

Commercial Customs Operations Advisory Committee (COAC) to U.S. Customs and Border Protection

**U.S. Customs and Border Protection (CBP)
Boston, MA**

July 27, 2016

12:30 p.m. – 04:30 p.m.



U.S. Customs and
Border Protection

Committee Welcome and Roll Call

CBP: **Maria Luisa Boyce**
Senior Advisor for Private Sector Engagement
Office of Trade Relations
Office of the Commissioner
U.S. Customs and Border Protection



Opening Remarks

CBP: **Commissioner R. Gil Kerlikowske**

Treasury: **Timothy Skud**, Deputy Assistant Secretary
Tax, Trade and Tariff Policy, Department of the Treasury

DHS: **Christa Brzozowski**, Deputy Assistant Secretary, Trade
Policy, Foreign Investment & Transport Security

ICE: **Daniel Ragsdale**, Deputy Director,
U.S. Immigration and Customs Enforcement

COAC: **Vincent Iacopella**, Member
Julie Ann Parks, Member



Trade Enforcement and Revenue Collection (TERC) Subcommittee

CBP: **Jerry Malmo**, Director, Commercial Enforcement,
Division, Commercial Targeting & Enforcement,
Office of Trade

Michael Walsh, Acting Executive Director, Trade
Policy & Programs, Office of Trade

COAC: **Lisa Gelsomino**, Member



Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

TERC Working Groups

- 1) Anti-Dumping and Countervailing Duty (AD/CVD) Working Group
- 2) Bond Working Group
- 3) Intellectual Property Rights (IPR) Working Group

Trade Facilitation & Trade Enforcement Act (TFTEA)

- 1) Section 115 Establishment of Importer Risk Assessment Program
- 2) Section 117 Priority Trade Issues (PTIs)
- 3) Enforce & Protect Act (ENFORCE)

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Prior Recommendations

- 010042 (encompassing 13024, 13061, and 13062) especially to “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.
- 010045 to implement section 116 of the Trade Facilitation and Trade Enforcement Act and consider the manner in which the current Broker Known Importer Program (BKIP) could satisfy the broker’s responsibility to vet an importer’s identity and authenticity.

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Prior Recommendations

- 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 importer choose to utilize this functionality. Additionally, this ability would empower the importer to use ACE to control the specific ports of entry in which entry can be made, and by which customs 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 importer could use this functionality to address changes in their supply chain as they occur, and authorize entry into these ports for a specific customs broker filer code, several specific filer codes, or all others.

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Intellectual Property Rights (IPR) 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 IPR Working Group continue to consider other approaches to developing a Known IPR Program with the National IPR Center and work together to co-create the program.
- 2) COAC recommends that the National IPR Center partner with the IPR Working Group and various Trade Associations to promote the “Report IP Theft” campaign and encourage real-time reporting of IPR violations through a newly established 800 Hotline.
- 3) 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.

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

IPR Recommendations Continued

- 4) 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.
- 5) COAC recommends that CBP take advantage of certain IPR best practices established by the Centers of Excellence and Expertise (Centers) to conduct webinars internally and 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 CSMS messaging.

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

AD/CVD Recommendations pertaining to ENFORCE Act

- 6) To ensure the definition of evasion as defined by the ENFORCE Act is fully understood by the trade, COAC recommends that CBP conduct more public outreach to educate the trade on ENFORCE proceedings.
- 7) 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](https://www.cbp.gov). The on-line reporting tool should include guidance on the ramifications for submitting false claims and/or information to CBP and require all parties in an ENFORCE proceeding to provide signed certifications of the accuracy of the submitted information.
- 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.

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

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.
- 10) 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.

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Bond Recommendations

- 11) **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 bonding requirements for three times the value, and that this higher bond formula does not include PGAs that are disclaimed in ACE.

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Bond Recommendations Continued

12) **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 provided that CBP's Centers of Excellence and Expertise continue to detect trends prior to liquidation or through audit and "adjust" 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) as addressed in Recommendation #14.

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Bond Recommendations Continued

13) **Liquidated Damages:** COAC recognizes that continuous bond formulas do not currently contemplate any inclusion of liquidated damages. 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 continuous 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. COAC also recommends 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.

