

Commercial Customs Operations Advisory Committee (COAC)

Intelligent Enforcement Subcommittee

February 2019



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**Report of the Work of the COAC
Subcommittee on Intelligent Enforcement (IE)**

Co-Chairs

Heidi Bray – FCA US LLC
Amy Magnus – A.N. Deringer, Inc
Kate Weiner – Cargill

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 Subcommittee, it was agreed the following working groups would continue:

- 1) Anti-Dumping and Countervailing Duty (AD/CVD), co-chaired by Alexander Amdur, 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 Robert Copyak, Amy Smith and Jody Swentik.

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

Summary of Work

Since launching the Intelligent Enforcement (IE) Subcommittee on October 3, 2018, four Working Groups have been operating. The AD/CVD, Bond, Forced Labor, and IPR Working Groups consist of COAC and non-COAC members representing over 100 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 last COAC meeting on October 3, 2018, the IE Subcommittee held three conference calls to review the activity of all the active working groups as outlined below.

AD/CVD Working Group

Since October 3, 2018, the AD/CVD Working Group held four conference calls to review and discuss the following issues:

The first call focused on the following issues:

- **Manufacturer ID (MIDs):** CBP is having issues with the correct MID being provided for AD/CVD shipments. Customs brokers recognize this is an important data element for AD/CVD shipments but expressed how difficult it is to get correct MIDs.
- **NEI Webinar:** It was suggested that CBP conduct a National Customs Brokers and Forwarders Association of America Educational Institute (NEI) webinar for customs broker and importers to provide proper training on the MID issue. A NEI webinar was held on Thursday, December 6, 2018.
- **ACE Reports:** The Department of Commerce (Commerce) also discussed the improvements they are looking to make to AD/CVD reports in ACE. Several suggestions were provided during the call and a master list of suggestions is being created. The Working Group (WG) will also schedule some webinars for CBP and Commerce to see how the current reports in ACE are being used by different trade stakeholders. Commerce is very excited to help improve ACE AD/CVD reports within the budget they have for this project.
- **Trade Remedies:** The rest of the call focused on questions from the trade on Section 201, 232 and 301 shipments. There were several questions on policy and technical issues in ACE, especially quota shipments. CBP continues to issue guidance as needed to address all the trade remedy inquiries they are receiving.

The second call focused on the following issues:

- **Statistics:** Year-end enforcement statistics for AD/CVD.
- **Section 321:** CBP is exploring issues with Section 321 shipments that involve AD/CVD merchandise. Section 321 clearance is not allowed for any entry involving AD/CVD.
- **Centers of Excellence and Expertise:** The AD/CVD WG will discuss inviting another Center to the AD/CVD WG to report on their AD/CVD efforts.

The third call focused on the following issues

- **AD/CVD Recommendations:** CBP reviewed the status of prior recommendations from the 14th term and will be updating CBP.gov with new language about how Single Transaction Bonds are handled when requested on AD/CVD shipments especially when there are enforcement-related issues.
- **Critical Circumstances:** The Working Group discussed how CBP can improve outreach to ensure importers understand this process if/when declared by Commerce, and the need for importers to post cash deposits on a retroactive basis.
- **MID:** The Working Group continued discussions on the issues the trade is having reporting the correct MID. Trade is looking for regulatory language, however this

doesn't seem to exist outside of the ACE Entry Summary Business Rules. The AD/CVD Working Group will consider future recommendations to improve the MID process and still working on an FAQ for the trade.

- **GAP:** Due to the government shutdown, there may be more AD/CVD investigations that have a GAP between the preliminary and final findings in a new AD/CVD investigation. CBP and Commerce discussed how the GAP operates and no AD/CVD cash deposits are due during the GAP but CBP must wait for instructions from Commerce to proceed in this manner. If CBP does collect AD/CVD deposits during a GAP period, an importer will receive a refund on those deposits once instructions by Commerce are issued.
- **PSC Corrections for AD/CVD:** There is an issue when handling PSC in ACE for an AD/CVD shipment. Because AD/CVD entries are suspended, there is no bill that gets issued for the cash deposit that should be posted and could be overlooked. The AD/CVD Working Group will consider future recommendations to improve this process.

