

Commercial Customs Advisory Committee (COAC) 2016 Term to Date Recommendations

July 27, 2016 Boston, MA



U.S. Customs and
Border Protection

Commercial Customs Operations Advisory Committee

Term to Date Recommendations

April 27, 2016

TRADE ENFORCEMENT AND REVENUE COLLECTION SUBCOMMITTEE

010001

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.

010002

2. COAC recognizes that CBP's trade enforcement vision strives to focus on more substantial enforcement areas and not just taking a "parking ticket" approach for minor non-compliance (e.g., Option 1 or other liquidated damages claims of a few hundred dollars), especially non-repetitive and 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.

010003

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.

010004

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.

010005

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).

010006

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.

010007

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.

010008

8. COAC recommends that CBP 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.

010009

9. COAC recommends that CBP should 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.

010010

10. In accordance with Section 432 of HR 644, COAC recommends that CBP consult with COAC 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.

010011

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.

010012

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.

TRUSTED TRADER SUBCOMMITTEE

010013

COAC recommends CBP focus Trusted Trader strategic and tactical objectives on developing compelling benefits for voluntary participation in Trusted Trader Programs, and should outweigh the cost of participation. These benefits are essential for the advancement of Trusted Trader Programs and must be articulated in specific facilitation metrics. Benefits must be aligned with section 101 of HR 644 on Improving Partnership Programs.

TRADE MODERNIZATION SUBCOMMITTEE

Broker Regulations

Single Permit & Permit Process

010014

1. Replace “district permit” and “national permit” with “the permit” or “permit” to better reflect the transition to a single permit framework that operates at the national level within the customs territory of the United States. Part 111

010015

2. Implement COAC recommendation 15057 to require brokers to have a single permit that allows them to have sufficient authority to conduct customs business at the national level within the customs territory of the United States. §111.2

010016

3. Prepare for the transition to a single permit by asking CBP to identify brokers that currently do not have a National Permit and work with them to properly and effectively transition to a single permit that operates at a national level. §111.2

010017

4. Eliminate the process for brokers to receive permit waivers as they will not be required under a single permit operating at the national level. §111.19

010018

5. Require brokers to provide satisfactory evidence of how he/she/the entity intends to exercise responsible supervision and control (“RSC”) to obtain a permit which includes, but is not limited to, a plan outlining the use of the ten (10) factors, list of physical offices, name and title of the licensed broker qualifying the permit; the list of other licensed brokers providing supervision and a list of employees conducting customs business. §111.19

010019

6. Make enhancements to ACE for the broker to identify the name and primary point of contact associated with the broker’s permit. §111.19

Responsible Supervision & Control

010020

7. Update the 10 factors, as appropriate, under responsible supervision and control (“RSC”) to better align with brokers’ current business practices; specifically clarify language to:
 - a. Factor 4: CBP initiated reject rate resulting from entries or entry summaries expressed as a percentage of the broker's overall business for the various customs transactions.
 - b. Factor 5: The maintenance of current electronic or other media editions of CBP Regulations, the Harmonized Tariff Schedule of the United States, and CBP issuances
 - c. Factor 6: The availability of an adequate number of individually licensed brokers for necessary consultation with the broker’s employees engaged in customs business.
 - d. Factor 7: The frequency of supervisory contact (whether physical or virtual) of an individually licensed broker to another office that does not have a resident individually licensed broker.
 - e. Factor 8: The frequency of audits and reviews conducted under the supervision of an individually licensed broker of the customs transactions handled by employees of the broker and evidence of corrective action taken as a result of the audits and reviews.
 - f. Factor 9: The extent to which the individual who qualifies the permit is engaged in the customs business of the brokerage firm (removal of “district” and “national” permit language). §111.1

010021

8. Provide guidance concerning the ten (10) factors demonstrating responsible supervision and control. Specifically, CBP should set forth best practices in a policy document, preferably in the Broker Handbook, including examples of how a broker, among other things, should: properly train employees; issue appropriate written instructions, guidelines and internal controls; maintain an adequate ratio of employees to a licensed broker based on factors such as the volume, type, diversity of business and commodities a broker handles etc.; engage in supervisory contact; and audit and review operations, etc.

