

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

U.S. Customs and Border Protection

Virtual Quarterly Public Meeting

Wednesday, July 15, 2019

1:00 p.m. - 5:14 p.m.

OPENING REMARKS

CBP Deputy Executive Director Valerie Neuhart called the COAC public meeting to order and addressed some technical issues concerning the meeting. Proceeding with the COAC Member roll call, all members were present.

CBP Acting Commissioner Mark Morgan began by acknowledging the ten employees within CBP who passed away in the line of duty, with eight directly relating to COVID. He then recommended a new team member, Office of Trade Executive Director Jon Perdue, and gave acknowledgment to several individuals on their ongoing work.

Addressing misinformation on the borders being shut down, he emphasized that trade is flowing across the borders and CBP is continuing to process cargo. Americans and American businesses continue to have access to necessary supplies and goods throughout the COVID-19 pandemic and CBPs commitment to that has stood strong. CBP has created a COVID-19 Cargo Resolution Team (CCRT) to

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facilitate critical shipments of PPE and resolve issues concerning legitimate trade.

Acting Commissioner Morgan stated that between January 1, 2020, and July 7, 2020, CBP has seized more than 120,000 FDA prohibited COVID-19 test kits, more than 12 million counterfeit masks, and 24,000 FDA prohibited Chloroquine tablets. Every crisis brings out the criminals trying to take advantage of the situation and profit off of it. Additionally, fluctuations concerning trade volume and other import trade aspects are being closely monitored as the pandemic evolves.

As of July 1, 2020, the U.S., Mexico, Canada Agreement (USMCA) took effect. Acting Commissioner Morgan gave a brief overview of the agreement's benefits and critical aspects. Through December 31, 2020, CBP will focus on training and compliance guidance as the trade community adjusts to the new requirements going forward. Additionally, CBP is providing guidance to the private sector through briefings with trade associations, industry groups, and private sector stakeholders.

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Lastly, CBP has provided nearly 500 trade professionals with a week-long series of webinars and will continue to communicate and educate with the community moving forward.

Moving on to discuss the Type 86 and Section 321 Data Pilot Program, he explained that despite the pandemic the CBP e-commerce data pilot is moving forward and is now receiving live data from most of the pilot participants. This pilot allows for the acceptance of data directly from non-traditional players within the e-commerce sphere and matches it with data received from traditional actors. As of June 24, 2020, over 18 million shipments have provided enhanced data such as product pictures and links to website listings. This provides enough data to assess, monitor, track, and decide how to move forward with specific actions and collect feedback.

Acting Commissioner Morgan informed COAC that as of June 5, 2020, CBP published new rulemaking in the Federal Register to modernize customs border regulations to better align with the development of trade initiatives.

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Shifting to forced labor, CBP has pursued several enforcement actions to prohibit the importation of goods produced with forced labor and has issued three Withhold Release Orders (WRO). The WROs demonstrate CBP's commitment to enforcement, specifically concerning forced labor.

Concluding, it was announced that the next COAC meeting will be October 7, 2020, in either Philadelphia or via webinar. The Trade Symposium that was scheduled for August 25 and 26, 2020 will be having a virtual Trade Week in September with an in-person trade symposium in 2021.

Treasury Deputy Assistant Secretary Timothy Skud greeted the COAC members and is looking forward to the meeting's discussions. He also thanked Lisa Gelsomino for all her hard work and unpaid service.

ICE Acting Deputy Associate Director Matthew Allen highlighted three ongoing HSI/ICE efforts and operations directly relevant to the meeting with the first focusing

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on COVID-19 and those who are exploiting this global pandemic for financial gain. These schemes compromise legitimate trade and financial systems, threaten the integrity of the U.S. borders, and endanger the safety and security of the American people. As a response, Operation Stolen Promise was initiated by HSI and various partnering agencies in April 2020 to provide protection from the increasing threat posed by COVID-19-related fraud and criminal activity.

Utilizing the partnerships with CBP and the trade community with HSI's expertise in financial fraud, international operations, and cybercrime, Operation Stolen Promise investigates financial fraud schemes, importation of prohibited pharmaceuticals and medical supplies, and all other illicit criminal activities associated with the virus that compromises legitimate trade and financial systems. As of this meeting, over 1,100 leads have been sent to the field resulting in more than 530 investigations and the seizure of over \$5.2 million in illicit proceeds.

