

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

July 2020

COAC

COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE

**Commercial Customs Operations Advisory Committee (COAC)
July 2020**

**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 and Lisa Gelsomino.
- Bonds, co-chaired by Randy Mitchell, Lisa Gelsomino and Kathy Wilkins.
- Forced Labor, co-chaired by Eric Choy, Erika Faulkenberry and Brian White.
- Intellectual Property Rights 21st Century Customs Framework (IPR21), co-chaired by Laurie Dempsey, Amy Smith and Heidi Bray.

The Working Groups consist of COAC and non-COAC members representing different stakeholders from the trade including importers, domestic industry, U.S. manufacturers, brand holders, customs brokers, sureties, attorneys, ABI vendors, carriers, consultants, various trade associations, non-governmental organizations (NGOs) as well as participants from CBP and other Partner Government Agencies (PGAs).

Since the last COAC meeting on April 15, 2020, 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 the COAC meeting on April 15, 2020, CBP held a webinar for the trade on Pipe Spools and three (3) conference calls with the AD/CVD Working Group to discuss a variety of topics including:

- CBP is working on a new public AD/CVD site on CBP.gov to continue to make it easier for the trade to find AD/CVD case information. More information will be forthcoming.
- The Duty Evasion Cooperation under Section 10.7 of USMCA effective 7/1/2020 https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/10_Trade_Remedies.pdf
- The Department of Commerce and CBP are receiving a record number of new AD/CVD Petitions. There have been over 60 new petitions filed this year setting record numbers and many of these petitions will proceed to full investigations and subsequent AD/CVD Orders.
- Trade Remedies for Section 301 and delays the trade was experiencing with Exclusion Orders. The AD/CVD Working Group will be presenting recommendations on these issues at the COAC meeting on July 15, 2020.

Looking forward, the AD/CVD Working Group plans to address challenges with Critical Circumstances, Scope Rulings, and the growing number of new AD/CVD cases.

Bond Working Group

Since the COAC meeting on April 15, 2020, the Bond Working Group (BWG) held two (2) conference calls to discuss the following topics:

- 1) **Duty Deferral.** On April 20th, CBP issued CSMS-42423171 to provide a 90-day postponement of the payment of certain duties, taxes and fees in response to the COVID-19 pandemic. The temporary postponement applied to formal entries in March and April 2020 only and excluded any AD/CVD deposits and Trade Remedies for Section 232, Section 201, and Section 301 investigations. In addition, importers had to demonstrate a 40% reduction in sales and disruption in business or closure due to the COVID-19 pandemic. Over 2,600 importers participated in the Duty Deferral program resulting in a delay in payment of over \$574 million in duties, taxes and fees many of which will be paid in July and August 2020 depending on statement dates.
- 2) **Continuous Bond Sufficiency Reviews.** Due to the COVID-19 pandemic, CBP also paused issuing the monthly notices for a 90-day period and plans to resume these in August 2020.
- 3) **International Carrier Bonds for Airlines.** Due to the severity of COVID-19, CBP will start the process to review bond sufficiency for international carrier bonds in August based on the prior quarterly payment schedule and any reduction in passenger fees.

- 4) **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. A recommendation on the bond formula will be made at the COAC public meeting on July 15, 2020.
- 5) **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. A recommendation will be made at the COAC public meeting on July 15, 2020.

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 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 Subgroups 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 the last public COAC meeting held on April 15th, 2020, the FLWG provided several recommendations to CBP. The recommendations addressed objectives 1, 2, and 4.

Since the last public meeting, the focus of the Subgroups has been on the topics of Industry Collaboration and Leadership, as well as the current Mechanisms to Submit Forced Labor Allegations to CBP. The Subgroups held virtual calls to develop the work product and supporting recommendations. Three virtual calls were held with the Mechanisms to Submit Forced Labor Allegations Subgroup and six virtual calls with the Industry Collaboration Subgroup.

The FLWG is planning to present a white paper that captures the discussions and work product of the Industry Collaboration Subgroup during the July 15, 2020 COAC public meeting. It highlights existing collaborative initiatives, discusses best practices, highlights constraints and includes corresponding recommendations. During the next quarter the Industry Collaboration Subgroup is planning to host a working engagement session with US Government (USG) Agencies involved in addressing forced labor. The objective of the working session is to identify opportunities for better collaboration among industry and the USG. The Subgroup tasked with assessing forced labor reporting mechanisms will continue their work to present findings and any related recommendations during the next public COAC meeting.

Intellectual Property Rights – 21st Century (IPR21WG)

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-records system and Team 2 on data sharing, the DHS Report on IPR Trafficking and Presidential Memo on eCommerce.

At the April 15, 2020 public meetings, COAC unanimously passed a recommendation that CBP should program the Automated Commercial Environment (ACE) to reject entries for any importers that are suspended or debarred from doing business with CBP as identified within any applicable database. COAC submitted this recommendation in response to the DHS report issued January 24, 2020. The DHS Report also found that [Executive Order 12549, Debarment and Suspension](#) should be amended to clarify the scope of suspension and debarment to:

- prevent participation in the importer of record program
- require regulated entities to screen their customers against the list
- explicitly bar suspended and debarred persons from participating in the importer of record program.

We understand the [Suspension and Debarment List](#) only includes importers of record and no other parties. For instance, foreign or intermediary sellers, resellers, and domestic consignees, that may be facilitating the trade of counterfeit or piratical goods are not included on this list. Further, the list includes numerous parties that have been suspended or debarred for reasons completely unrelated to IPR, or even CBP enforcement.

Accordingly, the COAC IPR21 Working Group reflected further on these issues and will be presenting recommendations at the COAC meeting on July 15, 2020. Team 1 and Team 2 will also be including a background paper in support of an “IPR Restricted or Prohibited Party List.”

Known IPR violators represent a similar type of danger to the U.S. as parties (e.g., narcotics traffickers, money launderers, export control violators) subject to the OFAC or other lists, because of the importation and sale of many counterfeit goods are a threat to health, safety, security and the economy. What one company considers a “bad actor” might actually reflect a contractual issue or dispute. We suggest focusing on an “IPR Restricted or Prohibited Party List” which would allow CBP to focus more closely on the foreign parties who are unauthorized manufacturers as well as domestic parties sourcing from these entities that are not otherwise known to CBP without prior importation history.

Team 2 also focused on ranking the recommendations from the April 15, 2020 Public COAC meeting so CBP could prioritize its resources accordingly. A new Team 3 was also created to continue discussions regarding the DHS Report on IPR Trafficking and the Presidential Memo on eCommerce. This includes review of the STOP Act for postal shipments. We plan to present a recommendation at the COAC meeting on July 15, 2020.

Conclusion

CBP has invited the COAC Intelligent Enforcement (IE) Subcommittee to draft an initial White Paper concerning enforcement modernization. This initiative supports CBP’s development of its 21st Century Customs Framework (“CCF”) designed to address and enhance aspects of CBP’s trade mission to better position the agency to operate in the current trade environment. One of the 21st CCF themes is “intelligent enforcement” anchored on further improving risk management and the impact of efforts to detect high-risk activity, deter non-compliance and disrupt fraudulent behavior—all in the interest of enforcing U.S. trade laws to protect America’s economic security and ensure consumer safety. CBP’s intelligent enforcement efforts include how to better utilize technology, big data, and predictive analytics to drive decision-making. This white paper was submitted to CBP for review, and we hope to publish for the COAC meeting in October 2020.

The IE Subcommittee looks forward to presenting recommendations from the AD/CVD, Bond, Forced Labor and IPR Working Groups at the July 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.