

FORCED LABOR: ADDING COMPLEXITY TO THE TRADE LANDSCAPE

The recent pivot to a virtual approach to trade and business (due to the pandemic) has added to the complexity of the trade landscape. However, this virtual dimension also allows individuals to connect globally in meaningful trade discussions at the click of a button. For CBP, this means that the capabilities of technology must be refined in order to create a more seamless virtual trade process. Supply chains, which are extremely important to maintaining trade, were greatly affected during the first signs of the pandemic. Supply chain interruptions could be seen in individuals stocking up on masks, hand sanitizers, paper towels, and toilet paper, creating a serious shortage in many areas. CBP has broad oversight on trade matters, enforcing roughly 500 laws including anti-dumping orders and unfair trade. Additionally, CBP has stated that their vision for the future is to “create processes that are more streamlined, secure and digital.” This will be done through a new legal and operational framework that will anticipate risk and allow for flexibility for future trade. Unfortunately, the rise of E-commerce has presented an opportunity for bad actors to abuse the system and hurt American consumers. CBP is focused on penalizing these bad actors and ensuring a safe, easy exchange of goods in the trade landscape. Forced Labor has affected roughly 25 million people, making this a priority for CBP.

According to the International Organization (a United Nations agency), forced labor “refers to situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities.” The use of child labor falls under the umbrella of forced labor.

As long ago as 1930, the U.S. has been concerned about importing goods that have been produced using forced labor; in that year, Section 307 of the Tariff Act (19 U.S.C. §1307) became law, giving CBP the means to help prevent this practice CPB can take legal action by issuing a Withhold Release Order (WRO) which prevents merchandise produced through forced labor from being imported in the US. If a WRO is issued, the CBP states that shipments of merchandise subject to WROs will be detained while the matter is investigated. The importers will then have the opportunity to submit information to CBP verifying that the products are not in violation of 19 U.S.C. § 1307. If the importer chooses not to provide such verification (or cannot), the importer may re-export the goods. If the importer is unable to provide satisfactory evidence that the goods are admissible, the shipments will be seized or excluded.

CBP outlines the indicators of forced labor developed by the International Labor Organization to help “criminal law enforcement officials, inspectors, trade union officers, NGO workers, and others to identify persons who are possibly trapped in a forced labor situation.” Some of these indicators include: debt bondage, retention of identity documents, abusive living conditions, intimidation and threats, withholding of wages, and excessive overtime. The verification of a company’s Certificate of Origin signed by a foreign seller can be used to help prove that goods were not produced with forced labor. This certificate must meet the specific guidelines and format indicated on CBP’s website which is the 19 C.F.R. & 12.43(a). This clarification requires the seller to provide a detailed account of the production of goods being sold. This information can include purchase orders, invoices, proof of payment, production steps, records, transportation documents, and daily process reports. Furthermore, the 19 C.F.R. & 12.43(a) document must be submitted to CBP by the importer, not by the seller.

According to the CBP, importers “must exercise reasonable care over their supply chains and understand where and how their products are manufactured or produced, in whole or in part.” Importers are expected to monitor the CPB’s website which lists foreign entities and products subject to an active WRO. More information about maintaining sound business practices, monitoring supply chains, and responsibly sourcing commodities is available at the CBP’s Forced Labor web page at <https://www.cbp.gov/trade/programs-administration/forced-labor>.

Sources:

- 1) CPB website, retrieved October 13, 2021.
<https://www.cbp.gov/trade/programs-administration/forced-labor>.
- 2) International Labour Organization website, retrieved October 13, 2021.
<https://www.ilo.org/global/topics/forced-labour/statistics/lang--en/index.htm>

Addy Bonovich, Intern, Law Offices of Tammie Krauskopf LLC
Suzanne DeCuir, Law Offices of Tammie Krauskopf LLC