



**Baker  
McKenzie.**

# Asia Pacific Industrials, Manufacturing & Transportation Webinar Series

23 September 2022 | 9:00 - 10:00 am (SGT)



# Webinar Housekeeping Reminders



The session is being recorded.

All webinar materials will be shared post-event.



Please use the Q&A function at the bottom of your screen to submit your questions.

Questions will be answered at the end of session or post-event.

# Speakers

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# Latest Customs Audit and Enforcement Trends in the United States

# Agenda

1 Key Legal Trends

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2 US Customs Audit 101 – The Process

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3 Best Practices

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4 Voluntary Prior Disclosures

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5 Q&A

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A large container ship is docked at a port at dusk. The ship is illuminated by warm lights, and its reflection is visible in the water. In the foreground, a metal walkway with railings leads towards the ship. To the right, a smaller boat is docked. The sky is a mix of dark blue and orange, suggesting sunset or sunrise. The overall scene is industrial and serene.

1

# Key Legal Trends

# US Customs Audit Trends

## Where Are CBP Audits Headed?



### Audit Landscape

- FYTD22: 280 audits
- FY21: 422 audits
- FY20: 466 audits
- Audit collections FY 20 to 21 increased almost \$90 million
- Steady in spite of COVID and audit resources likely to increase



### Audit Type

- Fewer Focused Assessments
- Focus on Single Issue
- Focus on Risk Analysis and Survey Assessments (RASA)



### Priority Issues

- Related Party Valuation
- AD/CVD
- Forced Labor
- Country of Origin / Preference Claims



### Who to Audit?

- High Risk to Moderate Risk Companies
- Targeting (issues/ patterns in trade data)
- Prior Disclosures
- Referrals

# CBP Audit Statistics

	FY2017	FY2018	FY2019	FY2020	FY 2021	FY 2022 (As of 6/30/22)
<b>CBP Audits</b>	418	435	391	466	442	280
<b>Audit Revenue Collected</b>	41.3 million	42.2 million	43.1 million	44.6 million	132.2 million	23.1 million
<b>Audit-related Penalties &amp; Liquidated Damages</b>	27.2 million	15.5 million	30.1 million	20.1 million	21.7 million	12.9 million

Source: <https://www.cbp.gov/newsroom/stats/trade>  
CBP fiscal year runs October 1- September 30.

# US Customs and Border Protection Trade Strategy

CBP is using data to monitor trade activity, evaluate risk, identify noncompliance and target importers for further review and audit.



# Framework for Compliance – CBP Guidance

## Preparing for an Audit-Partnership in Responsible Trade



March 2022 – CBP published high-level guidance on best practices to ensure compliance with US customs laws



New emphasis on "social responsibility" and "traceability" indicating increase focus on forced labor



### Preparing for an Audit-Partnership in Responsible Trade

#### Background

U.S. Customs and Border Protection (CBP) is responsible for preventing the entry of prohibited goods into the U.S. market. CBP encourages stakeholders in the trade community to closely examine their supply chains to ensure goods imported into the U.S. meet all statutory and regulatory requirements.

CBP created this best practice framework to provide the importing community general guidance on four core areas in which the trade should target its due diligence: **Compliance, Social Responsibility, Traceability and Remediation.**



#### Framework Basics

The four core areas of this Framework are defined below.

1. **Compliance:** Adherence to statutes and import regulations;

# CBP Priority Trade Initiatives



Agriculture and Quota



Antidumping and Countervailing Duty (AD/CVD)



Import Safety



Intellectual Property Rights



Revenue



Textiles/Wearing Apparel



Trade Agreements

- Increasing rules of origin audits and origin verification exercises over the past years
- Potential increase arising from self-certification under FTAs

# Other Areas of Focus



## Tariff Classification

- Remains a key audit topic - repeated errors can result in significant exposure
- Targeted industries/ goods include those attracting high customs duty



