

### CBP Details How to Get a UFLPA Release, Warns DNA Testing Not Enough

BOSTON—In breakout sessions on operational perspectives on the Uyghur Forced Labor Prevention Act and the technology that can help importers do UFLPA due diligence, CBP officials acknowledged that it's hard to provide the sort of evidence required to clear an applicability review after goods are detained.

Maya Kumar, acting deputy executive director of the Trade Remedy Law Enforcement Directorate, acknowledged at the CBP Trade Facilitation and Cargo Security [Summit](#) that enforcing UFLPA is hard for CBP, too, and that they know the level of tracing they're asking importers to provide is way deeper than anything that was needed before. She said hundreds of people work on UFLPA, between the trade office and the operations office.

At the technology panel, Amy Morgan, a former trade compliance corporate officer who now is head of trade compliance at Altana AI, noted that a McKinsey survey last year found 45% of companies have no visibility past their Tier 1 suppliers, and less than 5% said they have "strong visibility" past Tier 1. "You never had to know" in the past what was way up in your value chain, she said.

Kumar noted that an audience member at a previous UFLPA session (see [ITT 04/18/2023](#)) asked: "How am I supposed to prove a negative?" She asked the operations panel to try to answer that question.

Panelist Bruce Coulliette, who said he's responsible for implementing forced labor efforts in the field as branch chief of the Trade Admissibility Branch, said trying to prove admissibility under UFLPA "is probably the highest bar there is."

Coulliette said it's not simple like it was when a withhold release order targeted a specific manufacturer, and imports from that business stopped. He said that CBP is not see-

ing imports directly from companies on the UFLPA entity list nor from Xinjiang addresses. Rather, CBP looks for "known entities that were operating in the Xinjiang region, that once our enforcement actions went into place, those entities have dried up, disappeared, started circumventing, transshipping their goods elsewhere ... . We look to see where we can identify that they are entering the supply chains that are coming into the U.S., and those are going to be in other markets, other countries, Malaysia, Vietnam etc.

"So when we detain your merchandise, what we're asking for is a complete mapping of your supply chain to show us that there are no inputs from the Xinjiang region. That means we need to be able to map it out, all the way through from the point of origin of the raw material all the way to the finished product."

Panelists from both sessions acknowledged it's probably not feasible to do so for every product imported. Kumar said: "Start with the one that's going to give you the biggest headache."

Blake Harden, vice president at the Retail Industry Leaders Association, who spoke at the UFLPA technology breakout session, echoed that advice. "It's not an impossible task, but it's not an easy task at all," she said. "If everything's a priority, nothing's a priority."

Cotton-containing apparel is a priority sector under UFLPA, and Eric Batt, center director for the Apparel, Footwear and Textiles Center of Excellence and Expertise, gave granular detail on the kind of package that can convince officials to release your goods, because they have no nexus to Xinjiang.

Batt said, "My advice: don't wait for your shipment to get detained by us. Contact your center [of expertise]," he said, and ask officials there, "What kind of documents pass that [evidentiary] bar? And that bar is high." Batt said it takes his office more than 30 hours to review one package. "We've gotten submissions up to 1,000 pages," he said. "Be

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as complete and thorough as possible.” Batt said it’s not a negative when importers and the center experts go back and forth with requests for more information or questions as the review is underway.

It’s common for importers with detained goods to ask for at least one extension past 30 days to get documents in order, he said. Two extensions are allowed. “If you can avoid it at all, don’t piecemeal packages.”

Batt says there have been cases where the importer thought they could show the cotton for garments made in Vietnam came from Australia and Turkey, but then discovered the fabric mill had a stream of cotton from China, too.

Stephen Cassata, a senior science officer at CBP laboratories, told *International Trade Today* that in cases where a garment has polyester as well as cotton from multiple countries, CBP’s ability to determine definitively whether there is Xinjiang cotton is on a “case by case basis. We’ve got a lot of capabilities and expertise, but it also comes out to the sampling.” He said it’s easy to tell where raw cotton was grown. With a finished garment, it’s more complicated, and with commingled cotton from several countries—well, Cassata said, it is possible to isolate a Xinjiang source even then, but he joked, “Anybody got the lottery numbers?”

Importers sometimes complain that even after they make a massive effort to prove the goods don’t touch Xinjiang, the review’s result goes against them, and they don’t know why.

Coulliette said, “We often hear from the trade community: ‘We spend weeks putting this package together, and all we get back is: Denied.’ If you feel you submitted a good package, I highly recommend you reach out to the center and ask where the deficiencies are.” Then, he said, you can file a protest with additional information.

