

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

April 2020

COAC

COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE

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

Co-Chairs

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Intelligent Enforcement Subcommittee Members:

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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).

We are pleased to advise that Ana Hinojosa is the newly appointed Executive Director for the Trade Remedy Law Enforcement Directorate (TRLED) and will act as the Government Chair for the IE Subcommittee. We are excited to work with XD Hinojosa to finish out the last year we have in the 15th term of COAC. Eric Choy is the newly appointed Deputy Executive Director of TRLED. The TRLED oversees the Civil Enforcement Division, Enforcement Operations Division, Forced Labor Division, National Threat Analysis Divisions and Trade Analytics & Innovation Division. Ana Hinojosa will act as the Government.

Since the last COAC meeting in December 2019, the IE Subcommittee held three (3) 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 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 December 2019, the AD/CVD Working Group held six (6) conference calls to review and discuss a variety of topics including Risk-Based Bonding which will be more fully addressed in the Bond Working Group. The remainder of calls focused primarily on developing a policy for pipe spools. Pipe spools are prefabricated components of a piping system consisting of various types of pipes, flanges, elbows, and fittings, and may contain line pipes and other components manufactured in multiple countries. Pipe spools, made of steel, may be subject to Section 232 duties or quotas, Section 301 duties, as well as antidumping and countervailing duties (AD/CVD), based on the country of origin of the component and the AD/CVD scope.

It is not uncommon for a pipe spool to be manufactured with pipes and other components from multiple countries. While the entire pipe spool has one tariff classification, the country of origin of the components of the pipe spool is unique to each component and there have been a variety of rulings issued on this. The AD/CVD Working Group reviewed the current AD/CVD case and various rulings surrounding pipe spools to develop better policy guidance on how these entries should be declared on an entry and reported in ACE, especially with multiple countries of origin.

On March 24, 2020, CBP issued [CSMS #42133823](#) that provided Entry Summary Guidance for Pipe Spools from Multiple Countries of Origin and provided an example for the calculation. CBP-HQ also conducted a follow-up call with the Center of Excellent & Expertise for Machinery and an importer of pipe spools to ensure the CSMS is being fully understood by the trade to comply with this new guidance. The trade is encouraged to submit any additional questions about this to the Center of Excellence and Expertise, or request a ruling from CBP's Office of Regulations and Rulings at <https://www.cbp.gov/trade/rulings>.

Looking forward, the AD/CVD Working Group plans to address challenges with Critical Circumstances, Scope Rulings, and Trade Remedies since this new division reports into the AD/CVD Division.

Bond Working Group

Since the last COAC meeting in December, the Bond Working Group (BWG) held four (4) conference calls to discuss the following topics:

- 1) **Risk-Based Bonding for AD/CVD.** On January 28th, CBP held a joint COAC AD/CVD and Bond Working Group call to advise that risk-based bonding would be delayed. After legal review, CBP decided to issue a Notice of Proposed Rulemaking (NPRM) to seek public comment on requiring an additional Single Transaction Bond from “new” or high-risk importers. CBP did not provide a specific date for the NPRM other than it plans to issue in 2020. In the interim, CBP continues to have authority to request STBs on high-risk AD/CVD shipments per <https://www.cbp.gov/trade/priority-issues/adcvd/bonds>.

CBP also plans to issue an Advance Notice of Proposed Rulemaking (ANPRM) to address how CBP calculates continuous bonds to ensure CBP is considering risk-based factors as required under Section 115 of TFTEA. CBP does not expect to issue this until 2021 or beyond. CBP’s current continuous bond formulas used to manage bond insufficiency on a rolling 12 month basis can be found on CBP.gov at the following link: <https://www.cbp.gov/document/guidance/current-bond-formulas-updated-october-24-2013>.

COAC previously made recommendation #010096 indicating that the current Reviewer and Analytical Bond Formulas are already sufficient to protect the revenue and satisfy priority trade issues if CBP would fully execute them. CBP has been actively monitoring the Reviewer’s formula through its monthly continuous bond insufficiency reviews. In fact, CBP issued a record number of over 12,000 continuous bond insufficiency notices in 2019 due to the Section 201, 232 and 301 tariffs. CBP has no automated means to review the Analytical formula, which does contemplate high-risk importers who have outstanding debt. CBP plans to have an automated process in ACE by year end.

