

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

Eleventh Term

2010 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 second year of the two-year eleventh term (2009 – 2010), and contains recommendations regarding the commercial operations of U.S. Customs and Border Protection (CBP).

- The report includes the issues considered by COAC and its subcommittees during 2010;
- Votes taken by COAC during 2010

Attached as appendices are the following:

- Appendix 1: COAC comments on the Notice of Proposed Rule Making regarding the CBP Bond Program
- Appendix 2: COAC Recommendations concerning Continued Public Outreach for Importer Security Filing (“ISF”)
- Appendix 3: COAC Recommendations concerning ISF Progress Reports for Tier II and Tier III Members of the Customs-Trade Partnership Against Terrorism.
- Appendix 4: COAC Recommendations concerning Finality of the Importer Security Filing transaction.
- Appendix 5: COAC Recommendations concerning ISF Highly Compliant Importers
- Appendix 6: COAC Summary Comments on US CBP’s Intellectual Property Rights Enforcement Strategy: 5 Year Plan
- Appendix 7: COAC Summary Comments on US CBP’s Intellectual Property Rights Voluntary Disclosure Pilot
- Appendix 8: Survey of Automated Commercial Environment (“ACE”) Benefits to Companies and Trade Members
- Appendix 9: COAC Recommendations concerning Duplicative Federal Background Check and Credentialing Requirements for Air Cargo Employees
- Appendix 10: COAC Comments on National Strategy for Global Supply Chain Security Development Efforts
- Appendix 11: Letter Received from the Transportation Intermediaries Association dated July 12, 2010
- Appendix 12: H.R. 5619 – June 28, 2010 “A Bill To amend the SAFE Port Act...”

Appendix 13: Letter from Representative Bill Owens regarding Third Party Logistics Providers Participation in the Customs-Trade Partnership Against Terrorism

Appendix 14: Letter to the National Association of Manufacturers from Commissioner Bersin (undated).

Appendix 15: International Trade Data System (“ITDS”) Proposal Summary

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

1. Earl Agron, APL Limited
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 Packard¹
14. Kenneth Roberts, Kraft Foods
15. Bethann Rooney, Port Authority of New York and New Jersey²
16. Leigh Schmid, Limited Brands, Inc.
17. Carol Sheldon, DHL
18. Bradley Shorser, Sears Holdings Corporation³
19. Barbara Vatier, 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

¹ Ms. Reichstein resigned from COAC midway through 2010 and was not replaced.

² Ms. Rooney resigned from COAC midway through 2009 and was not replaced.

³ Mr. Shorser resigned from COAC midway through 2010 and was not replaced

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 meeting and five official (public) meetings during 2010 as follows:

February 17, 2010	Washington, DC ⁴
February 25, 2010	Miami, FL
May 11, 2010	Philadelphia, PA
July 15, 2010	Teleconference
August 4, 2010	Detroit, MI
November, 9, 2010	Washington, DC

Officials from the Department of Homeland Security, U.S. Customs and Border Protection including Acting Commissioner David Aguilar (February meeting), Commissioner Alan Bersin, Deputy Assistant Secretary of Treasury Tim Skud and representatives from the Department of Homeland Security participated in the public meetings.

2010 Overview

The 11th term of COAC started with an "administrative" meeting rather than a formal public meeting due largely to the third change in leadership at CBP during the 11th term of COAC.⁵ The COAC members met with Acting Commissioner David Aguilar to discuss priority issues of interest to CBP.

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

Bond Subcommittee – Chair: Don Huber

The Subcommittee discussed in depth the Proposed Rulemaking and offered several proposals and clarifications which were voted on at the COAC public meeting in Miami on February 25, 2010.

Subcommittee members had many discussions with the CBP revenue division concerning the rough draft of the "Monetary Guidelines for Setting Bond Amounts",

⁴ The meeting on February 17, 2010 was an administrative meeting only. The COAC members met with Acting Commissioner David Aguilar to discuss upcoming meetings. There was no advice provided by COAC to DHS or Treasury officials during this informal meeting.

⁵ Ralph Basham was Commissioner of CBP when the 11th term of COAC began in 2009, after his retirement in 2009, Jayson Ahern became Acting Commissioner, followed by David Aguilar in 2010, a fourth leadership change occurred in early 2010 when Alan Bersin was appointed Commissioner of CBP.

during which they made numerous suggestions. Bruce Ingalls committed to submitting a formal draft to the Subcommittee which would include those suggestions that CBP could incorporate. Although our agreement was reached in the fall of 2010, at the end of the eleventh term of COAC, the committee had not reviewed a revised draft.

The Subcommittee was vocal with regard to the various “pipelines” (official notices) issued by CBP officials at several ports regarding the filing of single transaction bonds. Our comments and concerns resulted in an agreement with CBP that ports would not issue notices without first consulting with CBP headquarters.

The Subcommittee was initially created to address issues related to bond centralization. At that time, CBP agreed that all updates and changes to the continuous bond filing process would be reviewed by the Subcommittee in advance of publication on CBP.gov. CBP recently updated its "Policies and Procedures" document without prior Subcommittee review. The Subcommittee was disappointed that this was published without their knowledge and they hope CBP will collaborate more with the Subcommittee during the 12th term of COAC.

The Bond Subcommittee strongly recommended that they remain active during 2011. There are open issues, including the updated bond regulations and revised "Monetary Guidelines for Setting Bond Amounts" publication. In addition to the open issues, the concepts of "simplified financial processing" and "risk-based bonding" will affect bonds and the Subcommittee believes that participation in the discussions surrounding these concepts is critical.

Importer Security Filing (ISF) Subcommittee: Chair: Karen Lobdell

The ISF Subcommittee conducted ongoing discussions with CBP in 2010 with respect to the implementation of the ISF Interim Final Rule following the one year “grace period” that had been allowed by CBP in 2009. Beginning January 26, 2010, CBP began enforcement of the ISF Subcommittee meetings, which commenced in January 2010 and were held, at a minimum, on a monthly basis:

1. **Visibility to ISF Activity and Performance:** The COAC continued its strong message that the current Progress Reports being provided by CBP (monthly PDF reports) were inadequate to provide useful data for measuring compliance and identifying gaps in a timely manner. Further discussions with CBP resulted in COAC recommendations which were presented at the public meeting in May 2010, including reports being available via ACE in real time (or potentially via the Customs-Trade Partnership Against Terrorism, or C-TPAT portal), data extracts allowing larger importers to manipulate data within their own systems, additional data element inclusion, further clarity on status messages, total filings and ratings for metrics. Although work on this issue is ongoing, COAC is pleased that CBP has proceeded with development of a data warehouse that will address the majority of these issues and will ultimately reside within the ACE portal. CBP will pilot the data warehouse with Tier 3 C-TPAT members first and then phase-in for all importers over time.

2. **Finality of the ISF for Penalty Purposes:** As it stands today, the ISF transaction has no end date with the exception of the required six year statute of limitations to ensure liquidated damages can be enforced. COAC developed recommendations, presented at the May 2010 public meeting, to provide a reasonable timeline by which the ISF itself is closed out for the purposes of assessing liquidated damages for late, inaccurate or incomplete filings. This would also address the concerns of the surety industry with respect to the amount of exposure on their books during this period. The recommendations included a series of recommended timelines for notice of liquidated damages after which no liquidated damages could be issued.⁶ Unfortunately, agreement could not be reached with CBP on the recommendations provided on this matter.
3. **Enforcement Strategy:** The Subcommittee continued discussions with CBP throughout the year with respect to handling of the graduated enforcement efforts. The Trade was very pleased that enforcement was focused primarily on non-filers and/or repeat violators during the initial phases and that CBP's response was heavily focused on trade outreach and non-intrusive inspections where necessary to address non-compliance.
4. **Continued Outreach:** Although outreach efforts in 2009 were substantial, the Subcommittee felt the approach may need adjustment as enforcement began in 2010, including ongoing efforts to reach the small and medium enterprises (SME) community. COAC developed recommendations, presented at the May 2010 public meeting to address these concerns including consideration of automated letters to non-compliant importers, targeted communication through the portal to C-TPAT members, development of an Informed Compliance Publication, updating of existing CBP publications to incorporate ISF requirements, online training via the CBP website, ongoing use of the broker and forwarder community and engagement of the Small Business Administration (SBA). Many of these recommendations are in the process of being implemented, although the challenge of outreach to SME's continues to be an issue and warrants further efforts as this impacts all CBP regulations and initiatives, not just ISF.
5. **Benefits for ISF Highly Compliant Importers:** During the first public meeting of 2010, CBP raised the issue of obtaining assistance from the Trade in identifying the benefits of a highly compliant ISF program. As a result, the Subcommittee developed recommendations (presented at the August 2010 public meeting) for importers who were highly compliant with respect to ISF, including deeming it a best practice under C-TPAT, further facilitation for multiple containers under single bills of lading that are pulled for stratified compliance exams, further mitigation of penalties (not associated with ISF), streamlined C-TPAT application process for SMEs, and conditional release at time of vessel departure for unified filings. Additionally, the Subcommittee identified collateral benefits realized by

⁶ This would not preclude CBP from taking appropriate measures under the statute for fraudulent and/or criminal activity associated with the ISF.

those same companies. Unfortunately, agreement has not been reached with CBP with respect to any of the suggestions offered, however COAC hopes CBP will to give consideration to the recommendations provided.

6. **Outstanding Bond Concerns:** The surety industry continues to have concerns related to the finality of the transaction as indicated in number 2 above. The exposure over a six year period is likely to exceed \$300 billion for the industry. The COAC and Subcommittee hopes to continue to discuss the issue with CBP. In addition, the lack of data available on the ISF transactions is an issue for surety companies. CBP worked with the Subcommittee and developed a report for sureties, however, due to the volume of transactions per surety it was determined that the reports are not feasible. In order for a surety to obtain all of their bonded transaction data, a report would have to be provided daily. CBP has indicated that the data will be available in the data warehouse mentioned in number 1 above. We hope to work closely with CBP to ensure that the data will be available to the surety industry as well as the importing community. These issues can be addressed through the COAC Bond Subcommittee going forward, or through a working group as part of the Global Supply Chain Security Subcommittee.

As of November 2010, the ISF Subcommittee had completed its discussion and recommendations on the majority of outstanding issues regarding the ISF. Although there are still some areas that warrant further discussion with CBP going forward, including review of the pending Final Rule, it is the feeling of the Subcommittee that a separate Subcommittee is not necessary in the upcoming term of COAC. Ongoing discussions for outstanding issues can be addressed as needed within the scope of the Global Supply Chain Security Subcommittee which is broader in scope and can accommodate these discussions going forward.

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

In the year 2010, the COAC IPR Subcommittee had four meetings:

- Jan., 12 – conference call
- April 7 – meeting in Washington, DC
- May 6 – conference call, and
- Aug., 12 – conference call.

The Subcommittee released one major document during 2010, a document concerning Voluntary Disclosures. The Chair of the Subcommittee put forward a motion that the COAC submit recommendations on this matter to CBP. The recommendation and comments concern grey market goods where the voluntary disclosure would be problematic for some importers and traders that may not be sure which products to disclose. CBP should be clearer on the definition of disclosure. These issues and others could be explored once a recommended pilot program is created and tested. There is no confirmed date for such a pilot to start.

The Subcommittee reviewed the CBP IPR Enforcement Strategy five-year plan, and suggested a few improvements. For example, the Subcommittee indicated that performance metrics should be incorporated to measure performance on tracking and progress of the IPR seizures, address grey market goods, and procure samples of confiscated merchandise for evaluation by the rightful intellectual property holders.

The Subcommittee discussed the need to transition the IPR Enforcement concept to an account supply and distribution management format under the account management program for trade facilitation. A discussion ensued but there was a lack of information on legitimate imports of trademark and copyright goods as a percentage of the total imports. To that fact, there were no concrete plans to proceed. CBP has not established a distribution chain management program, for identification of legitimate (Non- IPR infringing materials) imports without physical examinations of these goods.

A meeting was held in April, 2010 in Washington, D.C. with CBP and various COAC IPR Enforcement Subcommittee members to discuss an Importer Self Assessment (“ISA”) program for IPR enforcement. The idea was to establish an ISA program for trade compliance companies to achieve a reduction in the resources required by CBP and importers during the entry and post entry process. As a result of this meeting and subsequent meetings by CBP, it appeared that this program will be delayed due to the lack of interest by the trade.

The Subcommittee is still waiting for a report from CBP on a recommendation to conduct a feasibility study to develop an automated system linking the trade names and copy right system of Department of Commerce to CBP’s trademark and copyright recordation system. Under this proposal, once a trademark or copyright is registered, CBP will receive the record electronically making the Customs Recordation process more efficient and reduce recordation errors.

Automation – Co-Chairs: Jevon Jamieson and Michael Ford

COAC was tasked by CBP to create a Subcommittee with the goal of creating a survey to analyze the financial impacts that ACE has had on trade members. More specifically, CBP requested that survey determine the positive benefits that ACE has had on trade participants finances the Subcommittee wanted to gauge the cost savings of trade members due to implementation of ACE functionality. CBP needed to know how much, if any, ACE has saved trade members so that this information could be used to support their effort to maintain the appropriate level of funding for ACE.

Prior to release of the Subcommittee survey, CBP provided the Subcommittee with valuable insight from economists and statisticians. These entities provided much needed details and suggestions for better ways of asking a specific question to gain better and more usable results.

By March 11, 2010 all of the links to the surveys were distributed to the appropriate trade associations and other contacts for specific trade groups for distribution to members. These groups include:

- Ocean Carriers and Non-Vessel Operating Common Carriers
- Truck Carriers
- Rail Carriers
- Air Carriers
- Sureties
- Foreign Trade Zones and Bonded Cargo Facilities
- Customs Brokers and Freight Forwarders
- Importers

The survey closed on March 31, 2010. Upon closure, members of the COAC were provided with the raw data for analysis and creation of a report of the results for CBP. CBP was also provided with data from the surveys giving them an opportunity to analyze the survey results independently as needed.

The survey report was submitted to CBP on May 6, 2010. The results of the survey were posted to CBP website later in May 2010. Cynthia Allen provided a formal response to COAC regarding the survey results on November 2nd, 2010.

Agriculture Subcommittee – Chair: Geoff Powell

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 2010, the Subcommittee worked on three Agricultural related issues:

1. Lacey Act Implementation: The Subcommittee's first goal was 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. Carrier Contamination (initially pertaining to Asian Gypsy Moth (AGM) interceptions): The second goal was 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.

3. Agriculture Stakeholder Outreach and Statistics Dissemination: The third goal was to follow up on the recommendations of the Joint Agency Task Force and provide suggestions to CBP and the Animal and Plant Health Inspection Service (APHIS) about the possibility of COAC being utilized to extend CBP agriculture program and information outreach to the wider agriculture stakeholder constituency. The Subcommittee also intended to 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 APHIS received numerous inquiries from the private sector regarding information sharing. However, no agreement was reached at the conference on the type of information to be shared, what information is of interest to the private sector stakeholders, and the format and frequency of communications with the private sector stakeholders. CBP asked COAC to offer suggestions on how CBP and APHIS could disseminate agriculture-related information of interest to private sector stakeholders. In response, the COAC Subcommittee on Agriculture developed a short questionnaire designed to elicit preferences from respondents on the types of agriculture-related information they might like to receive. The Subcommittee received responses from a number of stakeholders which provided guidance to CBP/APHIS on what data will be shared and how often.

In addition to the questionnaire, the COAC Subcommittee hopes to assist CBP in their next scheduled Joint Stakeholder Conference scheduled for May 2011.

Trade Facilitation Subcommittee - Chair: Jeffrey Whalen

The Trade Facilitation Subcommittee had an active year in 2010. During the first five months of the year, the Subcommittee held regular calls to define values and methods to serve as guide posts in our discussions on how CBP and the importing community can work together to promote trade facilitation.

The Subcommittee first addressed the fundamental question of what does modernization mean? The Subcommittee agreed to the following:

CBP Modernization [is] prompt and efficient cargo processing while maintaining a high level of compliance with rules and regulations in a dynamic environment. Improving on existing systems and processes, Modernization should include concepts such as management by account, single window, periodic processing, unified filing with flexibility to include future enhancements and changing needs.

The Subcommittee further identified the following values related to Modernization:

- Predictability
- Efficiency
- Transparency
- Partnerships
- Safety and Security

The Subcommittee next addressed the definition of trade facilitation. The Subcommittee agreed to the following:

Trade Facilitation is where procedures and controls governing the movement of goods across national borders and the communication of information relating to said goods serve to minimize associated compliance and logistical costs and maximize efficiency for both trade and government while safeguarding regulatory and security objectives.

Following agreement on these core principles and working from the COAC White Paper on Account Based Processing approved in May 2009, the Subcommittee—with direction from CBP—began work on identifying and prioritizing projects. The highest priority project that emerged from the subcommittee was the development of Centers of Expertise. Given the list of other proposed projects, it was determined that the Subcommittee needed to expand beyond the COAC members to include a wide variety of interests and expertise; this expansion occurred in June 2010.

At the same time, Commission Bersin and Deputy Commissioner Aguilar created an internal CBP task force to drive more rapid development of the work of the Subcommittee. The task force drew from CBP offices around the nation and came together in Washington, D.C., for a ninety-day detail. In addition to the work of this task force, three rounds of meetings were scheduled with the entire Subcommittee to review and provide private sector guidance on the different stages of projects proposed by the task force. These meetings were held in Washington, D.C., on: July 7-8, 2010; August 10-11, 2010; and September 15-16, 2010. Following these meetings, formal proposals were prepared by CBP Staff for approval by Commissioner Bersin. During these meetings, the COAC Subcommittee and the CBP task force focused on the following proposals:

- Risk-Based Account Management
- Single Partnership Programs
- Simplified Entry Process
- Simplified Financial Processing
- Centers of Excellence
- Account Executive

In addition to examining these projects individually, the Subcommittee also discussed how these various projects might be integrated to create a more uniform whole. To that end, the private sector members of the Subcommittee created a discussion paper on a

Trusted Shipper Program that would embrace the Risked-Based Account Management, Simplified Entry, and Single Partnership programs.

Commissioner Bersin adopted two pilot projects:

- Centers of Excellence and Expertise (CEE): This program will be piloted with the pharmaceutical industry to create and implement policies and procedures to ensure uniformity. In particular, the CEE will focus on trade facilitation and the interaction with Partner Government Agencies (PGA's), which was an important finding in the work of the Subcommittee
- Account Executive: This program will be piloted with an electronics importer to develop strategic risk management with companies identified as "most trusted."

Work on the other proposals—in particular Simplified Entry—is expected during the 12th Term of the COAC.

Air Cargo Security Subcommittee – Chair: Barbara Vazier

The Air Cargo Security Subcommittee met via conference call 7 times in January through April 2010 to develop recommendations on a single issue identified from the work conducted in 2009. The issue of redundant and overlapping ID and credentialing requirements between CBP, TSA, and the airports was reviewed and analyzed during the course of these meetings. The concerns from industry represented the entire air cargo supply chain, i.e., airlines (both passenger and cargo), truckers, and freighter forwarders/indirect air carriers. The attached 4 recommendations were presented and endorsed by the full COAC during the May meeting.

