



COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE

COAC Public Meeting

July 15, 2020 – Virtual

SECURE TRADE LANES SUBCOMMITTEE

Export Modernization Working Group Recommendations

010457

1. COAC recommends that CBP work with other government agencies to review and compare the Electronic Export Information (EEI) and Air, Ocean and Rail Manifest data elements by name and definition to identify duplicative and unnecessary data elements.

010458

2. COAC recommends the unnecessary data elements identified between the EEI and Air, Ocean, and Rail manifest be eliminated.

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3. COAC recommends the duplicative data elements identified between the EEI and Air, Ocean, and Rail manifest be only required from the owner of the data since it is the most timely and accurate source, e.g., departure date.

010460

4. COAC recommends CBP provide a data-flow and process-flow map for all government agencies defining where data originates such as the EEI, the Manifest, and Departure messages e.g., Carrier owned data comes from the Manifest message.

In-Bond Working Group Recommendations

010461

1. COAC recommends that CBP accept the White Paper as the basis of an in-bond modernization strategy. The white paper identifies key issues including trade and CBP visibility to all in-bond transactions, clarity of liability for bonded partners, the need for automated hand-offs between trade partners, addition of all modes of transportation to automation requirements, national policy harmonization and short term technical requirement changes to improve the current process, and align with the 21st Century Customs Framework. The document provides strategic level solutions that will support movement toward regulatory changes, policy changes and / or technical changes across these issue areas. The In-bond White Paper is a working “living” document and will be modified and updated as solutions to the issues raised solidify, and give rise to future recommendations.

Remote and Autonomous Cargo Processes Working Group Recommendations

010462

1. COAC recommends that CBP establish a multi-tiered Free And Secure Trade (FAST) program/process that allows for FAST eligible drivers to take advantage of the FAST infrastructure when driving for a Customs and Trade Partnership Against Terrorism (CTPAT) approved carrier regardless of other parties in the supply chain being CTPAT certified. Through the tiered approach, using a FAST card and a FAST manifest, the driver will be able to take advantage of the FAST lanes, automating a portion of the data and thereby expediting the cargo release process and avoiding longer wait times associated with non-FAST freight.

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2. COAC recommends CBP continue efforts to invest in and enhance existing Decal & Transponder Online Procurement System (DTOPS) and the new Gen-2 RFID transponders and infrastructure which supports Non-Invasive Inspection (NII), FAST manifest data and additional efficiencies in remote and autonomous cargo processing.

010464

3. COAC recommends CBP support expanding the use of vetted International Crews crossing land borders on the rail. Such International Crews eliminate the need to switch crews at midbridge at the border allowing for autonomous movement of goods, increasing security, saving time and therefore increasing capacity. This crew would need to be allowed to turn around at the US rail yard, inside the port, within an agreed upon

distance from the land border with the rail carrier. Successful Pilot Programs at the port of Laredo should be expanded to other ports.

010465

4. COAC recommends CBP support the expansion of image technology for trains crossing land borders, e.g. Non-intrusive Image (NII) technology, and leveraging partnerships through the Donation Acceptance Program (DAP). This technology has proved to reduce time by remote and autonomous processing of cargo.

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5. COAC recommends CBP continue to look to the future by supporting additional bridge expansions that allow for autonomous cargo processing, whether rail or truck, at land borders. One example is the proposed expansion of the rail bridge at the port of Laredo to allow North and South bound international rail traffic. Retaining this rail connection along the secure rail corridor between the rail yards is essential to international rail operations in and around Laredo and Nuevo Laredo. Another example is the additional bridge being constructed near Detroit to relieve congestion.

Trusted Trader Working Group Recommendations

Development of metrics to measure the performance of benefits for both CBP and Trade:

010467

1. COAC recommends that CBP develops a list of the most important quantifiable indicators (both for CBP and Trade) related to the benefits of participating in the Trusted Trader program and develops a mechanism to measure them consistently and periodically.

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2. COAC recommends that CBP develops a metrics' dashboard or report available to each Trusted Trader account, which incorporates key metrics related to their specific Trusted Trade Program benefits. (e.g. Number of inspections, average of exams, detentions, etc.)

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3. COAC recommends that CBP issues the benefits metrics' report on a periodic basis (e.g. quarterly) and it is uploaded in the Trusted Trader CTPAT portal account for easy access.

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4. COAC recommends that CBP also publishes at least on an annual basis, a metrics report on CBP's website and accessible to the public, with general CTPAT Trusted Trader Program benefit statistics. For instance, CBP could publish the average percentage of extensive examinations, and in-person validations that non-CTPAT Trusted Trader companies experienced vs program participants, etc.

