

Commercial Customs Operations Advisory Committee (COAC)
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Report of the Work of the COAC
Subcommittee on Trade Enforcement and Revenue Collection
Co-Chairs
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Background

During the first quarterly meeting of the 14th Term of COAC held on April 24, 2015, it was decided that topics from the 13th Term of the Trade Enforcement and Revenue Collection (TERC) Subcommittee would continue to be worked on in the 14th Term. This includes the Anti-Dumping and Countervailing Duty (AD/CVD), Bonds, and Intellectual Property Rights (IPR) Working Groups. The Regulatory Audit Working Group that was established in the 13th Term continues to be on hiatus until further notice from U.S. Customs & Border Protection (CBP). The subcommittee objectives and scope are consistent with the official charter of COAC.

Summary of Work

Since launching the TERC Subcommittee in April 2015, three (3) Working Groups have been operating. The AD/CVD, Bond, and IPR Working Groups consist of COAC and non-COAC members representing over 60 stakeholders from the trade including importers, domestic industry, U.S. manufacturers, brand holders, customs brokers, sureties, attorneys, ABI vendors, carriers, consultants, various trade associations as well as participants from CBP and other Partner Government Agencies (PGAs).

Over the past quarter, the TERC Subcommittee continued to focus its efforts on the various enforcement provisions under the Trade Facilitation and Trade Enforcement Act (TFTEA). Certain aspects of the bill, such as the ENFORCE Act, specify that CBP consult with COAC on TFTEA matters and many provisions of the bill must be implemented by August 22, 2016.

Through consultation with the AD/CVD, Bond and IPR Working Groups, the TERC Subcommittee reviewed and provided recommendations for Sections 115 of TFTEA regarding the Establishment of Importer Risk Assessment Program, the ENFORCE provisions for AD/CVD, and Section 117 outlining CBP's Priority Trade Issues (PTIs), which currently include the following:

(1) Agriculture Programs is a newly added PTI for CBP and Agroterrorism has become a very real threat. Protecting the nation's agricultural industry from various threats such as invasive pests, bugs and worse, is an important component of CBP's mission to protect the nation. COAC recognizes that CBP has increased its enforcement efforts in this area through collaboration with various PGAs and stronger enforcement efforts provided by the Center of Excellence and Expertise for Agriculture which became fully functional in March 2016 to provide improved targeting for this industry sector and stronger enforcement initiatives. CBP is also evaluating its C-TPAT minimum security criteria for this sector through the COAC Global Supply Chain Subcommittee and C-TPAT Working Group. There were no specific TERC recommendations provided for this PTI.

(2) Antidumping and Countervailing Duties (AD/CVD). The goal of this AD/CVD PTI is to detect and deter circumvention of the AD/CVD law, to liquidate final duties timely and accurately, while at the same time facilitating legitimate trade. According to the report that CBP prepares for Congress on the [Collection of Outstanding AD/CVD Claims](#), CBP reported over \$1 billion in outstanding debt for AD/CVD duties in FY14.

CBP's ability to fulfill its statutory responsibility with regard to AD/CVD has been affected by the retrospective nature of the U.S. AD/CVD system. Under the U.S. system, CBP collects estimated AD/CVD cash deposits at the time of entry, but the final AD/CVD amount an importer is obligated to pay is not known until after the Department of Commerce (DOC) reviews the AD/CVD Order and provides CBP with a final AD/CVD rate to be paid. The retrospective system often results in the issuance of bills years after the importation of merchandise has occurred and delays CBP's ability to collect.

The AD/CVD Working Group provided several recommendations to assist with these challenges to better protect the revenue within a retrospective system and ensure the ENFORCE provisions of TFTEA deal with AD/CVD evasion swiftly and in a transparent manner for the trade.

(3) Import Safety. This PTI is designed to ensure that unsafe products do not enter the commerce of the U.S. COAC recognizes that CBP has increased its enforcement efforts in this area through collaboration with partner government agencies and stronger enforcement efforts provided by the Centers of Excellence and Expertise (Centers) with improved targeting by industry sector. There were no specific TERC recommendations provided for this PTI, however the Bond Working Group did consider CBP's ability to issue liquidated damages to ensure compliance with requests for redelivery by PGAs that have hold authority and how the current bond formulas ensure such risk is factored.

