

Commercial Customs Operations Advisory Committee (COAC)

Trade Modernization Subcommittee

**International Engagement and Trade Facilitation Working Group,
Draft Recommendations**

The logo for the Commercial Customs Operations Advisory Committee (COAC) features the letters 'COAC' in a bold, serif font. The 'C' and 'A' are blue, while the 'O' and 'C' are red. Below the letters are two horizontal lines, one blue and one red.

**COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE**

International Engagement and Trade Facilitation Working Group

****DRAFT****

1. Publication and Availability of Information

COAC recommends that CBP work with customs administrations to implement publication, access, and availability of information to provide transparency and to encourage that such information is available in English to include making the HTS and relevant customs and trade laws and regulations available on-line. While some countries have made significant strides in trade facilitation efforts, there is still a lack of publication of all fees and charges, and information that relates to customs and trade issues remains unavailable.

COAC recommends that customs administrations should readily update the trade community with current laws and regulations by way of public websites and other appropriate social media. This should include appropriate contact information on specific issues related to customs and trade. Such information should be presented in a very practical and easy to understand manner or guide to traders. For instance, CBP's informed compliance publications and cargo systems message service (CSMS) provide critical legal and operational information in a very comprehensive, clear and current manner, which increase the trade community's understanding and compliance.

COAC recommends that in cases where a free trade agreement (FTA) is in place with the U.S., CBP should ensure publication of import, export and transit information consistent with FTA requirements.

2. Opportunity to Comment

COAC recommends that CBP should encourage all customs administrations to adopt a standardized formal process initiated by the government to provide opportunities for the trade to comment on new laws or regulations impacting trade. The proposed introduction or amendment of laws and regulations should be approached as a consultative process accepting input through direct formal comments from companies, individuals, trade associations and most importantly industry advisory committees. Such committees are critical in an international trade environment in which technology and trade cycles continue to accelerate. These types of committees should operate on a continuing basis to ensure that the private sector has an official venue to engage directly with the national government in advocacy efforts, and that the government can count on a trusted group of experts on which to count for input on proposed regulatory changes and other policy initiatives.

COAC recommends that CBP should encourage customs administrations to adopt as a best practice for a comment period, a minimum sixty (60) day comment period with a delayed effective date of

sixty (60) days at a minimum, and an additional thirty (30) to sixty (60) days when the intricacy and impact of the change requires additional time. Further, when the changes relate to system and/or automated changes an additional sixty (60) to ninety (90) days should be required to program, test, and implement.

CBP should encourage customs administrations to develop a formal established commercial advisory committee comprised of members of the trade similar to the COAC and WCO Private Sector Consultative Group. Members should represent stakeholders of different sizes, involved with various commodities and playing divergent roles within the supply chain and have an impact on customs or trade matters.

3. Advance Rulings

COAC recommends that CBP should encourage customs administrations to prioritize the implementation of an advanced rulings program, including import classification, valuation, trade preference and entry related issues. As a best practice, CBP should encourage that rulings and decisions are published electronically as is the case with the U.S. CROSS rulings system. Databases such as CROSS are searchable, up to date, and include ruling modifications and/or revocations, providing guidance to the trade community, essential to compliant business decisions

COAC recommends, with regard to obtaining rulings, that the process to obtain such decisions should be transparent and consistent to simplify the process and allow for interested parties to file for a ruling. As a best practice, CBP should point towards the U.S. advance rulings program. Further, the ruling itself should provide enough information about the product and justification or rationale on how the customs administration reached the determination, to allow the interested parties to understand the underlying reasoning. The rulings programs should endeavor to include transparent timeframes for ruling issuance that keep in mind business needs.

4. Procedures for Appeal or Review

COAC recommends that CBP should advocate and share with customs administrations the U.S. best practices of administrative review and judicial appeals that include clear and transparent procedures, stipulated timeframes, etc. in trade and customs matters with uniform implementation throughout a country's territory. Access to appeal and reviews should be adequate to ensure due process. For instance, customs regulations provide for the issuance and publication of internal advice and protest review decisions that provide guidance on current, ongoing and/or past transactions that enable the trade community to receive formal clarification and guidance on critical customs and trade issues.

