

**Commercial Customs Operations Advisory
Committee (COAC)
Intelligent Enforcement Subcommittee**

August 2019

COAC

COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE

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August 2019**

**Report of the
Work of the COAC
Subcommittee on Intelligent Enforcement**

Co-Chairs

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Intelligent Enforcement Subcommittee Members:

Heidi Bray, Erika Faulkenberry, Lisa Gelsomino, Amy Magnus, Amy Smith, Jody Swentik, Madeleine Veigel, Kate Weiner, Brian White, and Kathy Wilkins

Background

During the quarterly meeting of the 15th Term of COAC held on October 3, 2018, CBP announced the restructuring of the COAC Subcommittees and underlying Working Groups to align with CBP's Trade Strategy 2020. This strategy focuses on four areas aimed at modernizing import/export processes, improving trade intelligence, and maximizing efficiencies.

The former Trade Enforcement and Revenue Collection (TERC) Subcommittee is now called the Intelligent Enforcement Subcommittee to reflect CBP's initiatives to:

- 1) Execute integrated trade enforcement that includes a proactive IUSG approach and focus on priority trade issues.
- 2) Strengthen targeting efficiencies using predictive analytics and intelligence.
- 3) Drive consequence delivery through importer risk assessment and network investigations.

Under the Intelligent Enforcement (IE) Subcommittee, it was agreed the following working groups would continue:

- 1) Anti-Dumping and Countervailing Duty (AD/CVD), co-chaired by Shari McCann, Heidi Bray and Lisa Gelsomino.
- 2) Bonds, co-chaired by Bruce Ingalls, Lisa Gelsomino and Kathy Wilkins.
- 3) Forced Labor, co-chaired by Thomas Kendrick, Erika Faulkenberry and Brian White.
- 4) Intellectual Property Rights (IPR), co-chaired by Laurie Dempsey, Amy Smith and Jody Swentik.

Three Working Groups have been active since the February 2019 COAC meeting, the AD/CVD, Bond, and IPR. The Working Groups consist of COAC and non-COAC members representing different stakeholders from the trade including importers, domestic industry, U.S. manufacturers, brand holders, customs brokers, sureties, attorneys, ABI vendors, carriers, consultants, various trade associations as well as participants from CBP and other Partner Government Agencies (PGAs).

Since the COAC public meeting held on May 30, 2019, the IE Subcommittee held two conference calls to review the activity of all the active working groups as outlined below and also received an update on the following:

- 1) **Joint Strategic Plan.** Under Section 105 of TFTEA, this plan is required every two years. In developing the Joint Strategic Plan required under this section of TFTEA, CBP and ICE shall consult with the COAC on its development. We look forward to future collaboration in this regard since the plan is due later this year
- 2) **Presidential Memos and Executive Orders on Enforcement.** CBP shared the work it has been doing to address these enforcement-related priorities from the White House. CBP has a new Trade Statistics page at <https://www.cbp.gov/newsroom/stats/trade>. CBP is also reforming the Mitigation Guidelines. This is being done by section and updates are being posted with revision dates at <https://www.cbp.gov/trade/publications/informed-compliance-publication-mitigation-guidelines-fines-penalties-forfeitures-and>.
- 3) **Forced Labor Working Group (FLWG).** We discussed the need to collaborate with the FLWG once again especially as the Trusted Trade framework gets developed. CBP agreed and we are hoping to receive updates at the next COAC meeting on new priorities for the FLWG.

All subcommittee objectives and scope are consistent with the official charter of COAC.

Summary of Work

The Intelligent Enforcement (IE) Subcommittee has the responsibility of looking at opportunities to enhance the trade and government processes, policies and programs, enabling the trade and CBP to be better positioned for the future. Our Subcommittee currently consists of three working groups. Each have had substantial tasks over the last few months and continue to work on recommendations.

