

### CBP Hopes to Standardize Forced Labor Enforcement Processes in Coming Year, Highsmith Says

LAREDO, Texas—CBP hopes this year to “formalize and normalize” its forced labor enforcement processes following initial implementation of recent changes to forced labor laws, including the Uyghur Forced Labor Prevention Act, said AnnMarie Highsmith, CBP executive assistant commissioner, in remarks at a conference Jan. 18.

CBP wants to be able to take its decisions and put them into a system “that everyone can understand and operate and that keeps merchandise flowing,” Highsmith said, speaking at the Southern Border Conference. The agency recognizes the impacts of its forced labor efforts on the movement of cargo, and is “making adjustments,” she said.

Highsmith said CBP has more petitions open for remediation of forced labor findings since the first laws on imports made with forced labor were put in place around 100 years ago, including from large companies. The agency also has evidence of companies changing their supply chains and demanding their suppliers treat workers fairly and humanely, she said.

She said she hopes to be able to say that “things are normal, steady-state” in our forced labor environment.

Turning to the upcoming requirement for submission of the Chinese postal code in ACE, slated for March (see [ITT 12/21/2022](#)), Highsmith said more information is on the way. CBP will deploy “chatbots, videos and an interactive dashboard,” so the trade community should keep an eye on the agency’s website.

Upcoming ACE deployments related to collections are among the last remaining functionalities that have yet to be added, Highsmith said. The rest will be completed by the fall, which means CBP will finally retire the legacy Automated Commercial System. “I can’t just turn the switch off without recognizing what ACS did for us,” she said. —  
*Brian Feito*

### CBP Working on Prior Disclosure-Like Process for Forced Labor for CTPAT Members, Garza Says

CBP is working on a new benefit for the Customs-Trade Partnership Against Terrorism program that would allow CTPAT members to report they’ve found forced labor in their supply chain without triggering CBP penalties or additional detentions, CBP’s Manny Garza said during a webinar hosted by the agency on Jan. 27.

“It’s not a prior disclosure because prior disclosure is very specific, but we’re trying to identify something very similar to that, so that partners are not worried about disclosing that information,” said Garza, who is director of the CTPAT program.

Garza said he has been in discussions with senior leadership at CBP, including executive assistant commissioners Pete Flores and AnnMarie Highsmith of the agency’s field operations and trade offices, as well as CBP’s office of chief counsel. “Even our acting commissioner, Mr. Troy Miller, is familiar with the desire for companies to want to provide information but, at the same time, not get in trouble for providing that information,” he said.

“We are working very hard at trying to identify some way” that partners in CTPAT Trade Compliance and the CTPAT cargo security programs “can provide information to CBP without worrying about it getting issued penalties or having additional shipments stopped,” Garza said.

“We don’t have a benefit in place for that yet,” he said. —  
*Brian Feito*

### CBP Adds Aluminum Questions to UFLPA Detention Notices, Lawyer Says

CBP recently added specific documentation requirements for aluminum products to its standard Uyghur Forced Labor Prevention Act detention notices, customs lawyer Richard Mojica of Miller & Chevalier said in a [post](#) on LinkedIn.

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Previously, the detention notices had listed only documentation requirements for cotton, polysilicon and tomatoes, the three sectors singled out in UFLPA. As of recently—possibly January, Mojica said—the notices now request details on the manufacturing process, the location where the aluminum was further manufactured, and any raw material invoices, purchase orders, proof of payment and export documents. “This likely means we’ll see an uptick in detentions of aluminum products,” Mojica said. “What about products that are not made primarily of aluminum, but contain aluminum?” CBP did not comment.

### December Entries Targeted by CBP for Forced Labor Down From November

CBP targeted 310 entries worth over \$59 million in December 2022, including goods subject to the Uyghur Forced Labor Prevention Act and withhold release orders, the agency said in its most recent operational [update](#). The number of entries targeted was down from November’s total of 444 entries worth some \$128 million (see [ITT 12/27/2022](#)). CBP also seized 1,501 shipments that contained counterfeit goods valued at more than \$178 million in December, and completed 26 audits that identified \$86.9 million in duties and fees owed to the U.S. government for goods that had been improperly declared, the agency said.

### AMS to Require Certs for All Organic Imports; Will Allow Weekly, Monthly Certs

The Agricultural Marketing Service on Jan. 18 released a [final rule](#) requiring submission in ACE of National Organic Program organic certificates for all organic products entering the U.S. as part of the entry process. The agency’s sprawling final rule also sets requirements for organic certifiers, recognition of foreign organic certifications, labeling requirements and the calculation of organic content of multi-ingredient products, among other things.

In response to concerns from industry that a proposed 30-day time frame for issuing organic certificates was unworkable (see [ITT 10/07/2020](#)), particularly for perishable shipments crossing land borders, the AMS will allow organic certifiers to issue certificates for a specific time frame and volume, so that certificates may cover a week, month or season of organic imports.

Compliance with the final rule is required by March 19, 2024.

