



—————→

IMPORTING FREEDOM

—————→

—————→

Using the U.S. Tariff Act to Combat
Forced Labor in Supply Chains

—————→

CONTENTS

Introduction	3
What Is Section 307 Of The U.S. Tariff Act?	5
What Is The Admissibility Standard?	7
What Evidence Do I Need?	11
Drafting A Petition	17
Safety Considerations And Confidentiality	20
How To Submit A Petition	21
What Happens Next?	23
What Works?	26
Using The Tariff Act In Your Strategic Campaign	31
<hr/>	
Appendix A: Additional Resources	33
Appendix B: Recommended Submission Template	35
Appendix C: Targeted Intake Questionnaire To Establish Forced Labor Under Section 307	40
Appendix D: Analysis Of Recent Orders	43

ACKNOWLEDGEMENTS

*This Practice Guide was written by **Anasuya Syam**, human rights and trade policy advisor at the Human Trafficking Legal Center, and **Meg Roggensack**, consultant, with the help of **Sarah L. Bessell**, deputy director of the Human Trafficking Legal Center. This Practice Guide was edited by **Martina E. Vandenberg**, president of the Human Trafficking Legal Center.*

*The Human Trafficking Legal Center would like to thank Ian Urbina for permissions to use photographs from his book, *The Outlaw Ocean: Journey Across the Last Untamed Frontier*.*

The Human Trafficking Legal Center is profoundly grateful to Humanity United for their resolute commitment to support the fight against forced labor in supply chains. A grant from Humanity United made this publication possible. The Human Trafficking Legal Center would also like to express its deep gratitude to the Freedom Fund for supporting our work on the U.S. Tariff Act.

Citation: Syam, Anasuya and Roggensack, Meg, "Importing Freedom: Using the U.S. Tariff Act to Combat Forced Labor in Supply Chains," The Human Trafficking Legal Center (2020).

Graphic Design: Mirna Morphis, madebymirna.com

Made possible by
a grant from:



HUMANITY
UNITED

 @htlegalcenter

 @htlegalcenter

 htlegalcenter

www.htlegalcenter.org

info@htlegalcenter.org

All rights reserved. The Human Trafficking Legal Center
Printed in the United States of America.

© The Human Trafficking Legal Center, June 2020



INTRODUCTION

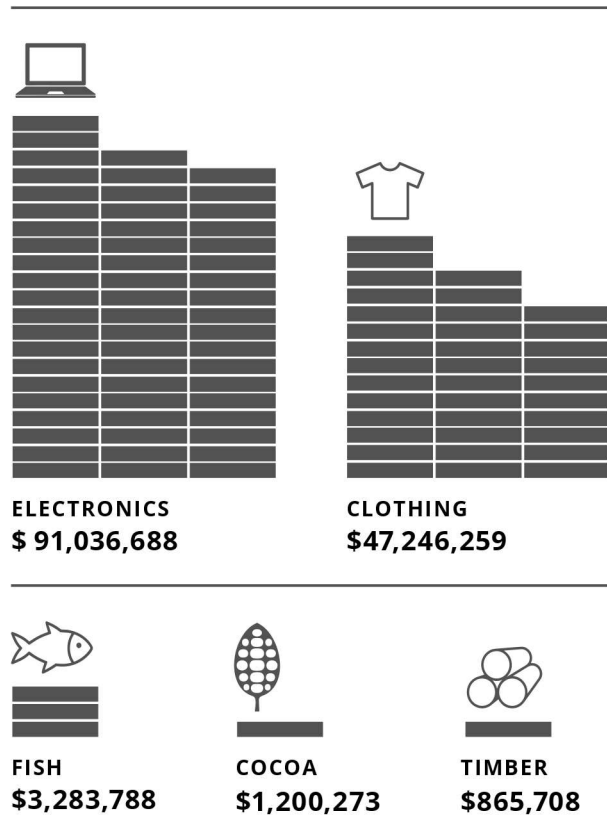
An increasingly interconnected world has led to sprawling supply chains across the globe. But what is the human cost of increasing consumer demands for fresh produce year-round, fast fashion, and flashy gadgets? For those held in forced labor in supply chains, what remedies exist? What can advocates do to hold corporations accountable for human trafficking and forced labor in their supply chains?

As one of the world's largest importing economies, it is estimated that the United States imports up to \$144 billion worth of goods made using forced labor.¹ A few of the most imported at-risk goods include electronics, apparel, cocoa, seafood, timber, and cotton.²

This guide provides advocates with tools to leverage U.S. trade enforcement mechanisms, specifically the prohibition on imports made using forced labor, to clean up corporate supply chains. This guide is for anyone – U.S. and foreign NGOs, lawyers, labor unions, and individuals – interested in using U.S. trade law and policy to combat forced labor in their countries.

The guide provides an overview of the core components of a petition, including the standard of admissibility, types of evidence required, sources of information, and the standard of review. It also includes a suggested submission template and intake questionnaire. It will also guide readers to reliable resources that organizations and individuals can use to strengthen petitions to U.S. Customs and Border Protection.

Estimated value of high-risk imports into the United States (value in USD):

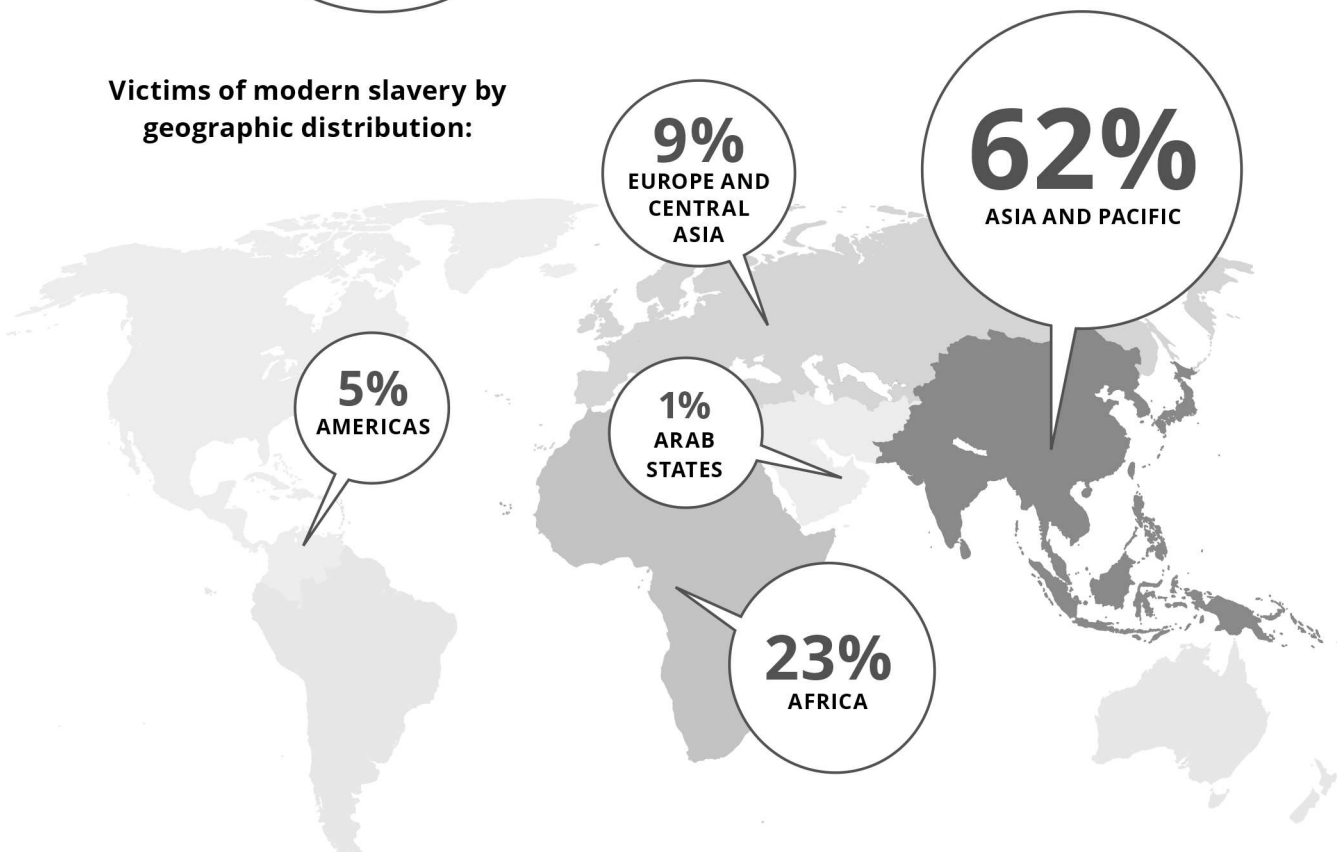


Source: Global Slavery Index 2018, Walk Free Foundation

This tool is but one piece in the larger strategy to combat forced labor and trafficking. It is hoped that the guide will make petitions under U.S. trade mechanisms, such as Section 307 of the Tariff Act of 1930, more accessible to anyone interested in anti-trafficking efforts. The ultimate goal is to catalyze interest in creative and unconventional remedies against forced labor. If used well, Section 307 of the Tariff Act has the potential to be a game-changer in the fight against forced labor.

¹ See G20 Analysis, The Global Slavery Index (2018), <https://www.globallslaveryindex.org/2018/methodology/g20-analysis/#table:3>.

² *Id.*



Source: International Labor Organization, *Global Estimates of Modern Slavery: Forced Labor and Forced Marriage (2017)*

WHAT IS SECTION 307 OF THE U.S. TARIFF ACT?

The U.S. Tariff Act of 1930 prohibits the importation into the United States of any goods made “wholly or in part” using forced, indentured, or convict labor, in any part of the world. The statute applies irrespective of the method of production of the goods.

Section 307 of the Tariff Act authorizes U.S. Customs and Border Protection to prohibit imports made using forced, convict, or indentured labor from entering the United States.

Section 307 (§ 307) of the U.S. Tariff Act (19 U.S.C. §1307), 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 shall **not be entitled to entry** at any of the ports of the United States, and the **importation thereof is hereby prohibited**, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision.”*

This provision is implemented by the U.S. Customs and Border Protection (CBP) agency. CBP has the power to issue a Withhold Release Order (WRO) to prevent imports from entering the United States if there are suspicions that forced labor was used in the overseas production or processing of the goods. Goods that are subject to a WRO will be detained at all U.S. ports.



A U.S. Customs and Border Protection officer looks on as a container shipping vehicle reaches U.S. port.

A Withhold Release Order (WRO) is a powerful trade enforcement tool used by CBP to tackle forced labor in supply chains. Goods subject to a WRO are “withheld” from release, prohibited from entering the United States. After the completion of appropriate investigations – either based on externally-submitted petitions,³ or self-initiated efforts, or both – CBP can issue a WRO based on a *reasonable* belief that shipments entering the United States, or likely to enter the United States, are produced using forced labor, convict labor, or indentured labor.⁴

In most cases, CBP does not target entire product lines or countries. For the most part, CBP only issues WROs against specific commodities from specific producers, factories, or exporters. On rare occasions, CBP has issued WROs against entire product lines in a nation, without naming specific producers. For example, WROs have been issued against all tobacco from Malawi, all cotton from Turkmenistan, and all artisanal gold from the Democratic Republic of Congo (DRC).

→ Workers including children seen tilling a tobacco field in Malawi.

↓ Gold miners form a human chain while digging an open pit at the Chudja mine near the village of Kobu, in northeastern DRC, Feb. 23, 2009.



Source: Finbarr O'Reilly/Reuters



Source: David Levene/The Guardian

→ Workers in a cotton field in Turkmenistan.



Source: Alternative Turkmenistan News

³ A detailed **Submission Template** is found in [Appendix B](#).

⁴ 19 C.F.R. § 12.42(e).

WHAT IS THE ADMISSIBILITY STANDARD?

The goal of the Tariff Act is to prevent goods made with forced labor from entering the United States. But how does the Tariff Act define forced labor? And what is the evidentiary standard that CBP uses to review petitions?

