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FOIA Request Department of Homeland Security OIG Office of Counsel 245 Murray Drive, Bldg. 410 Mail Stop – 2600 Washington, DC 20528-0001 Fax: 202-254-4398 Email: <u>foia.oig@dhs.gov</u>

Note:

See following page for list of included DHS OIG reports

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#### Homeland Security Inspector General Reports included in this file

- 1. Audit of Export Controls for Activities Related to China, Unclassified Summary, OIG-06-28, March 2006
- 2. Audit of Screening Trucks Carrying Canadian Municipal Solid Waste (Unclassified Summary) OIG-06-21, January 2006
- 3. A Review of CBP and ICE Responses to Recent Incidents of Chinese Human Smuggling in Maritime Cargo Containers (Redacted) OIG-07-40
- 4. Review of Controls Over the Export of Chemical and Biological Commodities (Redacted), OIG-05-21; June 2005

Office of Inspector General

U.S. Department of Homeland Security Washington, DC 20528



SEP 9 2009

Subject: Freedom of Information Act Request No. 2009-034 – Final Response

This is our final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS) Office of Inspector General (OIG), dated November 11, 2008, and seeking redacted portions of reports specifically named in your request (a copy of your request is enclosed). Your request was received in this office on December 5, 2008.

Our July 27, 2009 interim response notified you that the full and un-redacted versions of the remaining reports you requested contain information of interest to other DHS entities. As such, we can respond to you only after consulting with the U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS) regarding their information. *See* 6 C.F.R. § 5.4(c)(1).

At this time our consultations with the above-referenced entities are complete. Enclosed are the remaining four OIG reports responsive to your request. Please be advised that a previously redacted version of the OIG inspection report entitled, "A Review of CBP and ICE Responses to Recent Incidents of Chinese Human Smuggling in Maritime Cargo Containers," is available on the OIG website. That report was re-reviewed by OIG, in consultation with CBP and ICE, to determine what information could be disclosed publicly. Based on that review, it was determined that no additional information is appropriate for release. Additionally, the OIG audit reports entitled, "Review of Controls over the Export of Chemical and Biological Commodities," and, "Audit of Export Controls for Activities Related to China," was reviewed in consultation with CBP, ICE, and USCIS. Based on that review, those reports are being released with certain redactions. Finally, the OIG audit report entitled, "Audit of Screening Trucks Carrying Canadian Municipal Solid Waste," is being released in its entirety. As such, this office is providing the following:

- <u>90</u> page(s) are being released in full (RIF);
- \_29 pages are being released in part (RIP);
- \_\_\_\_\_ page(s) are withheld in full (WIF);
- \_\_\_\_\_ page(s) are being referred to another entity;

Freedom of Information Act, 5 U.S.C. § 552			Privacy Act, 5 U.S.C. § 552a
552(b)(1)	552(b)(4)	552(b)(7)(B)	552a(j)(2)
∑ 552(b)(2)	552(b)(5)	552(b)(7)(C)	552a(k)(2)
552(b)(3)	∑ 552(b)(6)	552(b)(7)(D)	552a(k)(5)
	552(b)(7)(A)	⊠552(b)(7)(E)	Other:

The exemptions cited for withholding certain portions of these records are marked below.

#### Exemption 2, 5 U.S.C. § 552(b)(2)

Exemption 2 exempts from public disclosure records and information "related solely to the internal personnel rules and practices of an agency." See 5 U.S.C. § 552(b)(2). OIG is invoking Exemption 2 to protect certain information, the disclosure of which would benefit anyone attempting to violate the law and avoid detection; and reveal sensitive information that may put the security and safety of a CBP or ICE activity at risk.

#### Exemption 6, 5 U.S.C. § 552(b)(6)

Exemption 6 allows withholding of "personnel and medical files and *similar files* the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *See* 5 U.S.C. § 552(b)(6)(emphasis added). CBP recommends invoking Exemption 6 to protect the names of certain CBP employees.

#### Exemption 5, 5 U.S.C. § 552(b)(5)

Exemption 5 of the FOIA protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." *See* 5 U.S.C. § 552(b)(5). USCIS recommends invoking the deliberative process privilege of Exemption 5 to protect information that falls within that privilege's domain.

#### Exemption 7(E), 5 U.S.C. § 552(b)(7)(E)

Exemption 7(E) protects all law enforcement information that "would disclose techniques and procedures for law enforcement investigation or prosecution, or would disclose guidelines for law enforcement investigations or prosecution if such disclosure could reasonably be expected to risk circumvention of the law." *See* 5 U.S.C. § 552(b)(7)(E). In conjunction with Exemption (b)(2), CBP and ICE recommend invoking Exemption (b)(7)(E) to protect sensitive law enforcement information that would risk circumvention of federal statutes or regulations.

#### Fees

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge. See 6 CFR 5.11(d)(4).

#### Appeals

You have a right to appeal CBP's withholding determinations. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, 799 Ninth St. NW, Washington, DC 20229-1177, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal."

Likewise, the decision to withhold information under ICE purview was made by Catrina M. Pavlik-Keenan, the Initial Denial Authority, Immigration and Customs Enforcement, Department of Homeland Security. You have the right to appeal that decision. Should you wish to do so, you must send your appeal within 60 days of the date of this letter to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, DC 20528, following the administrative procedures outlined in Subpart a, Section 5.9, of the DHS FOIA Regulations. Your envelope and letter should be marked "Freedom of Information Act Appeal," and reference FOIA case number 09-FOIA-1186.

Finally, in the event you wish to appeal the determination made by USCIS, you may write to the USCIS FOIA/PA Appeals Office, 150 Space Center Loop, Suite 500, Lee's Summit, MO 64064-2139, within 60 days of the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." The FOIA and implementing DHS regulations are available at www.dhs.gov.

This completes OIG's processing of your request. If you have any questions about this response, you may contact Stephanie Kuehn at 202-254-4389.

Sincerely,

Katherine R. Gallo Assistant Counsel to the Inspector General

Enclosures: 119 pages

DEPARTMENT OF HOMELAND SECURITY Office of Inspector General



# Audit of Export Controls for Activities Related to China



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**Office of Audits** 

OIG-06-28

March 2006

Office of Inspector General

U.S. Department of Homeland Security



Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the Homeland Security Act of 2002 (*Public Law 107-296*) by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibility to promote economy, effectiveness, and efficiency within the department.

This report assesses the effectiveness of the U.S. government's export control policies and practices with respect to preventing the transfer of sensitive U.S. technologies and technical information to the Peoples' Republic of China. It is based on interviews with officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

This report discusses the status of recommendations from prior reports but does not make new recommendations. Therefore, no formal response to this report is necessary. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

Richard L. Skinner

Richard L. Skinner Inspector General

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#### Abbreviations

AES	Automated Export System
ASTI	Arms and Strategic Technology Investigations
CBP	Bureau of Customs and Border Protection
USCIS	United States Citizenship and Immigration Services
DHS	Department of Homeland Security
EAR	Export Administration Regulations
ECC	Exodus Command Center
FY	Fiscal Year
ICE	Immigration and Customs Enforcement
ITAR	International Traffic in Arms Regulations
OFAC	Office of Foreign Assets Control
OIG	Office of Inspector General
PCA	Planned Corrective Action
POE	Ports of entry/exit
PSA	Project Shield America
SEVIS	Student and Exchange Visitor Information System
U.S.	United States

# OIG

#### Department of Homeland Security Office of Inspector General

#### **Executive Summary**

This report presents the results of our review of export control activities related to China<sup>1</sup>. It is the sixth in the series of seven interagency audits required<sup>2</sup> by Congress on transfers of militarily sensitive technology and technical information to countries and entities of concern.

The objective of the interagency<sup>3</sup> audit was to determine the effectiveness of the United States (U.S.) government's export control policies and practices with respect to preventing the transfer of sensitive technologies and technical information to China. Specifically, we attempted to answer these questions:

- For arrests made in connection with violations of export requirements to China, were the commodities properly screened prior to release?
- Has DHS taken actions or established documented plans to implement the recommendations of the prior audit reports?

We reviewed Immigration and Customs Enforcement (ICE) arrests for the illegal exportation of militarily sensitive commodities to China in FY 2004 and 2005; CBP export screening procedures in effect during October and November 2005; and recommendations from our prior audit reports open at September 2005. Additionally, we reviewed the policies and procedures applicable to the exportation of militarily sensitive commodities, and interviewed responsible agency officials. Further, we obtained documentation to support the implementation or correction of prior open DHS bureau audit recommendations. We visited Customs and Border Protection (CBP), ICE, and Citizenship and United States Immigration Service (USCIS) headquarters in Washington, D.C. Also, we visited CBP port offices in Boston, Massachusetts; Houston, Texas; Atlanta, and Savannah, Georgia, as well as the ICE Special Agent-In-Charge office in Boston, Massachusetts. This audit was conducted from September to November 2005 according to generally

<sup>&</sup>lt;sup>3</sup> The OIGs for the Department of Commerce, Department of State, Department of Defense, Central Intelligence Agency, Department of Energy, and the Department of Homeland Security are participating in the audit this year.

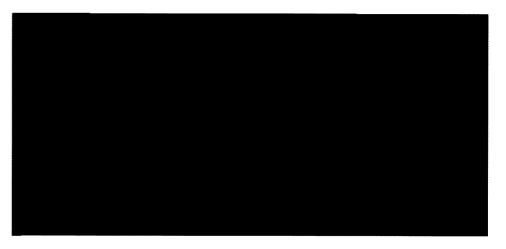


<sup>&</sup>lt;sup>1</sup> The use of the term "China" in this report refers to the Peoples' Republic of China and Hong Kong.

<sup>&</sup>lt;sup>2</sup> The National Defense Authorization Act for Fiscal Year (FY) 2000, Public Law 106-65, section 1402, October 5, 1999, contains the requirement.



accepted government auditing standards. A more detailed description of the purpose, scope, and methodology is provided in Appendix A.



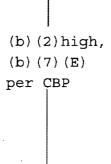
Of our seven prior open audit recommendations, DHS bureaus took actions to close two recommendations and established documented plans to implement four more. The remaining prior audit recommendation addressed to ICE is unresolved.

#### Background

The U.S. controls the export of dual-use<sup>4</sup> commodities and munitions<sup>5</sup> for national security and foreign policy purposes under the authority of several laws, primarily the Export Administration Act of 1979<sup>6</sup> and the Arms Export Control Act.<sup>7</sup>

It has been widely reported in the media that responsible federal agencies and congressional committees have serious concerns with China's proliferation activities. The record of Chinese proliferation activities over the past decade remains mixed and contentious. A critical question in this debate is the U.S. government's capacity to implement effective controls over exports to China. In addition, while current U.S. policy supports Hong Kong's high degree of autonomy established under the Joint Declaration signed by Britain and China

FOR OFFICIENT USE ONLY Audit of Export Control for Activities Related to China Page 2

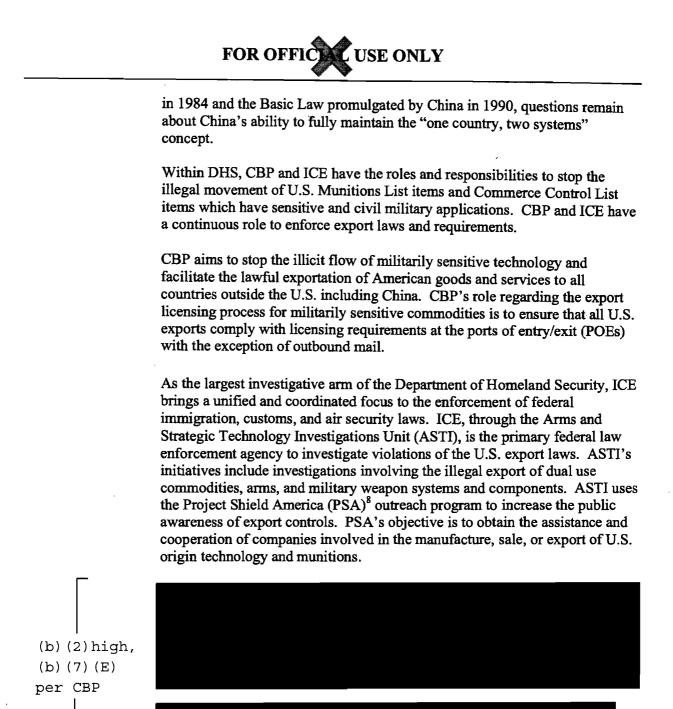


<sup>&</sup>lt;sup>4</sup> Dual-use commodities are goods and technology items that have both military and civilian applications.

<sup>&</sup>lt;sup>5</sup> Munitions are defense articles or technical data on the U.S. Munitions List.

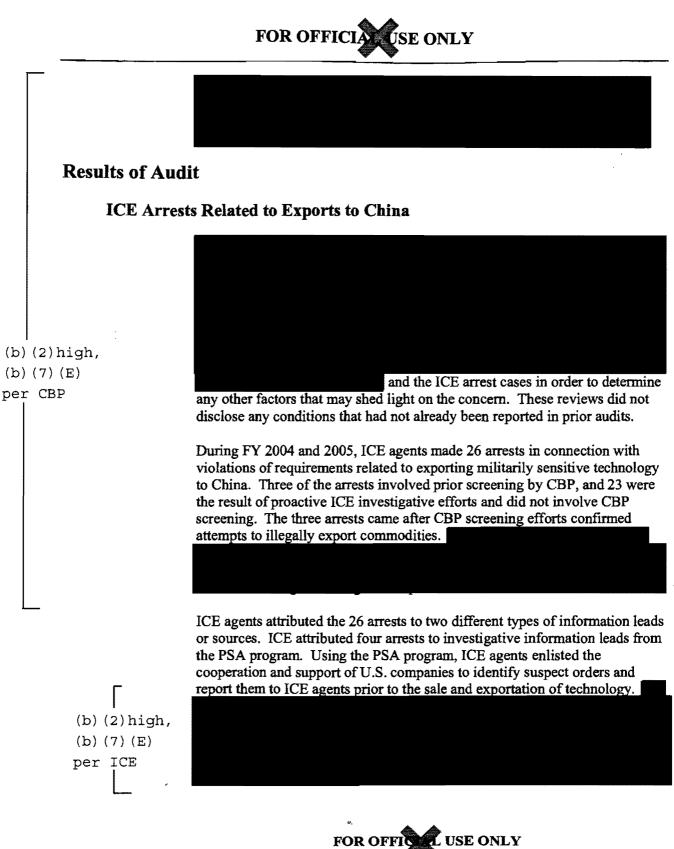
<sup>&</sup>lt;sup>6</sup> Although the Export Administration Act last expired on August 21, 2001, the President extended existing export regulations under Executive Order 13222, dated August 17, 2001, invoking emergency authority under the International Emergency Economic Powers Act.

<sup>&</sup>lt;sup>7</sup> Section 38 of the Arms Export Control Act (22 USC Section 2778) authorizes the President to control the export and import of defense articles.



<sup>8</sup> Project Shield America is an integral part of the ICE strategy of preventing illegal exporters, targeted foreign countries, terrorist groups, and international criminal organizations from: trafficking in Weapons of Mass Destruction (WMD) and their components; obtaining and illegally exporting licensable commodities, technologies, conventional munitions, and firearms; exporting stolen property; and engaging in financial and other transactions that support these activities or violate U.S. sanctions and embargoes.

FOR OFFICE USE ONLY Audit of Export Controls or ectivities Related to China Page 3



Audit of Export Control Aor Activities Related to China Page 4



For the other 22 arrests, ICE agents obtained information leads from their work on various assignments with other federal agencies. The arrests were generally made at a point in the process that precedes CBP's involvement, and export screening being performed.

The agents assigned to these agencies identified information and intelligence on illegal export activity and provided this investigative information to ASTI. Also, ICE received investigative information from the Department of Commerce and Treasury Department's Office of Foreign Assets Control.

(b) (2) high, (b) (7) (E) per ICE/CBP



The types of militarily sensitive commodities identified and the sources of the information leads are listed in Appendix B.

#### Status of Prior DHS Audit Recommendations

DHS bureaus have taken actions or established documented plans to implement six of the seven recommendations from the prior audit reports. On one open prior audit recommendation, ICE did not concur with the recommendation and it is unresolved. The DHS bureaus have submitted acceptable planned corrective actions (PCAs) and target dates on four open recommendations, and are still taking corrective actions. Finally, two recommendations were closed during this audit. The table below summarizes the status of the prior audit recommendations and PCA target dates; a more detailed discussion is included in Appendix C.

**Summary of Prior Audit Recommendations** 

FOR OFFICEL USE ONLY Audit of Export Controls for Activities Related to China Page 5

OIG Report Number	Finding # - Recommendation #	DHS Bureau	Status
OIG-03-069	F2-R4	ICE	PCA Target Date – May 2006
OIG-03-069	F3-R3	ICE	Closed
OIG-04-023	F1-R1	ICE	Unresolved
OIG-04-023	F1-R2	USCIS	PCA Target Date - December 2006
OIG-04-023	F1-R3	USCIS	PCA Target Date - October 2006
OIG-05-021	F1-R1	CBP	PCA Target Date - September 2006
OIG-05-021	F2-R2	CBP	Closed

The audit report, Export Enforcement: Numerous Factors Impaired Treasury's Ability to Effectively Enforce Export Controls<sup>9</sup> (OIG-03-069), dated March 2003, had two open recommendations directed to ICE. The first open audit recommendation was to develop a license determination tracking system. To implement the recommendation, ICE is developing a new Exodus Accountability Referral System that will facilitate ICE's tracking and retrieval capabilities for export license determination information. ICE has a PCA target date of May 2006. ICE completed actions to close the second recommendation during this audit (see Appendix C, page 10).

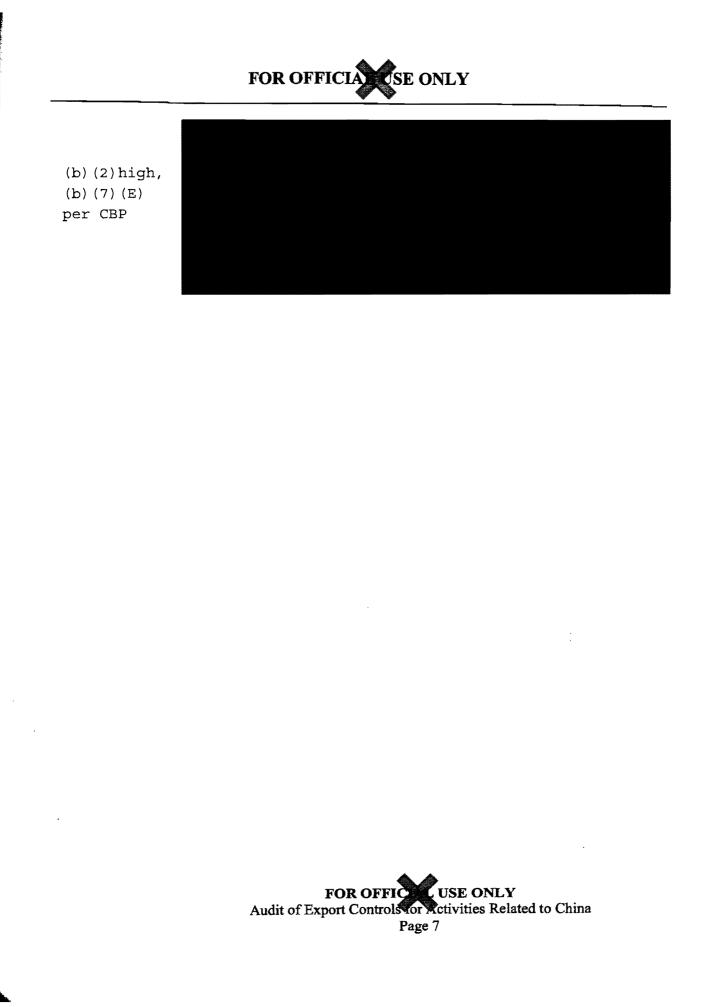
The audit report, Review of Deemed Exports (OIG-04-023) dated April 2004, had three open recommendations, one directed to ICE and two directed to USCIS. ICE did not concur with the recommendation to expand the list of "countries and entities of concern" whose students and exchange visitors have certain regulatory restrictions that prevent the potential exposure of foreign nationals to information directly related to controlled technologies and use Student and Exchange Visitor Information System (SEVIS) to enforce the expanded restricted list. ICE's position was that the U.S. Department of State or a higher authority, not DHS, would be the appropriate organization to expand the restricted list. ICE further believed that SEVIS was not an appropriate vehicle for enforcing the restrictions. Therefore, this recommendation is unresolved and will be referred to the Department for resolution. The remaining two open recommendations are related to USCIS' process for approving immigrant applications. USCIS provided us with PCAs and target dates of October and December 2006 to complete the recommended actions (see Appendix C, page 11).

