

UNITED STATES OF AMERICA

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DEPARTMENT OF HOMELAND SECURITY

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CUSTOMS AND BORDER PROTECTION

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COMMERCIAL OPERATIONS ADVISORY COMMITTEE

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MEETING

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TUESDAY
APRIL 12, 2011

The Advisory Committee met in the Rotunda Room in the Ronald Reagan International Trade Center, 1300 Pennsylvania Avenue, N.W., Washington, D.C., at 1:00 p.m., Alan Bersin, Commissioner, U.S. Customs and Border Protection, presiding.

PRESENT

ALAN BERSIN, Commissioner, U.S. Customs and Border Protection

TIMOTHY SKUD, Deputy Assistant Secretary, Tax, Trade and Tariff Policy, U.S. Department of Treasury

ELLEN McCLAIN, Acting Chief of Staff, Office of Policy Development, Department of Homeland Security (DHS)

DON HUBER, COAC Trade Co-Chair

KAREN LOBDELL, COAC Trade Co-Chair

LEMAN BOWN, COAC Member

SCOTT CHILDERS, COAC Member

COLLEEN CLARKE, COAC Member

MARY ANN COMSTOCK, COAC Member

PRESENT: (CONT.)

JEFF COPPERSMITH, COAC Member
ROBERT DeCAMP, COAC Member
MATTHEW FASS, COAC Member
MICHAEL FORD, COAC Member
WILLIAM FERGUSON, COAC Member
CAROL HALLET, COAC Member
KAREN KENNEY, COAC Member
KATHLEEN NEAL, COAC Member
JAMES PHILLIPS, COAC Member
TED SHERMAN, COAC Member
BARBARA VATIER, COAC Member
JEFFREY WHALEN, COAC Member

Members not present:

DAVID VITALE, COAC Member
GEORGE WEISE, COAC Member

ALSO PRESENT

MARIA LUISA O'CONNELL, Senior Advisor for Trade and Public Engagement, Trade Relations, Office of the Commissioner
ALLEN GINA, Assistant Commissioner, Office of International Trade
KEVIN MCALEENAN, Deputy Assistant Commissioner, Office of Field Operations
BRENDA SMITH, Executive Director, Trade Policy and Programs, Office of International Trade
LEON HAYWARD, CBP Account Executive
ANNE MARICICH, Director, Center of Excellence and Expertise, CBP
CYNTHIA WHITTENBURG, Director, Trade Facilitation & Administration, Office of International Trade
KEVIN HARRIGER, Acting Executive Director, Agriculture Programs and Trade Liaison, Office of Field Operations
CINDY ALLEN, Executive Director, ACE Business Office, Office of International Trade
TODD OWEN, Executive Director, Office of Field Operations
KIM COSTNER MOORE, Assistant General Manager, Air Cargo Programs, Transportation Security Administration (TSA)
CHRISTA BRZOZOWSKI, Director Cargo Security, DHS
THERESE RANDAZZO, Director, IPR Policy and Programs, Office of International Trade
BRUCE INGALLS, Director, Revenue Division, Office of Administration
MICHAEL LEHNERT, SPECIAL ASSISTANT, CBP

OPENING REMARKS:

Alan Bersin, Timothy Skud, Ellen McClain, Don Huber & Karen Lobdell

The meeting was called to order at 1:10 p.m. Co-Chair Alan Bersin welcomed the participants to the Advisory Committee on Commercial Operations (COAC). He noted that this is the inaugural session of the 12th Term cohort. He welcomed back the returning COAC members. He thanked the new members for taking up the position on the committee. Since this is a new cohort the agenda is slightly revised for this term. Committee will determine how many subcommittees will address topics during the 12th term. He introduced Tim Skud and thanked him for his service on COAC as co-chair.

Co-Chair Timothy Skud welcomed the new COAC on behalf of Secretary Geithner. COAC has a twenty year history. The goal of COAC was to create a forum where concerns of the trade community would be addressed by government officials. This still remains an important role for COAC but over the twenty years additional role where the government seeks the trade community's input on border challenges we face today. Mr. Skud provided the COAC members a copy of the latest International Trade Data System (ITDS) Report to Congress. He informed the COAC that the report recognizes the work that CBP has done to implement the priority projects recommended by the ITDS Board in its previous report and further recommends that the ITDS agencies, particularly those with an export mission, undertake an assessment of the practicalities of achieving part of the export process part of the ITDS vision by enhancing existing systems, and thereby saving cost and time. He will be looking for input from the trade community.

Ellen McClain on behalf of Secretary Napolitano's she passed along the Secretary's commitment to facilitating trade. The Department is excited to see progress on CBP initiative for Trade Facilitation and is supportive. Her office at DHS is designed to inform senior leadership about trade-related issues. She also mentioned her office's work with CBP, ICE and the IPR Center on the Joint Strategic Plan on Intellectual Property Enforcement. She addressed the continuing efforts on aviation security and the challenges of reducing potential security risks for cargo aircraft without impeding trade flow or business processes. She concluded by commenting on the steady progress made in the National Strategy for Global Supply Chain Security, which is on its fourth round. The work is expected to be released in the near future. She also mentioned the Secretary's work in regards to global supply chain security at the international level with the World Customs Organization (WCO) and other coordination with international organizations such as the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO).