AD/CVD Working Group:

Since the COAC public meeting held on May 30, 2019, the AD/CVD Working Group held one conference call on July 31st to review and discuss the following issues:

1. **Shari McCann** – Introduced as the Acting Director for AD/CVD Division on temporary assignment until end of October.
2. **Scope Rulings** – Based on a recommendation from COAC, the Department of Commerce (DOC) has updated the E&C home page with scope rulings as far back as 1990 <https://www.trade.gov/enforcement/operations/scope/index.asp>. If prior to 2011, the scope ruling has been scanned. If the scope ruling was made after August of 2011, you can take the bar code and go to ACCESS system to find the scope ruling. Some paper filings were too old and are missing. The DOC estimates the system is about 85%-90% complete. Scope Rulings clarify but don't modify the AD/CVD case so there are also rulings for anti-circumvention. It took over 2 years to pull all this information together and big thank you to the Customs Liaison Unit (CLU) especially Wendy Frankel

and Elisabeth Urfer. This page will now be updated every quarter and any cases that get sunset during each quarter will get removed. Note: this will not include any proprietary scope rulings. If the trade identifies any scope rulings after 1990 that may be missing, please email to CLU at ECCommunications@trade.gov

3. **ACE Redesign on 9/14** – Commerce provided an update on what's forthcoming including migrating all names that are crammed into the notes section into a new parties tab. There will also be fewer case numbers for any specific shipper rates that spun off from the group. Instructions will be clearer, and there will also be sub-types that delineate between actions making it much easier to search for information. Third Country Case Numbers will be enhanced since DOC has noticed a rise in circumvention for third country cases and wanted it to be more prominent in ACE to manage. Another improvement is updating all HTS codes provided for convenience for any active AD/CVD case to the 10-digit level. DOC is putting together training materials for the trade, but this will not impact the CATAIR or require any ACE programming. A big thank you to the DOC for making these improvements!
4. **Date of Duty Calculation** – Section 301 provided clear guidance on when the tariffs would apply based on the in-bond date. AD/CVD is a different guideline than Section 301 cases and is not in the regulations. The in-bond date is based on a statute in 1952, and AD/CVD should be the same as other trade remedies. The AD/CVD Working Group provided the DOC and CBP with various statutory, regulatory, and rulings on this matter and hopes to get further clarification to discuss in our next call. We also discussed some issues ACE is having with tracking the Special Value Fields that DOC and CBP will look into for our next call.

Bond Working Group

Since the COAC public meeting held on May 30, 2019, the Bond Working Group (BWG) held two calls on June 27th and July 18th.

During the June 27th call, the BWG discussed the following topics:

- 1) **Continuous Bond Sufficiency.** The BWG discussed the ongoing increase in continuous bonds due to the Section 201, 232, and 301 tariffs. Through June of 2019, there have been 6,200 bond sufficiency notices issued vs. 5,900 for the entire year of 2018, so volume is expected to more than double especially with List 4 going into effect on 9/1/19.

CBP continues to issue a record number of continuous bond sufficiency requests and importers are limited to respond so must be proactive. CBP issued [CSMS# 18-000664 - Continuous Bond Sufficiency Review and Bond Stacking Liability](#) on 11/8/18 to remind the trade that CBP Revenue Division conducts sufficiency review for all active Activity Code Type 1 continuous bonds on a monthly basis. The bonding formula(s) used to conduct sufficiency review can be viewed at (<https://www.cbp.gov/trade/priority-issues/revenue/bonds/bond-centralization-program>). To avoid bond stacking liability, importers should forecast their import activities for the next 12 months to determine if a bond increase beyond the minimum bond amount will be more appropriate.

There was discussion on whether CBP had considered any cap on continuous bond amounts such as the \$30 million cap that was required for textile shipments prior to bonds being centralized. At the time those continuous bonds were based on imported value, and not 10% of the annual duties which is how the Activity 1 Continuous Bond is calculated under the Reviewer's formula. CBP indicated there are less than 30 continuous bonds over \$30 million so no cap is being considered at this time, especially since the formula already considers only 10% of the annual duties, taxes and fees.

- 2) **Risk-Based Bonding.** The BWG discussed CBP's plans to implement more robust bonding for Anti-Dumping and Countervailing Duty (AD/CVD) shipments in response to the 2016 GAO Report, Section 115 of the Trade Facilitation and Trade Enforcement Act (TFTEA), Presidential Executive Order 13785 for enhanced collection and enforcement of AD/CVD Violations.

The BWG previously made recommendation 010282 to CBP as follows: "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."

The surety members of the BWG conducted several desk top exercises for a potential risk-based bonding formula last summer. However, the formula needed to be tweaked and the desktop exercises were never completed. In the meantime, CBP determined this recommendation would be a long-term strategy since it requires regulatory changes and modifications in ACE.

