

DEPARTMENT OF HOMELAND SECURITY

Office of Inspector General

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



The Department of Homeland Security, Office of Inspector General, has redacted this report for public release. A review under the Freedom of Information Act will be conducted upon request.

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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.

A handwritten signature in cursive script that reads "Richard L. Skinner".

Richard L. Skinner
Inspector General

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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
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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 onto the vessel in Hong Kong, but containers in later 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.

Figure 1: Stacked container used in Seattle incident.



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 http://www.cbp.gov/linkhandler/cgov/import/commercial_enforcement/ctpat/security_criteria/sea_carrier_criteria/sea_carrier_criteria.ctt/sea_carrier_criteria.doc, 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:

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- 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 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 ---- on the terrorism rule-set must be examined before leaving the port terminal. Containers with

scores between [REDACTED] 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.

C-TPAT Program Standardized Response to Maritime Human Smuggling 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 nonvessel-operating 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.

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 minimum-security 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.

Figure 3: CSI ports in Shenzhen after expansion



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.

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 rule-set'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 [REDACTED]. CBP determined that [REDACTED]. In addition, historical analyses showed that containers with stowaways [REDACTED]. These 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 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 [REDACTED]. As a result, the container harboring Chinese stowaways in April 2006 was held for a mandatory examination due to its score [REDACTED]. Had Seattle maintained the original threshold score [REDACTED], 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 [REDACTED] 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:

- [REDACTED]
- [REDACTED]
- [REDACTED]

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 [REDACTED]

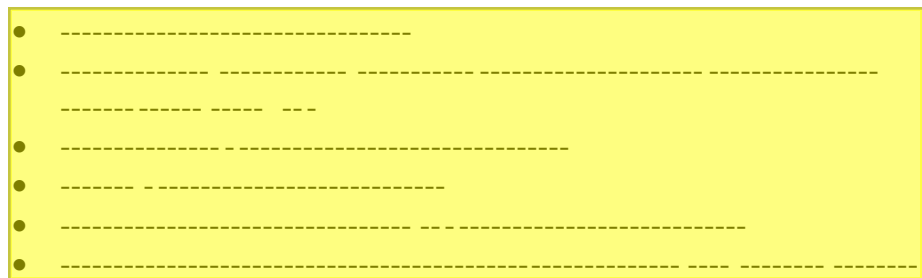
[REDACTED]

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.

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.

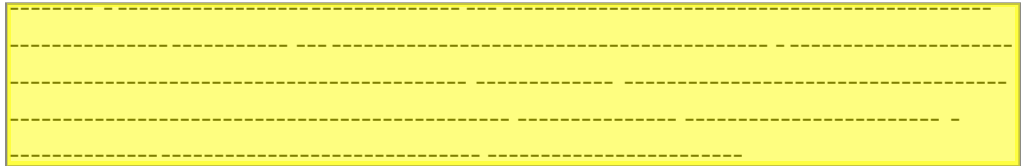
CBP's Current Efforts to Improve Targeting to Detect Chinese Stowaways

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 [REDACTED]

[REDACTED]. Having this information 24 hours prior to shipment would give CBP's targeters more time to determine [REDACTED]. 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.

CBP is also negotiating to obtain



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.

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 expeditiously 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 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 inter-agency 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 [REDACTED] presumably [REDACTED]

[REDACTED] Since 1999, all of the containers harboring Chinese stowaways were destined for one of the two ports [REDACTED]. Relying on CBP's historical analyses, the CBP ports of Los Angeles/Long Beach and Seattle/Tacoma increased targeting and enforcement efforts [REDACTED].

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, [REDACTED]

[REDACTED] Because earlier incidents at Los Angeles/Long Beach [REDACTED]

[REDACTED]

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 [REDACTED] 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

