

**COMMERCIAL CUSTOMS OPERATIONS ADVISORY
COMMITTEE
(COAC)**

U.S. Customs and Border Protections

Virtual Quarterly Public Meeting

Wednesday, October 7, 2020

1:00 p.m. - 5:00 p.m.

OPENING REMARKS

CBP Office of Trade Relations Executive Director John Perdue opened the meeting. He apologized for the late start and introduced the next speaker.

CBP Acting Commissioner Mark Morgan commented on the challenges with virtual meetings. It was emphasized how much COAC relies on the active participation from both the government agency participants and virtual sector colleagues and thanked everyone for their participation. The new Deputy Executive Assistant Commissioner for the Office of Field Operation, Diane Sabatino, was introduced. He then opened the floor for others to give opening remarks.

Treasury Deputy Assistant Secretary Timothy Skud greeted the participants. He commented that the COAC members are interested in the various aspects of United States Mexico Canada Agreement (USMCA) implementation, challenges within the administration of small direct to consumer shipments, and the CBP Ruling Process. He looks forward to the upcoming discussions.

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Department of Homeland Security (DHS) Acting Deputy Assistant Secretary Michael Ding echoed that he is looking forward to working with the group, particularly working together on high priority issues.

Homeland Security Investigations/Immigrations and Customs Enforcement (HSI/ICE) Deputy Assistant Director Patrick McElwain, filling in for Acting Deputy Associate Director Matthew Allen, was introduced and he gave appreciation for the opportunity for HSI/ICE to address the group. Touching on some interagency highlights, it was pointed out that a new Trade Enforcement Coordination Center has begun.

Additionally, the interagency operation focusing on COVID-19 fraud Operation Stolen Promise, had over 1,300 seizures, 130 arrests, and over \$10 million in proceeds seized during the last fiscal year. Another highlight was given on two new agreements for IPR Center Partners: Michigan State University the Motion Picture Association. Lastly, he highlighted two enforcement cases and stressed the great interagency response by all involved.

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COAC Trade Co-Chair Lenny Feldman noted the immeasurable gratitude for the dedication of CBP and DHS throughout the country for securing and protecting the borders. After reviewing and discussing past Commercial Operations hearings and COAC Meetings, there is a need to take a step back and look at what lessons have been learned.

These lessons focus on duty and revenue collections, communication flows relating to the COVID-19 pandemic, automating that communication, building the 1-USG paperless approach, and look at inspection enforcement discretion as needed in an intelligent enforcement modernization approach. It was stressed that not only will this require the right person at the right time in the right place to provide the data, but it needs to be conducted simultaneously with the changing trade agenda and trade agreements. Concluding, an overview was given of the upcoming discussions relating to these issues in relation with the 21st Century Framework and the COVID-19 pandemic.

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COAC Trade Co-Chair Brian White thanked the members of COAC for their participation and congratulated CBP and Valarie Neuhart's team on the first virtual trade week. It was a great demonstration of a large group participating together online in a meaningful way. He then stressed the importance of continuous learning relating to rapid changes through the continued participation between peers within the trade community. Furthermore, there is an importance of agility and making adjustments as the impacts, learnings, and needs change within the community.

Acting Commissioner Morgan quickly commented on the virtual trade work, stating that the silver lining of conducting it virtually was that there was a significant increase in the number of participants compared to in-person meetings. He also stressed CBP's eagerness to welcome more members of COAC within the public forum as it generates meaningful collaboration. Furthermore, the ever-present commitment to send a clear message to the entire international trade community the intolerance of illicit and inhumane practices of sending goods that have

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been produced by forced labor, specifically within the United States supply chain.

Office of Trade Executive Assistant Commissioner Brenda Smith added that USMCA was another significant event which had a bit of a learning curve as there is understanding of all its ins and outs. There have been other significant events with interagency partners, significantly within the forced labor area. This fiscal year, there has been thirteen withhold release orders, with eight orders since the July 2020 COAC Meeting.

