

**Departmental Advisory Committee on
Commercial Operations of the
Bureau of Customs and Border Protection**

May 9, 2008

**Ronald Reagan Building and International Conference Center
Washington DC
9:00AM – 1:00 PM**

Opening Remarks:

Commissioner Ralph Basham said that U.S. Customs and Border Protection (CBP) would focus on trade facilitation and enforcement while balancing these goals with CBP's security mission.

The Minutes from February 13th were approved.

CBP Trade Strategy:

Brenda Smith, Executive Director, Trade Policy & Programs, Office of International Trade (OT), gave a presentation on CBP's Trade Strategy. She explained that the Trade Strategy had not yet been sent to Office of Management and Budget (OMB) or Treasury for review so she would keep her comments general in nature.

Executive Director Smith stated that the Trade Strategy implements high level trade goals and objectives outlined in CBP and Department of Homeland Security strategic plans. She stated that the CBP trade strategy was developed to communicate CBP's approach on trade issues and to develop a clear vision of and highlight the Office of International Trade's (OT) role in national and economic security. Finally, Executive Director Smith commented that there are some opportunities with ACE trade functions coming on line in near future that will support the Trade Strategy. She said OT will prepare a document defining OT's roles, responsibilities and goals – and will communicate these responsibilities to other stake holders (Other Government Agencies (OGA)) and to include the scope.

Executive Director Smith stated that the overall vision is not new and is based on multi-layered risk management where legitimate goods come in rapidly using advanced information and risky goods are caught or deterred quickly, using new tools, regulatory auditing and a growth in enforcement mechanisms.

Brenda Smith stated that CBP is faced with a number of challenges: a number of experienced officers retiring; the sophistication of the trade community; the need to more actively use partnerships, like that with Commercial Operations Advisory Committee (COAC).

The executive director stated that the Trade Strategy represents a 5 year plan and has four goals:

1. Facilitate legitimate trade and ensure compliance
2. Enforce trade laws and collect accurate revenue
3. Advance national and economic security (while improving targeting)
4. Intensify Modernization of CBP trade processes

Executive Director Smith stated that CBP needs to make sure that enforcement actions are consistent.

Brenda Smith also touched upon risk management concerns – How does CBP use their data better on security and enforcement and targeting? How can they make this effort more thorough and sophisticated?

Executive Director Smith stated that CBP will do a couple of road shows to meet with Trade and CBP field personnel to discuss these goals and this renewed focus on trade facilitation and **enforcement**.

Barry O'Brien – addressed 8 Priority Initiatives using teams and measures on each project. Anti-Dumping Duties (ADD), penalties, Safety, Revenue, Intellectual Property Rights (IPR), etc....We'd like to work on these immediately to assist CBP with this mission. We'd like to identify 10 new COAC members so that they could attend the Oct/Nov Meeting to get them on board sooner than later.

Commissioner W. Ralph Basham said that COAC's involvement is critical.

Assistant Commissioner Michael Mullen commented regarding the 10 Members coming in. He said 12 of existing members have reapplied. Mr. Mullen thinks they will have recommendations to the Commissioner within 30 days and CBP has to consult with Chief Counsel to determine the appropriateness of selecting these members sooner.

Import Safety Initiatives: Brenda Smith, Executive Director, Trade Policy & Programs, Office of International Trade:

Dan Baldwin is the CBP Liaison to other Federal Agencies on this important topic.

3 recommendations that CBP and DHS are promoting:

1. Common Mission – harmonizing processing of import shipments among the various federal agencies; need more efficiency. Also, how to manage Import Safety Incidents: who has what authority and who can handle the resolution in the timeliest fashion.
2. Interoperability – a single window or International Trade Data System (ITDS) – working internally to work with OGAs to come up with standard targeting mechanisms and the ability to use a single identifier to track an importer's activity
3. Information Gathering – to create an interactive import safety network.

Carol Cave, Director, Import Surveillance Division, Consumer Product Safety Commission (CPSC):

This Division was created to protect the public from unsafe products and assist in research and prevention to prevent injury.

How to prevent entry of unsafe products:

Have good port cooperation to do this; focused on Automated Commercial Environment (ACE) to target unsafe shipments; use data mining to look at importer's history with CPSC. They do have CPSC investigators around the country to target goods, look for certifications that may be required; they conduct exams and test products that may not be safe.

