

Advisory Committee on Commercial Operations Of Customs and Border Protection Twelfth Term

2012 Annual Report

The Advisory Committee on Commercial Operations of 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 12th term (2011 – 2012), 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 2012;
- Votes taken by COAC during 2012

Attached as appendices are the following:

- Appendix 1: Trade Facilitation Subcommittee CEE Recommendations
- Appendix 2: Role of the Broker Whitepaper
- Appendix 3: Master Principles Document
- Appendix 4: Air Cargo Subcommittee Recommendations, February 2012
- Appendix 5: CBP 5-Year IPR Enforcement Strategy
- Appendix 6: IPR Enforcement Subcommittee Recommendations
- Appendix 7: AD-CVD Summary & Recommendations
- Appendix 8: Bond CBP Form 301 Instructions - Predecisional

Respectfully submitted by the Trade Members of the 12th COAC Term

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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 is “jointly managed” between Treasury and DHS, and COAC’s name and mission subsequently were expanded to the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC)..

Objectives and Scope of Activities of the Committee (As spelled out in the COAC 12th Term Charter)

The COAC shall advise the Secretaries of the Department of the Treasury and the Department of Homeland Security on the commercial operations of Customs and Border Protection (CBP) and related DHS and Treasury functions. The COAC may consider issues such as: the development of advance electronic cargo information requirements, streamlining Customs procedures, and other issues related to trade facilitation and cargo security; safety of imports and protection of intellectual property rights, management by account and the interaction of all government agencies in the border environment.

Meeting Venues and Dates

COAC held four official (public) meetings during 2012 plus one Teleconference Meeting in 2013 as follows:

February 21, 2012	Washington, DC
May 22, 2012	Savannah, GA
August 4, 2012	Seattle, WA
December 4, 2012	Washington, DC
January 15, 2013	Washington, DC (Teleconference meeting)

Government officials from U.S. Customs and Border Protection including Acting Commissioner David Aguilar, Deputy Assistant Secretary of Treasury Tim Skud and Acting Chief of Staff, Office of Policy and Development from the Department of Homeland Security Ellen McClain, participated in the public meetings, along with numerous other U.S. Customs and Border Protection and Transportation Security Administration

personnel. The committee was particularly pleased with the presence of Ms. McClain at the meetings based on her past experience with Customs matters. The COAC members felt this showed an increased commitment by the Department of Homeland Security.

2012 Overview

The 12th COAC had been challenged by CBP with seven areas where they felt COAC could give U.S. Customs and Border Protection valuable feedback and guidance:

1. Management by Account/Trade Facilitation
2. Automated Commercial Environment (ACE) and International Trade Data System (ITDS)
3. Supply Chain Security, Including Air Cargo and Land Border Security
4. Role of the Broker
5. One U. S. Government at the Border
6. Intellectual Property Rights (IPR)
7. Antidumping and Countervailing Duties (AD/CVD)

These were the issues that the 12th COAC agreed to concentrate on in 2012.

Most of the COAC sub-committees met weekly or bi-weekly, to work on the numerous agenda items that Customs outlined for us about two years ago and ones that we have added during this two year session. We, and our CBP counterparts, put in significant time and effort and have seen the fruition of our work with substantial steps towards trade transformation.

CBP senior leadership championed the alignment of their procedures with that of the trade community, other partner agencies within the U.S. government, and even with partner agencies around the world in an effort to maximize security.

COAC and CBP worked together on a number of major issues, with some key results and promising steps in an agreed upon direction for others. That work entailed a process of “Co-Creation” to find new and innovative ways to facilitate trade flows and ultimately to increase economic competitiveness.

CBP established two Centers of Excellence and Expertise in test modes which worked extremely well. They were then expanded to a total of four centers in operation by the end of 2012. Six more were announced in November at the Customs Trade Symposium and are planned for 2013. Those companies that have joined the current centers are enthusiastic with the results so far. With industry based, account focused centers, CBP can concentrate their limited resources on higher risk shipments, both from a compliance and security standpoint.

Another area that COAC has long requested was to simplify the entry process. This is at least the 3rd COAC that has worked to bring simplified entry to fruition, although our vision is much wider than the current test which has begun. The stated goals of simplified entry have to be continually pursued. Those goals are:

- Expedited release of cargo
- Reduced transaction costs and,
- Enhanced cargo security

The extra requirements put on many imports by Congress and other government agencies make it increasingly difficult for U.S. companies to compete in the global economy. Therefore, COAC, the trade and CBP must continue the efforts to simplify the entry process.

COAC worked with CBP and other government agencies to efficiently meet their specific requirements while imposing the minimum burden on the importing community. The majority of inspections and holds of cargo are from these other agencies in their effort to uphold the requirements that Congress has stipulated for them. However, we must continue to work with these agencies, making them aware of the threat these increasing requirements make to our global economic competitiveness. The objective is to develop a system that allows them to attain their goals, minimizing the effect on the entry process for the trade.

Through the efforts of Customs, Treasury and COAC, we are jointly working to bring the other Government agencies together in one entry process to protect the health and safety of Americans using imported products while insuring that imports move smoothly and efficiently. Our joint aim is to get “One U.S. Government at the border.”

On the security side, the government, COAC and private industry worked together to develop and institute ACAS (Air Cargo Advance Screening), which provides enhanced security for shipments destined for the US. This was a joint effort not only of CBP and the trade but, also with the Transportation Security Administration.

Another area we’ve worked on but has not reached finality is the rewrite of Section 111 of the Customs regulations pertaining to Customs Brokers, not only those that work in or for Customs Brokerage companies, but also for all licensed brokers, many of whom work for importers, consultants or other trade entities.

COAC also worked diligently with CBP and made recommendations on strengthening the procedures to improve the collection of all of antidumping and countervailing duties.

We joined with CBP in trying to develop procedures which will facilitate better enforcement of our Intellectual Property Rights laws.

Customs is also addressing Exports and getting the export procedure and export data into ACE. COAC’s and the Trades message there is consistent – do not burden us with unnecessary requirements that adversely affect our ability to compete globally. Exports create a huge number of U.S. jobs, and we must remain economically competitive. At the Customs Symposium in November the Deputy Commissioner and the Chief Operating Officer highlighted their commitment to work closely with COAC and the continuing members for the 13th COAC have accepted that challenge. Secretary Napolitano, at that same meeting, stressed that same commitment by DHS to work closely with the trade in proposing the changes in the export procedures.

An extremely important area is COAC’s continuing support for ACE. There have been tremendous strides made in the last year and a half and COAC will continue to work with CBP to get ACE completed as quickly and economically feasible as possible.

Through all these joint efforts, the Customs and Border Protection personnel at all levels we have worked with have been diligent, thought out-of-the-box where necessary, and moved forward, even when we urged them at times to move faster and consider more trade sensitive alternatives.

At the end of the year, Customs leadership congratulated this COAC for their significant contributions and achievements and that was echoed in a number of magazine articles on our notable accomplishments and in numerous commendable comments received from the Trade on the outstanding results of the 12th COAC.

