



**COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE**

**Recommendations during June 29, 2022
16th Term COAC Public Meeting
CBP Advance Training Center Harper's Ferry, West Virginia**

**Intelligent Enforcement Subcommittee
Forced Labor Recommendations**

010537

1. COAC recommends CBP to develop and prioritize proactive, transparent, and bi-directional training with Trade and within the agency to ensure consistency in effective communication, enforcement, and outreach across ports of entry and Centers of Excellence and Expertise related to implementation of Uyghur Forced Labor Prevention Act (UFLPA) and the eradication of forced labor.

010538

2. COAC recommends CBP develop and publish a robust Informed Compliance Publication covering all aspects tied to CBP and forced labor enforcement under 19 U.S.C. § 1307, including the UFLPA and the Countering America's Adversaries Through Sanctions Act (CAASTA) rebuttable presumptions, providing necessary and specific guidance to members of the Trade regarding their reasonable care obligations and the differing evidentiary standards.

010539

3. COAC recommends a new benefit for CTPAT members where CBP provides proactive and collaborative engagement on emerging non-public forced labor risks on a quarterly basis.

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4. COAC recommends CBP provide advanced advisory opinions and forced labor rulings related to CTPAT member supply chains to facilitate fully-vetted supply chains, minimizing port disruptions and congestion, while delivering increased predictability in cross border execution.

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5. COAC recommends CBP clearly define “Clear and Convincing Evidence” relative to the CBP UFLPA Operational Guidance for Importers, cite specific case law and provide examples of its application by CBP.

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6. COAC recommends that CBP include in the UFLPA Operational Guidance for Importers to consider social compliance audits, which may be maintained in the ordinary course of business, as part of the fair clear evidence for demonstrating the absence of Forced Labor for detained shipments.

010543

7. COAC recommends CBP revert to application of 19 U.S.C. § 1307 and 19 C.F.R. § 12.42/43 as the UFLPA enforcement mechanism as opposed to the detention process applied under 19 U.S.C. § 1499.

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8. COAC recommends, CBP inform the importer subject to an admissibility issue, with specific information regarding which element of the commodity in the transaction is being questioned, so that specific rebuttal evidence can be provided.

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9. COAC recommends CBP update the UFLPA Operational Guidance for Importers to state that CBP will not apply any adverse inferences to an importer’s record related to a decision to export merchandise subject to a detention.

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10. COAC recommends that CBP adopt and publish a policy that allows importers to transport, in-bond as necessary, to store detained or seized cargo, allegedly produced with forced labor, in a bonded facility (e.g., bonded warehouse or Foreign Trade Zone) within or external to the initial port of import/entry in order to avoid or minimize unnecessary congestion as well as to provide relief from premium carrier and terminal detention or demurrage charges.

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11. COAC recommends that CBP not implement a certification requirement as a part of UFLPA enforcement. Importers already certify at the time of entry that the goods are eligible for entry under the presumption of reasonable care. An additional certification is a burden to the Trade and to CBP and is an unnecessary duplication.

010548

12. COAC recommends that CBP should continue to research in collaboration with the Trade, new and emerging technology options that could be beneficial for this risk area, including a pilot program that would have varied applications or a large percentage of stakeholders, including small and medium sized businesses

Next Generation Facilitation Subcommittee 21st Century Customs Framework Recommendations

010549

1. COAC recommends that CBP proceed to internally finalize the draft statutory language based on areas addressed in the course of 21CCF discussions for the following statutes:
21CCF Statutory Changes to be Finalized:
CBP Challenge Area 1: Limited Data Collection
 - 19 USC 1321
 - 19 USC 1498
CBP Challenge Area 2: Restricted Data Usage
 - 19 USC 1628a and b
CBP Challenge Area 3: Narrow Visibility and Accountability
 - 19 USC 1508
 - 19 USC 1509
CBP Challenge Area 4.1: Preventing Loss of U.S. Revenue
 - 19 USC 1499
CBP Challenge Area 4.2: Streamlining Enforcement Avenues that Protect U.S. Intellectual Assets and American Consumers
 - 19 USC 1514(a)(4)
CBP Challenge Area 4.3: Driving Trade Compliance through Expanded and Streamlined Penalties
 - 19 USC 1526(f)
 - 19 USC 1436

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2. COAC recommends that CBP, the 21CCF Focus Group, and any additional PGAs as appropriate, continue to discuss and attempt to finalize the below statutory changes proposed by CBP and separately, by industry.

