



U.S. Customs and
Border Protection

Forced Labor Overview

- Johanna Estes, Director, Forced Labor Division
- Alyssa Dickinson, Analyst, Forced Labor Division
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Objectives

- Forced Labor Context and Definitions
- Statutory Authority (Tariff Act of 1930)
- Forced Labor Allegations Process and Risk
- Countering America's Adversaries Through Sanctions Act
- Summary





Forced Labor Context and Definitions

Forced Labor Worldwide



- Over 24 million people are victims of forced labor across the world, trapped in jobs which they were coerced or deceived into and which they cannot leave
 - 16 million are exploited in the private economy by individuals or enterprises. Of these, 4.8 million are victims of forced sexual exploitation and 4.1 million are victims of forced labor exploitation in economic activities, such as agriculture, construction, domestic work or manufacturing.



Number of forced laborers per region. Source: ILO.org

Forced Labor from a Trade Perspective



- 2020-2024 DHS Strategic Plan
 - international trade “frequently involves...extensive, worldwide supply chains that require modernized trade enforcement practices to prevent products of forced labor” from entering the United States.
 - DHS is “expanding existing safeguards and practices that prevent the importation of...products made with forced labor.”
 - The Plan also has an objective to prevent, identify, investigate, disrupt, and dismantle human trafficking.



Forced Labor Defined

- “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
- Merchandise produced by the following is not entitled to entry or importation to the United States:
 - Slave labor
 - Prison/convict labor
 - Forced child labor
 - Indentured labor under penal sanctions
- ILO FL Convention, 1930 (No. 29) “all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.”



Forced Labor & Human Trafficking

- The Trafficking Victims Protection Act of 2000 and its subsequent reauthorizations defines human trafficking as including:
 - 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
- The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the so-called “Palermo Protocol”) – signed in 2000



Statutory Authority: Tariff Act of 1930

Section 307, Tariff Act of 1930



19 U.S.C. § 1307

- “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...”

The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA)



TFTEA Summary

- A wide-ranging Customs law affecting CBP's organization and enforcement authorities
 - Signed by the President on February 24, 2016
- Section 910 of the Act repeals the “consumptive demand” clause in 19 U.S.C. § 1307
 - Repeal effective March 10, 2016

Consumptive Demand Clause

- “[I]n no case shall [provisions preventing the importation of goods produced by forced labor] be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.”

19 U.S.C. § 1307



Receipt of Information

19 CFR § 12.42

- CBP acts on information that a particular good that is being, or is likely to be, imported, may be produced with forced labor
 - “Any person outside the Customs Service”
 - For example: Human rights, labor rights civil society organizations, or member of the trade.
- Anonymous submissions may be reported via the e-Allegations Online Trade Violation Reporting System at <https://apps.cbp.gov/eallegations>

Reporting Suspected Forced/Forced Child Labor



19 CFR § 12.42(b)

- Every such communication to CBP shall contain, or be accompanied by:
 - (1) a full statement of the reasons for the belief;
 - (2) a detailed description or sample of the merchandise;
 - (3) all pertinent facts obtainable as to the production of the merchandise abroad

Withhold Release Orders



19 CFR § 12.42(e)

- When information reasonably but not conclusively indicates that merchandise within the purview of 19 U.S.C. § 1307 is being, or is likely to be imported, the Commissioner shall issue a withhold release order (WRO)
- Withhold release orders are internal instructions to all port directors to withhold release of specific merchandise into the U.S. commerce pending instructions from the Commissioner as to whether the merchandise may be released otherwise than for exportation

Findings



19 CFR § 12.42(f)

- If the Commissioner is provided with information sufficient to make a determination that the goods in question are subject to the provisions of 19 U.S.C. § 1307, i.e., probable cause, the Commissioner will publish a formal finding to that effect in the Customs Bulletin and in the Federal Register
- Probable cause may also be established by an ICE/HSI investigation