## Customs Valuation

- Common topics reviewed include royalty, license fee, assist, etc.
- Increasing focus on transfer pricing and related party transactions



## Licensing Requirements

- In most cases, no import permit / license needed, but for certain goods, some agencies (e.g., FDA, USDA, EPA) may require a license, permit, or other certification



## Forced Labor

- Uyghur Forced Labor Prevention Act
- Withhold Release Orders and Findings
- Target goods made, in whole or in part, from forced labor

# CBP Priority Highlight – Forced Labor

Fiscal Year	FY2018	FY2019	FY2020	FY2021	FYTD 2022 As of June 30
Forced Labor Withhold Release Orders (WROs)	2	6	13	7	6
Findings Issued	-	-	-	1	2
Detentions Related to WROs	6	12	314	1,469	2,010
Value of Detained Cargo Related to WROs	\$218,659	\$1.2 million	\$49.8 million	\$486 million	\$357.8 million

Source: <https://www.cbp.gov/newsroom/stats/trade>  
 CBP fiscal year runs October 1- September 30.



# Targeting Forced Labor in Xinjiang

## Uyghur Forced Labor Prevention Act

**Entered into force June 21, 2022**

### **Rebuttable Presumption:**

The Commissioner of US Customs and Border Protection shall .... apply a presumption that, with respect to any goods, wares, articles, and merchandise **mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region** of the People's Republic of China **or produced by an entity on [the UFLPA Entity List]** ... the importation of such goods, wares, articles, and merchandise is prohibited under section 307 of the Tariff Act of 1930 (19 USC. 1307) ...

### **Exception (i.e., rebutting the presumption):**

The importer of record must:

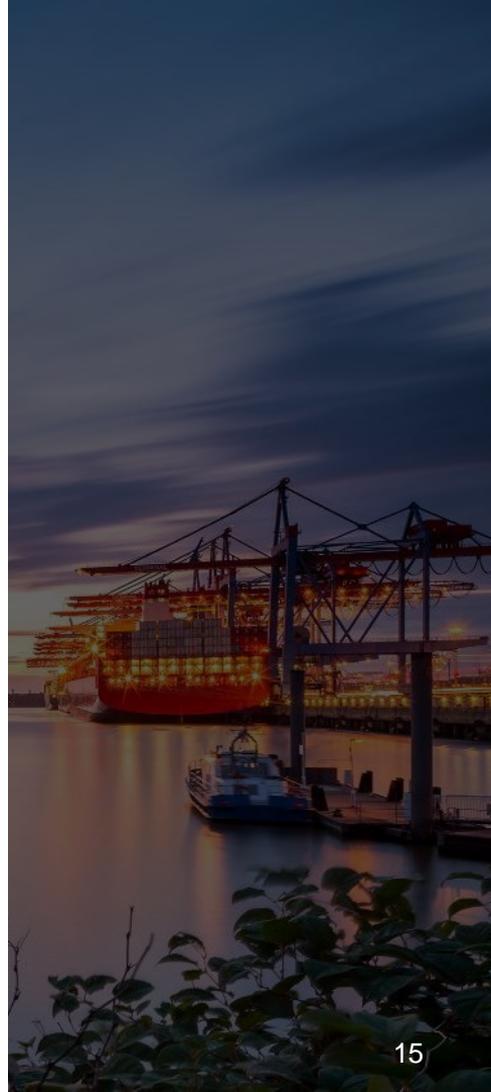
- Comply fully with UFLPA guidance and implementing regulations;
- Respond completely and substantively to all CBP requests for information; and
- Demonstrate with **clear and convincing evidence** that merchandise was not produced wholly or in part by forced labor