21CCF Statutory Changes for Further Discussion:

CBP Challenge Area 1: Limited Data Collection

- 19 USC 1484

CBP Challenge Area 2: Restricted Data Usage

- 19 USC 1415

CBP Challenge Area 4.1: Preventing Loss of U.S. Revenue

- 19 USC 4320, 1321, and 1498
- 19 USC 1623
- 19 USC 1517

CBP Challenge Area 4.2: Streamlining Enforcement Avenues that Protect U.S. Intellectual Assets and American Consumers

- 19 USC 1526(e), 1595a(f), and 1607

CBP Challenge Area 4.3: Driving Trade Compliance through Expanded and Streamlined Penalties

- 19 USC 1595a(b)
- 19 USC 1595a(d) and (e)
- 19 USC 1592

Industry-Proposed Statutory Changes for Further Discussion:

- 19 USC 1431(c) - Automatically treat manifest and Customs declaration data of all transportation modes as private and confidential business information.
- 19 USC 1411 and 19 USC 4316 – Codify PGA engagement with trade, including COAC reporting to the existing Border Interagency Executive Council, establishing a framework that requires the PGAs engagement with and reporting to the trade, provides visibility and input to harmonize cargo processing and release protocols, require true IUSG cargo release through interoperable platforms, and also ensures appropriations for funding of such measures.
- 19 USC 4301 – Require each PGA with authority to detain and release merchandise entering the U.S. to set forth CTPAT-PGA minimum security and compliance criteria and to implement a program for importers, exporters, and other appropriate parties, providing benefits, facilitating the release of cargo, minimizing inspections and exams, limiting the recall of merchandise into custody as well as other tangible, meaningful benefits that CBP and PGA’s develop in collaboration with the COAC. The

CTPAT PGA programs shall not limit or restrict any PGA's ability to develop and implement its own trusted trader programs in addition to the CTPAT PGA program, in order to provide more fulsome or recurring benefits.

- Statute TBD – seek legislation that authorizes Congress to appropriate the necessary amounts to carry out improvements in a uniform IUSG single window cargo admissibility, release, and summary, specifically related to improvements in the Automated Commercial Environment and the International Trade Data System and to carry out a government-wide CTPAT-PGA program via the CBP CTPAT portal for each of fiscal years 2023 through 2027.
- 19 USC § 58c in an effort codify the ability to reduce Merchandise Processing Fee (MPF) for CTPAT members and ensure MPF is allocated to CBP for operations and automation.

010551

3. COAC recommends CBP proceed to further develop sub-statutory concepts identified in the course of 21CCF discussions leveraging the appropriate COAC working group. These sub-statutory concepts include:
 - Enhance uniform data sharing protocols between CBP and Partner Government Agencies (PGAs) to facilitate effective targeting and immediate, true release of cargo within the IUSG ACE platform.
 - Engage with the Border Interagency Executive Council (BIEC) to harmonize PGA data collection, analytics, and response to ensure timely decisions. Review the merits and near-term implementation of account-based processing.
 - Evaluate industry's concept of account-based processing.
 - Evaluate industry's trade automation wish list.
 - Evaluate opportunities to enhance entry processing and explore other modernization opportunities.

Secure Trade Lanes Subcommittee Export Modernization – Recommendation

010552

1. COAC recommends that CBP publish a collaborative draft communication for the Electronic Export Manifest (EEM) pilot. The communication will introduce EEM, outline benefits for participation, and provide critical information on why pilot participation is beneficial in advance of regulation.

Secure Trade Lanes Subcommittee In-Bond Recommendations

010553

1. COAC recommends that title 19 CFR § 4.34 regarding prematurely discharged, overcarried, and undelivered cargo be amended to:
Allow overcarried cargo to be returned by any bonded carrier
Allow inaccessibly stowed cargo to be moved by any bonded carrier
Remove references related to paper processes, including stamps, for prematurely landed or overcarried cargo. In addition, CBP should consider automation of a manifest as the singular solution.

010554

2. COAC recommends that title 19 CFR § 4.38(b) [release of cargo] be amended to include language in consideration that carriers do not have visibility to marks or numbers.