The final rule is meant to address concerns associated with a steep rise in organic shipments since the organic regulations were originally implemented. “Both demand for and sales of organic products have risen steadily; total U.S. sales of organic products reached more than \$63 billion in 2021,” the AMS said. “The number of businesses producing, handling, marketing, and selling organic products has also grown to meet consumer demand. Rapid growth has attracted many businesses to the USDA organic label and increased the complexity of global organic supply chains.”

The AMS says the final rule will reduce the types of uncertified entities in the organic supply chain that operate without USDA oversight, including importers, certain brokers and traders of organic products. The import certificate requirement will improve the oversight and traceability of imported organic products. The final rule also clarifies the National Organic Program’s “authority to oversee certification activities, including the authority to act against an agent or office of a certifying agent.”

Among other things, the final rule will address the following:

**Non-retail container labeling.** Require that nonretail containers used to ship or store organic products be labeled with organic identity and be traceable to audit trail documentation.

**Unannounced inspections.** Require certifying agents to conduct unannounced inspections of at least 5% of the operations they certify, complete mass-balance audits during annual on-site inspections, and verify traceability back to the previous certified operation in the supply chain during annual on-site inspections.

**Mandated use of USDA database.** Require certifying agents to issue standardized certificates of organic operation generated from the USDA’s Organic Integrity Database (OID). “This will simplify the verification of valid certificates of organic operation,” the AMS said.

**Enforcement authority.** “Clarify” that the National Organic Program may initiate enforcement action against any

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violator of the Organic Foods Production Act, “including uncertified operations and responsibly connected parties; clarify what actions may be appealed and by whom; and clarify NOP’s appeal procedures and options for mediation (alternative dispute resolution),” the AMS said.

Multi-ingredient products. Clarify the method of calculating the percentage of organic ingredients in a multi-ingredient product to promote consistent interpretation and application of the regulation.

#### NOP Organic Certificate Now Required for All Imports, Filed at Entry

The final rule requires that any organic agricultural product imported to the U.S. be “associated with” a valid NOP import certificate, “generated by the certifying agent of the final certified exporter sending the product to the United States.” That’s a change from current requirements, under which the certificate is only used for organic products imported from countries with which the AMS has an equivalence determination, i.e., the EU, Switzerland, Japan, South Korea, Taiwan and the U.K. (Canada also has an equivalence determination but uses a different certificate).

“The rulemaking changes this to make the use of NOP Import Certificates mandatory, regardless of an imported product’s country of origin or if that country has an equivalency determination with USDA,” the AMS said. “Specifically, this rulemaking requires that all imported products intended to be sold, represented, labeled, or marketed as organic in the United States must be declared as organic to [CBP], using an NOP Import Certificate.”

The import certificates will be generated by the exporter’s USDA-accredited certifying agent or organic certifying agent accredited by countries with which the USDA has an equivalence determination or recognition arrangement. The certificates will be generated in the USDA’s Organic Integrity Database system. Only accredited organic certifying agents will be able to use the database. Each certificate will include a unique identifier. The certified organic exporter will provide the import certificate to the U.S. importer, which may then provide it to the customs broker.

“Organic exporters may be the final physical handler of organic products within a foreign country, or they may

be the entities that facilitate, sell, or arrange the sale of organic products shipped to the United States,” the AMS said.

Data includes origin, certifying agent, HTS code. The U.S. importer or customs broker will then be responsible for entering the import certificate data into ACE as part of the import filing process, following the timelines set by CBP, the AMS said. Data to be entered in ACE includes the “origin; destination; the certifying agent issuing the NOP Import Certificate; harmonized tariff code, when applicable; total weight; and the organic standard the product was certified to (7 U.S.C. 6502(13)),” the AMS said.

No de minimis applies. The import certificates “are required for organic commodities regardless of value or size and is not applicable for any de minimis exemptions under current CBP regulations. A very limited number of exemptions will be allowed for items such as, but not limited to, food donations, non-retail samples, and humanitarian efforts,” the AMS said.

All entry documentation must state product is organic. Under the final rule, as the organic product moves from the exporting country into the U.S., “all entry documentation including, but not limited to bills of lading, bills of sale, commercial invoices, and packing lists must clearly state that the product is organic,” the AMS said.

Importer must verify organic compliance. Upon receiving a shipment, the organic importer must verify that the organic product complies with the USDA organic regulations. “This includes ensuring that an NOP Import Certificate is associated with the product received,” the AMS said. “It also includes verifying that the import has not been treated with a prohibited substance as a result of fumigation or treated with ionizing radiation at any point in the products’ movements across borders.” While verification may take various forms, the importer must have an “organic control system” that documents how the verification is conducted. That control system must be reviewed by the importer’s certifying agent, the AMS said.

Record-keeping. Both the organic exporter and the organic importer must maintain records of NOP import certificates which must be available for inspection by the NOP and certifying agents. — **Brian Feito**

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## PGAs List Few New Rulemakings in Fall Regulatory Agenda

Regulatory agencies with a hand in trade included relatively few new trade-related rulemakings in their [regulatory agendas](#) for fall 2022. While the Commerce Department did include one new rule related to its antidumping and countervailing duty procedures, FDA, USDA and other partner government agencies (PGAs) largely continued to list rules that had been listed in previous agendas but not yet published.

