

**The Departmental Advisory Committee on the Commercial Operations of U.S.
Customs and Border Protection**

Eleventh Term

2009 ANNUAL REPORT

The Departmental Advisory Committee on the Commercial Operations of U.S. Customs and Border Protection (“the Committee” or “COAC”) is submitting this report to Congress pursuant to the Budget Reconciliation Act of 1987 (Public Law 100 – 203) and the Committee’s original Charter, dated October 17, 1988, and subsequent Charters.

The Act requires the Committee to submit an annual report on COAC’s activity to the Senate Committee on Finance and the House Committee on Ways and Means. This report summarizes COAC’s activities during the first year of the two-year tenth term (2009 – 2010), and contains recommendations regarding the commercial operations of U.S. Customs and Border Protection (CBP).

- The report includes the a issues considered by COAC and its subcommittees during 2009;
- Votes taken by COAC

Attached as appendices are the following:

- Appendix 1: White Paper on Account Based Processing
- Appendix 2: IPR Resolution (proposed)

Respectfully submitted by the Trade Members of the 11th COAC Term

1. Earl Agron, APL Global Transportation
2. Samuel Banks, Sandler & Travis Trade Advisory Services
3. Adrienne Braumiller, Braumiller Schultz & Co.
4. Colleen Clarke, Roanoke Trade Services, Inc.
5. William Cook, Chrysler Corporation
6. Robert DeCamp, Deringer Logistics Consulting Group
7. Michael Ford, BDP International
8. Don Huber, General Electric Company
9. Jevon Jamieson, ABF Freight System, Inc.
10. Karen Lobdell, Drinker Biddler & Reath LLP
11. Barry O’Brien, Hasbro, Inc.
12. Geoffrey Powell, C.H. Powell Company
13. Alison Reichstein, Hewlett Packard
14. Kenneth Roberts, Kraft Foods
15. Bethann Rooney, Port Authority of New York and New Jersey¹
16. Leigh Schmid, Limited Brands, Inc.

¹ Ms. Rooney resigned from COAC midway through the year and was not replaced.

17. Carol Sheldon, DHL
18. Bradley Shorser, Sears Holdings Corporation
19. Barbara Vazier, Air Transport Association
20. Jeffrey Whalen, NIKE, Inc.

Role of COAC

COAC was created by Congress as the U.S. Treasury Advisory Committee on Commercial Operations of the U.S. Customs service in the Budget Reconciliation Act of 1987 (Public Law 100 – 203) to ensure that the business community has an effective voice in the management and operations of the Customs Service. Prior to the creation of COAC, many believed the law enforcement functions of Customs had been given a priority to the detriment of global trade imperatives and without an opportunity for legitimate commercial interests to influence customs decision makers. These issues were directly highlighted in the legislative history for this portion of the Budget Act.

With the creation of the Department of Homeland Security (“DHS”), including the transfer of security functions related to Customs and other agencies to the new department, the responsibility for COAC was divided between Treasury and DHS, and COAC’s name and mission subsequently were expanded to The Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions.

Meeting Venues and Dates

COAC held one administrative (non-public) meeting and three official (public) meetings during 2009 as follows:

February 9 th and 10th, 2009	Washington, DC ²
May 6, 2009	Washington, DC
August 5, 2009	Washington, DC
November 4, 2009	Washington, DC

Officials from the Department of Homeland Security, including Deputy Assistant Secretary Stephen Heifetz, U.S. Customs and Border Protection Acting Commissioner Jayson Ahern and Deputy Assistant Secretary of Treasury Tim Skud participated in the public meetings.³

² Although the COAC normally meets on a quarterly basis; there was no public meeting held in February 2009; rather, an administrative meeting was held as an orientation session for new members. This meeting included training on the Federal Advisory Committee Act (“FACA”) and a discussion of topics that CBP was seeking advice and consultation on, which COAC would address in the 11th term. There as no advice provided by COAC to DHS or Treasury officials during these informal meetings.

³ Commissioner Ralph Basham met with the full COAC in February of 2009 to welcome new members and encourage open and honest dialogue between the Trade and Government during the 11th term. Mr. Basham resigned prior to the first official public meeting in May.

2009 Overview

The 11th term of COAC started with an “administrative” meeting rather than a formal public meeting which seemed to dampen the momentum of the subcommittees that were carried over from the 10th COAC; therefore, we recommend that the COAC hold a minimum of four formal (public) meetings per year. Any administrative or membership training sessions required should be held in addition to the quarterly public meetings.

During the meetings in Washington, CBP representatives recommended elimination of two of the subcommittees that were operating under previous COAC terms; namely the Supply Chain Security subcommittee that dealt with matters pertaining to the Customs-Trade Partnership Against Terrorism (“C-TPAT”) program, and the Bond Subcommittee dealing with all matters pertaining to single entry and continuous bond procedures.

