we recommend that BIS (1) take the necessary actions to ensure that license conditions are monitored and followed up consistently, and (2) require licensing officers to thoroughly review a company's compliance history when processing new licenses.

⁵*Improvements Are Needed to Meet the Export Licensing Requirements of the 21st Century*, U.S. Department of Commerce Office of Inspector General, IPE-11488, June 1999.

Our review also disclosed that Export Enforcement does not have an established national plan for proactively identifying manufacturers and exporters of critical commodities to target for outreach, nor does it have formal guidance to help its agents strategically identify these firms. It should be noted, however, that Export Enforcement did employ a nationwide strategic approach to outreach with respect to chemical manufacturers in the months immediately following the terrorist attacks of September 11, 2001. Nonetheless, without an established, proactive program, BIS lacks a key mechanism for preventing export violations through education and for detecting violations via company leads. Therefore, we recommend that Export Enforcement establish a national outreach plan that has annual goals and identifies priority industries to be visited (see page 50).

BIS Should Continue to Improve the End-Use Check Process

End-use checks, an important part of the license evaluation and enforcement process, verify the legitimacy of dual-use export transactions controlled by BIS. A pre-license check (PLC) is used to validate information on export license applications by determining if an overseas person or firm is a suitable party to a transaction involving controlled U.S.-origin goods or technical data. Post shipment verifications (PSVs) strengthen assurances that exporters, shippers, consignees, and end users comply with the terms of export licenses, by determining whether goods exported from the U.S. were actually received by the party named on the license and are being used in accordance with the license provisions. (b) (7)(E)

[REDACTED]. BIS export control attachés, stationed at three overseas posts, also conduct end-use checks.⁶

While we continue to find that the end-use check process is a valuable tool, as we discuss in the following sections, we found that many of the problems with end-use checks discussed in our 1999 export licensing report persist.

(b) (7)(E)

(b) (5), (b) (7)(E)

⁶Export control attaches are currently stationed in Abu Dhabi, United Arab Emirates; Beijing, China; and Moscow, Russia. BIS plans to station four additional attachés in Cairo, Egypt; New Delhi, India; Shanghai, China; and Singapore, by the end of FY 2003.

(b) (5), (b) (7)(E)

Safeguards team checks. (b) (7)(F). In addition to conducting most PSVs and some PLCs, Safeguard teams also conduct outreach visits to foreign firms and provide guidance and support on preventive enforcement matters to the American Embassy personnel and/or host government export control officials. During FY 2001, BIS conducted Safeguard Verification trips to 15 countries.

Overall, we believe the Safeguards Verification Program is working reasonably well. However, we have identified several areas, such as the writing and dissemination of trip reports and coordination with other U.S. government agencies at post, where we believe improvements would make this program more effective. Therefore, we recommend that BIS (1) ensure that its agents submit timely trip reports, (2) make improvements to the Safeguards report format, (3) (b) (5), (b) (7)(E) and (4) instruct Safeguards teams to brief U.S. agencies at post about the end-use visits and endeavor to share relevant law enforcement or intelligence information (see page 59).

Unfavorable pre-license checks. BIS and licensing referral agencies rely on the results of PLCs to determine the ultimate disposition of a license application. Of the 373 PLCs conducted in FY 2001, 27 received an unfavorable determination. License applications for 15 of these were "returned without action", 9 were rejected, and 3 were approved with conditions after BIS took action to ensure that the concerns raised during the check were corrected or addressed. However, we identified seven cases in which Export Enforcement recommended rejection of a license application, but Export Administration returned them without action. This, in our opinion, violates the spirit of the 1996 memorandum of understanding (MOU) between Export Administration and Export Enforcement.⁷ Specifically, the MOU indicates that if Export Administration disagrees with a licensing recommendation made by Export Enforcement, the offices must resolve the dispute, via the dispute resolution process, before the application can be processed further. However, for these seven cases, there was no indication that the dispute resolution process was actually used. Complicating the resolution process is the lack of internal controls in ECASS, BIS' automated licensing system, for ensuring that export license applications are not returned without action by Export Administration over a rejection by Export Enforcement.

BIS should remind Export Administration directors and licensing officers to adhere to the dispute resolution process outlined in the 1996 MOU and hold them accountable for

⁷Export Administration and Export Enforcement entered into an MOU in 1996 regarding Export Enforcement's recommendations on export license applications. The MOU includes a dispute resolution process to be used by both organizations.

implementing it. In addition, BIS should (b) (5), (b) (7)(E) ECASS⁸
(b) (5), (b) (7)(E)
(b) (5), (b) (7)(E) BIS should also reevaluate the guidance provided in the 1996 MOU concerning the return of license applications without action, and—as we recommended in 1999—disseminate negative PLC results to all referral agencies (see page 59).

Export Administration's Processing of License Determinations for Customs is Untimely

Export Administration is not processing license determinations (LDs) requested by the U.S. Customs Service in a timely manner. LDs are needed to determine (1) whether an item is subject to the Export Administration Regulations; (2) the reason(s) for control, if any; (3) the item's export control commodity number; and (4) the licensing policy for the export of the item to the specified destination.

As stated in the Export Administration Act⁹, Customs can detain a shipment for only 20 days. If Customs does not receive a determination within 20 days from Export Administration, it has three options: it can (1) continue to detain the shipment in violation of the Act, (2) formally seize the shipment, or (3) release the shipment. Each option is potentially problematic. If Customs chooses option 1 or 2, it may unnecessarily delay legitimate trade if the licensing officer determines that the item does not require a license. If Customs chooses option 3, it could allow sensitive dual-use commodities to leave the United States that should not be shipped without a valid export license or, possibly, should not be exported at all. Because of this, Customs needs to receive the LD within a 20-day window in order to make an appropriate decision regarding disposition of the shipment. However, during our review, we found that less than 50 percent of the LDs requested in FY 2002 were processed in 20 days or less.

We also examined this issue in our 1999 export licensing report, and recommended that BIS work with Customs to (1) automate the referral of Customs' LD requests and (2) formulate a written agreement outlining the responsibilities of each party involved in the process. Although BIS agreed with our recommendations, it has not initiated efforts in either area. We remain concerned that, without an automated system and written guidelines, neither BIS nor Customs can be assured that LDs will be processed in a timely manner. As such, we recommend that

(b) (5), (b) (7)(E)

(see page 74).

On page 77, we list all of our recommendations to address the concerns raised in this report.

⁸ Export Control Automated Support System.

⁹ See section 12(2)(a) of the EAA. Although the EAA is expired, the President's executive order invoking emergency authority under the International Emergency Economic Powers Act directs the executive branch to continue to comply with the provisions of the EAA to the extent possible.

In its March 25, 2003, written response to our draft report, BIS indicated that many of the issues raised in our report had already been identified by BIS management, and these items already have or are in the process of being addressed. We discussed many of our findings and recommendations with senior Export Enforcement officials throughout the course of our review. They were consistently candid about and receptive to our concerns and recommendations and began many corrective actions before completion of our review. We are pleased that BIS management is committed to taking vigorous action to enforce the U.S. government's dual-use export control laws.

However, BIS' response also raised several concerns about our report's conclusions. First, the response took issue with the fact that our report focuses on case prosecutions versus preventive enforcement matters. Specifically, the response stated that "...attempting to police on a case-by-case basis the millions of export transactions that occur annually in the contemporary globalized economy with a force of slightly more than 100 agents is effectively impossible. Rather, enforcement is most effectively promoted through deterrence, preventive action, and the targeting of limited resources on major 'chokepoints' in global strategic trade flows, where they will have the most impact." We completely agree with BIS that preventive efforts and deterrence are an integral part of any enforcement program. Accordingly, we did review many of BIS' preventive programs, including its outreach to industry, (b) (7)(E), end-use checks, and follow-up on license conditions. Our draft report offered a number of recommendations that address actions Export Enforcement could take to improve those preventive efforts, including its outreach efforts to U.S. exporters as well as exporter compliance with license conditions. While the draft report also acknowledged BIS' recently established Transshipment Country Export Control Initiative, which is a cooperative endeavor that seeks to strengthen the trade compliance and export control practices of governments and industry in the major transshipment hubs, this effort was too new for us to evaluate its impact at this point.

In addition, BIS took exception to our conclusion that it produces "few" criminal prosecutions (3 in FY 2002) and administrative sanctions (25 in FY 2002). Specifically, it questions how we judged these statistics and whether we compared them to those of other law enforcement agencies, such as the U.S. Customs Service which has concurrent jurisdiction over export controls or the FBI which enforces white collar criminal laws in addition to other laws. BIS' response compares 1015 cases opened by it to a *National Journal* citation of 80 investigations launched by Customs last year, but does not note that BIS' "cases" include both case leads and investigations. While we were unable to obtain comparable data from either Customs or the FBI, we were told, by the Acting Assistant Secretary for Export Enforcement, that comparing BIS statistics with FBI statistics on its white collar crime cases would probably not be appropriate given the nature and complexity of BIS cases. Our conclusion about BIS' record on criminal prosecutions and administrative sanctions was based on consideration of a number of factors. First, we note that repeatedly throughout our review, senior Export Enforcement managers were candid in acknowledging that they thought there was considerable room for improvement in increasing the number of criminal convictions and administrative sanctions. Second, according

to its FY 2003 Performance Plan, BIS states that it will devote its current level of enforcement resources to investigations that have the highest probability of leading to the prosecution of export violators.

Although we did not compare BIS' criminal prosecutions and administrative sanctions with other law enforcement agencies, we did compare BIS' 2002 statistics with its performance data from prior years. As a result, we learned that since 1998, BIS' prosecutions, sanctions, and warning letters issued have steadily decreased. Specifically, as our draft report cites, in FY 1998 BIS had 10 criminal prosecutions, 44 administrative sanctions, and 266 warning letters as compared to FY 2002 in which BIS had 3 criminal prosecutions, 25 administrative sanctions, and 132 warning letters. During the course of our review, export enforcement officials were unable to explain this decrease.

Finally, BIS' written response questions the linkage between few criminal prosecutions and administrative sanctions and inadequate case management and license determinations. Our discussion of case management principally highlights the fact that not all of OEE's special-agents-in-charge or headquarters managers are adequately monitoring case activity. We found that not all SACs were conducting quarterly case reviews to ensure that the agents were adequately working cases and expending their resources on the most viable cases. Without sufficient supervisory attention, the agents may not be pursuing the best case strategy or leads or working the highest priority cases. In addition, failure to conduct timely preliminary investigations often resulted in the unnecessary upgrade of some case leads to full-scale investigations and potentially solid investigations just languished in agents' queue because of the increasingly large caseloads. The ultimate effect of this action is that agents are not able to fully focus their attention on those cases that may be most likely to result in prosecutions or sanctions.

While our report discusses just two examples of problem license determinations, we identified several other inaccurate, inconsistent, and untimely license determinations during our review. We chose to highlight two of the more egregious examples to demonstrate the adverse impact that problem license determinations have on the export enforcement investigative process.

In its March 28, 2003, written response to our draft report, ITA (b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

Where appropriate, we have made changes to the final report in response to BIS' and ITA's comments on our draft report. Their complete responses have been included in Appendices D and E, respectively, to this report.

INTRODUCTION

The Inspectors General of the Departments of Commerce, Defense, Energy, State, in consultation with the Directors of Central Intelligence and the Federal Bureau of Investigation (FBI), are required by the National Defense Authorization Act for Fiscal Year 2000 to annually assess — for a period of 8 years — the adequacy of export controls and counterintelligence measures for preventing the acquisition of sensitive U.S. technology and technical information by countries and entities of concern.¹⁰

The legislation mandates that the Offices of Inspector General (OIGs) report to Congress no later than March 30 of each year, until 2007, on the status of efforts to maintain and improve export controls. To comply with the act's 2000 requirement, the OIGs reviewed certain aspects of their respective agency's export controls and counterintelligence measures. Our report focused on Commerce Department activities, principally at the Bureau of Industry and Security (BIS),¹¹ aimed at helping to prevent the illicit transfer of sensitive technology.¹² We looked at (1) deemed export controls,¹³ (2) (b) (7)(E), and (3) the Committee on Foreign Investment in the United States.

To meet the act's 2001 requirement, the OIGs conducted an interagency review of the Commerce Control List and the U.S. Munitions List. Our review looked at BIS' policies and procedures for the design, maintenance, and application of the Commerce Control List.¹⁴ For 2002, the interagency review examined the various automated export licensing systems maintained by federal licensing agencies to determine how the systems interact and whether it is feasible to develop a single federal automated export licensing network or other alternatives. We conducted a program evaluation that focused on BIS' efforts to modernize its aging Export Control Automated Support System (ECASS).¹⁵

To comply with the 2003 requirement, the OIGs agreed to conduct an interagency review of the federal government's export enforcement efforts. We focused on evaluating the adequacy and effectiveness of BIS' export enforcement program for dual-use commodities (goods and technologies that have both civilian and military applications).

¹⁰Because the Department of the Treasury's U.S. Customs Service is a key player in the enforcement of export controls, the Treasury's OIG participated in this year's review. In addition, the U.S. Postal Service's OIG joined the review to assess the Postal Service's efforts to assure that users of the U.S. mail service comply with the export control laws and regulations.

¹¹On April 18, 2002, the Bureau of Export Administration (BXA) was renamed the Bureau of Industry and Security (BIS) to reflect more accurately the broad scope of the agency's responsibilities.

¹²*Improvements Are Needed in Programs Designed to Protect Against the Transfer of Sensitive Technologies to Countries of Concern*, U.S. Department of Commerce Office of Inspector General, IPE-12454-1, March 2000.

¹³According to the Export Administration Regulations, any release to a foreign national of technology or software subject to the regulations is deemed to be an export to the home country of the foreign national.

¹⁴*Management of Commerce Control List and Related Processes Should be Improved*, U.S. Department of Commerce Office of Inspector General, IPE-13744, March 2001.

¹⁵*BXA Needs to Strengthen Its ECASS Modernization Efforts to Ensure Long-Term Success of the Project*, U.S. Department of Commerce Office of Inspector General, IPE-14270, February 2002.

Program evaluations are special reviews that the OIG undertakes to give agency managers timely information about operations, including current and foreseeable problems. One of the main goals of a program evaluation is to eliminate waste in federal government programs by encouraging effective and efficient operations. By asking questions, identifying problems, and suggesting solutions, the OIG hopes to help managers move quickly to address program weaknesses and to prevent similar ones in the future. Program evaluations may also highlight effective programs or operations, particularly if they may be useful or adaptable for agency managers or program operations elsewhere.

We conducted our evaluation from late April through early December 2002, under the authority of the Inspector General Act of 1978, as amended, and in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency. Throughout the course of our review and at the end, we discussed our findings and conclusions with BIS' Under Secretary, Deputy Under Secretary, Acting Assistant Secretary for Export Enforcement, Deputy Assistant Secretary for Export Administration, and other senior BIS officials.

OBJECTIVES, SCOPE, AND METHODOLOGY

We sought to assess the adequacy and effectiveness of BIS' export enforcement program in preventing the illegal export of dual-use items and investigating and prosecuting violators of the Export Administration Regulations (EAR). Specifically, we reviewed the following BIS activities:

- ❖ Conduct of investigations (including the adequacy of case leads and case management, administrative enforcement proceedings, and its training of agents).
- ❖ Interactions with the export licensing, law enforcement, and intelligence communities, and with U.S. Attorneys' Offices.
- ❖ Monitoring of license conditions by both Export Enforcement and Export Administration.
- ❖ Outreach and education to provide U.S. companies with export control guidance and obtain investigative leads.
- ❖ End-use checks, including pre-license checks (PLCs), post shipment verifications (PSVs), and the Safeguards Verification Program.

We used the following methodology to conduct our inspection:

Interviews. Within Export Enforcement, we interviewed the Acting Assistant Secretary; the directors of the Office of Export Enforcement (OEE), Office of Enforcement Analysis, and Office of Antiboycott Compliance; Export Enforcement agents, including all special agents-in-charge (SACs), and analysts. Within Export Administration we met with the Deputy Assistant Secretary; directors of the Office of Strategic Trade and Foreign Policy Controls and the Office

of Exporter Services; directors of the Chemical and Biological Controls Division, Nuclear and Missile Technology Controls Division, and Strategic Trade Division; and other licensing officials. We also met with the Chief Counsel for Industry and Security and staff attorneys, and with officials from the Office of Administration.

Within Commerce, we also met with officials from the International Trade Administration, including the United States and Foreign Commercial Service's (US&FCS) Deputy Assistant Secretary for International Operations.

Externally, we met with officials from the Departments of Defense (Defense Intelligence Agency and U.S. Air Force), Justice (FBI and U.S. Attorneys' Offices), State, and the Treasury (U.S. Customs Service (Customs)); the Central Intelligence Agency (CIA); the U.S. Postal Service; and the U.S. General Accounting Office. We also met with representatives of a shipping company and a freight forwarder located in Baltimore, and with officials from the Port of Baltimore. (For information on overseas contacts, see the following page.)

Review of export control laws and regulations, relevant BIS guidance, and other documents. We examined current and prior legislation, executive orders, and related regulations, including the Export Administration Act (EAA) of 1979, the EAR, and the International Emergency Economic Powers Act (IEEPA), as well as the following:

- ❖ BIS annual reports for FYs 1998-2002. (Note: We were unable to verify criminal case and end-use check data derived from these reports.)
- ❖ Presidential Budget Submissions for FYs 1999-2002 and the Office of Management and Budget's FY 2003 budget submission for BIS.
- ❖ The 1993 Export Enforcement Coordination Procedures between the Office of Export Enforcement and the United States Customs Service (the 1993 MOU), and the 1996 memorandum of understanding between Export Enforcement and Export Administration regarding export license recommendations.
- ❖ Customs' shipment seizure data for FYs 2001 and 2002, data regarding the inspectors assigned to the Outbound inspection program, and literature on Project Shield America.
- ❖ The Department of Justice's manual on the export control laws.

We also examined closed investigatory case files for FYs 2001 and 2002 from the four Office of Export Enforcement (OEE) field offices we visited, a chronology of training completed by OEE agents over the prior 5 years, OEE's 1989 and 2002 *Special Agent Manual* (SAM) and Office of the Director Memoranda (ODMs). We also reviewed BIS guidance on end-use checks (both for (b) (7)(E) and OEE's Safeguards Verification Teams), (b) (7)(E), and OEE's export control attaché work plan. We reviewed the (b) (7)(E)

(b) (7)(E) and 4 PLCs and 25 PSVs from Safeguards teams,¹⁶ as well as information (including 532 end-use checks) from 10 Safeguards team reports on trips conducted in FY 2001.

In preparation for an overseas trip to Asia, we also examined PLCs and PSVs conducted in Hong Kong and Singapore (b) (7)(E) during FYs 2001 and 2002, in addition to reviewing reports on Safeguards team trips to both countries during that same period. Furthermore, we reviewed the license outcomes associated with the 28 unfavorable PLCs for FY 2001.

In addition, we reviewed BIS directives and data relating to license monitoring. Specifically, we analyzed information derived from a sample of 90 export licenses monitored by Export Administration and from a sample of 33 export licenses monitored by Export Enforcement. We also examined Export Administration's processing of license determinations (LDs) requested by both OEE and Customs during FYs 2001 and 2002. In doing so, we reviewed internal BIS directives on the LD process, particularly the August 2002 License Determination Work Plan and performance evaluations for division directors and licensing officers. With regard to BIS' administrative remedy process, we reviewed the charter for the Administrative Case Review Board (ACRB), along with cases closed with administrative sanctions in FYs 2001 and 2002, and observed an ACRB meeting. We requested information on the processing of administrative cases by the Office of Chief Counsel for Industry and Security (OCC), which were presented to the ACRB; however, we were unable to obtain such data.

OEE Field Office visits. In addition to our work at OEE headquarters, we visited four of OEE's 8 field offices, including those in Herndon, Virginia (Washington Field Office); New York, New York; Irvine (Los Angeles Field Office, including its satellite office located at Los Angeles International Airport), and San Jose, California.

Overseas visits. We met with various officials stationed at the U.S. consulate in Hong Kong and the U.S. embassy in Singapore, including those with the US&FCS, State's Economic and Political Section, Customs, FBI, Defense, and officials of other relevant agencies. We spoke with the U.S. Consul General in Hong Kong and both the Ambassador and Deputy Chief of Mission in Singapore, as well as with officials of Hong Kong's Trade and Industry Department, Customs and Excise Department, and the Commerce, Industry and Technology Bureau. In addition, we participated in a PSV conducted by US&FCS personnel in Singapore.

Surveys. We conducted two electronic surveys during the course of our review. One questionnaire was sent to 76 OEE agents in the field and at headquarters, and 8 SACs to solicit their input on the adequacy of BIS' export enforcement program. We received responses from 33 agents (43 percent) and 7 SACs (88 percent). The other questionnaire was delivered to (b) (7)(E) (b) (7)(E)

¹⁶ (b) (7)(F)

BACKGROUND

The United States controls the export of dual-use commodities for national security, foreign policy, antiterrorism, and nonproliferation reasons under the authority of several different laws, but the primary legislative authority is the EAA. Under the act, BIS administers the EAR by developing export control policies, issuing export licenses, and enforcing the laws and regulations for dual-use exports. Although the act last expired on August 21, 2001, the President extended existing export regulations under Executive Order 13222, dated August 17, 2001, invoking emergency authority under the IEEPA.

