

**Commercial Customs Operations Advisory  
Committee (COAC)  
Intelligent Enforcement Subcommittee  
Recommendations**

April 15, 2020

**COAC**

COMMERCIAL CUSTOMS OPERATIONS  
ADVISORY COMMITTEE

## **Forced Labor**

### **FORCED LABOR ALLEGATION**

- Define the elements of a credible high-quality allegation, including the mechanisms of reporting and types of documents that comprise a credible high-quality allegation.

#### **Recommendation:**

- 1) COAC recommends CBP develop a guidance document that includes specific criteria to assist individuals and organizations in identifying meaningful information to include when reporting forced labor allegations. We have provided the specific criteria in Appendix A.

### **MEANINGFUL CBP FORM 28 RELATED TO FORCED LABOR**

- Define elements of a CBP Form 28 for a specific inquiry related to an entry that is subject to a WRO. Work product should lead to criteria required to demonstrate Proof of Admissibility to CBP - 19 CFR § 12.43.

#### **Recommendations:**

- 2) COAC recommends CBP modernize the current forced labor regulations in 19 CFR § 12.43 and provide for a public comment period. 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, such as the forced labor Certificate of Origin, that are obsolete or may become so in the future and incorporate the Forced Labor CBP Form 28 questions that can be used to start the dialog with trade in the course of determining Proof of Admissibility.
  - b. Currently, forced labor regulations are silent as to when and how CBP must detain merchandise subject to a WRO. COAC recommends CBP update the regulations so they are similar with existing procedures, policies and directives for detention of merchandise, which CBP is required to follow in order 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.<sup>1</sup>
- 3) COAC recommends CBP use update the questions that are used on a CBP Form 28 to solicit information to confirm forced labor admissibility as opposed to a detention notice. The suggested questions are provided as Appendix B and the aim is to provide CBP with meaningful information for a specific entry or a set of entries, as it relates to forced labor. They are not intended to be used as an equivalent to an audit, or to gather broad information over the entire supply chain for an importer.

### **STATUTORY GUIDANCE: DISCLOSURE PROCESS & BENEFITS**

- Develop guidelines on the disclosure procedure and reporting requirements that importers should follow when an incident of forced labor is found to reasonably exist in their supply chain.

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<sup>1</sup> COAC previously recommended this under recommendation 010120, which was not fully implemented.

- Identify reasonable factors that CBP can consider for voluntary self-disclosure, full cooperation, and timely and appropriate remediation related to forced labor violations.

## **Recommendations**

- 4) Regulatory Framework: Since 19 CFR 162.74 only allows for violations of 19 USC 1592 and 1593(a), COAC recommends that CBP update 19 CFR 162.74 to include violations of 19 USC 1307 and 19 USC 1595(a). COAC has drafted recommended language as attached in Appendix C.
- 5) Disclosure Eligibility: COAC recommends CBP design a disclosure process that includes the following elements:
  - a. Disclosures are for violations of 19 USC 1307 and 19 USC 1595(a).
  - b. Disclosures are allowed for the importation of any article which is being or has been introduced, or attempted to be introduced into the commerce of the United States.
  - c. Disclosures apply to goods made in whole or in part of forced labor in that forced labor incidents discovered at both direct suppliers and upstream suppliers are eligible for disclosure.
  - d. A WRO should not be considered an ongoing investigation that limits disclosure eligibility if the importer and their supplier(s) are not named in the investigation.
  - e. The timeline to submit a disclosure should be consistent with the current prior disclosure process in that an importer can file notification of a possible disclosure, be granted 90 days to conduct an internal investigation, and then file a full disclosure or withdrawal the notification, depending on the outcome of the investigation. Extensions of the 90-day period may be requested by the disclosing party. This will allow importers to secure the disclosure benefits early in their supply chain review process, conduct a thorough review, and take remedial action if necessary.
  - f. For CTPAT partners, the existing benefit that allows for a disclosure to be made within 30 days of notification from CBP (as long as there is no ongoing investigation or consideration of fraud), should also be extended to violations of 19 USC 1307 and 19 USC 1595(a).
- 6) Disclosure Benefits: COAC recommends CBP design a disclosure process that offers the following benefits in exchange for a company's voluntary disclosure:
  - a. Companies that file a disclosure on past importations will be exempt from all penalties.
  - b. If a company submits a disclosure, and, in addition to past importations, they have subject merchandise in transit to the U.S., that merchandise will not be subject to the seizure process. Instead, the company will be afforded the option of exporting or destroying the goods.
  - c. For past importations where a CF 4647 Notice of Redelivery has been issued, a company will not be subject to liquidated damages penalties for failure to redeliver, if the subject goods are no longer available to be redelivered (for example, sold).
- 7) Disclosure Factors: COAC recommends that CBP consider the following factors in evaluating and making a determination on the outcome of a disclosure:
  - a. Company's level of cooperation with the CBP investigation.
  - b. Company's demonstrated efforts to remediate issues pertaining to goods made with forced labor in regards to the specific supplier and associated facility such as the outcomes and history of previous social compliance audits, including corrective actions.
  - c. Company's overall commitment and established social responsibility compliance program to combat forced labor in their supply chains including efforts to communicate requirements, provide training and guidance to their suppliers.