# CBP Priority Highlight – Origin / FTA

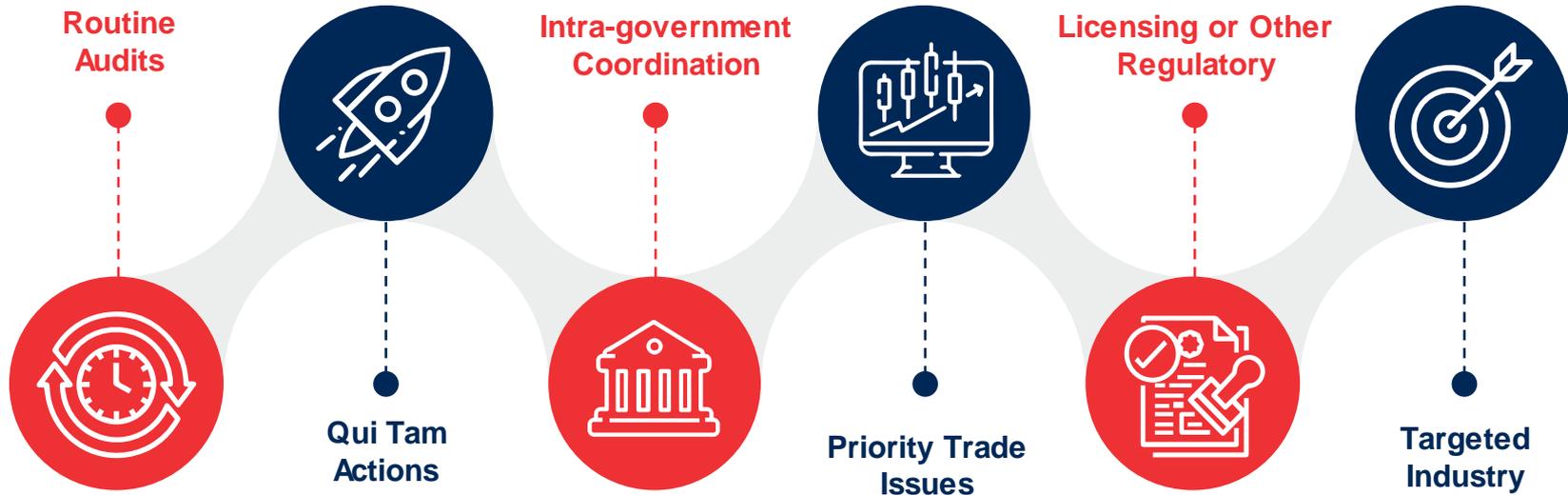


## Country of Origin

- Section 301 Duties
- Section 232 Duties on Steel and Aluminum
- FTA Preference Claims, including USMCA
  - **USMCA:**
    - Specific and more robust procedures for conducting origin verifications via documentation and visits that was not present in the previous NAFTA regime.
    - Entered into force on July 1, 2020; the "restraint in enforcement" phase ended end of 2020 for most goods.
    - Ongoing disputes include automotive rules of origin – very complex



# Audit Triggers & Related Enforcement





2

# US Customs Audit 101 – The Process

# US Customs and Border Protection

## Auditing Agency in the United States



# Regulatory Audit Offices

## Regional Specialization

<p><b>Atlanta</b> (5 branches: Atlanta and Nashville) - Import Safety and Express Couriers</p>	<p><b>Long Beach</b> (4 branches) – Intellectual Property Rights, Foreign Trade Zones, ACE</p>
<p><b>Boston</b> (2 branches: Boston and Buffalo) - Focused Assessments and RA Management</p>	<p><b>Miami</b> (2 branches) – FTA's for Central/South America, Pre-Penalty Assessments</p>
<p><b>Chicago</b> (5 branches: Chicago, Minneapolis) - Trade Fraud and User Fees and ACE modernization</p>	<p><b>New York</b> (4 branches: NY, JFK) – Textiles, Textile Transshipment, Customs Brokers</p>
<p><b>Detroit</b> (3 branches: Detroit and Ft. Mitchell, KY) - Express Couriers and Importer Self Assessments</p>	<p><b>Philadelphia</b> (5 branches: Philadelphia, Newark NJ) - Drawback, Bonded Warehouses and Duty Free Shops and ability to pay reviews</p>
<p><b>Houston</b> (4 branches: Houston, Dallas, El Paso) – Importer Self-Assessment and NAFTA, Petroleum related issues</p>	<p><b>San Francisco</b> (5 branches: San Francisco, Seattle, San Jose) - Focused Assessments and Pacific Rim FTAs</p>