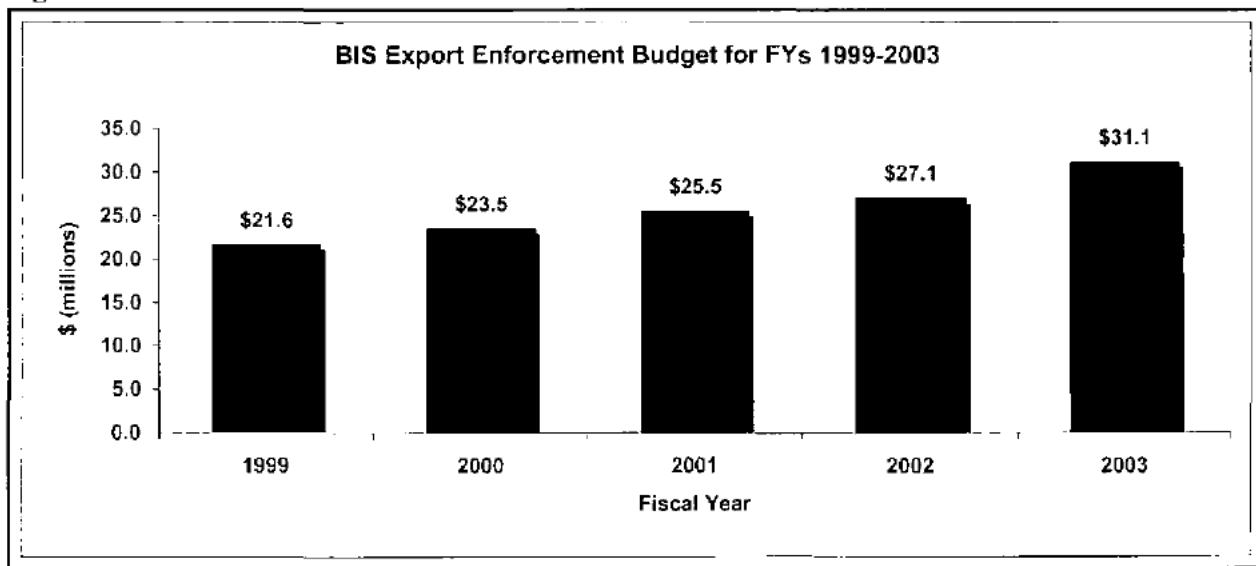
I. BIS' Organizational Structure

BIS has two principal operating units, Export Enforcement and Export Administration that are involved in export controls. BIS' Office of Chief Counsel and Office of Administration are also involved in some aspects of export enforcement as well as export licensing.

Export Enforcement

Export Enforcement's budget for FY 2002 was \$27.1 million, an increase of \$1.6 million over FY 2001. For FY 2003, Export Enforcement's budget increased nearly 15 percent to \$31.1 million (see figure 1). In FY 2001, the unit had a staff of 152, including 95 special agents.

Figure 1



Source: Budget of the United States of America for FYs 1999-2002, and House Conference Report 108-10 accompanying House Joint Resolution 2, U.S. House of Representatives.

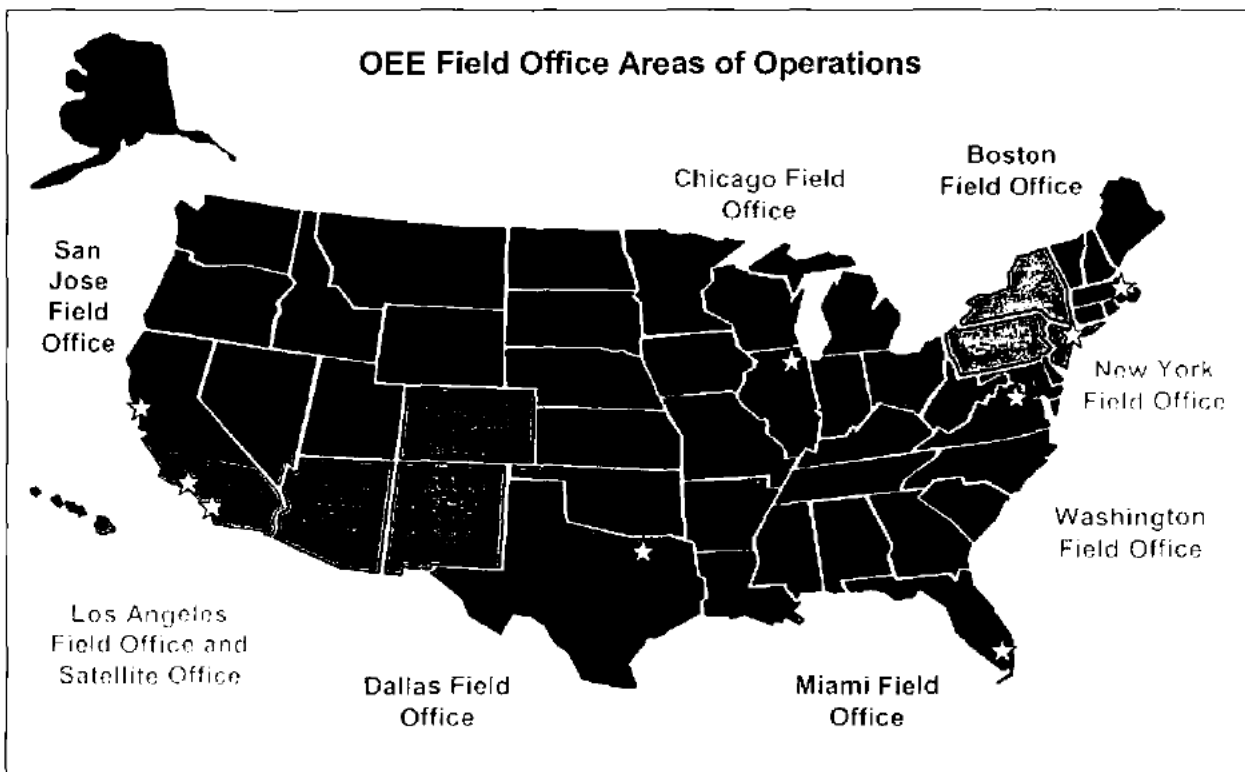
Export Enforcement comprises three offices: (1) the Office of Export Enforcement, (2) the Office of Enforcement Analysis (OEA), and (3) the Office of Antiboycott Compliance (OAC).

Office of Export Enforcement

OEE investigates alleged export control violations and coordinates its enforcement activities with other federal agencies, including Customs, the FBI, and U.S. Attorneys' Offices. OEE agents are empowered to make arrests, carry firearms, execute search warrants, and seize goods about to be exported illegally. They also travel overseas to conduct end-use checks under the Safeguards Verification Program (see page 59 for further discussion).

OEE is headquartered in Washington, D.C., and has eight field offices and one satellite office that provide coverage for all 50 states (see figure 2). Export control attachés are stationed in Abu Dhabi, United Arab Emirates; Beijing, China; and Moscow, Russia. By the end of FY 2003, BIS intends to open a field office in Seattle, Washington; a satellite office in Houston, Texas; and have additional attachés in place in Cairo, Egypt; New Delhi, India; Shanghai, China; and Singapore.

Figure 2



Source: Office of Export Enforcement, Bureau of Industry and Security.

Finally, OEE's Intelligence and Field Support Division (IFSD), located at headquarters, is also staffed by agents and serves as a liaison with the U.S. intelligence community and OEE's field offices.

Office of Enforcement Analysis

OEA is the central point for the collection, research, and analysis of classified and unclassified information on end users who are of export control concern. OEA analysts review license applications, (b) (7)(E), and develop preventive enforcement programs. This office also analyzes intelligence information and determines whether a PLC and/or PSV should be requested. OEA also assists OEE agents with research and analysis on investigative matters.

Office of Antiboycott Compliance

OAC enforces the antiboycott provisions of the EAA and the EAR, assists the public in complying with these provisions, and compiles and analyzes information regarding international boycotts.

Export Administration

Export Administration is composed of four offices. The Office of Exporter Services (OExS) is responsible for outreach (e.g., educational seminars and conferences) and counseling efforts to help ensure exporters' compliance with the EAR and coordination of policy within Export Administration. OExS is also responsible for following up on license conditions to determine exporters' compliance with them. The Office of Nonproliferation Controls and Treaty Compliance and the Office of Strategic Trade and Foreign Policy Controls each have a full range of responsibilities associated with the licensing of exports, including processing license determinations for OEE and Customs. Finally, the Office of Strategic Industry and Economic Security oversees issues related to U.S. defense industry competitiveness.

With regard to outreach efforts, in FY 2002, 37 educational seminars were held in 16 states that attracted 2,273 participants. BIS also held its two annual Update Conference events to bring high-level government officials and industry representatives together to discuss new export control policies, regulations, and procedures.

Office of Chief Counsel

OCC provides BIS with legal advice and policy support. OCC attorneys represent BIS in administrative enforcement cases, advise criminal investigators in their investigations, and assist Assistant U.S. Attorneys (AUSAs) in prosecuting criminal export control cases. OCC also provides guidance on legal and policy issues related to export licensing and antiboycott compliance and helps draft and review proposed export control regulations and interpret existing ones.

Office of Administration

The Office of Administration handles BIS' overall administrative management. It includes the Office of the Comptroller, which monitors payments of administrative penalties assessed by Export Enforcement.

II. BIS' Export Enforcement Program

BIS uses a number of tools to carry out its Export Enforcement program that is designed to (1) investigate and assist in the prosecution of violators of the EAR and (2) prevent the illegal export of dual-use items.

Investigative and Prosecutorial Efforts

During FY 2001, OEE conducted numerous investigations, some of which led to criminal and/or administrative sanctions. OEE also closed 208 cases involving minor violations with warning letters.¹⁷ Export Enforcement's staff works closely with OCC and AUSAs to prosecute companies and individuals who violate export control laws. Violators can face criminal penalties (fines and possible imprisonment) and/or administrative sanctions.¹⁸ In FY 2001, \$2.4 million in administrative penalties and \$1.01 million in criminal fines were imposed for export control violations. Corresponding amounts for FY 2002 were \$5.2 million in administrative penalties and \$15,000 in criminal fines.

BIS employs an internal administrative remedy process to sanction those companies or individuals who violate the export control laws. If there is sufficient evidence to pursue an administrative sanction, the SAC presents the agent's administrative case report to the Director of OEE, who evaluates the justification for an administrative action. If there is insufficient evidence, the case report is returned to the SAC for additional field investigation or issuance of a warning letter. If the report is complete, the OEE Director submits it to OCC to begin the administrative case processing. OCC determines the number of violations committed under the regulations and then presents an administrative case package to the ACRB for review.

The ACRB, an internal BIS committee created in February 2002, advises the Assistant Secretary for Export Enforcement at the important stages of the administrative remedy process. If the ACRB agrees with the charges proposed by OCC, a pre-charging letter¹⁹ is issued to the respondent (i.e., company or individual). If the respondent wishes to settle the charges, negotiations with OCC then commence. A settlement may include a monetary penalty and/or a denial of export privileges. In some cases, the denial of export privileges may be suspended for

¹⁷A warning letter is an informal action by OEE that imposes neither fines nor restrictions on export privileges. It describes the alleged violations and possible sanctions. It further states that while no sanction will be imposed, BIS will consider any future violations in light of the warning.

¹⁸An administrative sanction is a monetary penalty and/or denial of export privileges.

¹⁹A pre-charging letter, signed by the Director of OEE, constitutes a formal complaint against a company and indicates BIS' reason(s) for believing that a violation of the export control laws has occurred.

the duration of the denial period, provided that the respondent complies with the terms of the order, which would include payment of administrative penalties. Failure to pay or committing any other violation might result in the imposition of a full denial of export privileges. After a settlement is reached, an order is drafted and signed by the Assistant Secretary for Export Enforcement. Cases that are settled may not be reopened or appealed.

Conversely, if the company or individual fails to respond to the pre-charging letter or contests the charges, a formal charging letter is issued and the case is referred to the administrative law judge (ALJ) for adjudication. In the case of the respondent's failure to respond to the charging letter, BIS files a motion of default action against the company or individual.²⁰ Based on the evidence presented, the ALJ submits a recommended decision and order to the Under Secretary of Commerce for Industry and Security who then issues a written order approving, modifying, or vacating the recommended decision and order of the ALJ. The charged party may appeal the Under Secretary's written order to the U.S. Court of Appeals for the District of Columbia.

Preventive Enforcement Measures

End-use checks. As an important component of the export control process, end-use checks help determine if the overseas parties or representatives of U.S. exporters are suitable for receiving sensitive U.S. items and technology and will likely comply with appropriate end-use conditions and retransfer restrictions. End-use checks consist of pre-license checks (PLCs) and post shipment verifications (PSVs). A PLC is conducted before approval of a license application to obtain information about a foreign end user or intermediary consignee, which helps validate information on export license applications. The results of PLCs are factored into Export Enforcement's licensing recommendations to Export Administration's licensing officials. In contrast, a PSV is conducted after goods have been shipped, to determine whether the licensed item or technology was received and is being used in accordance with the provisions of the license. PSVs help assure that all parties involved in the transaction—exporters, shippers, consignees, and end users—comply with the terms of export licenses.

(b) (7)(E)

(b) (7)(E) most PSVs and some PLCs are conducted by OEE's agents under the Safeguards Verification Program. In FY 2001, 373 PLCs and 689 PSVs were conducted. End-use checks may be initiated or requested by any of the parties involved in the license review process, including BIS' licensing or enforcement personnel, or export licensing referral agencies.

Project Outreach. OEE's agents conduct outreach visits with companies to educate them about the export control laws and seek their cooperation in identifying illegal export activity within their respective industry. Agents also conduct outreach visits to follow-up on certain types of investigative leads, such as (b) (7)(E). In addition, (b) (7)(E) (b) (7)(E)

²⁰Failure to respond constitutes a waiver of the respondent's rights to appear and contest the allegations in the formal charging letter.

(b) (7)(E)

(b) (7)(E) across the country; 4 of which were held in conjunction with seminars sponsored by the Office of Exporter Services (OExS), an office within BIS' Export Administration.

(b) (7)(E)

(b) (7)(E)

Export Enforcement International Outreach. BIS officials provide advice and information on methods to enforce export control laws and regulations to other countries through international export control seminars and workshops. In FY 2002, BIS conducted a number of outreach programs with a particular emphasis on countries with transshipment hubs²¹ to achieve more effective export control enforcement. For example, in March 2002, the Under Secretary of Commerce for Industry and Security and the Assistant Secretary for Export Enforcement led an interagency delegation to Hong Kong for the seventh round of the U.S.–Hong Kong Interagency Export Control Discussions. Export Enforcement officials also conducted training and technical workshops in Cyprus, the Czech Republic, Hungary, Malta, Romania, Slovakia, and the United Arab Emirates. In addition, BIS officials participated in international nonproliferation regimes, including the Missile Technology Control Regime, the Nuclear Suppliers Group, the Australia Group (for chemical and biological weapons), and the Wassenaar Arrangement (conventional weapons).

For FY 2003, BIS is focused on enhancing trade security by working in partnership with transshipment countries and the trade community to highlight the danger of illicit diversion of sensitive items through the major transshipment ports. In October 2002, BIS announced its Transshipment Country Export Control Initiative (TECI), which is a cooperative endeavor that seeks to strengthen the trade compliance and export control practices of government and industry in the major transshipment hubs. Towards that end, the Deputy Under Secretary of Commerce

²¹A transshipment hub is a global commerce port which processes large volumes of shipments. Most transshipment hubs are located near countries of concern. The proximity of transshipment hubs to destinations of concern increases the risk of sensitive technologies being diverted or illicitly re-exported to those destinations. Transshipment hubs include Hong Kong, Singapore, and the United Arab Emirates.

for Industry and Security promoted the goals of TECI to U.S. trade partners at the Southeast Asian Conference on Trade Security in Thailand during December 2002.

Other Preventive Enforcement Efforts

BIS first published its list of “unverified” foreign entities in June 2002. The list essentially advises U.S. exporters about foreign companies on which the United States has been unable to conduct requested PLCs or PSVs and warns U.S. exporters to perform enhanced due diligence before exporting any items to the listed entities. The list does not impose a new licensing requirement for exports to these entities. Exporters are required to seek a license only if, upon completion of their due diligence, they believe that the transaction involves a proliferation activity or is in violation of the Export Administration.

In addition, Export Enforcement maintains the (1) “Entity List,” which indicates those end users determined to present an unacceptable risk of diversion because of their link to the development of weapons of mass destruction or the missiles used to deliver those weapons and puts exporters on notice of export license requirements that apply to exports to these parties, and (2) “List of Denied Persons,” which contains the names and addresses of those firms and individuals denied access to U.S. goods, and advises U.S. companies to avoid doing business with these entities.

OBSERVATIONS AND CONCLUSIONS

I. Export Enforcement's Investigative Process Produces Few Criminal Prosecutions and Administrative Sanctions

A key BIS performance goal for Export Enforcement is to detect illegal export transactions and penalize violators.²² Towards that end, in its FY 2003 Annual Performance Plan, BIS states that it, "...will devote its current level of enforcement resources to investigations that have the highest probability of leading to prosecution of export violators." As such, we examined Export Enforcement's investigative process for preventing and detecting illegal export transactions and for prosecuting violators of U.S. export control laws. We found a number of systemic weaknesses that warrant BIS' attention and improvement:

- ❖ **Stronger case management oversight is needed.** Neither case development nor case leads are consistently monitored or evaluated by management.
- ❖ **The processing of license determinations needs to be improved.** Inconsistent and untimely determinations sometimes terminate or postpone investigations conducted by the Office of Export Enforcement (OEE).
- ❖ **The administrative remedy process needs to be more transparent and timely.** The rationale with regard to how administrative penalties are determined is not transparent. In addition, the Office of Chief Counsel's processing of cases can be untimely.
- ❖ **Delinquent administrative penalty accounts need to be followed up.** OEE does not take enforcement action against companies and individuals who fail to pay monetary penalties.
- ❖ **Better case management guidance and agent training should improve enforcement capabilities.** The new *Special Agent Manual (SAM)* lacks sufficient policies and procedures to guide agents in conducting investigations, and training is not consistently provided.
- ❖ **Better cooperation with other federal law enforcement and intelligence agencies could strengthen its investigative process.** Export Enforcement's relations with other federal law enforcement and intelligence agencies should be improved to help it better meet its goal of preventing, detecting, and prosecuting illegal export transactions.

(Figure 3 on page 14 illustrates the entire investigative process and identifies, by color code, the steps in the process that are impacted by these weaknesses.)

We would like to point out that some of these weaknesses are partly dependent upon external factors. For example, BIS must rely on the Department of Justice's U.S. Attorneys Office to

²² BIS' FY 2003 Annual Performance Plan.

criminally prosecute its cases. However, Assistant U.S. Attorneys (AUSAs) with whom we spoke informed us that dual-use export control cases can be very complex and without strong export control legislation, these cases can lack jury appeal. For instance, some AUSAs stated that it is difficult for a jury to grasp the importance of export controls when new export control legislation has not been approved by the Congress. As a result, AUSAs are sometimes reluctant to accept an export enforcement case for prosecution. In an effort to better educate AUSAs on dual-use export control laws and regulations, we noted that, on occasion, the former Assistant Secretary for Export Enforcement, the Acting Assistant Secretary for Export Enforcement, and the Director of OEE have conducted outreach visits with AUSAs in an effort to "sell" OEE cases to them.

However, the cumulative effect of these inadequacies in the investigative process results in few criminal convictions and administrative sanctions from the many cases opened by Export Enforcement. In FY 2001 and FY 2002, for example, Export Enforcement obtained criminal convictions in 6 cases in FY 2001 and 3 in FY 2002. In addition, 25 administrative enforcement actions were taken in each of these two years.²³ (Table 1 provides a comparison of case data from FYs 1998 thru 2002.)

