

Commercial Customs Operations Advisory Committee (COAC) to U.S. Customs and Border Protection

**U.S. Customs and Border Protection (CBP)
Washington, DC**

November 17, 2016

12:30 p.m. – 04:30 p.m.

Committee Welcome and Roll Call

CBP: **Maria Luisa Boyce**
Senior Advisor for Private Sector Engagement
Office of Trade Relations
Office of the Commissioner
U.S. Customs and Border Protection

Opening Remarks

CBP: Commissioner R. Gil Kerlikowske

Treasury: Timothy Skud, Deputy Assistant Secretary
Tax, Trade and Tariff Policy, Department of the Treasury

DHS: Christa Brzozowski, Deputy Assistant Secretary, Trade
Policy, Foreign Investment & Transport Security

ICE: Daniel Ragsdale, Deputy Director,
U.S. Immigration and Customs Enforcement

COAC: Vincent Iacopella, Member
Julie Ann Parks, Member



One U.S. Government Subcommittee

Special Guest: **William Woody**, Chief, Fish and Wildlife Service

CBP: **Deborah Augustin**, Executive Director, ACE Business Office, Office of Trade

Jeff Nii, Acting Executive Director, Trade Policy & Programs, Office of Trade

COAC: **Susie Hoeger**, Member

Amy Magnus, Member



COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE

One U. S. Government (1USG) at the Border Subcommittee Recommendations

Recommendation #1

In the spirit of streamlining America's Imports and Exports and coordinated border management, COAC recommends that CBP work with the Fish & Wildlife Service (FWS) to minimize data creep in the FWS PGA message set and increase process coordination. Data not used for admissibility decisions before, including forms that were kept in broker files but rarely requested by the PGA, should not be used for that purpose now. The agency should collect this data post-entry, if necessary, and it should be based on risk management principles in order to not impede the entry process.

COAC further recommends that CBP work with FWS to minimize the number of HTS codes that are flagged and limit the flags to those HTS codes that truly have a high likelihood of covering goods that are subject to the agency's requirements. In addition, CBP should work with FWS to align their disclaim process with that of other agencies and reinstate the FW1 flag. Finally, CBP should work with FWS to maintain the Non-Designated Port Exemption Permit (DPEP) or develop another way to ascertain the admissibility of goods while allowing regulated cargo to flow through all US ports of entry.

COAC recommends CBP share these recommendations with the Border Interagency Executive Council (BIEC).

One U. S. Government (1USG) at the Border Subcommittee Recommendations

Recommendation #2

COAC recommends CBP continue the detailed work with the U.S., Canada and Mexico, and to the greatest extent possible, harmonize all data elements being required by the countries for import and export manifests, and ensure that all data elements are in accordance with the WCO SAFE Framework.

It is also recommended that all three participating countries formalize the process of extracting the data they are authorized to access from a single source, thereby requiring the carrier to only submit one manifest transaction for both import and export purposes.

One U. S. Government (1USG) at the Border Subcommittee Recommendations

Recommendation #3

As the U.S. implements export manifest requirements for all modes, COAC recommends that CBP work with the U.S., Canada and Mexico to harmonize, where possible, the data required for U.S. export with Canada's import and Mexico's not-yet-developed truck import manifest, and synchronize the timing requirements for filing.

One U. S. Government (1USG) at the Border Subcommittee Recommendations

Recommendation #4

For advance security filing, manifest, and cargo release, COAC recommends CBP work with the three countries to place the relevant filing requirement on the party most qualified to do so. Qualified parties are those most likely to have the best information and who can be held accountable to the various governments if the data is incorrect or false.

For advance security filings similar to ACAS and PACT, COAC recommends CBP work with Canada and Mexico to ensure these filings are made by the party who issued the lowest level transport bill, or in the absence of the ability to regulate that party, by the carrier.

For shipment-level manifest information, COAC recommends CBP work with Canada and Mexico to ensure manifest filings are made by the party who issued the transport bill or in the absence of the power to regulate that party, by the carrier. Transport manifest information should be provided by the carrier, as the carrier is the only party who can identify with certainty which shipments have been loaded onto a conveyance.

One U. S. Government (1USG) at the Border Subcommittee Recommendations

Recommendation #5

When identifying common data elements used by the U.S., Canada, and Mexico, COAC recommends the use of a standard naming convention aligned with the WCO Data Model III for standardized Customs and other border control agency import and export messages. Using minimal common data elements to achieve an effective risk management solution should be the goal.

Furthermore, when CBP is analyzing advance data and all message sets for the North America Single Window, COAC recommends the WCO Data Model III should be used as a basis to build any future data and message sets among the U.S., Canada, and Mexico.

One U. S. Government (1USG) at the Border Subcommittee Recommendations

Recommendation #6

COAC recommends CBP work with all three nations' government agencies who have authority over imported products to meet and harmonize their individual requirements to collect advanced data to make determinations in advance as to whether cargo should be released upon arrival, examined, or held for further research and testing. COAC also recommends CBP work with Canada and Mexico to identify agencies which have release/hold authority and prioritize harmonization efforts.

COAC recommends CBP work with the other government agencies to examine all permits and licenses required for import and export to determine any redundancies or areas where there are similar requirements and harmonize where possible.

One U. S. Government (1USG) at the Border Subcommittee Recommendations

Recommendation #7

COAC recommends CBP review work completed to date on both the U.S.-Canada Beyond the Border initiative as well as the U.S.-Mexico High Level Economic Dialogue and 21st Century Border Management initiatives. CBP should leverage work completed specific to border operations by various Partner Government Agencies (PGAs) and Other Government Departments (OGDs) relevant to North American trade. COAC recommends CBP fully engage with Canada and Mexico to finalize and implement initiatives such as data harmonization, integrated cargo security strategy, and true mutual recognition of trusted trader partners.

One U. S. Government (1USG) at the Border Subcommittee Recommendations

Recommendation #8

COAC recommends CBP work with Canada and Mexico to identify how each country defines advance security and admissibility data. This should provide a general overview to include modes impacted, time frames to submit, the responsible party who can present and/or submit advance security and admissibility data as well as a current and future end state for each country. To the extent possible under national legislation, these same data elements should be used for admissibility requirements across borders when filed as a unified entry/release including both advance security and admissibility data elements.