- 8) Agency Alignment: COAC recommends that CBP coordinate with ICE to have similar disclosure processes for potential violations, violations, or any other criminal matter.
- 9) Outreach: COAC recommends CBP publish a dedicated Informed Compliance Publication (ICP) on forced labor to include guidance on mechanisms to report forced labor allegations, investigations/WROs, due diligence, enforcement, prior disclosure, and mitigating factors.

## **Intellectual Property Rights (IPR)**

### **Team 1 Recommendations on eRecordation**

Team 1 was created to examine matters related to the e-recordation portal and procedures for trademarks. The charter of the Team was to consider how a “clean-sheet” approach would manifest, and therefore reflect an idealized state of business process. Further exploration, as well as investment, in terms of people and/or budgetary expenditure, will be required to bring the recommendations from concept to reality. These recommendations reflect the Team’s collective view about how to best accelerate cooperation between trade actors and CBP in a more coordinated and effective fashion to enforce IPR.

#### **eRecordation System**

- 1) In support of prior recommendation #10374 to provide CBP with additional budget and resources, COAC recommends that CPB redesign the eRecordation system in which IPR enforcement is made more effective and efficient by:
  - a. Allowing data to flow automatically from the registration of the IPR.
  - b. Make it the hub for data upon which CBP can rely to target IPR violations
  - c. Allow the system to be the hub for data from CBP
  - d. The E-recordation system should be interactive, allowing CBP and IPR owners the ability to share information in real time.

#### **Data Flows Automatically**

- 2) **Integration**: COAC recommends CBP work with USPTO to have registration numbers flow directly from USPTO to the CBP Portal. Rights holders will select registrations for enhanced enforcement via the portal. Once selected, rights holders can assign contact information by groups of trademarks. Rights holders can provide information about authorized parties/licenses for groups of marks or individual marks, as well as supplying information about known violators of all or certain marks.

#### **Hub for Enforcement**

- 3) **Enforcement Targeting**: COAC recommends the new system be multi-functional. The new system should be the registry for enforcement targeting data such as:
  - U.S licensees of the IPR
  - Authorized manufacturing locations add actual name manufacturers
  - Known offender data
  - Unique identifiers or verifiable credentials that promote more secure trade by providing greater insights into importers of genuine articles and their histories
  - IPR owner contacts associated with IPR to assist with determinations of authenticity

