

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

December 2019

COAC

COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE

**Commercial Customs Operations Advisory Committee (COAC)
December 2019**

**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, the following Working Groups reside:

- Anti-Dumping and Countervailing Duty (AD/CVD), co-chaired by Alexander Amdur, Heidi Bray and Lisa Gelsomino.
- Bonds, co-chaired by Randy Mitchell, Lisa Gelsomino and Kathy Wilkins.
- Forced Labor, co-chaired by Johanna Estes, Erika Faulkenberry and Brian White.
- Intellectual Property Rights (IPR), co-chaired by Laurie Dempsey, Amy Smith and Jody Swentik.
- Intellectual Property Rights 21st Century Customs Framework (IPR21), co-chaired by Laurie Dempsey, Amy Smith and Heidi Bray.

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, non-governmental organizations (NGOs) as well as participants from CBP and other Partner Government Agencies (PGAs).

Since the last COAC meeting in August 2019, the IE Subcommittee held three (3) conference calls to review the activity of all the active working groups as outlined below and received the following updates:

- **Joint Strategic Plan.** Under Section 105 of TFTEA, this plan is required every two (2) 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 continue to look to collaborate with CBP on this effort since the plan is due later this year.
- **21st Century Customs Framework.** The Subcommittee was briefed on the internal efforts of CBP in response to the Federal Register Notices on their comprehensive modernization effort and specifically how they plan to engage the Intelligent Enforcement Subcommittee in those efforts.
- **Intellectual Property Rights (IPR).** Customs announced the refocus of the IPR WG to work on the 21st Century Customs Framework (21CCF) goals in the IPR area. The focus will be to lay out the groundwork for supply chain mapping – looking on the industry side of what some of the rights holders are doing prior to the goods arriving. The kick-off meeting for the new IPR21 WG was on October 9th.
- **Forced Labor Working Group (FLWG).** After a brief hiatus, the FLWG kicked-off on September 27th.

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 IE Subcommittee currently consists of four (4) active working groups. Each have had substantial tasks over the last few months and continue to work on recommendations.

AD/CVD Working Group:

Since August 2019, the AD/CVD Working Group held three (3) conference calls to review and discuss the following issues:

- **AD/CVD Redesign** – This was successfully deployed in ACE on 10/5/19. CBP conducted a deployment support call on 10/7/19 and briefed the AD/CVD Working Group. The deployment was successful, and trade is thankful for the additional improvements that were made. Going forward any technical issues can be submitted to the ACE Account Service Desk (ASD) at 1-800-927-8729 or ACE.Support@cbp.dhs.gov.
- **GAO Report.** The AD/CVD Working Group was provided with the most recent [GAO-20-50R](#) report issued on 11/7/19 to discuss in our December call.

- **Risk Based Bonding** – The AD/CVD Working Group was given a presentation on the Risk Based Bonding Model for AD/CVD shipments. Since the implementation date has been delayed until March 2020, CBP will provide additional updates once the model is finalized.
- **Date of Duty Calculation** – CBP is still reviewing this matter as outlined in our last subcommittee report. We hope to have more definitive resolution before the next COAC meeting.
- **Alexander Amdur** – He is back from his temporary assignment and once again assuming his role as Director for AD/CVD Division. Alex also introduced the new members of his team.
- **Steel Pipe Spools** – The AD/CVD Working Group was asked to provide feedback on how to manage the complexity of this case in ACE.
- **Scope Rulings** – An update from the Department of Commerce will be provided in our December call.

Bond Working Group

Since the last COAC meeting in August, the Bond Working Group (BWG) held three (3) conference calls to discuss the following topics:

- **Continuous Bond Sufficiency.** CBP is current on getting these processed to the sureties each month. CBP reminded the trade that importers should project duties, taxes and fees for the future 12-month annual bond period to avoid disruptions in importations and potential for bond stacking. Bond sufficiency notifications will continue to increase due to ongoing and new tariffs. Through 8/31/19, CBP has issued over 10,000 insufficient bond notices to date.
- **5106 Processing.** CBP is current in processing these when submitted to the Revenue Division and a new 5106 should not be required to convert importers to periodic monthly statement.
- **Risk-Based Bonding for AD/CVD.** At the last COAC meeting in August, COAC recommended that implementation of the Risk-Based Bond program be delayed at least 90 days or until such time as certain technology and policy issues could be reviewed and resolved. During this additional time, the trade would also have time to complete additional desktop exercises and testing in the ACE CERT environment. CBP agreed to delay implementation to March 2020 and continues to discuss the following topics with the Bond WG.
 - How to identify a “new” importer that would be subject to risk-based bonding for AD/CVD shipments. CBP will work on flagging this in ACE and in the Bond Query that trade can run to identify new importers that have not had an 03 or 07 AD/CVD entry liquidate and not CTPAT Tier II or III (which are exempt from Risk-Based Bonding under Section 115 of TFTEA)
 - Calculating the STB based on total value of the goods at Cargo Release vs. the value of just the AD/CVD shipment for co-mingled shipments. CBP understands the concerns from the trade and are reviewing the policy. However, CBP is

limited to calculating the STB at the time of Cargo Release and the data available at that time.

