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Section 307 and Imports Produced by Forced Labor

The International Labor Organization (ILO) estimated that in 2021 on any given day 27.6 million people were forced to labor against their will globally. The products of that forced labor entered global supply chains and made their way to consumers around the world, competing against products made with unforced labor. In recent decades, Congress, through legislation and oversight, has increased its efforts to keep these products out of the U.S. market. Since 2015, many of those efforts have been directed at amending and overseeing the enforcement of Section (Sec.) 307 of the Tariff Act of 1930 (19 U.S.C. §1307), which prohibits importing products that are mined, produced, or manufactured, wholly or in part, by forced labor, including by forced or indentured child labor. In the 118th Congress, some Members held various hearings and proposed legislation focused on concerns over forced labor in China and in specific sectors and supply chains, such as seafood, critical minerals, and automotive parts.

Defining Forced Labor in Section 307

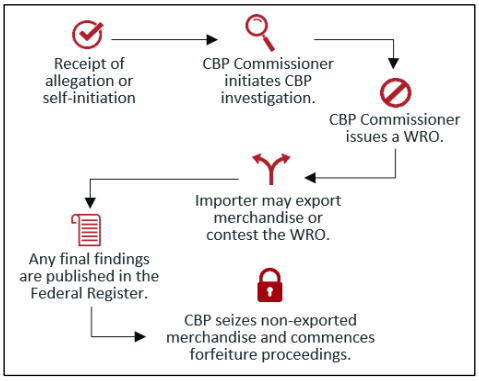
"All work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily." – 19 U.S.C. §1307; language modeled on ILO Forced Labor Convention, 1930 (No. 29).

Administering Section 307

U.S. Customs and Border Protection (CBP) enforces Sec. 307 (19 C.F.R. §§12.42-12.45). 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" has been produced by forced labor may communicate that belief to the Commissioner of CBP. Upon receipt of such a communication, the Commissioner initiates an investigation "as appears warranted" by the amount and reliability of the submitted information.

If the Commissioner finds the information "reasonably but not conclusively indicates" that imports may be the product of forced labor, then she or he is to issue an order to withhold release (WRO) of such goods pending further instructions. An importer has three months to contest a WRO and must demonstrate that "every reasonable effort" has been made to determine the source/type of labor used to produce the merchandise and its components. If the importer does not successfully contest the WRO or remove the merchandise from the United States (e.g., reexport), CBP may consider it abandoned and destroy it. If the Commissioner determines that the good is conclusively subject to Section 307, CBP may publish a Finding, seize the imports, and commence forfeiture proceedings. Beyond the date, type of good, manufacturer, and WRO status, CBP does not generally publish information about detentions, reexportations, exclusions, or seizures.

Figure 1. Application of Section 307



Source: CRS, based on U.S. Customs and Border Protection.

Sec. 307's Relationship with Other Labor and Anti-Trafficking Measures

Sec. 307 is one of several congressionally mandated forced labor-related measures. Others include the Department of Labor, Bureau of International Labor Affairs' (ILAB) Findings on the Worst Forms of Child Labor (prepared per P.L. 106-200) and List of Goods Produced by Child Labor or Forced Labor (per P.L. 109-164). These reports contain country profiles and lists of goods suspected to have been produced by child or forced labor. ILAB's 2024 list identified at least 75 goods produced by forced labor from 44 countries/areas, and 35 downstream goods made with *inputs* produced by forced labor. While ILAB analysis traditionally has been used to increase awareness, it may potentially inform certain CBP Sec. 307 investigations. The State Department and other agencies also address forced labor as part of broader efforts to combat human trafficking pursuant to the Trafficking Victims Protection Act of 2000 (Division A of P.L. 106-386, as amended).

History and Trends in Sec. 307 Use

In 1930, Congress enacted Sec. 307 largely to protect domestic labor from competing with foreign forced labor. Although some Members raised humanitarian concerns during the debate, these concerns were subordinated to ensuring U.S. consumers could still access products that were frequently made with forced labor abroad (e.g., coffee, tea, rubber). To that end, Congress allowed imported goods made with forced labor in cases where domestic production was insufficient to meet the "consumptive demand" of U.S. consumers. In practice, this provision put substantial limits on the products to which Sec. 307 could apply.

For more than 70 years after its enactment, Sec. 307 was rarely used to block U.S. imports. By the turn of the millennium, as more products were manufactured exclusively abroad, it became easier for importers to make

use of the "consumptive demand" exception; between 2000 and 2015 no products were stopped by CBP.

As lawmakers grew increasingly concerned about forced labor for humanitarian and foreign policy reasons, in 2015 they amended Sec. 307 to remove the "consumptive demand" clause. Since the amendment, CBP has blocked the entry of more products than in the prior 85 years; as of October 1, 2024, CBP is enforcing 51 active WROs and 8 Findings globally. CBP has also changed the scale and scope of WROs. Historically, CBP typically issued WROs against specific goods from specific producers; this practice has been changing in recent years as CBP has issued WROs against broader categories of goods and targeted regions.

