

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

Quarterly Public Meeting

November 14, 2017

WASHINGTON, D.C.

1:00 p.m. - 3:30 p.m.

Executive Summary

Opening Remarks

Bradley Hayes, Executive Director of the Office of Trade Relations at U.S. Customs and Border Protection (CBP), welcomed participants to the third public COAC meeting of 2017. He extended his appreciation to the COAC members and senior CBP leadership for helping CBP move forward with its goals.

Mr. Hayes then conducted a roll call. Members present: Cynthia Allen, Brenda Barnes, David Barry, Heidi Bray, Celeste Catano, Lenny Feldman, Lisa Gelsomino, Susie Hoeger, Vincent Iacopella, Alexandra Latham, Amy Magnus, Elizabeth Merritt, Julie Ann Parks,

Kevin Pinel, Madeline Veigel, Michael White, and Michael Young. The following COAC Member was absent: Adam Salerno. Mr. Hayes then turned the meeting over to CBP Acting Commissioner, Kevin McAleenan, for opening remarks.

Mr. McAleenan acknowledged the leadership team and chairs at COAC, Vincent Iacopella, Julie Ann Parks and Timothy Skud, Deputy Assistant Secretary, Department of Treasury (Treasury) and Michael Dougherty, Assistant Secretary, from the Department of Homeland Security (DHS), as well as Peter Edge from Homeland Security Investigations/Immigration and Customs Enforcement (HSI/ICE).

The COAC is headed toward the last of its meetings for the 14th term which ends in April 2018. He commented that this has been one of the best groups COAC has ever had with the establishment of tremendous partnerships which will be ongoing and that Bradley Hayes and others are working to find the best new members out of 70 applications received and there will be 13 of those who are current members who will be continuing with the program.

COAC welcomes the robust discussion and

recommendations from the subcommittees and will be identifying top priorities on which to begin to take action. E-commerce and Section 321 are obviously among the priorities.

COAC is pushing toward February with some additional feedback from this session and expect a strong transition in one of the most productive areas of trade engagement.

Timothy Skud called for comments and suggestions on regulatory reform from members -- What regulations can be eliminated and what regulations can be made less burdensome. Although the formal deadline from the Treasury request for information is closed, Tim will accept informal suggestions, and the DHS request for comments is still open until December 11th.

Michael Dougherty expressed his thanks to the COAC for inviting his group's participation.

Julie Ann Parks gave an overview from an agency perspective regarding what they see as multiple priorities in the areas of trade, congressional, and individual groups' strategic priorities. Another aspect that should always be at the forefront is coordinated border management. They've done a lot of

work with the Border Interagency Executive Council (BIEC) in assisting CBP in rounding out the mission of the Single Window and sharing that information globally.

Ms. Parks also stressed the importance of having a confirmed Commissioner so the strategic direction can be set and all can align and move forward at a quicker pace.

Vince Iacopella noted that the outgoing COAC members are committed to a smooth transition. He noted that the One U.S. Government discussion with Fish and Wildlife continues on data elements and they will have an update on that. He also wanted to encourage the discussion on the BIEC for the Participating Government Agencies (PGA), for their intention, and the de minimis section space and enforce their support for a robust discussion there on the BIEC and a continuous discussion with CBP and the Trade on the remainder of Automated Commercial Environment (ACE) deployment. Regarding Global Supply Chain, the COAC noted HR3551 which is the reauthorization of the Customs-Trade Partnership Against Terrorism (C-TPAT) in their discussion with CBP on minimum security criteria (MSC)

and the MSC changes. They will have a pipeline update. They have a new work group on emerging technology.

The agency will ultimately focus on cross border transactions and looks forward to aligning the trade side of that discussion with the CBP strategy document for E-commerce to make sure they are aligned.

Trade Modernization Subcommittee

The Trade Modernization Subcommittee has no recommendations to share at this time but said that some discussions at the upcoming East Coast Trade Symposium will address North Korean Forced Labor issues.