Disposition of Detained Merchandise



19 CFR § 12.44

- The importer may **export the merchandise** to a location outside the United States within the 3-month detention period
- The detained shipment will be **excluded from entry** if:
 - The importer fails to either re-export the detained shipment or timely furnish the required Certificate and Statement
 - CBP determines the proof submitted by the importer does not establish admissibility of the merchandise
- Seizure of merchandise subject to a finding



Reasonable Care

- **19 U.S.C. § 1484** requires
 - Exercising reasonable care
 - Taking all necessary and appropriate steps to ensure goods entering the United States comply with all laws and regulations, including 19 U.S.C. § 1307 and CAATSA
- Resources
 - CBP's Informed Compliance Publication, [What Every Member of the Trade Community Should Know: Reasonable Care](#).
 - Fact sheets on various topics related to forced labor, including [Forced Labor – Importer Due Diligence](#). The fact sheets are posted on [CBP.gov](#).

ICE/HSI Authorities & U.S. legal Statutes



- ICE's role relating to the U.S. import prohibition on items produced by forced labor and reporting allegations for enforcement action
- 18 U.S.C. § 1761: Prison-Made goods
- 18 U.S.C. § 545: Smuggling goods into the United States
- 18 U.S.C. § 1001: False statements; concealment
- 18 U.S.C. § 1589: Forced labor

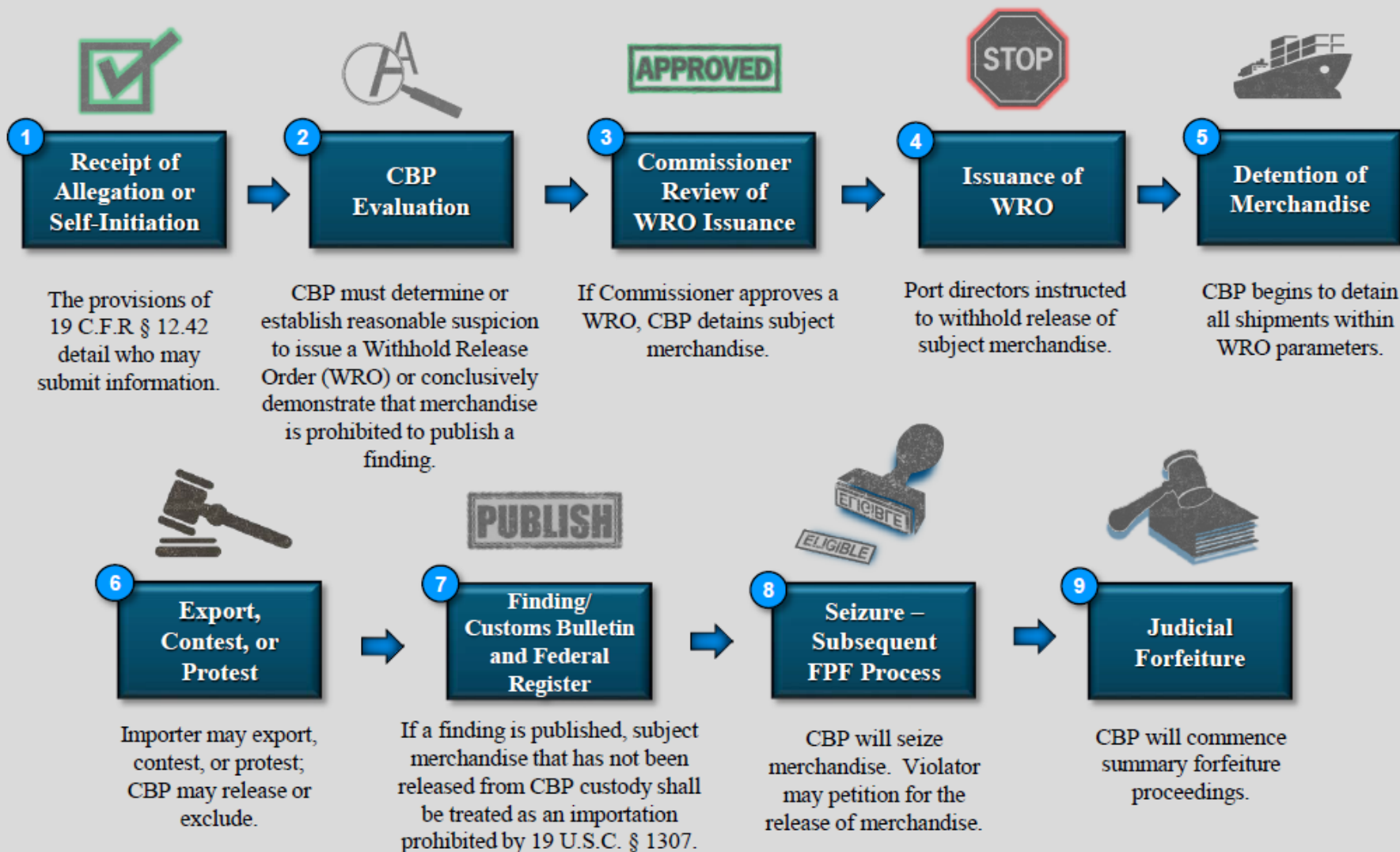
- ICE welcomes forced labor allegation reports to ICE's forced labor mailbox at ICE.ForcedLabor@ice.dhs.gov, or directly to the ICE Attaché for your country.