- 4) **Brand Identification Guides:** COAC recommends the system should make it easier for CBP to research and locate information filed by IPR owners such as brand identification guides. Using automation to allow CBP officers to enter a search term and be brought automatically to the relevant page of an IP owners Brand Identification Training Guide uploaded to CBP's systems. Right now, one visible problem is that frontline officers don't have the time to search through detailed brand manuals to find what they're examining. We need to make this easier for them.
- 5) **Key Technology:** COAC recommends data could be linked to keys that could be shared with brokers and then transmitted to CBP in the entry filing process in ACE. The keys would identify to the authorized licensee/importer (validate to IOR) and item level (to extent the holder loads this info). The key would link directly to the appropriate locations in the recordation database that could automate release or allow officers to very quickly make determinations. It shrinks the haystack and allows CBP to focus its efforts on potential bad actors. Also, it is essential that the system for maintaining the data is user friendly for SME's and automated for use by folks with lots of data to share.

### **Hub for Data from CBP**

- 6) **Track and Trace:** COAC recommends that CBP report the results of assistance rendered by IPR holders so that the latter can track and trace on a transaction basis from detention to seizure or release. With this information, IPR holders will know better how the assistance provided to CBP should be refined or improved.
- 7) **Data Sharing:** COAC recommends Customs brokers have access to information about rights holders' recorded goods to help facilitate legitimate trade and automate their customer vetting processes. Brokers play an integral part in the Customs clearance process. As key trade partners to importers and CBP, brokers are equally concerned with ensuring the facilitation of legitimate goods and identifying bad actors. Access to information improves the broker's ability to properly vet their importer customers, identify bad actors and act as an effective force multiplier in preventing the importation of infringing goods.

### **Vehicle for Real Time Communication with IPR Owners of Record and between CBP Offices**

- 8) **Real Time Communication:** In support of prior recommendation #10356 COAC also recommends the electronic system be used to send and receive e-messages for purposes of authentication of detained goods. It can also be used for issuing notices of seizure to IPR holders. In either case, functionality could include the ability of IPR owners to request additional information such as photographs and samples. IPR bond information can also reside in the system. IPR owners who've recorded contact information can indicate e-mail addresses and mobile device IDs for purposes of automatic distribution of the above-mentioned messages from CBP.

### **Interim Recommendations**

We visualize these as a process that can benefit from automation that immediately exists until CBP system can be automatically updated

- 9) COAC recommends the elimination of trademark-by-trademark recordation. The IPR owner should be able to record multiples marks and trademarks simultaneously.

- 10) COAC recommends as an interim step that the Automated Commercial Environment (ACE) be updated to carry the capability of recording IPR, including the renewal of marks as well as the expiration and renewal of license agreements, etc. thus alleviating the need for separate systems.
- 11) COAC recommends that CBP look at existing systems that can be used to automatically notify rights holders of the seizure. This would save both time and money for CBP and rights holders compared to many notifications being sent via U.S. Mail. This could possibly be an interim solution and/or part of a long-term solution depending on the functionality of the systems.

## **Team 2 Recommendations**

Team 2 was established to discuss and review recommendations for Data Sharing, the DHS Report on Trafficking and Pirated IPR goods, and the Presidential Executive Order on eCommerce. The recommendations developed by Team 2 are provided below.