Trade Facilitation Subcommittee – Co-Chairs: Jeffrey Whalen and Jim Phillips

Centers of Excellence and Expertise (CEE)/Account Executives (AE)

In 2012 one of the focuses continued to be the Centers of Excellence and Expertise (CEE)/Account Executive (AE) concept as it was rolled out by CBP. The COAC Trade Facilitation Subcommittee discussed/provided input on various aspects of the CEE/AE that included:

Metrics:

The Subcommittee examined metrics that would demonstrate the effectiveness of the CEEs. These included:

- Reduction in the redundancy of CF 28's and CF 29's. The CEE/AE's could define a base year and evaluate the reduction of these forms.
- Through a better understanding of industries improve targeting effectiveness.
- Increase in the number of low and medium risk importers into low risk importers. Two measures of these transitions are: (1) The number of participants in the CEE/AE. How has active participation grown with the CEE/AE? (2) The number of participants within a CEE that have joined trusted trader programs such as Importer Self-Assessment (ISA) or Customs – Trade Partnership Against Terrorism (C-TPAT).
- Industry Specific Issues: There may be metrics that align with specific industries. For example, the pilots have shown more effective enforcement against counterfeit pharmaceuticals in the Pharmaceutical CEE.

Location of CEEs:

The Subcommittee extensively discussed the criteria relating to the location of the CEE's. The Subcommittee anticipates that the CEE's will serve as a resource to the broader trade community. In order to achieve their full potential, the CEE's must also foster trust and cooperation with the importing community. For these reasons, CEE's must be located in places to maximize the expertise that already exists in CBP and make the CEE's accessible to the industry stakeholders that they will serve. For these reason, the Subcommittee recommended that when evaluating the location of the CEE's, CBP should consider the following criteria (**Appendix 1**):

- Locations that permit routine communications and meetings with a large sector of the importing industry.
- CBP ports that process a large percentage of the entries that will be governed by the CEE.
- Recommendations of the Industry Advisory Committees.
- Political sensitivities of certain industries.

Resourcing of CEEs:

- The Subcommittee believed that the success of the CEE's will be dependent on adequately resourcing the CEE's. Consideration should be included not only to support the importers identified to be Trusted Shippers, but also support for the full range of compliance within an industry. At the same time, given limits on its overall resources, the Subcommittee acknowledged the balance that CBP must work to adequately staff the CEE's and to maintain routine operations in the ports.

Importers with Commodities that Cut Across Multiple Industries:

- The implementation plan for importers with commodities that cut across multiple industries must be further articulated.

Evaluation Criteria:

- The Subcommittee reviewed the draft Evaluation Report and supported the evaluative criteria in the report, but the metrics tend to focus on compliance and enforcement. The Subcommittee believed that the evaluation of the qualitative results of the CEE's is very important. Given the differences in industries, metrics may also vary by industry and will be an appropriate subject for the Industry Advisory Groups.

Trusted Traders:

- A consistent theme through the discussions of the Subcommittee has been that of the "Trusted Trader." While it is acknowledged that an ISA/CTPAT member would qualify as a Trusted Trader within a CEE,

the Subcommittee understands that highly compliant importers may not choose to join the voluntary compliance programs. The Subcommittee believes that further exploration must be undertaken to explore ways to recognize high levels of compliance outside of the more traditional methods for recognition.

Role of the Broker in the CEE:

- The scope of activities performed by a Customs Brokers for an importer may vary from importer to importer depending upon the importer's requirements. In some cases, the broker will be the third party that performs most of the import activities, such as filing import documentation and often including communication with CBP. In other cases, the importer may perform a significant number of the activities and work closely with the broker. From a high level perspective, we believe that the relationship between the broker, importer and CBP should remain the same. However, the point of contact at CBP will change. In certain cases, the appropriate party will contact the CEE instead of a local port or other CBP contact. The subcommittee collaborated with the Broker Subcommittee to create a white paper with recommendations that is attached (**Appendix 2**).

Trade Efficiency Survey

Another focus of the subcommittee was the Trade Efficiency Survey. The COAC Trade Facilitation Subcommittee continues to advise CBP on its various trade facilitation efforts. A component of this work includes establishing baseline industry metrics. These baseline metrics are essential in order to establish a benchmark for costs associated with importing goods into the United States. This benchmark can then be used to determine what facilitation benefits "save" the industry, and therefore can have a bearing on key partnership benefits CBP can offer the Trade.

Overview:

- COAC conducted a benchmarking survey in June 2012¹, and provided the results during our August 2012 COAC meeting. We reviewed the survey in detail provided recommendations to CBP. Additionally, the survey was provided by COAC to the International Trade Data Systems (ITDS) Agencies and the Border Interagency Executive Council (BIEC) through the One US Government at the Border Subcommittee. Additionally, COAC members communicated the results through their Industry Working Groups. We are encouraged by this dialogue, as we work to facilitate the bi-directional dialogue that help us lower the cost of doing business while ensuring the protection of our Homeland.

COAC Recommendations:

As a result of analyzing the survey results, COAC had the following recommendations for CBP:

- Visibility. With the development of the CEE's with many different industries, it is important for CBP to continue to collaborate with COAC to seek ways to improve and measure process and reduce dwell. While the survey attempted to collect the first wave of details, we recommend developing a set of metrics, inclusive of both facilitation and compliance/risk topics, in addition to their distribution cadence and audience. Accomplishing this within the Center Industry Working Groups, including broad participation from industry, will serve to create meaningful bi-directional dialogue that will generate successes in meeting the objectives of both CBP and the trade.
- Center Communication. We recommend that CBP continue to communicate on the role and status of the Centers. Providing more information and outreach on Centers, their status, their scope, and customer

¹ These assertions pertain to most survey respondents; results are not representative of the overall trade industry. *FY 2012 COAC Trade Efficiency Survey.*

support offerings will assist in the most beneficial application and use of the Centers. Consider posting webcasts from Center Directors, etc.

- Center Expansion. We recommend that CBP provide Center access to the service provider community in order to allow a better cross-view of an industry and the voice of the small and medium size enterprises within an industry.
- Knowledge Sharing. When shipments are stopped or paused at the ports, the results tell us the respondents are favorable to dealing with CBP, as compared to the PGA (in general). COAC recommends that CBP champion multi-directional field office specific knowledge sharing exercise between PGA's, CBP and the Trade, specifically around holds / freight stops to align best practices and identify process improvements. Accomplishing this review in conjunction with the Centers will ensure positive benefits for the trade. We anticipate that the metrics will reveal the positive impact to the trade in the areas of decreased freight dwell, improved targeting, and increased customer service.
- Integrated Customer Service Model. We recommend CBP advocate for an integrated customer service model with the PGA's. Synthesizing the current customer service design of CBP and PGAs will benefit both trade and security. Additionally, using the Centers to aid in the integration of a service model is most beneficial to impact processing times and freight dwell.
- Annual Trade Efficiency Survey. We recommend the continuation of an annual COAC survey to assist in prioritization, measure success, obtain satisfaction feedback, and begin establishing trends.

About the Survey:

The survey was designed to measure how effective CBP's trade facilitation efforts are at lowering the cost and burden associated with a company's compliance and operations efforts. The survey captured input on current, planned, and future facilitation efforts by respondent type and industry type. Additionally, the survey was also designed to capture trade priorities that can be used by CBP to provide meaningful partnership benefits.

The Report is organized into three key areas: Centers of Excellence and Expertise and Facilitation, Stops and Impacts, and CBP and PGA satisfaction. Each key area summarizes findings on particular survey questions. From the survey, highlights include:

- As prioritized by businesses, CBP's facilitation efforts should be focused on reducing CBP processing times, CBP holds, exams, and PGA processing times.
- 90% of respondents indicated their ability to file all required data electronically for U.S. Imports was a very important issue for the single window to resolve.
- A majority of companies spend up to 14 hours managing the lifecycle of a single entry.
- A one-day delay in the release of merchandise costs companies over \$700 for each affected shipment.
- The first 24 hours is critical to resolve CBP or PGA freight holds or exams; thereafter, respondents revealed multiple days.
- Majority of respondents were with companies filing anywhere from 100 to 99,999 entries per year.
- The survey was favorable to CBP's responsiveness to addressing issues, indicating a good level of customer service at the ports when issues arise. Specifically, 53% of the respondents stated that most issues are communicated in 30 minutes or under, and over 90% of the time the respondents have stated that the end result was positive versus a 9% a "not-positive" response.

