

Federal IP Enforcement: Clear Leadership and Accountability Needed

**Presentation by
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**Coalition Against Counterfeiting and Piracy
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GAO Work Has Contributed to the Public Policy Debate on IP Enforcement

We have examined:

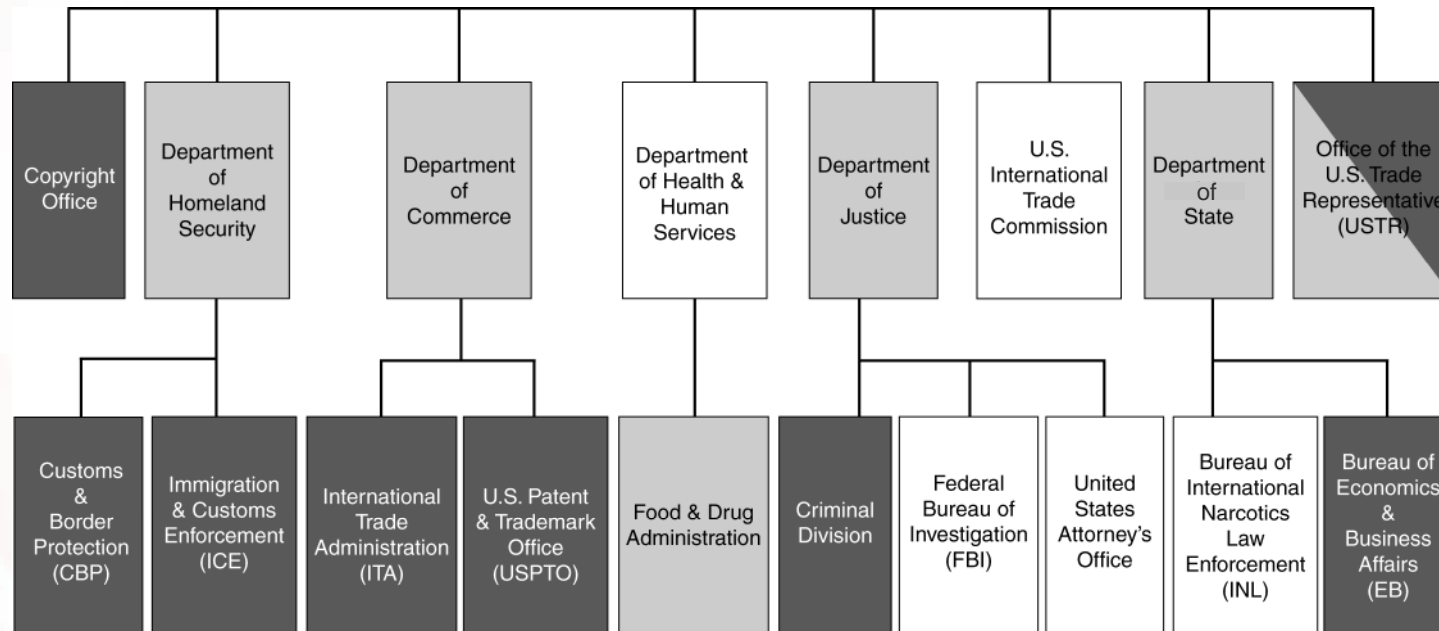
- IP coordinating structures
- Federal IP enforcement efforts

Congress considers changes to federal IP efforts:

- two congressional bills under consideration
- Customs Reauthorization activities

Many Agencies Are Involved in IP Enforcement

Primary U.S. Agencies Supporting IP Protection



■ Strategy Targeting Organized Piracy (STOP) agency
■ Entities that house National Intellectual Property Law Enforcement Coordination Council (NIPLECC) principals

Source: GAO.

The Coordinating Structure Lacks Clear Leadership and Permanence

Features of NIPLECC and STOP

	National Intellectual Property Law Enforcement Coordinating Council (NIPLECC)	Strategy for Targeting Organized Piracy (STOP)
Origin	Congressional mandate	White House initiative
Leadership	Coordinator for International Intellectual Property Enforcement (IP Coordinator), housed at Commerce Co-Chairs from USPTO and Justice report to Coordinator	National Security Council
Membership	By agency and position	By agency
Dedicated Funding	\$2 million (<i>for fiscal years 2005 and 2006</i>)	None
Dedicated Staff	Seven (<i>IP Coordinator, 4 staff members and 2 detailees</i>)	None
Meetings	Quarterly	Approximately monthly (<i>Scheduled on an ad hoc basis</i>)