Efforts have been focused around the world, but primarily on information gathered around the mistreatment of Muslim and ethnic minorities in the Shandong Meager Economist Region in China and on issues relating to Malaysian Palm Oil. There has been great communication within this issue as it is critical to ensure that foreign companies understand what it means to be compliant, for U.S. importers to understand compliance responsibility to their leverage buying and economic power to make sure that supply chains are clean.

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Acting Commissioner Morgan introduced an ongoing enforcement operation called Operation Mega Flex and is an interagency effort within the international mail environment through periodic surge operations.

Deputy Executive Assistant Commissioner for the Office of Field Operation Diane Sabatino explained that CBP routinely conducts special operations that utilized enhanced targeting and high tense inspections which generally resolve with enforcement actions. Operation Mega Flex was initiated in July 2019 which increased scrutiny of shipments from China in the mail and courier environments to help measure compliance and increase access to elicit networks through a layered approach to cargo security, risk management, and advanced electronic information. The operation has examined 75,970 parcels and identified about 9,700 discrepancies that resulted in over 4,200 seizures and 2,500 agriculture interdictions.

Beyond Operation Mega Flex, in Fiscal Year 2020 there were over 23,700 seizures of counterfeit goods with an estimated value of \$1.2 billion, over 1,000 seizures of

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illicit drugs totaling to just over 4,800 pounds of narcotics and other controlled substances, and over 19,000 interceptions of agriculture products from China that pose risks to the U.S. agriculture in products from seeds to other plant materials, meat, and meat byproducts.

CBP Executive Director John Perdue thanked all the speakers for their remarks. Proceeding with the official COAC roll call, all members were present and there was a quorum.

INTELLIGENT ENFORCEMENT SUBCOMMITTEE
FORCED LABOR WORKING GROUP

Working Group Co-Lead Erika Faulkenberry began by explaining the group will be presenting four recommendations. Before diving into the recommendations, she explains that the Working Group is comprised of various members of the private sector to best provide advice and guidance to CBP and Treasury.

There is a sub team called Allegations Subgroup within the Forced Labor Working Group to provide further guidance related to system mechanisms for potential forced labor's allegations to the agency. As the CBP has indicated the intent to use the e-portal, therefore the majority of the group's time was spent on three specific goals: 1) e-allegations portal (webpage) user interface, submission template contents, and systems capabilities; 2) increasing CBP's Collaboration with Civil Society- Encouraging the use of the e-allegation

portal as a preferred tool for submitting Forced Labor allegations; and 3) best practices that CBP should consider for improving the Forced Labor allegations' submission process..

The first recommendation is for CBP to implement the nine core concepts outlined within the Forced Labor Working Group E-Allegations Background Paper related to enhancing system capability and intuitiveness of the e-allegations portal. The next recommendation is for CBP to increase collaboration with civil society and other government

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agencies, specifically those relating to enforcing forced labor within different jurisdictions in order to promote and encourage the use of the e-allegation portal as a primary tool to submit forced labor allegations.

Continuing, the third recommendation is for CBP to increase transparency on the process for receiving, investigating, processing, and closing forced labor allegations, including estimated timelines, notification and engagement of progress to the reporting party, including information on how the e-allegations process works. Lastly, COAC recommends for CBP share available metrics on forced labor allegations submitted through the e-portal and other mechanisms. This provides the opportunity to identify any statistics that provide meaningful information to the public.

Trade Remedy Law Enforcement Executive Director Ana Hinojosa appreciates the feedback and expressed that the interface should be as easy to use and intuitive as possible in order to encourage the submission of forced labor allegations. Additionally, there has been re-

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engagement with non-governmental organizations and civil society working groups with a meeting held on August 28th. CBP is very open to hearing continued feedback and recommendations on best practices from the industry and what they're doing to complete the supply chain.

Concerning transparency, they would like to offer more transparency than they currently are but may not be able to due to limitations of both the Trade Secrets Act and some of the Privacy Act regulations with regards to disclosure of information.

A public comment made by Charles Benign (phonetic) asks if CBP is confident that it can deploy area wide Withhold Release Orders (WRO) in response to forced labor. Ms. Hinojosa replied that they gather sufficient evidence that indicates that reasonably, not conclusively, that the goods from that particular entity and meet the required evidence standard in order to issue the WRO's.