During the August meeting, John Wagner of CBP and Kim Costner Moore of CBP updated COAC on government response and plans to address the subcommittee recommendations. CBP specifically addressed the issue of the CBP Customs Seal requirement and outlined a plan to automate the process using data that airport authorities are already collecting and submitting to TSA. A pilot program utilizing the Global Enrollment System Database (GESD) was launched at Los Angeles International Airport. Almost immediately, turnaround time for applications was reduced from about a week to just over a day. CBP reported that efforts to have commensurate background checks between TSA and CBP are ongoing as the two agencies coordinate to understand each other's vetting processes.

CBP and TSA committed to continue working together to streamline processes. Moving forward, the subcommittee identified a future task for 2011 to address additional synergies between the TSA CCSP (Certified Cargo Screening Program) and C-TPAT (Customs Trade Partnership against Terrorism).

Global Supply Chain Security Subcommittee – Chair: Earl Agron

COAC was charged with addressing a four part task:

1. Review the 2007 document titled, *Strategy to Enhance International Supply Chain Security* (“Strategy”)
2. Respond to questions directed by the SAFE Port Act
3. Respond to additional questions posed by DHS; and
4. Identify other questions COAC thinks should be considered by DHS in their development of the National Strategy for Global Supply Chain Security.

In order to ensure a broad swath of the supply chain was represented, non-COAC members were asked to participate in the subcommittee deliberations prior to the final report being drafted by COAC and presented to both CBP and DHS at a July 2010 public meeting. Specifically, representatives from air, rail and maritime service providers; importers that use all modes of transportation in their supply chains and other service providers such as brokers and freight forwarders contributed to the report’s findings.

Some key findings in the report include:

- COAC’s comments on the 2007 Strategy are still valid, however the Strategy should focus more attention on air and surface transportation
- Coordinating supply chain security protocols both inside and outside of the Department should be a strategic priority. Minimizing conflicts between agencies will help make the supply chain more secure and help facilitate trade.
- Timely sharing of actionable intelligence among government agencies and the private sector should be a strategic priority. The US Government needs to better utilize the private sector as a “force multiplier” in protecting the supply chain which is best done through information sharing, both to and from the private sector.
- Increasing the number of large and small scale security exercises is a key to improving and measuring resiliency. Every exercise does not have to be large and expensive. Some can be simpler as there are benefits gained by increasing the population of stakeholders that directly participate.
- Collaboration on the C-TPAT minimum security criteria should continue through this subcommittee and other industry organizations to help ensure this partnership program remains efficient and reflects the ever-changing threats.
- In regard to the technology arena, container-centric technology solutions present little hope of reducing the risk of terrorists using containers as Weapons of Mass Destruction (WMD) as delivery tools. CBP should therefore review the emphasis they currently place on these security solutions. Container Security Devices (“CSDs”) may have some application in a limited way such as at border crossings but it is not practical to think CSDs can be broadly applied to the global supply chain.

DHS specifically asked COAC to recommend opportunities for legislative or regulatory improvement. Three COAC findings include:

- The mandate for 100% scanning of maritime containers and the 100% screening of air cargo on passenger aircraft contained within *the 9/11 Commission*

Recommendations Act should be re-evaluated in favor of risk-based measures that target high-risk shipments. More specifically the requirement to scan 100% of maritime containers prior to vessel load should be repealed.

- 19CFR103.31 should be modified to protect certain sensitive cargo manifest information from being released to the public. As background, this regulation requires that manifest data acquired from AMS be made available to the public on a daily basis. Some of the required data elements include vessel, voyage number, port of unloading, bill of lading number, description of goods, container number and seal number. As a consequence of this regulation security vulnerabilities are created that would otherwise not exist. This regulation also undermines the effectiveness of some of the C-TPAT minimum security criteria. For example, C-TPAT requires the use of high security seals and mandates specific seal control and anomaly reporting procedures. 19CFR103.31 negates any security benefit of these C-TPAT requirements as the seal number is a data element made available through this regulation. Both authorized stakeholders and adversaries now have access to this information.
- CBP and/or DHS should take steps to revise protocols that would allow the USG to consult with the private sector after public comments are received. If this takes regulatory change, then that avenue should be pursued. Currently a form of a “gag order” is in place, for example, CBP that prohibits them from engaging with industry on proposed rulemaking. 10+2 is a good example. Interaction of a material nature is limited forcing the USG to respond and react to comments without the benefit of further industry consultation.

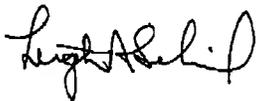
Votes Taken by COAC

In 2010, COAC voted during public meetings on the following issues:

1. February 25, 2010 – COAC voted on a Motion to approve the minutes from the November 4, 2009 meeting. Motion Carried.
2. February 25, 2010 – COAC voted on a Motion to submit comments on the Notice of Proposed Rule Making (NMRM) regarding Bond Centralization. Motion Carried.
3. May 11, 2010 – COAC voted on a Motion to approve the minutes from the February 25, 2010 meeting. Motion Carried.
4. May 11, 2010 – COAC voted on a Motion to submit recommendations on Importer Security Filing (ISF) in three areas: Finality of ISF Transaction; ISF Outreach and Progress report recommendations. Motion Carried
5. May 11, 2010 – COAC voted on a Motion to submit recommendations on Air Cargo Security. Motion Carried.

6. May 11, 2010 – COAC voted on a Motion to submit a report of the “Survey of Automated Commercial Environment (ACE) Benefits on Companies and Trade Members” by the Automation Subcommittee. Motion Carried.
7. July 15, 2010 – COAC voted on a Motion to submit recommendations on COAC Comments on National Strategy for Global Supply Chain Security Development Efforts. Motion Carried.
8. August 4, 2010 – COAC voted on a Motion to approve the minutes from the May 11, 2010 and July 15th meetings. Motion carried.
9. August 4, 2010 – COAC voted on a Motion to submit recommendations on Importer Security Filing Benefits. Motion Carried.
10. August 4, 2010 – COAC voted on a Motion to submit comments on CBP’s Intellectual Property Rights Enforcement Strategy. Motion Carried.
11. November 9, 2010 – COAC voted on a Motion to approve the minutes from the August 4, 2010 meeting. Motion Carried.
12. November 9, 2010 – COAC voted on a Motion to submit the IPR Enforcement subcommittee comments on CBP’s Intellectual Property Rights Voluntary Disclosure Pilot. Motion carried.

Respectfully submitted,



Leigh A. Schmid
Trade Chair – 11th Term

Eleventh COAC - 2010

Eleventh Term COAC – 2009 to 2010



Back Row (L-R) Tim Skud, Sam Banks, Geoffrey Powell, Earl Agron, Jevon Jamieson, Leigh Schmid, Robert DeCamp,
Front Row (L-R) Jeffrey Whalen, Don Huber, Barry O'Brien, Colleen Clarke, Commissioner Alan Bersin, Kimberly Marsho, Barbara Vatie, Michael Ford, Adrienne Braumiller, William Cook, Karen Lobdell

Appendix 1

**COAC comments on the Notice of Proposed Rule Making regarding
the CBP Bond Program**

11TH TERM ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF
US CUSTOMS AND BORDER PROTECTION

February 25, 2010

Mr. David Aguilar
Acting Deputy Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

Mr. Timothy Skud
Deputy Assistant Secretary, Tax, Trade and Tariff Policy
Department of Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

**Re: Docket No. USCBP-2006-0013
Customs and Border Protection Bond Program**

Dear Sirs,

The Advisory Committee on Commercial Operations (“COAC”) submits the following comments to the above referenced Notice of Proposed Rulemaking. The COAC is an advisory committee chartered under the Federal Advisory Committee Act and all members are appointed by the Secretary of the Treasury and the Secretary of Homeland Security. The members consist of 20 non-government individuals that represent the interests of those involved with the international carriage of goods and transportation.

The NPRM subject to these comments is of interest to all members of the trade community. The Customs bond is the one Customs document that touches on all aspects of a Customs transaction. The Customs bond is required for importers, customs brokers (if acting as importer of record), domestic carriers and international carriers, to name a few; and, surety companies provide these bonds for all members of trade subject to a bond requirement.

The COAC Bond Subcommittee is composed of sureties, surety agents, customs brokers, importers and attorneys. This subcommittee reviewed and discussed the NPRM in detail and compiled suggestions which formed the basis and were incorporated into this document after a thorough review and discussion by the entire COAC.

§113.11 Bond Application

The NPRM sets forth revised requirements for bond applications. It includes single transaction and continuous bond application provisions. The proposed detail to be required on applications is vastly expanded in comparison with current application requirements.

11TH TERM ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF
US CUSTOMS AND BORDER PROTECTION

The "Paperwork Reduction Act" section on page 272 of the NPRM states that "There are no new collections of information proposed in this document." §113.11 as proposed renders this statement inaccurate. The level of application detail specified in the NPRM is much greater than that currently collected from bond applicants by CBP and clearly constitutes a "new collection of information." Importers and customs brokers with whom we have discussed this proposed requirement advise that the application preparation process will become much more involved and time consuming if the new application detail is required. This translates to an additional cost of doing business for a substantial number of entities. In the "Regulatory Flexibility Act" section, also on page 272, the CBP states that "...the number of entities subject to this proposed rule would be considered "substantial.""

Routinely requiring applications on customs bonds is an outmoded concept. Since February 18, 1985, CBP (including its predecessor agencies) has had the option to require applications on single transaction bonds (STBs). The need for such a document has never been clearly established and, to our knowledge, CBP has never exercised this option. The requirement for applications on continuous or term bonds existed prior to 1985, although the basic regulations that went into effect on February 18, 1985 included certain modifications to the requirement. We submit that routinely requiring applications on continuous bonds is no longer necessary or desirable. Data processing and analysis capabilities today are vastly more comprehensive than those existing in 1985 when the current application requirements were instituted. Furthermore, as a practical matter, we are clearly given to understand that the preponderance of bond sufficiency decisions rendered by the CBP Revenue Division (RD) are based not on bond applications but on the RD's analysis of data readily and routinely extracted from CBP's own systems. Additionally, the proposed detail set forth in the NPRM involves certain information which is pertinent only in the case of Activity Code 1 continuous bonds, even though the requirements of proposed §113.11(c) purport to apply to all activity codes. Proposed §113.11(d) essentially mirrors the current §113.12(b)(2) and requires updates to application information in the event of a "significant change" in such information. CBP has not enforced this provision during the past 25 years and it is unenforceable.

Proposed §113.11 should be amended as follows:

- The opening paragraph ("Each person...as follows:") should be deleted in its entirety.
- The proposed STB application provision §113.11(a) should be deleted in its entirety.
- The proposed continuous bond application provision §113.11(b) should be re-designated §113.11(a) and changed to read:
"The CBP Revenue Division (RD) may require a prospective or existing continuous or term bond principal to file a written bond application. The application may be in the form of a letter and must be submitted to the RD via mail, fax, or in an electronic format (as prescribed by CBP). When required, the application shall include such information as the RD deems necessary in order to properly evaluate bond sufficiency. When an

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application is required by the RD, such application must include a certification statement as set forth in paragraph (b) of this section.

- Proposed required bond application information §113.11(c) should be deleted in its entirety.
- Proposed Signature and Certification §113.11(e) should be re-designated §113.11(b). (See additional comments elsewhere regarding corporate seals.)

Note that references to CBP Form 301 have been deleted in view of the fact that certain bonds filed with CBP (e.g., ISF "Appendix D" bonds, Airport Security Area Bonds "Appendix A") are not filed on CBP Form 301. Furthermore, the word "term" has been added since some non-single-type bond forms filed with CB (e.g., Airport Security Area Bonds) are term bonds rather than continuous bonds. CBP may want to consider additional regulatory changes to make such bonds continuous rather than term.

In summary, §113.11 as proposed will actually result in paperwork proliferation. Conversely, the foregoing modifications proposed by COAC will result in true paperwork reduction without sacrificing CBP's ability to obtain and review the information it needs to make sound sufficiency decisions.

§113.12 Bond Approval

This section was previously §113.11 in the current regulations. The last sentence of §113.12(b) Continuous bonds states, "Only one continuous bond for a particular activity will be authorized for each principal." CBP may be exposing itself to the denial of liability based on this language.

The bond conditions for the Importer Security Filing are found in the language for the following activity codes in §113:

1. Activity Code 1 - Basic Importation and Entry Bond (§113.62)
2. Activity Code 2 - Basic Custodial Bond (§113.63)
3. Activity Code 3 – International Carrier Bond (§113.64)
4. Activity Code 4 – Foreign Trade Zone Operator Bond (§113.73)
5. Importer Security Filing Bond (Appendix D to §113)

If the ISF importer holds more than one of the above referenced bonds, any bond could be subject to the ISF requirements. For example, an ISF importer may have an Importer Security Filing Bond (Appendix D to §113) and an Activity Code 1 bond (§113.62). If the Importer Security Filing Bond becomes saturated and CBP cannot collect liquidated damages under it, CBP maintains they have the authority to issue liquidated damages under the Activity Code 1 bond. The importer or surety may attempt to deny liability under the Activity Code 1 bond because §113.12(b) states a principal is only authorized to have one continuous bonds for a particular activity.

To avoid this exposure to CBP, the last sentence of §113.12(b) Continuous bonds should be amended to read, "*Only one continuous bond for a particular activity code will be authorized for each principal.*"

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§113.12 Bond Approval; §113.21 Information required on bond; §113.24 Riders; §113.25 Seals; §113.27 Effective dates of termination of bond; §113.33 Corporations as principals; §113.37 Corporate Sureties

The following language is found in the sections reference above:

“CBP is entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with applicable laws.”

This is a substantive change to the regulations, though it is not highlighted in the summary of this notice. CBP has a responsibility for reviewing bond applications, bonds and bond riders filed with it in order to protect the revenue and other obligations owed to the U.S. The statements indicate that CBP takes no responsibility for accepting bond applications, bonds or bond riders that are contrary to its own regulations.

The language we object to indicates that CBP would hold itself harmless whenever it accepts a bond application, bond or bond rider that would be considered invalid for any reason, whether arising from fraud or inadvertence; whether obvious or subtle. This sweeping ability to charge the surety with obligations not actually or properly incurred should be eliminated or limited to defined circumstances in which the presumption can be shown to be appropriate.

First, it should be noted that this unfettered and undefined presumption is not needed. Since the onset of Bond Centralization, CBP has meticulously reviewed all bond submissions at the RD, rejecting bond filings for minor issues such as a signature outside of the lines in the signature box. If the RD takes such precaution when reviewing and accepting bonds, it is unlikely that they would accept a bond that would be fraudulent or legally deficient. The explicit elimination of CBP’s accountability indicates a radical, unneeded and inappropriate change in philosophical approach to the bond process and protection of the revenue.

The problems with the proposed language are clearly exposed upon examination of examples of actions authorized by the broad, undefined authority. CBP would be able to charge a surety on bonds that were produced fraudulently or are inconsistent with CBP regulations and statutory requirements. Where an importer, licensed customs broker or other filer produces and/or files a fraudulent bond, CBP would be able to collect against that document, completing the fraud to the surety. Where a bond is facially deficient under the CBP requirements, CBP would be able to ignore those deficiencies at the time it accepts the bond and collects against the bond.

We believe that this broad authority is inappropriate and unlawful. If a bond is submitted and accepted by CBP, then CBP must also take responsibility for the problems, errors or deficiencies in the bond which is accepted. Regulations should not be crafted to allow CBP officials to blind themselves to the reasonableness and unlawfulness of the documents it is asked to accept.

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Nonetheless, we believe there may be a limited number of instances in which it is appropriate for CBP to presume that certain elements of the bond are valid without the need for CBP to verify those elements. One example might be the presumption that the bond principal is a corporation or partnership, whichever is represented in the bond application, bond or rider. However, if any such presumptions are included in regulations, they should be specifically defined, adopted only after providing an opportunity for public comment and consistent with the needs to facilitate trade, foster fiscal stability of sureties, and protect the revenues and legal obligations of the U.S.

§113.13 Amount of bond.

The NPRM will remove the current requirement in 19 CFR 113.13(c) that gives the principal on a bond 30 days to respond to a written notice of a deficiency. The proposed change would allow CBP to inactivate a bond almost immediately. The 30 day time frame is important to maintain and goes beyond the bond amount as CBP inactivates bonds for other reasons (e.g., bad address). Although not giving 30 days notice is taking on new importance, the ISF implications are of special concern in this regard. Before ISF, this action would only cause delays on filing an entry for release as the cargo arrives at terminals in the U.S. The delay in release causes a major obstacle that we had discussed with the RD in the past. The Trade, through the COAC Bond Subcommittee, had agreed with the RD that the current regulation without any special program for avoiding inactivity of a bond being insufficient was a good policy.

Now with ISF, inactivation of a bond immediately for any insufficiency takes on new urgency. If an ISF transaction is rejected for not having an active bond on file, the problems will be felt overseas before the cargo is delivered to the carrier's terminal. Cargo that is held back from being sent to the carrier for a rejected ISF could miss the vessel and have to roll over to another ship. It may be days or weeks before space on another ship is available. There is also the possibility of liquidated damages for an importer when cargo is delivered by a shipper without the ISF being accepted just because they thought one was properly sent and accepted.

CBP proposes to change the current process because “in **some instances** 30 days is too long to permit the conditions to continue”. Most importers are honorable and work well with CBP when notified of a deficiency that can easily be fixed in 30 days. CBP should consider other processes to deal with the small number of problem importers while allowing most importers to continue to have time to fix a deficiency. Now the sudden removal of a bond from an importer, large or small, trying to comply with the graduated enforcement of the ISF targeting program opens the doors for the possibility of severe delays in the supply chain or, even worse, multiple claims for liquidated damages.

§113.23 Changes made on the bond.

The last sentence of §113.23 (c) After signing, prior to approval states, “When a modification or interlineation is desired, the existing bond will be cancelled and a new bond will be executed.”

The language indicates that the bond is in force, however the heading of this section indicates “prior to approval”. If a bond is not approved, it does not exist. We propose

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the language be amended to reference a bond filing and withdrawal of the filing. Therefore, the sentence should read, “When a modification or interlineation is desired, the existing bond **filing** will be **withdrawn** and a new bond will be executed.”

§113.24 Riders.

This section refers to the filing of riders at the RD. The riders named in this section are for a change in the principal’s name or address as well as addition and deletion riders for unincorporated divisions on a bond. It does not address reconciliation riders.

Today, the reconciliation rider is filed at CBP Headquarters. We propose that those riders now be filed with the RD. We have had issues in the past when a bond is terminated, but the rider was never terminated. If a new bond is filed with a new surety, the rider is deemed unavailable as it indicates the surety on the terminated bond. Any entry flagged for reconciliation under the new bond is not valid because there is no reconciliation rider for the new bond. This is a CBP system issue and it would be best for the RD to control the filing and termination of reconciliation rider.

The filing of the reconciliation rider should be added to §113.24. In addition, there should be language indicating “any future rider requirement”.

§113.25 Seals.

Currently, the Customs regulations require that a seal be affixed to the bond when the State in which the principal is incorporated requires it. Because the Customs regulations require the state of incorporation be listed on the face of the bond, any question Customs may have with regard to whether or not a seal is required can easily be ascertained by Customs simply contacting the State in question.

In connection with the foregoing, it would be well to seize upon the current rulemaking process as an opportunity to insert into §113 (in various places where reference to seals is made) language clarifying the fact that seal requirements apply to bonds directly executed by principals (e.g., by corporate officers), such language specifying that bonds executed by a duly empowered attorney-in-fact acting for the principal are exempt from seal requirements as to the principal.