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Bond Recommendations Continued

- 14) **AD/CVD Duties:** COAC recognizes the challenges of a retrospective system in the U.S. and continues to support recommendation 12025 from the 12th Term of COAC that would provide a prospective system for collection of AD/CVD cash deposits. 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, COAC recommends that CBP leverage the current policy for “Use of Single Transaction Bonds as Additional Security for Anti-Dumping and Countervailing (AD/CVD).” COAC further recommends that CBP amend this current policy to revise the statement to “return the bond” to “liquidate the entry to exhaust remaining liability or exposure” and include this policy in the new bond directive for full transparency to the trade.

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Forced Labor Working Group

- Kick Off Conference Call on 7/25/16
- Recommendations due for COAC meeting on 11/17/16
- Breakdown into 4 Teams
 - 1) Communication
 - 2) Legal Challenges
 - 3) Strategic Leadership and Information Network
 - 4) Customs to Customs and coordination with HSI/ICE

Public Comment Period

Please send in your comments or questions via the Chat box in the webinar.

Your comments will be read into the public record and CBP will respond during the public comment period noted on the agenda if time permits.



Global Supply Chain Subcommittee

CBP: **Liz Schmelzinger**, Director, Customs-Trade Partnership Against Terrorism, Cargo and Conveyance Security, Office of Field Operations

Jim Swanson, Director, Cargo Security and Controls, Cargo and Conveyance Security, Office of Field Operations

COAC: **Adam Salerno**, Member
Brandon Fried, Member



Export Subcommittee

CBP: **Jim Swanson**, Director, Cargo Security and Controls, Cargo and Conveyance Security, Office of Field Operations

Deborah Augustin, Executive Director, ACE Business Office, Office of Trade

COAC: **Heidi Bray**, Member

Export Subcommittee Recommendations

COAC recommends that CBP HQ, with COAC and PGA input, should develop and provide training in the short term and on a periodic basis to local CBP officials responsible for enforcing export laws and requirements. Such training should address CBP as well as PGA regulations (e.g., Census, BIS, DDTC, OFAC, etc.) and data requirements as relevant to different commodities and should lead to CBP standard operating procedures (SOPs) for processing export cargo in a uniform and efficient manner nationally.

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Break

We will be taking a ten minute health break and will resume with the COAC meeting shortly.



One U.S. Government Subcommittee

CBP: **Deborah Augustin**, Executive Director, ACE Business Office, Office of Trade

Michael Walsh, Acting Executive Director, Trade Policy & Programs, Office of Trade

COAC: **Susie Hoeger**, Member

Amy Magnus, Member



Trade Modernization Subcommittee

CBP: **Thomas Overacker**, Acting Executive Director, Cargo and Conveyance Security, Office of Field Operations

Michael Walsh, Acting Executive Director, Trade Policy & Programs, Office of Trade

COAC: **Lenny Feldman**, Member



Trusted Trader Subcommittee

CBP: **Thomas Overacker**, Acting Executive Director, Cargo and Conveyance Security, Office of Field Operations

Liz Schmelzinger, Director, Customs-Trade Partnership Against Terrorism, Cargo and Conveyance Security, Office of Field Operations

COAC: **Alexandra Latham**, Member
Michael Young, Member



Trusted Trader Framework Strategy

Trusted Trader Framework:

- The strategy for a Trusted Trader framework is based on a continuum of activity providing a consistent level of engagement between the trade and regulatory government partners that demonstrates the highest level of commitment in practice to security, compliance, and partnership within the global supply chain. This is a trusted relationship that is articulated with trading and/or facilitative benefits, streamlining the global trading process, allowing focus and global attention on those that pose the highest risk.

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Trusted Trader Framework Strategy

Trusted Trader Framework:

- The development of the CBP Trusted Trader framework will consider global trading roles, including importer, exporter, carrier, etc., and be built with the foundation of national and international interoperability, demonstrating that a commitment to CBP's Trusted Trader Programs will provide for global and mutual recognition. A key to the success of such a Trusted Traders strategy is the recognition that the program is scalable and attainable for all size traders, providing tangible acknowledgement through trading benefits and incentives. CBP continues to collaborate with Partner Government Agencies (PGAs) such as Food and Drug Administration (FDA), Consumer Product Safety Commission (CPSC), etc., to move towards a whole of government approach to supply chain security and trade compliance.

