

Preparing for new CTPAT forced labor compliance requirements

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This past summer, new forced labor compliance requirements were added to the CTPAT Security and Trade Compliance programs. These requirements must now be met for new program applicants, and for existing program participants on the timetable discussed in this Alert. In addition, last month, U.S. Customs and Border Protection announced new benefits relating to forced labor compliance for CTPAT Trade Compliance program participants. In this Alert, we discuss these developments.

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CTPAT stands for Customs Trade Partnership Against Terrorism. This voluntary supply chain security program is led by CBP. Originally, known as CTPAT Security, the program functioned as a voluntary collaboration between CBP and supply chain stakeholders — including importers, carriers, consolidators, licensed custom brokers and manufacturers — to promote U.S. border security and combat terrorism.

In 2016, CTPAT launched its Trusted Trader Strategy, which incorporated trade compliance elements from its Importer Self-Assessment program, a voluntary self-audit program. The effort to integrate the ISA program resulted in the March 2020 establishment of CTPAT Trade Compliance, a program that allows importers to assume responsibility for monitoring their own compliance with trade laws and regulations. Partner companies that demonstrate compliance with program requirements receive various trade facilitation benefits.

New forced labor compliance requirements

CTPAT Security. As of January 2023, CTPAT Security partners are required — rather than merely encouraged — to have a documented social compliance program in place. At a minimum, the program is required to address how the partner ensures that goods imported into the United States were not mined, produced or manufactured, wholly or in part, with forced, imprisoned or indentured child labor.

CTPAT Trade Compliance. Existing CTPAT Trade Compliance partners must meet the following six forced labor prevention compliance requirements, beginning August 1, 2023:

- **Risk-based mapping.** Partners must conduct risk-based mapping that outlines supply chains in their entirety, including regions and suppliers that they feel pose the most risk for forced labor. As part of this process, partners should take into consideration information that CBP publishes on its website.

CBP may request unredacted proof of supply chain mapping.

- **Code of conduct.** Partners must put in place a code of conduct statement indicating their position against the use of forced labor in any part of their supply chains. FAQs published by CBP in July indicate that the commitment to business mapping (see above) should be included in the code of conduct. The code of conduct also must be included in the importer's social compliance program that focuses on forced labor. In addition, partners must have policies and procedures that operationalize the code of conduct.

CTPAT partners who fail to comply with the new forced labor requirements may be subject to suspension or removal from the program.

The code of conduct statement must be uploaded to the CTPAT online portal and published publicly.

- **Evidence of implementation.** Partners must provide CBP with evidence of the implementation of their social compliance program, including, if requested, their risk assessment.

Examples of evidence include unredacted audits of high-risk supply chains related to forced labor, internal training programs for employees on identifying signs of forced labor and mechanisms used to show the supply chain is free of forced labor.

- **Due diligence and training.** Partners must provide training to suppliers on the partners' social compliance program requirements that identifies the specific risks and helps identify

and prevent forced labor in the supply chain. Training should exemplify the partner's position against forced labor as stated in its code of conduct and must ensure that the supplier's business model and code of conduct expressly state that it will not partner with businesses that use forced labor.

Proof of training must be made available to CBP upon request.

- **Remediation plan.** Partners must have remediation plans in the event that forced labor is identified in their supply chains. A remediation plan must include the process for disclosing information to CBP and outline the necessary steps for the partner's employees and suppliers to correct the issue.

Remediation plan information must be provided to CBP upon request.

- **Shared best practices.** Partners are required to share best practices with the CTPAT Trade Compliance program, as appropriate, to help mitigate the risk of forced labor.

Pre-existing CTPAT partners will be required to upload to the applicable CTPAT portal evidence that they have implemented a social compliance program addressing forced labor prevention, including a copy of the partner's code of conduct. CTPAT partners who fail to comply with the new forced labor requirements may be subject to suspension or removal from the program.

The forced labor compliance updates to the CTPAT program criteria are aligned with Section 307 of the Tariff Act, which prohibits the importation into the United States of merchandise mined, produced or manufactured, wholly or in part, by forced labor, as well as the complementary Countering America's Adversaries Through Sanctions Act, which applies to North Korean labor (see our Alerts here,¹ here² and here³), and the Uyghur Forced Labor Prevention Act, which creates a forced labor presumption for goods produced in the

Xinjiang Uyghur Autonomous Region of China or with labor linked to specified Chinese government-sponsored labor programs (see our Alerts here⁴ and here⁵).

New CTPAT trade compliance program benefits

In November, CTPAT's Director sent a letter to trade partners announcing the addition, with immediate effect, of three forced labor compliance-related benefits for Trade Compliance partners:

- **Front of the line admissibility review:** CTPAT Trade Compliance partners who have shipments detained due to forced labor will have their admissibility packages prioritized for review by the appropriate Center of Excellence and Expertise.
- **Redelivery hold:** If a shipment that arrived at a CTPAT Trade Compliance partner's facility is later determined to be held due to ties to forced labor, the partner may hold the shipment at its facility, rather than redelivering the goods to CBP, until an admissibility determination is made or a physical inspection is required.
- **Movement of detained WRO shipments to bonded facility:** CTPAT Trade Compliance partners who have a shipment detained by CBP due to a Withhold Release Order will be allowed to move the goods to a bonded facility to be held intact until an admissibility determination is made by CBP.

Notes

- ¹ <https://bit.ly/3UTzQOX>
- ² <https://bit.ly/3FpLmMm>
- ³ <https://bit.ly/3j2thfP>
- ⁴ <https://bit.ly/3UR33Kh>
- ⁵ <https://bit.ly/3FOCOLg>

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