Several COAC members felt that these subcommittees should continue. In regard to supply chain security, there were opinions expressed by members that the C-TPAT program was not operating as effectively as it could and the Trade was disappointed that almost all of the benefits requested by subcommittee members were denied for various reasons. CBP stated that the reasons for discontinuing this subcommittee included the fact that CBP had responded to all requests for benefits made during the 10th COAC and they did not want to devote any further time and resources on this matter. In addition, CBP felt that the C-TPAT program was operating well and its membership was still growing; therefore, they were not seeking further advice on C-TPAT matters from the Trade at this time. The supply chain security subcommittee was discontinued despite the fact that this subcommittee was carrying out roles specifically created for COAC under the SAFE Port Act of 2006 as follows:

- Post-Incident Trade Resumption/International Supply Chain Security Strategic Plan/Information-Sharing with Private Sector (§§ 201 (c) and (e), 202 and 236 (c))
- Advance Information Requirements (§203 (c)(2))
- CSI and C-TPAT Effectiveness (§§205 (l), 213 (4) 216 (c), 218 (b), 221 (c))
- Organizational Issues, including establishment of CBP Office of International Trade, and CBP trade facilitation (§§401 (c)(1), (d)(1)(C), (d)(2), (d)(3), (d)(2)(c)(iii))

Shortly after this subcommittee was discontinued, the COAC member who had been chairing the subcommittee during the 10th term and expected to continue in this role during the 11th term (Ms. Bethann Rooney) resigned from COAC. By the end of 2009, CBP and Treasury had not filled the vacancy created by Ms. Rooney’s departure.

In regard to the Bond Subcommittee, some members believed that this subcommittee should continue into the 11th term because there would be significant decisions on bond processes and operations required by new provisions created in the Importer Security Filing (“ISF”) regulations. After much discussion, CBP discontinued the Bond

Subcommittee but left open the possibility of re-establishing a subcommittee later if required. The Bond Subcommittee was not reinstated by the end of 2009.

CBP suggested that some new areas where they would like COAC advice and involvement included the new Importer Security Filing requirements implemented in 2009, air cargo operations and CBP's automation efforts, keeping in mind Acting Commissioner Jayson Ahearn's comments to COAC on bringing CBP into the 21st Century.

During the first official COAC meeting on May 6, 2009 three new subcommittees were created:

1. The Importer Security Filing Subcommittee was established to work with CBP to provide the Trade's perspective and advice on the implementation of the ISF provisions. The Trade was especially pleased that the regulations included a "grace period" of one year to allow the Trade to transition to the new requirements without the imposition of penalties for non-compliance. In addition, the Trade praised CBP for its public outreach efforts. Several members volunteered to participate in public awareness sessions throughout the United States. More details on the work of this subcommittee are provided below:
2. An Air Cargo Security Subcommittee was created to work with CBP and TSA officials to identify redundancies, and gaps in security programs administered by the two agencies, as requested by a COAC member in the 9th term. Certain provisions were causing inefficiencies for air transport workers and duplicative work by the agencies.
3. An Automation Subcommittee was established to discuss automation issues in general and to specifically address CBP's interest in the benefits received or expected by the Trade as new Automated Commercial Environment ("ACE") modules were released.

The detailed issues examined by COAC and its subcommittees, and the advice and recommendations are described in detail below in the following sections:

Agriculture Subcommittee – Chair: Geoff Powell

At the August 2008 meeting of the 10th Term Commercial Operations Advisory Committee (COAC), a subcommittee on Agriculture (subcommittee) was established. It was agreed that this subcommittee would continue its work during the 11th term of COAC. The objective of the subcommittee is to generate advice and develop recommendations pertaining to different agriculture and agriculture-related issues that might arise from examinations and border enforcement.

In 2009, the subcommittee worked on four Agricultural related issues:

1. Lacey Act Implementation: to provide periodic advice and feedback to CBP and the Animal and Plant Health Inspection Service (APHIS) about the implementation of the provisions of the Act as they evolve. The subcommittee regularly received updates and was provided information on some of the critical requirements of the Lacey Act Amendment by a senior manager within APHIS. The work will be ongoing due to the phased in approach of the Lacey Act Amendment.
2. Wood Packaging Materials (WPM): to develop recommendations for decreasing the incidence of imports that are associated with non-compliant WPM. The subcommittee began preliminary discussions with CBP to identify various methods of outreach, education and possibly penalty provisions. Due to the scope of this issue, there will be more effort by the subcommittee in 2010, and beyond, to assist CBP/APHIS in their efforts.
3. Carrier Contamination (initially pertaining to Asian Gypsy Moth (AGM) interceptions): to develop recommendations for decreasing the incidence of carrier contamination; provide suggestions for enhancing communication methods on regulatory-related information to trade and industry; informing trade and industry of AGM-related and other contaminant-related concerns; and enhancing awareness on AGM and other agriculture-related contaminants and the associated consequences if introduced into the .U.S. The subcommittee worked with CBP to create a training PowerPoint for interested parties to assist in identifying the pest and what needs to be done to eradicate the potential negative impact to the agriculture industry, vessel delays, and shipment delays. The subcommittee identified industry trade groups which could assist CBP in its outreach effort. Various vessel trade associations, steamship lines, terminal operators and port authorities were approached about making the PowerPoint training available to all its employees who could assist in decreasing the possibility of AGM Contamination. Training and outreach continues.
4. Agriculture Stakeholder Outreach and Statistics Dissemination: to follow up on the recommendations of the Joint Agency Task Force and provide recommendations to CBP and APHIS about whether/how COAC can be utilized to extend CBP agriculture program/information outreach to the wider agriculture stakeholder constituency; and develop suggestions for disseminating agriculture-related information from CBP and APHIS to trade and industry. At the last joint agency agriculture stakeholder conference, CBP and Animal and Plant Health Inspection Service (APHIS) received numerous inquiries from the private sector regarding information sharing. However, no agreement was reached at the conference on what type of information is available to be shared, what information is of interest to the private sector stakeholders and in what format/how often it should be communicated to the private sector stakeholders. CBP asked its Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) to offer suggestions for how CBP and APHIS could disseminate agriculture-related information of interest to private sector

stakeholders. In response, the COAC Subcommittee on Agriculture has developed a short questionnaire designed to elicit preferences from respondents on the types and kinds of agriculture-related information they might like to receive. The COAC Agriculture subcommittee will advise the COAC in these areas and will make recommendations that are helpful to industry and Government, will be supported by different stakeholders, and will incorporate the views and address the concerns of industries impacted the pertinent issues.