COAC has encouraged CBP to update its 1991 Monetary Guidelines for Determining Bond Amounts, [Directive 3510-004](#). The document is extremely outdated and does not address the single window in ACE. COAC previously made recommendation #010095 and asks for the Directive to be updated to provide clarity to the trade on various matters.

“Activity Code 1 Single Transaction Bonds (STBs): COAC recommends that CBP seek to clarify and streamline the current bond formula if subject to Partner Government Agency (PGA) 18 | Page requirements so the trade can fully automate compliance within ACE at the HTS and line level, and CBP can more easily conduct sufficiency reviews. Such guidance should include clarifying which PGAs with hold authority are subject to bonding requirements for three times the value, and that this higher bond formula does not include PGAs that are disclaimed in ACE.”

- 2) **FTZ Bond Amounts.** The Bond WG has provided CBP with an extensive amount of data and revised continuous bond formulas that CBP can consider using for foreign-trade zone (FTZ) operations to ensure a fair and uniform process. Currently, different ports are requiring bond amounts that do not rely on any formula and basing the bond amount on values instead of the risk of duty which is very low for FTZs. The minimum FTZ continuous bond amount is \$50,000 yet some ports are asking for as high as \$250,000 to \$400,000 for a new FTZ operation with no justification. This is not a level playing field for FTZ operations and causing barriers to entry that COAC is asking CBP to resolve. The Bond WG hopes to have updates or recommendations at our next meeting in July.
- 3) **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 still waiting for guidance from CBP to resolve this issue and hopes to provide updates at the July meeting.

- 4) **International Carrier Bonds for Airlines.** Due to the severity of COVID-19, CBP advised they were not requiring compliance with the international carrier continuous bond increases that were sent out on March 6, 2020. Although some air carriers had already complied, those bonds will remain in force. Since the Federal government suspended travel, CBP understands the hardships facing the airline industry and the impact to passenger user fees. CBP will rerun the international carrier bond insufficiency in August 2020 due to the anticipated impact of refunds on the May 1st and July 31st payments. Airline companies should keep careful records of such adjustments for audit purposes. The airlines must be prepared to establish that they have remitted or refunded all fees collected and that they have not retained any fees for their own use.
- 5) **Duty Deferral.** On March 20th, CBP issued [CSMS #42097586](#) indicating that due to the severity of COVID-19, CBP would approve on a case-by-case basis additional days for payment of estimated duties, taxes and fees due to the emergency. On March 26th, CBP issued [CSMS #42161666](#) advising they were no longer accepting requests for additional days of payment and then issued CSMS 4217931 advising all payments for these extensions were due on March 27th and accepted payment by ACH or FedWire. To date, CBP is still collecting these funds and indicates they will take into consideration the delays caused by the severity of COVID-19 to mitigate the issuance of any liquidated damages for late files of entry summaries and/or payment of duty.

Since there continues to be rumors that the White House may or may not delay these requests, COAC Bond Working Group had a call with CBP on April 2nd to review and discussed some of the challenges that would exist to handle a delay in the payment of duty plus the additional risk it brings to CBP and sureties for non-payment. The COAC Bond Working Group reviewed a white paper put together by the Customs Surety Executive Coalition (CSEC) in conjunction with the National Customs Brokers and Forwarders Association of American (NCBFAA) provided as Appendix A of this IE Subcommittee Report. This includes additional feedback provided from the Bond Working Group during the call. This is a very fluid situation, and the COAC will continue to provide feedback as these issues evolve.

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 related to Forced Labor**
 - Define elements of a CBP Form 28 for a specific inquiry related to an entry that is subject to a WRO.

- Work product should lead to criteria required to demonstrate Proof of Admissibility to CBP - 19 CFR § 12.43.
- **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.

As reported during the last public COAC meeting held on December 4th, 2019 in Washington, D.C., the FLWG membership was expanded to include additional subject matter experts with diverse industry representation and Non-Government Organizations (NGOs). The additional FLWG members were divided into teams based on area of expertise to address the following objectives:

1. Meaningful CBP Form 28 related to Forced Labor;
2. Industry Collaboration and Leadership to address Forced Labor; and
3. Statutory Guidance related to disclosure and mitigating factors.