Source: GAO

STOP Lacks Elements Important to Oversight

Extent STOP addresses GAO's desirable characteristics of an effective national strategy	
1. Clear purpose, scope, methodology	<input checked="" type="radio"/>
2. Detailed discussion of problems and assessment of risks	<input checked="" type="radio"/>
3. Desired goals, objectives, activities, and performance goals	<input checked="" type="radio"/>
4. Description of resources, investments and risk management	<input type="radio"/>
5. Delineation of organizational roles, responsibilities, and coordination	<input checked="" type="radio"/>
6. Description of strategy's integration with other agencies	<input checked="" type="radio"/>

Fully addresses

Partially addresses

Does not address

Source: GAO analysis.

GAO Recommendations & Legislative Activity

GAO recommends the IP Coordinator should:

- clarify how NIPLECC will carry out its oversight
- ensure that STOP has key characteristics

House and Senate sponsoring legislation:

- clarifies leadership and establishes permanence
- addresses other GAO recommendations

Two Different Coordinating Structures Proposed by Congress

Features of Proposed Coordinating Structures

	Senate Bill 522	House Resolution 4279
Leadership	Office of Management and Budget (OMB) Deputy Director, OMB- chair Coordinator for IP Enforcement- vice chair	Office of the United States Intellectual Property Enforcement Representative
Membership	IP Enforcement Network Members: specific agency and positions	Advisory Committee Members: specific agencies
Dedicated Funding and Staff	yes	yes
Strategic Plan- Key Elements	yes	yes
Oversight Role	yes	yes

Source: GAO

IPR Center Has Not Become the Hub for IP Complaints

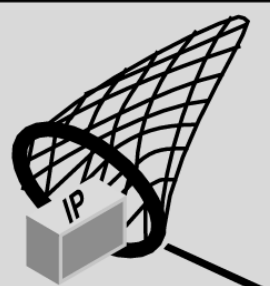


Created in 2000 to collect and analyze IP complaints, but

- agencies failed to develop a common understanding of center
- staff levels have not been maintained:
 - ✓ FBI has dropped out
 - ✓ ICE staff focus on private sector training and outreach

GAO recommendations:

- agencies reassess the IPR Center's mission
- report to Congress on status and required resources

Three Key IP Enforcement Functions

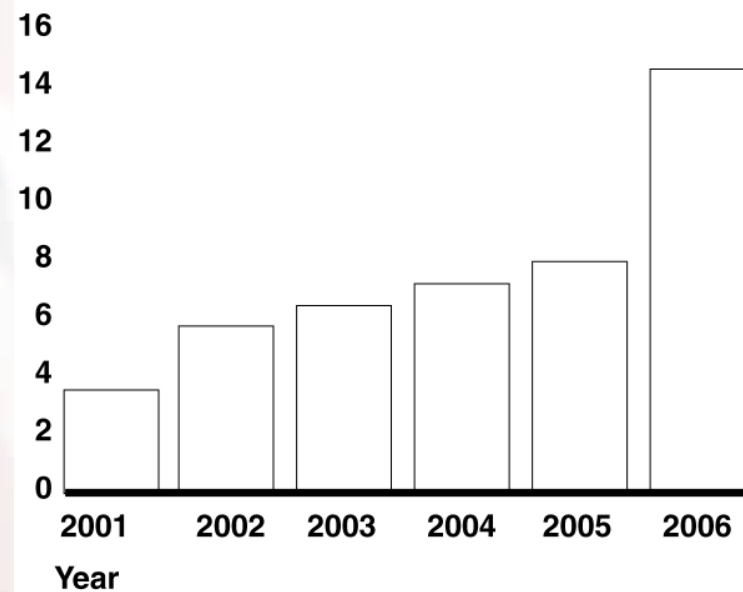
	Seizing	Investigating			Prosecuting
Function					
Agency ^a	CBP	ICE	FBI	FDA	DOJ
Structure	Office of International Trade, Office of Field Operations (325 ports of entry)	Office of Investigations (26 investigative field offices)	Cyber Crime Division (56 investigative field offices)	Office of Criminal Investigations (6 investigative field offices)	Criminal Division, U.S. Attorney's Office (94 field offices)

Sources: GAO analysis of agency data; Art Explosion (images).