COAC further recommends CBP work with Canada and Mexico to develop uniform advance manifest data elements in both the truck and rail modes of transport to allow sharing of manifest data unilaterally across each border. To the extent possible under national legislation, the uniform advance manifest data elements in each mode should be used for admissibility purposes when accompanied by the required submissions for each country's entry/release process and export reporting requirements. As the data required for these modes of transport expands beyond harmonized manifest elements, COAC further recommends CBP develop a tri-lateral program for standardized advance security data elements that can also be used as a unified filing similar to how ISF operates for ocean in today's U.S. environment to provide for a unified, simplified security data and entry process (security filing, cargo release, and entry summary).

One U. S. Government (1USG) at the Border Subcommittee Recommendations

Recommendation #9

Where possible, COAC recommends CBP work with PGAs/OGDs in the U.S., Canada and Mexico to accept globally recognized product identifiers, such as G-TIN, when submitted by an importer or exporter to describe the imported or exported product. Because these codes are more specific and more descriptive of the product, the codes should be preferred over other types of identifiers used by specific agencies.

Recommendation #10

To streamline the requirements for importing and exporting and to assist all three countries' government agencies with oversight over imported and exported products, COAC recommends CBP work with the U.S., Canada and Mexico to begin the process of harmonizing their PGA/OGD data and their definitions of each data element.

One U. S. Government (1USG) at the Border Subcommittee Recommendations

Recommendation #11

COAC recommends CBP work with the U.S., Canada and Mexico to align, where possible, the data elements required for export filings into a single data set and single filing to benefit importers and/or exporters as well as the various regulatory agencies.

Recommendation #12

COAC recommends CBP work with Canada and Mexico so the single window data set accommodates the most specific shipment references available. All modes of transportation may transport consolidated shipments of cargo; therefore, the single window data set should accommodate simple bills of lading, master bills of lading, house bills of lading and sub-house bills of lading even though each mode of transportation may use different terminology.

One U. S. Government (1USG) at the Border Subcommittee Recommendations

Recommendation #13

Anticipating a rapid growth of e-commerce in the next few years, COAC recommends CBP consider the WCO guidelines as they evolve, and encourage the three nations to examine their current processes for e-commerce including entering and screening low value importations, not just to facilitate trade, but also to have adequate screening processes to ensure the health and safety of the citizens of the three countries. COAC recognizes that each country may establish a different value threshold for goods allowed under the de minimis, but screening by PGAs and CBP for health and safety should be similar.

Public Comment Period

Please send in your comments or questions via the Chat box in the webinar.

Your comments will be read into the public record and CBP will respond during the public comment period noted on the agenda if time permits.

Trade Enforcement and Revenue Collection (TERC) Subcommittee

CBP: **Troy Riley**, Executive Director, Commercial Targeting & Enforcement, Office of Trade

Jeff Nii, Acting Executive Director, Trade Policy & Programs, Office of Trade

COAC: **Kevin Pinel**, Member

Lisa Gelsomino, Member



COMMERCIAL CUSTOMS OPERATIONS
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Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Trade Facilitation & Trade Enforcement Act

- Section 105 Joint Strategic Strategy
- Section 115 Importer Risk Assessment
- Anti-Dumping and Countervailing Duty (AD/CVD) Working Group
- Bond Working Group
- Intellectual Property Rights (IPR) Working Group
- Mitigation Guidelines Working Group
- Forced Labor Working Group Recommendations

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Forced Labor Working Group (35 members)

- Importers and Domestic Industry
- Trade Associations
- Customs Brokers and Consultants
- U.S. Customs & Border Protection (CBP)
- Immigration and Customs Enforcement (ICE)
- Department of Labor (DOL) and State Department
- Civil Society Organizations (CSOs) and Non-Government Organizations (NGOs)

Strengthening Forced Labor Laws

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Communications Team

Recommendation 1: COAC recommends CBP develop a forced labor mapping process similar to what was created for the Enforce and Protect Act (EAPA) for anti-dumping and countervailing duty (AD/CVD). While the process should focus on CBP roles and responsibilities, it should also include other government requirements, including those of the U.S. Department of State, U.S. Department of Labor, U.S. Immigration and Customs Enforcement (DHS-ICE), and additional relevant Partner Government Agencies (PGA), and Other Government Agencies (OGA). The mapping process should identify pain points and potential recommendations for resolving them.

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Recommendation 2: COAC recommends CBP conduct a series of webinars to educate all stakeholders including Civil Society Organizations (CSOs), importers, customs brokers, etc. about forced labor laws and relevant issues to increase awareness and compliance. These webinars should include the following perspectives:

- a) Industry specific webinars with CBP's Centers of Excellence and Expertise (CBP Centers)
- b) Efforts by the trade industry to address forced labor laws by industry/sector
- c) CSO efforts to help the trade industry identify forced labor within the supply chain
- d) Joint trade industry and CSO efforts to address forced labor

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Recommendation 3: COAC recommends several updates to CBP technology used to communicate forced labor updates, including:

- a) CBP should promote the trade.enforcement@cbp.dhs.gov email address for stakeholders to submit forced labor questions and develop an automated auto reply process.
- b) CBP should use these questions to update a Frequently Asked Questions document on a quarterly basis and post the updates to cbp.gov.
- c) CBP should update its forced labor web page on cbp.gov and provide more meaningful tools to clarify how importers can comply with forced labor laws. The Forced Labor Working Group has provided feedback for CBP's consideration in Appendix A.
- d) CBP should modify the CSMS messaging fields to allow selection of "Trade Policy Updates" on forced labor and RSS feeds when the forced labor page on cbp.gov is updated (similar to COAC recommendations made for AD/CVD).