Don Huber mentioned that he is glad the 12th Term has convened for the 12th term after a delay with the committee renewal process. He recognized the talents of the COAC given that there is 2 former Customs Commissioners, the president of the National Customs brokers and Forwarders Association, the president of the Coalition Of New England Companies for Trade (CONNECT), former past chair of the Border Trade Alliance, a number of brokers, importers, and carrier representatives. The new COAC looks forward to working on challenging issues such as simplification of entry and financial processes, management by account and the other topics on the agenda. He stated that ACE and ITDS are areas that COAC would like to continue to be involved in. He requested that a member of COAC serve as a representative on the ITDS board

of directors or if this is not possible closer communications between the board and COAC. Don also applauded the progress of Commissioner Bersin and CBP mentioning that COAC has developed a consolidated list of subcommittees and trade chairs and will focus on working priority issues.

Karen Lobdell added to Don's comments that she would like to welcome the new members and that the 12th term COAC is on the same page as CBP in regards to priorities and she feels the group has a lot of energy to get the projects completed over the next two years.

Introductions of the COAC and government participants and Commissioner Bersin certified the minutes from the November 9, 2010 meeting of COAC. Commissioner Bersin mentioned that two members were excused for today's meeting, David Vitale and George Weise.

Commissioner Bersin introduced members of the CBP senior leadership team, Maria Luisa O'Connell, Al Gina, Dan Baldwin, Todd Owen and Kevin McAleenan. Commissioner Bersin mentioned the organizational changes that were effective on March 15th.

MANAGEMENT BY ACCOUNT - NEXT STEPS:

Brenda Smith, Leon Hayward, Anne Maricich & Jeffrey Whalen

Brenda Smith reported on how Commissioner Bersin chartered the Trade Integrated Planning and Coordination Cell (TIPCC) to review the activities which support CBP's trade mission and to identify strategic gaps of that mission. She mentioned the consultations held regarding Management by Account and how this fit into the work of the TIPCC. She explained that seven projects have emerged as priorities of these consultations including the role of the Account Executive (AE), simplifying the entry and collection processes, and the Center for Excellence and Expertise (CEE). She introduced both Leon Hayward and Anne Maricich as directors of the pilot projects. She reviewed the work of the TIPCC and how this group worked with the COAC Trade Facilitation subcommittee out of which two pilots (AE and CEE) and the third area identified a future project of simplifying entry and financial processes.

Leon Hayward, as director, gave an update on the Account Executive pilot. This pilot was launched on November 1, 2010. The project is testing the Agency's ability to engage trusted partners in the electronics industry to facilitate trade while ensuring continued compliance with all import requirements. Successful engagement will enhance CBP's ability to formalize an account-based approach to dealing with trusted (low-risk) trade partners, remove transactional hurdles and other barriers for trusted partners, and enable the Agency to focus its resources on higher-risk companies and shipments. CBP is currently working with two electronics industry companies on the pilot and have engaged TechAmerica, the electronics industry association to further expand involvement by this industry.

The objectives for the AE pilot are as follows:

- Refine and elevate CBP's account-based approach to dealing with trusted partners
- Educate CBP's internal stakeholders on the benefits and process of managing by account

- Garner other government agency input on the Account Executive framework

Anne Maricich reported on her efforts as the Director of the Centers of Excellence and Expertise (CEE). This pilot was also launched on November 1, 2010 and is expected to run through June 30, 2011. The pilot is developing comprehensive strategies to facilitate trade and manage risk within the pharmaceutical industry. The CEE is driving uniform implementation of policies, procedures, and technical guidance within the pharmaceutical sector. This initiative will also evaluate opportunities to collaborate with other government agencies on touch points involving pharmaceutical imports.

The goals and objectives for the CEE pilot include:

- Bringing together pharmaceutical expertise across organizational lines in the Agency
- Developing a robust understanding of the facilitation and enforcement challenges associated with the pharmaceutical industry
- Addressing the challenges through a strategic approach
- Increasing uniformity in interpretation, application, and execution of trade laws and regulations
- Providing clear guidance which would support consistency in CBP actions
- Providing a communication center for CBP and the Trade to promote trade collaboration and achieve greater internal and external transparency
- Determining the feasibility of expanding the CEE to other key industries

Anne explained that through risk analysis they revealed that 90% of import value is handled by 2% of importers in the pharmaceutical industry. She is working closely with the American Association of Exporter and Importers (AAEI) subcommittee on healthcare (which has 22 members from the pharmaceutical industry) regarding the work of this pilot. Anne's team is comprised of 6 CBP personnel (includes: national account manager, 3 import specialists, an international trade specialist and a field analyst) located in Los Angeles and the team has access to other CBP personnel around the country such as the National Import Specialist and others.

Anne mentioned that there will be a two day conference in May in New Jersey with the pharmaceutical industry. The industry is taking time to train CBP on their processes. In addition part of the evaluation process has been to identify challenges, identify impediments and capture best practices. Some of the impediments and challenges include other government agency requirements and outdated regulations that do not reflect current business processes. The team is looking for areas where there is lack of uniformity.

