

COAC 13th Term Recommendations

May- November, 2013

May 22, 2013

Global Supply Chain Security Subcommittee:

FAST for carriers - CBP has been very creative in developing processes for conducting C-TPAT validations remotely. However, current CBP travel restrictions do not allow for onsite meetings in Mexico, thereby preventing many C-TPAT certified carriers from participating in FAST. We recommend that CBP develop an alternative to onsite validations that will allow new C-TPAT carriers to become FAST lane participants.

Status: Motion carried – unanimous

Trusted Trader Subcommittee:

Trusted Trader Program –Before issuing the final Trusted Trader program requirements, we urge CBP to allow us to have an opportunity to review the results of all pilots and provide input to the program in its totality before we (as COAC) decide whether to endorse the program.

Status: Motion carried – unanimous

Trade Modernization Subcommittee:

ACE - Given that the Trade community has been asked to make significant financial commitments and investments in the development of the automation of new international trade systems and process changes necessary to adapt to ACE deployment, COAC recommends that CBP continue to move expeditiously, according to a very well-defined schedule and timeline as previously provided to COAC, to finish development and deliver full ACE functionality with full PGA integration within 3 years. Further, that the progress and achievements of these development efforts should be reported to COAC at least every quarter.

Status: Motion carried – unanimous

August 07, 2013

Export Subcommittee:

Recommendation 1

We recommend that CBP, in conjunction with COAC, develop a combined Government approach to risk, process, guidance and correction by establishing a One US Government for Exports Work Group.

–We recommend the work group tasking result in the delivery of a One US Government for Exports, using the One U.S. Government Master Principles document for Imports as a model. The Master Principles document is critical to harmonize the voice of trade and provide guidance to the US Government on the desired balance point when considering the criteria of outbound speed and cost, the necessary mitigation of US risk, and foreign inbound speed and cost.

–We further recommend that at a minimum this work group consider the following inputs prior to creating the Master Principles for Exports: scope, constraints, and timing from CBP, current state jurisdiction and current risks, mutual recognition, the President’s National Export Initiative (ITDS for Exports and Export Control Reform status), agency alignment in export enforcement, and the particular opportunities for improvement and solutions provided by the EMWG and related USG feedback. Finally, we recommend that group membership include CBP, BIS, Commerce, DDTTC, and trade representation from PGA FACA appointees, exporters, carriers, forwarders and brokers.

Recommendation 2

We recommend that CBP, in conjunction with COAC, create an Export Process Working Group (EPWG) to focus on prioritizing acknowledged opportunities for improvement, review the C-TPAT for exporter criteria in close alignment with the Trusted Trader COAC Sub-committee, and to focus on designing a future state export process that will serve to implement the developed One USG master principles for exports.

Engaging government and trade expertise to focus directly on the process, prioritizing short-term and long-term, will begin to deliver a streamlined future process that considers business, trust, and risk.

–We further recommend that at a minimum this work group consider the following inputs prior to delivering on the tasking: scope, constraints, and timing from CBP Mapping Work Group Education Package, Imports/Exports One USG Master Principles Document, AES status, the President’s National Export Initiative (ITDS for Exports and Export Control Reform status), C-TPAT draft criteria, Mutual

Recognition Requirements for Exports, Authorized Economic Operator (and other export component programs), ACAS feasibility study, best practices in Government to Government (US to Canada – sharing of import information for export purposes). Finally, we recommend this group include members of CBP, BIS, Commerce, DDTC, and trade representation from PGA FACA appointees, exporters, carriers, forwarders and brokers. We also believe that at the proper point, CBP should consider engaging the World Customs Organization (WCO) members from foreign governments to continue global facilitation efforts.

Recommendation 3

We recommend that CBP, in conjunction with COAC, create an Export Visibility, Amendments, and Controls Work Group to focus on delivering specific recommendations to promote supply chain visibility, USG transparency, and compliance. We envision these recommendations being realized via an automated single “system” applying best practices for internal assessment and controls monitoring. Working together to resolve and develop requirements for visibility, amendments, and controls is integral to trade efficiency and compliance and will further implement desired elements associated with a One USG Export Master Principles vision.