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3. COAC recommends that title 19 CFR § 4.82(b) [touching at foreign port while in coastwise trade] be amended to remove references related to paper processes and add language related to electronic filings, which may include the application for in-bond entry.

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4. COAC recommends that title 19 CFR § 122.3 [Availability of forms] be stricken in its entirety.

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5. COAC recommends that title 19 CFR § 122.5 [Reproduction of Customs forms] be stricken in its entirety.

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6. COAC recommends that title 19 CFR § 122.38(d) [Permit and special license to unlade and lade.] be amended to:
 - Remove the Customs Form 3171 requirement
 - Require that the application for a permit and special license to unlade or lade be submitted via a CBP-approved electronic system.

010559

7. COAC recommends that title 19 CFR § 122.42 [Aircraft entry] paragraph (c) [Delivery of Forms] be amended to read “When the aircraft arrives, the aircraft commander or agent shall provide required notifications to CBP timely.”

010560

8. COAC recommends that title 19 CFR § 122.48 regarding Air cargo manifest be amended to:
 - Require the Air Cargo Manifest to be submitted via a CBP-approved electronic system.
 - Remove the language that any cargo manifest on board may be inspected.
 - Remove the language referencing Customs form 7509, as well as allowing documents to be submitted with the air cargo manifest. In addition, the statement “Cargo as per air waybills attached must appear on the manifest” should be stricken.
 - Remove the reference to Customs Form 7509.

010561

9. COAC recommends that title 19 CFR § 122.49 regarding the correction of air cargo manifest or air waybill be amended to:
 - Strike sections (a)(1)(i) and (a)(1)(ii) regarding paper process
 - Reword section (a)(1)(iii) and (b)(1)(ii) to read “On the cargo manifest”
 - Strike section (b)(1)(i) regarding paper processes.
 - COAC recommends that title 19 CFR § 122.50 regarding general order merchandise be amended, as follows:
 - Replace “warehouse facility” with “facility” to accommodate other facility types

010562

10. COAC recommends that title 19 CFR § 122.50 regarding general order merchandise be amended, as follows:
 - Replace “warehouse facility” with “facility” to accommodate other facility types
 - Update paragraph (c) to reference and include a subparagraph (i) that reads “To effect the transfer of in-bond cargo to the bonded facility, the carrier will send a message in the Air Manifest System (AMS) notifying the bonded facility that the cargo is ready to be transferred. The bonded facility will reply with a message accepting the cargo. The carrier and the facility will arrange and complete the physical transfer of the cargo, and the facility will then send a second message indicating the possession of the cargo has moved to the facility’s FIRMS code and has been concurred. The liability for the carrier’s original bond will then transfer to the FIRMS code of the bonded facility along with the goods. This process will not require closing the original bond or creating a new one.”

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11. COAC recommends that title 19 CFR § 122.73 regarding general declaration and air cargo manifest be amended to remove the paper process and require the filing to be submitted via a CBP-approved electronic system.

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12. COAC recommends that title 19 CFR § 122.74 regarding incomplete (pro forma) manifest be amended to:
 - Paragraph (a) to read “If a proper bond is filed in ACE”.
 - Paragraph (b) be amended to read “must be filed in ACE” as it is no longer filed with the port director.

010565

13. COAC recommends that title 19 CFR § 122.82 [Bond requirements.] be amended to remove the reference to CBP Form 301. In addition, the language should be amended to read “The bond shall be filed in the correct amount in ACE” rather than with the director of the entry airport.

010566

14. COAC recommends that title 19 CFR § 122.92 regarding the procedures at port of origin be amended to:
 - Replace paragraph (a) with the following language “In order to transport merchandise in-bond (transport imported merchandise, secured by a bond, from one port to another prior to the appraisalment of the merchandise and without the payment of duties), an in-bond application as described in paragraph (d) of section 18.1 is required. An in-bond application consists of a transportation entry and a manifest. A transportation entry as described in paragraph (b) of section 18.1 may be made for any imported merchandise upon its arrival at a port of entry, subject to the prohibitions and restrictions provided in this part.”
 - Allow an air waybill for both entry and manifest to be filed through a CBP-approved electronic data interchange system. In addition, the language regarding the paper process should be removed from this subparagraph.
 - Allow the airway bill number to replace the bond number to account for partial or split shipments.
 - Subparagraph (a)(2)(v)(8)(Item 7) [Signature of Carrier’s Agent (or Exporter)] be stricken in its entirety.
 - Subparagraph (a)(2)(v)(8)(Item 8) be amended to remove the customs officer’s signature and date requirement, as well as strike the language surrounding paper processes.

