

Human Trafficking and Forced Labor: Trends in Import Restrictions

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Introduction

More than 85 years ago, Congress passed a provision against forced labor in the Tariff Act of 1930 ([19 U.S.C. 1307](#)), which prohibited from import into the United States "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" (Section 307 of the Act).

Mirroring the International Labour Organization's (ILO) [Forced Labour Convention of 1930](#) (though the United States is not party to this treaty), the Tariff Act defines forced labor as "all work or service which is extracted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily." The term forced labor also encompasses forced or indentured child labor—concepts recognized by the United States in other ILO commitments, including the 1998 Declaration on the Fundamental Principles and Rights at Work and the 1999 Convention on the Worst Forms of Child Labour.

According to human rights and anti-human trafficking awareness and advocacy groups, the use of Section 307 has been limited. In the over 85 years since the Tariff Act was enacted, U.S. authorities applied this provision to relatively few specific goods and manufactures. Some observers pointed to the so-called "consumptive demand" clause for the limited effect of this import prohibition. This clause excluded Section 307's application to any imports that were not made "in such quantities in the United States to meet the *consumptive demands* of the United States."

Elimination of the "Consumptive Demand" Clause

In February 2016, the 114th Congress passed the Trade Facilitation and Trade Enforcement Act of 2015, known also as the Customs Reauthorization bill ([P.L. 114-125](#)). The bill was signed into law on February 24, 2016. Section 910 of the Act repeals the "consumptive demand" exception, effective 15 days after enactment, or March 16, 2016.

[In a public statement](#), U.S. Customs and Border Protection (CBP) Commissioner R. Gil Kerlikowske noted that, "imperative to human rights protections around the world, the Act eliminates obstacles to preventing imports made with forced or child labor into the United States." [A CBP fact sheet](#) further stated that "[t]he repeal of the consumptive demand exception enhances CBP's ability to prevent products made with forced labor from being imported into the United States."

Section 910 also requires that within six months of its effective date, and annually afterward, a report by the CBP Commissioner to the Senate Finance Committee and the House Committee on Ways and Means that includes the number of instances that merchandise was denied U.S. entry during the previous year, a description of the merchandise, and other information on monitoring and enforcement compliance.

Section 307 of the Tariff Act of 1930

CBP is responsible for acting on information related to specific U.S. imports that were produced, wholly or in part, by forced labor. In cases where the CBP Commissioner becomes aware of information that reasonably (but not conclusively) indicates that U.S. imports are subject to the provisions of Section 307 of the Tariff Act of 1930, the Commissioner may issue withhold release orders (WROs). Shipments of goods subject to a WRO are to be detained at U.S. ports of entry and importers would have an opportunity either to re-export the goods or demonstrate that the goods are not in violation of U.S. law. If neither action is taken within 60 days, the merchandise will be considered "abandoned," and will be destroyed. If the CBP Commissioner determines conclusively that U.S. imports were made with forced labor, the Commission will issue a formal finding and publish it in the Customs Bulletin and the Federal Register. Goods subject to published findings are in turn treated as prohibited imports.

To invoke Sec. 307, CBP may receive external petitions (e.g., from non-governmental organizations, firms, or individuals) or self-initiate cases. [Section 307 has been invoked 42 times](#), including 36 times against goods produced in China. Prior to 2016, it was last invoked in 2000 (against Mongolia). [CBP attributes the 15-year gap to a lack of sufficient evidence](#) to pursue further actions.

Since the Customs Authorization Bill's enactment, CBP has issued three WROs—all pertaining to goods from China:

- On March 29, 2016, CBP issued a detention order for soda ash, calcium chloride, caustic soda, and viscose/rayon fiber manufactured by Tangshan Sanyou Group and its Subsidiaries.
- On March 29, 2016, CBP issued a detention order for potassium, potassium hydroxide, and potassium nitrate produced by Tangshan Sunfar Silicon Industries.
- On May 20, 2016, CBP issued a detention order for stevia and its derivatives produced by Inner Mongolia Hengzheng Group Baoanzhao Agricultural and Trade LLC, PureCircle Ltd.