There is legislation in conference that hopefully will pass by June regarding safety.

Are working on Importer Self Assessment (ISA) Program changes to improve safety.

When CPSC takes enforcement: can take action when nonconforming goods are attempted entry and are seized or those that are not inspected but have entered commerce and are nonconforming.

Hasbro: Barry O'Brien: on import safety working committee. This subcommittee on product safety is an education for both. Hasbro will show CBP the quality assurance procedures they use to ensure quality and safety of their goods.

Challenge of this subcommittee: how do you do an ISA on import safety? Usually this is not housed in import departments but rather Quality Assurance.

Commissioner Basham: we can't inspect our way out of this – partnership and better information are critical.

Medical/Pharmaceutical Safety document – Tony hopes to have this prepared by June/July and will present to COAC.

Intellectual Property Rights Enforcement - Therese Randazzo, Director, IPR Policy and Programs, Office of International Trade

COAC Subcommittee presented 20 draft recommendations to CBP. She asked that the recommendations be broad enough to address concerns of right holders in a cross-section of industries, that the views of other stakeholder that may be impacted be considered and that recommendations be prioritized. The subcommittee needs broader participation to include more sectors of the industry. CBP agreed that they would look at their current recordation process to determine how it could be improved, but would like to know if this is a priority concern for copyright and trademark holders across various industries.. She suggested expanding the IPR committee to a wide spectrum of right holders and industry sectors as well as varying sizes of entities. Also, she recommended expanding the participation to non-COAC members to provide more diverse input.

Barry O'Brien commented that the use of technology could be useful in the protection of IPR. He wants to bring in some software providers with software solutions that may prove beneficial.

Tim Skud -- when we go outside to non-COAC members, important to get those who would be affected by the rules to make sure the rules designed are balanced.

We need to find some small and medium sized companies for participation.

Tony Barone suggested that CBP hold the meetings on a more regular basis and that CBP also provide suggestions as to who should join.

Customs Bond Subcommittee - Bruce Ingalls, Chief Debt Management Branch, Revenue Division, Office of Finance:

Bonds centralized in Indianapolis last year- update:

3 basic measures:

Usually the National Finance Center (NFC) is processing bonds within 2 days. Got behind with ACE A-1 but are now caught up -- exceeding their goals of 5 and 10 days. The issue termination and replacement is being reviewed. Have a continuous bond and for whatever reason wants the principal to terminate and replace it with a new bond, ACE will not permit a Principal in place on 2 bonds at the same time. The lag between the termination and replacement causes heart burn to trade and often forces them to get single transaction bonds until continuous replacements are in place.

Conditional replacement period -- he believes they have a solution and have drafted language into an application that legally allows CBP some flexibility on the term and replace.

Usually, CBP will review the replacement first prior to the termination. CBP must first cancel the OLD bond in Automated Commercial System (ACS) or ACE and when start putting in a new bond, there is a problem. CBP has developed new language for a conditional replacement period. This language by June 30th should be in place. Kiko Zuniga requested a copy of the language for COAC to review. Need to determine how the errors occur so we can assist CBP with the corrections.

ADD/CVD Revenue Policy - David Genovese, Director, AD/CVD/Revenue Policy & Programs, Office of International Trade:

Mr. Genovese began by stating that at the last COAC meeting, Assistant Commissioner Baldwin posed the following question: Should highly compliant importers who participated in the C-TPAT and ISA programs have the same bond formula as companies that have no trade experience and don't participate in these programs?

Mr. Genovese explained that a Bond Working Group composed of senior representatives from the Offices of International Trade, Field Operations, Finance, and Chief Counsel

and as appropriate in consultation with U.S. Treasury, other government agencies, and select members of COAC has been created to address this question.

Mr. Genovese stated that discussions on this issue are at the beginning stages: An initial meeting of the CBP Bond Working Group was held during which a number of issues were discussed; following this meeting a conference call was held between the CBP Bond Working Group and Bruce Leeds and Don Huber of the COAC Bond Subcommittee.

Mr. Genovese stated that during this initial call, the CBP Bond Working Group and the COAC Bond Subcommittee held preliminary discussions on the issues identified by the group and next steps. Discussion also focused on the importance of including a representative from the surety industry in future discussions. The COAC Bond Subcommittee offered to identify a surety representative for this purpose.