Appendix A

Appendix A: Recommended Updates to Forced Labor Page and Documents on cbp.gov

Updates to Supply Chain Due Diligence Fact Sheet

- Consider renaming the Reasonable Care section to Legal Compliance since that seems to be what CBP is really inferring in this section. Most customs brokers are not going to be forced labor experts so it does not make sense to recommend them in this section.
- Under Supply Chain Audits, there should be an explicit point that these should be unannounced and conducted by independent or third party auditors.
- Under U.S. Government Publications, CBP should include the Responsible Sourcing Tool, which was funded and partially produced by the U.S. Department of State. It is one of the best resources out there with model compliance plan, etc.
- Under the Civil Society and International Organizations section, it is not just that CSOs produce investigative reports, but also provide expertise on forced labor and human trafficking. Many CSOs work with survivors and know what policies and practices can prevent forced labor. CBP should work with CSOs to reframe this section and make it broader.
- In general, importers need more of an outline of what CBP is looking for at a top-line, general level. CBP may have hesitations about providing that level of guidance, but they are already going down that road by suggesting importers get advice from a broker or international trade attorney and conduct audits of their supply chain.
- A step-by-step process for importers would be more helpful so they know best places to start to determine if forced labor exists in their supply chain.

Suggestions for a Questions and Answers (Q&A) Fact Sheet

- CBP should clarify their ability to self-initiate allegations.
- On the question of how CBP will update the regulations, it would be really helpful to have more clarity around whether this will provide for public comment.

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Recommendation 4: COAC recommends CBP add new forced labor questions to the existing COAC survey to gauge the trade industry's knowledge of these issues, and share the survey results with the trade.

The Forced Labor Working Group has provided sample questions for CBP's consideration in Appendix B.

Appendix B

Appendix B: Forced Labor Sample Questions for COAC Survey

The following questions could be added to the existing COAC survey to gauge stakeholder's awareness and understanding of CBP's forced labor laws and processes.

- Are you aware of the new requirements under the Trade Facilitation and Trade Enforcement Act of 2015 that repealed the "consumptive demand" clause that allowed the importation of certain forced labor produced goods?
- Are you aware that import shipments may be held by CBP under this change, and if so, are you aware of the process required for CBP to release your shipments?
- Do you have policies in place to address the issue of forced labor in your supply chain?
- Do you publish or issue to your suppliers a "Code of Conduct" highlighting social responsibility requirements?
- Do you conduct risk assessments related to forced labor in your supply chain?
- Do you require certifications from your vendors that goods are not produced with forced labor?
- Do you reach beyond your Tier 1 suppliers regarding forced labor?
- Do you participate in stakeholder engagement initiatives or partner with civil society organizations on the issue of forced labor?
- If the seller/manufacturer and importer of record both have a U.S. presence, do you know which company would be held liable for forced labor issues?
- Which of these policies do you have in place (check all that apply):
 - (a) Engage in verification of product supply chains to evaluate and address risks of human trafficking and slavery
 - (b) Conduct audits of suppliers
 - (c) Require direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the countries in which they are doing business
 - (d) Maintain accountability standards and procedures for employees or contractors that fail to meet company standards regarding slavery and human trafficking
 - (e) Provide suppliers, employees, and management training on slavery and human trafficking

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Recommendation 5: COAC recommends CBP develop a catalog of available resources that have been developed to address forced labor. The catalog should be organized by Government, CSO, and Business resources. The Forced Labor Working Group has provided a sample Resource Catalog for CBP's consideration in Appendix C.

Appendix C

Appendix C: Forced Labor Resource Guide

Government

- **U.S. Department of Labor (DOL)**
 - *List of Goods Produced with Forced or Child Labor*: <https://www.dol.gov/ilab/reports/child-labor/list-of-goods/>
 - *Reducing Child Labor and Forced Labor: A Toolkit for Responsible Businesses*: <https://www.dol.gov/ilab/child-forced-labor/About-this-Toolkit.htm>
- **U.S. Department of State Trafficking in Persons Report:**
 - *Responsible Sourcing Tool* (a project of U.S. State Department and Verite) including sample vendor agreements with contract clauses for suppliers of labor, due-diligence screening process for labor recruiters, a sample self-assessment, interview tools for monitors/auditors, and supplier questionnaires (page 3, 2A) www.responsible sourcingtool.org
 - *Report on Risks in Supply Chains*: <http://www.verite.org/sites/default/files/images/Verite-CommodityReports-2016%200229.pdf>
 - *President's Executive Order on Forced Labor and Human Trafficking*: http://www.verite.org/sites/default/files/images/JTIP-Verite-ExecutiveOrder_13627_0229.pdf
 - *Forced Labor Index*: <http://www.state.gov/j/tip/rls/tiprpt/2016/index.htm>
- **Federal Laws for Government Contractors**
 - The below provisions contain Forced Labor requirements that already apply to federal contractors which should serve as a guide for all U.S. importers to strive for to address Forced Labor within their supply chain.
 - *Federal Acquisition Regulation (FAR) Subpart 22.17, Combating Trafficking in Persons*: <https://www.acquisition.gov/far/current/html/Subpart%2022.17.html>
 - *2012 Presidential Executive Order (EO), Strengthening Protections Against Trafficking In Persons In Federal Contracts*: <https://www.whitehouse.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe>
 - *Title XVII of the National Defense Authorization Act for FY 2013, Ending Trafficking in Government Contracting*: <https://www.gpo.gov/fdsys/pkg/BILLS-112hr4310enr/pdf/BILLS-112hr4310enr.pdf>
- **United Nations**
 - *Sustainable Development Goals (SDGs)*: <https://sustainabledevelopment.un.org/?menu=1300>
 - *UN Guiding Principles*: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

Associations and Civil Society Organizations (CSOs)

- **International Labor Organization (ILO)**
 - *Global Estimate of Forced Labor Report*: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_182004.pdf
 - *Combating Forced Labor: A Handbook for Employers and Business*: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/instructionalmaterial/wcms_099626.pdf
 - *ILO's 38 Checkpoints*: http://www.ilo.org/global/publications/WCMS_460489/lang-en/index.htm
- **Fair Labor Association**: <http://www.fairlabor.org/our-work/code-of-conduct>
- **Tronie Foundation** – Organization set up by former slaves to create awareness and education globally: <http://www.troniefoundation.org/>
- **Know the Chain**, a resource for businesses who need to understand and address forced labor risks within their supply chains: <https://knowthechain.org/>

Audit Templates

- **SAI – Social Accountability International (SA8000 standard)**: <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=937>
- **Conflict Free Sourcing Initiative**: <http://www.conflictreesourcing.org/resources-and-training/guidance-documents/>
- **OECD Due Diligence Guidelines**: <http://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf>
- **Electronic Industry Citizenship Coalition**: <http://www.eiccoalition.org/media/docs/EICC-VAP-Audit%20Operations%20Manual%20v.5%201%20Auditee%20Preparation.pdf>
- **Verite**: <https://www.verite.org/helpwanted/toolkit>

