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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 importing 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) enforces the prohibition.

Defining Forced Labor in Section 307

"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 prohibited 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 brought up humanitarian concerns during debate, the central legislative purpose was protecting domestic producers from competing with products made with forced labor. As such, Section 307 allowed products of forced labor if no comparable product was made in the United States or the level of domestic production did not meet U.S. "consumptive demand."

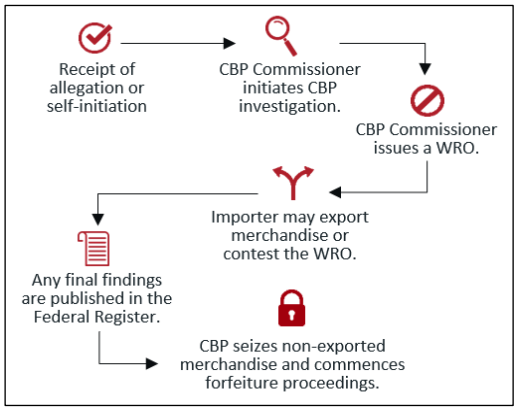
Over the decades, lawmakers and civil society became increasingly concerned about forced labor in the context of human trafficking. The Trafficking Victims Protection Act of 2000 (Division A of P.L. 106-386), for example, included forced labor in its definition of human trafficking, concordant with a U.N. anti-trafficking protocol adopted that year. Similarly, Congress removed the "consumptive demand" clause as part of the Trade Facilitation and Trade Enforcement Act (P.L. 114-125) in 2015. Since then, and amid ongoing interest in worker rights in trade policy, use of Section 307 has increased.

Application of Section 307

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 (**Figure 1**). Port directors and other principal customs officers must report such instances to the CBP Commissioner. Persons outside of CBP may also submit allegations online.

Upon receipt, the CBP Commissioner is required to initiate an investigation "as appears warranted" by the amount and reliability of the submitted information. If the Commissioner 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. Traditionally, CBP has issued WROs that target specific goods from specific producers, though this practice has changed in recent years.

Figure 1. Application of Section 307



Source: CRS, based on CBP.

An importer has three months to contest a WRO and must demonstrate that "every reasonable effort" has been made to determine the source and type of labor used to produce the merchandise and its components. If the importer does not successfully contest the WRO or remove the merchandise from the United States, CBP may seize and destroy it. Beyond publishing the date, type of good, manufacturer, and WRO status, CBP does not generally publish information about detentions, reexportations, exclusions, or seizures. Immigration and Customs Enforcement (ICE) can pursue criminal investigations of Section 307 violations.

Other Labor and Anti-Trafficking Measures

WROs are one of several congressionally mandated forced labor and anti-human trafficking measures. Others include the Department of Labor's Findings on the Worst Forms of Child Labor (prepared per the Trade and Development Act of 2000, P.L. 106-200) and List of Goods Produced by Child Labor or Forced Labor (per the Trafficking Victims Protection Reauthorization Act of 2005, P.L. 109-164). These reports contain country profiles and lists of goods suspected to have been produced by child or forced labor, though have traditionally been used to increase awareness rather than to inform specific CBP actions. More broadly, various international conventions and guidelines of the United Nations and International Labor Organization (ILO) address forced labor, and have informed U.S. approaches.

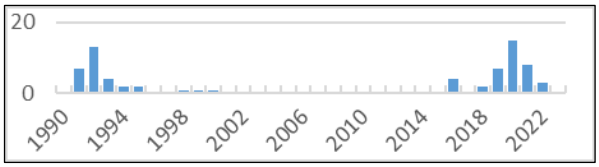
Trends

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 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 10 times (6 times from Mexico, and once each from Japan, the Dominican Republic, Canada, and the former Soviet Union). Use of Section 307 increased substantially in the 1990s with an increase in exports from China to the United States. Between 1991 and 1995, CBP issued 27 WROs against manufacturers in China. Between 2000 and 2016, CBP did not issue any WROs (**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 emphasized limited resources and 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 consumptive demand clause in 2015, which CBP stated, would "[enhance] CBP's ability to prevent products made with forced labor from being imported." Since then, CBP has issued 39 WROs to date.