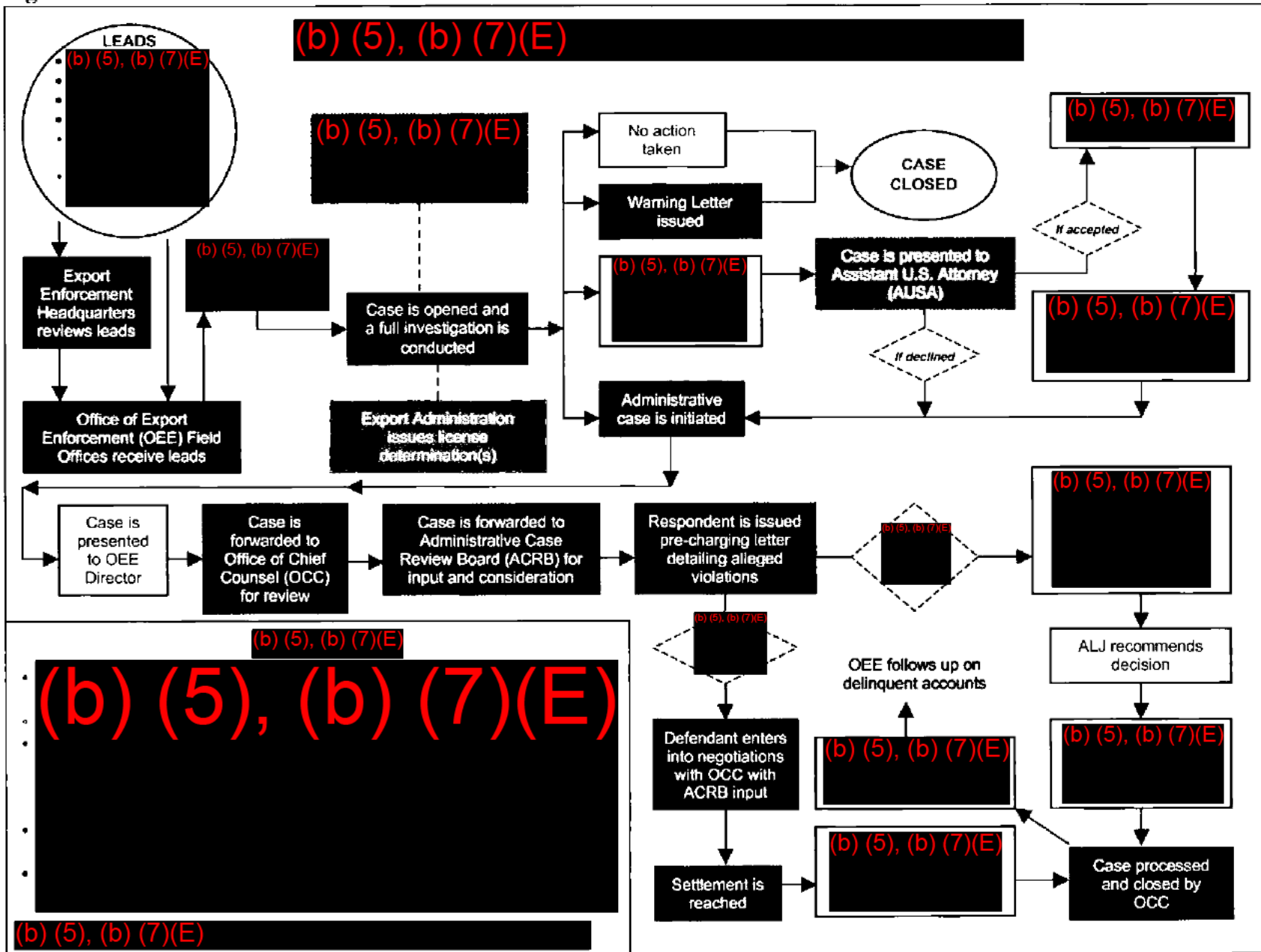
Table 1: Export Enforcement Case Data, FYs 1998-2002^a

	1998	1999	2000	2001	2002
Total Cases Opened	N/A ^b	N/A ^b	N/A ^b	1060 ^c	1015 ^c
Cases Yielding Criminal Convictions	10	11	6	6	3
Administrative Sanctions Imposed	44	26	29	25	25
Warning Letter Issued	266	263	192	208 ^d	132 ^d
Cases Yielding Criminal Indictments/Informations^e	N/A ^b	11	6	8	6
Total Cases Closed	N/A ^b	N/A ^b	N/A ^b	1227 ^c	941 ^c
Notes:					
^a Unless noted otherwise, data derived from BIS Annual Reports (FYs 1998-2002).					
^b Data not readily available from BIS.					
^c Data provided by Export Enforcement.					
^d Data provided by Export Enforcement and reflect cases closed with warning letters.					
^e Includes indictments and informations that led to convictions in the same fiscal year. An "information" is an accusation or criminal charge brought by the prosecutor without a grand jury indictment.					

Sources: Bureau of Industry and Security.

²³ The average yearly caseload was calculated by taking an average of the total number of cases opened in FYs 2001 and 2002.

Figure 3



14

Source: OIG Analysis.

A. The investigative process needs better management oversight

OEE management is responsible for designing standard investigative operating procedures for its staff, and regularly monitoring compliance with them. However, we found this oversight (at both the headquarters and field office levels) was inadequate in the following areas: (1) case development was not consistently monitored and (2) case leads were not being adequately assessed and prioritized. It should be noted that during the course of our review, OEE hired new SACs for its Boston, Los Angeles, and Washington Field Offices and is currently trying to fill two management positions at headquarters (including the Assistant Director for Investigations and the Assistant Director for the Intelligence and Field Support Division).

Case development should be better monitored

Not all of OEE's SACs or headquarters officials are adequately monitoring case activity. Specifically, we found that the majority of cases from our sample²⁴ (b) (7)(E)

In addition, we determined that the majority of SACs were not conducting quarterly case reviews for all cases, as required.²⁵ As a result, full-scale investigations are being launched regardless of merit, increasing agents' caseloads with cases that may not warrant attention and are ultimately closed because of no violation or insufficient evidence of a violation. The larger caseloads tend to slow overall case processing.

Preliminary Investigations. According to the SAM, the SAC is responsible for case control. When a lead is received at the field office, the SAC assigns it to an agent, for a preliminary investigation. The purpose of a preliminary investigation is to conduct an initial inquiry on all credible leads received. If the investigation is not completed within 90 days,²⁶ the SAC must request an extension from the Director of OEE. At that time, a full-scale investigation is opened. However, we found that OEE's former export enforcement information system (b) (7)(E)

Our review of 87 closed case files obtained from the four OEE field offices we visited—all of which had been upgraded to headquarters cases—found that 80 (92 percent) were closed without criminal or administrative action. In some of these cases, we found minimal investigative work

²⁴Our review predominantly focused on 87 cases closed in FY 2001. Our sample included all of the closed criminal and/or administrative cases from the four field offices that we visited. We were not given access to open criminal or administrative cases.

²⁵Although the 1989 SAM only required SACs to review cases every 6 months, the Director of OEE informed us that he subsequently issued an ODM requiring quarterly case reviews, and this requirement has been incorporated into the 2002 SAM

²⁶The 2002 manual stipulates that a field office investigation must be completed within 120 days.

had been conducted and others where no investigative work had been conducted before they were upgraded to a headquarters case.

While we understand that many OEE agents have heavy caseloads (e.g., in July 2002, agents in New York were handling between 30 and 40 cases each), failure to thoroughly evaluate leads up-front could negatively impact a case later on. For example, in several visa referral cases that we reviewed,²⁷ (b) (7)(E)

(b) (7)(E). In such instances, agents informed us that they must trust the company's assertion that U.S.-controlled technology was not transferred illegally. In addition, export control regulations may change during the course of an investigation forcing OEE to decide whether to pursue a situation that was a potential violation (under the old regulations), but may no longer be so. For example, OEE received a number of allegations involving violations of export control laws enacted in 1998 that prohibited certain exports to India and Pakistan, but when the laws were rescinded in 2001, these cases became more difficult to pursue. In general, as one SAC stated, "leads may simply go cold" if not followed up early. When leads are vetted early during preliminary investigations, SACs can better ensure that agents dedicate their efforts to those cases with the greatest potential.

Quarterly Case Reviews. Once a preliminary investigation is upgraded to a full-scale investigation, SACs are required to conduct quarterly case reviews. Quarterly case reviews help the SACs ensure that agents are expending their resources on viable cases and adequately working them. SACs can also help an agent determine a strategy for pursuing a case during these reviews. While many SACs indicated that they conduct quarterly case reviews on "select" cases, not all conduct quarterly case reviews on all cases.

However, we would like to point out two best practices we noted during our visits to OEE's San Jose and New York field offices. First, the SAC in San Jose, on a quarterly basis, requires her agents to summarize any actions taken to date for each case so that she can walk through the actions with them. This information is updated each quarter and is incorporated into the official case file. In addition, during our visit to OEE's New York field office in July 2002, the SAC showed us a recently created quarterly case review form that each of his agents is required to complete. The form requires an update on all cases and if an agent has not taken any action on a case in a few months, the SAC requires an explanation.

Because not all of OEE's SACs conduct quarterly case reviews on all cases, we found that many cases languished in an agent's queue with little or no action.²⁸ Again, as stated earlier, we found some cases where partial investigative work had been conducted and others where no investigative work had taken place. Our review of the 87 case histories revealed the following:

²⁷(b) (7)(E)

(b) (7)(E)

²⁸Please note that while our case review focused on cases closed in FY 2001, some of them were opened years ago under former SACs.

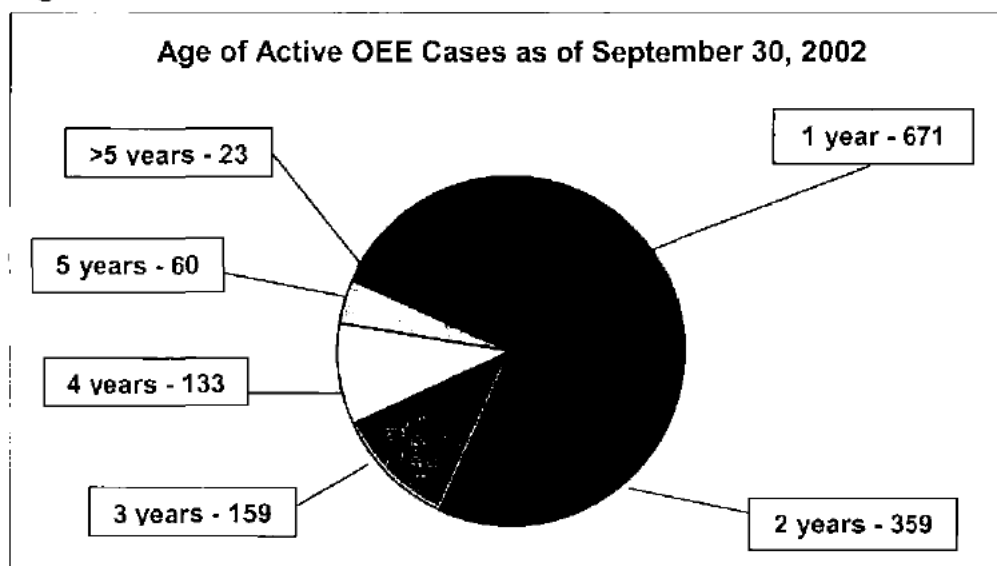
- ❖ Seven cases were closed with administrative action, with an average time to case completion of 1404 days (or 4 years).²⁹
- ❖ Twenty-nine cases were closed with a warning letter, with an average time to case completion of 664 days (or 1.8 years).
- ❖ Fifty-one cases were closed due to insufficient evidence or no evidence of a violation, with an average time to completion of 1,044 days (or 2.9 years).

Based on our discussions with various law enforcement agents (from OEE, Customs, and FBI), we understand that agents may require several years to investigate potential criminal or administrative cases. However, the majority of OEE's investigations close with no violation after many months of being in an active case status. In addition, in FYs 2001 and 2002, 15 and 10 cases were closed, respectively, because the 5-year statute of limitations had expired. We would like to point out that the Acting Assistant Secretary for Export Enforcement visited the Los Angeles Field Office after we completed our fieldwork there to provide the office with guidance and direction on "cleaning up" their old cases. Specifically, we were told that she instructed the agents to close all cases that were over four years old that had no merit. We believe this was a positive effort and that OEE headquarters (b) (5)

(b) (5)

Figure 4 provides a snapshot of the individual case life for OEE's 1,405 active cases as of September 30, 2002.

Figure 4



Source: Export Enforcement, Bureau of Industry and Security.

²⁹Some of these were also untimely due to, among other things, OEE's investigative process and the administrative review process (see section C).

During the course of our review, we also noted that OEE headquarters does not monitor warning letters issued by SACs. In FYs 2001 and 2002, 208 and 132 cases, respectively, were closed with warning letters. The SAM provides guidance on issuing a warning letter; however, most SACs we spoke with stated that they rely on their own experience in deciding to issue these letters rather than on the guidance. There is currently no requirement for a SAC to seek headquarters' clearance for issuance of a warning letter. (b) (5)

RECOMMENDATIONS. OEE headquarters should do the following:

- ❖ (b) (5)
- ❖ (b) (5)
- ❖ (b) (5)
- ❖ Require SACs to provide quarterly reports to OEE headquarters on the status of their quarterly case reviews. Such reports should include the total number of cases open in their field office, the number of cases opened and closed during a particular quarter, as well as warning letters, indictments, convictions, and the number of administrative cases pending at headquarters.



In response to our draft report, BIS recognized the (b) (5)

In addition, it stated that OEE (b) (5)

We believe BIS' actions will meet the intent of our recommendation once completed.

In addition, BIS has reportedly (b) (5)

(b) (5) . Towards
this end, BIS' (b) (5)

With regard to our recommendation that (b) (5)
In the interim, as stated above, the Acting Assistant Secretary
for Export Enforcement will (b) (5)

Finally, according to BIS' written response, in February 2003, OEE instituted a policy that requires the SACs to conduct case reviews twice a year, not quarterly. The SACs are required to report to the Director and Assistant Director for Investigations every six months that they have completed reviews of all their field office cases. As such, OEE stated that it will amend the SAM accordingly.

Headquarters case leads need to be evaluated

Export Enforcement does not routinely track the outcome of headquarters leads, such as (b) (7)(E) (b) (7)(E), and intelligence leads, that are generated or passed on to the field offices by IFSD and the Office of Enforcement Analysis. Therefore, the investigative potential of these leads is not fully being evaluated.

(b) (7)(E)
We found that many agents and SACs dislike headquarters leads because they take up a lot of their time but typically do not result in criminal or administrative cases.

We could not fully evaluate these issues since neither OEA nor IFSD tracks the number or disposition of their referrals. However, our review of the 87 closed cases supported some of the SACs' and agents' concerns (see table 2).

Table 2: Disposition of Headquarters Leads from Select Closed OEE Cases

Type of Lead	Administrative Action	Warning Letter	No Violation or Insufficient Evidence
Project Outreach	0	0	5
Intelligence	1	2	3
(b) (7)(E)	0	0	11
(b) (7)(E)	0	7	4

* The leads from the remaining 54 cases in our sample were generated from self-disclosures, informants, spin-offs from other cases, and end-use checks.

Source: OEE's Washington, New York, Los Angeles, and San José Field Offices.

In our March 2000 export control review, we recommended that BIS periodically assess its Visa Application Review Program to determine whether the resources dedicated to it justify the results. Currently, there are approximately 2.75 full-time equivalents (ranging in grades from a GS-12 to a GS-14) devoted to this program. The Director of OEA informed us that BIS' FY 2003 budget request also includes an additional full-time equivalent to be applied to this program. (b) (7)(E)

(b) (7)(E)

Given that the assessment was not completed until the end of our review, we were unable to fully assess all of the information contained in the report.³⁰ However, we would like to note some highlights from the assessment and offer a few general comments. (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

(b) (7)(E) was incorporated into existing investigations. As we discussed in the first part of this section, the fact that there are open investigations stemming (b) (7)(E) does not, in our opinion, indicate whether the resources dedicated to the program justify the results. Again, our review indicates that investigations can remain open without any investigative work being done on them. A more appropriate measure of the usefulness of this program and its leads would

³⁰ The visa application review assessment was not provided to the OIG until January 28, 2003.

be a measure of the outcome of these referrals as they relate to the enforcement of export controls, e.g., visa referrals that resulted in warning letters issued, criminal convictions, or administrative sanctions.

The BIS 2003 assessment also indicates that, as a result of the visa review program, (1) 28 visa denial recommendations have been submitted to the State Department, (2) (b) (7)(E) (b) (7)(E),³¹ and (3) 3 warning letters were issued. In addition, the assessment highlights the fact that there have been significant intelligence benefits resulting from this program.

While we do not question (b) (7)(E)

—according to its FY 2003 Performance Plan, BIS states that it will devote its current level of enforcement resources to investigations that have the highest probability of leading to the prosecution of export violators. Accordingly, it follows that Export Enforcement's involvement in the program (i.e., the number of resources dedicated to this program and the scope of the program), as well as the (b) (7)(E) and intelligence research programs, should focus on its mission of identifying and following up on the most effective leads for developing criminal and/or administrative export enforcement cases.

RECOMMENDATION. Export Enforcement (b) (5)

In its written response to our draft report, BIS stated (b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

However, BIS' written response also noted (b) (5), (b) (7)(E)

³¹ (b) (7)(E)

(b) (5), (b) (7)(E). While we were not provided a copy of the actual survey results, only four of the cases cited in the assessment appear to be highly active export enforcement criminal investigations (involving search warrants and detentions, as well as, two indictments in one case). An additional case was apparently accepted by an AUSA for criminal prosecution but later declined due to insufficient evidence and a warning letter was issued instead.

Our report highlighted three specific types of headquarters leads that, according to many OEE agents and SACs, resulted in few criminal or administrative cases. Again, our report notes that we were unable to fully evaluate these issues since neither OEA nor IFSD tracked the number or disposition of their referrals. However, as discussed in our draft report, our review of 87 closed cases supported some of the SACs' and agents' concerns (see table 2).

Overall, we are encouraged by BIS' actions to (b) (5)

B. License determinations are problematic

In the early stages of an investigation, OEE requests a license determination (LD) to help it decide whether a company or individual has violated, or attempted to violate, the EAR and thus whether enforcement action is warranted. An LD, completed by a licensing officer, is an official finding by Export Administration that indicates (1) whether the item is subject to the EAR, (2) the reason for control, if any, (3) the export control commodity number for the item, and (4) the licensing policy for the export of the item to the specified destination (i.e., a presumption of approval or denial of an export license application for the commodity and destination in question). OEE reported requesting 441 LDs from Export Administration during FY 2001.

If an LD indicates that the export of a product requires a validated license, and the company or individual made, or attempted to make, unlicensed shipments, then OEE is justified in pursuing criminal or administrative action. A determination must be certified to enable agents to obtain a search warrant or charging letter.³² A certified LD is a notarized document that is signed by the appropriate Export Administration division director and becomes evidence in the criminal or administrative proceeding.

(b) (7)(E)

³²A charging letter is a formal complaint against a company, which indicates BIS' reasons for believing that a violation(s) of the export control laws has occurred.

(b) (7)(E)

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(b) (7) (E)

LDs need to be more timely

During our period of review, the target for LD processing was 30 days. However, in FY 2001, the average processing time was 73 days, and in several instances, LDs remained pending more than a year after they were requested. For example, as of September 30, 2002, two certified LDs requested on March 8, 2001, had not been completed (a delay of approximately 562 days).

Untimely LDs undermine OEE's ability to fulfill its mission. Late determinations can have serious consequences: (1) investigations may be placed on hold, charges dropped, or cases terminated; (2) case presentations to AUSAs may be postponed; and (3) issuance of charging letters delayed.

Several factors contribute to the untimely LD processing. (b) (7)(E)

(b) (7) (E)

To improve the quality and timeliness of LDs, Export Administration and Export Enforcement drafted a License Determination Work Plan in August 2002, and established a working group comprised of staff from both offices. The working group, known as the Tiger Team, is expected to meet bimonthly to conduct an up-front review of LD requests, resolve issues on pending LDs, and foster greater communication between Export Administration and Export Enforcement.

Under the plan, Export Administration has agreed to a 25 working day target for processing LDs. We note that the Tiger Team is making progress toward achieving this goal. During November 2002, 38 determinations were completed in an average processing time of 25 days.

The work plan also calls for all determinations to be certified as part of the LD process. To facilitate certification, Export Enforcement has added (b) (7)(E) Given that LDs are a

critical element in export control enforcement, we support Export Enforcement's efforts to certify all determinations before issuance.

RECOMMENDATIONS. To ensure that the objectives of the License Determination Work Plan are achieved, Export Administration and Export Enforcement should monitor the implementation and progress of the plan. We also recommend that Export Administration ensure that division directors and licensing officers complete "accurate and timely" LDs, as required in their respective performance plans.

In addition, Export Administration should (1) provide more instruction and guidance to OEE agents on the information needed to complete a determination accurately and in a timely manner; and (2) (b) (5)

In its written response to our draft report, BIS stated that the Tiger Team, which now reportedly meets weekly to review new and pending LD requests, is ensuring that LDs are completed in an accurately and timely manner. BIS indicated that the average processing time for LDs closed in February 2003 was 27 days as compared to 64 days for LDs closed in October 2002. BIS also stated that to ensure the accuracy of LDs, it has clarified its internal policies to require the licensing division with the strictest controls (e.g. (b) (7)(E)

Additionally, to ensure that LDs are not issued with clerical errors, BIS has instituted an additional review of certified LDs. (b) (7)(E)

We believe that BIS actions' meet the intent of our recommendations to ensure that the objectives of the License Determination Plan are met and that division directors and licensing officers complete accurate and timely LDs.

In response to our recommendation that Export Administration provide more instruction and guidance to OEE agents on information needed to complete LDs, BIS indicated that it has initiated training at OEE's field offices. As of March 25, 2003, five of the eight field offices received LD training during FY 2003, and the remaining offices will receive the same training by May 2003. BIS stated that additional LD guidelines are being prepared for licensing officers and agents. We support these instructional efforts and request that a copy of the additional LD guidelines be provided to us as part of the action plan.

(b) (5)

Finally, in its response, BIS stated that we identified problems based on only a handful of LDs completed in FY 2002. In addition to the problems we identified concerning LDs in our 1999 export licensing report, our current review identified many inaccurate, inconsistent, and untimely LDs and certified LDs. For purposes of this report, we discussed only the most egregious LDs cases identified in order to highlight the adverse impact that problem LDs have on Export Enforcement's investigative process.

C. Administrative case processing and the collection of penalties could be improved

Export Enforcement pursues administrative action against a company (or individual) under any of four scenarios: (1) the investigation demonstrates no criminal intent on the part of the subject in committing the export control violation; (2) the U.S. Attorney's Office declines to criminally prosecute the case; (3) Export Enforcement decides to supplement a criminal punishment with a civil sanction (i.e., a monetary fine and/or denial of export privileges); or (4) the violators are not subject to U.S. criminal jurisdiction. Regardless of the reason for pursuing an administrative remedy, the case flows through BIS' administrative process in the same manner.

The Office of Chief Counsel for Industry and Security (OCC) represents Export Enforcement in all administrative enforcement proceedings. In both FY 2001 and FY 2002, OCC closed 25 administrative enforcement cases (see table 3).³¹ As a result, civil penalties totaling \$2,392,000 and \$5,198,500, respectively, were imposed.

Table 3: Results of Administrative Enforcement Cases (FYs 2001-2002)

Results	FY 2001	FY 2002
Civil Penalties (including denial of export privileges)	13 (5)	18 (5)
Denial of Export Privileges Only	6	3
Section 11(h) Denial*	4	1
Temporary Denial Order	1	3**
Other	1***	0

*Section 11(h) of the EAA authorizes the Secretary of Commerce to impose a denial of export privileges for up to 10 years upon anyone convicted of specific violations, such as espionage.