Issues for Congress

Sec. 307 Enforcement Challenges

While legislation to remove the consumptive demand clause was widely welcomed, some observers have questioned whether CBP has effectively made use of the change. Enforcement, in particular, remains difficult, with some observers claiming factors, such as widespread fraud in the import process, the expansion of direct-to-consumer e-commerce, and limited access to technologies that enhance supply chain traceability also hinder CBP's ability to effectively enforce Sec. 307. Some advocacy groups maintain a lack of clear evidentiary standards and lack of transparency on WRO decisions make it difficult for human rights and labor organizations to know what kinds of evidence are sufficient when making allegations to CBP of forced labor in a supply chain, and thus limit their ability to aid CBP in Sec. 307 enforcement. Additionally, per a U.S. Government Accountability Office report in 2020, CBP cited staff shortages as leading to some dropped investigations and limited ability to monitor cases.

Expanding the Scope of Sec. 307

Some observers argue CBP's practice of targeting individual producers and the difficulty CBP experiences in tracing products suspected to be produced with forced labor to specific facilities also limits enforcement. Due in part to complex supply chains and the widespread use of forced labor in certain regions of the world (such as North Korea and parts of China, see below), several groups and some Members of Congress, have advocated for more industry- and region/country-wide prohibitions of certain goods. H.R. 6909, for example, would restrict imports of goods containing cobalt refined in China under the presumption that the cobalt is extracted/processed with child and forced labor in the Democratic Republic of the Congo.

Some industry groups caution that broader WROs may disrupt supply chains, deter legitimate business, and worsen the economic security of vulnerable workers. Others assert unclear evidentiary standards in Sec. 307 place undue burdens on companies and should be clarified. Other stakeholders assert that greater supply chain due diligence and accountability by companies is critical to mitigate the risks of forced labor and ensure compliance with Sec. 307.

China and Forced Labor

Goods imported from China have been the primary target of WROs due to long-standing concerns related to prison labor and more recent concerns about the systemic forced labor of ethnic Uyghurs and other minority groups in Xinjiang and other parts of China. Xinjiang-connected raw materials and products are used in a range of finished goods in China and neighboring countries, putting supply chains at risk of exposure to forced labor. In early 2021, CBP issued a region-wide WRO on imports of all cotton products and tomato products from Xinjiang. In December 2021, Congress enacted P.L. 117-78, known as the Uyghur Forced Labor Prevention Act (UFLPA). The law creates a rebuttable presumption that goods made in Xinjiang or by certain entities with ties to the region are made with forced labor and prohibited from U.S. entry under Sec. 307. It creates reporting requirements and declares that it is U.S. policy to coordinate with Canada and Mexico on this issue.

CBP began enforcing UFLPA in June 2022. As mandated by the act, the interagency Forced Labor Enforcement Task Force (FLETF), chaired by the Secretary of Homeland Security, issued its strategy on UFLPA enforcement, which includes listing entities subject to the rebuttable presumption and "high-priority" sectors for enforcement. As of September 2024, CBP has detained 9,791 shipments under the act, with 3,976 denied entry. Some Members and experts have raised concerns over enforcement and whether the rebuttable presumption standard is being implemented as intended. Some contend that the UFLPA Entity List remains narrow and additions are made too slowly. Since the initial 20 entities named in 2022, the FLETF has expanded the list to cover 75 PRC-based entities.

Trade Policy and Forced Labor Provisions

The treatment of forced labor in U.S. trade policy has been of long-standing interest to Congress. Few countries implement import bans similar to Sec. 307. In 2022, the U.S. Trade Representative (USTR) announced plans for its "first-ever" trade strategy to combat forced labor. Per negotiating objectives set by Congress in trade promotion authority legislation, recent U.S. free trade agreements (FTAs) commit countries to maintain and enforce laws on core ILO rights principles, including the elimination of forced or compulsory labor. In addition, eligibility criteria for U.S. trade preference programs include taking steps to maintain internationally recognized worker rights. For the first time in an FTA, the U.S.-Mexico-Canada Agreement (USMCA) commits parties to prohibit imports made by forced labor and to cooperate in identifying such goods. In the USMCA Implementation Act (P.L. 116-113), Congress also created the FLETF to monitor and report on broader enforcement of Sec. 307. Some Members support greater North American cooperation and have urged Canada and Mexico to implement UFLPA-like restrictions.

Trade agreements have expanded such labor provisions in part because the World Trade Organization (WTO) does not cover such rules, with members deferring to the ILO—but WTO rules do provide exceptions to a country's obligations for measures related to imports of products of prison labor. Congress might consider assessing the ILO's role and whether to encourage the executive branch to elevate forced labor as part of trade discussions in other international fora.

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