COAC recommends that CBP share its best practices before the WTO Trade Facilitation Committee regarding advance rulings, internal advice decisions, protests and other appeal processes and procedures with the objective of establishing a global model for obtaining customs decisions that would standardize processes and procedures. It is extraordinarily burdensome and costly for multinational companies to put in place the resources that are necessary to adapt, respond to and generally manage multiple and differing decision-making procedures, including review or appellate processes.

5. Other Measures to Enhance Impartiality, Non-Discrimination and Transparency

COAC recommends that CBP encourage customs administrations to develop cohesive measures that would minimize risk and promote transparency in the process for release of detained goods, particularly about perishable goods. As a best practice CBP should encourage the laws, regulations and policy permitting the receipt and review of advance data and alerts on such shipments to facilitate decision-making by customs administrations as well as by the trade prior to and post arrival.

COAC recommends that CBP should encourage customs administrations to consider and weigh the results of private accredited labs, even when the results contradict the ones from government labs.

6. Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation and Penalties

COAC recommends that CBP encourage customs administrations to improve transparency and consistency in fees, other customs charges, liquidated damages and penalties, making them easy to find and understand, particularly penalties for more egregious violations that could result in higher monetary amounts.

COAC further recommends that CBP should encourage customs administrations to no longer require the consularization of documents, and certificates establishing articles of free sale or merchantability. Rather, CBP should encourage the use of commercial documents kept in the ordinary course of business, which are necessary for the transaction itself.

COAC recommends that fees should be proportionate to services rendered. For instance, CBP should encourage customs administrations not to assess both a value added tax (VAT) and customs fee on the same transaction.

COAC recommends that penalty regimes should be clear, understandable and not overly complex and penalties should be proportionate to the violation. Different frameworks should exist for civil versus criminal penalties. Customs administrations should recognize distinct levels of culpability as opposed to merely fraud or strict liability for any infraction especially in cases of minor breaches or clerical error. Mitigation guidelines should be transparent and easily accessible to provide for penalty resolution at amounts lower than the initial assessment. Voluntary prior disclosures should be a mitigating factor to any penalty assessment. Where bonding systems exist, customs administrations should consider issuing liquidated damages claims for breach of bond conditions in lieu of civil monetary penalties for more common entry, inbond or warehouse related violations.

7. Release and Clearance of Goods

COAC recommends that CBP work with customs administrations to:

- a) Simplify procedures to reduce average clearance times;
- b) Publish predictable time frames for cargo release decisions;
- c) Introduce pre-arrival processing of import documentation;

- d) Accept electronic payments for duties, taxes and fees; and
- e) Promote release of goods prior to final determination and payment of customs duties.

COAC recommends that CBP share best practices with customs administrations on pre-arrival processing, e-payment, clearance and release, simplified procedures, as well as relevant risk management and audit techniques.

COAC recommends that CBP should encourage customs administrations to leverage a risk management methodology to target high-risk shipments for inspection or document requirements, decrease overall inspections to improve border efficiency, and focus post-clearance audit procedures on a risk based selective sampling methodology.

COAC recommends that CBP encourage customs administrations to establish guarantees (customs bonds) to secure entry, inbond/transit, and warehousing as well as duty payment obligations and to ensure that bond amounts for security are commensurate with duty and tax risk. Furthermore, customs administrations should use bonds to provide for immediate release of cargo prior to final duty payment and other product conformity determinations, as well as to secure other obligations, including redelivery of goods. Most countries require the payment of duties, taxes and fees as well as admissibility decisions and inspection of cargo at the time of entry, which causes delays in the importation of cargo.

COAC recommends that CBP encourage and share best practices with other customs administrations on developing a customs electronic bond or “ebond” system. In the U.S., customs bonds can be filed electronically in an efficient and timely manner, which assures CBP that the import obligation is secured before an entry is made. While some countries do have a customs bond system, it is paper intensive.

COAC recommends that CBP encourage customs administrations to recognize tiered entries – de minimis, informal, and formal entries, providing for release with manifest declaration only for de minimis and informal entries in appropriate cases. Although de minimis provides for cost savings for companies of all sizes because such imports are free of customs duty and enjoy reduced paperwork, some countries maintain low or non-existent de minimis thresholds. COAC recommends that CBP advocate for a consistent \$800 USD de minimis threshold with reduced documentary requirements.