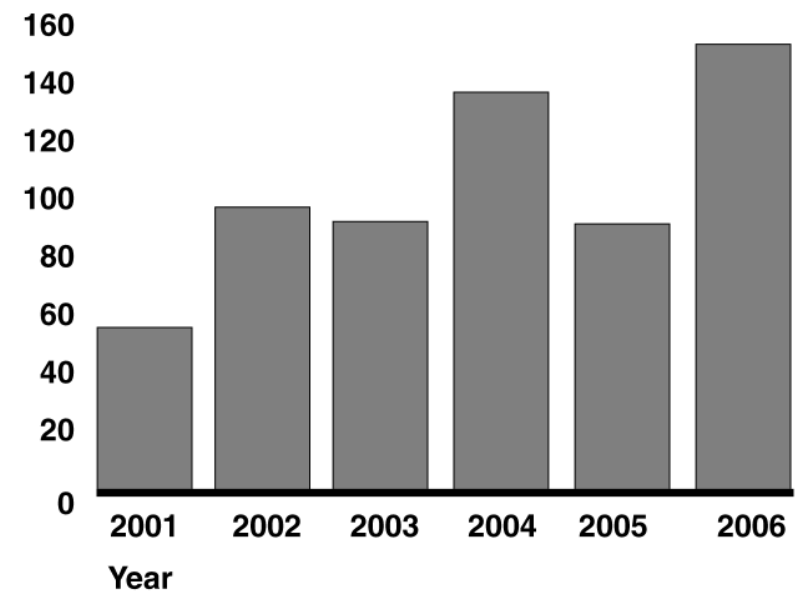
^a We use the term “agency” for DOJ for ease of presentation.

Seizures Have Increased...

Number of seizures (thousands)



Estimated domestic value (dollars in millions)



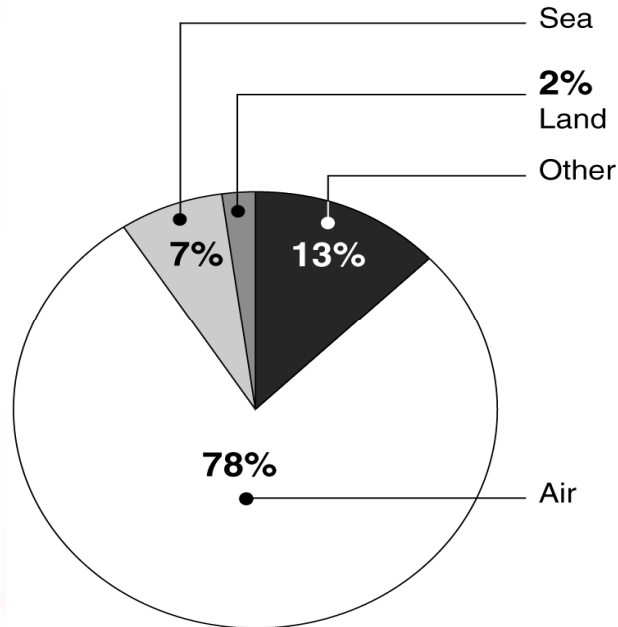
Source: GAO presentation of CBP data.

Note: Data are presented by fiscal year.

... and Air Cargo and Mail Seizures Dominate Growth

Percent Seizures by Transportation Mode

Percent of IP Seizure Actions, 2003 - 2006

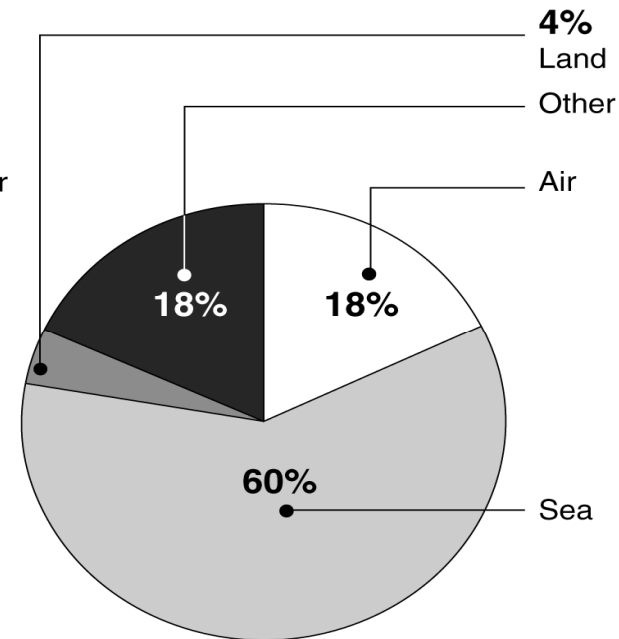


Number of seizures = 36,452

Source: GAO analysis of CBP data.

