

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

March 2021

COAC

COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE

**Commercial Customs Operations Advisory Committee (COAC)
March 2021**

**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 Shari McCann, Lisa Gelsomino and Kathy Wilkins.
- Forced Labor, co-chaired by Therese Randazzo, Erika Faulkenberry and Brian White.
- Intellectual Property Rights 21st Century Customs Framework (IPR21), co-chaired by Laurie Dempsey, Amy Smith and Jody Swentik.

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 December 16, 2020, the IE Subcommittee held three (3) 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

The COAC AD/CVD Working Group had two (2) calls since the last COAC meeting that focused on the following topics:

CBP issued a CSMS Message on Third Country AD/CVD Case Numbers on February 2, 2021 <https://content.govdelivery.com/accounts/USDHSCBP/bulletins/2be63cb>

- Third country antidumping and countervailing duty (AD/CVD) case numbers allow importers to enter merchandise that have a CBP country of origin that differ from the country of the AD/CVD order.
- From October 5, 2019, through October 28, 2020, ACE did not allow importers to file AD/CVD entries with any of the AD/CVD third country case numbers listed in the attachment due to technical errors. As a result, entries may have been filed without the required AD/CVD third country case numbers.
- Importers should review their entries during this period and determine if any of the entries should have been filed with the AD/CVD case numbers listed in the attachment.
- Within sixty days of this notice (before April 3, 2021), importers should submit post summary corrections with the required AD/CVD cash deposits for entries identified as missing the applicable third country cases. For entries that have already liquidated, importers may file voluntary tenders per 19 CFR 141.105.
- **Failure to take action within the sixty-day period may result in further actions by CBP. Please send any questions to ADCVDISSUES-HQ@cbp.dhs.gov.**

Discussion on risks with non-resident importers of imports subject to AD/CVD

- CBP will be providing more information on the challenges this presents for unpaid claims and any difficulty recovering from non-resident importers since they have no assets in the United States, and CBP has no jurisdiction over non-resident importers.
- Customs brokers expressed that there are many AD/CVD cases that involve non-resident importers so making changes to how this is managed will definitely have an impact on trade.

In addition, some countries may present more risk than others. Canada and Mexico may also have special provisions under the former NAFTA and new USMCA provisions.

- The Working Group is also exploring how other countries treat non-resident importers, especially for priority trade issues such as AD/CVD.
- The main challenge in the U.S. is that the U.S. Department of Commerce (Commerce) has a retrospective system for administering final AD/CVD. The U.S. is the only country that maintains this vs. a prospective system, which presents unique challenges for CBP to collect funds after the many years it takes for final liquidation.
- The Working Group discussed if CBP can consider working with non-resident importers of AD/CVD where there is a reciprocal revenue agreement with another country. This would allow CBP to have U.S. jurisdiction in another country's court system. This may require certain statutory or regulatory review.
- The Working Group is also exploring what authority CBP has to collect unpaid debt and deal with non-resident importers of AD/CVD under prior Presidential Executive Orders including:
 - EO13785 dated 3/31/17 [“Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Laws”](#)
 - EO13904 dated 2/5/2020 [“Ensuring Safe and Lawful eCommerce for United States Consumers, Businesses, Government Supply Chains, and Intellectual Property Rights Holders”](#)

Bond Working Group

Since the last COAC meeting, the Bond Working Group (BWG) held two (2) calls to review and discuss the ongoing updates to [CBP's Monetary Guidelines for Setting Bond Amounts](#). The BWG has made great progress on the document, which has not been updated since 1991. The BWG must provide final input to CBP by March 12, 2021. Once finalized, the Bond Directive will need to go through additional review by various levels at CBP. There is no definitive date when the final document will be posted and shared publicly.

The BWG is hoping the Bond Directive can be posted before the Advance Notice of Proposed Rulemaking (ANPRM) on Risk Based Bonding is issued expected sometime this summer. The ANPRM has been reviewed by the U.S. Treasury Department, which received input from various sureties in the BWG, and progressing to the next level of review.

Forced Labor Working Group

The Forced Labor Working Group (FLWG) finalized a revised Statement of Work (SOW) following the December 2020 public meeting. Since that time, the group focused on establishing three subgroups that will focus on developing the work products related to each of the objectives outlined in the updated SOW. These subgroups and related work objectives include the following:

- 1) **Informed Compliance Fact Sheet Subgroup:** Partner with CBP to co-author Forced Labor Fact Sheet(s) to include guidance on reporting forced labor allegations, investigations/Withhold Release Orders (WRO)/Findings enforcement, and reasonable care and due diligence.
- 2) **Emerging Traceability Technologies Subgroup:** Assess existing and emerging traceability tools which can be used to improve forced labor mitigation, evaluate readiness of the technology and present a summary of its functionality and applicability to broader industries and businesses of all sizes. Additionally, highlight investment needs and define best practices that could be used for benchmarking purposes.
- 3) **Forced Labor Report and Metrics Subgroup:** Assess key areas of focus and potential actions to assist CBP based on GAO's 2020 Forced Labor Report. Help CBP define 'success'

and establish objective metrics for WROs, which are consistent with the ask from the House Ways and Means Committee and the GAO Forced Labor report.

Additional subject matter experts were identified and considered to ensure that each subgroup had balanced representation from industry. The FLWG will continue working towards the objectives outlined above throughout 2021 and provide updates on progress towards each, including any supporting recommendations during each quarterly public meeting.

Intellectual Property Rights – Process Modernization

Since late October 2020, the COAC IPR Process Modernization Working Group kicked off a deep dive to further develop, expand upon, and align three previous recommendations from the IPR Working Group in the April 2020 COAC meeting. The Working Group split into three teams, each focused on one of the April 2020 recommendations. Bi-weekly WG and team calls took place during the months of January and February 2021. At the March 17, 2021 Public COAC Meeting, the IPR Process Modernization Working Group will present actionable recommendations based on industry knowledge and input provided by CBP.

The three recommendations the WG focused on include:

010434

Sharing of Detention Information: COAC recommends that CBP automate the sharing of detention information, photographs, images and samples as provided for by current regulations. CBP regulations provide for disclosure of unredacted photographs, images and samples (“images”) to the importer per 19 CFR 133.21(a)(1) and to the IP owner per 19 CFR 133.21(b)(3), (c) and (e) but CBP has not adopted procedures to do the following allowed for under these regulations:

- Generate sharable images at the time of inspection
- Provide images to importers at the outset of the 7-day response period
- Provide images to intellectual property (IP) owners promptly following seizure
- Provide images electronically

010435

Photographic Standards Guide: COAC recommends that CBP partner with brand holders to share and provide “photographic standards guides” to aid CBP Officers in taking the required photographs necessary to streamline and expedite the brand authentication process. This can help authenticate products that are detailed within 24-48 hours.

010436

Data-Driven CBP Seizure Process: COAC recommends that CBP re-evaluate the current 25-point step seizure process to eliminate unnecessary steps and choose an expedited process for small parcels vs. pallets. An innovative, streamlined seizure flow would create more efficient identification, interdictions, and seizures. Particularly, the first six to seven steps could be combined through technology advancements. Expedited seizure should not eliminate ability to share information with the business community or target bad actors.

Conclusion

The IE Subcommittee looks forward to presenting recommendations from the Intellectual Property Rights Working Group at the March 2021 COAC Meeting. The Subcommittee continues to prioritize review and modernization of past recommendations and working through implementation. As always, this Subcommittee continues to consider other priority trade issues and enforcement modernization in general.