



Customs & Trade Bulletin

by INTERNATIONAL TRADE TODAY

CBP: Full Traceability Not Enough to Win UFLPA Challenge

PHILADELPHIA—CBP officials who clear or reject packages from importers seeking to show there is no Uyghur labor anywhere in the supply chain of a detained product said it’s not enough to assemble a paper trail of every transaction and vendor from raw material to finished good.

Carrie Azurin, acting associate executive director of Trade Regulatory Audit at CBP, advised importers to look at their packages with an auditor’s skeptical eye.

If you have information about what quantity of raw materials from a certain source was sold to a vendor to start making the product, ask yourself “if that amount really makes sense in producing the final finished good,” she said.

In addition to looking at invoices, auditors may look at bank statements to see if the payments were made to who you said you paid.

“We’re trying to identify where it doesn’t make sense at each level of the organization,” she said.

The Industrial and Manufactured Material Center has flagged 40% of the UFLPA detentions. Bob Bekalarski, assistant center director for enforcement at that Center of Excellence and Expertise, advised importers to provide a guide to the documents, like an index in a book. “We want you to tell us a story” of how the product was made, from start to end, he said. “Everything should link together. There should be a logical progression to this.”

“There is no one document or piece of information” that makes CBP examiners say, “Oh, this is an automatic release,” Bekalarski said. “It’s the totality of the evidence.”

He advised importers to provide translated documents. They can rely on CBP to translate, but that will take longer,

and he said if it’s not translated, that makes him ask: “Do you know what it says?”

Redactions in documents should be limited. “I have seen documents that were 80 to 90 percent black lined,” he said, which poses more questions to import specialists than it provides answers.

The Grunfeld Desiderio law firm has submitted more than 60 UFLPA applicability packages. Heather Litman, a partner at the firm’s Los Angeles office, quipped that pronouncing UFLPA as “uffel-puh” makes it sound like a German drinking game. “I say U-flip-uh, because you should be flipping out,” she said.

Litman said that when a firm gets a detention notice, the first things to look at are whether the import is a one-off, or if the goods are critical to the business’ ongoing operations. Are the goods perishable, or seasonal? If they are not critical, or if they will no longer be salable in several months, it’s better to avoid the applicability review, which is expensive in terms of professionals’ time, is costly in paying to store the goods while the review is pending, and could be costly in paying outside professionals like lawyers or consultants. But if the goods that are detained are mission-critical, or worse yet, they are the first in a group of shipments from the same supply chain on the water, it will be worth it to challenge the detention.

She said, “I don’t think the system as it exists is sustainable,” she said. “We’re all exhausted from the fear, the repetitiveness.”

She added: “You might have to submit 30 times for the same supply chain.”

An attendee at the CBP Trade Facilitation and Cargo Security [Summit](#) asked Bekalarski if a supply chain is found not to touch Uyghur labor once, if that will prevent a detention for the same product in a future shipment?

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He responded that it doesn't, but said as the same supply chain is presented again and again, the center's examiners develop "a comfort level," and instead of a heavily detailed package, may "ask for very specific pieces of information."

But he said that wouldn't happen after the second shipment, saying it would be "maybe 9 or 10 where we get to that point."

There's no time limit on the number of extensions an importer can apply for as he or she is working to get together a documents package to challenge the applicability of UFLPA—it depends on the number of tiers in the supply chain and the complexity of the product.

Litman emphasized that winning an UFLPA challenge is likely to take months. She said at first, just getting this volume of data to CBP was challenging, because the Document Image System (DIS) doesn't have enough capacity, and you can't send a USB stick to CBP. CBP then came up with a way to upload a link to a sharepoint drive, but she warned that not all import specialists are aware of this method.

Ann Marie Paul, acting director of trade operations, said the agency is working on developing a case management system. She also said that as the agency has gained experience, some reviews only take a week or two.

She also told the audience bluntly: "I would approach it as: expect to have a detention."

Litman said that with that expectation in mind, importers should think about who their most important vendors are, and see how far back in the supply chain they can trace for goods from those vendors. She also advised that contracts be written in such a way that if goods can't enter into the U.S., the producers have financial responsibility for that failure.

An attendee asked Bekalarski if a challenge was not successful, would he tell them why it was rejected?

