

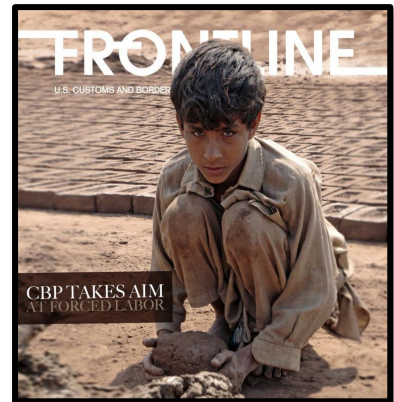
# Stopping Forced Labor in the Supply Chain



Last Updated: February 25, 2023

This CTPAT Alert addresses some of the U.S. government efforts designed to stop imports into the U.S. that were mined, produced or manufactured wholly or in part by forced labor. It also serves as a reminder that the minimum security criterion on forced labor is now a requirement.

U.S. Customs and Border Protection (CBP) defines forced labor as 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 work or service voluntarily. Indentured labor is defined as work or service performed pursuant to a contract, the enforcement of which can be accomplished by process or penalties. This includes forced or indentured child labor.



**Background on Forced Labor** – Forced labor continues to persist in the 21st century partly because of the globalization of the economy. Over the last few decades, many companies outsourced production to foreign countries in an effort to lower wages and increase profits. Their tier 1 suppliers have also employed the same tactic as outsourcing represents one of the key methods by which they can cut costs.

Outsourcing is also most common where activities are primarily unspecialized or manual in nature – like harvesting, mining, and fishing. This practice of outsourcing has in turn led to long and complex global supply chains. As the number of layers of stakeholders, suppliers, distributors, etc. increases, so do a company’s risk and challenges to its ability to manage and monitor these stakeholders.

**CBP’s Enforcement Role and Legal Basis** – CBP plays a critical role in the enforcement of forced labor laws – particularly Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) through issuance of Withhold Release Orders (WRO) and findings. In 2016, the *Trade Facilitation and Trade Enforcement Act of 2015* repealed the “consumptive demand” clause contained within the Tariff Act that allowed for the importation of forced-labor-made goods if the goods were not produced in such quantities in the U.S. as to meet the consumptive demands of the country. Repealing this clause removed a significant barrier to full enforcement of the law.

Most recently, the *Uyghur Forced Labor Prevention Act (UFLPA)* came into effect June 21, 2022. This Act creates a rebuttable presumption that all goods, articles, wares, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region (XUAR) of the People’s Republic of China or by entities on the [UFLPA Entity List](#) are produced by forced labor and therefore the importation of the goods into the U.S. is prohibited. Even those not importing directly from China may have goods detained if the materials used to produce the imported goods at any point in the supply chain are tied at any level to XUAR or the Entity List. Companies need to ensure their supply chains do not include such goods.

**The Role of the Private Sector in Combating Forced Labor** – Governments cannot address the presence of forced labor practices in the supply chain alone. A holistic effort is needed where government partners with the trade and civil society to enhance and improve information collection, prevention, enforcement, and remediation. The enforcement of national laws and international mandates should be aligned with pre-existing government-endorsed initiatives like the CTPAT program.

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Companies with responsible supply chain practices not only attempt to protect vulnerable workers, but they also guard against legal, reputational, and financial risks. The more companies proactively engage in responsible supply chain management, the better equipped they will be to respond when a disruption occurs. Those that do not could face financial and legal risks, in addition to the tarnished perception of their brand and image.