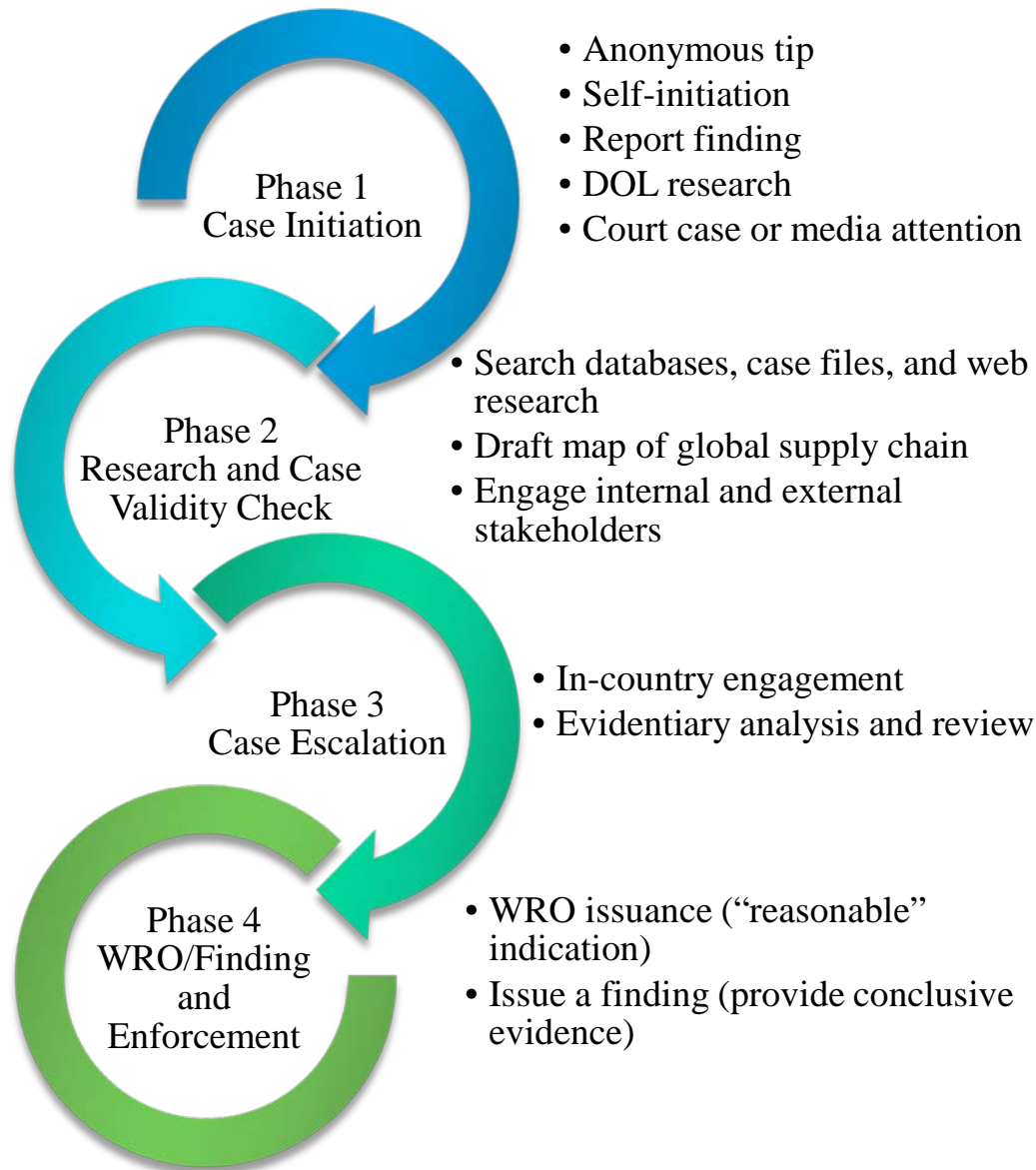
Forced Labor Allegations Process and Risk



