



U.S. DEPARTMENT OF COMMERCE
Office of Inspector General



***Bureau of Industry
and Security***

***Issues Related to the
Bureau of Industry and Security's
Budget and Responsibilities for
International Treaty
Implementation and Compliance***

*Final Briefing No. IPE-19463
October 2008*

FOR PUBLIC RELEASE

Office of Audit and Evaluation





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

October 7, 2008

The Honorable Daniel K. Akaka
Chairman
Subcommittee on Oversight of Government Management,
the Federal Workforce, and the District of Columbia
Committee on Homeland Security and Governmental Affairs
SH-605, Hart Senate Office Building
Washington, DC 20510

Dear Senator Akaka:

My office has completed the review that you requested on June 9, 2008. You asked that we investigate budget management practices in the Bureau of Industry and Security (BIS) related to international treaty implementation and compliance activities. We met with your staff on September 30, 2008, to present the results of our review.

To summarize our findings, conference report language accompanying the FY 2006 appropriations bill stated that the funding previously spent on international treaty implementation and compliance activities could now be spent on "national security related programs." Based on this language, BIS started funding other programs with the funding previously dedicated to the Treaty Compliance Division. With regard to the Chemical Weapons Convention attaché being curtailed from his posting in The Hague, this action was taken by BIS management due to what it described as budget constraints. We found that funding was available, but was used instead by BIS for other national security programs. Finally, we found that the electronic system to compile the U.S. Additional Protocol (AP) declaration would not have been ready in time to accept the first round of submissions from U.S. industry in late 2008 even if spending on the project had continued. The development of the system had not been well managed—it was only 35 percent complete in January 2008 when BIS stopped any further work on it. Reverting to a paper-based process for the AP declaration is inefficient, but in speaking to all the agencies involved in AP implementation, none of them felt it would have any impact on the submission of the initial AP declaration to the International Atomic Energy Agency.

We have enclosed a copy of our briefing and an identical letter has been sent to Senators Biden and Lugar. If you have any questions, please feel free to contact me at (202) 482-4661 or Lisa Allen, Deputy Assistant Inspector General for Inspections and Program Evaluations, at (202) 482-5422.

Sincerely,

A handwritten signature in black ink that reads "Todd J. Zinser".

Todd J. Zinser

Enclosure





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

October 7, 2008

The Honorable Joseph R. Biden, Jr.
Chairman
Committee on Foreign Relations
SD-439, Dirksen Senate Office Building
Washington, DC 20510-6225

Dear Senator Biden:

My office has completed the review that you requested on June 9, 2008. You asked that we investigate budget management practices in the Bureau of Industry and Security (BIS) related to international treaty implementation and compliance activities. We met with your staff on September 30, 2008, to present the results of our review.

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

October 7, 2008

The Honorable Richard G. Lugar
Ranking Member
Committee on Foreign Relations
SD-439, Dirksen Senate Office Building
Washington, DC 20510-6225

Dear Senator Lugar:

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Enclosure





Briefing for U.S. Senate Requesters

Issues Related to the
Bureau of Industry and Security's
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Background

- The President's Budget Request for FY 2008 included \$78.78 million to fund BIS programs. Both the House and Senate marks were at this same funding level.
- On December 18, 2007, the consolidated appropriations act passed, which included a \$72.85 appropriation for BIS. This was approximately 8 percent less than the President's request.
- In May 2008, Congress approved a \$2.1 million transfer from other Commerce accounts to BIS. According to BIS management, this additional funding enabled it to fill key management positions and avoid rolling staff furloughs.
- On June 8, 2008, Senators Akaka, Biden, and Lugar requested that the Commerce OIG review several decisions BIS made as a result of the cut to its FY 2008 budget. The OIG agreed to address the questions listed on the next slide.

Senate Questions

- (1) Since 2006, what has the “inspections and other activities related to national security” (Category B) subset been spent on? Has money from that subset been spent on areas other than international treaty responsibilities?
- (2) What is the history of the Commerce/BIS attaché to the Organization for the Prohibition of Chemical Weapons (OPCW)? How did it come about and how was the position funded? What was BIS’ rationale for pulling the attaché from The Hague?
- (3) What is the status of compiling the United States’ Additional Protocol (AP) declaration? What is the deadline for filing the declaration? Will the deadline be missed and if yes, why? What are BIS’ specific responsibilities regarding the AP declaration?
- (4) What funding has been directed to creating an electronic system to compile the necessary data for the AP declaration and what is the status of the system? What are the consequences of stopping work on the system and returning to a paper system? Was a cost-benefit analysis completed before making this decision?
- (5) Was a cost-benefit analysis made before moving the Treaty Compliance Division from Rosslyn, Virginia into the main Commerce building?