FORCED LABOR

The definition of forced labor under § 307 is nearly identical to the definition in the ILO Forced Labor Convention of 1930 (No. 29):

Since the definition of forced labor under the Tariff Act overlaps significantly with the ILO definition, it is useful to examine how the ILO interprets forced labor. Under Article 2(1) of ILO's Forced Labor Convention No. 29 of 1930, forced labor is broken down into three elements⁵:



Work or service - Refers to all types of work occurring in any activity, industry or sector including in the informal economy.



Menace of any penalty - Refers to a wide range of penalties used to compel someone to work.



Involuntariness - The term "offered voluntarily" refers to the free and informed consent of a worker to take a job and his or her freedom to leave at any time. This is the case for example when an employer or recruiter makes false promises so that a worker takes a job he or she would not otherwise have accepted.

U.S. Tariff Act, § 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."

ILO Forced Labor 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."

For conditions of forced labor to be established under the above definitions and under Section 307 of the Tariff Act, evidence substantiating both the elements, menace of penalty and involuntariness, must be present.

⁵ *What is Forced Labor, Modern Slavery and Human Trafficking*, International Labor Organization, <https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm>.

Despite the similarities in the definitions, there are some key differences between the ILO definition of forced labor and the Section 307 definition:

	U.S. Tariff Act, § 307	ILO
CONVICT LABOR	No exceptions for imported goods produced using convict labor.	Voluntary and fairly paid convict labor exempted from the definition of forced labor. ⁶
CHILD LABOR	Only goods produced using forced or indentured child labor are prohibited. Unlike the ILO definition, CBP explicitly references forced or indentured child labor. Absent stronger indicia of forced labor, goods made with child labor by itself may not satisfy the definition of forced labor, irrespective of the industry involved.	Children cannot consent to work in hazardous industries ⁷ or in conditions that amount to ‘worst forms of child labor’ ⁸ and such work is therefore forced labor.



Source: The Guardian

Mother and son toil on a tobacco field in Malawi.

6 Convict Labor that is supervised by a public authority and not recruited by or contracted out to private corporations or individuals does not constitute forced labor. ILO Convention No. 29 Art. 2(2).

7 “The age of 18 should be applied if and where the work or tasks in question are considered as hazardous—defined as work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.” See FAQs on Business and Child Labor and ILO Convention 182, https://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_CHL_FAQ_EN/lang--en/index.htm.

8 See Worst Forms of Child Labor as defined under ILO Convention 182 Art. 3.



Source: Julien Harnais on flickr

Submitting proof of involvement of child labor in the manufacture of goods, even if in a hazardous industry, does not by itself suffice for the purposes of Section 307. The evidence presented must satisfy the twin elements of menace of penalty and involuntariness.

Under the ILO standard, children are considered to be working in conditions of forced labor if they are working for or with parents who are themselves subject to threats of penalty and involuntary work.⁹ In other words, when par-

ents who are subjected to forced labor enlist their children, such children could be considered to be held in forced labor, based on the circumstances involved. Such a situation typically arises in the case of a family debt-bondage system in agriculture where parents are in debt bondage with a landowner.¹⁰ CBP also appears to accept derivative evidence of forced labor in such cases. In the WRO against tobacco from Malawi, for example, CBP appears to have imputed that the child labor was forced.

INDENTURED LABOR

Section 307 also prohibits indentured labor. Indentured labor under the Tariff Act refers to debt bondage¹¹ and peonage¹², both defined under U.S. law. **Peonage** is work without pay performed involuntarily to discharge a real or imagined debt. **Debt bondage** arises from a pledge of personal services of the debtor or someone under the debtor's control, where either the reasonable value of services is not

applied to liquidate the debt, or the length and nature of services is not defined or limited. This typically arises in the context of migrant worker recruitment by brokers, who charge exorbitant recruiting fees. The indebtedness for recruitment fees charged may constitute indentured labor. Any allegation of a violation under Section 307 should align with these legal definitions.

⁹ See International Labor Organization, *Global Estimates of Child Labor – Results and Trends 2012-2016* 37 (Sept. 19, 2017), https://www.ilo.org/global/publications/books/WCMS_575499/lang--en/index.htm.

¹⁰ *Id.*

¹¹ The term “debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined. See 22 U.S.C. § 7102(7).

¹² “Peonage” is defined as “a condition of enforced servitude by which the servitor is compelled to labor against his will in liquidation of some debt or obligation, either real or pretended.” See 42 U.S.C. § 1994.



Source: Ian Urbina, *The Outlaw Ocean: Journeys Across the Last Untamed Frontier*

Cambodian migrants haul in the nets on a Thai-flagged fishing boat in the Gulf of Thailand.

STANDARD OF REVIEW

Under 19 C.F.R. §12.42 (e), if the Commissioner of CBP finds at any time that *information available reasonably but not conclusively* indicates that merchandise that violates Section 307's prohibition on forced labor is being, or is likely to be, imported into the United States, then he/she may issue a WRO. The low evidentiary threshold makes this remedy quite accessible. Organizations filing petitions need only show that the evidence at hand is sufficient for a reasonable person to conclude that there is forced labor in the production of the goods in question. Petitioners need not present comprehensive evidence that proves the use of forced labor.

Under the Tariff Act, the evidentiary threshold is low – petitioners need only submit evidence that 'reasonably, but not conclusively' proves the prevalence forced labor. This is a standard lower than 'credible evidence' or 'probable cause'.

WHAT EVIDENCE DO I NEED?

What evidence should advocates include in their petition to show that a good is 1) made with forced labor, and 2) imported into the United States? Advocates need not include every indicator or evidence type listed here, but *at a minimum* a petition must include **evidence substantiating both the elements of the law: menace of penalty and involuntariness.**



Menace of Penalty Examples

- Threats or violence against workers or workers' relatives;
- Restrictions on workers' movement;
- Debt bondage or manipulation of debt;
- Withholding of wages or other promised benefits;
- Withholding of valuable documents (such as identity documents or residence permits);
- Abuse of workers' vulnerability through denial of rights or privileges, threats of dismissal or deportation.

See ILO International Conference of Labor Statisticians, Measurement of Forced Labor (2018).



Involuntariness Examples

- Unfree recruitment at birth or through transaction such as slavery or bonded labor;
- Requirements that the worker perform a different job from that specified during recruitment without his or her consent;
- Abusive requirements for overtime or on-call work that were not previously agreed with the employer;
- Work in hazardous conditions to which the worker has not consented, with or without protective equipment;
- Work with substandard or no wages;
- Work under degrading living conditions linked to the job;
- Work for other employers than agreed;
- Work with a substantive change in job tasks than agreed;
- Work for longer period of time than agreed;
- Work with no or limited freedom to terminate work contract.

See ILO International Conference of Labor Statisticians, Measurement of Forced Labor (2018).

↓ Cambodian worker on a Thai fishing ship in the South China sea.



IMPORTING FREEDOM | THE HUMAN TRAFICKING LEGAL CENTER



Source for both images: Ian Urbina, The Outlaw Ocean: Journeys Across the Last Untamed Frontier

↑ Workers pack products at a tuna warehouse.

EVIDENCE OF FORCED LABOR

The ILO has developed eleven indicators of forced labor. In press statements on WROs issued in 2019, CBP explicitly referenced the ILO forced labor indicators in each WRO. The chart below includes the ILO indicators and the corresponding evidence for each.



Abuse of vulnerability

Any documentation or correspondence that shows the employer promised a certain immigration status or visa; any general evidence that shows a worker's vulnerability (e.g. if a country's immigration laws tie a worker's work permit to a specific employer)

Deception

Correspondence or contracts that show the employer promised a different job or salary

Intimidation and threats

Testimony and interviews with the workers or people who witnessed the threats; text messages or any recordings of threats

Abusive working and living conditions

Photos/video documenting conditions; physical evidence; medical evidence; witness testimony; inspector reports

Restriction of movement

Testimony and interviews with the workers or other witnesses; interviews with people who have witnessed limitations on the victims' freedom of movement; evidence that the workers are locked in dormitories during non-work hours; evidence that the workers live on the premises and the entry/exit is controlled by guards

Isolation

Testimony and interviews with the workers or other witnesses

Retention of identity documents

Testimony and interviews; photos of where documents are held; statements from witnesses who observed document seizure or retention

Excessive overtime

Testimony or interviews; video footage (CCTV) of people working; texts/emails/correspondence between workers; time clock entries

Withholding of wages

Financial records; salary and payroll records; pay stubs; credits/debits into the workers' bank accounts; bank records showing payments and deductions from worker accounts; records of funds transfers to family in country of origin

Physical and sexual violence

Medical records; police reports; witness testimony; photographs of injuries

Debt bondage

Financial records; emails, texts and correspondence; contracts; IOUs; signed debt documents

EVIDENCE THAT A GOOD IS IMPORTED INTO THE UNITED STATES

Petitions must show that there is a reasonable belief that a good made with forced labor is entering the United States.

While specific shipment and product information is helpful, failure to provide this information in a petition is not fatal.

CBP has access to its own databases to investigate allegations submitted by petitioners. At a minimum, petitioners should provide information sufficient to enable CBP to identify a good in the CBP internal databases.

The following types of information (see next page), while not required, are helpful. This information may be available through subscription databases like [Panjiva](#) and [Importer Genius](#), as well as publicly available customs entries.



Detailed description of good or sample

Specific product, commodity – provide physical description, characteristics:

- Provide tariff classification number, if known
- Provide any additional information documenting product identity, uniqueness, commercial value/use
- Provide any information regarding packaging, marking, numbering, quality control standards, health-related certification or other identifying characteristics

Production method, means – mining, manufacture, other (agriculture):

- Provide any additional information about production process and relationship to performance of labor, such as seasonal, small scale/artisanal, tenant/sharecropper, labor-intensive/unmechanized, assembly line/in home piecework

Related up/downstream supply chain – is the product sourced from, further processed by another supplier?

- Provide any information on links to related industries with history of forced labor, such as sourcing, outsourcing, further processing
- Provide any information to establish origin and supply chain traceability

Location of production – field, factory, mine, other:

- Provide any information to correlate product to specific location
- Provide information establishing time of production, such as seasonal harvest, favorable market conditions, production cycle needs, etc.
- Provide information on export processing zones with differential production and market access standards, if applicable

Producer - name, business, registration, owner(s), investor(s), relationship to U.S. entities:

- Provide any information to identify the legal entity responsible for the production of product, including any information on the entity's business status/standing and any key commercial relationships relating to sale and export of products to the U.S.
- Provide information on the relationship between the producer and the producing government. Does this relationship have any implications for production costs and methods?

Commercial documentation of export transaction – how did the product get from production site to U.S.?

- Purchase information: Provide any invoices, purchase orders, contracts, letters of credit, insurance, consignor/broker data, etc.
- Export information: Provide any information on shipment, including bills of lading, port of loading/final embarkation for U.S. port, shipping records or other information showing date and time of shipment
- Import information: Provide any information of U.S. port of entry, Customs broker, other shipment facilitator, including Customs entry documentation if available (shipment value, weight, consignor/broker name and address, purchaser name and address)

Additional helpful information:

- Country share of global production, country share of U.S. market, U.S. industry/U.S. purchasers of product, U.S. producers of product

SECONDARY AND CORROBORATING EVIDENCE

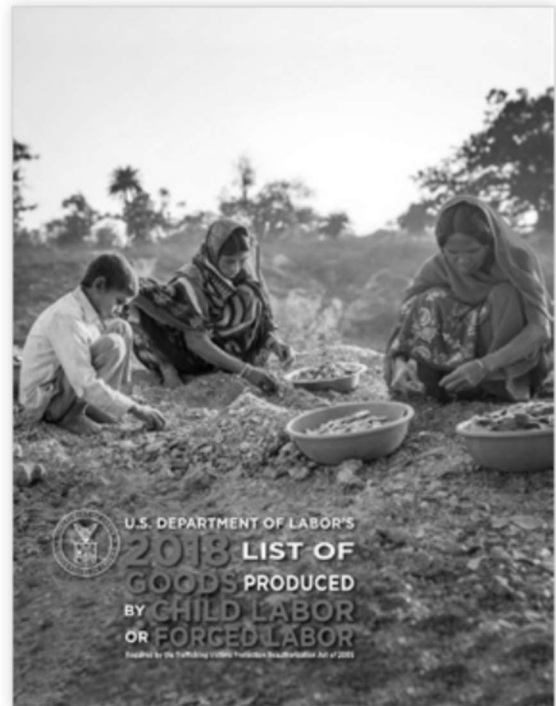
The Section 307 petition process is designed to trigger comprehensive investigations by CBP and its designated forced labor team. Petitioners should provide evidence that can be corroborated by CBP.