In the short term and as reported at the last COAC meeting, CBP is looking into Single Transaction Bonds (STBs) as an option for additional AD/CVD bonding in addition to the Activity Code 1 Continuous Bond. This would apply to any 03 or 07 AD/CVD entry types for "new" importers who have never participated in an AD/CVD investigation or gone through the lengthy liquidation process. As outlined in Section 115 of TFTEA, CTPAT Tier II and III members are exempt from these bonding requirements. The surety members in the BWG conducted additional desk top exercises with this new formula for STBs and are still in active discussion with CBP on the outcome of these findings.

The BWG has identified significant challenges with this new policy and several modifications in ACE are required, especially the ability to flag "new" importers and calculate STBs at the line-item level. CBP plans to issue a Federal Register Notice in August and implement the new STB bonding requirement as early as September 21st or September 28th. The COAC will be recommending that CBP delay implementation of this policy to allow more time for the desk top exercises with sureties to be reviewed and

programming time for ABI vendors to program and test the new CATAIR for this additional functionality. Failure to do so will result in unnecessary burden on the trade.

During the July 18th call, the BWG discussed possible formulas for the Activity Code 4 Foreign Trade Zone (FTZ) Bond based on the prior COAC recommendation made at the October 2018 meeting (Recommendation #010307);

“FTZ Bonding: COAC recommends that CBP review how the FTZ bond amount (Activity Code 4) is determined with the COAC Bond Working Group to ensure it contemplates the custodial obligation of an FTZ based on duty of average inventory rather than value within the FTZ. This review should ensure the FTZ bond amounts are sufficient to protect the revenue of the U.S. and calculated in a uniform manner to avoid unnecessary hardship on the trade. COAC further recommends that CBP modernize the FTZ regulations to align with the eBond environment implemented in January 2015.”

Before the call, members were requested to review the information from the Current Monetary Guidelines Directive (CD3510-004), the FTZ Manual (Section 12.2 Bond Administration) along with a spreadsheet that proposed a new bond formula to determine the continuous bond amount and sufficiency, based on real zone data by various industries.

During the call, it was again identified by working group members that there is very little uniformity in how CBP determines FTZ bond value; currently it's determined at the local port level. FTZs are becoming much more common and applications are escalating due to the tariffs and Free Trade Agreement environment emerging. The spreadsheet provided actual FTZ inventory values for various industries. Specifically, the values outlined were by total inventory value, the foreign status value and the duty liability for that foreign status. The snapshot looks at the value of a zone at any given time as that represents the actual duty liability, or potential loss of revenue to CBP, in real time. It was noted that with product moving in and out daily, a daily snapshot is representative of an average value for bonding purposes, which is often used for insurance purposes also.

The next steps will be to collect more data, and sureties within the Bond Working Group, will conduct desk top exercises to determine if the proposed bond formula is viable. These results will be discussed during the next BWG call on August 15, 2019.

Intellectual Property Rights Working Group (IPRWG):

Since the COAC public meeting held on May 30, 2019, the IPRWG held three calls on June 10th, July 8th and August 12th, and several calls were held by the team reviewing recommendations for e-Recordation. The key issues for the IPRWG have been:

- COAC submitted comments to the Presidential Memo on Combatting Counterfeit and Pirated Goods. COAC consolidated everyone's viewpoints on Section 321, postal shipments, and combatting IPR in the supply chain. The IPRWG has also been reviewing recommendations to address the Presidential Memo.
- The e-Recordation team has been very active and developed recommendations to review with the IPRWG, especially in terms of automation. There has also been a disconnect

between the regulations and the policy, and a mapping exercise could benefit the IPRWG members. Several members have volunteered to begin work on that process.

- The IPRWG has also been active with the development of a Block chain Proof of Concept that will be discussed by the Emerging Technologies Working Group.
- Lastly, the IPRWG will be receiving new priorities to address from the 21st Century Framework initiative. We look forward to receiving updates at the next COAC meeting.

Conclusion

The IE Subcommittee looks forward to collaborating with CBP on the Joint Strategic Plan and receiving new priorities for the IPR and Forced Labor Working Groups. In addition, we will continue our focus enforcement-related priorities and monitor the execution of and provide guidance for our previous recommendations. To this end, the IE Subcommittee will also be developing a white paper for CBP that will look to modernize enforcement priorities in a number of key areas.