# Types of CBP Audits & Related Procedures

## Focused Assessments



Comprehensive audit with formal procedural obligations



Declining number of FAs



Introduced in 2001 and refreshed in 2014



Three phases:

- i. Pre-Assessment Survey
- ii. Assessment Compliance Testing
- iii. Follow-Up Audit



CIPs and Audit Report – May be accompanied by a demand for payment



Increased auditor discretion on what to test, how much to test and how far back in time to look

# Types of CBP Audits & Related Procedures

## Single-Issue, Quick Response Audits



May be a referral or enforcement audit



Usually focused on revenue-related and priority issues:

■ Customs valuation

■ Preference programs

■ AD/CVD



Increasingly based on CF-28's or CF-29's



Increasingly driven by CEEs

# Types of CBP Audits & Related Procedures

## Surveys or Risk Analysis and Survey Assessments (RASAs)



Not formal audit and not controls based



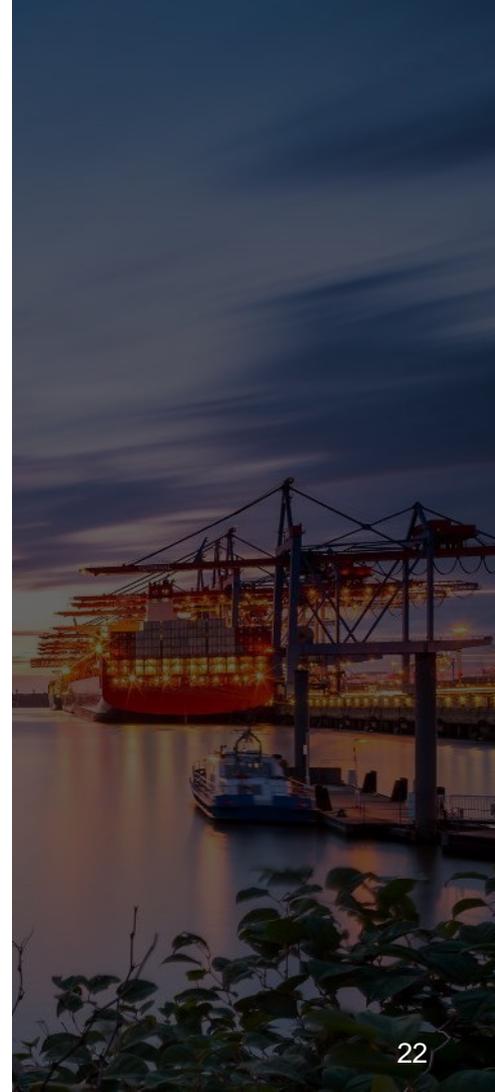
Do not utilize Generally Accepted Government auditing standards