License Examination

010022

9. Pursue a Notice of Proposed Rule Making (NPRM) at once to enable CBP to administer an electronic exam format in calendar year 2017. In the long term, automate the exam, the process for notifying examinees of their exam results and the appeal process. §111.13

010023

10. Explore further enhancements to the broker exam such as automated access to resources like the Harmonized Tariff Schedule (HTS) and Explanatory Notes. §111.13

010024

11. Conduct the examination on the fourth Monday in April and fourth Monday in October to enhance applicant participation and CBP exam proctoring. In the long term, explore conducting a broker exam that can be taken ‘on-demand’ rather than conducted twice a year. §111.13

010025

12. Explore having the broker industry (e.g., NCBFAA) assist in developing broker exam questions in conjunction with CBP.

Recordkeeping, Record Retention & Confidentiality

010026

13. Duplicate records stored in non-customs territory of the United States must be available and retrievable by the broker upon request by CBP and parties as addressed in §111.24. §111.21

010027

14. Require brokers to provide CBP with the contact information of the individual who is the designated contact in §111.21(c) as well as how and by whom the records are stored. This information is to be provided with the application of a new permit and through the triennial process. §111.23

010028

15. Define “confidential business information” as including data, information or records that concern or relate to the production, sales, shipment, purchase, expenditures, payment, warehousing, inventory

management or other information of commercial value or significance unless such information is otherwise available within the public domain. §111.1, 111.24

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16. In addition to the current exceptions for sureties and duly accredited CBP or other U.S. officers or agents, enable the broker to disclose confidential business information to third parties to facilitate the movement of merchandise, perform security screenings or reviews, for collection purposes, to address any claim or potential claim against him/herself from the importer, or otherwise to conduct business within the broker's scope of services consistent with its power of attorney. §111.24

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17. Consider any necessary revisions to 19 CFR §163 in accordance §111.21, §111.23 and §111.24 recommendations.

Employee & Status Reporting

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18. Streamline the employee reporting process through electronic submission and limit the required data elements to the employee name, social security number, date of birth, and current home address. §111.28

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19. Eliminate the requirement for a broker to report terminated employees; require the broker to, at a minimum, to report employees involved in customs business, but allow the broker to report all employees if necessary; and modify the employee reporting timeframe requirements to harmonize reporting timelines and to allow for flexibility in reporting frequency. §111.28

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20. Make enhancements to ACE that can better facilitate the electronic reporting of broker employee information (to include the system electronically determining if the broker is reporting new or terminated employees) and other broker-related functions.

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21. Review the information included in the triennial reporting process and identify ways to better facilitate and satisfy reporting requirements for the information (e.g., maintaining current information on the ACE portal).

Relations Between Brokers & Importers

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22. In all cases, the broker shall follow the importer's documented instructions regarding customs business to include the transmission of bills for services, copies of the entry releases and summaries, and other documentation or data filed on the importer's behalf. Ensure that importers to directly interact with the broker and provide guidance on processing merchandise. §111.36 (a)

010036

23. Implement COAC recommendation 13023 regarding obtaining a power of attorney directly from the importer. Recommend CBP implement immediately to meet requirements in the Trade Facilitation and Trade Enforcement Act of 2016 until it can be promulgated in regulation. §111.36 (a)

010037

24. Allow brokers to compensate freight forwarders for referring brokerage business without the conditions currently stated in the regulations. §111.36(c)

Fees

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25. Remove specific fee dollar amounts and reference a single source (i.e. CBP.gov, policy directive, etc.) for specific information on the fees and their schedule where all broker-related fees can be posted in order for CBP to have greater flexibility in changing fee amounts, if needed. §111.96

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26. Increase the permit fee to offset CBP's administrative costs. §111.96

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27. Increase the exam fee to offset CBP's costs for administering an electronic exam. §111.13

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28. Expand payment options for brokers and partners for broker-related fees to Pay.gov.

