

Trade Enforcement & Revenue Collection (TERC) Subcommittee
COAC 14th Term
TERC Recommendations
July 15, 2016

In support of Section 115 of the Trade Facilitation and Trade Enforcement Act (TFTEA) to address the Establishment of Importer Risk Assessment, especially for those importers subject to CBP's designated Priority Trade Issues (PTIs), which includes AD/CVD and IPR for which the TERC Subcommittee manages respective Working Groups, the COAC continues to support prior recommendations that were made to assist with identifying various importer risk factors.

These include 010042 (encompassing 13024, 13061, and 13062), and especially 13024 which states that CBP should "pursue information collection to improve their admissibility determination via the proposed revisions to the CBP Form 5106... This could be helpful to CBP in addressing risks associated with traditional challenges related to AD/CVD, IPR, and other enforcement issues."

In addition, 13064 which recommended that CBP build functionality in ACE to help prevent corporate identity theft. Proposed functionality should enable the Importer of Record (IOR) to control and limit which customs brokers or filers, by filer code, are authorized to make entry in each port of entry tied to the Importer of Record number. This could serve as an additional tool to combat corporate identity theft, should an IOR choose to utilize this functionality. Additionally this ability would empower the IOR to use ACE to control the specific ports of entry in which entry can be made, and by which custom broker filer codes. An importer could potentially employ functionality that would restrict any entry from being made in their name in a specific port of entry if necessary. The IOR could use this functionality to address changes in their supply chain as they occur, and authorize entry into those ports for a specific customs broker filer code, several specific filers' codes, or all filers.

Additional recommendations from the IPR, AD/CVD, and Bond Working Group will be outlined as well as establishment of a new TERC Working Group on Forced Labor.

COAC 14th Term
Intellectual Property Rights (IPR) Working Group
IPR Recommendations
July 15, 2016

Since the last public COAC meeting in April, the IPR Working Group (IPRWG) had three conference calls and met with CBP, ICE officials, and trade stakeholders at the National IPR Center in Arlington, VA for a tour and open discussion of IPR-related issues. The IPRWG consists of a wide variety of stakeholders including importers, brand holders, customs brokers, express couriers, customs attorneys, sureties, and various trade associations.

As a result of this meeting, the COAC supports the following recommendations:

- 1) After extensive exploration and discussion, the COAC recommends that the Known Importer Program initiative cannot be managed uniformly by all trade associations to pilot and/or implement the program at such time. As a result, the COAC recommends that the IPRWG continue to consider other approaches to developing a known IPR supply chain program that includes working with the National IPR Center to extend Trade Association participants to promote the “Report IP Theft” campaign and encourage real-time reporting of IPR violations through a newly established 800 Hotline.
- 2) COAC recommends that CBP investigate partnering with eCommerce stakeholders to develop an automated process for their on-line customers to complete a survey if they feel the shipment of product they received is not legitimate along with the opportunity to submit an allegation through the Report IP Theft Button. COAC also recommends that CBP establish an eCommerce Working Group to further explore this and other pressing eCommerce issues.
- 3) COAC recommends that CBP should consult with the IPRWG to determine how to better facilitate cargo that arrives as “blanks” without a logo or trademark to distinguish the brand at the time of arrival to reduce resources CBP is expending on unnecessary seizures. The IPRWG should consider how this could be automated to manage known parties or entities to the transaction within the ACE Portal.
- 4) COAC recommends that CBP take advantage of certain IPR best practices established by the Centers of Excellence and Expertise (Centers) to conduct webinars internally to allow Centers to gain knowledge of these successes, inform the trade of these successes, and inform industries of CBP’s efforts through these webinars and even CSMS messages.

**COAC 14th Term
AD/CVD Working Group
AD/CVD Recommendations
July 15, 2016**

AD/CVD Enforce & Protect Act

In order to meet requirements of the Trade Facilitation and Trade Enforcement Act (TFTEA) specifically Title IV (otherwise known as the “Enforce and Protect Act of 2015” or ENFORCE), the COAC and AD/CVD Working Group (WG) were consulted through various meetings and conference calls with CBP between April and July. The AD/CVD Working Group consists of a wide variety of trade stakeholders including U.S. manufacturers, domestic industry, importers, customs brokers, sureties, customs attorneys, consultants, various trade associations, and representatives from CBP, DOC and HSI/ICE.

In accordance with Subtitle A, Sec. 411 of TFTEA, the COAC AD/CVD Working Group was asked to provide input to CBP on developing guidelines for the types and nature of information that may be provided in an allegation of AD/CVD evasion as well as the development and implementation of regulations, interpretations, and policies related to such evasion. The ENFORCE Act will go into effect on August 22, 2016, and CBP is not able to provide any regulations or standard operating procedures for the COAC to review at this time. The following recommendations are being made to assist as CBP prepares to implement the ENFORCE Act, and COAC will continue to provide feedback as these policies are more fully developed.

