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Section 307 and Imports Produced by Forced Labor

Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) prohibits the importation of any product that was mined, produced, or manufactured wholly or in part by forced labor, including forced or indentured child labor. U.S. Customs and Border Protection (CBP) is charged with enforcing the prohibition.

Defining Forced Labor in Section 307

Forced Labor: "All work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily." – 19 U.S.C. § 1307; language modeled on the ILO Forced Labor Convention, 1930.

U.S. customs law has contained prohibitions against importing goods produced by certain categories of labor since the end of the nineteenth century. Beginning in 1890, the United States prohibited imports of goods manufactured with convict labor. In 1930, Congress expanded this prohibition in Section 307 of the Tariff Act to include any (not just manufactured) products of forced labor. Although a few Members of Congress brought up humanitarian concerns during debate, the central legislative concern was with protecting domestic producers from competing with products made with forced labor. As such, Section 307 allowed the admission of products of forced labor if it could be shown that no comparable product was made in the United States or the level of domestic production did not meet domestic demand ("consumptive demand" provision).

Over the decades, lawmakers and civil society became increasingly aware of and concerned about forced labor in the context of human trafficking. The Victims of Trafficking and Violence Prevention Act of 2000 (P.L. 106-386), for example, included forced labor in its definition of human trafficking. In 2015, Congress decided to remove the "consumptive demand" clause as part of the Trade Facilitation and Trade Enforcement Act (TFTEA P.L. 114-125), reflecting this increased interest in addressing human rights abuses in the context of forced labor.

Application of Section 307

Reporting

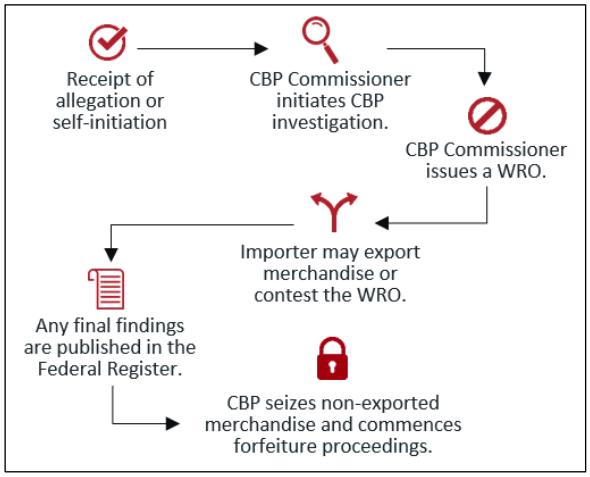
Any individual who has "reason to believe that any class of merchandise that is being, or is likely to be, imported into the United States" is being produced by forced labor may communicate that belief to CBP (see **Figure 1**). As required by 19 CFR § 12.42, port directors and other principal customs officers must report such instances to the Commissioner of CBP. Persons outside of CBP may choose to report to the Commissioner, to any port director, or online (https://eallegations.cbp.gov/).

Investigations and Withhold Release Orders

Upon receipt of such a report, the Commissioner of CBP is required to initiate an investigation "as appears warranted." Because the amount and reliability of information submitted to CBP can vary, the scale and scope of the investigation are left to the Commissioner's discretion.

If the Commissioner of CBP finds the information "reasonably but not conclusively indicates" that imports may be the product of forced labor, then she or he is to issue an order to withhold release of such goods (WRO) pending further instructions. WROs have usually been issued against specific goods from specific producers.

Figure 1. Application of Section 307



Source: CBP.

An importer has three months to contest a WRO. An importer contesting a WRO must demonstrate that he or she has made "every reasonable effort" to determine both the source of and the type of labor used to produce the merchandise and its components. If the importer does not successfully contest the WRO and does not remove the merchandise at issue from the United States, CBP is to seize and destroy it. Beyond publishing the date, merchandise type, manufacturer, and status of a WRO, CBP does not generally publish information about specific detentions, re-exportations, exclusions, or seizures.

Relation to Other Labor and Anti-Trafficking Measures

WROs are one of several congressionally mandated anti-human trafficking measures that focus on forced labor in supply chains. Others include the U.S. Department of Labor's Findings on the Worst Forms of Child Labor (prepared in accordance with the Trade and Development Act of 2000, P.L. 106-200) and List of Goods Produced by Child Labor or Forced Labor (required by the Trafficking Victims Protection Reauthorization Act of 2005, P.L. 109-164). These reports contain country profiles and lists of

goods (and source countries) suspected to have been produced by child or forced labor, but have traditionally been used to increase awareness rather than to inform CBP actions.