It is unnecessary for Customs to change the regulations on seals as currently written. These comments apply here and elsewhere in the NPRM where similar changes to seal provisions have been set forth.

§113.27 Effective Dates of Termination of Bond

We observe that §113.27(c)(2) has been proposed, ostensibly to create a regulatory provision addressing “conditional term & replace” situations. The objective here is clearly worthwhile but the language as proposed clouds the intent. Furthermore, the placement of language created ambiguity as to its applicability.

It should be noted that “conditional term & replace” in reality involves actions initiated by principals (usually importers), not be sureties. However, the proposed language “...termination by principal or surety...” (emphasis added) suggests §113.27(c)(2) might

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apply to §113.27(b). The proposed placement of the provision might be read by some to reinforce this.

To eliminate superfluous language and improve clarity, we recommend that proposed §113.27(a) and §113.27(c) be amended by eliminating the words “as surety” from §113.27(c)(2) adding a new (1) designation under §113.27(a), and re-designating §113.27(c)(2) as §113.27(a)(2). The result will be as follows:

Proposed §113.27(a) will now read:

“(a) Termination by principal/co-principal. (1) A written request by a principal or co-principal to terminate a continuous bond must be addressed to the Revenue Division (RD) and must state the date the termination will take effect. Once the RD has received a valid bond termination request, the termination cannot be withdrawn. The termination will take effect on the date requested if the date is at least 15 business days after the date the request is received by CBP. Where the requested date of termination is less than 15 business days from the date SCBP received the request, or where no termination date has been requested, the termination will take effect on the close of business on the fifteenth business day after the request is received by CBP. (2) Notwithstanding the above, when a principal intends to continue to engage in the same activity as that secured by a bond to be terminated pursuant to this section, and the principal has submitted a replacement bond to secure the continued activity, no termination requested by a principal will take effect or be effective until CBP has reviewed and approved the replacement bond.”

Proposed §113.27(c) will now read:

“(c) Effect of termination. After a bond is terminated, no new CBP transaction will be charged against the bond. A new bond in an appropriate amount on CBP Form 301 (or other form as designated by regulation), containing the appropriate bond conditions set forth in subpart G of this part, must be filed before further CBP activity may be transacted.”

§113.33 Corporations (including Limited Liability Corporations) as principals

When the current regulations were written in 1984, they did not anticipate the existence of new business entities, such as LLC’s and LLP’s. This has caused much confusion with both CBP and the trade in how these entities should be treated, specifically with respects to this regulation and §113.34 which states that a bond with co-principals may not be used to join separate legal entities (e.g. a partnership and a corporation).

Each state determines if an entity should be considered a corporation or a partnership. It is our opinion that CBP should revise the proposed language in a fashion similar to the revision of §113.32 which includes an introductory paragraph. The introductory text for §113.33 should read “A Corporation means any business association recognized under the laws of the state where the association is organized.” CBP can therefore strike any

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reference to LLC throughout this section, as it would be encompassed by the recommended language.

§113.35 Individual sureties.

This section allows for an individual to act as a surety on a bond. The criteria that CBP requires of the individual surety are not sufficient to properly protect the revenue of the U.S. In today's economic environment the idea to allow an individual to act as a surety, is not prudent. Based on the above, this section should be removed from the proposed regulations.

§113.37 Corporate sureties.

CBP indicates the requirement to file a CBP Form 5297 in §113.27(g)(1), §113.27(g)(2), §113.27(g)(3), and §113.27(g)(4). In today's electronic environment, the RD allows a surety to add, change or revoke a Customs Surety Power of Attorney ("CSPOA") through the surety portal.

In light of the fact that the RD does not require the paper CBP Form 5297 for ACE sureties, the following language should be added in all sections referenced above, "*For sureties with the capability, an authorized electronic process for the granting, revocation, or modification of corporate surety powers of attorney (provided such process affords adequate legal safeguards to CBP and sureties) is permitted in lieu of use of CBP Form 5297.*"

Summary

As stated in our introduction, the COAC members represent all trade industry sectors. While the NPRM serves to clarify the current bond filing procedures and requirements our members have observed some ambiguity. We have input from representatives of all businesses associated with trade and trust CBP will consider these comments as valid and nondiscretionary.

Appendix 2

COAC Recommendations concerning Continued Public Outreach for Importer Security Filing (“ISF”)

COAC ISF SUBCOMMITTEE

RECOMMENDATIONS FOR CONTINUED ISF OUTREACH IN 2010

1. Automated CBP Letters to non-compliant Importers.

- For small infrequent importers who are identified as non-compliant (non-filer or incomplete/inaccurate/late filing), create an automated letter that can be sent electronically to the importer upon identification of the violation.
- This should not be monthly, but more timely (e.g., within a few days of identification), and could include a web-link to the online CBP training presentation as well as other resources for infrequent or new importers.
- The notifications will need to include the B/L number and CBP ISF transaction number so the importer/agent can cross reference.

2. Engagement of the Small Business Administration (SBA)

- The SBA is the “go-to” agency for most issues relating to small and mid-size businesses. This agency has traditionally focused on export matters and has not been receptive in the past to being active on import issues. We would like to see a stronger push to engage this agency to develop tools to assist with ISF issues. Small and mid-size businesses are not limited to domestic and export activities. It would make sense for import assistance to be available here as well and this would be a good channel to capture SMEs that we cannot identify through CBPs existing channels (e.g., associations for large importers). We would like assistance from CBP in identifying the proper contacts at SBA and perhaps making a joint effort in this area.
- SME outreach is not a problem for just ISF matters. If this channel could be developed further, it would provide another avenue for future regulations, initiative and partnership opportunities with CBP and could be a great way to better engage SMEs over the long term.

3. Engagement of the Federal Maritime Commission (FMC)

- Continued outreach is needed for supply chain partners in the foreign markets (e.g., forwarders and NVOCCs). These parties have timely access to critical data and continued outreach to these parties would be beneficial. The FMC could be engaged as a conduit to achieve this. This would be especially helpful with respect to addressing NVOCC B/L mismatch issues.

COAC ISF SUBCOMMITTEE

RECOMMENDATIONS FOR CONTINUED ISF OUTREACH IN 2010

4. Targeted outreach to C-TPAT members.

- Use of the C-TPAT Secure Portal for messaging to C-TPAT members would be an effective way to communicate ISF outreach to this segment. Electronic communication is already available in the portal and is used for other messaging, so there would be virtually no cost to enhance targeted communication to members. Although it is assumed that C-TPAT members should be some of the more compliant (and aware) members of trade with respect to ISF, CBP should conduct outreach to these parties on ISF matters that will specifically affect their status in the program. This is a partnership program and the trade would expect collaborative and proactive communication in this regard.
- For example, if low compliance with ISF can put C-TPAT status at risk, the portal should be used to communicate specifically how that will be handled. Will progress reports become part of the validation process? What is the definition of low compliance, etc?

5. Updating of existing CBP resources for new importers to incorporate ISF.

- There are a number of existing resources produced by CBP for new importers. These documents should be updated to incorporate the new ISF requirements. A thorough review of what is out there is needed to determine what would make the most sense. For example, this could include updates to "Tips for New Importers & Exporters," and "Importing into the United States." Additionally, the Customer Service Center/CBP Info Center could be updated to include additional ISF information and links.

6. Ongoing outreach provided by the Broker and Forwarder community.

- Many brokers and forwarders are already incorporating ISF discussions into their procedures when bringing on new customers. Additionally, many do still offer training (although some do not do either). CBP should continue dialogue with the broker and forwarder community to encourage assistance with outreach.

7. Online training provided by CBP (on the CBP website)

- CBP has a power point presentation online for ISF, however it is 42 slides and may not be the best version to use for beginners/SMEs. This needs to be reviewed further to see if maybe it can be revised to better target the audience that needs it most right now. Additionally, if the power point will be taken online without verbal instruction, it would be recommended that talking points be include for clarification purposes on some slides (or the presentation could be provided with a voice-over).

COAC ISF SUBCOMMITTEE

RECOMMENDATIONS FOR CONTINUED ISF OUTREACH IN 2010

- Consideration should also be given for the concept of warning letters including a link to the presentation/webinar to either encourage or mandate it be taken as a result of a violation. CBP may wish to consider having a non-compliant filer take the webinar as a “course” from a mitigation standpoint. This could be effective for smaller entities for a first violation and would push them towards actually learning the requirements. A short “quiz/test” could be included at the end for a knowledge check.
8. Informed Compliance Publication (ICP)
- CBP currently offers a number of ICPs in the series “What Every Member of Trade Should Know About...”, including recordkeeping, entry, reasonable care, etc. ISF would be a very nice edition.
9. The AMS participating NVOCC list that CBP maintains on their website should be expanded to include the SCAC in addition to the NVOCC name.

Appendix 3

COAC Recommendations concerning ISF Progress Reports for Tier II and Tier III Members of the Customs-Trade Partnership Against Terrorism

COAC ISF SUBCOMMITTEE

RECOMMENDATIONS ON ISF PROGRESS REPORTS – FOR TIER 2/3 C-TPAT MEMBERS

- Reports should be available/accessible on-line in some capacity. This could be done either via ACE and/or perhaps the C-TPAT Secure Portal (for C-TPAT members). On-line availability will provide “real-time” information and allow the importer to take corrective action in a more timely manner. Although we recognize that the timeline to complete this recommendation may be longer, the Subcommittee feels that this option is more desirable and effective for the long term.
- Report frequency should be at least monthly, preferably more frequently. Providing historical data is not as beneficial for identifying and correcting gaps to minimize the potential for repeat failures. We recognize that in the current format this may be administratively burdensome to CBP, which further supports the need for an online tool as noted above.
- Report should show the most recent status message – the importer needs to know that it was the final transmission to CBP.
- Report should reflect the total number of filings.
- Report should reflect the percentage rating for accepted and on-time. It is important for importers to have a clear understanding of how CBP is measuring compliance. This is especially important if at some future point, benefits will be provided to highly compliant importers/filers. Generally, we understand compliance to be a measurement of completeness, accuracy and timeliness. Ratings for these metrics should be provided so the trade has a clear understanding of how CBP views their efforts.
- We need clarification with respect to the “Transaction Date Range” shown at the top of the report. What dates is CBP referring to?
- Country of export should be included as this would be helpful to companies in dividing the report out by geographic regions.
- Manufacturer/supplier name would be helpful to better identify the most problematic orders.
- Ability to match the ISF number to the vessel name and departure date.
- ISF Progress Reports that cover multiple IOR numbers for large importers should be sent as one report, with individual IOR breakouts. Currently, separate emails are sent for each IOR number. For example, importers with many IOR numbers may receive 60 individual emails. Reports should continue to be run by IOR number, however, one email could be sent with all reports included, and individual IOR numbers could be on separate pages for further breakout.

COAC ISF SUBCOMMITTEE

RECOMMENDATIONS ON ISF PROGRESS REPORTS – FOR TIER 2/3 C-TPAT MEMBERS

- In the future, Progress Reports such as these should be available to all importers (not just C-TPAT members) as ISF is a mandatory requirement for all importers transporting goods via vessel. Specific details on the importer's compliance with the regulation should be available to all – not just C-TPAT members. This will potentially result in higher ISF compliance.
- Although transaction level detail reports such as these are a vast improvement over the existing PDF summary reports, the Subcommittee recommends that CBP continue to pursue the option of providing large importers with a data dump, extract or download for ease of handling.

Appendix 4

**COAC Recommendations concerning Finality of the
Importer Security Filing transaction**

COAC ISF SUBCOMMITTEE

Recommendations on the Finality of the ISF Transaction

The ISF transaction, as it stands today, has no end date with the exception of the required six year statute of limitations to ensure that the liquidated damages can be enforced. The statute of limitations for ISF bonds/transactions should be adjusted to reflect the real purpose of the importer security filing.

The ISF transaction is not an entry, therefore, it has no liquidation cycle. The current liquidation cycle is 314 days. Realistically, the ISF obligation ends when CBP releases the goods subject to an ISF. There is a 30 day conditional release period for importations; CBP considers the goods admissible once the conditional release period terminates. Alternatively, with ISF, once the goods subject to the ISF are considered admissible, CBP should not have the ability to issue liquidated damages.

Per the Interim Final Rule, the ISF is designed "to help prevent terrorist weapons from being transported to the United States" and that "the required information is reasonably necessary to improve CBP's ability to identify high-risk shipments so as to prevent smuggling and ensure cargo safety and security." With this in mind, it is reasonable to provide a timeline by which the ISF itself is closed out for purposes of assessing liquidated damages for late, inaccurate or incomplete filings. Once cargo has been released, admitted into a zone/warehouse, or exported the ISF should have served its purpose. CBP does have the ability to assess claims for any fraudulent/criminal activity within the statute of limitations time frame.

The COAC ISF Subcommittee recommends the following timelines for notice of liquidated damages to be sent to the importer and surety:

1. For consumption entries, the ISF should be deemed acceptable for timeliness and accuracy upon acceptance of the entry by CBP.
2. For carrier filings, the ISF should be deemed acceptable for timeliness and accuracy 30 days after the date of arrival of the vessel.
3. For IE and T&E shipments, the ISF should be deemed acceptable for timeliness and accuracy upon exportation of the merchandise.
4. For FTZ and bonded warehouse entries, the ISF should be deemed acceptable for timeliness and accuracy upon admission into the FTZ or bonded warehouse.
5. For FROB, the ISF should be deemed acceptable for timeliness and accuracy after vessel departure from last U.S. port.

If notice is not provided to the importer and surety within the above timeframes, the ISF is considered accepted and no liquidated damages may be issued. This does not preclude CBP from taking appropriate measures under the statute for fraudulent and/or criminal activity associated with the ISF.

Appendix 5

COAC Recommendations concerning ISF Highly Compliant Importers

COAC ISF SUBCOMMITTEE

RECOMMENDED BENEFITS FOR ISF HIGHLY COMPLIANT IMPORTERS

The following recommendations are being provided by the COAC with respect to benefits afforded to importers that are highly compliant with ISF requirements.

It should be noted that definitions have yet to be clarified with respect to what would be deemed "highly compliant." Additionally, with respect to the benefit specific to Small and Mid-size Enterprises (SME), the definition of SME would also need to be clarified. The subcommittee would be pleased to provide further input on definitions at CBP's request.

- For importers who are certified C-TPAT members, high compliance with ISF requirements should be deemed a "best practice" and considered with respect to elevating C-TPAT status to Tier 3 level.
- In cases where stratified compliance exams are undertaken by CBP (where multiple shipments are under one bill of lading), and the importer is a C-TPAT member, CBP should allow sealed containers not being examined to not only move to destination, but also be released by CBP.
- CBP should also consider the option of releasing for distribution other bills of lading on the same entry (where the importer is a C-TPAT member). As with the above recommendation, the released containers in question would be those not designated for exam. To address potential concerns by CBP with this request, this benefit would not include containers stuffed by the same party who stuffed the container(s) designated for exam.¹
- For SME importers that are highly compliant, CBP should consider a streamlined process for application to the C-TPAT program.
- In the case of unified ISF filings, conditional release in the system at time of vessel departure should be provided.
- Consideration of mitigation for other penalties (outside those associated with ISF compliance) should be given for highly compliant importers.
- For continuous, highly compliant importers, there may be a situation where CBP identifies a problem where it is very low frequency (e.g., one out of a thousand). CBP should take this into consideration with respect to penalties. Although CBP has indicated that this is already being considered when reviewing potential ISF violations, the Subcommittee would like to see something in writing confirming this benefit.

¹ This benefit has been brought up by the trade in the past (prior to ISF) and CBP had voiced concern over containers possibly being released that had been stuffed by the same party stuffing the targeted container with potential compliance concerns. Prior to ISF, CBP did not have the ability to identify the "stuffer" to offer this form of conditional release. ISF now provides that data.

COAC ISF SUBCOMMITTEE

COLLATERAL BENEFITS OF BEING ISF COMPLIANT

In discussing potential benefits to be provided by CBP to highly compliant importers with respect to ISF, the COAC also discussed what collateral benefits were identified by those same importers. This information is being shared with CBP at the Agency's request.

- Importer has better visibility into its global supply chain since it now has a CBP process at origin. The company identifies non-standard shipments earlier in the process allowing more time to address the issue prior to arrival and potential delay.
 - Because importer provides this data earlier, it has less delays at destination. For example, sample product that is not classified - instead of classification occurring at destination, now it occurs at origin. Because the importer is doing these types of checks 20-30 days in advance of arrival this reduces delay at the ports.
- Working through the ISF requirements highlighted that the import compliance team needed to be folded into the procurement process earlier.
- Importer has been forced to become more integrated with overall supply chain functions. Especially with items not required to be on the 7501. The importer is more engaged with parties not typically communicated with in the past, which provides more visibility and improvement in data availability and accuracy.

Appendix 6

**COAC Summary Comments on US CBP's Intellectual Property
Rights Enforcement Strategy: 5 Year Plan**

Commercial Operations Advisory Committee

Summary Comments

On

U.S. Customs and Border Protection's Report to Congress

“Intellectual Property Rights Enforcement Strategy: 5-Year Plan”

August 04, 2010

Background

On June 28, 2010, the U.S. Customs and Border Protection (CBP) provided the Commercial Operations Advisory Committee (COAC) with a draft of its “IPR Enforcement Strategy: 5-Year Plan, Fiscal Year 2010 Report to Congress”, a document intended to meet the requirements of the language set forth in Conference Report 111-298 and Senate Report 111-31 accompanying the Fiscal Year (FY) 2010 Department of Homeland Security Appropriations Act (P.L. 111-83). The report provides a 5-year enforcement strategy to reduce intellectual property rights (IPR) violations, including objectives for strengthening penalties, as well as timelines for developing supply chain management programs, improving targeting models, expanding training for all enforcement personnel, collaborating with foreign customs administrations and expanding post-entry audit reviews for IPR.

CBP requested COAC to provide comments by July 14. However, the full COAC will not formally submit our comments until August 4. The following comments are in response to that request. COAC endorses the IPR enforcement strategy as written but has made the following observations and provided additional comments for CBP's consideration. COAC hopes that these comments will be useful to the Agency in addressing this very challenging issue.

COAC would like to thank CBP for giving us the opportunity to make these comments.

SUMMARY OF COMMENTS

A majority of COAC members having considered the draft observed the following.

1. The strategy is comprehensive but lacks a performance matrix and some specific timelines to measure performance to goals.
2. Imposition of 19 U.S.C. § 1641 penalties concerns brokers and service providers. Some within the trade community feel that a 592 penalty can work just as well.

We would like to submit the following specific comments, which have been endorsed by COAC.

Challenges, page ii.

1. In addressing the lack of advance information, brand information should be captured as an element to better identify “ low risk” and “ high risk” shipments.
2. Increasing the responsibility / accountability of Customs Brokers should be considered to ensure the information is accurate.
3. Identify expectations of brand holders and potential conflicts with gray market Importers.

Challenges, page iii.

1. There is a need to define a strategy for a global program on IPR Enforcement. What will be the steps and measurements to put a global program together?

Seizures page 2

1. Seizure data is misleading. Value of imports is down 25% but quantity of counterfeits is up and the data does not reflect how many shipments of counterfeit goods are undervalued and incorrectly identified in declarations.
2. Data does not identify seizures performed for US brand holders vs. seizures done for the Federal Government. During 2008 and 2009 extensive CBP resources were used to investigate counterfeit computer parts purchased for the US Military and other government operations.