Bekalarski said first the period of time for a protest would have to elapse, and the specialist is "not going to go page by page and comment," but will give some direction "if you ask."

He said information gaps are often identified in their analyses, and they'll share what gaps they noted.

The attendee asked if it would be something actionable, such as saying the quantities produced at one stage don't match what you're buying?

He replied, "We'll point out contradictions in the paperwork," such as that one.

Eric Choy, executive director of the Trade Remedy Law Enforcement Division that oversees the efforts to stop the import of goods made with forced labor, said importers often ask for CBP to post more detailed data about what is stopped under UFLPA beyond broad categories like "electronics." He said that the agency can't do that, because it runs the risk of identifying specific companies, and that would make the public assume that the goods contain forced labor. The U.S. cannot prove that goods detained due to UFLPA have inputs made with forced labor in most cases—the presumption of forced labor in Xinjiang means they don't have to.

However, Choy said maybe two, four or 10 years from now, there will be enough data to release particular tariff lines that are being stopped without exposing which shipments were stopped.

Choy said there have been multiple attempts by importers to overcome the presumption of forced labor, not just prove that the product had no link to Uyghur labor. But none have progressed to CBP admitting the goods. He said the importers and CBP either came to an impasse on what the evidence showed, or the importer decided it was better to sever the relationship with the Xinjiang supplier. In at least one case, Choy said, the company could have cleared the hurdle, but because that would have triggered a public report to Congress, they didn't want that kind of disclosure, and withdrew the request.

An apparel importer asked the panel if another input is listed as a high priority factor in June, will CBP start enforcing that the next day?

Choy, who had accidentally listed synthetics as a high priority sector in his opening remarks, said there would be no phase-in, because already, enforcement is not limited to high-priority commodities. — *Mara Lee*

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JFK Port Official: 'De Minimis Keeps Me Awake at Night'

PHILADELPHIA—When CBP ran an audit to estimate how many packages that enter under de minimis violate Customs laws, it found about 9% did, either through misclassification, insufficient documentation, or more serious violations, like smuggling narcotics.

Some segments of de minimis were more compliant—those coming from express shippers were only 2% violative—and Type 86 entries, which include 10-digit HTS codes, looked worse, at 12% with violations.

But even at 2%, a panel at CBP's Trade Facilitation and Cargo Security [Summit](#) noted, that's a heck of a lot of packages. "If we were talking about a billion compliant shipments, it wouldn't be such a problem," said Jim Moore, a CBP headquarters official chosen to help shape national policy on de minimis.

The volume of packages entering under de minimis continues to grow at breakneck speed, with more than 1 billion in the last fiscal year, up almost 400 million from FY 2023—and CBP is projecting the country will receive 1.3 billion de minimis shipments in the current fiscal year. CBP also is seeing thousands of cases a day of importers switching what had been a formal entry to a Type 86 entry to save duties.

About 880 million of the entries come by air—the amount coming in mail has dropped significantly, and the segment coming through commercial air, rather than express shippers, doubled from 2022 to 2023. Moore said that's synonymous with Type 86 entries.

Moore, whose official title is program manager, cargo and conveyance security, said "the whole point of de minimis is it's supposed to be insignificant," but because of the volume and the contraband risk, they aren't.

As a result, there is vocal lobbying to curtail de minimis, either through ending Chinese eligibility, by lowering the dollar threshold, or, in the most radical proposal, to return de minimis to its original design, for tourists' purchases and personal gifts. If that was done, no e-commerce purchases, no matter how inexpensive, would be duty-free.

Christopher Mabelitini, director of CBP's e-Commerce division, said: "This topic is very hot right now," with attention both from other agencies and "a lot of congressional attention."

In response to a question from *International Trade Today* on whether eliminating Chinese participation, lowering the threshold, or even changes that have not been proposed, such as prohibiting de minimis fulfillment from Mexican and Canadian warehouses, would help CBP manage the risk, Moore said that while there are "any number of ideas being floated around" in Congress, CBP is focused on how it can best enforce the law as it's currently written.

Some of the changes CBP is going to make to enhance that enforcement include programming ACE so that it will flag a consignee receiving more than \$800 in goods in a day—currently CBP cannot track whether the de minimis threshold is being honored.