A comment from Paul Sherman asks how will this translate into Customs Trade Partnership Against Terrorism (CTPAT)

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consideration as this year the minimum-security criteria was greatly enhanced and included consideration for forced labor issues. Ms. Hinojosa responded that they are working closely with the CTPAT program and further discussions will be held on the topic, but they are in sync with the CTPAT Office and with the Office of Field Operations.

Following up, Charles Benign asks how to get an area wide WRO work given the limited information received for informal entries? Would CBP simply rely on specific addresses to know if an area wide WRO is applicable? Ms. Hinojosa explained that they look within the supply chain. Mr. Benign specified on WRO's relating to cotton and the Shenzhen region and questioned the use of a WRO compared to an individual company. Ms. Smith replied that it is a specific question a complex issue. This comment period is used for comments and not direct answers from CBP. But, if there is a regional WRO, there will be extensive communication about the details of how a regional WRO would apply. **See Appendix for the full list of recommendations.**

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BOND WORKING GROUP

Working Group Co-Lead Lisa Gelsomino explained that the Working Group does not have any recommendations at the time, but the group did accomplish a good amount of work since the last meeting.

One item that has been worked on is that the Foreign Trade Zone (FTZ) bond amounts are increasing not by risk but due to volume with trade remedies and Section 321. Working with CBP, an internal memo has been sent to all CBP ports as a reminder that the continuous bond minimum for Foreign Trade Zones (FTZ) is \$50,000 as some ports are using a minimum of \$250,000 or \$400,000 without reason.

Additionally, it is expected that CBP will be issuing a Cargo System Messaging Service (CSMS) message on this to discuss it further and if there are any extenuating circumstances when the bond amount would need to be increased over \$50,000. The Working Group has also been

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working on the bond directive for monetary guidelines for bond amounts as it has not been updated since 1991. By updating the guidelines, there is also an opportunity to add further clarification on FTZ bond amounts, pipeline operator bonds, to name a few.

Working Group Co-Lead Kathy Wilkins added that they took live FTZ data and provided it back to Customs in order to do their work as far as due diligence.

ANTIDUMPING AND COUNTERVAILING DUTY (AD/CVD) WORKING GROUP

Working Group Lead Lisa Gelsomino explained that the group looked at the recommendations from July that dealt with trade remedies and focusing on one of the recommendations that CBP has agreed to do during the 4th quarter. This will clarify how to better file protests for some of the exclusions on the trade remedies as they are unique from typical protests.

Additionally, the group highlighted that the Department of Commerce issued a proposed rule on regulations to improve administration and enforcement of AD/CVD laws with ninety comments having been submitted by the September 14 due date.

INTELLECTUAL PROPERTY RIGHTS (IPR) WORKING GROUP

Working Group Co-Lead Heidi Bray stated that there are no recommendations from the group to share but they are prioritizing the numerous recommendations made in the April and July public meetings. However, the IPR Working Group will be on hiatus until CBP puts forth a new IPR effort.

SECURE TRADE LANES SUBCOMMITTEE

EXPORT MODERNIZATION WORKING GROUP

Working Group Co-Lead Brenda Barnes explained that the group has reviewed numerous issues within export that have been received from various individuals through different means, one being a trade symposium. In the

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future, the group will be working on a White Paper that will encompass other issues and processes within all the data elements and analytics. At this time, the Working Group will be making two recommendations.

The first recommendation from COAC is for CBP to work with Census and others to define a clerical error versus a material error for both Electronic Export Information (EEI) and manifest filing and issue appropriate guidance to CBP Personnel. When unintentional clerical errors are present, CBP should contact the filer for correction in lieu of issuing a penalty.

Working Group Co-Lead Kate Weiner introduced the second recommendation, which is that CBP in cooperation with Census and others, develop and conduct mandatory training on export enforcement for CBP personnel consistent with recommendation 10098, originally presented July 2016. Due to the COVID-19 pandemic, virtual environments can be utilized to conduct training at a fraction of the cost, and it is important that officers are trained to properly affect penalties when warranted.