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Additionally, they have recovered funds equaling to \$17.9 million with some instances involving individuals attempting to scam state agencies. In one instance, HSI and the Department of Veterans OIG in Atlanta partnered on a case with an individual attempting to sell millions of dollars of nonexistent respirator masts to the VA for a large up-front payment. A criminal complaint was obtained, and that individual was charged with wire fraud and alleges that there was a series of fraudulent misrepresentations to secure the order for 125 million face masks and other PPE valued at \$750 million.

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Acting Deputy Associate Director Allen then addressed vaping and the work HSI and CBP are doing at the National Targeting Center with the Department of Justice Consumer Protection Branch. They are focusing on the identification and investigation of importers of illegal vaping products and identifying importers distributing those products.

Lastly, an overview was given on Anti-Counterfeiting Consortium to Identify Online Nefarious Actors (ACTION). This is Intellectual Property Rights' (IPR) Center's E-Commerce Working Group and responds to the presidential memorandum on combatting the trafficking of counterfeit and pirated goods. The primary goal is to enhance information between private sector partners to produce leads that benefit law enforcement.

DHS Acting Under Secretary Scott Glabe greeted COAC and gave appreciation for the dedicated work on the shared objectives throughout the COVID-19 pandemic. In addition to crisis response, continued work is being done to implement the counterfeiting report from January and the

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related E-Commerce Executive Order which has been signed by the Acting Secretary.

Another issue with increased priority concerns forced labor as the policy community continues to gather interest according to the USMCA implementing legislation. A forced labor task force has been created and they had their first meeting in June. These efforts are to happen quarterly and align with the Forced Labor Working Group. Lastly, the efforts of the Intelligent Enforcement Subcommittee were highlighted as they continue to work on counterfeits and the STOP Act implementation.

COAC Trade Co-Chair Lenny Feldman stated that since the last meeting, some great solutions and opportunities have been identified. He is looking forward to hearing the thoughts and discussions on the executive order (13924) issued in May as a response to COVID regulatory relief to support economic recovery. An overview was given on the various concepts, processes, programs, and policy work that has been and continues to be addressed and improved. Concluding, that although only 21 are involved in COAC,

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the recommendations are a product of hundreds of people within the trade community.

COAC Trade Co-Chair Brian White thanked the members of COAC and CBP for the privilege to serve as COAC Co-Chair. It was stated that although trade volumes are down by 18% in terms of value, it is of continued importance that CBP help to balance the facilitation and enforcement activities of the agency. He concluded by mentioning the numerous recommendations that are set to be presented and discussed during the meeting.

SECURE TRADE LANES SUBCOMMITTEE

EXPORT MODERNIZATION WORKING GROUP

Working Group Co-Lead Brenda Barnes informed COAC that the group has completed the task of going through 86 data elements and deciding which government agencies rely on each data element, how it is described, how it is defined, how it is transmitted (EEI, AEF, automated, or manifest) and who owns that data. Four recommendations will be given based on the work that has been done so far.

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The first recommendation is 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. The second is to eliminate those unnecessary data elements identified from the prior recommendation. Currently, trucks are excluded as it is being reworked by Customs.

Working Group Co-Lead Kate Weiner presented the next recommendation, which is for those 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. The fourth recommendation is for CBP to provide a dataflow and process-flow map for all government agencies defining where data originates to be utilized as a key to where specific data elements are from.

Cargo and Conveyance Secure Executive Director Thomas Overacker thanked the co-chairs of the subcommittee and its members on behalf of CBP.

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Gregory (Public Comment - full name was inaudible) asked for any comments on the status of the new regulations for routed export transactions. Ms. Barnes replied that it has to do with the Census and not CBP.

Ronald Shepard (Public Comment) asked if there has been a consideration of offering to change the port of export on the EEI to the port where the shipments are being loaded as it would be easier to make available to exam loading into the container. Ms. Barnes replied that all 86 data elements are being looked at, but she believes there will be some oversight on what is specifically being asked.

Cargo Security and Control Division Director and CBP Lead James Swanson added that it is being worked on and they have begun publishing the operational guidance for export manifest which includes a process allowing for exactly what was asked. There was a motion and then seconded to submit the export recommendations from COAC. A roll call vote was taken and COAC unanimously agreed. See Appendix for the full list of recommendations.