(b)(2)high, (b)(7)(E) per CBP

<sup>9</sup> This was a Treasury OIG audit report for which DHS OIG has follow up responsibility.

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Purpose, Scope, and Methodology

The objective of the interagency audit was to assess the effectiveness of the U.S. government's export control policies and practices with respect to preventing the transfer of sensitive U.S. technologies and technical information to China. Specifically, we attempted to answer these questions:

- For arrests made in connection with violations of export requirements to China/Hong Kong, were the commodities properly screened prior to release?
- Has DHS taken actions or established documented plans to implement the recommendations of the prior audit reports?

We reviewed ICE arrests for the illegal exportation of militarily sensitive commodities to China in FY 2004 and 2005; CBP export screening procedures in effect during October and November 2005; and recommendations from our prior audit reports open at September 2005. We reviewed the policies and procedures applicable to the exportation of militarily sensitive commodities; and interviewed responsible agency officials. Also, we reviewed the FY 2004 and 2005 ASTI investigative cases with arrests made in connection with violations of export requirements to China and interviewed the case agents to determine what information led to the arrests. Further, we obtained documentation to support the implementation or correction of prior open audit recommendations.

We visited CBP, ICE, and USCIS headquarters in Washington, D.C. We visited CBP port offices in Boston, Massachusetts; Houston, Texas; Atlanta, and Savannah, Georgia to review CBP's export processing procedures and enforcement programs for State and Commerce licensed exports of militarily sensitive technology. Also, we visited the ICE Special Agent-In-Charge office in Boston, Massachusetts. The audit was conducted from September to November 2005 according to generally accepted government auditing standards.





#### ICE Arrests Related to Export of Sensitive Technology

Fiscal Year	Number of Arrests	Commodities	Source of Information Leads
2004	2	<ol> <li>Night vision equipment and various components used in radar, satellite and aerospace</li> </ol>	Private Companies
	2	2. Infrared imaging technology and four infrared cameras	Other Federal Agencies
	3	3. Sensors, analog converters, signal processing, amplifiers, computer chips, and electrical components	Other Federal Agencies
	4	4. Honey comb absorbers	Other Federal Agencies
	2	5. Monolithic microwave integrated circuit chips	Other Federal Agencies
	4	<ol> <li>Semi-conductor chips for satellite communications and radar systems</li> </ol>	Other Federal Agencies
	1	7. Night vision goggles	Private Companies
	1	8. 4-t700 night vision goggles	Private Companies
	1	9. Sparrow missile parts	Other Federal Agencies
	1	10. Scrap metal-radar central section	Other Federal Agencies
	2	11. F-4 phantom components	Other Federal Agencies
Subtotal	<u>23</u>		
2005	3	12. Oscillators	Other Federal Agencies
Total	26		

FOR OFFICE USE ONLY Audit of Export Controls for Activities Related to China Page 9

#### FOR OFFICIAL USE ONLY Appendix C Status of Follow-up of Prior Years Recommendations

#### Treasury OIG Audit Report: EXPORT ENFORCEMENT: Numerous Factors Impaired Treasury's Ability To Effectively Enforce Export Controls (OIG-03-069) March 25, 2003

Finding 2: Numerous Factors Impaired Customs' Ability To Effectively Enforce Export Controls

Recommendation	Management Comments	Status
4. Develop a license determination tracking system that provides ECC management with meaningful, accurate information on the ECC program results.	ICE is developing a new tracking system called Exodus Accountability Referral System. The current tracking system is paper based, which takes too much time and hampers information sharing.	OPEN ICE Arms and Strategic Technology Investigations PCA Target Date May 2006

Finding 3: Office of Foreign Assets Control (OFAC) Could Benefit From Better Coordination With State Department and Customs

Recommendation	Management Comments	Status
3. The appropriate Customs official should ensure that periodic reports are provided to the Office of Foreign Assets Control regarding the status of OFAC referrals and Customs initiated investigations of Office of Foreign Assets Control violations.	Customs concurred with this recommendation. ICE provides OFAC with periodic reports regarding the status of OFAC referrals and ICE initiated investigations of OFAC violations.	CLOSED ICE Arms and Strategic Technology Investigations

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#### FOR OFFIC USE ONLY Appendix C Status of Follow-up of Prior Years Recommendations

#### DHS OIG Audit Report: Review of Deemed Exports (OIG -04-023) April 2004

Finding 1: DHS Policies and Procedures Do Not Ensure Compliance With Deemed Export Requirements

Recommendations	Management Comments	Status
1. We recommend that the Under Secretary for BTS <sup>10</sup> expand, beyond Libya, the list of " countries and entities of concern" whose standards or exchange visitors are considered for evaluation based on regulatory restrictions concerning enrollment in certain courses of study or participation at approved U.S. institutions. In addition, BTS should examine the need to expand the list of disciplines currently restricted by federal regulations to include any others, which may potentially expose foreign nationals to information directly related to those controlled technologies listed in either the Commerce Control List or the U.S. Munitions List. Based on changes to these lists, SEVIS should be modified accordingly.	ICE did not concur with the recommendation to expand the list of "countries and entities of concern" whose students and exchange visitors have certain regulatory restrictions that prevent the potential exposure of foreign nationals to information directly related to controlled technologies and use SEVIS to enforce the expanded restricted list. ICE's position was that the U.S. Department of State or the President, not DHS, would be the appropriate organization to expand the restricted list. ICE further believed that SEVIS was not an appropriate vehicle for enforcing the restrictions.	UNRESOLVED ICE SEVIS PCA Target Date not established
2. We recommend that the Deputy Secretary strengthen current DHS change of status adjudication procedures including additional controls, such as obtaining an SAO <sup>11</sup> from State	USCIS will incorporate the Technology Alert List into the adjudicative process through automation. USCIS will add instructions to Form I-129, Petition for a Nonimmigrant Worker. USCIS	OPEN USCIS PCA Target Date December 31, 2006

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 <sup>&</sup>lt;sup>10</sup> BTS – Border and Transportation Security, BTS no longer exists and ICE is now responsible for corrective actions
 <sup>11</sup> SAO – Security Advisory Opinion
 <sup>12</sup> IBIS – Interagency Border Inspection System
 <sup>13</sup> VISA Mantis – screens individuals who may seek to violate U.S. export laws



Appendix C

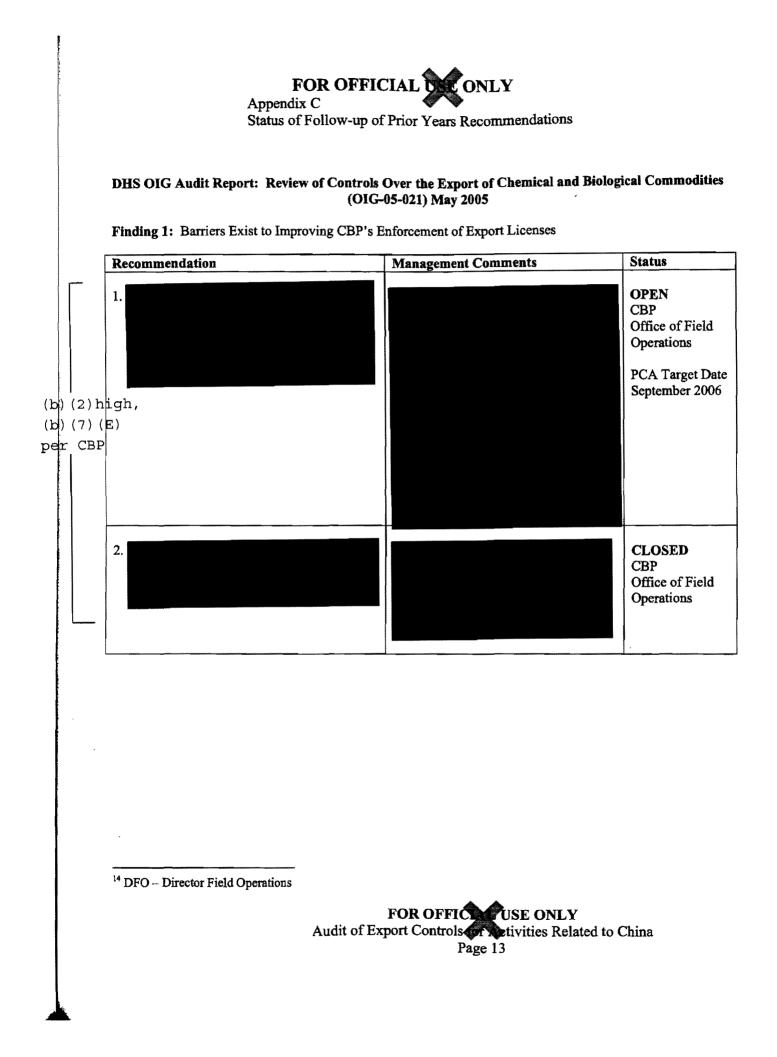
#### Status of Follow-up of Prior Years Recommendations

#### DHS OIG Audit Report: Review of Deemed Exports (OIG -04-023) April 2004

Finding 1: DHS Policies and Procedures Do Not Ensure Compliance With Deemed Export Requirements

Recommendation	Management Comments	Status
3. We recommend that the Director, USCIS seek the discretionary authority to deny outright any immigrant or nonimmigrant benefit, including changes to visa status, on the grounds of national security.	USCIS concurred with this recommendation. The proposal is with the DHS General Counsel for review. The PCA due date has not been reached and the recommendation remains open.	OPEN USCIS PCA Target Date October 1, 2006







Appendix D Major Contributors to this Report

George Tabb, Director for Trade Operations & Security Division Gene Wendt, Audit Manager Clara Veal, Auditor In Charge Linda Howarton, Auditor Christy Staples, Auditor





#### **Department of Homeland Security**

Secretary Deputy Secretary Chief of Staff Deputy Chief of Staff General Counsel **Executive Secretariat** Assistant Secretary, Policy GAO/DHS OIG Liaison Assistant Secretary, Public Affairs Assistant Secretary, Legislative and Intergovernmental Affairs Commissioner, Bureau of Customs and Border Protection Assistant Secretary, Bureau of Immigration and Customs Enforcement Director, Bureau of Citizenship and Immigration Services OIG Liaison, CBP OIG Liaison, ICE OIG Liaison, USCIS

#### Office of Management and Budget

Chief, Homeland Security Branch DHS OIG Budget Examiner

#### **Congress**

Congressional Oversight and Appropriations Committees, as appropriate



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### DEPARTMENT OF HOMELAND SECURITY

# **Office of Inspector General**

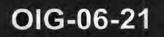
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# Audit of Screening of Trucks Carrying Canadian Municipal Solid Waste



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# **Office of Audits**



January 2006

Office of Inspector General

U.S. Department of Homeland Security Washington, DC 20528



#### Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the Homeland Security Act of 2002 (*Public Law 107-296*) by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, and special reports prepared by our office as part of our DHS oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This review was conducted at the request of Senators Carl Levin, Debbie Stabenow and Representative John D. Dingell of Michigan. We assessed the Bureau of Customs and Border Protection's process for screening and inspecting trucks carrying Canadian municipal solid waste into the United States. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

Richard L. Skinner

Richard L. Skinner Inspector General



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#### Abbreviations

ATS	Automated Targeting System		
CBP	Bureau of Customs and Border Protection		
CES	Centralized Examination Station		
GAO	Government Accountability Office		
MSW	Municipal Solid Waste		
OIG	Office of Inspector General		
POE	Ports of Entry		
PRD	RD Personal Radiation Device		
RIID	Radiation Isotope Identifier Device		
RPM	Radiation Portal Monitor		
VACIS	Vehicle and Cargo Inspection System		

WMD Weapons of Mass Destruction

#### Department of Homeland Security Office of Inspector General



#### **Executive Summary**

UI(†

The greater Toronto, Canada area has been shipping municipal solid waste (MSW) to Michigan landfills for disposal since 1998. During calendar year 2004, Michigan landfills received approximately 100,000 truckloads of Canadian MSW, an 8% increase over calendar year 2003. Another 10,000 shipments of MSW enter the U.S. through 9 other ports of entry (POE) that accept Canadian and Mexican MSW. Over the past two years, trucks carrying Canadian MSW were found to contain medical waste, illegal drugs, and illegal currency. At the request of Senators Levin and Stabenow and Representative Dingell, our office reviewed the effectiveness of the Bureau of Customs and Border Protection's (CBP) screening of trucks carrying Canadian MSW.<sup>1</sup>

Our audit work was conducted at CBP Headquarters in Washington, DC, and at the ports of Detroit and Port Huron, Michigan. We evaluated CBP entry and screening procedures and observed CBP personnel implementing those procedures at Michigan landfills and at the ports of Detroit and Port Huron. We also gathered and analyzed information regarding techniques for screening MSW from other northern and southern border ports. In addition, we made site visits to three MSW transfer stations in the greater Toronto area. The audit objective, scope, and methodology are discussed in more detail in Appendix A of this report.

CBP has the authority<sup>2</sup> to search all persons, baggage, and merchandise arriving in the U.S. to detect and seize smuggled instruments of terror, and other contraband, such as illegal drugs. CBP carries out its responsibility by using screening equipment and physical inspections. For example, every passenger vehicle and truck entering the U.S. at the Detroit and Port Huron POE pass through a radiation portal monitor (RPM) and selected trucks receive a Vehicle and Cargo Inspection

<sup>1</sup> The request letter is included as Appendix B.

Screening of Trucks Carrying MSW

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<sup>&</sup>lt;sup>2</sup> 19 USC § 1467; 19 CFR § 162.6.

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System (VACIS)<sup>3</sup> screening. During special operation days, the contents of selected trucks are physically inspected. However, because of the limitations of the screening equipment,<sup>4</sup> the large number of MSW trucks crossing POE, the limited resources available for conducting time-intensive inspections of MSW, and the difficulty in conducting physical inspections of MSW, the likelihood of finding prohibited items is minimal.

We are recommending that the Commissioner of CBP conduct a risk analysis and develop procedures and minimum requirements for selecting and inspecting trucks carrying Canadian MSW.

#### Background

According to Title 19 Code of Federal Regulations, Section 162.6, all persons, baggage, and merchandise arriving in the customs territory of the U.S. from places outside thereof are liable to inspection and search by a customs officer.

Over 99% of Canadian MSW coming into Michigan flows through two major POE, the Blue Water Bridge in Port Huron and the Ambassador Bridge in Detroit. During calendar year 2004, these POE accepted approximately 100,000 shipments of MSW for Michigan landfills, an increase from approximately 92,600 during calendar year 2003. The majority of the shipments are from the greater Toronto area. MSW from other areas of Canada and Mexico enter the U.S. through an additional nine POE that processed approximately 10,000 trucks in calendar year 2004.

Screening of Trucks Carrying MSW



<sup>&</sup>lt;sup>3</sup> A VACIS machine uses gamma rays to produce a visual presentation of a truck's contents. The image is similar to an x-ray.

<sup>&</sup>lt;sup>4</sup> We have reported on the limitations of RPM and VACIS equipment in DHS OIG report number OIG-04-040, September 2004.

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Table 1 MSW Truck Entering U.S. Ports Calendar Year 2004				
Ports	Number of Shipments	Percentage		
Port Huron, Michigan	90,174	82.1		
Detroit, Michigan	9,250	8.4		
Buffalo, New York	7,580	6.9		
Sumas, Washington	2,252	2.1		
Sault Ste. Marie, Michigan	534	0.5		
San Luis, Arizona	38	0		
Other Ports	19	0		

Table 1 shows the number of MSW trucks entering the U.S. during calendar year 2004.

In Toronto, the MSW is unloaded from garbage trucks and reloaded onto larger long-distance tractor-trailers for shipment to Michigan landfills. At some of the transfer stations, the loaded trucks are driven through an RPM prior to departure to the U.S.

#### CBP Inspections

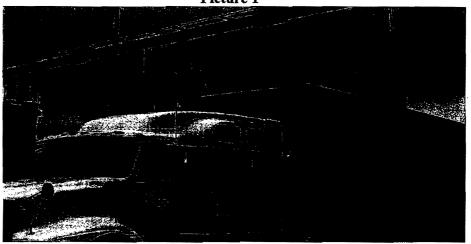
At the Detroit and Port Huron POE, every passenger vehicle and truck must pass through an RPM. An RPM is a non-intrusive tool that screens vehicles for nuclear and radiological materials.

Screening of Trucks Carrying MSW

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Picture 1 shows an MSW truck passing through a RPM.



Picture 1

Truck going through a Radiation Portal Monitor

If an RPM or a Personal Radiation Detector (PRD)<sup>5</sup> alerts to the presence of radiation, the MSW truck receives a second screening using a different RPM. If the second RPM also alarms, the truck undergoes secondary examination. The secondary examination would involve CBP officers using a Radiation Isotope Identifier Device (RIID) to identify the source of the radiation (specific isotope). The truck may also undergo a VACIS examination. The secondary examination generally involves a physical examination of the vehicle. CBP does not have the capability to unload and inspect the contents of a MSW truck at the POE. Once the source of the specific radiation is determined, the vehicle will be released into the U.S., or processed for immediate return to Canada.<sup>6</sup> If a violation has occurred, a penalty might be issued. In September 2004 we reported on the limitations of RPM, VACIS, PRD, and RIID equipment in report number OIG-04-040.

Screening of Trucks Carrying MSW



<sup>&</sup>lt;sup>5</sup> The PRD is a small, self-contained personal safety device used for detecting radiation.

<sup>&</sup>lt;sup>6</sup> Radiation can be present in many commonly used materials such as cat litter and clay tiles.



#### Special Operations

In July 2003, CBP initiated special operation days called "Dump in Detroit" and "Screen Waste in Port Huron" to determine if trucks hauling MSW into the U.S. are in compliance with import laws and regulations. During the special operations, trucks are selected after they have gone through the RPM. All trucks entering the U.S. at the ports of Detroit and Port Huron drive through an RPM. Trucks cannot be selected for special operations until they have gone through the RPM. The truck driver's entry documents are also reviewed to see if the driver has any outstanding warrants or legal issues in the U.S. or Canada. After the documents are confirmed, the truck is escorted to a landfill for a more thorough examination of its contents. Before the trucks are escorted to the landfill, a canine, if available, will be used to inspect the trucks. Since the special operations began, 629 trucks have been inspected, including 552 at the port of Detroit and 77 at Port Huron.

#### **Results of Audit**

#### Vulnerabilities in Screening Equipment and Physical Inspections

CBP does not have an effective method to screen and inspect the 350 truckloads of MSW that enter the U.S. daily through the Detroit and Port Huron POE. The effectiveness of RPMs and other equipment used to test for the presence of radiation is limited. VACIS visual presentations cannot easily distinguish drugs, weapons, or other contraband in MSW. In addition, physical inspections are of limited value because it is difficult to thoroughly inspect compacted MSW to identify illegal cargo, and relatively few inspections are performed because they are labor intensive. Further, physical inspections of the cab and the tractor are not routinely performed.

#### **RPM and VACIS Examinations**

The effectiveness of RPM and VACIS examinations is limited. In a September 2004 classified report, we identified needed improvements in the application of RPM technology. In addition, the effectiveness of the VACIS imaging system is limited by the nature of MSW. Because MSW is dense when compacted for transportation and is not a

Screening of Trucks Carrying MSW



Page 5

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homogenous product, it can be difficult for the officers to identify anomalies in the visual representation. Other commodities present a clearer and more uniform image. However, the imaging system has been useful in detecting some illegal drug smuggling. In one instance, an anomaly in the visual representation was found to be 1,900 pounds of marijuana packed in sports equipment bags. The bags were found in the back of a MSW truck.

The VACIS imaging equipment also has mechanical limitations. At the ports we visited, the truck housing the equipment and the VACIS equipment itself were often out of service due to mechanical problems. The VACIS truck must be driven to a contractor or wait for a technician for repairs. Also, the equipment is often inoperable in inclement weather (electrical, wind, and snow storms).