Business

- **Dun & Bradstreet** – Human Tracking Risk Index: <http://www.dnb.com/products/operations-supply/human-trafficking-risk-index-combat-forced-labor.html>
- **HealrWorld** – Self-registration process to demonstrate adherence to United Nations SDGs: <http://www.healrworld.com/>
- **Thomson Reuters** – Regulatory Compliance: <https://risk.thomsonreuters.com/en/resources/infographic/your-supply-chain-free-slavery-and-forced-labor.html>
- **Chain of Custody and Traceability ISEAL Alliance**: <http://www.isealalliance.org/waypoint/chain-of-custody-and-traceability>

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Recommendation 6: COAC recommends CBP-HQ work through the CBP Centers to develop referral resources on forced labor for industry-specific sectors where applicable, and publish these resources on cbp.gov.

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Legal Challenges Team

Recommendation 7: COAC recommends the CBP Commissioner leverage the resources of the appropriate CBP Center, which has knowledge of the industry and is responsible for managing importer accounts, when making an allegation assessment or the decision to issue, revoke, or modify a withhold release order (WRO).

Recommendation 8: COAC recommends the CBP Centers engage in ongoing outreach and bi-directional education with all stakeholders active in preventing the importation of goods made with forced labor, including the importing community, PGAs, OGAs, CSOs, and other non-government organizations (NGOs). CBP-HQ and the Centers should also invite CSO and NGO representatives to take part in industry outreach efforts.

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Recommendation 9: COAC recommends CBP modernize the current forced labor regulations in 19 C.F.R. 12.42-44 and provide for a public comment period. In addition to updating the regulations to remove the consumptive demand provision, CBP should consider the following updates:

- a) In regards to Proof of Admissibility requirements per 19 CFR 12.43, rely less on reference to specific documents that are obsolete or may become so in the future.
- b) Currently, forced labor regulations require an importer to respond to a WRO within 90 days, but do not specify when CBP must provide a reply. When detaining merchandise in other cases, CBP is required to respond within a specified timeframe. COAC recommends that CBP establish an appropriate timeframe to respond to an importer's proof of admissibility as a result of a WRO, and this timeframe should be incorporated into the revision of the regulations.

Trade Enforcement and Revenue Collection (TERC) Subcommittee Recommendations

Strategic Leadership Team

Recommendation 10: COAC recommends CBP work with key stakeholders to develop and publish an Informed Compliance Publication (ICP) on Forced Labor. The Forced Labor ICP should include a detailed process for stakeholders (both CSOs and the trade industry) to understand how the current forced labor process works from CBP's perspective. In order for the trade industry to become strategic leaders in the field, the ICP should also include resources and guidance from CBP and other PGAs for industry to follow.

The Forced Labor Working Group has provided a suggested outline and resources to include in the ICP for CBP's consideration in Appendix D.

Appendix D

Appendix D: Outline for Forced Labor Informed Compliance Publication

COAC recommends CBP consider the below topics when developing its Forced Labor Informed Compliance Publication (ICP).

- 1) **A detailed process for stakeholders (both Civil Society Organizations (CSO) and the trade industry) to understand how the current forced labor process works from CBP's perspective.**
 - What is required by supplier and/or importers during the allegation process, and what steps CBP takes to review the allegation and issue a withhold release order (WRO).
 - What role U.S. Department of Labor, U.S. Department of Homeland Security – Immigration and Customs Enforcement, Partner Government Agencies, and Other Government Agencies have in the CBP forced labor process.
 - What standards are used by all government agencies involved in the CBP forced labor process to determine whether an allegation of the use of forced labor is actionable.
 - The information and/or documentation CBP considers when reviewing an allegation of forced labor, especially when linking intermediate goods alleged to be made with forced labor into the final product imported into the U.S. This guidance is helpful for parties who submit allegations, and for importers contemplating what type of verification procedures they should put in place within their supply chains.
 - The type of documentation that could be provided as part of a response to a WRO.
 - The ICP should be updated regularly and reflect any updates to regulatory language as implemented.

- 2) **In order for the trade industry to become strategic leaders in the field, the ICP should include resources and guidance from CBP and other PGAs for industry to follow. Resources may be utilized from the recommended Forced Labor Catalog and also include:**
 - Engage in due diligence to include policy, risk assessment, integration, monitoring, auditing, and remediation. This due diligence should include completing a self-assessment of supplier compliance with forced labor laws and move beyond first tier vendors in an attempt to ensure a socially responsible supply chain free of forced labor.
 - Include forced labor compliance in codes of conduct, mission statements, etc., and then refer back to these codes of conduct in purchase orders, contracts, supplier agreements etc. Agreements should include contractual clauses that emphasize zero tolerance and penalties for forced labor, as well as enforce restrictions on unauthorized subcontracting by requiring authorization and/or notification of change in suppliers and/or factories.
 - Require supplier acknowledgement and acceptance of a Social Responsibility Code of Conduct.
 - Conduct periodic supplier training including education and outreach to suppliers and/or factories on forced labor issues.
 - Schedule unplanned visits of suppliers to avoid concealment of forced labor violations and/or conduct independent audits that are trained to identify forced labor patterns.
 - Have transparent and public reporting about forced labor risks and impacts that include engaging with industry stakeholders and/or CSOs as part of an overall risk assessment.

- 3) **How importers could publicly disclose to what extent possible handling of the following:**
 - Engaging in verification of product supply chains to evaluate and address risks of forced labor
 - Conducting independent audit of suppliers
 - Requiring direct suppliers to certify that materials incorporated into the product comply with forced labor laws for the countries in which they are doing business
 - Maintain accountability standards and procedures for employees or contractors that fail to meet company standards regarding forced labor
 - Provide employees and management training on forced labor

Public Comment Period

Please send in your comments or questions via the Chat box in the webinar.

Your comments will be read into the public record and CBP will respond during the public comment period noted on the agenda if time permits.