Another change will be requiring "special instructions bonds" for container freight station operators, because CBP has so often found that service providers are not presenting merchandise for inspection if there was an early pre-clearance under Type 86.

Type 86 shipments, because they include advance data, can receive a notice of release far before the packages arrive in the U.S., but sometimes, after targeting, CBP rescinds that release and puts a hold on the packages. Importers aren't seeing those holds—or they are, but are ignoring them—and the packages leave before they can be inspected.

Andrew Renna, assistant port director for JFK, said the problem of presentation is common. "I can't tell you how many times my officers would come back from the field with nothing in his hands, [telling me] 'This one was released already, this one was released already.'"

Moore said the regulatory package that would make it mandatory for importers to submit advance data with de minimis packages—rules written with the lessons of the Section 321 and Type 86 pilots in mind—is with Treasury, and CBP hopes to put it out for public comment "as soon as we can."

He said that, and the customs modernization legislation CBP is seeking will help the agency across the board, not just with de minimis. One of the changes in that bill would give CBP the ability to receive information from sources

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other than exporters or importers—e-commerce platforms, for instance—and he said that “would help us a lot in this space.”

JFK Airport in New York receives about 23% of the total de minimis shipments in a year. Renna said: “JFK is all de minimis all the time. I eat, sleep and think de minimis. De minimis keeps me awake at night.”

He said bad actors are exploiting the de minimis exception and using it to harm Americans, whether economically, by undercutting local retailers, or physically, by smuggling synthetic opiates which are killing tens of thousands of Americans annually. While many overdose deaths are among those who habitually abuse opiates, Renna and his fellow panelists said they are haunted by the cases where a teen or young adult takes one pill that purports to be a prescription painkiller or anti-anxiety medication but is really fentanyl, and dies.

Renna shared several de minimis interdiction stories from his port:

A package of \$5,000 worth of rough diamonds whose shipper lied and said it was \$17 worth of synthetic gemstones.

- A 1,762 kilo package that claimed to be \$717 worth of jewelry and really was a mix of jewelry boxes, hats, and clothing.
- A package that claimed to be kitchenware and was six small switches that would turn Glock semiautomatic pistols into a fully automatic pistols.
- A 148 kilo package declared as footwear and men and women’s jackets that was really prohibited pork, beef, poultry and other food.

In the case of the jewelry boxes, CBP sent back the clothing, which contained cotton, and collected \$2,077 in duties for the jewelry boxes. He said if even 0.1% of de minimis packages owed that much in duties, it would be \$1 billion in revenue. (He understated it—it would be \$2 billion in revenue).


“What each of these stories highlight is the struggles we face day in, day out,” Renna said. “I’m proud of what we’re getting. I’m more concerned about what we’re missing.”

The Glock switches were only discovered because CBP examined 100% of a 1,300-package shipment, he said.

Smugglers are constantly changing their tactics as they see what gets interdicted, the panelists said. Master carton smuggling is dropping. Fentanyl once came through the mail. Then Chinese shippers changed to master carton smuggling, and also switched to precursor chemicals. Pill presses were detected, and now they’re broken down into parts, and those parts look just like bolts. With a surge in interdicted precursor chemicals, Manuel Garza, assistant director at CBP’s targeting center, said they believe direct flights between China and Mexico laden with chemicals are more common.

Garza said CBP is deploying new equipment to detect synthetic opiates in a package without opening it up. But he said CBP needs help from brokers. He told the audience to be suspicious if a client is spending more on moving a low-value package from the U.S. to Mexico, because the transfer is in bonded status, than the package is worth. He said if they see that, call CBP.

Renna said JFK officers are seeing smugglers continuing to use de minimis to up their game—now they’re sending signal jammers. Those are illegal for civilian use generally, but CBP’s concern is that they will be used to interfere with Bluetooth-enabled seals on cargo containers that alert CBP

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when someone has tampered with the seal to add contraband to a container after it's been inspected by the agency.

They're also seeing increases in interdiction of drugs that are being used to adulterate fentanyl, such as Xylazine, an animal tranquilizer that cannot only be deadly, as opiates can be, but also can cause flesh rot. Those drugs are coming from India and China, Renna said.