#### CBP Inspections of MSW

Very few trucks received inspections other than an RPM. All MSW inspections during calendar year 2004 took place under special operation days called "Dump in Detroit" and "Screen Waste in Port Huron." Although the Detroit and Port Huron POE accept 99% of MSW entering Michigan and over 90% of all MSW entering the U.S., the contents of less than 2/10 of 1% of MSW trucks are selected for physical inspections.

During calendar year 2004, 77 of the 90,174 MSW trucks that came through Port Huron were selected for landfill inspections. At the port of Detroit, 100 of 9,250 MSW trucks were selected for inspection. However, all inspections at Detroit occurred during July through December; no inspections were performed during January to June. CBP personnel told us they did not perform any landfill examinations during the latter period because officers were assigned to higher risk priorities.





Table 2 shows the number of landfill examinations performed by month during 2004 for the Port Huron and Detroit POE.

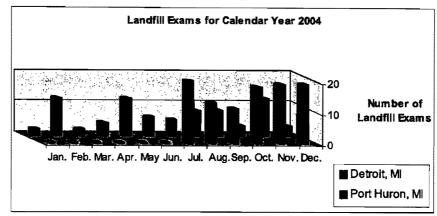


Table 2

Poor weather conditions, difficulty getting into landfills, distances to the landfills, the length of time required to escort MSW trucks to a landfill and conduct an inspection, limit the number of landfill exams conducted by CBP. The Michigan landfills are located from 25 to 90 miles from the POE. Three officers and a supervisor conduct landfill examinations either on overtime or on regular hours, with their normal work assignments performed on an overtime basis. CBP officers typically select no more than five trucks to accompany to the landfill, observe the unloading, and examine the contents. The officers then return to the POE. The process from selection to release of the trucks after the examination, can take from 3 to 6 hours.

Physical examinations at landfills are difficult to perform because of unhealthy and dangerous environmental conditions. The presence of blood, medical waste, syringes, and the commingling of household chemical products, can cause skin irritation, respiratory problems, and diseases, such as hepatitis. Officers are also exposed to bird droppings from the multitude of birds that fly above the landfills.





#### Picture 2



CBP Officers at a Michigan landfill unloading a MSW truck

In addition, the MSW is generally so tightly compacted when a truck is loaded, that it is hard to identify specific items, as they are unloaded at the landfill. There have been fires inside these trucks caused by spontaneous combustion in the tightly compacted MSW.

Further, the landfill surfaces are unstable and slippery during rain, snow, and ice. Officers can be injured climbing through the waste or by other commercial trucks unloading garbage in the same area. Poor weather conditions can also limit the number of landfill exams because of the conditions of the roads and the distances to the landfills.

CBP officials consider inspection activities to be a local decision based on a port officials' assessment of risk, available resources, and workload. CBP officials at the ports of Detroit and Port Huron told us they use local intelligence, officer judgment, random sampling, and targeting scores from CBP's Automated Targeting System (ATS) to select trucks carrying MSW for further examination. CBP officials said they have not conducted a comprehensive assessment of risks facing the northern border.

Screening of Trucks Carrying MSW

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#### Centralized Examination Station

Centralized Examination Stations (CES) are facilities located near POE that provide the buildings and equipment needed to unload trucks, examine their cargo, and reload. There are no CES near the Detroit or Port Huron POE. Physical examinations are limited to a peek in the back of truck (if the door is opened too much, it cannot be closed again) or a view of the top of an open-top truck covered by a rollback tarp.

CBP solicited bids for a contractor to provide a preexisting facility or to construct and operate a CES for MSW near the Detroit and Port Huron POE. CBP planned to have contractors operate the facility, including unloading and re-loading the MSW trucks and inspecting the contents. The cost of the examinations, under CBP's plan, would be charged to the importer/exporter or importer's/exporter's agent. CBP officers would be present at the CES to oversee the operation.

CBP received one proposal in response to its request. The proposal was for a CES facility 80 miles from the POE. CBP determined that this was too far from the POE. CBP officials believe a CES would allow CBP to conduct more inspections in a safer environment and reduce the cost of inspections. However, according to CBP officials, there appears to be no interest from the private sector in establishing a CES facility closer to the ports, and as a result, CBP is no longer pursuing the CES.

#### **Operating Procedures**

CBP relies on local POE officials to decide when to select and inspect MSW trucks. CBP's procedures for special operation days, for example, do not specify how frequently special operation days should occur or how many trucks should undergo inspection during these operations. Lacking nationwide procedures, local port officials drafted local procedures for screening MSW. This resulted in inconsistent inspections by the CBP officers at the various POE. For example, Port Huron's "Screen Waste" procedures instruct the officers to release the trucks selected for inspections if a bottleneck develops at the bridge, while Detroit's "Dump" procedures do not mention release because of bottlenecks.

Screening of Trucks Carrying MSW





In addition, Detroit and Port Huron do not conduct VACIS exams in the same way. Detroit images the entire truck after the driver exits. Port Huron starts to image behind the driver; the driver remains in the cab to drive the truck through the imaging process. Consequently, if there were contraband in the cab, the imaging process would not detect it.

## Recommendations

We recommend that the Commissioner of CBP conduct a risk analysis and develop procedures and minimum requirements for selecting and inspecting trucks carrying MSW. The procedures should require inspections throughout the year and physical inspections should not be limited to special operations days.

## **Management Comments and OIG Analysis**

We obtained written comments on a draft of this report from CBP. We have included a copy of the comments in their entirety as Appendix C. CBP agreed with the recommendations. Below is a summary of CBP's response to the recommendations and our assessment of the response.

CBP concurred with the recommendation and proposed a three part action plan:

The Office of Field Operations (OFO) will request that the Office of Strategic Trade perform a risk analysis of trucks carrying municipal solid waste into the United States.

OFO will review the risk analysis and develop procedures and requirements for selecting and inspecting trucks carrying Canadian municipal solid waste.

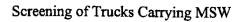
OFO will implement the new selection criteria and inspection procedures.

Screening of Trucks Carrying MSW

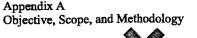




CBP's proposed corrective action, when fully implemented, will satisfy the recommendation. We requested a copy of the risk analysis and a copy of the selection criteria and inspection procedures.









# **Objective, Scope, and Methodology**

The objective of this audit was to determine the effectiveness of the technologies and methodologies used by CBP to screen MSW. Specifically, we determined whether there were vulnerabilities in the technologies and methodologies that CBP used to screen trucks and drivers hauling MSW from Canada, and whether CBP personnel had established consistent, comprehensive, and clear methodologies for screening MSW. The audit scope covered the period January 2003 through March 2005.

We interviewed CBP Headquarters and port personnel responsible for the program. We reviewed regulations, directives, and other guidance related to the screening and examination of MSW. We reviewed MSW entries and analyzed data files received from port personnel.

We conducted our audit work at CBP Headquarters and at the ports of Detroit and Port Huron, Michigan, where we observed the processing and screening of MSW. We selected the ports of Detroit and Port Huron because they have the largest volume of MSW entries nationwide. We also visited two Michigan landfills and observed how MSW is examined. We visited three MSW transfer stations in the greater Toronto area where MSW is unloaded from collection vehicles and briefly held while it is reloaded onto larger longdistance transport vehicles for shipment to landfills or other treatment or disposal facilities. We also gathered and analyzed information regarding techniques for screening MSW from other northern and southern border ports.

We conducted our audit between June 2004 and March 2005 under the authority of the Inspector General Act of 1978, as amended, and according to generally accepted government auditing standards.

Screening of Trucks Carrying MSW

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Appendix B Request from Representative Dingell, Senator Stabenow, and Senator Levin



# Congress of the United States Washington, BC 20510 October 20, 2003 The Honorable Clark Kent Ervin Acting Inspector General U.S. Department of Homeland Security Washington, D.C. 20528 Dear Inspector General Ervin: We are writing to request that your office begin an investigation into the effectiveness of the Bureau of Customs and Border Protection screening of trucks carrying municipal solid waste (MSW). Since January 2003, the City of Toronto has been shipping all of its MSW to Michigan for disposal. Currently, approximately 125-150 trash tracks from Toronto and 30 trash trucks from other Canadian municipalities travel across the U.S. - Canadian border into Michigan for disposal each day. The core question we seek an answer to is whether or not the methodologies and technologies used by the Burean to acreen municipal solid waste are as effective as the methodologies and technologies used by the Bureau to screen other items of commute entering into the United States by commercial motor vehicle transport. As you may know, Inward Cargo Manifests for these trash shipments simply read "Municipal Solid Waste." Over the course of the part year, there have been numerous cases where trucks were in fact carrying more than was listed on the manifest. In October, 2002, a trash truck was leaking blood from its trailer as it crossed the Ambassador bridge from Canada into the United States. As the truck was inloaded at a Waste Management Recovery station in Detroit, it became clear that medical waste was a large percentage of the waste in the trailer. In April of this year, police in Sumpter Township, Michigan, found 50 pounds of marijuana in a trash truck. In that instance, Customs agents told Carleton Farms landfill operators to be on the lookout for contraband such as illegal drugs. In early August of this year, a trailer carrying MSW was pulled over for being overweight. The policemen on duty, after obtaining consent from the driver and passengers, found a blue duffel bag containing \$539,200. On September 24, 2003 Customs agonts apprehended a trash truck driver for attempting to enter the United States with one ton of marijuana. The approximately 2,000 pounds of illegal drugs packed in 59 plastic bags and hockey equipment duffel bags was one of the biggest drug busts in recent Michigan history. Law enforcement officials value the drug's street value at approximately \$9 million. A few days later, on September 30, the Macomb County prosecutor's office secured a warrant against a Canadian waste hauling company for violating Michigan law by dumping medical waste in Michigan landfills.

Screening of Trucks Carrying MSW

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Appendix B Request from Representative Dingell, Senator Stabenow, and Senator Levin

**USE ONLY** FOR OFFIC The Honorable Clark Kent Ervin October 20, 2003 Page Two The aforementioned cases are examples of the system working. However, we are concerned that for each truck found with contraband, many more may be getting through the system. This is an issue of the utmost importance to the citizens of Michigan, and indeed the safety of our Nation. Therefore, we ask that you begin this investigation as soon as possible. If you have any questions, please do not hesitate to contact us, or have your staff contact Kaye Meier in Senator Lovin's office at (202) 224-9110. Sincerely, John D. Dingell Debbie Stabenow Carl Lovin Member of Congress Member of Congress Member of Congress U.S. House of Representatives U.S. Senato U.S. Senate

Screening of Trucks Carrying MSW



Appendix C Management Response To Draft Report



	Washington, DC 20229
	U.S. Customs and Border Protection
	December 20, 2005
MEMORANDUM FO	R RICHARD L. SKINNER INSPECTOR GENERAL DEPARTMENT OF HOMELAND SECURITY
FROM:	Acting Director M. C. Mullen Office of Policy and Planning
SUBJECT:	Response to the Office of Inspector General's Draft Report on the Screening of Trucks Carrying Canadian Municipal Solid Waste
Screening of Trucks to discuss the issues appreciated the oppo	ing us with a copy of your draft report entitled "Audit of Carrying Canadian Municipal Solid Waste" and the opportunity is in this report. The U.S. Customs and Border Protection (CBP) ortunity to work with the auditors in constructing a balanced and CBP agrees with the overall substance and findings of the
and develop procedu trucks carrying MSW	tor General (OIG) recommends that CBP conduct a risk analysis ares and minimum requirements for selecting and inspecting I. The procedures should require inspections throughout the spections should not be limited to special operations days.
CBP concurs with the	e recommendations and proposes a three part action plan;
Field Operation a risk analysis The analysis for each type	s performed by the Office of Strategic Trade – The Office of ons (OFO) will request that the Office of Strategic Trade perform s of trucks carrying municipal solid waste into the United States. will be focused on providing statistically valid examination rates of examination performed. This analysis will be requested within e tentative delivery date is May 1, 2006.
	t of procedures by OFO – OFO will review the risk analysis and edures and requirements for selecting and inspecting trucks

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Appendix C Management Response To Draft Report



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<ul> <li>Implementation of procedures by the OFO – OFO will implement the new selection criteria and inspection procedures. Full implementation should be completed by August 1, 2006.</li> </ul>	
CBP has determined that the information in the audit does warrant protection and we are designating the document as "For Official Use Only (FOUO)." Classification of the report as FOUO is clearly justified because of the sensitive nature of the information contained therein. The entire report should be FOUO because it discusses targeting and exam methodology. Please consider CBP's concerns prior to releasing information that has been determined to be sensitive.	
If you have any questions regarding this response, please contact me or have a member of your staff contact Ms. Lynn Richardson at (202) 344-2953.	

Screening of Trucks Carrying MSW



Appendix D Major Contributors To This Report



# **Major Contributors To This Report**

Roberta N. Rickey, Field Office Director Robert Davis, Audit Manager Elizabeth Haskett, Auditor-in-Charge Robert Long, Auditor Mee Lun Williams, Auditor

> Screening of Trucks Carrying MSW FOR OFFIC

Appendix E Report Distribution



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A Review of CBP and ICE Responses to Recent Incidents of Chinese Human Smuggling in Maritime Cargo Containers

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The OIG is issuing this report with the handling instruction "For Official Use Only" (FOUO). The OIG has determined that the report contains sensitive information that should not be released to the general public. Recipients of this report must protect it from unauthorized disclosure and should not make further dissemination of the report.

April 2007

OIG-07-40

Office of Inspector General

U.S. Department of Homeland Security Washington, DC 20528



April 23, 2007

Preface

The Department of Homeland Security Office of Inspector General was established by the Homeland Security Act of 2002 (*Public Law 107-296*) by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, effectiveness, and efficiency within the department.

This review examined how Customs and Border Patrol (CBP) and Immigration and Customs Enforcement (ICE) responded to three incidents of Chinese human smuggling in maritime cargo containers that occurred in January and April 2005, and April 2006. We reviewed the lessons that CBP and ICE learned from the incidents, as well as any modifications they made to their programs and operations as a result.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

Richard L. Skinned

Richard L. Skinner Inspector General



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A Review of CBP and ICE Responses to Recent Incidents of Chinese Human Smuggling in Maritime Cargo Containers

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# Acronyms

CBP	Customs and Border Protection
CSI	Container Security Initiative
C-TPAT	Customs-Trade Partnership Against Terrorism
DHS	Department of Homeland Security
ICE	Immigration and Customs Enforcement
MOU	Memorandum of Agreement
OIG	Office of Inspector General, DHS
USCG	United States Coast Guard



# OIG

Department of Homeland Security Office of Inspector General

# **Executive Summary**

This review was conducted in response to a request from members of the U.S. Senate's Committee on Homeland Security and Governmental Affairs and the House of Representatives' Committee on Homeland Security and Committee on Energy and Commerce. They requested that we review three incidents of Chinese human smuggling in maritime cargo containers to determine what lessons Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) learned from the incidents and what changes, if any, they made as a result of them. In particular, we examined the effects of the incidents upon CBP's Customs-Trade Partnership Against Terrorism (C-TPAT), Container Security Initiative (CSI), and U.S. targeting and enforcement procedures, as well as the ICE investigations of the incidents.

After the three incidents, CBP and ICE modified their operations to improve the deterrence and detection of Chinese stowaways in maritime cargo containers. CBP broadened C-TPAT minimum-security criteria compliance to its members' non-C-TPAT partners and is negotiating expansion of CSI to ports at which the containers were laded. Domestic port targeting and enforcement measures improved, as well. ICE modified its methods for exchanging information with the Chinese government to facilitate information exchange. However, during our fieldwork ICE and CBP did not reveal to us any formal procedures for coordinating response to incidents of human smuggling at the ports, which may have had a negative effect on the investigation of one of the incidents.

We made three recommendations, directing two to CBP and one to CBP and ICE. CBP and ICE concurred with our recommendations, and their actions taken enabled us to close the second and third recommendations. The first recommendation remains open.



## Background

While human smuggling in maritime containers accounts for only a small portion of illegal entries into the United States, it presents risks to the life and health of the stowaways and illustrates national security vulnerabilities in maritime commerce. Since April 1998, there have been 23 known incidents of Chinese nationals being smuggled into the United States via maritime cargo containers. Six additional smuggling attempts were intercepted at foreign locations before they arrived in the United States. Of the 23 incidents, 15 were discovered at Los Angeles/Long Beach ports and 8 at Seattle/Tacoma ports. Through the year 2000, containers used in the incidents were laded at ports on the Chinese mainland or in Busan, Korea. The three most recent incidents were discovered between January 15, 2005, and April 5, 2006.

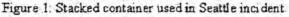
On January 15, 2005, Customs and Border Protection (CBP) and the U.S. Coast Guard (USCG) apprehended 32 Chinese nationals after they attempted to enter the United States via two cargo containers arriving in the port of Los Angeles, California. The containers were laden in Shekou, China, and had been modified to support life and to assist the eventual escape of the stowaways. Routine targeting revealed discrepancies on the manifests, and CBP ordered the containers held for examination, but the stowaways were discovered before the containers were discharged from the vessel. CBP and the USCG responded initially, detaining all known stowaways. ICE took custody of the stowaways while their asylum status was determined and began to investigate the incident.

On April 3 and 4, 2005, port security and CBP apprehended 29 Chinese nationals after they attempted to illegally enter the United States via two cargo containers discharged in the Port of Los Angeles. As with the January 2005 incident, the containers were laden in Shekou, China, and were modified to support life and to assist the eventual escape of the stowaways. Targeters (CBP officers who target containers for inspection) placed a hold for examination on one of the containers due to discrepancies on the manifest. After the vessel discharged the containers, but before CBP examined the questionable container, the stowaways exited the containers and dispersed into the terminal yard. Port security spotted the stowaways and contacted CBP and ICE to respond. CBP and ICE detained 29 Chinese nationals, but 2 additional stowaways breached the perimeter and escaped. ICE took custody



of the stowaways while their asylum status was determined and began to investigate the incident.

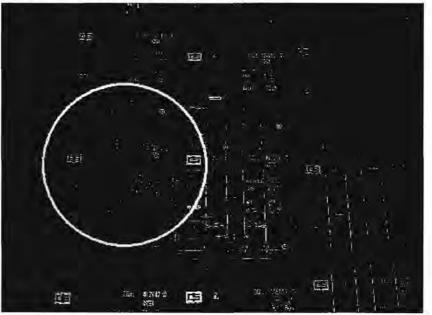
On April 5, 2006, CBP apprehended 22 Chinese nationals after they attempted to illegally enter the United States in a cargo container discharged at the Port of Seattle. This container was laden in Shanghai, China, and was minimally modified. CBP targeters at the Port of Seattle placed a hold on the container for examination. On the morning of arrival, but before CBP examined the container, the stowaways exited the container and were discovered by terminal security in the terminal yard. CBP coordinated the response with ICE, USCG, and other law enforcement authorities. ICE took custody of the stowaways while their asylum status was determined and began to investigate the incident.



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A Review of CBP and ICE Responses to Recent Incidents of Chinese Human Smuggling in Maritime Cargo Containers

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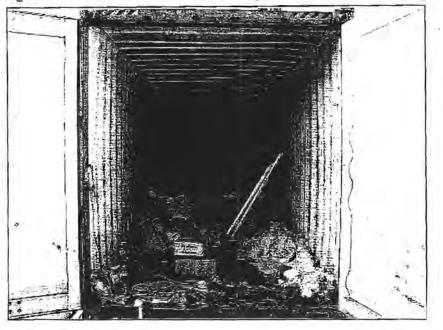


Figure 2: Container used in Seattle incident, opened.

#### Ports of Los Angeles/Long Beach and Seattle

Together, the ports of Los Angeles and Long Beach comprise the largest port in the Nation. The ports cover 35 miles of waterfront and receive 42% of all seaborne containers that arrive in the United States. CBP administers both ports together under a single CBP office and port director. Los Angeles/Long Beach CBP targeters screen 12,000 containers a day and 31,000 crewmembers and passengers a week.

The Port of Seattle is the eighth most active port in the Nation, with three international container terminals. Due to their proximity, CBP administers the ports of Seattle, Tacoma, and several smaller ports in Washington under a single office and area port director. The ports are 20 miles apart and require separate enforcement teams.

The port authorities at Los Angeles/Long Beach and Seattle lease their terminals to private entities. The lessees, known as terminal operators, are responsible for terminal security, in accordance with federal and international standards. Terminal operators schedule the arrival and departure of vessels, as



well as the discharge and release of cargo. Cargo discharge is the unloading of cargo from the vessels onto the terminals. CBP allows cargo to be moved from the terminal only after it has been subjected to all enforcement activities CBP requires, such as examination and radiation detection.