May be interviews, transactional testing, closure letter



Designed to identify areas for further review



3

# Best Practices

# Understand Your Risk and Audit Process

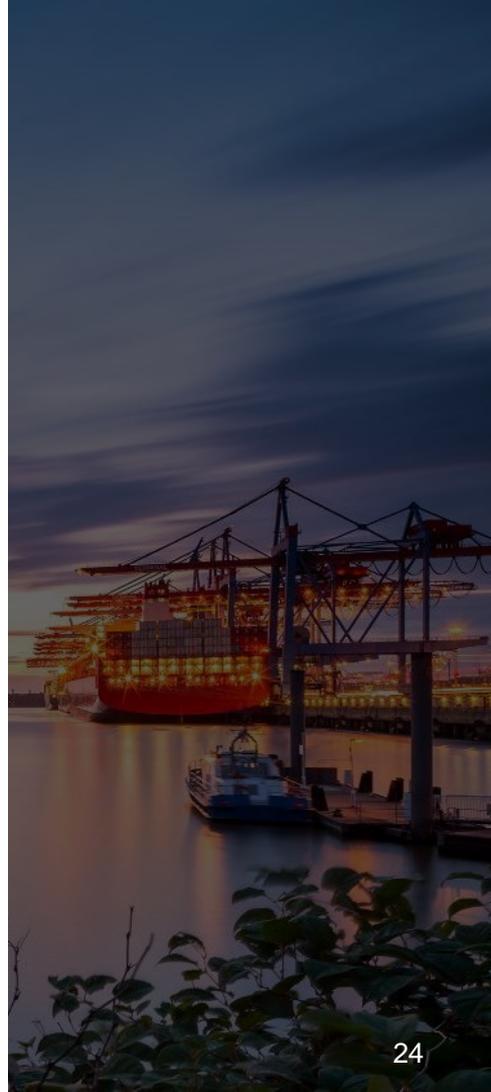


If you import meaningful volumes, you should expect to be audited and plan accordingly



Be sure you understand:

- The audit methodology to be used
- The areas of focus for the auditors – tariff classification, customs valuation, preference claims, ADD/CVD, etc.
- Your import activity through internal reports or reports provided by the government (e.g., ACE reports) or by your brokers



# Tailor Controls to Risk, Test and Correct



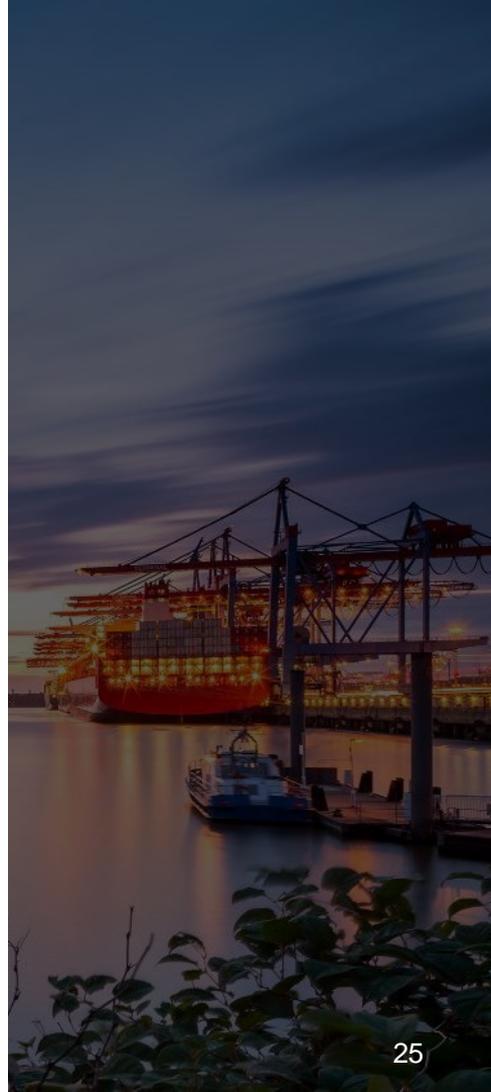
## Focus on your internal controls

- Start with your risk profile (activity → risk)
- Tailor your controls to the business in order to mitigate the risk
- Test those controls periodically to ensure they are working effectively
- Implement corrective measures (and consider voluntary self-disclosures before audit begins – **not** advisable everywhere)



## Take your non-customs colleagues to lunch

- Training non-customs people on customs issues is helpful, but...
- Understand the business/internal processes



# Control the Audit Narrative and Outcome



## Manage the audit

- Have a plan and tell your story (early and often) – do not just sit back and hope the auditors figure it out
- Understand what the auditors need to see in order for you to pass the audit



## Recognize (and accept) that no one is perfect

- Errors will occur – what you do with the errors is what is important!



