

**Commercial Customs Operations Advisory
Committee (COAC)
Rapid Response Subcommittee
COVID-19 CBP & PGA Regulatory Discretion
Recommendations & Background**

April 15, 2020

COAC

COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE

Commercial Customs Operations Advisory Committee (COAC)
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COVID-19

Recommendations

1) Duty & Revenue Collection:

COAC recommends that CBP should relax and be flexible in its collection of duties, fees and taxes to the greatest extent possible to assure the economic health and stability of the trade and logistics industry.

2) Communication & Notification:

COAC recommends that CBP and the PGAs should adopt a consistent, clear and transparent communication process to share and receive vital information from stakeholders leveraging technology whenever possible.

3) 1USG Approach:

COAC recommends that the government agencies impacting trade and logistics must adopt a 1 USG approach, incorporating the BIEC, to ensure trade flows continue despite multi-jurisdictional admissibility and/or revenue collection requirements.

4) Inspection & Enforcement Discretion:

COAC recommends that except for life threatening concerns or egregious violations during the national emergency, CBP should exercise its discretion to inspect cargo and to engage in informed as opposed to enforced compliance and mitigate or cancel claims altogether where such non-compliance does not pose a threat to consumer health, safety or welfare.

Background:

The United Nations Conference on Trade and Development (UNCTAD) has indicated that apart from the tragic human consequences of the COVID-19 coronavirus epidemic, the economic uncertainty it has sparked could cost the global economy up to \$2 trillion this year. Accordingly, UNCTAD and other international bodies are calling upon governments to take urgent steps to reduce the economic impact.

To this end, the COAC appreciates the actions CBP has already taken and is considering in order to diminish some of the impact the pandemic has had, and is expected to have, on the trade. At CBP's request, the COAC met virtually to coalesce its own as well as to review other associations' suggestions to identify ways in which CBP and the PGAs can exercise regulatory discretion to help ensure that the trade ecosystem remains intact in order to maintain the critical flow of cargo that is essential during this crisis¹. We are pleased to have the opportunity to provide these suggestions in this white paper, some of which may lead to formal COAC recommendations.

Discussion: Introduction

The Cybersecurity and Infrastructure Security Agency (CISA) has identified sixteen (16) critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the U.S. that their incapacitation or destruction would have a debilitating effect on our security and economy. Not only has the CISA and DHS indicated that such critical sectors have a special responsibility to maintain normal work schedules, but it has released guidance to help state and local jurisdictions and the private sector identify and manage this workforce while responding to COVID-19.

CISA had identified transportation and logistics as a critical infrastructure sector. First and foremost COAC suggests that DHS and CBP recognize publicly that this sector includes companies comprising and/or dedicated to servicing any nodes of the supply chain whether cargo is moving in bound or outbound including but not limited to: customs brokers, freight forwarders, indirect air carriers, ocean and land cargo carriers, couriers, importers, exporters, warehouses, truckers, FTZs, 3PLs, sureties, software service providers, trade attorneys/consultants, etc. Accordingly, the federal government not only should adopt emergency programs providing any necessary financial relief (permanent or temporary), as appropriate, to ensure such companies stay operational but also should take a whole of government or 1USG approach to relax, and where possible waive, regulatory administration and enforcement wherever possible.

¹ In particular, the COAC notes the suggestions that the NCBFAA and CSEC have raised in their CBP presentations and submissions.

Duty & Revenue Collection

Strategy: CBP should relax and in effect “compromise” and be flexible in its collection of duties, fees and taxes to the greatest extent possible to assure the economic health and stability of the trade and logistics industry.

1. CBP and the PGAs should consider an industry-wide trade and logistics forgiveness plan, including a waiver on all duties, taxes and fees as well as section 201, 232 and 301 retaliatory tariffs, while a national emergency exists so that all stakeholders may continue to operate, including customs brokers and customs sureties who based on current laws are held liable for any debt.
2. Alternately, CBP and the PGAs should align with IRS policy to provide an industry-wide ninety (90) day delay or deferral on all duties, taxes and fees with appropriate time frames, notice to all stakeholders (e.g., importers, brokers, sureties), and bond sufficiency guidelines.
3. CBP should waive or compromise new or past due payments of duties, taxes and fees and liquidated damages, including payments related to past liabilities such as denied protests, petitions or tenders where demonstrated to be necessary for a company’s operations to survive the pandemic and associated economic impact.
4. CBP should not charge interest on supplemental duty bills for a minimum of six (6) months.
5. CBP should suspend demands to terminate and replace bonds based upon sufficiency calculations, particularly in the case of granting duty deferrals or waivers.
6. CBP should ensure that the National Finance Center continues to process, and where possible accelerate, refunds associated with trade remedy tariffs, drawback entries, protests, PSCs, etc.
7. CBP should explore other means (besides ACH or check) of allowing importers to pay duties on an entry summary directly to CBP similar to FedWire, which it used during the recent “snow days.”

Communication & Notification

Strategy: CBP and the PGAs should adopt a consistent, clear and transparent communication process to share and receive vital information from stakeholders leveraging technology whenever possible.

1. CBP and the PGAs should develop a unified COVID-19 webpage setting forth trade and logistics related updates, in addition to the continued use of the Cargo Systems Messaging Service (CSMS) email messages.
2. CBP should continue to hold weekly COVID-19 updates for the trade, as has been the case thus far, incorporating PGAs as appropriate.