Evaluation of Existent CTPAT Trusted Trader Program Benefits:

010471

5. COAC recommends that CBP develop a methodology to evaluate the performance and value added to trade and CBP of existent CTPAT Trusted Trader program benefits and determine when a benefit should be phased out or needs to be modified, based on the assessment results. For this effort, COAC recommends that CBP continues to partner with external expert organizations such as the University of Houston, U.S. Government Accountability Office (GAO), etc. to run an independent assessment that evaluates the efficiency and relevance of existent CTPAT Trusted Trader benefits every two or three years (the time that it takes on average for new benefits to be fully implemented). The results of the assessment should be made public and incorporate feedback from Trusted Trader accounts.

Visibility and communication of the implementation status and deployment timeline for CTPAT- Trusted Trader benefits.

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6. COAC recommends that CBP communicates periodically (e.g. quarterly) the implementation status of approved benefits, expected deployment timeline for Trusted Trader members, and adjustments to estimated completion dates when applicable. The updates on the implementation should be available to the public at CBP's CTPAT webpage.

Consideration of new potential benefits (both from CBP and Trade)

010473

7. COAC recommends that CBP develops and documents a formal process to receive and process feedback on existent benefits, as well as suggestions for new potential benefits from both CTPAT Trusted Trader Program members, Participating Government Agencies (PGAs), non-governmental organizations (NGO's) and the general public.

010474

8. COAC recommends that CBP expands its current process of receiving comments via the general CTPAT information email, and develops guidance on the most efficient mechanism that the trade and other parties should use to submitting feedback on existent benefits and potential new benefits for consideration. Some options CBP could consider are an e-submission form through CBP's CTPAT website, a comments/suggestions box through the CTPAT portal, etc. CBP should also consider a 'once a year' open period for public comments on existent and potential new benefits.

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9. COAC recommends that as CBP evaluates and considers potential new benefits, it should open a 'public comment' period to the public, sharing the benefits that are being considered and requesting additional input to be included in the evaluation process.

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10. COAC recommends that CBP's process for evaluation of new benefits balances the enforcement value and the return on investment for trade of the particular benefit.

CTPAT's Trusted Trader Program Benefits Methodology (Consideration of new benefits, evaluation of existent benefits, and metrics) should be documented and available to the public.

010477

11. COAC recommends that once CBP adopts and implements the Trusted Trader Program Benefits methodology recommendations, CBP documents the end to end process and includes it as a reference document available in the CTPAT- Trusted Trader Handbook and CBP's CTPAT Webpage.

INTELLIGENT ENFORCEMENT SUBCOMMITTEE

Forced Labor Working Group Recommendations

010478

1. Recognition for Withhold Release Order (WRO) Remediation

COAC recommends CBP exercise discretion when considering how and when to carry out enforcement responsibilities for 19 USC 1307, particularly prior to issuing a WRO. CBP should take into account when the importing community is making genuine efforts to conduct due diligence and active remediation as the agency makes decisions about how and when to issue a WRO, including considering utilizing grace periods during

which CBP provides alerts and/or guidance to allow the problem to be sustainably resolved before issuing a WRO. Remediation is only viable when the importing community maintains the necessary business leverage and the supplier is financially stable.

010479

2. Enhanced Collaboration between Industry & United States Government (USG) to identify known forced labor risks

COAC recommends enhanced collaboration with industry experts, civil society and other USG agencies to utilize existing resources including, but not limited to the Department Of Labor (DOL) List of Goods Produced by Child or Forced Labor and the Department of State (DOS) Trafficking in Persons Report in order to identify, prioritize, communicate and partner on known forced labor risks. See related recommendations 10112 and 10119 presented on 11/16/2016 and 10287 presented on 11/4/2017.

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3. Enhanced Collaboration between Industry & USG to address highest forced labor risks

COAC recommends that CBP recognize and implement the need for a risk-based approach, including targeting enforcement action on known high risk areas based on tangible data and information, in consultation with civil society, the private sector and other parts of the USG in order to address the worst abuses.

010481

4. Withhold Release Order (WRO) Process Considerations

COAC recommends CBP meaningfully engage all relevant stakeholders (affected individuals, United States Government (USG), private sector, civil society, etc.) prior to issuing a WRO to help avoid unintended consequences related to its actions. This will ensure other USG agencies with proper authority can take proper action to protect those that may be affected, which may include personal protection, health care, legal aid, psychological assistance and referrals.

010482

5. International Labour Organization Standards

COAC recommends CBP, through its interagency efforts related to forced labor with the U.S. Government, respect, promote and realize the International Labour Organization (ILO) Declaration on the Fundamental Principles and Rights at Work to foster greater enforcement and implementation of human rights laws at the national level. To the extent possible, promote alignment with the ILO Convention 29 and 2014 Protocol on forced labor.

010483

6. Information Sharing

COAC recommends that CBP, through its interagency efforts related to forced labor with the U.S. Government, assist US importers with deeper visibility in the supply chain by sharing experiences, resources, and tools utilized to access information about forced labor risk in upstream levels of the supply chain that may be less accessible to importers.

