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Section 307 and U.S. Imports of Products of Forced Labor: Overview and Issues for Congress

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SUMMARY

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Cathleen D. Cimino-Isaacs, Coordinator
Analyst in International Trade and Finance

Christopher A. Casey
Analyst in International Trade and Finance

Katarina C. O'Regan
Analyst in Foreign Policy

Section 307 and U.S. Imports of Products of Forced Labor: Overview and Issues for Congress

The International Labor Organization (ILO) estimates that as of 2016, nearly 25 million adults and children worked in forced labor, also known as labor trafficking. Section 307 of the Tariff Act of 1930 (19 U.S.C. §1307) prohibits U.S. imports of any product that was mined, produced, or manufactured wholly or in part by forced labor, including forced or indentured child labor.

Amid concerns in recent decades over the statute's lack of use and increasing interest in combatting human trafficking, Congress amended Section 307 in 2015 to make it easier to block the entry of products of forced labor by removing the "consumptive demand" exception. This exception had permitted imports of goods that were not domestically produced in such quantities as to meet U.S. consumption needs. Since 2016, enforcement of Section 307 has increased in frequency and scope, and to date U.S. Customs and Border Protection (CBP) has issued nearly 30 "withhold release orders" (WROs), which bar entry of certain goods made by forced labor. While WROs were typically limited to specific manufacturers and producers, CBP recently has issued broader industry- and countrywide orders. WROs are one of several congressionally mandated forced labor and anti-human trafficking measures. In addition, various international conventions and guidelines address forced labor and supply chains, including those produced by the United Nations and the International Labor Organization (ILO), which have informed and worked in tandem with U.S. approaches.

Stakeholders welcomed congressional action to repeal the consumptive demand exception as a critical step toward improving utilization of Section 307. Enforcement of the provision has faced challenges, however, and nongovernmental organizations (NGOs), research institutes, and the media have documented a number of U.S. companies and global brands implicated, directly or indirectly, by forced labor in their supply chains. The U.S. Department of Labor tracks more than 60 categories of goods produced with forced labor from more than 40 countries. While identifying high-risk sectors and countries in which forced labor occurs is not inherently difficult, tracing such practices to specific facilities can be very challenging, particularly given complex global supply chains, widespread subcontracting, and problems with effective third-party auditing.

Some Members of Congress have expressed interest in ensuring CBP actively applies Section 307. Some observers view recent enforcement actions as inadequate in eliminating U.S. imports of forced labor, and recommend greater clarity and guidance in CBP decisions and requirements, as well as allocation of greater resources. Other stakeholders emphasize the need to shift the burden of mitigating risk to manufacturers and importers, through due diligence measures and transparency in supplier relationships. Some advocate for greater use of broader enforcement actions against an entire industry, region or country, rather than targeting individual companies. In particular, some Members and stakeholders seek a regional enforcement approach to address forced labor practices in China, given deepening concerns over the widespread use of state-sponsored forced labor of Muslim minority groups in the Xinjiang Uyghur Autonomous Region, and China's central role in global manufacturing. On the other hand, some industry groups caution about the spillover effects and compliance costs of broader enforcement, which could disrupt legitimate supply chains, burden companies, and further harm vulnerable workers. Practical challenges in enforcement, such as limited resources and tracing difficulties in supply chains are also key private sector concerns.

The Uyghur Forced Labor Prevention Act (H.R. 1155/S. 65) would create a rebuttable presumption provision that all goods produced or manufactured in Xinjiang are made with forced labor, and thus prohibited under Section 307. This and other bills also aim to improve disclosure and transparency of companies. In January 2020, Congress used passage of the U.S.-Mexico-Canada Agreement (P.L. 116-113) to bolster broader enforcement efforts related to Section 307 and interagency coordination.

This report provides background and analysis on Section 307 and CBP processes, trends regarding its use, and key issues for Congress regarding Section 307 enforcement and U.S. trade policy.

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Introduction

The International Labor Organization (ILO) estimates that as of 2016, nearly 25 million adults and children worked in forced labor, also known as labor trafficking, including 16 million put to work by the private sector.[1] The U.S. Department of Labor (DOL) tracks at least 63 categories of goods produced with forced labor, some exported as finished goods or inputs, from more than 40 countries.[2] U.S. customs law has prohibited importing goods produced by certain categories of labor since the late nineteenth century.[3] Today, Section 307 of that Tariff Act of 1930, as amended (19 U.S.C. §1307), prohibits the importation of goods made by forced labor.[4] It provides

> All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision.[5]

Enforcement of this prohibition by U.S. Customs and Border Protection (CBP) has been uneven and has faced challenges, and forced labor in global supply chains has persisted. Over the past several decades, some Members of Congress have expressed concerns with CBP's enforcement of Section 307, and Congress has enacted legislation to remove exceptions and expand CBP's enforcement capacity.[6] Most notably, Congress removed the so-called "consumptive demand" provision in 2015, which had allowed the importation of goods made with forced labor if such goods were not made in the United States in sufficient quantities to meet domestic demand.[7]

Since 2016, CBP has increased the use of Section 307. In the past five years, CBP has issued nearly 30 "withhold release orders" (WROs), which bar the entry of certain goods suspected of being produced with forced labor. Between 2000 and 2015, CBP had issued zero. In the past, WROs were typically limited to specific manufacturers and producers. Recently, however, CBP has also issued broader industry and countrywide orders, which may cover an entire product line from a country or region.

Even with the recent change, some Members have continued to express concerns with Section 307 enforcement.[8] Some labor groups and government agencies recommend improving transparency in CBP decisions and petition requirements, such as clarifying evidentiary standards and improving CBP's collaboration with other anti-trafficking initiatives.[9] Some

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[1] ILO, *Ending Forced Labour by 2030: A Review of Policies and Programmes*, December 2018.

[2] Based on DOL's *2020 List of Goods Produced by Child Labor or Forced Labor*; reported figures do not include countries and goods produced by child labor. While some goods listed are produced with both child labor and forced labor, DOL notes that this does not necessarily mean that the goods were produced with *forced* child labor.

[3] See, e.g., the Tariff Act of 1890 §51, 26 Stat. 567, 624 (October 1, 1890).

[4] P.L. 71-361 (March 13, 1930), §307; 46 Stat. 590, 689, codified as amended at 19 U.S.C. §1307.

[5] Ibid.

[6] See, e.g., P.L. 114-125 (February 24, 2016) §910(a); 130 Stat. 122, 239; P.L. 105-61 (October 10, 1997) §634, 111 Stat. 1272.

[7] P.L. 114-125 (February 24, 2016) §910(a); 130 Stat. 122, 239.

[8] U.S. Congress, House Ways and Means Committee, *Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang*, hearing, 116th Cong., 2nd sess., September 17, 2020.

[9] For example, Testimony by Cathy Feingold, International Director, AFL-CIO, U.S. Congress, House Ways and Means Committee, *Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang*, hearing, 116th Cong., 2nd sess., September 17, 2020; International Labor Rights Forum (ILRF), *Combatting Forced Labor and Enforcing*

nongovernmental organizations (NGOs) argue that manufacturers and purchasers should bear more of the burden of preventing the use of forced labor through greater supply chain due diligence and accountability.[10] While identifying high-risk sectors and countries in which forced labor occurs is not inherently difficult—and is the subject of annual reports by DOL[11]—tracing forced labor practices to a specific factory or farm is often difficult, particularly given complex global supply chains, widespread subcontracting often involving migrant or temporary workers, and challenges in effective third-party auditing. To this end, some stakeholders seek greater use of enforcement actions against an entire industry, region or country, rather than targeting individual companies.[12] Others caution about the potential spillover effects and the compliance costs of broader enforcement actions, which could disrupt legitimate supply chains, burden companies, and further harm vulnerable workers.[13] Some industry groups emphasize practical challenges in enforcement and complex supply chains as complicating factors, for example, the lack of tracing technologies that ensure complete accuracy of the origin of key inputs at risk for forced labor.[14]

Some Members have advocated a regional enforcement approach to address forced labor practices in China, given deepening concerns over reports of widespread state-sponsored forced labor of Muslim minority groups in the Xinjiang Uyghur Autonomous Region, both in facilities in Xinjiang, as well as in other parts of China.[15] The Uyghur Forced Labor Prevention Act (H.R. 1155/S. 65) includes a rebuttable presumption provision that all goods produced or manufactured in Xinjiang are made with forced labor, and thus prohibited under Section 307. In addition, H.R. 1155 would require publicly traded companies to disclose certain activities related to Xinjiang, including whether they knowingly engaged with any entity for which CBP has issued a WRO. Other bills also mandate disclosure and transparency of firms, such as H.R. 2072. Amid growing congressional pressure, throughout 2020, CBP issued several new orders to ban imports of certain products from Xinjiang, culminating in its first region-wide ban on Xinjiang cotton and tomato products in January 2021.[16]

There was legislative activity on forced labor and trade issues in the 116th Congress. For instance, in January 2020, Congress used passage of the U.S.-Mexico-Canada Agreement Implementation Act (P.L. 116-113) to bolster broader enforcement efforts related to Section 307 and expand interagency coordination.[17]

Workers' Rights Using the Tariff Act, Briefing Paper, February 2020; and U.S. GAO, *Forced Labor – Better Communication Could Improve Trade Enforcement Efforts Related to Seafood*, GAO-20-441, June 2020.

[10] ILRF, *Combatting Forced Labor and Enforcing Workers' Rights Using the Tariff Act*, February 2020. The latter terms refer to systematic efforts to determine what types of labor are used in the manufacture of a given product or supply chain in order to preclude and/or eliminate the use of forced labor.

[11] Available at https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods.

[12] See, e.g., the Uyghur Forced Labor Prevention Act (H.R. 1155); Olivia Enos, *Responding to the Crisis in Xinjiang*, The Heritage Foundation, Backgrounder No. 3416, June 7, 2019.

[13] COAC, *Report of the Intelligent Enforcement Subcommittee Forced Labor Working Group*, July 15, 2020.

[14] In particular, for highly fungible commodities, such as cotton; cotton from Xinjiang, China for example, can be and is often comingled with similar cotton fibers from other sources, including from the United States. Testimony by Stephen Lamar, President and CEO, American Apparel & Footwear Association, U.S. Congress, House Ways and Means Committee, *Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang*, hearing, 116th Cong., 2nd sess., September 17, 2020.

[15] Congressional-Executive Commission on China, "Xinjiang: CECC Commissioners Seek Import Restrictions on Forced Labor Made Goods," Press release, November 5, 2019.

[16] U.S. CBP, "CBP Issues Region-Wide Withhold Release Order on Products Made by Slave Labor in Xinjiang," Press release, January 13, 2021.

[17] P.L. 116-113 (January 29, 2020) §§741-744, 134 Stat. 11, 88-90, codified at 19 U.S.C. §§4681-4684.

This report provides background and analysis on Section 307 and CBP processes, trends regarding its use, and issues for Congress. It also contextualizes the debate over Section 307 enforcement, with other U.S. and international forced labor and anti-trafficking tools.

Section 307: Origins, Development, and Trends

Origins

U.S. prohibitions on the import of goods made with forced or penal labor were not initially enacted as a humanitarian measure, but to protect domestic free labor. In the 1880s, following the end of formal slavery in the United States, U.S. manufacturers and labor activists became increasingly concerned with competition from the expansion of penal labor domestically and abroad.[18] In 1890, Congress prohibited the import of "all goods, wares, articles and merchandise manufactured wholly or in part in any foreign country by convict labor."[19] The purpose of the measure, the Chair of the House Committee on Ways and Means explained, was to prevent the admission of "convict-made products of the world to free competition with our free labor."[20]

In Section 307 of the Tariff Act of 1930,[21] Congress expanded this prohibition to include any (not just manufactured) products of "convict labor or/and forced labor or/and indentured labor under penal sanctions"—see **Text Box** for definitions. Although the amendment's sponsor brought up humanitarian concerns as a rationale for the expansion of the prohibition,[22] the overriding legislative concern expressed by the final text of Section 307 was with protecting domestic producers and workers, while also ensuring that Americans retained access to products commonly produced with forced labor that were unavailable in the United States.[23] While debating the amendment, Senator David A. Reed rhetorically asked, "Will it help Americans for us in our zeal to abolish forced labor in foreign climes, to deny all Americans the use of such articles as coffee,

[18] On the growth of penal labor in the United States following the end of slavery, see Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor* (London: Verso, 1996). On concern with imports of goods made with penal labor, see, e.g., U.S. Congress, Senate Committee on Finance, report to accompany H.R. 9051, 50th Cong., 1st sess., S.Rept. 50-232 (Washington, DC: GPO, 1888), pp. 345, 540, 795; U.S. Congress, House Committee on Ways and Means, *Revision of the Tariff*, hearings, 51st Cong., 1st sess., Misc.Doc. 51-176 (Washington, DC: GPO, 1890), p. 584. Penal labor still exists in the United States and U.S. firms have at times found themselves in breach of foreign laws prohibiting the import of goods made by prison labor. See for instance, James Hagerty, "Berkshire Unit Finds It Broke Canada Trade Laws Over Prison Labor," *Wall Street Journal*, January 12, 2012.

[19] The Tariff Act of 1890 §51, 26 Stat. 567, 624 (October 1, 1890).

[20] House debate, *Congressional Record*, vol. 21, part 6 (May 7, 1890), p. 584.

[21] P.L. 71-361 (March 13, 1930), §307; 46 Stat. 590, 689. The amendment that became Section 307 was introduced, in part, to give effect to the *Convention to Suppress the Slave Trade and Slavery*, 25 September 1926, 60 LNTS 253, Department of State Treaty Series No. 778, 46 Stat. (pt. 2) 2183, which had been recently ratified in 1929. See, Senate debate, *Congressional Record*, vol. 71, part 4 (October 14, 1929), p. 4496.

[22] See, e.g., Senate debate, *Congressional Record*, vol. 71, part 4 (October 14, 1929), p. 4496: Sen. Blaine. "I understand that we might suffer some economic loss, but we can not [sic] afford any economic gain at the sacrifice of the degeneracy and death of the natives amounting to millions of men and women…."

[23] See, e.g., ibid., p. 4494: Sen. Reed. "I think we are agreed that American labor ought to be protected from the competition of convict-made goods or slave-made goods … but we are legislating for the benefit of Americans here. Will it benefit Americans to exclude from importation into this country products which we do not make and can not make, such as tea and coffee and rubber?" See also McKinney v. U.S. Dept. of Treasury, 9 C.I.T. 315, 320 (1985): "Congress intended to protect domestic workers and producers from unfair competition. But this concern as well as any desire to improve foreign labor conditions were clearly subordinate in section 307, as enacted, to concern for the American consumer's access to merchandise not produced domestically in quantities sufficient to satisfy consumer demand."

tea, and rubber?"[24] In its final form, Section 307 exempted from prohibition any goods that were not domestically produced in such quantities as to meet U.S. consumptive demands.[25]

Selected U.S. Government Definitions of Forced Labor/Labor Trafficking

Tariff Act of 1930/19 U.S.C. §1307: "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."

Trafficking Victims Protection Act of 2000/22 U.S.C. §7102: "The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery." (Note, part of a broader definition of severe forms of trafficking against persons, which also includes sex trafficking.)

Trafficking Victims Protection Act of 2000/18 U.S.C. §1589: "Whoever knowingly provides or obtains the labor or services of a person-(1) by threats of serious harm to, or physical restraint against, that person or another person; (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened abuse of law or the legal process."

Trends and Development: 1930-2020

In the decades following its entry into law, Section 307 was used sparingly.[26] Between 1930 and the mid-1980s, the U.S. International Trade Commission (USITC) identified between 60 and 75 instances in which parties requested, or the U.S. Customs Service (CBP's precursor) considered the application of Section 307.[27] Only eight of those instances resulted in a good's exclusion from importation.[28] During that time, investigations varied in scale and scope, according to the USITC, "because of the varying amount and degree of reliability of the information available relating to the imports [of goods allegedly made with forced labor]."[29] Additionally, the USITC reported that the Customs Service was lenient in its application of Section 307, "[allowing on an ad hoc basis] the importation of prison goods where the size of the shipment was small, where the prisoners were working voluntarily and were compensated, or where importers promised not to enter subsequent shipments."[30]

In the 1980s, following the emergence of modern international human and worker rights politics in the 1970s,[31] increasing Cold War tensions,[32] and growing public awareness of the role of forced labor in the Soviet Union and China,[33] some Members of Congress expressed interest in using

[24] Senate debate, *Congressional Record*, vol. 71, part 4 (October 14, 1929), p. 4494.

[25] P.L. 71-361 (March 13, 1930), §307, 46 Stat. at 690.

[26] U.S. International Trade Commission, *International Practices and Agreements Concerning Compulsory Labor and U.S. Imports of Goods Manufactured by Convict, Forced, or Indentured Labor* ("USITC Report"), U.S. ITC Pub. 1630 (December 1984), pp. v-vi.

[27] USITC Report, p. vi.

[28] USITC Report, pp. B-3–B-6.

[29] USITC Report, p. vi.

[30] USITC Report, p. vi, 6.

[31] See Samuel Moyn, *The Last Utopia* (Cambridge, MA: Harvard University Press, 2010), pp. 120-175; Daniel Sargent, *A Superpower Transformed* (Oxford: Oxford University Press, 2015), pp. 220-229; Carol J. Pier, "Workers' Rights Provisions in Fast Track Authority, 1974-2007," *Indiana Journal of Global Legal Studies* 13, no. 1 (Winter 2006), pp. 78-81; The Trade Act of 1974 required that the President to "bring trade agreements heretofore entered into … into conformity with … international fair labor standards." P.L. 93-619 (January 2, 1975) §121, 88 Stat. 1978, 1986.

[32] See, e.g., Robert G. Kaiser, "U.S.-Soviet Relations: Goodbye to Détente," *Foreign Affairs* (1980); Dimitri K. Simes, "The Death of Détente," *International Security* 5, no. 1 (Summer 1980), pp. 3-25.

[33] See, e.g., Aleksander Solzhenitsyn, *Gulag Archipelago* (New York: Harper and Row, 1974); David Satter, "The System of Forced Labor in Russia," *Wall Street Journal*, June 24, 1982, p. 28; "C.I.A. Says 4 Million in Soviet are

Section 307 to restrict imports for foreign policy and human rights purposes.[34] Moreover, Congress had become increasingly interested in incorporating worker rights protection clauses into U.S. trade legislation and trade programs, such as adding worker rights criteria into U.S. trade preference programs, including on forced labor and the worst forms of child labor.[35] Against this background, Congress began to express its concern with the lack of enforcement of Section 307,[36] and a USITC report prepared in response to that concern identified several problems with the Customs Service's enforcement, specifically that it was opaque, inconsistent, and lacked clear evidentiary standards.[37]

By the early 1990s, perhaps owing to additional congressional pressure, enforcement of Section 307 had become more common, and CBP issued several WROs per year, primarily on merchandise from China. However, the reinvigoration was short lived and use of Section 307 declined in the late 1990s; between 2000 and 2015, CBP did not issue a single WRO (**Figure 1**).

Some observers attributed the decline in enforcement, in part, to the strictures of the consumptive demand provision, which was included in 1930 to ensure Americans did not lose access to commodities like "coffee, tea, and rubber" that then were produced entirely abroad, often with forced labor.[38] In 2005, for example, cocoa produced with forced child labor was allowed entry because no domestic cocoa production industry existed sufficient to meet domestic demand.[39]

Doing Penal Labor," *New York Times*, November 7, 1982, p. 3; John Maclean, "Soviet Refugee Describes Forced Labor on Pipeline," *Chicago Tribune*, December 27, 1982, p. 1.

[34] USITC Report, p. vii; U.S. Congress, Senate Committee on Finance, Subcommittee on International Trade, *Enforcement of U.S. Prohibitions on the Importation of Goods Produced by Convict Labor*, hearing, 99th Cong., 1st sess, July 9, 1985, S. Hrg. 99-357 (Washington, DC: GPO, 1985) ("Forced Labor Hearing"); Helsinki Commission, *Implementation of the Helsinki Accords, Soviet Forced Labor Practices*, hearing, 99th Cong., 1st sess. (Washington, DC: GPO, 1985); Kenneth B. Noble, "U.S. Asked to Ban Soviet Items Made by Forced Labor," *New York Times*, October 8, 1983, p. 1. For example, in 1983 Commissioner of Customs, William von Raab, recommended using Section 307 to block certain imports from the Soviet Union; others in the Reagan Administration worried such actions might further cool U.S.-Soviet relations. Ultimately, no action was taken. Clyde, H. Farnsworth, "Reagan Delays Decision on Soviet Import Ban," *New York Times*, May 17, 1984, p. 12; "U.S. Trade United Reports on Prison-Good Imports," *New York Times*, December 20, 1984, p. 23; Forced Labor Hearing, p. 11. In 1988, concerned that "delay in enforcing the law [was bringing] into question the commitment of the United States to protest the inhumane treatment of prisoners in the Soviet Gulag," Congress urged the President to increase enforcement of Section 307 "without delay" with respect to goods imported from the Soviet Union. P.L. 100-418 (August 23, 1988), 102 Stat. 1313, 1314.

[35] See, e.g., Trade and Tariff Act of 1984, P.L. 98-573 (October 30, 1984) §503, 98 Stat. 2948. See also Carol J. Pier, "Workers' Rights Provisions in Fast Track Authority, 1974-2007."

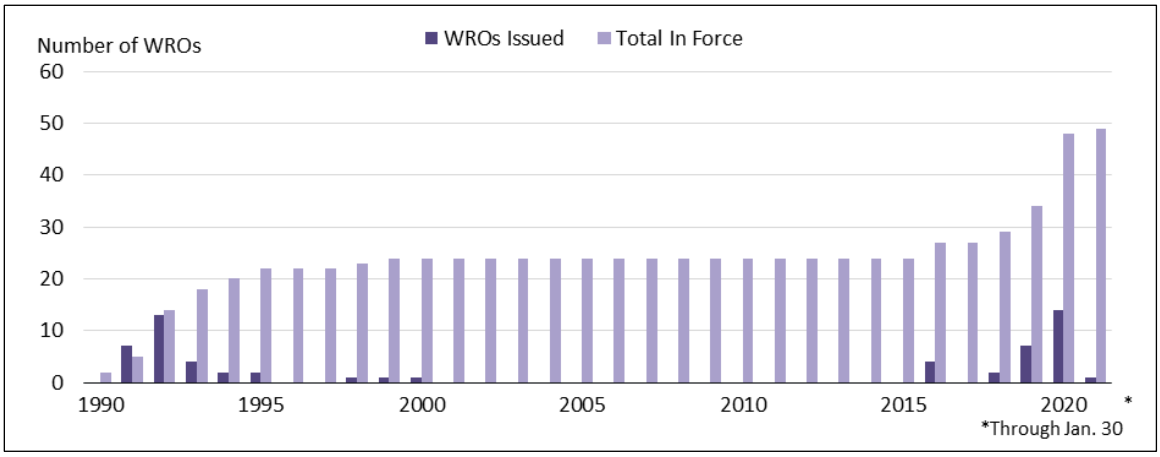
[36] See P.L. 100-418.

[37] USITC Report, p. vii.

[38] See, e.g., Int'l Labor Rights Fund v. United States, 29 C.I.T. 1050, 1055 (2005); U.S. Congress, Senate, *A Bill to Amend the Tariff Act of 1930 to Eliminate the Consumptive Demand Exception Relating to the Importation of Goods Made with Forced Labor*, S.1157, 110th Cong., 1st sess., introduced in Senate April 19, 2007; Marc Ellenbogen, "Can the Tariff Act Combat Endemic Child Labor Abuses—The Case of Cote d'Ivoire," *Texas Law Review* 82 (2004), pp. 1131, 1136, 1139; Senate debate, *Congressional Record*, vol. 71, part 4 (October 14, 1929), p. 4494.

[39] Int'l Labor Rights Fund v. United States, 29 C.I.T. at 1055.

Figure 1. Withhold Release Orders (WROs): Issued and In Force



Source: U.S. Customs and Border Protection.

Notes: *2021 through January 30. CBP may rescind WROs. However, as the figure indicates, such rescissions are rare.

Although enforcement of the prohibition declined around the turn of the millennium, Congress continued to be interested in mitigating forced labor and child labor. In 1998, Congress forbade the Customs Service from using funds to allow the importation of goods produced with forced labor.[40] In 2000, Congress amended Section 307 to include "forced or indentured child labor" in its definition of forced labor.[41] Congress also continued to insist that U.S. trade agreements include worker rights provisions that reflected core internationally recognized rights.[42] Moreover, Congress passed significant legislation related to human trafficking, notably the Trafficking Victims Protection Act of 2000 (P.L. 106-386) and subsequent reauthorizations.[43]

Despite this legislative activity, according to the Court of International Trade in 2005, Section 307's consumptive demand provision continued to "subordinate[] human rights concerns to the availability of the goods at issue by means of domestic production."[44] In 2015, perhaps reflecting a congressional commitment to anti-trafficking measures and concern over global labor conditions, Congress eliminated the consumptive demand provision of Section 307, as part of the Trade Facilitation and Trade Enforcement Act (TFTEA, P.L. 114-125).[45] In addition, TFTEA also required CBP to submit to the Senate Finance Committee and the House Ways and Means Committee an annual report on CBP's enforcement activities with respect to Section 307.[46] CBP

[40] Treasury and General Government Appropriations Act, 1998, P.L. 105-61 (October 10, 1997) §634, 111 Stat. 1272.

[41] Trade and Development Act of 2000, P.L. 106-200, (May 18, 2000) §411, 114 Stat. 251. Codified at 19 U.S.C. §1307.

[42] See, e.g., North American Agreement on Labor Cooperation, opened for signature Sept. 8, 1993, 32 I.L.M. 1499 (entered into force Jan. 1, 1994); Trade Act of 2002, P.L. 107-210 (August 6, 2002) §2102(a)(6, 7, 9), (b)(11, 17), (c); 116 Stat. 933, 994, 1002-1003. See also Kimberly Ann Elliott, *Preferences for Workers? Worker Rights and the U.S. Generalized System of Preferences*, Peterson Institute for International Economics, May 28, 1998; Carol J. Pier, "Workers' Rights Provisions in Fast Track Authority, 1974-2007."

[43] Victims of Trafficking and Violence Protection Act of 2000, P.L. 106-386 (October 28, 2000), 108 Stat. 1902.

[44] Int'l Labor Rights Fund v. United States, 29 C.I.T. at 1057.

[45] Trade Facilitation and Trade Enforcement Act of 2015 ("TFTEA"), P.L. 114-125 (February 24, 2016) §910(a); 130 Stat. 122, 239. Codified at 19 U.S.C. §4453.

[46] Ibid.

expected that the changes to Section 307 would "enhance [its] ability to prevent products made with forced labor from being imported into the United States."[47]

In 2017, Congress legislated a new approach to Section 307 enforcement for North Korean goods specifically. Section 231 of the Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA, P.L. 115-44) creates a presumption that goods mined, produced, or manufactured by North Korean nationals have been produced by forced labor and are thus prohibited from importation under Section 307.[48] The presumption can be rebutted only if the CBP Commissioner finds by clear and convincing evidence that such goods were not produced by forced labor.[49]

In the years after TFTEA eliminated the consumptive demand provision, enforcement of Section 307 increased in frequency and scope. Since 2016, CBP has issued 28 WROs through the date of this report. Although traditionally WROs were issued against specific goods from specific producers or manufactured in specific facilities, since 2016 CBP has issued four geographically bounded orders, such as the WROs banning cotton from Turkmenistan and tobacco from Malawi. In 2020, WROs targeted Chinese-manufactured hair products, garments and apparel, cotton, and computer parts; Malaysian disposable gloves and palm oil; and seafood harvested by two specified Taiwan-flagged fishing vessels and a Vanuatu-flagged fishing vessel.

The majority of WROs issued by CBP since 1990 have targeted Chinese goods. Many were issued between 1991 and 1993, but the number declined after the United States and China negotiated agreements relating to goods made with prison labor, notably a 1992 Memorandum of Understanding (MOU)[50] and a 1994 Statement of Cooperation. These agreements provided for the exchange of information and requests for inspections, although many observers and officials have considered China's compliance with the MOU to have been inconsistent.[51] Like some U.S. industry groups, representatives of Chinese trade associations have argued that U.S. efforts are hypocritical due to the use of U.S. prison labor in U.S. manufacturing.[52]

Since 2016, China has again become a focus of Section 307 cases. Sixteen WROs have been issued against products from China, with a total of 34 in force, as of January 2021 (**Figure 2**). The recent increase reflects, in part, allegations of systematic state-sponsored forced labor of Muslim minority groups in Xinjiang (see "Forced Labor in Xinjiang").

[47] U.S. CBP, "Forced Labor," available at https://www.cbp.gov/trade/programs-administration/forced-labor.

[48] Countering America's Adversaries Through Sanctions Act ("CAATSA"), P.L. 115-44 (August 2, 2017) §302A, codified at 22 U.S.C. §9241a.

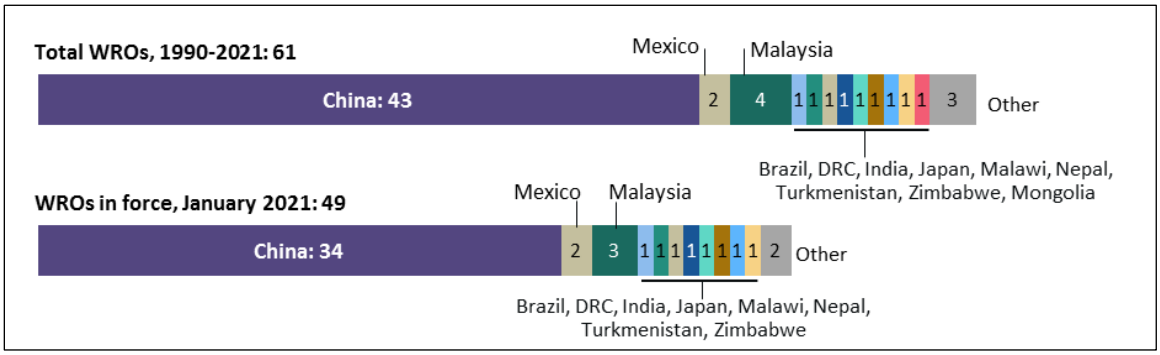
[49] Ibid.; U.S. CBP, "Countering America's Adversaries Through Sanctions Act: Title III Section 321 Frequently Asked Questions," March 6, 2018.

[50] China-United States, Memorandum of Understanding on Prohibiting Import and Export Trade in Prison Labor Products, August 7, 1992, 3 I.L.M. 1071 (1992).

[51] John Dotson and Teresa Vanfleet, *Prison Labor Exports from China and Implications for U.S. Policy*, U.S.-China Economic and Security Review Commission, July 9, 2014; U.S. Government Accountability Office, *U.S. China Trade, Implementation of the 1992 Prison Labor Memorandum of Understanding*, GAO/GGD-95-106, April 1995, p. 2; U.S. Congress, Senate Committee on Foreign Relations, *U.S. Implementation of Prison Labor Agreements with China*, hearings, 105th Cong., 1st sess., May 21, 1997, S. Hrg. 105-253 (Washington, DC: GPO, 1997).

[52] Testimony by Shengfu Wu, China National Forest Products Industry Association, Marketing Department Director, in U.S. International Trade Commission, *Multilayered Wood Flooring from China*, Investigation Nos. 701-TA-476 and 731-TA-1179 (Preliminary), November 12, 2010.

Figure 2. WROs by Country



Source: U.S. Customs and Border Protection.

Section 307 Application

Under the current regulations implementing Section 307, any person 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, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions, including forced child labor or indentured child labor under penal sanctions" may communicate that belief to CBP.[53] Persons outside of CBP may report such reasonable beliefs by submitting a statement accompanied by a detailed description of the merchandise and all pertinent facts they have available to any port director, to the Commissioner, or online.[54] Additionally, port directors and other principal Customs officers are required to report any such reasonable beliefs they have about possible product-forced labor linkages to the CBP Commissioner.[55] CBP has not published precise guidance on the information that should be contained in such reports, leading to some criticism about the process (see "Section 307 Enforcement").

Upon receipt of a report, the Commissioner must initiate an investigation as "warranted by the circumstances of the case."[56] Because the amount and the reliability of information submitted to CBP can vary, the scale, scope, and timing of the investigation are left to the Commissioner's discretion. If the Commissioner finds "that information available reasonably but not conclusively indicate" that imported merchandise may be the product of forced labor, he or she is required to issue a WRO to port directors, instructing them to withhold the release of the merchandise at issue pending further instructions.[57]

[53] 19 C.F.R. §12.42.

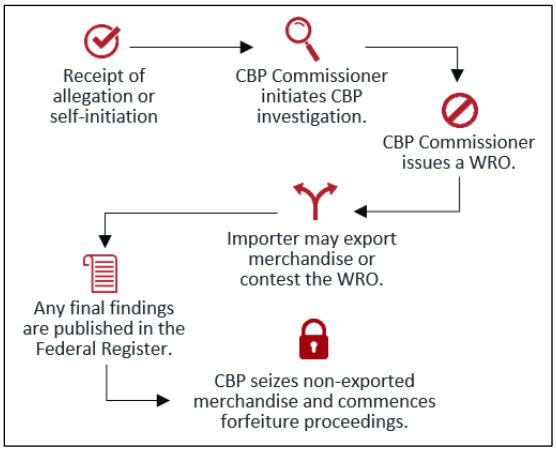
[54] 19 C.F.R. §12.42(b).

[55] 19 C.F.R. §12.42(a).

[56] 19 C.F.R. §12.42(d).

[57] 19 C.F.R. §12.42(e).

Figure 3. Application of Section 307



Source: U.S. Customs and Border Protection.

An importer has three months to contest a WRO.[58] To succeed in contesting a WRO, an importer must demonstrate that they have made "every reasonable effort to determine the source of the merchandise and of every component thereof and to ascertain the character of labor used in the production of the merchandise and each of its components" (see below).[59] If the importer successfully contests the WRO, the merchandise may be released into the United States. If the importer does not successfully contest the WRO and does not remove the merchandise at issue from the United States, or reexport it, within 60 days, CBP is authorized to seize and destroy it.[60] 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.

Following the issuance of a WRO, if the Commissioner finds that the covered merchandise is conclusively subject to Section 307, the Commissioner, with the approval of the Secretary of the Department of Homeland Security,[61] will publish such a finding in the *Customs Bulletin* and the *Federal Register*.[62] The publication of a finding authorizes CBP to seize the unreleased merchandise and commence forfeiture proceedings.[63] On October 20, 2020, CBP found, after obtaining conclusive evidence that the imported goods were made with forced labor.[64] The finding authorized CBP to seize (rather than just withhold release) and commence forfeiture proceedings on imports of stevia produced or manufactured in China by the Inner Mongolia Hengzheng Group Baoanzhao Agriculture, Industry, and Trade Co., Ltd.[65] On March 29, 2021, CBP issued another finding authorizing CBP to seize certain disposable gloves manufactured by Top Glove Corporation Bhd. in Malaysia.[66] These were CBP's first two findings since 1996.

[58] 19 C.F.R. §12.43(a).

[59] 19 C.F.R. §12.43(a-b).

[60] 19 C.F.R. §12.44(a-b). In addition to forfeiture, persons who transport certain goods made with penal labor may be subject to criminal penalties. See, e.g., 19 U.S.C. §§1761-1762.

[61] See "Merchandise Produced by Convict, Forced, or Indentured Labor; Conforming Amendment and Technical Corrections," 82 *Federal Register* 26582, June 8, 2017.

[62] 19 C.F.R. §12.42(f).

[63] 19 C.F.R. §12.44(b).

[64] U.S. CBP, "Notice of Finding That Certain Stevia Extracts and Derivatives Produced in the People's Republic of China With the Use of Convict, Forced or Indentured Labor Are Being, or Are Likely To Be, Imported Into the United States," 85 *Federal Register* 66574, October 20, 2020.

[65] Ibid.

[66] U.S. CBP, "Notice of Finding That Certain Disposable Gloves Produced in Malaysia With the Use of Convict, Forced or Indentured Labor Are Being, or Are Likely To Be, Imported Into the United States," 86 *Federal Register* 16380, March 29, 2021.

Responsibilities of Importers

U.S. companies importing goods into the United States have a general obligation to exercise "reasonable care" and to take necessary and appropriate steps to ensure that imported goods comply with U.S. laws and regulations, including those related to forced labor (see **Text Box**). As per the Customs Modernization Act (Mod Act),[67] the importer of record is responsible for exercising reasonable care to enter, classify, and determine the value of imports, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements have been met.

As such, CBP advises that importers must exercise reasonable care over their supply chains and understand where and how their products are manufactured or produced.[68] Companies, particularly those operating in industries and geographies at higher risk of forced labor, are generally advised by CBP to address forced labor risks through supply chain due diligence (see **Text Box**), maintaining a comprehensive social compliance system, obtaining U.S. import certifications of origin, and including forced labor prohibition provisions in contract terms.[69] CBP and other agencies (including DOL), as well as certain NGOs, offer support and resources for advising on best practices and reporting on forced labor issues.[70] In response to a WRO, an importer may contend that the good was not produced by forced labor for example, by submitting a certificate of origin signed by the foreign seller, and a statement (e.g., third-party audit) demonstrating the goods were not produced with forced labor.

Exercising Reasonable Care Over Supply Chains

U.S. importers have a general obligation to exercise "reasonable care" in importing into the United States, which includes the responsibility to take reliable measures to ensure imported goods are not produced wholly or in part with forced labor. To promote importers' compliance with CBP laws and regulations related to forced labor, CBP guidance includes scoping questions that prompt importers to[71]

- Establish reliable procedures to ensure goods are not being imported in violation of 19 U.S.C. §1307 and 19 C.F.R. §§12.42-12.44;
- Know how goods are made, by whom, where, and under what labor conditions;
- Review CBP's "Forced Labor" web page, which includes a list of active withhold release orders and findings, as well as forced labor fact sheets;
- Review the Department of Labor's List of Goods Produced by Child Labor or Forced Labor;
- Obtain a "ruling" from CBP regarding admissibility of imported goods under 19 U.S.C. §1307;
- Establish a procedure of conducting periodic internal audits to check for forced labor in the supply chain;
- Establish a reliable procedure for third-parties to conduct periodic, unannounced audits of supply chain;
- Review the ILO's "Indicators of Forced Labour";

[67] P.L. 103-182, Title VI, 107 Stat. 2057.

[68] U.S. CBP, "Forced Labor Frequently Asked Questions," https://www.cbp.gov/trade/programs-administration/forced-labor/frequently-asked-questions.

[69] Clare Connellan et al., *US Customs & Border Protection Enforces Forced Labor Prohibition in First Action Against Vessel*, White & Case, April 2019; and Teresa Polino, David Salkeld, and Arent Fox, "US Announces New Strategy to Combat Forced Labor in US Imports," JD Supra, February 12, 2020.

[70] For example, see, U.S. CBP, *Responsible Business Practices on Forced Labor Risk in the Global Supply Chain*, August 2018; and U.S. DOL, "Comply Chain: Business Tools for Labor Compliance in Global Supply Chains," https://www.dol.gov/general/apps/ilab-comply-chain.

[71] U.S. CBP, *What Every Member of the Trade Community Should Know: Reasonable Care*, An Informed Compliance Publication, September 2017.

- Vet new suppliers/vendors for forced labor risks through questionnaires or other means;
- Include terms in contracts with suppliers that prohibit use of forced labor, a time frame to take corrective action if forced labor is identified, and consequences if corrective action is not taken;
- Put in place a comprehensive and transparent social compliance system;
- Develop a reliable program or procedure to maintain and produce any required customs entry documentation and supporting information.

The importer of record may face liability for noncompliance with Section 307. For example, in its first civil enforcement action since the passage of TFTEA, in August 2020, CBP fined Pure Circle U.S.A. Inc. $575,000 after an investigation found evidence of past imports of stevia made with prison labor in China.[72] Additionally, the Tariff Act of 1930 permits CBP to impose civil penalties for any person who "by fraud, gross negligence, or negligence" introduces or attempts to introduce any merchandise into the United States by means of false information or material omissions.[73] Such penalties can extend to persons beyond the importer of record.[74] A person or corporation that "benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of [forced labor]," when that person or corporation knew, or recklessly disregarded, how the labor was obtained may face further criminal and civil penalties under anti-trafficking laws.[75] While traditionally such prosecutions have focused on importers, the Trump Administration indicated it is seeking to enforce these provisions more broadly, including in potential actions against company and corporate officials.[76]

Multinationals and Supply Chain Due Diligence

Reports by NGOs, research institutes, and media have documented a number of U.S. companies and international brands implicated, directly or indirectly, in forced labor in their supply chains.[77] Certain multinational companies have developed codes of conduct, social audits, risk management and due diligence measures to prevent and mitigate their exposure, often through collaborative efforts with civil society, government, and international organizations,[78] and in response to various national legislation on labor-related disclosure requirements.[79] Many

[72] U.S. CBP, "CBP Collects $575,000 from Pure Circle U.S.A. for Stevia Imports Made with Forced Labor," August 13, 2020. CBP has not identified the legal basis under which it levied the penalty, but it is possible that it was imposed under 19 U.S.C. §1592. Current CBP regulations indicate that violations of Section 307 are subject to forfeiture proceedings, see 19 C.FR. §12.44, so it may be that CBP relied on Section 1592 to levy the civil penalty.

[73] 19 U.S.C. §1592(a).

[74] United States v. Trek Leather, Inc., 767 F.3d 1288, 1300 (Fed. Cir. 2014).

[75] 18 U.S.C. §1589; Laura Ezell, "Human Trafficking in Multinational Supply Chains: A Corporate Director's Fiduciary Duty to Monitor and Eliminate Human Trafficking Violations," *Vanderbilt Law Review* 69, no. 2 (March 2016); Stefan Schumann, "Corporate Criminal Liability on Human Trafficking," *The Palgrave International Handbook of Human Trafficking* (New York: Palgrave Macmillan, 2019).

[76] In November 2019, Kenneth Kennedy, head of Immigration and Customs Enforcement's (ICE) Forced Labor Program stated that the agency is "under extraordinary pressure from Congress and the White House to enforce [forced labor] laws," and the Department of Justice is "willing to prosecute retailers … online marketplaces and so on." Arthur Friedman, "Jail Time Awaits Retailers Trading in Forced-Labor Goods," *Sourcing Journal*, November 11, 2019.

[77] For example, see Peter Whoriskey and Rachel Siegel, "Cocoa's child laborers," *Washington Post*, June 5, 2019; Vicky Xiuzhong Xu et al., *Uyghurs for Sale: 'Re-education', Forced Labour and Surveillance Beyond Xinjiang*, Australian Strategic Policy Institute (ASPI), Policy Brief Report No. 26/2020, March 2020.

[78] For example, OECD, *Due Diligence Guidance for Responsible Business Conduct*, 2018 and *Update of the OECD Guidelines for Multinational Enterprises*, 2011; *Principles of Fair Labor and Responsible Sourcing*, Fair Labor Association, https://www.fairlabor.org/our-work/principles. Per the OECD, "risk-based due diligence refers to the steps companies should take to identify and address actual or potential risks in order to prevent or mitigate adverse impacts associated with their activities or sourcing decisions."

[79] Nicola Phillips, Genevieve Lebaron, and Sara Wallin, *Mapping and Measuring the Effectiveness of Labour-related*

U.S. companies have issued public commitments to eliminate forced labor in their supply chains and emphasize a zero tolerance approach. Recent reports by KnowTheChain, a nongovernmental partnership, benchmarks such efforts of global companies in three sectors at relatively high risk for forced labor (information and communications technology, food and beverage, and apparel and footwear), and finds companies have made advancements, but there remains significant room for improvement.[80] In general, companies tend to be more advanced in developing supply chain commitments and monitoring the labor conditions of their first-tier suppliers.[81] While overall efforts have made important strides in certain sectors, some critics argue that broader accountability and transparency measures are needed to reinforce Section 307 enforcement.

To this end, some bills introduced during the 116th Congress and 117th Congress aim to improve disclosure and transparency of companies (for more, see "Section 307 Enforcement"). There have been similar legislative efforts in the past, but no bill passed successfully at the federal level. Section 1502 of Title XV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) requires publicly-traded companies to report if and where they purchased "conflict minerals" mined in or sourced from the Democratic Republic of the Congo (DRC) or adjoining countries, and engage in due diligence reporting.[82] While Section 1502 was intended to prevent companies from directly or indirectly financing armed groups in the DRC, the due diligence frameworks that firms use to comply generally also cover child labor and/or other forced labor, which has been widely documented in the DRC and some other countries.[83]

In recent years, there have also been state government efforts to address forced labor. The California Transparency in Supply Chains Act, which took effect in 2012, requires large retailers and manufacturers to disclose on their websites "efforts to eradicate slavery and human trafficking from [their] direct supply chain for tangible goods offered for sale."[84] Disclosures are required in five areas: verification, audits, certification, internal accountability, and training. These laws do not mandate that companies take specific actions, however.

CBP Resources

Prior to 2016, CBP handled forced labor issues through an informal internal forced labor task force, which sporadically pulled approximately 8-12 staff from other divisions on a temporary basis.[85] The informal structure and lack of permanent staff may have contributed to the previously mentioned difficulties in enforcing Section 307.

The passage of TFTEA in 2016 and elimination of the "consumptive demand" exception perhaps signaled continued congressional interest in human trafficking, forced labor, and trade enforcement more generally. Subsequently, CBP created the Trade Enforcement Task Force, which was to focus on "issues related to enforcement of antidumping and countervailing duty laws, and interdiction of imported products using forced labor."[86] In 2018, CBP transformed the

Disclosure Requirements for Global Supply Chains, Working Paper No. 32, ILO, June 2018.

[80] KnowTheChain is a partnership between Humanity United, the Business & Human Rights Resource Centre, Sustainalytics, and Verité. See KnowTheChain, *Forced Labor Action Compared: Findings From Three Sectors*, 2017; KnowTheChain, *Three Sectors, Three Years Later: Progress and Gaps in the Fight Against Forced Labor*, April 2019.

[81] KnowTheChain, 2017, p. 5.

[82] "Conflict minerals" generally include columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives.

[83] See CRS Report R42618, *Conflict Minerals in Central Africa: U.S. and International Responses*, by Nicolas Cook. Regarding Section 1502, compliance costs, practicalities of compliance (e.g., supply chain tracking challenges and business confidentiality), effectiveness of reporting, and impact on the ground were extensively debated. The section's provisions have also been subject to litigation. The quality of Section 1502 due diligence reporting varies, according to the Responsible Sourcing Network (RSN). See RSN, *Mining the Disclosures 2019: An Investor Guide to Conflict Minerals and Cobalt Reporting in Year Six*, December 6, 2019.

[84] Cal. Civ. Code, §1714.43. The law applies to any company doing business in California with annual worldwide gross receipts of greater than $100 million.

[85] Based on email correspondence between CRS and CBP staff.

[86] U.S. CBP, "CBP Creates Trade Enforcement Task Force," Press release, May 2, 2016.

informal task force into the formal Forced Labor Division, located within the Office of Trade.[87] CBP has increased the division's resources, expanding its expenditures from $1 million in FY2018 to $1.4 million in FY2019—this accounts for less than 1% of the Office of Trade's budget.[88] According to CBP, as of mid-2020, 13 full-time positions were allocated to the Forced Labor Division.[89] Other offices within CBP also contribute to the agency's investigative work and enforcement efforts, including the review of forced labor allegations and the verification of import trends, on an as-needed basis.[90] (See "Department of Homeland Security.")

According to the U.S. Government Accountability Office (GAO), CBP's Forced Labor Division has not completely assessed and documented its workforce needs, and staff shortages perpetuate challenges in effectively enforcing Section 307.[91] According to CBP officials, the division has suspended ongoing investigations due to staff shortages, and does not have enough resources to reassess the effectiveness of existing WROs, among other issues. GAO recommended that CBP: (1) perform a needs assessment to identify potential gaps in its Forced Labor Division workforce; (2) issue guidance or take other steps to improve the completeness, consistency, and accuracy of summary data on active, suspended, and inactive investigations; and (3) set targets for performance indicators related to Section 307 enforcement. CBP's FY2021 budget justification requests funding for an additional 50 positions for overall Trade Agreement, Remedies and Enforcement Personnel. The new personnel are expected to "strengthen [Office of Trade] enforcement efforts around key trade issues such as … forced labor."[92]

Trends: U.S. Trade and Forced Labor

While data on rates of forced labor are imprecise due to a range of factors, such as lack of data collection capacities in many countries and the structure of some industries, the ILO has estimated that in 2016, 24.9 million people were engaged in forced labor, 16 million of these in the private sector.[93] Globally, domestic work and construction are the leading sectors, accounting for more than 40% of forced labor used by the private sector, followed by manufacturing (15%), and agriculture and fishing (11%).[94]

Sizing up the volume of trade flows tied to forced labor is difficult, in part due to the complexity of supply chains, the magnitude of global trade flows, and tracing challenges. There is limited aggregate data on global and domestic consumption patterns with respect to goods made with forced labor, though sectoral case studies by country or region can offer some insights on major exporting sectors. U.S. data are limited, as CBP does not disclose the value of shipments produced by forced labor that are imported, detained, or seized pursuant to a WRO. WROs have also typically applied to specific companies, for which data can be proprietary or undisclosed in records at the buyer and shipment level. The Forced Labor Program in Homeland Security

[87] Paul Koscak, "CBP Takes Aim at Forced Labor," https://www.cbp.gov/frontline/cbp-takes-aim-forced-labor.

[88] U.S. GAO, *Forced Labor Imports: DHS Increased Resources and Enforcement Efforts, but Needs to Improve Workforce Planning and Monitoring*, GAO-21-106, October 27, 2020, p. 15.

[89] Based on email correspondence between CRS and CBP staff.

[90] For more detail, see U.S. GAO, October 2020, pp. 13, 47.

[91] U.S. GAO, October 2020.

[92] Department of Homeland Security, U.S. CBP, Budget Overview, FY 2021, p. CBP-OS-58.

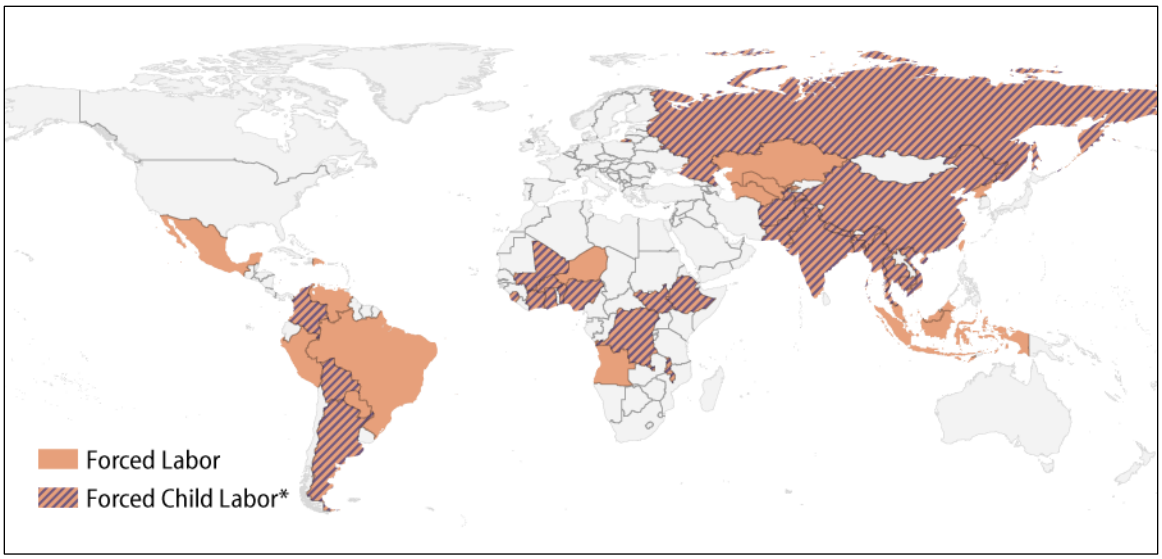
[93] ILO, *Ending Forced Labour by 2030: A Review of Policies and Programmes*, 2018. For information on obstacles to measuring labor trafficking, see ILO, *Measurement of Forced Labor*, October 2018, pp. 12-14.

[94] ILO, *Ending Forced Labour by 2030*, 2018, p. 33.

Investigations (HSI)[95] reported that it seized $1.4 million worth of products produced with forced labor, domestically and internationally, in FY2018.[96]

Reports produced by the International Labor Affairs Bureau (ILAB) of DOL provide broad insights on high-risk countries and sectors for forced labor. The *2020 List of Goods Produced by Child Labor or Forced Labor* specifies 63 distinct categories of goods in 41 countries with production by forced labor (see **Figure 4**).[97] Twenty-six of these countries are specifically cited for forced child labor in ILAB's latest *List of Products Produced by Forced or Indentured Child Labor*.[98] Considering listed countries collectively, the highest incidence of forced labor is in the bricks, cotton, garments, cattle, fish, gold, and sugarcane sectors. China (17 goods), Burma (13), India (8), and North Korea (7) are the top countries in terms of the most categories of goods subject to forced labor production.

Figure 4. Countries with Production by Forced Labor and/or Forced Child Labor



Source: U.S. Department of Labor, Bureau of International Labor Affairs, *2020 List of Goods Produced by Child Labor or Forced Labor* and *2019 List of Products Produced by Forced or Indentured Child Labor*.

Note: * Categories overlap and some countries with forced child labor also have incidence of non-child forced labor; in its categorization, ILAB does not definitively distinguish countries as exclusively one or the other.

Several factors limit insights into precise estimates of U.S. imports affected by forced labor. ILAB reports on countries and goods found to have a "significant incidence" of forced labor, but notes that the listing of any particular good and country cannot be generalized to all production of

[95] An investigative arm of ICE.

[96] Department of Homeland Security, ICE, *Forced Labor and Forced Child Labor: Fiscal Year 2018 Report to Congress*, May 24, 2019. Note: ICE did not report comparative figures in its FY2019 report.

[97] Figures do not include countries/goods produced by child labor. ILAB considers evidence of child labor and forced labor separately to determine whether either or both were used in production. While some goods are listed as produced with both child labor and forced labor, ILAB notes this does not necessarily imply production with *forced* child labor.

[98] The latest complete list is for 2019; see https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-products. In October 2020, DOL made an initial determination to add Cambodia to the list, bringing the total to 26 countries. See "Notice of Initial Determination Revising the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor," 85 Federal Register 62325, October 2, 2020.

that good in the country.[99] ILAB also does not distinguish between goods produced for domestic consumption and for export, nor does it indicate the relative weight of the forced labor good as a share of the country's exports of the good. In the past, some commentators have urged that the child labor and forced labor list correspond with specific product codes under the U.S. Harmonized Tariff Schedule, to improve specificity, analysis, and interagency consultation.[100] In addition, the list focuses on raw goods and materials.

A growing priority of ILAB is addressing the impact of forced labor on global supply chains. An estimated 70% of global trade involves global supply chains, with production taking place across multiple countries.[101] As a result, trade in services, raw materials, parts and components often repeatedly cross borders, confounding the challenge of identifying and tracing forced labor in supply chains, beyond the "first-tier," which is comprised of a company's direct suppliers. Congress has attempted to address such issues by mandating the expansion of DOL's list of goods produced by forced or child labor to include goods made with *inputs* produced by forced or child labor.[102] The 2020 DOL list highlights supply chains with documented forced labor risks, including those involving cobalt, a key input for lithium ion batteries; cocoa, an input to chocolate products; and palm oil, an input to consumer products, such as soap.

Forced Labor in Xinjiang

Nine of the 17 Chinese goods in ILAB's 2020 list relate to forced labor production in Xinjiang. At least ten WROs issued recently against China have centered on concerns of forced labor in Xinjiang—a growing target of trade enforcement actions (see **Text Box**). Since 2017, according to various reports, authorities in Xinjiang have implemented mass detentions of ethnic Uyghurs and other Turkic Muslims in political "re-education" centers, some of which include assignment to factory work within the facilities.[103] In addition, Chinese factories, within and outside the Xinjiang region, are reportedly using Uyghur forced labor or employing former detainees under coercive conditions. According to the Australian Strategic Policy Institute (ASPI), at least 27 factories in nine Chinese provinces have used transferred labor since 2017; those factories claim to be part of the supply chain of more than 80 global brands.[104]

In one case that received significant media attention, CBP officials seized almost 13 tons of imported human hair products at the Port of New York/Newark.[105] In September 2020, CBP

[99] U.S. DOL, ILAB, *2020 List of Goods Produced by Child Labor or Forced Labor*, pp. 80-81.

[100] U.S. DOL, "Notice of Procedural Guidelines for the Development and Maintenance of the List of Goods From Countries Produced by Child Labor or Forced Labor; Request for Information," 72 *Federal Register* 73374, December 27, 2007.

[101] OECD, "The trade policy implications of global value chains," https://www.oecd.org/trade/topics/global-value-chains-and-trade/.

[102] Per the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, 22 U.S.C. §7112(b)(2)(C)). Also, see U.S. DOL, *2020 List of Goods Produced by Child Labor or Forced Labor*, p. 42.

[103] For more information and analysis on developments in Xinjiang and treatment of Uyghurs, see CRS In Focus IF10281, *China Primer: Uyghurs*, by Thomas Lum and Michael A. Weber; Congressional-Executive Commission on China, *Global Supply Chains, Forced Labor, and the Xinjiang Uyghur Autonomous Region*, Staff Research Report, March 2020; and Adrian Zenz, *Beyond the Camps: Beijing's Grand Scheme of Forced Labor, Poverty Alleviation and Social Control in Xinjiang*, SocArXiv Papers, July 12, 2019.

[104] Vicky Xiuzhong Xu et al., *Uyghurs for Sale: 'Re-education', Forced Labour and Surveillance Beyond Xinjiang*, Policy Brief Report No. 26/2020, ASPI, March 2020.

[105] U.S. CBP, "CBP Detains Chinese Shipment of Suspected Forced Labor Products Made with Human Hair," Press release, July 1, 2020.

issued five WROs to ban imports of certain cotton, apparel, computer parts, and other products from Xinjiang, including all products from a specified facility.[106] Subsequently on November 30, 2020, CBP issued a WRO banning the import of all cotton and cotton products produced by the Xinjiang Production and Construction Corporation (XPCC) and its affiliates—a major producer—as well as any products made in whole or in part with that cotton, such as apparel, garments, and textiles.[107] These actions stopped short of a region-wide WRO, which was reportedly under consideration at the time.[108] In January 2021, CBP went a step further and issued a region-wide WRO on cotton, tomatoes, and downstream products from Xinjiang (see below).[109]

Other Reporting and Trade-Related Enforcement Actions

The increase in WROs has coincided with heightened response across the executive branch to the Chinese government's repressive activities in Xinjiang. Recent annual State Department reports reference state-sponsored forced labor of ethnic minorities in Xinjiang.[110] In addition, between October 2019 and June 2020, Commerce added 37 Chinese companies to the Bureau of Industry and Security's (BIS) Entity List, which restricts exports of certain items to listed entities due to U.S. national security priorities.[111] The BIS actions relate less directly to forced labor practices and more broadly target the Chinese government's surveillance and control of information, communications, and movement in Xinjiang. Commerce added another 11 entities in July 2020, reflecting China's "campaign of repression, mass arbitrary detention, forced labor, involuntary collection of biometric data, and genetic analyses targeted at Muslim minority groups" from Xinjiang.[112]

Xinjiang commodities and products are used as inputs in finished goods in China and neighboring countries, putting entire regional supply chains at risk of exposure to forced labor production. In July 2020, the Departments of State, Commerce, the Treasury, and Homeland Security issued a joint Xinjiang Supply Chain Business Advisory. The advisory recommended that businesses with operations in Xinjiang "be aware of the reputational, economic, and legal risks of involvement with entities that engage in human rights abuses, including but not limited to forced labor in the manufacture of goods intended for domestic and international distribution."[113]

U.S. experts have identified high-risk sectors to include agricultural products (e.g., tomatoes), cotton, textiles, apparel and footwear, electronics, food products, mining, chemicals, and medical equipment.[114] There has been a particular focus and congressional concern regarding textile and

[106] "U.S. CBP, "DHS Cracks Down on Goods Produced by China's State-Sponsored Forced Labor," Press release, September 14, 2020.

[107] While the actions fell short of a region-wide ban of cotton, acting Deputy Homeland Security Secretary Ken Cuccinelli stated that given XPCC is "so massive" and deeply embedded in the region's economy, "even though it appears that it's a single company, from our perspective it is equivalent to a regional WRO." U.S. CBP, "CBP Issues Detention Order on Cotton Products Made by Xinjiang Production and Construction Corps Using Prison Labor," Press release, December 2, 2020; Gavin Bade, "DHS blocks cotton imports from major Chinese firm over forced labor," *Politico Pro*, December 2, 2020.

[108] Doug Palmer, "CBP could take action against Xinjiang cotton products," *Politico*, September 8, 2020; and Ben Fox, "US halts imports from China's Uighur region for forced labor," *Washington Post*, September 14, 2020.

[109] U.S. CBP, "CBP Issues Region-Wide Withhold Release Order on Products Made by Slave Labor in Xinjiang," Press release, January 13, 2021.

[110] U.S. Department of State, *2020 Trafficking in Persons Report*, June 2020, pp. 153-157.

[111] U.S. Department of Commerce, "Commerce Department Adds Eleven Chinese Entities Implicated in Human Rights Abuses in Xinjiang to the Entity List," Press release, July 20, 2020.

[112] Ibid.

[113] U.S. Departments of State, the Treasury, Commerce, and Homeland Security, *Xinjiang Supply Chain Business Advisory: Risks and Considerations for Businesses with Supply Chain Exposure to Entities Engaged in Forced Labor and other Human Rights Abuses in Xinjiang*, July 1, 2020, p. v1.

[114] Amy Lehr, *Addressing Forced Labor in the Xinjiang Autonomous Region*, Center for Strategic and International

apparel supply chains, as China is the world's largest producer of yarn, textiles, and apparel, and a top producer of cotton; Xinjiang cotton accounts for more than 80% of China's cotton and a fifth of global supply.[115] One U.S. expert characterizes these supply chains as "complex and often difficult to trace due to potential roles of middlemen and commodities traders and the practice of blending cotton and yarn at certain stages."[116] Because China is a major yarn and textile exporter, textile and apparel from third countries are considered highly likely to be affected by forced labor. U.S. companies are primarily linked to forced labor through purchases that include Xinjiang inputs, rather than through direct shipments and relationships with factories—though there have been such cases.[117] One estimate suggests that of 13 billion units of cotton garments imported into the United States in 2019, at least 2 billion were made, in part, in Xinjiang.[118]

These conditions have led a number of stakeholders and some Members to advocate for CBP to issue a regional WRO, at least with regard to all cotton, yarn, fabric and finished apparel from Xinjiang (see "Section 307 Enforcement"). In addition, a coalition of labor unions and NGOs has urged apparel brands and retailers to "take a stand" and withdraw from Xinjiang, concluding that "the only way brands can ensure they are not profiting from the exploitation is by exiting the region and ending relationships with suppliers propping up this Chinese government system."[119] Industry groups representing brands and retailers have emphasized zero tolerance for forced labor and ongoing collective efforts to address due diligence challenges.[120] On January 13, 2021, CBP issued its first region-wide WRO against Xinjiang blocking all U.S. imports of cotton products and tomato products.[121] The order applies to "cotton and tomatoes grown in that region and to all products made in whole or in part using this cotton or these tomatoes, regardless of where the downstream products are produced."[122] The agency cited several forced labor indicators in its investigation, including debt bondage, restriction of movement, isolation, intimidation and threats, withholding of wages, and abusive living and working conditions.

Studies, July 2020, pp. 2-3; Congressional-Executive Commission on China, *Global Supply Chains, Forced Labor, and the Xinjiang Uyghur Autonomous Region*, Staff Research Report, March 2020, p. 6; and U.S. Departments of State, Treasury, Commerce, and Homeland Security, *Xinjiang Supply Chain Business Advisory*, July 1, 2020, p. 16.

[115] Amy Lehr, *Addressing Forced Labor in the Xinjiang Autonomous Region*, Center for Strategic and International Studies, July 2020.

[116] Ibid., p. 4.

[117] Amy Lehr and Mariefaye Bechrakis, *Connecting the Dots in Xinjiang: Forced Labor, Forced Assimilation, and Western Supply Chains*, Center for Strategic and International Studies, October 2019, pp. 9-10.

[118] Testimony by Scott Nova, Executive Director, Worker Rights Consortium, in U.S. Congress, House Ways and Means Committee, *Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang*, hearing, 116th Cong., 2nd sess., September 17, 2020.

[119] Worker Rights Consortium, "180+ Orgs Demand Apparel Brands End Complicity in Uyghur Forced Labour," Press release, July 23, 2020.

[120] "Joint statement from NRF, AAFA, FDRA, RILA and USFIA on Supply Chains and Xinjiang," July 23, 2020.

[121] U.S. CBP, "CBP Issues Region-Wide Withhold Release Order on Products Made by Slave Labor in Xinjiang," Press release, January 13, 2021.

[122] Ibid.

Other U.S. Forced Labor and Anti-Labor Trafficking Measures

Numerous U.S. government measures may inform the issuance of WROs under Section 307 and seek to address labor trafficking more broadly.[123] For example, the October 2020 National Action Plan to Combat Human Trafficking establishes, in principle, the need to "Build capacity to prohibit goods produced with forced labor from entering United States markets." The plan's priority actions include the publication by CBP of "an accessible explanation of its Withhold Release Order and Findings process" and seeking the inclusion in future trade agreements commitments "to prohibit the importation of goods produced with forced labor."[124]

Department of Homeland Security

Within DHS, various offices engage with international forced labor issues. The DHS Center for Countering Human Trafficking, which is led by ICE, was established in September 2020, and will reportedly inform CBP forced labor actions as part of its mandate to support "federal criminal investigations, victim assistance efforts, intelligence analysis, and outreach and training activities related to human trafficking."[125] The Forced Labor Program of HSI Global Trade Investigations (GTI) division conducts criminal investigations of allegations of forced labor related to goods imported into the United States, as well as domestic forced labor.[126] The program works with other government entities and civil society organizations to share and gather information about forced labor.[127] The CBP Office of Trade's Regulatory Audit Office has partnered with CBP's Forced Labor Division to conduct forced labor surveys of selected imports. Established by TFTEA, the Commercial Customs Operations Advisory Committee (COAC), composed of members from the private sector, advises the Secretaries of Treasury and Homeland Security "on all matters involving the commercial operations" of CBP (see **Text Box**).[128] While much of COAC's work on labor trafficking and imports is centered in its Forced Labor Working Group, its Trusted Trader Working Group reported on CBP plans to implement forced labor provisions into the Custom Trade Partnership Against Terrorism (CTPAT), a voluntary public-private partnership designed to strengthen international supply chains and U.S. border security.[129] CBP also reportedly chairs an Interagency Working Group on Forced Labor.[130]

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[123] For a fuller list of government entities involved in anti-trafficking efforts, see U.S. Department of Homeland Security, *Strategy to Combat Human Trafficking, the Importation of Goods Produced with Forced Labor, and Child Sexual Exploitation*, January 2020, and the President's Interagency Task Force, *Report on U.S. Government Efforts to Combat Trafficking in Persons*, October 2020.

[124] White House, *The National Action Plan to Combat Human Trafficking*, October 19, 2020, p. 18.

[125] U.S. DHS, "DHS Launches New Center for Countering Human Trafficking," Press release, October 20, 2020, and CRS correspondence with CBP, October 30, 2020.

[126] U.S. ICE Homeland Security Investigations, *Forced Labor Program*, July 2018.

[127] In 2019, GTI announced a partnership with an anti-trafficking NGO, Liberty Shared. According to ICE, "By using its unique authorities, and by partnering with organizations like Liberty Shared with information about corporate supply chains and financial flows, HSI seeks to gather information that will lead to successful prosecutions and significant steps being made in eliminating forced labor." U.S. Immigration and Customs Enforcement, "ICE HSI Global Trade Investigations Division Partners with Liberty Shared to Combat Forced Labor," Press release, July 31, 2019.

[128] P.L. 114-125 §109, 130 Stat. 122, 136, codified at 19 U.S.C. §4316.

[129] COAC, *Secure Trade Lanes Subcommittee: Trusted Trader Working Group*, July 15, 2020.

[130] GAO, *Forced Labor*, June 2020, pp. 32-33.

In May 2020, President Trump established a new interagency Forced Labor Enforcement Task Force, chaired by the Secretary of Homeland Security, as required by the United States-Mexico-Canada Agreement Implementation Act (P.L. 116-113), to monitor U.S. enforcement of Section 307.[131] The act directed the task force to meet quarterly "regarding active Withhold and Release Orders, ongoing investigations, petitions received, and enforcement priorities, and other relevant issues with respect to enforcing the [Section 307] prohibition."[132] The task force is also required to establish timelines for CBP response to Section 307 petitions, and submit a biannual report to Congress detailing DHS enforcement activities related to forced labor, among other issues.[133]

Recommendations by the Commercial Customs Operations Advisory Committee

A July 2020 report by COAC's Forced Labor Working Group identified recommendations for CBP, such as[134]

- **Recognize WRO Remediation**, such as taking into account when importers are "making genuine efforts to conduct due diligence and active remediation," and consider "utilizing grace periods during which CBP provides alerts and/or guidance to allow the problem to be sustainably resolved before issuing a WRO."
- **Enhance Collaboration Between Industry & U.S. Government** to identify known forced labor risks and address highest risks.
- **Adjust WRO Process** to take into consideration engaging U.S. government entities that may provide services to those affected by CBP actions.
- **Promote International Labor Organization (ILO) Standards**, including the ILO Declaration on the Fundamental Principles and Rights at Work, Convention 29, and the 2014 Protocol on Forced Labor.
- **Assist Importers** to gain deeper knowledge of complex supply chains.

Departments of Labor and State

Other agencies have core responsibilities in monitoring and reporting on forced labor trends, and such findings may inform Section 307 processes. As discussed, DOL's ILAB reports identify goods and countries implicated in forced labor, including *Findings on the Worst Forms of Child Labor* (prepared in accordance with the Trade and Development Act of 2000, P.L. 106-200); *List of Goods Produced by Child Labor or Forced Labor* (required by the Trafficking Victims Protection Reauthorization Act of 2005, P.L. 109-164)—see **Table 1**; and *List of Countries and Goods Produced by Forced or Indentured Child Labor* (pursuant to Executive Order 13126).[135] These reports have traditionally been used to increase awareness rather than inform CBP actions, though CBP officials have stated that they may consult ILAB as part of the WRO process.[136] In addition, DOL, as well as the State Department, partners with foreign governments and funds technical assistance and projects aimed at preventing and abating forced labor.[137]

[131] Task force activities relate to U.S. enforcement of Section 307 broadly and are not limited to USMCA parties, though there are specific duties on enforcement and reporting regarding forced labor in Mexico per §744. P.L. 116-113 (January 29, 2020) §741(a); E.O. 13923, "Establishment of the Forced Labor Enforcement Task Force Under Section 741 of the United States-Mexico-Canada Agreement Implementation Act," 85 *Federal Register* 30587, May 20, 2020.

[132] P.L. 116-113 §741(b), 134 Stat. 11, 88, codified at 19 U.S.C. §4681.

[133] P.L. 116-113 §742(c), 134 Stat. 11, 88, codified at 19 U.S.C. §4682.

[134] Commercial Customs Operations Advisory Committee, *Report of the Intelligent Enforcement Subcommittee Forced Labor Working Grp*, July 15, 2020, pp. 10-11.

[135] E.O. 13126, "Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor," 64 *Federal Register* 32383, June 16, 1999.

[136] GAO, *Forced Labor*, June 2020, pp. 32-33.

[137] See https://www.dol.gov/agencies/ilab/projects.

Table 1. Goods and Countries Identified by DOL for Child Labor or Forced Labor

	2009	2010	2011	2012	2013	2014	2016	2018	2020
Number of Goods	122	128	130	134	134	136	139	148	155
Number of Countries	58	70	71	74	73	74	75	76	77

Source: U.S. Department of Labor annual Lists of Goods Produced by Child Labor or Forced Labor.

Note: Year refers to calendar year covered, not necessarily the year of report publication.

The State Department publishes an annual *Trafficking in Persons* (TIP) report (pursuant to the Trafficking Victims Protection Act of 2000, P.L. 106-386), which classifies countries according to the effectiveness of their efforts to address human trafficking.[138] The reports include country profiles and often provide information about industries suspected of using forced labor. The State Department's annual *Country Reports on Human Rights Practices* also provide information, occasionally describing incidents in which goods made with forced labor were reportedly imported into the United States. CBP officials have stated that they may consult these resources.[139]

Sector-Specific Policy Tools and Legislation

Other anti-labor-trafficking programs, policies, and agreements exist for particular industries. For example, seafood imports may be subject to regulations for illegal, unreported, and unregulated (IUU) fishing, an illicit practice that may encompass forced labor.[140] A June 2020 report from the U.S. GAO identified numerous statutes that prohibit illegally harvested seafood, including the Magnuson-Fishery Conversation and Management Act of 1976 and the Lacey Act of 1900.[141]

In another example, representatives of the cocoa industry signed a congressionally led protocol in 2001 aimed at ending forced child labor in the cocoa industry in Côte d'Ivoire and Ghana, known as the Harkin-Engel Protocol, after former Senator Tom Harkin and former Representative Eliot Engel.[142] The United States has implemented subsequent studies, implementation plans, and technical assistance projects, with the support of the U.S. Agency for International Development (USAID), DOL, the ILO, and the State Department.[143] The protocol also has been repeatedly amended and extended, but in recent years, rates of child labor in the cocoa sector reportedly have risen.[144] Some Members have urged the use of Section 307 in response to the incomplete implementation of the Harkin-Engel Protocol, including missed deadlines and goals in the 2010 follow up framework. For example, in July 2019 Senators Sherrod Brown and Ron Wyden called for DHS to take more "aggressive action" and invoke Section 307 to prohibit imports of cocoa products produced by forced child labor from Côte d'Ivoire.[145] After a

[138] For more, see CRS Report R44953, *The State Department's Trafficking in Persons Report: Scope, Aid Restrictions, and Methodology*, by Michael A. Weber, Katarina C. O'Regan, and Liana W. Rosen.

[139] GAO, *Forced Labor*, June 2020, pp. 20-23.

[140] Ibid., pp. 5-9.

[141] Ibid., p. 11.

[142] Chocolate Manufacturers Association, *Protocol for the Growing and Processing of Cocoa Beans and Their Derivative Products in a Manner that Complies with ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor*, September 19, 2001.

[143] E.g., see DOL, *Framework of Action to Support Implementation of the Harkin-Engel Protocol*, September 11, 2010.

[144] Ange Aboa and Aaron Ross, "Child labour still prevalent in West Africa cocoa sector despite industry efforts: report," Reuters, April 9, 2020.

[145] "Wyden, Brown Call on Department of Homeland Security to Fully Enforce the Law, Crack Down on Imported Cocoa Produced With Child Labor," Press release, July 19, 2019.

Washington Post investigation of labor conditions in June 2019, CBP reportedly opened a Section 307 investigation of Ivoirian cocoa.[146] Another petition was filed in February 2020, but there has been no action to date.[147]

Free Trade Agreements and Other Trade Programs

The U.S. government also uses other trade policy tools to promote internationally recognized worker rights abroad and constrain forced labor practices. Starting with the 1994 North American Free Trade Agreement (NAFTA), free trade agreements (FTAs) and trade programs have expanded coverage of such issues, in part because multilateral trade rules under the World Trade Organization (WTO) do not cover labor issues, with one exception allowing for restrictions on imports produced by prison labor.[148] Consistent with negotiating objectives set by Congress in trade promotion authority (TPA), recent U.S. FTAs commit countries to adopt, maintain and enforce laws on core labor rights and principles of the ILO, including the elimination of forced labor (see below).[149] These commitments are enforceable under FTA dispute settlement provisions. In a 2012 FTA labor dispute with the Dominican Republic (DR), for instance, DOL confirmed allegations of violations of laws related to forced labor in the sugar industry, and has conducted periodic reviews of the DR government's progress toward remedying U.S. concerns.[150] The 2020 U.S.-Mexico-Canada Agreement (USMCA), which replaced NAFTA, goes further than other U.S. FTAs and reflects Section 307 in committing the parties to prohibit imports from other countries of goods produced by forced labor through "measures [a party] considers appropriate," and to establish cooperation for identifying such goods.[151] As discussed, Congress also used the opportunity of USMCA passage to bolster broader U.S. enforcement efforts related to Section 307 within implementing legislation.

Most of the countries with forced labor concerns are not U.S. FTA partners, but may be affected by other trade policies. For instance, eligibility criteria for U.S. trade preference programs, such as the Generalized System of Preferences (GSP) and the African Growth and Opportunity Act (AGOA), which offer duty-free entry to certain U.S. imports from beneficiary developing countries, include taking steps to maintain worker rights, including with respect to forced labor. The U.S. Trade Representative (USTR) has reviewed certain beneficiary countries' compliance with such criteria, and in some cases has suspended benefits over forced labor concerns.[152]

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[146] Peter Whoriskey and Rachel Siegel, "Cocoa's child laborers," *Washington Post,* June 5, 2019; "U.S. report: Much of the world's chocolate supply relies on more than 1 million child workers," *Washington Post,* October 19, 2020.

[147] "Cal and IRAdvocates Challenge Importation of Cocoa Produced with Forced Child Labor," February 2020, https://corpaccountabilitylab.org/calblog/2020/2/14/cal-and-iradvocates-challenge-importation-of-cocoa-produced-with-forced-child-labor.

[148] Article XX(e), General Exceptions clause of the General Agreement on Tariffs and Trade (GATT) states that "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: … (e) relating to the products of prison labour."

[149] For more information on TPA, see CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked Questions*, by Ian F. Fergusson and Christopher M. Davis.

[150] U.S. DOL, Office of Trade and Labor Affairs, *Public Report of Review of U.S. Submission 2011-03 (Dominican Republic)*, September 2013.

[151] USMCA art. 23.6, November 30, 2018, available at https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between.

[152] For example, see USTR, "President Trump Terminates Trade Preference Program Eligibility for Mauritania," Press release, November 2, 2018. The USTR may self-initiate a GSP review, or interested parties may request one. CRS

Intergovernmental Forced Labor and Anti-Trafficking Measures

Numerous international conventions and guidelines address forced labor in the contexts of core internationally recognized worker rights, human trafficking, and supply chains, including those created by the United Nations and ILO. These efforts have informed and worked in tandem with U.S. approaches; U.S. agencies often collaborate with ILO programs and are a key source of funding.[153] Other international organizations, including the World Bank and Organization for Economic Cooperation and Development (OECD), have addressed forced labor through various guidelines. See **Text Box** (below) for an example of U.S. and global efforts to mitigate forced labor in the cotton sector in Central Asia.

International Labor Organization

Two of the ILO's "fundamental" conventions, which have arguably become binding norms of international law, directly pertain to forced or compulsory labor. The Forced Labour Convention, 1930 (No. 29) prohibits all forms of forced labor, while The Abolition of Forced Labour Convention, 1957 (No. 105) concerns forced labor imposed by state authorities (e.g., as a means of political coercion).[154] These conventions are among the ILO's most highly ratified instruments[155]—the United States has only ratified No. 105 and not No. 29, due to conflicts in U.S. law and practice related to the use of prison labor.[156] Amid concerns over gaps in implementation, a Protocol to Convention No. 29 was adopted in 2014 to "bring ILO standards against forced labour into the modern era."[157] Other measures also address forced labor, including the Worst Forms of Child Labour Convention, 1999 (No. 182).[158] The 1998 *Declaration on Fundamental Principles and Rights at Work* commits ILO members to respect and promote four

Report RL33663, *Generalized System of Preferences (GSP): Overview and Issues for Congress*, by Vivian C. Jones, and CRS Report R43173, *African Growth and Opportunity Act (AGOA): Background and Reauthorization*, by Brock R. Williams.

[153] ILO, *The United States: ILO Cooperation*, October 2019.

[154] ILO, *General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)*, 2007.

[155] As of December 2020, 178 member states have ratified No. 29 (nine countries have not, including the United States); 176 have ratified No. 105 (eleven have not).

[156] In its review of potential conflicts of conventions with U.S. federal and state laws, the U.S. Tripartite Advisory Panel on International Labor Standards determined that No. 29 cannot be ratified without amending U.S. law and practice relating to prison labor. Namely, "the trend of states to subcontract the operation of prison facilities to the private sector in the United States conflicted with the requirements of Convention 29 relating to circumstances under which the private sector may profit from prison labor." United States Council for International Business, *U.S. Ratification of ILO Core Labor Standards*, April 2007, p. 8. Other studies have documented forced labor and labor trafficking practices in U.S. agriculture, domestic work, hospitality, restaurants, and construction sectors; see for example, Colleen Owens et al., *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*, Urban Institute and Northeastern University, October 2014.

[157] It provides guidance on effective measures regarding prevention, protection and remedies toward elimination of forced labor. As of December 2020, 47 countries have ratified the 2014 Protocol; the protocol is accompanied by a nonbinding Recommendation No. 203. See ILO, *ILO Standards on Forced Labor: The New Protocol and Recommendation at a Glance*, 2016.

[158] Worst forms of child labor include "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict."

core labor rights categories, including "elimination of all forms of forced or compulsory labour," whether or not they have ratified conventions.[159]

The ILO has a supervisory and reporting system to monitor the application of ratified conventions. In addition, through technical assistance (e.g., research, capacity building, and field-based projects) the ILO helps countries address problems in developing and implementing legislation and undertaking other actions to meet their obligations. Through ILO representation and complaint procedures, industrial associations of workers/employers and member states, respectively, can raise concerns over a country's noncompliance with conventions; some submissions have related to forced labor and a few resulted in investigations.[160] In one instance, in 2000 the ILO took unprecedented steps to compel Burma to take action after it failed to implement the recommendations of an investigation that found "widespread and systematic" forced labor.[161] The ILO has relatively limited means for enforcing recommendations.[162]

Other U.N. Initiatives

In 2000, the United Nations General Assembly adopted the Convention Against Transnational Organized Crime and its Protocol to Prevent, Suppress, and Punish Trafficking in Persons. The Protocol committed ratifying states to criminalize human trafficking and to attempt to implement measures including "economic initiatives" to prevent it.[163] The U.N. Office on Drugs and Crime is responsible for overseeing implementation of the protocol and has published numerous issue papers and strategy documents relating to forced labor.[164]

The U.N. Guiding Principles on Business and Human Rights includes the operational principle that "States should enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights."[165] U.N. Sustainable Development Goal 8, Decent Work and Economic Growth, includes target 8.7 "to eradicate forced labor, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labor." Alliance

[159] See https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang—en/index.htm.

[160] About 9% of representations (out of 238 total), 15% of complaints (out of 34), and more than a third of those complaints resulting in investigations (out of 14) involved conventions Nos. 29 or 105, according to CRS calculations. See https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/lang—en/index.htm.

[161] A Commission of Inquiry is the ILO's highest-level investigative procedure and convenes when a country is accused of persistent and serious violations, and failing to address them. If a country refuses to meet a Commission's recommendations, the ILO Governing Body can take action under article 33 of the ILO Constitution and recommend "action as it may deem wise and expedient to secure compliance therewith." Article 33 was invoked for the first time with respect to Burma. For more detail on measures taken, see "ILO Governing Body opens the way for unprecedented action against forced labour in Myanmar," November 17, 2000.

[162] Kimberly Ann Elliott, *The ILO and Enforcement of Core Labor Standards*, Policy Briefs Number 00-6, Institute for International Economics, July 2000; and Miriam Hartlapp, *Labour law supervision and enforcement by EU and ILO: Is there one international implementation style?* Paper presented at the ECPR Joint Session in Uppsala, 13-18 April 2004.

[163] U.N. Office of the High Commissioner for Human Rights (OHCHR), *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,* November 2000, Article 9.

[164] See, for example, the discussion of forced labor in UNODC, *Transnational Organized Crime in the Fishing Industry – Focus On: Trafficking in Persons, Smuggling of Migrants, Illicit Drugs Trafficking,* 2011, and U.N. Global Initiative to Fight Human Trafficking, *Vienna Forum Workshop: Supply Management, Eliminating the Risks of Forced Labour and Trafficking,* February 2008.

[165] U.N. OHCHR, *Guiding Principles on Business and Human Rights*, 2011, p. 9.

8.7, a partnership focused on achieving the target, has published reports relating to forced labor and international trade, and includes a Supply Chain Action Group, chaired by the ILO.[166]

Forced Labor in Cotton Production: Uzbekistan and Turkmenistan

Reports of state-sponsored labor trafficking in cotton harvests in Uzbekistan and Turkmenistan have prompted responses from intergovernmental organizations, NGOs, and the U.S. government. Cotton has been identified in DOL's *List of Goods Produced by Child Labor or Forced Labor* for both Turkmenistan and Uzbekistan since the first list was published in 2009, and has been referenced in recent annual State Department TIP reports. In 2013, the International Labor Rights Forum (ILRF) and Cotton Campaign submitted a Section 307 petition seeking to exclude cotton yarn and fabric imports from Uzbekistan.[167] CBP did not ultimately issue a WRO.[168] In 2013, CBP did reportedly stop a shipment of Uzbek yarn due to allegations of forced labor.[169] In 2016, ILRF and the Cotton Campaign submitted a petition to ban cotton imports from Turkmenistan.[170] CBP requested that ILRF provide more information before ultimately issuing an industry-wide WRO against Turkmen cotton in May 2018.[171]

In 2016, human rights groups reported that the World Bank had funded numerous agricultural projects in Uzbekistan that had been linked to child and forced labor.[172] In 2017, third-party monitoring by the ILO reported that Uzbekistan had "phased-out organized child labor," and that no child or forced labor had been identified to World Bank-supported agriculture, water, and education projects, though "forced labor [remained] a risk for some categories of people."[173] A February 2020 ILO report stated that "systematic forced labor did not occur during the 2019 cotton harvest," but that approximately 102,000 workers were subjected to some form of forced labor coercion, a 40% decline from the previous year.[174] Current views on forced labor in Uzbekistan vary. Some observers have held Uzbekistan up as a model for addressing forced labor and suggest that further prohibitions on Uzbek cotton will impede economic growth and other reforms, but some human rights groups remain concerned that progress has been insufficient and advocate for additional prohibitions.[175] DOL removed Uzbek cotton from its forced child labor list in 2019, but reinstated the sector in its 2020 list for forced labor.[176]

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[166] Alliance 8.7, *2nd Global Workshop of the Supply Chains Action Group Outcome Report*, May 2019.

[167] Letter from Brian Campbell, director of ILRF's Policy and Legal Program, and Matthew Fischer-Daly, Cotton Campaign coordinator, to CBP Commissioner Thomas Winkowski, May 15, 2013.

[168] CBP reportedly declined to provide information on decision-making on Uzbek cotton, in response to a Freedom of Information Act (FOIA) request filed by ILRF, citing "ongoing law enforcement investigations." See ILRF, *Combatting Forced Labor and Enforcing Workers' Rights Using the Tariff Act,* Briefing Paper, February 2020, p. 5. The issue of economic pressures on and by importers of Uzbek cotton arose in Europe as well. A 2013 report by the European Center for Constitutional and Human Rights contended that "The cessation of business relationships with the Uzbek cotton industry therefore remains the only adequate measure [to address forced labor]," but found that global cotton traders ceased to engage on anti-labor trafficking efforts when media attention lessened. See ECCHR, *Forced Labor of Children and Adults in Uzbekistan. How Effective is the OECD Complaint Mechanism?* May 2013.

[169] Cotton Campaign, "Truthfully 'Why was a Container with 22 Tons of Uzbek Yarn Detained in the United States?'" January 3, 2014.

[170] Letter from Ruslan Myatiev, Alternative Turkmenistan News director, Matthew Fischer-Daly, Cotton Campaign coordinator, and Brian Campbell, Cotton Campaign legal adviser, to CBP commissioner Kerlikowske, April 6, 2016.

[171] ILRF, *Combatting Forced Labor and Enforcing Workers' Rights Using the Tariff Act,* February 2020, p. 4.

[172] Human Rights Watch and the Uzbek-German Forum for Human Rights, *"We Can't Refuse to Pick Cotton": Forced and Child Labor Linked to World Bank Group Investments in Uzbekistan*, June 27, 2017.

[173] ILO, *Third-Party Monitoring of Measures Against Child Labor and Forced Labor During the 2016 Cotton Harvest in Uzbekistan*, February 1, 2017, pp. 2-3.

[174] ILO, *Third-Party Monitoring of Child Labor and Forced Labor During the 2019 Cotton Harvest in Uzbekistan*, February 5, 2020, p. 4.

[175] See for example, Komala Ramachandra, *Forced Labor Persists in Uzbekistan's Cotton Fields*, Human Rights Watch, June 25, 2020; Kenneth Rapoza, "As China Faces U.S. Forced Labor Sanctions, Uzbekistan Becomes a Model," *Forbes*, September 24, 2020; and Esfandyar Batmanghelidj and Oybek Shaykhov, "The Boycott on Uzbek Cotton Needs to End," *Foreign Policy*, March 28, 2020.

[176] U.S. DOL, "Notice of Final Determination To Remove Uzbek Cotton From the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Pursuant to Executive Order 13126," 84 *Federal Register* 11123, March 25, 2019.

Issues for Congress

Stakeholders and many Members of Congress welcomed congressional action to repeal the consumptive demand exception in 2015 as a critical step toward improving utilization of Section 307.[177] Still, some observers view recent enforcement actions as inadequate and seek new approaches, while others caution against the potential adverse impacts of broader enforcement on U.S. and foreign workers and companies. Congress has engaged on these issues through its oversight of Section 307 implementation and lawmaking responsibilities. Committees and commissions have held numerous hearings on forced labor in China and proposed related legislation. Congress may consider several questions related to its oversight of Section 307 and in examining ongoing challenges, such as regarding CBP processes, transparency, and resources. Other considerations include prospects for greater regional or industry-wide enforcement actions, including Section 307 as a tool for mitigating forced labor in Xinjiang, and impacts on workers and companies. Congress may also consider how U.S. trade policy tools and international trade rules may complement and enhance Section 307 objectives. These issues may receive renewed focus in the Biden Administration. As part of its "worker-centric" trade policy priorities, the Biden Administration has pledged to "engage with allies to achieve commitments to fight forced labor and exploitative labor conditions, and increase transparency and accountability in global supply chains."[178]

Section 307 Enforcement

Changes to Section 307 Processes to Enhance Enforcement

Since the statute's inception, CBP has had broad discretion in administering Section 307.[179] The varying amount and reliability of evidence in a case, as well as limited resources, have presented ongoing challenges.[180] A 1984 report by the USITC noted that regulations implementing Section 307 did not "provide specific guidance with respect to evidentiary standards, investigative procedures and schedules, criteria for initiating investigations, and rules for making final determinations."[181] The report also expressed concerns about the consistency of enforcement.[182]

All of these are still ongoing issues identified by various stakeholders. NGOs and labor groups, which have filed numerous petitions, have expressed concern regarding the lack of official guidance from CBP on what kind of information makes an allegation credible.[183] In particular, stakeholders view the lack of guidance on the evidentiary standards required for CBP to consider an allegation to be credible as a factor that has hampered enforcement.[184] They also cite a lack of

[177] Senate debate, *Congressional Record*, daily edition, vol. 162, no. 25 (February 11, 2016), p. S836; Human Rights First, "President Signs Bill to Close Loophole on Import of Goods Made with Forced Labor," February 24, 2016.

[178] In addition, it pledged in particular to "hold China accountable, including for the extensive human rights abuses perpetrated by its state-sanctioned forced labor program." USTR, *2021 Trade Policy Agenda and 2020 Annual Report*, pp. 2, 4.

[179] USITC Report, p. 4.

[180] USITC Report, p. vi.

[181] USITC Report p. vii, 7.

[182] USITC Report pp. vi-viii.

[183] U.S. GAO, *Forced Labor – Better Communication Could Improve Trade Enforcement Efforts Related to Seafood*, GAO-20-441, June 2020; ILRF, February 2020.

[184] ILRF, February 2020, p. 4.

transparency regarding the justification and timelines required for CBP action or inaction and an unwillingness to publicize the status of ongoing cases.[185] For example, while CBP took action against Turkmenistan cotton in 2016, it deferred action in 2013 on cotton from Uzbekistan, at a time when forced labor was widely documented in the country, raising possible questions about the consistency of CBP's evaluation process. Industry has likewise expressed confusion about how CBP evaluates evidence that a good is not subject to a WRO.[186]

A July 2020 GAO report recommended that CBP improve communications about the types of information that help the agency initiate and investigate cases, which would in turn improve enforcement.[187] The Trump Administration's 2020 National Action Plan to Combat Human Trafficking also called for increased clarity on the WRO process.[188] Some advocates argue that Congress could consider exercising its oversight to ensure CBP acts expeditiously and transparently upon information concerning forced labor imports and clarifies its internal processes for interested stakeholders.[189]

Feasibility of Industry- or Region-wide Enforcement Approaches and Related Challenges

Some observers attribute the relatively limited number of enforcement actions to CBP's customary practice of targeting individual producers, rather than an industry across an entire country or region within a country.[190] While the U.S. government and various other stakeholders are able to identify countries in which forced labor occurs on a regular basis, tracing forced labor practices to a specific factory, farm, or fishing vessel can be challenging, given complex global supply chains and the widespread use of informal subcontracting, often involving migrant or temporary workers. Traceability can be particularly difficult for agricultural commodities, such as cocoa and cotton. The few industry and countrywide WROs issued by CBP have been welcome developments to some observers, and there is growing bipartisan support for this approach to Xinjiang, China (see below). Some labor groups however, have questioned resulting enforcement outcomes, citing the absence of reports of CBP blocking cotton-made goods from Turkmenistan. One group concluded that, "lack of any action following the issuance of the Turkmenistan WRO has no doubt meant that a substantial amount of goods [are] imported from third countries containing Turkmen cotton."[191]

Others support enforcement involving targeted entities, and caution that broader WROs are difficult to enforce and may disrupt supply chains and deter legitimate business with suppliers that are not using forced labor.[192] In this view, practical challenges in enforcement and

[185] Ibid., pp. 4-5.

[186] Complaint, Vitus Nutrition LLC v. United States, Court of International Trade, Case 1:21-cv-00165, filed April 15, 2021.

[187] GAO, *Forced Labor*, June 2020.

[188] White House, *The National Action Plan to Combat Human Trafficking*, October 19, 2020, p. 18.

[189] Testimony by Cathy Feingold, International Director, AFL-CIO, U.S. Congress, House Ways and Means Committee, *Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang*, hearing, 116th Cong., 2nd sess., September 17, 2020.

[190] ILRF, February 2020, pp. 5-7.

[191] Testimony by Cathy Feingold, International Director, AFL-CIO, September 17, 2020.

[192] Testimony by Stephen Lamar, President and CEO, American Apparel & Footwear Association, U.S. Congress, House Ways and Means Committee, *Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang*, hearing, 116th Cong., 2nd sess., September 17, 2020; and U.S. Chamber of Commerce, "U.S. Chamber Letter on H.R. 6210, the 'Uyghur Forced Labor Prevention Act,' H.R. 6270, the 'Uyghur Forced Labor Disclosure Act of 2020,'" September 22,

complexities in global supply chains are complicating factors. According to the head of the American Apparel and Footwear Association (AAFA), "we simply do not have the capability or capacity to implement, comply with, or enforce a blanket WRO."[193] In particular, while new technologies have advanced more reliable traceability in global apparel supply chains, AAFA asserted that, "there is no technology yet developed that allows us to trace the origin of cotton with reasonable, let alone complete, accuracy."[194] In the context of a region-wide WRO against Xinjiang products, he argued this "creates enormous compliance and enforcement challenges for both CBP and the industry that have yet to be solved." In support of a targeted approach, apparel and retail industry representatives have stated that "clearly defined [WROs] on specific and actionable intelligence greatly supplement our own considerable enforcement activity."[195] At the same time, they committed to working with CBP to make sure enforcement of the recent region-wide cotton ban is "smart, transparent, targeted, and effective."[196] Others claim there is capacity to determine origins of inputs, but brands and retailers "choose not to know," absent consequences for failing to control and track sourcing.[197]

Broader enforcement approaches, as well as maintaining CBP's current standard practice, would likely hinge on greater resources. CBP officials have confirmed that staff shortages have led the agency to drop Section 307 cases, limited investigations of violations under the Countering America's Adversaries Through Sanctions Act of 2017 related to imports of North Korean goods, and affected its ability to proactively monitor and review existing cases.[198] Many experts agree that more enforcement resources will be necessary if CBP issues more industry-wide or regional WROs. Congress could appropriate funds if lack of capacity hinders new WRO issuance and enforcement.

Section 307 as a Tool for Mitigating Forced Labor Practices in China

Some Members of Congress are particularly interested in ensuring the effective use of Section 307 to address forced labor practices in China, and some have proposed related legislation. China has emerged as a key focus of congressional concerns due to growing public documentation of the scope and scale of China's repression of ethnic minorities in Xinjiang, China's central role in global manufacturing, and its ranking as the country with the most forced labor goods identified by DOL. As discussed, because Xinjiang is a key supplier in several sectors across China and regionally, entire supply chains have become at risk of exposure to forced labor production. This has prompted some Members and various stakeholders to urge more concerted action to enforce Section 307, including adopting the same approach taken to ban North Korean imports.[199]

2020.

[193] Testimony by Stephen Lamar, President and CEO, American Apparel & Footwear Association, September 17, 2020.

[194] Ibid.

[195] United States Fashion Industry, "Joint Statement from AAFA, NRF, RILA, USFIA in Response to Administration's Enforcement Actions to Prohibit XPCC Cotton," Press release, December 2, 2020.

[196] "Joint Statement from AAFA, NRF, RILA, USFIA in Response to Ban on All Cotton Imports From XUAR," January 13, 2021.

[197] Testimony by Scott Nova, Executive Director, Worker Rights Consortium, in U.S. Congress, House Ways and Means Committee, *Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang*, hearing, 116th Cong., 2nd sess., September 17, 2020.

[198] U.S. GAO, *Forced Labor Imports: DHS Increased Resources and Enforcement Efforts, but Needs to Improve Workforce Planning and Monitoring*, GAO-21-106, October 27, 2020, p. 17.

[199] For example, Republican Study Committee, *The RSC National Security Strategy: Strengthening America & Countering Global Threats*, June 2020, p. 21.

Committees and commissions recently held numerous hearings on human rights abuses and forced labor in Xinjiang, including in the 116th Congress.[200] In September 2020, the House Ways and Means Committee held a hearing on "Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang." The Uyghur Forced Labor Prevention Act (H.R. 1155) creates a rebuttable presumption of denial of imports of items produced, wholly or in part, in Xinjiang or by certain Xinjiang-related entities,[201] pursuant to Section 307, in addition to other provisions.[202] The presumption would be rebutted only if CBP finds by clear and convincing evidence that such goods were not produced by forced labor. In addition, the bill would require publicly-traded companies to disclose in filings to the Securities and Exchange Commission (SEC) certain activities related to Xinjiang, including whether they knowingly engaged with any entity for which CBP has issued a WRO. Other proposed legislation also would mandate transparency of companies and industries possibly benefiting from forced labor production (see below).[203]

If CBP were to issue more industry-wide WROs, or if all goods from Xinjiang were presumed as prohibited (per H.R. 1155/S. 65), some experts expect companies may face challenges in diversifying supply chains and securing sufficient inputs due to China's "outsized role" in global supply chains.[204] Additionally, industry representatives have expressed concern that it would be difficult to know with complete certainty that a product was fully in compliance, given the opacity of supply chains in China—CBP's enforcement of, and U.S. industries compliance with, the recent region-wide action to ban Xinjiang cotton will provide an illustrative case study. As such, some industry representatives have asked that any potential legislation or regulations provide more clarity about their scope, such as activities and entities targeted or covered, more certainty as to how any prohibitions will be enforced, and more time before becoming effective to ensure compliance.[205]

Congress may consider potential implementation challenges related to CBP processes and resources, implications for those supply chains that may reposition out of compliance or in mitigating risk, as well as prospective impacts on workers and companies (see below). Congress may also consider the role of other anti-trafficking tools including State Department reporting and U.S. diplomatic outreach to other countries related to oppression in Xinjiang, in conjunction with Section 307.[206] For example, Congress might urge the Administration to formalize channels for sharing information with CBP compiled from foreign government services on forced labor in the region.