- Subparagraph (a)(2)(v)(8)(Item 8)(b)(1) and (b)(2) be amended to replace the paper process with an electronic approval process when merchandise is entered for immediate transportation without appraisalment.
- Subparagraph (a)(2)(v)(8)(Item 8)(b)(2) be amended to replace the paper process with an electronic approval process when merchandise is entered for transportation and exportation.
- Subparagraph (a)(2)(v)(8)(Item 8)(b)(3) [After delivery.] be stricken in its entirety to eliminate the reference to paper processes.
- Subparagraph (a)(2)(v)(8)(Item 8)(c) [Receipt and supervision] be amended to require agents of bonded air carriers to notify and confirm receipt electronically for any merchandise delivered to it for transportation in bond.
- Remove references related to paper processes.
- Remove the word “copy” when referencing the entry and manifest.
- Subparagraph (a)(2)(v)(8)(Item 8)(e) be amended to correct the spelling of the word Transshipment.
- Subparagraph (a)(2)(v)(8)(Item 8)(g) regarding warning labels be stricken in its entirety as they are no longer a requirement.

010567

15. COAC recommends that the title 19 CFR § 122.93 regarding the procedure at destination or exportation airport be amended to:

- Reword the title for paragraph (a) from [Delivery to port director.] to [Notification of arrival].
- Require the bonded carrier to electronically notify CBP of the arrival through a CBP-approved electronic data interchange system.
- Require the bonded carrier to electronically notify the consignee through a CBP-approved electronic data interchange system when the merchandise is sent under an entry for immediate transportation without appraisal.

010568

16. COAC recommends that title 19 CFR § 122.94 be amended to:

- Reword the title from [Certificate of lading for exportation.] to [Notification of exportation.]
- Remove the references related to paper processes and require the notification of exportation to be filed through a CBP-approved electronic data interchange system
- Strike subparagraph (b) [Clearance not at place of final departure.] in its entirety.

010569

17. COAC recommends that title 19 CFR § 122.113 regarding form for transit air cargo manifest procedures be amended to:

- Read [Transit air cargo manifest procedures.]
- Eliminate the language surrounding paper processes and require the manifest to be submitted through a CBP-approved electronic data interchange system

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18. COAC recommends that title 19 CFR § 122.114 [Contents.] be amended to remove the language surrounding paper processes, specifically those processes referencing forms and sheets.

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19. COAC recommends that title 19 CFR § 122.115 [Labeling of cargo.] be stricken in its entirety.

010572

20. COAC recommends that title 19 CFR § 122.116 [Identification of manifest sheets.] be amended to:
- Read [Identification of manifest.] in place of [Identification of manifest sheets.]
 - Remove the language surrounding paper processes
 - Require the original cargo manifest for the aircraft to be automated and submitted to CBP through an approved electronic data interchange system.
 - Replace the reference to “Customs” with “CBP”

010573

21. COAC recommends that title 19 CFR § 122.117 regarding requirements for transit air cargo transport be amended to:
- Remove references related to paper processes
 - Require the receipt to be issued by the airline responsible for transport or export within the general order period through a CBP-approved electronic data interchange system.
 - Subparagraph (b)(2) regarding receipts be stricken in its entirety.
 - Replace references to “Customs” with “CBP”
 - Subparagraph (c)(4)(iii) regarding importing carriers be amended to include the following language: “To effect the transfer of in-bond cargo to the domestic carrier, the importing carrier will send a message in the Air Manifest System (AMS) notifying the domestic carrier that the cargo is ready to be transferred. The domestic carrier will reply with a message accepting the cargo. The two carriers will arrange and complete the physical transfer of the cargo, and the domestic carrier will then send a second message indicating the possession of the cargo has moved to the domestic carrier’s FIRMS code and concurred by the receiving party. The liability for the importing carrier’s original bond will then transfer to the FIRMS code of the domestic carrier along with the goods.”
 - Subparagraph (c)(4)(iii) be amended to strike the language that reads “the importing carrier’s bond covers the transportation.”