Batt said, “Sometimes it is better to export it, sell it somewhere else.” He said under the cotton WRO, there were about 30 protests of denials, with half granted, half denied. Under UFLPA, there has only been one protest, and it was denied.

He said a perfect package, from CBP’s perspective, to clear detained cotton or cotton-blend garments, would disclose a

lot number for each cotton container, based on seal numbers and the bill of lading used at the mill for this run of fabric. The line number of the garment “was used to trace the specific pattern through its inventory, allowing the yarn lots to be tied to specific catalogues from which it was spun. And, then, using the lot number, the [apparel] center could trace the cotton throughout the production of the garments.”

He recommended separating yarn documentation from cotton receiving records, “down to the packing list, the transport to the next level. Where do you produce the fabric? Maybe it’s a different country,” he said. There should be proof of payment for that step. “And lastly, the finished garment, where was it finished? So we’re looking for maybe a bill of materials there, commercial invoices, purchase orders ... .”

Maps are helpful, and flow charts are “very useful,” he said.

Panelist Sasha McNickle, assistant director for operations in the Forced Labor Division, added: “Don’t do a disorganized document dump.” She said a table of contents and summary will help your review.

A member of the audience asked, if an importer previously had a shipment detained and then barred for entry, would future shipments face more scrutiny?

Coulliette said, “We are not targeting importers.” He said they are looking for manufacturers that they believe have inputs from the Uyghur region. “It is a continual game of whack-it-ball,” he said, giving an example of a company that used to operate in Xinjiang that did business with the manufacturer you are buying from, and now that company’s leader says it is operating in Mongolia. “And we say, well, wait a minute, [that company] can’t do what he’s planning to do in Mongolia, because that doesn’t exist, right?” So then CBP continues targeting that firm that claims to be in Mongolia, and supply chains that include that firm.

Coulliette said that at the recent CBP forced labor tech expo, companies talked like they had products that are ready to solve the problem for importers, and he said CBP has not embraced any technology or combination of technologies as a way to get out from under detention. He said if an outside vendor’s DNA testing shows your garment made in Vietnam

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had all its cotton from Australia, “we’ll take that into consideration, but we still have to see all the documents.”

He said, for instance, CBP cannot be sure that the cotton that was tested by the company is the cotton that was used in the garments. “There are a lot of trust issues,” he said.

McNickle was asked to predict what sectors could be on the UFLPA high priority list next, joining cotton, polysilicon and tomato paste. She did not point to civil society reports that have identified PVC and luxury vinyl tile, aluminum and steel and auto parts, but rather said everyone needs to know all their inputs, and where they’re coming from.

She also noted that even with all the emphasis on UFLPA, and the shift in the burden of proof away from CBP under that law, the agency has not abandoned its traditional forced labor enforcement under the Tariff Act of 1930. She said that more than 50 allegations are under review now for withhold release orders that are not linked to Uyghurs. “That’s still CBP’s responsibility to investigate forced labor across the world. We do take in allegations, we investigate every one of them.”

In the technology panel, it was revealed that CBP may introduce data regimes that could help with detailed supply chain mapping.

CBP is working on using the blockchain to have all participants in a supply chain identified, and Vinnie Annunziata, the architect of ACE, said that once this comes together, it should take some pressure off importers in documenting complete supply chains. He said the agency knows outsourcing manufacturing partners don’t want to disclose their suppliers to the buyer, and so there will be a way for deeper tiers to send their information directly to CBP.

“We will be testing this year, steel and pipeline pieces,” he said.

On that same panel, Harden said hiring supply chain mapping companies is burdensome from a cost perspective, but it’s possible that this demand for complete supply chain information will spread past forced labor.

Morgan agreed, saying that once exporters or importers have to calculate carbon intensity in their goods, or expo-

sure to critical minerals from problematic sources in their goods, these tools will serve multiple purposes. She added, “The cost will come down as the technology matures.” — *Mara Lee*

### CBP to Provide Preliminary Notifications of UFLPA Holds to CTPAT Trade Compliance Members

CBP is providing an additional benefit to Trade Compliance program members of its Customs Trade Partnership Against Terrorism, the agency said in a [letter](#) to CTPAT members posted to the agency’s website April 26. Since March 5, the agency has been offering preliminary notifications of Uyghur Forced Labor Prevention Act holds, CBP said.