Note: Data are presented by fiscal year.

Percent of Estimated Domestic Value, 2003 - 2006



Estimated domestic value = \$481.4 million

Border Enforcement Activity Is Highly Concentrated

Enforcement measures	Number or value of enforcement outcomes (2001-2006)	Percent of total
Top ten ports' number of IP seizures	30,462	66%
Top ten ports' domestic value of IP seizures	\$463.2 m	73%
Top ten ports' number of IP penalty cases opened	1208	84%
Top ten ports' penalty amounts assessed	\$1,135 m	97%

Note: Top 10 ports for each type of enforcement measure differ. Data are presented by fiscal year.

Penalty Collection Is a Weak Deterrent...

CBP IP Penalty Amounts Assessed Versus Collected

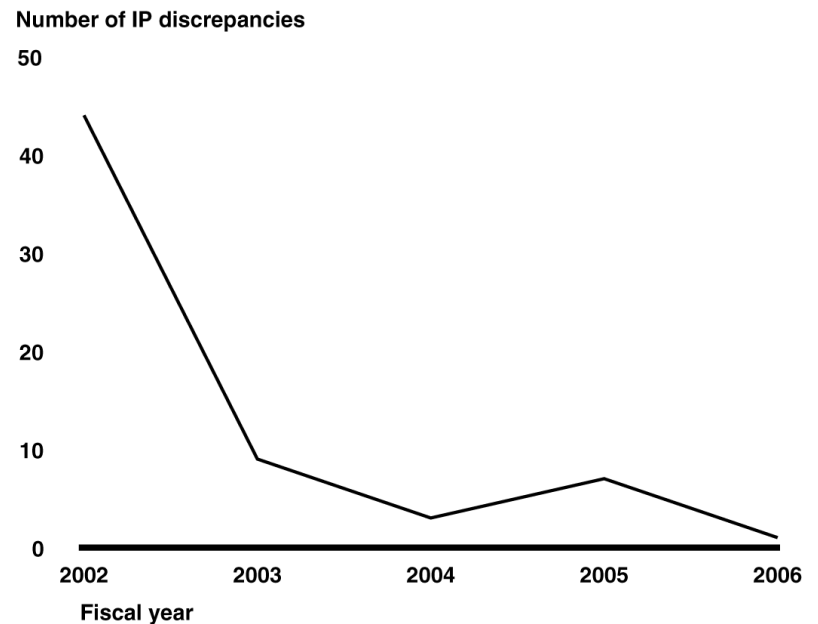
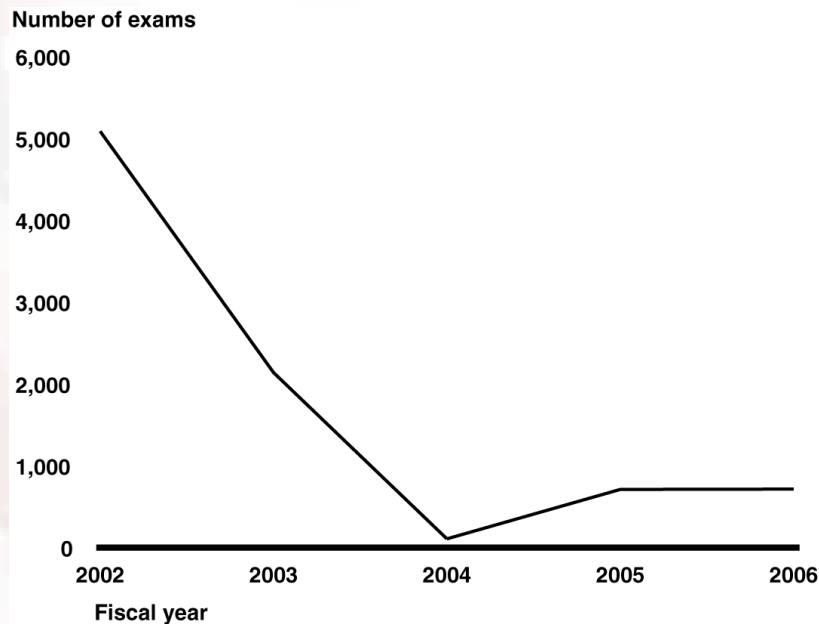
(Dollars in millions)	2001	2002	2003	2004	2005	2006
Total penalty amount assessed	\$52.0	\$65.0	\$45.0	\$442.9	\$423.9	\$136.6
Total penalty amount collected	\$0.5	\$0.3	\$0.4	\$0.5	\$0.4	\$0.6
Percent collected	0.90	0.48	0.91	0.11	0.10	0.45

Source: GAO analysis of CBP data.

