

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

June 2021

COAC

COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE

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

**Report of the
Work of the COAC
Subcommittee on Intelligent Enforcement**

Co-Chairs

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Background

During the quarterly meeting of the 15th Term of COAC held on October 3, 2018, CBP announced the restructuring of the COAC Subcommittees and underlying Working Groups to align with CBP's Trade Strategy 2020. This strategy focuses on four areas aimed at modernizing import/export processes, improving trade intelligence, and maximizing efficiencies.

The former Trade Enforcement and Revenue Collection (TERC) Subcommittee is now called the Intelligent Enforcement Subcommittee to reflect CBP's initiatives to:

- 1) Execute integrated trade enforcement that includes a proactive IUSG approach and focus on priority trade issues.
- 2) Strengthen targeting efficiencies using predictive analytics and intelligence.
- 3) Drive consequence delivery through importer risk assessment and network investigations.

Under the Intelligent Enforcement Subcommittee, the following Working Groups reside:

- Anti-Dumping and Countervailing Duty (AD/CVD), co-chaired by Alexander Amdur and Lisa Gelsomino.
- Bonds, co-chaired by Shari McCann, Lisa Gelsomino and Kathy Wilkins.
- Forced Labor, co-chaired by Therese Randazzo, Erika Faulkenberry and Brian White.
- Intellectual Property Rights Process Modernization co-chaired by Laurie Dempsey, Amy Smith, and Jody Swentik.

The Working Groups consist of COAC and non-COAC members representing different stakeholders from the trade including importers, domestic industry, U.S. manufacturers, brand holders, customs brokers, sureties, attorneys, ABI vendors, carriers, consultants, various trade associations, non-governmental organizations (NGOs) as well as participants from CBP and other Partner Government Agencies (PGAs).

Since the last COAC meeting on March 17, 2021, the IE Subcommittee held four (4) calls to review the activity of all the active working groups as outlined below and review the [IE Modernization White Paper](#). All subcommittee objectives and scope are consistent with the official COAC charter.

Summary of Work

The Intelligent Enforcement (IE) Subcommittee has the responsibility of looking at opportunities to enhance the trade and government processes, policies, and programs, enabling the trade and CBP to be better positioned for the future.

The Intelligent Enforcement Subcommittee submitted its [IE Modernization White Paper](#) to CBP during the October 2020 meeting. This white paper supports CBP's 21st Century Customs Framework, anchored on further improving risk management and the impact of efforts to detect high-risk activity, deter non-compliance and disrupt fraudulent behavior by better utilizing technology, big data, and predictive analysis to drive decision-making. We intend to dedicate time during our COAC public meeting to discuss the progress we have made since introducing this White Paper to CBP in 2020.

The IE Subcommittee currently consists of four (4) active working groups. Each have had substantial tasks over the last few months and continue to work on recommendations and executing on prior recommendations.

AD/CVD Working Group

The COAC AD/CVD Working Group had four (4) calls since the last COAC meeting that focused on the following topics:

- 1) **Third Country AD/CVD Case Numbers.** Third country antidumping and countervailing duty (AD/CVD) case numbers allow importers to enter merchandise that have a CBP country of origin different from the country of origin for the AD/CVD Order. As a follow up to [CSMS Message 4603181](#) that CBP issued on February 2, 2021, Customs brokers within the AD/CVD Working Group showed CBP the challenges they were having in ACE identifying Third Country Cases. As a result, CBP updated ACE Report REF-202 AD/CVD Active Case to pull the Third Country element into the standard report. Once anyone logs into ACE reports, they can go to the home page and select the Entry Summary workspace. Under the AD/CVD tab in the workspace, select the AD/CVD Reference Tab and then open the Reports folder to select REF-202 ADCVD Active Case List.
- 2) **Enforce and Protect Act (EAPA) Portal:** CBP deployed a new EAPA Portal to submit EAPA allegations on March 27, 2021. The new portal will enable trade users to submit and view allegations in a centralized location and no longer need to submit EAPA allegations via the eAllegation found on CBP.gov. The COAC AD/CVD Working Group received an update on the new portal functionality that allows users to submit and upload documents directly into the new portal with login credentials. The login functionality allows users to make updates and view ongoing investigations by selecting case numbers in the portal depending on their authority to view information based on their login rights. The portal is also more interactive allowing users to view and respond to a Request for Information Task from CBP. Users need to create a CBP login account at <https://www.login.gov/create-an-account/>. After creating an account, users can proceed to [EAPAllegations.cbp.gov](https://www.cbp.gov/trade/trade-enforcement/tftea/eapa) to login and submit, review, or update an EAPA allegation. More information can be found on the EAPA page at <https://www.cbp.gov/trade/trade-enforcement/tftea/eapa>.

