

Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC)

**U.S. Customs and Border Protection (CBP)
Washington, DC**

October 29, 2015

1:00 p.m. – 4:00 p.m.



U.S. Customs and
Border Protection

Committee Welcome and Roll Call

CBP: **Maria Luisa Boyce**
Senior Advisor for Private Sector Engagement
Office of Trade Relations
Office of the Commissioner
U.S. Customs and Border Protection



Opening Remarks

CBP: **Kevin K. McAleenan**, Deputy Commissioner
U.S. Customs and Border Protection

TREASURY: **Timothy Skud**, Deputy Assistant Secretary,
Tax, Trade and Tariff Policy, Department of the
Treasury

DHS: **Seth Stodder**, Deputy Assistant Secretary,
Threat Prevention and Security Policy, Department of
Homeland Security

COAC: **Vincent Iacopella**, Member
Julie Parks, Member



Global Supply Chain Subcommittee

CBP: **Liz Schmelzinger**, Acting Director,
 Customs-Trade Partnership Against Terrorism, Cargo and
 Conveyance Security, Office of Field Operations

Jim Swanson, Director, Cargo Security and Controls,
Cargo and Conveyance Security, Office of Field
Operations

COAC: **Adam Salerno**, Member

DHS: **Sean Moon**, Acting Director, Transportation and Cargo,
 DHS Office of Policy



Global Supply Chain Recommendations

1) Companies that voluntarily use Electronic Cargo Security Devices (ECSDs) should not face additional burdens when crossing international borders. Regulations should be modernized and interoperable and necessary rulings modified or revoked to eliminate any additional paperwork, data entry, duty payments or customs declarations when moving these or similar tracking or monitoring devices, regardless of positioning or number of devices, inside or outside of the shipping container. ECSDs should be universally accepted as an instrument of international traffic (IIT). CBP should work with trade partners to find a 21st century solution that overcomes these barriers.



Global Supply Chain Recommendations

2) COAC recommends that CBP monitor the technology market, focusing on technologies that are gaining wide market acceptance. The voluntary use of ECSDs and other technologies will create a better product, and drive a market-based solution that is mindful of international trade and transportation modes. Any consideration of these devices would have a large impact on international trade, with variation by mode of transportation, and should always consider operational impacts and cost-benefit analysis.

3) Companies that voluntarily use ECSDs, utilize the data to monitor movements of a shipment's life cycle. This information is, and should remain, proprietary and should not reside in the public domain. There should be no expectation that this data will be made available to parties outside of the shipper, its contracted carrier and other authorized parties.

Exports Subcommittee

CBP: **Jim Swanson**, Director, Cargo Security and Controls,
Cargo and Conveyance Security, Office of Field Operations
Deborah Augustin, Acting Executive Director
ACE Business Office, Office of International Trade

COAC: **Liz Merritt**, Member
Heidi Bray, Member



Export Recommendations

- 1) We recommend that CBP formally recognize in its air export pilot documentation the fundamental difference between house air waybill – or “shipment-level” – data, and master air waybill – or “consolidation-level” – data, as was done for import electronic data in 19 CFR 122.48a. For the export pilot, this difference should be recognized by delineating and redefining the data element list along a house/master demarcation as per the specific recommendations provided in recommendation 6 below, which includes elimination of the imprecise terms “consolidator” and “de-consolidator.”
- 2) We further recommend that flight-level information be distinguished from master-level data, such that flight information can be provided independently of and subsequent to the provision of both house bill data and master bill data, and that flight information remain a post-departure transmission during the pilot period as per the current paper manifest filing timeframe.



Export Recommendations

3) Per the concept of decoupling shipment data from transport data, the effectiveness of which has been proven by over 5 years of ACAS pilot experience, we recommend that CBP designate house bill and master bill data elements for pre-departure submission to allow risk targeting in the pre-departure timeframe, well in advance of flight departure. At the same time, recognizing the time-pressured operational environment of air cargo and the current pre-departure regulatory structure for the automated export system, no data deadlines for house or master AWB transmission should be set earlier than the deadline for AES filing.