COAC recommends that CBP share with customs administrations best practices regarding the creation and implementation of the single-window particularly in the way it facilitates trade and enhances cargo clearance.

COAC recommends that CBP encourage authorized economic operator (AEO) programs that prioritize participation in new programs for traders as opposed to excluding non-participants from participation in certain programs altogether and that AEO should be accessible, functional, and meaningful for companies of all sizes. Further, CBP should work with customs administrations to establish more mutual recognition agreements (MRAs) so that such traders can limit costs and gain benefits from such programs globally in a way that does not hinder, but encourages participation. Further, CBP should hold other customs administrations accountable for such appropriate and

consistent implementation COAC recommends continued cooperation among customs administrations as they develop their AEO programs with an aim towards mutual recognition of certifications and benefits.

8. Border Agency Cooperation

COAC recommends that CBP work with other customs administrations to establish within each country a national interagency entity that encourages cooperation and coordination among all government agencies with border cargo clearance responsibilities. As a best practice of interagency border cooperation and coordination CBP should reference the U.S. Border Interagency Executive Council (BIEC) that has enabled partner government agencies (PGAs) administering import and export laws, regulations and policies to collaborate with each other, CBP and the trade community on an ongoing basis.

COAC recommends that CBP work through the WCO to promote a concept of a coordinated border management to be built on partnerships with other government agencies with border control responsibilities as outlined in the WCO Framework of Standards to Secure and Facilitate Global Trade.

9. Movement of Goods Intended for Import Under Customs Control

COAC encourages CBP to promote the establishment of an in-bond process and to engage industry in the development of a domestic process. Any resulting in-bond program must be multi-modal and applicable to all commodities and to the extent practicable, an automated process.

10. Formalities Connected with Importation, Exportation and Transit

COAC recommends that CBP urge customs administrations in countries, which have yet to already do so, to: promote becoming part of the ATA Carnet System; secure broadest scope of coverage possible; and promote prompt action and implementation at respective domestic levels. The global gold standard for temporary admissions is the international ATA Carnet system, under the auspices of the World Customs Organization. ATA Carnets, commonly known as “Merchandise Passports”, are tools of trade facilitation, which simplify customs procedures for the temporary importation (admission) of various types of goods. ATA Carnets are the perfect tool for exporters to move their goods internationally, allowing goods to enter the customs jurisdiction of parties to the system – duty and tax free for a period of one year.

COAC recommends that coupled with the development of robust risk-based systems, CBP should work with customs administrations in conjunction with the WCO to reduce, simplify and standardize the number of documents and data elements required for import and export of good. CBP should work with customs administrations to avoid the current practice of duplication of electronic documents and paper copy requirements. COAC recognizes that some countries have regulatory provisions to accept electronic transmissions, yet have not implemented these practices or they have adopted practices requiring paper documents and signatures of the same document. Further, CBP should work with customs administrations on capacity building, electronic data exchange, and automation of border processes to lessen the burden connected with formalities in

import/export operations. Specifically, we encourage CBP to work with customs administrations to achieve a uniform data collection process with the goal of reducing the paper documents and duplication.

COAC recommends that CBP work with customs administrations to reduce the incidence of signatures on import, export, and transit documents. When signatures are required, customs administrations should accept copies of the document along with the signature. CBP also should encourage acceptance of electronic documents in lieu of paper including for domestic transit. Further, customs administrations should not require documents to follow or travel with the goods upon release and should eliminate such requirements and automate the process. Documentary requirements should not impede lawful transshipment of goods. CBP should encourage customs administrations to avoid increased requests for documentation in addition to commercial invoices as “proof of purchase” for shipments of physical goods.

COAC recommends that CBP encourage customs administrations to adopt, in a uniform manner, an informal (consolidated) entry process for lower value shipments. COAC recognizes that in the express environment some countries do not provide for such processes.

COAC recommends that CBP encourage customs administrations and partner government agencies to develop the necessary internal expertise to diminish and where practicable eliminate reliance on pre-shipment inspection and/or third-party verification practices that cause unnecessary cargo delays and additional costs to traders.