In addition to the questionnaire, the Subcommittee hopes to assist CBP in their next scheduled Joint Stakeholder Conference which is being planned at this writing to occur mid-late 2010.

Importer Security Filing Subcommittee – Chairs: Alison Reichstein and Karen Lobdell⁴

Following months of conversation between CBP and the COAC, creation of the COAC ISF Subcommittee was proposed in a Motion carried during the COAC public meeting of May 6. Initially the subcommittee trade chair position was held by Alison Reichstein, who stepped down in November, at which time Karen Lobdell took the lead role.

Participating members as of November 2009:

Government members:

Subcommittee Co-Chair is Rich DiNucci, Director, Secure Freight Initiative, Office of Field Operations.

Kimberly Marsho, CBP Office of Trade Relations

Michael Schreffler, CBP Office of Trade Relations

Trade members:

Leigh Schmid

Geoffrey Powell

Karen Lobdell

Alison Reichstein

Earl Agron

Samuel Banks

Colleen Clarke.

Carol Sheldon

Jeffrey Whalen

In addition to general discussion clarifying both government and trade concerns as ISF implementation took place, the following issues were discussed over the course of monthly subcommittee meetings which commenced March 2009, and include items raised during the public meetings.

⁴ Alison Reichstein chaired the ISF Subcommittee until November 2009 when she resigned for personal reasons. The Chair position was filled by Karen Lobdell, and Alison continued participating as a member of the subcommittee.

1. Visibility to ISF Activity and Performance

The COAC carried a strong message that the report card performance reporting method proposed and provided by CBP was inadequate to fulfill any meaningful purpose. The report cards that have been developed provide only truncated visibility to performance reporting, as importers are not provided with more than a cursory summary of their ISF participation, providing neither confirmation of quality or timeliness of individual filings. This issue compounded a wide swath of trade concerns about data-based performance analysis which is critical to driving continuous improvement, as well as building and maintaining a successful compliance program.

CBP advised the subcommittee that there is some programmer activity relative to improving the reports, however no immediate changes are anticipated, and no commitment to long term improvements were given by the end of 2009. COAC suggested that moving forward, data should be provided as basic text/CSV format, avoiding the complexity and time commitment encountered by the ACE effort to build highly functional reports.

2. Closure of the ISF Interim Final Rule Comment Period

COAC requested an extension of the comment period as the proposed closure was premature in light of the lack of consistency and program maturity among filers and importers. At the time the comment period was closing, there was a near complete lack of visibility to performance data. Without access to filing data, importers have limited ability to identify and understand filing program weaknesses, comments elicited at that point were largely theoretical and could not reflect many impacts that will come to the fore as importer and broker programs mature. The comment period regarding the interim final rule closed on June 1, 2009, CBP did not allow any extension on the comment period as requested.

3. Small-Medium Enterprise (SME) Inclusion/Accessibility

COAC requested that specific efforts be made to engage the Small to Medium Enterprise (“SME”) community as the potential negative impact to those importers could be substantial once enforcement begins. Traditional channels used by CBP for outreach efforts (e.g., trade associations, seminars at the ports, etc) are not likely to reach SMEs, which could result in penalties being applied simply due to their lack of awareness. Furthermore, agencies specifically designed to assist SMEs (e.g., Small Business Association) focus solely on exports and do not provide support for import-related matters. As a result, most CBP outreach is targeted to large importers, who typically have resources in-house to manage compliance matters such as the ISF.

CBP’s Rich DiNucci responded by aggressively pursuing outreach to the trade via print and direct addresses in both virtual and live environments. This included publication of a brochure targeted to SMEs (distributed at the port level), as well as trade publications issuing articles targeted toward SME challenges with ISF and how to overcome them. A number of webinars were conducted targeted specifically

toward SMEs. Although participation was good, it is likely that only a small fraction of the overall SME community actually took part.

It should be noted that CBP is receptive to providing better outreach to the SME community; however, the larger problem is in *creating* the proper channels for SMEs going forward, not only for ISF outreach, but also for other CBP concerns. Without proper channels being developed, this will continue to be a problem. The traditional reliance on the service providers (e.g., customs brokers) to supply SMEs with information is limited in its effectiveness.

4. ISF Impact to Bond Requirements

COAC has expressed concern regarding the lack of information about the ISF bonding process. We have concerns regarding the untimely response to the bond issues. CBP has indicated full enforcement will begin on January 26, 2010 and there was no final word on bond requirements by end of 2009 with less than five weeks to the enforcement date.

The Interim Final Rule updated the bond regulations (19CFR§113) to allow for the use of the Continuous CBP Form 301 Activity Codes 1, 2, 3 and 4 and the Single Transactions CBP Form 301 Activity Codes 1 and 3. However, the rule also allowed for a new bond type (Appendix D ISF Bond). Since the publication of the IFR in November 2008, the bonding basics and technical information have not been formalized. Surety companies have submitted recommendations on how the process should work, which is supported by the members of COAC.