**Includes renewals of existing temporary denial orders.

*** An existing order was amended.

Source: BIS' FY 2001 Annual Report (Appendix A -Table 5-2) and FY 2002 Annual Report (Appendix D - Table 1).

Our review of the administrative remedy process revealed (1) a lack of transparency with regard to how administrative penalties are determined, and (2) untimely handling of some cases by OCC. We also found that OEE is not taking follow-up enforcement action against companies and individuals who fail to pay administrative penalties.

³¹A case is considered closed by OCC on the date the order is signed.

Determination of penalties needs to be more transparent

According to its charter, BIS established the Administrative Case Review Board (ACRB) in February 2002 to ensure that export enforcement cases are processed consistently, fairly, and in accordance with best legal practices. The ACRB reviews and decides upon administrative charges (set forth in pre-charging and charging letters), settlement offers, settlements, dismissal of charges, and other key decisions (e.g., litigation strategy). The charter also stipulates that the ACRB receives recommendations with respect to these issues from OBE or the Office of Antiboycott Compliance (OAC), as appropriate.

The ACRB advises the Assistant Secretary for Export Enforcement at the important stages of administrative cases and assists in determining Export Enforcement's positions related to the prosecution of cases. The Assistant Secretary has the authority to affirm, reject, remand, or modify the ACRB's recommendations. According to its charter, the ACRB is composed of three members—(1) the Deputy Assistant Secretary for Export Enforcement, who presides over board meetings, (2) the Chief Counsel for Industry and Security, and (3) either the Director of OAC for an export control case or the Director of OEE for an antiboycott case.

Prior to the creation of the ACRB, the shaping of legal strategy, negotiation, and resolution of cases were primarily handled at a lower level of management involving the Director of OEE and OCC attorneys. The Deputy Under Secretary of Commerce for Industry and Security, who participated in the creation of the Board, informed us that, while there were no major problems with the pre-ACRB administrative process, the purpose of designing the ACRB was to ensure best legal practices and that the positions taken by Export Enforcement in cases reflect the policy goals of BIS, as set by senior managers.

Of the 25 administrative enforcement cases closed in FY 2002, the ACRB deliberated 5 of them. Because the ACRB reviewed few of the administrative cases closed during FY 2002, we were unable to fully analyze its impact on the processing and resolution of administrative cases. However, we did find that the ACRB's administrative penalty decisions are not always transparent.

Specifically, no guidelines or table of penalties exists for determining appropriate fees or number of years to deny export privileges. Without formal guidelines, penalties may appear arbitrary or inconsistent and future board members could have a difficult time deciding cases without a source of guidance to consult. BIS' Chief Counsel stated (b) (5)

[REDACTED] A table of penalties could work better under any of the proposals for a new Export Administration Act which would have a higher range of penalties.

RECOMMENDATION. Export Enforcement and OCC (b) (5)

In its response to our draft report, BIS disagreed with a recommendation we had in the draft report (b) (5)

BIS stated that the ACRB is an advisory and review body, not the final decision-making authority in the administrative resolution of cases – as they contend we imply in stating the “ACRB reviews and decides upon administrative charges” (see page 27). We want to point out that the language in our report describing the role of the ACRB was taken directly from BIS’ “Export Enforcement Administrative Case Board” charter, dated February 19, 2002, which was provided to us by Export Enforcement. If the ACRB is in fact only an advisory board, BIS should revise the charter to reflect the actual intent of the board.

In addition, although we recommended that BIS (b) (5)

As such, we believe BIS’ alternative is reasonable and will address the problem.

Processing of administrative cases should be more timely

Export Enforcement relies on OCC to initiate timely action against individuals and companies that violate the export control laws. From our sample of 87 cases, we reviewed the 7 cases closed with administrative sanctions and found that OCC’s processing of these cases was sometimes slow, for example:

- ❖ An OEE investigation of a Pakistani company (“Company M”), initiated in June 1992, revealed that the firm was a fictitious front company. OEE sought an administrative sanction in the form of an indefinite denial order to preclude U.S. firms from making future shipments to the company. On June 23, 1994, OCC accepted the case, but did not issue a charging letter until April 1, 1997, after the statute of limitations began to expire.³⁴ A year later, and with no response from Company M to the charging letter, OEE requested that default action be taken. However, OCC did not file the default motion until August 2000, which resulted in a final order on December 14, 2000, denying Company M’s export privileges for 10 years. The untimeliness in this case was partly due to OCC’s concerns about initiating the default action without knowing whether the firm had received the charging letter. However, OCC knew, upon accepting the case and issuing the charging letter, that Company M was fictitious and, therefore, unlikely to respond to the letter.

³⁴There were multiple violations committed. The date of the oldest violation for statute of limitations purposes was January 29, 1992.

- ❖ A self-disclosure case³⁵ was accepted by OCC on January 20, 2000. The proposed charging letter was issued on February 24, 2000, but the final order was not signed until May 22, 2001, despite the fact that the company was cooperative in the settlement. OCC closed the case on July 16, 2001.
- ❖ OCC was also slow to initiate action in a Section 11(h) denial case. Though the case was accepted on June 9, 1999, OCC did not take any action until March 24, 2000. OCC closed the case on September 28, 2000.

Some agents also informed us that since the ACRB's creation, the processing time for administrative cases remains slow. For example, a case accepted by OCC in September 2001, had yet to be presented to the ACRB for a proposed charging letter as of January 3, 2003. As of early December 2002, 34 export control cases were on the ACRB's schedule, but Export Enforcement was unable to provide us with the chronologies of these cases so that we could evaluate the case processing times.³⁶

Several factors contribute to OCC's slow case processing:

- ❖ Neither Export Enforcement nor OCC has established time lines for case processing by OCC: there is no target date (e.g., 30 days from receipt of a case) by which an OCC attorney must present a proposed charging letter to the ACRB. We discussed this issue with the Acting Assistant Secretary for Export Enforcement and the Chief Counsel for Industry and Security; both officials agree that internal processing deadlines are beneficial and intend to move forward on designing new administrative case procedures to include the fast-tracking of certain types of cases.
- ❖ OEE's administrative case reports are not always complete or well prepared, and OCC attorneys must contact the agent for clarification or additional information before a case package can be presented to the ACRB. According to the Acting Assistant Secretary for Export Enforcement, the new administrative case procedures will include a new format for OEE to use in presenting its cases. This format should satisfy the requirements of OCC and the ACRB.

Untimely case processing could impede BIS' ability to successfully obtain administrative remedies against violators of the export control laws. A case that is not promptly processed could be terminated should the statute of limitations expire, or weakened as evidence gets old or export control regulations change. In addition, delays in OCC's processing of cases could result

³⁵A company or individual voluntarily disclosing to OEE that it has or may have committed an export control violation(s).

³⁶In October 2002, we requested from Export Enforcement the case chronologies of the 34 cases to determine the number of days it took OCC, after accepting the cases, to present the case packages to the Board and issue proposed charging letters. Despite numerous requests to Export Enforcement for the information, we did not receive the case chronologies and, therefore, were unable to evaluate OCC's processing of cases since the ACRB commenced.

in continued shipments of controlled commodities by or to a problem company that has a denial of export privileges sanction pending.

RECOMMENDATIONS. Export Enforcement and OCC should (b) (5)

In its written response to our draft report, BIS reported that OEE and OCC (b) (5)

. We believe that BIS' actions will meet the intent of our recommendations once completed. We request that a copy of the new administrative case procedures and the revised OEE case report format be provided to us as part of the action plan.

OEE should take stronger action to enforce payment of penalties

Collection of penalties is the final step in Export Enforcement's administrative process. BIS' Office of the Comptroller receives these payments and forwards them to Commerce's National Oceanographic and Atmospheric Administration's (NOAA's) Office of Finance and Administration for processing and deposit in the U.S. Treasury. NOAA sends a reminder letter to late payers every 30 days for up to 6 months, after which the account is considered delinquent and referred to the Treasury for collections. Each month, the comptroller sends copies of account deliverables to both OCC and the Office of the Director of Export Enforcement.

OEE attempts to mitigate the potential for delinquencies in its administrative orders by suspending a denial of export privileges—when applicable—on the condition that defendants comply with the terms of the order, including payment of penalties. Failure to pay penalties could result in the imposition of a full denial of export privileges.

When delinquencies do occur, the EAR gives OEE authority to initiate export denial proceedings. However, we found that OEE is not taking such actions. Specifically, we reviewed five delinquent OEE accounts out of nine being monitored by the comptroller. These accounts had combined outstanding penalties exceeding \$300,000 out of nearly \$730,000 owed BIS. OEE had taken no additional steps to enforce payment from any of the five respondents. This failure to implement measures to secure payment of penalties might encourage noncompliance by EAR violators and thereby diminish the effectiveness of export enforcement. However, as a result of our inquiry, the office of the OEE Director sent emails to the appropriate field offices directing the agents in charge of these cases to contact the companies and/or individuals and investigate these matters further. Since issuance of our draft report, OEE determined that one company had

gone bankrupt, one company went out of business, and three accounts were referred by NOAA to Treasury for collection.

We confirmed that OEE receives monthly account activity reports from BIS' Office of the Comptroller, and is therefore being notified of delinquencies; but we learned that office staff has been simply filing the reports without reviewing them. Instead, a staff person within the OEE Director's office had been relying on direct notification from a staff person in the comptroller's office, via e-mail or phone, regarding specific delinquencies. However, this practice ceased in mid-2000 when the responsibility for monitoring BIS accounts was transferred to another individual within the comptroller's office.

RECOMMENDATION. To enforce administrative sanctions, Export Enforcement (b) (5)

In its written response to our draft report, BIS stated that it is (b) (5)

BIS' response will meet the intent of our recommendation once completed.

D. Enhanced Special Agent Manual guidance and agent training would improve enforcement capabilities

BIS (b) (5)

The *Special Agent Manual* is the OEE agents' guidebook on investigative case management, administrative policies and procedures, personnel issues, and export enforcement operations. Until the manual's revision in November 2002, agents had been working with an outdated 1989 version. We noted that the 2002 SAM is in electronic format, making it easier to update and disseminate to agents nationwide. We also noted significant improvements in the revised manual, such as revised travel and official vehicle use policies, new guidance on outside employment, and agent disciplinary procedures.

While we commend OEE for this revision, we note that the (b) (5)

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(b) (5)

(b) (5)

RECOMMENDATIONS. OEE (b) (5)

(b) (5)

(b) (5)



In its written response to our draft report, BIS informed us (b) (5)

We request that a copy of (b) (5)

In addition, BIS (b) (5)

We acknowledge this effort and request that a copy of this statement be provided to us in the action plan.

BIS also (b) (5)

BIS' action will meet the intent of our recommendation once completed.

Agent training program should be restructured

BIS' 2002 Annual Report to the Congress states, "Training in export control laws and in modern investigatory techniques is crucial to the development of Export Enforcement's special agents." However, we have some concerns about the adequacy of training OEE provides its agents. The agency tries to hold annual training seminars. In FY 2002, it conducted a 3-day basic course for new agents and a weeklong advanced course for all agents. The majority of agents we interviewed spoke highly of these seminars, indicating that the course materials and instructors (e.g., AUSAs, OCC attorneys, and FBI agents) were especially beneficial.

Still, agents we interviewed and surveyed indicated that additional training would improve their performance, especially in areas such as advanced interviewing techniques, presentation skills, intelligence and counterintelligence, money laundering, and export control regulations. We believe improvements in the following areas would also enhance the enforcement capabilities of OEE agents and, by extension, the agency's success at achieving its mission:

New agent training. This training is not consistently offered. Several agents who participated in the FY 2002 seminar told us that they had been employed by OEE for 3 years and were just now receiving this "basic" training. In addition, while all agents complete formal basic criminal investigative training at a federal law enforcement facility, OEE does not routinely provide orientation that specifically relates this training to the agency's mission, programs, policies, rules, regulations, and investigative procedures, as do some agencies. At Customs, for example, agents who complete basic criminal investigative training receive separate "add-on" instruction in the specialized laws and regulations that the agency enforces.

On-the-job training program. Both the old and new SAMs provide guidance for an on-the-job training (OJT) program for new agents. OJT allows newly hired agents the invaluable opportunity of working on criminal or administrative export enforcement cases under the guidance of an experienced OEE investigator. (b) (7)(E)

Career development. (b) (7)(E)

RECOMMENDATIONS. Export Enforcement should do the following:

- ❖ (b) (5)
- ❖ (b) (5)
- ❖ (b) (5)

In its written response to our draft report, BIS stated that it received excellent feedback from the agent training held in April 2002. As such, it is in the process of adapting some of that material together with new case studies and a new regulations course to develop a new agent training module before the end of the year. Furthermore, the response stated that OEE has received good feedback on its revised on-the-job training program that was incorporated into its November 2002 SAM. While we are encouraged by BIS' actions, we want to emphasize the importance of ensuring that the new training materials, including its on-the-job training program, are implemented. BIS' actions meet the intent of our recommendation.

With regard to our recommendation concerning the (b) (5)

(b) (5)

With regard to our recommendations concerning (b) (5)

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E.

(b) (5)

Interagency cooperation on export enforcement is essential to better safeguard U.S. national security and foreign policy interests. This collaboration is imperative to using limited investigatory resources efficiently, gaining access to the resources and expertise of others, reducing duplicative efforts, and conducting successful prosecutions. We examined Export Enforcement's relationship with various Assistant U.S. Attorneys located across the country, Customs, FBI, CIA, and the U.S. Postal Service. We found great variation in Export Enforcement's level of coordination and cooperation with these agencies, and noted that the positive interplay of personalities, especially among agents and their counterparts, is key to building long-term, beneficial interagency relationships.

U.S. Attorneys



U.S. Attorneys serve as the nation's principal litigators under the direction of the Attorney General and the U.S. Department of Justice.⁴⁰ They conduct most of the trial work in which the United States is a party. The U.S. Attorneys have three statutory responsibilities: (1) the prosecution of criminal cases brought by the federal government; (2) the prosecution and defense of civil cases in which the United States is a party; and (3) the collection of debts owed the federal government which are administratively uncollectible.⁴¹

There are 93 U.S. Attorneys stationed throughout the United States, and on Guam, Puerto Rico, the Northern Mariana Islands, and the Virgin Islands. Each U.S. Attorney is the chief federal law enforcement officer of the United States within his or her particular jurisdiction and has a staff of Assistant U.S. Attorneys (AUSAs), who handle casework and litigation. OEE agents work with AUSAs to make arrests and obtain search warrants, grand jury subpoenas, indictments, and convictions.

We discovered that the OEE field offices have vastly different relationships with the AUSAs located in their respective regions. For instance, according to SACs and agents, some AUSAs are more interested than others in accepting export control cases for criminal prosecution. An OEE agent presents a case to the AUSA for possible criminal prosecution, if the case evidence indicates that an export control violation occurred with criminal intent

⁴⁰ www.usdoj.gov/usao (January 30, 2003).

⁴¹ Title 28, Section 507 of the United States Code.

(i.e., it was committed knowingly and willfully). The agent provides the AUSA with a case report that outlines the details of the investigation, including the violations and the specific laws and regulations over which OEE has jurisdiction.

We heard from several AUSAs that OEE's case reports are usually well prepared and contain sufficient evidence and details. As such, the AUSA's decision to accept or decline a case is generally not based on the quality of the work performed by the agent, but rather on other case specific considerations such as the intent of the exporter, number of violations committed, the product type, and the export destination. In particular, the AUSA wants to see evidence of significant violations (i.e., not technical in nature) and an established pattern of misconduct. According to some AUSAs interviewed, although each case is evaluated on its merits, cases that have stronger jury appeal are more likely to be accepted for prosecution (e.g., exports to a designated terrorist entity or embargoed country). Dual-use export control cases, in particular, may lack jury appeal because the products exported may be common items, such as computers, for which the importance of control (versus munitions) is difficult for a jury to understand. In addition, some AUSAs view BIS' internal administrative process as a more appropriate venue for some dual-use cases, especially when the proper punishment is a monetary penalty or when a criminal conviction would yield only probation or a limited prison sentence. Several AUSAs suggested that OEE agents should contact them during the early stages of an investigation for legal assistance to build stronger cases.

A majority of SACs and agents told us that the expired status of the EAA is the most significant impediment to getting cases accepted by AUSAs—they believe that some AUSAs do not consider export control violations as seriously as other types of cases that have established legal authority for criminal prosecution. Some also believe that the lapse of the EAA undercuts the credibility and importance of the export control laws.

However, while some AUSAs with whom we spoke informed us that the EAA's expired status is not the only indicator as to whether they accept or reject a dual-use export control case, they all acknowledged that the lack of strong export control legislation does play into that decision. Some AUSAs stated that it is difficult for a jury to grasp the importance of export controls when new export control legislation has not been approved by the Congress. Since early 1990, both the Congress and the Administration have tried to rewrite the basic law that authorizes the President to regulate exports from the United States. According to BIS officials and all of the AUSAs whom we spoke with, a new EAA is clearly needed to strengthen BIS' enforcement efforts. The focus of the continuing policy debate about the specifics of different versions of draft EAA legislation pertains to disagreements over what national security and proliferation-based controls are needed to restrict exports of dual-use technologies to high-risk countries and entities of concern. There is a wide range of opinions on how the government's export control policies and practices should balance the need to protect U.S. national security and foreign policy interests⁴² with the desire not to unduly hamper U.S. trade opportunities and competitiveness. Striking this balance poses a significant challenge for the parties involved.

⁴²Foreign policy export controls relate to the broad issues of human rights, anti-terrorism, regional stability, chemical and biological warfare, missile technology, and nuclear nonproliferation.

In addition, some AUSAs indicated that the legal standards for convicting a defendant under IEEPA are higher than those were under the EAA. Under IEEPA, there is a requirement that the crime be willful, i.e., a specific intent offense. As such, the AUSA must demonstrate that the defendant knew of and understood the law, and deliberately violated or attempted to violate the law. Whereas the EAA, which also had criminal provisions that required willfulness, included a provision of mere knowledge of the law. As such, under the EAA, the AUSA had to show only that the defendant acted intentionally, and did not have to prove that the defendant knew what he/she did was a crime.

In previous years, Export Enforcement, OEE, and OCC conducted a few workshops on export control laws and regulations for AUSAs in an effort to promote interest in these cases. Both the Acting Assistant Secretary for Export Enforcement and the Director of OEE emphasized to us the importance of reaching out more to AUSAs on a one-on-one basis to encourage them to accept specific OEE cases for criminal prosecutions. We support these efforts as a means of increasing interagency cooperation but encourage BIS to seek additional ways to work with more AUSAs to increase acceptance of OEE cases for prosecution.

RECOMMENDATIONS. (b) (5)

[REDACTED]



In its written response to our draft report, (b) (5)

[REDACTED]

In addition, (b) (5)

[REDACTED]



U.S. Customs Service

Under the EAA, BIS and Customs share responsibility for enforcing the export control laws on dual-use commodities. (See Figure 5 for more information about Customs.) At one time, BIS' OEE and Customs had persistent disagreements over coordinating investigations, pooling resources, and handling overseas cases, which hampered the investigative efforts of both agencies. As a result, BIS and Customs signed the 1993 Export Enforcement Coordination Procedures between the Office of Export Enforcement and the United States Customs Service (the 1993 MOU), which outlines the authorities and procedures for coordinating their law enforcement activities.

According to agents and managers at both OEE and Customs, the overall relationship between the two agencies has since improved, with an increase in cooperative efforts and joint investigations. For example, OEE and Customs worked together in investigating TAL Industries, Inc., which was sentenced to pay a criminal fine of \$1 million and to a maximum 5-year period of corporate probation in May 2001, for making false and misleading statements in connection with a license application submitted by the McDonnell Douglas Corporation for the export of machine tools to China. OEE and Customs agents also conducted a joint investigation on Massive International, which received a fine of \$10,000 in April 2002, for the illegal export of hydraulic stud tensioners to a company listed on the Entity List.⁴³

However, during our review, we discovered that OEE and Customs are not working together as well as they could. We identified several areas in which the agencies need to evaluate and improve their efforts.

Figure 5

U.S. Customs

As the principal U.S. border enforcement agency, Customs has inspection and investigative resources for enforcing approximately 400 laws. In addition to maintaining a headquarters office in Washington, D.C., there are 20 Special Agent in Charge field offices serving the 50 states. These field offices administer and manage all enforcement activities. Customs employs approximately 3,000 headquarters and field agents, of which 5 percent, or about 150 agents, are dedicated to the Strategic Investigations Division. Customs' Trade Enforcement Group, part of its Strategic Investigations Division, enforces export control and other laws. There are also 20 Customs Management Centers located across the United States, which have jurisdiction over all U.S. ports of entry and exit. Of Customs' 7,500 inspectors, 400 are dedicated to the Outbound program, which is responsible for preventing the export of illegal dual-use commodities and munitions as well as stolen vehicles and currency.

Source: U.S. Customs Service.

⁴³The Entity List is a listing of foreign end users involved in proliferation activities. These end users have been determined to present an unacceptable risk of diversion to developing weapons of mass destruction or the missiles used to deliver those weapons. By publishing this list, BIS puts exporters on notice of the export license requirements that apply to exports to these parties.