- **AD/CVD Congressional Reports:** The COAC AD/CVD Working Group reviewed the reports from fiscal years 2018 and most recent from 2019. These reports can be accessed at the following link <https://www.dhs.gov/publication/2020-dhs-congressional-appropriations-reports>. There are now over 600 AD/CVD cases and collection of AD/CVD duties are still challenging. However, CBP continues to work aggressively to collect outstanding duties and use its enforcement authority to level the playing field for domestic industries. Some successes include getting current on liquidations with over 200,000 entries liquidated in 2018 and 2019. CBP also collected \$2.3 billion in AD/CVD cash deposits in 2019 up from \$1.9 billion in 2018. In particular, the 2019 report is helpful and provides Appendix C that lists the cases CBP is targeting due to problems with collections. CBP's EAPA page also shows over 50 cases of reported evasion that has been investigated by CBP through the EAPA process.
- 3) **Golf Clubs Ruling:** The COAC AD/CVD WG received an update from CBP on two different rulings involving Golf Clubs <https://rulings.cbp.gov/ruling/H313495>, and <https://rulings.cbp.gov/ruling/H313537>. These rulings for Golf Clubs are very similar to Pipe Spool rulings that require a breakdown of the different components to determine the correct classification for trade remedies and/or AD/CVD margins. These commodities can be declared in ACE using the special value provisions. CBP is working on providing additional guidance, and the WG encourage CBP to consider enhancements in ACE that can make it easier for the trade to comply with these more complex cases.
 - 4) **AD/CVD A-570-124:** The COAC AD/CVD WG discussed that the International Trade Commission (ITC) issued an affirmative final critical circumstance ruling on small engines case from China. The WG has previously discussed that many critical circumstances investigations have negative findings by the ITC. This affirmative finding demonstrates why CBP still requests AD/CVD cash deposits to be posted during the preliminary investigation when critical circumstances are declared because it would be too difficult to collect those deposits retroactively when the ITC does have an affirmative finding such as this.
 - 5) **21st Century Customs Framework (21CCF):** The COAC AD/CVD WG asked to receive a briefing from CBP on 21CCF to discuss how the AD/CVD process could be transformed under this new framework that looks to modernize entry processes, technology, and legislation. COAC recognizes that AD/CVD policy is set by statute and laws governed by the Department of Commerce (DOC). Through collaboration with the DOC and other Partner Government Agencies (PGAs), the COAC still sees opportunity to provide CBP with feedback and recommendations to “reimagine” processes for AD/CVD and Trade Remedies under this framework. The WG discussed three (3) pain points in the AD/CVD entry process that should be considered under the 21CCF framework.
 - a. **Prospective vs Retrospective System.** The U.S. is the only country that has a retrospective system for determining final AD/CVD margins. This results in a lengthy liquidation process with the final AD/CVD margins unknown until each annual Administrative Review is complete. This can often take three to five years to complete a single Administrative Review. By the time entries liquidate, the AD/CVD margin may increase from the deposit margin approximately 20% of the time. Importers may be unable to financially pay a large shift in duties after goods have already been sold. Bad actors also use this long delay to develop shell companies to evade paying AD/CVD duties altogether. The COAC has made several recommendations for CBP to work with the DOC to consider a prospective system that would eliminate this lengthy investigation and liquidation process.

Going forward, the AD/CVD WG will be reviewing the [2008 United States Government Accountability Office \(GAO\) report](#), which discussed AD/CVD retrospective and prospective systems, as well as the 2010 DOC Study on this matter. These studies were conducted over 10 years ago before there were over 600 AD/CVD cases that are also complicated by multiple Trade Remedies under Section 201, 232, and 301. The COAC AD/CVD WG believe it is time to revisit our prior recommendations through the 21CCF.

