

U.S. CUSTOMS AND BORDER PROTECTIONS  
(CBP)

**COMMERCIAL CUSTOMS OPERATIONS ADVISORY COMMITTEE**  
**(COAC)**

QUARTERLY PUBLIC MEETING

Wednesday, December 7, 2022

1:05 P.M. - 3:15 P.M.

Washington, District of Columbia

By: Chelse Sander

## OPENING REMARKS

Felicia Pullam, Executive Director for the Office of Trade Relations, opened the meeting at 1:05 P.M.

CBP Deputy Commissioner Troy Miller welcomed everyone to the meeting and stressed that recommendations and dialogue from the COAC process have a meaningful contribution to the economy and national security. Some presented highlights include the Border Interagency Executive Council Global Business Identifier Initiative, 21st Century Customs Framework (21CCF), and Forced Labor.

A new Passenger Air Operations Working Group was announced and will operate under the Next Generation Facilitation Subcommittee. The working group will be identifying modernized passenger processing rules and regulations, streamlining passenger experience at US ports of entry, and identifying the challenges that impact operations.

Deputy Commissioner shared two file rules for modernizing the Customs Broker Rail Regulations published on October 18, 2022, and they will be effective as of December 19, 2022. The rules will eliminate distinct permits and transfer all licensed brokers to a national permit. He concluded that the next public COAC meeting will be held on March 29, 2023.

Tax, Trade, and Tariff Policy Deputy Assistant Secretary Tom West highlighted a significant development since the last COAC meeting, which is the Broker Modernization Regulations published in October 2022. Although there are several CBP outreach efforts to ensure smooth implementation and add additional guidance for specific areas of focus, the COAC and the Broker Modernization Working Group will continue providing feedback as the implementation progresses.

Although not on the agenda, the upcoming change relating to the Craft Beverage Modernization Act (CBMA) refund process was highlighted. This process moves from CBP to Alcohol and Tobacco Trade and Tax Bureau (TTB). TTB published a temporary regulation in September 2022 laying out how foreign producers register and how importers can file for refunds based on the foreign producers' assignment of CBMA tax benefits beginning January 1, 2023.

DHS Deputy Assistant Secretary for Trade and Economic Security Tasha Hippolyte noted support from the DHS perspective of the clearly outlined efforts that CBP is doing within trade, specifically within 21CCF. DHS is supportive of the dynamic changes made through COAC recommendations. Additionally, DHS is supportive of the outstanding job of implementing the Uyghur Forced Labor Prevention Act (UFLPA), which is only strengthened through work with the COAC.

HSI Assistant Director of Global Trade Investigations and Director of the National Intellectual Property Rights Coordination Center Jim Mancuso explained that the IPR Center oversees the Intellectual Property and Commercial Fraud Efforts, which is housed within HSI's Global Trade Division. Additionally, the Global Trade Division oversees the Counter Proliferations Unit, which prevents the illicit export and transfer of sensitive military and dual-use technology and defense articles to transnational criminal organizations, terrorist groups, adversarial nation-states, and other nefarious entities.

The HSI-CBP relationship is crucial as CBP's Deputy Director and full-time personnel at the IPR Center are vital members of the IPR Center team. Together they continue to impact the establishment of Trade Enforcement Coordination Centers (TECCs) to integrate commercial fraud enforcement efforts, enhance coordination, increase communication, and unify efforts. An example of these efforts is the sentencing in the John Wayne Holdings case.

The IPR Center is to resume in-person training for domestic law enforcement and international partners, including the Intellectual Property and Trade Enforcement course. In FY22, CBP personnel assisted with international training events in Egypt, Paraguay, Kenya, and Thailand.

Executive Director Felicia Pullam called roll. All but Amy Elizabeth Smith were present.

COAC Trade Co-Chair Kathy Wilkins briefly summarized what will be heard throughout the remainder of the meeting. Updates will be given on the Trade Partnership and Engagement (TPE), clarifications regarding the UFLPA and the thirteen recommendations presented in June 2022, the Truck Manifest Program, and the CBP Trade Strategy of 2020.

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**NEXT GENERATION FACILITATION SUBCOMMITTEE**

COAC Co-Lead Jody Swentik shared that the Subcommittee will provide recommendations from two groups, the 21st Century Customs Framework Task Force and the E-Commerce Working Group. In addition, updates will also be given on the 1-USG and ACE 2.0 Working Group. Lastly, they welcomed the newly announced Passenger Air Operations Working Group, which Vicente Herrera Gonzalez and J.D. Gonzalez will lead.