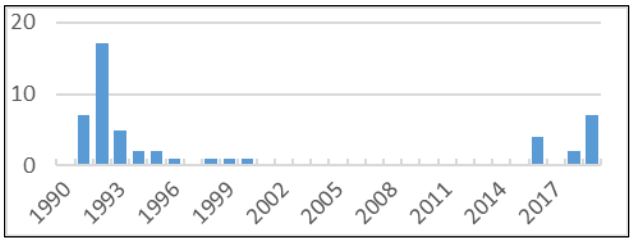
Trends

Following its enactment in 1930, Section 307 was rarely used to block imports. The International Trade Commission reported that between 1930 and the mid-1980s there were approximately 60 to 75 instances when either interested parties requested or Customs considered the application of Section 307. Of those instances, merchandise was denied entry into the United States at least ten times (six times from Mexico, and once each from Japan, the Dominican Republic, Canada, and the Soviet Union). Use of Section 307 increased substantially in the early 1990s with an increase in Chinese exports to the United States. Between 1991 and 1995, the CBP issued about 27 WROs against manufacturers in China. WROs against Japan, Nepal, India, and Mongolia were issued in the late 1990s. Between 2000 and 2016, no WROs were issued (see **Figure 2**).

Observers generally linked the difficulties in enforcing Section 307 to the "consumptive demand" clause. As more goods were manufactured exclusively abroad, it became easier for importers to make use of the exception. CBP also attributed difficulties to a lack of sufficient evidence, caused in part by the infeasibility of spot inspections that would provide evidence of forced labor.

As noted, Congress removed the clause in 2015. CBP stated "[t]he repeal of the consumptive demand exception enhances CBP's ability to prevent products made with forced labor from being imported into the United States." Since the repeal, and amongst ongoing interest in worker rights in trade policy and anti-trafficking efforts, CBP has issued 13 WROs, five of which were issued on September 30, 2019, against manufacturers and producers in Brazil, China, the Democratic Republic of the Congo, Malaysia, and Zimbabwe.

Figure 2. WROs Issued Per Year



Source: CBP.

Issues for Congress

Trade Policy and Forced Labor Provisions

The treatment of forced labor in U.S. trade policy and U.S. free trade agreements (FTAs) has been of longstanding congressional interest and has evolved in recent years. Consistent with negotiating objectives set by Congress in Trade Promotion Authority (TPA), recent U.S. FTAs commit countries to adopt and maintain laws on core labor rights and principles of the International Labor Organization (ILO). This includes the elimination of forced or compulsory labor, and the effective abolition of child labor and prohibition of its worst forms. For the first time in a U.S. FTA, the proposed U.S.-Mexico-Canada Agreement (USMCA) would also commit the parties to prohibit imports of goods produced by forced labor through "measures it considers appropriate," and to establish cooperation for the identification of such goods. The 116th Congress may consider implementing legislation for the proposed USMCA, which includes new provisions related to forced labor.

In addition, eligibility criteria for U.S. trade preference programs, such as the Generalized System of Preferences (GSP), includes taking steps to maintain internationally recognized worker rights. Some eligibility reviews by the U.S. Trade Representative have involved concerns over labor practices and resulted in countries losing benefits. Most recently, the Administration withdrew GSP benefits for Thailand over various labor concerns, including forced labor, especially in the fishing sector.

Trade agreements and programs have expanded coverage of trade and labor issues in part because the World Trade Organization (WTO) does not cover such rules. However, one relevant provision, Article XX(e) under the General Agreement on Tariffs and Trade (GATT), provides for exceptions to a country's obligations for measures related to imports of products of prison labor.

China and Forced Labor

The majority of WROs have been against China. Of the 49 WROs issued under Section 307 since 1990, 39 (80%) have been against merchandise produced in China. Many of those orders were issued between 1991 and 1993. The number of WROs began to decline after the U.S. and China negotiated several agreements relating to goods made with prison labor, notably a 1992 Memorandum of Understanding (MOU) and 1994 Statement of Cooperation. These agreements provided for the exchange of information and request for inspections. However, China's compliance with the MOU has been inconsistent and U.S. concerns over forced labor, including outside of prison labor, remain.

China has again become a focus of Section 307 investigations: since 2016, six of thirteen WROs have involved Chinese products. Media sources have reported that some WROs have centered on concerns of forced labor in Xinjiang, particularly that of Uyghurs and other Turkic Muslim minorities.

There has been some legislative activity on this issue in the 116th Congress. The Uyghur Human Rights Policy Act (H.R. 649 and S. 178), for example, urges U.S. companies and individuals operating in Xinjiang to, "take steps…to publicly assert…that their supply chains are not compromised by forced labor." The act would also require the Secretary of State to submit a report containing an assessment of forced labor in reeducation camps, among other elements.

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