Global Supply Chain Subcommittee

CBP: **Liz Schmelzinger**, Director, Customs-Trade Partnership Against Terrorism (C-TPAT), Cargo and Conveyance Security, Office of Field Operations

COAC: **Brandon Fried**, Member
 Adam Salerno, Member



COMMERCIAL CUSTOMS OPERATIONS
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Global Supply Chain Subcommittee Recommendations

Recommendations

- 1. Minimum Security Criteria (Minimum Security Criteria) Purpose:** The C-TPAT program is a voluntary program with a specific purpose of achieving the highest level of supply chain security and facilitating legitimate trade. As such, COAC recommends that CBP maintain the focus of the program on supply chain security and additional Minimum Security Criteria should be focused on minimizing risks in the supply chain. The COAC recognizes the need of the Minimum Security Criteria to be periodically reviewed and updated as global security threats shift and evolve, the underlying goals of the C-TPAT program should be maintained.
- 2. Additional Feedback:** COAC commends CBP for taking steps to update Minimum Security Criteria as this process facilitated a productive interactive dialogue leading to a framework for the future of C-TPAT. In light of the fact that the Minimum Security Criteria will have a significant operational and financial impact on partners, the COAC recommends that CBP reach out to C-TPAT participants giving them 90 days to comment on the proposed new Minimum Security Criteria and allow CBP to integrate feedback. Given the proposed substantial changes to the program, the current process warrants additional outreach to C-TPAT participants.

Global Supply Chain Subcommittee Recommendations

- 3. Benefits:** COAC recommends that CBP work with the COAC working group to review and update program benefits and assist in establishing metrics. The goals are to facilitate trade, secure the supply chain, and maintain and encourage increased participation. To achieve these goals, it is necessary to find ways to offset the program costs.
- 4. Cost-Benefit Analysis:** In conjunction with developing the Minimum Security Criteria, COAC recommends that CBP work with C-TPAT participants to develop an analysis of the cost and benefits.

Global Supply Chain Subcommittee Recommendations

5. **Staged Implementation:** Since the C-TPAT program's creation in 2001, and with current participation of over 11,000 companies, the existing Minimum Security Criteria have been widely adopted and institutionalized in business practices. As such, COAC recommends that CBP conduct a pilot phase of the new criteria to evaluate the operational feasibility. In addition, CBP should allow sufficient time for business to implement the new Minimum Security Criteria once they are finalized.
6. **Eliminating Redundancy:** COAC recommends that prior to finalization and implementation of new Minimum Security Criteria, the Minimum Security Criteria should be reviewed in their totality to streamline requirements, remove potential redundancies with existing Minimum Security Criteria or any overlap with existing laws and regulations, and focus both CBP and Trade resources on areas of highest risk.
7. **International Obligations:** The COAC recommends that CBP engage with international trade partners to ensure that any new requirements align with Authorized Economic Operator (AEO) standards to meet mutual recognition obligations.
8. **Outreach:** COAC recommends that CBP provide training and reference materials on the new Minimum Security Criteria to ensure C-TPAT participants understand the objectives, risk, and requirements of each new Minimum Security Criteria well in advance of implementation.

Global Supply Chain Subcommittee Recommendations

- 9. Uniformity & Transparency:** COAC recommends that CBP's plan include the development and issuance of updated guidance to both C-TPAT partners and CBP including a transparent and uniform Tier 3 / best practices and validation process.
- 10. Supply Chain Entities:** In light of recent security threats, CBP should consider expanding C-TPAT participation to include other entities in the international supply chain currently ineligible for participation, e.g., domestic entities such as drayage carriers, rail carriers and warehouses.

Public Comment Period

Please send in your comments or questions via the Chat box in the webinar.

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Break

We will be taking a ten minute health break and will resume with the COAC meeting shortly.

Export Subcommittee

CBP: **Jim Swanson**, Director, Cargo Security and Controls, Cargo and Conveyance Security, Office of Field Operations

Deborah Augustin, Executive Director, ACE Business Office, Office of Trade

COAC: **Elizabeth Merritt**, Member
Heidi Bray, Member

A Progressive Post-Departure Filing Proposal

November 2016



Summary

- CBP has identified several risks associated with AES Post-Departure Filing.
- Elimination of Post-Departure Filing would impose significant costs for high-volume exporters that rely upon it.
- Manufacturers have a proposal to address CBP's risk concerns, yet preserve the option of Post-Departure Filing for eligible shipments.
- This proposal will:
 - Discuss the benefits associated with Post-Departure Filing.
 - Outline the risks identified by CBP; and
 - Detail the manufacturers' proposal and how it would address those risk concerns.



Exporters Rely on the Flexibility of Post-Departure Filing

- Post-Departure Filing affords companies much-needed supply chain flexibility, making them competitive in the global market place.
- For some companies, “what” is being exported and to “whom” is known when a shipment leaves the company facility. Some commodity exporters, though, may not have complete information prior to export (as goods can be sold in transit). Many commodity shippers do not know to whom the cargo will be sold and or consigned to until after the cargo exits the United States. Many times cargoes are being sold “in transit”. The quantity sold to each particular consignee may not be known until the cargo is on the water. This scenario can exist in bulk vessels as well as container shipments.
- Many cargoes are perishable and require no stoppage or delays to maintain value and quality. To stop the cargo because data is not completely known prior to shipment will cost shippers monetarily as well as future sales.
- Often, the “where” and “when” are still being determined when the shipment leaves the facility or may change after initial booking of shipment. While the exporter may know the country of destination (which would alert them as to whether or not we would need to pre-file), they may not have an identified customer. Post-Departure Filing allows exporters to begin the export process before these logistics questions are resolved – creating supply chain efficiencies, preserving profitability and improving customer satisfaction.
- Post-Departure Filing allows exports to proceed despite delays or changes in logistics information due to weekends, holidays and/or weather.
- Elimination of the Post-Departure Filing regime and the imposition of a “two-touch” filing process would inflict significant costs and cause supply chain disruptions. Consequences include reduced competitiveness in the global marketplace, suppressed exports and strategic reevaluations for future investments in the United States.



Companies that consolidate face unique efficiency challenges that are overcome by the availability of Post-Departure Filing.