Simply put, CBP and PGA programs or efficiencies that ultimately decrease entry lifecycle processing times and decrease freight dwell are significant motivators as they contribute to reducing the overall cost of doing business for those companies involved in this survey. We recommend publishing metrics that demonstrate the impact in these two areas, as they ultimately work to increase focus and participation in key areas CBP is working to address.

As an inaugural survey, COAC found the results to be quite useful in a number of different areas. While the survey provided feedback on overall costs and time, and additionally provided feedback on the specific touch-points between CBP and companies, we agree that this is only the beginning. Working with CBP to aid in meaningful metric development is a necessary immediate next step. Additionally, COAC plans to reissue this survey on an annual basis to assist in prioritization, measure success, obtain satisfaction feedback, and begin establishing trends.

The survey can be found using the following link:

http://www.cbp.gov/sites/default/files/documents/coac_eff_survey.pdf.

Residue

The ongoing deliberations related to residue² were discussed and determined to fall under the trade facilitation subcommittee's area of responsibility. A work group was formed in June to liaison with CBP and other affected stakeholders toward potential recommendations on behalf of COAC. Following numerous discussions, the following actions have or will be initiated:

- **Test procedures:** CBP will initiate a test in the latter part of 2012 to evaluate suggested procedures.
- **New FAQ's and enforcement:** New frequently asked questions with responses will be drafted and formal enforcement of earlier suggested provisions will be withheld pending results of the test.
- **Outreach:** CBP will develop webinars to ensure the reasonable outreach to all stakeholders.
- **Interagency Cooperation:** CBP has taken the initiative to enter into discussions with other federal agencies potentially impacted by new regulations.
- **Valuation:** Highly cognizant of the need for safety and control, CBP recognizes that most residue is not weighed, gauged or recognized as an asset in commercial practice and, therefore, has no commercial value.
- **Modes of transportation:** Provisional procedures to date have focused on truck and rail modes whereas all modes must be considered. Current thinking recognizes that each mode inherently differs from each other and some might already exhibit tight controls thereby suggesting reasonable alternatives to reporting.

Full consideration will be given to the need for safety, security and control, aligned with the need to maintain a reasonably economic infrastructure.

One U. S. Government at the Border – Co-Chairs: Michael Ford and Ted Sherman

The One U.S. Government at the Border Subcommittee conducted bi-weekly conference calls and several in person meetings during 2012 to address the challenges facing both CBP and the trade with respect to managing the import supply chain in the face of disparate reporting, communication, and risk management practices across the numerous government agencies involved in regulating imported merchandise. The overall goals of the Subcommittee remained:

1. To identify redundancies that might exist today with CBP as well as all Partner Government Agency (PGA) requests for documents and data.
2. To recommend, if possible, the use of a single document imaging system by the Trade, CBP, and the PGAs involved in the import process.

² For the purposes of this document, the term residue refers to the amount of material left in a container or tank, after discharge of the product, resulting in a small amount still remaining in the container when it reenters the United States.

3. To recommend a partnership program for Importers that will be recognized by CBP as well as all PGAs, acknowledging an Importer's secure or trusted shipper status.

The purpose of the above stated goals was to lower costs, increase competitiveness and increase ease of doing business, ensuring that a modern business model is being used for importing goods into the United States.

As the subcommittee continued its work, including face-to-face meetings with representatives from Participating Government Agencies (PGAs), it became clear that the issue of "trusted partner" programs/designations, across all agencies, must be addressed. Additionally, the subcommittee felt that the enormity of the task in moving the U.S. to a "One Government at the Border" approach to managing trade would involve working at a strategic level, in particular via engagement with the Border Interagency Executive Council (BIEC). To that end, the Subcommittee developed, and the full COAC recommended adoption of, the "One U.S. Government at the Border" Master Principles Document (**Appendix 3**). It is hoped that this document, which draws upon key elements of the National Supply Chain Security Strategy and the World Customs Organization (WCO) SAFE Framework, can be used as a set of principles that will guide CBP and other U.S. government agencies as they work to automate, streamline, and harmonize import requirements, and as important work continues in the development of a holistic, "whole of government" approach to segmenting risk and defining "trusted" traders in the import supply chain.

This work continues in the 13th COAC, which carried forward the One U.S. Government at the Border Subcommittee with a focus on the following priorities:

- Implementation of action items from the One U.S. Government Master Principles Document
- Driving a government-wide approach to partnership programs
- Overcoming hurdles to greater information sharing between PGAs
- Continuing support for implementation of "single window" automation
- Leveraging COAC to obtain Trade Community feedback via a survey on how other government agency holds are impacting cargo processing and trade facilitation efforts.

Air Cargo Security Subcommittee – Chair: Barbara Vatie

During 2012, the COAC GSCS Air Cargo Subcommittee ("ACS") reported at the February, May, August, and December meetings. The ACS proposed recommendations to the full Committee during 2012, in February and in December. Both sets of recommendations passed COAC votes and were approved by the full Committee. A summary of these 2012 activities follows.

Overview and Objective:

The ACS expected to identify ACAS-related stakeholder issues and impacts by monitoring the ACAS pilot among air cargo supply chain participants such as air carriers and freight forwarders, and to formulate recommendations to assist in developing the framework for policy changes informed by ACAS pilot results. At the same time, the ACS, TSA and CBP worked on finalizing an ACAS Strategic Plan to move from Pilot phase to a regulatory program. Various issues ranging from lack of prior experience with foreign air freight forwarders not regulated by CBP, competing business interests and supply chain knowledge levels amongst subcommittee members representing diverse air cargo supply chain ACS participants such as Express Carriers, passenger and heavyweight cargo carriers, and large multinational air freight forwarders vs. small US-based brokers with an overseas agents, prevented development of a Strategic Plan that was approved by all stakeholders. In February, CBP released a "draft" plan that had not been fully adjudicated by industry comments but was nonetheless posted to the public

CBP.gov website; that plan was never subsequently updated to incorporate key private sector concerns. The major issue for industry was the CBP policy requirement for duplicative data from multiple supply chain participants resulting from a CBP unwillingness to accept “AMS” House air waybill level data submitted for ACAS adjudication as meeting the legal AMS requirement.

By February 2012, more than 2 years after the Yemen printer cartridge incident that precipitated ACAS, although The Express Carrier industry had been participating in ACAS with 2 years of informed pilot results, the passenger airlines/freight forwarder pilots had barely begun, and with very limited participation. Despite this disparity, CBP determined to move forward with regulatory action on both the passenger carriers and the Express Consignment Operators (ECO).

Recommendation - February 2012:

As a result of the CBP stated desire for concurrent regulatory action on both the express industry and the passenger airlines despite the pilot progress inequities, (i.e., from the passenger carriers’ perspective regulatory proposals could not have been informed by the results of a full pilot program), COAC made the following recommendations (**Appendix 4**):

1. To leverage pre-departure House AWB data for both ACAS and AMS to eliminate transmission of duplicative data from multiple entities.
2. Make a minor regulatory change that would allow air freight forwarders qualified by CBP to directly transmit AMS, even if not meeting existing ABI filer/FIRMS code requirements. This would provide the policy framework needed for CBP to use the ACAS transmission as an AMS transmission, rather than requiring both the forwarder and the airline to transmit identical data at different times.