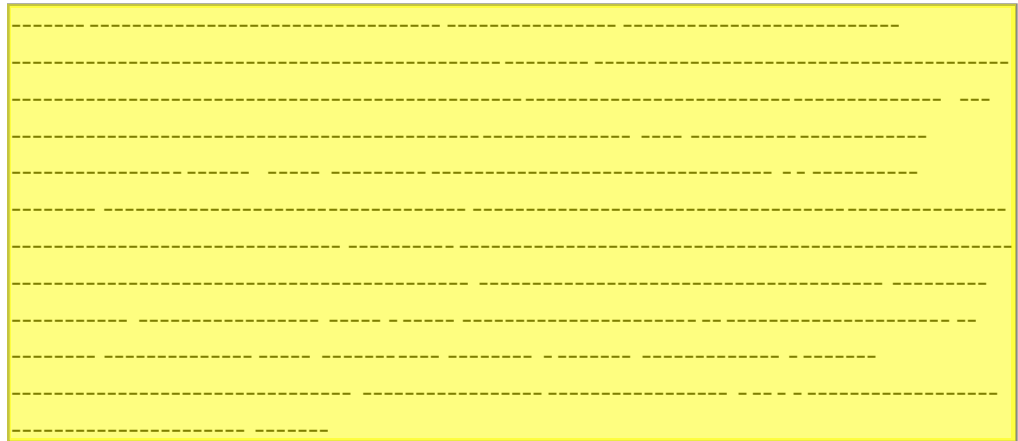
ICE's investigations demonstrated the need to coordinate better with Chinese and CBP counterparts to conduct a successful investigation. Exchanging information with the Chinese government benefits both countries' respective investigations. However, achieving an open and equitable exchange has been difficult 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. [REDACTED]

[REDACTED] 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.



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. [REDACTED]

[REDACTED]

[REDACTED]

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.

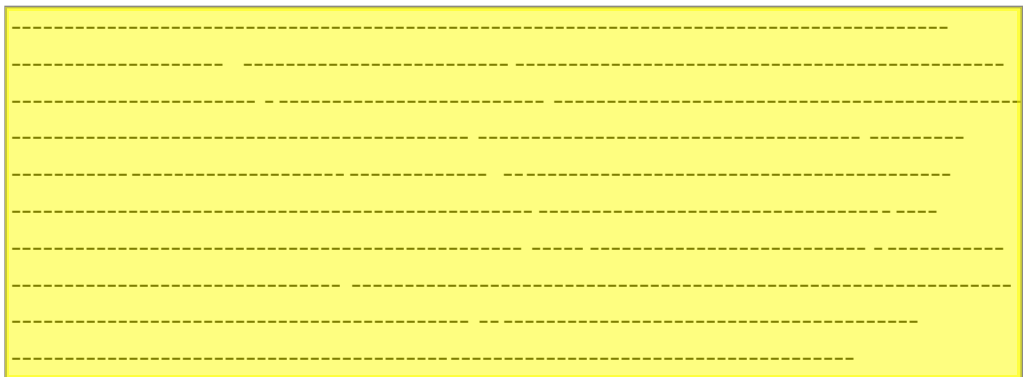
The Lack of Formal Coordination Between ICE and CBP Might Have Hindered ICE's Investigation

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. 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 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.

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*.

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



Homeland
Security

MAR 19 2007

MEMORANDUM FOR RICHARD L. SKINNER
INSPECTOR GENERAL
DEPARTMENT OF HOMELAND SECURITY

FROM: Director, Office of Policy and Planning *Will H. Houston*
U.S. Customs and Border Protection

Director, Office of Policy and Planning *[Signature]*
U.S. Immigration and Customs Enforcement

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.

The U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) agree with the Department of Homeland Security (DHS), Office of Inspector General's (OIG's) overall observations made within the report.

CBP concurs with recommendations 1 and 2 and considers them completed and closed. CBP and ICE concur with recommendation 3 and consider it completed and closed. Outlined below with attached supporting documentation are the corrective actions both agencies have taken in response to the recommendations made by the OIG.

In addition, attached are technical corrections to statements made within the draft report that need to be clarified prior to its finalization.

CBP believes that this version of the report must be treated as "For Official Use Only – Law Enforcement Sensitive." However, CBP attached sensitivity comments to the report to make it suitable for public disclosure without risking circumvention of laws and undermining CBP's enforcement efforts.