Findings: Category B Spending

- The “inspections and other activities related to national security” subset (Category B) of the base BIS appropriation first appeared in the FY 1998 Commerce, Justice, State appropriations act. This exact language, to describe the Category B funds, has been in every appropriations act since. [Note: The FY 1998-2008 history of BIS’ base appropriation and the Category B subset is included as an Appendix to this briefing.]
- Prior to FY 2006, Category B funds were primarily used to fund BIS’ international treaty implementation and compliance programs, which were housed in the Treaty Compliance Division (TCD).
- In FY 2006, the Category B funding increased from \$7.2 million to \$14.77 million. The conference report stated that these funds were for “national security related programs.” Based on this language, BIS began to fund other national security related programs, in addition to TCD, with Category B funds, including:
 - Office of Strategic Industry and Economic Security,
 - Office of Technology Evaluation,
 - Overseas export control attaché program,
 - End-use check program, and
 - Seized computer evidence recovery program.



Findings: Category B Spending

- The FY 2008 President’s Budget submission did not specifically list an amount to be spent on international treaty compliance activities. The FY 2006 and FY 2007 President’s Budget submissions stated that \$7.2 million was dedicated to BIS’ Performance Goal 2—“Ensure U.S. Industry Compliance with the Chemical Weapons Convention.”
- Our analysis found that BIS obligations for TCD’s international treaty programs declined by about \$200,000 in FY 2006. More significant reductions occurred in FYs 2007 and 2008.

| Fiscal Year | Total TCD Obligations, Including Overhead | Percentage Decline Over FY 2005 Baseline |
|--------------------|--|---|
| 2005 | \$5,736,529 | NA |
| 2006 | \$5,510,514 | 4% |
| 2007 | \$3,596,193 | 37% |
| 2008 ¹ | \$3,277,822 | 43% |

1: OIG estimate of full year, based on figures as of August 31, 2008 (11 months of FY).

- Our analysis indicates that BIS did not spend \$7.2 million on TCD’s programs during the past several years. However, determining the exact amount of obligations that should be allocated to TCD would require a detailed cost allocation audit, which was beyond the scope of this analysis.
- According to BIS management, despite the reduced spending on TCD’s programs, all CWC inspections have been completed on time and all declarations have been submitted on time. Additionally, BIS is also helping industry meet its obligations under the CWC and completed two requested site assistance visits in FY 2008.

Findings: CWC Attaché

- The Organization for the Prohibition of Chemical Weapons (OPCW), located in The Hague, The Netherlands, has the mission of monitoring the implementation of the CWC Treaty, which entered into force in 1997.
- The United States maintains a permanent on-site delegation to the OPCW, which is currently led by Ambassador Eric M. Javits.
- Presidential Decision Directive/NSC-70 (1999) states the Department of Commerce shall “provide members of the U.S. Delegation to the OPCW, including an Alternate Permanent U.S. Representative to the OPCW, who will be resident in The Hague.”
- BIS, the Commerce bureau with the lead on CWC implementation, sent the first CWC attaché to The Hague in September 1999.
- Other than a brief, two-month period in 2005, when the incumbent attaché unexpectedly resigned, the position had been continually filled until August 2008.
- BIS paid for the CWC attaché position with Category B funds.

Findings: CWC Attaché

- In February 2008, BIS management decided to curtail the assignment of the attaché due to budget constraints. Because many of the costs to keep the attaché and his family in The Hague for FY 2008 had already been paid, it was decided to curtail his assignment on/about July 15, 2008. The attaché's 3-year posting was due to finish in October 2008, so he was effectively curtailed 3 months early.
- There were no significant cost savings in FY 2008 resulting from this decision. BIS reported to us that it made the decision out of concern for its FY 2009 budget situation. Specifically, BIS would have had to commit funds (e.g., housing, school, overhead expenses, etc.) to the State Department in FY 2008 in order to keep the attaché in The Hague for FY 2009. However, BIS did not believe it was prudent to do this given the continuing uncertainty of the bureau's budget and the likelihood of a lengthy continuing resolution due to the Presidential election and a new Administration.