- b. **Country of Origin for CBP vs. DOC.** Another pain point in the AD/CVD process is the complexity of determining the country of origin for goods that have component parts or pieces subject to AD/CVD that could have a different country of origin based on the AD/CVD scope than CBP does for classification purposes. This can become even more complex when Trade Remedies under Section 201, 232, and 301 are involved.
- c. **Date of Entry for Duty Calculation.** As previously mentioned, there are many goods that are subject to additional Trade Remedies under Section 201, 232, and 301 plus also have an active Anti-Dumping and/or Countervailing Duty case. Each shipment has a different date of entry that triggers the duty calculation for Trade Remedies vs. the AD/CVD margins. Since AD/CVD margins are a form of Trade Remedy to level the playing field for domestic industries, it seems the date of entry under statute and in ACE should more easily coincide to allow a more transparent, seamless, and cost-effective process.

Bond Working Group

The COAC Bond Working Group (BWG) had five (5) calls since the last COAC meeting that focused on the following topics:

- 1) **CBP's Monetary Guidelines for Setting Bond Amounts.** The BWG is pleased to advise that we have completed our review of Directive 3510-004 for determining bond amounts. CBP will proceed to review internally and hopes to publish by year end. The completion of this recommendation also helped finalize and complete three prior COAC recommendations:
 - a. **Foreign Trade Zone (FTZ) Operator Bonds** received updated guidelines that were already distributed by CBP via CSMS Message. Those guidelines will also be incorporated into the revised Bond Directive.
 - b. **Pipeline Operators** in Canada only need to provide an Activity Code 2 Bond to move shipments via pipeline across the Northern Border into the U.S. The Pipeline Operator would also need an Activity Code 1 bond if acting as importer of record or Activity Code 4 bond if acting as an FTZ. An Activity Code 3 International Carrier Bond is not required.
 - c. **Single Transaction Bonds** involving other PGAs with hold authority can be based at three times the value of the line level valuation and three times the value is not required when goods are disclaimed. CBP is also working on a PGA Disclaim Handbook that will help solidify policy on these issues.
- 2) **Risk Based Bonding.** The BWG received an update from CBP that it has changed course on how to best comply with Section 115 of the Trade Facilitation and Trade Enforcement Act (TFTEA). This section required CBP to develop importer risk assessment guidelines to adjust bond amounts, especially for the seven Priority Trade Issues (PTIs) including AD/CVD, Agriculture, Free Trade Agreements, Import Safety, IPR, and Revenue with a focus on new and non-resident importers. Validated CTPAT Tier 2 and 3 partners were exempt, and CBP planned to issue an Advanced Notice of Proposed Rulemaking (ANPRM) to gain feedback for a risk-based bonding model. Instead of this lengthy rulemaking process, CBP will focus on authority provided under current laws and statutes.

The BWG previously made [COAC recommendations in July 2016](#) that CBP's current continuous bond sufficiency [formulas](#) already take into account these PTIs in many ways with the exception of AD/CVD. CBP also has a [policy](#) in place that can require additional STBs for high-risk shipments of AD/CVD and can consider enforcing this more routinely. To this end, CBP will conduct internal training with Port Offices and Centers of Excellence and Expertise on its existing authority to request additional bonding and when this can be exercised under current statutes, laws, regulations, directives, and policy provisions.

- 3) **Suspended and Debarred Importers of Record:** In alignment with its new strategy to exercise existing authority to meet risk-based bonding requirements, CBP issued [CSMS Message 47894086](#) on May 21, 2021. This message announced that CBP would not permit an importer of record that is suspended or debarred in the System of Award Management (SAM) database (www.SAM.gov) by CBP (and possibly other federal agencies) to use an Activity Code 1 continuous or drawback bond to clear entries or file drawback claims. CBP's Office of Finance, Revenue Division, will provide written notice to sureties to cancel any continuous bonds of this nature with a notice of at least 15 calendar days per 19CFR113.27.

Consistent with existing CBP regulations and policy, importers not permitted to use a continuous bond are still permitted to use single transaction bonds or cash in lieu of surety (for single transactions only) to engage in customs activities. CBP officials remain authorized to take additional actions as authorized by law, regulation, or agency policy when the circumstances so warrant, such as requiring additional bonding to protect the revenue or to ensure legal compliance. This new policy went into effect on May 11, 2021. CBP has already identified 7 importers of record impacted by this new policy. When an importer's suspension and/or debarment terminates which will be updated in the SAM database real time, sureties may file a new continuous bond to resume Customs activities.