Note: Data are presented by fiscal year.

... and Exclusion Order Enforcement Has Sharply Declined

Number of CBP Exclusion Order Exams Performed and IP Discrepancies Found

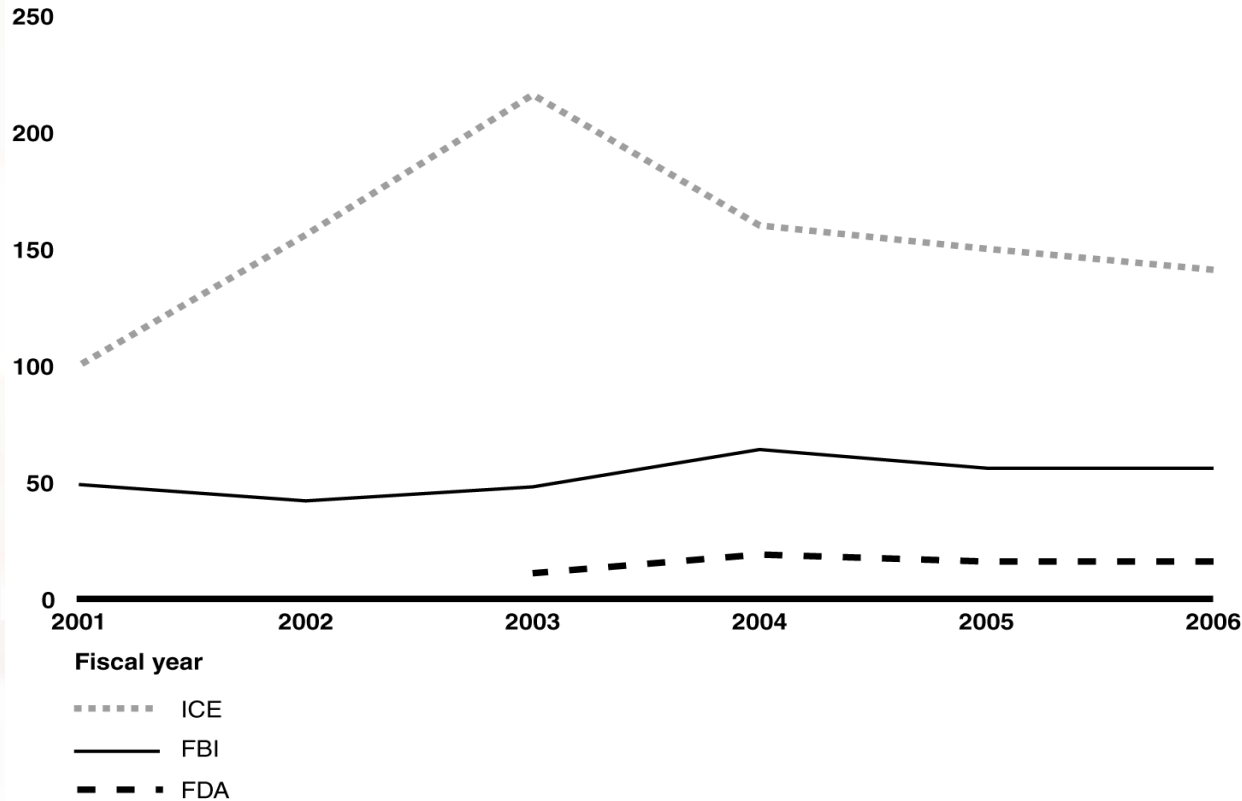


Source: GAO analysis of agency data.