Brenda mentioned that evaluation of both pilots is continuing with a long list of measures to help judge their impact on facilitating trade while ensuring compliance and security. She mentioned that work started on the simplified entry and financial processing. There was a kick off meeting on April 8th which included representatives from the American Association of Exporters and Importers (AAEI), the Business Alliance for Customs Modernization (BACM), the National Manufacturers Association (NAM), the National Customs Brokers and Forwarders Association (NCBFAA) and the National Retail Federation (NRF). Brenda will keep the COAC apprised of

the work done with this project.

Brenda explained the Simplified Entry and Financial Process Vision which is to create streamlined entry/entry summary and financial processes that reduce the administrative burden of CBP procedures while employing risk management principles that facilitate legitimate trade and promotes strengthened supply chain security. CBP will seek opportunities to:

- 1) reduce the filings involved in obtaining release (aligning release with advance data filing);
- 2) coordinate Other Government Agency interests at point of release;
- 3) allow entry/entry summary data transmittal to CBP in accordance with importer's business model post release;
- 4) consolidate payment of duties, taxes, fees owed government on monthly basis, separated from entry summary transaction; and
- 5) minimize import bond requirement for "trusted" importers.

Brenda posed the following questions to COAC:

How does COAC want to structure continuing work on Managing by Account efforts?

What are the key elements of simplified processes?

Jeff Whalen stated that these pilots go a long way towards common goals of predictability, efficiency, transparency, partnership and security and that trade community is pleased that CBP is making progress on these concepts. He did express concerns with CBP's communications on the pilots over the past several months. He also questioned where the subcommittee ended after the close of the 11th term COAC. He has concerns on expanding the pilots to a national level for additional industries and making these a national program. There could be institutional resistance and there are questions of authority. Jeff mentioned the big question for CBP still remains as to how to develop necessary expertise within CBP and how does the pilot(s)/program work in conjunction with other government agency requirements and concepts?

In regards to simplified entry, both sides learned a lot from the discussions but we need to move on with the development of these projects. We are at the point as to where do we go from here. He felt that he could not answer some of the questions that Brenda posed at today's meeting but will need more dialogue with CBP. Some concerns are that by establishing a new trade work group may be a step back on the work that the COAC subcommittee already addressed. I would like to see the sub committee from last summer be reconstituted and new members of COAC be integrated into the subcommittee. COAC plays an essential role in defining the framework of the next steps with these projects.

It was also noted that an important question that has yet to be answered is "what is a Trusted Trader" (or "Account") in these scenarios. This must be defined going forward.

Commissioner Bersin felt that discussion was good but it highlighted the need to have fewer items on the agenda so that the COAC can further discuss the issues in depth. Mr. Whalen questions are hard questions addressing the change process that need to be revisited by CBP and

COAC.

ROLE of the BROKER

Cynthia Whittenburg & Robert DeCamp

Cynthia reported that as part of creating a 21st century vision, the TIPCC generated ideas to transform the role of the broker to modernize and facilitate legitimate trade. Cynthia previously shared with the COAC a concept paper and overview of “Identifying the Role of the Broker in the 21st Century”. This project also would include a look at CBP regulations CFR part 111 and look to change other regulations where necessary.

Cynthia reported that CBP met with representatives of the National Customs Brokers and Forwarders Association of America (NCBFAA) on January 26, 2011 to “kick off” the broker regulatory revision project. The goal of the meeting was to reach a consensus regarding the 21st century role of the broker prior to scoping this project.

CBP proposed major areas to be addressed through project:

Broker Responsibilities

- Require broker to have greater connectivity to importer (increased responsibility for vetting clients)
- Strengthen proof of identity requirements necessary to activate power of attorney
- Examine broker-freight forwarder relationship to determine if clearer regulations are required
- Explore brokers’ role as force multiplier to increase importers compliance especially for small and medium sized companies.

Regulatory Modernization

- Update regulations to account for modern business practices and align with electronic environment
- Discontinue use of Triennial Report contingent upon automation capabilities (automate the triennial).
- Address off-shore “Customs Business” operations

Professionalism

- Revisit examination requirements
- Enhance licensing criteria
- Introduce continuing education requirements for all parties involved in trade and customs work. Includes the government sector.

Penalty Regime/Disciplinary Actions

- Assess 19 U.S.C. § 1641 penalty provision and CBP’s administration of the process with due process.
- Clarify what constitutes filer code misuse and incorporate due process

C-TPAT Broker Partnership

- Explore revamping the substance of broker participatory elements to increase relevancy to the brokers’ business process

Cynthia posed the following discussion questions to COAC:

Does COAC want to formerly respond to provide feedback on the concept paper “the Role of the Broker in the 21st Century”?

What do you see as COAC’s role with respect to this project?