Ms. Allen mentioned the recommendations that had been made at previous COAC meetings on broker regulations and work continues on Revenue Modernization. Mr. Feldman talked about the upcoming Rulings and Decisions Improvement working group, The International Engagement and Trade Facilitation, and intend to provide recommendations at the next COAC meeting scheduled for some time in February. Ms. Allen noted they will focus on four areas: Education and awareness, international engagement, policy

collaboration, and the facilitation of continued growth. They have two new working groups: Deregulation and Cost Savings and Trade Facilitation and Enforcement Education.

The other working group that they are going to set up is the Trade Facilitation and Enforcement Education. Section 104 of the Trade Facilitation and Trade Enforcement Act (TFTEA) requires CBP to establish and carry out educational seminars so they want to partner with CBP and provide some recommendations and resources to facilitate legitimate trade in the U.S. and they look forward to providing some assistance in that area from the private sector.

One U.S. Government Subcommittee

The One U.S. Government Subcommittee continued discussions on the progress of the Fish & Wildlife Service Working Group. Ms. Hoeger noted that section 321 continues to be a hot topic and urges CBP to leverage the external engagement committee of the BIEC and the agencies to make their determinations regarding jurisdiction and data requirements as soon as possible as a top priority. The North American Single Window

Working Group remains available and awaits guidance from CBP. Fish & Wildlife Service Working Group, from discussions at the August public meeting is working on a white paper with detailed recommendations on Harmonized Tariff Schedule (HTS) code breakouts. They have the document drafted, but are getting some feedback from some of the other agencies, such as U.S. International Trade Commission, Census, and CBP.

Ms. Magnus talked about the ACE Outages Work Group formed since the last meeting in San Diego, California, and collaboration with the vendors, CBP, brokers, and importers with six recommendations - noted in full at the end of the summary.

There were no public comments made at the end of the reading of the recommendations. Brenda Barnes moved that the recommendations be submitted. Susie Hoeger seconded the motion. Mr. Hayes called for a voice vote, which was unanimous, and the recommendations were all submitted.

Trusted Trader Subcommittee

The Trusted Trader Subcommittee had a robust discussion with the pilot participants in the Trusted

Trader program, as this program leads some of the most trusted parties around transactional burdens.

Alexandra Latham continued the discussion for an enhanced Trusted Trader program that includes engagement with CBP and relevant PGAs with a potential for international interoperability. She discussed the focus which is the C-TPAT minimum security criteria under the existing working group. The final release of deployment G is scheduled for February 24, 2018. Over the next quarter we do expect to see the MSC shared more broadly with the trade community for additional feedback and additional review and work on the implementation plan.

Michael Young noted that in the future meeting that they are planning, probably in January, they will be trying to expand the scope of participation beyond the existing pilot group to include some other potential members who are interested in participating within the Trusted Trader program itself.

Ms. Schmelzinger updated the group on the MSC. That effort has been an enormous undertaking. She thanked the COAC for its support and feels as though they've reached a point they're prepared to greet

leadership. On the Trusted Trader front really the transition of ISA into the trade compliance component of C-TPAT is exciting. CBP is committed at the beginning of this work to do a much better job of articulating the benefits and the value of partnering with them; to make sure that they actually understand what it is they are getting out of these programs.

There were no recommendations submitted at this time from the Trusted Trader Subcommittee.

Exports Subcommittee

Elizabeth Merritt and Heidi Bray of the Exports Subcommittee discussed the Post Departure Filing (PDF) Working Group's progress on the implementation plan of the PDF Proposal and included steps to initiate a proof of concept. The Export Subcommittee has made recommendations in the past around the Export Manifest and its interaction with PDF. They are in the process of identifying candidates and working with a process to test the system. At the time, the Export Subcommittee is making 15 recommendations to increase pilot participation, to nail down the big picture regulatory framework, and to request also indicated some specific

timeline and filing regime provisions. The 15 recommendations are noted in full at the end of this summary.

Public comments were entertained and Ms. Barnes stated that she supports this in terms of needed timelines.