(4) Intellectual Property Rights (IPR). Trade in counterfeit and pirated goods threatens America's innovation economy, the competitiveness of our businesses, the livelihoods of U.S. workers, and, in some cases, national security and the health and safety of consumers. CBP protects businesses and consumers every day through an aggressive IPR enforcement program. CBP targets and seizes imports of counterfeit and pirated goods, and enforces exclusion orders on patent-infringing and other IPR violative goods. The IPR Working Group held a face to face meeting on June 22, 2016 and developed several recommendations to partner with CBP on these initiatives going forward.

(5) Revenue is a newly added PTI, yet revenue collection has always been a main priority of CBP and the TERC Subcommittee. The Bond WG evaluated CBP's Directive 3510.004 for Setting Monetary Bond Amounts and provided recommendations to ensure bond formulas adequately protect the revenue.

(6) Textiles and Wearing Apparel. Textile imports generate 40 percent of the duties collected by CBP with average duty rate of 16%. More than \$21.1 billion of entered textiles and wearing apparel claim preferential tariff treatment, placing textiles and apparel at a high risk for non-compliance. CBP encounters lost revenue when importers may undervalue merchandise or try to circumvent higher duty rates applicable to textiles. The Bond WG evaluated CBP's bond formulas to ensure such risk is factored.

(7) Trade Agreements and Preference Programs. CBP encounters lost revenue when importers fail to meet duty-free requirements of Free Trade Agreements, and there is potential for insufficient bonding because the Reviewer's Formula is based on 10% of the annual duties, taxes and fees subject to a \$50,000 minimum. Provided CBP's Centers of Excellence and Expertise can identify when importers have not met duty-free requirements upon liquidation or audit, CBP's Analytical Bond Formula would address this concern by requiring continuous bonds to be increased when there are open increased duty bills that CBP would issue upon liquidation. The Bond WG evaluated CBP's bond formulas to ensure such risk is factored to adequately protect the revenue.

In order to implement section 115 of the Trade Facilitation and Trade Enforcement Act (TFTEA) to address the Establishment of Importer Risk Assessment, especially for those importers subject to CBP's designated PTIs as outlined above, which includes AD/CVD and IPR for which the TERC Subcommittee manages respective Working Groups, the COAC continues to support prior recommendations that were made to assist with identifying various importer risk factors.

These include 010042 (encompassing 13024, 13061, and 13062), and especially 13024 which states that CBP should "pursue information collection to improve their admissibility determination via the proposed revisions to the CBP Form 5106... This could be helpful to CBP in addressing risks associated with traditional challenges related to AD/CVD, IPR, and other enforcement issues."

In addition, 010045 to implement section 116 of the Trade Facilitation and Trade Enforcement Act and consider the manner in which the current Broker Known Importer Program (BKIP) could satisfy the broker's responsibility to vet an importer's identity and authenticity.

In addition, 13064 which recommended that CBP build functionality in ACE to help prevent corporate identity theft. Proposed functionality should enable the Importer of Record (IOR) to control and limit which customs brokers or filers, by filer code, are authorized to make entry in each port of entry tied to the Importer of Record number. This could serve as an additional tool to combat corporate identity theft, should an IOR choose to utilize this functionality. Additionally this ability would empower the IOR to use ACE to control the specific ports of entry in which entry can be made, and by which custom broker filer codes. An importer could potentially employ functionality that would restrict any entry from being made in their name in a specific port of entry if necessary. The IOR could use this functionality to address changes in their supply chain as they occur, and authorize entry into those ports for a specific customs broker filer code, several specific filers' codes, or all filers.

These recommendations would help support an Importer Risk Assessment Program that can be further refined with clarification of these issues. In addition to these findings from the TERC Subcommittee, the progress of each COAC Working Group is provided below and each Working Group has provided several recommendations that will be made at the COAC public meeting in Boston on Wednesday, July 27, 2016. As CBP continues to implement the provisions of TFTEA, further review of these PTIs and trade enforcement matters will continue going forward.

