

Forced Labor

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What is Forced Labor?



(photo courtesy of the Solidarity Center)

“ . . . any work or service performed by any person under the threat of penalty, and for which the person does not offer himself voluntarily.”*

Forced labor is everywhere.

- Worldwide, the International Labour Organization (ILO) estimates that there are **168 million** child laborers—**85 million** of whom work in hazardous conditions.
- The ILO also estimates that **21 million** people are trapped in forced labor situations—a number that includes at least **6 million** children.
- Forced labor exists in every country, though the types differ from country to country.
- The efforts of countries to fight forced labor also differ from country to country.

Legal definition of forced labor

- The legal definition of forced labor used in U.S. enforcement actions is provided in 19 U.S.C. 1307, which defines “forced labor” as, “all work or service which is exacted from any person under the menace of penalty for its non-performance and for which the worker does not offer himself voluntarily”.



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U.S. Forced Labor laws

1. The Tariff Act of 1930, as altered by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA)
2. The Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA)



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The Tariff Act of 1930

- Created to protect U.S. businesses from the unfair competition of imported goods that were produced using forced labor (a term which includes the forced labor of adults and children, convict labor, and other forms of forced labor)
- Any goods produced, mined, or manufactured wholly or in part using forced labor were prohibited entry into the U.S.
- Corporations were made responsible for their entire supply chains, and made liable for civil and/or criminal penalties relating to any goods imported into the U.S.



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The Trade Facilitation and Trade Enforcement Act of 2015

- TFTEA went into effect in March 2016
- It contained a provision that eliminated the “consumptive exemption” language of The Tariff Act of 1930, which permitted the importation of forced labor-produced goods when those same goods could not be produced domestically in sufficient quantity to meet U.S. consumer demand
- Due to TFTEA, all forced labor-produced goods are prohibited from importation into the U.S.



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The Countering America's Adversaries Through Sanctions Act of 2017

- CAATSA went into effect in August 2017
- Section 321 of CAATSA is based upon the Tariff Act of 1930 (19 U.S.C. 1307)
- It created an additional area for enforcement relating to the prohibition of the importation of forced labor-produced goods into the U.S., with two significant differences from Tariff Act of 1307 enforcement



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CAATSA continued...

- CAATSA Section 321 concerns products produced by North Korean citizens or nationals anywhere in the world, since their wages are a significant source of income for the North Korean government.
- CAATSA Section 321 also contains a “rebuttable presumption”, which means that these individuals are considered to be forced laborers due to the nature of their government’s actions in providing them as laborers in countries around the world, and the conditions under which they labor. Corporations seeking to import into the U.S. any goods produced by North Korean citizens or nationals must demonstrate the lack of forced labor in the production of that good.



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CAATSA aids

- The U.S. Department of Homeland Security issued a Frequently Asked Questions compilation document on 30 March 2018, about the enforcement of CAATSA Section 321. It can be found at:
<https://www.dhs.gov/news/2018/03/30/caatsa-title-iii-section-321b-faqs>
- The U.S. Departments of State, Homeland Security, and Treasury issued an Advisory on Risks for Businesses with Supply Chain Links to North Korea on 23 July 2018, which can be found at:
<https://www.state.gov/documents/organization/284481.pdf>
- Both contain resources, guidance, and information on enforcement.



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Forced Labor Enforcement

- Within the Department of Homeland Security (DHS), two agencies are responsible for both preventing these goods from entering the U.S. and for the potential criminal prosecution of the parties responsible for the importations.
 - **U.S. Immigration and Customs Enforcement (ICE)**
 - **18 USC 1589, 18 USC 545, 18 USC 1761**, and other criminal statutes grant ICE the authority to investigate and pursue the criminal prosecution of people and/or companies involved in the importation of goods produced by forced labor.
 - **U.S. Customs and Border Protection (CBP)**
 - CBP has civil enforcement authorities relating to the importation of goods made using forced labor.



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Potential U.S. legal statutes

- 18 U.S.C. 1761: Prison-Made goods
- 18 U.S.C. 545: Smuggling goods into the United States
- 18 U.S.C. 1001: False statements; concealment
- 18 U.S.C. 1589: Forced labor



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Indicators of Forced Labor

The presence of a single indicator may not prove the existence of forced labor. In some cases, you may need to find several indicators, which, taken together, indicate forced labor.

- Deception
- Restriction of Movement
- Retention of Identity Documents
- Isolation
- Intimidation, Threats and Violence
- Debt Bondage
- Withheld Wages
- Abuse of Vulnerability
- Abusive working and living conditions
- Excessive Overtime

(Notes and Slides Source: from “Indicators of Forced Labour, International Labor Organization (ILO)



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Opportunities for collaboraton

- The existence of these statutes and ICE's and CBP's enforcement activities provide an expansive area in which to work collaboratively with foreign government officials, trade associations, individual corporations, and other interested parties.
- The goal of the United States government is the eradication of forced labor worldwide, but enforcement solely at a local or national level does not strategically use resources.
- If any U.S. links to the revealed forced labor overseas could be shared with the appropriate U.S. authorities, then U.S. enforcement customs authorities could potentially be used to pursue enforcement actions against the corporations benefitting from this exploitation and forced labor.
- This would also potentially lower "risk" in a particular country for foreign investors seeking to decrease their exposure to forced labor in supply chains.



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Opportunities for collaboration (continued)

This may mean (for example):

- Measured and strategic postings on U.K., Australia, France corporate due diligence regimens...to possibly be followed by Germany, Switzerland, Canada, and others;
- Good corporate due diligence is adaptive, constantly evolving and being updated, tailored to sectors and country conditions, and is proactive—not reactive; and,
- Good corporate social responsibility and due diligence relating to labor provides a lower risk of enforcement actions and brand reputational damage.
- These are just a few options for collaboration that would permit ICE and CBP to support U.S. trade as well as protect foreign nationals from forced labor exploitation.



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Reporting Violations

- ICE works diligently to determine the credibility of all reported allegations on forced labor, and to ensure the integrity of investigations. In order to bring all our enforcement equities to bear, effective reporting includes providing as much information as possible about the situation in question.
- ICE welcomes forced labor allegation reports to ICE's forced labor mailbox at ICE.ForcedLabor@ice.dhs.gov, or directly to Kenneth.J.Kennedy@ice.dhs.gov.



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