- ACE functionality to properly reject an entry that requires the STB for a new importer of AD/CVD as defined. A revised CATAIR for Cargo Release was posted on 7/23/19 at <https://www.cbp.gov/document/guidance/ace-catair-cargo-release-chapter> and available in CERT on 8/20/19.
- Since the last COAC meeting and the recommendation to seek more input from the trade, CBP also hosted additional outreach on Risk-Based Bonding as follows:
 - NCBFAA Webinar on 9/11/19
 - Customs Surety Executive Committee (CSEC) Meeting on 9/24/19
 - CSEC and TSN eBond Committee Meeting on 11/7/19
 - CBP plans to make a presentation to the full COAC before year end or Q1 20
 - Questions received from this additional outreach will also be used to develop a Frequently Asked Questions (FAQ) document about Risk-Based Bonding.
- **FTZ Bond Amounts.** The Bond WG collected live data on a few FTZs to compare the on-hand inventory value and the duty implication on any given day to determine the potential loss of duty to CBP due to a catastrophic loss. Currently the group is further reviewing the data and working with sureties to consider their findings and potential for a revised bond formula. The Bond WG hopes to make a recommendation at the next COAC meeting in 2020.
- **Pipeline Recommendation.** The Bond WG has been reviewing the prior recommendation from the Pipeline Working Group to develop a uniform bond policy for pipeline operators. The Bond WG is waiting for CBP to provide additional information in our next call.
- **International Carrier Bonds for Airlines.** The Bond WG will be reviewing how the bond amounts are being calculated.

Forced Labor Working Group

The Forced Labor Working Group (FLWG) was initially established on July 13, 2016, and re-established September 27, 2019, as part of the Intelligent Enforcement Subcommittee. The SOW for the current FLWG encompasses the following four Objectives:

- **Forced Labor Allegation**
 - Defining the elements of a credible high-quality allegation, including the mechanisms of reporting.
 - Types of documents that comprise a credible high-quality allegation.
- **Meaningful CBP Form 28 to ascertain forced labor due diligence**
 - Defining a meaningful forced labor CBP Form 28
 - Informed Compliance forced labor questions
 - Specific inquiry related questions

- **Industry Collaboration and Leadership to address Forced Labor**
 - Engage industry organizations taking a leadership position to combat Forced Labor
 - Identify best practices, and
 - Identify industry standards that can be adopted
 - Identify and catalog best practices for identification of forced labor supply chain risks
 - Develop methodology for ways industry can take a collaborative approach to combat Forced Labor practices and improve supply chain traceability as it relates to forced labor
- **Statutory Guidance related to disclosure and mitigating factors**
 - Develop guidelines on the disclosure procedure and reporting requirements that importers should follow when an incident of forced labor is found to reasonably exist in their supply chain.
 - Identify reasonable mitigating factors that CBP can consider for voluntary self-disclosure, full cooperation, and timely and appropriate remediation related to forced labor violations.

Since the last public COAC meeting held on August 21st, 2019 in Buffalo, the FLWG held three calls. These calls have focused on gathering and discussing members feedback for the first two objectives: 1. Defining elements and documents for a high-quality forced labor allegation and 2. Developing a meaningful CBP Form 28 to ascertain forced labor due diligence.

Additional efforts of the FLWG since the last public meeting have concentrated on ensuring that the subject matter experts with diverse industry representation and Non-Government Organizations (NGOs) are well represented in the working group in order to have a well-balanced perspective about the different topics covered on the SOW.

During the next quarter, the FLWG will continue discussing relevant information to the topics in scope and recommendations are expected to be presented during the next COAC public meeting.

Intellectual Property Rights – 21st Century (IPR21WG)

Since October 2019 the IPR WG has been put on hiatus and a new IPR21 WG was established under the 21CCF. The focus of the new IPR21 WG will be on supply chain mapping and processes that occur prior to goods being imported. The Working Group will be focusing on the following areas:

- Strengthening partnerships between CBP and the trade community to promote compliance with IPR laws and enhance enforcement;
- Improving effectiveness of IPR risk assessment;
- Identify effective approaches for deterring IPR violations;
- Streamlining and modernizing IPR processes through improved use of technology; and,
- Supporting other steps to enable more effective administration of IPR operations.

The IPR21WG is currently working on mapping the IPR process from the beginning. The exercise will cover all steps in the process from the first article of inspection, licensing process, approving manufacturers, and all steps in-between until import. The WG is scheduled to have a face to face meeting in Washington D.C on December 5.

Additionally, as follow up to the comments the COAC submitted to the Presidential Memo “Combatting Trafficking in Counterfeit and Pirated Goods”, members of COAC had an opportunity to meet with the DHS Office of Strategy, Policy and Plans in Washington, DC on September 13, 2019. These sessions provided an opportunity for members of the private sector to expound on comments formally submitted through the Department of Commerce’s Federal Register Notice, highlight specific concerns, and submit additional comments regarding the report required by the Presidential Memorandum. Along with DHS Headquarters, the event included representatives from U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, U.S. Trade Representative, Department of Commerce, White House Office of Trade and Manufacturing Policy, and Intellectual Property Enforcement Coordinator. The COAC looks forward to receiving further briefings from DHS on the final recommendations made to the White House at the end of October.

The IPR WG will not be submitting any recommendations for the December COAC meeting.

Conclusion

The IE Subcommittee looks forward to collaborating with CBP on the Joint Strategic Plan and developing recommendations on the new priorities for the IPR21 and Forced Labor Working Groups. In addition, we will continue our focus enforcement-related priorities in Bonds and AD/CVD.