Enforcement challenges:

Page 4, paragraph 1

1. “Seizures are not effective as counterfeiters see this as a cost of doing business.” This is because the majority of their shipments are passing through.

Page 4, paragraph 2 "...infringement determinations much more challenging than they were even a few years ago."

1. CBP has the authority to provide Brand owners with more information and actual samples. Though contrary to discussions between brand holders and the US Dept. of Justice, the staff attorneys at CBP have issued an opinion against providing available information to brand holders as requested by the trade community. Though language is included in the Customs Reauthorization Act, it is unfortunate that CBP is requiring a Congressional mandate to make the information available.

Page 12, under post entry strategy. There should be a program to post or share Customs seizure data with other countries that have an IPR Enforcement program under the WTO.
Conclusions:

- The strategy is comprehensive but lacks a performance matrix and some specific timelines to measure performance to goals.
- This 5 year plan also lacks a specific strategy to clarify and standardize CBP operations at the ports.
- Strategy for detection seems bent towards all brand holders purchasing and implementing a standard authentication technology rather than increasing cooperation and communications with brand holders. No mention was made of the recently developed continuous sample bond.
- The plan spends considerable time discussing obstacle and options for collecting fines and penalties but gives no mention to (a) the ability to handle increased seizures, (b) the disposition of seized goods, or (c) the release of importer/exporter information so brand holders can/could pursue the counterfeiters independently.

Finally, we also respectfully request that the Customs and Border Protection continue to consult with COAC as subsequent iterations of this Strategy are developed and implemented.

Appendix 7

**COAC Summary Comments on US CBP's Intellectual Property
Rights Voluntary Disclosure Pilot**

Commercial Operations Advisory Committee
Summary Comments
On
U.S. Customs and Border Protection's
"Intellectual Property Rights Voluntary
Disclosure Pilot"
November 09, 2010

Background

On July 29, 2010, the U.S. Customs and Border Protection (CBP) provided the Commercial Operations Advisory Committee (COAC) with a draft of *U.S. Customs and Border Protection's Voluntary Disclosure of IPR Violations Pilot Program* which is a Document intended to address the COAC recommendations regarding this concept. CBP requested COAC and the COAC IPR Enforcement Subcommittee to provide comments by August 13th. However, the full COAC was not able to formally submit these comments until November 9th. The following comments are in response to that request. COAC endorses the IPR voluntary disclosure pilot as written but has made the following attached observations and provided additional comments for CBP's consideration. COAC hopes that these comments will be useful to the Agency in addressing this very challenging issue.

COAC would like to thank CBP for giving us the opportunity to make these comments and we also respectfully request that the Customs and Border Protection continue to consult with COAC as the pilot progresses.

**U.S. Customs and Border Protection
COAC IPR Enforcement Subcommittee
Meeting Minutes August 12, 2010**

Meeting Purpose	ISA-IPR Roundtable
Facilitator	Therese Randazzo, CBP Director, IPR Policy & Programs, Office of International Trade (OT)
Subcommittee Designated Federal Officer (DFO)	Steve Graham, International Trade Liaison, Trade Relations (TR), Office of the Commissioner
Date	August 12, 2010
Time	3:00 p.m. – 4:00 p.m.
Location	Conference Call

Attendance

Trade Co-chair, COAC ISF Subcommittee			
P	Barry O'Brien - COAC		
Government Co-chair			
P	Therese Randazzo		
P	Tim Skud, Treasury		
Subcommittee Members			
NP	Bill Cook COAC/Chrysler	P	Lee Sandler, Sandler, Travis & Rosenberg
NP	Don Huber COAC/ GE	P	Norm Schenk, UPS
P	Kirsten Koepsel, Aerospace Industries Association (AIA)	NP	Colleen Clarke COAC/ Roanoke Trade
NP	Jon Kent, Kent & O'Conner/ INTA	NP	Leigh Schmid COAC/ Limited Brands
NP	Ruby Mages, Pfizer	NP	Marianne Rowden, AAEI
NP	DeeJay Smith, Proctor & Gamble	NP	Diane Darvey, National Association of Chain Drug Stores
NP	Maria Strong, IIPA	NP	Rob Calia, U.S. Chamber of Commerce
NP	Bruce Leeds, Braumiller Schultz	P	Dean Brocious, Limited Brands
P	John Sullivan, Costco	NP	Robert Barchiesi, IACC
NP	Matt Bassiur, Apple	NP	Joe Gavin, USCIB
NP	Dave Simpson, Nike	NP	Fred Paliani, Quality King
NP	Brian Monks	P	Evelyn Suarez, Williams Mullen
NP	Sebastian Wright, IPR Policy Branch CBP		
NP	Michael Schreffler, Trade Relations, CBP	NP	Kimberly Marsho, Director, Office of Trade Relations (OTR) CBP

Present (P); Represented (R) with approval of Chair; Not Present (NP)

Action Items

Issue	Responsible party
<ul style="list-style-type: none">• Is there a guaranteed response time for when CBP will make a determination on the Voluntary Disclosure?	<ul style="list-style-type: none">• Therese
<ul style="list-style-type: none">• Decision whether to expand or remove reference to Gray Market exceptions.	<ul style="list-style-type: none">• Therese
<ul style="list-style-type: none">• Consideration that “at CBP’s sole discretion” terminology may be a disincentive.	<ul style="list-style-type: none">• Therese
<ul style="list-style-type: none">• Does terminology “information may be used for CBP for other purposes” need to be clarified?	<ul style="list-style-type: none">• Therese
<ul style="list-style-type: none">• Provide further details on how the trade will file the voluntary disclosures i.e. on-line, hard copy letter, etc.	<ul style="list-style-type: none">• Therese
<ul style="list-style-type: none">• Consider “may release” rather than “will release”	<ul style="list-style-type: none">• Therese
<ul style="list-style-type: none">• Look into a clear cut method of informing the violator (#4)	<ul style="list-style-type: none">• Therese
<ul style="list-style-type: none">• All subcommittee final comments to be submitted by August 20.	<ul style="list-style-type: none">• Subcommittee members

Agenda Item 1:

Barry Obrien and Therese Randazzo opening remarks:

On August 5th the subcommittee was sent a draft of *U.S. Customs and Border Protection’s Voluntary Disclosure of IPR Violations Pilot Program*.

The subcommittee was ask to review the document and provide any feedback they may have by August 13th, 2010.

The subcommittee was informed by CBP that “While we cannot guarantee we will be able to incorporate all of your suggestions, we welcome your input on this document and anything needed to improve it.”

It was pointed out that the subcommittee should notice that the pilot program incorporates ideas that the COAC’s subcommittee on Intellectual Property Rights Enforcement that have been discussed over the past couple of years.

- CBP is preparing to issue a Federal Register Notice
- CBP wants to create a program similar to one that exists in 19 USC 1592
- The program is for those who believed they were importing legitimate goods that received goods infringing trademarks or copyrights
- The program will help CBP gather information on IPR violations
- Relief from penalties/enforcement action based on the disclosure will be given to the disclosing party. and CBP may use the obtained information to pursue manufacturers and other importers for potential IPR violations.

An explanation was requested regarding the “Gray Market” reference in the document.

- The “gray market” reference was put in because importation of gray market goods is legal with minor exceptions. CBP attorneys recommended the wording to make it clear that the program does not provide for enforcement against gray market goods.

- If CBP were to be informed of the importation of goods which are restricted gray market goods, gray market goods subject to Lever rule requirements, or subject to an ITC exclusion order, would they be protected by this voluntary disclosure program?
- CBP feels referencing gray market International Trade Commission (ITC) exclusions will complicate this pilot program. We were not envisioning this in the scope of the program.
- If you are excluding compliant gray market goods you may have to explain why there is (or is not) an exclusion for ITC exclusion orders. It would be of value to CBP if the trade came forward with these infractions.
- Treasury feels that we need clarity on why we could not include lever rule, 337s or others. We need to be careful in defining these terms.
- CBP will take a closer look at these issues.

A courier's perspective

- In today's environment when we possess violating goods, especially name brand goods, we will hold the cargo and try to obtain a letter of authorization. We normally give information to CBP if we suspect a violation so that CBP take the appropriate enforcement action. When the pilot is implemented should we change our process? Should we go to importer and tell them to do a voluntary disclosure?
- If the carrier reports the infraction the carrier would be shielded, not the importer. If you want the importer shielded then they should reported the circumstances to CBP at the same time the carrier does.

Will there be a guaranteed, recommended or implied CBP response time?

- CBP's response: Yes, there will be in the time line for accepting or not. We are looking at 30 days. We want to parallel the existing prior disclosure process.

CBP's sole discretion

- Currently the voluntary disclosure will be accepted at CBP's sole discretion. If you don't give the trade enough assurance they won't disclose. If you make it so subjective they won't use the program. The 592 has benefit of statutory mitigation and hinges on the fact that you made an effective prior disclosure. At CBP's sole discretion is a disincentive.
- The trademark statute we are working under currently says we shall seize goods that are counterfeit once we are aware of a violation. So CBP is exercising its prosecutorial discretion here in not seizing those goods.
- CBP will take back to counsel.

What is the intent of "may be used by CBP for other purposes"?

- Intent is that CBP will use this information to target other parties.
- Perhaps that should be clarified.
- CBP: We will look at it.
- "Used for CBP other purposes" might also mean that the information will be used for Consumer Product Safety Commission violations. Yes, this is addressed in the first FAQ.

CBP is working on procedures for filing and is looking into on-line or hard copy letters and will get back to you on that.

Clarity in wording

- Carrier: Under number 12 you may want to consider saying “may release” instead of “will release the goods”. It would give CBP more flexibility.
- In number 4 where an effective date is established seems murky. CBP might consider a uniform way of informing, something that is clear cut so there is no doubt that the party has been informed. Paragraphs b,c, & d “Has placed an inquiry” and “has requested specific books or records” are not clear cut events that cut off the right to a prior disclosure. Without clarity it can create a lot of debate, discussion and controversy. CBP will look into this.
- CBP is trying to parallel established guidelines. However the subcommittee retorted that if it is muddled in 592, why would you want to replicate something that is problematic?
- Paragraph g says provided written or oral notice. You might want to make it in writing.
- CBP replied that it is difficult to require everything to be recorded in writing every time.

What is the range of parties other than importers that might use this program?

- Brokers, forwarders, carriers, warehouse operators, etc.
- CBP is using language similar to that in 1526 & 1595, “Importers and others” and “any person involved in an importation of goods”
- The subcommittee suggests saying ... for example and listing a few.

Conclusion /Next Steps:

- CBP is looking for comments and is reluctant to hold discussion open until the COAC meeting in November. CBP is expecting to announce the pilot before then. CBP is looking for more informal handling than a COAC vote. CBP offered to redraft the existing document and release a draft one more time for comments.
- CBP reminded the subcommittee that this is a pilot and that comments will be accepted before and during the FRN and pilot implementation.
- There are legal requirements we have to meet before we can announce the program such as the system of records notice. CBP is looking at starting the pilot in October or November.
- The pilot will be open to anyone that wishes to use it and will be in effect for one year.
- The subcommittee established August 20th as a deadline for comments to be sent to CBP.
- A follow up conference call will be established during the second half of September.

Appendix 8

Survey of Automated Commercial Environment (“ACE”) Benefits to Companies and Trade Members

Advisory Committee on Commercial Operations of Customs and Border Protection
(COAC) - Automation Subcommittee

**Survey of Automated Commercial Environment (ACE)
Benefits on Companies and Trade Members**

May 2010

COAC Members of Subcommittee

Jevon Jamieson
Manager Customs Compliance
ABF Freight System, Inc.

Michael Ford
Vice President, Regulatory Compliance
BDP International

Geoffrey Powell
Vice President Operations
C. H. Powell Company

Colleen Clarke
Vice President – Surety
Roanoke Trade Services, Inc.

Don Huber
Global Customs Manager
General Electric Company

Barry O'Brien
Global Trade/Customs/Import Professional

Alison Reichstein
Projects & Systems Manager
HP Americas Customs Operations

Trade Members

Lori Goldberg
Sr. Director - Trade Compliance Americas
Avery Dennison

Melissa Irmen
VP – Product & Strategy
Integration Point, Inc.

Arthur L. Litman
Principal
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Michael K. Schreffler
International Trade Liaison
Trade Relations
Office of the Commissioner
Customs and Border Protection

Steven R. Graham
International Trade Liaison
Trade Relations
Office of the Commissioner

Objective

US Customs and Border Protection Agency (CBP) tasked Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) to create a survey for the trade community to determine the financial benefits of the current release and functionality that ACE Automated Commercial Environment system has delivered to trade in an attempt to understand future costs savings or avoidances with specific functionality that will be deployed with the next two years.

In an effort to determine the financial benefits of ACE, COAC created a subcommittee (Automation Subcommittee) to gather the most appropriate members of COAC and the Trade to create and analyze the survey results.

Methodology

The survey was developed for participation by eight different trade groups: Importers, Brokers/Forwarders, FTZ/Bonded Cargo Facilities, Sureties, Air Carriers, Truck Carriers, Ocean/NVOCC Carriers, and Rail Carriers.

The survey was completely anonymous. The survey was opened March 11th and closed March 31st.

The survey questions were developed to provide feedback about the ACE functionality that has been implemented in addition to the system functionality that has been planned for development in the next two years (2010 / 2011). It was the intent of the survey to provide CBP with the information and guidance of ACE so Trade can assist in providing and indentifying the important future releases of the system that will positively impact their current business practices.

The survey was provided to the Trade membership in an online format within the Survey Share tool. The links to the online survey tool were disseminated to the participants via various Trade Associations and other trade organizations. The total number of persons that actually received a request to participate in the survey is unknown. We did have 390 trade professionals participate overall. The top three groups participating were: Importers (44%), Truck Carriers (22%), and Brokers/Forwarders (19%).

Highlights

Many companies today are seeking to maximize on system applications to bring about an efficient and effective processes that will bring about the right change to the process to be able to keep up with the demands for information and business processes, ACE is one of those tools that will drive the change for Importing for all parties (Trade and Government agencies) that join in and utilize the systems. ACE is meant to drive the single window concept from the government side and just as important to the Trade partners that actively engage in the data sharing. The number of respondents that participated in this survey is an important first sign on the importance of ACE to the

Import community, with multiple trade partners participating and presenting their opinions with dollars savings and efficiency gains. Across all sectors the survey has identified specific functionality that is much needed for communication between all parties (the imaging of documents for example). ACE has been developed in many different stages over the past several years and has worked with all Trade sectors to implement the functions required. The survey clearly shows that benefits and dollars savings do exist for trade partners to encounter, once they have implement ACE into their system design.

As you will see the preceding sections, each trade partner that is part of the import of goods into the United States has a gain that can be realized with ACE.

Observations

Brokers

With the responses from the Brokers to the ACE survey, a majority of the brokers (70%) fell into the small to medium size firms, these firms offered multiple services to the clients (import / export and carriage) and process entries to CBP in the range of 500 to 2000 on a monthly basis.

A majority of the respondents were active in ACE (74%) yet they have not realized any costs savings in the implementation as a broker at this stage of ACE. In the future functionality that is being released by CBP in the near future, most brokers responded very little financial impact to the current process and most have not begun to implement ACE into their entry process(91%) in understanding of when the broker community might adopt ACE as the business platform to operate under, I believe that CBP needs to develop additional details about the advantages of ACE, as 59% responded back they do not know when nor have any plans to implement ACE into their import design.

With ACE being the single window for all PGA data the connection for certain agencies will impact the entry process by bringing varying costs savings to the table, specifically ATF, APHIS, EPA and FDA were identify as important PGA's. With E-Bond the broker community does recognize the importance of implementing the strategy however most brokers responded that this change will not have a financial impact back into their process for bond processing as only 37% of the respondents stated that this change will bring about a positive impact.

Truck Carriers

The significant majority of respondents were Truckload carriers (TL 55%) with the remaining types of Less-than-Truckload (LTL 25%), Other (7%), Flatbed (7%), and Tanker (3%). Annual revenue levels for the participants were generally on the lower end of the spectrum with 74% indicating <\$100 million, 15% between \$100 million and \$1 billion, and 10% reporting greater than \$1 billion.

Two questions in particular seem to make the biggest statement of the survey: Has ACE improved your company's work processes (61% YES 25% NO 14% NOT SURE) and has ACE reduced your company's cost of doing business (21% YES, 60% NO, 20% NOT SURE). There does not seem to be one segment of the industry impacted more than another (Truckload vs. Less-than-Truckload) or one particular revenue range impacted more than another (\$500 million or less vs. >\$501 million). The results seem to indicate ACE provided an opportunity for companies to reevaluate their operations and make updates accordingly that provided more efficient operations but failed to produce any measurable cost savings.

The majority of truck carriers used the following methods to file their manifest data into ACE: Secure Data Portal 30%, EDI 21%, EDI to file/ Portal as backup/ Portal to amend EDI manifest 16%. Overall, we were able to identify 10 different combinations of aspects used to file or update ACE. Truck carriers most often utilized these methods to file their manifests: 31% Third Party Service Provider, 29% EDI, and 28% Portal.

In a continued effort to determine cost benefits, the survey attempted to determine if the truck carriers were able to reduce or reallocate staff due to ACE. Of the carriers responding 88% indicated No Change, 8% said they were able to reduce 1-3 positions, and 4% said they were able to reduce their workforce by 4-6 positions.

Another key indication as to costs involving ACE was to determine the amount of money spent by the Truck Carriers on the programming and software for ACE. We broke it down by dollars spent and 68% said they spent less than \$10k while 32% said they spent >\$10k. Only 6% of the respondents indicated they spent over \$100k on software.

In looking at specific details for usage of things like the reports portal or various entry types etc, there were some interesting results. Only 26% of the respondents indicated they use the Reports Portal. As for arriving or exporting inbond movements, 58% said they participate in this activity but 65% said they request inbond movements via ACE. Only 22% said they utilize Broker Download.

Of the 87 participants, there were 25 free text inputs at the very end of the survey. Those responses were able to be classified into 18 different response types. The top responses were: Provide "entry on file message" to carrier immediately upon completion of the entry by the broker 24% and harmonize inbond process nationwide vs. northern border only/ more visibility to bonds 12%. There were additional responses that are worthy of consideration as well.

FTZ / Bonded Warehouse Facilities

We had minimal participation in this category with only 11 total respondents. Of those, eight were from the FTZ community, two CFS operations, and one Bonded Warehouse operator.

Of the FTZ importers, 44% indicated over \$1 billion in goods and 22% indicated \$101 million to \$599 million to their zone on a yearly basis. Of the bonded facilities, the majority indicated moving over 1001 tons of cargo/month.

The majority of respondents (55%) feel that having all carriers submit their manifest data into ACE is an important step that must be completed to complete the import clearance of cargo. FTZs are evenly divided regarding the value of having zone admission data available in ACE with 50% stating that ACE portal access to zone admission data would offer no savings to their operation.

The majority of FTZs and bonded facilities anticipate savings in having access to bonded movement processing (to create, arrive and export) through the ACE portal. Of the participants, 72% anticipate saving between \$1 and \$3000 per month if they had access to in-bond processing in ACE with 63% anticipate saving between \$1 and \$3000 per month if they had access to PTT (permit-to-transfer) processing in ACE. Presumably, the difference is in the number of zones that are located within the port and are able to use PTT to move goods to their zone

Majority of respondents (60%) anticipate saving between \$1 and \$3000 per month if they had ACE Portal / ACE EDI access to receive CBP status messages (CSM) (release, hold, ETC.) This coincides with the NVOCC/Ocean input. FTZs and Bonded warehouses are evenly divided regarding the value of being able to file their entries (either FTZ consumption or bonded warehouse entries and withdrawals) directly to ACE.