In addition to primary evidence, corroborating evidence is important to bolster the allegations in the petition.

It is useful to cite reports published by international organizations, U.S. domestic agencies, Congressional committees, investigative media reports, and non-governmental organizations to corroborate specific allegations of forced labor. Information on forced labor in that particular sector, country, or region is also useful. A list of suggested sources is included in [Appendix A](#).

US sportswear traced to factory in China's internment camps

By DAI KE KANG, MARTHA MENDOZA and YANAN WANG December 19, 2018



U.S. DEPARTMENT OF LABOR'S
**2018 LIST OF
GOODS PRODUCED
BY CHILD LABOR
OR FORCED LABOR**
Issued by the Publishing Office, Washington, DC 20540

Global Estimates of Modern Slavery



FORCED LABOUR AND FORCED MARRIAGE



Exploitation in focus

**The children labouring in
Malawi's fields for British
American Tobacco**

DRAFTING A PETITION

CBP must be presented with information that would lead it to *reasonably believe* that goods coming – or likely to come – into the United States were made using forced labor. The submission procedure regarding forced labor allegations is detailed under 19 C.F.R. §12.42, which is the enabling provision of Section 307 of the Tariff Act. Although CBP has not specified what form the submission should take, it is recommended that allegations of a Section 307 violation should be reduced to a formal petition addressed to the CBP Commissioner.

CBP does not require a particular format for petitions, but does have several requirements for content:

Specifically, a petition shall contain, or be accompanied by:

1. A full statement of the reasons for the belief that the goods are made with forced labor;
2. A detailed description or sample of the merchandise; and
3. All pertinent facts obtainable as to the production of the merchandise abroad.

A detailed Submission Template is located in Appendix B. At a minimum, it is recommended that the following information be included in your petition:

Overview statement:

An overview should include a brief summary of the entire petition that captures the commodity or merchandise sought to be excluded by CBP, the country of origin, details of U.S. importers involved (if available), name of the producer of the goods abroad, the allegations of forced labor, and a description of the evidence, including its source and limitations.

Previous Section 307 petitions include:

[Cotton from Uzbekistan \(2013\)](#)

[Cotton from Turkmenistan \(2016\)](#)

[Palm Oil from Malaysia \(2019\)](#)

[Cocoa from Côte d'Ivoire \(2020\)](#)

Description of the goods:

This portion of the petition should describe the specifics of the commodity to be prohibited, such as: product features, industry involved, method of extraction or manufacture, whether raw material or finished product, shipment details, and details of the producer.



Practice Pointer:

A photo of a label on a box in a factory operated by the producer can reveal information needed to substantiate the petition. For example, an address label can provide information about the goods, their destination, and their original source.

All pertinent facts about the overseas production of the goods:

The petitioning organization or individual need only prove ‘reasonably’ that workers are being made to work i) involuntarily and ii) under a menace of penalty.

Evidence of forced labor should be linked to a specific production facility, farm, or mine, if possible. Direct testimonies of affected workers, pay stubs, email correspondence, sworn witness affidavits, audit reports, medical records, and police reports are examples of the potential evidence. However, in the absence of such accounts, petitioners can resort to creative evidence collection tactics. Petitioners who obtained the 2019 WRO against a Chinese apparel manufacturer used satellite photography and media reports.

Where it is impossible to collect direct victim testimony due to a hostile government or fear of retaliation, organizations can use aerial photography, drones, satellite imagery, photos, or videos obtained from social media that raise red flags about a certain production facility.

The Human Trafficking Legal Center can provide technical assistance from the initial stages of evidence collection to the final stages of drafting and filing the finished petition. For more information please contact info@htlegalcenter.org or visit www.htlegalcenter.org.

It is useful to corroborate primary evidence gathered with authoritative secondary sources such as U.S. government agency reports. The Department of Labor’s annual report on Goods Produced with Forced Labor or Child Labor and Findings on the Worst Forms of Child Labor, the Department of State’s annual Trafficking in Persons Report, Congressional reports, UN, ILO reports and other NGO resources are all useful to corroborate allegations. These sources bolster the petition’s merit. These sources can also serve to make a policy case for the issuance of a particular WRO.

It is helpful to contextualize the goods in the country’s labor market. Useful information can include domestic and global market share of the tainted goods, revenue from exporting the goods, or local reporting on any incidents in the facilities operated by the producer/importer.



Practice Pointer:

The fact that a worker is restricted from leaving factory or farm premises may not, by itself, amount to forced labor under § 307. Similarly, the fact that a recruiter did not fulfill his/her promise of a well-paid, decent job may be insufficient to prove forced labor. However, when this restriction of movement or deception is combined with threats of physical violence, psychological threats, non-payment of wages or a loss of rights or privileges (such as a promotion, transfer, or access to new employment), it is possible to conclude that conditions of forced labor exist in a particular case. **For additional information, see the [ILO Q&A on Business and Forced Labor](#).**¹³

¹³ ILO Q & As on Business and Forced Labor: https://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_FL_FAQ_EN/lang--en/index.htm. Also see ILO Indicators of Forced Labor (2012): https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf.



A satellite photo taken over Hotan (China) in 2018 shows that a Uighur internment camp (center) had expanded.

SAFETY CONSIDERATIONS AND CONFIDENTIALITY

Advocates on the frontlines of corporate accountability are increasingly at risk of retaliation by corporate actors and governments. The safety of researchers and forced labor victims is a critical consideration when developing and submitting a petition.

Organizations and individuals should exercise caution in gathering evidence. Care should be taken to protect the identity and safety of affected workers, investigators, and potential witnesses in the evidence-gathering process. Petitioning organizations must adhere to safety protocols when handling non-public information in order to ensure the privacy and protection of affected workers as well as witnesses.¹⁴

Additional confidentiality considerations can arise once a petition is submitted. According to CBP's website, in most cases, the Privacy Act, the Trade Secrets Act, and CBP regulations prevent the agency from disclosing information shared by a petitioner, as well as research findings conducted as part of any investigations triggered by the petition.¹⁵ These statutes and regulations protect submissions from Freedom of Information Act (FOIA) requests for disclosure.

CBP does not disclose the filing of petitions. The agency's internal decision-making process is not publicly shared, but the agency does occasionally provide some information as part of its announcement of a decision to issue a Withhold Release Order.

Although it has not yet occurred, it is possible that CBP could be sued. In the case of a civil suit against CBP brought by a supplier or importer, those bringing suit would likely demand information from CBP on the evidence presented in the Section 307 submission as part of the discovery process. CBP may be compelled by a court to provide this information in such a lawsuit.

Recommended security measures:

- Redacting names/identifying information;
- Petitioning anonymously, using the help of another NGO based in the U.S.;
- Using VPN to mask IP addresses;
- Using encrypted email services, such as Proton Mail;
- Using secure messaging platforms, such as Wire, Signal;
- Submitting physical copies to CBP;
- Using encrypted phone and other communication services¹⁶

Filing a petition anonymously is possible. But this may hamper CBP efforts to obtain more information on the matter. Another option is to work with established labor rights organizations in the United States to submit petitions to CBP using these organizations' contact details. This is recommended if a local organization confronts pressing security concerns.

¹⁴ Examples of useful resources include: OHCHR's Manual on Human Rights Interviewing: Protection of Victims, Witnesses and Other Cooperating Persons <https://www.ohchr.org/Documents/Publications/Chapter14-56pp.pdf>, WHO Ethical And Safety Recommendations For Interviewing Trafficked Women https://www.who.int/mip/2003/other_documents/en/Ethical_Safety-GWH.pdf.

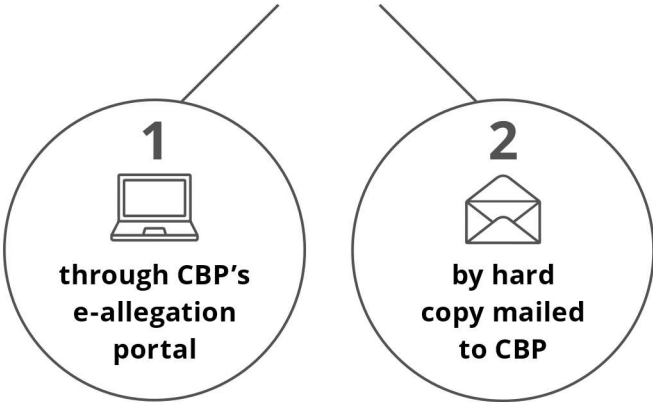
¹⁵ See e-Allegations FAQs <https://www.cbp.gov/trade/e-allegations/faqs>.

¹⁶ Also See ILO Guidelines Concerning the Measurement of Forced Labor, 20th International Conference of Labor Statisticians (2018) for more information on data sources and data collection strategy, including ethical considerations for interviewers. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms_648619.pdf.

HOW TO SUBMIT A PETITION

Anyone may submit information to CBP on the use of forced labor at any stage of the manufacture, processing or mining of goods imported into the United States. There are no geographical limits to the reach of Section 307. Any organization or individual may petition CBP.

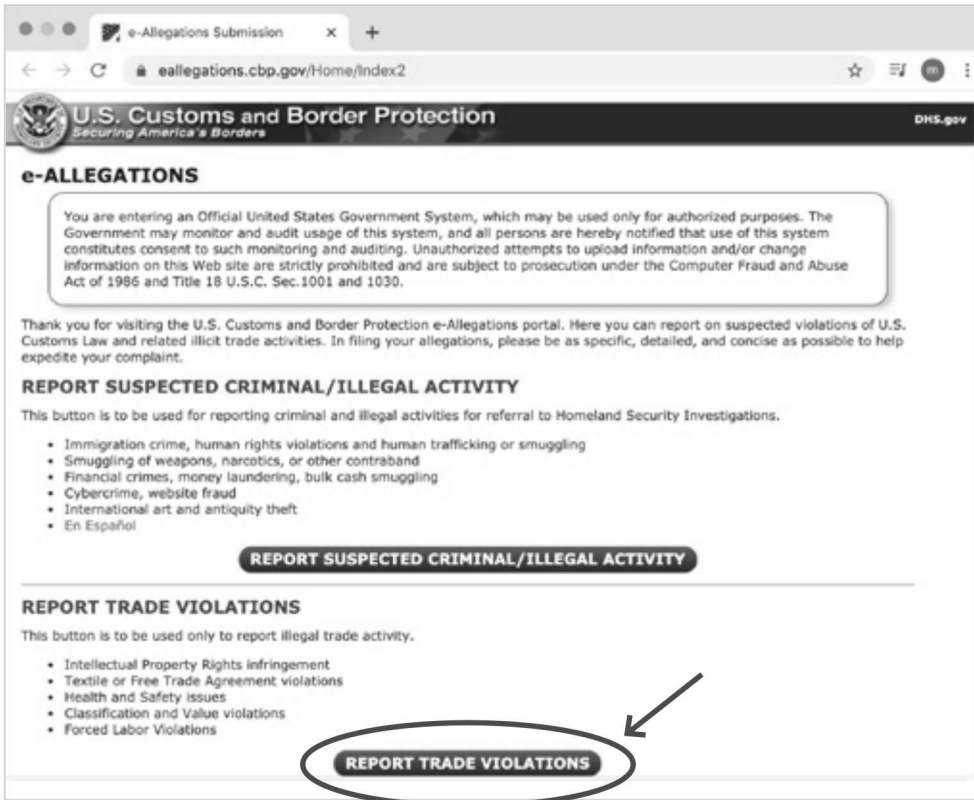
There are two ways to submit a petition:



1 The e-allegation portal requires the following information:

- Type of Violation (this portal handles all trade allegations, so it is necessary to specify that the alleged violation falls under Section 307 of the Tariff Act)
- Description of the Violation
- The 'Violator' Product (the goods in question)
- Country of Export
- Product Category (HTSUS)
- Name of Violator

The e-allegation information intake page contains an attachment option where one can upload up to five document files (maximum size of 2MB each) to support the allegations. If the information exceeds these limits it must be submitted in hard copy. The e-allegation link is: <https://eallegations.cbp.gov/Home/allegation>.