4) Per the Trade Act dictate that data be provided by the party in the best position to do so, we recommend that CBP further designate that house bill data, during the pilot period, may be provided by a participating freight forwarder, while master bill data and flight data should be provided by the carrier.



Export Recommendations

5) Finally, recognizing that industry and CBP may have different opinions regarding what cargo information, per the Trade Act’s mandate, is “reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security,” and recognizing that industry was surprised by several new data elements that were introduced in the FRN for the air export manifest pilot without any prior discussion with COAC, we recommend that data elements not currently required under the export manifest regime be designated as optional for the pilot period. We believe that even with an optional designation, the pilot will provide sufficient information to determine the necessity of the new data elements for risk assessment, to be weighed against the burden that their provision will cause to the trade. We also note that one FRN data element – consolidation status – appears to have been included in error as it is not applicable to the air environment, and that another – number of house air waybills – is an unnecessary element in an electronic reporting system, and therefore both of these elements should be removed from the list.



Export Recommendations

- 6) Based upon the above 5 recommendations, we recommend that CBP disposition the data elements from the air export manifest FRN as follows (items listed in the order found in the FRN list):

FRN list #	Data Element Name	Recommended Disposition
1	Owner/Operator	Existing Data Element: Per recommendation #2, designate as a flight-level data element to be provided post-departure
2	Marks of nationality and registration	Existing Data Element: Per recommendation #2, designate as a flight-level data element to be provided post-departure
3	Flight number	Existing Data Element: Per recommendation #2, designate as a flight-level data element to be provided post-departure
4	Port of lading	Existing Data Element: Per recommendation #2, designate as a flight-level data element to be provided post-departure
5	Port of unlading	Existing Data Element: Per recommendation #2, designate as a flight-level data element to be provided post-departure
6	Scheduled date of departure	Existing Data Element: Per recommendation #2, designate as a flight-level data element to be provided post-departure
7	Consolidator	Existing Data Element: Eliminate per recommendation #1 (see items 14 and 15 below)
8	De-consolidator	Existing Data Element: Eliminate per recommendation #1 (see items 14 and 15 below)



Export Recommendations

FRN list #	Data Element Name	Recommended Disposition
10	Air waybill number	Existing Data Element: Per recommendation #1, divide by “master-level” and “house-level”. Per recommendation #3, designate as a pre-departure data element. Per recommendation #4, designate the house-level as an element to be provided by freight forwarders participating in the pilot.
11a	Number of pieces	Existing Data Element: Per recommendation #1, divide by “master-level” and “house-level”. Per recommendation #3, designate as a pre-departure data element. Per recommendation #4, designate the house-level as an element to be provided by freight forwarders participating in the pilot.
11b	Unit of measure	New data element; Per recommendation #5, designate as “optional” for pilot
12	Weight	Existing Data Element: Per recommendation #1, divide by “master-level” and “house-level”. Per recommendation #3, designate as a pre-departure data element. Per recommendation #4, designate the house-level as an element to be provided by freight forwarders participating in the pilot.
13	Number of HAWBs	Existing Data Element: Eliminate per recommendation #5 – this element is not applicable in an electronic environment
14	Shipper name and address	Existing Data Element: Per recommendation #1, divide by “master-level” and “house-level”. Per recommendation #3, designate as a pre-departure data element. Per recommendation #4, designate the house-level as an element to be provided by freight forwarders participating in the pilot. Note, at the master level, the shipper takes the place of the “consolidator” – FRN item 7.
15	Consignee name and address	Existing Data Element: Per recommendation #1, divide by “master-level” and “house-level”. Per recommendation #3, designate as a pre-departure data element. Per recommendation #4, designate the house-level as an element to be provided by freight forwarders participating in the pilot. Note, at the master level, the consignee takes the place of the “deconsolidator” – FRN item 8.
16	Cargo description	Existing Data Element: Per recommendation #1, divide by “master-level” and “house-level”. Per recommendation #3, designate as a pre-departure data element. Per recommendation #4, designate the house-level as an element to be provided by freight forwarders participating in the pilot.
17	AES Info	Existing Data Element: Per recommendation #1, designate as a “house-level” data element. Per recommendation #3, designate as a pre-departure data element. Per recommendation #4, designate as an element to be provided by freight forwarders participating in the pilot.
18	Split AWB indicator	Existing Data Element: Per recommendation #2, designate as a flight-level data element to be provided post-departure
19	Hazmat indicator	New data element: Per recommendation #5, designate as “optional” for pilot
20	UN Number	New data element: Per recommendation #5, designate as “optional” for pilot
21	In-bond Number	New data element: Per recommendation #5, designate as “optional” for pilot
22	Mode of transportation	New Data Element: Eliminate per recommendation #5 – this element is not applicable in the air environment