During this time, each of the teams held bi-weekly calls to develop the work product and supporting recommendations. The FLWG held four calls since the last public COAC meeting to review progress and provide feedback on the work product for each of the teams.

For the April 15 meeting, recommendations will be presented that include elements of a credible high-quality allegation; Forced Labor CBP Form 28 questions that incorporate criteria related to proof of admissibility; and statutory guidance related to a forced labor prior disclosure.

The Industry Collaboration team will continue to work towards achieving the objectives from the SOW in the next quarter. This team has developed the framework for a white paper that will include a catalog of industry organizations identified in the course of work; summarize key practices across sectors used to address forced labor in the supply chain; highlight industry related challenges; and discuss consideration for industry not engaged and will include supporting recommendations. The FLWG will continue to conduct additional due diligence related to mechanisms for reporting forced labor allegations during the next quarter.

Intellectual Property Rights – 21st Century (IPR21WG)

In October 2019, the IPRWG was put on hiatus, and a new IPR21 WG was established under the 21st Century Customs Framework. The focus of the new IPR21 WG will be on supply chain mapping and processes that occur prior to goods being imported. The IPR21 WG is focusing on the following:

- 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.

After establishing the new IPR21 WG, an on-site meeting was kicked off on December 5. The goal of the meeting was to obtain insight into and refine the current state of the intellectual property rights (IPR) import process map. The discussions centered on identifying the art of the possible for collaborations between Customs and Border Protection and rights holders regarding enforcement. The Working group was divided into two teams; Team 1 to focus on the e-recordation system and Team 2 on data sharing, DHS Report on IPR Trafficking and Presidential Memo on eCommerce.

Team 1 examined matters related to the e-recordation portal and procedures for trademarks. The charter of the Team was to consider how a “clean-sheet” approach would manifest, and therefore reflect an idealized state of business process. Further exploration, as well as investment, in terms of people and/or budgetary expenditure, will be required to bring the recommendations from concept to reality. These recommendations reflect the Team’s collective view about how to best accelerate cooperation between trade actors and CBP in a more coordinated and effective fashion to enforce IPR.

In keeping with the ‘clean sheet’ approach, the trade envisions an electronic environment in which IPR enforcement is made more effective and efficient in the following fundamental ways:

- I. e-Recordation - flows automatically from the registration of IPR.
- II. Is the hub for data upon which CBP can rely to target IPR violations.
- III. The CBP system should also be a hub for data from CBP.
- IV. Is a hub or portal for interactivity, allowing CBP and IPR owners the ability to share information in real time to assist CBP and sister law enforcement agencies make enforcement determinations.

Team 2 focused on IPR issues that involved data sharing, regulatory rewrite, public outreach, and discussion of The Department of Homeland Security Report on Combating Trafficking in Counterfeit and Pirated Goods issued on January 24, 2020 and Presidential Executive Order for Ensuring Safe & Lawful E-Commerce for US Consumers, Businesses, Government Supply Chains, and Intellectual Property Rights issued on January 31, 2020.

Both teams put together recommendations that were scheduled to be discussed and reviewed during an in-person meeting that was scheduled on March 18-19. Due to the severity of the COVID-19 virus, the in-person meetings were converted to webinars and phone calls to review the recommendations with the entire IPR21 WG. There are 29 recommendations that will be presented at the COAC meeting on April 15th and hoping with additional recommendations at the July meeting that will address Denied Parties Lists for IPR Enforcement and other evolving issues.

Conclusion

The IE Subcommittee looks forward to presenting recommendations from the Forced Labor and IPR Working Groups at the April meeting. All four (4) of the IE working groups continue to be active. Looking forward, we will continue to focus on AD/CVD, IPR and Forced Labor as well as other priority trade issues and enforcement modernization.

Appendix A

Duty Deferral

NCBFAA/CSEC White Paper

In preparation for a decision from government to allow for a 90-day deferral of duty payments, members of the NCBFAA and the surety industry want to start discussing the following concerns to work in collaboration with CBP to address them.