This recommendation was passed by the full COAC. CBP OFO responded generally to the work of the Subcommittee in August, without addressing specific policy recommendations.

Recommendation – December 2012:

In the absence of specific activity relating to the recommendations made the ACS in February, the inability to expand pilot participation amongst the freight forwarders using passenger airlines, and as a result of the Federal Register notice announcing a 6-month pilot program prior to initiation of regulatory action, the ACS made another, very specific and budget-neutral policy recommendation during the meeting which was passed by the full COAC. This recommendation was that CBP include IATA air freight forwarders in the list of entities eligible to file AMS cargo manifest data by adding a fifth option under 19CFR122.48a (c)(1).

It is unclear whether the December 2012 recommendation will be addressed by CBP with any more consideration than the February recommendations were given. It may be that this is a topic on which CBP is simply not inclined to incorporate expert stakeholder advice in the development of new programs and private sector engagement. However given the commitment by two separate Commissioners that CBP would not impose redundant, duplicative data submission requirements on Trade, it is likely that the issue will continue to be raised and be debated, especially if CBP initiates a regulatory mandate for duplicative data from ACAS freight forwarders as well as AMS passenger airlines.

February 21, 2012 Summary

1. C-TPAT Export: Discussions among the subcommittee and the trade and between the subcommittee, trade and CBP are ongoing. The subcommittee has considered different approaches such as “flipping” the C-TPAT importer criteria to exports and using a check list similar to AEO in Europe. A consensus on these or other approaches has not been attained. Accordingly, the subcommittee is interested in details from CBP for what we understand is to be a pilot in the near future.
2. C-TPAT Questions Included in Regulatory Audit Focused Assessments: It has come to the subcommittee’s attention that C-TPAT questions are being requested as part of Focused Assessments. We plan to request additional information and discuss with CBP. The subcommittee is concerned that including C-TPAT questions as part of a focused assessment may damage the voluntary nature of the C-TPAT program.
3. National Strategy for Global Supply Chain Security: The subcommittee compliments the work undertaken to create the strategy and in general supports the goals and objectives of the strategy. The COAC is eager to work with the Cross Sector Supply Chain Working Group. We look forward to being provided more information on the strategy including plans for implementation and engagement with the trade throughout the process. The subcommittee will submit more detailed comments and possibly recommendations to the full committee in the near future.
4. United States – Canada Beyond the Border: A Shared Committee For Perimeter Security And Economic Competiveness: The committee compliments the work done on the Beyond The Border Action Plan. In general, the subcommittee supports the shared vision for perimeter security and economic competitiveness. We look forward to being provided more information in various meetings that are planned that include COAC members. Based on these discussions, the subcommittee will submit more detailed comments and possibly submit recommendations to the full committee.

May 22, 2012 Summary

1. C-TPAT Export: As reported at the last meeting, discussions among the subcommittee and the trade and between the subcommittee, trade and CBP are ongoing. The subcommittee was advised that the C-TPAT Export pilot is in initial development stages and that CBP would discuss with the subcommittee when further work has been completed. The subcommittee plans to discuss with the full COAC what elements of C-TPAT for importers might be applied to C-TPAT export.

Additionally, the subcommittee requests that CBP provide an update on their efforts to seek input on proposed C-TPAT criteria for exports. The subcommittee further suggests that CBP review the export security processes already in place at subcommittee member facilities as a means of obtaining input and examples.

2. National Strategy For Global Supply Chain Security: On April 30, 2012, the combined COAC Global Supply Chain Security Land Border and Air Cargo subcommittee members participated in a 2-hour webinar to discuss the Strategy. The two main goals of the Strategy are to 1) promote the secure and efficient movement of goods and 2) foster a resilient supply chain. DHS was provided and continues its efforts to gather feedback on Strategy implementation and is working on a comprehensive way of moving forward with implementation. The report will be completed by January 2013.

3. United States – Canada, Beyond the Border: A Shared Committee For Perimeter Security And Economic Competiveness: As previously reported the committee compliments the work done on the Beyond The Border Action Plan. In general, the subcommittee supports the shared vision for perimeter security and economic competitiveness. While waiting for the governments to determine data to be released the subcommittee discussed with CBP the method to review/comments. It was decided that the joint land border / air subcommittee would work on comments. Eventually CBP/CBSA released the presentation from the Niagara Falls meeting to the COAC and asked that the subcommittee focus on the items discussed at Niagara Falls. Based on these discussions, the subcommittee will submit more detailed comments and possibly submit recommendations to the full committee.
4. It was brought to the attention of COAC at the Trade Symposium that Foreign Trade Zones (FTZs) and Bonded Warehouses do not have C-TPAT status. The regulations that govern FTZ and bonded warehouse operations require that strict security measures be in place at each FTZ or bonded warehouse facility. Because of these requirements, these locations should be given C-TPAT certified status automatically, thus allowing importers who ship to FTZs and bonded warehouses from Canada and Mexico to use the FAST lane for their shipments.
5. The C-TPAT Program Acting Directors have done a commendable job in overseeing C-TPAT activities. COAC is concerned that the lack of a permanent director in this position may be stifling the ability for the C-TPAT program to grow. COAC recommends that CBP hire a permanent C-TPAT Director as soon as possible to allow the C-TPAT program to continue to grow and change to meet the ever-changing supply chains.

August 15, 2012 Summary

Going into the year, the subcommittee had six carryover recommendations. The update for those action is below:

1) Establish Tier 3 Status for U.S./Mexico and U.S./Canada Highway Carriers

Many C-TPAT certified carriers focus on supply chain security best practices. These carriers should be recognized for their multi-layered approach to tracking the movement of tractors and trailers, as well as other innovative methods implemented to improve supply chain security. Some of the possible benefits of Tier 3 status include recognition from CBP and from potential customers; invitations to participate in pilot programs where available; direct communication with C-TPAT program leadership; and input in developing new security requirements and programs.

The subcommittee is interested in learning what input was received from the industry regarding this proposal.

2) Allow SVI Number Query Access for All Users

Property brokers and other participants in the supply chain are frequently asked to make arrangements with transportation providers and Customs brokers. The property brokers and other third-party logistics providers do not have any way to confirm the C-TPAT status of the transportation providers. The COAC requests that access be given to the public to verify the status of C-TPAT participants by looking up the SVI number online. The recommendation is to do a positive lookup by SVI number, not by company name or status.

We understand that this option will be included in the upcoming release of the web portal. Recent discussions implied that this option will only be available to C-TPAT members. We urge CBP to consider providing this option to the public,

3) Develop a C-TPAT Status for Exporters

CBP and the subcommittee are in ongoing discussions on C-TPAT for exporters. Topics have included: CBP's export pilot, challenges that may be unique to each mode of transportation, and continued discussion on flipping the current import criteria to exports. Specific areas of interest include:

- Should export requirements be added to existing requirements or be separate
- Application of TSA requirements to meet air shipment C-TPAT requirements
- Security requirements of supply chain partners and export customer including consideration of existing export regulatory requirements (denied party and other bad guy lists, licenses, etc.)
- Seal application and cost
- Recognition of participation in C-TPAT for export by Customs in destination country
- Due to complexities ocean shipments will be first focus

It is expected that the C-TPAT working group that will be created shortly will focus on this topic. Additionally, collaboration will take place with the Export subcommittee that is examining the overall export process. C-TPAT for exports is one element of overall exporting.