Public Comment Period

Please send in your comments or questions via the Chat box in the webinar.

Your comments will be read into the public record and CBP will respond during the public comment period noted on the agenda if time permits.



One U.S. Government at the Border Subcommittee

- CBP:** **Cynthia Whittenburg**, Executive Director
Trade Policy & Programs, Office of International Trade
Deborah Augustin, Acting Executive Director
ACE Business Office, Office of International Trade
- CPSC:** **Carol Cave**, Deputy Director, Office of Compliance
and Field Operations, U.S. Consumer Product Safety
Commission
- COAC:** **Susie Hoeger**, Member
Scott Boyer, Member
Amy Magnus, Member



One U.S. Government at the Border

Recommendations

- **Communication and Outreach Related to the ACE PGA Pilots:** The COAC recommends that CBP do the following, leveraging the BIEC as appropriate when PGA matters are involved:
 - As recommended previously (see recommendation #14017), CBP should deliver an actionable and measurable communication plan to COAC before the next public meeting.
 - CBP's communication and outreach efforts should include more importer-focused messaging.
 - CBP and the PGAs should publish Importer FAQs for how to join a pilot.
 - CBP should publish updated information re: the PGA pilot rollout schedule on CBP.gov and keep it current.
 - Pilot applicants should receive more timely responses from CBP and an acknowledgement that their request to join has been received and is under review.

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Recommendations

- **Communication and Outreach: (cont')**

- CSMS messages regarding ACE deployment should be more timely and specific, and better categorized for easier reference (e.g., software issues, policy issues, etc.).
- Key issues and learnings from the pilots should be published on CBP.gov and broadly communicated to the trade as soon as they are identified, to give as much lead time as possible in the development of contingency plans by importers and filers.
- CBP and the PGAs should publish a list of ACE contacts and escalation points by port and/or district/region.

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Recommendations

- **PGA Message Sets and Related ACE Functionality**: The COAC recommends that CBP do the following, leveraging the BIEC as appropriate when PGA matters are involved:
 - The business rules, implementation guides, and record layouts for all PGAs should be locked down now, with no additional changes allowed prior to the February 2016 mandatory filing deadline. The agencies have had enough time to finalize their layouts. Importers and filers need to be afforded the same courtesy, in terms of having adequate time to complete and test their own programming.
 - As recommended previously (see recommendations #14008 and 14018), CBP should work with the PGAs to minimize data creep. Data not used for admissibility decisions before, including forms that were kept in broker files but rarely requested by the PGA, should not be used for that purpose now. The agencies should collect this data post-entry, if necessary, but it should not impede the entry process when no real risk is present.

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Recommendations

- **PGA Message Sets and Related ACE Functionality: (cont')**
 - All data elements that are included in the customs entry and are also required by the PGAs should be fed automatically without having to re-key the data.
 - CBP should incorporate automated house bill release in ACE Cargo Release and companion manifest capabilities where it does not exist to facilitate effective visibility in managing cargo release at non-automated facilities.
 - CBP should implement an eBond process for DOT bonds.