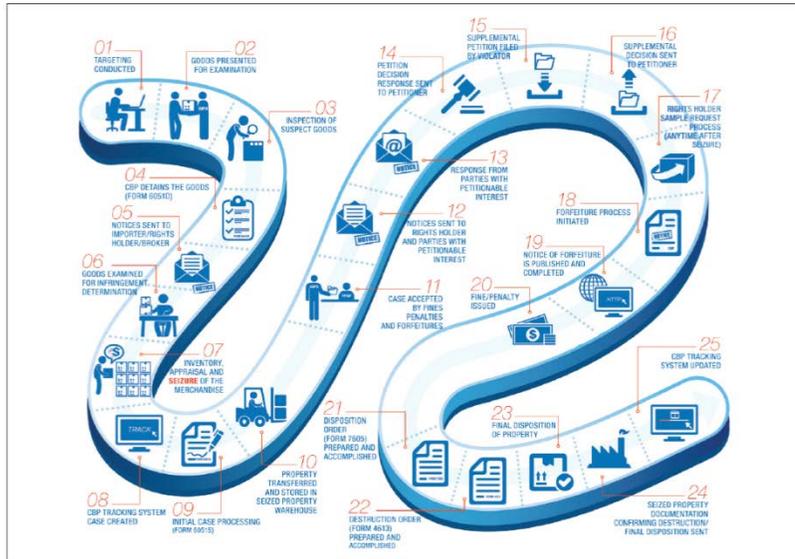
### **Data Sharing**

In regards to automation and data sharing, the COAC previously submitted recommendation #010353 to automate the current paper process for seizures and detentions, #010375 to make the detention and seizure process more transparent and visible as allowed by law, and #010376 to build functionality in ACE that would allow the ability to see these notices and share information among approved parties. In further support of automation and data sharing, the COAC submits these additional recommendations.

- 12) **Blockchain:** COAC recommends that CBP pursue blockchain encryption technology based on the successful IPR Proof of Concept completed by the COAC Emerging Technologies Working Group. This will enable CBP, rights holders and importers to share and access database information in a secure and confidential manner so that items could be targeted or pre-cleared before arrival at the port of entry. Specifically, the rights holder would provide a database of identifiers for legitimate product. The data would be encrypted through Blockchain technology so that neither CBP nor the Importer would have access to the raw data, thereby ensuring confidentiality of the Rights Holder's intellectual property.
- 13) **Sharing of Detention Information:** COAC recommends that CBP automate the sharing of detention information, photographs, images and samples as provided for by current regulations. CBP regulations provide for disclosure of unredacted photographs, images and samples ("images") to the importer per 19CFR 133.21(a)(1) and to the IP owner per 19 CFR 133.21(b)(3), (c) and (e) but CBP has not adopted procedures to do the following allowed for under these regulations:
  - Generate sharable images at the time of inspection
  - Provide images to importers at the outset of the 7-day response period
  - Provide images to intellectual property (IP) owners promptly following seizure
  - Provide images electronically
- 14) **Photographic Standards Guide:** COAC recommends that CBP partner with brand holders to share and provide "photographic standards guides" to aid CBP Officers in taking the required photographs necessary to streamline and expedite the brand authentication process. This can help authenticate products that are detailed within 24-48 hours.
- 15) **Data-Driven CBP Seizure Process:** COAC recommends that CBP re-evaluate the current 25-point step seizure process to eliminate unnecessary steps and choose an expedited process for small parcels vs. pallets. An innovative, streamlined seizure flow would create more efficient

identification, interdictions, and seizures. Particularly, the first six to seven steps could be combined through technology advancements. Expedited seizure should not eliminate ability to share information with the business community or target bad actors.

FIG. 49: CBP's Existing 25-Point IPR Seizure Process.<sup>8</sup>



- 16) **Trusted IPR Vendor:** COAC recommends that CBP authorize all Centers (Center) of Excellence and Expertise (Centers) to establish pilot programs for “Trusted IPR Vendor” lists which are good actors within the supply chain (i.e., importers and foreign suppliers). A Trusted IPR Vendor could be identified with a flag in ACE similar to the Broker Known Importer Program (BKIP) that attaches a flag to every entry an importer makes once “known” or approved as a Trusted IPR Vendor. A Trusted IPR Vendor could be defined as:
- A company which is authorized to import on behalf of a brand owner or;
  - A company which has been identified directly by the Center as a Trusted IPR Vendor either directly or in conjunction with a third-party organization acceptable to the Center.