Pertaining to the ENFORCE Act, COAC recommends the following:

- 5) To ensure the definition of evasion as defined by the ENFORCE Act is fully understood by the trade, COAC recommends that CBP continue to conduct public outreach and to educate the trade on ENFORCE proceedings.
- 6) To meet ENFORCE statutory requirements, COAC recommends that CBP be provided with the appropriate resources to establish and maintain an on-line reporting tool similar but distinct from the current eAllegation process on CBP.gov. The on-line reporting tool should include information covering the potential penalty for submitting false claims to CBP and require all parties in an ENFORCE proceeding to provide signed certifications of the accuracy of the submitted information.
- 7) COAC recommends that CBP consider adding a regulatory provision to enable and require customs brokers to report evidence and/or incidents of evasion as defined by the ENFORCE Act when it comes to their attention. This regulatory provision would also protect brokers from liability as a result of reporting evasion under the ENFORCE Act as well as reporting any suspicious activity of trade violations under the existing eAllegations tool on CBP.gov.
- 8) COAC recommends that CBP provide transparency for all parties to an ENFORCE proceeding and put procedures in place as fully allowed by ENFORCE statute that mitigate the risk of unwarranted damage to the reputation of innocent parties who have acted properly under the law.

AD/CVD Website and Outreach

- 9) The AD/CVD Working Group reviewed CBP's web page and recent AD/CVD Brochure. COAC further recommends that CBP work with the AD/CVD Working Group to help disseminate this information to new and existing importers through various trade associations, which can also provide yearly updates to provide more education and outreach about the potential consequences of circumvention. The messaging should raise awareness of the compliance requirements associated with merchandise subject to AD/CVD and act as a deterrent against "bad actor" suppliers that seek to tempt importers with the promise of a previously untapped revenue stream for their business. In addition, COAC recommends that CBP consider using the new data elements they will collect under the New 5106 regulations, (importer contact name and email address) to make new importers aware of the compliance requirements and risks associated with merchandise subject to AD/CVD as well as other PTIs and informed compliance tools. This review completes recommendation (010011) and (13121).

COAC 14th Term
Bond Working Group
Bond Recommendations
July 15, 2016

In support of Section 115 of the Trade Facilitation and Trade Enforcement Act (TFTEA) to address Importer Risk Assessment and adjustment of bonds under this provision, the Bond Working Group received a current draft of the Monetary Guidelines for Setting Bond Amounts (Old Directive 099 3510-004) and provided feedback to CBP. The Bond Working Group also evaluated how each Priority Trade Issue (PTI) had an impact on revenue to CBP. The Bond Working Group consists of a wide variety of trade stakeholders including importers, customs brokers, sureties, customs attorneys, ABI vendors, and various trade associations. Based on this review, the COAC provides the following guidance and recommendations:

- 10) Activity Code 1 Single Transaction Bonds (STBs):** COAC recommends that CBP seek to clarify and streamline the current bond formula if subject to Partner Government Agency (PGA) requirements so the trade can fully automate compliance within ACE at the HTS and line level, and CBP can more easily conduct sufficiency reviews. Such guidance should include clarifying which PGAs with hold authority are subject to three times the value and that this higher bond formula does not include PGAs that are disclaimed in ACE.
- 11) Activity Code 1 Continuous Bonds:** COAC recommends that the current Reviewers and Analytical Bond Formula are sufficient to protect the revenue and satisfy certain PTIs, such as Textiles/Wearing Apparel and Trade Agreements, where CBP faces potential for lost revenue if an importer fails to meet duty-free requirements and/or undervalue merchandise to circumvent higher duty rates. Because CBP's Centers of Excellence and Expertise can detect these trends prior to liquidation or through audit, CBP's Analytical Bond Formula "adjusts" continuous bonds when there is any outstanding debt that has not been paid or protested and jeopardizes revenue. However, these continuous bond formulas are insufficient for Anti-Dumping and Countervailing Duty (AD/CVD) exposures as addressed in Recommendation #13.
- 12) Liquidated Damages:** COAC recognizes that continuous bond formulas do not currently contemplate any inclusion of liquidated damages since they result from a breach of the bond contract. The COAC recommends that CBP fully consider past history of liquidated damage claims and patterns before factoring these into any continuous bond formulas and consult with the Bond Working Group if and when such data is available to review and consider. Based on the current draft directive, COAC recommends that CBP better define how liquidated damages would be factored into any bond formulas and should not include those liquidated damages that have been satisfactorily paid or petitioned by an otherwise compliant bond principal to resolve the matter, unless the revenue is in jeopardy due to a decrement of the bond amount. COAC also suggests that the Analytical Bond Formula can be used to contemplate liquidated damages paid by the surety to adjust bond amounts if such claims advance to a delinquent status.

- 13) Anti-Dumping and Countervailing Duties (AD/CVD):** COAC recognizes the challenges of a retrospective system in the U.S. and continues to support recommendation #12025 from the 12th Term COAC that would provide a prospective system for collection of AD/CVD cash deposits. However, such policy takes Congressional change, and CBP must enforce the policy as it currently exists. Because the revenue is not adequately protected when there is a retrospective change in the AD/CVD cash deposit that is posted at time of entry during an Administrative Review, COAC recommends that CBP consider more robust bonding requirements, such as CBP's current policy to require STBs where AD/CVD evasion is suspected. To date, this policy has been effective for garlic and other high-risk or volatile AD/CVD cases. The COAC recommends that CBP continue this enforcement measure, but amend current policy to revise the statement to "return the bond" to "liquidate the entry to exhaust remaining liability or exposure" and consider including this policy in the new bond directive for full transparency.

Pending any additional information from CBP to continue reviewing the Bond Directive for Monetary Guidelines for Setting Bond Amounts, the Bond Working Group is on hiatus until further notice. The TERC Subcommittee will continue to review TFTEA provisions as they are implemented to provide additional feedback as new laws and regulations are implemented.