

Commercial Customs Operations Advisory Committee (COAC)

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Report of the Work of the COAC Subcommittee on Trade Enforcement and Revenue Collection Co-Chairs

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Background

During the first quarterly meeting of the 14th Term of COAC held on April 24, 2015, it was decided that topics from the 13th Term of the Trade Enforcement and Revenue Collection (TERC) Subcommittee would continue to be worked on in the 14th Term. This includes the Anti-Dumping and Countervailing Duty (AD/CVD), Bonds, and Intellectual Property Rights (IPR) Working Groups. The Regulatory Audit Working Group that was established in the 13th Term continues to be on hiatus until further notice from U.S. Customs & Border Protection (CBP). The subcommittee objectives and scope are consistent with the official charter of COAC.

Summary of Work

The TERC Subcommittee continues to conduct monthly calls to discuss CBP's requirements under the Trade Facilitation and Trade Enforcement Act of 2015 (HR 644). Since the bill was passed and signed into law by President Obama in February 2016, the TERC Subcommittee expects to launch additional Working Groups that will consult with CBP on the various provisions of the new law, such as:

- Forced Labor and removal of Consumptive Demand exclusion.
- Enforce and Protect Act Procedure Review including Small Business Outreach. This procedure review will support Sec. 411 of HR 644 (Trade Remedy Law Enforcement Division) which states, in part: *"...in cooperation with the public, the Commercial Customs Operations Advisory Committee, the Trade Support Network, and any other relevant parties and organizations, develop guidelines on the types and nature of information that may be provided in allegations of evasion; and (G) regularly consult with the public, the Commercial Customs Operations Advisory Committee, the Trade Support Network, and any other relevant parties and organizations regarding the development and implementation of regulations, interpretations, and policies related to countering evasion."*

In addition, the TERC Subcommittee has been discussing how to enhance transparency of CBP's enforcement policies as recently required by HR 644. This will help create a more informed trade environment surrounding CBP enforcement actions to address prior concerns raised by the trade due to an increase in certain violation types. As a result, the TERC Subcommittee is submitting the following recommendations for consideration:

- 1) *COAC recommends that CBP utilize CSMS messaging to advise or inform the trade of emerging compliance risks that will initiate enforcement activity as well as*

changes in port operation. This includes port pipelines and notifications from Centers of Excellence and Expertise to be provided via CSMS message as the trade migrates to more centralized processes. In addition, CBP should also place all CSMS messages in a single searchable location, via CBP.gov.

- 2) *COAC recognizes that CBP's trade enforcement vision strives to focus on substantive enforcement areas and not just taking a "parking ticket" approach (e.g., Option 1 or other liquidated damages claims of a few hundred dollars) for minor non-compliance and especially non-repetitive clerical errors involving both imports and exports. Similar to ISF and other new, phased-in enforcement or policy regimes, CBP should provide at least 30-days notice to the trade in order to allow ample time to comply. This policy further supports CBP resource allocation decisions for application to the more substantial, fraudulent and egregious violators.*
- 3) *COAC recommends that CBP provide specific deadlines for issuing liquidated damage claims similar to ISF so claims do not pile up unnecessarily due to any potential delays in issuing them. Liquidated damages are meant to be punitive in nature and allow the violator time to correct and rectify any problems. If violators are held to paying or petitioning liquidated damage claims within 60 days of issuance, CBP should also have guidelines to issue claims on a timely basis (e.g. 60 days) to avoid unnecessary hardship on the trade.*
- 4) *COAC recommends that CBP review and update its Mitigation guidelines, in light of technology advances, trusted trader programs, and inter-agency enforcement partnerships to provide a transparent and uniform application of CBP's mitigation policy. Particularly in cases of less egregious violations, CBP should enforce and mitigate on more of an account-based, as opposed to transactional approach. This also encompasses COAC's prior recommendation to review the FDA Redelivery Mitigation Guidelines. COAC recommends that TERC create a Working Group to assist CBP with addressing this recommendation within the next three to six months.*

Since launching the TERC Subcommittee in April 2015, three (3) Working Groups have also been operating. The AD/CVD, Bond, and IPR Working Groups were all carried over from the 13th Term of COAC and consist of over 50 stakeholders from the trade including importers, domestic industry, customs brokers, sureties, attorneys, ABI vendors, carriers, consultants, etc. The progress of each COAC Working Group is provided below.