Bond Working Group Recommendations

010484

Customs Bond Directive: In support of prior recommendation 10095, COAC recommends that CBP update Customs Directive 3510-004 prior to the next COAC meeting scheduled in October 2020. This directive was issued in 1991 and has not been updated to reflect the current environment in ACE for single transaction bonds and other bond types.

In addition, the directive does not provide uniform guidance to determine the amount of Foreign Trade Zone (FTZ) Bonds per recommendation 10307 or Pipeline Operators per recommendation 10338. COAC recommends the Customs Directive be updated to include the following changes:

- a) Pipeline Operators should be defined so it is clear which bonds are required to transact business.
- b) FTZ Operators should have a defined continuous bond formula that all ports can follow uniformly, subject to a \$50,000 minimum per current regulation. The Bond Working Group provided several suggestions for bond formulas CBP can consider given the very low risk of duty exposure and loss experience including:
 1. \$50,000 minimum + \$10,000 per additional FTZ location.
 2. 10% of the duty liability for the goods stored in the warehouse based on the daily snapshot of FTZ inventory.
 3. 3% of the value that is dutiable based on the daily snapshot of FTZ inventory.

Antidumping and Countervailing Duty (AD/CVD) Working Group Recommendations

010485

1) Presidential Executive Order:

COAC recommends that CBP evaluate whether the Presidential Executive Order (EO) 13924 issued on Regulatory Relief to Support Economic Recovery provides CBP with the authority to honor refunds for trade remedy exclusions even if they were issued beyond the period of time to request an extension of liquidation or file a protest. Currently, hundreds of importers are missing the opportunity to receive refunds on trade remedy exclusions that are issued so late that no administrative relief is available to process the refund. During the COVID-19 pandemic, this is causing tremendous economic hardship, especially on small to medium-sized businesses.

010486

2) Future Considerations:

COAC recommends that CBP work with United States Trade Representative (USTR), Congress and appropriate parties to provide authority for legislative changes that will modify the timeframe to file a refund request for trade remedy exclusions and/or consider whether the Reconciliation Program could be a viable solution for future Trade Remedies. Doing so would provide importers with the opportunity to finalize their entry once the Exclusion Order is approved or have additional time to file a protest if the 180 days from liquidation has expired. There has been prior precedence for this under the Generalized System of Preferences (GSP), which gets reinstated after long periods of expiration because these entries are flagged in ACE to process once GSP is approved by Congress. Entries subject to trade remedy exclusions could be flagged in a similar manner as Reconciliation Entries, which would eliminate the time-consuming process to file Post Summary Corrections (PSCs), extensions of liquidation, and/or protests.

010487

3) Protest Training:

COAC recommends that CBP conduct a webinar on best practices to file protests in ACE. Due to the large influx of protests that are being filed for trade remedy exclusions, some protests are being denied for minor reasons or missing information. During a webinar, the trade would be able to ask questions about the challenges they are having providing information through the ACE portal and tips to ease the administrative burden

on all parties. The AD/CVD Working Group has submitted a list of topics that could be covered during this webinar in Appendix C of our background paper.

010488

4) CBP/USTR Coordination:

COAC recommends that USTR coordinate with CBP to ensure that changes to trade remedy exclusions (when they are sunset, extended, revised, etc.) are presented to the trade with adequate notice to understand duty implications. Further, USTR should ensure that its changes are timely communicated to CBP and the industry to complete the necessary ACE programming to implement the changes in a timely manner so exclusions can be claimed at the time of entry.

Intellectual Property Rights (IPR) Working Group Recommendations

010489

1. IPR Restricted and Prohibited Parties List:

COAC recommends that CBP should seek and obtain the legal authority to create and enforce a comprehensive “IPR Restricted and Prohibited Parties List” (hereinafter called the IPR RPP List) consisting of foreign and domestic parties (*i.e.*, individuals, companies or organizations) who are known offenders due to repeat violations. There are troves of information about counterfeiters by the trade, CBP, ICE and other agencies that can be put to more effective use through a consolidated approach and system. Known counterfeiters like terrorists, proliferators, and other bad actors, present a threat to U.S. health, safety, security, and the economy. The IPR RPP List would serve to deter and reduce the numbers of de minimis (Section 321) as well as other informal and formal entries of counterfeit shipments flooding the country.

010490

- 2. Public Lists:** COAC recommends that CBP create and enforce the IPR RPP List based on the successful use of other lists created for “denied parties” from entities such as Bureau of Industry and Security (BIS), Directorate of Defense Trade Controls (DDTC), Office of Foreign Assets Control (OFAC) and CBP’s own Debarred or Suspended Importers list.

