

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

May 2019



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

**Co-Chairs
Heidi Bray – FCA US LLC
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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 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.

Three Working Groups have been active since the February 2019 COAC meeting: the AD/CVD, IPR, and Bond. 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 last COAC meeting in February 2019, the IE Subcommittee held two conference calls to review the activity of all the active working groups as outlined below.

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. The Subcommittee currently consists of three working groups. Each have had substantial tasks over the last few months and continue to work on recommendations.

Anti-Dumping and Countervailing Duty (AD/CVD) Working Group

Since February 2019, the AD/CVD Working Group held three conference calls to review and discuss the following issues:

- **Post Summary Corrections for AD/CVD Shipments:** When the Department of Commerce (DOC) does not update the AD/CVD deposit rates in ACE on a timely basis, the trade must file Post Summary Corrections (PSC) for AD/CVD and this opens the potential for compliance issues. For example, when you process the PSC, it does not generate any type of invoice for the cash deposits that are due within 3 days. This can also occur when a PSC is needed to change an entry from 01 consumption to 03 AD/CVD shipment. CBP should consider a trigger for the cash deposits that are due. CBP is monitoring all PSCs for AD/CVD entries to ensure they are issued correctly. If not done correctly, CBP will issue a 28 request or 29 to take action which includes collecting any cash deposits that are due. CBP recommends you call the DOC Call Center if you need any updates on AD/CVD cases in ACE. Otherwise, contact the Import Specialist, or the Center of Excellence & Expertise that is managing the AD/CVD Case.
- **Trade Remedies:** With the trade remedies, there are many live entries triggered due to absolute quotas. This makes for a cumbersome entry process because documents must be loaded into DIS and cannot be paperless. The trade would like CBP to develop a paperless process because live entries are becoming more common due to trade remedies and so many active AD/CVD cases (close to 480 now).
- **FTZ WG Recommendation:** The team discussed COAC recommendation #010302 involving goods subject to AD/CVD and trade remedies that enter a Foreign Trade Zone (FTZ). The COAC FTZ working group requested this recommendation and CBP would like an opportunity to discuss it with the relevant stakeholders.
- **Centers of Excellence & Expertise:** During our second call, the AD/CVD Working Group received an update from Mel Moreland, Director for the Consumer Products and Mass Merchandising Center. They handle some of the largest AD/CVD cases and were also involved in one of the largest fraud cases. We reviewed and discussed the press release issued by the Department of Justice and how an importer must be responsible for vetting its sourcing when dealing with Priority Trade Issues, such as AD/CVD, Forced

Labor, etc. <https://www.justice.gov/opa/pr/univar-usa-inc-pay-us-625-million-resolve-allegations-it-evaded-36-million-antidumping-duties>.

- **Tomato Case:** During our third call, we discussed the new AD/CVD case for Tomatoes from Mexico and how this allows bonds or cash deposits to be accepted during the preliminary stages of the investigation only because the initial proceedings date back to the 1990s. After 2011, only cash deposits are accepted during the preliminary and final investigation stages. If the AD/CVD margin is over 5% a separate single transaction bond or cash deposit must be made on each entry based on the applicable shipper rate and/or all-others country wide rate.
- **ACE AD/CVD Redesign:** Our third call focused on the improvements the DOC is working to make to the AD/CVD Case Management in ACE. Some of the new features that will be forthcoming once it gets released in Q4 19 include but are not limited to the following. The AD/CVD WG will continue to provide valuable feedback in this area.
 - **Expand Name Field.** Currently there has not been enough room for some of the company names listed in cases. This is being improved so all company names referenced in an AD/CVD investigation can be named within the record.
 - **HTS at 10-Digit Level.** All AD/CVD cases are being updated to have an HTS reference at the 10-digit level. Some old cases are only at the 6-digit or 8-digit level which has caused some problems identifying AD/CVD cases in your ABI software.
 - **Country of Origin Expansion.** There are some cases like Solar Panels that have separate AD/CVD case numbers for third world countries and differences between the country of origin declared to CBP vs. the origin used for an AD/CVD Case. Commerce is working to create and capture different AD/CVD Case Numbers for all these scenarios to make it easier to manage.

