

Commercial Customs Operations Advisory Committee (COAC)

Secure Trade Lanes Subcommittee: Trusted Trader Work Group Draft CTPAT/Trade Compliance Forced Labor Strategy

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U.S. Customs and
Border Protection

CTPAT/Trade Compliance: Forced Labor

OFO Proposal to Implement Forced Labor Provisions of 19 USC 1307 through Trade Compliance

11.20.18

The Department of Labor defines a social compliance system as an, “integrated set of policies and practices through which a company seeks to ensure maximum adherence to the elements of its code of conduct that cover social and labor issues.” CTPAT intends to incorporate social compliance as part of its trade compliance program, thus supporting the agency wide effort to combat forced labor.

To be eligible for a benefit, companies must develop, implement and verify a robust social compliance program. Below are the seven facets of a successful program, the evidence of implementation that a company must provide to CBP and the benefits for which a compliant company will be eligible.

COMPLIANCE CRITERIA:

1) ENGAGE STAKEHOLDERS AND PARTNERS

- Stakeholders and partners can be
 - company employees
 - workers in production facilities and worker representative organizations
 - suppliers throughout the supply chain
 - communities and community-based organizations throughout your supply chain
 - national or international civil society organizations
 - shareholders and investor groups
 - other companies in your industry
 - government entities

- Engagement can be one-to-one or through multi-stakeholder groups, to include industry associations and initiatives.

Evidence of Implementation: documentation of stakeholder engagement, could include: membership in multi-stakeholder groups such as the International Labour Organization Global Business Network on Forced Labor and Human Trafficking and certification programs

2) ASSESS RISKS AND IMPACTS

- Risk and impact assessments identify how a company might be at risk for contributing to forced labor. The assessment should be ongoing and not a onetime exercise.

- The assessment should cover both internal and external factors and include supply chain mapping. “Mapping” constitutes knowledge of who your suppliers are and also where

they are located. Mapping does not inherently imply that a company is responsible for all entities involved in their supply chain.

- The assessment should cover the following, but not exclusively: the worker population and vulnerabilities to forced labor, the presence of indicators of forced labor, geographic areas of sourcing and risks of forced labor, industry-specific forced labor risks.
- The assessment should also include use of a variety of outside sources, such as the Labor Department and State Department reports, to assess risks based on industry and country. This should include knowledge of the root causes of forced labor, such as countries that lack awareness about human rights or access to quality education.
- The information or records should be maintained so as to manage information and data effectively.

Evidence of Implementation: assessments should be provided to CBP; National Account Managers (NAM) should be shown the records that contain the information gathered during the risk assessment; supply chain mapping should be provided to CBP annually or as is necessary if changes occur

3) DEVELOP CODE OF CONDUCT

- A code of conduct sets out the standards and policies for both the company itself and the company's partners. A code of conduct is typically based on international or industry standards, and for purposes of this program, must be in compliance with applicable United States law. The code may cover the following:
 - prohibitions on forced labor and human trafficking
 - fraudulent and coercive recruitment
 - recruitment fees and transportation expenses
 - contracts of employment
 - retention of personal documents
 - deposits and other forms of induced indebtedness/debt bondage
 - humane treatment in the workplace
 - workplace equality
 - wages and benefits
 - working hours and wages, including overtime
 - freedom of movement and personal freedom
 - grievance procedures
 - private employment agencies and labor recruiters
 - employee awareness and training
- Simply joining an industry code is not a substitute for a company code; evidence of implementation of the code must still be provided.

Evidence of implementation: the company or industry code should be supplied to CBP and should be signed by senior management; other legal documents such as contracts that include terms of compliance with the company code, should be signed by both the partner management and the company management

4) COMMUNICATE AND TRAIN

- Communication and training should extend not only to employees, but to suppliers and suppliers beyond the first tier. Training may cover the following:
 - Standards included in the code of conduct
 - Comprehensive overview of the social compliance system
 - Expectations for each component of the system
 - What to expect from an audit and how audit data is independently verified
 - Remediation policies and procedures
 - Company's public reporting
 - Opportunities for input, including grievance mechanisms
- Companies should ensure that channels are available for workers to lodge complaints about any issue related to the company's code of conduct.