Findings: CWC Attaché

- According to BIS management, they have committed to filling the vacant CWC attaché position as soon as sufficient funding becomes available. Based on our analysis, the decision not to fund the CWC attaché was a management decision—Category B funding was available but BIS chose to spend those funds on other national security programs.
- BIS management also told us that they will send staff to key CWC meetings, as funds permit. For example, they are sending a staffer to the CWC Executive Council meeting in The Hague in October 2008.
- In late August 2008, we spoke to Ambassador Javits who expressed concern about the effectiveness of the U.S. delegation to the OPCW without the Commerce CWC attaché. Specifically:
 - The U.S. has some momentum after a successful CWC Review Conference in April 2008. This Conference is held once every 5 years and it spawned a number of opportunities to negotiate changes to the treaty that the U.S. either proposed or supports. Thus, the Ambassador expected that the remainder of FY 2008 and FY 2009 would be a very busy period for the delegation.
 - Many of the opportunities involve addressing shortcomings in the treaty related to the commercial chemical industry. The State attaché and DOD attaché will do their best to represent U.S. industry interests, but without the assistance of a knowledgeable Commerce attaché who is intimately familiar with the U.S. chemical industry, the Ambassador fears U.S. influence during negotiations on industry-related issues will decrease significantly.

Findings: AP Declaration

- There is currently no “deadline” for filing the first Additional Protocol (AP) declaration because the U.S. has not deposited its instrument of ratification of the AP with the International Atomic Energy Agency (IAEA).
- According to BIS officials, the President has indicated that he would like to do so before the end of his term. Thus, the interagency working group (State, Defense, Energy, Commerce, the Attorney General, and the Nuclear Regulatory Commission) is working to have all necessary requirements completed by December 31, 2008.
- Once the instrument of ratification to the AP is deposited, the first U.S. declaration under the AP will be due to the IAEA in 180 days.
- There are five key requirements that must be met before the President can deposit the instrument of ratification to the AP. Three have been completed:
 - (1) **Ratification**—the U.S. signed the AP to the U.S./IAEA Safeguards on June 12, 1998, and the Senate provided its advice and consent, with two conditions, on March 31, 2004.
 - (2) **Enactment of Implementing Legislation**—on December 18, 2006, the President signed the *United States Additional Protocol Implementation Act* (Public Law 109-401).
 - (3) **Issuance of an Executive Order**—on February 5, 2008, the President signed an Order directing the responsible agencies to issue regulations and take other necessary actions to implement the *Act* and meet U.S. obligations under the AP.

Findings: AP Declaration

- The final two requirements that must be met before the President can deposit the instrument of ratification to the AP are:
 - (4) **Issuance of Agency Regulations**—by the Departments of Commerce (for provisions of the AP affecting U.S. industry and others not regulated by the NRC), Defense, and Energy, and by the NRC.
 - (5) **Certification of Senate Conditions**—the President must certify that the two conditions added by the Senate, involving national security exclusions and site vulnerability assessments of locations with direct national security significance, will be met within 180 days after the deposit of the instrument of ratification.
- Status of Commerce’s Implementing Regulations—BIS issued its draft AP implementing regulations on July 25, 2008. The 30-day comment period closed August 25, 2008. BIS plans to issue the final regulation by late October or early November 2008. Entities subject to the regulation must declare their civil nuclear fuel-cycle activities to BIS within 30 days of the final AP regulation being issued.

Findings: AP Declaration

- Status of Other Agencies' Implementing Regulations—The regulations that must be issued by Defense, Energy, and NRC are either (1) on target to be issued in time to support the President depositing the instrument of ratification prior to leaving office or (2) do not have a bearing on the President being able to make the deposit.
- Status of Certifying the Senate's Two Conditions—Because the work to meet the conditions has just begun, it is unclear when the Secretaries of Defense and Energy will be able to provide the President with the necessary assurances that the two Senate conditions can be met.