The fourth call was a continuation of the discussions from the third call.

Bond Working Group

Since October 3, 2018, the Bond Working Group held two conference calls to discuss the following issues:

- **Continuous Bond Sufficiency.** CBP has issued over 4,000 sufficiency letters this year due to increase in tariffs (Section 201, 232, 301) and encourages importers to ensure they maintain an adequate bond that includes future projections of duties, taxes and fees to conform with CBP's continuous bond formula. CBP issued the following CSMS message to educate the trade on these issues: [CSMS# 18-000664 - Continuous Bond Sufficiency Review and Bond Stacking Liability](#)
- **Bond Sufficiency for Single Transaction Bonds (STBs).** These are also centralized with CBP's National Finance Center. With eBond, customs brokers should be aware they can change the bond amount filed at cargo release to ensure it is the correct amount when the entry summary is filed. Customs brokers should select "C" to change the bond amount. If the STB is not sufficient, CBP will issue a notice to increase the STB amount.
- **Cap on Continuous Bond Amounts.** Due to the increase in tariffs, many importers are experiencing a large increase in their continuous bond amount and may have difficulty meeting the requirements. Currently, there are only 137 continuous bonds over \$10 million and CBP will continue to evaluate this.
- **Supplemental AD/CVD Bond Formula.** CBP has revised its model and will continue to work with sureties in the Bond WG to conduct the table top exercise and also evaluate the formula for importers that have multiple AD/CVD cases.
- **FTZ WG recommendation to review continuous bond formula.** The Bond WG reviewed the recommendation made at the October meeting and will review the current bond directive in the next call.
- **Status of COAC Recommendations from 14th Term.** The Bond WG reviewed the prior recommendations on data sharing with sureties, ability to file 5106, and the supplemental AD/CVD Bond. CBP is working to provide updates on these recommendations and schedule meetings with the sureties to revisit the Supplemental AD/CVD Bond Formula.

Forced Labor Working Group (FLWG)

Since October 3, 2018, the Forced Labor Working Group held one conference call to advise the FLWG that it would be on hiatus while CBP worked on the Notice of Proposed Rulemaking (NPRM) to modernize Forced Labor regulations. The proposal to implement the Forced Labor Provision under Trade Compliance will be covered by the Trusted Trader Working Group going forward.

Intellectual Property Rights Working Group (IPRWG)

Since October 3, 2018, the IPWG held three conference calls. The first, to expand on the discussion of the proposed blockchain proof of concept and to engage potential participants to test out the feasibility of a blockchain based solution. The second, to kick off the new term with new members and to review a proposal for recommendations.

Additionally, the 2018 IPR Center Symposium was held on October 24, 2018, and focused on Leveraging the Influence of Social Media to educate consumers on counterfeit goods. The IPR Center is shifting more of its attention to social media platforms to inform and educate consumers about the dangers of counterfeit goods and more importantly, how the proceeds from their sale can threaten public health, safety and national security.

Conclusion

Going forward, the IE Subcommittee will discuss CBP's Trade Strategy 2020 for Intelligent Enforcement as outlined in the Trade Enforcement and Trade Facilitation Act (TFTEA). The IE Subcommittee will continue to leverage the existing IE Working Groups and its many trade stakeholders to provide feedback on the various enforcement sections of TFTEA and collaborate to help CBP achieve its dual goals of trade facilitation and enforcement.

In addition, the IE Subcommittee looks forward to hearing the public feedback the trade has on Intelligent Enforcement as part of the 21st Century Customs Framework. Several COAC members will be attending and speaking at the public meeting on March 1, 2019. We plan to incorporate much of this into our strategic planning and recommendations going forward.