Evidence of implementation: documentation of training should be provided to CBP; NAMs should be offered the opportunity to attend a training event and/or take online training; relevant forced labor information collected through the grievance mechanism should be available to CBP, if requested

5) MONITOR COMPLIANCE

- Auditing is crucial to the effective implementation of a social compliance system. A company should utilize internal and/or external auditors.
- Auditors should take a comprehensive approach to investigating forced labor. Below are some, not all, of the questions that should be asked:
 - Are any workers working excessive overtime beyond legal limits?
 - Does the employer restrict worker's freedom of movement or communication with others inside or outside the workplace?
 - Does the employer force workers to engage in illicit activities?
- Auditing should include not just interviews, but also documentation review for evidence of the answers provided.
- All audits should produce a full report.

- The company must demonstrate a commitment to using the data gathered from an audit to inform future practice.
- Independent review differs from auditing in that no money is exchanged between the company and the group conducting the review. This removal creates a more objective perspective and should be utilized when possible.

Evidence of implementation: the report(s) produced by the audit(s) should be provided to CBP in its/their entirety; when a third party audit occurs, this audit should also be provided to CBP

6) REMEDIATE VIOLATIONS

- Every forced labor violation identified in an audit should be remediated, both to correct the violation identified and to prevent a future recurrence.
- Remediation of violations includes immediate and forthcoming disclosure to the appropriate government party.
- Analysis of why a violation occurred can, and often will, include factors outside the company's control, such as ineffective government institutions and systemic poverty. All remedial steps should include actions on the part of the company that will create change, regardless of the circumstances outside the company's control.
- Remediation action should be organized into a Corrective Action Plan or other plan, so as to comprehensively create effective change.
- Communication of the disclosure to CBP should include, to the extent possible, summary of how an issue was handled.

Evidence of Implementation: the Corrective Action Plan should be provided to CBP; specific documentation of steps taken to ensure the safety of employees found to be the victims of forced labor should be presented, including swift reporting to law enforcement and other necessary steps

7) DISCLOSURE

- Disclosure must be conspicuous. A link that can be readily identified and understood should be placed on a partner's homepage.
- A separate page should be devoted to outlining the ways in which the company fulfills the seven steps.
- If a company does not currently take action in a specific area, but is working to create and implement a measure, that should be disclosed as well.

- Companies that do not have a social compliance program and have no plans to create one will need to explicitly disclose the absence of a program.

Evidence of Implementation: NAMs will view the disclosure online

OFO Recommendations for Benefits:

Note: Only companies that develop and maintain a validated social compliance program are eligible for benefits. Companies without a social compliance program will need to publicly disclose as much and will not be entitled to any of the benefits listed below.

1) CBP will notify participating CTPAT Trade Compliance companies of countries and/or commodities considered to be at high risk of a U.S. nexus to forced labor violations in the supply chain, prior to CBP issuing a Withhold Release Order (WRO). Prior notification will allow participating companies time to review their supply chain and, if necessary, prepare exculpatory evidence before the WRO takes effect.

2) CTPAT Trade Compliance companies will be first in line for an expedited verification of evidence provided. If the company successfully exonerates itself – proving that the goods in question were not made with forced labor – then the company will no longer be subject to the WRO, effective immediately.

3) CTPAT Trade Compliance companies will see a reduction in post release inquiries related to forced labor supply chain due diligence such as CBP Form 28, audit surveys, etc.

4) In the absence of specific actionable intelligence identifying imports associated with individual CTPAT Trade Compliance participants, participants in good standing will be excluded from the universe of imports considered high-risk for violating 19 USC 1307.

Removal from CTPAT Trade Compliance

Failure to fulfill the terms of the CTPAT TC Memorandum of Understanding (MOU) constitutes grounds for removal from the CTPAT TC program. The MOU stipulates – among other requirements – that members will maintain a high level of trade compliance and will agree to comply with all applicable CBP laws and regulations. A forced labor violation will be seen as violating the CTPAT TC MOU and said violation will be considered when determining partner status.

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