2 In case of hard copy, the submission should be addressed to the CBP Commissioner and mailed to:

Hardcopy submissions must provide an email address so that CBP can email a confirmation number. Petitioners should consult the following sites for additional guidance before making a submission: <https://www.cbp.gov/trade/programs-administration/forced-labor> and <https://www.cbp.gov/trade/trade-community/e-allegations/e-allegations-faqs>.



WHAT HAPPENS NEXT?

Upon receipt of a petition, CBP reviews the information submitted to check if it meets standards specified in CBP regulations. The mere receipt of a petition is insufficient to trigger a WRO. If adequate evidence of forced labor is presented, it will trigger more comprehensive investigations by the agency, including additional fact-finding to corroborate the allegations. This typically takes six months or more. The investigation may include further contact with the party making the submission (if named) and any corroborating sources identified. *See* 19 C.F.R. §12.42(d).



If the information reasonably but not conclusively indicates that goods produced using forced labor are being or are likely to be imported into the United States, CBP will issue a withhold release order (WRO) prohibiting the entry of goods at all U.S. ports of entry.

Although petitioners may seek an update on their petition from CBP's Forced Labor Division, the information that the agency can share may be limited. However, if the allegations are insufficient to warrant a WRO, CBP will notify the party and may point out the defects in the petition.¹⁷

U.S. regulation 19 C.F.R § 12.42(e) provides details. Shipments subject to a WRO are detained at the U.S. border. A current list of WROs can be found on CBP's forced labor page.¹⁸

Affected companies typically have two options – they can either re-export the detained shipments to another port outside the United States or they can contest the WRO within 3 months. *See* 19 U.S.C. § 1307.

To obtain a release of the detained goods into the United States, the importer has ninety days to provide evidence of the goods' origin, and show due diligence efforts to determine that the goods were not produced with forced labor, such as supply chain audit reports. *See* 19 C.F.R. § 12.43.¹⁹ CBP expects importers to know their supply chains, including where and how their products are made, from raw material to finished goods.

If the evidence submitted by the importer is deemed satisfactory to show that forced labor was not used to make the goods, CBP may release the detained goods and allow entry into the U.S. market. If the importer fails to successfully contest the WRO or fails to re-export the tainted goods, CBP may continue to exclude the goods from the U.S. market.

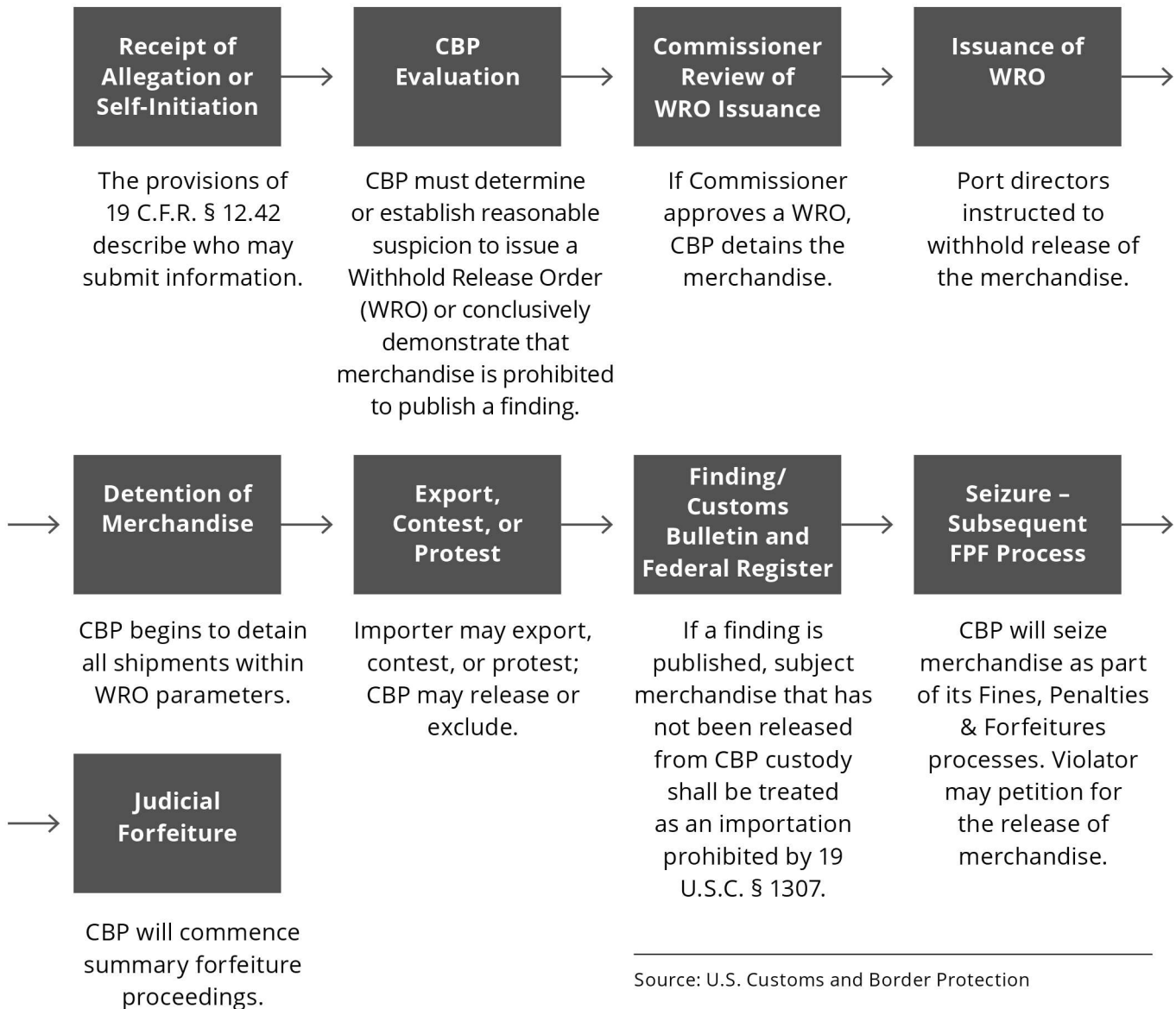
¹⁷ Forced Labor Frequently Asked Questions (FAQs), <https://www.cbp.gov/trade/programs-administration/forced-labor/frequently-asked-questions>.

¹⁸ *Withhold Release Orders and Findings*, U.S Customs & Border Protection, <https://www.cbp.gov/trade/programs-administration/forced-labor/withhold-release-orders-and-findings>.

¹⁹ *See* CBP Factsheet on Forced Labor Enforcement, Withhold Release Orders, Findings, and Detention Procedures: <https://www.cbp.gov/sites/default/files/assets/documents/2016-Aug/Fact%20Sheet%20-%20Forced%20Labor%20Procedures.pdf>.

On rare occasions, WROs may be revoked or modified. This can occur if evidence shows that the subject goods were not made with forced labor, are no longer being produced with forced labor, or are no longer being, or likely to be, imported into the United States. This occurred in 2020, when CBP reversed two WROs - one on rubber gloves made in Malaysia²⁰ and the other on tuna from a shipping vessel called Tunago No. 61.²¹

If CBP finds conclusive evidence that the goods were produced with forced labor, it will publish a formal finding in the Customs Bulletin²² and the Federal Register.²³ Once a finding is published, CBP has the power to seize the remaining goods and commence forfeiture proceedings. It is very rare for CBP to issue findings - the agency has issued only 6 findings since 1930.



20 See CBP Press Release (Mar. 24, 2020), <https://www.cbp.gov/newsroom/national-media-release/cbp-revokes-withhold-release-order-disposable-rubber-gloves>.

21 See CBP Press Release (Apr. 1, 2020), <https://www.cbp.gov/newsroom/national-media-release/cbp-revokes-withhold-release-order-imports-tuna-harvested-tunago-no>.

22 See CBP Customs Bulletin and Decisions, <https://www.cbp.gov/trade/rulings/bulletin-decisions>.

23 The evidentiary threshold for a 'finding' is 'conclusive evidence or probable cause', which is higher than the standard for a WRO i.e., 'reasonable, but not conclusive'. 19 C.F.R. § 12.42(f).



↑ A worker in the garment industry in India.



↑ Vietnamese crew arrested and photographed by Indonesian police on the back of the Macan, an Indonesian patrol vessel.

WHAT WORKS?

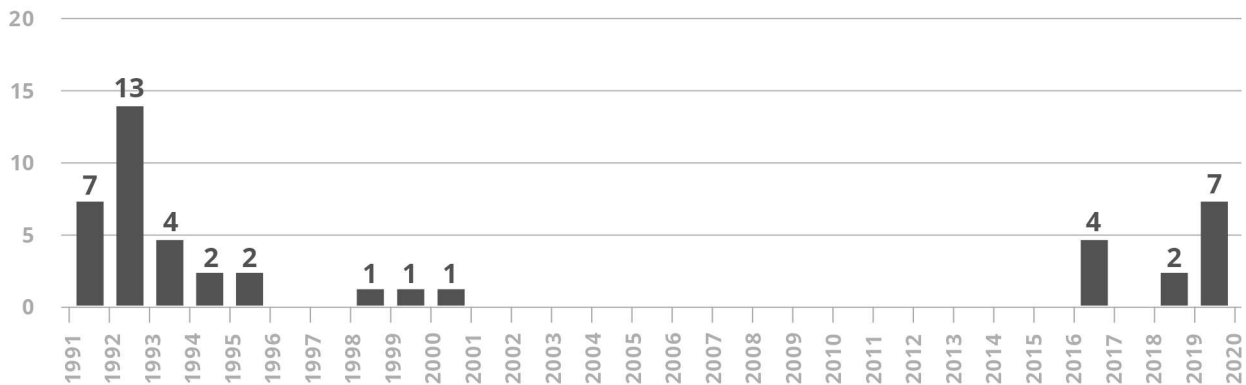
Since the law was amended to close a loophole²⁴ in 2015²⁵, there has been considerable uptick in the issuance of WROs by CBP. In fact, in the three months following the Trade Facilitation and Trade Enforcement Act (TFTEA)'s entry into force, three back-to-back WROs were issued. Between March 2016 and May 2020, CBP issued a total of 15 WROs against different goods. These numbers are in stark contrast to the 33 WROs total issued from 1930 to 2015. One of the major reasons for this dismal enforcement before 2015 was the crippling effect of the consumptive demand loophole, which rendered most petitions and evidence of forced labor moot.

No longer fettered by consumptive demand considerations, CBP issued seven forced labor WROs in 2019. What can be learned from these successful WROs? This section provides a brief analysis of factors leading to a successful WRO petition and factors that may pose challenges.



The table on page 30 identifies the forced labor indicators present in each case. For in-depth analysis of recent WROs, see individual case studies in [Appendix D](#).

Number of Withhold Release Orders (WROs) issued per year since 1990



Source: Congressional Research Service (CRS) and Customs and Border Protection (CBP). CBP issued additional WROs not captured on the graph in 1953 and 1958.

24 The 'consumptive demand' exception to Section 307 allowed goods to be imported, even if made using forced labor, as long as the U.S. domestic production of the goods was insufficient to meet the demand. The Obama Administration finally removed the 'consumptive demand' exception through the passage of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), effectively banning any goods made using forced labor from entering the U.S. commerce.