For CTPAT Trade Compliance members, CBP will, to the best of its ability, provide “advanced notice of a possible hold, detention, exclusion and/or seizure of merchandise after the entry is filed for cargo arriving in the United States and subject to” UFLPA, CBP said. The preliminary notifications will be provided to the points of contact for the CTPAT Trade Compliance account who have the “email notification” box marked to receive notifications,” CBP said.

“The notification will include the entry number and associated lines that may be subject to a detention, exclusion, and/or seizure due to the enforcement requirements of the UFLPA,” CBP said. CBP cautioned that it “will be unable to provide further information beyond what is provided in the notification,” and that the notification “does not denote any final decision made by CBP but may be used by the importer to prepare for a possible shipment hold, detention, exclusion and/or seizure,” the agency said.

### CBP Hoping to Roll Out New CTPAT Portal, Dashboard This Year

CBP is working on a new, “custom-built” portal for its Customs Trade Partnership Against Terrorism program, including a new dashboard that will give CTPAT users insight into their examination rates and cost savings, said Manuel Garza, CTPAT director. The agency hopes to roll out the portal in phases beginning later this year.

The portal eventually will feature a dashboard specific to each CTPAT participant, Garza said, which will include information on the participant’s number of shipments over

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the past year, how many of those shipments were referred for examination, and what type of examinations they were. That will help companies “get a better understanding of what your actual exam rate is, what your cost savings is compared to non-CTPAT partners,” Garza said during CBP’s Trade Facilitation and Cargo Security [Summit](#) April 19 in Boston.

CBP is expecting to release the dashboard during the second phase of the portal rollout, which will occur “shortly after” the first phase is released in the “September-October time frame,” Garza said. The agency had originally hoped to start the rollout early this summer but experienced “a few delays,” he said.

Garza said CBP wanted to update the portal because the current one is “based on an old platform” and is overdue for an upgrade. The agency is working with a vendor on a “custom-built design” and is expecting a “smooth transition” between the portals, but it also plans to hold training webinars for users. “I think it’s really important that you guys understand how to use the system instead of us just throwing it out there to you all,” Garza said.

CBP is also hoping to conduct more in-person validations this year, he said. The agency conducted 64% of its validations virtually in 2022, Garza said, but plans to shrink that number through “quite a bit” of in-person visits this year. “We’re going to be pushing probably 3,000 companies to get that done, if not more,” he said. “Everybody’s going to have to be patient and respectful of when the specialist reaches out and provides a date on when we need to get this validation done. We’re trying to get caught up.”

The agency recently completed some validations in Nuevo Laredo, Mexico, and plans to complete about 70 more in the city over the next week, Garza said. But he said the agency isn’t yet ready for CTPAT users to apply for the Nuevo Laredo location because there are “a lot of companies still in the backlog that are already in CTPAT, and we need to complete all those validations first before we get out there to allow more companies to apply to the program.” The agency will make an announcement once it’s ready for more applicants.

The agency also recently conducted validations in Monterrey, Mexico City and Baja California. “Mexico is open,” Garza said.

But there are “still some areas we’re not going to make it to,” he said, specifically mentioning Matamoros and Reynosa. “But as travel increases,” Garza said, “you will see more and more site visits in the interior of Mexico.”

Garza also urged CTPAT participants to make sure they’re completing their security profiles. CBP suspended or removed 213 participants in 2022, he said, and the “most common reason” was for incomplete security profiles.

CBP specialists reached out to some of those users “numerous times” to ask them to update their profile but never received a response. Garza said he personally contacted some through their phone numbers, email addresses and even their LinkedIn pages.

“Sometimes I get a response. Sometimes I don’t,” he said. “We really don’t want to kick companies out. But if you’re not following the program, then there’s only so much I can do.”

During the panel, Garza received a question from a CTPAT participant who said they’re not seeing the “cost benefits” from participating in the program because “a lot” of their shipments are still being examined. Garza said CBP will reach out to ports if it hears about high examination rates of CTPAT users, but sometimes there’s not much it can do.

“Every port is different, folks. I wish I could be here and tell you that every port does everything the same, but they don’t,” Garza said. “So unfortunately there’s really not a whole lot I can tell you.” — *Ian Cohen*

### CBP to Focus on Enforcement for Type 86 Entries Going Forward, Official Says

CBP has started to shift its enforcement focus to Type 86 entries as use of the relatively new entry type for de minimis shipments grows and the agency sees a “large percentage of violations” related to use of the entry type, CBP’s James Moore said during an April 5 [webinar](#) hosted by the agency.