Findings: AP Declaration

- Once the instrument of ratification is deposited, the National Security Presidential Directive (NSPD) 57 states that BIS will be responsible for:
 - (U) Combining the civil nuclear fuel-cycle related filings it previously received (in the 30-day period after the publication of its final AP implementing regulations) with the filings from Defense, Energy, and the NRC to form the basis for the initial U.S. declaration.
 - (U) Providing IAEA inspectors with complementary access to declared commercial locations and obtaining necessary administrative warrants for IAEA inspector complementary access.
- This second responsibility won't start until sometime after the initial declaration is filed with the IAEA.

Findings: AP Reporting System

- Starting in 2004, BIS began developing the Additional Protocol Reporting System (APRS), an electronic system to collect declarations from both industry and government filers subject to the AP and compile them into an overall U.S. declaration for submission to the IAEA. BIS estimated it would take about 2 years and \$2.0 million to develop and complete APRS.
- In January 2008, BIS management stopped development of APRS due to budget constraints. TCD was directed to revert to a paper-based system for collecting declarations and compiling the overall U.S. declaration for submission to the IAEA. BIS did not do a cost-benefit analysis of reverting to a paper-based process.
- Approximately \$1.6 million had been expended on APRS at the point development was halted.
- Even if BIS had continued development of APRS in its existing design, and had sufficient funds to do so, the system would not have been ready in time to accept the first round of declarations in late 2008.

Findings: AP Reporting System

- In February 2008, the BIS Chief Information Officer brought in an outside consultant to provide a technical assessment of APRS and determine whether the development effort could be salvaged. The consultant found that the overall project was only 35 percent complete and much of the necessary lifecycle management documentation was non-existent.
- The consultant recommended that APRS be abandoned in favor of a new design that would be in compliance with BIS' security, architecture, and lifecycle management requirements.
- BIS management acknowledges that reverting to a paper-based process for the AP declarations is inefficient. But, they are confident the initial U.S. declaration, as well as subsequent declarations, will be submitted on time and in the format required by the IAEA.
- We spoke to cognizant officials at each of the agencies involved in the AP implementation and they all told us that a paper process for AP declarations is laborious and cumbersome. However, they do not believe it will impact the initial IAEA submission.



Findings: TCD Move

- According to BIS management, the decision to move TCD from Rosslyn, Virginia, to the main Commerce building in May 2008 was largely driven by the FY 2008 budget situation. However, BIS reportedly had been contemplating such an action for the past few years given TCD's shrinking space requirements.
- No formal cost-benefit analysis of this decision was done. However, BIS did provide us with some rough calculations that showed consolidating TCD into existing BIS space in the main Commerce building (\$140,024 annual cost) would be less expensive than continuing to rent separate space in Rosslyn (\$261,423 annual cost). The cost of vacating the Rosslyn space and moving personnel and equipment to the main Commerce building was \$26,200.
- According to BIS management, some savings were also realized from eliminating TCD's separate IT-support contract and bringing that work under the BIS Chief Information Officer's IT-support contract.

Appendix: BIS Appropriations FYs 1998-2008

| Fiscal Year | Base BIS Appropriation ³ | Category B ¹ Subset of Base BIS Appropriation |
|-------------------|-------------------------------------|--|
| 1998 | \$43,900,000 | \$1,900,000 |
| 1999 | \$52,231,000 | \$1,877,000 |
| 2000 | \$54,038,000 | \$1,877,000 |
| 2001 | \$64,854,000 | \$7,250,000 |
| 2002 | \$68,893,000 | \$7,250,000 |
| 2003 | \$74,653,000 | \$7,250,000 |
| 2004 | \$68,203,000 | \$7,203,000 |
| 2005 | \$68,393,000 | \$7,200,000 |
| 2006 | \$76,000,000 | \$14,767,000 |
| 2007 ² | \$75,393,000 | \$14,767,000 |
| 2008 | \$72,855,000 | \$13,627,000 |

1: Category B is for “inspections and other activities related to national security.”

2: Figures obtained from the Department, instead of applicable Public Law, due to full year continuing resolution.

3: Does not include any rescissions, carryover, recoveries, or transferred funds.

Note: Between FYs 1998 and 2002, BIS was also provided funding in its base appropriation for its work toward CWC implementation. The high amount was \$3.4 million in FY 2000.