4) Obtain User Input for C-TPAT Web Portal 2.0

Nothing new to report.

5) National Business Continuity Management Template

CBP has engaged in business resumption exercises in a number of land border locations in the past several years. CBP has made a template available on the website for use by the ports. The subcommittee would like an update on this process and a better understanding of the communication process at the ports.

6) Establish a C-TPAT working group to operate under this subcommittee.

The subcommittee has created a draft mission statement and objectives for the working group. Additionally, a list of suggested participants has been created. Once agreed to by CBP and the COAC initial meetings will be proposed. It is expected that the first big item to work is C-TPAT for Exports and collaboration with the COAC Export committee.

Beyond the Border

Under Tier One, US/Canada are to harmonize, by December 2013, two flagship trusted trader programs – known as C-TPAT and PIP. Changes are designed to encourage new membership, especially for small and medium-sized enterprises (SMEs). Applicants will now be able to apply once for both programs and will receive a similar package of benefits, such as access to FAST lanes at specific locations starting in mid-2012.

Under Tier Two, both countries will work to align their respective border facilitation programs, known as CSA and ISA, for high volume, trusted shippers. Taking the best from each program and introducing new streamlined processes will provide a suite of new benefits to shippers. Further, focused consultations with tier two members will look for ways to enable them to more efficiently manage the paperwork associated with shipping high volumes across the border.

Ms. Hinojosa has provided very detailed updates on most of the initiatives. CBP/CBSA is making progress on a number of the elements of the initiative including pilots. However, significant work remains to reach an agreement on Tier II.

Information that has been recently posted to the DHS Beyond The Border web site at:

<http://www.dhs.gov/beyond-border-shared-vision-perimeter-security-and-economic-competitiveness>.

- Considerations for United States – Canada Border Traffic Disruption Management
- Fact Sheet: Pre-clearance Initiative Pilot Project on Import Re-inspection Activities for Fresh Meat (PDF, 2 pages - 86 KB)
- Fact Sheet: BTB United States – Canada Law Enforcement Cooperation
- Fact Sheet: BTB Facilitating Travel at the United States - Canada Border
- Fact Sheet: BTB Key Questions and Answers
- Fact Sheet: BTB Pre-Inspection and Pre-Clearance
- Fact Sheet: BTB Statement of Privacy Principles
- Fact Sheet: BTB United States - Canada Economic Relationships
- Fact Sheet: Air Cargo Shipping Simplified Between Canada and the United States

National Strategy for Supply Chain Security

Nothing new to report. The subcommittee is eager to understand more about how the high-level strategies will be implemented.

December 4, 2012 Summary

The Global Supply Chain Security – Land Border Subcommittee welcomes Bryan Picado as Acting Director of C-TPAT. We look forward to working with Mr. Picado in the future. Since the August COAC the committee met and continued to discuss ongoing programs and previous recommendations.

Ongoing programs/initiatives include:

Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness: CBP/US government agencies continue to work with Canada Customs (Canada Border Services Agency)/Canada departments to meet the terms of the agreement. Programs have been agreed to on Canada Law Enforcement Cooperation, Pre-clearance, Facilitating Travel and air cargo simplification. Information may be found at <http://www.dhs.gov/beyond-border-shared-vision-perimeter-security-and-economic-competitiveness>.

Twenty-first Century Border Initiative: On May 19, 2010, the United States and Mexico established the Twenty-first Century Border Initiative and declared their intent to collaborate on enhancing the U.S. Mexican border. The declaration expressed a desire to enhance public safety, welcome lawful visitors, encourage trade, strengthen cultural ties, and reduce the cost of doing business in North America. CBP provided updates on certain initiatives and it was suggested that a status web site be created similar to the Beyond The Border web site.

Trusted Trader Programs: CBP formed a Trusted Trader Work Group that included participation by COAC member Ted Sherman. A briefing was provided and input from the subcommittee was collected. More information is expected in the near future.

Previous Recommendations include:

1) Establish Tier 3 Status for U.S./Mexico and U.S./Canada Highway Carriers

Many C-TPAT certified carriers focus on supply chain security best practices. These carriers should be recognized for their multi-layered approach to tracking the movement of tractors and trailers, as well as other innovative methods implemented to improve supply chain security. Some of the possible benefits of Tier 3 status include recognition from CBP and from potential customers; invitations to participate in pilot programs where available; direct communication with C-TPAT program leadership; and input in developing new security requirements and programs.

The subcommittee is interested in learning what input was received from the industry regarding this proposal.

2) Allow SVI Number Query Access for All Users

Property brokers and other participants in the supply chain are frequently asked to make arrangements with transportation providers and Customs brokers. The property brokers and other third-party logistics providers do not have any way to confirm the C-TPAT status of the transportation providers. The COAC requests that access be given to the public to verify the status of C-TPAT participants by looking up the SVI number online. The recommendation is to do a positive lookup by SVI number, not by company name or status.

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It is expected that the C-TPAT working group that will be created shortly will focus on this topic. Additionally, collaboration will take place with the Export subcommittee that is examining the overall export process. C-TPAT for exports is one element of overall exporting.

4) Obtain User Input for C-TPAT Web Portal 2.0

Nothing new to report.

5) National Business Continuity Management Template

CBP has engaged in business resumption exercises in a number of land border locations in the past several years. CBP has made a template available on the website for use by the ports. The subcommittee would like an update on this process and a better understanding of the communication process at the ports.

6) Establish a C-TPAT working group to operate under this subcommittee.

The C-TPAT working group has been put on hold pending the work of the Trusted Trader working group. The GSCS-LB subcommittee requests a formal update of the activities of the Trusted Trader Working Group so that we may have a better understanding of the path for C-TPAT and Trusted Trader programs.

Role of the Broker Subcommittee – Chair: Bob DeCamp, Vice Chair: Jeff Coppersmith

The executive summary regarding the work of the broker subcommittee within COAC includes the actions and progress conducted during the second half of the 12th COAC, the calendar year 2012. The broker subcommittee was initially formed during the 11th COAC with much of its focus culminating in significant recommendations which were presented in December of 2011. Those recommendations related to modernization, CBP efficiency, education, professionalism and regulatory revision.

With the subcommittee's primary mandate being completed, work continued during 2012 in support of the initial recommendations, to assure that they were being considered and brought to fruition. In addition, the broker subcommittee recognized its overlapping objectives with several other subcommittees in their endeavor to pursue goals that would benefit from the meaningful input from this subcommittee. Therefore, our work during 2012 may be characterized as relating to reinforcement and collaboration.

Our subcommittee work and recommendations were accepted and endorsed by the full COAC. The continuance of and ultimately the completion of ACE remains the foremost recommendation. Work to complete ACE continues today. Other key recommendations and topics relate to education, professionalism, and an updating of the regulations governing brokers under 19 CFR part 111. Continuing the pursuit of education within the industry toward achieving a higher level of professionalism is currently under study. Modernization of the regulations governing brokers, their authority and responsibilities is now being reviewed. Allowing qualified brokers to pre-certify importers under the Importer Self-Assessment Program has been completed and a test will commence during 2013. This program brings opportunity to the private sector and drives quality and security within the importing community. We applaud this movement and look forward to positive results.

The broker subcommittee partnered with the anti-dumping and countervailing duty subcommittee to explore and jointly evaluate the trade process toward promulgation of more cooperative work between government and private sectors. The overall intent continues to be compliance with applicable laws, policy and to enhance enforcement. We also recognize the need to improve AD/CVD risk assessment and more effective approaches toward deterring violations. Debate and examination of the proactive and retroactive methods of trade remedies has been considered at length.