–We further recommend that at a minimum this work group consider the following inputs prior to delivering on the tasking: scope, constraints, and timing from CBP, Mapping Work Group Education Package and Export Survey Results, current amendment processes, agency alignment in export enforcement, best practices in export control monitoring, and the One US Government Master Principles for Exports document. Finally, we recommend this group include members of CBP, BIS, Commerce, DDTC, and trade representation from PGA FACA appointees, exporters, carriers, forwarders and brokers.

Recommendations 4

We recommend that CBP engage with the trade to share the export education packages with CBP export and outbound roles in addition to other groups and forums. We encourage CBP to develop and share a list of enhancements as they are implemented as a result of this exercise. We further recommend CBP continue their dialogue with Census, BIS, and DDTC on the opportunities for improvement and continue to work with the trade on solutions.

Status: Motion carried – unanimous on all four recommendations.

COAC Global Supply Chain Subcommittee –

ACAS RECOMMENDATIONS FOR PUBLIC MEETING – 07AUG13

1. Recognizing the unique constraints that necessarily accompany the earliest possible transmission of raw data and the significant impact that the language of the ACAS regulations will have on advance data requirements worldwide, draft ACAS-specific data element definitions that
 - a. are more expansive than the equivalent Air AMS data element,
 - b. promote the earliest possible transmission of data for targeting, and
 - c. match as closely as possible the working definitions that have been used and proven effective during the pilot period.

Status: Motion carried – unanimous

2. Develop an efficient and well-crafted ACAS compliance regime that
 - a. adopts an account-based management approach, including the establishment of a carrier account manager structure for advance cargo data, analogous to that which exists for the advance passenger information system, that allows the full picture of a participant and its compliance level to be taken into account in the determination of appropriate compliance measures,
 - b. focuses on the quickest possible identification and remediation of compliance failures, as opposed to devoting limited resources on both the industry and government side to the imposition of transaction-based monetary penalties and subsequent time-consuming mitigation process,
 - c. that targets negligently or intentionally non-compliant parties, particularly those found to be engaging in fraud, and employs broad discretion in the determination to assess liquidated damages against generally compliant parties demonstrating robust efforts to meet ACAS requirements, and
 - d. includes a sufficiently long period of informed compliance to allow the trade to make all necessary process changes and IT system modifications to meet ACAS requirements.

Status: Motion carried – unanimous

3. Ensure that the filing regime is designed to achieve ACAS’s primary policy objectives – namely, enhancing air cargo security by obtaining the earliest possible data submission, while simultaneously avoiding unnecessary negative impacts on air carrier operations, the air cargo business model, and the movement of legitimate goods. In particular:
 - a. Recognize both the Integrated Carrier – Conventional Carrier business model and the Freight Forwarder – Conventional Carrier business model, as well as the integrated carriers, conventional carriers and freight forwarders themselves, as distinct entities with regard to commercial practices, operational characteristics and technological capacities that necessitate unique self-filing

regimes in terms of pre-requisites for participation and regulatory responsibility.

- b. Recognize ACAS as a discrete advance data system justifying development of a specific self-filing regime that differs from Air AMS in terms of pre-requisites for participation and regulatory responsibility.

Status: Motion carried – By a vote of 15 to 2 abstentions

Trade Modernization Subcommittee:

Role of the Broker Recommendations:

Differences between written version and transcribed versions color coded:

1. There is a recommendation that there be a continuing education component to the customers broker license of a minimum of 40 hours of continuing education over a 36-month reporting period. The COAC recommends that a minimum of 32 hours of the continuing education be accredited, and that a maximum of 8 hours of education may come from non-accredited sources.

It is recommended that CBP take a measured, commercially reasonable approach to the 40-hours continuing education requirement for customs brokers that are wishing to reactivate a license that is inactive.

2. The second recommendation is that the reporting of the continuing education should be tied into the triennial reporting of the licensed customs broker. The consolidated reporting will remove a separate reporting requirement, and the timing will make compliance easier for brokers.

It is further recommended that the reporting of the license holder and the continuing education be done together in ACE. This will eliminate some of the challenge that CBP has with the current reporting program and make compliance easier for the broker as well.