3. CBP should develop and set forth a contingency plan that advises the trade how it will prioritize, and address cargo flows particularly if front-line officials are required to self-isolate/ quarantine.
4. CBP should ensure all requests for information, notices of action or other post entry (including audit) communication to regulated entities not only are provided via ACE and regular mail but also e-mailed to the point of contact(s) listed in the ACE portal, to customs brokers and the surety on file for the entry
5. CBP and the PGAs should send all enforcement actions (liquidated damages claims, detention and seizure notices, pre-penalty and penalty notices, audits) and decisions via e-mail in addition to regular mail, otherwise they must grant extensions because most businesses are closed and unable to receive email particularly in states that are locked down.
6. CBP and the PGAs should automatically grant extensions to respond to any inquiries or claims.
7. For liquidations in which the 180-day protest period would expire on March 1, 2020 or later. CBP should provide a protesting party up to 365 days to submit additional information to support a protest before CBP issues its determination, if the protest is filed and the request is made within the 180-day required time frame, until such time that the government terminates national or local emergency designations.
8. CBP, Census and PGAs should grant extensions for resubmitting rejected or flawed entries or EEIs.
9. CBP and the PGAs should notify sureties and customs brokers in an automated fashion of all non-payment or deferred payments to promote and maintain visibility and coordination.
10. CBP port directors should exercise their authority to grant bonded warehouses, centralized examinations stations (CES), container freight stations (CFS), Foreign Trade Zones (FTZs), and other facilities provisional authority to operate or reconfigure in the event non-critical information is unavailable or cannot be reviewed.

1 USG Approach

Strategy: The government agencies impacting trade and logistics must adopt a 1 USG approach, incorporating the BIEC, to ensure trade flows continue despite multi-jurisdictional admissibility and/or revenue collection requirements.

1. CBP, the USTR and its USCMA partners should delay USMCA's entry into force until no earlier than January 1, 2021 and provide a transition or implementation period for the year where NAFTA qualifying goods with appropriate certificates of origin will be considered to comply under the USMCA. Now is not the time to implement a trade agreement that contains so many important and meaningful changes that will impact

certain industries in a significant financial manner. The trade simply is not, and will not be, ready to shift from NAFTA to USMCA on June 1, 2020.

2. APHIS CORE ACE transmissions should be delayed until no earlier than January 1, 2021.
3. CBP and PGAs should suspend or waive registration and permit requirements for products such as PPE that are critical for the health, safety and welfare of U.S. citizens.
4. CBP and the PGAs who require original certificates, permits, etc. for release of goods should enable filers to provide such documents via DIS (Document Imaging System) or e-mail, for the time being, waiving the production of the original document which the filer or other party to the transaction would maintain. Some examples include but are not limited to: i.) Veterinary Certificate (USDA), ii.) Phyto-sanitary Certificate (USDA); iii.) Sterilization Certificate (USDA); iv.) CITES (F&W); v.) Carnets (CBP); vi.) Delivery Verification Certificate or DVC (CBP); vii.) Pasta Certificates (CBP); viii.) Vriksh Certificates (USDA); ix.) Bureau of Fisheries and Aquatic Resources (F&W); x.) DEA Certificate (CBP); and xi.) original AGOA visas (CBP).
5. CBP and PGAs should grant CTPAT members/trusted traders front of the line privileges for cargo release where infrastructure allows, particularly in the case of port closures or delays. PGAs should recognize CBP trusted trader status as well in making admissibility decisions.

Inspection & Enforcement Discretion

Strategy: Except for life threatening concerns or egregious violations during the national emergency, CBP should exercise its discretion to inspect cargo and to engage in informed as opposed to enforced compliance and mitigate or cancel claims altogether where such non-compliance does not pose a threat to consumer health, safety or welfare.

1. CBP and PGAs should encourage port officials and appropriate personnel to allow for diversion of cargo to other ports of entry or export due to port or other infrastructure closures or health threats/risks without the trade having to re-key and or re-file entries that were already pre-keyed and or transmitted to CBP and the PGAs.
2. CBP should not issue inbound or outbound manifest, ISF, ACAS, Census or related transportation/security related enforcement claims due to diversions of cargo or changes to the port of arrival or exportation.
3. CBP should not issue late entry or payment filing fees. If necessary CBP should provide a warning in more egregious situations.
4. CBP and PGAs should waive redelivery requirements and request product information, documentation and images in lieu of physical inspection, where the health, safety and welfare of the consumer would not be compromised. CBP should waive claims for the failure to redeliver, where possible, and only in critical cases require redelivery but at a local jurisdiction where the cargo is located.

5. CBP should extend or waive inbond time frames and provide flexibility to close inbonds at ports other than designated in the CBPF 7512.
6. CBP should extend or waive general order time frames.
7. CBP should provide flexibility for direct delivery to FTZs and to transfer cargo to/from FTZs.
8. CBP should not hold cargo due to forced labor concerns, except for the most egregious scenarios for instance when clearly subject to a WRO, but address through other mechanisms such as monetary penalties.
9. CBP should waive storage charges for cargo seized at government contractor warehouses.

Conclusion:

The COAC appreciates the flexibility and innovation that CBP and the PGAs have demonstrated considering this unprecedented pandemic. The trade community looks forward to the opportunity to continue the dialogue to implement these suggestions designed to ensure that the trade and logistics industry is in a position to continue to serve the American people in a manner that supports the health and safety of the Homeland.