Robert DeCamp, Jeff Coppersmith, Jim Phillips and Don Huber responded to this topic. Bob raise discussion points related to trade facilitation. He is pleased that the work on this project continued through the NCBFAA. He mentioned that in addition to himself, Jeff Coppersmith would participate as trade co-chair on this subcommittee. He then responded to the draft concept paper. First stating that it is recognized that there are regulations that need to be revised. He feels that all licensed brokers are all stakeholders on this project, large, medium and especially small enterprises within the brokerage community. There are brokers who are in firms, independent and some employed directly by importers. He wants to ensure all ideas are heard for this project. He also stated another important stakeholder is the importer and they need to be represented as well. Bob discussed the broker penalty actions but it is important to preserve due process. He cautioned how CBP will address this topic to avoid adverse actions. Professionalism and education have always been a topic that the broker community keeps in mind. Education is not just important for the broker community but to all parties (importers, carriers and government). This education has to evolve and grow as other government agencies are involved in the regulatory process on imports and brokers. Bob feels that education applies to both the private and public sector due to the complexities of these topics. Bob is eager to work with Cynthia and her team on this project. Based on the paper it is clear that the services provided by a broker are not always black and white and that there can be additional complexities that need to be addressed. Brokers come in different sizes and CBP needs to account for this in developing the role of the broker.

Don Huber asked that CBP remember that some brokers are employed directly by importers in compliance department and they should be included when CBP approaches the broker regulation rewrite. Jim Phillips stated that just like there are differences in size of brokers, there are differences in size of importers so it is important for CBP to understand some of the contractual relationships between brokers and importers.

Jeff Coppersmith stated in terms of professionalism that brokers do not only deal with CBP but other government agencies are looking to brokers. It is critical that the design of the new role of the broker not only is CBP focused but focused on the interactions of brokers with other government agencies especially as ITDS further implemented.

Commissioner Bersin introduced retired major general Michael Lehnart, who launched the Global Borders College at the CBP leadership institute in Harper’s Ferry, WV. Mr. Lehnert is also leading efforts to engage the trade, public and academic communities in developing curricula regarding to trade compliance. Mr. Lehnert will provide an update on this later on the agenda.

ONE U.S. GOVERNMENT AT THE BORDER – INTERAGENCY ISSUES

Assistant Commissioner Allen Gina, Kevin Harriger & Michael Ford

The Commissioner mentioned that 2 out of every 3 trade inspections are done at the request of another government agency. There is no other more important priority but to address this issue. CBP held its first ever Import Safety Conference at the end of the October and progress with these agencies continues. Assistant Commissioner (AC) Gina reported that there will be an interagency dispute resolution body under the White House National Security Staff (NSS), specifically the Transborder Interagency Policy commission that will be used if agencies can not come to agreement on disputes related to import transactions. In the past there was no mechanism to address these disputes.

AC Gina led the discussion on this topic. Mr. Gina reported that CBP is working collaboratively and collectively with other government agencies, foreign governments and the trade community to better define and assess risk through increased automation and the sharing of information to encourage greater use of partnership and best practices to protect the U.S. consumer. Mr. Gina stated that coordination needs to be the rule not the exception. CBP is addressing these challenges as to how we can enhance this coordination.

One key achievement designed to improve interagency cooperation is the Border Interagency Executive Council (BIEC). The BIEC was formed to improve interagency coordination on matters relating to import safety and will be the foundation for enhanced efforts in the area of import safety and trade enforcement and one of the outcomes of the October Import Safety Conference. It is comprised of leadership by government agencies that have a role at the border. This includes 10 chartered members: Animal and Plant Health Inspection Service (APHIS), Alcohol, Tobacco, Firearms and Explosives (ATF), Consumer Product Safety Commission (CPSC), CBP, Environmental Protection Agency (EPA), Food and Drug Administration (FDA), Food Safety Inspection Service (FSIS), Immigration and Customs Enforcement (ICE), National Highway Traffic Safety Administration (NHTSA) and National Marine Fisheries Service (NMFS). The BIEC also includes members from International Trade Data System (ITDS), US Coast Guard (USCG), and National Security Staff (NSS).

During the first meeting on February 3, 2011 a governance structure was established. The first BIEC Chair (CBP) and Vice Chair (FDA) were selected to serve a one year term. The second meeting was held on March 3rd and hosted by NSS. The next meeting is scheduled for May 12th and will be hosted by FDA.

3 Goals and priorities for the BIEC include: information sharing, document imaging, and partnership programs. Regarding Partnership Programs we explored best practices and even possibly acceptance by one agency of another agency's members within good standing.

AC Gina presented the following question to Mr. Ford **“While the BIEC was formed to improve interagency coordination, and enhance efforts in the area of import safety and trade enforcement, does COAC feel that the newly-formed import safety committee can in part act in a trade advisory capacity to CBP, as the BIEC raises initiatives that may impact you and your colleagues in the trade community?”**

Commissioner Bersin reported that Michael Ford has been selected by the COAC to represent this topic for this meeting and as a future subcommittee lead. Michael discussed the roadmap that commissioner explained. The COAC feels this project is important and that there are opportunities but will require a lot of working effort for both CBP and the trade community. The COAC is willing to assist in building the roadmap.