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IN-BOND WORKING GROUP

Working Group Co-Lead Michael Young explained they only have one recommendation; however, it introduces the White Paper which contains multiple elements within it. The overall recommendation is that CBP accepts the White Paper as the basis of an in-bond modernization strategy as it 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, the 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 a 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.

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There are six elements this recommendation includes. The first is complete visibility to in-bond transactions across all trade and CBP stakeholders for all players within the supply chain. Secondly, is liability concerning the terms of bonded cargo moving with the United States. The bonded carrier liability is not always clear within the supply chain parties which causes additional liability issues. There is a lack of seamless in-bond electronic handoffs and tracking across all modes of transport and all stakeholders. These elements are to make sure all the players and parties have the ability to understand at what point they assume the liability. For this to be accomplished there needs to be sufficient automation of the in-bond regulatory requirements to accommodate them.

Working Group Co-Lead J.D. Gonzalez added the fifth element which is the port policy and nationwide harmonization. Whenever new policies are implemented, they need to be done uniformly. The last element is miscellaneous high-pain technical issues.

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Executive Director Overacker thanked everyone for their hard work, stating that the White Paper is something to be excited about. He noted that the document is more than strategy, it is a road map to a desired future state for in-bond.

Deputy Executive Director Neuhart added that the referenced White Paper is available online with the proposed set of recommendations. After no comments were made, Ms. Neuhart explained that they will vote by a subcommittee which allows for the public to process and list any additional comments. **See Appendix for the full list of recommendations.**

REMOTE AND AUTONOMOUS CARGO PROCESSING WORKING GROUP

Working Group Co-Lead Jody Swentik explained that since the last COAC meeting, the Working Group held seven conference calls. They have reviewed the four modes of

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transportation and assessed how advanced technology can be utilized within cargo processing applications, specifically for rail and truck first.

The five recommendations being presented impact various phases of the entry and conveyance process to build efficiencies and save on costs for the trades and the U.S. Government. The first recommendation is that CBP establishes a multi-tiered Free and Secure Trade (FAST) program that allows 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.

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

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expanding the use of vetted International Crews crossing land borders on the rail.

Such International Crews eliminate the need to switch crews at mid-bridge 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.

The fourth recommendation is to support the expansion of image technology for trains crossing land borders, NII, and leveraging partnerships through the Donation Acceptance Program (DAP) which has been proved to reduce time by remote and autonomous processing of cargo. The final recombination is for CBP to continue to look to the future by supporting additional bridge expansions that allow for autonomous cargo processing, whether rail or truck, at land borders..

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Working Group Co-Lead Heidi Bray added that they had a demonstration from a rail carrier regarding the pilot that they had been involved in at the southern border that was impressive.

Executive Director Overacker commented that the five recommendations align very closely with CBP's objectives as they move forward in building the port of the future.

Ms. Neuhart asked for any comments or questions with none being heard. **See Appendix for the full list of recommendations.**

TRUSTED TRADER WORKING GROUP

Working Group Co-Lead Alexandra Latham provided an update on the Working Group. Over the last quarter, the Working Group held four calls to discuss and receive status briefings on the collaboration with the 1-USG Working Group, the development of the Participating Government Agency (PGA) Engagement Strategy, alternative validation

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processes from travel restrictions stemming from COVID-19, and the incorporation of forced labor into CTPAT trade compliance.

Working Group Co-Lead Erika Faulkenberry began with the first set of recommendations concerning the development of metrics to measure the performance of benefits for both CBP and Trade. The first recommendation is for CBP to develop a list of the most important quantifiable indicators (for CBP and Trade) related to the benefits of participating in the Trusted Trader Program.

Furthermore, for CBP to develop a mechanism to measure those benefits consistently and periodically. COAC then recommends that CBP develop a metrics dashboard or report available to each Trusted Trader account that incorporates key metrics related to their specific Trusted Trader Program Benefits.

The third recommendation is that CBP issue a benefits metrics report on a quarterly basis which is uploaded to the Trusted Trader CTPAT portal account for easy access. Concluding this section, the fourth recommendation is for

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CBP to also publish a metrics report on CBP's website that is accessible to the public with the general CTPAT Trusted Trader Program Benefit statistics on at least an annual basis.