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Trusted Trader Framework Strategy

Objectives:

- The objective of the Trusted Trader Framework/Strategy is to co-create a strategy in terms and practice, which acknowledges the significant commitment of partnership between the U.S. Government and trade, in global trade and security.
- The Trusted Trader framework begins with a foundation of security; current certified membership in CBP's Customs-Trade Partnership Against Terrorism (C-TPAT) providing the baseline of engagement for the Trusted Trader. CBP is working, through the Trusted Trader Pilot announced June 16, 2014 in Federal Register 79FN13992, to transform the existing Importer Self-Assessment (ISA) program into the new Trade Compliance Program which will provide importers and exporters a process to achieve an integrated partnership program for security and compliance.

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Trusted Trader Framework Strategy

- The Trusted Trader Strategy will call for the alignment of CBP Trusted Trader Programs with the Authorized Economic Operator (AEO) programs for mutual recognition with national and international interoperability.
- The Trusted Trader Strategy will strive to provide other U.S. partner government agencies (PGAs) with a tangible opportunity to incorporate their trusted trader programs into the Trusted Trader Framework; resulting in enhanced efficiencies, a reduction in government-wide resources expenditures, enhanced information sharing, and an integrated platform to support both Trade and CBP's objectives in facilitating international trade.

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Trusted Trader Framework Strategy

Benefits and Incentives:

- Benefits and incentives for participation in Trusted Trader Programs must be directly aligned with risk mitigation strategies to ensure that benefits align with program requirements.
- Benefits and incentives for participation will result in tangible and measurable advantages to Trusted Trader partners.
- CBP's Trusted Trader Programs will serve as the gateway program for prioritized participation in CBP business transformation initiatives, prior to global institution, such as simplified entry.

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Trusted Trader Framework Strategy

Benefits and Incentives:

- Enhanced Communication Tools - with the intent to allow industry a single platform to easily access, share, and communicate information between trading partners.
 - Convey Best practices
 - Articulate Lessons learned
 - Include communications provided by PGAs
- A coordinated validation process for security and compliance which includes reporting mechanisms for recommendations and best practices. Streamline the processes through aligned criteria and verification amongst CBP and the PGAs, with the goal of minimizing business operations disruption.

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Trusted Trader Framework Strategy

Scalable:

- Trusted Trader programs will have a commitment to the principle of program scalability (achievable, affordable for small, medium and large businesses) with streamlined processes for all participants.
- Trusted Traders should have an established history of trade compliance with CBP and the PGAs. CBP will need to work closely with industry during the development of the Trusted Trader Framework for Partner Government Agencies (PGAs). Engagement in TT framework is a dynamic process, based on trading needs, to adapt to changing global demands and environment.

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Trusted Trader Framework Strategy

Partnering Government Agencies (PGAs):

- While CBP will be the originator of The Trusted Trader Framework strategy, it will be vital to have the support of our Participating Government Agencies (PGAs) for policy and enforcement of the strategy, and to support a streamlined mutually beneficial approach. The following Phases will occur during the development of the strategy:
 - Phase I: CBP/ PGAs outline incentive
 - Phase II: Joint training between PGAs
 - Phase III: Application of PGA Trusted Trader Program

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Trusted Trader Framework Strategy

Trusted Trader Pilot:

- On completion of the work of Phase I of the Trusted Trader Pilot, announced June 16, 2014 in Federal Register 79FN13992, CBP will conduct an evaluation of the pilot performance and results, identifying lessons learned and best practices to ensure success of the Trade Compliance Program within the CBP Trusted Trader Strategy.
- This will equally form the baseline and groundwork for the continued development and improvement of the integrated Trusted Trader program.

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Public Comment Period

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Adjourn



U.S. Customs and
Border Protection



U.S. Customs and Border Protection

Our Mission

We are the guardians of our Nation's borders.

We are America's frontline.

We safeguard the American homeland at and beyond our borders.

We protect the American public against terrorists and the instruments of terror.

We steadfastly enforce the laws of the United States while fostering our nation's economic security through lawful international trade and travel.

We serve the American public with vigilance, integrity and professionalism.