Figure 2. WROs Issued Per Year



Source: CBP, as of October 2023.

Issues for Congress

Section 307 Implementation and Enforcement

While congressional action to close the Section 307 loophole was widely welcomed, some observers question whether CBP is effectively making use of the change. Some labor groups cite lack of clear evidentiary standards required in petitions and transparency by CBP on explanations of enforcement actions as concerns. Observers attribute few actions to the customary practice of targeting individual producers and the difficulty of tracing products back to the facility using forced labor, given complex global supply chains. Recent industry- and country-wide enforcement actions have been welcome developments to some, including Members of Congress who advocated this approach to the Xinjiang region of China. Some industry groups caution that broader WROs may disrupt supply chains, deter legitimate business with other suppliers, and worsen the economic security of vulnerable workers. They have expressed uncertainty as to what evidence demonstrates compliance. Other stakeholders view greater supply chain due diligence and accountability by companies as critical components. Enhancing Section 307 enforcement may hinge on greater resources. CBP cited staff shortages as leading to dropped investigations and limited ability to monitor existing cases. Congress could appropriate funds if lack of capacity hinders WRO issuance and enforcement.

China and Forced Labor

Goods imported from China have been the primary target of WROs due to long-standing concerns related to prison labor and more recent concerns about the systemic forced labor of ethnic Uyghurs and other minority groups in Xinjiang and other parts of China. Xinjiang-connected raw materials and products are used in finished goods in China and neighboring countries, putting supply chains at risk of exposure to forced labor. In 2021, CBP issued a region-wide WRO on imports of all cotton products and tomato products from Xinjiang.

Congress enacted P.L. 117-78, commonly known as the Uyghur Forced Labor Prevention Act (UFLPA), in December 2021. The law creates a rebuttable presumption that goods made in Xinjiang or by certain entities with ties to the region are made with forced labor and prohibited from U.S. entry. It creates new reporting requirements and declares that it is U.S. policy to coordinate with Canada and Mexico on this issue. UFLPA's enactment continues the recent trend toward using Section 307 on a region-wide basis and for humanitarian purposes. CBP began enforcing UFLPA in June 2022, and issued importer guidance to assist in its implementation. As mandated by the act, the Forced Labor Enforcement Task Force (FLETF), chaired by the Secretary of Homeland Security, issued its strategy on UFLPA enforcement, which includes lists of entities subject to the rebuttable presumption and "high-priority" sectors for enforcement. As of September 2023, CBP has detained 5,346 shipments under the act, with 2,325 denied entry. Members of the 118th Congress have held oversight hearings on UFLPA implementation. Some Members and experts have raised concerns over enforcement challenges and whether the rebuttable presumption standard is being implemented as intended. As of October 2023, there are 27 distinct entities on the UFLPA entity list, prompting concerns among some Members and stakeholders that the list remains too narrow and additions are made too slowly.

Trade Policy and Forced Labor Provisions

The treatment of forced labor in U.S. trade policy and free trade agreements (FTAs) has been of long-standing congressional interest and has evolved in recent years. In 2022, the U.S. Trade Representative (USTR) announced plans to develop its "first-ever focused trade strategy to combat forced labor." Per negotiating objectives set by Congress in trade promotion authority legislation, recent U.S. FTAs commit countries to maintain laws on core ILO rights/principles, for example, elimination of forced or compulsory labor. For the first time in a U.S. FTA, the U.S.-Mexico-Canada Agreement (USMCA) commits parties to prohibit imports made by forced labor and to cooperate over identifying such goods. USMCA implementing legislation (P.L. 116-113) created the FLETF to monitor and report on enforcement of Section 307.

In addition, eligibility criteria for U.S. trade preference programs includes taking steps to maintain worker rights. Some eligibility reviews and revocation of developing country benefits by USTR have involved labor practice concerns.

Trade agreements have expanded coverage of trade and labor issues in part because the World Trade Organization does not cover such rules, deferring to the ILO—though it provides exceptions to a country's obligations for measures related to imports of products of prison labor. Congress might consider assessing the ILO's role and whether to encourage elevating forced labor as part of trade discussions in other international fora.

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