Obtaining & Vetting Importer Information

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29. Implement COAC recommendations 13024, 13061, and 13062 regarding updates to CBP Form 5106 data elements, limiting additional information from companies in good standing, and collecting such information as practical via ACE. Proposed new section §111.43

010043

30. Require customs brokers to collect appropriate and accurate data for the CBP Form 5106 as practical, available and necessary for a broker to conduct due diligence on, and verify the identity of, an importer including a foreign national. Proposed new section §111.43

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31. Enhance ACE capabilities to enable importers to provide the remainder of CBP Form 5106 data at the importer's, as opposed to the broker's, disposal and also to enable customs brokers to review information maintained by relevant Federal agencies for purposes of verifying the identities of importers. Proposed new section §111.43

010045

32. In order to implement section 116 of the Trade Facilitation and Trade Enforcement Act of 2016:

1. To verify the authenticity of such information the customs broker will take reasonable steps, for instance by reviewing publically available open source information regarding the importer's business and as appropriate, by reviewing the physical address of the importer particularly in the case of small or privately held companies and/or for individuals.
2. In cases where the review calls into question the authenticity of the information, the broker will conduct a further review inquiry, as reasonable and practical, to identify the importer. A customs broker shall maintain the records of the information collected to verify the identity of the importer consistent with appropriate recordkeeping guidelines.
3. CBP should 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. Proposed new section §111.43

Continuing Education

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33. Pursuant to CBP's authority under 19 U.S.C. §1641(f), enabling it to prescribe rules or regulations it considers necessary to protect importers and the U.S. revenue, implement COAC recommendation 13010 requiring licensed brokers to have a minimum of 40 hours of continuing education during their triennial reporting period. However, allow flexibility in qualifying continuing education credits with no restrictions/requirements on accredited continuing education. Proposed new section.

010047

34. As a policy recommendation, require a broker with a voluntarily suspended license to have a triennial period's worth of continuing education completed as a prerequisite to re-activate his/her suspended license. Also, recommend that CBP institute a waiver for this requirement upon a showing of good cause.

Broker Management

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35. 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 for management purposes.

Broker Regulations

Single Permit & Permit Process

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36. Ensure customs business, as performed by a Customs Broker, may only be conducted within the customs territory of the United States with the issuance of a permit. §111.19

Recordkeeping, Record Retention & Confidentiality

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37. Require electronic customs records be stored in an electronic format within the customs territory of the United States. The records must be available and retrievable by the broker upon request by CBP to the parties addressed in §111.24. Duplicate records may be stored in non-customs territory of the United States. §111.21(a) and §111.23(b).

Centers Uniformity

Uniformity - Outreach, Communication & Informed Compliance

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1. U.S. Customs and Border Protection Headquarters (CBP HQ) plays a vital role in promoting uniform practices across all ports of entry. The CBP Centers of Excellence and Expertise (Centers) should communicate and collaborate with HQ, and with one another, to ensure the consistent and uniform application of business rules, directives, processes and policies that affect trade.

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2. To the extent practicable, CBP should share reports and findings (e.g., The National Center for Risk and Economic Analysis of Terrorism Events (CREATE report)) including performance measurements and metrics regarding the efficiencies, costs for participants, and best practices of the Centers as a result of employing risk management and account-based processing principles to enhance uniform decision-making. At least on an annual basis CBP should offer a questionnaire to Center accounts to obtain industry input to gauge such progress and report such findings to the Trade. (The University of Virginia C-TPAT study is a good example.)

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3. CBP HQ should provide consistent, clear messaging regarding the status and intended length of the Centers test as well as benefits provided to such “participating accounts.” The Centers should also provide or, at least serve as a reference point for, information on CBP partnership programs (Customs –

Trade Partnership Against Terrorism (C-TPAT) or Importer Self-Assessment (ISA)), including the benefits of those programs internal and external to the Centers to encourage participation.

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4. CBP shall provide each Center with its own webpage embedded in CBP.gov. The webpage would provide a collection of existing and current industry based information, decisions and publications in consultation with COAC (e.g., Informed Compliance Publications, Customs Rulings On-Line Search System (CROSS) rulings and decisions, and educational information) -- this would pull and consolidate from existing resources already on CBP.gov to make the information more manageable by industry. Additionally, CBP HQ shall interface with PGAs to obtain their industry-related links to be placed onto the Center webpages.

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5. Centers shall collaborate with the trade to request and obtain industry focused information to create and further develop industry guidance through new or updated Informed Compliance Publications or other means.