The bonding community also has concerns regarding the finalization of the bond obligation. Since an ISF is not an entry, there is no liquidation cycle. The liability will remain open for six years based on statutory requirements for contractual obligations. By the end of 2009 the subcommittee was requesting that CBP address the issue to advise ISF importers and surety companies exactly when the liability will conclude.

5. ISF System Performance

Initial concerns raised regarding delays in the processing of ISF data by CBP were addressed and resolved by the end of 2009.

Air Cargo Subcommittee – Chair: Barbara Vatier

The subcommittee was formed in 2009 and assigned the task of providing an assessment of areas of overlap or gaps with domestic and international air cargo security within DHS (e.g., TSA and CBP programs). The output requested was the development of recommendations on security and efficiency enhancements for air cargo (domestic and international). The following is a summary of the subcommittees activity:

1. The subcommittee conducted 11 meetings during 2009.
2. The subcommittee drew upon the expertise of non-COAC participants from various supply chain companies including foreign carriers, freight forwarders, exporters and manufacturers
3. The subcommittee developed a detailed, comprehensive matrix of the various government and private sector security programs and requirements applicable to the air cargo security environment for trade participants. This matrix facilitated side-by-side comparisons of the various programs.
4. During 2009, the subcommittee identified two opportunities for reduction of overlaps. Due to the complexities of existing requirements, further investigation and development of potential solutions will continue into 2010
5. The two issues that the subcommittee will develop recommended security and efficiency changes related to the air cargo security environment are:
 - a. Develop recommendations to address redundancies in DHS employee ID and credentialing requirements (work began in 2009 and the subcommittee plans to present recommendations to the full COAC in May 2010)
 - b. Identify specific opportunities to leverage program synergies between C-TPAT and CCSP to reduce burdens on participants in both programs and develop recommendations. The subcommittee plans to begin work on this top in June 2010.

Automation Subcomm – Chairs: Jevon Jamieson & Michael Ford

COAC and CBP tasked the Automation Subcommittee specifically with the creation of a survey to analyze the financial impacts that the Automated Commercial Environment (“ACE”) has had on trade members. More specifically, CBP requested that the survey determine whether the Trade received positive benefits (fiscally) as a result of ACE functionality provided to Trade participants. CBP wanted to determine how much, if any, savings ACE provided Trade members so that CBP might use this information determine appropriate levels of funding for the ACE project.

During the survey design phase, CBP provided the subcommittee with valuable insight from economists and statisticians. These experts provided much needed details and suggestions for better ways of asking specific questions to gain better, more usable results.

By the end of 2009 all surveys were ready for distribution to the appropriate trade associations and specific trade groups for distribution to members. These groups included:

- Ocean/NVOCC Carriers
- Truck Carriers
- Rail Carriers
- Air Carriers

- Sureties
- FTZ/Bonded Cargo Facilities
- Brokers/Forwarders
- Importers

The plan required the survey to close by March 31, 2010, whereupon members of the COAC and CBP will be provided the raw information for analysis and a report summarizing results.

Intellectual Property Rights (“IPR”) Subcommittee – Chair: Barry O’Brien

In 2009, the COAC IPR Enforcement subcommittee had four meetings where the major emphasis was to focus on the three top priority recommendations from the original twenty recommendations that the subcommittee developed in 2008. The three projects were:

1. Bonds for Testing – Use of a continuous bond to secure samples of suspected counterfeit products for better interdiction.
2. Voluntary Disclosure – Procedure to benefit Importers of Record, CBP, and rights holders.
3. Detention/Seizure – The subcommittee examined how can we improve communication flow to the rights holder to determine whether a product is in fact counterfeit?

In addition, there were three additional recommendations where the subcommittee thought that any improvements in these areas would improve the IPR process. These three recommendations were:

4. Pre-filed Profiles
5. Cost value to measure IPR metrics and
6. IPR data access

Accomplishments:

The IPR Enforcement Subcommittee, in conjunction with CBP, is pleased to announce that we have a national continuous bond that is renewable year to year and allows the rights holder to secure infringing materials from suspected counterfeiters for possible.

Our second recommendation, the Voluntary Disclosure Program is very close to implementation. CBP hopes to finalize this program with the other government agencies that have IPR responsibilities and hopes to make an announcement very soon.

The third project to improve the communication process had a setback. The subcommittee voted in favour of a draft for a resolution to support language for the delivery of samples to the rights holder by supporting legislation authorizing CBP to release samples of suspected counterfeit merchandise to the rights holders to validate

markings. The full COAC did not approve this resolution because there was no support from the US Chamber of Commerce and others who feared it may conflict with third party or grey market importers. This resolution will be further reviewed in 2010.

As for the remainder of the projects; the “Pre-filed profiles” project is completed. The value issue to measure IPR seizures is completed. It was decided that the landed cost value is acceptable. The last project call “Data Access” will be discussed in 2010 under a new CBP proposal where the supply chain management process will be discussed to enhance the IPR enforcement process. This project would encompass a process where the trade would be able to identify their supply chain – list their copyrights, trademarks, brands and markings to help the importer combat illicit trade. By defining their supply chain, CBP would be able to compare their products against counterfeiters.

Bond Subcommittee – Chair: Don Huber

During the 10th COAC, CBP turned down a recommendation to reduce bond amounts for ISA members. The Bond subcommittee was put “on hold” throughout 2009 as Customs stated there were no further issues to discuss.