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Charles Benign expressed his opposition to the second recommendation stating the CBP should notify filers about clerical errors. **A motion was made and then seconded. After a roll call vote, COAC unanimously agreed to submit the recommendations. See Appendix for the full list of recommendations.**

IN-BOND WORKING GROUP

Working Group Co-Lead Michael Young explained that the group presented their In-Bond White Paper during the last meeting listing the issues they had identified for all the various different modes in terms of some specific points and itemized those against the recommendations that were made previously while looking at additional recommendations they wanted to make moving forward. Additionally, the group reviewed the document and isolated the technical requirements away from the regulatory ones.

The technical requirements have been compiled into a separate paper which will be presented to the Trade Support Network (TSN) Working Group who will then set up an In-Bond Committee to look further at the recommendations and decide how to proceed. With the regulatory aspects, there will be continued work to review and update the White Paper. Currently, five areas are to be identified within the White Paper with two being recommendations during this meeting. The other three will be evaluated more before being presented.

The first recommendation is that CBP update the In-Bond regulations to eliminate the unnecessary closure of active bonds and filing of subsequent in-bonds. Instead, a single in-bond should be able to be transferred among bonded parties, with liability for the in-bond shipment moving along with the physical transfers. The group recognizes that this recommendation is complicated and will require a lot of additional thought and work to be able to transfer from one in-bound party to a subsequent in-bond party without creating a secondary in-bond with

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all parties involved in the movement of cargo - making use of the initial in-bond.

Working Group Co-Lead Jose "JD" Gonzalez presented the second recommendation from COAC which is that CBP reprogram Automated Commercial Environment (ACE) to allow for the posting of CBP hold and release messages related to in-bonds against the house bill level, and to further allow the ability to query ACE notifications at the house bill level.

Mr. Young added that there is a house bill paper that is being worked on with CBP and the group just wanted to document the requirement for in-bond activities even though they will be taken in to account within the house bill release process. **See Appendix for the full list of recommendations.**

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REMOTE AND AUTONOMOUS CARGO PROCESSING WORKING GROUP

Working Group Co-Lead Jody Swentik elaborated that the group is focused on establishing a clear vision of autonomous conveyances in each of the environments and speculating how customs operations should be billed to afford efficiencies within those, both for trade and for the U.S. Government.

At this time, the Working Group does not have any recommendations but are looking to join with other COAC Working Groups to align with the CBP's Modernization Strategy to ensure there is only one single strategy moving forward.

Cargo and Conveyance Secure Executive Director Thomas Overacker commented that he is grateful for the four recommendations provided and the Committees hard work.

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TRUSTED TRADER WORKING GROUP

Working Group Co-Lead Alexandra Latham stated the working group has focused on the continued implementation of an enhanced Trusted Trader Program that was set in the framework to include security and tracing clients under the CTPAT umbrella. This includes program benefits, Participating Government Agencies (PGA) engagement strategy, virtual validations, the University of Houston study, and incorporating forced labor into CTPAT compliance.

A public comment was made by Monica (inaudible last name) asking if this is autonomous shipping and processing paperwork or autonomous and actually driving and how to ship function? Executive Director Overacker replied that they are looking at all aspects of autonomous capabilities and types of technology. Ms. Swentik concurred in terms of looking at all aspects and the overall impact it would have on the customs process.

Co-lead Alexandra Latham provided an update on the Trusted Trader Working Group. Over the last quarter, the Working

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Group held several conference calls to discuss and receive status briefings on the collaboration with the 1-USG Working Group, the development of the PGA Engagement Strategy, alternative validation processes from travel restrictions stemming from COVID-19, and the incorporation of forced labor into CTPAT trade compliance. **The votes have been taken and the recommendations are to be submitted. See Appendix for the full list of recommendations.**

RAPID RESPONSE SUBCOMMITTEE

BROKER EXAM MODERNIZATION WORKING GROUP

Working Group Co-Lead John VanWallaghen reminded everyone that the purpose of the Working Group is to review all aspects of the Customs Broker License Exam in an effort to make the exam process more efficient and attainable. Customs has planned the October exam to be a single day double session for both the October and the previously delayed April exams.