Kevin Harriger was then asked to give a report on the Agriculture Annual Report for Fiscal Year 2010. Kevin reported that there are 2400 agriculture specialists in CBP. APHIS is a member of BIEC and we enforce their regulations. CBP is working with APHIS to expedite release programs. Kevin also highlighted the work with APHIS on the cut flower release program, the Asian gypsy moth training program, the agricultural report recently posted online, the APHIS stakeholder registry (an online tool) and new thoughts regarding wood packaging material that will be presented at the Trade Symposium. Kevin would like to further work with the COAC on addressing agriculture issues.

Kevin posed the question to COAC:

Would COAC want to receive the agriculture annual report on a regular basis? The report includes CBP agriculture inspection statistics, CBP Agriculture enforcement action statistics, and a section on the APHIS PPQ stakeholder registry.

Commissioner Bersin stated that he will put this question on hold since the new members may not be familiar with this report so hold on a vote on this item. Commissioner Bersin also thanked Cindy Smith (APHIS/USDA) regarding her role in the integration of agriculture with CBP. Ms. Smith will be leaving USDA in the near future.

AUTOMATED COMMERCIAL ENVIRONMENT/INTERNATIONAL TRADE DATA SYSTEM - INTEROPERABILITY WITH THE OTHER GOVERNMENT AGENCIES Cindy Allen & Michael Ford

Commissioner Bersin, along with Secretary Napolitano, is committed to getting ACE back on track. The CBP leadership team is committed to getting ACE where it needs to be. The leaders include Cindy Allen with the ACE Business Owner, Linda Jacksta for Office of Information Technology, Assistant Commissioner Gina, Executive Director Dan Baldwin and Deputy Commissioner Aguilar who are all committee to the project.

Ms. Allen began her report with an overview on how the ACE Business Office operates and its efforts to engage stakeholders. She thanked the COAC for having business focus on ACE. She recognizes that the stakeholders for ACE include the trade community, the other government agencies and CBP. She mentioned that a monthly ACE status update is available on CBP.gov. This is under "What's New with ACE?" She also reported that CBP made the decision to move forward with IBM as the contractor for the sea/rail manifest. CBP is moving forward with M1, with testing to begin mid-May 2011, with 15 carriers to pilot. Testing in the ports will take place September-January at which point they will announce a date to retire ACS. Post Summary Corrections (PSC) testing is rolling out in April and the functionality should be available in May.

International Trade Data System (ITDS):

Cindy reported there are great successes with ITDS.

Document Imaging: document imaging is ready for piloting with some of the other government agencies. Some of these pilots will be announced to the trade in the near future (May to end of summer timeframe), with a full rollout planned for October 2011

Participating Government Agency (PGA) Interfaces/Interoperability: Identifying and then building interfaces and protocols through which PGAs and CBP will communicate and share information related to imports of cargo.

- The interoperability plan is set to be finalized by CBP in April 2011.
- CBP will provide to PGAs data already collected electronically by CBP that is currently unavailable to them. This capability will become available in August 2011.

PGA Message Set: A single, harmonized set of information that will be collected electronically from international traders by CBP on behalf of PGAs, thereby allowing CBP and PGAs to make decisions about what cargo can come into the US without the myriad paper forms currently required.

- CBP and PGAs will finalize the make up of this single harmonized set of data needed from international traders for imports (PGA Message Set) by April 2011.
- CBP will be putting out the “implementation guides” for the PGA Message Set so that international traders and PGAs can begin the process of readying themselves to utilize this new capability in late spring 2011.
- CBP will build the technology that will enable the collection of this PGA message set and pilots of this new capability by August 2011.

Other ACE functionality: The development of the Cargo Release requirements will focus on the admissibility of imported articles and their release into the commerce of the United States in coordination with Participating Government Agencies (PGAs) and the trade community.

- Work is currently underway with PGAs and the trade communities to revalidate the previously gathered requirements, map the requirements against the ITDS Concept of Operations (CONOPS), and identify any gaps that need to be addressed. This work is expected to be completed by April 2011.
- CBP hosted meetings from February 1 - February 21, 2011 with stakeholders to verify and validate functionality.
- CBP will continue to engage stakeholders to ensure a harmonized approach to the process from all stakeholder vantage points: PGAs, trade, and CBP users.

Once the requirements are revalidated, the design and acquisition phase will begin with an anticipated contract award at the end of 2011 or early 2012. Cindy and her team are traveling around the country to visit ports to see first hand the challenges that field offices have with the systems. Cindy is looking at e-bond for single transaction bonds and addressing continuous bonds. Cindy’s team is also looking at expedited release processes, and one release message for all agencies is under review. Cindy is also looking at the National Export Initiative. Cindy asked COAC for their continued support of TSN.

Cindy asked COAC:

If there should be one processing system for imports and exports? CBP would want a

current system for manifest. Cindy stated that 90% of data elements are the same for both imports and exports regarding manifests. Cindy wanted to know if COAC would like to pursue these ideas and ask for COAC's help on this.

