

**Commercial Customs Operations Advisory Committee (COAC)  
Trade Enforcement and Revenue Collection Subcommittee  
Trade Executive Summary**

February 28, 2018

**COAC**

COMMERCIAL CUSTOMS OPERATIONS  
ADVISORY COMMITTEE

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

**February 2018**

**Report of the Work of the COAC  
Subcommittee on Trade Enforcement and Revenue Collection (TERC)**

**Co-Chairs**

**Lisa Gelsomino - Avalon Risk Management  
Kevin Pinel - Microsoft Corporation**

**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 13<sup>th</sup> Term continues to be on hiatus until further notice from U.S. Customs & Border Protection (CBP). In July 2016, a new Forced Labor Working Group (FLWG) was also established. All subcommittee objectives and scope are consistent with the official charter of COAC.

**Summary of Work**

Since launching the TERC Subcommittee in April 2015, four (4) Working Groups have been operating. The AD/CVD, Bond, Forced Labor, and IPR Working Groups consist of COAC and non-COAC members representing over 100 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 as well as participants from CBP and other Partner Government Agencies (PGAs).

During this quarter, the TERC Subcommittee held three conference calls and continues to focus on all aspects of the enforcement provisions under the Trade Facilitation and Trade Enforcement Act (TFTEA) that passed in February 2016. Updates from each TERC Subcommittee Working Group are provided below.

**AD/CVD Working Group**

During this past quarter, the AD/CVD Working Group held two conference calls to review the recommendations made at the November COAC meeting and discuss CBP's current policy for rejecting entries as noted in [https://www.cbp.gov/sites/default/files/documents/3550-067\\_3.pdf](https://www.cbp.gov/sites/default/files/documents/3550-067_3.pdf). Currently, CBP has up to 90 days to reject an Entry Summary and sometimes a longer period of time is needed for AD/CVD entries due to their complexity and scope related issues. These issues were discussed with the AD/CVD Working Group, and members of the WG provided CBP with excellent insight and input into the current process, especially with CBP 28 requests. The AD/CVD WG looks forward to further discussion on this topic.

The AD/CVD Working Group also received an excellent update from the Industrial and Manufacturing Materials (IMM) Center based in Buffalo, NY. This Center focuses on importations of raw or unprocessed materials, such as rubber, plastics, precious metal and stones, lumber, etc. The Center manages 59,000 importers of records, which is the 3<sup>rd</sup> largest of all the CBP Centers. Transactions are primarily land border based via Truck/Rail. The Center deals with many areas of risk, especially AD/CVD, and has over 30 AD/CVD cases to administer.

The Center discussed its approach to AD/CVD enforcement to be as proactive as possible to mitigate schemes before they can develop. The Center also looks to facilitate trade by partnering with the petitioners of the AD/CVD cases to learn their industry, so they can hone in on specific areas of risk vs. casting a wide net on a

particular industry or commodity. The Center also hosts AD/CVD Summits where CBP and Trade stakeholders can collaborate and exchange invaluable ideas and information about their respective industry or commodity.

The AD/CVD Working Group was very appreciative of the update from the Center and looks forward to updates from additional Centers throughout the year. The AD/CVD WG will continue to act as a standing forum of subject matter experts that can be called together by CBP when any AD/CVD issues arise to solicit feedback and advice from the trade.

### **Bond Working Group**

During this past quarter, the Bond Working Group (BWG) held two conference calls to review the recommendations made at the November 2017, COAC meeting. Discussions focused on the following recommendation to support a supplemental bond for AD/CVD shipments:

*“To support increased bonding for AD/CVD shipments, COAC recommends that CBP establish a separate supplemental AD/CVD Bond available as a Single Transaction or Continuous Bond. The supplemental bond should have a separate Activity Code and be required to secure the potential shift in AD/CVD rates for active AD/CVD Orders...”*

The BWG received an overview from CBP on how this supplemental bond could be calculated in a risk-based manner to meet the requirements of Section 115 of the Trade Facilitation and Trade Enforcement Act (TFTEA). CBP continues to review its historical data on AD/CVD losses to refine how the bond formula should be calculated and further discussions are necessary to refine how it could operate.

With this in mind, CBP also discussed the potential for a pilot with surety members of the BWG. This pilot would evaluate how the supplemental AD/CVD Bond would be calculated before being required by the trade so CBP can ensure its operability. The BWG looks forward to further discussions on this topic and the additional recommendations made at the November 2017, COAC meetings.

### **Forced Labor Working Group**

During this past quarter, the Forced Labor Working Group (FLWG) held two conference calls which focused on the below recommendation made at the November 2017, COAC meeting:

*“**Recommendation #010289:** COAC appreciates CBPs efforts to implement the Forced Labor Working Group’s (FLWG’s) prior recommendations, especially the recent issuance of an updated Informed Compliance Publication. As CBP continues to self-initiate and enforce forced labor allegations, COAC recommends that CBP seek additional feedback from the FLWG on how CBP Form 28 Requests for Information (CBPF 28 requests) are being handled uniformly at all centers of excellence and expertise. For example, some requests are more akin to an audit of an importer’s entire supply chain and sourcing factors rather than a request for information related to one set of transactions and/or supplier. Instructions must be clear so importers know how to properly and timely respond to CBPF 28 requests.”*

The FLWG had robust discussion on the topic and will be providing CBP with additional feedback on how some of the questions currently being asked could be worded to ensure a better response from the trade. Going forward, the FLWG looks forward to receiving feedback to our November 2017, recommendations and discussing new ideas. The FLWG will continue to act as a standing forum of subject matter experts that can be called together by CBP when any Forced Labor issues arise to solicit feedback and advice from the trade.

### **IPR Working Group**

During this quarter, the IPR Working Group (IPRWG) held one conference call to discuss the following white papers that CBP distributed as IPR priorities.

1. **Developing Partnership in Small Package Arena to Aid in Enforcement.** The current Abandonment Pilot recommended by the 13<sup>th</sup> term of COAC continues to work well as a cost effective alternative to

- CBP seizures. The IPRWG continues to discuss other alternatives to seizures that can be as effective as the Abandonment Program and how the current Abandonment Pilot can be expanded to other key areas.
2. **Mitigating Costs of Destruction.** In line with the Abandonment Program, the IPRWG discussed additional ideas for the destruction of cargo as an alternative to seizures. These discussions continue in response to TFTEA and the Executive Order on Alternatives to Seizure and Information Sharing with CBP.
  3. **eRecordation System in Automation.** The IPRWG received an overview from CBP's Office of Ruling and Regulations (ORR) on the eRecordation system that allows importers to register their brand with CBP. The IPRWG was asked to provide feedback on any additional improvements that can be made to the eRecordation system or process.
  4. **Bi-directional Conversations on Threats in IPR Space with Centers of Excellence & Expertise (Centers) and the Trade.** The IPRWG feels the roundtable discussions each CBP Center hosts is extremely helpful to collaborate on combating IPR Threats by industry. Other ideas discussed by the IPRWG were to have trade participants included on educational seminars, training and outreach
  5. **Revisit the IPR Known Importer Program.** The IPRWG discussed how Blockchain could be utilized to facilitate this program. Additional research is needed and will be discussed in future calls.

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.

### **Summary**

Looking forward, the TERC Subcommittee will continue to collaborate with CBP and other government partners on the various TFTEA provisions to improve enforcement of U.S. trade laws and protect the revenue with a focus on CBP's Priority Trade Issues (PTIs). The TERC Subcommittee also looks forward to establishing a new Working Group that will formulate recommendations on CBP's Mitigation Guidelines in the near future.