US prohibits imports made with forced labor

New law is a force to be reckoned with

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Your latest shipment of imports is detained at the border. You are told that your goods are not being allowed admission to the US because they were produced, in whole or in part, with forced labor.

But these are the same products you've been importing, in pretty much the same way, for years. What is happening? Is this even possible?

The answer is yes. It is very possible. Companies are starting to feel the effects of a significant 2016 amendment to the Smoot-Hawley Tariff Act of 1930, and, in its wake, stepped up enforcement activity by Customs and Border Protection. This amendment eliminated a long-standing exception to a general prohibition of the import of goods manufactured using convict or forced labor into the United States. Under the exception, the prohibition against the use of forced labor did not apply to goods not produced in the United States for which domestic production did not satisfy U.S. consumptive needs. As a result of the 2016 amendment, the prohibition on imported goods made using forced labor is now broadly applicable to all goods.

In response to the amendment, Customs and Border Protection (CBP) has stepped up its enforcement efforts with respect to goods being imported into the United States that are suspected to have been produced using forced labor. According to CBP, merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced labor – including forced child labor – is subject to exclusion and/or seizure, and may lead to criminal investigation of the importer(s).

In light of these developments, importers must begin to take notice and act. What can you do as an importer in the wake of the reinvigorated Forced Labor statute?

First, you can take steps to avoid products that already have been identified by CBP as being subject to a Withhold Release Order (WRO). CBP has announced on its website that it does not target entire product lines or industries in problematic countries or regions, but rather acts on specific information relating to specific manufacturers/exporters and specific merchandise. CBP also publishes on its website a list of all WROs and findings that have been issued. This is sufficient information on which to base precautionary measures for an importer to avoid the products produced by forced labor that may be subject to seizure or withholding.

Second, even if you fail to identify goods that are covered by an outstanding WRO and they are detained by CBP at the ports of entry, there is still a chance that your goods may be allowed entry. CBP Regulations allow importers of goods detained under a WRO to provide ‘proof of admissibility.’ Furthermore, if your proffered proof of admissibility (as outlined in the CBP Regulations) is not convincing to CBP, and the goods are finally denied admission, ie, “excluded” from entry into the US, you still may appeal that decision by filing a protest.
Third, you may seek even further redress in the Court of International Trade if CBP denies the protest under US Law and CBP Regulations.

**Recommendations**

In the wake of the revised Forced Labor statute (and possible fallout), we offer two suggestions for importers to consider:

1. Avoid the importation of goods allegedly produced with forced labor entirely by using the information that CBP publishes on its website in connection with products already identified as having been produced or manufactured with the use of forced labor; or
2. If avoidance is not possible, defend the importation using the legal tools provided in the CBP Regulations to support your position that your shipment was not produced with the use of forced labor.

If you are concerned about the implications for your business, contact the author.

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