Mr. Ford commended Ms. Allen's involvement within ACE and reported that the roll-out of M1 for rail and ocean environments is coming along. He mentioned it is critical to include exports and outbound process for automation in ACE/ITDS. This effort will help drive down transactional costs. Advance electronic information is coming both for inbound and outbound. There are some opportunities for reducing transactional costs and creating a single window system. Focus on outbound will help with the economy. COAC welcomes the opportunity to participate on outbound issues.

Commissioner Bersin noted that Office of Management and Budget (OMB) and many committees on the Hill have been watching ACE development and have not only indicated approval of the direction we are taking but, even in a very constrained budget, there will in fact be appropriations to support this.

ENHANCING AIR CARGO SECURITY

Todd Owen, Kim Costner Moore & Barbara Vatie

Commissioner Bersin noted that CBP and TSA have been jointly working together to address the Yemen cargo plot and other air cargo security issues to create a seamless DHS approach on air cargo security initiatives. From day one it has been a private/public approach to address these issues without having Congress legislate a solution.

Todd Owen gave an update on the Air Cargo Advance Screening (ACAS) pilot. Todd stated that as a result of a foiled terrorist plot to ship explosive devices within cargo shipments aboard aircraft ultimately bound for the United States, Customs and Border Protection (CBP) and the Transportation Security Administration (TSA) immediately took additional measures to enhance existing protocols to screen inbound air cargo. Prior to the terrorist attempt, CBP and TSA had begun collaborations with the private sector to strengthen air cargo security in the express consignment environment. As a result, efforts are underway to have private industry provide CBP with seven advanced security filing cargo data elements prior to departure as a means to target international inbound air cargo shipments which may be of high risk. The seven data elements from the manifest that are already being collected by the carrier are the shippers name and address, the consignee name and address, the cargo description, the weight and the quantities. These data elements will be collected and analyzed during a multi-phased pilot; the results will guide the ultimate policy and operational approaches that CBP and TSA will take to enhance the security of air cargo. What we've seen through the course of the pilots in the past three and a half months is that whereas before we gained visibility four hours before the plane landed, now we've got that data coming to us 20, 30, sometimes 70 hours before the plane ever departs for the United States.

The results of various partnership meetings have revealed that certain trade partners are capable of providing shipment data to CBP and TSA for joint analysis much earlier in the supply chain and a pilot program for screening advance data have been developed.

The objective of the Air Cargo Advance Screening (ACAS) pilot program is to establish receipt of pre-lading cargo data, allowing CBP and TSA to conduct a joint security risk analysis in order to identify potential threats to aviation prior to lading. Security concerns for identified shipments will be mitigated through host-country intervention or TSA implemented security screening protocols conducted by the carrier prior to lading. The scope of the pilot program is currently limited to the Middle East and North Africa and is expected to expand globally following evaluation and further development of the pilot program.

While many trade partners have volunteered to participate in the ACAS pilot program, CBP and TSA have focused the initial expansion of the pilot program to the express consignment operators since this sector of the trade accounts for more than 70% of all international air cargo shipments. Members of the Express Association of America, which includes the United Parcel Service (UPS), Federal Express, DHL Express, and TNT, account for approximately 93% of the international air cargo shipments in the express consignment environment.

CBP and TSA have held preliminary discussions with additional air carriers and plan to expand the current pilot program in a phased approach that has started with the express consignment air cargo operators. The next piece of the pilot will involve the passenger airlines and freight forwarders piece which is much more challenging because of the inclusion of multiple supply chain entities. Finally we will include all commercial or heavy-lift air cargo carriers.

Kim Costner Moore reported that TSA focus is on risk and to meet requirements of the 9/11 Act. She is looking forward to continue work with the COAC to help sort out some of the more challenging issues particularly as it relates to the freight forwarders.

Barbara Vatie reported out on air cargo security efforts. She first recognized Todd Owen for his efforts regarding the progress with these pilots and engaging the aviation industry. Barbara reported that the key for dealing with the passenger air carriers handling cargo is to engage with the forwarders, shippers and brokers. There is a need to socialize these ideas with the trade community. Barbara reported on Secretary Napolitano's aviation working group chaired by Administrator John Pistole and Commissioner Bersin. The committee is listening to trade on the issues on advance data, capacity building, technology issues and other areas of concern for the trade community.

THE NATIONAL STRATEGY ON GLOBAL SUPPLY CHAIN SECURITY

Christa Brzozowski & Barbara Vatie

Christa Brzozowski expressed her hope to have the new National Strategy on Global Supply Chain Security finalized within a few weeks. The broad and complex issue of global supply chain security requires an integrated, interagency approach, in which agencies share common goals and a common perspective. Government agencies should come to an agreement with each other before engaging with industry and with foreign governments.

"Supply chain" is defined as legitimate commerce across all modes of transportation, including

involved parties or individuals who have a close nexus with supply chains. Passengers are excluded in this context, since they are already screened through other means. The Global Supply Chain Strategy will not address smuggling, cybersecurity or energy networks. The Strategy will include a recommendations document, which is intended to translate strategic principles into near-term actions on immediate challenging issues in specific scenarios.

COAC was involved in initial consultations and contributed significantly to the development of the draft Strategy.