Ms. Kelly introduced Keisha Downs, Chief of Trade Regulations Branch, who has been working very closely with colleagues at CBP and the export subcommittee to nail down three-digit alphanumeric codes. Questions about the significance of the codes simplifying processes were answered. A webinar request for clarification of the Automated Export System (AES) exemptions and exclusions was answered. Michael Young moved to accept the 15 recommendations. Kevin Pinel made a sufficient second. Mr. Hayes called for a voice vote, which was unanimous, and the recommendations were all submitted.

Trade Enforcement & Revenue Collection (TERC)

Subcommittee

Lisa Gelsomino, Kevin Pinel and Troy Riley

discussed new TERC recommendations and provided updates

from the Anti-Dumping and Countervailing Duty, Bond, Forced Labor, and Intellectual Property Rights Working Groups. Lisa Gelsomino noted that the group has had a very busy quarter working on TFTEA issues. Kevin Pinel noted the work done on IPR areas of opportunity for automation. The 12 recommendations were read. Julie Parks made a motion to submit the recommendations and Vince Iacopella made a sufficient second. Mr. Hayes called for a voice vote, which was unanimous, and the recommendations were all submitted.

Global Supply Chain Subcommittee

James Swanson and Lisa Gelsomino presented the status of a pilot that will test the utilization of existing ACE automation in the pipeline mode of transportation. The committee also discussed the progress of the Global Supply Chain Subcommittee's new Emerging Technologies Working Group.

Public Comment Period

Comments were made by Milton Magnus of B&M in Leeds, Alabama. He stated that the Enforce and Protect Act which passed last year has been a tremendous help to his

industry. Ms. Brenda Smith noted that it is good to see the impact the Enforce and Protect Act has had on an industry.

Mr. Iacopella discussed some concerns about the planned February deployment of ACE and the need for the agency to clarify some of those issues. Mr. Leonard explained how the process would work regarding drawback claims.

Mr. Hayes reiterated that the East Coast Trade Symposium is coming up December 5th and 6th in Atlanta, Georgia. They have a great lineup - the senior CBP leadership will be there talking all things trade. A lot of DHS colleagues will be there as well. The registration link is open.

He thanked the intergovernmental colleagues and his staff for making the meeting a success.

Mr. Hayes adjourned the meeting at 3:30 p.m.

November 14, 2017

FINAL RECOMMENDATIONS

ONE U.S. GOVERNMENT AT THE BORDER SUBCOMMITTEE

Technical and Operational Outages:

- 1) COAC recommends CBP establish nationally coordinated uniform procedures for system disruptions regardless of port or mode of transportation, documented in writing and publically available to the trade. The procedure should include the specific required data elements for release during a system disruption.
- 2) COAC recommends CBP establish a procedure to allow software vendors and or software self-programmers to contact directly OneNet support rather than going through ACE helpdesk when experiencing VPN connectivity issues.
- 3) COAC recommends CBP create a communication procedure to provide an early warning notification to software vendors and software self-programmers of a potential unplanned system disruption.
- 4) COAC recommends ACE Availability Dashboard be enhanced as follows:
 - Provide Real-time, accurate status visibility of the processes including but not limited to - trouble with outbound queues
 - Provide an alert when a status changes
 - Provide visibility to categories not currently available such as: Manifest – air, sea, rail, truck, FAST; specific PGAs, e214/FTZ; statements; QPWP/Inbond; ACAS; full ISF process
 - Reflect CBPs planned outages and retain historical activity
- 5) COAC recommends when systems are recovered after a filer or CBP system disruption, CBP will not manually amend or back date the release date to the date of arrival.
- 6) COAC recommends CBP create a pro-active review process prior to issuing liquidated damage cases for filings that may have been connected to a system disruption.

EXPORTS SUBCOMMITTEE

Recommendation 1: In onboarding new participants into the air, ocean and rail manifest pilots, CBP has chosen to decentralize the connectivity and testing processes to the ACE Client Reps. Unfortunately, this core and dedicated group of professionals has been and remains busy with issues stemming from mandatory ACE implementations, leaving them with insufficient time to

dedicate to the voluntary export pilot. We therefore recommend that CBP's Trade Transformation Office identify by December 31, 2017 specific, non-client rep resources to dedicate to the onboarding process for new air, ocean and rail export manifest pilot participants. We further recommend that CBP stand up a dedicated export technical task force to catalog, prioritize and expeditiously resolve technical issues in order to enhance pilot progress no later than Q1/2018 (CY).