For advice bond matters, CBP meets regularly with sureties, surety agents and brokers on the Customs/Surety Executive Committee (CSEC). It should be noted there is no representation from importers on that committee.

By the end of 2009, with the Bond Subcommittee suspended there was no ongoing dialogue between CBP and importers, even though importers are required to pay for all the bonds and are affected by any decision CBP makes pertaining to bonds.

COAC will request that the bond subcommittee be reinstated in 2010.

Trade Facilitation Subcommittee – Chair: Brad Shorser

With the exception of the white paper on account based processing, the Trade Facilitation subcommittee really didn’t accomplish a lot in 2009. Since the transfer of Angela Downey, of CBP from Washington to Atlanta, access to the office of International Trade was limited. This is supported by the fact that the COAC Trade Facilitation Subcommittee still hadn’t begun the process of developing the concept of account based processing with CBP engaged at the same table. However; the subcommittee did provide input on defining success factors and what elements are measurable performance indicators to demonstrate the effectiveness or lack thereof of the program.

Other issues discussed:

1. Conditional release policy for entries designated for exam: This issue concerns those containers on the entry that are not designated for exam and the importer’s

inability to break the seals and distribute the product. CBP rejected the suggestion from interested members of the trade to permit distribution of product when the merchandise at issue is not designated for exam, not produced by the same party that manufactured the products designated for exam, and not loaded at the same location.

2. Directive mandating that importers file entry with complete classification and valuation of residue left in containers from prior shipments: Initially, CBP did not approach COAC for any opinion or input on this matter prior to the formal Notice of Proposed Rulemaking that was published.. Despite the fact that this rule, as drafted, has the potential to impact any and all containers carrying imported products, COAC was denied an opportunity to discuss the matter. CBP chose to discuss the matter with certain trade associations. Hopefully, the language of the regulation will be amended to limit the scope to only address the specific issue that gave rise to the need for the new rule (i.e. tanker containers with residual liquids.)

The main accomplishment of the Subcommittee in 2009 was the White Paper submitted at the COAC meeting in May. If these recommendations are accepted and implemented by CBP, it will reshape CBP and its relationship with the Trade. We look forward to working with CBP on developing the ideas in the White Paper in 2010.

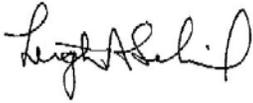
Votes Taken by COAC

In 2009, COAC voted during public meetings on the following issues:

1. May 6, 2009 – COAC voted on a Motion to approve the minutes from the November 20, 2008 meeting. Motion Carried.
2. May 6, 2009 – COAC voted to submit a paper on Account Based Processing. The motion carried by unanimous vote.
3. May 6, 2009 – COAC voted on a Motion to establish an Importer Security Filing (“ISF”) subcommittee. The motion carried by unanimous vote.
4. May 6, 2009 – COAC voted on a Motion to establish an Air Cargo Security subcommittee. The motion carried by unanimous vote.
5. May 6, 2009 – COAC voted on a Motion to establish an Automation subcommittee. The motion carried by unanimous vote.
6. August 5, 2009 – COAC voted on a Motion to approve the minutes from the May 6, 2009 meeting. Motion carried.
7. August 5, 2009 – COAC voted on a Motion proposed by Mr. Barry O’Brien on Intellectual Property Rights Enforcement. The motion was defeated - eleven members of COAC opposed the motion.
8. November 4, 2009 – COAC voted on a Motion to approve the minutes from the August 5, 2009 meeting. Motion Carried.
9. November 4, 2009 – COAC voted on a Motion proposing that Karen Lobdell replace Alison Reichstein as the Chair of the Importer Security Filing subcommittee. Motion carried.

10. November 4, 2009 – COAC voted on a Motion to adopt a Resolution expressing concern related to a lack of progress and engagement by CBP on “management by account” and other trade facilitation matters. The motion carried and the Resolution was submitted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Leigh A. Schmid". The signature is written in a cursive style with a large initial "L".

Leigh A. Schmid
Trade Chair – 11th Term

Appendix 1

Commercial Operations Advisory Committee (COAC) Paper on Customs and Border Protection (CBP) Account Based Processing

Strategic Vision of Account Management in CBP

The Commercial Operations Advisory Committee (COAC) strategic vision of Customs and Border Protection (CBP) is that CBP should adopt Account Based Processing (ABP) as a fundamental business model for all commercial, product safety and security operations. In fact, CBP should develop an integrated account based processing concept that encompasses virtually all interactions with filers/importers designated as trade accounts with an emphasis on internal controls leading to accurate/compliant reporting for both CBP and Other Government Agencies (OGA) requirements.

CBP should conduct a comprehensive review of each of its major programs in the commercial, product safety and security arenas to determine how the account based processing approach could be utilized as a key driver in all programs throughout the CBP enterprise, and CBP should approach all new programs with this business model in mind. This strategy presumes that CBP would consult fully with the COAC, OGAs and the trade community in this review of existing programs and design of new initiatives.

Background

The concept of Account Management (AM) was developed by U.S. Customs in 1994 as a key driver to achieve commercial compliance of large importers that represented the preponderance (70% +) of commercial imports into the United States. The theory was that by focusing on the internal compliance controls and processes of large commercial enterprises, such importers would achieve a higher degree of trade compliance leveraging an enterprise account model rather than a “transactional approach” which meant assessing or inspecting each shipment or reviewing each entry declaration by these companies.