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6. The Centers should share information to assist the trade in achieving compliance in the CBP priority trade issues that often result in enforcement actions such as Antidumping and Countervailing Duty (AD/CVD), Intellectual Property Rights (IPR), Free Trade Agreements (FTAs), etc.

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7. Each Center should conduct webinars and participate at CBP and industry outreach events for the trade to introduce center staff, resources, and other benefits of being a managed account.

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8. Some of the webinars that the Centers provide should be geared specifically to small and medium sized entities with limited resources that may not have the staff or capacity to participate in a partnership program.

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9. CBP and the Trade should utilize a single automated platform enabling Automated Commercial Environment (ACE) account holders and the Port, Centers, and other areas of CBP to communicate, as well as to submit and access information, regarding binding rulings, protests, and internal advice, including status notifications once binding rulings are submitted and in the queue for processing (e.g., ruling under review, additional information required, referral to HQ, etc.).

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10. National Import Specialists (NIS) should report to the Center chain of command, as COAC believes that this will enhance CBP's internal/external communication, knowledge and education; facilitate responsiveness, and provide more uniform, account-based services.

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11. Because of the critical role customs brokers play nationally in the entry and release of merchandise, CBP should encourage the Centers to align entry specialists in a manner that provides a consistent approach to broker management on a national level.

Levels of Service & Trusted Partner/Trader

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12. There shall be a higher level of service as well as outreach for partner accounts (ISA or C-TPAT) including enhanced communication, accessibility and responsiveness (including updates and trends to increase or maintain compliance) with their National Account Manager (NAM) or other Center representative. While the Centers should grant the highest levels of service to ISA accounts, the Centers still should provide enhanced levels of service to C-TPAT and Center “participating” (testing) accounts.

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13. Centers and NAMs should maintain, and as practicable, increase messaging internally to achieve collaboration and facilitation between trusted partners (ISA and C-TPAT).

010064

14. The C-TPAT office should assess the feasibility of developing an organizational structure that mirrors the industry specific Centers concept that enables the respective industries to work with dedicated Supply Chain Security Specialists (SCSS), in coordination with NAMs and/or Center representatives to provide enhanced benefits to C-TPAT accounts.

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15. When requested by a trusted partner (ISA and/or C-TPAT) Fines Penalties & Forfeitures (FP&F) shall request formal input from the Centers when a petition is filed involving seizures, penalties or liquidated damage claims. This would enable the Center to provide input to the mitigation process, promoting uniformity for all trusted partners.

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16. CBP should work with PGAs and the Trade to establish shared trusted partner/trader programs, e.g., C-TPAT + ISA + Partner Government Agencies (PGA) requirements (reference [Trade Facilitation and Trade Enforcement Act \(TFTEA\) Act of 2015, Section 101](#)) and leverage the sharing of redundant data applicable to common import requirements. The Centers should provide industry expertise to encourage the development of uniform account- based requirements.
 1. CBP should pilot such shared trusted partner/trader programs with one to two PGAs at a time, prioritized based on Center and importer feedback.
 2. CBP, with the support of the Centers, should solicit input from the PGAs and Trade regarding trusted partner/trader program benefits.

010067

17. CBP and PGAs should consider together with the Trade whether there may be ways to offer benefits to trusted partners (e.g., expedited entry, screening and release; reduced examination -- except when associated with a risk such as security, health, etc.; expedited processing (e.g., sampling, analysis, etc.). Particularly for trusted partners (C-TPAT or ISA), the Centers should provide problem resolution

contacts and work with the Ports to grant the importer “preferred location designation” to provide flexibility in the exam location, where practicable, in the event cargo must be held for exam or review. Trusted partners should also receive expanded permission to use electronic and/or blanket certifications/authorizations over transactional/paper requirements.

010068

18. Once “trusted trader” has been defined, the trusted trader benefits should include additional, increased levels of service that will be provided by the Centers beyond those provided to trusted partners, as available and applicable.