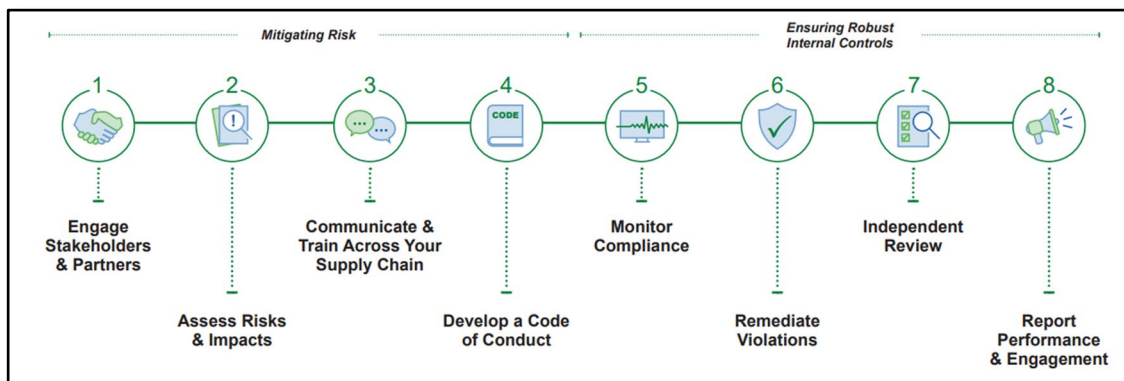
**CTPAT Members New Requirement** – Beginning Jan. 1, 2023, criterion 3.9 changed from a “should” or recommendation to a “must” or mandatory requirement. This criterion applies to CTPAT importers, exporters, and foreign manufacturers. Criterion 3.9 is a Business Partner Category requirement, and it now reads as follows:

CTPAT Members **must** have a documented social compliance program in place that, at a minimum, addresses how the company ensures goods imported into the United States were not mined, produced or manufactured, wholly or in part, with prohibited forms of labor, i.e., forced, imprisoned, indentured, or indentured child labor.

**What CTPAT Members Need to Do** – CTPAT importers, exporters, and foreign manufacturers must include the threat of forced labor – an illegal activity under U.S. and international law – into the company’s risk assessment methodology. And, they must also document how they address this threat through a documented social compliance program – also referred to as a social responsibility program (or responsible sourcing).

A social compliance program is a set of policies and practices through which a company seeks to ensure maximum adherence to the elements of its code of conduct that covers social and labor issues. Social compliance refers to how a business addresses its responsibilities in protecting the environment, as well as the health, safety, and rights of its employees, the communities in which they operate, and the lives and communities of workers along their supply chains.

Some of the key elements of a social compliance program are already part of the CTPAT program – they just need to be expanded to include the threat of forced labor. CTPAT Members need to be proactive and take steps like the ones outlined below to be able to document in their security profile that they have done their due diligence to mitigate the risk of forced labor in their supply chains. Many of these actions are fully explained by the U.S. Department of Labor’s [Comply Chain](#).



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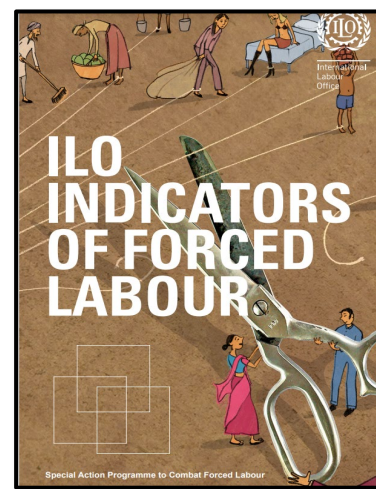
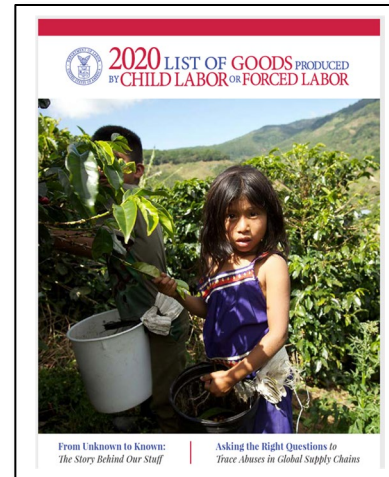
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- 1. Engage Stakeholders and Partners** – By involving your stakeholders, you will gather more ideas and have a broader range of people with whom to vet issues and solutions. Stakeholder involvement allows you to gather a variety of perspectives before you commit to a particular approach. Some examples of stakeholders and partners that you may engage include community and religious leaders, union leaders, and non-governmental organizations (NGOs). The ILO's [Global Business Network on Forced Labor \(GBNFL\)](#), for example, brings together businesses of all sizes to eradicate forced labor. Operating across all sectors, members work to engage smaller enterprises, develop actionable resources and tools, and devise local solutions.
- 2. Assess Risks and Impacts** – Identify and document the risk of forced labor use in your supply chain to your current CTPAT risk assessment process and develop strategies to mitigate that risk. Leverage industry associations, U.S. government, NGOs, and international resources that have robust tools and guidelines to assist in the due diligence process.