Forced Labor Process



Forced Labor Allegation Process



ILO Indicators of Forced Labor



- Deception
- Restriction of movement
- Isolation
- Physical and sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive working and living conditions
- Excessive overtime
- Abuse of vulnerability

Collaboration

- Customs Commercial Operations Advisory Committee, Intelligent Enforcement Subcommittee
 - Establishment of a Forced Labor Working Group to develop recommendations
- Interaction with NGOs, think tanks
- DHS Interagency Working Group
- Work with other government agencies
- Intergovernmental collaboration



Forced Labor - Resources



- Department of Labor
 - List of Goods Produced by Child Labor or Forced Labor:
<https://www.dol.gov/ilab/reports/child-labor/list-of-goods>
 - List of Products Produced by Forced or Indentured Child Labor:
<https://www.dol.gov/ilab/reports/child-labor/list-of-products/index-country.htm>
 - Comply Chain App
- Responsible Sourcing Tool
 - <http://www.responsiblesourcingtool.org/>
- OECD Guidelines for Multinational Enterprises
 - <http://mneguidelines.oecd.org/>



Newest Withhold Release Orders

CBP lists all withhold release orders and findings on <https://www.cbp.gov/trade/programs-administration/forced-labor/withhold-release-orders-and-findings>

Date	Merchandise	Manufacturer(s)	Status
11/1/2019	Tobacco	Tobacco produced in Malawi and products containing tobacco produced in Malawi	Active
9/30/2019	Rubber Gloves	WRP Asia Pacific Sdn. Bhd.	Active
9/30/2019	Bone Black	Bonechar Carvao Ativado Do Brasil Ltda	Active



Proof of Admissibility (for a particular shipment)

- Merchandise subject to withhold release orders will be detained at all ports of entry.
- If a company wishes to provide evidence that a particular shipment or shipments were not produced with forced labor, the company should submit proof of admissibility to the Port Director at the location of the entries, in accordance with 19 CFR § 12.43.
 - Contact information for ports: <https://www.cbp.gov/contact/ports>
- **19 CFR § 12.43:** The importer may contend, within 3 months after the date of importation, that the merchandise is not produced by a prohibited form of labor
 - Submit a certificate of origin signed by the foreign seller
 - Submit a detailed statement demonstrating the goods were not manufactured with forced labor



WRO Modification or Revocation

- If a company wishes to request that CBP revoke or modify a WRO, the company should send that request and supporting documentation to trade.enforcement@cbp.dhs.gov
- Companies should submit their most compelling evidence
- CBP will consider if the agency should move to revoke or modify the withhold release order or finding
- CBP prioritizes requests received
 - Factors assisting processing of requests include quality and completeness of evidence (e.g. document translation)



Countering America's Adversaries Through Sanctions Act

Countering America's Adversaries Through Sanctions Act (CAATSA)



SEC. 302A.