#### CBP Layers of Security

CBP maintains several layers of security to protect the United States against in-bound cargo and people that may present threats of terrorism or breaches of customs and immigration laws, such as the import of illegal drugs, banned agricultural products, and products violating intellectual and property rights. In the case of Chinese stowaways, preventing the stowaways from loading into containers or intercepting the containers offshore is especially important because Chinese stowaways are coached to give fictitious reasons for asylum, which provides them legal status in the United States. There is no practical way to investigate or question their claims. Therefore, intercepting the containers before they reach U.S. soil and the stowaways obtain asylum rights would prevent the award of legal status to those who use duplicitous means to get it.

Two CBP layers of security, the Customs-Trade Partnership Against Terrorism (C-TPAT) and the Container Security Initiative (CSI), extend border protection beyond U.S. boundaries. C-TPAT is a partnership with members of the shipping industry that works to improve security and prevent the transmission of illegal goods into the United States. CSI is a partnership with foreign governments that allows CBP's targeters in host countries to target all containers and refer containers suspected of national security threats to host governments for inspection.

In addition, CBP targeters at domestic ports can prevent containers suspected of posing a high risk to national security from entering the United States. They begin targeting containers before the containers are loaded onto vessels bound for the United States. When the targeters determine that a container poses a national security risk, they may issue a *Do Not Load* order on the container, which prevents the container from being laded at a foreign port, or from being discharged in the United States. However, the threshold for issuing this order is so high that it is rarely done. Accordingly, C-TPAT and CSI are the primary means by which containers carrying stowaways will be prevented from entering the United States.



When CBP domestic targeting indicates that a container is suspicious, but the evidence is not strong enough to issue a *Do Not Load* order, the domestic targeters will order an examination of the container once it reaches the domestic port. CBP enforcement teams work with terminal operators to examine containers before they are released from the terminal into the United States.

#### Customs-Trade Partnership Against Terrorism

The C-TPAT program comprises the outermost layer of security by imbedding security practices in the international supply chain overseas. C-TPAT is a voluntary partnership between CBP and private businesses to secure the foreign supply chain of goods that are imported into the United States while facilitating legitimate trade. Under the program, C-TPAT members agree to meet minimum-security criteria. In return, CBP reduces targeting scores for importers, decreasing the probability that their containers will be examined and thus delayed. All other members such as carriers and brokers receive increased market credibility and access. CBP officials said that many large importers require carriers and brokers to be C-TPAT certified.

C-TPAT includes 3,231 importers, 1,655 carriers, 38 terminals, 637 brokers, and 400 foreign manufacturers and consignees. "Consolidators," or nonvessel-operating common carriers, are responsible for shipping goods, but do not use their own vessels. Instead, they arrange to have goods shipped on other companies' vessels.

To gain C-TPAT membership, a business must submit, among other documents, an action plan to CBP that describes security enhancements that it will take to bring it into compliance with C-TPAT's minimum-security criteria. (See C-TPAT Criteria for Sea Carriers, March 1, 2006, available at <u>http://www.cbp.gov/linkhandler/cgov/import/commercial\_enforcement/ctpat/s</u> <u>ecurity\_criteria/sea\_carrier\_criteria/sea\_carrier\_criteria.ctt/sea\_carrier\_criteria</u>. <u>doc</u>, viewed on January 25, 2007.) CBP reviews the action plan and the company's history. If there is no evidence of prior violations, and if the company's action plan is satisfactory, CBP certifies the applicant. Certified members are then validated after CBP conducts site visits to ensure the action plan is executed to expectation. C-TPAT has 6,502 certified members, of which 3,926 are validated.

The Container Security Initiative



CBP's other layer of security outside the U.S. borders is CSI, which targets U.S.-bound cargo for terrorist threats at the foreign ports of lading. CSI has three objectives:

- Identify high-risk containers;
- Prescreen containers before they are shipped to reduce disruptions to trade; and,
- Minimize physical examinations through technological means.

To achieve these objectives, the United States enters into bilateral agreements with foreign governments to host CBP and ICE officials so they may conduct targeting operations in the foreign ports. These CSI teams work in partnership with their host counterparts and with the National Targeting Center to identify containers destined for the United States that pose a risk of terrorism. Once CSI identifies a high-risk container, it presents reasons for examining the container to the host government. If the host government determines the reasons are convincing, it will examine the container. However, the host government maintains the right to refuse requests for examination. CSI now operates in 50 ports and targets nearly 82% of the containerized shipments bound for the United States.

#### Targeting and Enforcement Procedures

CBP's third layer of security occurs at U.S. ports. CBP and the USCG share federal jurisdiction over port security; CBP is the lead agency for cargo, while the USCG is the lead agency for vessel, port, crew, and passenger security. Specifically, CBP works with the USCG, ICE, local and port authorities, and terminal operators to prevent the entry of illegal containers or individuals by (1) targeting all cargo and people entering at the port; and (2) conducting various enforcement activities, such as examining containers that CBP's targeters identify as suspicious.

At the ports, CBP officers in the Advanced Targeting Units target all U.S.bound containers and people to determine their level of risk. Officers use the Automated Targeting System to assess the risks presented by each shipment or person entering the United States. The Automated Targeting System analyzes information in cargo manifests, which carriers submit 24 hours before the cargo is loaded on the vessel. These manifests may subsequently be updated until a day after the cargo arrives. Targeters use a separate



(b)(2)high, (b)(7)(E) per ICE/CBP Automated Targeting System rule-set or filter to target each area of risk, such as terrorism, narcotics violations, agricultural threats, and goods violating intellectual or property right laws. Applying a rule-set against a container's manifest results in a numerical score indicating the degree of likelihood for the threat being assessed. Targeters must review all manifests with the terrorism rule-set. Containers with scores exceeding for on the terrorism rule-set must be examined before leaving the port terminal. Containers with scores between for are subject to further review. At their discretion, targeters may use other rule-sets, past experience, intelligence, or other research to assess threats and target containers.

Using the Automatic Targeting System score and the results of any additional research, targeters notify the CBP enforcement officers and the terminal operator when to examine a container. The CBP enforcement officers work with the terminal operators to schedule a convenient time to examine the containers. An operator may not release a container from the terminal once it has been identified for examination. The CBP enforcement officers usually employ a nonintrusive inspection device that captures an image of the container's contents with gamma or x-rays. If the image reveals a suspicious object, CBP enforcement officers will open the container and examine it. CBP also randomly selects containers for examination.

CBP officers also conduct other law enforcement activities. They board vessels to look for stowaways or contraband, patrol the terminals for suspicious activity, and verify that manifests match the containers discharged from vessels.

#### **ICE Investigations**

CBP refers violations of immigration and customs laws, including incidents of human smuggling, to ICE for investigation. ICE investigators gather evidence to support the prosecution of smuggling ring members by pursuing leads generated from interviews, observations, and physical evidence. In addition to investigations, ICE is responsible for the custody of detained immigrants pending their immigration hearings. ICE's Office of Detention and Removal Operations transports and houses detained immigrants.

The transnational nature of human smuggling crimes often requires investigators to seek assistance from foreign law enforcement counterparts. Investigators rely on ICE attachés to facilitate cooperation with foreign



agencies, including those in mainland China and Hong Kong. Given sovereignty concerns, ICE attachés do not conduct investigative work in China, and serve only as liaisons to facilitate the exchange of information between Chinese officials and ICE investigators.

#### **Results of Review**

### CBP Strengthened the Customs-Trade Partnership Against Terrorism Program as a Result of Incidents

CBP gathered lessons learned from the three incidents and used those lessons to make modifications that enhanced the C-TPAT program. After the April 2005 incident, CBP established requirements that C-TPAT members involved in a human smuggling incident must satisfy to maintain their membership, including:

- Pay a fine;
- Conduct an assessment of security gaps; and,
- Submit to CBP an action plan for correcting security lapses.

CBP will revoke the membership of companies that fail to comply. Additionally, CBP updated the C-TPAT minimum-security criteria, which in turn required C-TPAT members to ensure that their business partners met the C-TPAT minimum-security requirements.

#### <u>C-TPAT Program Standardized Response to Maritime Human Smuggling</u> Incidents

The January 2005 incident was the first incident to involve a C-TPAT carrier, Nippon Yusen Kaisha Shipping Lines, and C-TPAT nonvessel-operating common carriers, WiceMarine and P&O Nedlloyd. CBP responded to the incident by meeting with representatives from the carrier and nonvesseloperating common carriers to discuss the incident and course of action to be taken. CBP and Nippon Yusen Kaisha representatives said that the meeting resulted in a misunderstanding of the follow-up actions that CBP expected the carrier to take. C-TPAT officials said that they requested the carrier to produce additional action plans to identify the security gaps and outline any



corrective actions it planned to take. The carrier's officials said that they did not believe CBP made such requests. As a result, the carrier did not produce the action plan that C-TPAT officials expected to receive. However, C-TPAT took no action against the carrier for its perceived failure to comply with a C-TPAT request until after the April 2005 incident.

Immediately after the April 2005 incident, in which Nippon Yusen Kaisha was also the carrier, Nippon Yusen Kaisha contacted CBP. C-TPAT officials determined that they did not communicate requirements clearly to the carrier after the January 2005 incident. They determined that the program needed standard procedures for responding to members implicated in human smuggling incidents. On April 6, 2005, CBP suspended the carrier from the program due to the carrier's failure to submit an action plan following the first smuggling incident. The carrier's representatives said that losing C-TPAT membership would have had a devastating effect on its business had they not acted quickly. Soon after learning of the suspension, Nippon Yusen Kaisha officials contacted CBP and C-TPAT program managers to schedule a meeting. On April 13, 2005, CBP met with the carrier's chief operating officer to discuss the incidents, the carrier's response, and the suspension. CBP agreed to reinstate the carrier if it immediately paid \$2000 per alien stowaway not detained (as per 8 USC § 1253, 1231) and addressed its supply chain vulnerabilities. Specifically, CBP instructed the carrier to:

- Inspect their business operations in China for security gaps;
- Submit a satisfactory, comprehensive action plan to close gaps in security; and,
- Schedule quarterly follow-up meetings with CBP to report its progress in implementing the action plan.

Nippon Yusen Kaisha complied with the conditions and improved its security, as well as the security of its partners. Carrier officials visited its terminal operations at the port of Shekou and 22 other ports where the carrier conducts business to determine security gaps. The carrier found security breaches at its terminal in Shekou and identified problems at its terminals in other ports. The carrier submitted an action plan to CBP summarizing the security gaps and how it would resolve them. Although we did not verify their claims, the carrier's officials said that it made the following corrections to improve security at its Shekou terminal:

Terminated all of its staff;



- Trained its new staff in security measures including detection of anomalies such as trap doors and holes in container floors;
- Refined its detection systems, including improving its process for weighing containers; and,
- Installed carbon dioxide detection devices that indicate a likelihood of stowaways in containers.

According to Nippon Yusen Kaisha officials, its Shekou terminal now has seven layers of security and all of its personnel are conducting surveillance of the containers that are laded there. Every 2 weeks, carrier officials visit the ports to ensure adherence to security practices. The carrier is implementing similar security enhancements at all of its terminals. Nippon Yusen Kaisha also worked with the Chinese government and business partners to deter future smuggling incidents. Carrier officials distributed press releases in China to discourage smuggling attempts on carrier vessels, and they met with Chinese police and customs officials to discuss smuggling issues and prevention. The carrier facilitated meetings with shippers and other trade partners to discuss security concerns and ways to overcome them. For example, the carrier's officials suggested that its partners hire truck drivers that have been vetted for security concerns.

Following the April 2006 incident, C-TPAT officials followed the same process with China Shipping Container Lines that it used with Nippon Yusen Kaisha in the April 2005 incident. China Shipping Container Lines contacted CBP immediately after the incident, initiated an internal review of the incident, and provided CBP with information related to the shipment. On April 7, 2006, CBP's Assistant Commissioner for Field Operations met with the carrier's president to discuss the facts of the incident and the actions that the shipping line would have to take in order to maintain its C-TPAT membership.

Fine proceedings were initiated for failure to detain stowaways. CBP required the carrier to pay the stowaway penalty. The carrier was also required to visit its terminals in China to determine security vulnerabilities and submit an action plan to address any security gaps. Because the carrier responded quickly to CBP's requests, and because the container harboring stowaways in April 2006 incident had no trap doors or other visible indicia of stowaways, CBP did not suspend the carrier's membership in the C-TPAT program.

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On April 17, 2006, China Shipping Container Lines submitted an action plan but said it was unable to conduct the security reviews at its terminals at that time. CBP acknowledged the carrier's reasons for delaying the site visits, yet urged its officials to conduct them as soon as possible. A few months later, the carrier conducted a site visit of Shanghai to assess security controls, including assurance that each container being laded on its vessels are visually inspected for signs of modifications.

The January 2005 incident led C-TPAT program managers to standardize their response to members involved in maritime human smuggling incidents. CBP acted decisively and consistently in response to the April 2005 and the April 2006 incidents. As a result, both carriers' terminals at Chinese ports are more secure. Also, Nippon Yusen Kaisha's communications with its business partners and the Chinese government may have generated more interest in implementing maritime security measures.

#### C-TPAT Program Leveraged C-TPAT Membership to Improve Security

Partly as a result of the January 2005 incident, CBP issued updated minimumsecurity criteria for C-TPAT members with a new requirement that leveraged C-TPAT sea carriers' membership to improve the security of nonmember business partners and customers. CBP required C-TPAT sea carriers to screen their business partners who provide transportation services. Similarly, C-TPAT sea carriers must screen new customers to determine whether they are a legitimate business or otherwise pose a security risk. Sea carriers must also ensure that nonvessel-operating common carriers commit to the C-TPAT security recommendations. CBP gives C-TPAT members 90 days to comply.

The minimum-security criteria provide broad security goals, but do not prescribe the methods by which C-TPAT members may satisfy the goals. To fulfill the new requirement, Nippon Yusen Kaisha created standard language for its contracts with business partners requiring the partner to uphold certain security standards. To achieve the same goal, China Shipping Container Lines required the agents that book space on its vessels to ask a list of security-related questions to each entity seeking reservations on the carrier. Should an answer reveal a security lapse, the booking agent notifies the carrier's security officer, who decides whether the customers' security measures meet the minimum-security criteria.



Nippon Yusen Kaisha and China Shipping Container Lines are large companies in the container shipping community, and each has specific needs that are unique to its operational and management structure. CBP recognized that mandating rigid methods for compliance with the criteria would not allow C-TPAT members enough flexibility to support their differing business models. Accordingly, while the C-TPAT 2006 minimum-security criteria require C-TPAT members to ensure the security of their business partners and customers, the criteria allow each C-TPAT member to devise its own methods for achieving that goal. This approach allowed Nippon Yusen Kaisha and China Shipping Container Lines to comply with the requirement in ways that were compatible with their own business models.

#### **Incidents Highlighted CSI Program's Inherent Limitations**

Although the CSI program performed as designed, the incidents highlighted the program's inherent limitations. First, CSI is unable to recommend for examination containers that are laded at non-CSI ports. In the January and April 2005 incidents, the containers passed thru Hong Kong, a CSI port, but were laded elsewhere. Second, it is difficult for program officials to convince the Chinese government to examine containers with intermediate Automated Targeting System terrorism rule-set scores and no additional specific indicia of threat. The April 2006 incident illustrated that even when containers harboring stowaways are laded at CSI ports, the targeting does not always provide a threat specific enough to persuade the Chinese government to examine the container.

CSI is working to remedy these problems. When the January incident occurred, CSI was negotiating to establish CSI operations at ports in China, and is continuing to negotiate expansion to Shekou, the port in Shenzhen where the containers in the incidents were laded. However, given that the Chinese smuggling rings have changed tactics in the past, it is likely that the smugglers will use other ports where CSI does not have a presence for lading human cargo. Nonetheless, CBP is currently negotiating with the shipping industry to include more information in the 24-hour rule submissions to improve its targeting. Some of the additional information might improve the ability of CSI to provide specific information to support its recommendations for examination.

CSI Program Is Limited Due to Restricted Number of Ports Served

CBP never intended for CSI to cover all 704 ports that ship to the United States. Instead, CBP prioritized ports based on the volume of exports to the United States and the risk presented across multiple dimensions including terrorism, drug smuggling, human smuggling and other threats. However, the lack of a CSI presence in Shekou and other ports exemplifies the program's limitations as part of the layered maritime security strategy.

In the 2005 incidents, the containers holding the Chinese nationals were loaded onto a vessel in Shekou, China, a non-CSI port. The vessel then sailed to the CSI port of Hong Kong where the containers harboring the stowaways remained on board. CSI does not target containers that are laded at non-CSI ports and then pass through a CSI port without being discharged from the vessel. The program only targets containers that are laded in the foreign ports at which CSI has a presence. According to CSI officials, removing and examining containers laded at non-CSI ports would place a much higher burden on carriers and ports than inspecting containers as they are being laded. Foreign governments would be less receptive to hosting the CSI program if it required containers laded at non-CSI ports be removed and examined. Therefore, the CSI program acted according to its protocols and was not directly implicated in the 2005 incidents.

Before the 2005 incidents, CSI was negotiating with China to expand the CSI program to ports in mainland China. The ports of Shanghai and Yantian export 1.5 million containers to the United States annually. The other Chinese ports, which do not host CSI, export approximately 500,000 containers to the United States annually. CSI has been expanding since its inception in January 2002. As of January 2005, CSI targeted approximately 50% of in-bound containers. In 2003, the United States and China signed a Declaration of Principles, agreeing to pursue a CSI presence in Chinese ports. However, China proceeded slowly in negotiations, requiring precise delineation of CBP and ICE roles in the program to alleviate security concerns and sovereignty issues. Despite its efforts, CSI still had not established its program at the new ports when the 2005 incidents occurred.

The United States and China finally approved CSI implementation guidelines for mainland China on March 28, 2005. CSI established pilot ports in Shanghai and in Shenzhen's port of Yantian in April and June 2005, respectively. The efforts to implement these two CSI ports in mainland China are not a reaction to the two Chinese human smuggling incidents in 2005, but are part of the initial phase of CSI expansion. However, the containers in the



January and April 2005 incidents were laded in Shekou, where there was no CSI presence planned. CSI officials wanted to expand the program to Shekou and similar ports in China to reduce the human smuggling and other vulnerabilities, but were concerned that aggressively seeking to expand CSI would elicit resistance from already cautious Chinese negotiators.

In December 2005 and January 2006, CSI officials identified a creative opportunity for expanding CSI in China. The operational agreement with China listed Shenzhen as one of the two new port areas to become a CSI program. Shenzhen has customs authority for three physically distinct container ports, including Shekou. China and the United States initially agreed that the CSI program would target the shipments for only one of the Shenzhen ports, the port of Yantian. CSI officials decided to propose a slight change to the initial agreement with China. In January 2006, CSI officials requested China to expand the CSI team's effective presence without expanding its actual presence. The CSI team would continue operating out of Shenzhen, but would target containers laded at all ports within the customs authority of Shenzhen. China agreed to the proposal. To accommodate the expanded examinations, China improved infrastructure and officer training in the ports of Shekou and Chiwan. The expansion of CSI in Shenzhen continues to develop.





Source: CIA World Factbook, additional ports added by DHS-OIG

CSI continues to expand, both generally and in response to obvious vulnerabilities identified in the 2005 incidents. Expanding CSI's presence might decrease the number of containers with human stowaways laded in those ports. While the ports of Shanghai and Yantian export 1.5 million containers to the United States annually, approximately 500,000 containers arrive from Chinese ports without a CSI presence. To some extent, these containers come from lower-risk ports, as CSI officials established the program in the ports with higher levels of risk. However, the recent history of Chinese human smuggling suggests that smugglers are adaptive and change ports of lading for stowaways in containers. Ports lacking a CSI presence remain vulnerable.

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CSI officials reacted appropriately to the 2005 incidents. They identified the obvious threat of the port of Shekou and developed a creative solution without disrupting their phased expansion. CSI's expansion to high-risk ports will decrease the number of ports vulnerable to human smuggling and other immigration and customs violations.