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One of the things that will continue is to focus on what is needed to move forward on the modernization piece and when the next exam occurs in April 2021 it is highly likely that we will not be finished with COVID-19 related issues and contingencies should be expected concerning that exam.

BROKER CONTINUING EDUCATION TASK FORCE

Working Group Lead Amy Magnus explained that there is an advanced notice of public rule making which has been drafted and is currently being reviewed by the Department of Homeland Security, and licensed brokers and associations associated with licensed brokers are anxiously awaiting the publication of that advanced notice of public rule which will outline some of the requirements or proposed requirements for education for a broker to maintain their license.

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NEXT GENERATION FACILITATION SUBCOMMITTEE

Subcommittee Co-Lead Madeleine Veigel explained that it has been a busy quarter as the Subcommittee has focused on the 21st Century Customs Frame Work Entry Process Modernization Effort, Intelligent Enforcement Modernization White Paper, and the 1-USG and Partner Government Agency (PGA) Partnerships. There are continued updates on the efforts of the task force, specifically the status of pilots. Entry Type 86 has been aggressively adopted in the industry and the committee is looking forward to partnering with CBP to share the best practices across all the players in that space to combat IPR and other violations. They are also looking forward to Section 321 Pilot updates.

Mr. Brian White added that there are some challenges that the trade still has with engagement on USMCA with both implementation and interpretation of the application of the rule, specifically in terms of the marketing and rules of origin related to USMCA. He requested elaboration on some challenges highlighted.

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Ms. Kathy Wilkins began by pointing out that the group right now is technically on hiatus but there are some things currently being monitored, specifically FTZ and the applicability for preferential treatment.

Ms. Heidi Bray added that there has been work done to clarify some of the rules of origin, specifically the auto rules. She understands there is still confusion or a lack of direction on used vehicles and spare parts. Spare parts can sit in stock for many years and when they do cross the border how should they be treated? There were no U.S. Entity "A" Rules at the time they were manufactured, so what is an importer or exporter to do? The same applies with used vehicles. There are still questions as to the rules of origin and some ways to interpret the super core with regard to vehicle regional value content.

Additionally, there is also the 102 Rule, the non-preferential rules of origin and if it should be a case-by-case verse substantial transformation. This has offered consistency and she would really like to see the

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clarity in the country of origin under USMCA for Part 102 Rules.

Ms. Kate Winer commented that Customs has done a great job cutting out the center on addressing and doing all the educational webinars for importers and moving towards the future possibility of resurrecting the USMCA Task Force or Working Group. It is extremely important to consider how we manage exporters from the United States and assisting them with the rules and regulations as they come out on USMCA in general.

J.D. Gonzalez also added that the main concern is the southern border and taking into consideration the definite and clear guidelines as the labor value content for the automotive industry with the soft enforcement period ending January 2021. There are still graders that need to be defined closed in on to ensure there the required information (Customs Form-28s) is collected in order to see referenced information. He is looking forward to any kind of clear guidelines in areas which require them.

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Ms. Amy Bray opened the floor to any other COAC Members for any comments, clarifying comments concerning Part 102 Rules and Country of Origin marking under USMCA. Ms. Amy Magnus emphasized that Rule 102 vies a greater degree of objectivity and it appears to be worse when the country of origin determination is based on substantial transformation leading to results in the request of a ruling.

Mr. Lenny Feldman added that it does not provide consistency but was designed to codify the substantial transformation case-by-case decisions. As importers felt there needed to be a change to the 102 Rules, they could ask for a ruling.

Trade Policy and Programs Executive Director John Leonard thanked everyone for their hard work both in the Broker Exam Working Groups and work being done in conjunction with USMCA. But in terms of ruling, it is a large issue which needs to be addressed.