- 4) **eBond Test:** Since 2015, the eBond module in ACE has been a great success story allowing bonds to get on file in seconds vs. a minimum of five calendar days and sometimes up to 30 days if paper bonds were rejected or had any complication. Today, even rejections can be corrected in seconds ensuring CBP has a valid bond on file to cover the revenue and national visibility to all bonded transactions. Unfortunately, there are still some bonds outside the ACE eBond module and CBP needs to convert the eBond Test into regulation. The BWG has provided several recommendations to make this eBond enhancements that will be presented at the June meeting and also align with CBP's vision to focus on getting all bonds in ACE to conduct automated bond sufficiency review to better meet risk-based bonding requirements.

Forced Labor Working Group

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

- 1) **Informed Compliance Fact Sheet Subgroup:** Partner with CBP to co-author Forced Labor Fact Sheet(s) to include guidance on reporting forced labor allegations, investigations/Withhold Release Orders (WRO)/Findings enforcement, and reasonable care and due diligence.
- 2) **Emerging Traceability Technologies Subgroup:** Assess existing and emerging traceability tools which can be used to improve forced labor mitigation, evaluate readiness of

the technology, and present a summary of its functionality and applicability to broader industries and businesses of all sizes. Additionally, highlight investment needs and define best practices that could be used for benchmarking purposes.

- 3) **Forced Labor Report and Metrics Subgroup:** Assess key areas of focus and potential actions to assist CBP based on GAO's 2020 Forced Labor Report. Help CBP define 'success' and establish objective metrics for WROs, which are consistent with the ask from the House Ways and Means Committee and the GAO Forced Labor report.

The three subgroups held bi-weekly and weekly working sessions discussing work product related to the objectives. The decision has been made to temporarily suspend activities related to the Emerging Traceability Technology Subgroup while CBP continues internal due diligence related to technology. CBP will present a summary of their findings to the group and determine whether the subgroup can assist CBP further on this topic. The other two subgroups continue to make progress towards objectives, including meeting with subject matter experts, continued dialog with CBP and other government stakeholders.

The current work from the Forced Labor Working group will continue for the remaining of 2021, and an initial set of recommendations it is expected to be presented at the Fall COAC public meeting.

Intellectual Property Rights (IPR) Process Modernization Working Group

The IPR Process Modernization Working Group has been on hiatus since the last COAC meeting. Members of the IE Subcommittee had one call to review the prior IPR recommendations that have been made to prioritize them. In total, there are over 40 IPR recommendations made during the 14th and 15th term of COAC. The IE Subcommittee must review and prioritize these recommendations so the WG can reconvene in the 16th term. Looking forward, the main areas of focus will be:

- 1) **Automation:** Automating the IPR Detention and Seizure process allowing information to be shared with all relevant parties (IPR rights holder, importer, customs broker/logistics provider, and surety) electronically either via email or through the ACE portal. We are pleased to hear that CBP has started a new process to email notices to rights holders.
- 2) **eRecordation:** Implement three short term recommendations for the eRecordation process until a new system can be rebuilt with the long-term recommendations provided by the WG under the 21st Century Customs framework (21CCF).
- 3) **IPR Restricted & Prohibited Parties (RPP) List:** Under the provisions of 21CCF, CBP should seek and obtain the legal authority to create and enforce the RPP List consisting of foreign and domestic parties (i.e., individuals, companies, or organizations) who are known offenders due to repeat violations. When CBP develops an RPP List or suspends or debar an importer of record through the System for Award Management (SAM) database, CBP must also allow the trade to query this information through ACE to receive messaging before handling a shipment for any restricted, suspended, or debarred parties.
- 4) **CBP Seizure Process:** We believe CBP can benefit from a more streamlined seizure process on small package with more automation as noted in 1-3 focus areas above. The IPR WG also provided photographic standards that could make the seizure process easier on CBP.

Conclusion

The IE Subcommittee looks forward to presenting recommendations from the Bond Working Group at the June 2021 COAC Meeting and wrapping up the 15th term of COAC with accomplishments and priorities for each working group as we head into the 16th term of COAC. The Subcommittee continues to review and prioritize past recommendations to work through implementation of them with CBP. As always, this Subcommittee continues to consider other priority trade issues and enforcement modernization in general as presented in our IE Modernization White Paper that can act as a roadmap for the 16th Term of COAC.