The second category of recommendations is on the evaluation of existent CTPAT Trusted Trader Program Benefits. The next recommendation is that CBP develops a methodology to evaluate the performance and value-added to Trade and CBP of the existent program benefits to determine which benefit should be phased out or modified based on the results of that assessment. To accomplish this, CBP should continue to partner with external expert organizations to run an independent assessment that evaluates the efficiency and relevance of existent CTPAT Trusted Trader Benefits every two or three years. The results of the assessment should be made public and incorporate feedback from Trusted Trader accounts.

The next category of recommendations concerns the visibility and communication of the implementation status and deployment timeline for CTPAT Trusted Trader

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benefits. This recommendation is for CBP to communicate quarterly on the implementation status of approved benefits, expected deployment timeline for Trusted Trader members, and adjustments to estimated completion dates when applicable and made available for the public online.

The following four recommendations are categorized under the consideration of new potential benefits. The first in this category and seventh recommendation is for CBP to develop and document a formal process to receive and process feedback on existing benefits and suggestions for new potential benefits from both CTPAT Trusted Trader Program members, PGAs, Non-Government Organizations (NGOs), and the general public. The eighth recommendation is to have CBP expand its current process of receiving comments via the general CTPAT information email and to develop a guide on the most efficient mechanism used to submit feedback on existing benefits and potential new benefits for consideration.

COAC then recommends that CBP evaluates and considers potential new benefits and to open a "Public Comment"

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period to the public in order to share benefits that are being considered and request additional input to include within the evaluation process. Additionally, it is recommended that CBP's evaluation process of new benefits be balanced with the enforcement value and the return on investment for trad of that particular benefit.

The last category and recommendation is concerning the documentation and public availability of CTPAT's Trusted Trader Program Benefits Methodology. COAC recommends that once CBP adopts and implements the Trusted Trader Program Benefits Methodology recommendations, that CBP should document the end to end process and include it as a reference available in the CTPT Trusted Trader Handbook and CTPAT webpage.

Mr. Overacker concurs with what is being asked with respect to evaluating efficiency and effectiveness of the benefits within the program.

Ms. Neuhart asked for any other comments or questions Hearing none, she requested a motion for the COAC to

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submit recommendations for the In-Bond Working Group, the Remote and Autonomous Cargo Processing Working Group, and the Trusted trader Working Group. **A motion was made and seconded which was voted on and passed unanimously. See Appendix for the full list of recommendations.**

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INTELLIGENT ENFORCEMENT SUBCOMMITTEE**FORCED LABOR WORKING GROUP**

Working Group Co-Lead Erika Faulkenberry gave a brief introduction, explaining that since the last public meeting, the focus has been on the current mechanisms to submit forced labor allegations to CBP and on industry collaboration and leadership. The recommendations being presented relate to the White Paper, especially on the Industry Collaboration group, and highlights the existing collaborative initiatives.

Working Group Co-Chair Brian White advises COAC members to review the public materials as they have put together a comprehensive White Paper on Industry Collaboration. After very briefly touching on the topics within the White Paper, he explained that the six recommendations being presented address its constraints so CBP can take action on them. Working through the White Paper has been a long process that began the year prior, the Working Group as well as the Industry Collaboration Subgroup which has been established which includes civil society representation.

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The first recommendation is the concept of Recognition of Remediation relating to Withhold Release Orders (WRO).

COAC recommends for CBP to exercise discretion when considering how and when to carry out enforcement responsibilities for 19 USC § 1307, specifically prior to issuing a WRO. It should be taken into account when the importing community is making a genuine effort to conduct due diligence and active remediation when deciding how and when to issue a WRO. It has been demonstrated that when there is disengagement from a supplier versus providing remediation tools, they are more likely to end up within a different supply chain.

COAC recommends enhanced collaboration between the industry and the U.S. Government to identify, prioritize, communicate, and partner on known forced labor risks. Relating to that, the third recommendation is to utilize that enhanced collaboration and taking action. It is recommended 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 acquired through collaboration.

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The fourth recommendation continues to build on enhanced collaboration by having CBP diligently engage with all relevant stakeholders prior to the issue of a WRO to avoid unintended consequences related to that action. This is to make sure that other agencies are prepared and have the proper authority to take action to protect the affected individuals. In order to fully address forced labor, there needs to be collective engagement across the USG to protect the individuals.

International Labor Organization Standards is the next one, and it is recommended that through inter-agency efforts relating to forced labor that CBP respect, promote, and realize the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work to foster greater enforcement and implementation of human rights laws on a national level. Lastly, the sixth recommendation is that through the inter-agency efforts relating to forced labor, CBP assists U.S. importers with clearer visibility within the supply chain by sharing experiences, resources, and tools utilized to access information that may be less accessible to importers.