Investigative Resource Levels Vary by Agency

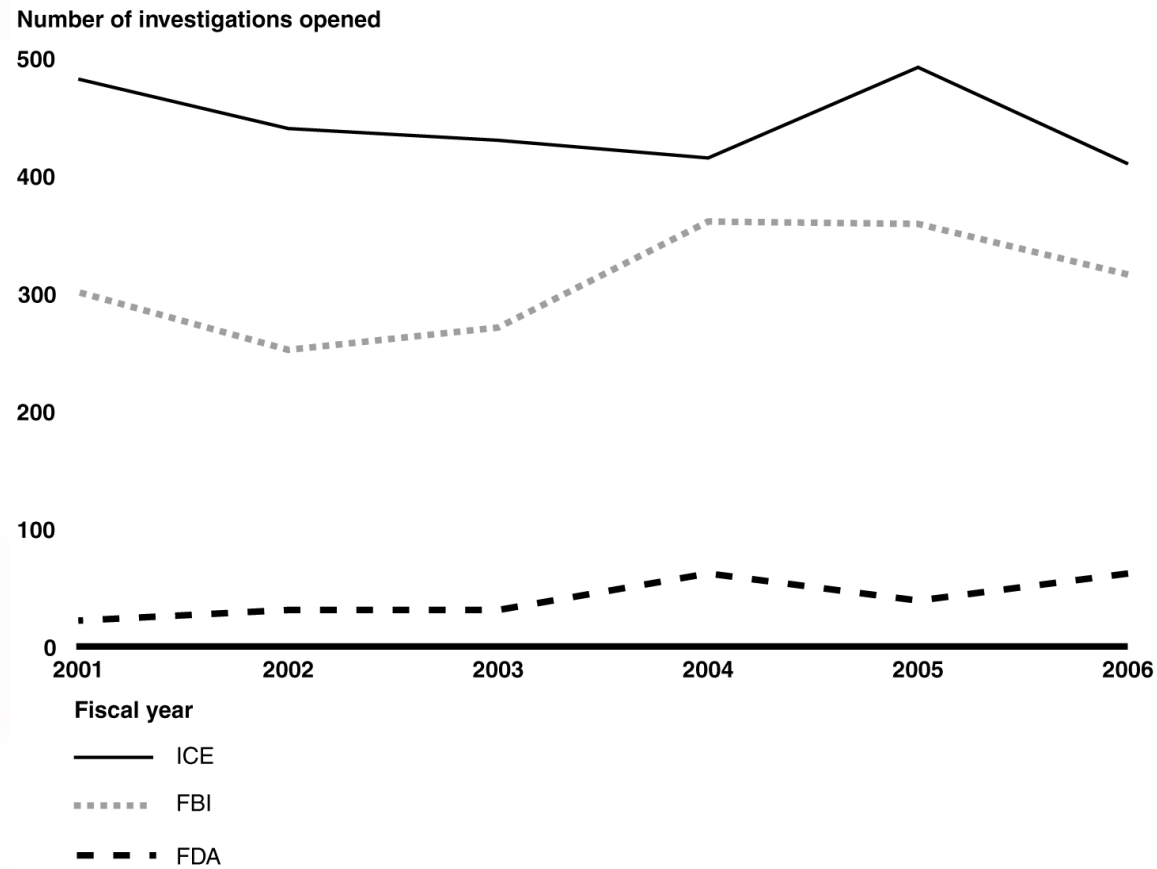
Number of Investigator Estimated Full-Time-Equivalents (FTE)

Investigative resources spent on IP-related enforcement



Source: GAO analysis of agency data.