Status: Motion carried – unanimous

Automated Commercial Environment Working Group Recommendation:

It is critical for CBP to continue the ongoing dialogue and provide timely information to the trade community in order to ensure a successful transition from ACS to ACE. COAC recommends that CBP announce definitive transition dates for this conversion and that the determination of these dates provide for a period of 18 months from the release of the technical application documentation.

Status: Motion carried – unanimous

November 2013

COAC One US Government at the Border Subcommittee

Recommendation 1

The One US Government at the Border Subcommittee recognizes U.S. Customs & Border Protections' (CBP) work towards the One US Government (1USG) Single Window Concept and recommends:

- CBP support the continued development of the International Trade Data Set (ITDS) Single Window to include all Partner Government Agency (PGA) requirements, including FDA, in the PGA Message Set.
- CBP accepts 1USG unified import filings including PGA data up to 30 days prior to shipment's departure from the foreign origin. CBP should pass the PGA message set data to the PGA upon receipt. The PGA should review the data for admissibility as early as possible, well in advance of the cargo's arrival. The PGAs will benefit from early data filing, affording the PGA more time to assess risk, review importer & product compliance, and make admissibility decisions while effectively managing their resources. The precedent of early submission requirements of import data is exemplified in Air Cargo Advanced Screening (ACAS), FDA Prior Notice and CBP Importer Security Filing (ISF).
- Upon receipt of 1USG unified import filings, CBP shall provide clear, concise and coordinated messaging to the trade on the status of entry release data and PGA data submission through ACE. The trade requires a consistent message set that includes anticipated status information from each Partner Government Agency as well as CBP. The message set should also provide examination information for planning purposes. The trade community recognizes that the final CBP and PGA cargo release messages will not be issued until one of the following occurs: goods are laden on the vessel (Ocean), wheels up (air), train consisted (rail) or cargo arrives at the border (truck).

Status: Motion carried – unanimous

Recommendation 2

The COAC 1USG@TB recommends CBP work with the Partner Government Agencies through the Border Inter-Agency Executive Council (BIEC) to ensure support for CBP and PGA Trusted Trader programs.

- Trusted Trader participants who submit full advance data submissions should be provided a CBP/PGA cargo release response message (not the anticipated status information received by non-trusted traders) prior to arrival of the cargo, according to a defined and predictable timeline (based on Mode of Transportation or MOT).

In the absence of a credible threat and/or real evidence of a goods' inadmissibility, shipments for Trusted Traders shall not be delayed or detained based on the mere "appearance of" a violation without observed evidence of an actual violation.

- Trusted Trader programs shall be designed to fully leverage CBP's and the trade's investment in Compliance and Security programs such as the Customs – Trade Partnership Against Terrorism (C-TPAT), Importer Self Assessment (ISA), and Focused Assessment (FA) programs. The COAC acknowledges the significant contribution of time and resources that program participants make, and recommends that participation in these programs sets the stage for the participation in PGA Trusted Trader programs, such as the FSMA/FDA Voluntary Qualified Importer Program (VQIP).

Status: Motion carried – unanimous

Recommendation 3

The COAC recommends CBP, PGAs and the trade community develop an efficient process to allow timely and early electronic corrections of data, whether or not the information is considered material for admissibility purposes.

- COAC supports the early filing of data, with the ability for the data to be updated as new information becomes available. Entry corrections shall be allowed prior to arrival or post arrival through the ACE corrections and deletions program.
- Correction of clerical errors should not impact CBP or PGA targeting of Trusted Traders.
- In addition, the trade community should be notified via ABI or other means if the Partner Government Agency makes an adjustment or updates the data filed by the trade.

Status: Motion carried – unanimous

Recommendation 4

The COAC recommends that via the BIEC, CBP should work with the PGAs to define the most workable and efficient way to incorporate the relevant PGAs into the Centers for Excellence & Expertise (CEE) according to industry. CBP should work via BIEC to ensure adequate PGA support for the CEEs, with the ultimate goals of:

- Making Admissibility Decisions
- Fostering Transparent & Standardized Decision Making to Facilitate a Predictable Supply Chain.