A slim majority (52.86%) of FTZs and Bonded Warehouse respondents feel there would be no transactional savings to them when ACE eliminates the paper processing with other government agencies through electronic sharing of data between agencies. Presumably, this is due to the nature of the operations of the respondents. If they do

not interact with the agencies included in the survey, they do not perceive a savings to their operations. The majority of respondents that do anticipate savings through the electronic communication between CBP and other agencies hope to save up to \$10 per transaction.

The majority of respondents (72%) will most likely interface with ACE using the web portal instead of EDI.

When given the opportunity to provide suggestions for ACE functionality that would benefit the trade, all responses to the question pointed out the criticality of release functionality at the house bill level to improving the efficiency, effectiveness and visibility for all involved in the transaction.

NVOCC and Ocean Carriers

Highlights

- A larger percentage of ocean carriers (61%) have opened ACE accounts than NVOCCs (44%).
- Perceived benefits of ACE functionality in order of percent of agreement:
 - Ability to monitor bond activity or use - 78%
 - Ability to create, arrive & report on in-bound moves and PTTs - 59%
 - Ability to transmit electronic releases to CFS - 59%
 - Ability to file manifests - 44%
- Percent of respondents agreeing to cost-savings relative to ACE Functionality
 - Ability to cut in-bond moves electronically - 50%
 - Ability to submit electronic docs to CBP via ACE - 48%

The NVOCC/Ocean Carrier survey had 21 Ocean Carrier participants and nine NVOCC participants. Of those, 61% of the Ocean Carriers and 44% of the NVOCC participants have an established ACE Portal Account at the time of the survey.

Of all participants in this group, 69% indicated they control the use of their bond in the ACE Portal, 66% said they maintain vessel profiles, 69% use the Reports tool, and 69% monitor the status and history of their continuous bonds.

78% of the participants agreed there would be a benefit monitoring bond activity and use electronically. When asked about the estimated savings to cut inbond moves electronically, 50% said they would see NO SAVINGS while 30% said they would save between \$1 and \$3000/month and 19% indicated savings of more than \$3000/month. Half of the participants indicated they do not do any inbond and PTT moves. One third indicated they handle 1-1,000 moves per month. The remaining 16% move more than 5,000/month.

Only 44% saw a benefit to filing manifests electronically via ACE. A slight majority of participants, 59%, saw a benefit to creating and reporting inbound and PPT moves via ACE. An equal percentage of participants indicated a benefit to transmitting releases to the CFS after authorization of the PTT.

When discussing electronic submission of documentation to CBP, 42% indicated they would realize no savings. Of the participants, 39% indicated a savings range from \$1 to \$3000/month, while only 19% indicated saving more than \$3000/month.

Summary of NVOCC/Ocean Carrier Comments

The participants voiced their concerns on a number of issues and the specifics for each point are below.

- ACE is not oriented to break-bulk carriers
- Would like more visibility to in-bounds, GO, AMS and ISF status
- Would like export manifesting
- Allow for non-automated NVOs to file their AMS through ACE. (I disagree – too many 3rd party software providers offering this functionality already. It's not a government accountability responsibility.)
- "Broker Download" commentary and caution about confidentiality.
- Commentary on caution about releasing cargo at the HBL level.
- Request for all bonded moves to be paperless.
- Caution about the vessel maintenance data requirement.
- Caution about the 25 Notify party provision: a) is this enough and b) will the carriers enter in all the notify parties required?

Air Carriers

The following summary details have been collected from the COAC survey that was conducted in March 2010. While not a large number of airlines completed the survey, the respondents that did were representative of the U.S. airline industry including passenger and all-cargo airlines with international service. The size of the airline is based on the revenue dollars that have been reported along with the number of International arrivals and manifest data that is submitted to CBP on a monthly and daily basis.

Many of the airlines stated that much of the future ACE functionality that has been planned is unknown or not clearly understood by the airline companies, for example, an airline to gain access to cargo manifest that has been filed with CBP does not seem to deliver a gain as 25% of the respondents and another 38% just are unsure of the deliverable. This is likely due to the fact that although CBP has engaged with air carriers on ACE requirements since the 1990's, there have been no deliverables and the air mode continues to rely solely on the legacy AMS system. However, airlines do see the

need to have their manifest details filed in ACE as well as insight into the “in-bond” activity for import cargo as very important new features, in addition to a true multi-modal capability between cross-border trucks and airfreight. Many of the new features that have been developed for the airlines that will exist in ACE will bring about some estimated costs savings as many of the respondents have noted the monthly savings in various dollars ranges.

One of the important findings of this survey to the airline industry is that although ACE has been presented as the future system for air carriers, much of CBP’s planned functionality is not widely known. Therefore, CBP needs to engage directly with air carriers to identify operational requirements, priorities and functionality and timing differences from other ACE transport modes to ensure the adoption of the new cargo manifest, release, truck-to-air, and inbond system application priorities for airlines are effective and at a minimum, achieve a higher level of inbond and release accountability than possible under the existing legacy system.

Rail

The following summary details for rail Carriers have been collected from the COAC survey that was conducted in March 2010. A limited number of rail carrier responded to the survey yet those that did respond are already an established member of the ACE system, therefore some knowledge of the ACE systems and functionality was present to the respondents.

Many of the rail carriers have clearly stated that ACE will bring them some needed automation of their import processes that they are running with today. In responses to the questions on the future ACE functionality that has been planned the carriers have been able to place a range of significant dollars saving for: filing manifest data, running reports and controlling the movement of bonded cargo and submitting the electronic imaging of documents.

Importers

Importers responding were well distributed between large, medium and small importers. The majority of importers currently do not use ACE for entry and do not know when they will begin doing so. The majority of importers do not seem to understand the potential benefits that ACE entries offer to importers. This is supported by the response to question #6 where about 50% or more see no process improvement. Other responses support this finding. The majority of importers do not feel that ACE will generate savings. This may indicate a lack of understanding of what the system and the related processes have to offer importers. This possibility is further supported by question #7 wherein over 70% do not report any savings using the periodic monthly statement (PMS). Given that over 75% of the importers that responded that they

participate as an ACE account, it is difficult to ascertain why there is no perceived savings among these importers. Some well documented savings include:

- The time value of money (interest) savings related to Period Monthly Statements and duty payment which provides a longer duty deferral period compared to daily statements.
- The availability of the ACE entry database and reporting tools provided by the Secure ACE web portal. Prior to the availability of these reporting tools in ACE importers had to maintain their own entry database or rely on reporting from their Customs Brokers (which may involve fees for specialized reporting).

The results for importers seem to indicate that CBP has a tremendous opportunity to better educate the importing community on ACE benefits and the potential efficiencies that will be gained by taking full advantage of the features available in ACE.

Surety and eBond

COAC ACE Surety Survey Summary

There are few surety companies that write customs bonds. Only a handful of surety companies or surety agents write the majority of customs bonds on file with CBP. Therefore, only 8 companies responded to the COAC Automation Subcommittee Surety Questionnaire.

Current surety capabilities are very limited. A surety is able to view bonds by bond number for their surety code and the Customs Surety POA's they have on file with CBP. 75% of the respondents currently participate in ACE (surety portal). None believe that the surety portal has reduced the cost of doing business.

Based on the results, the majority (87.5%) of the surety respondents agree or strongly agree that eBond would provide cost savings and process time savings for their companies. The results indicate majority support for a fully functioning eBond system that would benefit all trade members and CBP by allowing quicker bond filing and control over their risk.

Comments received also indicate the need for a better functioning surety portal. Most of the comments regarding the portal have already been addressed with CBP through the TSN surety subcommittee.

COAC ACE Broker Survey Summary (eBond questions)

Customs brokers file 98% of the entries on behalf of importers. An overwhelming majority supports the production of a paperless eBond system.

Only 73 customs brokers responded to the survey, which is disappointing. However, 91% of those that did answer the survey support eBond. Of the responses, 37% believe there would be an increase in productivity and efficiency within their company with a

fully automated bond system. 38% were not sure and 24% do not believe it would help them be more efficient. Since 38% are not sure, we believe this is because the person responding did not have the time to review and calculate the savings.

The results are a bit conflicting because 37% of the brokers agree that they would have increased productivity and 91% support an automated bond system. These results indicated that a large majority of the brokers support eBond even though some are not sure or do not believe this system would increase their productivity.

COAC ACE Importer Survey Summary (eBond questions)

We received 171 responses to the importer survey. The results reflect that many importers are not sure if eBond would be of value. This is not surprising because customs brokers and sureties/surety agents file the majority of the bonds.

The importer survey findings reflect 37% in support of an eBond system and 44% are not sure. Only 19% do not support an electronic bond system.

Conclusion

ACE, as a system, has been designed to deliver the system methods for Government as well as all of the parties involved when importing goods into the US.

(Importer, Carriers, Sureties, FTZ – Bonded Warehouses, Brokers & Government)

ACE is expected to deliver the application technology as well as the process changes necessary to keep up with the growth and the demands for Global Trade. CBP needs to begin to deliver some direct marketing approaches to each respective trade partner so that the full business sector can listen to and understand the system for the 21st Century.

There seems to be a disconnect or lack of communication to the trade groups around the country about ACE and the benefits to be had as a member of the various trade communities. There still seems to be a lack of understanding of the benefits to the trade community that ACE can or will provide. It is critical that CBP reach beyond just the immediate circle of Trade Associations with their messages of ACE and begin to explore new methods of digital communications to keep the trade members informed and up to date with ACE development. One of the important messages that CBP needs to understand is that they might have the right technology for the right processes already in place or planned yet each sector has responded that they clearly are not sure of the impact (dollars and efficiencies) that ACE will bring to them.

How individual companies will handle their ACE implementation still remains unclear at this time.

Going forward to challenge ACE, we would like to recommend that an additional review of ACE development be conducted over the next several years, as this survey was only meant to capture current time period. It might be beneficial for CBP to consider additional outreach not unlike ISF recently provided. Like other business fundamentals in today's business world, it will take expertise to manage the weight of ever-expanding demands of trade issues, security and rules balanced with the need to meet the most efficient productive system applications to keep moving forward.

Appendix 9

COAC Recommendations concerning Duplicative Federal Background Check and Credentialing Requirements for Air Cargo Employees

COAC Air Cargo Security Subcommittee

RECOMMENDATIONS CONCERNING DUPLICATIVE FEDERAL BACKGROUND CHECK AND CREDENTIALING REQUIREMENTS FOR AIR CARGO EMPLOYEES

Issue 1: Overlap between TSA and CBP background check requirements for freight forwarder and customs broker warehouse employees

Background:

Employee vetting required by the TSA Indirect Air Carrier Standard Security Program (IACSSP) and the CBP requirement for employees having access to bonded facilities and cargo have significant overlap in the workers that fall under both programs. Most warehouse employees at a broker and/or freight forwarder handle export and domestic as well as (bonded) import cargo and therefore are subject to both TSA and CBP requirements. In addition to the TSA IAC requirements, brokers/forwarders must submit to CBP the name/SSN of all employees at each facility that have access to inbound cargo. This submission initiates a background check process by the local CBP office to a central DHS office for further vetting – the entire process is not fully defined to private industry. Although TSA already recognizes that individuals with SIDA credentials are deemed to have completed the STA for the IAC program, there are only a small number of IAC employees that have the need for SIDA or AOA (Airport Operations Area) access.

Recommendation:

There should be program recognition between TSA and CBP to allow employee processing through a single path. If an employee already has a Security Threat Assessment (STA) completed by virtue of their "Access to Air Cargo" status under the TSA IACSSP, to eliminate duplicity, CBP should accept that check as being comparable to their requirement for background checks on bonded warehouse employees. Likewise, the STA process should recognize those employees already vetted through the CBP bonded facility requirement and not duplicate that aspect of the background check when completing the STA. There should be only ONE process per employee – EITHER the TSA IAC requirement OR the CBP bonded cargo process, but not both. Local CBP port directors should have a way to validate an STA number provided by the broker/forwarder employer to verify within government records that the DHS STA was completed, in lieu of having to perform another background check using the SSN process. Benefits include costs savings to government and a simplified and expedited pre-employment vetting process for the private sector.

Issue 2: Lack of Portability - Airport Security Identification Display Area (SIDA) badges

Background:

The lack of SIDA badge portability impacts many aviation employees that travel to multiple US airports to perform job duties, e.g., seasonal workers (Anchorage/Florida), line mechanics, auditors and management. Common SIDA requirements for all U.S. airports include the STA, various watchlist matches and a Criminal History Record Check (CHRC). While nearly 90% of the SIDA requirement is general security information applicable to all airports, there is always a site-specific local component to the SIDA process which identifies designated security areas and access levels at each airport, usually by use of a map. This is the only local airport-specific component of what could otherwise be a national, uniform program. As a result, employees have to take virtually the same training at each airport where they need SIDA access, with significant loss in productivity and unnecessary costs. In the current environment, applicants must pay the same or similar fees at each subsequent airport for training that they mostly already have. Additionally, STA costs are a concern largely due to the existence of a sole-source contract between TSA and the vendor authorized to function as the STA data clearinghouse.

Recommendation:

- TSA should establish national uniform standards for SIDA training applicable to all airports. A SIDA credential issued by one U.S. airport should satisfy baseline requirements for SIDA access at all U.S. airports.
- Employees with a valid SIDA badge for one (or more) airports should only be required to complete airport-specific familiarization at subsequent airports when SIDA access is needed at multiple airports. Fees for SIDA badges at additional airports should be reduced to reflect the elimination of duplication of effort at subsequent airports.
- The cost of the STA component could be reduced by either having TSA house the data received from the airports instead of using a third party clearinghouse, or by allowing multiple vendors to provide this function to encourage competitive pricing.

COAC Air Cargo Security Subcommittee

RECOMMENDATIONS CONCERNING DUPLICATIVE FEDERAL BACKGROUND CHECK AND CREDENTIALING REQUIREMENTS FOR AIR CARGO EMPLOYEES

Issue 3: Redundancies between Airport SIDA Badges and CBP Customs Seal Requirements

Background:

Thousands of air carrier employees at hub and gateway airports are subject to redundant CBP Customs seal and TSA SIDA badge requirements. There exist a number of additional manual components of the CBP program (over and above SIDA) that industry believes are alternately addressed. The following aspects of the seal program add a significant administrative burden and costs to manage the program, presumably on CBP's end as well as for airlines, with incremental security benefits that are unclear:

- (a) Red vs. Black seals - in some but not all US airports (no national CBP standard) CBP has further divided seals into ramp vs. terminal employees to provide additional access restrictions, controls, and visual identification of FIS vs. ramp/AOA (airport operations area) access. At many airports, CBP has chosen to designate *all* customs seals as "black", using employees' widely diverse uniforms as a faster visual indicator than a small seal on a badge, and further using secure employee-specific electronic access control restrictions via badge-swipe technology (i.e., if a ramp employee does not have access to the FIS facility, swiping his badge through an unauthorized location results in a lockout) to control access.
- (b) The lack of inter-airport portability due to the CBP practice of embedding CBP customs access seals to local airport SIDA badges makes what should be a federal credential program, a local airport/facility-specific authorization process. If non-SIDA airline employees also need a customs seal, they currently must apply for a SIDA badge because CBP wants the seal affixed to the SIDA badge (rather than another airport/airline ID) in most ports. The result is additional and unnecessary expense because airline employees assigned to the FIS facility wouldn't otherwise need SIDA badges. If an employee has a customs seal at one airport, CBP should recognize that and grant a seal at a second airport without an additional, redundant application process.
- (c) There is a lack of intra-airport portability due to the lead time and expense for obtaining customs seals and the CBP practice of requiring employers to justify need for each employee. This creates problems because many airline labor agreements provide employees flexibility to bid on diverse work shifts and job functions, but the lack of flexibility in the seal program results in employees bidding into positions that they can't perform until the CBP seal process catches up. In addition, operational irregularities prevent employees that are not "sealed" (because they would not normally need access to an arriving international flight) from meeting that flight to offload baggage and/or cargo during operational exceptions such as weather or mechanical breakdowns. CBP in most ports is reluctant to issue seals on a contingency basis to meet this need, in an apparent effort to further control airline employee access to its arriving international aircraft.
- (d) The manual administrative burden required to manage additions and deletions to the "current seals" list is unnecessary and at times appears to exist solely for the purpose of facilitating enforcement of the \$1,000 seal fine. At a large gateway or hub airport, hundreds if not thousands of employees require customs seals on multiple shifts to provide 365-days per year operational coverage. As a result of personnel changes, employee labor bids and other factors, and a requirement to report all changes to CBP within 10 days, several updates per week are needed to keep the list current. In many airports, this is administered via large Excel spreadsheets emailed back and forth between airlines and CBP locally.
- (e) There are approximately half a dozen additional discretionary or "optional" disqualifying crimes on the CBP seal list that are not included on TSA's disqualifying crimes criteria. In addition, CBP may disqualify an applicant for an arrest that never results in a conviction, which is not part of TSA's program (49USC 44936). Given the comprehensive security and background check process required by TSA for airport employees to access the SIDA, sterile, and AOA areas and TSA standards for daily watch list vetting, it is not clear why the additional CBP criteria are locally discretionary. If disqualifying criteria are not uniformly applied to all applicants, they must not be universally disqualifying, and therefore, their existence can only create potential misunderstandings and claims of unfairness by those applicants denied access.

COAC Air Cargo Security Subcommittee

RECOMMENDATIONS CONCERNING DUPLICATIVE FEDERAL BACKGROUND CHECK AND CREDENTIALING REQUIREMENTS FOR AIR CARGO EMPLOYEES

Redundancies between Airport SIDA Badges and CBP Customs Seal Requirements (cont'd)

Recommendation:

DHS should seek to combine the TSA SIDA and CBP seal programs into a single application and credentialing process to establish one standard for access to secure air cargo and international flights. DHS should leverage common requirements between agencies to eliminate the overlap between the SIDA and Customs seal programs and the significant burden that these redundancies create for trade. We recommend that CBP undertake a review of the Customs Seal Program at the executive level to consider whether the additional CBP discretionary disqualifying criteria are necessary and appropriate. Specifically,

- a) CBP should justify the need for manual "red" and "black" seals and if the red and black seal requirement is maintained, CBP should establish a national standard common to all U.S. airports.
- b) If the CBP seal program continues, inter-airport portability should be implemented to allow employees with seals affixed to one airport's SIDA badge to obtain a seal at subsequent airports, without a second SIDA/seal application process.
- c) CBP should recognize that it is not in the airlines' interest to "seal" more employees than needed due to the liability for fines, and therefore, CBP should remove its requirement that airlines provide full justification for each seal request. If an employer needs additional employees to have seals for operational contingencies, and the employee passes the SIDA/vetting process, CBP should not deny the seal.
- d) If CBP does not eliminate the seal requirement, it should eliminate the list requirement or automate it, possibly by linking it with the automated airport SIDA system.
- e) CBP should give full consideration to aligning criteria to the greatest extent possible with TSA SIDA requirements. The TSA process includes additional layers not inherent in the CBP process. While the CBP option to eliminate employees based on case-by-case discretion is understandable, it should not prevent implementation of a single airline worker standard in accordance with a TWIC model.

