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Section 307 and Imports Produced by Forced Labor

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

Defining Forced Labor in Section 307

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

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

Over the decades, lawmakers and civil society became increasingly concerned about forced labor in the context of human trafficking. The Victims of Trafficking and Violence Prevention Act of 2000 (P.L. 106-386), for example, included forced labor in its definition of human trafficking. Similarly, Congress removed the “consumptive demand” clause, as part of the Trade Facilitation and Trade Enforcement Act (P.L. 114-125) in 2015.

Application of Section 307 Reporting

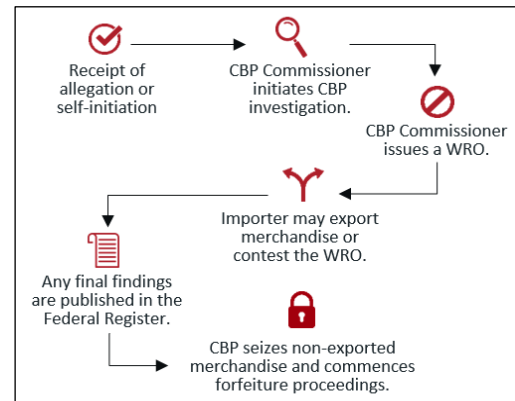
Any individual who has “reason to believe that any class of merchandise that is being, or is likely to be, imported into the United States” is being produced by forced labor may communicate that belief to CBP (**Figure 1**). As required by 19 C.F.R. §12.42, port directors and other principal customs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

Investigations and Withhold Release Orders

Upon receipt of such a report, the Commissioner of CBP is required to initiate an investigation “as appears warranted” by the amount and reliability of the submitted information. If the Commissioner of CBP finds the information “reasonably but not conclusively indicates” that imports may be the product of forced labor, then she or he is to

issue an order to withhold release of such goods (WRO) pending further instructions. CBP has usually issued WROs that target specific goods from specific producers.

Figure 1. Application of Section 307



Source: CBP.

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

Other Labor and Anti-Trafficking Measures

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

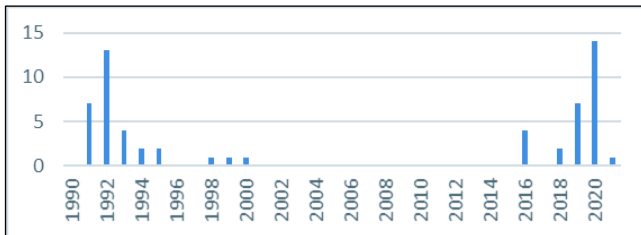
Trends

Following its enactment in 1930, Section 307 was rarely used to block imports. The International Trade Commission reported that between 1930 and the mid-1980s there were approximately 60 to 75 instances when either interested parties requested or Customs considered the application of

Section 307. Of those instances, merchandise was denied entry into the United States at least 10 times (6 times from Mexico, and once each from Japan, the Dominican Republic, Canada, and the former Soviet Union). Use of Section 307 increased substantially in the early 1990s with an increase in Chinese exports to the United States. Between 1991 and 1995, CBP issued 27 WROs against manufacturers in China. CBP issued WROs against Japan, Nepal, India, and Mongolia in the late 1990s. Between 2000 and 2016, CBP did not issue any WROs (**Figure 2**).

Observers generally linked the difficulties in enforcing Section 307 to the “consumptive demand” clause. As more goods were manufactured exclusively abroad, it became easier for importers to make use of the exception. CBP also attributed difficulties to limited resources and a lack of sufficient evidence, caused in part by the infeasibility of spot inspections that would provide evidence of forced labor. As noted, Congress removed the clause in 2015, which CBP stated, “enhances CBP’s ability to prevent products made with forced labor from being imported.” Since then, and amid ongoing interest in worker rights in trade policy and anti-trafficking efforts, CBP has issued 28 WROs, including 16 against products from China, 4 against products from Malaysia, 3 against specific fishing vessels, and 1 each against Brazil, the Democratic Republic of the Congo, Malawi, Turkmenistan, and Zimbabwe.

Figure 2. WROs Issued Per Year



Source: CBP, as of January 2021.

Issues for Congress

Section 307 Implementation and Enforcement

While congressional action to close the Section 307 loophole was widely welcomed, some observers question whether CBP is effectively making use of the change. The International Labor Rights Forum (ILRF) cites lack of clear evidentiary standards required in petitions and transparency by CBP on explanations of enforcement actions as concerns. Observers attribute the small number of actions to the customary practice of targeting individual producers and the difficulty of tracing products back to the factory or farm using forced labor, given complex global supply chains. Recent industry and country-wide enforcement actions, such as for Turkmenistan, have been welcome developments to some, including Members of Congress who advocate this approach to Xinjiang. Industry groups caution that broader WROs may disrupt supply chains, deter legitimate business with other suppliers, and worsen the economic security of vulnerable workers. Other stakeholders view greater supply chain due diligence and accountability by companies as critical components.

Enhancing Section 307 enforcement would likely hinge on greater resources. CBP has cited staff shortages as causing the agency to drop investigations and limiting its ability to

monitor existing cases. Congress could appropriate funds if lack of capacity hinders WRO issuance and enforcement.

China and Forced Labor

The majority of WROs have been against China: Of the 61 issued since 1990, 43 (70%) were against Chinese goods. Many orders were issued between 1991 and 1993, declining after the U.S. and China negotiated agreements relating to goods made with prison labor, notably a 1992 Memorandum of Understanding (MOU) and 1994 Statement of Cooperation. These agreements provided for the exchange of information and request for inspections. However, China’s compliance has been inconsistent, and U.S. concerns over prison and forced labor broadly, remain.

Since 2016, China has again become a focus of Section 307 actions. Several WROs center on concerns over systemic forced labor of ethnic Uyghurs and other Turkic Muslims in Xinjiang. Xinjiang raw materials and products are used in finished goods in China and neighboring countries, putting regional supply chains at risk of exposure to forced labor. In January 2021, CBP issued a region-wide WRO on imports of all cotton and tomato products from Xinjiang.

In the 116th Congress, the Uyghur Forced Labor Prevention Act (H.R. 6210/S. 3471) would have included a “rebuttable presumption” that all goods produced or manufactured in Xinjiang are made with forced labor, unless CBP determined otherwise. This and other proposed legislation would have mandated disclosure and transparency of companies doing business in the region.

Trade Policy and Forced Labor Provisions

The treatment of forced labor in U.S. trade policy and free trade agreements (FTAs) has been of long-standing congressional interest and has evolved in recent years. Consistent with negotiating objectives set by Congress in Trade Promotion Authority, recent U.S. FTAs commit countries to maintain laws on core ILO rights/principles, e.g., the elimination of forced or compulsory labor. For the first time in a U.S. FTA, the U.S.-Mexico-Canada Agreement (USMCA) also commits parties to prohibit imports produced by forced labor and to cooperate over identifying such goods. USMCA implementing legislation (P.L. 116-113) created a Forced Labor Enforcement Task Force, chaired by the Secretary of Homeland Security to monitor and report on broader enforcement of Section 307.

In addition, eligibility criteria for U.S. trade preference programs includes taking steps to maintain internationally recognized worker rights. Some eligibility reviews and revocation of developing country benefits by the U.S. Trade Representative have involved concerns over labor practices.

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

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