First, as stated in the 1993 MOU, OEE and Customs agree to exchange a case report list⁴⁴ on a monthly basis; however, (b) (7)(E)

(b) (7)(E)

Neither the Director of OEE nor the former assistant director of OEE could recall the date of the last case report list

(b) (7)(E)

. Both officials stated that the relationship between the agencies has improved, and as such, formal meetings to discuss problematic issues are no longer necessary at the headquarters level. Instead, they noted that OEE and Customs communicate as needed to address issues as they arise. They added that case information is being shared between some OEE and Customs field offices, and that Customs field offices are referring cases for administrative action to their respective local OEE field office. Because the procedures for coordinating their law enforcement activities have changed since 1993, and Customs will become part of the Department of Homeland Security, Export Enforcement and Customs should evaluate the MOU to determine if the terms and coordination requirements are still valid and, if not, update it as necessary to reflect current law enforcement practices and procedures.

Second, some OEE agents do not query Customs' Treasury Enforcement Communications System (TECS)⁴⁵ to determine if Customs has an investigative interest in the same company or individual before commencing an investigation or scheduling an outreach visit.

Third, many OEE agents are not engaging Customs agents and inspectors for assistance in meeting OEE's mission. OEE and Customs offices that fail to cooperate risk negatively impacting their respective agency's enforcement and prosecutorial efforts, as they may conduct parallel investigations and duplicative outreach visits, and consequently use limited law enforcement resources inefficiently. For example, both OEE and Customs agents conduct outreach visits to U.S. companies to educate them about export controls and elicit their cooperation in identifying illegal export transactions. Hence, they should be coordinating and sharing information from those visits to ensure that they do not duplicate their efforts and place an undue burden on exporters.

We found that the reasons for the mixed relations between OEE and Customs in the field are varied:

- ❖ Both OEE and Customs agents reported that interpersonal relationships are a significant factor in how well the agencies work together. Some SACs and agents are more congenial and proactive than others in networking with their Customs counterparts. We noted that several OEE agents were once Customs inspectors and are perhaps more able and willing to pursue relationships with former coworkers. For example, one OEE agent who had worked at Customs occasionally examines cargo with inspectors and in one

⁴⁴Per the MOU, the case list is to contain at least (b) (7)(E)

(b) (7)(E)

⁴⁵TECS was created to provide multi-agency access to a common database of enforcement information supplied by Customs, the Drug Enforcement Agency, and the Bureau of Alcohol, Tobacco, and Firearms.

instance stopped the export of computer equipment to an Indian company that was on the denied entities list.

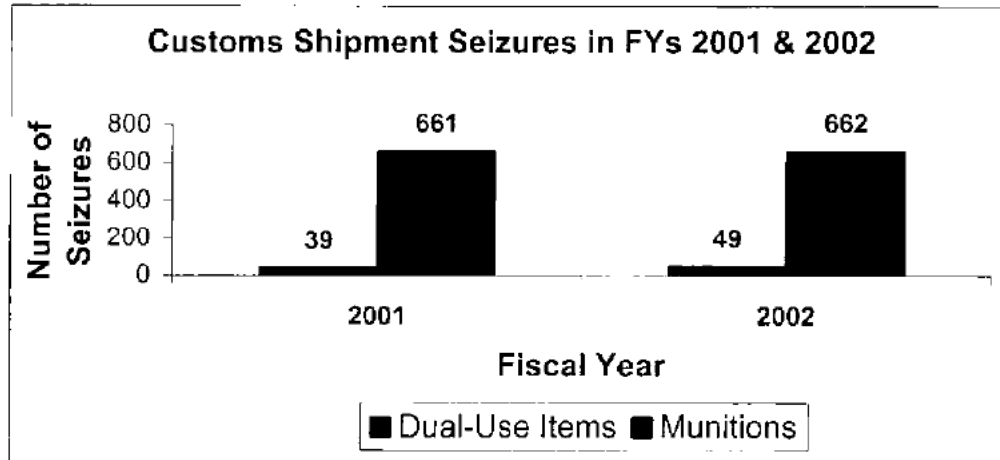
- ❖ The events of September 11th have shifted priorities within Customs' Trade Enforcement Group to a greater focus on the export of munitions and weapons of mass destruction and laundering of terrorist funds.
- ❖ Some rivalry between the agencies remains, particularly with regard to which should lead a joint investigation. A number of OEE agents stated that since Customs has more resources for informant payoffs and covert operations, Customs agents sometimes take control of investigations even if the case leads originated with OEE.

Our review identified one area that offers opportunities for greater cooperation between the agencies – Customs' Outbound program which is focused on detecting and stopping the export of illegal items such as unlicensed shipments of dual-use items and munitions, stolen vehicles, and currency. Approximately 400 Customs inspectors are assigned to the Outbound program and are located at most U.S. ports; they are responsible for enforcing the various export regulations. As such, these inspectors conduct outbound examinations (both physical and documentation inspections) of shipments leaving the United States. The inspectors have various computer systems which help them to target certain types of shipments for examinations.

These Outbound inspectors are the last line of defense at U.S. ports and, thus, key in preventing illegal exports of dual-use items. However, in FYs 2001 and 2002, Customs seized far fewer shipments of dual-use commodities than of munitions (see figure 6). According to a Customs official, the majority of dual-use items seized were shotguns. Some Customs inspectors informed us that identifying illegal shipments of dual-use commodities is sometimes difficult because the export regulations are complex and frequently amended. Several inspectors who we spoke with indicated that they would be agreeable to conducting cargo examinations with OEE agents to better identify controlled dual-use items. We believe that, (b) (5)

[REDACTED]

Figure 6



Source: U.S. Customs Service.

RECOMMENDATIONS. Export Enforcement should:

- ❖ (b) (5) [Redacted]
- ❖ Ensure that OEE (b) (5) [Redacted]
- ❖ (b) (5) [Redacted]

In its written response to our draft report, (b) (5) [Redacted]

(b) (5)

(b) (5)

(b) (5)



Federal Bureau of Investigation

Overall, our review revealed a somewhat strained relationship between OEE and FBI agents. In particular, we learned that some OEE agents have encountered difficulties working with their FBI counterparts—a situation that sometimes impedes OEE’s ability to develop investigations of export control violations. There are, however, a few noted exceptions, especially among those agents assigned to the FBI’s Joint Terrorism Task Forces (JTTFs).

Several factors contribute to the difficult working relationship between OEE and the FBI. Each agency has unique objectives, which, at times, foster divergent goals for an investigation. OEE’s primary goal is to develop export control cases for criminal prosecution; the FBI, however, has various missions including conducting counterintelligence activities. Therefore, when the intelligence value of a case exceeds its criminal value, it is not uncommon for the FBI to ask OEE to suspend a criminal investigation so that the Bureau can pursue a suspect for counterintelligence purposes. Two such instances were contained in our sample of 87 closed OEE cases. In addition, OEE agents stated that, because of the “chinese wall” between intelligence and criminal cases, it is often difficult to work a joint investigation with the FBI. Any evidence determined to be of intelligence value becomes “classified,” and is thus unavailable for use by OEE.

OEE agents assigned to the JTTFs, however, relate positive experiences working with the FBI. The goal of the JTTFs is to maximize cooperation among federal, state, and local law enforcement and public safety agencies to identify, prevent, and deter terrorist activities.⁴⁶

⁴⁶The FBI has established a JTTF in each of its 56 field offices and a national JTTF at its headquarters. The JTTFs are part of the FBI’s Counterterrorism Division.

These agents stated that OEE's presence on the JTTFs has improved the FBI's understanding of OEE and its mission and, thus, has enhanced its willingness to share information on potential export control violations. For example, through OEE's participation on the North Texas Joint Terrorism Task Force, OEE's Dallas Field Office became aware of illegal computer shipments to Libya and Syria by Infocom Corporation. On December 18, 2002, a 33-count indictment was returned against Infocom and several individuals. Charges include illegal exporting, making false statements on SEDs, dealing in the property of a designated terrorist, conspiracy, and money laundering.

However, the overall value added to OEE's mission from assigning agents, either full- or part-time, to the JTTFs is uncertain. Several SACs and agents indicated that few export control leads have originated from participation on the JTTFs, and that agents are often tasked with non-export control-related assignments. Agents assigned to a JTTF part-time continue to handle a full OEE caseload, but cannot give total attention to developing export control cases.

RECOMMENDATIONS. (b) (5)

[REDACTED]

(b) (5)
[REDACTED]



In its written response to our draft report, (b) (5)
[REDACTED]

(b) (5)
[REDACTED]. We believe that BIS actions meet the intent of our recommendation.

Central Intelligence Agency



The CIA is the U.S. government's lead intelligence agency. Its mission is to provide foreign intelligence related to national security through counterintelligence and other activities, to the President, the National Security Council, and any officials who make and execute U.S. national security policy. The primary objective of intelligence analysis is to minimize the uncertainty with which U.S. officials must grapple in making decisions about American national security and foreign policies.⁴⁷ However, during the course of our review, we determined that better coordination is needed between BIS' Export

Enforcement and the CIA to enhance OEE's enforcement capabilities. Specifically, we found that (1) (b) (7)(E)

OEE detail to the CIA. While OEE has routinely detailed an agent to the CIA since 1996, (b) (7)(E) Specifically, (b) (7)(E)

One of WINPAC's⁴⁸ key missions is to study the development of threats, from weapons of mass destruction (nuclear, chemical, and biological weapons) to advanced conventional weapons like lasers, advanced explosives, and armor, as well as all types of missiles. As a part of this mission, (b) (7)(E)

All of OEE's former details to the CIA informed us that they believe there is value added in having an OEE agent detailed to the agency. For example, not only is this agent usually given access to all of WINPAC's databases (b) (7)(E), he or she also has easier access to other intelligence agencies, such as the National Security Agency and the Defense Intelligence Agency, through their respective representatives at the agency. In addition, one WINPAC official told us that having an OEE agent detailed there helps her analysts better understand OEE's mission. As such, she has formally requested that OEE assign another agent there.

While the Acting Assistant Secretary for Export Enforcement told us that she does not think that she will reassign another agent to WINPAC, (b) (7)(E)

We believe (b) (5)

⁴⁷ www.cia.gov/cia/di/faq (January 23, 2003).

⁴⁸ In 2001, the Director of Central Intelligence merged the CIA's Nonproliferation Center with other CIA units to create WINPAC.



OEE's participation in the intelligence collection directive process. During the course of our review, we learned that OEE inconsistently communicates with the CIA regarding the U.S. Government's intelligence collection objectives. Specifically, the intelligence community holds biannual meetings for representatives from various federal agencies to offer feedback on proposed intelligence collection directives. One of the former OEE liaisons informed us that she attended two such meetings—one in early 2001 and one in late 2001. However, OEE has not participated in any such collection meetings since that time. Given that national security issues are incorporated into the CIA's annual collection directives, we believe it is imperative for OEE to actively participate in these meetings. This will help ensure that dual-use export control matters and their connection to weapons of mass destruction, proliferation, and terrorism issues are adequately reflected in the intelligence collection objectives. This is important because it will help determine where the intelligence community's resources will be directed.

CIA's engagement in export control activities. Although one of WINPAC's stated missions involves monitoring activities related to the acquisition of weapons of mass destruction, we are concerned that the CIA may not be (b) (7)(E)

However, given the sensitive nature of this information, we will issue a separate, classified memorandum on this subject. This memorandum will be incorporated in the April 2003 interagency OIG report on export enforcement.

RECOMMENDATIONS. Export Enforcement should do the following:

- ❖ (b) (5) [Redacted]
- ❖ (b) (5) [Redacted]
- ❖ (b) (5) [Redacted]

In addition, we discuss in a (b) (5)

[REDACTED]



In its written response to our draft report (b) (5)

[REDACTED]

[REDACTED] BIS' actions will meet the intent of our recommendations once completed.

With regard to our recommendation for the Under Secretary of Industry and Security (b) (5)

(b) (5)

U.S. Postal Service



During our 1999 export licensing review, we advised BIS that individuals could circumvent dual-use export controls by mailing controlled commodities to countries or entities of concern without seeking an export license. We (b) (5)

[REDACTED]

The EAR authorizes and directs postal officials to take appropriate action to ensure that individuals and organizations using the U.S. mail service comply with export control laws and

regulations.⁴⁹ Such actions include assuring that exports without a license are either outside the scope of the license requirements of the regulations or authorized by a license exception. In addition, the regulations state that Postal Service officials are authorized to: (1) inspect items or documents to be mailed, (2) question individuals, and (3) prohibit lading. When an item cannot be properly identified, the EAR allows the postal official making the inspection to take a sample for more detailed examination or laboratory analysis.

During our current review, the Director of OEE reminded us that it is important to keep shipments by mail in perspective. Specifically, he stated that there are a large number of these shipments, and the vast majority of them are not subject to the EAR. In addition, many OEE agents informed us that most companies use Federal Express or United Parcel Service for shipping small, high-value exports. While some agents reported coordinating with postal officials to obtain mail covers,⁵⁰ no OEE agent, with one exception, reported that they had received leads from or worked an actual export enforcement case with them (see figure 7). Even in this case, the company involved reportedly had never before shipped via the U.S. Postal Service, and it is possible that the company president tried to use the local mail system this time to minimize scrutiny of the packages. Regardless, we believe the case illustrates the potential for using outbound international mail to circumvent dual-use export control laws. Given the fact that the U.S. Postal Service sometimes targets other illegal shipments (e.g., drugs), we believe there may be some mechanism for the U.S. Postal Service to target shipments of dual-use commodities going to countries or entities of concern.

In response to our 1999 recommendation, the U.S. Postal Service stated that, "...a review of the interaction between mail security regulations and export control regulations would be prudent, especially given the sweeping changes in worldwide economic and political conditions...." We believe that this is even more true today, given the continuing war on terrorism. In addition, the Postal Service expressed an interest in learning about what types of exports or geographical areas may be of particular enforcement concern to BIS so that it could create better profiles to improve the U.S. Postal Service's Inspection Service investigations and its coordination with other enforcement agencies.

⁴⁹15 CFR, Part 758.7.

⁵⁰A mail cover is the process used by the U.S. Postal Service to record information appearing on the outside of any class of mail.

Figure 7

As a part of the current interagency OIG review of export enforcement and the concerns we raised in our 1999 report, the U.S. Postal Service OIG is currently evaluating Postal Service policies and procedures relating to export controls, and we hope that improvements will follow. In our view, the Postal Service's policy for monitoring illegal shipments via the mail appears unchanged since our 1999 review, in that the burden remains only on the customer to fill out the SED.

For example, someone mailing an underwater television camera (assuming that he or she labeled the item correctly on the SED) would not be questioned as to whether the camera was a controlled commodity under the Commerce Control List and required an export license. Under current policy, the Postal Service will assume that if a license was needed, the exporter would be responsible for obtaining it.

RECOMMENDATION. As such, (b) (5)

(b) (5)

U.S. Postal Service Case Example


In 1995, a San Jose (CA) field office agent received a tip that the president of a small company in Monterey had bypassed the company's export administrator and personally taken four packages to the Monterey post office for shipment to Taiwan. The packages contained pistol laser sights that required an export license, for which the company did not apply. The agent relayed this information to postal inspectors in San Jose, who then contacted the Monterey postmaster, requesting that she detain the packages until the OEE agent could obtain a search warrant. The agent secured the warrant and traveled to the Monterey post office to execute the search, with the postmaster as a witness. When the unlicensed commodities were discovered, the postmaster turned her chain of custody over to the OEE agent, who seized all four packages as evidence. The agent indicated that the postal officials were helpful in offering prompt and immediate assistance.

As a result of the investigation, BIS imposed a \$10,000 civil penalty on the company.

Source: OEE San Jose Field Office, Bureau of Industry and Security.

In its written response to our draft report, BIS stated that it has previously consulted with the U.S. Postal Service on export enforcement matters, and as a result, the Postal Service has revised its mail carrier manual to include red flag warnings for its employees to use when examining mail. BIS has also obtained points of contact in the U.S. Postal Service to notify when it has information concerning suspicious transactions. As such, BIS does not believe that further clarification of roles with the Postal Service is necessary. However, after issuance of our draft report, the U.S. Postal Service OIG informed us that Customs and the U.S. Postal Service conducted a two-week pilot program on reviewing outbound mail at some of the Postal Service's 12 international mail centers. As a result of the pilot program, we understand that Customs and the Postal Service have agreed to expand outbound mail inspections at all 12 centers that process international mail. We believe this is a positive effort and that BIS could be an integral player,

along with Customs and the U.S. Postal Service, in the targeting of potential illegal dual-use exports to be inspected. As such, we (b) (5)

A large black rectangular redaction box covers the text following "(b) (5)".

II. BIS' Other Enforcement Efforts Need Improvement

To help prevent and detect the illegal export of controlled U.S. technology, BIS monitors export licenses to ensure the holders comply with all license conditions, and conducts outreach to educate industry about dual-use export controls and encourage reporting of potential control violations. In addition to these preventive efforts, BIS announced the Transshipment Country Export Control Initiative in October 2002, which seeks to strengthen the trade compliance and export control practices of both governments and industries at the major international transshipment hubs.

The EAR allows BIS to further limit a transaction authorized under an export license by placing conditions on the license itself. This action is an important part of the interagency export license resolution process and offers BIS an additional means for monitoring certain shipments. Of the 54 possible conditions, only 7 require the licensee to submit export documentation to BIS concerning the shipment (see table 4).⁵¹ For each condition, with the exception of "Write Your Own," a standard message is placed on the license indicating the reporting requirements.

Table 4: License Conditions with Reporting Requirements*

Condition	Requirements
1 – Write Your Own	Specific reporting requirements, such as supplying a certified sales contract to the U.S. government, are written on the license by the licensing officer.
10 – Temporary Demonstration	Authorization is granted for shipment of the described item(s) to the destination country on a temporary basis for demonstration. At the end of the demonstration, the item(s) must be returned to the U.S. or to another specifically authorized country, no later than 1 year from the date of export. BIS must be promptly notified of an item's return.
12 – Delivery Verification: Standard	A delivery verification (DV) document is required for all shipments made under this license. The DV form must be obtained from the government of the destination country and the original copy sent to BIS after the last shipment has been made.
13 – Delivery Verification: Triangular	A DV document is required for each shipment made under this license. Since the referenced license is supported by information contained in a Triangular Import Certificate issued by the purchasing country, the exporter is reminded that the DV certificate(s) must likewise be obtained from the purchasing country within 90 days of the date signed.
14 – Post Shipment Verification	After the first shipment is made against the license, the applicant must send one copy of its shipper's export declaration and bill of lading or airway bill to the Office of Enforcement Analysis. Upon receipt of the documentation, OEA will initiate a post shipment verification.
17 – Aircraft on Temporary Sojourn	Upon return of the aircraft, immediate written notification must be sent to BIS' Office of Exporter Services.
20 – Encryption	The applicant must report to BIS biannually the item description, quantity, value, and end user name and address of all transactions made under this license. The reports must cover exports made during the 6-month periods of January 1 through June 30 and July 1 through December 31.

*Note: Condition 14 is monitored by Export Enforcement; all others are monitored by Export Administration.

Source: Office of Administration, Bureau of Industry and Security.

⁵¹Our review of BIS' license monitoring efforts focused on six of the seven license conditions with reporting requirements (excluding encryption which is monitored by the Office of Strategic Trade's Information Technology Controls Division within Export Administration).

BIS tracks licenses with (b) (7)(E)

- ❖ Write Your Own
- ❖ Temporary Demonstration
- ❖ Delivery Verification: Standard
- ❖ Delivery Verification: Triangular
- ❖ Aircraft on Temporary Sojourn

Each condition requires the licensee to submit the appropriate export documentation to OExS. BIS policy requires exporters to comply with previous license conditions on expired licenses before they can receive new licenses. Export Enforcement's OEA is responsible for monitoring licenses with post shipment verification conditions (commonly called Condition 14 licenses).

We found that neither Export Administration nor Export Enforcement is adequately monitoring licenses with reporting conditions. We also found that Export Enforcement does not have a national outreach plan to proactively identify which manufacturers and exporters of critical dual-use commodities should be targeted for outreach, or formalized guidance on how agents can strategically identify companies for outreach visits.

A. Export Administration is not adequately monitoring licenses with reporting conditions

In our 1999 export licensing report, we found that Export Administration was not routinely monitoring licenses, and a backlog of expired licenses requiring agency follow-up had resulted. At that time, OExS informed us that it did not have sufficient resources available to perform this follow-up work. Our current review found that Export Administration's license monitoring remains inadequate.

In August 2002, we reviewed 90 open licenses⁵² in the Conditions Follow-up Subsystem. Forty-eight had expired, of which OExS had followed up on only 16. On average, 1,037 days—2 years and 10 months—elapsed between a license's expiration and OExS' initial follow-up request for export verification (see appendix C).⁵³

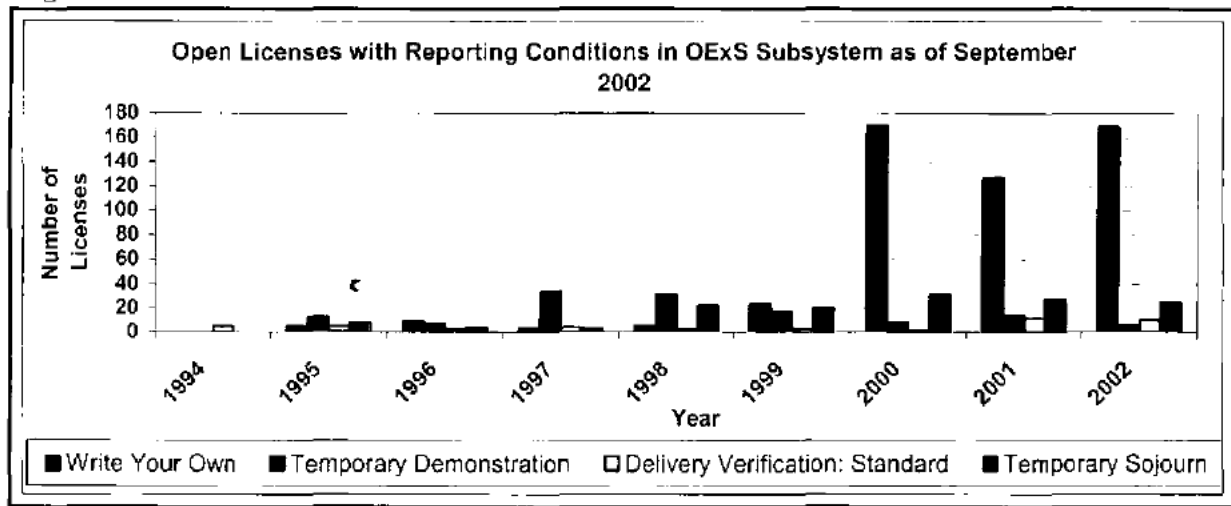
⁵²A license is considered "open" if its conditions have not been met.