The panelists urged brokers to ask “the next question”—do you have any information to back up the data you received from the exporter? Does the weight make sense for the claimed value? Do you have a legitimate name of a consignee? Mabelitini told the audience that there will be supplemental broker guidance soon on Type 86 entries, and said he hopes it will come out the first week in April. — *Mara Lee*

Choy: Expect a WRO Outside UFLPA Before October

PHILADELPHIA—CBP has not issued any withhold release orders for goods unrelated to Uyghur forced labor since the Uyghur Forced Labor Prevention Act passed in late 2021. Eric Choy, the CBP official whose office oversees the ban on goods made with forced labor, said that targeting forced labor abuses outside of China “is something that we're definitely reprioritizing resources [for], to focus in on those efforts.” Choy, who is executive director of Trade Remedy Law Enforcement Directorate, said in an interview during the CBP Trade Facilitation and Cargo Security [Summit](#) last week that he expects there will be a WRO announced before October.

During the nearly two years UFLPA has been in force, decisions on challenges to detentions have come quicker, Choy said, but outside the solar panel segment, importers haven't become more successful in showing their goods didn't touch Xinjiang than they were at the start.

Nearly \$2.9 billion worth of goods has been detained in the year and nine months UFLPA has been in effect. Only about \$330 million worth of goods had Chinese country of origin.

China has offshored a lot of its manufacturing, Choy said, so it makes sense that more than two-thirds of the goods stopped under UFLPA were manufactured outside of China.

“I think from our perspective, where we identify risks specific to the UFLPA, where things may originate from the [Xinjiang Uyghur Autonomous Region], we have fairly good visibility on that,” he said, and inputs that come from Xinjiang go into downstream manufacturing outside Xinjiang, or outside China.

Among the 2,480 shipments from China, 1,103 were released by CBP after the agency decided they had no connection to Xinjiang or Uyghur transferred labor, a slightly higher success rate than the shipments from the rest of the world, where CBP was convinced just under 40% of the time. The rest of the world accounted for 5,132 shipments and \$2.54 billion in value.

CBP doesn't disclose in its public dashboard what proportion of the goods were barred entry because the importer failed to prove to the agency that the supply chain didn't touch Xinjiang, and what proportion were exported without a challenge to the detention. CBP didn't respond to repeated questions about that breakdown.

Choy said that when the agency has more enforcement data, it may be able to report specific tariff numbers that have been affected by enforcement. Currently, only broad categories like “electronics” are disclosed.

In the not-quite six months of reports from the current fiscal year, \$360 million worth of goods were released after detentions, and about \$54.5 million worth were denied—in terms of shipments, twice as many have been admitted as denied, however the number of shipments pending review is almost as big as the other two categories combined in terms of individual detentions, and is larger than their combined value.

Apparel, which can contain Xinjiang cotton, one of the “high priority sectors” listed in the law, has accounted for 670 detentions since UFLPA went into force.

“We did have a running start” with the priority sectors, which had previously been identified through WROs, Choy said.

Cotton is one of the inputs that can be scientifically proven to be in—or not in—a certain finished good, through isotopic testing. Choy said that CBP is validating the new machines at the Savannah port, and hiring and training staff to run the lab. Choy said it should be operational by summer.

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When UFLPA passed, CBP was given \$27.5 million to implement it, and for fiscal year 2023, it received another \$101 million in funding. Choy said about two-thirds of the money dedicated to forced labor enforcement has been obligated. FY 2024 appropriations, which passed a few weeks before this interview, provided another \$20 million.

Choy said it would be a challenge to obligate that much money before the end of September, when this fiscal year ends. “Staffing is not easy,” he said, and CBP is looking to hire officers, attorneys, import specialists and public affairs professionals. “Everyone now, across the agency, really touches the forced labor mission.”

Choy said the Forced Labor Enforcement Task Force, which is under DHS, also is staffing up with the funding provided by Congress, both for UFLPA and for general forced labor enforcement.

But even once CBP has its own isotopic testing labs—it’s working on opening three—Choy said it wouldn’t be feasible to test every shipment that contains cotton. The agency might eventually test all detained goods that contain cotton, but one test wouldn’t be enough to clear the shipment, because CBP may be concerned about not just the cotton itself, but certain companies it believes are in a garment’s supply chain.

“The whole supply chain tracing is really the only way at this point to have full transparency and confidence in the supply chain,” Choy said.