- Providing an Empowered Point of Contact to whom issues may be escalated.
- Facilitating Trade Education & Communication

Status: Motion carried – unanimous

Recommendation 5

The COAC recommends CBP work with FDA to provide for electronic notification via ACE when a FDA Notice of Action is issued. The trade recognizes that the FDA Notice of Action will be available via ITACS but believes the electronic notification to the filer via ACE will enhance the trade’s ability to respond to the FDA Notice.

Status: Motion carried – unanimous

Recommendation 6

The COAC recommends CBP work through the BIEC, to encourage the Partner Government Agencies to review the efficiency of their entry release process, identifying clearance bottlenecks, and working to reduce those chokepoints. Analysis of their release process could lead to efficiencies through centralized entry reviews and expanded coverage hours. Delays or detention of goods while waiting for the PGA to determine admissibility could be avoided through more efficient entry release processes, consistent with how global supply chains function.

The COAC recommends that CBP work through the BIEC, to encourage PGAs to provide admissibility decisions at the time of Cargo Release.

Status: Motion carried – unanimous

Recommendation 7

The COAC recommends CBP work with FDA, CPSC and any other PGA who utilizes CBP’s Penalty or Liquidated Damage systems, to define and publish penalty mitigation guidelines for the PGA, taking into account an importer’s Trusted Trader status.

In conclusion, the One US Government at the Border Subcommittee believes these recommendations are consistent and in the spirit of COAC’s 12th Term One U.S. Government at the Border (1USG) Master Principals document, the SAFE Port Act of 2006, the ITDS “single window” requirements and supports The Department of Homeland Security (DHS) Global Supply Chain Security Strategy. DHS’s “Extending the Border Priorities” supports the early electronic submission of entry data. Early filing in ACE prior to the arrival of cargo

at the port of entry (POE) provides significantly improved opportunities for USG security and compliance risk assessments, greater resource planning and cost management efficiencies for both CBP as well as the Partner Government Agencies (PGAs). In return, the trade community would benefit from materially improved predictability and flow of lawful trade. Early filing of entry data does not preclude CBP or PGA from conducting physical exams or inspections.

Status: Motion carried – unanimous

Global Supply Chain Subcommittee

Recommendation 1

Regulatory requirements for filing air advance data should closely follow successful processes used in the ACAS pilot.

Status: Motion carried – unanimous

Recommendation 2

Prior to publication air advance data regulations should be carefully reviewed to ensure that they do not conflict with the Trade Act.

Status: Motion carried – unanimous

Recommendation 3

To promote harmonization of data and physical cargo security protocols, the ACAS Workgroup should add mapping of cargo transfer scenarios, identification of issues, and development of workable solutions to its mandate.

Status: Motion carried – unanimous

Trade Modernization Subcommittee

Recommendation 1

Modify 19 CFR section 111.36 (c) to require that brokers obtain a power of attorney directly from the importer. Nothing should prevent the broker from communicating directly with the importer.

Status: Motion carried – unanimous

Recommendation 2

Recommend that CBP continue to pursue information collection to improve their admissibility determination via the proposed revisions to the CBP Form 5106. CBP should continue to consult with COAC to finalize 5106 information requirements and the collection process. This could be helpful to CBP in addressing risks associated with traditional challenges related to AD/CVD, IPR, and other enforcement issues.

Status: Motion carried – unanimous

Recommendation 3

Realizing that different brokers have different best practices for different business models, we recommend that CBP develop a program to recognize best practices within the broker industry and provide benefits to these brokers. These best practices may include power of attorney collection and validation. We expect that the specific benefits will be discussed during future COAC meetings.

Status: Motion carried – unanimous

Recommendation 4

Given that the proposed changes to the CBP Form 5106 will address many of the concerns surrounding validation of bona fides, we recommend no changes be made at this time to the current regulations regarding the collection of a valid power of attorney. We will revisit this recommendation after the proposed 5106 changes have been reviewed by COAC.

