

Commercial Customs Operations Advisory Committee (COAC)

Trade Enforcement and Revenue Collection Subcommittee –
Forced Labor Draft Recommendations

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COAC

COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE

Commercial Customs Operations Advisory Committee (COAC)
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Trade Enforcement & Revenue Collection (TERC) Subcommittee
Forced Labor Working Group
COAC 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.

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

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 implement the feedback provided to the forced labor page and supporting documents on cbp.gov in order to provide the trade with a clearer understanding of forced labor laws and processes. CBP should also provide more meaningful tools to clarify how importers can comply with forced labor laws. The Forced Labor Working Group has provided updates to various aspects of the forced labor page on cbp.gov for CBP's consideration in Appendix A.
- d) CBP should clarify their ability to self-initiate allegations.
- e) 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 the COAC recommendations made for AD/CVD).

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

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.

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.

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.

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 are silent on when CBP must respond to a WRO. COAC recommends CBP update the regulations so they are similar to existing procedures, policies and directives for detention of merchandise, which requires CBP to make a final determination within a specified timeframe. CBP should 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.

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.

General

Recommendation 11: COAC recommends CBP continue the Forced Labor Working Group to provide additional input to CBP regarding implementation issues and additional communication needs for stakeholders in the future. The Forced Labor Working Group should consider focusing on forced labor compliance by industry sector and include personnel from each of the CBP Centers and continued involvement from CSOs.

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.

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

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.responsiblesourcingtool.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%20v5%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>

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