25 Trade Facilitation and Trade Enforcement Act, 2015, Title IX, Sec. 910. *Elimination of consumptive demand exception to prohibition on importation of goods made with convict labor, forced labor, or indentured labor; report*, <https://www.congress.gov/bill/114th-congress/house-bill/644/text>.

Recent Enforcement Actions by U.S. CBP



In each WRO, CBP relied on ILO indicators of forced labor, correlating the evidence received by the agency to the different indicators of forced labor. In almost all of the instances in which CBP issued a WRO, with the exception of bone black from a Brazilian company, there was prior significant international media coverage or NGO attention on the commodity. Exposés and investigations had already revealed the abuse.

Most of the allegations of forced labor involved direct worker testimonies or witness accounts. The only exception is the WRO issued against garments produced by the Hetian Taida Apparel Company in China. Due to governmental restrictions in Xinjiang, advocates could not collect direct worker testimony. In the absence of this, the Worker Rights Consortium collected and analyzed extensive satellite imagery.²⁶

In 2018, CBP issued a WRO against a long-haul tuna fishing vessel called Tunago No. 61. The vessel was particularly notorious for abuses against crewmembers. The International Transport Workers Federation, the Environmental Justice Foundation, and Greenpeace had reported abusive and unsanitary living and working conditions aboard the vessel, including physical violence, intimidation, death threats, abandonment and debt bondage. CBP revoked the WRO in 2020.

The products and regions covered by the WROs have come under prior scrutiny by a U.S. government agency (such as the Department of Labor or Department of State) or a Congressional Committee (for example, the Congressional Executive Commission on China). CBP appears to prefer significant corroboration of the evidence by U.S. government or UN reporting. These sources can bolster a stand-alone NGO report.

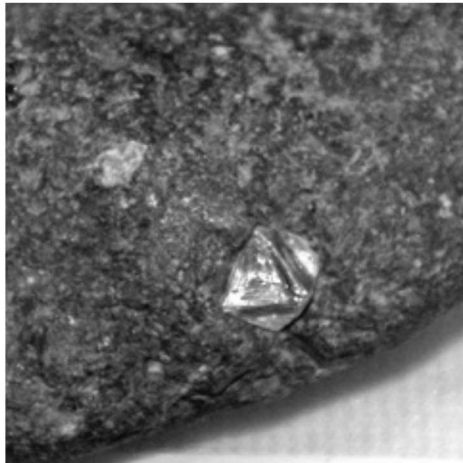


Vietnamese crew arrested by Indonesian police.

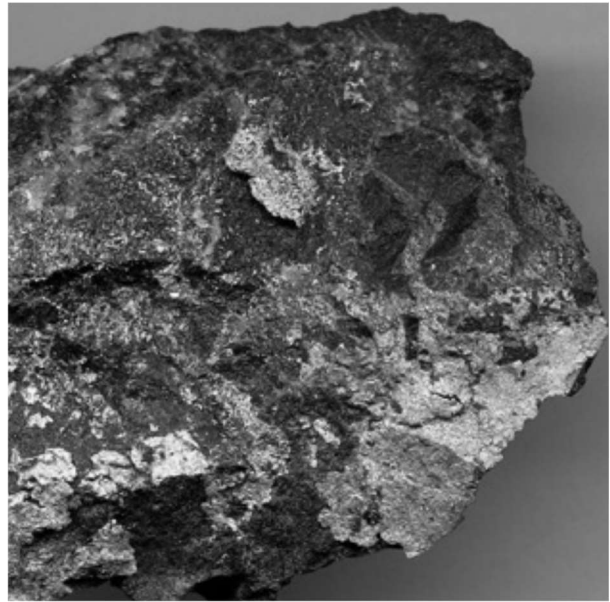
²⁶ Worker Rights Consortium, *Factory Assessment Hetian Taida Apparel Co. Ltd. China: Findings Recommendations and Status* (June 24, 2019), <https://www.workersrights.org/factory-investigation/heitan-taida-apparel-co-ltd/>.

Generally, WROs are not issued against entire product lines from a country. However, in certain instances, possibly due to state complicity in forced labor practices, such as in the DRC and Turkmenistan, CBP has issued WROs targeting all output from an entire country or region.

The WRO against artisanal gold and diamonds from DRC and Zimbabwe, respectively, involved the presence of armed guards and illegal mining syndicates. CBP cited evidence that showed that there was restriction of movement under threats of violence in both cases. CBP also cited other indicators of forced labor, such as debt bondage. For example, evidence showed that once the workers entered the mines, they could not leave.



The sizeable global market share of goods such as Malawian tobacco and Malaysian rubber gloves made it easy to establish links to the United States. However, if production and export capacities of the manufacturer and/or the country in question are small, identification of specific shipments entering the United States could be decisive for CBP's decision making.



Recent Enforcement Actions and Corresponding Forced Labor Indicators

Product	Country	Producer	Indicators of Forced Labor found by CBP in each case	
Apparel/ Garments	China (Xinjiang)	Hetian Taida Apparel Company Ltd.	Forced work Excessive hours Isolation Abuse of vulnerability	Little or no payment Restriction of movement Physical and sexual violence
Disposable Rubber Gloves	Malaysia	WRP Asia Pacific	Indicators not specified by CBP, but forced labor documented by media, civil society and government investigations. The Malaysian Department of Labor, for example, found evidence of non-payment of wages, delay in overtime payment, and illegitimate deductions. Note: CBP reversed this WRO on March 24, 2020.	
Gold mined in artisanal small mines	Democratic Republic of Congo (DRC)	All artisanal gold from entire country of DRC	Presence of armed guards in 67-77% of mines indicating forced labor through	intimidation and restriction of movement. Sexual violence Debt bondage
Artisanal diamonds	Zimbabwe	Marange Diamond Fields	Police, military and other security in charge of guarding the mines form illegal mining syndicates. They allow artisanal miners access to the diamond mines in exchange for bribes and a share of the loot. Once the miners enter these syndicates, they are prevented from leaving under threats of physical and sexual violence and other forms of punishment like arrest for trespassing.	
Bone Black (activated charcoal)	Brazil	Bonechar Carvao Ativado do Brazil Ltd. (Maringa, Brazil)	Abusive living and working conditions Restriction of movement	Isolation Debt bondage
Tobacco	Malawi	Nearly all tobacco grown in the country	CBP press release only mentions that it found evidence of forced labor and forced child labor. However, forced labor and child labor well documented by international media outlets and other U.S. government agencies (U.S. Department of Labor and Department of State).	
Seafood Tuna and Tuna products	N/A	A shipping vessel – Tunago No. 61 (owned by the Tunago Fishery Co., Ltd., based in Vanuatu)	Indicators not specified by CBP but forced labor aboard the vessel has been well documented since 2006. Note: CBP reversed this WRO on April 1, 2020.	
Hair Products	China (Xinjiang)	Hetian Haolin Hair Accessories Co. Ltd. (Haolin)	Not yet specified by CBP. Previous media reports suggest that Haolin is likely involved in forced labor. Haolin is also registered in an industrial park in Xinjiang’s Hotan Lop County, where previously, hundreds of detainees were photographed listening to a de-radicalization speech.	
Seafood	N/A	A shipping vessel – Yu Long No. 2 (Taiwanese flagged)	Not yet specified.	

USING THE TARIFF ACT IN YOUR STRATEGIC CAMPAIGN

The U.S. Tariff Act is a limited tool. Goods are only blocked from U.S. markets and can be re-exported to other countries. In order to have maximum impact, advocates should develop a Section 307 petition as part of a larger campaign to eradicate forced labor in a particular supply chain.

- Create a worker-centric campaign with significant worker buy-in.
- Deliberate the pros and cons of a public campaign.
- Consider the impact of a WRO on workers, including job security and possible retaliation.
- Advocate for legislative changes to push for import controls to address forced labor in supply chains.
- Use the Tariff Act as part of a broader campaign to press for mandatory disclosure of supply chains down to individual farm/facility level.

Worker Voices: In developing a petition, be attuned to worker voices. If you don't directly work with impacted workers, are you collaborating with a frontline NGO that does? Does your petition adequately reflect a worker-centered approach? Ensuring that you have worker buy-in before submitting a petition is critical.

Public vs. Private Campaign: Launching a public media campaign will depend on several factors, with safety considerations at the forefront. For a more detailed discussion of safety considerations see "Safety Considerations and Confidentiality" above. In addition, advocates must consider their existing campaigns. For example, an NGO working closely with corporate actors on prevention efforts may wish to submit a petition without an accompanying media campaign. On the other hand, a public campaign can be used as leverage, putting a corporate actor on notice that CBP has received allegations of forced labor in their supply chain. Additionally, even if the entire Section 307 petition cannot be shared publicly, posting a summary of the allegations could help raise public awareness of the issue, putting pressure on CBP to act.

Minimize Fallout: Civil society groups must consider the impact a WRO could have on workers. Petitioners should have a remediation or contingency plan to prevent harm to workers. For example, three months after the WRO against the Malaysian glove manufacturer was issued, the company announced suspension of operations, leaving many workers in jeopardy. Soon after, the glove manufacturer received an emergency equity infusion from a parent company to facilitate payments owed to workers.²⁷

²⁷ *Glovesmaker WRP Get Emergency Funds to Pay Workers*, Malaysiakini, Jan. 16, 2020, <https://www.malaysiakini.com/news/505695>.

Legislative Campaigns: Although the Tariff Act only affects U.S. markets, consider coordinating similar campaigns in other countries. Some countries have ad-hoc import bans. Others have passed legislation similar to the Tariff Act. Following CBP's WRO against a Malaysian glove manufacturer, Australian civil society groups called on their government to follow suit. Advocates sought to block glove shipments imported by an Australian company after it was discovered that the company had ties to the Malaysian glove manufacturer.²⁸ In the United Kingdom, an NGO sued the government to halt the importation of cotton harvested with state-sponsored forced labor in Uzbekistan.²⁹

Monitoring National Responses: In some cases, a WRO impacts an industry critical to the national economy, as was the case of the WRO against all tobacco from Malawi. In the aftermath of the WRO, the government of Malawi announced that it would begin cultivation of Cannabis to offset the economic damage caused by the WRO against the tobacco industry. The government planned to eventually replace tobacco as Malawi's major cash crop.³⁰ Despite government promises to disband the tenancy farming system that led to exploitative labor practices in the first instance, it remains to be seen if forced labor practices will simply be transplanted to a new crop. Advocates should keep a close watch on developments and continue to push for accountability.

Pressing for Mandatory Disclosure of Supply Chains: The use of the Tariff Act prohibition can be part of a larger strategy to hold corporations accountable for forced labor in their supply chains. Groups can use the Tariff Act to push for greater supply chain transparency. In fact, other civil and criminal penalties against the corporation can be pursued in tandem with the submission of a Section 307 petition to CBP. Corporations cannot be allowed to hide behind the bad practices of their suppliers and vendors, including those at the bottom of the supply chain.



Practice Pointer:

Corporate Accountability Lab (CAL) and International Rights Advocates (IRA) recently filed a 307 petition³¹ on Valentine's Day, 2020 to block cocoa from Côte d'Ivoire. The petition alleged the use of forced child labor by leading cocoa companies. Although the petition was filed under Section 307, CAL and IRA requested that CBP insist on disclosure of cocoa supply chains down to farm levels by the named cocoa companies. Facing pressure from civil society, CBP sent a 25-part questionnaire to leading cocoa companies, asking them to provide GPS coordinates for all suppliers, remediation measures if and when forced child labor had been identified, a list of imports into the United States from 2017-19, and audit reports.³² These actions show promise for requesting creative enforcement remedies under Section 307.

28 Nassim Khadem, *Australia Urged to Follow US, Ban Shipments of Rubber Gloves over Forced Labour Concerns*, ABC, Oct. 13, 2019, <https://www.abc.net.au/news/2019-10-14/australia-urged-to-ban-import-of-gloves-from-ansell-supplier-wrp/11594690?pfmredir=Sm>.

29 Annie Kelly, *Lawyers challenge UK imports of 'slavery-tainted' Uzbek cotton*, Guardian, Oct. 21, 2019, www.theguardian.com/global-development/2019/oct/21/lawyers-challenge-uk-import-of-slavery-tainted-uzbek-cotton.

30 Alice McCool, *Malawi Legalizes Cannabis Amid Hopes of Fresh Economic Growth*, Guardian, Feb. 28, 2020, <https://www.theguardian.com/global-development/2020/feb/28/malawi-legalises-cannabis-amid-hopes-of-fresh-economic-growth>.

31 A petition submitted to CBP by the Corporate Accountability Lab and International Rights Advocates in February 2020 proposed an alternative remedy, requesting that CBP require companies to demonstrate they had changed their practices within 180 days of the petition or face an import ban, see <https://static1.squarespace.com/static/5810dda3e3df28ce37b58357/t/5e4607e90bd7ed452a1c8c6e/1581647858374/FINAL+307+PETITION+WITH+EXHIBITS.pdf>.

32 Ange Aboa, et al., *Exclusive: U.S. Investigates Child Labor in Ivory Coast Supply Chains*, Reuters, Mar. 30, 2020, <https://www.reuters.com/article/us-cocoa-ivorycoast-childlabor-exclusive/exclusive-u-s-investigates-child-labor-in-ivory-coast-cocoa-supply-chains-idUSKBN21H0QW>.

APPENDIX A: Additional Resources

U.S. GOVERNMENT SOURCES

U.S. DEPARTMENT OF LABOR

List of Goods Produced by Child Labor or Forced Labor

Link: <https://www.dol.gov/agencies/ilab/resources/reports/child-labor>

List of Products Produced by Forced or Indentured Child Labor

Link: <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-products>

Findings on the Worst Forms of Child Labor

Link: <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings>

Sweat and Toil: Child Labor, Forced Labor, and Human Trafficking Around the World (mobile application)

Link: <https://www.dol.gov/general/apps/ilab>

U.S. DEPARTMENT OF STATE

Annual Country Reports on Human Rights Practices

Link: <https://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/country-reports-on-human-rights-practices/>
(Refer to the specific section on “Reporting on Workers’ Rights.”)

Annual Trafficking in Persons Reports (TIP)

Link: <https://www.state.gov/trafficking-in-persons-report/>

U.S. DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control Sanctions Programs and Country Information

Link: <https://www.treasury.gov/resource-center/sanctions/programs/pages/programs.aspx>

U.S. TRADE REPRESENTATIVE

Generalized System of Preferences (GSP) Ongoing Country Reviews

Link: <https://ustr.gov/issue-areas/preference-programs/generalized-system-preferences-gsp/current-reviews/ongoing-country>

U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Information on Artisanal Mined Gold and Efforts to Encourage Responsible Sourcing in the Democratic Republic of the Congo

Link: <https://www.gao.gov/assets/690/686745.pdf>
(For more reporting, see <https://www.gao.gov/reports-testimonies/>)

CONGRESSIONAL RESEARCH SERVICE

Publications on Forced Labor

Link: <https://crsreports.congress.gov/search/#/?termsToSearch=Forced%20Labor&orderBy=Relevance>

CONGRESSIONAL EXECUTIVE COMMISSION ON CHINA

Annual Reports

Link: <https://www.cecc.gov/publications/annual-reports>

INTERNATIONAL ORGANIZATION SOURCES

INTERNATIONAL LABOR ORGANIZATION

Forced Labor Convention, 1930 (No. 29)

Link: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

Protocol of 2014 to the Forced Labour Convention, 1930

Link: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029

Guidelines Concerning the Measurement of Forced Labor (2018)

Link: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms_648619.pdf

Indicators of Forced Labor (2012)

Link: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

Publications on Forced labor

Link: <https://www.ilo.org/global/topics/forced-labour/publications/lang--en/index.htm>

UNITED NATIONS

Security Council Sanctions

Link: <https://scsanctions.un.org/fop/fop?xml=htdocs/resources/xml/en/consolidated.xml&xslt=htdocs/resources/xsl/en/consolidated.xsl>

SUPPLEMENTAL SOURCES

Mentioned below is a non-exhaustive list of organizations working on forced labor in supply chains.

Australian Strategic Policy Institute

Link: <https://www.aspi.org.au>

Cotton Campaign

Link: <http://www.cottoncampaign.org>

Electronics Watch

Link: <https://electronicswatch.org>

Greenpeace

Link: <https://www.greenpeace.org>

Human Rights Watch

Link: <https://www.hrw.org>

International Labor Rights Forum

Link: <https://laborrights.org>

International Trade Union Confederation

Link: <https://www.ituc-csi.org>

Solidarity Center

Link: <https://www.solidaritycenter.org>

Verité

Link: <https://www.verite.org>

Responsible Sourcing Tool developed by Verité and its partners

Link: <https://www.responsiblesourcingtool.org>

Worker Rights Consortium

Link: <https://www.workersrights.org>

For more information, please visit www.htlegalcenter.org or contact info@htlegalcenter.org.

APPENDIX B: Recommended Submission/ Petition Template

Attn: Forced Labor Division
Trade Remedy Law Enforcement Directorate
Customs and Border Protection
U.S. Department of Homeland Security
1331 Pennsylvania Ave, N.W.
9th floor, Mailstop #1142
Washington, D.C. 20229
United States

Date:

**FORMAL SUBMISSION TO U.S. CUSTOMS AND BORDER PROTECTION TO
EXCLUDE IMPORTS MADE USING FORCED LABOR UNDER SECTION 307 OF THE
U.S. TARIFF ACT, 1930 (19 U.S.C. §1307)**

SUBMITTED UNDER THE REQUIREMENTS OF 19 C.F.R § 12.42.

SUBMITTED BY [Individual/ Organization Name and Contact Details³³]

I. OVERVIEW OF THE SUBMISSION:

This petition is submitted pursuant to Section 307 of the Tariff Act (19 U.S.C. §1307) to request that U.S. Customs and Border Protection issue a Withhold Release Order to halt the importation of [NAME COM-MODITY] into the United States.

It is also helpful to provide at the outset of the submission:

1) An executive summary of the complaint:

- The commodity alleged to be tainted with forced labor;
- The commodity's country of origin;
- The U.S. importer alleged to be importing the commodity.

2) A summary of the evidence presented in the submission, including sources and limitations:

- Evidence used to substantiate forced labor and the link to U.S. imports.
- Information on how the evidence was obtained. Methods may include first-hand accounts through interviews of workers and witnesses, satellite imagery, photographs from site visits, investigative media reports, official government accounts, customs records, commercial and other databases, international organizations, NGO reports, company documents/contracts of employment, e-mail correspondence, and any other documentation.

³³ Providing an e-mail is useful for communication with CBP. CBP may confirm receipt by email and may send follow-up requests.

- Information on the limitations of the evidence. If site visits or interviews of affected workers were not possible, explain why this could not be done. If connections to specific U.S. imports could not be made, explain why this was the case. Evidence collection may be precluded by a hostile government, the danger of retaliation, state-sanctioned forced labor, lack of access to internment camps, etc.

II. COUNTRY OF ORIGIN AND PRODUCT BACKGROUND:

1) Petitioners should provide information on the product, method of production, the location where it is produced, and whether it is produced in whole or in part with forced labor.

Information on the prevalence of forced labor in the country of origin – and in this sector – is also useful. This information may be found in the State Department’s annual Trafficking in Persons Report country chapters. Petitioners should provide information on the particular region or sector and any available research on the commodity.

2) Petitioners should provide information on the workers mining/manufacturing the commodity.

Provide any available information on workers involved in the production of the goods. Are the workers foreign workers or internal migrants? Are there women and children? Prisoners? Minorities held in detention centers? Sources for this information may include newspapers, NGO or government reports, UN reports, multilateral organization reports, and public statements.

3) Petitioners should also provide information on any steps taken by the government in the country of origin and/or the corporation importing the good.

Has the country/corporation taken steps to curtail forced labor? Is there any pending litigation relating to forced labor in this sector? Are there any criminal cases? If possible, provide CBP with additional context on the history of forced labor in the country of origin and specific examples of government or corporate policy.

III. EVIDENTIARY COMPONENTS OF THE PETITION:

1) Part One: Statement of reasons for the belief that the goods made with forced labor are being imported or are likely to be imported into the United States.

The statement should state:

In light of the information gathered by petitioner and set forth below, there is a reasonable belief that [goods] produced by [manufacturer/producer] in [country] were made using [specify type of **forced labor**], and are being, or are likely to be, imported into the United States.

The statement should include information about the party making the submission to establish its credibility on this subject, as well as the credibility of the evidence presented. For example, “The party making this submission is a [type of organization/mission] located in [city/country] with specific knowledge of the petition contents based on [desk research, field research, worker interviews, investigative reporting, organizational affiliations, or collaborations].”

2) Part Two: Detailed product description (optional)³⁴

This section should provide as much information as possible about the product. This information will enable CBP to open an investigation using its own internal trade data and records, including data on entry into the U.S. market. If possible, petitioners should provide evidence that the product is entering the U.S. market: CBP must be persuaded that the product has been, is, or is likely to be, imported into the United States.

At a minimum, this should include:

- Product description – photo, sample, label, other physical description³⁵
- Production location – factory, field, mine, farm, vessel
- Producer – name, business location

To demonstrate likelihood that the good will be imported to the United States, it is helpful, but not mandatory, to provide the name of U.S. buyer or consumer; port of entry, if known; or any information on U.S. consumers of similar goods.

3) Part Three: Evidence to show the existence of forced labor

Section 307 of the Tariff Act (19 U.S.C. §1307) defines forced labor as “labor that is **not performed voluntarily** and is performed under threat or **menace of penalty.**”

The evidence presented must meet the legal standard for forced labor. Forced labor under Section 307 of the Tariff Act is modeled on the International Labor Organization (ILO) Forced Labor Convention No. 29 definition. The ILO Forced Labor Convention No. 29 defines forced labor as “[a]ll 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.”³⁶ The definition also includes “indentured labor” and “convict labor.” Indentured labor under the Tariff Act refers to *debt bondage*³⁷ and *peonage*³⁸. Peonage is work without pay performed involuntarily to discharge a real or imagined debt. Debt bondage arises from a pledge of personal services of the debtor or someone under the debtor’s control, where either the reasonable value of services is not applied to liquidate the debt, or the length and nature of services is not defined or limited. This typically arises in the context of migrant worker recruitment by brokers and indebtedness for recruitment fees charged.

The facts and evidence presented in the submission should track these legal definitions. Section 307 of the Tariff Act does not encompass child labor that is not forced, or labor obtained by fraud alone. Without evidence of force or coercion, wage theft facts will not suffice. Evidence of poor or exploitative working conditions, while important, will not alone be sufficient. Similarly, evidence of fraud or deception, standing alone, will not suffice to trigger action by CBP.

34 Organizations working in the field may be unable to source commercial information on the products, such as bills of lading. This is not a barrier to submitting a petition under Section 307 of the Tariff Act. Based on the information submitted, CBP can identify specific commercial and customs information on the products.

35 *Id.*

36 See *ILO Guidelines Concerning the Measurement of Forced Labor*, 20th International Conference of Labor Statisticians (2018) for examples of what can constitute ‘menace of penalty’ and ‘involuntariness.’ https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms_648619.pdf.

37 The term “debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined. See 22 U.S.C. § 7102(7).

38 “Peonage” is defined as “a condition of enforced servitude by which the servitor is compelled to labor against his will in liquidation of some debt or obligation, either real or pretended.” See 42 U.S.C. § 1994.

Because of the similarities between the ILO definition on forced labor and the definition under 307 of the Tariff Act, CBP routinely references ILO standards and indicators of forced labor.³⁹ The ILO has developed eleven indicators of forced labor (relied on by CBP to categorize practices that amount to forced labor). The ILO indicators can be used to support a case of forced labor:

- abuse of vulnerability,
- deception,
- restriction of movement,
- isolation,
- physical or sexual violence,
- intimidation and threats,
- retention of identity documents,
- withholding of wages,
- debt bondage,
- abusive working and living conditions, and
- excessive overtime.

