



ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

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Dear John:

Further to our telephone discussion, I am enclosing a copy of the Treasury position on outstanding Export Administration Act issues between this Department and Commerce. Any assistance that you, the Director, or others may be able to give us will be much appreciated and, I firmly believe, in the national security interest.

Sincerely,

John M. Walker, Jr.  
Assistant Secretary  
(Enforcement and Operations)

Mr. John McMahon  
Deputy Director  
Central Intelligence  
Washington, D.C.

Enclosure



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MEMORANDUM

MAR - 9 1984

To: Honorable Donald Fortier  
Deputy Assistant to the  
President for National  
Security Affairs

From: John M. Walker, Jr. *J.M.W.Jr.*  
Assistant Secretary  
(Enforcement and Operations)

Treasury's Position on Issues Pertaining to the Amendment  
of the Export Administration Act

This paper summarizes the position of the Treasury  
Department on the following issues pertaining to the Export  
Administration Act:

- Enforcement Responsibility
- Foreign Enforcement Responsibility
- Access to Licensing Information for Enforcement  
Purposes
- Recognition of the Secretary of the Treasury  
in the Language of the Act
- Enforcement of Export Controls by Canada.

Issue I: Which Department, Treasury (through the Customs  
Service) or Commerce, should exercise enforcement  
responsibility under the Act?

Background: The Commerce Department has statutory authority  
for its enforcement program under the present  
Act; Customs conducts an enforcement program  
(Operation Exodus) under a delegation of enforce-  
ment authority from Commerce. With both Depart-  
ments performing the same enforcement role,  
disputes have occurred during the past two  
years, both with regard to domestic enforcement  
activity and to the conduct of investigations  
in foreign countries.

Last August, OMB attempted to reach a compromise  
position as the time approached for the Act to  
expire, but was unable to do so. Because of  
the need to reflect an Administration position  
on the issue at hearings before the International  
Trade Subcommittee of the Senate Committee on  
Finance, Counselor to the President Edwin Meese  
gave the Departments guidance as follows:

- (1) The Administration's should adhere to the status  
quo; i.e., both agencies should continue to  
enforce the Act.

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- (2) Commerce and Treasury would resolve the issue through an administrative agreement.

The present Act has since been extended twice and is set to expire on March 19, 1984. Although the Departments have tried to resolve their differences, conflicts persist. Recent export control cases and Congressional attention on renewal of the Act have brought increasing attention to the enforcement issue.

House Bill: Commerce is given authority to enforce the Act. Customs (1) is limited to conducting inspections where it has received specific information of possible violations of the Act, (2) is specifically prohibited from conducting random inspections, (3) must terminate any investigation at the time of seizure, and (4) is barred from expending more than \$14,000,000 in any fiscal year in the enforcement of export control [Section 12(a)].

Senate Bill: Sole enforcement authority is given to Customs [Section 12(a)]. An amendment passed by the Senate provides \$12 million additional funds to maintain current levels of enforcement.

Treasury position: The Administration should support the enforcement provisions of the Senate bill, which would give Customs sole authority for both domestic and foreign enforcement.

- Inherent conflict of interest within the Department of Commerce - Promotion of trade vs. export enforcement. Commerce lacks enforcement incentive of a police-type agency.
- Many criminal investigations involve violations of both the Arms Export Control Act (AECA) and Export Administration Act. U.S. Customs has exclusive responsibility for enforcing the Arms Export Control Act and thus must conduct an export control program in any event.
- U.S. Customs has existing resources in place while Commerce is in the process of building parallel resources. Customs presently has 64 offices in the United States staffed by criminal investigators whose duties include EAA investigations. Commerce has only 4 such offices (although several more are planned, all in cities where Customs already has an office).

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- ° Customs is and has been more successful in its pursuit of EAA violations than Commerce. A recent Department of Justice document on major export control cases is summarized as follows:

<u>Agency</u>	<u>No. of major cases since Jan. 1981</u>
U.S. Customs	31
Dept. of Commerce	1
U.S. Customs/DOC (joint cases)	8
U.S. Customs/FBI (joint cases)	1
Other Federal	4

Since the inception of Operation EXODUS in October 1981, Customs has had 346 cases accepted for prosecution (90 EAA; 256 AECA), along with 235 indictments (28 EAA; 207 AECA) 302 arrests (43 EAA; 259 AECA), and 207 convictions (22 EAA; 185 AECA).

- ° Statutory law enforcement and border search authority is possessed by Customs and not by Department of Commerce.
- ° Customs and Commerce must compete for the same sources of information in the high technology, exporting, law enforcement, and intelligence communities. These sources are naturally confused over the question of to whom to report suspected violations. Customs, with its greater resources and long history in law enforcement, is much better equipped to act on information received.

Issue II: Which Department, Treasury (through the Customs Service) or Commerce, should exercise enforcement responsibility overseas?

Background: Both Commerce and Treasury currently claim the right to enforce the Act anywhere abroad. Any such enforcement requires a close working relationship with foreign law enforcement authorities since U.S. enforcement agencies have no inherent jurisdiction abroad. After the Administration's position in 1983 favoring adherence to a dual agency status quo, Treasury agreed to a Memorandum of Understanding with Commerce in order to try to alleviate the confusion being created by dual enforcement jurisdiction abroad. In Treasury's view, this Memorandum of Understanding was only a partial solution to a less than satisfactory state of affairs. It allowed both

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agencies to investigate abroad but provided for Customs to be the liaison with foreign law enforcement agencies except in six countries (Austria, Belgium, India, Japan, Sweden and Turkey) in which existing relationships (and hence confusion) would remain.