MANUFACTURING
MAKES AMERICA
STRONG

Ocean Environment for Commodity Shippers

- Bulk Vessels
 - Cargo weights loaded may not be known by exporter until after the vessel has sailed.
 - Once the weight is determined, it is then decided how many bushels/MT's/units will be sold to which consignee/s.
- Container – (dry and refrigerated) load at manufacture's door
 - With perishable goods such as onions, grapes, etc., a booking may be made for 50 containers. However, the shipper may or may not be able to load all 50 containers before the cargo cuts at the dock occurs. It isn't until the last minute the exact number of containers aboard the vessel is known.
 - Once the number of containers loaded and sailing on a said vessel is known, the shipper will sell specific containers to specific consignees. Determining factors influencing the decision can include market price, valuation of the US Dollar at destination countries, the actual need of the product by each consignee and the consignee's willingness to pay.
- Container –(dry and refrigerated) load at transloader's facility
 - Containers not being loaded at the manufacture's door result in the shipper not having an exact, written confirmation as to how much product was loaded in each container until days later.
 - There may have been delays to the truck or rail that was delivering the goods to the trans-loader's facility, whereby these items won't make the said vessel, when originally it was thought they would.



Post-Departure Filers: Status Quo

Ocean Environment (Non-24 Hour Rule Destinations)

RORO



Container



Bulk



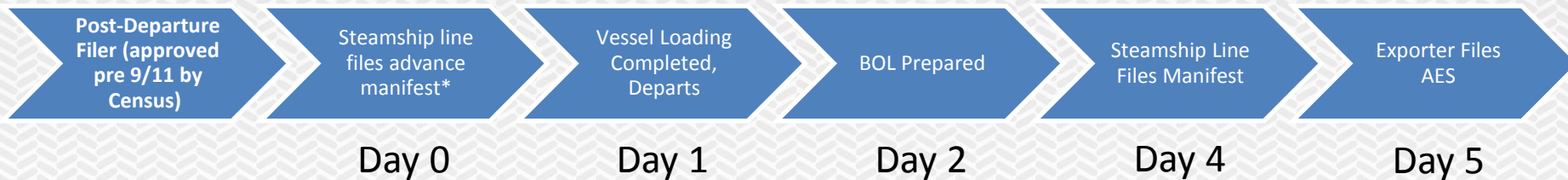
Note: Only applies to destinations/products for which Post-Departure Filing is permitted.



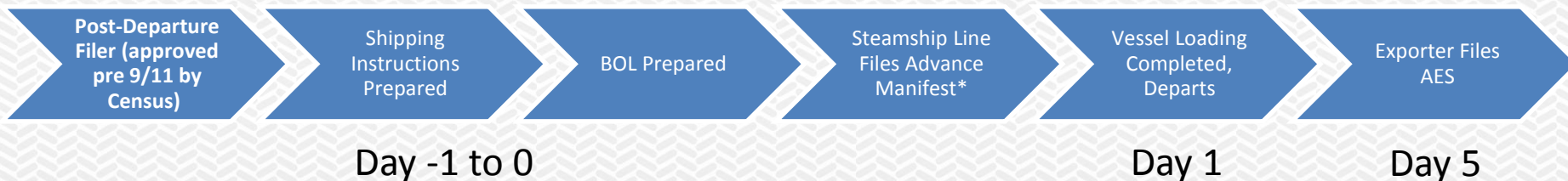
Post-Departure Filers: Status Quo

Ocean Environment (24 Hour Rule Destinations)*

RORO



Container



Bulk



**24-hour rule destinations include Japan, Israel, Turkey, EU, China, Mexico and Canada – with Korea TBD. Advance manifests do not require logistics information for risk assessment.*

Note: Only applies to destinations/products for which Post-Departure Filing is permitted.



Ocean Environment - Commodity Exporter

BREAK-BULK – vessel owned by shipper

Post-Departure
Approved

Vessel arrives port;
vessel loaded from
rail and elevator

Cargo weights
determined. Vessel
Manifest created.

EI transmitted.

Cargo sold. Bill/s of
lading created.

DAY -5 to 1

Day 4

Day 5

Day 10 to arrival



Ocean Environment - Commodity Exporter

BREAK-BULK – vessel NOT owned by shipper

Post-Departure
Approved

Vessel arrives port;
vessel loaded from
rail and elevator

Cargo weights
determined. B/L
instructions prepared.
Vessel Manifest created.

EEl transmitted.

DAY -5 to 1

Day 4

Day 5

Note: If additional consignees are sold on Day 10 and beyond, additional bookings and new EEI's may be needed. (Soon EEI data will be allowed to "split" without incurring "late filing" status.)

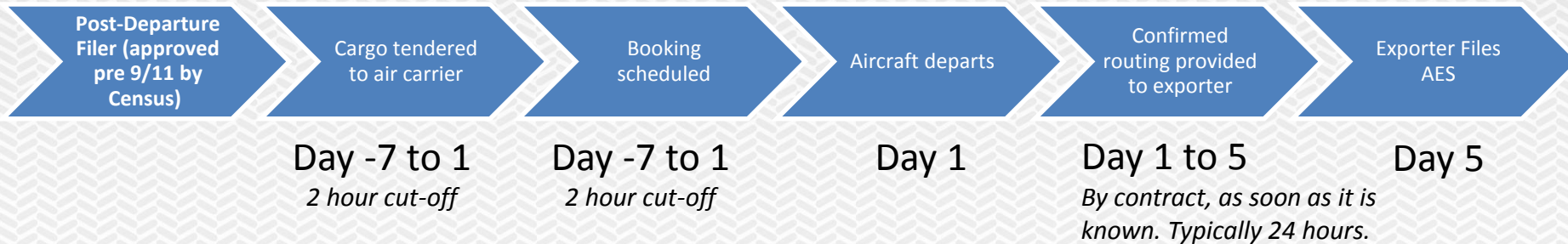
Many activities can occur after Day 5 such as, but not limited to:

- The consignee cancels the order. Cargo would then be resold resulting in change of consignee, destination port, value, or destination country. In a worse-case scenario, the shipment may have to be returned.
- The price could be renegotiated while in transit, resulting in a different value.
- The consignee resells the cargo and asks for the cargo to be shipped to a different destination port.
- Shipments of bulk and containers can be split and sold to more than one consignee. It is important to note with the new Bureau of Census regulations coming soon which allows for splitting shipments from the single ITN number will decrease the number of "Late Shipments" reported.