Other Core Processes: Bonded Facilities, Foreign Trade Zone (FTZ), FP&F, Release & Reconciliation

010069

19. A formal line of communication should be established between port officials and the Centers to utilize their industry expertise to facilitate FTZ release issues and to enhance uniformity on FTZ issues, in general, at an account level. Centers shall assist with FTZ-related questions for their respective industry, and provide a means to escalate matters if necessary and appropriate to Office of Field Operations – Headquarters (OFO-HQ) when the port is unable to resolve the issue locally.

010070

20. OFO-HQ should conduct more training and outreach with each port of entry that has an active zone to ensure consistent knowledge in FTZ management and compliance. Such training and outreach should also include Center industry experts.

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21. FTZ zone audits should be shared with Centers to provide industry expertise and input as appropriate.

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22. CBP and the Trade should utilize a single automated platform enabling ACE account holders and the Port, Centers and FP&F to communicate on enforcement issues such as seizure, penalty or liquidated damage claims, particularly those involving trusted partners (ISA and/or C-TPAT).

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23. CBP should develop protocols whereby the Centers should serve as a resource, and be called upon for their expertise as necessary, by Port officials for industry-focused as well as account-based knowledge for local release decisions.

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24. Because the drawback process is industry focused, account based and involves post release processing CBP should evaluate with input from the trade whether to integrate Drawback with Centers once automation is deployed.

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25. COAC supports CBP's efforts to manage Reconciliation within the Centers, to include appropriate training, the timing of which should coincide with ending of the current Automated Commercial System (ACS) Reconciliation Prototype as it completes its transition to processing in ACE by the end of 2016.

Participating Government Agency Integration

010076

26. Consistent with the One United States Government At the Border (1USG) initiative and implementation of International Trade Data System (ITDS), CBP should work together with participating government agencies (PGAs) through the Border Interagency Executive Council (BIEC), in consultation with the Trade, to conduct a study/report that evaluates the operational and financial impact on commerce and the U.S. economy resulting from the PGAs working with the Centers in applying account and risk management to their respective roles in import clearance. Newly available ACE data may provide objective basis to analysis.

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27. CBP should work through the BIEC to establish the appropriate level of support and resources from each PGA to act as liaisons to the Centers as appropriate to the industry, on an operational basis.

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28. CBP Center Directors, in coordination with CBP HQ, should have a formal input protocol to the BIEC regarding PGA challenges, new products/technologies, and data issues and to request outreach/support. CBP should establish periodic (e.g., quarterly) working level meetings between Center staff and the PGA(s) to which they are aligned (together with accounts that share the Center/PGA interaction). These working level groups should have access to provide feedback/recommendations to the BIEC.

010079

29. In coordination with the Center and PGA subject matter experts, CBP should develop and maintain a matrix of PGA-related areas to identify and address national systemic issues pertaining to an industry.

010080

30. CBP should work with PGAs to evaluate standard protocols for handling 'pending/conditional release' products, (i.e., CBP has released but PGA has not), particularly with an account-based focus.

Other Recommendations

010081

31. CBP should develop a paperless process for issuing 5955A penalty notices and electronic means for filing penalty, seizure and liquidated damages petitions similar to the eRulings and/or ACE Protest Module to search and receive timely updates.

010082

32. CBP should provide FTZ and bonded facility security recommendations consistent with C-TPAT guidelines.

ONE U.S. GOVERNMENT AT THE BORDER SUBCOMMITTEE

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- We recommend that as soon as possible, CBP announce the mandatory ACE filing dates for any PGAs or entry types for which mandatory filing dates have not yet been announced.

010084

- We recommend that the Border Interagency Executive Council (BIEC), established under Executive Order 13659 and recognized by the World Customs Organization as a best-in-class border management approach, be permanently established with a continued focus on cross-agency collaboration with the goal of promoting economic competitiveness through enhanced trade facilitation and enforcement.

July 27, 2016

TRADE ENFORCEMENT AND REVENUE COLLECTION SUBCOMMITTEE

Intellectual Property Rights (IPR) Recommendations

010085

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.

010086

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.

010087

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.

010088

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.

010089

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.

AD/CVD Recommendations pertaining to ENFORCE Act

010090

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.

010091

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 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.

010092

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

010093

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.

010094

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.

Bond Recommendations

010095

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.

010096

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.

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.

Bond Recommendations Continued

010097

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.

EXPORTS

010098

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.