Recommendation 1: 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: Concur. In response to incidents of human smuggling in sea containers incidents, CBP has taken the following corrective actions:

- Formulated a working group and developed a Standard Operating Procedure to streamline the reporting and coordination process of incidents involving human smuggling via sea containers. (See Attachment 1)
- Conducted a comprehensive analysis of previous incidents of human smuggling in sea containers. Information derived from this analysis was the driver behind the adjustments of filters and rule sets in the Automated Targeting System. Additionally, the commonalities were communicated to the responsible field managers at the affected ports.
- Appointed a CBP Headquarters representative to ensure that potential incidents of suspected human smuggling are identified, targeted, and communicated in a timely manner and that the proper coordination, including the notification of ICE, takes place.
- Identified a reporting system that ensures that when intelligence is received from a source or through Automated Targeting System – Narcotics (ATS-N), CBP Headquarters (Office of Field Operations) is the sole coordination point that will research, prepare and transmit a comprehensive human smuggling worksheet to all of the affected ports that captures essential information concerning a suspected human smuggling incident. In addition, CBP Headquarters will maintain continual communication from beginning to end and keep all stakeholders apprised of ongoing status.
- Established a schedule of routine conference calls with the West Coast ports to discuss strategy, communicate latest intelligence, and ensure that the field is kept apprised of newly created human smuggling filters and rule sets in the ATS-N.
- Issued a human smuggling heightened awareness memorandum to all CBP Officers stationed at the West Coast ports, [REDACTED] and commonalities in smuggling techniques. (See Attachment 2)

Due Date: Completed

Recommendation 2: 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 of such smuggling. Encourage local partners to contact CBP if they encounter suspicious parties at the ports.

CBP Response: Concur. CBP initiated the following corrective actions to solicit local partners to assist in identifying suspected Chinese human smuggling in sea cargo containers incidents.

- In May of 2006, CBP OFO distributed a memorandum to all Directors, Field 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. [REDACTED]
(See Attachment 2)
- CBP OFO met with shipping lines and terminal operators stressing the importance of immediate reporting of suspected human smuggling incidents.
- CBP OFO formulated a human smuggling team that will heighten awareness and outreach to CBP Officers and the affected trade communities.
- CBP C-TPAT personnel have contacted a significant number of 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. 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: 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. It 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 OI into a more complex, criminal investigation involving additional violations, co-conspirators, foreign leads, asset forfeiture, etc. OI will have the lead on investigations they accept from OFO."

Regarding "parties who must respond to human smuggling incidents and be present when opening containers suspected of holding human stowaways," the established protocol contains the following language. "It is essential that our officers from CBP Officers and ICE agents communicate effectively (emphasis added) to harmonize enforcement efforts to protect the American homeland." Continuing, "In an effort to establish a foundation of our mutual coordination we have collectively recognized that OI is the investigative arm for OFO and the primary contact for investigative matters; and OFO is primarily responsible for operational activities and interdictions within the ports of entry (emphasis added)." ICE agents already respond to alien smuggling interdictions and alien smuggling cases involving "endangerment" (human smuggling in containers) and "Chinese" (special interest aliens).

Regarding a "notification system and timeline for contacting those parties", a notification system already exists. CBP notifies ICE agents via the National Law Enforcement Communications Center as soon as they have identified a potential "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, foreign leads, asset forfeiture, etc." ICE offices maintain duty agents to address and respond to investigative matters 24 hours a day, 7 days a week. These responses include those referred by CBP, and ICE agents respond as soon as possible.

Regarding "actions to be taken to preserve the crime scene and other interests", we cannot discount the "endangerment" aspect involved in the smuggling of humans in containers of any type. We should use caution before trying to establish any type of protocol, which may lengthen the period of endangerment to those individuals being smuggled. However, the immediate notification of ICE should allow for the preservation of a crime scene, secondary to the preservation of life. Both the roles and responsibilities of CBP and ICE, and the coordination and timeliness issues, are addressed in the December 8, 2005, established protocol, which was issued after the January 2005 and April 2005 smuggling cases and was in place during the initial discovery of the April 2006 Seattle smuggling case when ICE was immediately notified.

The already established protocol created an ICE and CBP working group to strengthen our commitment to effectively coordinate our border enforcement activities. This working group meets quarterly to promote ongoing dialogue and resolution of issues that affect our agencies.

Moreover, ICE and CBP adhere to the Maritime Operations Threat Response (MOTR) protocols, which were issued in April 2006 and support the President's MOTR plan. The MOTR protocols ensure a seamless coordination effort to address maritime threats, including various types of terrorist and criminal acts, within DHS components and among other governmental agencies when such cases reach the threshold of MOTR protocols.