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Trade Remedy Law Enforcement, Executive Director, Ana Hinojosa thanked the overall Intelligent Enforcement Subcommittee for their hard work and dedicated service. Regarding the first recommendation, there is more work to be done to better understand what point different opportunities become available for remediation as it is typically described as what happens after a WRO has been issued. Furthermore, she believes there is a need for more conversations concerning the discovery of previously unknown forced labor conditions and the identification of the different phases of a potential case. It is important to focus on this issue as a whole government issue; however, she believes some recommendations are potentially outside of CBP's specific remit. They are very interested in continued engagement with the Working Group and completely agree with ensuring the International Labor Organizations' Standards and Protocols are aligned with the work being done. **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 has made over 400 recommendations with an additional 100 recommendations made by Intelligent Enforcement which have been blended to create one master recommendation and uniformity within bonding requirements through the Customs Bond Directive. In support of prior recommendation 10095, COAC recommends that CBP update the Customs Bond Directive 3510-004 before the October 2020 COAC meeting as it was issued in 1991 and has not been updated to reflect the current environment in ACE for single transaction bonds and other bond types.

Additionally, the directive doesn't provide uniform guidance determining the amount of Foreign Trade Zone (FTZ) Bonds per recommendation 10307 or Pipeline Operators per recommendation 10338. COAC recommends the directive be updated to define Pipeline Operators to provide clarity on which bonds are required to transact business. Furthermore, the directive should include a defined uniform bond formula for FTZ Operators that is subject to a \$50,000 minimum per the current regulations.

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Executive Director Hinojosa addressed the FTZ and is in agreement that work needs to be done to provide consistency and guidance regarding computation or calculation of the appropriate bonds. Additionally, she believes discussions are being done internally concerning how the standard calculation should be compiled with the guidance document currently being reviewed outside the Office of Trade.

The issue of Pipeline Operators is of huge interest and that they are working very closely with various offices within CBP and Office of Field Operations' (OFO) to provide further clarification. Currently, OFO is working with several working groups to establish a standard automated procedure for bonded movement through the pipelines. Ms. Gelsomino added that the Working Group has spent a lot of time on the duty deferral program. CBP has issued another CSM message that went out to Trade as a reminder of those due dates.

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Roanoke Trade Vice President Colleen Clarke (Public Comment) commented that the discussion for setting the Standard Bond Calculation for Foreign Trade Zone Operator Bonds has been on the Bond Working Group's agenda since 2019. This issue must be resolved without further delay as many importers are looking for ways to defer duty payment. Ms. Clarke explained that one resolution is to enter importer goods into FTZ for future formal entry and distribution. Additionally, CBP is also handling the goal of the Administration to promote or restart U.S. manufacturing and add jobs but further inaction may drive FTZ activity away from the U.S.

Roanoke Trade Vice President Matthew Zehner (Public Comment) echoed the previous comment that the recommendation for Customs to adopt a uniform policy that provides further clarity to the field. He hopes it is completed by the end of 2020. **See Appendix for the full list of recommendations.**

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ANTIDUMPING AND COUNTERVAILING DUTY (AD/CVD)

WORKING GROUP

Working Group Lead Lisa Gelsomino applauded CBP's efforts to roll out Section 201, 232, and 301 duty programs. It was a challenge to implement paired with alone, but it also involves the exclusion process. Importers can apply for a refund; however, the timeline of that process is a calendar year plus 180 days for protest. CBP needs to realize that if one importer applies for exclusion on a certain aspect or issue, it is applied to all importers. The importers are not aware of that until after approval when they missed out on its benefits.

Addressing those concerns, the first recommendation being made concerns the Presidential Executive Order (EO) 13924 on Regulatory Relief to Support Economic Recovery. COAC recommends that CBP evaluate the EO to determine if it 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.

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The second recommendation is for future considerations and for CBP to work with United States Trade Representative (USTR), Congress, and the 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.

COAC also recommends CBP provide protest training and conduct a webinar on the best practices when filing protests in Ace as many exclusions and protests are being denied for minor reasons. During this webinar, Trade would be able to ask questions on the challenges happening within the ACE portal and provide any time to help with the burden on all parties.