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3. CBP IPR Database Portal:

COAC recommends the IPR RPP List be developed with information that contains data from numerous sources including the IPR rights holder's own internal investigations. This list would be housed in a new CBP IPR Database Portal, and would complement CBP's IPR eRecordation Application, which serves as CBP's system of record for IPR administration and enforcement.

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4. IPR RPP List Criteria: COAC recommends CBP develop a process and criteria to place parties on the IPR RPP List based on information gleaned from the CBP IPR Database Portal as well as CBP's own internal resources from IPR Seizure Statistics at <https://www.cbp.gov/trade/priority-issues/ipr/statistics> and targeting intel. Such criteria should be made public and consider violations, such as:

- a. Shipments without valid licensing agreements (if required)
- b. Repeat offenders with more than three (3) seizures and/or uncontested detention notices.
- c. Foreign shippers or resellers, including marketplaces, with knowledge of violative goods even if consolidated and co-mingled with legitimate merchandise due to repeat violations.
- d. Any seizures reported on CBP's annual IPR Seizure Statistics report, which currently only provides commodity, country of origin, and value details, not any list of the violators.

010493

5. Trusted IPR Vendor List: In support of prior recommendation 10437, COAC recommends that CBP should complement the IPR RPP List with a Trusted IPR Vendor list. In addition to the criteria from our prior recommendation, CBP could also consider the receipt of ruling requests from the trade community concerning prospective transactions. Under 19 CFR Part 177, the Office of Regulations & Rulings may issue binding rulings or internal advice with respect to a specifically described transaction, that constitute a definitive interpretation of applicable law.

010494

6. Appeal Process: COAC recommends that CBP develop an appeals process to allow for parties to be removed from the IPR RPP List and ensure due process. The appeal process should be made public and consider the criteria to be removed from the IPR RPP List and

timeframe for doing so to avoid unnecessary hardship on the trade. Such criteria should include:

- a. Party provides receipt of proper IPR licensing
- b. Party changes sourcing to an approved or licensed supplier or distributor
- c. Party can remove violative goods from co-mingled shipments and correct problems with co-mingled and/or consolidated shipments

010495

7. **Publicly Available:** COAC recommends that CBP make the IPR RPP List publicly available, like the BIS, OFAC, and other lists. The IPR RPP List should include the entity names and addresses and be downloadable so these lists can be managed in proprietary software for vetting purposes.

010496

8. **ACE Integration:** Similar to recommendation 10446, COAC recommends that CBP program ACE to reject any entries for any parties on the IPR RPP List and have an automated process to remove them from the list through the appeals process.

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9. **STOP Act:**

COAC recommends that CBP promulgate regulations to implement and enforce the requirements set forth in the Synthetic Trafficking and Overdose Protection (STOP) Act. Such regulations should ensure that the United States Postal Service (USPS) provides advance electronic data for risk assessment of mail parcels that enter the United States, with the level of information provided comparable to that already required of inbound air cargo. Additionally, as CBP further develops its e-commerce strategy and contemplates the potential adoption of new data requirements for e-commerce shipments, it should ensure that such requirements are applied simultaneously in the cargo and mail environments. In particular, COAC recommends that additional requirements not be placed on any cargo until the technical, legal and practical barriers for mail data requirements have been resolved satisfactorily, such that advance data requirements—both current and new—can be mandatorily applied to mail shipments arriving in the U.S. Finally, as part of its ongoing COAC e-commerce and IPR work, CBP should collaborate with COAC and/or Working Groups dedicated to the topic of advance data for mail in order to consult and issue recommendations in this regard.

RAPID RESPONSE SUBCOMMITTEE

Broker Exam Modernization Working Group Recommendations

010498

1. COAC recommends that CBP provide a paper based exam in lieu of the electronic exam for the October 2020 (including the rescheduled April 2020) exams due to the challenges of the current COVID19 emergency and the possibility that a resurgence of cases could force states to maintain or reinstitute closure orders which could limit gatherings to ten (10) or fewer people so an electronic exam would not be available or feasible locally.

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2. COAC recommends that CBP identify additional government locations where the current CBP Proctor will offer the paper exam which accommodates the space for proper social distancing. If the government locations are unable to accommodate the anticipated number of exam participants, CBP should allow alternate private sector locations within 30 miles of the CBP ports of entry. Selected private sector locations would provide for a CBP Proctor and/or CBP direct oversight.

010500

3. COAC recommends that CBP outline the minimum criteria for private sector locations to ensure that the exam experience is standard across all locations with social gathering guidelines based on state or local municipality procedures. This should include sanitation standards, equipment, access, etc.

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4. COAC recommends that CBP work with the Proctor to ensure a minimum of one (1) hour between the first and second examination sessions in order to sanitize the facilities and equipment to the required standards and allow adequate set-up time for exam takers, including accommodating those with disabilities.

Updated: 7/20/2020 – BJW/MKS