



The Bottom Line

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CUSTOMS AND BORDER PROTECTION (CBP) INCREASES ENFORCEMENT EFFORTS IN FORCED LABOR PRODUCTS

Summary

In a letter dated July 12, 2019, U.S. Senators Sherrod Brown (D-OH) and Ron Wyden (D-OR) urged the U.S. Customs and Border Protection (CBP) to investigate and block certain imports reportedly made with forced labor from entering the U.S. market. On October 1, CBP issued Withhold Release Orders (WROs) against five different products from five various origins. On October 2, CBP conducted a forced labor audit of an importer—the first of its kind within the United States. These efforts are evidence of an accelerating trend of activities aimed at combating modern slavery in supply chains.

Background

Forced labor can be understood as work that is performed involuntarily and under the menace of any penalty. It refers to situations in which persons are coerced to work through violence or intimidation, or by more subtle means, such as manipulated debt, retention of identity papers or threats of denunciation to immigration authorities. In the United States, the McKinley Tariff Act banned the import of goods, wares, articles, and merchandise manufactured by convict labor in 1890. In 1930, the Smoot-Hawley Tariff Act (Section 307) banned the import of goods produced, mined, or manufactured by convict, forced, or indentured labor. Current regulations prohibit the importation of merchandise mined, produced or manufactured wholly, or in part, in any foreign country by forced or indentured child labor, including forced child labor. Such merchandise is subject to exclusion and/or seizure and may lead to criminal investigation of the importer(s). Written into the legislation, however, was a loophole: Goods made by forced labor could still be imported into the U.S. if those goods couldn't be sufficiently provided domestically—cocoa beans or coffee beans, for instance. Called the "consumptive demand" clause, it allowed for the importation of forced labor-produced goods if the goods were not produced "in such quantities in the United States as to meet the consumptive demands of the United States." In other words, if the U.S. market demanded an item, the law allowed the market to obtain it—even if the item was produced with forced labor—when the consumption of the goods in the United States exceeded the domestic production capacity. The tide began to turn on February 24, 2016, when the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) was signed into law, repealing the "consumptive demand" clause in 19 U.S.C. § 1307. In 2017, the Countering America's Adversaries Through Sanctions Act (CAATSA) strengthened Section 307's import ban as it relates to goods from North Korea. CAATSA assumed the use of forced labor in connection with goods made by

North Koreans, prohibiting the importation of goods "mined, produced, or manufactured wholly or in part by the labor of North Korean nationals or citizens...unless CBP finds through clear and convincing evidence that the merchandise was not produced with a form of prohibited labor."

Current Status

When information reasonably, but not conclusively, indicates merchandise within the purview of this provision is being imported, CBP may detain goods believed to have been produced with forced labor by issuing a 'Withhold Release Order.' Importers can either re-export the detained shipment(s) or submit information to CBP demonstrating that the goods are not in violation. In addition to CBP's civil enforcement actions, ICE's Homeland Security Investigations ("HSI") may institute criminal investigations against individuals or companies for involvement in the importation of prohibited goods. Since 2017, ICE has initiated 54 international cases on forced labor, made 66 related international arrests, and seized 4,397 related goods domestically and internationally. Violations of OFAC sanctions can result in monetary penalties of up to \$302,584 per violation, or twice the amount of the underlying transaction (whichever is greater). Violations can also result in criminal fines of up to \$1 million per violation, or twice the amount of the gross gain or loss arising from the offense (whichever is greater, along with up to 20 years in prison for individuals.

Impact

Companies are advised to address the risks of forced labor and trafficking through various measures, including ongoing operational and supply chain due diligence, obtaining U.S. import certifications, prospective administrative rulings, and the inclusion of forced labor provisions in contract terms. Those companies operating in high-risk industries and geographies should closely examine their entire supply chain for evidence of forced labor and trafficking risks, remediate where impacts are found, and document their efforts. Customs, for their part, will treat suspicious shipments on a "guilty until proven innocent" basis.

RESOURCES:

[List of Goods Produced by Child Labor or Forced Labor](#) (DOL)
[40 Million Slaves in the World](#) (The Washington Post)