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Mr. Feldman presented the last recommendation on CBP/USTR coordination. It is recommended that USTR coordinate with CBP to ensure that changes to trade remedy exclusions are presented to the trade with adequate notice to understand the duty implications. Further, USTR should ensure that the changes are timely communicated to CBP and the industry to complete the necessary ACE programming to implement those changes in a timely fashion. For instance, when there was a change in the subheadings for Personal Protective Equipment (PPE) face masks - specifically K95 and ANM95 - it wasn't in the system for importers to take that exclusion at the time of entry.

Executive Director Hinojosa commented that some of these pieces are outside CBP's area of responsibility and authority. It is important to note that the recommendation as written is outside the scope of what she believes the COAC recommendations to CBP should be, specifically USTR recommendations. However, from the presentation, the intent is to request a better support system from CBP when engaging with the USTR to improve

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the situation as a whole. As a point of clarity, USTR issues the Section 301 exclusions and establishes those timelines.

The EO in relation to economic relief is regulatory and the agency has been asked to look for regulatory opportunities to offer relief. In this case, the protest period is a statutorily defined period which, in her opinion, wouldn't fit in this particular part. CBP recognizes that COAC wishes a closer working relationship with USTR, specifically concerning the Section 301 exclusion a process.

However, issues concerning liquidations that happen before exclusions occur is already being addressed by CBP and they have already issued two guidance notices to importers advising them of their options to request the extension of the liquidation of the entries. Lastly, Ex.D. Hinojosa finds the recommendation for potentially using the reconciliation process extremely interesting and is definitely something to discuss further. **See Appendix for the full list of recommendations.**

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INTELLECTUAL PROPERTY RIGHTS (IPR) WORKING GROUP

Working Group Co-Lead Amy Smith informed COAC that the Working Group has nine recommendations in total. Eight of those recommendations are addressing IPR Restricted and Prohibited Parties list. The first recommendation is for CBP to seek and obtain the legal authority to create and enforce a comprehensive "IPR Restricted and Prohibited Parties List" (IPR RPP List). This list should include foreign and domestic parties, repeat and other bad actors who are a threat to U.S. health, safety, security, and the economy. The IPR RPP List would be a deterrent that would reduce the numbers of de minimis (Section 321) and other informal and formal entries of counterfeit shipments flooding the country.

COAC recommends that the creation and enforcement of the IPR RPP List be based on current successful lists created for "denied parties". It is then recommended that CBP utilize the IPR RPP List to develop an IPR PRR Portal containing various data sources housed within a new CBP IPR Database Portal complimentary to CBP's IPR eRecordation Application.

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The fourth recommendation specifically addresses the development of the criteria for the IPR RPP List by CBP to properly place parties within it. The criteria should be derived from the previously recommended development of the IPR RPP List and CBP's own internal resources from IPR Seizure Statics. These criteria should take the following into consideration: shipments without valid licensing agreements, repeat offenders with three or more notices, foreign entities with knowledge of violative goods, and any seizures reported on the IPR Seizure Statistics report.

Working Group Co-Lead Heidi Bray continued presenting the recommendations with the fifth relating to the Trusted IPR Vender List and is in support of prior recommendation 10437. CBP should complement the IPR RPP List with a Trusted IPR Vendor list. The next recommendation is on the appeal process and the removal of parties from the IPR RPP List. The following recommendation is for the development of this process by CBP to ensure due process with the removal criteria and timeline made public.

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Additionally, COAC recommends that CBP publicly publish the IPR RPP List as a downloadable file that includes entity names and addresses so that it can be managed within proprietary software for vetting purposes. It is also recommended 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.

Ms. Gelsomino then presented the last recommendation which relates to the STOP Act. She explained that the Working Group has over 75 members and they were unable to get together until June when everything was needed by July. Within a one-month span, they reviewed each section of the eleven recommendations within the DHS report. One key issue has been to address a lot of traffic that is going through the United States Postal Service (USPS) and where a lot of counterfeit goods are showing up. Supposedly the STOP Act is to begin providing full data of everything that is coming through USPS by the end of 2020.

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Highlighting this issue, COAC recommends that CBP promulgate regulations to implement and enforce the requirements set forth in the Synthetic Trafficking and Overdose Protection (STOP) Act that ensure the 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. CBP is currently conducting a data pilot relating to e-commerce, so it is recommended that the developing strategy and requirements for e-commerce shipments are also applied simultaneously in the cargo and mail environments.