Anti-Dumping/Countervailing Duty (AD/CVD) Working Group

The AD/CVD WG consists of a wide range of stakeholders including importers, domestic industry, U.S. manufacturers, customs brokers, sureties, consultants, trade associations, and representatives from CBP, DOC, and HSI/ICE to act as a standing forum of subject matter experts that can be called together by CBP when any issue on AD/CVD matters arise to solicit feedback and advice from the trade. Since the last COAC meeting held in April 2016, the AD/CVD WG worked with CBP to conduct another webinar on AD/CVD Best Practices for the trade. The webinar was well attended with over 600 participants, a recording is available at: http://www.ncbfaa.org/Scripts/4Disapi.dll/4DCGI/cms/review.html?Action=CMS_Document&DocID=16426&MenuKey=education

In addition, the AD/CVD WG held monthly and weekly conference calls to discuss the provisions of the Enforce and Protect Act (ENFORCE) and seek feedback from the trade to develop recommendations that will be presented at the COAC public meeting in Boston on Wednesday, July 27th. The AD/CVD WG also reviewed Section 115 to provide recommendations on adjusting bonds and improving screening and overall enforcement for AD/CVD shipments. Lastly, the AD/CVD Working Group reviewed CBP's web page to provide additional recommendations for improved communication and outreach to educate importers on the potential risk of AD/CVD entries to avoid evasion.

The AD/CVD WG will continue to maintain regular calls to discuss on-going challenges with AD/CVD matters and brainstorm new initiatives to help with enforcement and revenue collection. The AD/CVD WG will also continue to have ongoing discussions on how CBP, DOC, and the trade can work together to implement more effective communication and education tools to improve enforcement and facilitate legitimate AD/CVD importations.

Bond Working Group

Since the last COAC meeting in April 2016, the Bond Working Group (BWG) conducted monthly and weekly calls to consider revisions and recommendations to Directive 3510.004 for Setting Monetary Bond Amounts. The BWG consists of a wide range of stakeholders including importers, customs brokers, sureties, attorneys, ABI vendors, and representatives from CBP's Office of Trade and Office of Administration. Having completed its review of the draft directive for Setting Monetary Bond Amounts, the BWG will be on hiatus until additional issues from the trade arise, such as the rewrite to 19CFR113, Drawback Bond Revisions, or other matters that CBP may present to the COAC BWG for review.

Intellectual Property Rights Working Group

During the 13th term of COAC, the Intellectual Property Rights Working Group (IPRWG) suggested that COAC explore whether an IPR Known Importer program would offer CBP better targeting, while providing facilitation benefits to the trade. During the 14th term of COAC, the IPRWG was once again established to discuss and explore this topic and formulate a recommendation for the viability of an IPR Known Importer program going forward.

The IPRWG held monthly conference calls and conducted a face to face meeting at the National IPR Center in Arlington, VA on Wednesday, June 22, 2016, that included CBP, ICE officials, and a broad spectrum of Trade and Industry stakeholders for an IPR tour and open discussion of IPR-related issues including the IPR Known Importer Program. The IPRWG consists of a wide variety of trade stakeholders including importers, brand holders, customs brokers, express

couriers, customs attorneys, sureties, various trade associations, and representatives from CBP and HSI/ICE at the National IPR Center.

As a result of this meeting, the IPRWG developed several recommendations that will be made at the COAC public meeting in Boston on Wednesday, July 27, 2016. The IPRWG will continue to act as a standing forum of subject matter experts that can be called together by CBP when any IPR issues arise to solicit feedback and advice from the trade. Future discussions will focus on process and procedures of Seizures and Detentions.

Forced Labor Working Group

Another important provision of TFTEA was the repeal of the “consumptive demand” clause in 19 U.S.C. § 1307. The clause had allowed importation of certain forced labor-produced goods if the goods were not produced “in such quantities in the United States as to meet the consumptive demands of the United States.” Repeal of the consumptive demand exception has enhanced CBP’s ability to prevent products made with forced labor from being imported into the United States. As a result, the Forced Labor WG was established on July 13th with over 20 members representing importers in the aerospace, agriculture, food, retail, and software sectors along with several trade associations and representatives from CBP, HSI/ICE, Department of Labor, and other NGOs. The Forced Labor WG kicked off its first meeting on Monday, July 25th and plans to provide recommendations at the next public COAC meeting in Washington, DC in November.

Summary

The TERC Subcommittee will continue to review TFTEA provisions as these get fully implemented throughout 2016 and beyond. The Subcommittee will also address new and carry over topics in its efforts to collaborate with CBP to improve enforcement of U.S. trade laws and protect the revenue with a focus on CBP’s PTIs and mission.