

CUSTOMS COMMERCIAL OPERATIONS ADVISORY COMMITTEE

Trade Modernization Subcommittee Executive Summary – Trade Progress Report April 2016

Background

The Trade Modernization Subcommittee (Subcommittee) of the COAC now has completed the work of two (2) working groups (WGs) and actively launched one (1) WG to forge a public/private partnership that will develop a strategic vision to enhance predictability, transparency and efficiency that is relevant in today's progressive trade environment. The two WGs that have completed their work and developed recommendations for the April COAC are the Centers of Excellence & Expertise (Centers) Uniformity WG and 2016 Broker Regulations WG. The Subcommittee anticipates providing recommendations from the International Engagement & Trade Facilitation WG at the July COAC.

Chairpeople

Cynthia	Whittenburg	Executive Director, Trade Policy & Programs, OT
Richard	DiNucci	Executive Director, Cargo & Conveyance Security, OFO
Cindy	Allen	CEO and Founder, Trade Force Multiplier, LLC
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Work Update

1. Centers of Excellence & Expertise Uniformity

After holding biweekly calls for about two months, the WG broke out into four teams to hold weekly calls in order to prepare draft recommendations for a live 1 ½ day meeting in Washington, D.C. in early April. As a result of the meeting, the WG completed its recommendations one week later. Throughout the process participants included members of the Trade representing each of the ten (10) Centers, complemented with individuals from other critical industries (brokers and express couriers) that the Centers impact as well as HQ OFO officials and the Directors of the Electronics, Pharmaceuticals, Petroleum and Apparel Centers.

In developing the recommendations, the WG remained cognizant that: the number of importers of record (IORs) between the Centers could range from 2,000 to over 75,000; CBP had just recently fully deployed six (6) of the Centers in late March 2016; and numerous IORs import commodities whose tariff provisions would be covered by multiple Centers. Accordingly, the WG endeavored to develop recommendations that: are practical and realistic as to not drain the resources of the Centers; take an industry-focused and

account-based as opposed to a strict commodity/tariff and transactional approach; recognize the role CBP Headquarters would play in providing a uniform, coordinated approach from both a policy and operational standpoint; and CBP could implement in the short term as well as the longer term, as appropriate.

Mindful of the role and function the Centers would play according to section 110 of the Trade Facilitation and Enforcement Act, the WG arrived at over thirty (30) recommendations in four (4) core areas that can be summarized as follows.

A. Uniformity – Outreach, Communication & Informed Compliance

In this area, the WG intended for the Centers to maintain open, regular communication to foster transparency, which would enhance compliance that over time reduces post-entry corrections, rulings and protests, and trade enforcement measures and also promotes uniform decision-making. To accomplish this objective the WG developed recommendations encouraging: third party reports, with Trade input, setting forth measurements and metrics regarding the Center's efficiencies; Center webpages in cbp.gov highlighting critical industry based information; collaboration with the trade to develop and disseminate information particularly regarding priority trade issues; conducting outreach via webinars and via CBP and industry events; including information tailored for small and medium-sized importers; and realigning the National Import Specialists (NIS) to report to the Centers to promote uniform decision-making.

B. Levels of Service & Trusted Partner/Trader

In this area, the WG endeavored to recognize real benefits for C-TPAT or ISA accounts currently viewed as Center "partners" usually through interactions with their National Account Managers (NAMs). Although the WG recognized that ISA members should receive the highest level of benefits because the Centers' and NAMs' role primarily relates to trade compliance and enforcement, it envisioned that the Centers should expand such benefits to cover participating accounts and lower risk IORs who may not participate in partnership programs. Further, it was anticipated that many of the recommendations would play a role in CBP's and COAC's development of the trusted trader program. To this end, recommendations include input from the Centers, as a liaison, to trusted partners concerning rulings and decisions, FP&F actions as well as PGA admissibility, release and sampling decisions.

C. Other Core Processes: Bonded Facilities/FTZs, FP&F, Release & Reconciliation

The WG explored numerous ways to leverage the Centers' industry and subject matter expertise to support and enhance, but not supplant, critical functions and programs typically managed by CBP ports. In particular, the WG encourages the Centers to utilize its expertise to facilitate FTZ release issues, assist with industry-related FTZ questions, provide a means to escalate matters to CBP Headquarters where the ports cannot resolve them locally and also provide industry-related input for FTZ training and zone audits. Further, the WG recommended that Centers should be in a position to have visibility and to provide input, from an industry and account-based perspective, as practicable, on local release/hold decisions and FP&F enforcement actions. The WG added that CBP also

should examine the roles the Centers can play to integrate and manage other post entry processes such as drawback and reconciliation.