Anti-Dumping/Countervailing Duty (AD/CVD) Working Group

The AD/CVD WG consists of a wide range of stakeholders (importers, customs brokers, sureties, domestic industry, consultants, etc.) to act as a standing forum of subject matter experts that can be called together by CBP when any issue on AD/CVD matters arise to solicit feedback and advice from the trade. Since the last COAC meeting held in January 2016, three (3) new members from the customs brokerage community were added to the Working Group to ensure a broad range of industry continues to be represented during the monthly calls.

The AD/CVD WG held three (3) conference calls to help educate the AD/CVD WG on the Trade Facilitation and Trade Enforcement ACT, especially the AD/CVD provisions under HR 644. The AD/CVD WG specifically discussed the following topics:

- 1) **Enforcement Division of the Centers.** With the centers fully functional as of March 2016, the AD/CVD WG invited CBP personnel from the Electronics and Pharmaceutical Centers to provide an overview of their AD/CVD enforcement initiatives. CBP outlined its Trade Enforcement initiatives to work closely with domestic industry to level the playing field. This can now be better leveraged through each Center that is focused on a specific industry vs. industry knowledge being spread among the different ports of entry.
- 2) **Risk-Based Bonding.** Section 115 of HR 644 requires CBP to implement risk-based bonding within 180 days of the law being signed. In particular, CBP needs to contemplate the risk for Priority Trade Issues, such as AD/CVD. These discussions will also cross over with the Bond Working Group and lead to recommendations for the next COAC meeting in July.

Lastly, the AD/CVD WG hosted two (2) webinars where customs brokers were able to show their ABI process to CBP and the Department of Commerce (DOC) for handling AD/CVD entries. The customs brokers reviewed the complexity of finding information since fragmented between three (3) different government agency websites (CBP, DOC and International Trade Administration (ITA)) and how this could be better managed in ACE.

With AD/CVD cases on the rise as reported by year end Trade and Travel Numbers and the National Economic Report on White House Trade Enforcement, it is clear that further outreach is necessary to help the trade be more compliant and assist CBP in combating evasion. With this in mind, the AD/CVD WG puts forth the following recommendations:

In support of recommendation #13118 where COAC had previously recommended that CBP utilize CSMS messaging to more actively push out AD/CVD information,

- 5) *COAC recommends that CBP utilize CSMS messaging and/or RSS feeds to more actively push out links to AD/CVD enforcement information, such as:*
 - *AD/CVD enforcement updates issued monthly or as available on CBP.gov.*
 - *The final disposition of 19 U.S.C. §1592(a) penalty cases for civil violations and Department of Justice criminal claims filed under the False Claims Act as reported on CBP.gov*
 - *Year-end enforcement statistics on AD/CVD that breaks down enforcement efforts by commodity, country, etc. on an annual fiscal year basis (see IPR Annual Seizure Report as an example).*
- 6) *COAC recommends that CBP should also utilize CSMS messaging and/or RSS feeds to provide a web link to advise the trade of new AD/CVD Orders. This represents an important stage in the AD/CVD investigation when all entries are suspended for liquidation and cash deposits must be secured.*

In further support of recommendation #13119 where COAC recommended that CBP work with specific industry sectors to develop additional industry outreach related to AD/CVD issues:

- 7) *COAC recommends that the Centers collaborate based on their industry expertise to conduct outreach via webinars so the trade can be fully informed of AD/CVD orders among the various Centers' industry sectors and to increase informed compliance for the trade.*