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Recommendations

- **PGA Pilot Processes:** The COAC recommends that CBP do the following, leveraging the BIEC as appropriate when PGA matters are involved:
 - The PGAs should evaluate staffing levels to ensure they are able to turn around releases in the new shorter timelines. The timing of certain automated PGA data may shorten the time the PGA has to review data for cargo release.
 - CBP and the PGAs should establish a true 1USG process, whereby requests for documents and/or exams are made once on a multi-agency basis, and the same information or exam results are used by all agencies.

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Recommendations

- **PGA Pilot Processes: (cont')**

- Unless FDA intends to continue pre-validating data after the conclusion of their pilot, FDA should test real/un-validated data during the pilot to ensure all potential issues are identified and addressed. If FDA intends to continue pre-validating data, it should be done one time at a master data level, not at a shipment level. Pre-validating data on a shipment level is not sustainable by the trade or the agency.
- CBP, via the BIEC, should encourage FDA to relax all non-critical data requirements (i.e., those that are important to the agency but do NOT impact admissibility and weren't previously provided at the time of entry) so that release is not held up due to the addition of new data elements. Additional information or validation, if deemed necessary, can be provided post-entry. If FDA is not willing to relax and/or eliminate some of its new requirements, we recommend that the mandatory filing date for FDA is pushed to later in 2016 to allow time for further testing of real data.

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Recommendations

- **PGA Holds:**

- The COAC recommends that CBP, the BIEC, and the ITDS Board of Directors provide guidance to the trade community so they may properly understand the hold authority of CBP as well as those PGAs whose regulations permit pre-emptive authority at the border. The trade community needs clear guidance on who has the authority to issue a hold, how the hold will be managed (particularly under any relevant PGA pilots), and what actions may be taken to resolve a hold or detention. We believe the PGAs who have the ability to detain or hold cargo at the border, may also have authority over imported goods after they have cleared the border and been released from CBP custody. For this reason, the trade community needs to understand its obligations both at the border and after importation. We highly recommend the issued guidance include a list of current laws and regulations enforced by each PGA, the process to be followed to satisfy each agency's import requirements, and additional information requirements for the other PGAs who rely on CBP's 30 day detention period in 19 U.S.C. 1499, to ensure that imported goods can be made available to them after release.

Public Comment Period

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Break

We will be taking a ten minute health break and will resume with the October 29th COAC meeting shortly.



Trade Enforcement and Revenue Collection Subcommittee

CBP: **Cynthia Whittenburg**, Executive Director
Trade Policy & Programs, Office of International Trade

COAC: **Kevin Pinel**, Member
Lisa Gelsomino, Member



Trade Enforcement and Revenue Collection Recommendations

- COAC recommends that CBP, in consultation with Office of Regulations and Regulations (ORR), take immediate steps to identify those areas of enforcement involving PGA admissibility issues where the current CBP penalty and/or liquidated damage regime does not allow CBP to provide any independent relief apart from the PGA recommendation. As an example, we urge CBP, ORR to articulate mitigating factors for liquidated damages claims involving the failure to redeliver merchandise subject to FDA requirements.

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Trade Modernization Subcommittee

- CBP:** **Cynthia Whittenburg**, Executive Director
 Trade Policy & Programs, Office of International Trade
- Susan Thomas**, Acting Director, Trade Operations
 Division, Cargo and Conveyance Security, Office of Field
 Operations
- Ana Hinojosa**, Deputy Assistant Commissioner
 Office of International Trade
- COAC:** **Cindy Allen**, Member
- Lenny Feldman**, Member



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Trusted Trader Subcommittee

CBP: **Elizabeth Schmelzinger**, Acting Director, Customs-Trade Partnership Against Terrorism, Cargo and Conveyance Security, Office of Field Operations

COAC: **Alexandra Latham**, Member
Michael Young, Member



Public Comment Period

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Adjourn



U.S. Customs and
Border Protection



U.S. Customs and Border Protection

Our Mission

We are the guardians of our Nation's borders.

We are America's frontline.

We safeguard the American homeland at and beyond our borders.

We protect the American public against terrorists and the instruments of terror.

We steadfastly enforce the laws of the United States while fostering our nation's economic security through lawful international trade and travel.

We serve the American public with vigilance, integrity and professionalism.