21ST CENTURY CUSTOMS FRAMEWORK (21CCF) TASK FORCE

Working Group Member Matthew Zehner presented on behalf of Chair Brian White, stating their goal is to engage in constructive dialogue with CBP to advance the trade sector's interests and include over 75 members from various sized entities and a broad spectrum of industries.

Throughout the quarter, gathered trade concepts through input and guidance from trade colleagues to draft language to advance with CBP and TGA's partner government agencies. Finally, in October 2022, a focus group met with CBP and TGAs in Washington for a two-day working session to discuss the facilitation concepts and the proposed language, leading to the group's first recommendations.

COAC recommends that CBP, the 21CCF Focus Group, and any additional PGAs, as appropriate, continue to discuss and attempt to finalize the below statutory changes proposed by CBP and, separately, by industry. Industry-Proposed Statutory Changes for Further Discussion (Trade Opportunities): 19 USC § 1401 and 1484(a)(2)(D), 19 USC § 1484(a)(2)(C) and 1321(c), 19 USC § 1629, 19 USC § 1484(c), 19 USC § 1411, 19 USC § 4311, and 19 USC § 304 and 305. CBP-Proposed Statutory Changes for Further Discussion (CBP Challenges): 19 USC § 1517, 19 USC § 1623, 19 USC § 1595a(b), 19 USC § 1595a(d) and (e), and 19 USC § 1592.

The second recommendation from COAC is that CBP establishes a formal COAC Working Group to expand on the Intelligent Enforcement Modernization White Paper. It is suggested that CBP's Centers of Excellence and Expertise can deliver on centralized trade facilitation processes and explore the enforcement modernization concepts summarized in the

The task force's third recommendation is to provide two areas of study to the Forced Labor Working Group. The first topic is CBP's ability to share data with importers to help eradicate and address forced labor and provide advance notice of detention to streamline an importer's ability to assemble evidence to demonstrate compliance.

Secondly, when detaining goods based on a WRO or the UFLPA, CBP should identify the specific component or parties of concern instead of requiring an importer to provide documentation for all materials and components from all parties touching the supply chain. This action will ensure that issues concerning forced labor are addressed while expediting the review process for CBP.

ONE UNITED STATES GOVERNMENT (1-USG) WORKING GROUP

Working Group Co-Chair Craig Seeling explained that the Working Group met three times virtually and included presentations by the FDA, TTB, and CBP regarding ACE 2.0. They will continue to discuss practical and technical developments to include in CBP's Trade Strategy. Additionally, they are able to assist the ACE 2.0 Working Group when necessary to identify any gaps related to the PGAs and other agencies involved in importing and exporting goods into the US.

AUTOMATED COMMERCIAL ENVIRONMENT (ACE) 2.0 WORKING GROUP

Working Group Co-Chair Thomas Gould explained that their objectives are to recommend an improved ACE 2.0 process operational framework. Over the last quarter, they added several new members and held a leadership meeting and three calls to provide an overview of the ACE 2.0 process flow and gap analysis.



E-COMMERCE TASK FORCE

Task Force Co-Chair Craig Seeling stated that they advise CBP on managing risks and facilitating legitimate trade in the small package environment. They met four times virtually and are providing one recommendation.

COAC recommends that CBP track the growth and development of § 321 transactions, enhance and improve the use of resources, including transaction data, increase facilitation and enforcement, and consider alternatives to detentions and seizures. Quarterly, CBP should compile and report statistics of all shipments that receive CBP § 321 release via either Manifest Release or Entry Type 86. CBP should segregate statistics by express, postal, non-express air, non-express sea, and non-express truck.

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Trade Policy and Programs Deputy Executive Director Brandon Lord commented that the Trade Modernization effort would not be where it is today without the opportunity for collaboration and the exchanging of ideas on how to modernize the customs environment.

PUBLIC COMMENT

A written comment was submitted to COAC before the meeting and stated: we are looking forward to an update of the Global Business identifier, legal entity identifier, initiative proof of concept. If an update is not currently available, when will an update be available?

Executive Director Pullman notes the comment for the record.