⁵³Generally, an export license is valid for two years. An exporter is required to submit appropriate documentation to OExS about a shipment once it is made against a license. If a license has expired and its conditions remain outstanding, OExS is required to contact the exporter to verify shipment.

Export Administration's (b) (7)(E)

According to OExS, open license conditions were not properly monitored because the agency lacks staff to handle this responsibility. The Director of OExS stated that, prior to February 2002, the responsible export administration assistant followed up on open licenses only once a month because the assistant was tasked with other job responsibilities that took precedence. A significant backlog of expired licenses resulted, some dating back to 1994 (see figure 8).

Figure 8



Source: Office of Exporter Services, Bureau of Industry and Security.

OExS informed us in November 2002 that the export administration assistant now spends approximately 6 hours per day following up on expired licenses. The agency noted that this follow-up can be time-consuming and difficult for a number of reasons. For example, an exporter may have ceased operations, changed its contact information since the license was issued, or may fail to return phone calls or request additional time to search for documentation.

We found that several companies received additional export licenses before OExS had verified their compliance with conditions on previous licenses. Some of the new licenses were issued to manufacturers of controlled commodities such as chemicals, biotechnology products, and night vision and infrared camera technology. This apparent breakdown in the monitoring process might diminish the deterrent effect of the conditional licensing process on potential violators. In addition, failure to monitor license conditions might degrade the integrity of the interagency licensing referral process. For instance, licensing referral agencies (e.g., Defense and State) that depend on BIS to notify them of the outcomes of license conditions might make decisions on

future licenses without having appropriate information on compliance with conditions on previously issued licenses.

RECOMMENDATIONS. While we acknowledge OExS' recent efforts to improve follow-up of expired licenses, we recommend that (b) (5)

(b) (5)

(b) (5)

(b) (5)



In its response to our draft report, BIS (b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

We request a copy of this guidance be provided to us in BIS' action plan.

B. Export Enforcement needs to improve its license monitoring efforts

Our 1999 review found that – like Export Administration – Export Enforcement was not routinely monitoring open licenses. This also resulted in a backlog of expired licenses that required follow-up. When an exporter promptly notifies OEA of a shipment, the office can

quickly initiate a PSV to confirm a commodity's stated end-use. PSVs help prevent the diversion of controlled U.S. technology by strengthening assurances that exporters, shippers, consignees, and end users comply with the terms of export licenses. Our current review found that Export Enforcement's efforts at license monitoring and follow-up remain inadequate.

We analyzed 33 open Condition 14 licenses out of 150 expired licenses. Fifteen of these had expired as of September 3, 2002,⁵⁴ and while OEA had followed up on 12 of them, the average time from expiration to initiation of follow-up was 553 days or 1.5 years (see appendix C).

Export Enforcement's written procedures state that OEA should monitor open licenses on a monthly basis and follow-up on any that have expired. The Director of OEA's (b) (7)(E) Anti-Terrorism Support Division reviews the subsystem's "tickler," which monitors the status of open licenses, and identifies expired licenses that require follow-up.⁵⁵ OEA analysts are then tasked with contacting the licensees to verify whether a commodity was exported and, if so, to request the appropriate documentation.

However, OEA informed us that licenses were not being monitored and followed up properly because analysts are handling additional responsibilities since September 11, 2001, such as expanded reviews of visa requests under the Visa Application Review Program: (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

56

We found that—because Condition 14 licenses are inadequately monitored (see figure 9 below)⁵⁷—several companies received additional licenses without OEA having verified their compliance with conditions on previous licenses. Some of the new licenses were issued to manufacturers of firearms and ammunition, infrared camera technology, high-performance computers, and other controlled commodities. As with OExS, this breakdown in the monitoring process might diminish the deterrent effect of conditional licensing on potential violators.

⁵⁴In September 2002, OIG requested this sample of 33 licenses chosen from a complete list of all licenses that were in OEA's follow-up queue through May 2002.

⁵⁵(b) (7)(E)

⁵⁶(b) (7)(F)

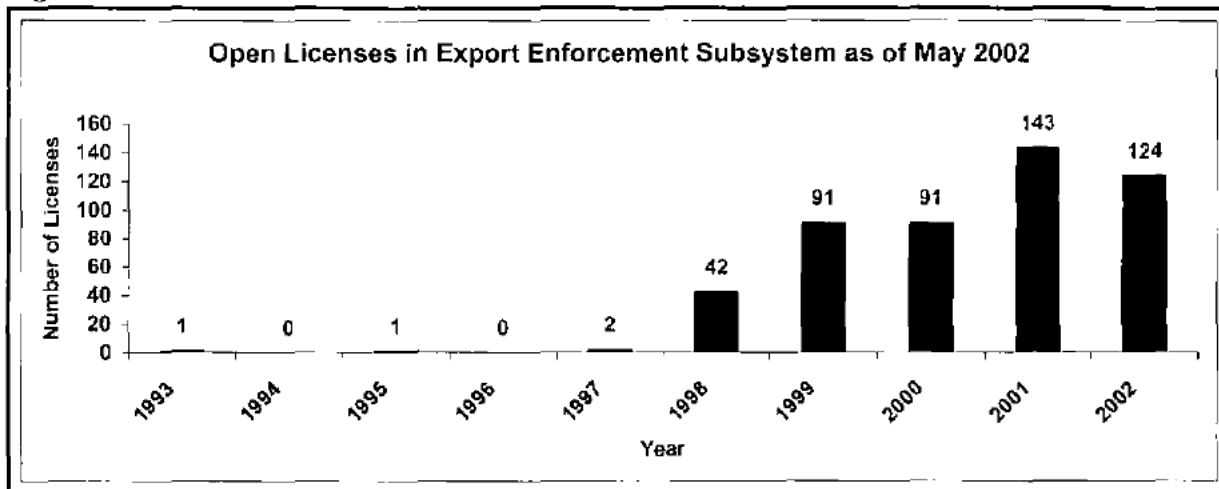
(b) (7)(E)

(b) (7)(E)

During FY 2002, OEA analysts reviewed approximately 53,000 visa request cables compared to 46,900 in FY 1999.

⁵⁷It should be noted that some of the open licenses are still valid for which no shipment may have been made; thus, no PSV can be initiated.

Figure 9



Source: Office of Enforcement Analysis, Bureau of Industry and Security.

In addition, the possibility exists for controlled commodities to be diverted during the license validity period (i.e., 2 years). For example, if the export were shipped one month after the license was issued but not reported to or monitored and followed up by OEA until two years later, the deterrent effect of a PSV would be diminished. Condition 14 is one of the most important conditions placed on a license because, at some point during the licensing process, it was determined by BIS or a licensing referral agency that a PSV was warranted to determine whether goods or technology were being used in accordance with the license provisions. Without proper monitoring, there exists the potential for exports to be diverted unbeknownst to BIS, which bears the responsibility of notifying other referral agencies about the end-use check results. As such, licenses with Condition 14 should be followed up on before they expire in order to minimize the risk of diversion.

RECOMMENDATIONS. Given the importance of PSV conditions, (b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

Finally, BIS agreed to consider sending automated reminders to exporters with Condition 14 licenses requesting verification and required documentation of pending or completed shipments. We request that BIS keep us informed on its progress in this matter. BIS' action meets the intent of our recommendation.

C. Export Enforcement's outreach visits should be more strategically planned

Export Enforcement conducts outreach visits to U.S. companies to educate them about export controls and elicit their cooperation in identifying illegal export transactions. Agents also conduct outreach visits to follow-up on certain types of investigative leads, such as (b) (7)(E). During FY 2001, OEE agents conducted 1,046 outreach visits.⁵⁸ However, we found that outreach is not generally used as a proactive, strategic tool for preventing and detecting illegal trade activity. Specifically, there is no system in place for targeting industries for outreach or formalized guidance on how agents can or should strategically identify companies in high-risk categories for visits.

Overall, we found that OEE gives outreach a relatively low priority. Several agents and SACs indicated that outreach visits are considered "fillers"—that is, an activity conducted when agents are not working criminal cases. Outreach also appears to be a reactionary effort, whereby agents meet with company officials after a violation has possibly occurred (e.g., voluntary self-disclosure or (b) (7)(E)). Among the closed cases reviewed, we noted several instances in which, after receipt of a lead, months passed before OEE agents made contact with the company. (b) (7)(E). However, approximately 10 months passed before the agent conducted outreach with the U.S. company.

Beginning in FY 2002, there was a policy shift away from conducting outreach to focusing more on the development of criminal cases. As a result, BIS discontinued the "Number of Enforcement Outreach Visits" as a performance measure. BIS however has maintained a certain level of focus on outreach as a means to prevent violations of the export control laws through its performance measure "Number of Cases Opened that Result in the Prevention of a Criminal Violation or the Prosecution of a Criminal or Administrative Case." BIS has set a target of 85 cases to be opened for both FY 2003 and 2004; of the 85 cases, BIS projects that 10 will result from leads obtained through outreach visits.

⁵⁸This number includes educational contacts, as well as visits with a person or company in conjunction with an investigation. As stated in the SAM, every one-on-one visit with the representative of a company is considered outreach.

On at least one occasion in the recent past, Export Enforcement has taken a focused, strategic approach to outreach. During the fall of 2001, it implemented a temporary national outreach plan in reaction to the September 11th terrorist attacks. Specifically, OEE agents were instructed to visit all chemical manufacturers within their respective regions. We encourage Export Enforcement to build upon that endeavor and implement a formal proactive annual outreach plan, based on intelligence, proliferation trends, and export data analysis. We further note that Export Enforcement promoted strategic outreach at its 2002 new agent training, which contained a presentation (entitled "Strategic Outreaches") on how agents can identify and target companies of high concern within their respective regions. However, this guidance was not subsequently incorporated into the 2002 SAM. We encourage (b) (5), (b) (7)(E)

RECOMMENDATIONS. To make outreach a more proactive and strategic tool, Export Enforcement should do the following:

- ❖ (b) (5)
- ❖ (b) (5)
- ❖ (b) (5)



In its written response to our draft report, BIS indicated (b) (5)

(b) (5)

(b) (5)

(b) (5)

III. BIS Should Continue to Improve the End-Use Check Process

BIS conducts two types of end-use checks to verify the legitimacy of the dual-use exports it controls: (1) pre-license checks validate information about end users on export license applications;⁵⁹ (2) post shipment verifications determine whether goods or technology exported from the U.S. actually were received and are being used appropriately by the party named on the license or by an authorized end user.

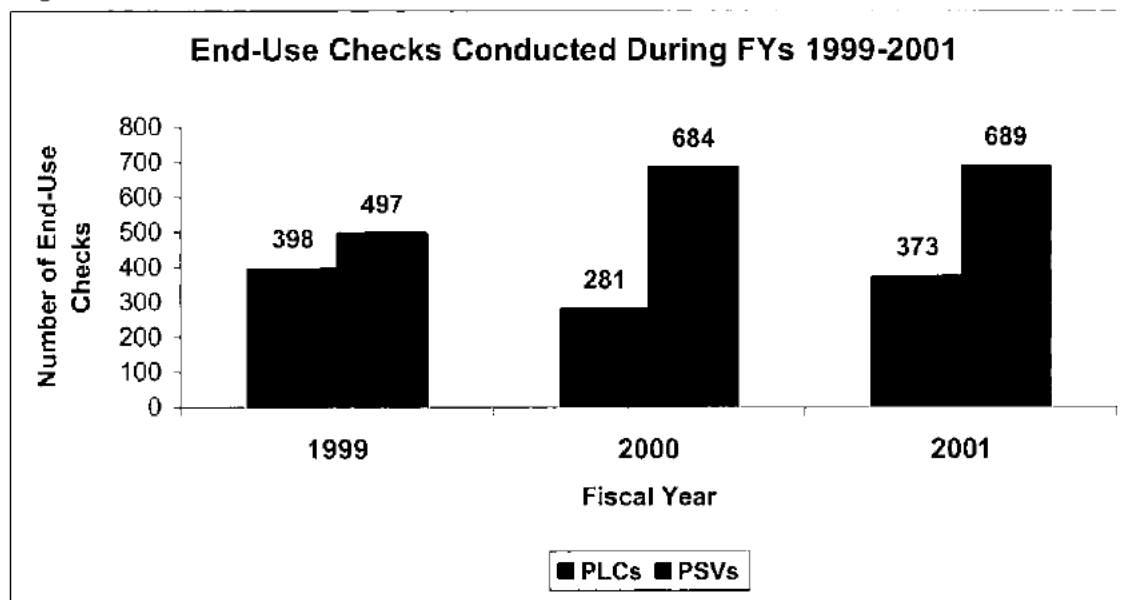
Requests for end-use checks may come from licensing officers, OEE agents, Export Enforcement analysts, and officials from other federal agencies involved in the license review process.

(b) (7)(E)

(b) (7)(E)

⁶⁰ In contrast, Export Enforcement agents handle most PSVs and some PLCs, under the Safeguards Verification program. (Figure 10 shows the number of end-use checks conducted during FYs 1999 through 2001.)

Figure 10



Source: BIS annual reports, FYs 1999-2001.

Safeguards teams also conduct outreach visits to foreign firms to educate them about U.S. export controls, and provide guidance and support on preventive enforcement matters to U.S. embassy personnel and/or to the host government's export control officials. During FY 2001, BIS conducted Safeguards Verification trips to 15 countries: Argentina, Brazil, Hong Kong, India, Israel, Malaysia, Mexico, Pakistan, Panama, the People's Republic of China, the Philippines, Singapore, South Korea, Venezuela, and Vietnam.

⁵⁹A PLC determines if an overseas person or firm is a suitable party to a transaction involving controlled U.S.-origin goods or technical data.

⁶⁰(b) (7)(F)

(b) (7)(E)

Our current review found that while some improvements have been made (e.g., officers conducting on-site PLCs as well as better record-keeping), many of the problems with end-use checks we identified in our 1999 export licensing report still exist. (b) (5), (b) (7)(E)

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(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

RECOMMENDATION. (b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

B. Weaknesses in the Safeguards Verification Program need to be addressed

Overall, we believe the Safeguards Verification Program is working reasonably well. The work of OBE Safeguards teams helps ensure the legitimate use of sensitive U.S. controlled dual-use commodities. Our 1999 review identified weaknesses in OBE agents' performance of Safeguards verifications, such as failure to consult with other U.S. agencies at the post; submission of late, inconsistent, and poorly disseminated trip reports; and lack of criteria for selecting PSVs. Unfortunately, our current review revealed that all but the selection problem persists. We have identified several areas where we believe improvements would make this program more effective.

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

RECOMMENDATION. (b) (5)

(b) (5)

(b) (5)

In its response to our draft report (b) (5)

We should note that our review of FY 2001 Safeguards trip reports revealed that teams met with other U.S. Government agencies in only 5 out of the 15 countries visited. However, we acknowledge BIS' renewed commitment to these briefings. In addition, we will follow-up on this issue as a part of our annual NDAA FY 2000 follow-up review.

(b) (5)

Office Director's Memorandum 99-02 requires Safeguards teams to submit their reports to the OEE Director within 30 days of a trip's conclusion. This protocol was revised in June 2002 (and incorporated into the new SAM) to require agents to adhere to this requirement or risk losing their privileges to participate in future Safeguards assignments.

We reviewed the 10 Safeguards trip reports issued for FY 2001, and found that 6 were submitted to headquarters more than 30 days after the trips' conclusion—and in most cases, well beyond the required time frame (see table 5).

Table 5: Late FY 2001 Safeguards Trip Reports

	Countries Visited	Number of Days to Submit Report:
1	People's Republic of China	272
2	South Korea and Vietnam	261
3	Argentina, Brazil, and Venezuela	111*
4	Pakistan and India	89
5	Hong Kong and Malaysia	45
6	Panama and Mexico	38

* Note: Export Enforcement's Intelligence and Field Support Division could not verify this report's submission date. However, the results of the end-use checks were entered into Enforce on October 20, 2001, nearly 4 months after the trip's conclusion.

Source: Office of Export Enforcement, Bureau of Industry and Security.

We found that confusion among team members over report writing responsibilities delayed the submission of one report, but we could not readily determine why the remaining five reports were submitted late.

(b) (7)(E)

RECOMMENDATION. While we acknowledge OEE's new Safeguards protocol as a positive step,

(b) (5), (b) (7)(E)



(b) (5)

BIS' action will meet the intent of our recommendation once completed.

(b) (5)

(b) (5)

(b) (5)

(b) (7)(E)

RECOMMENDATIONS. (b) (5)

[Redacted]



(b) (5)
[Redacted]

(b) (5)
[Redacted]

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

RECOMMENDATION. (b) (5), (b) (7)(E)
(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

C. Few unfavorable PLCs result in rejection of license applications

Both BIS and licensing referral agencies rely on the results of PLCs to determine the ultimate disposition of a license application. Of the 373 PLCs conducted in FY 2001, 27 received an unfavorable determination. License applications for 15 of these were returned without action,⁶⁷ 9 were rejected, and 3 were approved with conditions after BIS took action to ensure that the concerns raised during the check were corrected or addressed. However, we identified a number of cases in which BIS' decision to return the application without action,⁶⁸ rather than reject it, is questionable.

(b) (5)

(b) (5)

(b) (5) 1996 MOU between Export Administration and Export Enforcement.⁶⁹ The MOU indicates that if Export Administration disagrees with a licensing recommendation made by Export Enforcement (b) (5)

⁶⁷One license application involved two PLCs for two separate entities.

⁶⁸A decision to return a license application means that the application has been neither approved nor denied, thereby blocking the export.

⁶⁹Export Administration and Export Enforcement entered into an MOU in 1996 regarding Export Enforcement's recommendations on export license applications. The MOU includes a dispute resolution process to be used by both organizations.

(b) (5)

Figure 11

Dispute Resolution Process

If staff personnel (licensing officers, agents, and analysts) are not able to reach agreement on the outcome of a license application, the applicable Export Administration director shall consult with the Director of OEE or OEA. This must be done within five days of the Export Enforcement recommendation. If the directors disagree, they shall refer the issue to the Deputy Assistant Secretaries for Export Administration and Enforcement. All applications must be resolved or escalated to the Deputy Assistant Secretaries within 20 days of the initial recommendation made by Export Enforcement.

Source: 1996 MOU between Export Administration and Export Enforcement.

(b) (5)
(b) (5)

RECOMMENDATIONS. (b) (5)

(b) (5)



(b) (5)

(b) (5)

(b) (5)

(b) (5)

Better guidance is needed for returning license applications without action

We found four instances in which Export Enforcement recommended that an application be returned without action, considered on merits with conditions,⁷¹ and/or rejected—then later changed its position to return without action. Two of the four cases involved commodities that fell under the Australia Group⁷² and thus, had the applications been rejected, could have qualified for the “no undercut rule.”⁷³ In the remaining two cases, an Intent to Deny Letter had been mailed to the exporter before the case was returned without action. While there is no indication in the official licensing history as to why BIS changed its position from denial to return without action for those two cases, the explanation for the return without action is as follows:

“[BIS has been] unable to confirm the existence of the named consignee and is therefore returning the case without action. An actual pre-license check was made in country and the named consignee could not be found and was not known to any government official. For that reason, any resubmission of this request should be supported by comprehensive consignee information.”

The specific criteria in the EAR⁷⁴ for returning a license application without action is as follows:

- ❖ The applicant has requested its return.
- ❖ A license exception applies.
- ❖ The items are not under Department of Commerce jurisdiction.

⁷¹Certain conditions are imposed on a transaction to minimize risk in cases where the transaction raises questions or presents a risk of diversion.

⁷²The Australia Group consists of 34 countries that cooperate in curbing the proliferation of chemical and biological weapons through the coordination of export controls, the exchange of information, and other diplomatic actions.

⁷³So as not to “undercut” the denial, member countries agree not to approve an identical sale without first consulting with the member issuing the denial notification.

⁷⁴15 CFR 772.

- ❖ Required documentation was not submitted with the application.
- ❖ Attempts to contact the applicant for additional information needed to process the application have failed.

In addition, the 1996 MOU provides guidance on when to approve, reject, or return a license application without action, but we believe its direction for the latter action may be inadequate:⁷⁵

“A recommendation that an application be returned without action must be based on one or more of the following reasons: (1) the application omits essential information; (2) the application contains a misleading statement about a material fact; (3) determination has been made that the item or technical data in question does not require a license or reexport authorization for export to the destination and/or end-use identified in the application; or, (4) other reasons as agreed to by OEE, OEA, and CBTC, NMT, and STFP⁷⁶ in writing.”