House Bill: Except in the context of enforcement generally (see Issue I), foreign enforcement is not addressed as a separate matter.

Senate Bill: Except in the context of enforcement generally (see Issue I), foreign enforcement is not addressed as a separate matter.

Treasury

Position: The Administration should support Customs as the sole agency with foreign enforcement responsibilities under the Export Administration Act.

- Customs has had long-standing relationships with foreign police and customs services and regularly trades information on a quid pro quo basis. Any enforcement effort must depend on such relationships.
- Customs has 35 investigators in foreign posts in 10 countries. Commerce has a total of 2 investigators, one posted in Sweden and one in Austria.
- Commerce's practice of using Foreign Commercial Service Officers to conduct criminal investigations is in conflict with these officers' mission of trade promotion. They are not career criminal investigators and receive no training in the profession.
- Foreign police and Customs counterparts are today confused about which U.S. agency to refer information concerning technology diversion. (British and West German authorities have refused to deal with Commerce).
- In most countries, either the customs service or the national police has responsibility for export enforcement matters. Commerce-type agencies perform this function in only a few.
- Customs participates in the Customs Cooperation Council which requires members to exchange information and documentation on illegal exports. Commerce does not participate.

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- As in the U.S., many criminal investigations abroad involve violations of both the Arms Export Control Act and the Export Administration Act. Customs has exclusive responsibility for enforcing the Arms Export Control Act abroad.

Issue III: What level of access should the Customs Service have to licensing information maintained by the Commerce Department?

Background: The Customs Service uses information in Commerce's licensing files to support its investigative work. Such information includes license applications, denials, and other information important to enforcement both at home and abroad. While Commerce submits information from the files to Customs, it does not allow Customs unfettered access, but instead responds only to specific requests for information.

House Bill: Because the House bill would place almost all investigative authority in Commerce, the issue would be practically moot.

Senate Bill: Does not directly address this issue, but by designating Customs as the enforcement agency under the Act, would logically lead to greater access by Customs.

This issue should be resolvable through administrative means, without resort to legislation.

Treasury position Under the current Act, Section 12(c), as interpreted by the Office of Legal Counsel, U.S. Department of Justice, allows Customs the full access it desires. Nevertheless, Commerce has hindered the Customs enforcement effort through an overly-restrictive interpretation of Section 12(c). Under the Senate bill, in Treasury's opinion, Commerce would have difficulty maintaining its policy of restricted access.

- Because Customs' requirements for access to DOC records are inhibited by internal control procedures within DOC, Customs' investigations lack the information support that would make Exodus more effective.
- The Commerce position continues to inhibit Customs' analyses leading to the development of enforcement programs and strategies.

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- The Commerce restriction on records access prevents EDP networking by the involved Departments. Such computer links would benefit the Administration's licensing and enforcement effort.
- Customs is providing DOC with direct access to the U.S. Customs Service EXODUS data base and is installing a computer in DOC's office.

Issue IV: Statutory authority of the Secretary of the Treasury

Background: The Secretary of the Treasury is not recognized in the language of the Act pertaining to enforcement.

House Bill: Does not mention the Secretary in the enforcement language.

Senate Bill: Would resolve this issue by granting enforcement authority to U.S. Customs.

Treasury  
position:

If the Senate bill is not supported by the Administration, there should be, at the very least, specific mention in the statute of the Secretary of the Treasury's enforcement role to clear up any possible challenge to the validity of Treasury employees' actions under the Act.

- If Administration believes in a Customs role, then it should be fixed permanently in the legislation.
- It is uncertain whether the Secretary of Commerce himself has the authority to delegate functions to another Department under the present Act because of the somewhat confusing wording in the Act. [50 U.S.C. Appendix 2403 (e) and 2411(a).]
- Under the existing Act, a future Secretary of Commerce could revoke any or all of the authority delegated to Customs at any time.

Issue V: What steps should be taken to reduce the potential for diversion of strategic technology through Canada?

Background: The Export Administration Regulations permit exports to Canada without a license. 1941 Hyde Park Declaration affords "open border" arrangements and facilitates uncontrolled re-export

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of U.S. goods from Canada to free world countries. This is contrary to existing regulation which requires a U.S. export license to re-export U.S. goods from Canada to all other foreign destinations. Canada views U.S. export enforcement efforts by both Customs and Commerce as extra-territoriality and has restricted cooperative enforcement efforts. Classified material suggests that at least 15 computer systems have been diverted to the U.S.S.R. through Canada.

This issue should be resolvable through administrative means, without resort to legislation at the present time.

Treasury's  
position

A Committee, chaired by Treasury and consisting of the Departments of State, Commerce and Defense, shall be established to review and make recommendations to improve current export procedures and controls between the U.S. and Canada.

- ° Canada's failure to clear re-exports with the United States Government affords diversion opportunities.
- ° Enforcement difficulties caused by the Hyde Park arrangement, although recognized by Commerce Department, are unresolved.