In 1997, U.S. Customs created National Account Managers (NAM) for a number of large importers. With the development of the Automated Commercial Environment (ACE), CBP developed an ACE Account which enabled importers to view their account information, (entries and other commercial transactions with CBP), through on-line reports. The ACE Account approach expanded AM to include brokers, carriers, and other parties transacting business with CBP.

The stated purpose of AM was to establish “government-business relationships that are critical in building a solid foundation of open communication and trade facilitation” and become “a cornerstone of the U.S. Customs Service risk management approach”.

The Account Manager was to be “an experienced CBP Officer who can offer expert advice on a wide variety of topics, such as: valuation, improving internal controls, or joining other CBP programs like ACE. In addition, the Account Manager has contact with CBP subject matter experts at all levels so that questions can be answered as expediently as possible.”

The advantages and incentives provided to Accounts “include but are not limited to: access to company data relative to CBP examinations, advance notice on CBP program and policy changes, facilitation with discerning importers (or broker’s) problems and trends, assistance with determining bond sufficiency, among others. Account Managers focus on improving a company’s compliance and internal controls in order to help reduce CBP examinations. The Account Manager acts as the primary point of contact for all CBP issues and provides the best customer service possible.”

Current Account Management Status in CBP

The reality is that the Account Management program in CBP has fallen well short of the original goals and design.

It is estimated that CBP has less than 50 full-time National Account Managers and some 400 part-time Port Account Managers, (PAM), (although the PAMs are reputedly only nominally engaged in the program). This small number of account managers is most certainly insufficient to cover the needs of approximately 862,000 importers. In fact, the number is insufficient to cover the top 3000 importers that represent half of all entries filed and 73% of the value of all imports. Allegedly, only the top 30 broker accounts by import line value are assigned to NAMs. After more than a decade, these statistics do not reflect a sincere commitment by CBP to make this program a reality or a success.

CBP has made more progress in establishing ACE Accounts to access the importer ACE reports information. Some 13,000 ACE accounts, (about 1600 importers and 900 brokers are ACE accounts), were created, although these accounts are not managed as true Accounts with assigned CBP Account Managers. It is estimated ACE importer accounts represent approximately \$1.2 trillion in entered value, (about 50% of total entered value), and approximately 45% of entry summaries filed.

CBP has made similar progress in establishing Customs Trade Partnership Against Terrorism (C-TPAT) “accounts” with certification of some 8,500 companies.

It is evident that CBP has placed a greater emphasis on establishing Accounts for the programs that are of a higher priority to them. However, it is perplexing to

understand the rationale that a “fully managed account” for both security and trade would not serve both the importer and CBP better in the long term.

Vision for an Integrated Comprehensive Account Based Processing Concept

CBP should consider creation of an Integrated Account Based Processing concept that encompasses trade compliance, informed compliance, security, intellectual property rights, import product safety and information technology.

National Account Managers should be considered to manage the top 3,000 importers and top 100 brokers to act as the primary CBP contact and communication point with coordination responsibilities for all trade and security interaction between CBP and the trade accounts. Although the NAM would also serve as a contact point for internal CBP units dealing with programs such as C-TPAT, audit, textile or Intellectual Property Rights (IPR) enforcement, ACE, etc., these other CBP offices and teams operating on specific program areas within different offices and mission areas of CBP would utilize the NAM for coordinating and communicating with the specific company accounts. In addition, all functional areas of CBP should have direct access to the secure web portal provided by ACE. Routine business processes such as viewing entry data, CF-28 Requests for Information, CF-29 Notices of Action and the like, could be transmitted to participating importers via the secure portal. Feedback from the trade accounts would be provided via the secure portal, improving efficiency of communication and providing importers with maximum time to respond to CBP.

Additionally, thought should be given as to how account based processing can be expanded to encompass both small and medium enterprises (“SME”) by providing a role for qualified brokers managing customs business on behalf of their SME clients. It is our contention that the brokerage community with its diverse customer base can be used more effectively to build the partnerships that are a necessity for CBP to achieve its goals and objectives outlined in the five year trade strategy. (See section on Centers of Expertise below for specifics.)

We realize that due to budget constraints and the current economic conditions in the world today that at this time it would be unrealistic for CBP to appoint 400 National Account Managers. What we are saying is that we have a portal now that could hold all of the trade information that could be evaluated for risk assessment by CBP officials.

An Account Based Processing System would include the following components:

1. Commercial Account Component

A trade account would be required to qualify for account based processing by meeting certain performance criteria to be established by CBP in consultation with COAC. Current programs such as ISA and C-TPAT already have requirements that could be adapted to form the basis of an account based processing model. For

example, importers who are currently C-TPAT validated and ISA participants could be grandfathered in to a pilot program to test an Account Based Processing model.

A new business processing model should be considered in alignment with ACE processing capability and new security requirements such as Importer Security Filing. An end-to-end review of current processes by CBP and COAC to consider redundant and inefficient filing could streamline the data requirements and simplify the entry process while increasing accuracy of declarations. The Trade Support Network (TSN) should be consulted to ensure that the account process is in line with the technology they have envisioned for ACE.