While we understand a decision to return a license application without action for omitting essential information (e.g., insufficient end user information or technical documentation), it is not clear why BIS would return a license application without action versus rejecting it if it contained a misleading statement about a material fact. This is especially true if the information only came to light after a PLC was conducted. A denial sends a clear message that some part of a transaction involving controlled U.S.-origin goods or technical data is not suitable. In addition, when such licenses are not denied, the U.S. government is unable to use the “no undercut rule” established by the multilateral control regimes, which ensures that a member country does not approve an identical sale without first consulting with the member country issuing the denial notification.

RECOMMENDATION. (b) (5)

In its written response to our draft report, (b) (5)

⁷⁵Guidelines for Making Recommendations on Export Licenses and Licenses Exceptions (Suspension or Revocation of Existing Licenses; or Rejection, Return Without Action, or Consider on Merits [With or Without Conditions] of License Application), Section 5.3.2 of the guidelines, March 1, 1996.

⁷⁶Chemical and Biological Controls Division, Nuclear and Missile Technology Controls Division, and Strategic Trade and Foreign Policy Controls Division.

(b) (5)

[REDACTED]

As such, we have revised our recommendation to address this point.

(b) (5)

[REDACTED]

In response to our 1999 export licensing report, BIS agreed to inform the licensing referral agencies (e.g., Defense and State) when it receives a negative result on a PLC involving a case that had been referred to them, understanding that this additional information may affect the agencies' original position on the application. BIS restated this policy during our current review. However, we identified four instances in which the official case history did not indicate that the referral agencies were notified of an unfavorable PLC or agreed with the decision to return without action.

RECOMMENDATION. (b) (5)

[REDACTED]

In its written response to our draft report, (b) (5)

[REDACTED]

As such, we will follow-up on this matter as a part of our annual follow-up review per the FY 2000 NDAA requirement.

IV. Export Administration's Processing of License Determinations for Customs is Untimely

As previously mentioned in this report, BIS and Customs share responsibility for enforcing the export control laws on dual-use commodities. Customs' responsibility includes the detention and seizure of goods departing from U.S. ports whenever its agents or inspectors know, or have probable cause to believe, that a shipment is in violation of the export control laws. The EAA allows Customs to detain a shipment for up to 20 days, after which it must either formally seize or release the goods.⁷⁷ Within this 20-day window, Customs must ascertain whether the detained commodity is controlled under the EAR and thus may require a valid license for export. Customs therefore requests a license determination (LD) from Export Administration if the exporter cannot produce evidence of a valid license.

Agents and inspectors request LDs via Customs' Exodus Command Center⁷⁸ by submitting an LD referral that contains, among other information, the name and address of the exporter and foreign consignee, destination, monetary value of the shipment, and description of the product (including technical specifications) to be exported. (b) (7)(E)

(b) (7)(E)

We examined Export Administration's processing of LDs requested by Customs in our 1999 export licensing report. We found that the LDs were not processed in a timely manner. In particular, our review demonstrated that the average response took 36 days. We therefore recommended that BIS work with Customs to (1) automate the referral of Customs' LD requests and (2) formulate a written agreement outlining the responsibilities of each party involved in the process. Although BIS agreed with our recommendations, it has not initiated efforts in either area.

In the current review, we examined several hard copy LDs which Customs requested in FY 2001, and a report which contained the status and processing time of the 588 LD referrals which Export Administration received from Customs during FY 2002. We discovered that Export Administration's processing of Customs LDs remains untimely. Of the 588 LD referrals, Export Administration processed 284 (48 percent) of them in 20 days or less, and 220 (37 percent) in more than 20 days. The remaining 84 LD requests (14 percent) were pending as of December 20, 2002. While Export Administration did process many requests expeditiously, we noted several that were egregiously untimely. For instance, an LD received on November 27, 2001,

⁷⁷Section 12(2)(a) of the EAA.

⁷⁸The Exodus Command Center, established in 1982, is part of Customs' Strategic Investigations Division.

In addition to requesting LDs from various regulatory agencies, the center conducts license history checks and license verifications.

(b) (7)(E)

was not completed until October 16, 2002 – a processing time of 319 days. An LD referral requested on May 7, 2001, remained pending as of January 6, 2003.

When Customs agents and inspectors do not receive determinations within 20 days, they have three options: they can (1) continue to detain the shipment in violation of the EAA, (2) formally seize the shipment, or (3) release the shipment. Each option is potentially problematic. If Customs chooses option 1 or 2, it may unnecessarily delay legitimate trade if the licensing officer determines, in time, that the item does not require a license. If Customs chooses option 3, it could allow sensitive dual-use commodities to leave the United States that should not be shipped without a valid, proper license or, possibly, should not be exported at all.

Several factors contribute to Export Administration's untimely handling of Customs LD requests: First, and most important, the two agencies have no written guidelines that establish a time frame and procedure for the LD process or outline the responsibilities of each party involved in the process. Customs does not always provide the necessary product specifications required for a determination. In these cases, the licensing officer must contact either the Exodus Command Center or the Customs agent or inspector, who requested the LD, to obtain information needed to classify the commodity—which could lengthen the turnaround time. Most of the Customs agents and inspectors with whom we met stated that they would benefit from better guidance from Export Administration on the LD process (e.g., what information they need to provide to Export Administration to get a more timely LD). Therefore, Export Administration should (b) (5)

(b) (5)

(b) (5)

RECOMMENDATIONS. We recommend that Export Administration work with Customs in undertaking the following actions:

❖ (b) (5)

❖ (b) (5)



In its written response to our draft report, BIS (b) (5)

(b) (5)

RECOMMENDATIONS⁸⁰

We recommend that the Under Secretary for Industry and Security ensure that the following actions are taken:

Case Development

1. (b) (5)
 - a. (b) (5)
 - b. (b) (5)
 - c. (b) (5)
 - d. Requiring SACs to provide quarterly reports to OEE headquarters on the status of their quarterly case reviews. Such reports should include the total number of cases open in their field office, the number of cases opened and closed during a particular quarter, as well as warning letters, indictments, convictions, and the number of administrative cases pending at headquarters (see page 15).

Case Leads

2. (b) (5), (b) (7)(E)

⁸⁰ We have designated which recommendations below we consider closed. We will follow up on the remaining recommendations as a part of our annual follow-up work required by the National Defense Authorization Act for FY 2000.

License Determinations

3. Ensure that Export Administration and Export Enforcement implement the License Determination Work Plan and that the plan's objectives are achieved (see page 24). **We consider this recommendation to be closed.**

4. Improve Export Administration's processing of license determinations by:
 - a. Ensuring that division directors and licensing officers complete "accurate and timely" license determinations, as required in their respective performance plans (see pages 23 and 24). **We consider this recommendation to be closed.**

 - b. Providing more instruction and guidance to OEE agents on the information needed to complete a determination accurately and in a timely manner (see pages 23 and 24).

 - c. **(b) (5)**

Administrative Case Processing

5. Improve administrative case processing by:
 - a. **(b) (5)**

 - b. **(b) (5)**

6. **(b) (5)**

Collection of Administrative Penalty Payments

7. **(b) (5)**

Special Agent Manual & Agent Training

8. (b) (5):

a. (b) (5)

b. (b) (5)

c. (b) (5)

d. (b) (5)

9. Improve agent training by directing OEE to:

a. (b) (5)
We consider this recommendation to be closed.

b. (b) (5)

c. (b) (5)
We consider this recommendation to be closed.

Interagency Relationships

10. Strengthen Export Enforcement's relationship with U.S. Attorneys and Assistant U.S. Attorneys by:

a. (b) (5)

b. (b) (5)

11. Enhance its enforcement relationship with the U.S. Customs Service by having Export Enforcement:

a. (b) (5)

b. Ensure that OEE (b) (5)
(b) (5)

c. (b) (5)

12. Improve Export Enforcement's relationship with the FBI by directing it to:

a. (b) (5)

b. (b) (5) We consider this recommendation to be closed.

13. Improve Export Enforcement's relationship with the CIA by:

a. (b) (5)

b. (b) (5)

c. (b) (5)

14. (b) (5)

15. (b) (5)

Monitoring of License Conditions

16. Improve BIS' monitoring of license conditions by taking the following actions:

a. (b) (5)

b. (b) (5)

c. (b) (5)

d. (b) (5)

e. (b) (5)

Outreach

17. Make outreach to industry a more proactive and strategic tool by:

a. (b) (5)

b. (b) (5)

c. (b) (5)

End-Use Checks

18. (b) (5), (b) (7)(E)

a. (b) (5), (b) (7)(E)

b. (b) (5), (b) (7)(E)

c. (b) (5), (b) (7)(E)

d. (b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

this recommendation to be closed.

We consider

19. Revise the guidance for the Safeguards Verification program and enhance the quality and timeliness of Safeguards checks conducted by agents by:

a. (b) (5)

b. (b) (5)

c. (b) (5)
(b) (5) We consider this recommendation to be closed.

d. (b) (5)
(b) (5) We consider this recommendation to be closed.

e. (b) (5), (b) (7)(E)

Status of Unfavorable Pre-license Checks

20. (b) (5)

21. (b) (5)

22. (b) (5)

23. (b) (5)

License Determinations for Customs

24. Ensure that Export Administration works with Customs in the following areas:

a.

(b) (5)

b.

(b) (5)

We recommend that the Under Secretary for International Trade direct the (b) (5), (b) (7)(E) (b) (5), (b) (7)(E) to:

1.

(b) (5), (b) (7)(E)

2.

(b) (5), (b) (7)(E)

3.

(b) (5), (b) (7)(E)

4.

(b) (5), (b) (7)(E)

APPENDICES

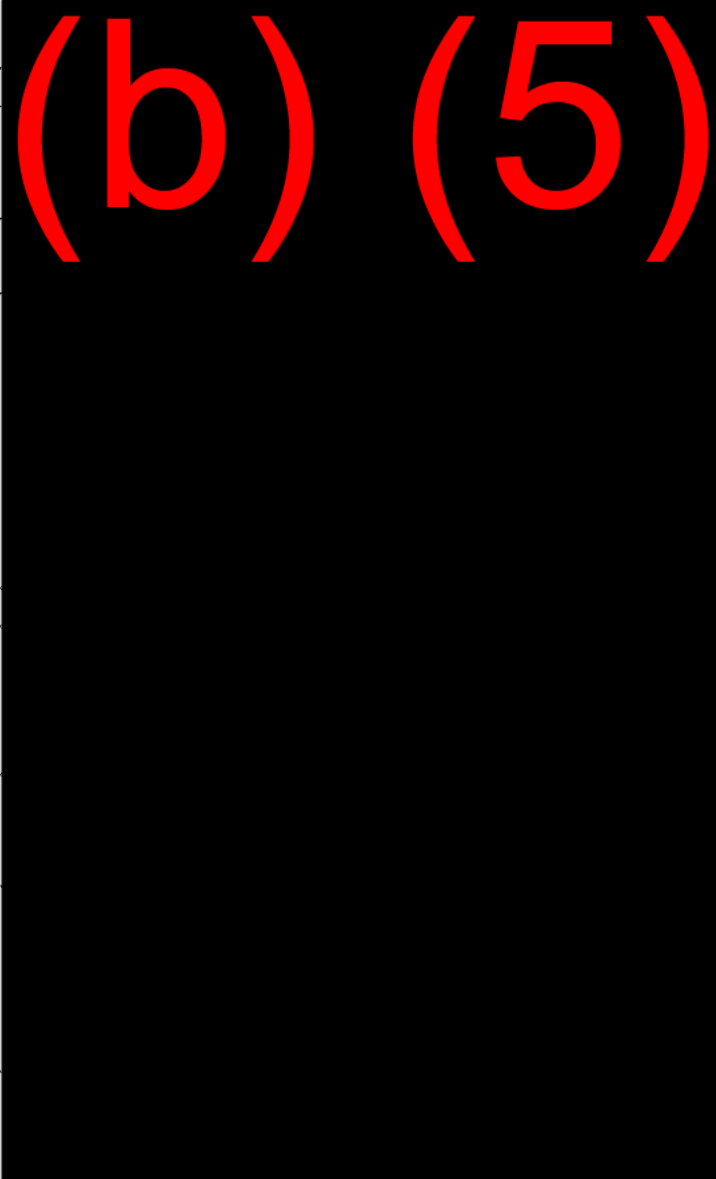
APPENDIX A

List of Acronyms

ACRB	Administrative Case Review Board
ALJ	Administrative Law Judge
AUSA	Assistant United States Attorney
BIS	Bureau of Industry and Security
CFR	Code of Federal Regulations
CIA	Central Intelligence Agency
EAA	Export Administration Act
EAR	Export Administration Regulations
ECASS	Export Control Automated Support System
FBI	Federal Bureau of Investigation
FY	Fiscal Year
IEEPA	International Emergency Economic Powers Act
IFSD	Intelligence and Field Support Division
JTTF	Joint Terrorism Task Force
LD	License Determination
MOU	Memorandum of Understanding
NOAA	National Oceanographic and Atmospheric Administration
OAC	Office of Antiboycott Compliance
OCC	Office of Chief Counsel
ODM	Office of the Director Memorandum
OEA	Office of Enforcement Analysis
OEE	Office of Export Enforcement
OExS	Office of Exporter Services
OIG	Office of Inspector General
PLC	Pre-License Check
PSV	Post Shipment Verification
SACs	Special Agents-in-Charge
SAM	Special Agent Manual
SED	Shipper's Export Declaration
TECS	Treasury Enforcement Communications System
US&FCS	United States and Foreign Commercial Service

APPENDIX B

Improvements Needed in the *Special Agent Manual*

SPECIAL AGENT MANUAL SECTION	WEAKNESS
Overall	
2. Firearms	
6. Travel	
8. Project Outreach	
9. Case Control	
10. Sources of Information	
11. License Determinations	
20. Administrative/Civil Procedures	
21. Reporting	
24. Cooperation with Export Administration and Other Agencies	

Source: 2002 *Special Agent Manual*, Office of Export Enforcement, Bureau of Industry and Security.

APPENDIX C

Export Enforcement and Export Administration License Monitoring Efforts

OExS Response Time on Expired Licenses with Conditions

	License	Date Expired	Initial OExS Follow-up	Response Time (days)
1	D214678	10/31/96	8/23/02	2,122
2	D216310	12/31/96	8/23/02	2,061
3	D217546	2/28/97	8/23/02	2,002
4	D222931	9/30/97	8/23/02	1,788
5	D227981	3/31/98	7/21/00	843
6	D229809	4/30/98	8/8/02	1,561
7	D237825	4/30/99	8/23/02	1,211
8	D242425	8/31/99	8/22/02	1,087
9	D245059	10/31/99	8/23/02	1,027
10	D242518	10/31/99	8/23/02	1,027
11	D247849	12/31/00	8/23/02	600
12	D264806	7/31/01	8/23/02	388
13	D266091	9/30/01	8/23/02	327
14	D268703	11/30/01	8/23/02	266
15	D268367	1/31/02	8/6/02	187
16	D274142	4/30/02	8/14/02	106
Average Follow-up Response Time (days)				1,037

Source: Office of Exporter Services, Bureau of Industry and Security.

OEA Response Time on Expired Licenses with Conditions

	License	Date Expired	Initial OEA Follow-up	Response Time (days)
1	D194898	7/31/95	3/8/99	1316
2	D225086	10/31/97	3/5/99	490
3	D241265	8/31/99	5/28/02	1001
4	D251254	6/30/00	5/15/02	684
5	D251855	9/30/00	5/8/02	585
6	D256663	11/30/00	5/21/02	537
7	D255344	12/31/00	5/23/02	508
8	D260887	3/31/01	5/21/02	416
9	D261643	5/31/01	5/21/02	355
10	D262835	6/30/01	6/18/02	353
11	D266157	8/31/01	5/21/02	263
12	D268107	12/31/01	5/15/02	135
Average Follow-up Response Time (days)				553

Source: Office of Enforcement Analysis, Bureau of Industry and Security.

APPENDIX D



UNITED STATES DEPARTMENT OF COMMERCE
Under Secretary for Industry and Security
Washington, D.C. 20230
March 25, 2003

FOR OFFICIAL USE ONLY (FOUO)

MEMORANDUM FOR JOHNNIE FRAZIER
INSPECTOR GENERAL

FROM: Kenneth I. Juster *KIJ*

SUBJECT: Draft Inspection Report No. IPE-15155, "Improvements are Needed to Better Enforce Dual-Use Export Control Laws"

We appreciate the opportunity to comment on the Draft Inspection Report No. IPE-15155, "Improvements are Needed to Better Enforce Dual-Use Export Control Laws." We also appreciate the substantial time and resources that you and your staff have devoted to preparing the report, as well as your acknowledgment of the Bureau's assistance to you during your preparation of the report.

We note at the outset that this Bureau's senior management team and this Department's most senior leadership are fully committed to taking vigorous action to promote compliance with our export control laws. To that end, since assuming office in 2001, we have taken a number of unprecedented steps:

- We have issued, for the first time, a set of Guiding Principles for the Bureau that state unequivocally that the Bureau's paramount concern is the protection of U.S. national security and that express our commitment to vigorous enforcement of the export control laws.
- We have launched a significant international public-private sector initiative designed to counter violations of U.S. export controls arising from the diversion of controlled goods through major transshipment hubs.
- We have successfully pursued novel legal theories – that have garnered significant attention in the private legal bar – to extend potential liability for export control violations to foreign sovereign entities and successor corporations.
- We have published a list of "unverified" foreign entities – entities for which we have been unable to conduct end-use visits – and have put U.S. companies on notice that they must exercise heightened due diligence before exporting any item to such companies.
- We have established a high-level advisory board to the Assistant Secretary for Export Enforcement to ensure careful consideration of both key decisions in prosecuting administrative cases and enforcement policy formed through such decisions.



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- We have sought and received additional funding to hire new enforcement agents, open a new domestic field office, and place additional attaches overseas.
- **(b) (5)**
- In testimony before Congress, speeches to and meetings with industry, and negotiations with foreign governments, we – including Secretary Evans and Deputy Secretary Bodman – have stressed repeatedly how seriously the Administration views violations of the export control laws.

These actions are significant. First, they have helped to foster a culture – both in the Bureau and in the U.S. exporting community – in which export control compliance and enforcement are strongly emphasized. We have been informed both by industry and by our trading partners that the actions listed above have substantially enhanced the Bureau's reputation for being tough, albeit fair, in the enforcement of export controls. Second, these actions are integral to implementation of the Administration's theory of export control enforcement. That theory recognizes that attempting to police on a case-by-case basis the millions of export transactions that occur annually in the contemporary globalized economy with a force of slightly more than 100 agents is effectively impossible. Rather, enforcement is most effectively promoted through deterrence, preventive action, and the targeting of limited resources on major "chokepoints" in global strategic trade flows, where they will have the most impact.

We were surprised that the report addresses none of these actions (other than a passing reference to the transshipment initiative and a cursory discussion of the advisory board that focuses primarily on the issues of transparency and record-keeping). We recognize that the report covered fiscal years 1998-2002 and, as such, does not focus solely on the activities of the current Bureau senior management team. But to ensure that the report does not inadvertently convey an out-of-date picture of the Bureau's enforcement program, the report would have done well to recognize these actions.

We were also disappointed that the report did not discuss the unique challenges related to the enforcement of dual-use export controls. Indeed, the report did not acknowledge any distinction between the enforcement of dual-use export controls and other types of criminal law enforcement. Yet the differences, and resulting challenges for export enforcement, are substantial. First, unlike many traditional crimes, the relevant activity here – the export of items that are civilian in nature – is in most cases perfectly legal. Second, unlike many traditional crimes, the regulations governing this activity are extremely complex – rules are subject to an array of exceptions, and those exceptions may themselves be subject to exceptions. Third, unlike many traditional crimes, there is often no clear evidence of the commission of the crime and no victim to report it; case prosecution thus depends on finding evidence of a violation. It is

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important to recognize these challenges not to excuse any failure to enforce the export control laws, but rather to appreciate the importance of a comprehensive approach to export enforcement – one that emphasizes preventive enforcement and deterrence as well as case prosecution. To this end, Export Enforcement has adopted as a performance measure the number of cases opened in which export control violations are prevented through, for example, temporary denial orders, detentions, proactive outreach to targeted industries, and the issuance of “Is Informed” letters under the Enhanced Proliferation Control Initiative. The report risks missing the critical importance of such preventive enforcement measures by focusing on the narrow category of prosecution of alleged violations.

We must also express concern over the report's analysis on a number of other key points. For example, the report's finding that “Export Enforcement's Investigative Process Produces Few Criminal Prosecutions¹ and Administrative Sanctions” (pp. ii and 12) is misleading and potentially subject to misinterpretation. As a preliminary matter, it should be noted that obtaining criminal convictions and administrative sanctions is a reflection of the success of the respective U.S. attorneys offices and the Commerce Department's Office of General Counsel (OGC) in prosecuting cases that BIS has built. The report acknowledges the key role played by U.S. attorneys in prosecuting the cases, but then proceeds effectively to disregard that point. Moreover, the report never acknowledges the role of the OGC in prosecuting administrative cases. Most troubling, the report fails to explain why it believes that the number of convictions and sanctions attributable to Bureau investigative efforts can appropriately be labeled “few.” The report cites raw data showing that 36 criminal convictions were obtained and 149 administrative sanctions imposed during a five-year period between Fiscal Years 1998-2002. However, the report supplies no basis on which to judge these numbers. How many criminal convictions in total (or on a per employee basis) did other enforcement agencies with concurrent jurisdiction (e.g., Customs) bring during this time period for export control violations? How many did other enforcement agencies (e.g., the FBI) bring for comparable white collar crimes? A recent National Journal article indicates that the U.S. Customs Service – with an enforcement force far larger than the Bureau – only launched 80 export investigations in total last year, far fewer than the 1015 cases opened by the Bureau. In short, the report's conclusion is not adequately supported.