Mr. Genovese stated that once a surety representative has been identified, the Bond Working Group will ask the subcommittee to provide its responses and/or recommendations on the issue that have been raised. In addition to addressing these issues, Mr. Genovese stated that the COAC Bond Subcommittee has been asked to provide analysis of the practical impact of a preferential bond formula on a company's premium rates and bottom line. In other words, using actual examples, what is a company's premium rate and the amount of premiums it pays under the 10% formula and what the company's premium rate would be and the amount of premiums it would pay if the formula was 9%, 8%, 7%, etc.

Mr. Genovese stated that once CBP receives this report from the COAC Bond Subcommittee it will move forward on addressing the question posed by Assistant Commissioner Baldwin.

Tim Skud said that CBP setting bond amounts needs guidance on determining these. There is a problem with collecting the retroactive duties versus duties collected at entry. There are 2 components at risk: (1) default and (2) the amount of funds at risk. The amount at risk is most directly related to the bond amounts. The risk of default impacts the amount of premium that is charged. These two risks have to be factored in.

Dan Baldwin – while the real benefit trade is looking for is the premium savings –try to flesh out if there are other benefits that you are looking for – the business advantage that Importer of Record (IOR) would find outside of the premiums. Curtis pointed out providing lower bond amounts to Customs and Trade Partnership Against Terrorism (C-TPAT) members and ISA members would be a benefit the trade would welcome. Dan Baldwin suggested we move these discussions into the Bond Subcommittee's work out of the Supply Chain Subcommittee.

International Trade Issues – Angela Downey, Director, Office of International Trade
She will address Remote Location Filing (RLF), Paperless Performance Measures and the Detention Policy.

RLF filing of electronic entry data from one port to another. Committee is looking at trying to affect bigger areas in RLF without the aid of ACE. ACS limits what we can do because of OGA requirements. Want to broaden the scope of RLF but this is problematic because so many other OGA's make entry a paper environment. She thinks the processing of RLF needs to be made more uniform via increasing awareness and expertise in the field of this process.

CBP updated web page with where RLF information was located and made administrative messages interactive.

Re: Paperless entry and release -- are trying to make progress there both in ACS and ACE and if accomplished can increase paperless dramatically

Performance Measures -- CBP has come up with 3 reports to give to COAC to use as a baseline to monitor both release and paperless entry.

Detention Policy -- Textile Detention Policy was put out to the field Angela clarified what was put into the policy and was distributed to the Field and to the Trade. OT clarified liquidated damages. Was posted yesterday.

Brad Shorser -- RLF -- CBP does not have a single Point of Contact for the field to call if there are issues. He said the trade needs a process to develop a Point of Contact for the Filer.

RLF - consolidation of invoices on one entry has become the norm for most importers. As part of Trade Facilitation, we need some mechanism for an electronic excerpt to be filed so that only that portion of an entry that CBP wishes to look at will be possible.

Paperless - once the edit to ACS occurs, ACS will provide the ability that 75% of all 3461's will be paperless. There are some hard edits to ACS that should improve paperless entry.

Measurements -- broker/importer filing on or prior to arrival has shown a significant improvement from the 2007 baseline of only 72%. The March 2008 number is: 88% of entries were filed on or before arrival. This has had a positive impact on dwell time. In fact, even entries filed after arrival had improved dwell time of no more than one day. CBP's response has improved as well as notifications. Notifications improved by 2 days earlier -- this allows companies to have a better opportunity to plan logistics.

The new Detention Policy -- Brad Shorser said it is much better and is risk-based. Leigh -- also applauded the new policy and wanted to reiterate the importance of open and continuous communication to ensure policies are not too one-sided.

World Customs Organization (WCO) -- Safe Working Group, Michael Mullen, Assistant Commissioner, International Affairs and Trade Relations -- He said that CBP agreed to align 10+2 with the SAFE Framework to ensure harmonization of the data

elements by proposing an amendment to the Framework by adding 5 additional data elements. CBP assured the WCO they remain committed to the uniformity of data. There are 3 criteria to amend the SAFE Framework:

1. Make sure that countries understand that data requirements not be overreaching and overly burdensome;
2. Consult extensively with the trade; and
3. Make sure that the data elements are part of the WCO data model.

WCO did not object to the new 5 elements and there have been additional meetings with the Technical Committee and working groups and he believes that the CBP will be able to get these 5 new data elements through the WCO.