#### Targeting Limits CSI

The April 2006 incident highlighted another vulnerability in the CSI program—container targeting is limited in its ability to ascribe specific risk factors to suspect containers, which reduces the likelihood that a host government will examine a container. The container that harbored Chinese stowaways in the April 2006 incident was laded at Shanghai, a CSI port. The CSI targeting team had identified the container as an intermediate risk using the Automatic Targeting System terrorism rule-set, but additional review did not find any specific information indicating a risk of terrorism. Without more specific information of risk, CSI's targeters could not justify requesting China to examine the container. The Chinese government requires more specific information relating to terrorism threats other than intermediate scores on the Automatic Targeting System terrorism rule-set. To justify a request to examine a container, CSI needs targeting information that specifically identifies containers that are a high risk to national security.

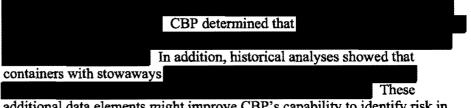
CBP officials said that targeting with the Automatic Targeting System terrorism rule-set is rarely able to determine the specific nature of the threat, just that there is one. The Automatic Targeting System terrorism rule-set identifies factors that could be indicative of a national security threat, but the number and nature of the data elements it reviews limit the Automatic Targeting System. Although many containers fall within the terrorism ruleset's range for further review, it is unlikely that targeters will detect specific information identifying the nature of the threat through subsequent research. If no specific information is available to link specific risk factors to a container, the targeting information alone may not be sufficient to support a request for inspection. While CSI officials said that Chinese officials would review containers presenting a risk for stowaways, China is also more likely to reject inspections if the evidence suggesting a threat is not specific, as evidenced by their denial of 19% of all examinations requested by CSI, while all other ports denied less than 1% of requests. The container in this incident could not be tied to sufficient evidence to indicate any specific threat.



Lacking adequate specificity, CSI's targeters referred the container to domestic targeters for additional review and possible inspection.

Following the April 2006 incident, CSI program officials reviewed CSI actions and determined that all CSI procedures were followed appropriately. We agree with their assessment. Due to the limited data elements available for targeting and the voluntary nature of the program, it is unclear what additional steps CSI could have taken to influence Chinese officials to examine the container. However, we are concerned that future containers with stowaways will not be examined.

CBP is aware of its targeting system's limitations and is pursuing improvements. For example, CBP is negotiating with the shipping industry to require additional data elements in the 24-hour rule submissions in an initiative called "Ten Plus Two." Some of the data sought includes



additional data elements might improve CBP's capability to identify risk in containers more accurately and to articulate those risk factors to host governments. The SAFE Port Act (Public Law No. 109-347) requires CBP to seek additional data elements to improve targeting. CBP should continue to advocate for these data elements in its ongoing negotiations with the shipping industry.

#### **CBP** Modified Targeting Activities

Using the lessons learned from the incidents, CBP ports revised targeting procedures to improve the likelihood of identifying containers harboring Chinese stowaways. In addition, CBP headquarters took actions to change targeting procedures at the ports. CBP did not alter targeting practices after the January 2005 incident, but altered its targeting procedures, both nationally and at the ports, after the April 2005 and April 2006 incidents. National changes included the creation of automated targeting system filters for detecting Chinese human smuggling in maritime cargo containers. CBP Seattle/Tacoma targeters decreased the automated targeting system mandatory examination score to increase the number of containers it examined, and CBP

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(b) (2) high, (b) (7) (E) per ICE/CBP | Los Angeles/Long Beach increased its targeting staffing in order to provide the resources necessary to conduct a more thorough analysis of each container. In addition, the CBP port staff there developed a new targeting approach that focused on the entire vessel and not just the individual containers that are discharged. The vessel targeting is used to develop a more comprehensive enforcement plan for each day's activities.

#### CBP's Response to the January 2005 Incident

Although CBP documented lessons learned from the January 2005 incident, it appears that CBP Los Angeles/Long Beach did not change its targeting practices after the January 2005 incident. CBP does not have documentation, and the officials we interviewed do not recall whether the targeting changes were made in response to the January 15, 2005, incident. Some CBP Los Angeles/Long Beach officers recalled that after one of the incidents, the targeters "scrubbed" the container manifests, reviewing them more often with particular attention to indications of human smuggling. However, we cannot confirm whether this change was made subsequent to the January 2005 incident.

#### CBP's Response to the April 2005 Incident

In response to the April 2005 incident, CBP Los Angeles/Long Beach's targeters developed an automated targeting system filter to identify containers that held a high risk of harboring Chinese stowaways. The filter relied on commonalities that CBP identified and documented from the January and April 2005 incidents. In addition to the rule-sets, targeting officers may develop queries or filters to identify containers that match certain port-specific indicators. Officers can implement them quickly because they do not have to undergo CBP's formal approval process. The filter created by CBP Los Angeles/Long Beach's targeters identified containers that were laded or received in the ports in and near Shekou, China, the port at which the containers harboring stowaways in both incidents were laded.

CBP Los Angeles/Long Beach also implemented recommendations by a team assigned by CBP headquarters to review its operations after the April 2005 incident. The review team recommended changes to the Automated Targeting Unit, including increasing the unit's staff to accomplish the additional research necessary on importers, consignees, and other aspects of container shipments. Among other changes, the review team also recommended that the



port provide supervisory staff on all shifts. CBP Los Angeles/Long Beach increased the size of its targeting staff. CBP's staff said that there are supervisors working on every shift.

In addition, CBP Los Angeles/Long Beach port personnel instituted a new targeting approach. The impetus for this change was an April 28, 2005, CBP headquarters memorandum instructing the ports to increase security measures due in part to the 2005 incidents. In addition to targeting maritime containers, crew, and passengers, the Los Angeles/Long Beach targeters created the Integrated Threat Analysis Group, which began targeting entire vessels by determining the risk presented in five areas: vessel type and history; ports of call; cargo; crew; and passengers. Each of the five areas is assessed for risks related to terrorism, narcotics smuggling, stowaways, deserters and absconders, agricultural or bio-terrorism, trade fraud, and illegal exports. Two other CBP ports, Baltimore and Philadelphia, subsequently instituted this approach.

CBP Seattle/Tacoma responded to the April 2005 CBP memorandum to increase port security by reducing the Automated Targeting System's terrorism threshold score for mandatory examinations from **Security**. As a result, the container harboring Chinese stowaways in April 2006 was held for a mandatory examination due to its score **Security** Had Seattle maintained the original threshold score **Security**, it is possible that the container would not have been subjected to additional review and held for examination. CBP Seattle/Tacoma's targeters have maintained the **Secure** score as the threshold for mandatory examinations.

In addition, CBP conducted a special operation, No. 2005-03, from May 5, 2005, through May 27, 2005, in its West Coast field offices. The operation required ports to target containers with traits similar to the containers in the January and April 2005 incidents. Containers with the following characteristics were targeted:



The operation required that CBP examine all containers meeting these criteria. The operation ended because CBP analyzed incidents of Chinese stowaways in maritime cargo containers and determined that

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(b)(2)high, (b)(7)(E) per ICE/CBP

#### CBP's Response to the April 2006 Incident

In response to the April 2006 incident, CBP Seattle/Tacoma port staff created new Automated Targeting System filters for detecting Chinese stowaways in maritime cargo containers. CBP Seattle port personnel developed a filter similar to that created by Los Angeles/Long Beach that relied on commonalities between the three incidents. Within a few days of Seattle's creation of a filter, CBP headquarters required all ports to use two new Chinese human smuggling filters that headquarters had developed in conjunction with CBP Los Angeles/Long Beach targeting staff. The filters added to the criteria the port of Shanghai as the port of lading and receipt. Shanghai was the port of lading for the stowaways in the Seattle incident.

(b)(2)high, (b)(7)(E) per ICE/CBP

CBP headquarters issued standard operating procedures requiring targeters to conduct additional research on containers identified by the filters. The factors to be researched were commonalities that CBP had identified through its analysis of the incidents of Chinese stowaways in maritime cargo containers. When the filters identified a container, targeters were to research certain factors not captured by the Automated Targeting System.



The standard operating procedures required CBP's targeters to place a hold for examination on the containers that matched the factors or otherwise had indicia of human smuggling.

#### CBP's Current Efforts to Improve Targeting to Detect Chinese Stowaways

CBP is undertaking other improvements to detect Chinese stowaways in maritime cargo containers. At the conclusion of our fieldwork, CBP officials were negotiating with the shipping industry to expand the data provided in the



24-hour rule submission. Among the additional data elements that CBP seeks are

. Having this information 24 hours prior to shipment would give CBP's targeters more time to determine **Sector**. Knowing where containers were loaded would allow CBP to determine whether the loading point was near to those used in the past to load Chinese stowaways. However, historical analysis indicates that the smugglers change location. For years they loaded containers in Hong Kong, then in Busan, then in Shenzhen, and in April 2006, in Shanghai. The point of loading may be useful, but the smugglers could begin to use new points of loading more frequently, which might make the information less useful.

#### <u>CBP is also negotiating to obtain</u>

Although CBP did not appear to have altered its targeting practices in response to the January 2005 incident, CBP ports made significant improvements to their targeting efforts in response to the April 2005 and April 2006 incidents. Increasing the number of targeters and supervision at Los Angeles/Long Beach allows targeters more time to research important data points for targeting purposes. Moreover, although the new Integrated Threat Analysis Group reports are not directed solely to targeting for Chinese stowaways, they provide CBP with a more comprehensive view of an incoming vessel to plan appropriate enforcement action. CBP Seattle/Tacoma's decision to decrease the mandatory examination threshold score will improve the likelihood of apprehending stowaways and other threats to national security.

Likewise, CBP headquarters helped improve targeting capability, and it continues to enhance targeting by expanding the data required by the 24-hour rule. CBP's development of a human smuggling filter for the Automated Targeting System represents an advance in targeting for Chinese stowaways in maritime cargo containers. The filters, in conjunction with the required research of commonalities, capture many of the factors shared by the 2005 and 2006 incidents.

A Review of CBP and ICE<sup>®</sup>Responses to Recent Incidents of Chinese Human Smuggling in Maritime Cargo Containers



(b) (2) high, (b) (7) (E) per ICE/CBP

#### **CBP Modified Its Enforcement Activities**

Using the lessons it learned from the incidents, CBP also modified its enforcement efforts. CBP Los Angeles/Long Beach instituted a permanent change, using the Integrated Threat Analysis Group's vessel targeting reports to direct and align enforcement activities between CBP enforcement teams and the USCG. CBP also increased patrols and vessel boardings and implemented more rapid examinations of containers targeted by the new Automated Targeting System filters for Chinese stowaways. CBP headquarters mandated these changes during brief special operations. CBP ports have re-instated some of the enforcement activities for the current season of Chinese human smuggling.

#### CBP's Response to the January and April 2005 Incidents

As with the targeting procedures, it appears that CBP did not make changes to its enforcement efforts after the January 2005 incident. However, it did do so after the April 2005 incident. On April 28, 2005, CBP headquarters issued a memorandum requiring local enforcement teams to increase enforcement activities. In addition, the May 5, 2005, special operation affected targeting and special enforcement actions by CBP officers some of the large Pacific coast ports.

The most significant change CBP made in response to the memorandum and the May special operation was to examine more quickly those containers identified by the Automated Targeting System terrorism rule-set. In one of its incident reports, CBP noted the following as a potential improvement to enforcement team practices:

Ports should examine more expeditionsly containers that are held for examination due to their scores on the terrorism rule-set. The shorter the delay between discharge and examination, the smaller the opportunity for the stowaways to escape.

Prior to the May 2005 special operation, CBP did not specify when ports should examine containers, and ports scheduled examinations at times that were convenient to them and their terminal operators. The May special

A Review of CBP and ICE Responses to Recent Incidents of Chinese Human Smuggling in Maritime Cargo Containers

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operation required CBP enforcement teams to board vessels and examine all containers that met the operation's targeting criteria. When the targeted containers could not be examined on board the vessel, CBP required that enforcement teams examine containers immediately upon discharge. In addition, after the special operation concluded, CBP Los Angeles/Long Beach created, trained, and equipped a special enforcement stowaway team to examine containers targeted by its Automated Targeting System filters for Chinese stowaways within 6 hours of discharge. That team was operational during the following Chinese stowaway season in October 2005 through May 2006, and did not discover any stowaways.

CBP Los Angeles/Long Beach also instituted daily review of Integrated Threat Analysis Group reports by its chiefs and members of the USCG. The meeting participants reviewed the threat level assessment for each vessel to determine how to focus and coordinate enforcement activities to address each potential threat. For vessels with a high risk of Chinese stowaways, the interagency vessel boarding team might decide to question the vessel's crew about unusual noises or smells emanating from containers. The vessel boarding team might attempt to observe containers targeted for Chinese stowaways before the containers are discharged from the vessel, look for trap doors or out-of-place trash, sniff for unusual smells, or listen for noises. Other enforcement measures might be implemented, as well, depending on the level of the threat. Reviewing the Integrated Threat Analysis Group reports increases the likelihood of detecting Chinese stowaways and the effectiveness and efficiency of CBP enforcement activities.

CBP port officials said that they were able to respond to the 2005 incidents quickly only because CBP officers happened to be working late on the nights the incidents occurred. To ensure a rapid response to future incidents of Chinese human smuggling or other threats, those CBP staff said the port should have a continuous watch command. However, at the time of our fieldwork, CBP management at the port did not have the resources to operate a continuous watch command.

CBP's Response to the April 2006 Incident



CBP headquarters issued a special operation directive to all ports on April 7, 2006, in response to the April incident. CBP required that for all China Shipping Container Lines vessels, CBP enforcement teams had to board the. vessels immediately, search the vessel for any signs of stowaway activity, monitor the vessel from the time of arrival to departure, and ensure that the containers discharged matched their manifest information. Teams were to examine targeted containers as soon as they were discharged from China Shipping Container Lines vessels, to the extent possible. For containers on other vessels arriving from certain Chinese ports and targeted by CBP headquarters' new Automated Targeting System filters, CBP enforcement teams were expected to conduct the examination as soon as possible after the containers were discharged. In addition, enforcement teams were asked to maintain increased security patrols. CBP Seattle/Tacoma port staff arranged rapid examinations of targeted containers with the terminal operators. CBP Los Angeles/Long Beach continued the special stowaway enforcement team that it assembled after the April 2005 incident.

Using the lessons learned from the three incidents, CBP enhanced its enforcement operations to identify and apprehend Chinese stowaways in maritime cargo containers. Some of the modifications also improved CBP's ability to identify and apprehend other violators. CBP should continue to examine, as quickly as possible, all containers held for examination due to Automated Targeting System terrorism rule-set scores. Quick responses to those containers might prevent or mitigate a serious incident. Likewise, the daily Integrated Threat Analysis Group report is a good tool for coordinating a comprehensive response to all threats. Officials in CBP headquarters are assessing the feasibility of expanding the Integrated Threat Analysis Group program to all CBP seaports. Finally, increasing patrols also improves not only the ability to apprehend stowaways, but also other violators.

# CBP Ports of Los Angeles/Long Beach and Seattle/Tacoma Prepared for New Smuggling Season

CBP's historical analyses indicated: (1) that the ports of Los Angeles/Long Beach and Seattle are the ports prone to Chinese stowaways in maritime containers; and (2) the incidents

(b) (2) high, (b) (7) (E) per ICE/CBP

Since 1999, all of the containers harboring Chinese stowaways were destined for one of the two ports **and the store of the two ports**. Relying on



CBP's historical analyses, the CBP ports of Los Angeles/Long Beach and Seattle/Tacoma increased targeting and enforcement efforts

CBP Los Angeles/Long Beach's targeters are using the automated targeting system stowaway filters and Integrated Threat Analysis Group reports to identify vessels with a higher probability of harboring containers with Chinese stowaways. The enforcement teams are conducting patrols and surveillance activities to apprehend stowaways and other miscreants,

Because earlier incidents at Los Angeles/Long

Beach

(b) (2) high, (b) (7) (E) per ICE/CBP

CBP Seattle/Tacoma's targeters are using the human smuggling filters and research procedures to detect containers with a high risk of harboring Chinese stowaways. The boarding teams now operate 24 hours a day, 7 days a week. They have begun boarding high-risk vessels with the intent to detect Chinese stowaways. As funds become available, CBP Seattle/Tacoma enforcement units will conduct other activities.

The CBP Los Angeles/Long Beach and Seattle/Tacoma increase in targeting and enforcement activities are appropriate and reflect the lessons learned from the three incidents. However, given that Chinese smuggling tactics have changed in the past, it is likely they will change again in the future. CBP Pacific coast ports need to alert their staff and industry partners to the heightened risk of Chinese human smuggling and train staff to be vigilant for potential stowaways.

We recommend that the CBP Commissioner:

**Recommendation #1:** Distribute summaries of the commonalities shared by past incidents of Chinese human smuggling in containers to Pacific coast port personnel with an instruction to be alert to the possibility of incidents occurring in their ports. While increased targeting and enforcement activities are not yet called for at these ports, CBP personnel should be vigilant for Chinese stowaways in containers.

**Recommendation #2:** Direct Pacific coast port personnel to inform its partners, such as terminal operators and local law enforcement, of the



potential for Chinese human smuggling in cargo containers and indicia of such smuggling. Encourage local partners to contact CBP if they encounter suspicious parties at the ports.

## ICE Improved Coordination of Investigations With the Chinese Government, but Coordination With CBP Should Be Improved

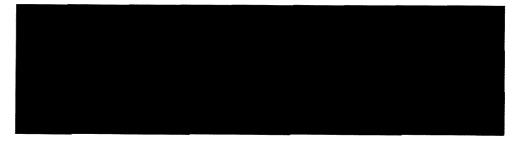
ICE's investigations demonstrated the need to coordinate better with Chinese and CBP counterparts to conduct a successful investigation. Exchanging information with the Chinese government benefits both countries' respective investigations. However, achieving an open and equitable exchange has been difficult and has required ICE officials to continue to develop their negotiating skills as they conduct their investigations. ICE officials were concerned that not being present at the initial stages of an apprehension of stowaways might hinder their investigations as well. While ICE has initiated some measures to improve response coordination with CBP, both components can do more to ensure that ICE has appropriate opportunities to advance its investigations.

ICE Faces Significant Issues When Dealing With Chinese Investigative Counterparts

ICE learned from its investigations of the 2005 smuggling incidents that obtaining assistance from Chinese government officials is difficult. ICE submitted all of its information to its Chinese counterparts, but received little in return.

In 2006, ICE revised its strategy for obtaining assistance from China. It meted out information, providing the Chinese officials one piece of information and insisting on receiving information in return before sharing another piece of information. That strategy was more successful; ICE obtained useful information from the Chinese government officials to advance its investigation, which is ongoing.

(b) (2) high, (b) (7) (E) per ICE/CBP





(b) (2) high, (b) (7) (E) per ICE/CBP

> ICE has no investigative authority in China and must seek assistance from its Chinese counterparts. ICE investigators communicate their investigative needs to the ICE attaché in Beijing, China, who coordinates with Chinese government officials. China has allowed ICE investigators access to officials in its Entry and Exit office, which oversees customs issues. However, ICE believes that the Entry and Exit office is not the appropriate counterpart, as it lacks true investigative capabilities. Given that China has made officials from this office available, ICE has continued to cooperate with them. According to ICE officials and staff, Chinese government officials do not distinguish ICE investigators from FBI, CIA, and other agencies. This has become a hindrance to obtaining investigative information from China because the Chinese government does not cooperate willingly with the other U.S. law enforcement and intelligence agencies. Moreover, ICE officials and investigators said that the Chinese government does not appreciate the U.S. asylum process and is less likely to cooperate with U.S. investigative requests when the smuggled Chinese nationals are granted asylum in the United States.

The investigations concluded that the smuggling operations for each of the three incidents were located in mainland China. While investigating the January and April 2005 incidents, ICE investigators forwarded information requests through the ICE attachés to the Chinese government. The Chinese government did not respond. In June 2005, ICE investigators organized a meeting with a Chinese delegation representing the Entry and Exit office to exchange information related to the 2005 smuggling cases. The investigators described the meetings as difficult and unproductive.



With photographs of the suspected smugglers and knowledge of the staging areas, ICE was able to question the smuggled Chinese nationals more effectively and obtain new and useful information. Some of the smuggled Chinese nationals confirmed that the photographs were of the smugglers and of the loading areas. The investigation is still open and has made more progress than the 2005 investigation due to China's willingness to share information.

To formalize the information exchange process, ICE successfully negotiated a Memorandum of Understanding (MOU) with the China's Ministry of Public Security and International Cooperation Department. The MOU was signed in July 2006. It is too early to be certain, but the MOU should provide some clarity to the collaborative process.