Due Date: Completed

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If you have any questions regarding this response, please have a member of your staff contact [REDACTED].

Attachments

Congress of the United States

Washington, DC 20510

June 9, 2005

Mr. Richard Skinner
Department of Homeland Security
Office of the Inspector General
1300 Pennsylvania Avenue, N.W.
Washington, DC 20528

Dear Mr. Skinner:

Maritime commerce, and container shipping in particular, provides an attractive means of smuggling weapons or terrorists into the United States. This was demonstrated on January 15 and April 2 of this year when 32 and 29 Chinese nationals respectively were found emerging from containers arriving at the Port of Los Angeles. In these cases, the individuals appear to have been seeking a better life in the U.S. Our concern, however, is that they could just as easily have been members of terrorist organizations and/or that the container could have contained a Weapon of Mass Destruction.

While the containers involved in both incidents were targeted by Department of Homeland Security (DHS) processes for further attention, either mandatory examination or document review, the apprehension of these Chinese nationals did not stem from the targeting. Their apprehension resulted from the vigilance of dockworkers at the port, who noticed the containers had been tampered with, witnessed some of the Chinese nationals trying to escape and then notified Federal law enforcement officials.

Although DHS may argue that these incidents demonstrate the current system works – containers were held for review and examination and the aliens were caught – we believe that view is overly simplistic. First, there is no guarantee the document review would have led to the physical examination of the container and interdiction of the Chinese nationals. Second, as several days often pass between a container's arrival in port and its examination, these individuals likely would have already escaped (as was attempted). And thus, we are left wondering what would have been the result if the incidents had involved smuggling Weapons of Mass Destruction rather than undocumented aliens?

Furthermore, the effectiveness of the Container Security Initiative (CSI) and the Customs-Trade Partnership Against Terrorism (C-TPAT), as applied in these instances, should be considered. While these containers transshipped a CSI port (Hong Kong) they were not targeted for inspection at that port in advance of arrival in the U.S., as CSI is only able to process containers that originate in CSI ports.

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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.

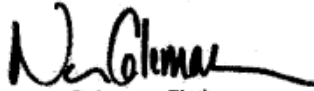
Sincerely,



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



Joseph I. Lieberman, Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate

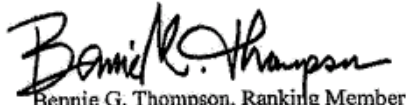



Norm Coleman, Chairman
Permanent Subcommittee
on Investigations
Committee on Homeland Security
and Governmental Affairs
United States Senate



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

Page 3


Bennie G. Thompson, Ranking Member
Committee on Homeland Security
U.S. House of Representatives


John D. Dingell, Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives

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 Yanussi, 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.

ICE Modifications Made in Response to Incidents

- Improved methods for obtaining information from the Chinese government.

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

Department of Homeland Security

Secretary
Deputy Secretary
Chief of Staff
Deputy Chief of Staff
General Counsel
Assistant Secretary for Public Affairs
Assistant Secretary for Policy
Assistant Secretary, Legislative and Intergovernmental Affairs
Chief Security Officer
Assistant Secretary for Immigration and Customs Enforcement
Commissioner for Customs and Border Protection
DHS OIG Liaison
CBP Audit Liaison
ICE Audit Liaison
Chief Privacy Officer

Office of Management and Budget

Chief, Homeland Security Branch
DHS Program Examiner

Congress

Congressional Oversight and Appropriations Committees, as appropriate

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To obtain additional copies of this report, call the Office of Inspector General (OIG) at (202) 254-4100, fax your request to (202) 254-4285, or visit the OIG web site at www.dhs.gov/oig.

OIG Hotline

To report alleged fraud, waste, abuse or mismanagement, or any other kind of criminal or noncriminal misconduct relative to department programs or operations, call the OIG Hotline at 1-800-323-8603; write to DHS Office of Inspector General/MAIL STOP 2600, Attention: Office of Investigations - Hotline, 245 Murray Drive, SW, Building 410, Washington, DC 20528, fax the complaint to (202) 254-4292; or email DHSOIGHOTLINE@dhs.gov. The OIG seeks to protect the identity of each writer and caller.