CBP also will be testing garments it cleared from detention, to audit its own decision-making, and it may do intermittent testing. The agency will be able to test more products with isotopic testing once it’s in house, Choy said.

The domestic textile industry has zeroed in on de minimis shipments as a “superhighway” for the entry of clothing made with Uyghur forced labor. The vast majority of de minimis shipments arrive via air—Choy said CBP doesn’t track what percentage of the goods stopped under UFLPA arrive by sea, land or air.

Importers complain that even once they have demonstrated to CBP’s satisfaction that a piece of merchandise didn’t have any ties to Uyghur forced labor, the agency continues to detain the same product in future shipments.

When asked if that cleared shipment has any precedential effect, Choy replied, “No, not at this time.” He said each shipment has to be judged independently because supply chains change so often and are so complex. An input that is widely sourced from Xinjiang can also come from other places, he said. “I don’t know that we can create precedents where we have 100% confidence of knowing that one importation is always the same as the next importation.”

However, Choy said, “They can continue to demonstrate the admissibility” with the subsequent shipments, but if a yarn mill or a fabric mill buys Xinjiang cotton destined for other markets or other customers, it’s still going to be flagged, even if you’ve proven controls that show the cotton that goes into your goods was segregated from the Xinjiang cotton.

He said subsequent document packages take less time to clear. On a first review, it could take four weeks, or even longer, depending on how long it takes importers to get all the information they need from their suppliers, Choy said. But after an initial clearance, he said, “I think they’ve been able to get through the reviews in seven to 14 days.”

He said CBP is trying to clear the Centers of Excellence and Expertise reviews faster to aid with trade facilitation.

Choy said working with the trade, the Uyghur diaspora, the media, Congress and other agencies “has helped us get through these two years, understand the issues, be able to adjust our operational approach, understand how to adjust methods in our implementation. It’s an evolution. The way supply chains are reacting to enforcement is dynamic, and the only way to stay ... with it is working together with all the different stakeholders to stay on top of the issues.”

Among the highest-value shipments unable to immediately enter U.S. commerce due to UFLPA was one of thousands of Audis, a few hundred Bentleys and 1,000 Porsches, estimated at \$150 million in goods by customs attorney John Foote.

In that case, Volkswagen Group identified that a supplier of an electrical component was on the UFLPA’s Entity List (see [ITT 02/23/2024](#)), and VW disclosed that to CBP after the cars were on the water. The company worked to replace that part on the cars once the shipment arrived in port.

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"I think this is a great case that shows that companies are doing due diligence, and this is what the agency really does support," Choy said. — *Mara Lee*

UFLPA Entity List to Grow by More Than 10 Firms; DHS Will Name New Priority Sectors

PHILADELPHIA—With the Uyghur Forced Labor Prevention Act's second anniversary coming up in June, DHS will be releasing a new implementation strategy—including adding new priority sectors, beyond cotton, tomatoes and polysilicon, the material integral to solar panels.

When asked by *International Trade Today* whether the new priority sectors will be those already exposed in news or nongovernmental organization reports, such as fish processed in China or aluminum, or PVC used in flooring, or if there will be surprises, Laura Murphy, a special adviser to the Forced Labor Enforcement Task Force, hesitated, then said, "Sounds like you would start with the ones you came up with."

She said whether all the products that have been identified in reports are named as official high priority sectors or not, importers should treat them as high priority sectors.

Murphy, who used to lead the highest-profile research operation that identified cotton and polysilicon as tainted by Uyghur forced labor, told an audience March 26 at CBP's Trade Facilitation and Cargo Security [Summit](#): "You can expect many more entities to be coming in the next few months." In response to a follow-up question on whether "many more" meant 10 new additions, 100, or 1,000, Murphy responded, "You can expect greater than 10. We're going to put companies on the Entity List. But you shouldn't be waiting for that. You don't want to be caught in a situation where you're making a computer, and you know one of those parts has been named on one of the reports, or you're importing fish from a place where you know is likely to be reported, and you're just waiting for the Entity List to drop because you don't know what day it's going to happen."

Murphy said that in addition to her own [list](#) of 55,000 companies with operations in Xinjiang (see [ITT 04/20/2023](#)), there also is a Chinese government publication about what their top priorities for investment in Xinjiang are. "So you can look that up, and make those your priorities, because I can tell you that those are our priorities, too," she said.