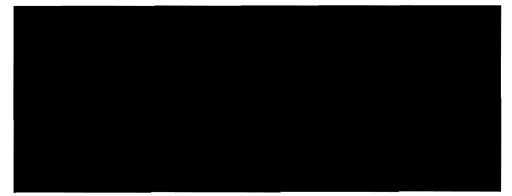
The Lack of Formal Coordination Between ICE and CBP Might Have Hindered ICE's Investigation

CBP and ICE do not have formal protocols for notifying each other when a smuggling incident occurs. Specifically, neither CBP Los Angeles/Long Beach's nor CBP Seattle/Tacoma's standard operating procedures for stowaways discuss ICE's role or requirements for investigating incidents. The Seattle/Tacoma document requires the port director to ensure that enforcement actions are coordinated with ICE, USCG, and other law enforcement entities, but it does not provide any details about how CBP should coordinate with ICE. As a result, all appropriate parties may not be present when a container suspected of human smuggling is opened, and the crime scene could be compromised. In the January 2005 incident, this procedural void resulted in delayed notification to ICE. While there is no way to know whether ICE would have gained substantiating evidence from being present at the opening, the failure to include ICE denied it that opportunity, which could have resulted in a stronger investigative case.



It is critical that federal and local law enforcement agencies coordinate their immediate responses to incidents of Chinese stowaways in maritime containers because valuable information is very difficult to obtain during an investigation. ICE agents have emphasized the importance of timely notification, citing a successful smuggling investigation that resulted in a conviction in 2004. The success of that investigation was directly related to investigators being present when the container harboring Chinese stowaways was opened.

In the January 2005 incident, CBP did not notify ICE until approximately 2 hours after it notified USCG and others of the incident. Investigators from ICE's port security and the human trafficking groups responded immediately. Upon arriving at the scene, they discovered that CBP officers and USCG sea marshals had already opened the second container, found stowaways inside, detained them, conducted cursory examinations of the container, and moved the containers. CBP officers were already interviewing the stowaways. CBP provided ICE with information from the interviews and a cellular telephone retrieved from one of the containers.



ICE agents said that shortly after the January incident, they met with CBP, USCG, and other law enforcement entities to discuss lessons learned and proper crime scene handling to preserve evidentiary integrity. The discussion and any agreements that resulted from the meeting were not documented.

ICE made another attempt to formalize the response to incidents in June 2006, a few days before our interview with ICE's Los Angeles/Long Beach investigators. The group supervisor for the January and April 2005 investigations sent a letter to CBP and USCG to communicate the importance of an organized response and to seek resolution of the competing priorities.

A Review of CBP and ICE Responses to Recent Incidents of Chinese Human Smuggling in Maritime Cargo Containers



(b)(2)high, (b)(7)(E) per ICE/CBP We later asked a Los Angeles/Long Beach CBP official about ICE's request. The official acknowledged that there were discussions about preserving the crime scene, but CBP was not aware of any discussions about notifying and waiting for ICE before opening a container. The June 2006 letter did not resolve the problems that arose in the January 2005 incident.

ICE employees expressed to us their interest in seeing USCG, CBP, and ICE create a human smuggling task force to respond to maritime human smuggling events. ICE envisioned task force members would coordinate their activities for the advantage of each of their agencies. At a minimum, the agencies would determine each other's priorities and response requirements, and establish procedures by which each agency would be alerted to and afforded a full opportunity to respond effectively to human smuggling incidents. Those procedures would be clearly delineated in an interagency agreement. With clear procedures in place, ICE would be afforded the investigative opportunities it needs to successfully investigate human smuggling incidents. The components have not created this task force.

We recommend that the Assistant Secretary for ICE and the Commissioner for CBP:

**Recommendation #3:** Establish formal protocols to guide the department's response to maritime human smuggling incidents. Determine organizational roles and responsibilities, especially with regard to:

- Parties who must respond to human smuggling incidents and be present when opening containers suspected of holding human stowaways;
- A notification system and timeline for contacting those parties; and
- Actions to be taken to preserve the crime scene and other interests.

## **Management Comments and OIG Analysis**

CBP and ICE provided a combined response to our report, which contained both technical and formal comments. We evaluated their response and made changes to the report where we deemed appropriate. We modified the report to incorporate updated data and phrasing regarding the CSI and C-TPAT programs that CBP suggested in its portion of the technical comments to the

A Review of CBP and ICE Responses to Recent Incidents of Chinese Human Smuggling in Maritime Cargo Containers For Official Use Only Page 31 draft. We did not modify the wording of one paragraph as ICE requested because the draft's language is sufficiently clear.

The components identified both "Law Enforcement Sensitive" and "For Official Use Only" information that would be inappropriate to publish to the public. Many of the items identified directly answer the Congressional request to report what CBP and ICE had learned from the incidents and what changes they had made to improve operations as a result. Accordingly, we are providing the report in full to Congress, but are issuing a redacted version for public distribution.

Below is a summary of the components' response to each recommendation and our analysis. Appendix B contains a complete copy of the components' combined response.

**Recommendation #1 (Directed to CBP)**: Distribute summaries of the commonalities shared by past incidents of Chinese human smuggling in containers to Pacific coast port personnel with an instruction to be alert to the possibility of incidents occurring in their ports. While increased targeting and enforcement activities are not yet called for at these ports, CBP personnel should be vigilant for Chinese stowaways in containers.

#### **CBP** Response

CBP concurs with the recommendation and suggests that activities it has undertaken have already satisfied the recommendation. CBP has:

- 1. Created a centralized office to coordinate responses to containers suspected of harboring stowaways;
- 2. Conducted a comprehensive analysis of the incidents and referred the commonalities to the affected ports;
- 3. Appointed a CBP headquarters representative to ensure that potential human smuggling incidents are identified, targeted, and communicated appropriately;
- 4. Developed a reporting system for suspected human smuggling cases to capture key information;
- 5. Established regular calls to the West Coast ports to discuss strategy, latest intelligence, and use of the human smuggling filters and rule sets in ATS;
- 6. Issued a memorandum to remind the ports of the commonalities found between incidents of human stowaways in maritime cargo containers.



#### **OIG Analysis**

Of the activities listed, two may be responsive to our recommendation. Item 5 may have served as a reminder of the commonalities and the need to be vigilant. However, CBP did not provide sufficient detail to confirm that the telephone calls relayed the required information. CBP provided us with a copy of the memorandum mentioned in item 6. The memorandum did not mention the commonalities that we requested for dissemination.

Items 1, 2, 3, and 4 are not pertinent to the recommendation, although the actions they describe may be useful for coordinating CBP activities with regard to human smuggling incidents. The information CBP provided did not explain how the actions described in items 1, 3, and 4, address our first recommendation. With regard to item 2, the commonalities uncovered by the comprehensive analysis were distributed approximately a year ago. The goal of our recommendation is to provide a reminder to the Pacific port personnel of the commonalities and of the need for continued vigilance.

Accordingly, this recommendation is resolved, but open. To close the recommendation, CBP should provide us with documentation of the actions taken to remind the Pacific port personnel of the commonalities noted from CBP's earlier comprehensive review.

**Recommendation #2 (Directed to CBP):** Direct Pacific coast port personnel to inform its partners, such as terminal operators and local law enforcement, of the potential for Chinese human smuggling in cargo containers and indicia of such smuggling. Encourage local partners to contact CBP if they encounter suspicious parties at the ports.

#### CBP Response

CBP concurred with the recommendation and reported it has taken actions to close it. CBP instructed its Directors of Field Operations to remind interested parties, including terminal operators, of the indicia of maritime human smuggling and of their responsibility to contact CBP when stowaways or indicia of stowaways are found onboard a vessel or in a container.

#### **OIG** Analysis



We agree that CBP has fulfilled this recommendation, and consider the recommendation closed.

**Recommendation #3 (Directed to CBP and ICE):** Establish formal protocols to guide the department's response to maritime human smuggling incidents. Determine organizational roles and responsibilities, especially with regard to:

- Parties who must respond to human smuggling incidents and be present when opening containers suspected of holding human stowaways;
- A notification system and timeline for contacting those parties; and
- Actions to be taken to preserve the crime scene and other interests.

#### CBP and ICE Response

CBP and ICE responded to this recommendation, which was addressed to both components. The two components concur with the recommendation and report that their actions have fulfilled it. Their response referred to a December 8, 2005 MOU between them, which defines the roles of CBP and ICE at the ports of entry. The MOU provides that CBP will refer all complex criminal violations to ICE, such as those that involve foreign leads and co-conspirators. Maritime container stowaway incidents fall within the definition of complex criminal investigations. Accordingly, the MOU established that ICE will be asked to respond to maritime container stowaway cases, such as those examined in this report.

CBP and ICE determined that ICE was not required to be present at the opening of a container suspected of harboring stowaways. Both agreed that opening a container immediately to preserve the health and safety of stowaways was more important than delaying to allow ICE time to respond to the scene.

Additionally, both components' responded that the existing system to notify ICE of potential complex criminal investigations, the National Law Enforcement Communications Center, satisfies the notification and crime scene preservation aspects of the recommendation. CBP officers must use the system to notify ICE immediately when they uncover a potentially complex criminal case, such as those involving stowaways in maritime containers.



Moreover, the response concludes that immediate notification to ICE will be adequate for crime scene preservation.

Finally, CBP and ICE refer to a working group to coordinate their activities and the Maritime Operations Threat Response protocols, which are designed to "ensure a seamless coordination effort to address maritime threats."

#### **OIG** Analysis

We agree that CBP and ICE have satisfied the recommendation, and consider the recommendation closed. We did not receive, but should have been provided, the December 8, 2005 MOU during fieldwork in response to our request for: "Any SOPs, procedures, policies, or other documents defining the roles of CBP, ICE, and USCG in responding to aliens smuggled into U.S. ports." When asked, no CBP or ICE personnel at the ports named the MOU or the communication system as guidance for responding to incidents of stowaways in cargo containers. Nonetheless, CBP and ICE have provided documentation subsequently that defines their roles in responding to cases of maritime container stowaways and have established expectations that CBP will immediately notify ICE through an existing 24-hour system as soon as such cases are discovered so that the crime scene may be preserved. We remain concerned that port personnel may not be aware of the MOU and the procedures CBP described in its response, as the 2006 incident was not handled in accordance with the procedures set forth in the MOA. We encourage CBP to remind its personnel of these procedures.



Appendix A Purpose, Scope and Methodology

We conducted this review at the request of the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Energy and Commerce, and the House Permanent Subcommittee on Investigations to answer the following questions:

- Are the current layers of container security effective in mitigating the smuggling threat?
- Is DHS learning from and adjusting its operations?
- Is DHS incorporating the lessons learned to improve its targeting systems and operations?

We conducted our fieldwork from May 16, 2006, through August 24, 2006. During this period, we interviewed 62 people in CBP, ICE, DHS HQ, and members of the maritime shipping community, and we attended a CSI conference. We traveled to Seattle, Washington, and Long Beach, California, to interview CBP and ICE personnel and tour CBP port facilities, terminals, container ships, and examination facilities. We also traveled to Secaucus, New Jersey, to interview executives from Nippon Yusen Kaisha and China Shipping Container Lines.

We examined many documents related to CBP and ICE special operations, operational statistics, correspondence, port musters, post-event analyses, procedural manuals, and program requirements. We reviewed reports issued by the General Accountability Office, the Congressional Research Service, the Congressional Budget Office, and the Senate Permanent Subcommittee on Investigations.

This review was conducted under the authority of the Inspector General Act of 1978, as amended, and according to the Quality Standards for Inspections issued by the *Presidents Council on Integrity and Efficiency*.



Appendix B Management Response to Draft

	Washington, DC 20528
	Security
	MAR 19 2007
MEMORANDUM	FOR RICHARD L. SKINNER INSPECTOR GENERAL DEPARTMENT OF HOMELAND SECURITY
FROM:	Director, Office of Policy and Planning Will: H Hunton U.S. Customs and Border Protection
	Director, Office of Policy and Planning
SUBJECT:	Response to the Office of Inspector General Draft Report for the Chinese Smuggling Incidents in Maritime Cargo Containers
Thank you for providing us with a copy of your draft report entitled "A Review of CBP and ICE Responses to Recent Incidents of Chinese Smuggling in Maritime Cargo Containers" and the opportunity to discuss the issues in this report.	
Enforcement (ICI	ns and Border Protection (CBP) and Immigration and Customs E) agree with the Department of Homeland Security (DHS), Office of al's (OIG's) overall observations made within the report.
CBP and ICE cor Outlined below w	h recommendations 1 and 2 and considers them completed and closed, nour with recommendation 3 and consider it completed and closed, with attached supporting documentation are the corrective actions both ken in response to the recommendations made by the OIG.
	hed are technical corrections to statements made within the draft report larified prior to its finalization.
Law Enforcement to make it suitable	at this version of the report must be treated as "For Official Use Only – t Sensitive." However, CBP attached sensitivity comments to the report le for public disclosure without risking circumvention of laws and P's enforcement efforts.
Recommendatic incidents of Chine	on 1: CBP distribute summaries of the commonalities shared by past ese human smuggling in containers to Pacific coast port personnel with
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Appendix B Management Response to Draft

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riginal/not a	On       • Issued a human smuggling heightened awareness memorandum to all CBP         FOIA       • Officers stationed at the West Coast ports, for the memorandum to all CBP         Officers stationed at the West Coast ports, for the memorandum to all CBP         Attachment 2)         Due Date: Completed         Recommendation 2:       CBP direct Pacific Coast port personnel to inform its partners, such as terminal operators and local taw enforcement, of the potential for Chinese human smuggling in cargo containers and indicia of such of such smuggling. Encourage local



Appendix B Management Response to Draft

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Operations, instructing them to prepare and distribute an information Notice to all local terminal operators, Container Examination Station (CES) operators, and other interested parties requesting them to immediately notify CBP, when evidence of stowaway activities is discovered. CBP OFO relasued this memorandum annually as a domain awareness reminder to CBP staff and local partners.         action       FOIA         memorandum annually as a domain awareness reminder to CBP staff and local partners.         (See Attachment 2)         • CBP OFO met with shipping lines and terminal operators thressing the importance of immediate reporting of suspected human smuggling incidents.         • CBP OFO met with shipping lines and terminal operators and coursech to CBP OFO mutated a human smuggling team that will heighten awareness and outreach to CBP OFO met with shipping lines and terminal operators to companies to reiterate the importance of immediate reporting of suspected human smuggling incidents.         • Due Date: Completed       Recommendation 3: Establish formal protocols to guide the Department's response to maritime human smuggling incidents and responsibilities, especially with regard to:         • Parties who must respond to human smuggling incidents and be present when opening container suspected of holding human stowaways;         • A notification system and then("coordination Efforts Between U.S. Customs and Border Protection, Office of Field Operators and U.S formal' memorandum of understanding (MOU) (protocol) entitied. "Coordination Efforts Between U.S. Customs and Border Protection, Office of Field Operators and U.S formal' memorandum of understanding (MOU) (protocol) entitied. "Coordination Efforts Between U.S. Customs and Border Protection, Offi		3
<ul> <li>outreach to CBP Officers and the affected rade communities.</li> <li>CBP C-TPAT personnel have contacted a significant number of companies to reiterate the importance of immediate reporting of suspected human smuggling incidents.</li> <li>Due Date: Completed</li> <li><u>Becommendation 3:</u> Establish formal protocots to guide the Department's response to maritime human smuggling incidents. Determine organizational roles and responsibilities, especially with regard to:         <ul> <li>Parties who must respond to human smuggling incidents and be present when opening containers suspected of holding human stowaways;</li> <li>A notification system and timeline for contacting those parties; and</li> <li>Actions to be taken to preserve the crime scene and other interests.</li> </ul> </li> <li><u>CBP and ICE Response:</u> Concur. Formal protocols already exist between ICE and CBP. On December 8, 2005, ICE and CBP entered into a "formal" memorandum of understanding (MOU) (protocol) entitled, "Coordination Efforts Between U.S. Customs and Border Protection, Office of Field Operations and U.S. Immigration and Customs Enforcement, Office of Intel of Portection, Office of Field Operations and U.S. Immigration and Customs Enforcement 3)</li> <li>Stated on page 3 of the MOU, under the caption "<u>CBP Officer Enforcement (E)</u>."         <ul> <li>"OI supports the current scope of duties for the CBPO (Es), klantifying and processing criminal prosecutions of The 3 of the USC (within the ports of entry. CBPO (Es) will also notify OI upon identification of a complex, criminal investigation involving the provisions of This B and 18 of the USC within the ports of entry. CBPO (Es) will also notify OI upon identification of a criminal prosecution or an administrative case, which has the potential to be developed by OI into a more complex, criminal investigation involving additional violations, co-conspirators, foreine leads, asset forfailture et. OI will</li></ul></li></ul>	ginal/not a	<ul> <li>Operations, instructing them to prepare and distribute an information Notice to all local terminal operators. Container Examination Station (CES) operators, and other interested parties requesting them to immediately notify CBP, when evidence of stowaway activities is discovered. CBP OFO reissued this memorandum annually as a domain awareness reminder to CBP staff and local partners.</li> <li>FOIA (See Attachment 2)</li> <li>CBP OFO met with shipping lines and terminal operators stressing the importance of immediate reporting of suspected human smugoling incidents.</li> </ul>
Due Date: Completed         Recommendation 3: Establish formal protocols to guide the Department's response to maritime human smuggling Incidents. Determine organizational roles and responsibilities, especially with regard to:         Parties who must respond to human smuggling incidents and be present when opening containers suspected of holding human stowaways;         A notification system and timeline for contacting those parties; and         A cotions to be taken to preserve the crime scene and other interests.         CBP and ICE Response; Concur. Formal protocols already exist between ICE and CBP. On December 8, 2005, ICE and CBP entered into a "formal" memorandum of understanding (MOU) (protocol) entitled, "Coordination Efforts Between U.S. Customs and Border Protection, Office of Field Operations and U.S. Immigration and Customs Enforcement, Office of Investigations." This protocol specifically addresses cases involving the Immigration and Nationality Act, which include human smuggling. (See Attachment 3)         Stated on page 3 of the MOU, under the caption "CBP Officer Enforcement (E):"         "OI supports the current scope of duties for the CBPO (Es), identifying and processing criminal prosecutions and administrative cases involving the Immigration and Nationality Act, th has been agreed that CBPO (Es) will continue their current duties in enforcing the provisions of Titles 8 and 18 of the USC within the ports of entry. CBPO (Es) will also notify OI upon identification of a criminal prosecution or an administrative case, which has the potential to be developed by 01 into a more complex, criminal investigation involving additional violations, co-conspirators, foreign leads, asset forfaiture e.c. Out will bayes the		<ul> <li>outreach to CBP Officers and the affected trade communities.</li> <li>CBP C-TPAT personnel have contacted a significant number of companies to reiterate the importance of immediate reporting of suspected human smuggling</li> </ul>
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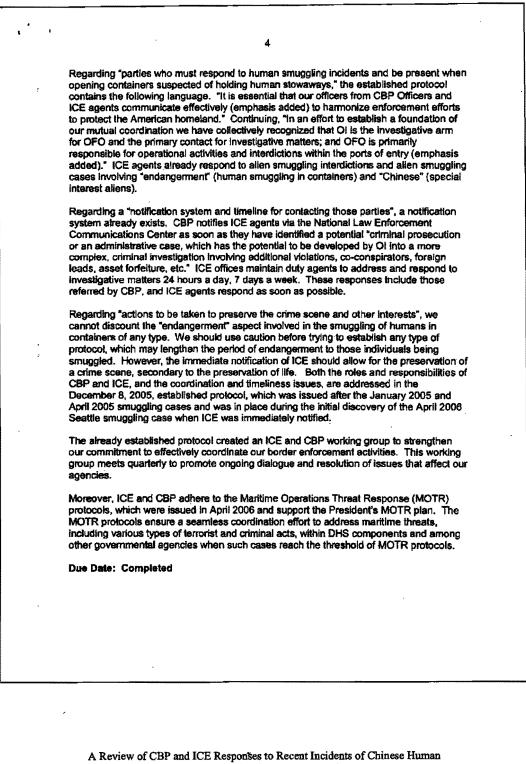
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A Review of CBP and ICE Responses to Recent Incidents of Chinese Human Smuggling in Maritime Cargo Containers