Alongside an explosion in Type 86 entries, CBP has seen “a lot of violations,” including misclassification, undervaluation and mismanifesting. “We’ve encountered silencers, IPR, pharmaceuticals, encountered a lot of agricultural

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violations,” Moore said. “This is very concerning for us and we really want to make sure that we’re highlighting that [there are] some expectations here with Entry Type 86,” Moore said.

Since use of the entry type began in September 2019 (see [ITT 08/12/2019](#)), there has been growth to the point that it accounts for a substantial proportion of import filings, said Christine Hogue, CBP’s e-commerce branch chief. De minimis shipments accounted for about 85% of total import transactions in 2022, and Type 86 entries made up 43% of all de minimis shipments, Hogue said.

Corresponding to that the large number of Type 86 entries, “there’s also a large percentage of violations in this realm,” Moore said. “And we’re seeing a lot of violations and a number of different categories, not just some of our most high-risk items.”

The violations point to a long-standing problem CBP has had with data quality for de minimis shipments, which the agency hopes to address with an upcoming proposed rule that will pull lessons from both the Type 86 pilot and a concurrent pilot on Section 321 data, Moore said.

The proposed rule will, among other things, “address trade liability” for data on de minimis shipments, Moore said. Some provisions will have a reasonable care standard, while others will have a “reasonable reliance” standard, “depending on the data elements,” he said. The Entry Type 86 pilot will continue until the proposed rule is finalized and implemented, “and then once we publish” the final regulations, “the Entry Type 86 test goes away,” Moore said.

— *Noah Garfinkel*

### Entries Targeted by CBP for Forced Labor Flat in March

CBP in March identified 400 shipments valued at more than \$122.7 million for further examination based on the suspected use of forced labor, including goods subject to the Uyghur Forced Labor Prevention Act and withhold release orders, the agency said in its most recent operational [update](#). That’s close to February’s total of 481 shipments valued at more than \$109 million (see [ITT 03/15/2023](#)). CBP also seized 1,798 shipments that contained counterfeit goods valued at more than \$335 million, and completed 29

audits that identified \$24.7 million in duties and fees owed to the U.S. government for goods that had been improperly declared, the agency said.

### AMS Set to Deploy Organic Filing in ACE Over Next Few Months, Agency Official Says

NEW ORLEANS—The Agricultural Marketing Service plans to deploy new filing capabilities for organic inputs in the ACE certification environment for testing in May, with deployment to the ACE real time production environment to follow in June, Stacy Swartwood, who runs the agency’s Organic Integrity Database, said during a panel discussion April 24.

AMS has met with software developers for an initial review of the filing requirements, and is set to mandate filing of 18 blocks in ACE, with a few additional optional items, “but that’s it,” Swartwood said. Under the agency’s final rule on organic import enforcement, compliance with filing and other requirements will be mandated as of March 19, 2024 (see [ITT 01/18/2023](#)).

“We tried to minimize duplication as much as possible,” Swartwood said, speaking at the National Customs Brokers & Forwarders Association of America annual [conference](#). Once filing requirements are in place, “everything will work exactly the same way it does now,” with “all the same bypass and displaying options” in the system, she said.

“We’ll be working with you all on the rollout,” she told the crowd of brokers and forwarders.

AMS is working on the other systems for importers, certifiers and foreign governments that will be needed to implement its final rule. AMS will have an “importation module” built into the Organic Integrity Database and it will be “ready to use by certifiers” in early fall 2023, allowing six months lead time before compliance with the final rule is required, said Kristin Tensuan, assistant director-trade systems at the USDA National Organic Program.

AMS also plans to release a “trading partner module” in May, which foreign governments and their certifiers can use to store the “organic operations” and “generate a certificate,” Tensuan said, speaking during the same panel discussion. Trading partner government operations for ex-

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port “will also be listed in the organic integrity database,” she said.

AMS is first working with Canada to get their exporter operations into the system, and will then work with other countries “on a rolling basis,” including the EU and Switzerland, Tensuan said.

“Additional information will be posted on the AMS website over the next several months,” Tensuan said. “We’re still gathering information.” The agency expects a “lot of questions” and will “work on those and get the information out to the community,” she said.

### FMC Releases Instructional Video For Filing Charge Complaints

The Federal Maritime Commission this week posted an instructional [video](#) on how to file a charge complaint. Charge complaints were established by the Ocean Shipping Reform Act of 2022 (see [ITT 07/14/2022](#)). The video includes information about “the types of charges that can be contested, the materials needed to file a complaint, how investigations are conducted, and potential outcomes,” according to an FMC [press release](#). — *Noah Garfinkel*

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