After the release of the Strategy, DHS will spend about six months in robust discussion with stakeholders, seeking their recommendations as to how to implement the principles of the Strategy. This will be done under the CIPAC (Critical Infrastructure Partnership Advisory Committee) process, which the COAC is invited to join.

IMPROVING INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT (IPR)

Therese Randazzo & Don Huber

Commissioner Bersin mentioned that many of the tools needed by CBP for IPR enforcement, NAFTA verifications, textile verifications and AD/CVD enforcement are not available and CBP needs to work with Congress to ensure CBP has the tools needed. He then turned over floor to Therese Randazzo for an IPR update.

Ms. Randazzo began her report by mentioning the priority recommendations by the Administration regarding IPR enforcement. She mentioned the IPR Joint Strategic Plan issued in June 2010. One recommendation highlighted by both is the sharing of information with right holders prior to seizure. Some additional priorities which the Administration is focused on include enhanced targeting, partnership programs and improving penalties.

With regard to targeting, CBP continues to work on improving enforcement in this area by working with right holders to increase information sharing. CBP is also currently exploring partnership programs to include provisions for supply and distribution chain management. CBP is also exploring ways to enhance the assessment and collection of penalties to deter violators and particularly repeat violators.

Currently CBP has a lack of advance information by rights holders. By having advance information from the right holder may help target high risk shipments. CBP has not kept pace with technological improvements and these advances may not always help detect IPR violations. The expansion of trusted partnership programs to include certification of supply chain management will help enable CBP limited focus on high risk shipments. Also, CBP can develop a distribution chain management partnership program to be used by right holders.

Therese asked the COAC:

Would COAC provide views on CBP implementing supply and/or distribution chain management programs that would enhance compliance with laws prohibiting the importation of IPR infringing goods, facilitate legitimate trade, and apply to all industries?

What other recommendations the COAC would make regarding the enforcement of IPR laws?

Commissioner Bersin stated that if CBP had the right tools then CBP can make a difference in enforcing IPR and other areas of concern.

Don Huber mentioned that Therese outlined a series of good recommendations. The problem that COAC only had Barry O'Brien on the COAC IPR subcommittee. The COAC plans to reinstitute the IPR subcommittee for the 12th terms. This will be chaired by Scott Childers and Karen Kenney.

Don noted that the importers in the past have expressed concerns that an IPR ISA program should not be tied to the current ISA program but he is open to discussing suggestions provided by Therese.

BOND ISSUES

Bruce Ingalls, Colleen Clark & Matthew Fass

Commissioner Bersin mentioned that there is an ongoing review of penalties by the Office of Chief Counsel (OCC). We see this notation related to the expansion of bonds, by doing so this will improve collections on some of the violators for IPR and AD/CVD and other CBP areas of concern in going after collections. CBP is not going to issue millions of dollars of penalties only to collect single digit. It is not an efficient use of resources.

Mr. Ingalls reported that the data for risk-based bonding has been provided to Don and Colleen as well as the other COAC members. He mentioned that the COAC knows the risk factors as to why CBP cannot collect debt and has to write off debt. There are 6 statutory reasons. CBP is in the process of re-writing CFR 113 which is very close to being completed and in the process of updating two bond directives with feedback received from the trade community.

Bruce asked the COAC three questions regarding the bond data:

Now that CBP has delivered the write-off data, how does COAC suggest that CBP move forward with the new bond directive?

Does the trade community feel that the risk factors are complete?

How does the trade community envision the risk factors relating to the risk based bonding?

Colleen Clarke reported that half the write off data is due to bond insufficiency. She mentioned that there is no evidence to suggest the current bond process is broken. Based on a study (the Crowe report) a few years ago there is no correlation that risk is lower for importers who participate with CBP partnership programs. In addition, CBP needs to ensure that they do not create a situation of "adverse selection" whereby surety companies are forced to write bonds for only high risk companies. In this situation, bonds would not be as freely available as they are today. Colleen mentioned that low bond amounts for trusted importers may lead to high

liabilities since any company may have financial difficulties (just because they are ‘trusted’ doesn’t mean they have a strong financial statement). Colleen advised that COAC will review the questions asked by Bruce and provide feedback.

Colleen stated that the surety industry believes that risk can be commodity driven as in the case of AD/CVD issues.

Bruce mentioned that he agrees that all parties should be treated the same regardless of size. He feels there are opportunities where CBP can examine different areas that may operate differently so as not to create “adverse selection” among the trade community.

Don Huber stated that 75% of the write off amount is due to AD/CVD and because of this the COAC is suggesting to create a subcommittee to address these issues. Don also asked about the data if the right offs are attributed to new importers that go in and out of business to avert duties.

Tim Skud responded that there have been good studies on this. One study suggested that CBP has an outstanding collection rate (over 90%) except in the area of collecting retroactive AD/CVD duties. Tim reported that a few years ago that we tried enhanced bonding amounts done on high risk importers and commodities but both the World Trade Organization and our domestic courts stated that we can not use this approach.