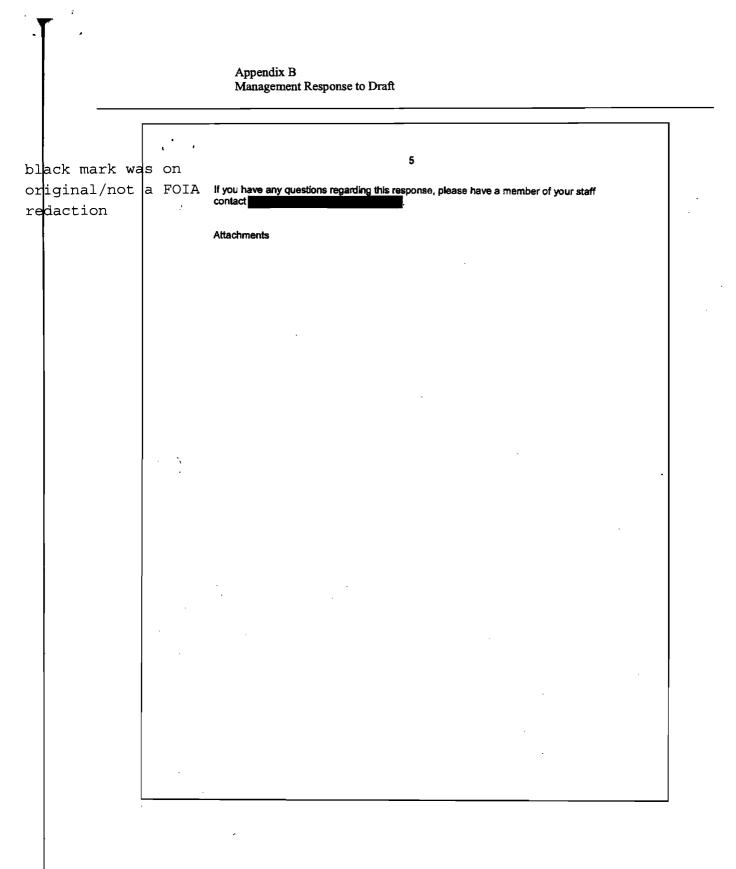
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Appendix B Management Response to Draft

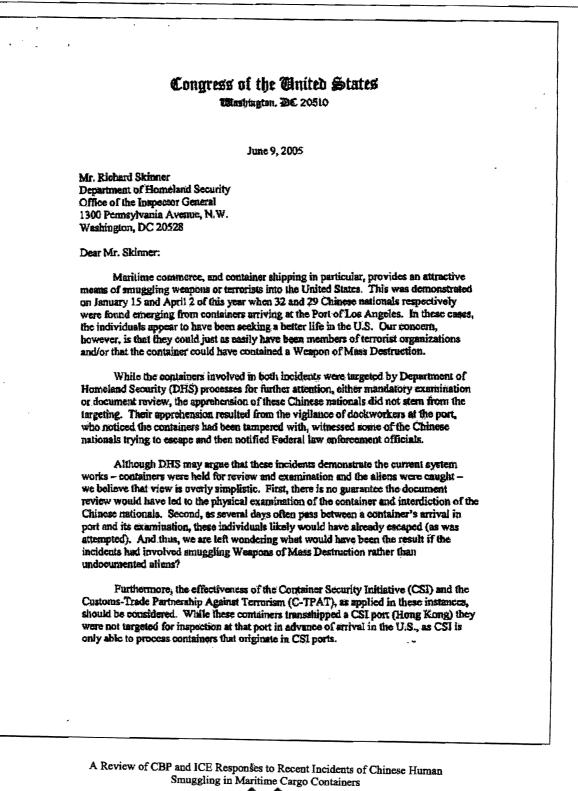








Appendix C Congressional Request Letter





Appendix C Congressional Request Letter

#### Page 2

Additionally, the carrier that transported the Chinese nationals was a C-TPAT member. Though the shipment received no favorable scoring or treatment as a result of the carrier's affiliation with the C-TPAT program, the requirements and value of C-TPAT membership should be questioned in this case. At the very least, we are left wondering what specific responsibility a carrier, and other participants, bears in return for C-TPAT membership? Also, what tangible benefits do carriers receive from C-TPAT?

Our concern regarding these incidents is whether our current layers of container security are effective in mitigating the smuggling threat; whether DHS is learning from and adjusting its operations based on these incidents; and whether additional changes should be considered. We therefore request that your office conduct an inquiry into recent human smuggling events to determine the following:

1. What are the lessons learned from these recent human smuggling incidents?

2. Is DHS incorporating these lessons learned from these events into its targeting systems and operations? How?

Thank you for your assistance on this important matter. If you have any questions about this request, please have your staff contact our respective staff points of contact listed in the attached.

Sincerely,

Susan M. Collins, Chairman Committee on Homeland Security and Governmental Affairs United States Senate

Norrit Coleman, Chairman Permanent Subcommittee on Investigations Committee on Homeland Security and Governmental Affairs United States Senate

Committee on Homeland Security and Governmental Affairs United States Senate

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Carl Levin, Ranking Member Permanent Subcommittee on Investigations Committee on Homeland Security and Governmental Affairs United States Senate



Appendix C Congressional Request Letter

Page 3 Ranking Member John D. Dingell, Ranking Member ennie G. Thompson, Committee on Homeland Security U.S. House of Representatives Committee on Energy and Commerce U.S. House of Representatives ,



Appendix C Congressional Request Letter

Attachment Staff Contacts for IG Request on Human Smuggling in Containers Kathy Kraninger, majority staff, Senate Committee on Homeland Security and Governmental Affairs, 224-4751 Jason Yanassi, minority staff, Senate Committee on Homeland Security and Governmental Affairs, 224-2627 Brian White, majority staff, Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, 224-7496 · Laura Stuber, minority staff, Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, 224-9505 Michael Geffroy, majority counsel, House Committee on Homeland Security, 226-8417 Allen Thompson, minority staff, House Committee on Homeland Security, 226-2616 Christopher Knauer, minority investigator, House Committee on Energy and Commerce, 226-3400



# **CBP** Modifications Made in Response to Incidents

#### C-TPAT

- Established procedures for handling members involved in human smuggling incidents, including mandatory assessment and correction of security vulnerabilities at foreign ports.
- Updated minimum-security criteria to require sea carriers to screen new customers for security risks and ensure that their nonvessel-operator common carriers commit to C-TPAT security recommendations.

#### CSI

- Continues negotiations in expanding to ports in the Chinese region of Shenzhen, including Shekou, the port where the containers were laden.
- Negotiating for the submission of additional data elements to improve targeting in general and targeting for Chinese stowaways in particular.

#### **Domestic Port Targeting**

- Developed Automated Targeting System human smuggling filters and research procedures.
- Increased targeting staff in CBP Los Angeles/Long Beach.
- Developed the Integrated Threat Analysis Group vessel targeting methodology in Los Angeles/Long Beach.
- Lowered automated targeting system threshold scores for mandatory examinations in Seattle/Tacoma.

#### **Domestic Port Enforcement**

- Negotiated with terminal operators to obtain containers targeted for human smuggling more quickly.
- Conducted examinations of suspicious containers immediately or soon after discharge.
- Implemented daily coordination with USCG using Integrated Threat Analysis Group reports at Los Angeles/Long Beach.
- Boarded vessels to observe containers for smells, sounds, trash, and to question crewmembers.
- Maintained surveillance on suspicious vessels or containers.
- Increased patrols.



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# ICE Modifications Made in Response to Incidents

• Improved methods for obtaining information from the Chinese government.

A Review of CBP and ICE Responses to-Recent Incidents of Chinese Human Smuggling in Maritime Cargo Containers For Offician Use Only

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Appendix E Major Contributors to the Report

William McCarron, Chief Inspector, Department of Homeland Security, Office of Inspections

Elizabeth Kingma, Senior Inspector, Department of Homeland Security, Office of Inspections

Russell Lundberg, Inspector, Department of Homeland Security, Office of Inspections

Lawrence Anderson, Inspector, Department of Homeland Security, Office of Inspections



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#### **Office of Management and Budget**

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#### **Congress**

Congressional Oversight and Appropriations Committees, as appropriate



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# DEPARTMENT OF HOMELAND SECURITY Office of Inspector General



# Review of Controls Over the Export of Chemical and Biological Commodities



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Office of Inspector General

U.S. Department of Homeland Security Washington, DC 20528



Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the Homeland Security Act of 2002 (Public Law 107-296) by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, and special reports prepared by the OIG as part of its DHS oversight responsibility to promote economy, effectiveness, and efficiency within the department.

This report assesses the strengths and weaknesses of the department's efforts to enforce controls over chemical and biological commodities. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein, if any, have been developed to the best knowledge available to the OIG, and have been discussed in draft with those responsible for implementation. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

Richard L. Skinner

Richard L. Skinner Acting Inspector General



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## Abbreviations

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AES	Automated Export System	
CFR	Code of Federal Regulations	
CBP	Customs and Border Protection	
CIS	Citizenship and Immigration Services	
Commerce	Department of Commerce	
DHS	Department of Homeland Security	
EAR	Export Administration Regulations	
ECASS	Export Control Automated Support System	
ECC	Exodus Command Center	
ICE	Immigration and Customs Enforcement	
ITAR	International Traffic in Arms Regulations	
JFK	John F. Kennedy	
NDAA	National Defense Authorization Act for fiscal year 2000	
OIG	Office of Inspector General	
PCA	Planned Corrective Action	
State	Department of State	
Treasury	Department of the Treasury	
U.S.	United States	

Controls Over the Export of Chemical and Biological Commodities





# OIG

Department of Homeland Security Office of Inspector General

# Introduction

This report presents the results of the Department of Homeland Security (DHS) Office of Inspector General's (OIG) review of the department's efforts to enforce export controls on chemical and biological commodities. This review is part of a series of interagency OIG reviews on the transfer of militarily sensitive technologies.<sup>1</sup> In concert with the interagency audit objective to assess whether the current export licensing process can help deter the proliferation of chemical and biological commodities, we evaluated the department's broader efforts to enforce export control laws, since the department does not enforce restrictions on biological and chemical commodities exclusively.

The department's U.S. Customs and Border Protection (CBP) bureau operates at air, land and seaports and is responsible for enforcing export control laws and regulations at the U.S. ports of exit. However, the export licenses and the regulations that govern licensing and controlling exports are issued by the Department of State (State) and Department of Commerce (Commerce). The department's U.S. Immigration and Customs Enforcement (ICE) bureau liaisons between CBP, State, and Commerce.

Among the actions that CBP may take to enforce export control laws and regulations are:

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> Our agency specific objectives were to determine whether the department's enforcement practices are in place and working effectively to prevent the illegal export of chemical and biological commodities and to follow-up on prior audits' recommendations. We focused our report on identifying barriers

Controls Over the Export of Chemical and Biological Commodities

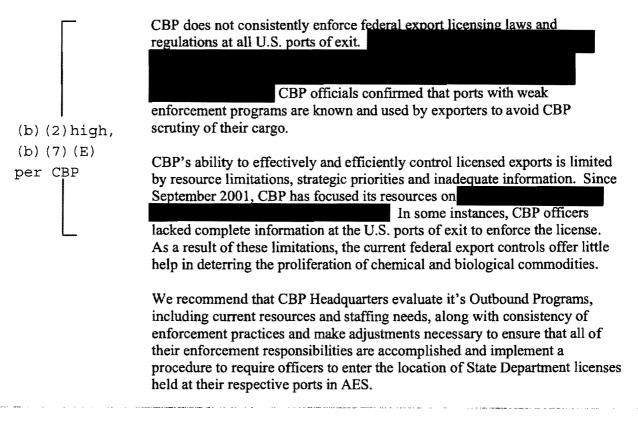


<sup>&</sup>lt;sup>1</sup> Section 1402 of the National Defense Authorization Act (NDAA) for Fiscal Year 2000, Public Law 106-65 requires annual interagency reviews of the transfer of militarily sensitive technologies to countries and entities of concern by the OIGs at the Departments of Commerce, Defense, Energy, and State, and in consultation with the Director of the Central Intelligence Agency and the Director of the Federal Bureau of Investigation.



to the department's effective and efficient enforcement of export control laws and regulations. We conducted our review from September 2004 through December 2004 at CBP Headquarters, the U. S. Citizenship and Immigration Services (CIS) bureau, and ICE. In addition, we surveyed 311 U.S. ports of exit and visited eight. A more detailed description of our purpose, scope, and methodology is provided as *Appendix 1*.

# **Results in Brief**



# Background

The United States (U.S.) controls the export of dual-use<sup>2</sup> commodities and munitions<sup>3</sup> under the authority of several laws, primarily the Export Administration Act of 1979 and the Arms Export Control Act of 1976. CBP is responsible for enforcing licensable export controls, including those governing biological and chemical commodities, for both Commerce and

Controls Over the Export of Chemical and Biological Commodities



<sup>&</sup>lt;sup>2</sup> Dual-use commodities are goods and technology items that have both military and civilian application.

<sup>&</sup>lt;sup>3</sup> Munitions are defense articles or technical data.



State through authority provided in the Export Administration Regulations (EAR)<sup>4</sup> and the International Traffic in Arms Regulations (ITAR).<sup>5</sup> Certain chemical and biological commodities are subject to the licensing requirements contained in the EAR for dual-use, which Commerce issues, or the ITAR for munitions, which are issued by State. ITAR defines a chemical agent as a substance having military application, which by its ordinary and direct chemical action produces a powerful physiological effect. ITAR further defines a biological agent or biologically derived substances as those capable of producing casualties in humans or livestock, degrading equipment or damaging crops and which have been modified for the specific purpose of increasing such effects. In fiscal year 2003, there were 1,803 license applications submitted to Commerce and 717 to State to export chemical and biological commodities.

As the enforcement arm at U.S. ports for both State and Commerce, CBP does not accept or approve applications for the export of licensable dual-use items or munitions. Instead, CBP is responsible for ensuring that licensable exports, in this case chemical and biological commodities, are processed in accordance with applicable laws and regulations. CBP uses ICE's Exodus Command Center (ECC) as a liaison with State and Commerce to answer questions that may arise as to whether a shipment is licensable and CBP officers are directed to send any such questions to the ECC for resolution.

#### **Process for State**

The Arms Export Control Act <sup>6</sup> authorizes the President to control the import and export of defense articles and defense services. This authority has been delegated to the Secretary of State, and is administered by the Directorate of Defense Trade Controls, which approves and issues licenses for the export of munitions. To legally ship commodities represented on the State Department's United States Munitions List (a list of munitions and associated commodities requiring a license), an exporter must be issued an export license administered by the Directorate of Defense Trade Controls. Once approved, the exporter provides the original license to CBP at the probable port of exit. At the time of shipment, the exporter enters the export information<sup>7</sup> electronically into the AES and a hardcopy notification of intent to ship is sent to CBP at the selected port of exit. However, the exporter is not required to export from the port where the original license is lodged. After the notification of intent to export has been received, the CBP officer at the port of exit reviews this information for compliance with the terms of the license

Controls Over the Export of Chemical and Biological Commodities



<sup>&</sup>lt;sup>4</sup> Title 15 Code of Federal Regulations (CFR), Part 758.7

<sup>&</sup>lt;sup>5</sup> Title 22 CFR Part 127.4

<sup>&</sup>lt;sup>6</sup> Title 22 United States Code Section 2778

<sup>&</sup>lt;sup>7</sup> Export information includes value of export, commodity and destination.

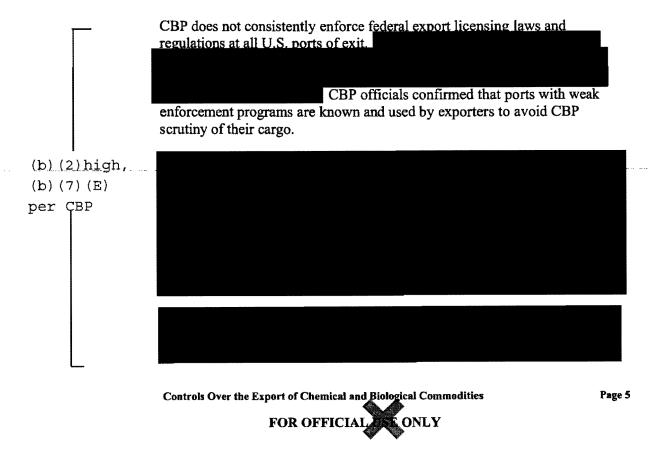


and decrements (i.e., progressively decreases the authorized quantity of the license by the amount exported) the license accordingly. If compliant, the shipment is free to depart. The exporter may continue to ship until the license quantity is exhausted or the license date expires and then the original license is returned to State.

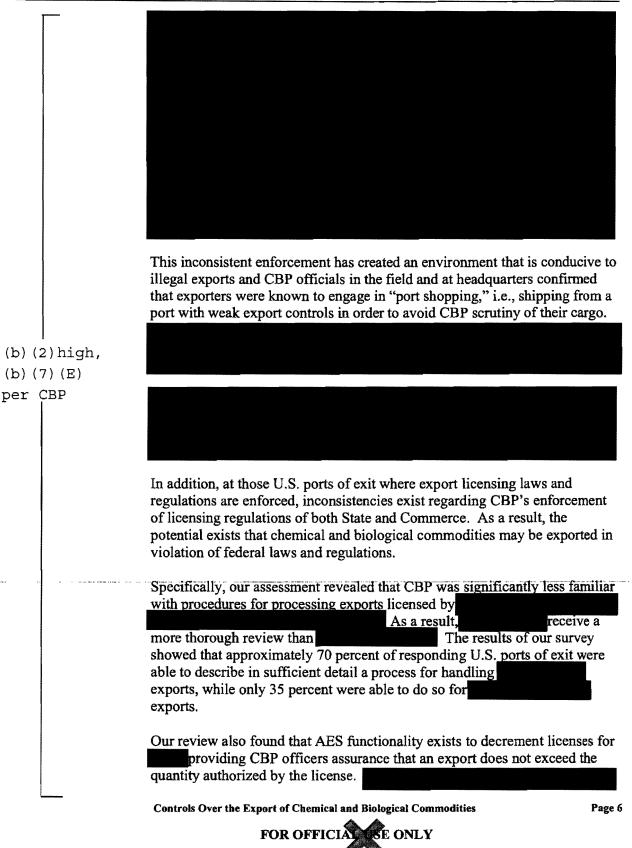
#### Process for Commerce

To legally export dual-use items subject to the EAR, an exporter obtains a license from Commerce's Bureau of Industry and Security, which enters all license information electronically into Commerce's Export Control Automated Support System (ECASS). CBP officers at U.S. ports of exit have access to ECASS through a link in their Treasury Enforcement Communication System and can therefore review the license data electronically. At the time of shipment, the exporter sends to CBP at the selected port of exit a hardcopy notification of intent to export goods against the license, referencing the Commerce license number so that CBP may access the corresponding license information in ECASS. CBP's compliance review is limited to verifying in ECASS that the export license is valid. If compliant, the shipment is released.

## **CBP Enforcement Practices**









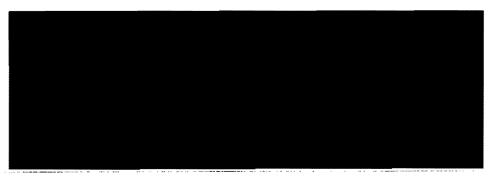
Also, for State licenses, the U.S. Customs Control Handbook For Department Of State Licenses (July 2002) was created to implement procedures to ensure that the ITAR was enforced. However, there is no similar set of internal written procedures for processing licensable exports for Commerce. Instead, Title 15 CFR part 758.7, directs CBP to take appropriate action to assure compliance with the EAR.

Collectively, these results indicate a lack of standardization and consistency in how the export enforcement policies and procedures are being implemented by CBP at U.S. ports of exit. Accordingly, Outbound Program staff at CBP Headquarters needs to provide increased oversight of and coordination with CBP field personnel to strengthen internal controls over the export process and foster consistency across all U.S. ports of exit.

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# (b) (7) (E) Barriers to Improving CBP's Enforcement Of Export Licenses

per CBP



# **Resources and Priorities**

CBP's Office of Field Operations relies on port management, (Directors, Field Operations and Port Directors) to make decisions on how to most effectively protect the United States based on the current national and local threat environments. Using a risk management approach, managers in the field assign CBP personnel to conduct those enforcement actions that individual port assessments have determined will maximize the protective impact of a port's available resources.