Duty Deferral Concerns

- If approved, what payments can be deferred?
 - Duty
 - Regular
 - Trade Remedy: Section 201, 232 and 301
 - ADD/CVD
 - If TR and ADD/CVD not deferred – filers may have to submit 2 entries
 - Taxes
 - IR taxes
 - Fees
 - MPF
 - HMF
 - Various other PGA required fees
 - Airline Passenger/Customs User Fees (not due until mid-May)
- Only regular duty, taxes and fees on an entry summary should be allowed for deferral. If any trade remedy or ADD/CVD duty exists, the whole summary must be paid.

Feedback from Bond Working Group

- Brokers would need to create two (2) different entry summaries. How does this work on a statement? Can two statements be issued?
- Periodic Monthly Statement, could you separate into two statements for regular duties vs. trade remedy and AD/CVD?
- What about separating Most Favored Nation (MFN) Status? This is another challenge and ABI vendors will have a hard time programming for this or separation of duties.
- Will importers be able to opt into duty deferral? Not all importers will need to do so, should only be due to delays caused by COVID-19.

Exposure to CBP Concerns

- The 90-day deferral should have an end date. Importers should not be allowed to defer payment for an unlimited amount of time.
- Only importers already approved to pay on a monthly basis should be allowed to defer payment. It is in the government's best interest to limit extension of time to pay for a 30-day period and then re-evaluate. Otherwise, CBP is exposed. If an importer fails to pay (i.e., goes out of business, files for bankruptcy), the surety is only liable for the bond amount. There will be unpaid debt that the government will not be able to collect.

Example of Continuous Bond Exposure to CBP

- Importer pays \$10M in duties, taxes, fees in past 12 months x 10% = \$1M continuous bond
- Importer pays on average \$833,333 per month. 90-day deferral = \$2.5M duties, taxes, fees
- Continuous Bond is \$1 million. If importer defaults, surety pays \$1M and CBP out \$1.5M

Importer Qualification Concerns

- How will CBP approve deferral requests? There is concern that all importers will automatically be approved to defer payment and could pose a risk to CBP. We recommend a vetting process and requirements:
- Importers should not have unpaid debt, debit vouchers, unprotested ID bills, FPF cases not petitioned
- Should Importers be domiciled in the U.S. since not all areas of the world are impacted by the pandemic equally?
- What about new importers or established liquidation history?
- Should importers have a continuous and sufficient bond?
- Should importers already be on a periodic monthly statement vs. single pay?

Feedback from Bond Working Group

- Can surety provide approval for delay through eBond?
- Importers will need alternate ways to pay like Fed Wire or Pay.go, since it's very difficult for importers to get a check issued if office is not open and everyone working remotely, etc.
- Per CBP, these systems are still a manual process and CBP is reviewing.

ACE System Concerns

- Surety and Customs Broker Filer must be advised of approved deferrals
- The rights of the surety may be prejudiced if they have no knowledge of duty deferral
- The surety must receive notice from CBP. Options include:
 - Duty Deferral Bond Rider (similar to the deferred tax rider)
 - Re-institute the periodic monthly statement rider
- New Entry Summary Code for Filer to transmit in ACE? (must be available to sureties in Automated Surety Interface/ASI)
 - New code under "Pay Basis Indicator"
 - New code under "Deferred Tax Payment Code"
 - New code under "Payment Type Code"

Feedback from Bond Working Group

- ABI vendors would have to review these options. Brokers do have pay codes so could add a deferral code that could help identify this
- What about regulatory requirements to file multiple entries? Regulations do allow for this but need to be sure the Bill of Lading piece count is reconciled to the Cargo Release/Entry Summary. There are regulations that allow for multiple entries against a single parcel.

Bond Sufficiency and Claim Concerns

- Will bond sufficiency be determined in the usual manner?
 - Monthly sufficiency review of total duty, taxes and fees paid or payable for the last 12 months. This is the Reviewer's formula.
 - Will CBP consider a higher bond amount for importers with duty extensions as part of a new condition in the analytical formula?
- The Reviewer's formula is based on "paid or payable" so this formula should not change for importers with deferred duty payment approval
- Would liquidation be extended? Would CBP waive all liquidated damages for late files?
- Entry summary data reflects revenue collection so it should not be extended