Ex.D. Hinojosa provided comment on the IPR Recommendations. First, CBP is very supportive of the notion of providing the public with information surrounding repeat offenders and they are working on how to disclose additional information on violations occurring in the mail and express shipments. She stated that CBP will consult with COAC's IPR Working Group on developments within the disclosure policy.

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Ms. Hinojosa then noted that a prior concept of Known IPR Importer Program was considered non-viable. However, that's not to say CBP is uninterested in the Trusted IPR Vender List but she suggests the group review some of the challenges the prior concept faced. Then, concerning the STOP Act recommendation, she informed COAC that this is not specific to IPR as it is much broader. She suggests the Working Group reevaluate if it even fits within their scope.

Mr. Overacker thanked the Working Group for pointing out CBP's responsibilities within the STOP Act. He assures that CBP is diligently working to fulfil those obligations and will take the recommendation under advisement.

COAC E-Commerce and IPR Working Group Member Shoshana Grove raised her hand for comment. She is a former USPS Postal Regulatory Commission executive, and is currently an officer of PreClear.com, a technology participant in the 321 data pilot, and the CEO of International Bridge, a logistics company that is both a transportation

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supplier and a transportation customer of the United States Postal Service.

As a USPS supplier, we have a contract for China to U.S. shipments and as a customer, we tender millions of packages a year to USPS for final mile. The packages they tender pass through the rigorous compliance requirements of PreClear.com and the advanced data requirements of the 321 data pilot. She fully supports COACs recommendation to create regulations to implement the requirements of the STOP Act as quickly as possible. The Universal Postal Union is putting in effort to increase Advance Electronic Data (AED) compliance from international postal operators. Additionally, they have taken initiatives of their own to request AED compliance of those operators.

Ms. Grove exclaimed that if STOP Act regulations are not implemented simultaneously for both postal and commercial clearance, violative items will move to the more lenient channel. USPS has demonstrated the ability to meet the technical, legal, practical, operational, and

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technological requirements through the 321 data pilot. Yes, it will take time to become compliant, however, until the requirements are defined by CBP, UPS cannot complete the required work to become compliant.

Keith Hein (phonetic) (Public Comment) asked how CBP plans to implement the STOP Act concerning USPS and likely be data quality issues stemming from foreign post? Mr. Overacker replied that there is a regulation package for both AED requirements and for the user fee requirements of the STOP Act. The current regulation package for the US AED is being reviewed with the hopes of being published soon.

Ms. Neuhart proposed a vote for all the Intelligent Enforcement Subcommittee recommendations that were presented under the Forced Labor, Bonds, AD/CVD and IPR Working Groups. **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.**

RAPID RESPONSE SUBCOMMITTEE

Subcommittee Co-Lead Kathy Wilkins provided a brief overview of the subcommittee. It was created to address hot topics requiring immediate consideration with 2020 being full of such topics. Currently the Subcommittee only has three working groups with only one presenting recommendations, the Broker Exam Modernization Working Group. The USMCA Working Group is currently on hiatus but they have been through the review period for several weeks' worth of calls and were an instrumental part of implanting a very difficult and time sensitive roll out.

Regulations and Rulings Special Advisor and CBP Lead Elena Ryan provided a quick update for the Broker Continuing Education Task Force. They currently don't have any recommendations but are working on a notice to be put in the Federal Register for comment. That notice has been drafted and is current in review within CBP. Once that is cleared it will need to be cleared by the Department as well before moving further.

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BROKER EXAM MODERNIZATION WORKING GROUP

Working Group Co-Lead John VanWallaghen explained that any recommendations for the October exam were needed by this meeting. The Broker Exam scheduled for October will be held as a split session on a single day with a morning and afternoon testing session. However, restrictions on gathering size will have an impact and other locations will be needed to accommodate additional people in alternate cities/states.

The Working Group's goal is to ensure that whoever desires to sit for this exam has the opportunity to and for those individuals, that the experience is consistent and credible. COAC recommends that CBP provide a paper-based exam in lieu of the electronic exam for the October 2020 exams due to the challenges of the current COVID-19 emergency and limits of gatherings to ten or fewer people as an electronic exam would not be feasible. The intent here is to have all test takers take the same test using the same testing format and to not have to scramble last minute to set up alternative testing locations.