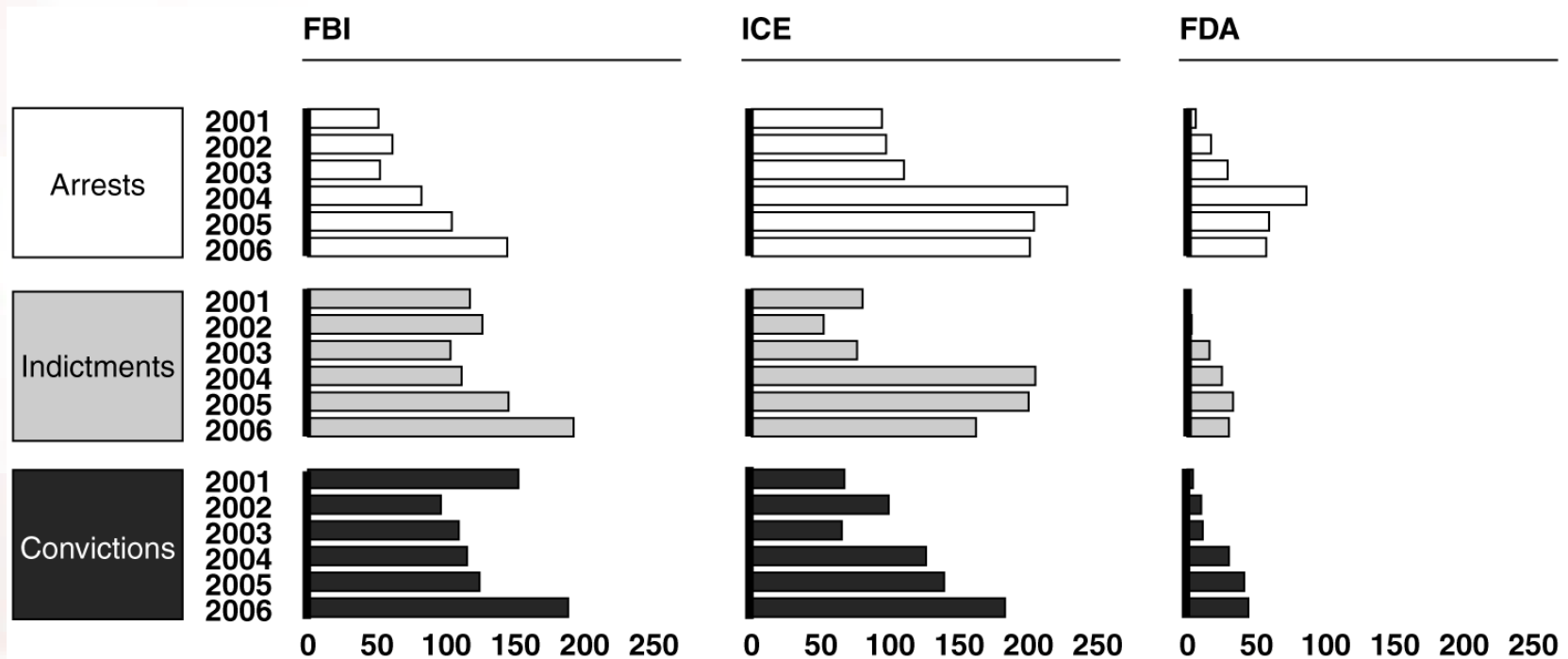
The Number of IP Investigations Has Fluctuated...



Source: GAO analysis of agency data.

... While the Number of Law Enforcement Actions Have Increased...

Number of Arrests, Indictments, and Convictions



Source: GAO analysis of agency data.

Note: Data are presented by fiscal year.

... and DOJ's Enforcement Has Increased, Relatively Few Are Imprisoned

Fiscal Year	IP-related defendants referred from investigative agencies	Defendants charged with IP-related violations	Defendants convicted of IP crimes	Defendants imprisoned for IP crimes
2001	514	200	153	52
2002	497	215	165	65
2003	563	246	141	58
2004	565	177	134	66
2005	724	346	122	53
2006	685	339	176	79
Total	3,548	1,523	891	373

Source: GAO Analysis of DOJ statistics.

GAO Recommendations & Legislative Activity

GAO recommendations:

- establish performance measures for their IP outcomes
- more systematically analyze their IP enforcement efforts
- take steps to better identify and report their efforts to address health and safety risks

Legislative activity:

- two congressional bills under consideration
- Customs Reauthorization
- GAO recommendation follow-up
- likely GAO work on international efforts

GAO Reports and Contacts

- *Intellectual Property: U.S. Efforts Have Contributed to Strengthened Laws, but Challenges Remain*, GAO-04-912 (March 2004)
- *Intellectual Property: Strategy Targeting Organized Piracy (STOP) Requires Changes for Long-term Success*, GAO-07-74 (Nov. 2004)
- *Intellectual Property: National Enforcement Strategy Needs Stronger Leadership and More Accountability*, GAO-07-710T (Apr. 2007)
- *Intellectual Property: Better Data Analysis and Integration Could Help U.S. Customs and Border Protection Improve Border Enforcement Efforts*, GAO-07-735 (Apr. 2007)
- *Intellectual Property: Risk and Enforcement Challenges*, GAO-08-177T (Oct 2007)
- *Intellectual Property: Federal Enforcement Has Generally Increased, but Assessing Performance Could Strengthen Law Enforcement Efforts*, GAO-08-157 (Mar. 2008)

Contacts for IP work and reports: www.gao.gov

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