¹Although the report uses the term “prosecutions” in its header, the text of the report address only criminal “convictions.” See page 13 (“the cumulative effect of these inadequacies in the investigative process results in few criminal convictions from the many cases opened by Export Enforcement”) (emphasis added).

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Finally, a number of the report's other conclusions also appear to be unclear and somewhat puzzling:

- As noted, the report claims that the "cumulative effect of [various alleged] inadequacies in the investigative process results in few criminal convictions" (page 13) (emphasis added). But two of those alleged inadequacies are that "the administrative remedy process needs to be more timely and transparent" and "delinquent administrative penalty accounts need to be followed up" (page 12) (emphases added). It is unclear how either of these allegations concerning administrative penalties (even if true) could conceivably account for "few criminal convictions."
- The report claims that two other alleged inadequacies contributing to "few criminal convictions" are the need for stronger "case development" and the existence of "inconsistent and untimely license determinations" (page 12). However, the report's detailed discussion of "case development" principally faults the fact that cases are being upgraded from a preliminary investigation to a full-scale investigation when some would be better eliminated earlier in the process. Although this may be a worthwhile endeavor to ensure efficiency (and, as such, is something we support), it is hard to see how this would result in more criminal convictions. Similarly, the detailed analysis of license determinations points to a single 2001 license determination that was subsequently corrected and two that contained minor technical errors (wrong case numbers and dates). Again, while it is clearly optimal to "get it right the first time," it is difficult to see how the correction of a single faulty license determination (thereby precluding prosecution of a presumptively innocent party) and two others with technical errors is responsible for "few criminal convictions."

Our senior management team believes deeply that there are, in fact, issues in the Export Enforcement program that require action. Some of those issues have been identified in your report. The attached document provides an item-by-item response by the Office of Export Enforcement and the Office of Export Administration to those issues that you have identified. We are compelled to note, however, that (i) many of the conclusions that the report reaches regarding the Export Enforcement program were items that had already been identified by Bureau management (and, indeed, had been pointed out to IG investigators as being issues of concern) and (ii) these items already have or are in the process of being addressed.

Again, we appreciate the time and effort that you and your staff have dedicated to this project.

Attachment

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**COMMENTS: IMPROVEMENTS ARE NEEDED TO
BETTER ENFORCE DUAL-USE EXPORT CONTROL LAWS,
DRAFT INSPECTION NO. IPE-15155, March 2003.**

IG Recommendations

Case Development

Recommendation 1: Improve case development by:

a. (b) (5)

(b) (5)

BIS Response: (b) (5)

(b) (5)

b. (b) (5)

(b) (5)

BIS Response: (b) (5)

(b) (5)

c. (b) (5)

(b) (5)

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BIS Response: (b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

In the interim, the Acting Assistant Secretary will review (b) (5). With respect to the recommendations regarding case management, the report notes that our San Jose and New York field offices employ best practices. Similar best practices are employed in the majority of our field offices, including Boston, New York, Chicago, Miami, Dallas and San Jose, and will shortly be employed in all field offices.

(b) (5)

d. Requiring SACs to provide quarterly reports to OEE headquarters on the status of their quarterly case reviews. Such reports should include the total number of cases open in their filed office, the number of cases opened and closed during a particular quarter, as well as warning letters, indictments, convictions, and the number of administrative cases pending at headquarters (see page 15).

BIS Response: OEE has instituted a policy, effective February 2003, that will require the SACs to conduct case reviews twice a year, not quarterly. The SACs will report to the Director and Assistant Director for Investigations every six months that they have completed reviews of all of their field office's cases. We will amend the *Special Agents Manual* accordingly. Again, as stated above, the Acting Assistant Secretary will independently review the caseload of each field office at the mid-year and nine-month mark.

Case Leads

IG Recommendation 2: (b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

BIS Response: As noted (b) (5), (b) (7)(E)
(b) (5), (b) (7)(E)

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(b) (5), (b) (7)(E)

The Office of Enforcement Analysis (OEA) conducted a comprehensive assessment of its Visa Application Review Program and will conduct a similar assessment of its Shipper's Export Declaration Review Program, in addition to any other applicable programs at the end of FY 2003. Resource adjustments will be made based on these assessments. The comprehensive assessment of the Visa Application Review Program completed in January 2003 was forwarded to the OIG in connection with this review. That assessment showed the success of the visa program in generating case leads for OEE that resulted in successful criminal and administrative cases and other outcomes.

In addition, OEA has been tracking the total number of (b) (5), (b) (7)(E) and unfavorable pre-license checks and post shipment verification referrals. OEA also reviews OEE and OCC weekly reports to determine which of the significant enforcement actions resulted from leads initiated by OEA.

Contrary to the report's assertion that many agents and SACS dislike headquarters leads because they take up a lot of their time, but do not result in criminal or administrative cases, OEA's statistical research suggests just the opposite. For example, in a survey of case actions between fiscal years 1999 and 2002, between 25 and 50 percent, on average, and, in some cases, a significantly higher percentage (60-80 percent) of headquarters leads resulted in cases accepted by Assistant U.S. Attorneys.

Consistent with our Congressional mandate, we consider the acquisition of controlled technology by foreign nationals to pose a significant threat to our national security (b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

License Determinations

IG Recommendation 3: Ensure that Export Administration and Export Enforcement implement the License Determination Work Plan and that the plan's objectives are achieved (see page 20).

BIS Response: EE agrees. Again, we note that the problem regarding the processing of licensing determinations (LDs) was identified months ago and has been proactively addressed by EE and EA management. We have established a LD Tiger Team comprised of personnel from EE and EA, which meets weekly to review new and pending LD requests. This is working effectively to address the problem and ensure timely responses.

IG Recommendation 4: Improve Export Administration's processing of license determinations by:

a. Ensuring that division directors and licensing officers complete "accurate and timely" license determinations, as required in their respective performance plans (see page 20).

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BIS Response: BIS has already taken steps to enhance the timeliness and accuracy of LDs. The average processing time for LDs closed in February 2003 was 27 days compared to an average processing time of 64 days for LDs closed in October 2002. This improvement in timeliness is a result of the EA/EE weekly LD meetings, EA staff increases, and LD training conducted by EA personnel at the EE field offices.

It should also be noted that the OIG has identified problems with only a handful of LDs out of the 334 completed in fiscal year (FY) 2002. Nonetheless, EA has taken steps to further ensure the accuracy of LDs. To address the first example cited by the IG, EA clarified its internal policy to require the division with the strictest controls (such as the Nuclear and Missile Technology (NMT) Division for items controlled for nuclear or missile proliferation reasons) to have the final sign-off on an LD. To address the second issue - LDs with clerical errors - EA has instituted an additional review process to ensure such errors do not occur. The electronic request in ECASS is printed out and reviewed against the certified response, and any other information related to the request, to ensure that data elements, such as commodity description, country of destination, and time period under review, are correct. This second level review is done by an NMT employee not involved in the case under review as a licensing officer or a signing official. This procedure was adopted to ensure that unintentional errors related to document preparation are caught and corrected.

b. Providing more instructions and guidance to OEE agents on the information needed to complete a determination accurately and in a timely manner.

BIS Response: Written LD guidelines for EA licensing officers and EE agents have been in place since 1998. Additional guidelines are being prepared. BIS has also initiated training on LDs at EE Field Offices throughout the United States. These sessions, conducted by EA engineers, provide EE agents with specific guidance on the information needed to accurately determine the license requirements of an item, identify applicable exceptions, and jurisdictional issues. To date five of the eight field offices have received the training in FY 2003 and all offices will have received it by May 2003. In addition, EA provided LD training at EE's FY 2002 special agent training.

^c(b) (5)
(b) (5)

BIS Response: (b) (5)
(b) (5)

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Administrative Case Processing

IG Recommendation 5: (b) (5) the Administrative Case
Review Board's (ACRB) (b) (5)
(b) (5)
(b) (5)

BIS Response: The ACRB is an advisory and review body, not the final decision-making authority in the administrative resolution of cases as you imply. See page 24, "the ACRB reviews and decides administrative charges." (b) (5)
(b) (5) the
Assistant Secretary's decision, the charging letter, and the settlement agreement serve to provide ample explanation and memorialization of the decision-making process.

While some in OEE may have concerns about the ACRB, we found in reviewing the ACRB process that most of its participants *viz.*, field agents, OCC attorneys and SACs, are very satisfied with the process and understood the analysis behind advice rendered in each case. The individual ACRB members also make themselves available to discuss the reasons for any variance with an attorney's or agent's recommendation in a particular matter, and regularly do so. The facts, settlements and judgements in particular cases stand independently as precedent and are used by OEE, OCC and the ACRB to guide their positions. (b) (5)

(b) (5)

IG Recommendation 6: Improve administrative processing by:

a. (b) (5)
(b) (5)

BIS Response: (b) (5)
(b) (5)

b. (b) (5)
(b) (5)

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BIS Response: (b) (5)

(b) (5)

(b) (5)

OEE and OCC (b) (5)

(b) (5)

IG Recommendation 7: (b) (5)

(b) (5)

BIS Response: (b) (5)

(b) (5)

IG Recommendation 8: Reassess the merits of having OEE headquarters management participate in ACRB meetings to provide case background and institutional knowledge when export control cases are under discussion.

BIS Response: As stated in reply to Recommendation 5, the ACRB has been met with great enthusiasm and support by the field offices. As part of the ACRB process, the Acting Assistant Secretary speaks with the agents and the SACs as well as OEE headquarters management regarding each case. The presiding member of the ACRB is the Deputy Assistant Secretary. We believe that obtaining the OEE viewpoint is amply represented. Accordingly, we are unpersuaded to alter the ACRB participants at this time.

Collection of Administrative Penalty Payments

IG Recommendation 9: (b) (5)

(b) (5)

BIS Response: (b) (5)

(b) (5)

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We have reviewed the five accounts noted by the IG during its review that were delinquent. We determined that one company had gone bankrupt, one company went out of business, and three accounts were referred by NOAA independent of the IG review to Treasury for collection. Pursuant to your recommendation, we have investigated the following delinquent accounts, and their status is reflect below:

Company	Status
Everex System	Company paid \$3,634 of \$75,000 penalty. It has filed for bankruptcy. Once we receive the bankruptcy documents, we will determine a course of action in consultation with counsel.
IGG Corporation	Company paid \$250,000 of \$400,000 penalty. OEE's investigation revealed that the company went out of business in March 2002. We will recommend that the penalty be written off as uncollectible.
Refinery Industries	Company claims to have gone out of business. The matter has been referred to the Treasury Department for collection.
Federal Parts	Company claims to have gone out of business. The matter has been referred to the Treasury Department for collection. Section 11(h) denial order has already been imposed. Therefore, no additional denial for failure to pay may be imposed.
(b) (6)	This matter has been referred to the Treasury Department for collection.

Special Agent Manual & Agent Training

IG Recommendation 10: (b) (5)

a. (b) (5)

BIS Response: (b) (5)

(b) (5)

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(b) (5)

b. (b) (5)
(b) (5)

BIS Response: (b) (5)
(b) (5)

c. (b) (5)
(b) (5)

BIS Response: (b) (5)
(b) (5)

d. (b) (5)
(b) (5)

BIS Response: (b) (5)
(b) (5)

IG Recommendation 11: Improve agent training by directing OEE to:

a. (b) (5)
(b) (5)

BIS Response: OEE received excellent feedback from the agent training held last April in Florida. We are in the process of adapting some of that material together with new case studies and a new regulations course to develop a new agent training module before the end of the year.

With regard to on-the-job training, we issued new material in our SAM last winter. OEE has received good feedback from the agents on this program.

b. (b) (5)
(b) (5)

BIS Response: (b) (5)

(b) (5)

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c. (b) (5)

(b) (5)

BIS Response: (b) (5)

(b) (5)

Interagency Relationships

IG Recommendation 12: Strengthen Export Enforcement's relationship with U.S. Attorneys and Assistant U.S. Attorneys by:

a. (b) (5)

BIS Response: (b) (5)

(b) (5)

b. (b) (5)

(b) (5)

BIS Response: (b) (5)

(b) (5)

IG Recommendation 13: Enhance its enforcement relationship with the U.S. Customs Service by having Export Enforcement:

a. (b) (5)

(b) (5)

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BIS Response: (b) (5)

(b) (5)

b. Ensure that OEE (b) (5)

(b) (5)

BIS Response: (b) (5)

(b) (5)

c. (b) (5)

(b) (5)

BIS Response: (b) (5)

(b) (5)

IG Recommendation 14: (b) (5)

(b) (5)

a. (b) (5)

(b) (5)

BIS Response: (b) (5)

(b) (5)

b. (b) (5)

(b) (5)

BIS Response: (b) (5)

(b) (5)

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IG Recommendation 15: Improve Export Enforcement's relationship with the CIA by:

a. (b) (5)
(b) (5)

BIS Response: (b) (5)
(b) (5)

b. (b) (5)
(b) (5)

BIS Response: (b) (5)

c. (b) (5)
(b) (5)

BIS Response: (b) (5)

IG Recommendation 16: (b) (5)
(b) (5)

BIS Response: (b) (5)

IG Recommendation 17: (b) (5)
(b) (5)

BIS Response: (b) (5) we have consulted USPS on export control enforcement. As a result of our meetings, the USPS has revised its mail carrier manual to include red flag warnings for its USPS employees to use when examining mail. We have also obtained phone numbers and points of contacts to notify the USPS when we have information concerning suspicious transactions. We do not believe that further clarification of roles with the USPS is necessary.

Monitoring of License Conditions

IG Recommendation 18: Improve BIS's monitoring of license conditions by taking the following action:

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a. (b) (5)
(b) (5)

BIS Response: (b) (5)
(b) (5)

(b) (5)

b. (b) (5)
(b) (5)

BIS Response: (b) (5)
(b) (5)

c. (b) (5)
(b) (5)

BIS Response: (b) (5)
(b) (5)

d. (b) (5)
(b) (5)

BIS Response: (b) (5)
(b) (5)

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(b) (5)

(b) (5)

EE wishes to make a few observations about the IG's report on this issue. First, Figure 9 on p. 47, entitled, "Open Licenses in Export Enforcement Subsystem as of May 2002" is misleading because it suggests OEA has failed to verify the conditions on a significant number of licenses. It should be noted that a number of the open licenses in this table are still valid for which no shipment has yet been made; thus no PSV can be initiated.

Second, the IG's point about untimely follow-up on license conditions misses the importance of varying the timing on initiated PSVs, from a few months to several months after shipment has occurred, when misuse or illegal diversions are more likely to be uncovered. For example, PSVs initiated 30 days after export will most likely find the export still with the consignee; whereas, PSVs completed several months to a year after shipment are more likely to uncover misuse or illegal diversions.

Finally, the IG's example used to illustrate average OEA follow-up response times on license conditions (p. 46) is not representative and does not reflect the true average follow-up response times. We provided several years of this data to the IG.

^c(b) (5)
(b) (5)

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BIS Response: (b) (5)

Outreach

IG Recommendation 19: Make outreach to industry a more proactive and strategic tool by:

a. (b) (5)
(b) (5)

BIS Response: (b) (5)
(b) (5)

b. (b) (5)
(b) (5)

BIS Response: (b) (5)

c. (b) (5)

(b) (5)

BIS Response: (b) (5)

(b) (5)

End-Use Checks

IG Recommendation 20: (b) (5) (b) (7)(E)
(b) (5), (b) (7)(E)

a. (b) (5), (b) (7)(E)
(b) (5), (b) (7)(E)

BIS Response: (b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

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(b) (5), (b) (7)(E)

b (b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

BIS Response: (b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

c. (b) (5), (b) (7)(E)
(b) (5), (b) (7)(E)

BIS Response: (b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

d (b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

BIS Response: (b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

IG Recommendation 21: (b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

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a. (b) (5)
(b) (5)

BIS Response: (b) (5)
(b) (5)

b. (b) (5)

BIS Response: (b) (5)

c. (b) (5)

BIS Response: (b) (5)
(b) (5)

d. (b) (5)

BIS Response: (b) (5)
(b) (5)

e. (b) (5), (b) (7)(E)
(b) (5), (b) (7)(E)

BIS Response: (b) (5), (b) (7)(E)
(b) (5), (b) (7)(E)

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Status of Unfavorable Pre-License Checks

IG Recommendation 22: (b) (5)

(b) (5)

BIS Response: (b) (5)

(b) (5)

IG Recommendation 23: (b) (5)

BIS Response: (b) (5)

(b) (5)

IG Recommendation 24: (b) (5)

(b) (5)

BIS Response: (b) (5)

(b) (5)

(b) (5)

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IG Recommendation 25: (b) (5)

BIS Response: (b) (5)

License Determination for Customs

IG Recommendation 26: Ensure that Export Administration works with Customs in the following areas:

a. (b) (5), (b) (7)(E)

(b) (5)

BIS Response: (b) (5)

(b) (5)

b. (b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

BIS Response: (b) (5)

(b) (5)

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Improvements Needed in the Special Agent Manual

SAM Section

WEAKNESS

RESPONSE

Overall

2. Firearms

6. Travel

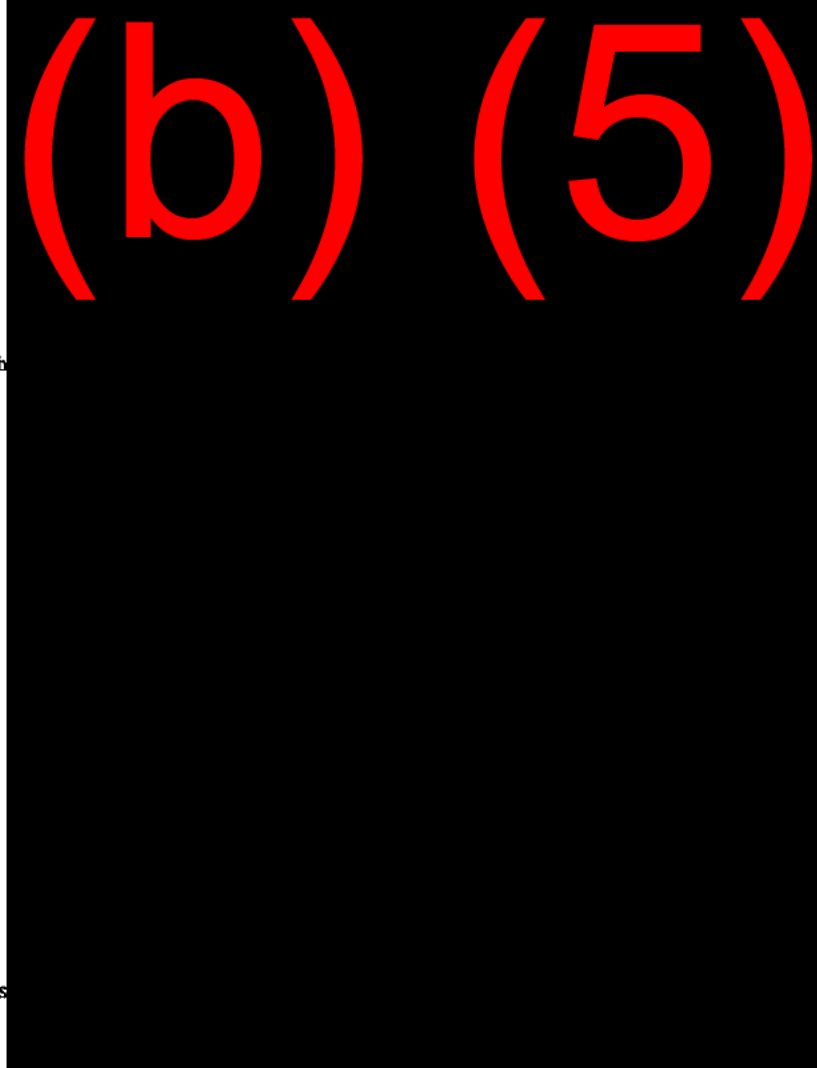
8. Project Outreach

9. Case Control

10. Sources of
Information

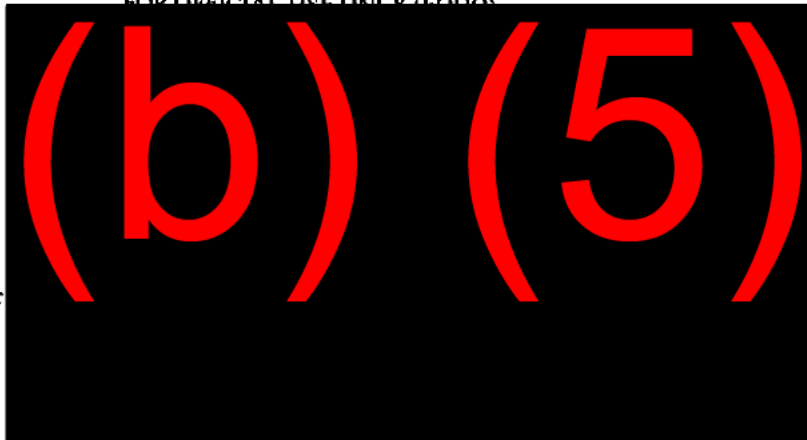
11. License
Determinations

20. Administrative/
Civil Procedures



21. Reporting

24. Cooperation
with Export
Administra-
tion and other
agencies



APPENDIX E

MAR 28 2003



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, DC 20230

(b) (5), (b) (7)(E)

MEMORANDUM FOR: Jill Gross
Assistant Inspector General for
Inspections and Evaluations Program

FROM: (b) (5), (b) (7)(E)

THROUGH: *Grant Aldonas*
Grant Aldonas
Under Secretary for International Trade

SUBJECT: Response to Draft Inspection Report: Improvements Are
Needed to Better Enforce Dual-Use Export Control Laws
(IPE-15155)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)



(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)