Post-Departure Filers: Status Quo

Air Environment



- Today, export flight manifests are provided to CBP in paper form (some port-by-port, carrier-by-carrier exceptions exist) and usually at or after departure (so long as certain CFR requirements are met). There is currently no mandatory electronic pre-departure delivery of export flight manifests to CBP for targeting (nor would such delivery be possible without significant cost and disruption).
- Unlike the ocean mode, no foreign country has a “24-hour rule” notice requirement for the electronic delivery of inbound air manifests. Therefore, electronic air manifests for flights departing the U.S. to foreign countries are transmitted only after flight departure. The international standard (WCO) for such inbound reporting is 4 hours prior to flight arrival, which is also the timeframe adopted by the United States for inbound air manifest.
- For exporters/shippers, air orders can be consolidated or ship same day. Any air booking information submitted after 5pm EST results in rollover to next day for filing.

Note: Only applies to destinations/products for which Post-Departure Filing is permitted.



Risks Identified by CBP

CBP identified the following risks related to Post-Departure Filing:

1

Lack of **INFORMATION** about Post Departure shipments moving through the ports.

- CBP states that it receives no advanced information for compliance or targeting purposes.
- Carriers do not provide manifest level information until four days after departure

2

Inability to ensure that the Post Departure shipments are in **COMPLIANCE WITH U.S. EXPORT CONTROL LAWS** and regulations.

3

Inability to verify **EXPORT CONTROLS**:

- CBP is concerned that Post Departure could be used to smuggle goods out of the United States.
- CBP is concerned that controlled goods under licenses or license exemptions can be shipped out of the country.
- CBP is concerned that goods may be shipped to embargoed/sanctioned destinations or entities.
- CBP is concerned that commodities that may not be controlled under a license or license exception to one country, may require a license or license exception to another country. The current Post-Departure program does not differentiate between countries.

4

The requirements for the **CARGO DESCRIPTION** for the manifest are not the same as the commodity level filings.

The risks identified by CBP can be fully addressed by the Progressive Post-Departure Filing Proposal.



Progressive Post-Departure Filing Proposal

- The Progressive Post-Departure Filing Proposal seeks to accomplish two goals:
 - Provide advance information to address CBP-identified export risks;
 - Create a solution that is minimally disruptive to current business practices, thereby mitigating the costs imposed to industry stakeholders;
- The proposal would open Post-Departure Filing to additional exporters who meet the eligibility criteria.
- One question that must be answered: What role should the Centers of Excellence and Expertise play?



Progressive Post-Departure Filing Proposal

The Four Elements of Progressive Post-Departure Filing:

- Eligibility to Apply;
- Exporter Registration;
- USG Validation of the Exporter Registration Information and Approval to Participate; and
- Periodic USG Shipment Inspections and Audits to Verify Compliance

Step #1 – Eligibility

- A current Option 4 filer in good standing; and
- An Active Exporter



Progressive Post-Departure Filing Proposal*

Step #2 – Exporter Registration

- Exporter provides corporate information to USG.
 - U.S. Principal Party of Interest (USPPI) Name and Employer Identification Number (EIN)
 - Title of contact
 - Address
- Exporter establishes an ACE account.
- Exporter provides data based on exports from the past 12-month period to allow USG to create an export profile. *
 - Origins
 - Ultimate Destination Countries
 - Commodity Descriptions
 - HTS or ECCNs
 - Transport modes
 - Ports of Export
 - Intermediate and/or ultimate consignees

** It should be noted that many government agencies already have export profiles and USG should be encouraged to use these established profiles to avoid redundant work.*



Progressive Post-Departure Filing Proposal

Step #3 – USG Review and Approval to Participate

- USG reviews exporter's export management and compliance program.
 - Documented export management and compliance program.
 - Maintain an internal Customs/Export department.
 - Documented requirements in place for freight forwarders and service providers.
 - Accountable member of senior management that oversees export compliance program to ensure adherence to export control laws and regulations.
 - Continuous risk assessment of the export program.
 - Internal and external compliance monitoring and periodic audits.
 - Ongoing compliance training and awareness.
 - Appropriate "Know Your Customer" program.
 - Adherence to regulatory recordkeeping requirements.
 - Maintain a program for handling compliance problems, including reporting export violations.
- USG issues the exporter a Post-Departure Authorization Number, which the exporter can use.



Progressive Post-Departure Filing Proposal

Step #4 – Periodic USG Reviews

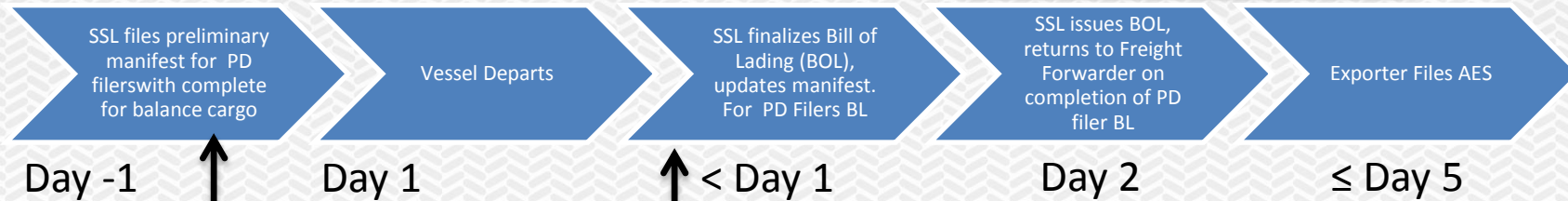
- To ensure that an exporter is in compliance (e.g., not using Post-Departure Filing to ship controlled commodities), USG may periodically request additional information from the exporter concerning a shipment and/or inspect shipments prior to departure.
- USG may also periodically review an exporter's records to confirm that it is in compliance.



Advanced e-Manifest using Progressive Post-Departure Filing

Ocean Environment RORO, Container & Bulk

Completion of BL post departure applies ONLY to those PD BLs that were not complete at time of advanced Manifest filing



CBP has export profile data on file.

Manifest filing for all cargo on vessel filed 24Hrs prior to load. PD (Post Departure) manifest will be filed with available data, which when applied against Profile Data will create risk assessment capability for CBP.