Companies wishing to be considered a Trusted IPR Vendor under either paragraph a) or b) above must agree to sign a Certification Agreement, agreed to by the Center and Industry, which would include the company’s agreements to certain criteria such as:

- Due diligence in sourcing goods to avoid counterfeit products
  - Best efforts to avoid goods that were manufactured with forced labor
  - Cooperation with U.S. Law Enforcement in any counterfeit investigation
  - Quarantine goods identified as counterfeit
- 17) **Donation Acceptance Program:** In support of COAC recommendation 010355, COAC recommends that CBP conduct more outreach with brand holders at least bi-annually to brainstorm on additional tools that are most helpful to CBP in counterfeit detection. This includes bar code scanners, mobile applications, and other broad-based technology that can assist CBP with authenticating a shipment in a matter of seconds. Donating enforcement technologies helps trade across the board. Sharing best practices or applications like third-party assessment tools streamlines

and broadens information sharing, while decreasing the time required to catch the violative goods. This can also help streamline the seizure and detention process and allow CBP officers quick access to data to identify counterfeit products.

### **DHS Report on Combatting Trafficking in Counterfeit and Pirated Goods**

In response to the Presidential Memo on Combatting Trafficking in Counterfeit and Pirated Goods, the COAC submitted public comments to the Department of Commerce under Docket Number 190703544-9544-01 at the following link: <https://www.regulations.gov/document?D=DOC-2019-0003-0090>. On January 24, 2020, DHS finalized its report in response to the Presidential Memo and provided 11 recommendations to CBP as well as best practices for rights holders. The IPR Working Group reviewed and discussed the report to develop the following recommendations in response to it. However, due to the COVID-19 pandemic, the in-person meetings scheduled for the IPR Working Group on March 18<sup>th</sup> and March 19<sup>th</sup> were cancelled. As such, the COAC and IPR Working Group have not had ample time to discuss the DHS Report with CBP and make the following high-level recommendations.

- 18) **Trade Collaboration:** COAC recommends that CBP engage with COAC working groups to brief the trade on plans to comply with the DHS Report before policy and/or regulatory decisions are made. The report asks CBP to implement the DHS recommendations within 180 days, which is on or after July 24<sup>th</sup>, 2020. Although COAC has made some high level recommendations in the near term, there continues to be a need for discussion on the impact this report will have on the trade, the policy questions that need to be answered, the regulations that need to be modified, and the technology that's necessary to support the changes.
- 19) **Entry Type 86 Pilot:** COAC applauds CBP on the successful implementation of this pilot to process millions of Section 321 entries that are under the \$800 de minimis value and recommends that CBP resolve the ongoing policy issues and unanswered question since the Noticed of Proposed Rulemaking was issued including but not limited to:
  - a. Policy Guidance from the BIEC on the different PGA requirements for Section 321.
  - b. Requirements for importer of record (when optional or mandatory), power-of-attorney (when required) Entry Type 86 transactions.
  - c. Trade is looking for a clear definition of "one person per shipment per day." How is one person defined and what person is legally authorized to do so within the supply chain?
- 20) **Section 321 Data Pilot:** COAC has members who participate in the pilot and recommends that the pilot continue since the data being collected and provided to CBP through this pilot can be very beneficial. However, CBP has not had the opportunity to evaluate the data being received, and there is still a great deal of effort for the pilot participants to gather the data.
- 21) **Section 321 Enforcement:** COAC recommends that CBP triangulate the data being collected from both pilot programs to identify enablers (whether knowingly or not) to establish a means to stop the product from being shipped to, or accepted at entry into the U.S. if coming from or through red-flagged entities.
- 22) **Co-Mingling:** To address the challenges with co-mingling by eCommerce platforms with fulfillment centers, COAC recommends that CBP develop new policy and/or regulation that requires eCommerce Platforms to do the following:
  - a) Include a mandatory country of origin field and require sellers/merchants to disclose the country of origin of the goods for every item being sold on the platform as required for all other commercial importations.
  - b) Require a "verified source" tag which indicates that the seller/merchant does not allow co-mingling of its merchandise. This provides the buyer with an option to choose the authentic merchandise that is a "verified source" over one that is not on the platform.