The company's risk assessment process should also identify the potentially adverse impacts the company may face as a result of being involved, directly or indirectly, in forced labor practices.

These are some of the key steps a company needs to take in completing this risk-based approach:

- Have full visibility into your supply chains. Delve into how the company's goods are produced, by whom, and under what labor conditions, from obtaining raw materials to the finished goods. By doing this, the company will be able to collect enough information to identify any possible red flags.
- Use reliable and credible resources to determine the level of risk in your supply chains in terms of forced labor. The resources you use *must* include:
  - a. [The International Labor Organization's \(ILO\) Indicators of Forced Labor](#) – Review the ILO's Indicators of Forced Labor to better understand what indicators to look for in determining risk. These eleven indicators represent the most common signs or “clues” that point to the possible existence of a forced labor case.
  - b. [The U.S. Department of Labor's \(DOL\) List of Goods Produced by Child Labor or Forced Labor](#) – DOL's Bureau of International Labor Affairs (ILAB) maintains a list of goods and their source countries, which it has reason to believe are produced by child labor or forced labor in violation of international standards. As of June 2021, the list comprises 156 goods from 77 countries.



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- c. [The U.S. Department of Labor's Bureau of International Labor Affairs \(ILAB\) – Better Trade Tool](#) – This innovative tool integrates existing reporting developed by the ILAB with U.S. import trade data, including Harmonized Tariff Schedule codes. The Better Trade Tool search feature enables users to select a specific country, good, type of labor exploitation, and year from the respective dropdown lists. The default view presents data for all countries, goods, and labor exploitations.
  - d. [CBP's Withhold Release Orders \(WROs\) and Findings List](#) – CTPAT Members must check this list for information on any merchandise that may be subject to exclusion and/or seizure. This resource lists, by country, the type of merchandise under the WRO (video games, tomatoes, etc.) and the entities subject to that WRO. Forced labor is most often found in Southeast Asia, China, and Central Africa so the more deeply a company is deployed in those regions, the higher the likelihood of forced labor in its supply chains.
  - e. [Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China](#) – This strategy was developed by the Forced Labor Enforcement Task Force (FLETF) and it incorporates input from various public and private-sector stakeholders and takes into account public comments received through the FLETF's Federal Register request for information and the UFLPA public hearing.
3. **Engage in Robust Communication** – CTPAT Members must have clear policies in place that prohibit all forms of forced labor. Moreover, its leaders need to emphasize the importance of the company's opposition to all forms of forced labor so that everyone understands the company's position and expectations. This message from the top of the organization needs to be consistent and should be communicated to its employees, suppliers, and business partners worldwide. This communication may be verbal but should also be documented on the company's website and in any public-facing written communications.
4. **Train Internally and Across your Supply Chain to Ensure Understanding** – Training should focus on identifying and mitigating risks within supply chains. As employees and managers become aware of what forced labor is and how it manifests itself ([International Labor Organization's Indicators of Forced Labor](#)), they will be able to identify red flags and address them accordingly. Educating suppliers and their workers empowers them to know and exercise their rights. Several NGOs and nonprofit organizations offer training and can provide industry-specific presentations ([Fair Wear Foundation](#), [Verité](#), [Fair Labor Association](#), etc.).
5. **Require Codes of Conduct from Suppliers** – CTPAT Members must have a Code of Conduct in place per criterion 11.5. They should also require a Code of Conduct from their suppliers that addresses the need for the supplier to avoid any involvement in any type of forced labor practices – particularly those suppliers in high-risk regions of the world for forced labor or those involved in the production, mining, or manufacturing of goods that have been associated with forced labor in the past.
6. **Allow Confidential Reporting** – Consistent with CTPAT criterion 7.25, companies should set up a mechanism where employees, suppliers and other stakeholders can confidentially report the existence of forced labor and other violations of the company's policies. This mechanism may be a toll-free hotline, a suggestion box, postal address, or an email address. Companies should publish the details