Recommendation 2: There is a currently lack of business process, policy and technical documentation regarding pilot processes, in particular those which elaborate timelines, set out response expectations and protocols, and explain how pre-departure targeting and hold resolution policies and procedures will impose minimal negative impact on time-sensitive carrier operations. At the present time, potential participants literally do not know "what they are signing up for" when they join the automated export pilot. We therefore recommend that CBP prioritize the development of written pilot policies and procedures that accord with past and present COAC recommendations and the dissemination thereof in early Q1/2018 (CY) to those who have expressed interest in pilot participation.

Recommendation 3: In order to confirm mutual understanding and allow productive industry-government discussion of any issues requiring resolution, we recommend that CBP promulgate a high-level regulatory "strawman" for each mode of transport that sets forth CBP's vision of how automation will transform the export manifest regulatory regime and the planned structure of the new regulatory approach no later than the end of Q1/2018 (CY).

Recommendation 4: We recommend that CBP enable the earliest possible transmission of 1) ocean house-level bills of lading by NVOCCs, and 2) house air waybills by Indirect Air Carriers (IACs) (freight forwarders that tender cargo to an air carrier), to facilitate early CBP risk assessment and shipment interception prior to the consolidation of cargo at inland ports / non-gateway airports and/or at ports/airports of export.

Recommendation 5: In the ocean mode, in order to align with CBP's ocean import filing deadline and with the import manifest filing deadlines established by the EU and other jurisdictions to which US export cargo is destined, we recommend that the latest submission time for export ocean bills of lading (including straight, master and house bills) be set at 24 hours prior to vessel loading at the port of exportation.

Recommendation 6: In the air mode, we recommend that the latest possible submission time for 1) house-level air waybills by the IAC, and/or the IAC's agents, and 2) simple bills by shippers, IACs, carriers and/or their agents be harmonized with U.S. Census requirements for AES submission for air shipments.

Recommendation 7: In the air mode, we recommend that CBP facilitate the earliest possible filing of master-level air waybills by IACs and/or air carriers, and that the latest possible submission time for master-level air waybills be established as prior to aircraft departure from the US.

Recommendation 8: In the air mode, as all necessary data for shipment risk assessment will be provided via house, simple and master air waybill transmissions prior to departure, we

recommend that the flight-level manifest be utilized by CBP only as a tool for reconciliation and confirmation of the date and port of export, and not as an element of export targeting.

Recommendation 9: Recognizing the multiple variables impacting flight capacity and the last-minute nature of flight loading and manifesting, and therefore the need for air carriers to complete post-departure reconciliation prior to transmitting flight-level data, we recommend that the submission timeline for the flight-level manifest be set at several hours after flight departure. We further recommend that an additional 3 business days be provided during which carriers may amend the flight-level manifest transmission without penalty.

Recommendation 10: – Air – Linking the AES Filing Record to the Export Manifest: For air export shipments that require AES filings, we recommend that CBP and Census link the USPPPI's AES filing to the export manifest filing by requiring the USPPPI to provide the ITN, AES Downtime citation, or AES Post Departure citation:

- For consolidations, to the Indirect Air Carrier (IAC) (the forwarder that issues the house bill that will be consolidated under an air carrier's master bill), and further that the IAC be required by CBP to include the AES ITN or Downtime / Post Departure citation in its house bill filing to ACE;
- For straight (direct) shipments, to the air carrier, and further that the air carrier be required by CBP to include the AES ITN or Downtime / Post Departure citation in its straight air waybill filing to ACE.

Recommendation 11: – Ocean – Reporting AES exemption/exclusion citations: For ocean export shipments that are exempted or excluded from AES filing requirements, we recommend that CBP and Census require the USPPPI to provide the 3-character alpha-numeric code that corresponds to the correct exemption or exclusion legend (per the CBP/CENSUS exemption/exclusion code table) to the carrier that issues the lowest level bill of lading. Furthermore, we recommend that CBP require the carrier that issued the lowest level bill of lading to include this three-character exemption code in its bill of lading filing to ACE.