The Commerce Department's new [rulemaking](#) would amend the agency's AD/CVD regulations to "improve and augment its scope, circumvention and covered merchandise proceedings," as well as create a new definition for particular market situation and provide "guidance on the criteria which Commerce may, and may not, consider in determining if a market situation is particular." The proposal, scheduled for March, would follow an advance notice of proposed rulemaking on the subject issued by Commerce in November.

FDA continues to list proposed rules on import [certifications](#) for high-risk foods, [submission](#) of ACE data for e-cigarettes, streamlined [provisions](#) for written assurances from customers under the Foreign Supplier Verification Program regulations, and on its prior notice [requirements](#). The latter rule, also listed in the agency's spring unified agenda, would "create a timeframe for submitting post-refusal/hold submissions" and "clarify FDA's and CBP's processes for having the food exported or destroyed per CBP general order merchandise requirements" if that time frame isn't met.

The National Oceanic and Atmospheric Administration continues to list a [proposed rule](#) it has included in its agenda since fall 2021 that would amend import permitting, reporting and record-keeping and entry filing requirements for seafood imports, as well as provide for revocation of a certification of admissibility if the "exporting nation officials do not exercise due diligence in documenting the origin of fishery products shipped to the United States."

The Fish and Wildlife Service now lists at the final rule stage a [rulemaking](#) that would amend its seizure and forfeiture regulations. Building on a proposed rule issued in 2016

(see [ITT 06/16/2016](#)), the final rule will "provide uniform guidance for the bonded release, appraisalment, administrative proceeding, petition for remission, and disposal of items subject to forfeiture," and harmonize FWS' regulations with CBP's seizure and forfeiture procedures. — *Brian Feito*

## FDA's Final FSVP Guidance Includes More Info on Covered Foods, FSVP Plans

FDA finalized its guidance document on Foreign Supplier Verification Program requirements for food importers. Released Jan. 10, the [final guidance](#) includes revisions to a draft guidance issued in 2018 (see [ITT 01/24/2018](#)), with "additional clarification regarding to what food the FSVP regulation applies; what information must be included in the FSVP; and who must develop and perform FSVP activities," FDA said in a [constituent update](#).

## India, US Talk GSP, Medical Devices, Targeted Tariff Reductions

U.S. Trade Representative Katherine Tai and Indian Commerce Minister Piyush Goyal did not announce any breakthroughs after their Jan. 11 [meeting](#), but their [joint statement](#) pointed to some trade irritants that might be resolved in the future.

The statement said they have recently intensified work to find solutions on outstanding World Trade Organization disputes between them, and said they want to arrive at "satisfactory outcomes in the coming months."

India expressed its interest in becoming eligible again for the Generalized System of Preferences benefits program. "The United States noted that this could be considered, as warranted, in relation to the eligibility criteria determined by the U.S. Congress," the statement said.

India was removed from GSP over U.S. complaints on price controls on cardiac stents and knee implants, and barriers to U.S. dairy exports. The statement said that the U.S. agreed that India's policy on pricing those goods had been positive during the pandemic. "They also agreed to continue to exchange views on pricing issues for cardiac stents and knee implants that would facilitate access to cutting edge medical technology at affordable prices to the patients."

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On agriculture, they acknowledged there's still work to do to lower barriers for products from both sides.

The statement also said, "The United States and India also exchanged views on potential targeted tariff reductions."

— *Mara Lee*

**House Ways and Means Member Expects TAA to Stay Linked to GSP, MTB**

A Republican Ways and Means Committee member said renewing the Generalized System of Preferences benefits program and the Miscellaneous Tariff Bill would require his committee and the Senate Finance Committee to come to an agreement on what they can support before the House moves a bill.

"Why produce a work product here," without talking to Democrats in the Senate first, Rep. David Schweikert, R-Ariz., asked.

Schweikert said he thinks Democrats still will want to link GSP and MTB to Trade Adjustment Assistance. A one-year renewal of TAA did get into the year-end spending package. The linkage is what House Republicans said last year was preventing GSP and MTB renewal.

Schweikert said he thinks a longer-term renewal of TAA would be appropriate, but said he would not support it unless the administration also is open to a trade promotion authority bill. So he said the negotiations for GSP and MTB will need to include someone from the White House, as well.

"Whether we like it or not, we're going to need our Democratic colleagues to do it with us," he said in a Capitol interview. He said "it's only fair" that TAA travels with TPA, and pointed to stalled free trade negotiations with Kenya as one reason why. "Because some of this stuff is lingering for years."

For businesses, Schweikert said, getting a renewal of the MTB and GSP is more important than the conditions in those renewals.

"I will get some folks who will come to my office saying they heard a rumor, they think this or that. And it's hard doing business planning on rumors." — *Mara Lee*

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