COAC recommends that CBP share its best practices for bringing goods into compliance, specifically through a process that allows companies to import merchandise into secure, bonded areas, e.g. bonded warehouses and/or free trade zones, to bring merchandise into conformity with product labeling or other admissibility requirements.

COAC recommends that CBP encourage customs administrations to administer an international labeling standard. Currently labeling requirements are country specific and some requirements are so specific that they require specialized labeling procedures to occur as a separate process after the initial product manufacture and packaging thereby creating extra cost, time and potential issues in the supply chain.

COAC recommends that CBP encourage customs administrations, particularly in Asia, to adopt, as practicable, more uniform and transparent procedures and processes among various ports and districts. In many cases port specific practices exist that hinder the flow and clearance of lawful commerce. Furthermore, internal customs ports and/or administrative offices should utilize consistent versions of customs automated systems to promote transparency and uniformity to traders.

COAC recommends that to the extent practicable, CBP should encourage customs administrations not to restrict clearance and/or inspection of certain classes of merchandise to specific ports of entry or geographic locations. Further, customs administrations should leverage technology where possible to allow for centralized clearance and inspection capability for all commodities.

COAC recommends that CBP encourage customs administrations to evaluate and consider programs that increase uniformity and create further efficiencies to apply common customs procedures at all ports of entry. As a best practice, the U.S. has centralized post-release procedures under CBP's Centers of Excellence and Expertise (CEEs) that have dramatically improved efficiencies and standardized processes for U.S. importers. Further, the Remote Location Filing (RLF) program in the U.S. allows for electronic remote filing for release at all ports of entry, no longer confining transmissions and filings to local or regional ports.

11. Freedom of Transit

COAC recommends CBP encourage countries not to impose unnecessary fees for the movement of in-transit goods including those relating specifically to instruments of international trade.

12. Customs Cooperation

COAC recommends that CBP encourage customs administrations to promote compliance through outreach such as webinars, symposiums and to develop informed compliance publications.

COAC recommends that CBP encourage customs administrations to share information about organizational structure, including contact information of government officials.

COAC recommends that the sharing of import and/or entry information should be consistent with the purposes of ensuring effective customs control and "data discipline" over the exchange of such information, particularly the release of proprietary information.

13. Other Trade Facilitation Recommendations

COAC recommends the expansion of public private partnerships with national trade facilitation committees including the Global Alliance for Trade Facilitation and others.

COAC recommends that CBP work with the Asia/APEC region, including China, Indonesia, Vietnam and the Philippines to encourage more transparent and streamlined processes and procedures involving phytosanitary certifications and/or requirements that often unreasonably delay clearance.

COAC recommends the development of processes which enable the free flow of goods, such as standardized customs data and expanded hours of full operation at border crossings, to greatly expand intra-Africa trade. This will help reduce the cost of intra-Africa distribution which is beneficial in attracting new businesses. Customs improvements will also allow companies to better implement business models which are based on reliable delivery networks including guaranteed and time-definite deliveries.

COAC recommends that CBP consult with other customs administrations to identify and share best practices on enforcing anti-dumping and countervailing duty (AD/CVD) laws and regulations including the benefits of a worldwide, uniform system for calculating and assessing

AD/CVD margins on a prospective basis during all aspects of the investigation including administrative reviews.

COAC recommends that CBP share best practices with other customs administrations to operate under a heightened level of IPR enforcement and implement IPR reforms within their legal structures to effectively emphasize deterrents such as civil, administrative and criminal penalties. For instance, as a best practice CBP should share its National IPR Center model that provides a focused resource to strengthen and improve IPR enforcement and prevent illicit activity. The National IPR Center and its Report IP Theft campaign also has encouraged open collaboration to develop intelligence by industry sector leading to increased IPR seizures.

14. Trade Policy

COAC recommends, in light of the U.S.' withdrawal from the Trans Pacific Partnership, that CBP maintain continued engagement with Asian customs administrations to promote U.S. exports and jobs.

COAC views the United Kingdom (UK) as a valuable trade partner and encourages CBP to have a productive dialogue and engagement between the UK and U.S. customs administrations on trade policy, particularly in light of its pending departure from the European Union.