The bond subcommittee joined with the broker subcommittee on several issues including proposals to update Customs 5106 form noting the benefits that may arise from this type of modernization. Feedback from both perspectives was presented to CBP for consideration. In addition, the subcommittees partnered to consider policy changes on late petition procedures for liquidated damages and the means by which these regulatory changes may be communicated to the trade community. Our goal was to achieve simplification, avoid unintended consequences and ultimately achieve efficiency regarding both of these issues.

Robust collaboration between the broker and trade facilitation subcommittees resulted in COAC recommendations regarding the new and evolving Centers of Excellence and Expertise (CEE's). This joint work took into account importers current capacity and evolving trade requirements. Both the attributes and the potential concerns relating to CEE's were diligently evaluated and presented to CBP for consideration (**Appendix 2**). This joint work leveraged our experience and expertise and helped to create a better and more efficient final recommendation.

The broker subcommittee was happy to present opinions regarding the regulatory impact on small and medium sized enterprises (SME's) in numerous areas including anti-dumping, bonding and procedural change. The subcommittee was also active in expressing their concerns and opinions regarding the regulations governing brokers in both industry and private sector businesses including the establishment of permits, bona fides, overall licensing and the Custom Broker examination. Finally, many subcommittee members were happy to comment on ongoing issues such as the means by which to handle residue within existing statute and federal regulation.

Export Subcommittee – Chair: William Ferguson

COAC formed a Subcommittee in July 2012 to work on three specific areas of the future vision for the export process. The team members make up several members of Trade (importers, carriers and brokers), as well as several key US CBP personnel.

Trade Co-chairs: Bill Ferguson and Michael Ford

Government Co-chair: Dan Baldwin and Karen Leniart

Objectives and Scope of Activities:

After engaging in full deliberation and discussion, the Subcommittee advised the COAC on issues related to export procedures, enforcement, and trade facilitation. Specifically, the Subcommittee conducted its work in support of the priorities and strategies of the President’s National Export Initiative and the National Strategy for Global Supply Chain Security. The Subcommittee conducted its work throughout the 12th Term of COAC and anticipates the Export Outbound Subcommittee work will be continued into the 13th term of COAC.

The Statement of Work for the Export Outbound Subcommittee was to:

- Identify existing programs that could be leveraged, both within the U.S. Government and globally.
- Assess current export policies and the impact of international policies and provide recommendations based on the findings.
- Provide recommendations for a strategy to harmonize automated data processing systems and sharing of information.

Subcommittee Final Report Update: The following is an update of the Subcommittee’s work since its inception July 17, 2012:

Formulation of the Aforementioned Statement of Work

Identification of Existing Programs

The Subcommittee discussed in depth the pursuit of Mutual Recognition under a Trusted Trader concept based on WCO Safe Framework of Standards and C-TPAT as governing documents. The Subcommittee identified and discussed the challenges facing Trade and Government of using the current import model for exports. The current security program that TSA manages for Air carriers, as well as for Air export consolidators will need to be reviewed. The work group was charged to leverage all security aspects that exist and avoid any duplication that could be created in new future processes.

After discussion with CBP and key PGAs (in particular CENSUS), it is expected that the future of export security and trade facilitation under Mutual Recognition Agreements with foreign partners must depend upon an advance data model rather than the current post departure model available to certain approved shippers. If advance data for exports is required, many shippers/exporters have expressed a concern that it is a new process that will add cost and time to exporting, especially in cases where AES Option 4 is used today. The impact on Air and Truck shipments will have to be carefully evaluated, as well as impact on all supply chain entities such as freight forwarders. The current expedited handling of priority Air and Truck shipments might likely be protected for certain approved sectors under a trusted trader concept. In addition to identifying benefits under an export trusted trader model, the Subcommittee will continue to work with CBP and the PGAs to minimize any negative impacts of the proposed advanced data requirement for exports.

Identification of Incentives and Benefits

The Subcommittee, while fully understanding what benefits would likely be available to AEO consignees as outlined in the SAFE Framework, is working to identify significant incentives and benefits for Consignors and their agents. The committee did not have sufficient time to work through with trade issues surrounding a revised Option 4, or moreover explore development of C-TPAT for Exports. The subcommittee acknowledged a strong voice from trade warning that exports are not imports and different procedures and criteria will be required for exports. These areas need much more work going forward.

Other Government Agency Involvement

The Subcommittee identified the need for extensive involvement of PGAs in determining the new export process, including roles each would play in security screening and facilitation. The subcommittee was afforded several PGA presentations and good PGA participation in committee meetings. Going forward the Subcommittee will request direct participation in ITDS committee meetings as much of the work overlaps with ITDS discussions.

Industry Outreach and Feedback

As of the closing of the 12th Term COAC, trade outreach has been very limited. The postponement of the East Coast Trade Symposium intended to showcase recent Mutual Recognition achievements, particularly with Japan, and to showcase CBP Export/Outbound reform, had not occurred, and however, some limited outreach has been accomplished in smaller forums and was met with great interest. The Subcommittee concludes that pursuit of a trusted trader (C-TPAT-like) program for certain export trade sectors presents challenges. The produce and forest product industries, for example, have expressed reservations, as it is very difficult today for these sectors to meet requirements for data even in the post departure environment afforded under Option 4. For certain sectors, C-TPAT for Exports is perceived to be a significant investment with unknown benefits. The Subcommittee recommends that this matter be taken up early in the 13th Term of COAC either by this committee or by a separate working group under a COAC subcommittee.

Alignment with ACE/AES

The Subcommittee participated in several ACE presentation sessions with the CBP Export Project Team to understand how ACE will manage export data under the conceptual advance data concept and to confirm current design covers all required functions. It was agreed that the role of the Subcommittee will be to keep the CBP Export Project Team informed of its deliberations and the CBP Export Project Team will, in turn, confirm to the Trade what is in or out of scope of the ACE/AES project. This two-way communications process will assure the best opportunity of success for export processing going forward under an advanced data scheme.

Communication of Trusted Trader Status Customs-to-Customs

Under Mutual Recognition, Customs-to-Customs needs to communicate “Trusted Trader” status electronically in order for destination customs to apply benefits under Mutual Recognition. The Trade and CBP have engaged in discussion regarding this communication and have identified challenges, especially for EU recognition.

Way forward:

The Subcommittee will expect to continue into the 13th session of the COAC.

The Subcommittee must continue to align with PGA to assure all voices are heard and accommodated in the new direction.

It is imperative that CENSUS complete its rulemaking revisions if any in regard to changing policies especially in regard to post departure filing.

The development of C-TPAT for Exports must progress to identify criteria for the Export Outbound security model and to align with current export operational processes.

The committee recommends that the IUSG Master Principals Document be developed to fully cover exports, and continue to be a guiding document going forward.

Intellectual Property Rights (IPR) Enforcement Subcommittee – Chair: Karen Kenny, Co - Chair Scott Childers

The IPR Enforcement and Facilitation Subcommittee conducted bi-weekly conference calls during 2012 to address the challenges facing both CBP and the trade with respect to IPR facilitation and enforcement, continuing the work completed during 2011. The Subcommittee used CBP's 5 Year IPR Strategy as its guideline for those calls (**Appendix 5**).