Currently, for a typical import shipment, importers must file an ISF to allow CBP to screen shipments for possible security issues – a development that was never envisioned when the ACE concept was designed. This is followed by an entry (CF 3461) declaration, which is then followed by an Entry Summary (CF 7501). Most large importers no longer complete the accounting process, (i.e. pay duties and taxes owing), on the basis of the entry summary, (the original purpose of an entry summary); rather, they pay duty on a periodic basis based on a summary of entry activity listed on a Periodic Monthly Summary (PMS). A new account based process may start with a known trade account filing an updated ISF that includes value for each shipment, which becomes the primary “release” instrument. For qualified importers that have demonstrated excellent internal controls and consistent compliance, the goods could be released to the importer on the basis of a successful ISF screening. The importer would no longer have to submit an Entry (CF 3461) or Entry Summary (CF 7501). They would be required to file a Periodic Entry, (already envisioned in the ACE process), and account for duties, fees and taxes owed on a monthly or quarterly statement. CBP would still receive all information they receive today and would be able to review the entry information and submit routine queries by referencing the specific lines on a periodic entry.

This is just one example where redundancies could be removed and current procedures simplified to benefit both CBP and trade accounts.

2. Security Account Component

Although the responsible party for the security component requires different skill sets and analysis tools, the NAM would be responsible for assisting the account in liaising with the C-TPAT Security specialist. Currently the Security and Compliance relationships the Account has with CBP are disjointed and distinct. The NAM would offer cohesion and a single voice to the account of the various programs within CBP, at the direction of the trade/security specialists.

The COAC IPR enforcement committee is working on a new detention seizure policy, a redesign of the bond process and establishment of a voluntary disclosure program. The NAM could be an integral person in these processes.

We endorse a plan to incorporate ITDS into the ACE portal to increase the automation process in trade activity and expand the National Account Managers concept to include Other Government Agencies into the Account Based Processing format.

Importers currently have to log on to two separate CBP portals to view all matters associated with their import shipments – one portal to access ACE information and a second portal to view and edit their security profile and related information. It seems obvious that a single portal for an account with various “pages” to access different aspects of CBP business would be much more effective and efficient. The trade accounts benefit by having all CBP business accessible in one location. CBP benefits by reducing costs associated with maintaining duplicate user IDs and passwords and maintaining two separate web sites.

3. Interagency Account Component

There is a need for various government agencies to work with Customs and Border Protection where information on imported material needs to be analyzed for safety and security concerns. Agencies such as the Food and Drug Administration (FDA), U.S. Department of Agriculture (USDA), Consumer Product Safety Commission (CPSC), Environmental Protection Agency (EPA), Federal Communications Commission (FCC), Census Bureau, Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), International Trade Commission (ITC) and Bureau of Industry and Security (BIS) require direct links to Customs in order to get the information they need for admissibility decisions. All these government agencies are part of the ITDS (International Trade Data Set) portal where eventually it will reside in the ACE portal.

Account managers would gain greater expertise in the industry segments to which they are assigned. Recognizing the value of this benefit, the initial assignment of NAMs would be most effective if built on previous experience. For example, a NAM assigned to medicines would be most effective if familiar with FDA, Drug Enforcement Administration (DEA) and USDA issues, a NAM assigned to wearing apparel should be familiar with issues related to quota and prevailing policies, and a NAM assigned to retailers should have a breadth of knowledge in the diverse areas in which retailers are engaged.

Unless NAMs participate in meaningful discussions between importers and the relevant Participating Government Agencies (PGAs) with which importers and CBP interact, the importing process cannot be optimized for all parties. This, of course, includes engagement in the ACE portal. Both CBP and the trade would benefit from this streamlined process where the needs of the PGAs would be coordinated through the ACE portal. Although CBP may not have responsibility or authority to enforce these other government agency requirements, there needs to be horizontal and vertical information flows. Information flow and data gathering must exist

between the account and the respective NAM. The NAM could then communicate with the respective CBP representative responsible for intra-agency programs. In effect, the NAM embodies the one face at the border model.

4. Information Technology Account Component

From its inception, ACE has been touted as the Account Management solution that would enable CBP to “simplify daily operations and promote a paperless work environment while ensuring the security of our nation's borders”. ACE provides near real-time visibility to data grouped at the account level as well as creating a centralized location for communication specific to that account. Fully realizing the potential of ACE to claim the benefits cited in this document is a quantifiable justification of the resources consumed by ACE development. Further, in the absence of a GTX-model database, there is a need for feasible logical approaches to segmenting the immense volume of data generated by and for CBP operations. Utilizing ACE data for analysis and management at the account level would benefit the trade and Customs, in synchronization with a number of CBP's Trade Strategy goals.

The NAM would need to be proficient in the ACE portal in order to assist the Account in maximizing the functionality of the system. Currently, importers have both an ACE and C-TPAT account, which possibly could be consolidated through better systems and account management coordination. It is possible that current and future legislation will require changes to ACE and ITDS, which may be product or industry specific. Accounts should work with separately assigned CBP IT support personnel to facilitate such changes.

Vision for Centers of Expertise for Trade Accounts

CBP should consider establishing “centers of expertise” for specific industry sectors and trade associations in concert with the National Account Manager program. The goal would be to achieve more industry commodity expertise, greater uniformity of treatment for specific product categories, and promote informed compliance. Trade associations could assist the NAM if a classification or particular safety violation should occur and they would need assistance.