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Executive Director Felicia Pullman requested a motion to submit the three 21-CCF Task Force recommendations. A motion was made by J.D. Gonzalez and seconded by Matthew Zehner. A vote was called, and the 21st Century Customs Framework recommendations were unanimously submitted.

A motion to submit the one E-Commerce Task Force recommendation was made by Jody Swentik and seconded by Heather Litman. The recommendation was voted on and unanimously submitted. **See the Appendix for the complete list of recommendations.**

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**INTELLIGENT ENFORCEMENT SUBCOMMITTEE**

COAC Co-Lead Erika Vidal-Faulkenberry explained that the Subcommittee is comprised of four working groups but only the Intellectually Property Rights and Forced Labor Working Groups will be presenting recommendations.

ANTI-DUMPING & COUNTERVAILING DUTY (AD/CVD) WORKING GROUP

Co-Chair Matthew Zehner elaborated that the group continues to meet monthly. They have provided input to Customs regarding the forthcoming guidance on reporting the foreign entities required for the AD/CVD entry.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROCESS MODERNIZATION  
WORKING GROUP

COAC Co-Lead Heather Litman stated that the group has been meeting on a monthly basis. As a reminder, the working group consists of participants from the government, industry, including current members of codec, rights holders, importers, carriers, and additional subject matter expert representatives of the industries and entities most concerned with IPR violations. They are all working towards three main goals: automation of the detention and seizure process, enhancements to the IPR priority trade issue website, and seizure alternatives.

The first set of recommendations relates to a single automated system, an internal framework for Customs that will link ACE with other utilized programs for enforcement and internal programs for a seamless datasphere.

The first recommendation in the set is for CBP to automate the agency's detention and seizure process. By automating the process, it can function with other programs as a single automated system to address all CBP enforcement priorities. The COAC also recommends that as a part of this automated system, CBP develop and adopt electronic exam, detention, imaging technologies, and procedures that officers can use to collect data on-site during the exam.

Another recommendation is that as a part of this automated system, CBP is to develop a method to generate electronic notices of detention for transmission to interested parties, which includes mandatory and standardized data elements, images, and meaningful information to interested parties regarding the basis for any detention. Additionally, it is recommended that CBP develops and uses a unique identifier as a reference number. And finally, COAC recommends that CBP develop and adopt a system for receiving and using email addresses from importers and other parties to facilitate communication within this automated process.

The second set of recommendations pertains to a portal that provides enhanced CBP communications for importers, rights holders, and Trade. The COAC recommends that CBP develop a portal that can be accessed via the IPR priority trade issue website to allow for direct and confidential communications.

COAC recommends, concerning rights holders, that the portal allows for the creation of password-protected accounts that reflect their records. In addition, affecting importers and other interested parties, it is recommended that the portal incorporate a search mechanism. Finally, for rights holders, importers, and other interested parties, the portal should allow access, sharing of information, and initiating and processing of CBP activities.

#### BOND WORKING GROUP

Working Group Chair Matthew Zehner reported that they had met twice since the last meeting and will be transitioning to a bimonthly basis. Additionally, the TSN E-Bond Group is meeting biweekly. It continues to work through the automation steps to enhance E-bond filing and tighten the control weaknesses involved with ISF single transaction bonds. Currently, they are working on the National Highway Traffic Safety Administration (NHTSA) vehicle conformance bonds.

FORCED LABOR WORKING GROUP

Co-Lead Erika Vidal-Faulkenberry reported that the group focused on two main areas: the continued discussion with CBP relating to the June recommendations on UFLPA and the development of recommendations to support communication between CBP and Intelligent Enforcement with trade concerning forced labor.

The first of the group's four recommendations is for CBP to publish a series of visual fact sheets to assist importers of all sizes in understanding the operational processes in compliance with UFLPA and WRO enforcement. The fact sheets should include a flowchart of the operational processes, including detention to release, exclusion, or import entry rejection; ruling process flow to request a determination from CBP for a specific commodity; and be made available on CBP's forced labor website.

COAC recommends that CBP develop a mechanism to receive additional questions and requests for new FAQs from the public, review the posted FAQs, and publish updated FAQs. It is also recommended that CBP revamp its Forced Labor and UFLPA websites to indicate to the public when updates or changes are made to guidelines, operational processes, fact sheets, FAQs, ACE, or other relevant information for the Trade community.