CBP headquarters officials have commented that the agency is committed to fulfilling its export enforcement responsibilities but its ability to effectively do so is dependent on the availability of resources within the context of the current threat environment. Following the terrorist attacks of September 11, 2001, the strategic priorities of the legacy U.S. Customs Service were refocused to support more defensive protective actions at U.S. ports of entry, including added emphasis on the screening of inbound passengers and cargo. These refocused priorities

remain in effect today.

(b)(2) high,

(b)(7)(E)

per CBP

# <u>CBP Does Not Consistently Document the location of State Licenses in</u> <u>AES</u>

Exporters physically lodge licenses issued by State with CBP at the port where shipments are expected to primarily occur, however exports may be made through any authorized port of exit. Such license information is necessary to determine whether an individual shipment is being made in compliance with the associated license conditions.

When a port receives notification of an export to be shipped against a license lodged at another port, enforcement personnel must locate the port of lodging and verify the authenticity of the export information to the original license.

This condition also hampered our own attempts to test the effectiveness of CBP's export enforcement practices.

Regarding Commerce, CBP does not have access to export information. We found the following regarding Commerce issued licenses:

Controls Over the Export of Chemical and Biological Commodities FOR OFFICE HUSE ONLY



(b)(2) high, (b)(7)(E) per CBP

 Because AES functionality exists to decrement licenses for State, officers can ensure that the export does not exceed the authorized shipment amount.

In fiscal year 2003, CBP and Commerce met to discuss modifications to AES, however, Commerce was not ready to make the adjustments until some complex issues were addressed. Specifically, EAR authorizes exporters to exceed their authorized shipment amounts under certain circumstances,<sup>9</sup> which complicates the decrementation process. CBP cannot move forward until Commerce makes a determination regarding these adjustments.

We recommend that the Commissioner of CBP:

## **Recommendation 1:**

Evaluate the Outbound Program, including current resources and staffing needs, along with consistency of enforcement practices and make adjustments necessary to ensure that all of their enforcement responsibilities are accomplished.

## Management Comment:

Management concurred with this recommendation and is in the process of implementing two corrective actions in response to this review.

## **OIG Comment:**

We will evaluate the planned corrective actions to ensure that they meet the intent of the recommendation.

<sup>&</sup>lt;sup>9</sup> Title 15 Code of Federal Regulations part 750.11



## **Recommendation 2:**

Implement a procedure to require officers to enter the location of State Department licenses held at their respective ports in AES.

## **Management Comment:**

Management concurred with this recommendation.

## **OIG Comment:**

We will evaluate the planned corrective action to ensure that it meets the intent of the recommendation.

# **Prior OIG Recommendations Still Need To Be Implemented**

CBP, ICE and CIS have planned corrective actions (PCAs) to address the deficiencies cited in the 16 recommendations, related to export controls, that DHS bureaus are responsible for; however, 5 of those recommendations remain open. Significant issues addressed in some of the five open recommendations included: (1) strengthening current DHS change of status adjudication procedures; (2) seeking discretionary authority to deny out right an immigrant or nonimmigrant benefits; and (3) developing an ECC license determining tracking system.

The 16 recommendations are from three NDAA reports containing a total of 19 recommendations. These three reports are our audit report *Review of Deemed Exports*, OIG-04-023, dated April 2004 and two Treasury OIG issued audit reports: *EXPORT ENFORCEMENT: Numerous Factors Impaired Treasury's Ability To Effectively Enforce Export Controls*, OIG-03-069, dated March 25, 2003 and *EXPORT LICENSING PROCESS: Progress Has Been Made But Better Cooperation And Coordination Are Needed*, OIG-02-065, dated March 14, 2002.

Appendix 3 lists the 16 recommendations. Also shown are completed PCAs and PCAs to fully implement the remaining five open recommendations.



Appendix 1 Purpose, Scope, and Methodology

# Purpose, Scope, and Methodology

The purpose of our review was to determine whether: 1) DHS' enforcement practices are in place and working effectively to prevent the export of chemical and biological commodities to countries of concern; and 2) perform follow-up on prior years' NDAA recommendations. The audit was conducted at locations in Washington, D.C. and at the Seaport of Baltimore, Dulles International Airport, Seaport of Philadelphia, Miami International Airport, Seaport of Beaufort-Morehead City, John F. Kennedy International Airport, Newark International Airport, and Denver International Airport from September 2004 through December 2004.

(b)(2) high, (b)(7)(E) per CBP

> In this process we: 1) reviewed and analyzed DHS enforcement practices and its laws and regulations, policies and procedures applicable to the export of chemical and biological commodities; 2) assessed CBP and ICE efforts to coordinate and cooperate with other appropriate federal agencies involved in export enforcement and licensing processes; 3) assessed CBP's export screening efforts at U.S. ports of exit; 4) conducted interviews with responsible CBP and ICE officials and other personnel to determine whether they are compliant with applicable export control laws and regulations as well as their own directives; and 5) selected exports for testing at U.S. ports of exit to determine if controls are implemented to enforce the requirements applicable to the export of chemical and biological commodities. To accomplish this review, we conducted fieldwork at selected port locations, collected export enforcement procedural information via a survey at the 311 U.S. ports of exit; and interviewed with officials and personnel at DHS bureaus of CBP, CIS and ICE.

> The NDAA requires the OIGs to conduct annual reviews regarding the transfer of militarily sensitive technologies and to include in their annual reports the status or disposition of recommendations made in prior year reports. Accordingly, we followed up on the status of recommendations made in the following prior reports: 1) DHS OIG: *Review of Deemed Exports*, OIG-04-023, dated April 2004; and 2) Treasury OIG audit reports: *EXPORT ENFORCEMENT: Numerous Factors Impaired Treasury's Ability To Effectively Enforce Export Controls*, OIG-03-069, dated March 25, 2003 and *EXPORT LICENSING PROCESS: Progress Has Been Made But Better Cooperation And Coordination Are Needed*, OIG-02-065, dated March 14, 2002. Our review was conducted in accordance with generally accepted government auditing standards.





Appendix 2 Recommendations

# Recommendations

We recommend that the Commissioner of CBP:

# **Recommendation 1:**

Evaluate the Outbound Program, including current resources and staffing needs, along with consistency of enforcement practices and make adjustments necessary to ensure that all of their enforcement responsibilities are accomplished.

# **Recommendation 2:**

Implement a procedure to require officers to enter the location of State Department licenses held at their respective ports in AES.



#### Homeland Security OIG Audit Report: Review of Deemed Exports (OIG-04-23) April 2004

Finding 1: DHS Policies and Procedures Do Not Ensure Compliance With Deemed Export Requirements

_	Recommendation	Management Comments	Status
	1. We recommend that the Under Secretary for BTS <sup>14</sup>		OPEN ICE OSTP informal meeting with Homeland Security Council the
(b)(5) per ICE			week of January 3,
			2005
Γ	2. We recommend that the Deputy Secretary strengthen current DHS <sup>18</sup> change of status adjudication procedures including additional controls, such as obtaining an SAO <sup>19</sup>	CIS met with Commerce <sup>22</sup> on October 19, 2004 and with State <sup>23</sup> on October 6, 2004 to	OPEN CIS met with Commerce October 19, 2004 and with
(b) (5)			DOS on
per USCIS		The PCA has not been reached and the recommendation remains open.	October 6, 2004

- <sup>10</sup> BTS Border and Transportation Security
- <sup>11</sup> CCL Commerce Control List
- <sup>12</sup> USML United States Munitions List
- <sup>13</sup> SEVIS Student and Exchange Visitor Information System
- <sup>14</sup> ICE Immigration and Customs Enforcement
- <sup>15</sup> OSTP Office of Science and Technology Policy
- <sup>16</sup> IPASS Interagency Panel on Advance Science and Security
- <sup>17</sup> PCA Planned Corrective Action
- <sup>18</sup> DHS Department of Homeland Security
- <sup>19</sup> SAO Security Advisory Opinion
- <sup>20</sup> CIS Citizenship and Immigration Services
- <sup>21</sup> IBIS Interagency Border Inspection System
- <sup>22</sup> Commerce Department of Commerce
- <sup>23</sup> State Department of State
- <sup>24</sup> Visa Mantis screens individuals who may seek to violate U.S. export laws





#### Homeland Security OIG Audit Report: Review of Deemed Exports (OIG-04-23) April 2004

Finding 1: DHS Policies and Procedures Do Not Ensure Compliance With Deemed Export Requirements

Recommendation	Management Comments	Status	
3. We recommend that the Director, CIS seek the discretionary authority to deny outright any immigrant or nonimmigrant benefit, including changes to visa status, on the grounds of national security.	CIS concurred with the recommendation. Amended on April 5, 2004, CIS Legislative Counsel submitted proposed amended language to the Immigration and Nationality Act, 8 USC <sup>25</sup> section 362. The planned corrective actions on this recommendation have not been completed. Therefore the recommendation will remain open.	OPEN CIS PCA Due Date not established	
<ol> <li>We recommend that the Director, CIS provide Commerce with access to data from foreign nationals' approved change of status applications as stored in CLAIMS<sup>26</sup> to help identify possible investigative leads for follow-up.</li> </ol>	CIS concurred with this recommendation. CIS and Commerce met on June 17, 2004 and CIS is waiting for Commerce to move forward on the CLAIMS fields request for Form I-129. On October 19, 2004, CIS left a request for Commerce to provide CIS with text to insert in Form I-129. The PCA implements this recommendation.	CLOSED CIS PCA Due Date October 19, 2004	

Finding 2: ICE Outreach Needs Standard Operating Procedures To Ensure Coverage Of Exports

Recommendation	Management Comments	Status
5. We recommend that the Assistant Secretary, ICE, continue its efforts to implement standard operating procedures for special agents use when conducting PSA <sup>27</sup> visits, and also include a standardized checklist of items to ensure that deemed exports are included in PSA presentations.	Management concurred with this recommendation. A memorandum was issued to all Special Agents on July 28, 2004 from Office of Investigations. The PCA implements this recommendation.	CLOSED ICE PCA Due Date July 28, 2004

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 <sup>&</sup>lt;sup>25</sup> USC – United States Code
 <sup>26</sup> CLAIMS – Computer Linked Application Information Management System
 <sup>27</sup> PSA – Project Shield America



### Treasury OIG Audit Report: EXPORT ENFORCEMENT: Numerous Factors Impaired Treasury's Ability To Effectively Enforce Export Controls (OIG-03-069) March 25, 2003

Finding 2: Numerous Factors Impaired Customs' Ability To Effectively Enforce Export Controls

R	ecommendation	Management Comments	Status
1.	Work with Census <sup>28</sup> officials to: (1) request that additional fields be added to AES <sup>29</sup> to provide Customs with container numbers and house and master airway bill numbers; (2) request that additional fields be added to AES to indicate where cargo is physically located; (3) request that AES edits be improved; and (4) ensure that all Outbound inspectors receive adequate AES training.	Customs concurred with this recommendation. CBP will meet with Census officials to make a proposal to add fields to AES and work to improve the edits within AES. On July 29, 2002, Customs requested Census to modify Title 15 CFR <sup>30</sup> 30.63(b)(11). The final ruling on Outbound was effective October 23, 2003. Also provided was a plan to combine the EXODUS <sup>31</sup> and AES classes at FLETC <sup>32</sup> . These PCAs implement the recommendation.	CLOSED CBP <sup>33</sup> Office of Field Operations PCA Due Date October 23, 2003
2.	Work with Commerce officials to identify and correct problems that cause Commerce to process license determination referrals untimely.	Customs' management concurred with our recommendation. Customs stated they would meet with Commerce officials to discuss this issue. Meeting was held on April 10, 2003.	CLOSED CBP Office of Field Operations PCA Due Date April 10, 2003
3.	Work with Commerce officials to ensure that the $ECC^{34}$ is notified on a timelier basis when additional specific technical information is needed from inspectors and agents regarding license determination referrals already submitted to Commerce	Customs' management concurred with our recommendation. Customs stated they would meet with Commerce officials to discuss this issue. Meeting was held on April 10, 2003.	CLOSED CBP Office of Field Operations PCA Due Date April 10, 2003

Controls Over the Export of Chemical and Biological Commodities

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<sup>&</sup>lt;sup>28</sup> Census –Bureau of Census, a division of the Department of Commerce

<sup>&</sup>lt;sup>29</sup> AES – Automated Export System

 <sup>&</sup>lt;sup>30</sup> CFR - Code of Federal Regulations
 <sup>31</sup> EXODUS - Program name for a CBP m

EXODUS – Program name for a CBP program that ensures compliance with U.S. export laws, specifically under the ITAR, EAR and sanction programs administered by Treasury

<sup>&</sup>lt;sup>32</sup> FLETC - Federal Law Enforcement Training Center now under the Department of Homeland Security

<sup>&</sup>lt;sup>33</sup> CBP – Customs and Border Protection

 <sup>&</sup>lt;sup>34</sup> ECC - EXODUS Command Center: CBP field staff liaison between federal agencies that issue export licenses



#### Treasury OIG Audit Report: EXPORT ENFORCEMENT: Numerous Factors Impaired Treasury's Ability To Effectively Enforce Export Controls (OIG-03-069) March 25, 2003

Finding 2: Numerous Factors Impaired Customs' Ability To Effectively Enforce Export Controls

Recommendation	Management Comments	Status
<ol> <li>Develop a license determination tracking system that provides ECC management with meaningful, accurate information on ECC program results.</li> </ol>	Customs concurred with this recommendation. ICE officials stated there are four phases utilizing 385 man-hours for each phase. Phase One migrate old database and Phase Two identifying data for archived are completed. Phase Three is scheduled to start in February or March 2005 with Phase Four due for completion in July 2006. The planned corrective actions on this recommendation have not been completed therefore the recommendation will remain open.	OPEN ICE Strategic Investigations Unit PCA Due Date July 2006
<ol> <li>Meet with Commerce officials to discuss the possibility of amending Commerce regulations to require Customs to decrement Commerce export licenses.</li> </ol>	Customs' management concurred with our recommendation. Customs stated they would meet with Commerce officials to discuss this issue. Meeting was held on April 10, 2003.	CLOSED CBP Office of Field Operations PCA Due Date April 10, 2003
<ol> <li>Issue written guidance regarding its national policy on Outbound cargo detentions to ensure uniformity at all ports.</li> </ol>	Customs concurred with this recommendation. Customs issued memorandum, ENF-13-OFO:OB RR, on "Detention Policy for shipments held for export licensing determinations", outlining the national policy regarding the outbound cargo detentions on June 11, 2003.	CLOSED CBP Office of Field Operations PCA Due Date June 11, 2003
<ol> <li>Reevaluate its current rotation policies for Outbound inspectors to minimize the loss of experienced and trained staff.</li> </ol>	Customs concurred with this recommendation. Customs will reiterate the rotation policy for EXODUS inspectors. The Customs survey on the rotation policies for Outbound cargo inspectors at major ports around the U.S. on November 27, 2002 and found that most Outbound inspectors normally stay in this position for two years or longer.	CLOSED CBP Office of Field Operations PCA Due Date November 27, 2002

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# Appendix 3

Status of Follow-up on Prior Year Recommendations

## Treasury OIG Audit Report: EXPORT ENFORCEMENT: Numerous Factors Impaired Treasury's Ability To Effectively Enforce Export Controls (OIG-03-069) March 25, 2003

Finding 2 Numerous Factors Impaired Customs' Ability To Effectively Enforce Export Controls

Recommendation	Management Comments	Status
<ol> <li>Explore additional methods of providing EXODUS training to Outbound inspectors to ensure they are adequately trained.</li> </ol>	Customs concurred with this recommendation. On January 4, 2005 OIG was provided with an Exodus Training Schedule for outbound inspectors with dates for FY 2004 and 2005. This implements the recommendation.	CLOSED CBP Office of Field Operations PCA Due Date January 4, 2005

Finding 3 OFAC<sup>35</sup> Could Benefit From Better Coordination With State Department and Customs

Recommendation	Management Comments	Status
3. The appropriate Customs' officials should ensure that periodic reports are provided to OFAC regarding the status of OFAC referrals and Customs' initiated investigations of OFAC violations.	Customs concurred with this recommendation. ICE officials met with OFAC on September 14, 2004 to obtain an up-to-date list of open OFAC referrals and provided an up-to-date list of ICE initiated investigations. ICE will (1) arrive at an agreement on format and distribution of referrals, and format and timing of reports; and (2) agree on the use of a project code in ICE' reports to facilitate their tracking; and (3) initiate a new referral and reporting system. The planned corrective actions on this recommendation have not been completed. Therefore, the recommendation will remain open.	OPEN ICE Strategic Investigative Unit PCA Due Date September 14, 2004



<sup>&</sup>lt;sup>35</sup> OFAC - Office of Foreign Assets Controls is an Office under Treasury, which administers sanction programs.



### Treasury OIG Audit Report: EXPORT LICENSING PROCESS: Progress Has Been Made But Better Cooperation And Coordination Are Needed (OIG-02-065) March 14, 2002

Finding 1 Operational Efficiency Improvements Are Needed in The Export Process

Recommendation	Management Comments	Status	
<ol> <li>In accordance with the Automation Initiative and the Government Paperwork Elimination Act. Customs should coordinate with the State Department to ascertain the feasibility of eliminating the paper SED<sup>36</sup> requirement.</li> </ol>	Customs concurs with this recommendation. In fact, this recommendation was accomplished with the implementation of mandatory filing for USML items via AES. (Mandatory filing requirements extend to commodities on the Bureau of Export Administration's CCL as well.) The legislation Title 15 CFR Part 30 took effect on August 18, 2003. Corrective action implemented this recommendation.	CLOSED CBP Office of Field Operations PCA Due Date August 18, 2003	

Finding 2 Increased Participation in AES is Needed Among Export Licensing Agencies

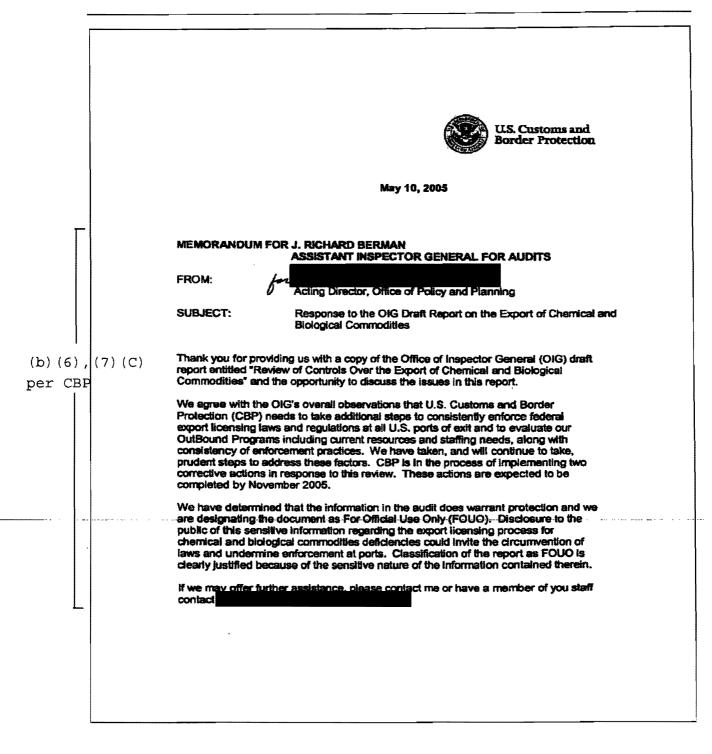
Recommendation	Management Comments	Status
<ol> <li>Customs should continue its efforts to encourage participation in AES with agencies involved in the export licensing process.</li> </ol>	Customs concurred with this recommendation. CBP provided documentation to show their initiative for encouraging other licensing agencies in January 2005. Corrective actions implement this recommendation.	CLOSED CBP Office of Field Operations PCA Due Date January 2005



<sup>&</sup>lt;sup>36</sup> SED – Shipper's Export Declaration



Appendix 4 Management Comments







Appendix 5 Major Contributors to this Report

Alexander Best Jr., Director, Border and Transportation Security Ethel Taylor-Young, Audit Manager Joseph L. Hardy Jr., Auditor-In-Charge Gary Alvino, Management Analyst Marshall Toutsi, Senior Auditor Nadine F. Ramjohn, Senior Auditor

Controls Over the Export of Chemical and Biological Commodities





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