He does state that the amendment to the SAFE Framework and the 10 +2 will go forward independently. He said there is no linkage between the implementation of these two.

He thinks the CBP SAFE amendment may be approved at the WCO meetings in June.

Mutual Recognition – Bradd Skinner, Director, Industry Partnerships, Office of Field Operations: Are incorporating elements of New Zealand's Program into CBP's Validation Process.

Canada and Jordan will sign agreements at the end of June. Dialogue has been opened with many other countries including Mexico.

CBP will participate in two events in the Americas to discuss Mutual Recognition and the Validation Processes.

CBP is working to update the Portal to permit members to share their standing with other countries' customs Administrations. This update should be available in the fall of this year.

Private Sector Consultative Group (PSCG) to the WCO – Leigh Schmid – 4 members left and 5 joined. The PSCG has a road map that it has that it would like WCO to work on followed by the technical working information and the Data Sets. There continues to be inconsistencies between the CBP data and the WCO sets. For example, the container status messaging (CSM) – there are some differences there that could lead to some problems. Need to make definitions clear and not overly legalistic.

Mike Mullen said CBP is sensitive to the differences in the definitions data sets such as the CSM.

ACE Program Status/ITDS – Lou Samenfink, Executive Director, Cargo Systems Program Office, Office of Information Technology

Lou said that now that ACE is used as a Security tool, they need to make sure that they keep the system working. Edit Modification and Edit Light – a topic Dan Baldwin addressed. To help with the A-2 drop whether some of the hard edits in ACS should be added to ACE. The trade has come back with 24 hard edits and CBP is happy to announce that they have accepted those 24 hard edits. (These were worked on at Trade Support Network (TSN) in Dallas).

ITDS – Peggy Rutledge – attended the meeting on April 29th. She was impressed at the number of OGA's available. The Memorandum Of Understanding's (MOUs) have been divided into 2 categories to expedite the process between:

The Data MOUs and Operational MOUs.

Many OGA's have completed their MOUs, while others are not as far along.

Peggy said that for those OGA's that are moving slowly, she requests that CBP encourage more timely action. She wants to meet the milestones already set.

Tim Skud – MOUs split – because of the way the project needs to be devised –

1. Data elements – there needs to be a focus on the data interchange system
2. Border Policy – cooperation.

Tim said that there are 44 Federal Agencies involved and CBP has to carefully watch the budget.

Post Incident Response – Jeremy Luzcowski, CBP - Have conducted exercises – focused on communication gaps and information exchanges at the border locations.

Maritime – CBP has worked well with U.S. Coast Guard (USCG) regarding how the two agencies will work together after a major incident. CBP is working with major industry groups such as the World Shipping Council (WSC) regarding how to address such issues. Hopefully, moving forward, CBP will be able to test this further. Also, CBP will call upon the trade for land-based carrier issues.

CBP has an exercise coming up with the USCG, Federal Emergency Management Agency (FEMA), and the trade on the East Coast to identify gaps during and after an incident, to improve communications, and to increase multiple locations and multiple carriers.

CBP is working closely with Mexican Customs on the Southern Border and are working on some joint protocols.

There is a list-serve offered for business resumption messages via CBP's website. This system is already in place and he is trying to get the word out on this.

Update on CBP/APHIS Joint Stakeholders Conference – Kevin Harringer, Deputy Executive Director, Agricultural Operational Oversight, Office of Field Operations - Animal and Plant Health Inspection Service (APHIS) had a Stakeholder meeting in which they had over 200 participants at the meeting from the CBP fields, Food and Drug Administration (FDA), U.S. Department of Agriculture (USDA), etc. CBP Port Directors go to meet their APHIS counterparts and to see how global and important the agricultural trade is globally. Industry was able to see the breadth of the issues CBP is responsible. Several groups were set among the states and the federal Agencies to improve coordination and communication. They came up with action plans such as recruitment

and retentions, coordination, communication, outreach. The minutes will be available. The task force will reconvene in two weeks.

Geoff Powell –Main theme is communication - big challenge is the number and diversity of groups, even at the state level that are involved. Recommend that they be brought into the COAC meetings because of the need to address these issues. Mike Mullen agreed.

Proposed Revisions to In-bond – Greg Olsavsky, Director, Cargo Control, Office of Field Operations, CBP is trying to enhance accountability and tracking of in-bond movements.

Working on ACS in-bond modules and carrying over those enhancements to ACE.