Manifest Data Elements

- | | |
|--------------------------------|---|
| 1. Mode of Transportation | 15. Gross weight* |
| 2. Name of the ship | 16. Shipper name & address |
| 3. Nationality | 17. Consignee name & address* |
| 4. Name of master (O) | 18. Notify party name & address* (C) |
| 5. Port of loading | 19. Country of ultimate destination* |
| 6. Port of discharge* | 20. In-bond number (C) |
| 7. Bill of lading* | 21. ITN number or AES exemption |
| 8. Bill of lading type | 21. NEW: Post-Departure Authorization # |
| 9. Number of house bills (O) | 22. Split shipment indicator |
| 10. Marks & numbers* | 23. Portion of split shipment (C) |
| 11. Container number* (C) | 24. Hazmat indicator* |
| 12. Seal number* (C) | 25. UN number* (C) |
| 13. Number & kind of packages* | 26. CAS number* (C) |
| 14. Description of goods* | 27. VIN or product identification number* (C) |

*May be revised or supplemented.



Advanced e-Manifest using Progressive Post-Departure Filing

Air Environment



1. CBP has export profile data on file.

Shipment Level Transport Data Elements

1. House or Simple Air Waybill Number
2. Cargo Description
3. Shipper Name and Address
4. Consignee Name and address
5. Number of Pieces
6. Weight and Weight Unit
7. ITN Number or AES Exception
 - i. With some modification (possibly) required to identify post-departure filers by a specific "filer authorization number"
- ~~8. NEW: Post-Departure Authorization #~~

**May be revised or supplemented.*



Progressive Post-Departure Filing Addresses CBP-Identified Risks

1 INFORMATION

Exporter provides its export profile to USG.

- USG can use this information for compliance or targeting purposes
- E-Manifest information is provided prior to loading (24 hours for ocean, 2 hours for shipment-level air data)

2

COMPLIANCE WITH U.S. EXPORT CONTROL LAWS

Post-Departure Authorization Number demonstrates that USG has reviewed the exporter's export management and compliance program to ensure that shipments are in compliance with U.S. export laws and regulations.

3

EXPORT CONTROLS

Eligibility vetting will ensure that an authorized export has an export management and compliance program to reduce the risk of export violations

4

CARGO DESCRIPTION

Exporter profile information and preliminary e-Manifest data, at a minimum, would be available prior to shipment for compliance and targeting purposes.





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Shipping Instruction - Day -1

SHIPPER/EXPORTER		DOCUMENT NO BOOKING NUMBER:		
		EXPORT REFERENCES FILE NUMBER :		
CONSIGNEE		FORWARDING AGENT		
NOTIFY PARTY, IF ANY		SPECIAL EXPORT INSTRUCTIONS		
PIER OR AIRPORT				
VESSEL	PORT OF LOADING			
PORT OF DISCHARGE	FOR TRANSSHIPMENT TO			
PARTICULARS FURNISHED BY SHIPPER				
MARKS	NO. OF PKGS	DESCRIPTION OF PACKAGES AND GOODS	GROSS WT	MEASUREMENT
DISTRIBUTOR CODE		AS ADDRESSED		
OCEAN FREIGHT LOADED CLEAN ONBOARD FREIGHT PREPAID BELOW DECK STOWAGE REQUIRED THESE COMMODITIES, TECHNOLOGY OR SOFTWARE WERE EXPORTED FROM THE UNITED STATES IN ACCORDANCE WITH THE EXPORT ADMINISTRATION REGULATIONS. DIVERSION CONTRARY TO U.S. LAW PROHIBITED				
FREIGHT AND CHARGES	REV BASIS	RATE PER	PREPAID	COLLECT
TOTAL	PAYABLE AT		PLACE AND DATE OF ISSUE RICHMOND, VA	
IN WITNESS WHEREOF 3 ORIGINAL BILLS OF LADING ALL OF THE SAME TENOR AND DATE BEEN SIGNED, ONE OF WHICH BEING ACCOMPLISHED THE OTHERS TO STAND VOID			BY:	



Reference Glossary

- ▶ Examples of commodities are:
 - ▶ Agricultural products (anything you or an animal would eat) (Fresh, Frozen, or dry)
 - ▶ Lumber products
 - ▶ Steel
 - ▶ Scrap metal
 - ▶ Paper products
 - ▶ Recycled plastic



Export Subcommittee Recommendations

Post Departure Filing (PDF) affords companies much-needed supply chain flexibility, making them competitive in the global marketplace. It allows exporters to begin the export process before logistics plans are finalized, creating supply chain efficiencies, preserving profitability and improving customer satisfaction.

The goal for the PDF Working Group (WG) is to update the current PDF structure, known as Option 4.

The PDF Working Group has completed a desktop exercise with stakeholders from various industries in both the ocean and air environments. Importantly, the WG's desktop exercise integrates the post departure filing proposal with CBP's Advanced Export Manifest Pilot, reflecting the fact that the two are inextricably linked. The desktop establishes a flexible manifest and PDF process that conforms to exporters' existing PDF processes yet achieves CBP's security-related goals.

- COAC recommends the development of a detailed plan for implementing the PDF pilot based on the proposal developed by the WG and we respectfully request that CBP engage with the PDF Working Group to develop and launch that pilot in the next six months both in the air and ocean modes.

Trade Modernization Subcommittee

CBP: **Jeff Nii**, Acting Executive Director, Trade Policy & Programs, Office of Trade
David Dolan, Director, International Organizations & Agreements, Office of International Affairs
Sherri Jordan, Director, Financial Systems Division, Office of Finance, Office of Enterprise Services

COAC: **Lenny Feldman**, Member
Cindy Allen, Member

Trusted Trader Subcommittee

CBP: **Liz Schmelzinger**, Director, Customs-Trade Partnership Against Terrorism (C-TPAT), Cargo and Conveyance Security, Office of Field Operations

COAC: **Alexandra Latham**, Member
 Michael Young, Member

Public Comment Period

Please send in your comments or questions via the Chat box in the webinar.

Your comments will be read into the public record and CBP will respond during the public comment period noted on the agenda if time permits.

Adjourn

COAC

**COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE**