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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) enforces 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” clause).

Over the decades, lawmakers and civil society became increasingly 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 removed the “consumptive demand” clause, as part of the Trade Facilitation and Trade Enforcement Act (reflecting this interest in addressing human rights abuses in the context of forced labor).

Application of Section 307 Reporting

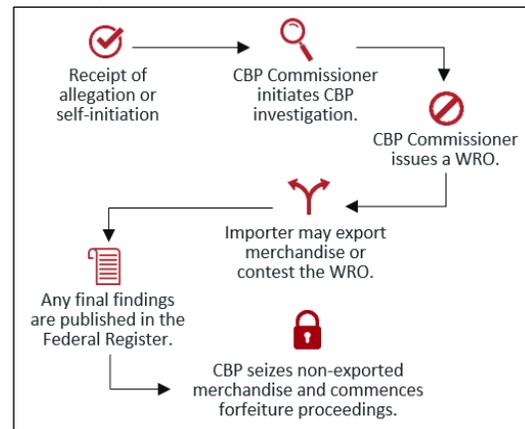
Any individual who has “reason to believe that any class of merchandise that is being, or is likely to be, imported into the United States” is being produced by forced labor may communicate that belief to CBP (**Figure 1**). As required by 19 C.F.R. §12.42, port directors and other principal customs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

Investigations and Withhold Release Orders

Upon receipt of such a report, the Commissioner of CBP is required to initiate an investigation “as appears warranted” by the amount and reliability of the submitted information. 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, reexportations, exclusions, or seizures. Immigration and Customs Enforcement can pursue criminal investigations of Section 307 violations.

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 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.

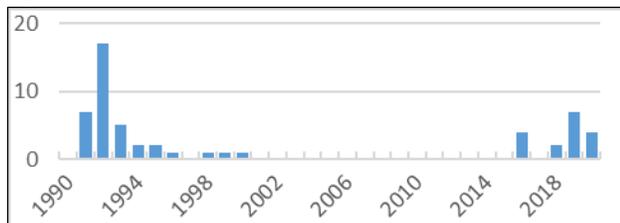
Trends

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 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 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 (**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.” Since the repeal, and amid ongoing interest in worker rights in trade policy and anti-trafficking efforts, CBP has issued 13 WROs. Five were issued in September 2019 involving Brazil, China, the Democratic Republic of the Congo (DRC), Malaysia, and Zimbabwe. In 2020, to date, WROs have targeted Chinese-manufactured hair products, Malaysian disposable gloves, and Taiwanese seafood.

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 free trade agreements (FTAs) has been of long-standing congressional interest and has evolved in recent years. Consistent with negotiating objectives set by Congress in Trade Promotion Authority, recent U.S. FTAs commit countries to maintain laws on core labor rights/principles of the International Labor Organization (ILO). This includes the elimination of forced or compulsory labor.

For the first time in a U.S. FTA, the U.S.-Mexico-Canada Agreement (USMCA) also commits parties to prohibit imports of goods produced by forced labor through “measures it considers appropriate,” and to establish cooperation for identifying such goods. The 116th Congress passed USMCA implementing legislation in early 2020. It created a Forced Labor Enforcement Task Force, chaired by the Secretary of Homeland Security, to monitor enforcement of Section 307, and reporting requirements.

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. Recently, the Administration withdrew GSP benefits for Thailand over forced labor 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, Article XX(e) of General Agreement on Tariffs and Trade (GATT), provides 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 51 WROs issued under Section 307 since 1990, 41 (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, 8 of 17 WROs have involved Chinese products. 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. Some versions of the Uyghur Human Rights Policy Act (H.R. 649, S. 178) urge U.S. companies operating in Xinjiang to “take steps ... to publicly assert ... that their supply chains are not compromised by forced labor.” The Uyghur Forced Labor Prevention Act (S. 3471), includes a “rebuttable presumption” that all goods produced or manufactured in Xinjiang are made with forced labor and thus prohibited imports, unless CBP determines otherwise.

Section 307 Implementation and Enforcement

While congressional action to close the Section 307 loophole was widely welcomed, some observers question whether the tool is used effectively. The International Labor Rights Forum (ILRF), which has filed numerous petitions, cites lack of clear evidentiary standards required in petitions and transparency on the explanation for CBP enforcement actions as concerns. They attribute the small number of enforcement actions to the customary practice of targeting individual producers and the difficulty of tracing products back to the factory or farm using forced labor, given complex global supply chains. Recent industry and country-wide enforcement actions, such as for Turkmenistan and the DRC, have been welcome developments to some, including Members of Congress who advocate this approach to Xinjiang. Others view greater supply chain due diligence and accountability by companies as critical components.

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