Recommendation 12: – Air – Reporting AES exemption/exclusion citations: For air export shipments that are exempted or excluded from AES filing requirements, we recommend that CBP and Census require the USPPPI to provide the 3-character alpha-numeric code that corresponds to the correct exemption or exclusion legend (per the CBP/CENSUS exemption/exclusion code table):

- For consolidations, to the IAC, and further that the IAC be required by CBP to include the AES exemption/exclusion citation in its house bill filing to ACE;
- For straight (direct) shipments, to the air carrier, and further that the air carrier be required by CBP to include the AES exemption/exclusion citation in its straight air waybill filing to ACE.

Recommendation 13: – Air and Ocean – Linking House Bills to Master Bills): In order to link NVOCC-issued house bills to their corresponding VOCC-issued bills of lading, and IAC-issued house air waybills to their corresponding master air waybill, we recommend that CBP require NVOCC and IAC house bill filers to include the master bill of lading / air waybill number in every house bill filing (as is done today in the ACE M-1 Ocean and Air Import Manifest

Systems).

Recommendation 14: – NVOCC visibility: In order to provide NVOCC master loaders with the necessary visibility to ensure that they have met all filing requirements, we recommend that CBP include a new ocean manifest required (conditional) data element for house bills: the master loader reference number. Specifically, when a co-loading non-master loader transmits its house bill(s) of lading to CBP, it would be required to include the master loader’s bill reference number. This will allow the master loader to verify that all house bills under a given master bill have been properly filed.

Recommendation 15: Following significant industry discussion with CBP and Census, and a survey of ACE user preferences, the trade has selected a new nomenclature of 3-character codes for AES exemptions/exclusions that are more-rationally derived from the corresponding paragraph citations found in the Foreign Trade Regulations. We recommend that CBP and Census adopt this mutually-agreed upon new nomenclature system as soon as possible, ensure that the ACE export system is expeditiously updated with the new nomenclature, and provide broad notice to pilot participants and the trade community overall about 1) the future requirement to identify AES exemptions/exclusions via 3-character codes instead of FTR paragraph citations, and 2) the change in the 3-character nomenclature from that currently programmed to the new trade-approved codes.

TRADE ENFORCEMENT AND REVENUE COLLECTION (TERC) SUBCOMMITTEE Anti-Dumping and Countervailing Duty (AD/CVD) and Bond Recommendations

1. To support increased screening, COAC recommends that CBP require live entries for AD/CVD shipments in the following instances:
 - An importer with a previous unresolved instance of non-payment of AD/CVD at the time of entry summary.
 - An importer does not pay an increased duty bill within 60 days of issuance unless there is a valid protest issue which can be filed within 180 days of issuance.

COAC also recommends that CBP establish and publicize its policy for removing an importer from live entries once they have rectified any payment problems and/or demonstrate the importer was not at fault for any late file or payment (i.e., due to a technical or processing error).

2. To support increased bonding for AD/CVD shipments, COAC recommends that CBP establish a separate supplemental AD/CVD Bond available as a Single Transaction or Continuous Bond. The supplemental bond should have a separate Activity Code and be required to secure the potential shift in AD/CVD rates for active AD/CVD Orders (estimated 420 active AD/CVD Orders). The TERC Subcommittee will be providing CBP with a white paper that provides recommendations on how the supplemental AD/CVD Bond would be calculated and automated as an eBond in ACE.
3. COAC recommends that CBP provide additional data and information to sureties to support more robust underwriting of Customs Bonds for AD/CVD, including:

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- a. Expansion of the Automated Surety Interface (ASI) data to include entry summary line item detail and AD/CVD 10-digit case number so sureties can properly manage and underwrite the risk and help counter AD/CVD evasion.
- b. Visibility to flagging the AD Reimbursement Statement in ACE as required by 19 CFR 341.402(f), or in the alternative immediate notification if the AD Reimbursement Statement is not filed with the Entry Summary. This could be accomplished through having the surety as a Secondary Notification Party (SNP) and/or updating the Bond Sufficiency Notification with additional flagging.
- c. Improving the functionality and information available in the ACE surety portal, especially as ACE migrates to a paperless environment sureties will need to rely on visible access to data and information via the surety portal account.