Issue 4: Streamlining Redundant Background Checks and Credentialing for Air Cargo Supply Chain Truck Drivers

Background:

Truck Drivers are subject to a number of overlapping requirements including the TSA Air Cargo Security Threat Assessment (STA) for access to unscreened air cargo, the Hazardous Materials Endorsement (HME), the TWIC (Transportation Worker Identification Credential) required for access to seaport facilities, and the CBP Free and Secure Trade (FAST) card for transborder crossings. These Federal requirements are often in addition to state and local fingerprinting requirements and can cost each driver upwards of several hundred dollars, depending upon which credentials are required by the employer.

Recommendation:

DHS and its relevant agencies should rationalize their credentialing programs to a single Security Threat Assessment (STA) and credential, especially for truck drivers whose pick up and drop off locations require STA vetting. As a short term solution, DHS should establish a policy of mutual recognition among FAST, TWIC, drivers' licenses with HMEs, and SIDA, notwithstanding the disparities among the programs. Holders of such DHS STA credentials should not have to undergo yet another STA. We note that TSA currently has comparability standards in place and recognizes that the TWIC, HME, FAST and Merchant Mariner STA's are comparable.

Appendix 10

**COAC Comments on National Strategy for Global Supply Chain
Security Development Efforts**

Commercial Operations Advisory Committee

Comments On

National Strategy for Global Supply Chain Security Development Efforts

Background

COAC has been requested to provide feedback as part of its contribution to the Administration's efforts to develop its National Strategy for Global Supply Chain Security.

DHS indicates that "The Administration envisions a global supply chain system that:

- Is secure against threats that could cause large-scale death, destruction and/or disruption of the US economy;
- Is resilient in response to large-scale events; and
- Maintains the expeditious flow of lawful commerce."

Global Supply Chain Security (GSCS) scope includes:

- Efforts directly supporting Global Supply Chain (GSC) security, resilience and expeditious trade flow;
- All modes of commercial transport on conveyances across air, land and sea;
- All potential modes in the legitimate supply chain where commercial shipments are handled; and
- GSC from points of origin or manufacture to final destination
 - Import and export

Given the above, COAC was asked to:

1. Review *Strategy to Enhance International Supply Chain Security* ("Strategy") July 2007;
2. Respond to questions directed by the SAFE Port Act;
3. Respond to additional questions posed by DHS; and
4. Identify other questions to be considered by DHS.

Summary of some key COAC findings and recommendations discussed in this report

- COAC's comments on the Strategy made in 2007 are still valid.
- The Strategy should focus more attention on air and surface transportation.
- Timely sharing of actionable intelligence among government agencies and the private sector should be a strategic priority.
- Increasing the number of large and small scale security exercises is key to improving and measuring resiliency.
- Collaboration on the U.S. Customs-Trade Partnership Against Terrorism (C-TPAT) minimum security criteria should continue through this subcommittee and other industry organizations to help ensure this partnership program remains efficient and reflects the ever-changing threats.
- The mandate for 100% scanning of maritime containers and the 100% screening of air cargo on passenger aircraft contained within *the 9/11 Commission Recommendations Act* should be re-evaluated in favor of risk-based measures that target high-risk shipments for physical inspections. Further the requirement to scan 100% of maritime containers prior to vessel load should be repealed.
- Coordinating supply chain security protocols both inside and outside of the Department should be a priority.
- 19CFR103.31 should be modified to protect certain sensitive information from being released to the public too early creating security vulnerabilities and negating effectiveness of some C-TPAT minimum security criteria.
- Container-centric technology solutions present little hope of reducing the risk of terrorists using containers as Weapons of Mass Destruction (WMD) delivery tools.

Part 1
Commercial Operations Advisory Committee (“COAC”)

**Comments On
Strategy to Enhance International Supply Chain Security**
(July 2007 document)

General

As the Strategy indicates, “...trade may be viewed as entering or departing the United States via one of three modalities: surface transportation (rail or vehicular), air transportation, or the maritime domain.” The Strategy also indicates that it is DHS policy that a terrorist incident will not automatically result in a shutdown of the Nation’s air, land, or seaports. The document goes on to indicate that elevated security activities triggered by modality specific threat conditions (e.g., Maritime Security (MARSEC) levels in the maritime domain, or an increase in the Homeland Security Advisory System (HSAS) for a transportation segment such as aviation) will be based on facts on the ground, available intelligence and associated risk.

COAC supports this approach and realizes that in order to succeed, both the public and private sector need to collaborate closely to ensure that the security of our Nation, including the health of our economy, is protected. COAC realizes that this is no small task and understands that politicians will be under pressure to take draconian actions that might, in the end, cause more harm to our economy than the actual event.

As COAC’s comments indicated in 2007, the Strategy is not actionable. It should be a blue print that can be referred to in both planning and execution. A strategy should set a concise number of core priorities that programs, initiatives, and operating procedures strive to attain. Development and implementation of programs, initiatives, and operating procedures should be driven by the strategy, not vice versa.

More generally, DHS should read the comments COAC provided to the draft of the existing report in 2007. The vast majority of those comments are still valid as related to the maritime environment.

Although the Strategy correctly highlights the importance of the three modalities, the overriding theme of the document is weighted toward maritime. Consequently, little is written about either the air or surface modes. COAC believes this is an important gap that needs to be addressed.

When the Strategy references highway security elements, the focus is on the domestic portion of the truck transport sector, not the border/import sector. International supply chain security starts at the final loading point in the shipping country for highway mode. There is no reference to the Free and Secure Transport (FAST) program or C-TPAT for highway carriers. There is no mention of details for getting goods from port to domestic customers via truck when vessels have to be rerouted from a US port to a foreign port such as Vancouver, Canada. This will require truck carriers that have proven safety and security import practices in place. The “Protocols and

Factors for Prioritization of Resumption of Trade” is almost void of truck considerations. This is a critical gap as the risk of port closures along the northern and southern borders due to both terrorism and natural disasters is extremely high and will require effective trade resumption efforts.

In the air mode, several examples help highlight the importance of the Strategy taking a multi-modal approach:

- In the immediate aftermath of Hurricane Katrina and the 2004 Tsunami, US commercial airlines experienced shortages of jet fuel in parts of the country. Local and regional aircraft fuel availability could be a critical component towards maintaining continuity of the air cargo supply chain.
- Another example is the 2010 E15 volcano ash which caused the cancellation of flights globally, but particularly in the European Union (EU). This caused the backup and ultimately closure of processing plants (loss of jobs) and the destruction of perishables such as fresh fruits and flowers destined for other areas of the world.
- During a pandemic or other global emergency, the delivery of vaccines and medications would need to be by air. This would require prioritization decisions involving the different modes. An effective strategic framework could help speed up the decision-making process helping to determine modal and cargo priorities.

In the air mode, the Strategy lacks clear guidelines as to who is responsible for conducting physical cargo screening. TSA is responsible for screening air cargo in the US at small airports with exceptions permitted based on individual TSA airport directors. At large airports in the U.S., airlines (not TSA) are responsible for screening air cargo. Exceptions at large airports are sometimes made when TSA canines are available. Overseas, the Strategy needs to address protocols that recognize the security value when “trusted countries” perform physical air cargo screening. Finally, the private sector and our trading partners require improved guidelines as to which screening methods are “approved”. Without clearer screening guidelines it is difficult for the various parties to allocate both human and capital resources.

Detailed Comments

The following are specific comments and observations made related to pages 98 to 102 of the Strategy:

Page 98:

- The Strategy states that a response to an incident should not unreasonably hinder the free flow of trade. It goes on to say, “To accomplish this objective, it is critical that pre-existing data and screening systems include the necessary information to “fully screen cargo”, including cargo already in transit and requiring additional risk-based analysis in a post-incident environment.” What additional post-incident changes to targeting are under consideration? The term “fully screen cargo” should be defined to ensure common

understanding and alignment of the Federal government's expectation and with available resources and security capabilities. To be effective, security measures must be risk-based and sustainable for extended periods.

- DHS should define "screening" by the definition used in Section 2(13) of the SAFE Port Act: SCREENING.—The term "screening" means a visual or automated review of information about goods, including manifest or entry documentation accompanying a shipment being imported into the United States, to determine the presence of misdeclared, restricted, or prohibited items and assess the level of threat posed by such cargo.
- While maritime trade is very important, it does not represent "95% of the cargo tonnage that comes to the United States." This statement omits NAFTA trade which represents a significant percentage of US imports.
- The Strategy document states that "...the USCG and CBP ...are responsible for the development and execution of tactical plans intended to foster business continuations and provide for elevated security conditions. Such tactical plans will be or have been developed with input of the trade community." We are not aware of such plans or the trade community input process. If this refers to planning that may have been done within the various Area Maritime Security Committees (AMSCs), then such a clarification would be warranted. Also note that industry representation in the AMSCs varies considerably by area. Plans in which AMSCs Marine Transport System Recovery Unit (MTRSU) have been involved are not tactical. They also are based on the same prioritizations that are listed in the Strategy and need to be expanded to include all modalities.
- Setting local priorities of cargo movement is complex and will depend on the circumstances. Different modes will face different and changing challenges. For example, what is pertinent and somewhat unique to the air mode is whether the cargo is perishable, contains medical supplies, whether the aircraft transporting the cargo is also transporting high-value passengers such as medical response teams, etc. Therefore it is important to understand what factors CBP would consider in deploying and/or re-allocating cargo inspectors between air, land and sea ports of entry to accomplish trade resumption.

Page 98-99:

- The Strategy states that "DHS components and agencies with trade-related missions...are responsible for the development and execution of tactical plans:". With some exceptions primarily in the maritime mode, Federal government agencies should not be leading tactical planning and operations. Rather, they should set strategies and develop programs and commit resources to provide capabilities that local/regional agencies private sector entities lack. More extensive integration and coordination with the private sector in developing tactical plans is recommended.

- Discussion of “Incident Commander or Unified Command” imparts a Federal focus to what will largely be a local/regional and private sector challenge. The structure discussed, requiring coordination of efforts of multiple senior Federal officials, would necessitate designation of a Federal executive as “Incident Commander.” The designation of the Federal “Incident Commander” should be required to be made in advance of any incident or threat as a standing appointment to the responsibilities – to ensure the most ample opportunities for advanced coordination with all affected stakeholders, both in government and the private sector. It is most important for all to understand who acts, when and where.
- The existing Strategy document, in discussing “the security status of the vessel,” notes that one factor that will be relevant is: “Is any of the cargo on the vessel suspect, or deemed “high risk” by CBP’s ATS...” The industry has worked closely with CBP to improve ATS by implementation of the Importer Security Filing (“10 plus 2”) regulations. If there is high risk cargo that would affect DHS’ decision to allow a vessel to enter a US port, CBP should issue “Do Not Load” messages prior to vessel lading. That is the purpose of providing this data before vessel loading. The only exceptions we can see to this would be where new intelligence was received by DHS after vessel sailing. The Vessel Prioritization on pages 101-102 is a subset of the “security status of the vessel” on page 99 and should be cross referenced.

When considering the prioritization of containerized cargo, DHS should in particular reconsider what COAC recommended in 2007, namely:

“We fully understand that energy supplies, for example, might need to take priority over other types of cargo. Military cargoes might be another example of a higher priority type of cargo warranting different treatment. We also understand that validated C-TPAT importers might receive more expeditious release of their cargo. We strongly urge DHS, however, to avoid trying to distinguish between commercial priorities amongst the many thousands of containers of cargo on a ship or in a port. Only in highly unusual situations should the government try to determine how to address competing requests for expedited release from the many different commercial interest involved in containerized shipments based on the relative “importance” of their cargo. The most expeditious handling of these cargoes is likely to result from allowing the industry to work out the most expeditious handling and onward transportation of such cargoes.”

- One of the bullets asks: Is there CBP resource availability to clear cargo or commodities once landed? This is a key issue for air, as well as USDA/FDA due to the volumes of perishables transported by air requiring other agency clearance.

Page 100:

- One of the bullets identifies the need for the vessel to move cargo out of the port (e.g., grain shipments needed to be shipped in order to avoid shutting down other transportation modes such as railways). Similarly, this is a significant issue for airports. The FAA needs to be fully engaged from both ATC and airspace standpoints. Likewise, airports need to be involved (locally if not nationally) due to gate availability and aircraft parking capacity standpoints.
- The Strategy notes: “Complicating the assessment of cargo priorities is the issue of non-homogenous cargoes, where vessels are not loaded with strictly C-TPAT participant’s containers.” This problem is also equally complicating in the air mode and, perhaps to a lesser extent, in the land mode.
- The USG should establish appropriate criteria for identifying high-risk cargo, and subject to priority cargo as identified nationally, and to the extent practicable, facilitate the movement of low-risk cargo. Cargoes from C-TPAT members or AEO members from supply chain security programs that have received Mutual Recognition generally should be considered to be lower risk than comparable non-C-TPAT /non-AEO member cargo.

Page 100-101:

- The Strategy discusses segregation of “high priority cargo” in transit. This proposed role for CBP to focus on separating “priority goods” from other categories within shipments and containers is impractical.

Part 2
Commercial Operations Advisory Committee

Response to Questions Directed by the SAFE Port Act

What changes to protocols would the COAC envision and/or advise?

The Department of Energy (“DOE”) and CBP radiation scanning results should be integrated into CBP’s risk scoring just as C-TPAT status is incorporated.

Organizations including key private sector subject matter experts, should be identified in advance and mustered together after a catastrophic event for consultation, helping ensure effective mitigation responses are employed.

DHS should take the lead in designing a path forward in developing harmonized security protocols (i.e., mutual recognition) among various US agencies both inside and outside the Department.

If protocols expand to all modes, what differences would the COAC envision?

Recognizing that transportation modes have differing priorities and characteristics, the protocols should remain as similar as practicable. This would provide industry a clear understanding of the protocols and expected responses by the government. Deviations may cause confusion among the trade and industry partners.

What information would industry desire to have in order to develop mitigation plans/business continuity plans?

In advance of an incident?

The critical information would be a complete description of planned government responses to various incidents. While it is impossible to know the response for every incident that could impact a single port or area, it is important to understand the planned steps and procedures for government responses. This information will be critical as industry develops their disaster recovery and business continuity plans.

DHS will have to address how the government will communicate with industry, to whom and what types of incidents will trigger these emergency communication channels. Similarly, DHS will have to develop means in which industry can inform the government of major disruptions.

Post incident?

One of the hardest things to manage during an event are Points of Contact (POCs) (both government and industry) so the key will be to ensure primary and backup POCs on both the government and industry sides to greatest extent possible.

The most critical information is the operational status of the affected port(s) and the plan that the government has put in place to keep trade flowing. What is the status of strategic ports around the nation? What is the capacity of these ports to handle trade diversions? What will be the process for clearing cargo originally destined for the affected port? How will cargo be prioritized?

Part 3
Commercial Operations Advisory Committee

Response to Additional Questions Posed by DHS

What are the key concerns regarding threats/vulnerabilities in the global supply chain?

This is a difficult question for the private sector to competently address without more information from the public sector. What does the national intelligence estimate indicate regarding the top supply chain threats? What are the associated risks? While industry does have some information, there is other information that the government should share to help industry bolster their supply chain security efforts.

While not having complete information, as discussed above, many in COAC believe one vulnerability that warrants additional attention is the role in the supply chain played by intermediaries who handle the material from sources, manufacturing, and suppliers (more often trucking and smaller regional airlines).

A concern for air cargo is that the 100% physical screening requirement at the individual carton level for large pallets and containers on passenger flights can actually result in the dilution of screening effectiveness. The analogy is that right now we are looking for a needle in a thousand haystacks using only our hands and eyes. We have a better chance of finding that needle if we can reduce the number of haystacks using risk assessment algorithms.

How well does the US reduce these threats/vulnerabilities?

The real question should focus on how does the USG reduce associated risks? The threats will not likely go away. Our collective task should be in developing countermeasures designed to mitigate risks.

In a general sense from a maritime perspective, the USG has done a good job in taking a risk-based approach by implementing initiatives such as the Container Security Initiative (CSI), C-TPAT, Automated Targeting System (ATS), the 24-hour advance manifest rule, radiation scanning at the port of entry and most recently the Importer Security Filing (ISF or "10 plus 2"). DHS and CBP have also successfully resisted political pressure in implementing 100% scanning prior to vessel load and in mandating Conveyance Security Devices (CSDs) - costly efforts that would have only created a false sense of security.

For the all-cargo freighter air carriers, USG has also done a fairly good job identifying the threats and implementing regulations to mitigate vulnerabilities. This enables freighter aircraft operators to use screening methods appropriate to the threat.

For passenger airlines, as a result of a Congressional legislative mandate in reaction to the 9/11 Commission, the USG has implemented commercially strangling 100% physical

screening requirements for cargo on passenger flights that are commensurate with baggage screening requirements. Transportation Security Administration (TSA) regulations require screening to occur at the smallest carton level as packaged by the shipper due to a USG interpretation that equates “commensurate” in the passenger baggage world with “smallest piece level” in the cargo world. Many security experts believe that 100% physical screening is less effective at reducing vulnerabilities than targeted risk assessment and screening of cargo posing a higher threat; the current 100% air cargo requirement is inconsistent with DHS’ risk assessment and targeting regimes.

What are some examples of industry best practices in reducing threats/vulnerabilities?
How might the USG better leverage private sector interest and efforts to secure the global supply chain?

The work done through C-TPAT is a good example. However, the USG needs to leverage C-TPAT and other AEO security programs by encouraging them to expand to other domestic and international constituents (e.g., foreign manufacturers located outside Mexico or Canada) that fall outside their normal scope/jurisdiction. For example, developing a strategy to better incorporate trucking within the partnership programs would be an effort which might materially improve supply chain security.

While not a government partnership, the Transported Asset Protection Association (TAPA) is another example of the industry putting programs into place to improve supply chain security.

What are the different threats/vulnerabilities between and among modes of transportation and what are opportunities for improvement?

More consideration needs to be given to truck chain-of-custody issues as virtually all products that are not bulk loaded have to get to an airport, seaport or rail terminal on a truck. A strategy designed to mitigate these truck related vulnerabilities would be one focused on securing international cooperation from like-minded countries.

What assumptions that currently inform our policies and programs may be incorrect or dated?

Scope needs broadening to incorporate additional industry issues such as food, product safety and pharmaceuticals.

Are there opportunities for legislative/regulatory improvement?

The Strategy should set legislative priorities for each mode (air, maritime and surface).

The Strategy should attempt to develop a structure to reduce the risk of ill-advised reactions following a major event (e.g., 100% inspection of all maritime containers destined to the US).

Terminology with common definitions provided by a recognized authority such as the Data Model published by the World Customs Organization (WCO) should be adopted for risk assessment and targeting data elements (e.g., ultimate consignee, scanning, screening, etc.) to help facilitate accuracy, consistency and management of trade and targeting data globally.

Similarly, clear definitions of “screening” and “scanning” are needed to help eliminate confusion whether the reference is made by USG (e.g. TSA, CBP or DHS personnel) or private sector personnel.