Are trying to eliminate the whole paper process to move to electronic. Want to change the delivery times by modes of transport to a single delivery times for all modes. This will require regulatory change – as well as to require that all applications be electronic and want additional data in that application. Want to facilitate the release of the in bond cargo and want to facilitate the diversion of the in-bond cargo to a new port via a message functionality so that the affected parties know the diversion is taking place. Are looking at **Radio-frequency identification (RFID)** technology as a means to track the in-bond cargo and increase visibility and security. Greg said CBP is running pilots on RFID technology for tracking purposes but may move to Container Security Devices's (CSDs) when available.

Curtis Spencer asked whether the RFID technology used will be a requirement and expense placed on CBP or on the In-bond Applicant. Greg said that CBP has not determined this as yet because focus is on whether RFID should be used.

Jevon Jamison – requested cooperation and on-going communication with CBP in the consultative process.

Container Security Devices – Todd Owen – 3 companies have been selected to produce the CSDs that need to meet the specifications and then be tested. No change since February.

Importer Security Filing (10+2). Rich Di Nucci, Director, Secure Freight Initiative, Office of Field Operations. Already reviewed the comments and have prepared the responses. Next is the drafting of the Final Rule. Regarding the comments that were filed: Some requested that implementation be delayed; others that it be harmonized with SAFE; Others focused on the liquated damages, 90 of the 200 plus comments dealt with this as well as bonding process.

Rich DiNucci will discuss the data set requirement layouts shortly with the Trade – within a week actually to provide the Trade the lead time necessary to work on programming or software changes.

Bruce asked about Cost Benefit Analysis Comments – Rich said that OMB will review this. He said that it does not appear that these concerns will slow this down any.

Rich thinks the Final Rule could be published by this summer – CBP wants to move as quickly as possible on this. Target date is September.

Rich said he does not think linking exemptions to CTPAT members is necessary because the members could readily provide the information. This data is critical in terms of targeting.

He said 10 + 2 is a Priority Initiative for the Secretary Chertoff.

Global Trade Exchange (GTX) is not moving forward at this time. All responses to the Request For Quotation (RFQ) were technically sufficient but the overriding reason was due to all the other priorities that CBP must address currently. CBP may possibly resurrect it in the future, but this will not occur until other initiatives are underway and implemented.

Secure Freight Initiative (SFI) – 6 month pilot over in April. CBP continues to learn lessons from the exercises in Pakistan and Honduras. Are learning a lot about the equipment used and how to cope with more high volume ports.

C-TPAT – Bradd Skinner –

Metrics:

As of April 17th:

- 8322 members
- 7469 validations
- Over 830 revalidated
- 531 – Suspended – ½ are hwy carriers
- 252 Tier III certified members.

China has opened the validations to CBP via a Joint Validation Phase – Working on a Second Round of Joint Validations.

3rd Party Validations as of March 31 – 30 companies volunteered to be validated to improve Tier Status. Report is due to Congress in June.

Benefits: from New Orleans Meeting – Bradd is working on brochure that quantifies what the benefits of C-TPAT are. He also wants to address the University of Virginia (UVA) study as the majority of participants surveyed said that their supply chain management has improved.

Bradd intends to ensure outreach includes internal stakeholders within CBP such as Directors and Port Directors to update them on C-TPAT and emphasize the importance of delivering benefits to the extent possible and practicable. He will also continue to present to external stakeholders to encourage membership and dialogue with the trade.

Curtis asked why benefits for C-TPAT have to be tied to security. The COAC subcommittee wants to revisit this and we want to discuss this further in Seattle. We will

get Bradd Skinner a document prior to that meeting. Also need CBP to provide the Third Party Logics (3PL) draft next time.

Bruce reiterated COAC's request that CBP expand C-TPAT to exporters.

Other

We requested an update from Mike Mullen regarding when the Final Rule in cooperation with Census for mandatory filing of Shipper's Export Declarations (SEDs).

Adrienne Braumiller requested an update from Dan Baldwin on First Sale, given that 18 Senators and 52 Congressmen were in agreement with COAC's position that the proposed interpretation be withdrawn.

Dan Baldwin -- said CBP just began the legal analysis and review of comments.

Adrienne requested that Mike Mullen and Dan Baldwin include this topic on the next agenda for the meeting to be held in Seattle on August 7.

The next D.C. meeting is scheduled on November 20th.