In further support of recommendation #13120, where COAC recommended that CBP undertake a dedicated communications initiative to further develop and improve information systems currently communicating AD/CVD information to stakeholders,

- 8) *COAC further recommends that CBP should establish RSS feeds from the AD/CVD page of its website to allow the trade to receive real-time notifications of any updates made to the site.*
- 9) *CBP should also provide an updated document to the trade that provides clear definition of what is meant by terminated vs. inactive AD/CVD cases as identified in the customs broker outreach that was conducted.*
- 10) *In accordance with Section 432 of HR 644, COAC recommends that CBP consult with the AD/CVD Working Group to further assess its legal ability to provide a public summary of AD/CVD investigations under the Enforce and Protect Act of 2015 to balance the need for trade enforcement transparency and support informed compliance for the trade.*

In further support of recommendation #13121 regarding the development of a single, multi-agency managed website dedicated to AD/CVD

- 11) *COAC recommends that the AD/CVD Working Group conduct a final review of CBP's AD/CVD Web Page to ensure it hosts links to all other government websites where AD/CVD information can be found. The AD/CVD web page is already robust and this review should help complete this pending recommendation.*

The AD/CVD WG will continue to maintain regular calls to discuss on-going challenges with AD/CVD matters and brainstorm new initiatives to help with enforcement and revenue collection. The AD/CVD WG will also continue to have ongoing discussions on how CBP, the Department of Commerce (DOC), and the trade can work together to implement more effective communication and education tools to improve enforcement and facilitate legitimate AD/CVD importations.

Bond Working Group

Since the last COAC meeting in January 2016, a Bond Working Group (BWG) was created and new members from the customs brokerage community were added. The BWG consists of a wide range of stakeholders (importers, customs brokers, sureties, attorneys, ABI vendors, etc.) and will consider the revisions to Bond Directive 3510-004, which contains monetary guidelines for setting bond amounts.

The first conference call was held on Thursday, January 21, 2016, and 2 (two) additional conference calls were held to review the first draft of the Bond Directive. The BWG is in the process of providing its feedback to CBP on the draft changes in the hopes of finalizing any

recommendations before the next COAC meeting in July. The BWG will also consider the rewrite to 19CFR113, Drawback Bond Revisions, AD/CVD Bonding, and/or additional topics that CBP may present to the COAC BWG for review.

Intellectual Property Rights Working Group

During the 13th term of COAC, the Intellectual Property Rights Working Group (IPRWG) suggested that COAC explore whether an IPR Known Importer program would offer CBP better targeting, while providing facilitation benefits to the trade. During the 14th term of COAC, the IPRWG was once again established to discuss and explore this topic and formulate a recommendation for the viability of an IPR Known Importer program going forward.

The IPRWG held five (5) conference calls since the January public COAC meeting to discuss the IPR Known Importer program.

- 1) Known Importer Program to offer CBP better targeting and facilitate processing. The IPRWG will evaluate the benefit of establishing such a program and incorporating into Trusted Trader status.
 - a. Reviewed and discussed proposed pilot model
 - b. Reached out to various Trade Associations to elicit feedback on the potential program

As a result of the feedback from Trade Associations and the input of the IPRWG members, the group developed a recommendation for the upcoming COAC public meeting as follows:

12. COAC recommends that CBP conduct outreach via appropriate means so that the trade can be better informed of the e-allegations tool and how it facilitates and enhances CBP processes in identifying and enforcing IPR related issues, concerns, and allegations

The IPRWG consists of a wide range of stakeholders (importers, customs brokers, carriers, sureties, consultants, associations, etc.) and will continue to act as a standing forum of subject matter experts that can be called together by CBP when any IPR issues arise to solicit feedback and advice from the trade.

Summary

It is expected that all of the Working Groups will continue to address new and carry over topics from the previous COAC term in its efforts to collaborate with CBP to improve enforcement of the trade laws of the United States and the collection of duties and fees.