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It is then recommended that CBP identify additional government locations where the current CBP Proctor will offer the paper exam to accommodate space for proper social distancing. If the government locations are unavailable, CBP should designate alternate private sector locations within 30 miles of the CBP ports of entry. The third recommendation is then for CBP to outline the criteria for private sector locations in order to standardize the exam experience while filing local and state social gathering procedures.

Additionally, COAC recommends a minimum of one hour between the first and second examination sessions so that the facilities and equipment can be sanitized and to provide adequate set-up time for exam takers.

Office of Trade, Executive Assistant Commissioner, Brenda Smith added a comment for all those preparing for the exam, that with the uncertainty of physical facilities and what each community is requiring, they will do the best they can to provide a consistent experience across all facilities and to accommodate everyone who wants to take the exam.

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Trade Policy and Programs Deputy Executive Director Brandon Lord added that they are open to the recommendations as they do not want to have to cancel another scheduled exam. He states that this is the perfect example of why the Rapid Response Subcommittee exists. **A motion was made and seconded to submit the Broker Examination recommendations which was voted on unanimously. See Appendix for the full list of recommendations.**

NEXT GENERATION FACILITATION SUBCOMMITTEE

Subcommittee Co-Lead Cynthia Allen provided a brief update on the Subcommittee and stated that they will not be presenting any recommendations at this time. She thanked CBP for getting the new proposed recommendations out in the Federal Register, which has been a twelve-year effort.

Trade Policy and Programs Executive Director John Leonard added that the Subcommittee's Working Groups are putting in great work and thanked them for all they do.

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EMERGING TECHNOLOGIES WORKING GROUP

Working Group Co-Lead Celeste Catano updated COAC by stating they have monthly meetings to focus on new innovative technologies. They have had various companies present different technologies at those meetings which has led to great discussions on how applicable to the work being done by Customs and DHS.

UNIFIED ENTRY PROCESSES WORKING GROUP

Working Group Co-Lead J.D. Gonzalez provided a brief update. The Working Group has continued to have several meetings which has highlighted the need to for a comprehensive update to keep pace with many of the new challenges in the modern trade environment. They have also been able to define Customs and Trade responsibilities for emerging and traditional actors to develop a framework that execute the 21st Century Customs Framework strategic goals.

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ONE UNITED STATES GOVERNMENT (1-USG) WORKING GROUP

Working Group Co-Lead Madeleine Veigel explained that they are collaborating with CBP on efforts between government agencies and industry stakeholders. They held the Partner Government Agency Disclaim Co-Workshop on July 1, 2020 to review and increase overall awareness of the disclaim process.

Mr. Lord thanked everyone for their willingness and hard work, especially in the time of COVID-19.

CLOSING REMARKS

Acting Commissioner Morgan thanked everyone on COAC for all the support they continue to give at the ports of entry as everyone works through the ongoing pandemic and its related issues.

Ms. Neuhart wanted to recognize all of the extensive work done by the CBP partners within each of the program offices and all the industry members that are not COAC

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members as they continue to participate and contribute to the working groups.

The meeting was adjourned at 5:14 p.m.

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APPENDIX**COAC Public Meeting
July 15, 2020 – Virtual****SECURE TRADE LANES SUBCOMMITTEE****Export Modernization Working Group Recommendations**

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

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**

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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.
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.
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.
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.
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:

1. COAC recommends that CBP develops a list of the most important quantifiable indicators (both for CBP and Trade) related to the benefits of

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participating in the Trusted Trader program and develops a mechanism to measure them consistently and periodically.

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.)
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.
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:

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.

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)

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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.
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.
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.
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.

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

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.

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Remediation is only viable when the importing community maintains the necessary business leverage and the supplier is financially stable.

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.

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.

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.

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.

6. Information Sharing

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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

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:
 - \$50,000 minimum + \$10,000 per additional FTZ location.
 - 10% of the duty liability for the goods stored in the warehouse based on the daily snapshot of FTZ inventory.
 - 3% of the value that is dutiable based on the daily snapshot of FTZ inventory.

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

1) Presidential Executive Order:

COAC recommends that CBP evaluate whether the Presidential Executive Order (EO) 13924 issued on Regulatory Relief to Support Economic Recovery

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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.

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.

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.

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

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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

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.

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.

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.

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)

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- 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.
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.
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
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.
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.
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

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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

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.
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.
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.
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

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adequate set-up time for exam takers, including accommodating those with disabilities.

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