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[200] See for example, U.S. Congress, House Ways and Means Committee, *Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang*, hearing, 116th Cong., 2nd sess., September 17, 2020; and Congressional-Executive Commission on China, *Forced Labor, Mass Internment, and Social Control in Xinjiang*, hearing, October 17, 2019.

[201] Namely, "persons working with the Xinjiang Uyghur Autonomous Region government for purposes of the 'poverty alleviation' program or the 'pairing-assistance' program which subsidizes the establishment of manufacturing facilities" in Xinjiang (H.R. 1155 §4(a)).

[202] S. 65 is the companion bill.

[203] In addition, the Uyghur Human Rights Policy Act of 2020 (P.L. 116-145) states that U.S. entities operating in Xinjiang should take steps to "ensure that their supply chains are not compromised by forced labor." Some versions of the UIGHUR Act of 2019 (S. 178/H.R. 1025) would have required a report on human rights abuses, including assessments of forced labor and "a description of foreign companies and industries benefiting from such labor" (S. 178, §8(b)(4)).

[204] Amy Lehr, *Addressing Forced Labor in the Xinjiang Autonomous Region*, Center for Strategic and International Studies, July 2020, pp. 9-10.

[205] Based on CRS discussions with various sources. Also, see Ana Swanson, "Nike and Coca-Cola Lobby Against Xinjiang Forced Labor Bill," *New York Times*, November 29, 2020.

[206] For example, "Uzbekistan Resists as U.S. Seeks to Rally Central Asians Against China," Reuters, February 3, 2020.

In the case of Xinjiang, many experts agree that Section 307 is an important tool, but perhaps not sufficient to bring about policy changes in China given the scale and severity of the human rights crisis, which goes beyond forced labor to include mass arbitrary detention, mass surveillance, and other abuses.[207]

Impact of Enforcement on Workers and Companies

Some observers argue that strict enforcement of import bans on goods made by forced labor may be ineffective at reducing forced labor practices and labor trafficking, leave workers in a more vulnerable position, and unnecessarily break constructive business relationships. In its July 2020 white paper, the private sector advisory committee COAC stated that "Importers, civil society, international institutions, industry groups, multi-stakeholder initiatives, and others generally all agree that importers and buyers should use their leverage, such that it may exist, to support remediation of an issue rather than 'cutting and running.'"[208] COAC contended that the severing of business between importers and suppliers due to forced labor, risks removing leverage that importers may have to improve labor practices.

Others argue that in exceptional circumstances of systemic, state-sponsored forced labor, as in Xinjiang—in which there is little chance that such practices will be easily remediated, given their deliberate and widespread nature—all parts of the supply chain remain at risk of complicity in forced labor. In such cases, they argue economic pressure arising from withdrawal may be the primary means of supporting vulnerable workers (see below).[209] Representatives of brands and retailers have argued that industry's economic leverage can be limited, and that systemic problems in Xinjiang are far bigger than one industry can handle.[210] They emphasize only sustained government-to-government pressure and multi-stakeholder engagement can solve the pervasive risks of forced labor in the region.

Others have used the passage of TFTEA to elevate what they see as ongoing unfair competition for American workers from U.S. prison labor. In 2016, the then-president and CEO of the AAFA argued that stricter enforcement of Section 307 increases the hypocrisy of U.S. prison labor and advocated that such labor also be prohibited.[211]

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[207] In January 2021, under the Trump Administration, Secretary of State Mike Pompeo declared that the Chinese government has committed "crimes against humanity" and "genocide against the predominantly Muslim Uyghurs and other ethnic and religious minority groups in Xinjiang." The Biden Administration is reviewing the designation. See U.S. Department of State, "Determination of the Secretary of State on Atrocities in Xinjiang," Press statement, January 19, 2021; and Patricia Zengerle and Michelle Nichols, "U.S. reviewing China genocide ruling to make sure it sticks," Reuters, January 27, 2021. Stakeholders have generally advocated for the use of numerous policies concurrently to create change in China. One report suggested that national governments employ diplomatic leverage, potentially in relation to the 2022 Olympic Games scheduled to be held in Beijing, in addition to trade policy, for example. Amy Lehr *Addressing Forced Labor in the Xinjiang Uyghur Autonomous Zone – Toward a Shared Agenda*, Center for Strategic and International Studies, July 2020, p. 9. For more information on policy options for promoting human rights in China, see CRS Report R45956, *Human Rights in China and U.S. Policy: Issues for the 116th Congress*, by Thomas Lum and Michael A. Weber.

[208] COAC, *Report of the Intelligent Enforcement Subcommittee Forced Labor Working Group*, July 15, 2020, p. 8.

[209] See expert remarks during "Using Trade Tools to Combat Forced Labor: The Roles of Government, Business, and Civil Society," Washington International Trade Association event, October 15, 2020.

[210] "Joint statement from NRF, AAFA, FDRA, RILA and USFIA on reports of forced labor in Xinjiang," March 10, 2020; and Testimony by Stephen Lamar, President and CEO, AAFA, U.S. Congress, House Ways and Means Committee, *Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang*, hearing, 116th Cong., 2nd sess., September 17, 2020.

[211] Rick Helfenbein, "Prisoners Compete for a Share of 'Made in USA,'" *The Hill*, May 15, 2016.

A report by the nongovernmental Human Trafficking Legal Center called WROs "a powerful trade enforcement tool," but suggested that in some cases, foreign manufacturers have gone out of business due to forced labor enforcement, jeopardizing the economic security of vulnerable workers.[212] The AFL-CIO has suggested that Congress consider amending Section 307 to provide a basis for remedies to forced laborers who suffer negative consequences when WROs are issued, and use civil fines on importers as a means of compensating such victims.[213] In considering further legislation related to Section 307, Congress may consider the potential benefits and likelihood of remediation, and the potential contributing factors, such as demand from other countries for the products at issue in such cases, as well as the potential for the goods to be reexported and reach other markets, which could conceivably have a lessened impact on addressing the existence of forced labor.

Role of Multinationals and Supply Chain Due Diligence

The debate over strengthening Section 307 enforcement has brought attention to U.S. importers' compliance and transparency in supplier relationships. While many companies have publicly committed to zero tolerance for forced labor and have robust systems in place to manage risks, various reports have documented problematic supply chains. Some labor groups advocate for more stringent requirements by CBP in Section 307 petitions, such as requiring importers in higher-risk industries to disclose their suppliers and document steps taken to eliminate forced labor from supply chains.[214] Some experts contend that if CBP puts in place broader regional or industry-wide import bans, the agency will need a dedicated strategy to incentivize or require companies to trace their supply chains, or prioritize targeting those companies not making serious efforts, including those directly sourcing from Xinjiang.[215]

In the 117th Congress, as noted above, some bills aim to improve disclosure and transparency of companies doing business in the region, such as H.R. 2072. Other past proposed legislation targeted practices more broadly, such as the Business Supply Chain Transparency on Trafficking and Slavery Act of 2020 (H.R. 6279; 116th Congress) and Slave-Free Business Certification Act of 2020 (S. 4241; 116th Congress). H.R. 6279, for instance, would have amended the Securities Exchange Act to require that companies disclose in annual SEC reports measures taken to address conditions of forced labor, slavery, human trafficking, and worst forms of child labor.

There is intensive debate about the objectives and impact of transparency mandates. Key factors debated include compliance costs, practicalities of compliance (e.g., supply chain data tracking challenges and business confidentiality), effectiveness of reporting, and impact on the ground.[216] In a review of assessments of U.S. and EU policies, one 2016 study concluded that in general

[212] The Human Trafficking Legal Center, *Importing Freedom: Using the U.S. Tariff Act to Combat Forced Labor in Supply Chains*, June 2020. Others have suggested that wide-ranging WROs can impact entire sectors or economies and contribute to economic instability that is counter-productive to improving human rights. Corporate Accountability Lab, *Using the Master's Tools to Dismantle the Master's House: 307 Petitions as a Human Rights Tool*, August 31, 2020.

[213] Testimony by Cathy Feingold, International Director, AFL-CIO, in U.S. Congress, House Ways and Means Committee, *Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang*, hearing, 116th Cong., 2nd sess., September 17, 2020.

[214] ILRF, February 2020.

[215] Testimony by Amy Lehr, Director and Senior Fellow, Human Rights Initiative, CSIS, in U.S. Congress, House Ways and Means Committee, *Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang*, hearing, 116th Cong., 2nd sess., September 17, 2020.

[216] For example, for debate over Section 1502 of the Dodd-Frank Act, see CRS Report R42618, *Conflict Minerals in Central Africa: U.S. and International Responses*, by Nicolas Cook.

they can be expensive for companies, especially smaller companies, to implement; they have not led the bulk of companies to report; and sufficient information is not provided to facilitate effective monitoring.[217] Companies can also face challenges in conducting effective due diligence in practice. In the case of Xinjiang, there is broad consensus that reliable and accurate verification and auditing of factories and farms is not possible, amid reports of auditors being detained or harassed; pervasive surveillance and government interference; and the inability to conduct candid interviews of workers.[218] The U.S. Chamber of Commerce expressed opposition to the Uyghur Forced Labor Disclosure Act of 2020 (H.R. 6270), claiming that "past attempts to utilize domestic U.S. securities law to combat human rights abuses provide a cautionary tale"—a reference to the Dodd-Frank Act provision on conflict minerals (Section 1502).[219] Congress may consider whether disclosure requirements in proposed legislation, as well as any prospective CBP requirements may improve enforcement of Section 307.

U.S. Trade Policy and Forced Labor Provisions

U.S. Trade Policy Tools to Complement and Enhance Section 307 Objectives

The treatment of forced labor concerns in U.S. trade policy and FTAs has been of long-standing congressional interest and has evolved in recent years to complement Section 307 more directly. The most recent U.S. FTA, the USMCA, reflects the intent of the provision in its labor chapter, which some observers and Members of Congress view as a template for future agreements.[220] As evidenced in the USMCA debate and passage, Congress may continue to use the implementation of FTAs to bolster U.S. enforcement efforts related to forced labor. Some Members have emphasized the importance of linking trade negotiations and forced labor issues, citing the U.S. phase-one trade deal with China as a missed opportunity to require the Chinese government to commit to address widespread reports of forced labor production in Xinjiang.[221]

With the current TPA expiring in July 2021, the potential reauthorization process and debate could provide Congress an opportunity to revisit U.S. trade negotiating objectives with respect to forced labor. Some Members have indicated that improving enforcement of Section 307 and oversight of TFTEA implementation could be part of a reauthorization debate, citing issues with CBP reporting requirements, transparency, and responsiveness to congressional requests.[222] Regarding negotiating objectives, U.S. FTAs reflect TPA's emphasis on upholding the ILO Declaration and do not commit the parties to enforce the core ILO conventions themselves. Labor

[217] Susan Ariel Aaronson and Ethan Wham, *Can Transparency in Supply Chains Advance Labor Rights? Mapping of Existing Efforts*, IIEP-WP-2016-6, George Washington University, April 2016.

[218] As a result, several major auditing firms have suspended labor-audit or inspection services in the region. Congressional-Executive Commission on China, *Global Supply Chains, Forced Labor, and the Xinjiang Uyghur Autonomous Region*, Staff Research Report, March 2020; and Eva Xiao, "Auditors to Stop Inspecting Factories in China's Xinjiang Despite Forced-Labor Concerns," *Wall Street Journal*, September 21, 2020.

[219] U.S. Chamber of Commerce, "U.S. Chamber Letter on H.R. 6210, the 'Uyghur Forced Labor Prevention Act,' H.R. 6270, the 'Uyghur Forced Labor Disclosure Act of 2020,'" September 22, 2020.

[220] For example, see Speaker of the House, "Transcript of Speaker Pelosi Press Conference Announcing New USMCA Agreement," Press release, December 10, 2019.

[221] U.S. Congress, House Ways and Means Committee, *Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang*, hearing, 116th Cong., 2nd sess., September 17, 2020; House debate, *Congressional Record*, daily edition, vol. 166, no. 164 (September 22, 2020), p. H4663. For information on the U.S.-China trade deal, see CRS Insight IN11208, *U.S. Signs Phase One Trade Deal with China*, by Karen M. Sutter.

[222] For example, see Rep. Kind remarks in U.S. Congress, House Ways and Means Committee, *Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang*, hearing, 116th Cong., 2nd sess., September 17, 2020

groups argue that doing so would strengthen labor chapter commitments, but this seems unlikely, since the United States has not ratified most of those conventions due to conflicts with U.S. law and practice.[223] Because most countries with forced labor concerns are not FTA partners, engagement through trade preference programs and trade capacity building may continue to be an avenue for remedying concerns.

Role of International Trade Rules with Respect to Forced Labor Issues

While U.S. trade agreements and programs are tools for mitigating the import of forced labor goods, many observers maintain that more effective global coordination on trade-related labor issues may hinge on developing multilateral trade rules.[224] However, WTO members omitted labor provisions from the global trade agenda in the 1990s amid intense debate and a view that the ILO is the lead international organization for addressing labor issues, and these issues have not gained new traction as part of recent efforts to advance new WTO rules and reforms.[225] Given the WTO's current deference to the ILO, Congress might consider assessing the ILO's role, as well as how to enhance U.S. support for ILO work in forced labor and trade issues. Congress could also encourage the Administration to elevate forced labor as part of trade discussions among senior officials in other international fora, such as the G7/G20, as well as the OECD Trade Committee, to report on measures other member nations are taking to prohibit trade of goods produced by forced labor.

Author Information

Cathleen D. Cimino-Isaacs, Coordinator
Analyst in International Trade and Finance

Katarina C. O'Regan
Analyst in Foreign Policy

Christopher A. Casey
Analyst in International Trade and Finance

[223] AFL-CIO, *NAFTA at 20*, March 2014; and United States Council for International Business, *U.S. Ratification of ILO Core Labor Standards*, April 2007.

[224] For example, see Testimony by Thea M. Lee, President of the Economic Policy Institute, in U.S. Congress, Senate Foreign Relations Committee, *Multilateral Economic Institutions and U.S. Foreign Policy*, hearing, 115th Cong., 2nd sess., November 27, 2018.

[225] WTO, "Labour standards: consensus, coherence and controversy," https://www.wto.org/english/thewto_e/whatis_e/tif_e/bey5_e.htm.

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