

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

October 2020

**COAC**

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COMMERCIAL CUSTOMS OPERATIONS  
ADVISORY COMMITTEE

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

**Report of the  
Work of the COAC  
Subcommittee on Intelligent Enforcement**

**Co-Chairs**

**Heidi Bray – FCA US LLC  
Amy Magnus – A.N. Deringer, Inc.  
Kate Weiner – Cargill**

**Intelligent Enforcement Subcommittee Members:**

Heidi Bray, Erika Faulkenberry, Lenny Feldman, Lisa Gelsomino, Amy Magnus, Amy Smith, Jody Swentik, Madeleine Veigel, Kate Weiner, Brian White, and Kathy Wilkins

**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 Therese Randazzo, Erika Faulkenberry and Brian White.
- Intellectual Property Rights 21<sup>st</sup> 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 July 15, 2020, the IE Subcommittee held two (2) 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 Intelligent Enforcement Subcommittee submitted its White Paper on Enforcement Modernization to CBP prior to the July 15 public meeting. This white paper supports CBP's 21st Century Customs Framework, anchored on further improving risk management and the impact of efforts to detect high-risk activity, deter non-compliance and disrupt fraudulent behavior by better utilizing technology, big data and predictive analysis to drive decision-making. We intend to dedicate time during our COAC public meeting to discuss the solutions put forward in the document.

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 and executing on prior recommendations.

### **AD/CVD Working Group:**

Since the COAC meeting on July 15, 2020, the AD/CVD Working Group had three (3) conference calls to discuss a variety of topics including:

- **Prior Recommendations:** We reviewed the recommendations made at the July 15<sup>th</sup> meetings and discussed an opportunity to collaborate with USTR to discuss some of the challenges the trade is having with Trade Remedies and the Exclusion process. CBP is also considering the Reconciliation program for Exclusions on a going forward basis and has agreed to conduct a Protest Webinar in Q4 2020.
- **New AD/CVD Cases:** There are 535 AD/CVD Orders and 91 investigations pending including 14 new petitions. Commerce has seen a huge influx of new AD/CVD petitions, in fact more than any other year.
- **Department of Commerce:** We discussed the Proposed Rule on Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws <https://www.govinfo.gov/content/pkg/FR-2020-08-13/pdf/2020-15283.pdf>. Comments were due by September 14, 2020, and the WG looks forward to discussing this issue in future calls.

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 July 15, 2020, the Bond Working Group (BWG) held two (2) conference calls to discuss the following topics:

- 1) **Continuous Bond Sufficiency.** Due to the COVID-19 pandemic, CBP paused issuing the monthly notices for a 90-day period and did resume them in August 2020. Over 3,000 letters were issued in August playing catch up, but settled down again in September.

- 2) **FTZ Bond Amounts.** As a reminder, CBP sent an internal memo to all CBP ports of operation to clarify the minimum continuous bond amount for a new FTZ is \$50,000.
- 3) **Bond Directive.** The Bond WG has been reviewing the Monetary Guidelines for Setting Bond Amounts <https://www.cbp.gov/document/directives/3510-004-monetary-guidelines-setting-bond-amounts>. This document has not been updated since 1999. The goal is to bring the document up to speed through today's environment in ACE. CBP still plans to issue an Advanced Noticed of Proposed Rulemaking to consider any changes to the current bond formulas to better achieve a risk-based bonding model.
- 4) **Surety Data:** CBP is preparing to provide sureties with real-time ASI data within the ACE eBond environment. This is the first update sureties have had to their ASI data since 1986. Discussions continue on expanding surety data to provide more details on AD/CVD and other high-risk shipments as well as details to pay claims as ACE migrates to a paperless process.

### **Forced Labor Working Group**

Since the COAC meeting on July 15, 2020, the Forced Labor Working Group (FLWG) held four (4) conference calls and the Allegations Subgroup held three (3) conference calls. Topics discussed during the quarter included:

- USMCA Task Force Work
- Review and discussion of recent withhold release orders
- Allegations Recommendations Work Product Review
- Discussion regarding pending notice of proposed rulemaking related to forced labor

The FLWG is planning to present recommendations based on the work for the Allegations Subgroup tasked with assessing forced labor reporting mechanisms. The recommendations are based on three opportunities:

- 1) e-allegations portal (webpage) user interface, submission template contents, and systems capabilities;
- 2) increasing CBP's Collaboration with Civil Society- Encouraging the use of the e-allegation portal as a preferred tool for submitting FL allegations; and
- 3) best practices that CBP should consider for improving the Forced Labor allegations' submission process.

### **Intellectual Property Rights – 21st Century (IPR21WG)**

The IPR21WG did not have any meetings since the last COAC meeting held on July 15, 2020. CBP is taking time to prioritize all the recommendations received from Team 1 on eRecordation, Team 2 on Data Sharing and Team 3 in response to the DHS Report on Combating Trafficking in Counterfeit and Pirated Goods

[https://www.dhs.gov/sites/default/files/publications/20\\_0124\\_plcy\\_counterfeit-pirated-goods-report\\_01.pdf](https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf).

The IPR21WG also made recommendations to CBP at the last meeting to develop an IPR Restricted & Prohibited Party List. As CBP continues to prioritize these recommendations, the IPR WG has

been put on hiatus. Looking forward, we believe CBP will be establishing a new IPR WG that will continue to explore 21<sup>st</sup> Century Initiatives

### **Conclusion**

The IE Subcommittee looks forward to presenting recommendations from the Forced Labor Working Group and discussing their White Paper on Enforcement Modernization at the October COAC Meeting.

Looking forward, the IE Subcommittee will be looking for new direction from CBP for Intellectual Property Rights in the 21<sup>st</sup> Century. Additionally, the Bond, AD/CVD and Forced Labor Working Groups continue to be active. One key activity is prioritizing past recommendations and working through implementation. As always, this Subcommittee continues to consider other priority trade issues and enforcement modernization in general.