The group's fourth recommendation is that CBP is to enhance the current quarterly forced labor enforcement statistics published to include additional indicators about enforcement activity such as the number of detentions, commodity types detained, country of origin of products detained, et cetera.

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Deputy Executive Director of Trade Remedy Law Enforcement Emily Simon applauded the Subcommittee and Working Groups on their continued hard work and detailed recommendations.

#### PUBLIC COMMENT

Executive Director Felicia Pullam opened the floor for public comment. No comments were heard from online participants or those who attended in person.

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A motion was made by Christopher Everly and seconded by Matthew Zehner to submit the IPR Process Modernization Working Group recommendations. The recommendations were unanimously voted to be submitted.

A motion to submit the Forced Labor Working Group recommendations was made by David Corn and seconded by Johnathan Drake. The recommendations were voted on and unanimously submitted. **See the Appendix for the complete list of recommendations.**

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## SECURE TRADE LANES SUBCOMMITTEE

Subcommittee Co-Lead J.D. Gonzalez welcomed Acting Executive Director of Cargo and Conveyance Security Diann Rodriguez and thanked Tom Overacker for all his support, collaboration, and partnership.

### EXPORT MODERNIZATION WORKING GROUP

Working Group Co-Chair Vicente Herrera Gonzalez explained that the group has continued to focus on reviewing data element mapping of the electronic export information (EEI) manifest filing requirements for all modes of transportation. They also hosted a two-day in-person meeting in November 2022 with CBP, Census, TSN, CSAC, and others to continue the conversation on modernization and collaborative recommendations on bringing export reporting effectively to the 21CCF.

The group has two recommendations to present. The first is that CBP explores the CTPAT process for exports. The second is that a verification process is examined by CBP for used self-propelled vehicle exports, adding a preventative layer for stolen vehicles and for those that have not met the 72-hours before export requirement by the exporter to present the vehicle and paperwork to CBP that will be carried out consistently across all ports.

IN-BOND WORKING GROUP

Working Group Co-Chair Christopher Everly said they are presenting thirteen recommendations focusing on modernizing and standardizing the regulations found in 19 CFR § 18.

The first three recommendations pertain to definitions, specifically consolidating all in-bond definitions into § 18 and adding descriptions for bonded party and in-bond. Recommendations four through six remove outdated regulations, except that the COAC has decided not to move forward with recommendation number five.

Seven and eight recommend that CBP provide Trade with the ability to request in-bond transit time extensions electronically and to amend the report of arrival requirements to allow Trade the option of either arriving cargo within two business days after the arrival of the first portion of an in-bond shipment or the final part.

The ninth recommendation is that CBP implements a rule to require recipients of in-bond merchandise to report cargo acceptance to CBP within two business days, thus holding the recipient liable under its bond for the receipt of inventory in the quantity and condition described on the in-bond.

The following two recommendations, ten and eleven, are that 19 CFR § 18.2(a) be amended to read, "Transportation of merchandise in-bond by bonded or non-bonded carriers," given that bonded cargo may be transported by bonded and non-bonded carriers. Recommendation twelve is that CBP implements electronic messaging to notify and allow the receiving bonded party to accept liability for the in-bond cargo upon transfer from another bonded party.

Finally, recommendation thirteen is that 19 CFR § 18.3(b) be amended to include language allowing the receiving party to review the bonded merchandise by means of opening the container to view, verify, and count the contents without causing impairment to the integrity of the product.

#### TRADE PARTNERSHIP AND ENGAGEMENT WORKING GROUP

Working Group Co-Chair Kerry Novak explained that the group met four times during the fourth quarter and that they currently do not have any recommendations to present. However, over the next quarter, they will continue to work on the multi-tabbed spreadsheet compiled by CBP, which contains information to build upon and review.

CROSS-BORDER RECOGNITION WORKING GROUP

Working Group Co-Chair Stephen Simmons informed COAC that they advise CBP to strengthen cross-border supply chains and improve land border operations. They have held multiple virtual meetings focused on the southern border and interactions of the US-Mexico dialogue. Mexico has been transitioning its Customs agencies from SAT to ANAM and ultimately to Sudan and Sumar, along with implementing cart deposite, which has presented some challenges to efficiently moving legitimate trade across the southern border.

The working group does not have any recommends recommendations at this time, but next quarter, they will be focusing on identifying and documenting best practices for unified cargo to allow for all the ports of entry on the southern border to benefit from those, along with identifying other PGAs that can be engaged to help maximize fluidity for imports and exports at the border.