To address the General Accountability Office (GAO) reports, as long as we have a retroactive duty collection approach there will be problems in collecting duties owed the U.S. Government. Tim stated that those familiar with the current AD/CVD system is the importer pays 10% at the time of importation and then 3-5 years later the importer is told it is 100%, as long as we have this current regime the government will have real problems in taking in these collections.

Commissioner Bersin stated that what is clear is that the current system is not acceptable.

Robert DeCamp asked Bruce if the amounts are duties or do they include penalties in these figures. Bruce responded that these are real supplemental duties, no penalties included. Commissioner Bersin asked Bruce to verify this data.

Matt Fass made two comments, he agreed with the comments on the retroactive system. His second comment, he is skeptical as to how some of the issues with retroactive collections can be handled by bonding. He mentioned that he is in an industry (seafood) where there are a lot of fly-by-night companies which has caused this problem. He is encouraged that there will be more communications and cooperation to help improve duty collections in this area which will help legitimate business. He feels there can also be interagency communications that can help address these issues.

PUBLIC COMMENTS/FUTURE MEETINGS/ADJOURNMENT

Commissioner Bersin introduced retired Major General Michael Lehnert regarding his work on developing a curriculum in international trade optimization (trade regulation). Commissioner Bersin invited both Tim Skud and the Department to participate in this process

Michael Lehnert first brought up the Global Borders College in Harpers Ferry, West Virginia. We are looking to instill in CBP leadership professional and integrity. There is opportunity to leverage the academic community in developing a curriculum in international trade regulations. Mr. Lehnert first explained how he identified the problem, historically Congress and other regulatory agencies have been passing rules governing international trade. These rules are complex and enforcement and compliance both require high levels of expertise. Currently though many universities teach supply chain management, no known institution of higher education provides targeted instruction on trade regulation.

Per the direction of Commissioner Bersin, Mr. Lehnert organized a meeting on the 20th of January with representatives from several international trade organizations, including Don Huber, Karen Lobdell and Kathy Neal, Customs and Border Protection and senior leaders from San Diego State University, University of Southern California, University of California Irvine and University of San Diego met to evaluate the feasibility of developing a curriculum in trade regulation that would benefit both governmental and private industry by improving the level of expertise, thus increasing both security and economic competitiveness. A subsequent meeting was held on the 20th of March.

The initial response from the universities and is favorable. There is a value proposition and solid business case that students who graduate with technical certificates, baccalaureate degrees or masters' degrees with an emphasis on international trade regulations would find ready employment in both the private and public sector.

Agreement in principle was achieved that the government and trade participants would develop a Request for Information (RFI) to determine the level of interest among universities and allow for an official examination of the initiative and solicit a formal response. The RFI will be widely disseminated to universities. CPB and International Trade representatives have formed a working group to develop the RFI. CBP is seeking additional input from the trade community.

Program Characteristics:

Students will be drawn from the general student population and from both public and private sector employees desiring to hone existing skills.

Universities expressed a strong desire for internships with both public and private sector.

Next Steps:

Major General Lehnert would like to meet at next COAC meeting and have a draft RFI.

COAC response from Karen Lobdell and Kathy Neal

Karen stressed that this is an important project for CBP and ties into CBP's trade strategy to keep a trained and developed work force for both private and public sectors. This is critical for economic competitiveness. This program also ties into trade priorities, especially in regards to role of the broker. Karen Lobdell mentioned that the task force asked Robert DeCamp to join the group based on his experiences as an educational instructor in this area.

Kathy Neal mentioned that our counterparts overseas are already teaching this curriculum in high school so the U.S. is in some respects behind but will be able to catch up with a program of this nature.

Commissioner Bersin opened the floor to public comments.

Lee Sandler, Sandler, Travis & Rosenberg and Sandler Travis Trade Advisory Services (STTAS) and former member of COAC made 3 brief comments. 1) With respect to comments from Kevin Harriger regarding the work of CBP's agriculture mission, this is important for the agriculture industry in south Florida since more new and complex pests are being found. Mr. Sandler mentioned there is a need for another Joint Stakeholder meeting between the State Agriculture Department, CBP, USDA, Importers, Exporters, Producers, Carriers and others. It is time to have another meeting. 2) In regards to AD/CVD, there is a problem of a retroactive system and it may be beyond this committee scope to explore legislative changes which may be needed to get out of this dilemma. 3) IPR- Mr. Sandler is concerned about a CBP IPR enforcement approach that would not couple with facilitation for legitimate shipments. Right holders should have greater protection at the border but at the same time the licensees as well as authorized and unauthorized distributors need to have their legitimate shipments facilitated.

George Tuttle, independent trade practitioner from San Francisco had a comment regarding trademark enforcement. Comment is in regards that CBP does not abdicate role to enforce trade mark violation and need to keep independence.

Chip Bown asked about the status of informal entries and de minimus Notice of Proposed Rule Making (NPRM). Commissioner Bersin stated that he would inform Mr. Bown of the status at a later time. He mentioned that CBP was able to move ahead on one and is consulting on the other NPRM package.

It was announced that the next meeting of COAC will be on Thursday August 18th, 2011 in Los Angeles California. The meeting was adjourned at 5:13 p.m.