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Executive Assistant Commissioner Brenda Smith stated there have been numerous requests for USMCA Rulings. There are very clear requirements within the legislation for the 120 turn around and they are also aware of the best place to give guidance are also written into the regulations. Work is being done with interagency partners to understand and implement USMCA where there is a lack of clarity. The intent is to make progress with regulatory packages and work closely to get that accomplished as soon as possible. Continuing, the understanding of the context against which USMCA rulings will be issued as there have been rulings ranging from classification where the bulk of ruling activity happens to entry and evaluation rulings. Currently there is an average of issuing rulings out of New York in twenty-one days and fifteen days for CTPAT Partners.

INTELLIGENT ENFORCEMENT MODERNIZATION WHITE PAPER

Ms. Amy Magnus requests that the listeners read the White Paper as they will just be discussing the highlights.

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This paper really addresses the importance of data, the use of technology, big data, and predictive analytics. There are seven specific issues and solutions concerning the white paper. The first issue includes Fines, Penalties, and Forfeitures (FPF) Partnership Branch as there is a real noticeable, consistent, and uniform benefit for trusted traders. Secondly, the issue being account-based as opposed to transaction-based penalty issuance and enforcement which can be better utilized when it comes down to issuing penalties or when looking at the level of fines being issued based on the holistic view of the account compared to the individual transactions.

The third issue is relating to automation of CBP notices and decisions. Automation is what helps assemble all the information and data housed within the system. Being able to assemble it before or with Customs when contemplating the consequence delivery, you know the exact consequence of a certain type of violation which builds on the second issue of account-based penalties.

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Mr. Lenny Feldman introduced the next issue as enhanced enforcement rationale and guidance, particularly from the local FPF Offices. This could be somewhat resolved through automation as well. The fifth topic would be an informal realignment of FPF offices and decision-making on a national level. It is CBP's decision as to how they staff offices and the careers of their officials, however, with a national realignment, it may aid with processing as it did with the sensors.

The sixth suggestion would be to modernize and streamline the petition and appeal process. By providing the enforcement decision, consequence, and clarity, this will help companies avoid recidivism and provide clarification as to if a claim is going to a local authority or to headquarters which may set the tone for the company if they even want to file a petition or how they want to proceed. Lastly, there needs to be. Review of the mitigation guidelines and for CBP to update those guidelines which are found on the Informed Compliance Publication.

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EMERGING TECHNOLOGIES WORKING GROUP

Working Group Co-Lead Celeste Catano explained that the focus has been on innovative technologies. Moving forward, the working group wants to continue to push forward new and innovative ways of solving complex problems and looking for opportunities to apply them within the processes for today.

Working Group Co-Lead Barry Baxter added that the Business Information Innovation Division with DHS have hired development teams and the working group is to put teams on projects to get started within that group from those that were selected.

UNIFIED ENTRY PROCESSES WORKING GROUP

Working Group Co-Lead J.D. Gonzalez stated that the group does not have any recommendations currently. However, since the inception of the CBP Working Group, they have provided substantial feedback to CBP. Additionally, there has been a comprehensive effort to assist in streamlining the entire logistics process from start to finish.

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The main objective in developing framework on the current entry process will be to achieve end-to-end supply chain transparency, collect data by extracting patterns and facts, utilizing those facts and including the decision making and transfer of accountability, and responsibility with a common balance of reasonable care standards. The group will continue to move forward with an effort to update integrated laws, policies, and processes. The next step is to engage with the Working Group to extend material for any kind of possible future recommendations.

ONE UNITED STATES GOVERNMENT (1-USG) WORKING GROUP

Working Group Co-Lead Madeleine Veigel stated that this working group was established to collaborate with CBP in efforts to create government agencies and industry stakeholders. There are no current recommendations, but they are currently focused on the following areas: PGA Status, Agriculture Marking Service, Global Business Identifiers, development of a Trusted Trader Program with

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the PGAs, and incorporation with the PGA on new and future designed government and trade processes.

Mr. Leonard stated, with the 1-USG, the fish and wildlife message set is expected to publish their final rule in early 2021 which completes the core PGA message sets for eight.

CLOSING REMARKS

Executive Director John Perdue thanked everyone for attending and all COAC members for their participation.

The meeting was adjourned at 5:00 p.m.

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