A separate law provides for sanctions when the workers are North Korean. Section 321(b) of Countering America's Adversaries Through Sanctions Act (CAATSA), presumes goods made using North Korean labor are products of forced labor and are prohibited from entry into the United States. Unlike the Tariff Act, petitioners need only prove that North Korean workers are involved in the supply chains of goods entering the United States. For more information, please refer to [DHS's FAQs on CAATSA and North Korean Forced Labor](#).

This portion of the submission should state the facts showing the product was made by a person under conditions that constitute **forced labor**. The narrative should be supplemented with evidence. Footnotes should link to supporting, publicly available documentation. Petitioners may also submit affidavits and video testimony. For evidentiary documents that are not public, it is best to footnote to an annex and include the materials confidentially. It is also important to note that petitions should be based on information and evidence that is no more than 12-18 months old.



Practice Pointer:

The fact that a worker is restricted from leaving factory or farm premises may not, by itself, amount to forced labor under § 307. Similarly, the fact that a recruiter did not fulfill his/her promise of a well-paid, decent job may be insufficient to prove forced labor. However, when this restriction of movement or deception is combined with threats of physical violence, psychological threats, non-payment of wages or a loss of rights or privileges (such as a promotion, transfer, or access to new employment), we may conclude that conditions of forced labor exist in a particular case.

For additional information, see the ILO Q&A on Business and Forced Labor.⁴⁰

Strong petitions include multiple, unique sources of credible, verifiable information and evidence corroborating the submission, combining on-the-ground research with published governmental sources.

³⁹ See Press Conference with CBP Office of Trade (Oct. 1, 2019), <https://www.youtube.com/watch?v=Fb2D4Ebcn8&t=13s>.

⁴⁰ ILO Q & As on Business and Forced Labor, https://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_FL_FAQ_EN/lang--en/index.htm. Also see ILO Indicators of Forced Labor (2012), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf.

Evidentiary Standard:

The evidence required to establish the existence of forced labor is “reasonable but not conclusive,” a lower standard than “credible evidence” or “probable cause.” Section 307 of the Tariff Act only requires evidence that would create a *reasonable belief* for CBP that goods imported or likely to be imported into the United States are made with forced labor. Although there is little to no guidance on what this standard actually requires, it is widely understood⁴¹ that in practice the agency prefers a stronger evidentiary threshold to satisfy its internal clearance processes.

CBP’s public statements indicate that a successful petition rests on multiple consistent sources, including:

- U.S. government reports, such as U.S. Department of Labor and Department of State reports;
- Strong first-hand evidence, such as site visit documentation or witness testimony (affidavits or video testimony);
- Documentary evidence, including photos or maps of the work site illustrating working and/or living conditions, wage records, personnel lists or other information about shift or roster demographics.

IV. CONCLUSION:

The petition should conclude with the request that CBP determine, pursuant to 19 C.F.R. §12.42, that the [specific good] imported from [country] is being/has been produced wholly or in part with [forced labor, convict labor, indentured labor, forced child labor] and is prohibited from importation into the United States.

Petitioners may also request more creative remedies, such as a demand that corporations publicly reveal their supply chain within a particular period of time, before a WRO is issued.⁴² Whether CBP will in fact act on such requests remains to be seen.

⁴¹ This assertion is based on discussions with NGOs that have previously submitted petitions under Section 307.

⁴² A petition submitted to CBP by the Corporate Accountability Lab and International Rights Advocates in February 2020 proposed an alternative remedy, requesting that CBP require companies to demonstrate they had changed their practices within 180 days of the petition or face an import ban, see <https://static1.squarespace.com/static/5810dda3e3df28ce37b58357/t/5e4607e90bd7ed452a1c8c6e/1581647858374/FINAL+307+PETITION+WITH+EXHIBITS.pdf>. Pursuant to such a request or otherwise, CBP sent a 25-part questionnaire to the cocoa companies named in the petition, asking among other things, GPS coordinates for all suppliers, corrective plans for when child labor is identified, a list of all suppliers of imports into the United States from 2017-19 and audits by certification schemes. See, Ange Aboa, et al., *Exclusive: U.S. Investigates Child Labor in Ivory Coast Supply Chains*, Reuters, Mar. 30, 2020, <https://www.reuters.com/article/us-cocoa-ivo-rycoast-childlabor-exclusive/exclusive-u-s-investigates-child-labor-in-ivory-coast-cocoa-supply-chains-idUSKBN21H0QW>.

APPENDIX C:

Targeted Intake Questionnaire To Establish Forced Labor Under Section 307

Most organizations that work on labor rights have exhaustive internal templates for interviewing victims and survivors of forced labor. The questionnaire below is not meant to replace existing templates but is instead intended to help understand the type of questions an interviewer would want to ask to reach a level of specificity required for the purposes of the Tariff Act. This questionnaire is not exhaustive and may have to be customized based on the unique circumstances surrounding the product, factory, industry and region under investigation. As mentioned earlier, CBP is looking for evidence that satisfies the twin prongs of *'involuntariness'* and *'menace of penalty'* under Section 307 of the Tariff Act.

1) Personal details of the worker

- Name, age, prior residence (permanent or otherwise), hometown, family, nationality, language and any other detail that is pertinent to understand the worker's background.

2) Details regarding the worker's journey to current location (specific farm, factory, mine, vessel)

- Method of transportation used, who was involved in the transportation (for example, agency, company representative)
- Any recruitment costs (for travel, work permit, visa)
- Conditions during the journey (how crowded, who all were transported and so forth)

The second set of questions should try to tease out the promises made by the recruitment agent and/or employer to the worker.

- Promised wages
- Promised work and housing
- Whether there was anything in writing, any documents signed, including whether the worker has copies or photos

3) Details of employer and workplace

- Name of employer, location
- Facility/Field/Mine – how big, description of facilities inside or adjacent to the workplace
- How long employed?
 - Whether continuous or with periods of no work?
- How many people are employed at the site?
- What is the type of work? (whether different from what was promised?) E.g., if the worker was promised work related to harvesting of fruit, but ends up doing cutting, cleaning, de-weeding in the field.

- Does employer have some relationship with a company?
 - If so (and if worker knows this), what company is this?
 - What is the nature of the relationship? E.g. does the farmer sell all of his product to the company or some of it?

4) Information on working conditions

- How many hours a day do you work?
- How frequently are you paid?
- Are you paid what you were promised?
- Is your payment contingent on the harvest yield (a specific quota) or is it fixed?
- Do you have access to those wages?
- Deductions:
 - Is any portion of your pay withheld? How much? What for? Is it towards a debt?
- Do you have pay stubs?
- Are you provided or allowed any breaks?
- Are you allowed to speak to your co-workers?
- Do you have access to clean drinking water and toilet facilities?
- If your work is hazardous, do you have access to adequate safety equipment or gear?
- Are you forced to work overtime?
 - If so, is there a threat of penalty if you refuse?
- Physical abuse or restraints?
 - Threats to you? Family members? Co-workers?
 - Any other threats?
- Do you have access to your passport or identity documents?
- Are you free to come and go from the work site as you wish?
- Do you know where the work site is located?
- Do you have access to your mobile phone if you have one, or access to a phone or some other form of communication (e.g. land line, computer) should you need it?
- Is there transportation to and away from the work site nearby and is it available to you?
- Who is in-charge when you are transported? Who accompanies the workers?
- Have you or anyone you know tried to complain about any issue that you faced?
- What was the reaction?
- Have you seen anyone getting fired in front of you for speaking up?
- Does the employer publicly censure/ intimidate or threaten workers (i.e., in front of other workers)?

5) Information on living conditions

- How far is your accommodation from the workplace?
- How do you go home?
- Are there shops or grocery stores nearby?
- Do you pay extra for housing?
- How different is the housing from what you were promised?
- What type of housing?
 - Dorm, rooms, capacity
- Does your family stay with you?
- Are there guards outside?
- Toilet facilities – how many people use it?

- Any infestation, mold or problems with construction (structural integrity)?
- Are you provided with water facilities?
- Who owns the housing facility (if known)?
- Is there a lease agreement or something similar that you have signed? (Copies?)
- Have you or anyone you know been evicted? Why?
- Are you provided with food?
- What is the condition of food that is provided?
- If not provided with food, how do you source food?
- Access to medical care
 - Is there a hospital or clinic nearby?
 - Does your employer allow you to visit the hospital or clinic? If so, how often have you visited it?
 - Have you ever been turned away?
- Do you know anyone who has fallen sick and left untreated?

6) Details regarding loans and recruitment fees, if any

- Do you owe any money to the employer, or, if not money, do you owe a certain production quota to the employer?
 - What is the amount owed (whether money or quota)?
 - Have you ever been able to satisfy the debt?
 - What is the debt for (e.g. seeds, tools, etc, recruitment costs)?
- If you do not owe any debt to your employer, do you owe money to someone else – middle-man, recruitment agency or other person?
- Does your employer know of this debt? Has he/she ever acknowledged it?
- What are the terms of (or other circumstances surrounding) the debt?
- What communications have you had with the employer about the debt?
- What is the evidence of the debt? If there are documents, can we get copies?
- Did you sign documents related to this debt (get copies if possible)?
- What language are the documents in?
- If there weren't documents, was it communicated verbally in a language that the employee understands?
- How much would you have to produce/work to pay off the debt?
- Is there some repayment plan (with the employer) you must comply with? If so, what are terms?
- Do you know what happens if you are unable to pay the debt?
- Do you know what has happened to others who have not been able to pay it?
- Has anyone ever threatened you (or your family) regarding what happens if you cannot pay the debt?
 - Who threatened you?
 - By what means?
 - When?
 - If you can recall, relay contents of conversation, who said what?

APPENDIX D: Analysis of Recent Withhold Release Orders

CBP press releases and press conferences can provide clues to factors that may have tipped the scale in favor of a particular Withhold Release Order. Even in cases where Customs and Border Protection (CBP) has not shared specific details on why it issued a WRO, insights from international media, investigative reporting, and NGO monitoring on the product can provide insights into the key drivers for a particular WRO.

MALAWI: TOBACCO

On November 1, 2019, CBP issued a WRO banning all tobacco imports from Malawi. In a statement issued with the WRO, CBP reported that it acted upon information that reasonably indicated the use of forced labor and forced child labor. The statement did not provide details. The exploitative practice of tenancy farming on Malawi's tobacco fields is well documented.⁴³ Driven by extremely low wages, many farmers are forced to involve members of their family to work on the tobacco farms and supplement income. This results in cycles of generational poverty and debt bondage. The conditions on tobacco farms in Malawi have also gained U.S. Department of Labor (DOL)'s attention. In its 2018 Findings on the Worst Forms of Child Labor, the Department of Labor Bureau of International Labor Affairs (ILAB) reported that despite moderate advancements by the Malawi government in tackling the issue, children in Malawi continued to suffer from the worst forms of child labor in the harvesting of tobacco.⁴⁴ There were also reports that suggested that this tainted tobacco was present in cigarettes imported into the United States and European Union.⁴⁵ U.S. Customs and Border Protection issued the WRO against Malawi a few days after a British law firm announced plans to file a class action lawsuit against British American Tobacco (BAT), one of the leading cigarette manufacturers in the world. The civil suit, filed in the United Kingdom, alleged that the company had unjustly enriched itself from the labor of thousands of Malawian children and their families without adequate compensation.⁴⁶



Source: Alex Plesovskich, Unsplash

43 See generally Sarah Boseley, *Child Labor Rampant in Tobacco Industry*, Guardian, June 25, 2018, <https://www.theguardian.com/world/2018/jun/25/revealed-child-labor-rampant-in-tobacco-industry>; David Levene, *The Children Working in the Tobacco Fields: 'I wanted to be a nurse'*, Guardian, June 25, 2018, <https://www.theguardian.com/world/ng-interactive/2018/jun/25/tobacco-industry-child-labour-malawi-special-report>; and Sarah Boseley, *BAT Faces Landmark Legal Case Over Malawi Families' Poverty Wages*, Guardian, Oct. 31, 2019, <https://www.theguardian.com/global-development/2019/oct/31/bat-faces-landmark-legal-case-over-malawi-families-poverty-wages>. See also International Labor Organization, *An integrated ILO strategy to address decent work deficits in the tobacco sector* (Feb. 23, 2018), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_618444.pdf.