D. Participating Government Agencies

The WG felt strongly that the Centers could play an invaluable role to increase interaction, coordination and uniformity between the PGAs and CBP, particularly towards establishing a One U.S Government at the Border (1USG) approach for trusted partners/traders. Through the Border Interagency Executive Council (BIEC), in coordination with the trade, the WG recommended that the BIEC and CBP conduct a study and issue a report regarding the increased efficiencies and diminished costs resulting from the PGAs working with the Centers to apply more account-based, risk management approaches in reaching admissibility determinations. The WG also suggested that through the BIEC the PGA develop and maintain an ongoing relationship and dialogue to address continuing, systemic issues of a national scale and to improve protocols for handling the release of commodities.

2. 2016 Broker Regulations

Due to CBP's intent to issue a Notice of Proposed Rule Making (NPRM) on 19 CFR §111 the Subcommittee formed this WG to address the open issues needed to modernize the customs broker regulations. The WG intended to ensure adequate consideration of the commercial and regulatory impact of these potential regulatory changes across industry. Accordingly, WG participants included brokers, express couriers, and importers of different sizes who handle various cargo volumes as well as CBP officials across several disciplines from all geographical regions. The WG also included representatives from the 13th COAC who formulated prior recommendations to avoid duplication of efforts, particularly where CBP and the Trade already had reached consensus.

The WG held two in person two day meetings first to identify critical issues and review past COAC, NCBFAA and other recommendations/input and then to formulate the final recommendations. Over the course of three (3) months, there were numerous phone calls, emails and other exchanges sometimes several times per week. As a result, the WG arrived at the following recommendations.

Single Permit & Permit Process: The WG recommended a single permit at the national level in lieu of the district permit structure to conduct customs business within the U.S. The WG recognized that the single permit system would provide greater flexibility and discretion to the private sector in approaching their business models, while easing processing for CBP and enhancing uniformity.

Responsible Supervision & Control: The WG recommended that CBP update several factors to recognize the virtual, more automated technology available to brokers, for instance by maintaining electronic as opposed to hard copy resources and providing supervisory contact virtually as well as physically. Additionally, the WG suggested that brokers maintain an adequate number of licensed brokers for consultation with employees, calculating reject rates from entries or entry summaries not just overall business as well as

some more minor changes to update the language regarding audits and reviews conducted under a broker's supervision. The WG agreed that such changes would promote professionalism, acknowledge modern technology and help ensure that brokers maintain a highly compliant brokerage operation. The WG also recommended that the Broker Handbook should set forth best practices to implement the ten (10) factors.

License Examination: The WG encouraged CBP to immediately pursue a Notice of Proposed Rulemaking (NPRM) to administer an electronic exam and in the longer term automate the process to notify examinees of the exam results and appeal process as well as enable them to use automated resources when taking the exam. The WG also suggested changing the exam date to the fourth Monday in April and in October to avoid frequent changes in the exam dates due to holidays and budgetary restrictions and eventually provide for the exam "on demand." Generally the WG felt these changes would ease CBP's burden in administering the exam and would streamline the process for both CBP and examinees.

Recordkeeping, Record Retention & Confidentiality: The WG recommended that customs brokers could store records in an electronic format within the customs territory of the U.S. and maintain duplicate records outside of the customs territory of the U.S. Further, the WG set forth a definition of confidential business information and recognized new exceptions to releasing confidential business information consistent with the broker's scope of services and its power of attorney. The WG recognized that such changes were needed to enable brokers to appropriately conduct business on behalf of customers, to address other internal business realities and reflect the virtual environment in which customs brokers now conduct business. Further the WG maintained that the confidentiality regulations should recognize the commercial, business relationship between the broker and the importer and that CBP should not decide nor burden itself in determining what is confidential.

Employee & Status Reporting: The WG drafted recommendations designed to streamline the employee reporting process through electronic submission and eliminate the requirement to report terminate employees. Instead, at a minimum, brokers could report employees involved in customs business or, alternatively, report all employees. Further, the WG suggested that ACE should facilitate electronic reporting of employee information as well as the information included in triennial reports. The rationale for the recommendations was to move from a manual, paper process to allow both brokers and CBP to take advantage of electronic methods of broker employee tracking, on a national scale, while providing flexibility in reporting employees, resulting in more accurate and timely reporting.