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of their anonymous reporting mechanisms with assurances that supplier employees can remain anonymous and need not fear retaliation.

- 7. Contractual Obligations** – CTPAT Members should also include contractual obligations with their first-tier suppliers in terms of adhering to their codes of conduct, U.S. laws, and international mandates against forced labor practices. Contracts should also require the direct supplier to ensure that upstream suppliers implement codes of conduct. Contracts may also require direct suppliers to specify the activities they are implementing as part of their social compliance commitments, such as allowing auditors and verification organizations unrestricted access to production facilities, having grieving mechanisms in place for workers, and providing training to its personnel on the prohibition of forced labor in all company activities.

Members may also want to amend their contracts with high-risk suppliers to impose large financial penalties if these suppliers fail to disclose their use of suppliers who are found to be involved in forced labor practices.

- 8. Monitor Compliance: Targeted Audits and Pro-Active Worker Participation** – Conduct and document oversight by conducting targeted, risk-based audits and personally visiting suppliers. Auditing is one of the most important ways to verify whether the supplier is meeting its obligations according to its code of conduct.

Questionnaires with targeted questions that require a detailed answer – not just “Yes” or “No” answers, may also be employed in addition to visiting suppliers. It is important to note, however, that those involved in forced labor practices go out of their way to conceal their operations, so a cursory examination or social responsibility audit may not always reveal any wrongdoing. For starters, companies need to be aware of possible vulnerabilities associated with some social responsibility audits, to include the following:

- Potential for a conflict of interest between the auditors and those commissioning the audits;
- Exclusion of workers’ input;
- Threats and coercion of workers to lie when interviewed by the auditors or an outside party; and,
- Possible falsification of audit results.

Information collected from suppliers or via audits should not be taken at face value. Audits should therefore not be the only approach in terms of ensuring compliance. Companies should also require that worker participation and engagement be at the core of their strategy to improve adherence to human rights, and they can do this by asking their suppliers to enable their workers to contribute to the development and implementation of policies and decisions that affect them on issues such as grievance mechanisms and the adoption and monitoring of globally accepted human rights standards.

Companies may use other avenues to monitor compliance beyond the traditional audit process, such as relying on the use of technology, which is playing an increasing role in the ability of companies, NGOs and other groups to capture worker feedback. Many initiatives rely on smart phone technology to administer anonymous surveys that poll workers on their working conditions in factories and fields (see [Comply Chain](#) for examples).

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9. **Remediate Violations** – Auditing uncovers problems; it does not solve them. It is one piece of the larger social compliance system. Remediation includes the actions taken in response to an identified violation, and they should strive to both fix the problem and prevent it from recurring. Remediation actions should be documented. If remediation is not possible, the Member should cut ties with the supplier.
10. **Independent Review** – While not a program requirement, it is one that is strongly recommended, particularly for those importers sourcing from areas of the world at high-risk for forced labor. As the Comply Chain makes clear, “... independent third-party verification consists of an assessment of a company's complete social compliance system, to determine whether it is being implemented properly and thoroughly.” This verification should be done at least annually for high-risk suppliers.
11. **Report Performance** – Public reporting on social compliance used to be largely voluntary, although some industry and multi-stakeholder groups required public disclosure of audit findings and other program elements as conditions for membership. Though most reporting is still voluntary, a growing number of consumers, shareholder groups, and NGOs have come to expect companies to share social compliance information with the public – and increasing numbers of companies have undertaken sharing such information to demonstrate engagement and leadership in their policies and programs.