Status: Motion carried – unanimous

2012 & 2013 COAC Trade Efficiency Survey and Export Survey Recommendations

As the charter effort for One United States Government at the Border, we recognize the Partner Government Agency (PGA) integration effort for imports has a maturity beyond that of exports. Given the successful path established for imports, we encourage a similar path for the export efforts – establish Master Principles, establish an Export PGA Council of Agency Leaders, achieve PGA integration (policy, operations, and technical). We encourage CBP to continue to promote cross-agency partnership and integration, and take the lead where necessary to assist in the education and realization of trade-requested improvements required to promote nationally secure economic growth.

The scope of the recommendations below shall apply to both imports and exports; however, given the statements above, we understand and anticipate the export achievements to lag import achievements. Further, while we recognize and value CBP's implementation of the

2012 recommendations, the trade's realization of such recommendations go beyond that of a calendar year. Therefore, the recommendations are restated below and are intended to be removed or replaced upon the trade's realization of intent.

Visibility

- NEW Recommendation 2013: The COAC recommends that CBP and PGAs partner with the trade community to target PGA requirements training and promote visibility of holds in ACE/ACS. We recognize and encourage the implementation of the One US Government at the Border Single Window approach, coupled with the PGA Message Set will provide greater visibility to the trade community as to the reasons for the holds. We encourage the Partner Government Agencies to become early adopters of PGA Message Set, allowing for early submission of information so the PGA may make earlier risk assessment decisions on admissibility of cargo.

Status: Motion carried – unanimous

- NEW Recommendation 2013: The COAC recommends working with CBP to define delays and holds and ensure a process exists for those types that require data capture. In addition, once delays and holds are defined in accordance with 2013 operations, COAC recommends that CBP develop national import/export port metrics as a method a) to understand the complexities associated with goods release by mode of transport and region and b) to achieve standardization of best operating practices across ports. Further, we recommend sharing the results with the Centers of Excellence and Expertise via the Industry Working Groups to achieve industry-specific best practices.

Status: Motion carried – unanimous

- From 2012: With strategic efforts such as the implementation of CEE's, streamlining and integration of PGAs via trade processes, and the National Export Initiative and Export Control Reform, it is important for CBP to continue to collaborate with COAC to seek ways to measure and improve trade processes and reduce freight dwell. We recommend CBP provide the trade with web-based metrics regarding export and import delays and holds on a One USG basis. We additionally recommend the continuation of the Center Industry Working Group metric sharing to generate meaningful bi-directional dialogue that will generate successes in meeting the objectives of both CBP and the trade.

Knowledge Sharing

- NEW Recommendation 2013: The COAC recommends that CBP share the survey information with the Partner Government Agencies (PGAs) to achieve a better understanding by the PGAs of the impact of cargo holds, detention and dwell times on the international supply chain.

Status: Motion carried – unanimous

- NEW Recommendation 2013: The COAC recommends that CBP share the results of the AD/CVD questions with relevant government entities when discussing issues related to the retrospective system of AD/CVD enforcement and collection. The 12th COAC made a formal recommendation based on several reasons that the AD/CVD system be changed to a prospective system similar to those utilized by all global trading partners. The feedback in this survey indicates that the larger trade community strongly supports this earlier COAC recommendation and would favor a prospective system. As this subject is often a topic of discussion in various forums in which CBP participates, the COAC recommends that CBP communicate this feedback in the appropriate forums.

Status: Motion carried – unanimous

- From 2012: When shipments are stopped or paused at the ports, the results tell us the respondents are favorable to dealing with CBP, as compared to the PGA (in general). COAC recommends that CBP champion a knowledge sharing exercise between PGA's and CBP specifically around holds / freight stops to align best practices and identify process improvements. Accomplishing this review in conjunction with the Centers will ensure positive benefits for the trade. We anticipate that the metrics will reveal the positive impact to the trade in the areas of decreased freight dwell, improved targeting, and increased customer service.

Integrated Customer Service Model

- From 2012: We recommend CBP advocate for an integrated customer service model with the PGA's. Synthesizing the current customer service design of CBP and PGAs will benefit both trade and security. Additionally, using the Centers to aid in the integration of a service model is most beneficial to impact processing times and freight dwell.

Annual Trade Efficiency Survey

- From 2012: We recommend the continuation of an annual COAC survey to assist in prioritization, measure success, obtain satisfaction feedback, and begin establishing trends.