"And so don't worry about how many companies are going to end up on the Entity List—check your supply chain."

Deputy Executive Assistant Commissioner John Leonard, who moderated the panel that Murphy spoke on, said that CBP frequently hears from importers who say, "We want more specificity." The Entity List provides that, he said.

Murphy said one of the primary ways that the Entity List is built out is by looking at the same reports that the public sees.

Eric Choy, executive director for Trade Remedy and Law Enforcement in the Office of Trade, leads the CBP team that enforces the ban on the import of goods made with forced labor. He said, "When those reports come out, we get a significant amount of incoming, whether it's the Hill, other agencies"

He later said that the compliance professionals who read reports from non-governmental organizations on forced labor, and read investigative journalism on forced labor, "are the ones getting ahead" of detentions.

Choy said keeping goods made with forced labor out of U.S. commerce is "not something you can detain your way out of." He said CBP needs industry to work with law enforcement, and the agency has seen significant shifts in supply chains as companies try to proactively de-risk.

The evidentiary standards to name a company in a newspaper story or an academic report are not the same as the standard for putting a company on the Entity List, Murphy acknowledged. She said making the transition from academia to government has been interesting to see the process from the inside.

"But what I'll say as somebody who came from academia and is now in government, is that I find the process is really appropriately rigorous. There are many lawyers that view every recommendation across the FLETF, across the seven member agencies," she said. That review "provides the necessary insight and rigor to ensure that the entities that are named to the list are appropriate, and will withstand legal scrutiny."

She said DHS has hired "many more analysts," more people who read Chinese, a new director of research and new lawyers as it ramps up efforts to identify entities.

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CBP has added staffing at ports, in Centers of Excellence and Expertise, at headquarters to implement UFLPA, and will continue to expand staff to address forced labor enforcement. Choy said they're delving into the tariff schedule to examine where Xinjiang is part of any product's supply chain.

"We've hit our stride in the agency," he said.

Choy said as "maybe new industries ... may be touched" by UFLPA detentions, his office will continue to engage with industry to educate them on how to conduct adequate due diligence to make sure their supply chains are not marred by Uyghur forced labor. — *Mara Lee*

Mayorkas Says Ending de Minimis Wouldn't Solve Screening Challenge

PHILADELPHIA—Homeland Security Secretary Alejandro Mayorkas said that the "de minimis exception" impacts CBP's work to stop illegal drugs and other contraband from entering the United States.

Mayorkas, who was speaking March 27 at CBP's Trade Facilitation and Cargo Security [Summit](#), spent more time talking about de minimis than any other topic in his brief remarks. In an aside, he said he spoke with a very prominent retail CEO the day before his speech, and that the CEO said the de minimis exception is harming his company.

But practically speaking, Mayorkas said, even if the \$800 threshold were to be eliminated, there would still be more volume of individual packages headed to U.S. buyers than CBP can inspect.

Mayorkas said that even though it's impossible to inspect every package, the agency doesn't want to send the message that de minimis packages enter the country "with impunity," and so, in addition to screening packages that raise suspicion, they may "randomly pull one or two" to inspect.

He added: "We want to be as data-driven as possible in the exercise of that discretionary authority so that we maximize the effectiveness of our work."

Mayorkas said CBP would like to consider de minimis packages coming from trusted partners, with proven track

records, differently than those who don't qualify for a trusted trader program.

Those senders "would actually be met with a greater level ... of scrutiny," he said.

He said that the agency is going to use AI to help screen packages for narcotics.

Mayorkas also talked about the need for customs brokers and freight forwarders to prepare for cyberattacks, ransomware attacks, natural disasters and accidents like the one that destroyed the Francis Scott Key Bridge in Baltimore and has closed that major port.

He also talked about the agency's efforts to identify goods made with forced labor, and praised Eric Choy, who leads that team at headquarters, and Executive Assistant Commissioner AnnMarie Highsmith.

"I understand the difficulties of identifying one's supply chain at times," he said, but said he wants to be "very, very clear" that CBP is charged with making sure that goods produced in whole or in part by forced labor do not enter the United States, and that it fulfills that mission "with tremendous, tremendous pride."

He added that CBP officials "have 100% conviction in the righteousness" of this duty. — *Mara Lee*