## Learn from the audit

- An issue discovered in one jurisdiction may need to be addressed elsewhere as well

A photograph of a port at dusk. A large container ship is docked at a pier, with its deck and cranes illuminated by warm lights. The sky is a deep blue, and the water reflects the lights. In the foreground, a metal walkway with railings leads towards the ship. The overall scene is industrial and serene.

4

# Voluntary Prior Disclosures

# Understand Potential Penalty Exposure

Primary Civil Penalty Statute – 19 USC § 1592

## Negligence

Loss of revenue = lesser of domestic value or 2 times duties, taxes and fees

No loss of revenue = 20% of dutiable value

## Gross Negligence

Loss of revenue = lesser of domestic value or 4 times duties, taxes and fees

No loss of revenue = 40% of dutiable value

## Fraud

Not to exceed domestic value

# CBP Audits and Prior Disclosures



An importer may make a **prior disclosure** to CBP of errors in the entry of merchandise into the United States.



If the errors are attributable solely to **negligence** or **gross negligence**, where the importer makes a valid prior disclosure all penalties, except interest on the unpaid duties, can be waived.



The importer will receive the benefits of a prior disclosure only if it is made before the importer has knowledge that CBP has initiated a **formal investigation** into the violations.

- Receipt of a CF28 or CF29 or notice of a CBP focused assessment or audit may not always be notice of a formal investigation depending on the facts.
- A prior disclosure may even be made where CBP has identified the issues involving the violation in the course of a focused assessment.
- A prior disclosure may result in meaningful mitigation even in an audit context; need to consider carefully whether a prior disclosure should be considered.

# Prior Disclosure Best Practices

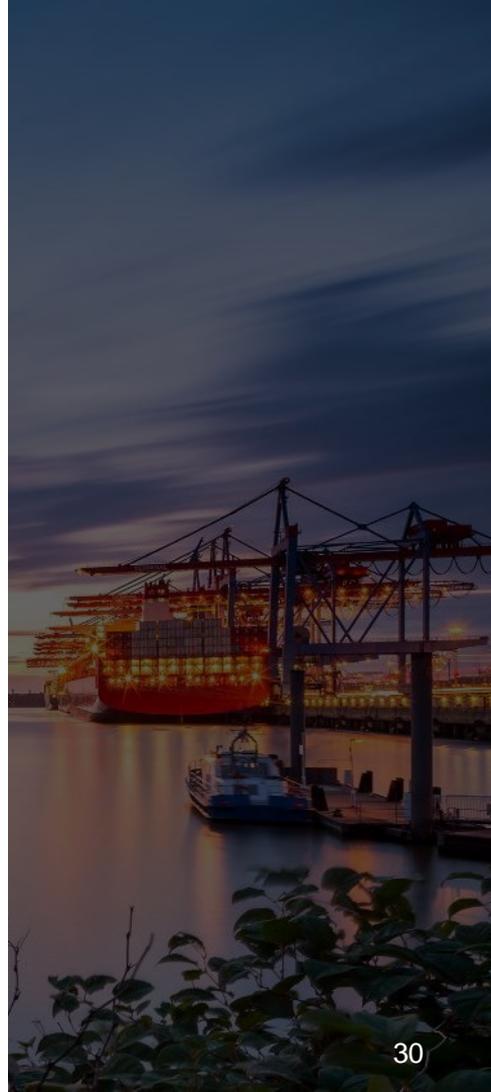


Do not simply address what went wrong

- Discuss how the issue was identified (e.g., by a compliance procedure, through internal auditing) – demonstrates that your controls worked!
- Discuss how the underlying cause of the issue has been remedied for the future
- Anticipate and address reasonable questions in the detailed statement – goal is no need for follow up



A disclosure can be a positive for the company, if done correctly



# Questions



# Thank you.



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