

Commercial Customs Operations

Advisory Committee (COAC)

Trade Enforcement and Revenue Collection Subcommittee –
Trade Executive Summary

November 17, 2016

COAC

COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE

Commercial Customs Operations Advisory Committee (COAC)

November 2016

Prepared November 2, 2016

Report of the Work of the COAC

Subcommittee on Trade Enforcement and Revenue Collection

Co-Chairs

Lisa Gelsomino - Avalon Risk Management

Kevin Pinel - Microsoft Corporation

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

Since launching the TERC Subcommittee in April 2015, three (3) Working Groups have been operating. The AD/CVD, Bond, and IPR Working Groups consist of COAC and non-COAC members representing over 60 stakeholders from the trade including importers, domestic industry, U.S. manufacturers, brand holders, customs brokers, sureties, attorneys, ABI vendors, carriers, consultants, various trade associations as well as participants from CBP and other Partner Government Agencies (PGAs).

Over the past quarter, the TERC Subcommittee continued to focus its efforts on the various enforcement provisions under the Trade Facilitation and Trade Enforcement Act (TFTEA) that passed in February of this year. In particular, the TERC Subcommittee began discussions on Section 105, which addresses CBP's Joint Strategic Plan on Trade Enforcement. In addition, the TERC Subcommittee will be providing more input on Section 115 Importer Risk Assessment. The TERC Subcommittee has just begun these discussions and will continue to collaborate with CBP on these sections of TFTEA over the next quarter.

The TERC Subcommittee continues to have monthly calls for the AD/CVD and IPR Working Groups to review and implement past COAC recommendations and discuss current trends and topics. The Bond Working Group continues to be on hiatus. The main focus for the TERC Subcommittee over the past quarter has been the Forced Labor Working Group, which was announced at the last public meeting and established on July 13, 2016.

Forced Labor Working Group

An important provision of TFTEA was the repeal of the “consumptive demand” clause in 19 U.S.C. § 1307. Repeal of the consumptive demand exception has enhanced CBP’s ability to prevent products made with forced labor from being imported into the United States. As a result of this change in the law and enforcement posture, the Forced Labor Working Group (FLWG) was established on July 13, 2016.

The FLWG includes over 35 participants from the trade, Civil Society Organizations, and representatives from U.S. Customs and Border Protection (CBP), U.S. Department of Homeland Security (DHS), Homeland Security Investigation/Immigration and Customs Enforcement (HSI/ICE), U.S. Department of State, and U.S. Department of Labor (DOL). In order to consider forced labor from different perspectives, the FLWG consisted of importers from the cotton, agriculture, seafood, retail, and software sectors as well as third-party vendors with experience in conducting forced labor audits. The FLWG broke into three teams to explore and consider recommendations involving communications, legal challenges, and strategic leadership for forced labor issues. These recommendations will be presented during the COAC public meeting on Thursday, November 17, 2016.

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

The AD/CVD WG consists of a wide range of stakeholders including importers, domestic industry, U.S. manufacturers, customs brokers, sureties, consultants, trade associations, and representatives from CBP, Department of Commerce (DOC), and HSI/ICE 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 July 2016, the AD/CVD WG held monthly conference calls to discuss various issues, such as:

- **Enforce and Protect Act (EAPA).** The AD/CVD WG provided input on the notice of proposed rulemaking that was issued by CBP on August 22, 2016. Since the deadline for comments was extended, the AD/CVD WG will continue to provide its feedback to CBP.
- **ACE Terminology Document.** The AD/CVD WG helped review a draft document created by the DOC and CBP to help clarify ACE terminology for different AD/CVD cases statuses. This document was developed in response to a COAC recommendation from July. The recommendation evolved from an outreach session with customs brokers from the WG, which allowed CBP and DOC to evaluate their process and the information they could see in ACE. This insight was extremely beneficial to CBP and DOC to help create the document. Once completed, this document will provide helpful guidance for the trade to correctly classify AD/CVD entries and applicable cash deposits.

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, 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 (BWG)

The BWG continues to be on hiatus until additional issues arise from CBP or the trade.

Intellectual Property Rights (IPR) Working Group

The IPRWG consists of a wide variety of trade stakeholders including importers, brand holders, customs brokers, express couriers, customs attorneys, various trade associations, and representatives from CBP and HSI/ICE at the National IPR Center. Since presenting several IPR recommendations at the last COAC public meeting held in July 2016, the IPRWG continues to hold monthly conference calls to explore and enhance these recommendations in partnership with CBP and the National IPR center to implement them.

Additional communication with CBP will have the IPRWG expand discussions on several topics to cover additional engagement models with the National IPR Center and Centers of Excellence and Expertise (Centers), e-commerce, the voluntary abandonment program, and additional issues or areas that arise.

The IPRWG 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

Looking forward, the TERC Subcommittee will continue to collaborate with CBP on the various TFTEA provisions to improve enforcement of U.S. trade laws and protect the revenue with a focus on CBP's Priority Trade Issues (PTIs). In the next quarter, the TERC Subcommittee looks forward to establishing a new Working Group that will formulate recommendations on CBP's Mitigation Guidelines.