010574

22. COAC recommends that title 19 CFR § 122.118 regarding exportation from port of arrival be amended to:

- Remove the references related to paper processes.
- Require the air cargo manifest to be submitted through a CBP-approved electronic data interchange system.
- Require the name of the exporting airline to appear on the manifest.
- Remove the word “copy” when referencing the Transfer air cargo manifest copies (c)(1)(2)(3).
- Require that the exportation manifest be submitted by the exporting airline through a CBP-approved electronic data interchange system.
- Require that the clearance be filed with the exporting aircraft's clearance documents through a CBP-approved electronic data interchange system.
- Require the transit air cargo manifest to be submitted through a CBP-approved electronic data interchange system.
- Require the transit air cargo manifest to clearly indicate which shipment(s) are covered by the manifest.
- Require a split shipment indicator when shipments listed on one transit air cargo manifest are not exported from the same port on the same airline.
- Require the manifest for post entered air cargo to be submitted through a CBP-approved electronic data interchange system.
- Replace references to “reviewing officer” and “Customs” with “CBP.”

010575

23. COAC recommends that title 19 CFR § 122.119 regarding transportation to another U.S. port.] be amended to:

- Replace the references to “Customs” with “CBP”.
- Paragraph (c) [Transit air cargo manifest copies.] be amended to read “Transit air cargo manifest.”
- Remove the references related to paper processes
- Require the transit air cargo manifest to be submitted through a CBP-approved electronic data interchange system.
- Determine the amount of duty and tax based on the information found on the manifest.
- Subparagraph (e)(1) be amended to include the following language: “To effect the transfer of in-bond cargo to the surface carrier, the importing air carrier will send a message in the Air Manifest System (AMS) notifying the surface carrier that the cargo is ready to be transferred. The surface carrier will reply with a message accepting the cargo. The two carriers will arrange and complete the physical transfer of the cargo, and the surface carrier will then send a second message indicating the possession of the cargo has moved to the surface carrier’s FIRMS code. The liability for the importing air carrier’s original bond will then transfer to the FIRMS code of the surface carrier along with the goods. The surface

carrier will move the goods to the port of destination, where the bond will be closed.”

- Subparagraph (e)(1) be amended to strike the language that reads: “The bond of the party receiving the cargo for surface movement must cover the transfer and surface movement.”

010576

24. COAC recommends that title 19 CFR § 122.120 regarding transportation to another port for exportation be amended to:

- Replace references to “Customs” with “CBP”
- Reword paragraph (d) (Transit air cargo manifest copies.) to read (Transit air cargo manifest.)
- Remove references related to paper processes.
- Require the transit air cargo manifest to be submitted through a CBP-approved electronic data interchange system.
- Strike subparagraph (d)(2) [Port of exportation.] in its entirety.

Secure Trade Lanes Subcommittee Partnership Programs and Industry Engagement – Recommendations

010577

1. COAC recommends that CBP update the CTPAT Trade Compliance Handbook section related to forced labor to allow CTPAT Trade Compliance members to follow a risk-based approach for supply chain mapping. The mapping requirement must be further defined to include only those portions of the supply chain that the importer determines pose the most risk for forced labor.

010578

2. COAC recommends the Mission Statement requirement be modified and included as part of the Code of Conduct requirement.

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3. COAC recommends that CBP update the CTPAT Trade Compliance Handbook section related to Code of Conduct training so that it clearly defines the acceptable types of business partner training to demonstrate compliance and ensure enforcement consistency across CBP Port staff, National Account Managers and Centers of Excellence and Expertise.

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4. COAC recommends CBP provide documented implementation guidance and training on the finalized Forced Labor CTPAT Trade Compliance minimum requirements to ensure understanding and consistent interpretation amongst Importers, CBP Port staff, National Account Managers and Centers of Excellence and Expertise. The guidance and training materials should be made publicly available for future reference and review by participants in the CTPAT Trade Compliance Program and those considering applying.

010581

5. COAC recommends that CBP update the CTPAT Trade Compliance Handbook section related to the Business Partner Code of Conduct to remove the requirement dictating that partners incorporate the same Code of Conduct as their CTPAT Trade Compliance member. Business partners should be permitted to develop their own Code of Conduct to meet the forced labor requirements so long as the Code of Conduct clearly demonstrates that the business partner understands the forced labor requirements.