The above automation is possible due to the creation of an eBond module in ACE and should not require additional funding. These changes can be made as part of the ASI conversion to ACE scheduled to deploy on February 2018.

4. COAC further recommends that CBP provide the following notifications to sureties to help manage the potential risk of importer default to CBP:
 - a. Importers placed on sanction by CBP and when they are put on live entry
 - b. Importers who immediately default on payment of Periodic Monthly Statement
 - c. Real time notification of Debit Vouchers
 - d. CBP Form 29-Notice of Action
 - e. CBP Form 4647 Notice to Redeliver Merchandise
 - f. Prior Disclosures related to non-payment of ADD/CVD

All of the above information can be provided to sureties in an automated fashion due to the creation of an eBond module in ACE. The eBond module provides CBP with the ability to include additional data elements electronically via real time messaging, SNP or at a minimum paper copy of notices if not currently automated in ACE.

5. COAC recommends that CBP provide sureties with the ability to add and maintain current names and addresses of importers, which are often verified through the underwriting process.
6. COAC recommends that CBP monitor accumulation of estimated AD/CVD amounts accruing on unpaid monthly statements against the amount(s) of the bond(s) securing the payment to ensure bond sufficiency.

Forced Labor Recommendations

1. COAC recommends that CBP continue to actively engage with the DHS Interagency Group as a best practice for cross-agency collaboration to improve forced labor enforcement and facilitation. COAC further recommends that CBP continue to include the COAC Trade Co-

Chairs for the Forced Labor Working Group (FLWG) to ensure bi-directional feedback from all government agencies and non-government stakeholders.

2. COAC recommends that CBP work with the DHS Interagency Group to co-create a “U.S. Goods Forced Labor Accountability Matrix” that will also outline the different government agencies involved with efforts to combat forced labor overseas to better understand each of their roles, responsibilities, and authorities. This Matrix is a high priority for the trade and should be reviewed with the Forced Labor Working Group prior to the next COAC meeting.
3. COAC appreciates CBPs efforts to implement the Forced Labor Working Group’s (FLWG’s) prior recommendations, especially the recent issuance of an updated Informed Compliance Publication. As CBP continues to self-initiate and enforce forced labor allegations, COAC recommends that CBP seek additional feedback from the FLWG on how CBP Form 28 Requests for Information (CBPF 28 requests) are being handled uniformly at all centers of excellence and expertise. For example, some requests are more akin to an audit of an importer’s entire supply chain and sourcing factors rather than a request for information related to one set of transactions and/or supplier. Instructions must be clear so importers know how to properly and timely respond to CBPF 28 requests.
4. COAC recommends that CBP publicize ongoing work to address and combat forced labor including other metrics besides Exclusions or WROs, such as:
 - a. Number of imports examined for potential forced labor violations
 - b. Number of shipments detained, denied entry, and/or seized due to forced labor
 - c. Number of self-initiated cases and CBPF 28 requests.
5. COAC recommends that CBP conduct additional outreach using a variety of methods, such as:
 - a. **Small and Medium-Sized Businesses Campaigns.** These companies may not have a compliance department, and there is a need to educate owners or transportation managers. CBP can do so by publishing bulletins and blogs, conducting and recording webinars and FAQs, and working with the Small Business Administration and U.S. Chamber of Commerce to expand outreach.
 - b. **C-Level Executive Campaigns.** CBP can do so by implementing campaigns that focus on WRO case studies and enforcement metrics similar in nature to AD/CVD and IPR statistics that are publicized on a regular basis.
 - c. **Public Outreach:** Continue to publicize the ability and process to report forced labor allegations via e-allegations and the personal/financial reward for doing so.
6. COAC recommends that CBP continue to have the Forced Labor Working Group (FLWG) act as a standing forum of subject matter experts that can be called together by CBP when any forced labor issues arise to solicit feedback and advice from the trade and all stakeholders within the FLWG.