In essence, the concept would be to designate a few specific units or ports that would be responsible for specific industry sectors such as automotive, information systems hardware, aerospace, textiles, apparel, pharmaceuticals, general merchants, etc. The designated import specialists or commodity experts would be responsible for a concentrated focus and intimate knowledge of the specific commodity area for classification, valuation, etc. All entries for Trade Accounts would be processed quarterly for those commodities at the appropriate “center”. These commodity experts would review entry data online using data mining techniques from the ACE database to accurately pinpoint high risk shipments. They would communicate directly with importer accounts for their specific commodities through the ACE portal. Over time they would

better understand which accounts are importing commodities that fall under their jurisdiction and any specially nuanced items involved in an account's product mix would be better understood. The actual port where a product entered the U.S.A would become irrelevant to the import specialist. CBP would benefit from this model by increasing efficiencies and expertise among Import Specialists. The officers involved would develop an in-depth expertise on their particular commodities. Importer and Broker accounts would benefit by dealing with one team of Import Specialists who provide consistent advice and guidance regarding their commodity rather than the current situation where opinions vary from port to port and the Import Specialists rarely obtain a deep understanding of a specific importer's products.

The Centers of Expertise concept could be expanded to include the brokerage community. By focusing on filer code, the brokerage ISA program could be used to include qualified segments of a broker's customer-base. The program would ensure that the universe(s) formed by said customer-base meets the CBP standard of being compliant at least 90% of the time. A risk assessment of a broker's customer-base will most likely result in several groups/universes based on commonality of risk. Brokers could segment their clients and internal resources into industry sectors that align with CBP's centers of expertise. An annual review of each universe would be performed by the broker to ensure the group meets the compliance standards. Alternatively, SME importers, while wanting to participate in an ISA program, should have the ability to do so as either a member of the broker's universe or as a separate entity. In either case, the broker would act as the gate keeper on behalf of CBP to ensure said importer possesses and maintains the internal controls that lead to highly compliant import transactions. In either case, annual compliance audits are conducted consisting of a sampling that covers transactions posing risks associated with the universe being tested. The results of this review are shared with CBP officials responsible for overseeing the ISA program.

If it chooses to do so, CBP can verify the results of the review prior to certifying a given universe for another year's participation.

If accepted in some form, this concept has the potential for CBP to effectively manage an ISA program for SME importers, thereby ensuring a high level of compliance with trade laws while protecting the government's revenue.

CBP and Trade Account Benefits

If an account based processing approach as described above can be agreed upon and adopted, it has the potential to benefit both CBP and the importing community in the following ways:

1. It will create a more efficient entry process for both CBP and importers/filers by reducing entry processing and review times, which saves CBP and importers/filers time and money while expediting goods to market.

2. CBP has sought to facilitate importer compliance through self-governance under programs such as ISA and C-TPAT. As a result of participating in such programs, importers will become more compliant with CBP entry regulations. This statement is supported by the compliance records of current participants, and it is attributable to the fact that importers will be responsible for self-assessment of the risks inherent with the products they import and the adoption of internal controls that ensure processes that generate compliant import transactions. Account managers supporting small and medium-sized importers (SMB) could be influential in expanding these programs throughout that business community. Treating these SMBs as accounts will foster greater understanding of and ability to achieve optimum compliance.

3. Quarterly filing of entries and payment of applicable duties provides importers the financial benefit associated with the time cost of money, or what is commonly known as the "float". This benefit could be reserved for importers who have demonstrated tight internal controls and who have been certified by Customs under the Importer Self Assessment program. By creating several tiers of importers in the Account Based Processing program, importers will have a meaningful financial incentive to participate in ISA.

4. Importers providing advanced notification of all suppliers, factories, forwarders, and carriers permits CBP and importers to utilize a more proactive approach to targeting potential commercial fraud and/or security risks. The benefits of this model have been recognized and realized within the C-TPAT program.

5. As Other Government Agencies (OGAs) buy into the ISA concept, CBP's mission of "one face at the border" becomes more and more a reality.

6. CBP receives advanced data permitting participant importers to get green-lane treatment at the border, while CBP has the ability to make better use of their limited resources. This will help to ensure improvement in both supply chain security and trade compliance while facilitating trade into the commerce of the U.S.

7. Centralized entry filing to a specific CBP team, a team of trained commodity specialists, will benefit importers and CBP with consistent decisions, uniformity in handling and be a more efficient use of CBP's latest technology and systems to ensure compliance while facilitating legitimate trade.

Collaborative Design and Implementation Process

COAC submits this whitepaper on Account Based Processing for CBP's review. It is our recommendation that we begin a dialog to address any fundamental differences in our vision of how importers and brokers who qualify should be managed and the role of the account manager. A working group consisting of importers, brokers/forwarders, carriers, and CBP personnel should be formed to discuss the issues and to develop an implementation plan. The makeup of the workgroup will remain constant for the COAC 11th term with subject matter experts being brought in for consultation as needed.

Appendix 2

IPR Subcommittee Resolution read at the August 5, 2009 Public Meeting

The Intellectual Property Rights Enforcement Subcommittee, the Commercial Operations Advisory Group (COAC), strongly supports the development of new enforcement tools and authorities to empower enforcement personnel in detecting, detaining, and seizing counterfeit and pirated merchandise.

CBP interprets the Trade Secrets Act to prohibit with very limited exceptions CBP officers and other enforcement personnel from disclosing to right-holders information on suspected IPR-infringing goods. Disclosure of additional information would help right-holders assist CBP in determining whether particular trademark goods or counterfeits or copyright works are pirated.

The subcommittee supports amendments and/or clarifications of the Trade Secrets Act or other appropriate customs laws to permit CBP officers and other appropriate enforcement personnel to disclose to right-holders information contained on a suspected trademark and copyright infringing goods themselves, including codes and other markings on the goods.

Note: The resolution did not pass by a vote of 11 opposed and 3 in support of the resolution, the remaining members abstained.