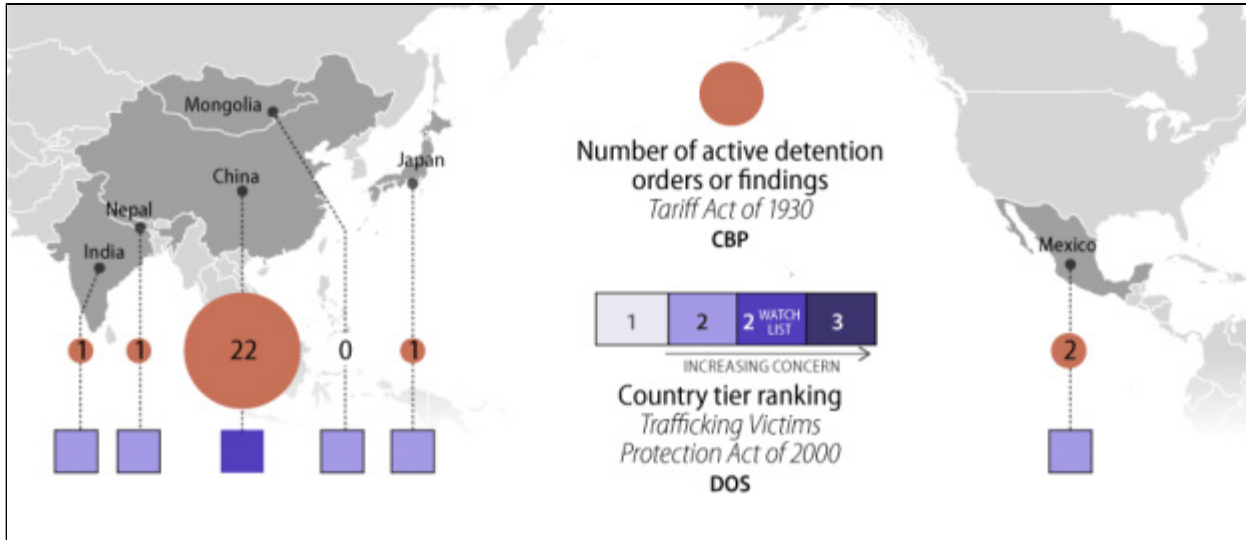
Issue Outlook

Even with the removal of the consumptive demand clause, identifying specific goods produced with forced labor, as well as manufacturers of such goods, remains a challenge. Some advocates question the impact of the amended law, as the burden of evidence is [on the importer](#). Nevertheless, growing public and policymaker interest in supply chain transparency may bolster demand for information regarding forced labor practices and the implementation of voluntary corporate due diligence standards. Provisions in U.S. trade agreements also reflect evolving policies on worker rights (see CRS In Focus IF10046, [Worker Rights Provisions in Free Trade Agreements \(FTAs\)](#), by Ian F. Fergusson and M. Angeles Villarreal).

The Departments of State and Labor are required by the Trafficking Victims Protection Act (TVPA, Division A of [P.L. 106-386](#), as amended; 22 U.S.C. 7101 et seq.) to publish periodic reports related to human trafficking and forced labor. These include the State Department's [annual report on Trafficking in Persons \(TIP\)](#), which ranks countries based on their performance to combat human trafficking, and the Labor Department's biennial [List of Goods Produced by Child](#)

[Labor or Forced Labor](#). Such reports, however, may not contain sufficient information for CBP to act pursuant to Section 307 of the Tariff Act of 1930. The Labor Department's list, for example, targets entire product lines or industries, whereas CBP must specify which individual products and manufacturers are in violation. Additionally, it remains unclear whether CBP WROs or findings are taken into consideration when ranking countries in the State Department's TIP Report.

Figure 1. Forced Labor: CBP Actions Pursuant to the Tariff Act of 1930 in Comparison to Other Selected U.S. Government Reporting



Source: U.S. Customs and Border Protection (CBP), Forced Labor, <https://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations#>; U.S. Department of State (DOS), *Trafficking in Persons Report*, June 30, 2016.