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Acting Executive Director of Cargo and Conveyance Security Diann Rodriguez thanked the work groups and appreciated the recommendations. She noted that it was her first COAC meeting and the second week in her new position.

PUBLIC COMMENT

An online question from Maryann Roden with the Emergency Trade Council was made. She states that her question pertains to data collected by Census and CBP on exported low-value shipments. Right now, the EEI only kicks in at \$2,500. Are their sources now collecting data on low-value export shipments, or is this something that the Electronic Export Manifest will begin to capture?

Executive Director Pullman notes the question for the record.

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Julie Pojar moved to submit the Export Modernization Working Group recommendations, which were seconded by Cynthia Roller. With a unanimous vote, the recommendations were submitted.

A motion was made to submit the In-Bond Working Group recommendations by Stephen Simmons and seconded by J.D. Gonzalez. The recommendations, excluding recommendation number five, were unanimously voted to be submitted. **See the Appendix for the complete list of recommendations.**

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## **RAPID RESPONSE SUBCOMMITTEE**

Subcommittee Co-Lead Julie Pojar noted that the Subcommittee met three times over the past quarter. They have three working groups, none of which will present recommendations during this meeting.

### BROKER MODERNIZATION WORKING GROUP

Working Group Co-Chair Brian Barber expressed that they have met three times and spent a substantial time focusing on the October 2022 Customs Broker Licensing Exam, culminating with user acceptance testing of a new contract or platform.

In addition, following the publication of the Modernized Customs Broker Regulations released on October 18th, they organized two trade-facing webinars conducted in October and November. The new regulations are scheduled to be effective on December 19th, and the Broker Modernization Working Group looks forward to continuing implementation dialogue and guidance in the next quarter.

### DOMESTIC MANUFACTURING AND PRODUCTION (DMAP) WORKING GROUP

Working Group Co-Chair Angela Cook stated that the group has met ten times since Q2 and provided recommendations during the June meeting.

In October, they met to review the statement of work to ensure group expectations and determined that all areas had been addressed. As a result, the group members voted unanimously to place the group on hiatus.

UNITED STATES-MEXICO-CANADA-AGREEMENT (USMCA) WORKING GROUP

Working Group Chair Kathy Wilkins explained that the group has been meeting biweekly. They are working through Chapter 7, Facilitation and Enforcement, with the US, Mexico, and Canada Dialogue Group and the CEO of the Dialogue Group to exchange information and ideas. They are about halfway through the chapter and expect to continue and provide more details over the next quarter.

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Executive Director of Trade Policy and Programs Brandon Lord thanked the Subcommittee for their hard work. He is excited to see what the groups put forward in the upcoming quarters.

PUBLIC COMMENT

Martina Vandenberg, President of the Human Trafficking Legal Center in Washington, D.C., commented that she represents a coalition of human rights and labor rights organizations known as the Tariff Act Advisory Group (TAAG) and is present at the meeting to emphasize the fact of how important it is for experts on forced labor, civil society members, and also human rights and labor rights lawyers to participate in the COAC as a general matter.

Ms. Vandenberg continued stating that they must join in the discussions on forced labor, participate in the recommendations, and participate in the working group. Civil society organizations have an essential role in forced labor enforcement issues that you have discussed as part of your work on the COAC. And I also ask that the record today reflect the publication of the AP story, US Businesses Propose Hiding Trade Data used to Trace Abuse, published by Joshua Goodman on October 17, 2022. That article is just one illustration, a prime illustration, about why it is so crucial for civil society experts and forced labor experts to have an opportunity to participate with the COAC.



Dean Pinkert, a Special Advisor at Corporate Accountability Lab and a member of TAAG, made another comment. He commented on the importance of CBP retaining the flexibility that it currently has to deal with forced labor issues as they come up. You have a statutory standard that's very flexible, that enables you to take action with a withhold release order when there's a reasonable suspicion that something has occurred that's contrary to the statute. Generally, there's a temptation to create too much administrative complexity, thereby undercutting CBP's flexibility in dealing with these issues as they arise. He encourages that they guard the flexibility within the process and limiting complexity.

Executive Director Pullman notes the comment for the record.

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**CLOSING REMARKS**

Executive Director Felicia Pullman thanked all the participants and adjourned the meeting at 3:15 P.M.