- 23) **Foreign-Trade Zones (FTZs):** In support of prior recommendation #010309, COAC recommends that CBP allow FTZs to be used for Section 321 shipments to increase visibility into these importations due to the recordkeeping, auditing and bonding requirements imposed on FTZs. Changes to U.S. informal-entry rules increasing the U.S. duty-free *de minimis* level for imported goods from \$200 to \$800 adversely impacted U.S. foreign-trade zone (FTZ) distribution operations by encouraging a shift of e-commerce fulfillment for the U.S. market to Canada, Mexico, and other foreign locations. Since the *de minimis* benefit is currently available only to foreign distributors but not to U.S. FTZs, COAC recommends that CBP work to make legislative changes to the 321 statute and FTZ Act to address the adverse impact of this change and assure that e-commerce operations can remain in the U.S. With the explosive growth of small-package delivery through e-commerce channels, moving even a portion of this trade through the stringent enforcement and compliance system of the FTZ program will help ensure that illicit goods, including products violating intellectual-property rights (IPR), do not enter the U.S. market.
- 24) **Public Outreach:** COAC recommends that CBP take the following actions to increase consumer awareness of counterfeit merchandise:
- a) Share photos from raids globally that highlight some of the conditions where products are manufactured and marketed to consumers.
  - b) Educate consumers on what best practices are working in other countries and focus on more violative health and safety issues. For example, best practices that France uses to enforce consumer purchases which are considered illegal if counterfeit.
  - c) Increase outreach to consumers on the dangers of buying on-line utilizing joint industry/government campaigns with a stress on consumer safety.
- 25) **Suspend and Debar Repeat Offenders:** COAC recommends that CBP program ACE to reject entries for any importers that are suspended or debarred from doing business with CBP as identified within any applicable database.
- 26) **Ensure Entities with Financial Interests in Imports Bear Responsibility:** COAC recommends that CBP develop regulations and/or policy guidance that would define what is considered “high risk” shipments and when any additional bonding would be required for the party with a financial interest in the transaction so this could be managed in an automated fashion in ACE (preferably by HTS tariff number). Policy guidance is also necessary since Section 321 *de minimis* shipments under \$800 in value do not require an importer of record number or bonding, unlike other transactions where this designates the party with the financial interest who is liable for complying with Customs laws and regulations. COAC further recommends that CBP consult with the trade to have more in-depth conversations on these requirements within the DHS report since they have far-reaching implications on the trade to effectively manage and identify the roles of the transacting parties in order to ensure compliance.
- 27) **Action Against Non-Compliant International Posts:** COAC recommends that IPR brand holders be provided with a means to identify in ACE if they provide any approval for their importations to arrive via post or courier service. Many brand holders have strict instructions and a simple flag in ACE could provide a short-term solution for CBP to target that cargo prior to arrival to provide advance notice to brand holders that a shipment is arriving by post or courier, which is likely counterfeit if the brand holder did not provide approval for such transit.
- 28) **BIEC Engagement:** COAC recommends that CBP conduct regular inter-agency meetings with the United States Postal Service as part of the BIEC as well as CBP’s outreach and relationship building with other Partner Government Agencies to address Section 321 compliance, IPR

facilitation and enforcement to ensure that similar data sets are required with both the public and private post as other modes of transportation via air, ocean, truck, etc.

**Presidential Executive Order on Ensuring Safe & Lawful eCommerce**

When developing regulations to respond to this Executive Order, COAC recommends that CBP consider it already has authority under 19 CFR 111.5 and 19 CFR 111.74 to begin proceedings to suspend or revoke a customs broker license or issue a monetary penalty for violations, which provides for due process. CBP also has authority to issue monetary penalties under Section 116 of the Trade Facilitation and Trade Enforcement Act (TFTEA) for which CBP has already issued a Notice of Proposed Rulemaking. COAC encourages CBP to utilize these processes and procedures to the greatest extent possible to address the enforcement issues raised in the Executive Order.

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