During 2012, the Subcommittee provided advice and recommendations to CBP in all of the key areas of CBP's IPR Strategy. The Subcommittee held active discussions with a broad range of stakeholders to insure we incorporated the views and addressed the concerns of all industries impacted. The group continued to work with CBP to explore the COAC's nine recommendations from 2011 (see **Appendix 6** - copy of IPR Enforcement Subcommittee recommendations) and began discussions on several new topics including IPR Enforcement in the small package and mail environments, refurbished goods, metrics to measure Intellectual Property Rights enforcement and facilitation and CBP's Interim Rule and Solicitation of Comments on the Disclosure of Information for Certain Intellectual Property Rights Enforced at the Border.

Throughout 2012, the IPR Subcommittee held various working group meetings to further explore the Distribution Chain Management serialization concept. Several presentations were made outlining various ideas and options along with active discussions regarding the potential practical application of the concept in global supply chains. Two pilots were discussed including one that would include physical authorization of the cargo and another virtual concept based on relationship recognition that would be targeted toward third party shipments allowing CBP to better segment risk.

During the year, the Subcommittee worked with CBP on its microscopy recommendation which culminated in CBP's acquisition of digital microscopes to improve enforcement against counterfeit and pirated goods. Subsequently, the COAC distributed an outreach document to the trade to socialize the use of the microscopes and to encourage more rights holders to share training with CBP as they recognize and develop new ways that the microscopes can be used to identify counterfeits.

In the last quarter of 2012, the IPR Subcommittee began discussions about IPR enforcement and facilitation with respect to refurbished goods. A work group meeting was held to facilitate bi-directional education between CBP and refurbished goods importers. In addition to the knowledge building that occurred, the meeting produced several new ideas that can be explored during the COAC's 13th term.

Other topics discussed during the last quarter of the year included the process by which CBP might add Importer of Record numbers to the existing Recordation Database to better segment risk, IPR enforcement metrics that could measure the impact of new initiatives on CBP's IPR enforcement goals and a discussion about whether the Distribution Chain Management concept might provide some solutions to the IPR challenges CBP is facing in the small package environment.

In the next COAC term, the Subcommittee will be opened as a working group under COAC's Trade Enforcement and Revenue Collection Subcommittee. That working group will continue to collaborate with CBP to explore its previous recommendations and to develop additional recommendations regarding the facilitation, enforcement, deterrence, modernization and partnership segments of CBP's IPR enforcement mission.

Antidumping and Countervailing Duties Subcommittee – Chair: Matthew Fass

In 2011, the Subcommittee on Antidumping and Countervailing Duties began its work for the 12th Term of the Advisory Committee on Commercial Operations of Customs & Border Protection (COAC). In 2012, the group continued to meet, focusing on priorities and issues of concern identified in 2011.

The subcommittee continued their work in the following areas:

- Strengthening partnerships between CBP and the trade community to promote compliance with AD/CVD laws, policy and enhance enforcement
- Improving the effectiveness of AD/CVD risk assessment through better identification of high and low risk shipments and/or entities
- Identifying effective approaches for deterring AD/CVD violations
- Supporting other steps to enable more effective administration of AD/CVD operations.

At the conclusion of the 2011 year, the COAC recommended the following: “The COAC recommends that CBP work together with other agencies (U.S. Department of Treasury and the Department of Commerce) to jointly design a prospective AD/CVD duty assessment and collection system. Because such system will require legislation, we recognize that the agencies should also consult with the relevant Congressional committees of jurisdiction throughout the development process.”

During the 2012 year, the COAC made two additional recommendations (**Appendix 7**) and we make note of the status of the recommendations:

“The COAC recommends that U.S. Customs & Border Protection, in conjunction with the Department of Commerce, research and co-create with input from the trade community, a new AD/CVD reporting tool or database. The COAC believes there should be a better tool or database available to the trade community so importers and brokers can access the latest AD/CVD information, ensuring their entries are correctly filed.”

- CBP has created a HTS/Origin/Case # database that is in an excel format and it is available on the www.cbp.gov website so members of the trade community may download the data and utilize it to assess their parts databases as well as ACE trade data.
- The database has been updated a number of times since it was initially published and the AD/CVD subcommittee believes the trade community finds this to be a useful tool in their compliance toolbox.

“The COAC recommends placing continued emphasis on the type of outreach and bi- directional education as exemplified by the recent intra-agency webinar presented by CBP and the Department of Commerce to an audience of CBP Import Specialists in the extruded aluminum anti-dumping case.”

- The AD/CVD subcommittee acknowledges the detailed documentation posted in conjunction with the aluminum extrusions anti-dumping case, and we continue to encourage CBP and the Department of Commerce to bring bi-directional education on new, highly visible and complex cases to the trade community.

Topics of discussion during the subcommittee meetings and the public meetings were broad in scope and captured as follows:

- The AD/CVD subcommittee wished to have a better understanding of the order process, in particular the scope review process to promote compliance with AD/CVD orders. The subcommittee was unable to accomplish this task in the 2012 calendar year. The scope review process appears to relate to the overall CBP duty collection and enforcement issues.
- Discussed the enhanced communications outreach efforts by CBP to various stakeholders with the goal of promoting increased compliance with AD/CVD orders.
- Discussed and provided feedback regarding the enhanced Single Transaction Bond (STB) initiative announced and implemented by CBP during 2012 in an effort to target individual shipments deemed to pose particular risk to CBP revenue collection.
- Notice that the President signed a law allowing Commerce/CBP to place non-market economies under the Countervailing Duty statute on March 13, 2012. It was noted that the Department of Commerce determines when a country shifts from a non-market to a market economy.
- CBP announced additional training outreach for their inspectors and import specialists in conjunction with the steel industry.
- The AD/CVD subcommittee received reports on CBP RED team work and validation efforts, including a focus on Power of Attorney validations and origin verifications.
- The AD/CVD subcommittee reviewed a DRAFT 5 YR CBP Strategy on AD/CVD document, and provided feedback to CBP.
- The AD/CVD subcommittee held joint meetings with three other subcommittees whose focus dovetailed with this group: Intellectual Property Rights, Role of The Broker, and Bonds.
- The Homeland Security Investigations (HSI) provided an overview to the AD/CVD subcommittee on their investigations.
- CBP has made program modifications to allow entry filers to file type 03 Remote Location Filing (RLF) entries. In addition the ACE program has been expanded to include type 03 entries. CBP is encouraging the trade community to utilize these new software capabilities to improve AD/CVD entry filing.
- The AD/CVD subcommittee encourages CBP to engage with the Department of Commerce, strengthening communications in the following areas:
 - Verification of import origin and transshipment issues.
 - Strengthening “New Shipper” requirements
 - Speedy updates on current case information for the Excel reporting tool as well as the CROSS AD/CVD database.

In addition to this work, the subcommittee found itself engaged in continuous discussion about the effect of the U.S. system of “retroactive vs. prospective” duty valuation and collection and the role this may play with collection and enforcement issues. It was recognized that this is a legislative policy issue. The subcommittee notes that this policy does affect and relate to ongoing collection, enforcement and evasion issues.

As the 2012 12th Term of COAC closed, the subcommittee is encouraged by the bi-directional educational opportunities to improve the awareness and understanding of AD/CVD system and believes that CBP is indeed making some progress in the collection and enforcement arena. This is an important topic that we hope will be continued into the 13th COAC.

Bond Subcommittee – Chair: Colleen Clarke

The purpose of the COAC Bond Subcommittee of the 12th term of COAC was to consult with the CBP Office of Finance and the Department of Treasury on bond related issues. The subcommittee is made up of COAC members, Trade, and Government.

The subcommittee was very active during 2012 providing advice and recommendations on bond related matters. The subcommittee also worked with other subcommittees on bond issues in their areas of expertise.