On a more granular level, one of the biggest issues that impacts both operational security and political friction is the 100% scanning mandate. The SAFE Port Act charges DHS for example, to work with the private sector and foreign governments to develop effective processes and to determine the probability of detection regarding 100% scanning. The SAFE Port Act also charges DHS with developing a set of “lessons learned” findings. Unfortunately the *Implementing the 9/11 Commission Recommendations Act*, mandating 100% scanning was passed before the SAFE Port Act pilots were completed. The 100% scanning mandate failed to account for the operational and political hurdles that needed to be addressed and evoked a strong negative response from many key US trading partners. Therefore COAC recommends that the 100% scanning mandate be repealed. Similarly, the 100% physical screening requirement in air mode should be eliminated in favor of targeted risk-based analysis and leveraging of CBP and TSA intelligence to identify higher-risk shipments requiring a physical screening process.

Another issue that adversely impacts security is public access of shipment information. More specifically 19CFR103.31 requires, *inter alia*, that the manifest data acquired from the Automated Manifest System (AMS) is made available to the public on CD-ROMs. This regulation requires that CD-ROMs be compiled daily and contain all manifest transactions within the last 24 hour period. Some of the required data elements include vessel name, vessel voyage, port of unloading, estimated arrival date, bill of lading number, foreign port of lading, description of goods, container number and seal number. As a consequence of this regulation vulnerabilities are created that would otherwise not exist. For example, in most major ports/marine terminals, no documentation is required for a truck driver to take delivery of a container. Only knowledge of the container number and B/L number is usually required. For example, C-TPAT requires the use of high security seals and mandates specific seal control procedures. 19CFR103.31 negates any security benefit of these C-TPAT requirements as the seal number is a data element made available through this regulation. Therefore COAC recommends that 19CFR103.31 be modified to protect this sensitive information.

How might we better measure and account for efforts to increase security?

From the CBP/DHS perspective, more quantitative and qualitative reporting could help measure and account for security efforts. For example, publishing statistics about how existing security programs are working would be helpful. What types of successes have resulted from the collection of ISF data? Feedback to the private sector on successes could assist in providing justification to senior management for maintaining or increasing investment in more expensive or effective security solutions.

DHS should establish a reporting conduit to assist industry in identifying security practices and protocols in a format that is easy to use while still maintaining confidentiality.

Incorporating similar methodologies employed by the Overseas Security Advisory Council (OSAC) is worth consideration.

How might we better measure and account for efforts to increase our collective operational resiliency?

The primary and most effective tool to better measure and account for our collective operational resiliency is through frequent security exercises – both live and tabletop in all key geographic locations. These exercises are critical to ensure all agencies involved know their roles if and when an incident occurs. It is also important to include members of the trade as part of the exercise so the government and the trade can understand how each will react through a series of lessons learned sessions.

Examples of areas that can be addressed in these exercises include determining chain of command and who is in charge; evaluating the communication with industry; and measuring the pace of response including the ability to make on-the-ground operational decisions (e.g., does a CBP or TSA inspector let the passengers off this plane?).

How are trade partnership programs enhancing global supply chain security or what additional role could they play?

There is a positive impact on supply chain security; however, areas could be strengthened which address certain vendors and providers in the global supply chain (e.g., trucking).

Trade partnership programs could play a much more robust role if there was an informal international forum available to allow for the exchange of ideas to help facilitate work being done at the United Nations (UN) level (e.g., International Civil Aviation Organization (ICAO), the World Customs Organization (WCO) (SAFE Framework of Standards) and the World Trade Organization (WTO) (expansion beyond customs considerations). A strategy incorporating private sector participation would be helpful in this regard.

Specifically, with regard to C-TPAT, threat/intelligence information sharing needs to be improved. The trade is left to determine threats to the supply chain with little assistance from the USG. Individual companies have independent programs to determine threats/vulnerabilities in order to focus resources to meet the criteria set forth by USG (C-TPAT in this case). The USG could streamline the process and help create a proper focus on areas where the USG sees threats to the supply chain by sharing appropriate information.

Collaboration on C-TPAT minimum security criteria (reviews, modifications, etc.) should be increased through this subcommittee to help ensure consistencies among the various modalities and that C-TPAT remains effective, efficient and reflects requirements appropriate with the ever-changing supply chain environment.

To encourage consistency between and in conjunction with the USG Inter-Agency Cooperation Workgroup, collaboration with the trade should be increased through this subcommittee to facilitate recognition of "trusted trader" status, use of related supply chain security elements from one agency to satisfy supply chain security elements of other

agencies, and use of the C-TPAT Security Link Web Portal to allow companies to communicate with other agencies.

What additional information sharing opportunities should be considered to enhance global supply chain security?

Timely sharing of accurate, actionable intelligence, both classified and unclassified, among governmental agencies and with private sector stakeholders should be a strategic security priority. The strategy should tackle the problem of over-classification of information; excessive use of the designation "Law Enforcement Sensitive" or internal strictures on information sharing imposed by senior officials in the Federal government. Sustainable means must then be implemented through targeted programs and operating procedures to ensure the consistent dissemination of relevant security information during normal operations, periods of heightened threat and during and following security incidents.

From a maritime (liner shipping and marine terminal) perspective, local information sharing is fairly effective. The Federal Bureau of Investigation (FBI), US Coast Guard (USCG) and Office of Naval Intelligence (ONI) do a good job of sharing local information. Unfortunately, the sharing of internationally-centric information that could impact the global supply chain is challenging and needs more attention. Examples of information a liner shipping company could use include notification that: (a) risks of stowaways have increased dramatically at a location that, in the past, did not represent a high risk; (b) drug trafficking has shifted to locations not normally thought of as high risk areas; and (c) notification that suspicious packages were found on multiple vessels operated by different companies at the same port. In all three examples, liner shipping could shift resources, take additional counter-measures and/or mitigate risks given the information provided.

The USG should better utilize the private sector as a "force multiplier" in protecting the supply chain. For example, the USG should encourage the reporting of suspicious activity to the intelligence community. Unfortunately, the conduit for reporting security information by the private sector is unclear, fragmented and typically uni-directional. Enhanced feedback to the reporting entities would benefit industry in understanding the threat posture and what impact our efforts are having in mitigating that threat. By way of example, we would like to receive direct feedback on suspicious activity reported (e.g., reported incident was followed up and resulted in a person of interest being contacted). This would confirm that efforts were worthwhile.

Some form of analysis indicating the value of Closed Circuit Televisions (CCTVs), perimeter detection and other technologies could influence/support future spending decision. For example, knowing the number of documented incidents in which an illicit act was detected via CCTV could help justify the initial investment and on-going maintenance cost.

DHS/CBP should look at the OSAC program run by the State Department which provides invaluable information-sharing opportunities. The trade is able to get critical information about different areas of the world and existing risk factors that apply. DHS/CBP should consider partnering with OSAC in extending its scope to supply chain security. This would

allow DHS/CBP to benefit from OSAC's experience and reduce implementation costs of standing up a separate stand alone system.

The USG should develop a long term strategy that would allow multiple parties to enter shipment information currently required into a common government database. This will speed up and enhance the delivery of important data to be used for targeting analysis, tracking changes (in providers) and identifying anomalies (is the common denominator to all the high-risk cargo a single trucker?). Alternatively, continuing the practice of limiting the input of shipment information to carriers, importers and third party providers demands multiple data handoffs increasing the probability of errors and transmission delays.

What is the state of technology solutions and what role should they play in global supply chain security?

Technology is a critical component of supply chain security, but it should not be perceived as a panacea. Rushing unproven technology into the supply chain will undermine progress made to date, provide a false sense of security and will make the supply chain less secure. Too many people are interested in the "silver bullet" solution to supply chain security through the use of technology. Unfortunately, available and emerging supply chain technology often requires a high degree of human intervention, potentially causing bottlenecks, false positives and delays in the supply chain without a commensurate improvement in security. Successful security will require a continuation of the multi-layered approach that DHS has been following to date.

Most container-centric technology solutions that companies are encouraged to use present many practical problems and little hope of reducing the risk of terrorists using containers as Weapons of Mass Destruction (WMD) delivery tools. The amount of money spent, for example, on developing the Conveyance Security Devices (CSDs) is significant given the security benefits expected (even assuming the most optimistic results). The amount of money spent on the Advanced Conveyance Security Devices (ACSD) is also something to reconsider. Increased engagement with private sector stakeholders would help ensure money is spent more effectively in developing technology solutions.

Bottom-line, the fact that cargo tends to be high volume, non-homogenous, and in many cases environmentally sensitive, reduces the opportunity for an efficient and cost effective over-arching solution. Technology along with people, process and training must be incorporated into the global supply chain from origin to delivery.

Part 4
Commercial Operations Advisory Committee

Additional Questions Posed by COAC

When the DHS *Strategy to Enhance International Supply Chain Security* was initially published, the focus of the document was the prevention of a weapon of mass effect being introduced into the international maritime supply chain. Since that time, supply chain security has not only improved, but has expanded beyond just the prevention of the “bomb in a box.” In addition to looking at other modes of transportation (i.e., air, rail and truck), should the strategy also look at the issue of import health and safety? The Import Safety Working Group established under former President George W. Bush put together a “strategic framework for continual improvement in import safety.” Should that framework and accompanying action plan be considered as part of the larger DHS strategy?

How does the USG measure risk and how are these metrics used to allocate limited resources across the supply chain?

How quickly can risk be re-calibrated and counter measures identified?

What protocols can be put in place which may or may not require regulatory change to allow the USG to consult with the private sector early in the development of new legislation/regulations?

What protocols can be put in place which may or may not require regulatory change to allow the USG to consult with the private sector after public comments are received?

How will the multi-modal strategy incorporate cohesive USG leadership designed to minimize the sparring amongst agencies that feel they have the authority for a specific transportation mode? This will be critical after a major event that impacts the supply chain where certain conflicting priorities must be managed.

As part of any supply chain logistics system, any nodal pivot point may represent a key vulnerability/choke point that could significantly delay trade resumption. Should the White House directed, interagency effort to develop a National Strategy on Global Supply Chain Security include “critical infrastructures” in the US? Should it address critical infrastructure outside of the US? Should this issue be addressed by the COAC GSCS Subcommittee?

Should CBP create an Export C-TPAT program?

This topic is important for many in the trade, so we have provided some visibility into the COAC recent GSCS discussions on this topic.

Many believe achieving mutual recognition with various Authorized Economic Operator (AEO) programs provides a means by which to help facilitate secure trade. By leveraging the investments made by certified C-TPAT participants and their overseas factories and logistics service providers, the trade community should be able to mitigate the incremental costs of participating in additional AEO programs. Consequently, many in the trade have requested CBP to pursue mutual recognition with our key trading partners.

Because many AEO programs are bi-directional, some believe securing mutual recognition with C-TPAT has proven to be, and will continue to be a challenge for CBP. On the other hand, mutual recognition has already been achieved with five (5) countries (Canada, Japan, Jordan, Korea and New Zealand). While foreign Customs authorities should not use the existence of an export based supply chain security program as a hard and fast requirement to determine eligibility for mutual recognition, it is nonetheless worth further consideration and analysis by CBP and the COAC.

Participation in an export oriented supply chain security program may be a challenge for a large segment of US exporters. Approximately 80% of US maritime exports to Asia are low value goods (e.g., hides, waste paper, liner board, hay, cotton, clay, grain, etc.). International competition is stiff and margins are low for these industries. The additional costs associated with implementing a broad-based security program with required minimum security criteria, that does not take into consideration the specific threats/risks of these supply chains, would likely create a barrier to participation for this cross section of US exporters. Yet, CBP would have to dedicate a portion of their limited resources to the program, regardless of how well received.

However, not all US export cargo and associated supply chains fall in the above low value, low risk category. High technology, high value cargo that is exported via air, and to a lesser extent ocean, or that travels via truck or rail across the northern and/or southern borders may justify expansion of C-TPAT to include exports.

CBP, in collaboration with the trade, should review existing C-TPAT security criteria and ensure that any expanded program continues to allow for flexibility and customization of security plans based on a member's business model. DHS currently bases its efforts on a layered, risk management approach. The individual elements of DHS' policy are built upon risk analysis specific to the risk area covered in the supply chain. We feel this approach:

- is consistent with DHS and CBP's current risk based approach; and
- supports the desire of US importers and exporters to advance mutual recognition. and
- recognizes the special challenges of some US exporters

Appendix 11

**Letter Received from the Transportation Intermediaries Association
dated July 12, 2010**



July 12, 2010

Ms. Wanda Tate
Office of Trade Relations
U.S. Customs and Border Protection
Department of Homeland Security
1300 Pennsylvania Avenue, NW Room 5.2A
Washington, DC 20229

RE: USCBP-2010-0022

Dear Ms. Tate:

On behalf of the Transportation Intermediaries Association, I would like to submit the enclosed documents for consideration by the members of the Advisory Committee on Commercial Operations (COAC) at their August 4, 2010 meeting.

The documents are copies of H.R. 5619, introduced by Congressman William Owens of New York and his introductory "Dear Colleague" letter. H.R. 5619, once passed, would direct Customs & Border Protection to specifically establish eligibility criteria for non-asset based third-party logistics providers within 60 days of enactment.

The documents relate to COAC Agenda item number 7 "Global Supply Chain Security Subcommittee".

I have prepared 30 copies for the COAC members and staff. I would greatly appreciate it if you could see that they are distributed appropriately. Thank you.

Sincerely,

A handwritten signature in black ink that reads "John T. Stirrup". The signature is written in a cursive style with a large, prominent "J" and "S".

John T. Stirrup
Vice President
Policy & Government Affairs

The Association of the Professional 3PL Industry

Appendix 12

H.R. 5619 – June 28, 2010 “A Bill To amend the SAFE Port Act...”

HR 5619 IH

111th CONGRESS

2d Session

H. R. 5619

To amend the SAFE Port Act to provide for the eligibility of certain third party logistics providers for participation in the Customs-Trade Partnership Against Terrorism program.

IN THE HOUSE OF REPRESENTATIVES**June 28, 2010**

Mr. OWENS introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

To amend the SAFE Port Act to provide for the eligibility of certain third party logistics providers for participation in the Customs-Trade Partnership Against Terrorism program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ELIGIBILITY OF CERTAIN THIRD PARTY LOGISTICS PROVIDERS FOR PARTICIPATION IN C-TPAT PROGRAM.

(a) In General- Section 212 of the SAFE Port Act (Public Law 109-347; 6 U.S.C. 962) is amended by inserting after 'contract logistics providers,' the following: 'non-asset based third party logistics providers that arrange international transportation of freight, including motor carrier brokers of property licensed by the Department of Transportation,'.

(b) Effective Date-

(1) IN GENERAL- The amendment made by subsection (a) takes effect on the date of the enactment of this Act and applies with respect to applicants seeking to participate in the Customs-Trade Partnership Against Terrorism ('C-TPAT') program on or after the date on which the regulations published pursuant to paragraph (2) take effect.

(2) REGULATIONS- The Secretary of Homeland Security, acting through the Commissioner responsible for United States Customs and Border Protection of the Department of Homeland Security, shall publish in the Federal Register criteria for participation in C-TPAT program of non-asset based third party logistics providers described in section 212 of the SAFE Port Act, as added by subsection (a), not later than 60 days after the date of the enactment of this Act.

END

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Appendix 13

**Letter from Representative Bill Owens regarding Third Party
Logistics Providers Participation in the Customs-Trade Partnership
Against Terrorism**

Help Secure the Global Supply Chain

Ensure Third Party Logistics Providers Can Participate in the C-TPAT Program
Become a Cosponsor of H.R. 5619

Dear Colleague:

The Customs-Trade Partnership Against Terrorism (C-TPAT) program is a voluntary initiative focused on building cooperative relationships between the U.S. government and businesses involved in importing goods into the country, with the goal of strengthening and improving the global supply chain and U.S. border security. Although the program was designed to improve security from the point of packing the cargo through delivery to the United States, one critical segment of the transportation supply chain has been excluded from the eligibility criteria established by Customs and Border Protection: non-asset based third-party logistics providers (3PLs).

A 3PL manages all or part of a client's logistical requirements, including transportation, inventory optimization, warehousing, order fulfillment and other functions. 3PL providers help companies lower transportation costs, improve on-time performance, and even reduce carbon emissions by increasing cargo weight and running fewer shipping routes. 3PLs assess and maintain files on thousands of motor carriers engaged in cross border traffic, including millions of shipments annually over our northern and southern borders. In doing so, 3PLs add a level of security to global supply chain, yet they have been excluded from eligibility for the C-TPAT program.

CBP's current C-TPAT eligibility requirements that exclude 3PLs do not conform to federal law under Section 212 of the SAFE Port Act, which states that "contract logistics providers and other entities in the international supply chain and intermodal transportation system are eligible to apply to voluntarily enter into partnerships with the Department under C-TPAT." Please join me as a cosponsor of H.R. 5619, which would amend the SAFE Port Act to clarify that 3PLs are indeed contract logistics providers eligible to participate in the C-TPAT Program.

3PL providers benefit the national economy by increasing efficiency in moving goods. In doing so, they help lower overall costs, including consumer prices, by identifying and correcting inefficiencies, improving on-time performance, and preventing costly delays of supply or final goods deliveries. As our economy continues to recover it is critical that we ensure efficiency in the global supply chain while keeping our nation's borders secure.

If you would like to cosponsor H.R. 5619, or have any questions, please contact Nell Maceda in my office at nell.maceda@mail.house.gov or 5-4611.

Sincerely,

/s/

BILL OWENS
Member of Congress

Appendix 14

Letter to the National Association of Manufacturers from Commissioner
Bersin (undated)



**U.S. Customs and
Border Protection**

Commissioner

Ms. Catherine Robinson
President of the National Association
of Manufacturers
1331 Pennsylvania Avenue, NW, Suite 600
Washington, DC 20004

Dear Ms. Robinson:

Thank you for your May 28, 2010 correspondence on the behalf of many of the participants of the April 7, 2010 industry roundtable meeting. U.S. Customs and Border Protection (CBP) appreciates all of your efforts to identify recommendations on ways to improve trade facilitation. While I look forward to meeting again soon to further discuss the ideas raised by the group, I want, without further delay, to address our current position on each of the items that you characterized as "short term," as well as a few of the long-term topics you identified.

- 1. Automated Commercial Environment/International Trade Data System:** *Set an implementation timetable for Automated Commercial Environment (ACE) and International Trade Data System (ITDS) and provide the CBP leadership to deliver the functionalities. One such functionality that would move ITDS forward would be to add Partner Government Agencies (PGA) requirements to the Automated Broker Interface (ABI) data message set.*

Our commitment to making ITDS work for the trade, participating government agencies, and CBP is paramount. We are working with the trade and other government agencies in a collaborative partnership that will ensure that ITDS is developing in a manner consistent with our mutual expectations.

With remaining no-year and Fiscal Year (FY) 2010 funds, CBP will focus on developing and deploying functionality that stakeholders have identified as priorities, including post summary corrections, document imaging, and rail and sea manifest. In addition, CBP will lay the groundwork for the future deployment of cargo release functionality, air manifest, and the remaining entry summary types. In FY 2011, further development will be deferred while business and technical requirements for future development are clearly defined. We will want to accomplish this, as far as practicable, in concert with the trade and PGA communities. Additional funding will be requested as business cases are completed.

Furthermore, we are developing a plan to provide the addition of PGA Data Elements to the data currently received in Automated Commercial System (ACS) using the ABI message layout. The data received by CBP in ACS will be transferred to ACE and stored and made available to the PGA via the ACE Portal. ACE will need to store the PGA data with the Manifest /Entry/Entry Summary data that CBP already collects for access and use by the PGA. This will allow PGA

access to collected data for PGA and CBP in one data base and available for PGA use as needed. Among the considerations for the implementation of this plan will be the initial cost, the timeline for implementation, the commitment of PGA to utilize the system, and the willingness of the trade to use the system for their PGA requirements.