44 See Bureau of Int'l Labor Affairs, *List of Goods Produced by Child Labor or Forced Labor* (2018), <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>.

45 *Id.*

46 Tenant farmers receive such little pay that they have "[n]o option but to rely on their children to work." "Total earnings were on average no more than £100 to £200 [\$130-\$262] for the work of a family of five for 10 months," see Tendai Marima, *Malawi Urged to Turn Over New Leaf Amid Tobacco Lawsuit*, African Business, Dec. 12, 2020, <https://africanbusinessmagazine.com/sectors/commodities/malawi-urged-to-turn-over-new-leaf-amid-tobacco-lawsuit/>.

DEMOCRATIC REPUBLIC OF CONGO AND ZIMBABWE: MINING

On September 30, 2019, CBP issued two Withhold Release Orders, covering artisanal gold and diamonds mined from the Democratic Republic of Congo (DRC) and Zimbabwe respectively. In each case, CBP found indicators of forced labor, drawn from the ILO indicators. According to CBP,⁴⁷ the most prevalent indicator of forced labor in DRC's artisanal mines was the presence of armed groups around the mines. The armed groups were reportedly present in 66-67% of all the mines in DRC. A recent U.S. Government Accountability Office (GAO) report confirmed this finding, noting that armed groups interfered in DRC's gold sites through illegal taxation, pillaging, and forced labor.⁴⁸ CBP reported that it also found evidence of sexual exploitation and debt bondage in these mines. The Department of Labor's Bureau of International Labor Affairs (ILAB) listed gold from DRC in its list of goods made using forced or child labor.⁴⁹



Source: Conflict Minerals, Ethical Consumer

On May 28, 2020, CBP modified the WRO to exempt one exporter from DRC. The press release stated that the WRO would be modified "based on a rigorous evaluation of the Chambers Federation's due diligence program and work with various government and non-governmental organizations. These actions produced evidence that sufficiently supports the Chambers Federation's claim that the artisanal and small-scale mines in the DRC from which the Chambers Federation imports gold do not use forced labor."⁵⁰

In issuing the WRO against Zimbabwe's Marange diamond fields, CBP pointed to the coercive operations of mining syndicates. Those syndicates – security, military, and other armed groups – control artisanal miners' access to diamond fields in exchange for bribes and a share of the diamonds. CBP specifically noted that after entering these fields, miners are often prevented from leaving by threats of violence. The WRO is consistent with other policy on Zimbabwe: in 2011, citing human rights abuses, two companies engaged in diamond mining operations in Marange were placed on the U.S. Department of Treasury's economic sanctions list.⁵¹

47 Press Conference by Brenda Smith, U.S. Executive Assistant Commissioner for Trade, U.S. Customs and Border Protection (Oct. 1, 2019), <https://www.youtube.com/watch?v=Fb2D4Ebucn8&t=13s>.

48 U.S. Gov't Accountability Office, *Information on Artisanal Mined Gold and Efforts to Encourage Responsible Sourcing in the Democratic Republic of the Congo, Report to Congressional Committees* (2017), <https://www.gao.gov/assets/690/686745.pdf>.

49 ILAB List of Goods Produced by Child Labor or Forced Labor (2018), <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>.

50 U.S. Office of Foreign Assets Control, *Zimbabwe Sanctions Program* (Dec. 18, 2013), <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/zimb.pdf>.

51 *U.S. Imposes Sanctions on 2 Zim Diamond Miners*, Mail & Guardian, Dec.13, 2011, <https://mg.co.za/article/2011-12-13-us-imposes-sanctions-on-two-zim-diamond-miners/>.

MALAYSIA: RUBBER GLOVES

The WRO against rubber gloves from a producer in Malaysia, issued on September 30, 2019, followed extensive investigative reporting. Exposés by various media outlets, including *The Guardian*,⁵² and investigations by leading migrant worker rights specialist Andy Hall documented allegations of forced labor.⁵³ The victims, mainly migrant workers from South Asia, were made to work seven days a week. Reports indicated that they paid high recruitment fees, did not receive their wages, were forced to surrender their travel documents, and were subjected to unsafe conditions on factory premises. Thousands of Nepalese workers working for the glove manufacturer in Malaysia went on strike in 2019, demanding their wages and identity documents. The Malaysian Labor Department found exploitative labor conditions, including non-payment of wages, delay in overtime payment, and illegitimate deductions.⁵⁴ Unlike some of the other WROs, imports by U.S. companies could easily be established and linked to the specific Malaysian producer. The producer named in the WRO is one of the leading exporters of rubber gloves around the world and accounts for a significant chunk of the gloves used by hospitals in the United States and United Kingdom.



On March 24, 2020, CBP revoked its WRO against the Malaysian glove manufacturer. In its press release, CBP stated that the manufacturer worked closely with the agency to stop forced labor in its factories. The revocation came in the midst of a global pandemic, raising concerns that the shortage in medical supplies, rather than an end to forced labor, prompted the decision.

52 Hannah Ellis-Peterson, *NHS Rubber Gloves Made in Malaysian Factories Accused of Forced Labor*, *Guardian*, Dec. 9, 2018, <https://www.theguardian.com/global-development/2018/dec/09/nhs-rubber-gloves-made-in-malaysian-factories-accused-of-forced-labour>.

53 Andy Hall, *The U.S. is Taking Action on Forced Labour in Malaysia, Will the EU follow Suit?* Business and Human Rights Resource Ctr, Feb. 10, 2019, <https://www.business-humanrights.org/en/the-us-is-taking-action-on-forced-labour-in-malaysia-rubber-glove-industry-will-the-eu-follow-suit>.

54 *Glovesmaker WRP Get Emergency Funds to Pay Workers*, *Malaysiakini*, Jan. 16, 2020, <https://www.malaysiakini.com/news/505695>.

BRAZIL: BONE BLACK

On September 30, 2019, CBP issued a WRO targeting bone black, a form of activated carbon from charred animal bones used in the refining of sugar and purification of water. Exploitative labor conditions in the cattle and charcoal industry in Brazil have been well documented.⁵⁵ It is unclear to what extent CBP found evidence of forced labor in bone black from a specific manufacturer. Local news reports in Brazil suggested that the prosecutor's office in Brazil had launched a forced labor investigation into the product.⁵⁶ And Associated Press reports linked the Brazilian manufacturer to importers in the United States.⁵⁷



Source: Occupational and Environmental Medicine

CHINA: GARMENTS AND HAIR PRODUCTS

On September 30, 2019, CBP issued a WRO blocking import of garments from Hetian Taida Apparel Co. This Chinese company operated in Xinjiang, the site of state-sponsored abuse of the Uighur population. Because worker rights organizations could not enter Xinjiang, advocates resorted to creative evidence collection, including satellite imagery. Additional evidence included Chinese government television footage showing images of the factories in the region. Petitioners relied on commercial databases to establish the link to U.S. imports.⁵⁸ The satellite images showed a heavily guarded perimeter around the factories and restrictions on the workers' movement. In its release, CBP characterized this WRO as relatively straightforward because of clear links to U.S. importers. Widespread international press coverage and leaks⁵⁹ of Chinese government documents detailed the forced labor allegations in detention facilities in Xinjiang.



Source: Greg Walters, flickr

55 See The Walk Free Foundation, Global Slavery Index (2018), <https://www.globalslaveryindex.org/2018/findings/country-studies/brazil/>.

56 Walter Tele, *Alleged Slave Labor and Environmental Crime in an Activated Carbon Factory in Maringá Generates Inquiries at the Public Ministry*, Maringá Post, June 11, 2018, <https://maringapost.com.br/negocios/2018/06/11/suposto-trabalho-es-cravo-e-crime-ambiental-em-fabrica-de-carvao-ativado-em-maringa-geram-inqueritos-no-ministerio-publico-concorren-cia-internacional-teria-motivado-denuncias/>.

57 Martha Mendoza, *Company Making Costco Pajamas Flagged for Forced Labor*, Assoc. Press, Oct. 8, 2019, <https://apnews.com/7d79c06344a245eea4bcc86759ad43d7>.

58 Worker Rights Consortium, *Factory Assessment Hetian Taida Apparel Co. Ltd. China: Findings Recommendations and Status* (June 24, 2019) <https://www.workersrights.org/factory-investigation/heitan-taida-apparel-co-ltd/>.

59 Austin Ramzy and Chris Buckley, *'Absolutely No Mercy': Leaked Files Expose How China Organized Mass Detentions of Muslims*, N.Y. Times, Nov. 16, 2019, <https://www.nytimes.com/interactive/2019/11/16/world/asia/china-xinjiang-documents.html>.

On May 1, 2020, CBP issued a new WRO blocking the import of hair products manufactured by Hetian Haolin Hair Accessories Co. Ltd. (Haolin), a manufacturer based in Xinjiang. Reports suggested that the hair manufacturer relied on forced labor.⁶⁰ Haolin's office is registered in an industrial park in Hotan's Lop County, a location where hundreds of Uighur detainees were photographed listening to a deradicalization speech.

TUNA FROM FISHING VESSEL TUNAGO NO. 61

In February 2019, CBP issued the first WRO ever issued against an individual fishing vessel, the Tunago No. 61. According to Kelly Cahalan, spokesperson for CBP, the WRO applied to not only all products from the 53.5-meter tuna longliner vessel, but also to all tuna caught by Tunago No. 61 and subsequently imported into the United States using another vessel.⁶¹ The Tunago No. 61 made headlines long before the WRO. In 2018, Greenpeace published a report, *Misery at Sea: Human Suffering in Taiwan's Distant Water Fishing Fleets*. That report described human rights abuses aboard the Tunago No. 61, including violent conduct by the captain of the ship and inhumane working conditions.⁶² A 2006 report by the International Transport Workers Federation also exposed severe abuses against crewmembers of Tunago No. 61.⁶³



Source: Ian Urbina, *The Outlaw Ocean: Journeys Across the Last Untamed Frontier*

On April 1, 2020, CBP revoked its WRO against Tunago No. 61.

60 Juozapas Bagdonas, *Tracking Down the Fruits of Xinjiang's Forced Labor Industry*, *Diplomat*, Nov. 16, 2019, <https://thediplomat.com/2019/11/tracking-down-the-fruits-of-xinjiangs-forced-labor-industry/>.

61 Steve Bittenbender, *US Customs Claims Vanuatu Tuna Vessel Used Forced Labor*, *SeafoodSource*, Feb. 27, 2019, <https://www.seafoodsource.com/news/supply-trade/us-customs-claims-vanuatu-tuna-vessel-used-forced-labor>.

62 Greenpeace, *Misery at Sea : Human Suffering in Taiwan's Distant Water Fishing Fleet* (2018) https://storage.googleapis.com/planet4-new-zealand-stateless/2018/05/9fdf62aa-greenpeace_misery_at_sea-report-lowres.pdf.

63 International Transport Workers Federation, *Out of Sight, Out of Mind* (2006), <https://www.itfcongress2006.org/press-releases.cfm/pressdetail/814>. See also Shrimp Alliance, *U.S. Customs and Border Protection Issues Withhold Release Order Barring Imports from Fishing Vessel* (Feb. 6, 2019), <https://www.shrimpalliance.com/u-s-customs-and-border-protection-issues-withhold-release-order-barring-imports-from-fishing-vessel/>.



**Made possible by
a grant from:**



 @htlegalcenter

 @htlegalcenter

 htlegalcenter

www.htlegalcenter.org

info@htlegalcenter.org