- a) In General.--Except as provided in subsection (b), any significant goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by the labor of North Korean nationals or citizens shall be deemed to be prohibited under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) and shall not be entitled to entry at any of the ports of the United States.
- b) Exception.-The prohibition described in subsection (a) shall not apply if the Commissioner of U.S. Customs and Border Protection finds, by clear and convincing evidence, that the goods, wares, articles, or merchandise described in such paragraph were not produced with convict labor, forced labor, or indentured labor under penal sanctions.

Actions taken under CAATSA occur outside of the traditional WRO/Finding process. Thus, these actions occur under CBP's general authority to enforce U.S. trade and customs laws.



CAATSA “Clear and Convincing” Evidence

- High evidentiary burden
- Importer carries the burden to overcome the presumption by providing sufficient information to meet the standard
- Determinations made on a case-by-case basis
- Examples of helpful documentation:
 - Copies of audit reports
 - Copies of visas and work permits retained by employers or recruiters
 - Copies of other official documentation, including government issued passports



Sources of Information about DPRK Labor

- North Korea Sanctions and Enforcement Actions Advisory
 - Contains a list of locations where North Korean laborers were working on behalf of the North Korean government in 2017-2018.
 - Annex 3 provides a sectoral breakdown of North Korean overseas workers.
- State Department Sources
 - Country Reports on Human Rights Practices
 - Trafficking in Persons Report
- NGO Reporting

List from North Korea Sanctions and Enforcement Actions Advisory



Location

In 2017-18, North Korean laborers working on behalf of the North Korean government were present in the listed countries and jurisdictions below.² China and Russia continue to host more North Korean laborers than all other countries and jurisdictions combined.

- Algeria
- Angola
- Bangladesh
- Belarus
- Cambodia
- China
- Democratic Republic of the Congo
- Equatorial Guinea
- Ethiopia
- Ghana
- Guinea
- Indonesia
- Kyrgyzstan
- Kuwait
- Laos
- Libya
- Mali
- Malaysia
- Mongolia
- Mozambique
- Namibia
- Nepal
- Nigeria
- Oman
- Peru
- Poland
- Qatar
- Republic of Congo
- Russia
- Rwanda
- Senegal
- Singapore
- Tanzania
- Taiwan
- Thailand
- Uganda
- United Arab Emirates
- Uruguay
- Vietnam
- Zambia
- Zimbabwe

2. The State Department regularly reports on countries and industries hosting North Korean laborers in our annual reports including the Country Reports on Human Rights Practices and Trafficking in Persons Report. In addition, a number of NGOs have conducted extensive research on this topic and have released public reports. These NGOs include the Database Center for North Korean Human Rights, the ASAN Institute, C4ADS, and the Committee for Human Rights in North Korea.



Due Diligence

- CBP encourages companies to implement due diligence and related practices such as
 - a high-level statement of policy demonstrating the company's commitment to respect human rights and labor rights;
 - a rigorous risk assessment of actual and potential human rights and labor impacts or risks of company activities and relationships, which is undertaken in consultation with stakeholders;
 - integrating these commitments and assessments into internal control and oversight systems of company operations and supply chains; and
 - tracking and reporting on areas of risk.



Summary



Key Points

- CBP encourages the trade community to closely examine their supply chains to ensure goods imported into the United States are not mined, produced or manufactured, wholly or in part, with prohibited forms of labor, i.e., slave, convict, forced child, or indentured labor.
- CBP requires information that is reasonable but not conclusive for issuance of a WRO.
- Findings require conclusive evidence, i.e., probable cause that the imported goods are made with forced labor.
- Evidence submitted by importers to revoke a WRO will be evaluated on a case-by-case basis.
- CAATSA creates a rebuttable presumption that can be overcome by “clear and convincing” evidence



Office of Trade

U.S. Customs and Border Protection

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