

## International Alert

### Trade Compliance Flash: Five Steps to Protect Your Company from CBP Enforcement Actions on Imports Made by Forced Labor

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The Commissioner of U.S. Customs and Border Protection (CBP) has promised more enforcement actions against companies importing products made by forced labor. His statements follow an amendment to the customs laws earlier this year which closed a loophole exempting products that were in short supply in the United States from the general prohibition on forced labor imports, set forth in Section 307 of the Tariff Act of 1930. Since this change, CBP created a task force focused on the interdiction of forced labor imports, and has detained shipments of merchandise suspected of being made by forced labor. Given the expected uptick in CBP enforcement actions, importers should consider conducting forced labor-focused due diligence on their supply chains, starting with the steps discussed below.

#### **The Forced Labor Statute and the Amendment**

As amended, Section 307 of the Tariff Act of 1930, known as the Forced Labor Statute, prohibits the importation of products made, wholly or in part, with convict labor, forced labor (including child labor) or indentured labor under penal sanctions -- with no exceptions.

CBP has not yet amended its regulations or issued formal guidance on its procedures for investigating allegations of forced labor. However, according to a [fact sheet](#) posted on CBP's website, anyone who has reason to believe imported products are made by forced labor may petition CBP to initiate an investigation. If CBP determines that the allegations "reasonably but not conclusively" indicate that the merchandise was manufactured by forced labor, CBP will issue a withholding release order (WRO), effectively detaining the merchandise at the U.S. border. At that point, an importer will be given the opportunity to petition CBP for release (*i.e.*, prove that the merchandise is, in fact, not manufactured by forced labor). If the proof submitted does not establish the admissibility of the merchandise, or if none is provided, CBP will exclude the shipment and initiate forfeiture proceedings. Alternatively, the importer may choose to export the merchandise.

Many questions still remain about this investigative process. For example, CBP has not yet clarified what satisfies the "reasonably but not conclusively" standard to issue a WRO, or what an importer must do to successfully petition the release of detained merchandise. It is also not clear how CBP will address a shipment where products suspected of being made by forced labor are commingled with others.

#### **Renewed Enforcement of the Forced Labor Statute**

CBP is now required to issue periodic reports to Congress on its efforts to enforce the prohibition on forced labor, including the number of instances in which merchandise was denied entry. This reporting obligation will likely result in an increased emphasis on forced labor investigations and detentions. Indeed, CBP has already issued its first three WROs under the new law (one relating to an artificial sweetener, the others on chemicals imported from China). CBP also announced that it increased the size of its forced labor task force in order to enhance its ability to self-initiate investigations.

## Steps to Consider

Below are five steps that your company should consider to lower the risk of forced labor of enforcement actions by CBP:

- 1. Learn how to identify "red flags" and vulnerability to forced labor in your supply chain.** Although specific risk factors vary by industry and geographic area, monitoring for red flags such as the use of labor recruiters, the presence of migrant workers, a high incidence of temporary workers and suppliers appearing on a U.S. government blacklist is critical to detect merchandise produced by forced labor in your company's supply chain. The presence of red flags does not necessarily indicate a violation has occurred, but should stimulate further scrutiny by your company.
- 2. Screen the names of your company's suppliers against the applicable U.S. government blacklists.** The U.S. Department of Labor maintains a list of goods and their source countries which it has reason to believe are produced by child labor or forced labor (available [here](#)). CBP also publishes a list of the foreign entities and commodities subject to an active detention order on its website ([here](#)). Screening your company's suppliers against those lists is an effective step to mitigate risk; however, it is important to do more. Screening often produces complicated issues about whether a match has actually occurred and what to do after it is determined that a supplier is on one of the applicable lists. A trained, experienced person must be part of the screening process to ensure it works as efficiently and as effectively as possible.
- 3. Insert a Forced Labor Statute compliance clause in supplier contracts and require periodic certifications.** In addition to representations concerning the prohibition on forced labor, the contract clause should set forth supplier obligations designed to protect your company. The most effective contract clauses require suppliers to actively monitor their own supply chains and establish the right to audit the supplier and to terminate the agreement in the event of noncompliance with the prohibition on forced labor. Consider requiring suppliers to certify compliance with that clause on a periodic basis.
- 4. Offer training to employees and implement an internal reporting mechanism.** For company employees to carry out a policy against the import of goods produced through forced labor, they must be trained on that policy and should understand how to report potential violations. Trainings should make employees aware of your company's policy of compliance and should also sensitize employees to the type of situations in which risks could arise. In addition, your company should ensure that employees are given ample resources to report possible violations as quickly as possible. Anonymous hotlines or other similar reporting mechanisms can serve as an important tool to allow your company to get ahead of any problems, rather than being blindsided.
- 5. Audit high-risk suppliers.** When red flags regarding a current or potential supplier arise, your company should consider auditing that supplier. Such audits may include interviews with relevant actors (such as managers, workers, labor recruiters and suppliers) as well as a review of personnel files, employment records and other relevant documentation. While a lot remains to be seen with regard to the CBP's enforcement of the prohibition on forced labor, it is clear that a supply chain audit report will be the most effective way to demonstrate that detained merchandise was not produced with forced labor.

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