1. Establish Guidelines for the Execution of the CBP 301 Form

The subcommittee established and obtained full committee approval of the guidelines. The guidelines were fully adopted by CBP and made public in June 2012 (**Appendix 8**).

2. Work with CBP to determine the best process for the Centralization of Single Transaction Bonds

The Centralization of Single Transaction Bonds was recommended in the DHS-OIG report from June 2011 entitled “Efficacy of Customs and Border Protection’s Bonding Process”. The subcommittee established, with full committee support, that the best and most viable solution for bond centralization is a fully functioning eBond system. CBP officials reported that internal discussions are still being conducted, but believe that the solution is eBond which is on the backlog of ACE projects.

3. Customs Bond Regulations (19CFR§113)

The re-write of the bond regulations was reviewed by the 10th and 11th terms of the COAC Bond Subcommittee and carried over into the 12th term. CBP reported that the re-write of the bond regulations had been blue sheeted with further recommendations. The recommendations were incorporated into the draft and it was continuing along the approval process. As of the date of this report, the regulations have not been published.

4. Risk Based Bonding and the Customs Directive 3510-004 “Monetary Guidelines for Setting Bond Amounts”

The DHS-OIG report from June 2011 (mentioned in number 2 above) indicated a need for “risk-based bonding” methodology to improve revenue collection. The subcommittee advised that there is a need to define “risk-based bonding” before incorporating the method into the guidelines for determining bond amounts. CBP reported that they are discussing this issue internally and will review the bond amount guide as a result of new initiatives and the update of the bond regulations.

5. Joint Bond and AD/CVD Subcommittee Work

The subcommittees worked together to discuss the Commissioner’s request to consider establishing a bond earlier in the import process. Members concluded that certain factors would make it impractical to require a bond pre-lading. Those factors are: 1) information is not available at the point of lading to determine duty liability, 2) it may not be known if the goods are destined for the U.S., 3) the cargo may be sold in transit, therefore, the responsible party changes, and 4) there is no obligation until release.

The subcommittees discussed concerns with Customs memorandum “Public Distribution of Information on Use of Single Transaction Bond as Additional Security for Anti-Dumping and Countervailing Duty” dated June 13, 2012. Members agreed that the notice was the first step in attempting to protect the revenue related to AD/CVD evasion by requiring the securing of a single transaction bond prior to release of the entry if they suspect circumvention of an AD/CVD order. However, it is still not known how often CBP would require a separate STB as CBP cannot quantify the frequency of evasion. CBP must also ensure that the STB initiative is handled uniformly across all ports and it must not disrupt the legitimate flow of trade for legitimate importers.

The main concern for the surety industry related to AD/CVD is the ability to underwrite these high risk transactions. Members of COAC agreed that a separate bond/activity code or indicator must be required for the STB requirement discussed above. The separate bond/activity code or indicator allows for separate and distinct underwriting. Another concern for the surety industry is the advisement by CBP to the continuous bond surety when a request is made by CBP for an AD/CVD STB.

The Bond and AD/CVD Subcommittees, working with the Broker Subcommittee, discussed critical circumstances in AD/CVD cases and improving collection of the duty on entries found subject to AD/CVD during a critical circumstances timeframe. The subcommittees provided feedback and questions to CBP related to the frequency that critical circumstances exist and how CBP can better collect what is owed.

6. Joint Bond and Broker Subcommittee Work

In 2012, CBP announced a plan to update the current CBP 5106 form to include more information. CBP briefed the members of the Bond and Broker Subcommittees on the new form and data elements that will be required. The form is not yet available, but the COAC subcommittees provided feedback relative to trade related issues regarding the new form. It is imperative that instructions accompany the new form so all parties (CBP and Trade) understand the specific data required.

CBP issued a memorandum on June 20, 2011 to Directors, Field Operations of CBP under the subject "Policy Change on Late Petition Procedures for Liquidated Damages". The policy change was never discussed with trade and there was no notice of the change provided to trade. In late 2011, CBP rescinded the new policy and advised they would re-write the policy and publish it in 2012. Members of the Bond and Broker Subcommittees provided comments and feedback regarding the issue of mitigation and late filed petitions. CBP worked internally and posted the notice in the Customs Bulletin January 9, 2013.

The bond is the one customs document that touches on all aspects of an import transaction, from release to liquidation. The team of members of the COAC Bond Subcommittee worked diligently to address the myriad of issues related to bonds during the 2012 calendar year and throughout the 12th term of the COAC.

Other Initiatives and Work Groups:

ACE Communications Strategy Work Group: Co-Chairs Leman (Chip) Bown and George Weise

:

The decision to create an ACE Communications Strategy Work Group was announced at the COAC public meeting in Savannah, Georgia in May 2012. The initial focus of the workgroup was to provide recommendations from the trade perspective to Customs and Border Protection (CBP) for their public announcements on the progress of ACE implementation. The subcommittee also analyzed the implementation requirements that must be factored into ACE by CBP, Customs brokers and self-filers, and software vendors to successfully transition the filing of entry summaries from the Automated Commercial System (ACS) to the Automated Commercial Environment (ACE).

In September 2012, the subcommittee submitted a white paper to the COAC and CBP that detailed the system requirements, the subcommittee's analysis and recommendation on the length of a transition period. System verifications (Edits) and Cargo Release, were prerequisite functionalities required prior to implementation of any transition period. Other dependencies included International Trade Data System (ITDS), Document Imaging System, and Electronic Bond Functionality.

In support of the white paper, the subcommittee developed a project management document to assist in the evaluation of what a realistic transition cycle should be. The subcommittee then socialized the document information with information technology and business professionals in the international trade community to determine realistic timeframes. The conclusion of this analysis resulted in a determination that, upon completion of the prerequisite functionality, a minimum 24-month transition period should be provided to convert the filing of the entries from ACS to ACE.

In November 2012, the subcommittee undertook to conduct two state of ACE readiness surveys. The first survey targeted entry filers of which the Customs brokerage community comprised 97% of entries filed. The other survey focused on the software vendors who provide the software to both the self-filers and Customs broker communities. The entry filer survey, which was conducted primarily through the auspices of the National

Customs Broker and Forwarders Association of America, Inc., was completed during 2012. The vendor survey was delayed until 2013.

The key results of the entry filer readiness surveys were:

- 87% of the entry filers utilized the vendor supplied software.
- Only 30% of the respondents reported filing entry summaries in ACE
- Of the 70% of the respondents not filing, the primary reasons cited were lack of full entry summary functionality and/or the inability or lack of readiness by their software vendor.

A formal recommendation on the implementation period was planned, but not made as a result of the announcement by CBP of their adoption of the Agile software development methodology and a high level of confidence in CBP's ability to deliver a fully functional ACE system in their stated three-year completion target timeframe.

Agriculture Work Group Report: Chair, Mary Ann Comstock

The 12th Term Advisory Committee on Commercial Operations of Customs & Border Protection (COAC) did not appoint a formal Agricultural Subcommittee; however the COAC did receive pertinent information and worked with U.S. Customs & Border Protection Agriculture Specialists (CBP Ag) in 2012.

CBP Ag provided enforcement action statistics, including quarantine materials intercepted and actioned, and provided COAC with the opportunity to provide comments and engage in meaningful dialogue. Several members of the 12th Term COAC attended the Joint USDA-CBP Stakeholder Conference held in July 2012. In addition, COAC members continued to engage CBP Ag regarding preventative measures for interdiction of Asian Gypsy Moth as well as other actions involving Wood Packaging Material.