- 2. Evaluate Starting Free and Secure Trade lanes further back at border crossing:**
Trucking companies continue to face a lack of "true" Free and Secure Trade (FAST) lanes. FAST lanes should extend further back from the port of entry. Currently, they begin only a few yards prior to arrival at the primary inspection booth. This results in low-risk Customs Trade Partnership Against Terrorism (C-TPAT) carriers being stuck in the same traffic as non-C-TPAT certified carriers. Thus, C-TPAT certified motor carriers with drivers who have undergone FAST background checks are not getting the benefits that were promised for investing in the program. FAST lanes should begin further back on existing roads leading to border crossings.

It is important to bear in mind that CBP does not own or control the infrastructure (roads, bridges, etc.) leading into the ports of entry; therefore, it does not have the authority to regulate the flow or queuing of traffic awaiting entry into the United States. However, CBP would be favorably disposed to approaching the relevant authorities with the trade community to seek solutions in specific locations and to help facilitate dialogue with the pertinent parties within the federal government. Please contact Dan Tanciar (daniel.tanciar@dhs.gov; 202-344-2818) in my office if you have a specific location and proposal you wish to pursue where CBP could play a role in bringing the proposal to fruition.

- 3. Formal withdrawal of the proposed change to the First Sale Rule and Rules of Origin Notice of Proposed Rule Making:** *In 2008, CBP announced its intention to stop using the first sale rule and published a Notice of Proposed Rule Making (NPRM) on country of origin determinations. Due to significant concerns raised by the industry in opposition to both policies, CBP did not move forward on either for admittedly different reasons. However, the policy changes have not been officially withdrawn. This creates significant uncertainty and anxiety within the trade community. We encourage CBP to formally announce that the first sale rule will remain in place and the withdrawal of the NPRM on country of origin.*

A Federal Register Notice to withdraw the first sale rule proposal has been drafted. We expect to have it published within the next 30 days. Furthermore, CBP and the Department of the Treasury have carefully reviewed the comments submitted in response to the rules of origin proposal. In particular, we have heard concerns expressed about the impact that extension of the rules of origin to other than North American Free Trade Agreement (NAFTA) trade may have on the trade community. These matters are still under consideration within our agencies as part of the official rulemaking process; however, we expect to soon be publishing a notice on this matter in the Federal Register.

- 4. Confirm to the committees of jurisdictions that CBP officers do not have the authority to share identifying information with rights holders and request legislation to provide a fix:** *Customs officers were informed in August 2008 that they could potentially be prosecuted for allegedly violating the Trade Secrets Act (18 U.S.C. §1905) and were*

specifically instructed not to share identifying information with trademark owners. CBP attorneys have stated that legislation is needed to share such information with rights holders. The information being withheld from trademark owners is information on the surface of the product (such as serial number, lot number, etc.) or digital information inside the product (such as memory readings)—all information that is available to the buyer in the United States. In the past, CBP officers shared identifying information with the trademark owners to assist in making the genuine/counterfeit determination. We encourage CBP to inform the committees of jurisdiction that rectification of this issue will require legislation.

CBP Counsel and the Department of Homeland Security (DHS) Office of General Counsel personnel are working to determine whether CBP could disclose – before seizure – information that could be used to identify intellectual property infringement. CBP and DHS are exploring what legislative or regulatory changes (if any) would be needed to accomplish this task. We expect this position to be clarified during September 2010.

5. **Empty Trailer Repositioning:** *Industry is seeking a minor change in the interpretation of immigration rules to allow foreign drivers to reposition a foreign-based trailer in the United States that did not enter and/or will not leave with the same driver. Such flexibility would not only greatly improve driver and equipment efficiency, but also improve fuel consumption and reduce emissions due to unnecessary extra tractor movements. CBP should provide such added flexibility to low-risk motor carriers that are members of the C-TPAT program as an added benefit to those carriers that have invested to participate in C-TPAT and/or PIP. Such treatment would be reciprocal in the United States, Mexico, and Canada.*

CBP and DHS have extensively looked into this and determined that the existing statutes, regulations, and precedents are clear. Based on these and CBP's long history of enforcing the law in this area, it does not strike us as appropriate for any change to be made in this area. The relevant provision is from the NAFTA, appendix 1603.A (as codified at 8 Code of Federal Register § 214(b)(4)) and is consistent with the general entry requirements for temporary visitor for business classification (B-1) set forth in section 101(a)(15)(B) of the Immigration and Nationality Act. The intent of these provisions is to allow the free movement of goods across the border, an activity that is international in scope. This provision is not to facilitate access to the domestic labor market. Drivers may not engage in any activity that qualifies as local labor for hire. The movement of empty trailers from point-to-point within the United States is considered cabotage and not permissible B-1 activity.

6. **Increase the values for de minimis and informal entry shipments:** *CBP should exercise its authority to increase the current values for de minimis and informal entry shipments and to make additional changes to simplify the entry process. Raising these limits, which have not been changed in over 10 years, would particularly facilitate trade for small and medium enterprises and allow CBP to focus resources on higher value shipments where the risk of a commercial violation is more significant. Security is not affected by this proposal, as manifest information on all shipments, regardless of value, is analyzed for security threats and subject to CBP risk assessment processes prior to arrival. It is our understanding that the Office of International Trade is currently drafting an NPRM to effect the required changes. We request that CBP accelerate the drafting and intra-governmental approval*

process for the NPRM, its publication in the Federal Register, and implementation of the changes.

CBP agrees, from a policy perspective, that these limits should be increased. CBP has drafted an NPRM providing for increases of both the de minimis value and the value for informal entries consistent with language in S. 1631. CBP is in the process of conducting an economic analysis and evaluating other factors required to evaluate the range of discretion available under 19 U.S.C. 1321. In addition, CBP's proposal will need to be reviewed and agreed to by the Department of the Treasury. We expect our economic analysis to be completed within the next 60 days and we intend to proceed with all due speed based on the findings of the analysis.

- 7. Modernize the In-Bond Process:** *CBP has been contemplating changes to the in-bond system to streamline and to modernize this critical process; however CBP has not implemented changes within the Automated Manifest System. The Commercial Operations Advisory Committee (COAC) has provided inputs and CBP has held discussions with several trade groups, as well as consultations with OMB and other agencies, to develop the desired changes to make the in-bond process more efficient for both the private sector and the government. The revisions will include enhancements to CBP systems that will allow for electronic in-bonds, approvals for diversion of freight to new destinations when required, and other changes that will reduce the quantity of paper and bring the process into the 21st Century. We are requesting acceleration of the publication of the NPRM on the in-bond revisions, rapid consideration of the comments received, and timely implementation of the new automation and procedures.*

As noted, for some time now, CBP has been engaging with industry, including COAC, about our efforts to draft regulations that would encompass a complete revision and modernization of Part 18 to enable the in-bond process to go from a paper-dependent entry process to an automated-paperless process. In addition to modernizing the regulations to meet the realities of today's real-time shipping environment, the proposed amendments to the regulations are being designed to provide CBP with the necessary tools to better track in-bond merchandise. This is important for purposes of security and to ensure that proper duties are paid. Furthermore, problems regarding the tracking of in-bond merchandise and the flexibility of the current in-bond regulations were concerns raised by the Government Accountability Office in a 2007 report.. The proposed changes are intended to address these concerns. Work is ongoing to draft these substantial regulatory change proposals. CBP intends to have an NPRM published by the end of this year where CBP will officially be seeking public comments on our proposals.

- 8. Inspections at the Port of Entry:** *For some time, industry and CBP have been discussing the issue of conducting nonsecurity inspections at the port of entry, usually an inland hub, as opposed to the first port of arrival. Aircraft often briefly touchdown at airports like Miami and Newark, where a small number of shipments may be offloaded before proceeding to an inland port where the majority of the shipments are entered and cleared. In the CBP targeting process, the first port of arrival sometimes designates shipments for inspection that are not offloaded until the plane reaches the inland port. This can result in both ports designating the shipment for an inspection, or a requirement to return the shipment from the inland port to the first port, which causes long delays in delivery. The shipments in question*

do not present a security risk and are being inspected for other reasons. The shipments move inland in-bond, remain on the aircraft, and are always under the control of the carrier. We understand a directive has been drafted and is under review that would issue guidance to the ports to ensure that nonsecurity inspections are conducted at the port where the shipment will normally be offloaded from the aircraft. We are requesting that CBP accelerate final approval of this directive.

CBP agrees with industry that many nonsecurity inspections should be conducted at the port of entry/unlading. On June 9, 2010, CBP's Office of Field Operations reissued internal policy guidance directing that the performance of nonsecurity and trade compliance inspections be done at ports of entry/unlading, versus at ports of arrival. Bear in mind though that in some cases, inspections for security, agricultural concerns, and some requirements imposed by other government agencies will still be conducted at ports of arrival.

- 9. Carefully consider the comments and suggestions submitted last June on the Importer Security Filing:** *Before finalizing Importer Security Filing (ISF), or as it is better known 10+2, CBP should carefully consider the comments filed by industry during the structured review and consider any adjustments to the program that could reduce the burden on industry.*

CBP has in fact carefully considered the comments submitted by the trade during the public comment period prior to the rule's effective date for implementation. CBP will also consider comments received during the structured review process before publishing a final rule. Note further that as part of the rule's initial development, CBP closely worked with the trade community, including COAC, to refine the rule's requirements.

To date, CBP is very satisfied with the compliance levels of the trade community. C-TPAT Tier 3 partners have led the way being among the most compliant filers of the security data. While the largest importers have submitted the largest total volume of security filings, small and medium-sized companies represent the vast majority of the filers of security data. CBP will continue to meet with the trade community and to closely work with the members to ensure their success in meeting the rule requirements.

- 10. Eliminating the customs seal requirement in favor of the comparable vetting process required by the Transportation Security Administration (TSA) Security Identification Display Area program.**

CBP has been closely working with COAC's Air Cargo Security Subcommittee to identify ways to simplify credentialing and identification required in the air cargo environment. COAC adopted recommendations on this topic at its last meeting in May. CBP and TSA are evaluating these recommendations and are working on several changes that will reduce the burden to the industry while still meeting the distinct security requirements of each agency. We intend to provide updates on progress in this area at upcoming COAC meetings.

- 11. Evaluate offering the C-TPAT conference three times per year - once on the West Coast, in the Midwest, and on the East Coast.** *Holding the seminar once a year only allows*

about 1,200 of the over 9,000 C-TPAT participants to attend and to benefit from the seminar. A larger segment of the C-TPAT population should be afforded the opportunity to attend the seminar. If it is not feasible to hold multiple conferences, utilize other technologies, such as webinars to reach a larger number of C-TPAT members.

CBP recognizes the tremendous interest in the C-TPAT annual conference and will begin to offer two seminars a year—one on the West Coast and one on the East Coast/Midwest. Each seminar will accommodate approximately 1,200 attendees (2,400 total for both events). In addition to these larger annual seminars, CBP will continue to offer an annual seminar directed specifically to Northern Border highway carriers. This seminar will continue to be held in Buffalo and will accommodate 500 attendees. This year's C-TPAT Northern Border highway carrier conference is scheduled for August 30-September 1, 2010. CBP will also continue to offer smaller trade outreach sessions along the Southwest Border throughout the year. CBP is also exploring the possibility of webcasting these events.

12. Reduce the backlog of rulings pending at the Office of Rulings and Regulations:

Our understanding is that the Assistant Commissioner of International Trade is reviewing every ruling before it is issued and published by CBP. We believe that this level of scrutiny is unnecessary for all rulings and regulations.

As CBP has clarified in numerous trade meetings, the Assistant Commissioner, Office of International Trade (OT) does not review every ruling that is issued. However, based on complaints from the trade and Congress that CBP is making policy changes without proper consultation with the Hill and the trade, the Assistant Commissioner does review the "1,625" rulings (less than 100 per year) that result in a change of position and, where appropriate, reviews the potential impact with the affected committees. In addition, CBP is developing an internal process to highlight to CBP management any substantive regulatory initiatives, major proposed rulings, and modifications of existing rulings prior to their publication. This will enable CBP to, consistent with legal requirements, conduct outreach and consultation with the Hill, the trade community, and other government agencies earlier. We believe that such a process will enable CBP to have a better appreciation of the impact that such proposed changes may have on the trade and on other stakeholders.

With respect to the issuance of rulings during this fiscal year, the National Commodity Specialist Division has issued 3,495 prospective rulings in an average processing time of 19 days. At CBP Headquarters, OT, Office of Regulations and Rulings (ORR) has issued 625 prospective rulings with an average processing time within 90 days.

We do have a backlog of protests and internal advice requests at Headquarters. I have made reducing this backlog a priority. ORR put together a "rulings blitz" in which personnel normally assigned to other duties are assigned rulings. Since the beginning of the fiscal year, we have issued 152 protest review decisions and 45 internal advice decisions. We intend to add additional personnel to the branches responsible for these cases. In addition, we are piloting a project to make increased use of our National Commodity Specialist Division in the analysis of these cases.

13. **Account-based management:** *Establish uniform processes for account-based management and account managers so that they can better understand our businesses and our commodities and have some control over the import specialists and the ports. In May 2009, COAC presented a report to CBP on expanding account-based processing. At the time, CBP committed to reviewing the document and reporting back to COAC on the next steps. However, since last May a few steps have been taken on the COAC report. Account-based processing was conceived and implemented on a smaller scale by CBP in the 1990s to improve commercial compliance, government efficiencies, and trade facilitation. COAC paper lays a foundation for expanding the current account-based management system to all commercial, product safety, and security operations. Expanding the program would result in significant benefits for both CBP and industry by creating robust government-business partnerships, increasing risk-based management, facilitating trade, and improving compliance. We encourage CBP to move forward on the COAC proposal.*

CBP is undertaking a task force to develop initiatives to allow CBP to manage by account. This task force, under directions from my office, is reviewing the role of the account managers, CBP's account-based risk management efforts, simplified entry and financial processing, and ACE's role in managing by account. To inform our efforts, CBP has been conducting weekly conference calls with COAC's Trade Facilitation Subcommittee to consult on ideas presented in COAC's proposal, potential design of new initiatives, and impact of these efforts on the trade and CBP and will expand this consultation with the trade through the course of the summer.

14. **Increase training and education of CBP officers and specialists on foreign trade zone regulations and free trade agreements.**

OT has piloted a 2-week advance training session on free trade agreements, other preference programs, and textiles that will be rolled out in the summer of 2010 for import specialists and others charged with enforcing such provisions. This effort builds on recent upgrades of basic entry specialist training (completed), basic drawback specialist training (in progress), advance IPR training (in progress), and broker management training (piloting in June 2010).

15. **Mutual recognition and greater global collaboration and harmonization:** *CBP should promote and adopt a more global approach to supply chain security by seeking greater harmonization of trusted trader programs among major trading partners and minimizing unilateral programs. U.S. companies operate in multiple countries; therefore, it is important that their investment in the United States' programs be recognized by other governments. Thus, the U.S. government should establish full, mutual recognition between the Canadian PIP program, the European Authorized Economic Operator (AEO) and C-TPAT, and work to do the same with other major trading partners. Otherwise, U.S. companies will be forced to waste time, to corporate resources, and to money applying for AEO status in every country they operate. CBP agrees that mutual recognition arrangements offer security and trade facilitation benefits throughout the international supply chain. CBP currently has mutual recognition arrangements with New Zealand (June 2007), Canada and Jordan (June 2008), and Japan (June 2009). CBP just signed its fifth mutual recognition arrangement with Korea on June 25th at the recent Session of the World Customs Organization Council*

meeting in Brussels, Belgium. CBP is currently working with the Customs Administrations of the European Union, Mexico, and Singapore towards achieving mutual recognition.

It should also be noted that on May 25, 2010, CBP and the General Administration of China Customs signed a Memorandum of Understanding Concerning Bilateral Cooperation on Supply Chain Security and Facilitation. Though this document is not a mutual recognition arrangement, it is a formal bilateral arrangement to cooperatively work together on various supply chain security efforts, one of which is the long-term goal of achieving mutual recognition of China's supply chains security program—the "Classified Management of Enterprises" program, which became operational in April 2008. This is a constructive first step on a long, difficult road with our country's most active trade partner.

Thank you again for your leadership role to develop a comprehensive effort regarding initiatives CBP can undertake to improve trade facilitation. I hope that this provides you with some welcome information on the status of our thinking and actions concerning most of the identified issues. Regarding other matters raised in the group's letter, such as performance metrics, trusted partner programs, the post-incident analysis program, mitigation guidelines, and mutual recognition of AEO programs, I have asked for additional internal consideration and comment and will communicate with you further regarding them.

I look forward to our continued dialogue.

Sincerely,



Alan Bersin
Commissioner

cc: James May, Air Transport Association of America, Inc.
Marianne Rowden, American Association of Exporters and Importers
Bill Graves, American Trucking Association
Dick Belanger, U.S. Business Alliance for Customs Modernization
Nelson Balido, Border Trade Alliance
Jim Phillips, Canadian/American Border Trade Alliance
Perrin Beatty, Canadian Chamber of Commerce
Jayson Myers, Canadian Manufacturers & Exporters
David Bradley, Canadian Trucking Alliance
Michael Mullen, Express Association of America
Will Berry, National Association of Foreign Trade Zones
John Engler, National Association of Manufacturers
Jeffrey Coppersmith, National Customs Brokers and Freight Forwarders of America
Jon Gold, National Retail Federation
Stephanie Lester, Retail Industry Leaders Association
Ann Beuchesne, U.S. Chamber of Commerce

Appendix 15

International Trade Data System (“ITDS”) Proposal Summary

Proposal Summary

Proposal	PGAs	Description	Benefit
Business/System Requirements	All	Complete Business Requirements (DOORS), and System Requirements	Enables Agencies to build to spec; Ensures that knowledge developed by CBP and PGAs is not lost.
PGA Message Set Additions	Many	Immediately add data elements required by other agencies to the major Import reporting messages (manifest, entry, entry summary)	Allow PGAs to work with data now. Allows Electronic instead of paper filing of PGA data (allows expanded use of RLF).
Large Automated Reports via Web Services	Many	Move large amounts of data (10s/100s GB) using an automated secure, method. Start with one report.	Enables low cost, secure - automated system exchanges so PGAs can use data now. Establishes specs that PGAs can build to
CERTS Enhancements	Some/ Many	Modify existing CBP data systems to auto-populate CERTS (Cargo Enforcement Reports and Tracking System) with both new and existing data elements.	Efficiency of process, accountability, transparency of inspection results for CBP/PGAs, promote enforcement
Foreign Trade Zone Account Structure	Four/ More (CBP, FTZ, IRS, TTB)	Complete FTZ account structure within ACE to allow for zone site information to be included.	Enhance tracking and enforcement efforts of PGAs concerned with FTZ sites.
Product Information for Risk Management	Most	Harmonize product-specific PGA codes (e.g., Global Trade Item Number)	Improve PGA jurisdiction and risk determinations. Reduce filing burden on importers.
Dun & Bradstreet Number (DUNNS)	Many/ Most	Alternate entity identifier for all parties to an import/export transaction	Unique standard (non-redundant) for all business entities. Reduce filing burden on importers.