Bond Working Group

Since February 2019, the Bond Working Group held one conference call to review and discuss the following issues:

- **Review Bond Recommendations for FTZ Bond Requirements:** The Bond WG reviewed the recommendation (#010307) regarding the FTZ Bond amounts and how they are determined. Consistency across ports can be achieved with more guidance. Members of the Bond WG offered to work with CBP on a suggested formula that could be used and will be revisited in our next call.
- **Section 115 Risk-Based Bonding:** A CBP meeting was held in Virginia to review requirements with the ACE Trade Transformation Office, Office of Finance, Chief Counsel and all key stakeholders. Focus will be on additional STBs for AD/CVD since the COAC recommendations for a supplemental bond will take regulatory change and more programming. CBP already has a STB policy on its website, so we don't see how this policy is any different than today. Sureties would need to have more discussion on where this is headed. Another round of tabletop exercises with sureties is targeted for June/July 2019. The Bond WG expressed the need for AD/CVD to have a separate activity code to separate this liability for the regular entry risk since AD/CVD holds up

liquidation on the rest of the entry. CBP also stressed that AD/CVD was the first Priority Trade Issue being reviewed for Risk-Based Bonding. Where will the next focus be? Trade Agreements and other issues that impact revenue collection will be the primary focus.

- **New 5106 Rollout/Process:** New ACE rollout on March 16th with updates on March 18th plus CBP conducted pre- and post-deployment calls. Trade was invited, but there was very limited participation, feedback and disruption. By March 20th, no open helpdesk tickets remained. CBP is currently looking at the data they are being provided. The form states the data will be used for risk analysis and targeting. In the future, it is anticipated that this data will be shared with other government agencies.
- **Review Bond Recommendation for Pipeline Bond Requirements:** CBP will review Pipeline Bond Requirements and provide uniformity for what bonds are required and the liability created for Pipeline Operators. Main issue with the Pipeline WG was the Activity Code 3 Bond. Is this required for Canadian Pipeline Operators? This needs to be finalized to help close out the recommendation.

Due to conflicts with other meetings, the calls scheduled for April 16th was cancelled and the call on May 16th had to be rescheduled.

Intellectual Property Rights (IPR) Working Group

Since February 2019, the IPR Working Group held three conference calls to review and discuss the following issues:

- **February IPR Recommendations:** The IPR Working Group reviewed all the recommendations made at this meeting to discuss them more fully with CBP and develop a plan of action to address each of the recommendations as follows:
 - Recommendation 010351 – Additional Data Elements & Metrics
 - There was a lot of discussion about the additional data elements and why they were needed. CBP to provide future comment based on IT priorities.
 - Recommendation 010352 – Small Package
 - CBP distributed the eCommerce Multi-Modal Supply Chain Map from the February COAC meeting for review. The IPR WG needs to outline what is unique about Small Package that makes it different from this model; specifically, the risks or challenges.
 - CBP is looking for written thoughts on how to add or augment work already done with mapping.
 - Recommendation 010353 – Automation
 - CBP would like the IPR WG to provide feedback on automation priorities.
 - Recommendation 010354 – Regulatory
 - CBP needs to provide further feedback to the IPR WG.
 - Recommendation 010355 – Donation Program
 - CBP is looking for authentication type technologies and/or partnerships. The IPR WG will provide further feedback on where

CBP can focus its priorities and increase participation in the Donation Program.

- **eRecordation (Recommendation 010356):** The IPR Working Group established a separate team to develop recommendations to improve CBP's eRecordation process. The team has held four productive calls including an overview of the eRecordation process from CBP's Office of Regulations and Rulings (ORR). The team is in the process of developing recommendations that they will present to the IPR Working Group in our next call. We hope to present these recommendations at the COAC meeting in August.
- **IPR Blockchain Proof of Concept:** The IPR Working group received an update from CBP on the blockchain meeting that took place in March. The meeting was well attended and has already found test participants. The IPR WG looks forward to future updates as the proof of concept progresses.

Conclusion

The IE Subcommittee will continue to review CBP's Trade Strategy 2020 for Intelligent Enforcement. In addition, we will continue our focus on IPR and AD/CVD issues, and monitor the execution of and provide guidance for our previous recommendations.