*The United States is committed to promoting respect for human rights and dignity and supporting a system of global trading free from forced labor. Combating trade in illicit goods produced with forced labor, including government-sponsored forced labor or convict labor, protects against unfair competition for compliant U.S. and international manufacturers and promotes American values of free and fair trade, the rule of law, and respect for human dignity.*

Robert Silvers - Under Secretary for Strategy, Policy, and Plans  
U.S. Department of Homeland Security

If a company discovers or suspects there is still forced labor in its supply chain after the above procedures have been implemented, the company should seriously consider working with a different supplier or business partner. While this might increase the cost of the goods being imported, it will be worth it in the long run. It is better for the CTPAT Member to be proactive rather than reactive, avoiding possible damage control after a forced labor violation has been made public.

**International Efforts to Combat Forced Labor** – The U.S. is not alone in its efforts to root out forced labor. Many European countries like Germany, as well as other countries like Australia and New Zealand, have passed laws that hold companies accountable for forced labor in their supply chains. *The United States-Mexico-Canada Free Trade Agreement (USMCA)* introduced formal elements to incentivize companies to improve their labor practices and established the USMCA Forced Labor Enforcement Task Force to lead U.S. enforcement activities to prohibit import of goods produced by forced labor, under both the USMCA and the Tariff Act of 1930. Both Canada and Mexico have worked towards strengthening their forced labor laws. [Mexico's new forced labor law](#), for example, condemns the importation of goods made with forced or child labor.

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## Additional Forced Labor Resources

- [CBP Forced Labor Page](#) – Includes a list of the Withhold Release Orders and Findings issued by the agency and links to important resources on forced labor.
- [Uyghur Forced Labor Prevention Act: U.S. Customs and Border Protection Operational Guidance for Importers](#) (June 13, 2022)
- [Everybody's Business: The Xinjiang Goods Entering Global Supply Chains](#) (Report from C4ADS)
- [Responsible Sourcing Tool](#) – This tool is the result of the collaboration of four institutions committed to fighting human trafficking: the State Department's Office to Monitor and Combat Trafficking in Persons, Verité, Made in a Free World, and the Aspen Institute.
- [OECD Guidelines for Multinational Enterprises](#) – These guidelines from the Organization for Economic Cooperation and Development (OECD) are recommendations addressed by governments to multinational enterprises operating in or from adhering countries - including the United States. The guidelines provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognized standards. The guidelines are the only code of responsible business conduct that governments have committed to promoting.
- [OECD Due Diligence Guidance for Responsible Supply Chain in the Garment and Footwear Sector](#) – The garment and footwear sector is one of the largest consumer goods sectors in the world. Adopted in 2017, these guidelines establish a common understanding of due diligence in the garment and footwear industry.
- [OECD-FAO Guidance for Responsible Agricultural Supply Chains](#) – These guidelines from the Food and Agriculture Organization (FAO) and the OECD are FAO's central framework for addressing supply chains, due diligence, and development in the agricultural sector. This guidance is relevant to companies upstream and downstream in the agricultural supply chain and lays out responsible business conduct and development from farm to consumer.
- U.S. Department of Commerce – [Training on Human Trafficking: Forced Labor Training for Global Supply Chains](#).

*An injustice anywhere, is a threat to justice everywhere.*  
Martin Luther King

## CTPAT Program

CBP.GOV/CTPAT

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