Relation Between Brokers & Importers: The WG recommended regulatory changes clearly requiring the broker to follow the importer's documented instructions regarding the transmission of information, documentation and bills and to ensure that importers directly interact with the broker to provide guidance in processing merchandise. Additionally, the regulations should require the broker to obtain a power of attorney directly from the importer and to allow brokers to compensate freight forwarders referring brokerage

business without any of the required preconditions currently set forth in the regulations. The WG found that these recommendations would clarify and further solidify the direct relationship between the customs broker and importer, in light of its fiduciary relationship.

Fees: With regard to fees, including those for permits, exams and status reports, the WG suggested removing specific fee dollar amounts from the regulations and instead to reference a single source such as cbp.gov or a policy directive. The WG felt this would benefit all parties by allowing CBP to publish fee changes faster and via methods more accessible to the brokerage community; it also would save CBP the cost of regulatory changes.

Obtaining & Vetting Importer Information: The WG reinforced the prior COAC's recommendations limiting the amount of CBP Form 5106 information that a customs broker could practically obtain to conduct the necessary due diligence and verify the identity of U.S. and foreign importers. Additionally, the WG encouraged the collection of such data via ACE particularly for the receipt of data more readily available from importers than brokers and to also limit additional information from companies in good standing. The WG recommended that CBP include this new section in the regulations to realistically recognize the capabilities and limitations of customs brokers to obtain such information. Further, the WG recommended requiring brokers to verify the authenticity of such information by taking reasonable steps by reviewing publically available open source information, including information such as the importer's physical address, especially in cases of small or privately held companies that may not have publically available corporate records on file.

Continuing Education: The WG felt strongly that CBP should implement the prior COAC's recommendation to promulgate new regulations requiring brokers to take a minimum of forty (40) hours continuing education during each triennial reporting period, while not placing restrictions or requirements on the accreditation of such programs. Further, the WG suggested that, as a policy, a broker who had voluntarily suspended its license should complete a triennial period's worth of continuing education to reactivate its license, but that CBP would recognize a waiver for this requirement upon the broker showing good cause. The WG felt continuing education will ensure a high level of professionalism, compliance and competency in the industry and, accordingly, falls under CBP's authority to promulgate recommendations under 19 U.S.C. §1641(f) enabling CBP to prescribe rules or regulations deemed necessary to protect importers and the revenue.

Broker Management: Finally, the WG provided a general recommendation advising CBP to institute a broker management office reporting to CBP HQ, with full time, dedicated personnel on a national level, with each broker assigned to one team to enhance management. The WG submitted this recommendation to promote uniformity, transparency and predictability in broker management nationally, particularly for brokers conducting customs business in different ports.

3. International Engagement & Trade Facilitation

The WG held calls every two to three weeks through early March with its members that include representatives from the importing, exporting, brokerage, forwarding, courier, consulting and legal industries who conduct business around the world. The WG agreed to break out into four (4) teams including: Latin America & Caribbean, North America, Asia and EMEA (Europe, Middle East & Asia). The WG developed a strategy to address the implementation of the components of the WTO Trade Facilitation Agreement and to identify best practices, opportunities and priorities regarding the countries in those regions viewed as most critical to U.S. business interests and possessing a “political will” to implement such changes. Although the representatives from both the Trade and Government were highly engaged, due to the Subcommittee’s other imminent deadlines for the Centers Uniformity and Broker Regulations WGs, this WG was placed on a brief hiatus until after the April COAC meeting.

Next Steps

The Subcommittee looks forward to continuing its efforts to develop recommendations from the International Engagement WG. It will be critical for CBP to bring forth the appropriate personnel from various offices and disciplines, including some in other Government agencies/departments to support this effort.

Conclusion

We thank the numerous officials from CBP Headquarters and the field as well as members from the trade community representing the importing and brokerage industry and its service providers (sureties, couriers, etc.) operating throughout the U.S. The WG members devoted an exceptional amount of time, energy and dedication, to the Centers Uniformity and 2016 Brokers Regulations WGs. These efforts led to the outstanding work product that the Trade Modernization Subcommittee Co-Chairs are honored to present on their behalf.