

Virtual Trade Week: Forced Labor Frequently Asked Questions (FAQs)

Q. Have you seen a decrease in forced labor since CBP began to focus on this?

Since the enactment of *Trade Facilitation and Trade Enforcement Act* in 2016, U.S. Customs and Border Protection (CBP) has undertaken various actions to enforce the prohibition on forced labor goods. In the three years after the act was enacted, CBP issued 13 Withhold Release Orders (WROs) and detained imports covered by these WROs; conducted one enforcement action under Countering America's Adversaries Through Sanctions Act (CAATSA); and issued a civil penalty associated with one WRO totaling nearly \$8.4 million. Since then, the number of enforcement actions has increased significantly. CBP issued an unprecedented 13 WROs in Fiscal Year 2020, detained over \$55 million worth of goods, and issued its first finding in nearly 25 years. CBP is currently enforcing 50 active WROs and eight active forced labor findings.

CBP's enforcement efforts prevent goods produced with forced labor from entering the United States and persuade companies to modify their business practices. Canada and Mexico have committed to working with the United States to address forced labor under the U.S.-Mexico-Canada Agreement, and CBP continues discussions of forced labor enforcement with like-minded partners in Europe and the Asia-Pacific region. CBP does not track the volume of forced labor around the world. The International Labor Organization (ILO) maintains these statistics. CBP regularly consults with other agencies, including the Departments of Labor and State, who have efforts related to labor, development, and diplomacy overseas, in the development of enforcement strategies.

Q. What does Ms. Syum recommend using for evaluating labor standards if a widely accepted and adopted social compliance audit mechanism is not effective based on her remarks? It is unreasonable to expect that trade will have ability to monitor day-to-day activities of each player involved in a supply chain to identify and address changing dynamics.

Anasuya Syum with the Human Trafficking Legal Center comments that any mechanism should meaningfully include worker agency to monitor and report working conditions. Workers should be given the freedom to organize and negotiate improved living and working conditions. Companies should also prioritize suppliers that have negotiated a collective agreement with independent trade unions, and companies should communicate to their suppliers that any efforts to undermine workers' efforts to form or join a union, or bargain in good faith, will not be tolerated. Freedom of association is considered fundamental to ending forced labor.

There is ample evidence-based research that demonstrates social audits, as they are currently administered, are ineffective in identifying and reducing forced labor. Instead, more investment should be made in worker-driven solutions. Examples of how this can be achieved are the [Fair Food Program](#) and [Bangladesh Accord](#).

Professor Genevieve LeBaron with the University of Sheffield, U.K. has written extensively on the drawbacks of the audit industrial complex. Some relevant examples of Prof. LeBaron's work that discuss the flaws of audits include [Governing Global Supply Chain Sustainability through the Ethical Audit Regime](#) and [Combatting Modern Slavery: Why Labour Governance is Failing and What We Can Do About It](#). Resources on this subject can also be found on the Re:Structure Lab [website](#).

Q. Is there going to be more focus on helping to remediate and educate facilities and giving importers time to work with them, or is the goal to just leave the area or entity all together? More useful guidance on how to better conditions for workers would be helpful.

CBP encourages importers to work with their suppliers to remediate the forced labor in their supply chains. Importers can work with their suppliers and help ensure compliance with 19 U.S.C. § 1307 by implementing social compliance programs that can identify, mitigate, and remediate forced labor. This does not mean that CBP will allow goods suspected of being mined, produced, or manufactured with forced labor to be imported into the United States during the remediation process. Importers may refer to the Department of Labor Comply Chain app and [website](#) for more information about developing a social compliance system.

Q. Is a voluntary disclosure appropriate if forced labor is discovered in your supply chain?

Parties are not required to make a prior disclosure but can elect to submit a disclosure. A valid prior disclosure discloses the circumstances of a violation of 19 U.S.C. § 1592 to CBP before, or without knowledge of, the commencement of a formal investigation of that violation by CBP and includes a tender of any actual loss of duties associated with the violation. Pursuant to 19 U.S.C. § 1592, CBP can assess monetary penalties against parties who make material false statements, acts, or omissions in connection with their importations. CBP will take into consideration valid prior disclosures regarding forced labor.

Q. What is the proof that is acceptable to prove that the goods are not made with Forced Labor? Some shipments have required up to four individual submissions of documentation each requiring an additional level of data beyond the last. Understanding what is required at the beginning of the process will give the trade predictability and guidelines that can be pursued in future transactions.

CBP understands the interest in greater transparency and is working to improve the information made publicly available. CBP has published several [fact sheets](#), [frequently asked questions](#), and [other materials](#) on its website to help importers understand what forced labor is and the process for forced labor enforcement. Importers are free to submit the evidence they believe is most compelling to show their supply chain is free of forced labor. Importers should expect to provide evidence that their imported goods are not

produced with forced labor for every shipment suspected of being produced with forced labor.

Foreign entities seeking to be excluded from the scope of a withhold release order can submit more [specific information](#) regarding their production process. Information that CBP generally considers beneficial includes, but is not limited to, evidence refuting each identified indicator of forced labor; evidence that policies, procedures, and controls are in place to ensure that forced labor conditions are remediated; evidence of implementation and subsequent verification by an unannounced and independent third-party auditor; and supply chain maps that specify locations of manufacturers, factories, farms, and processing centers.

Q. For cotton products produced in the Xinjiang region, would CBP consider letting the importer (at importer's cost) send a sample of the detained shipment to a lab for "cotton-DNA" testing to prove that the cotton is not from that region?

CBP recognizes that laboratory analysis can be a valuable tool to assist CBP in determining the make-up and origin of sampled goods. CBP will consider any information, including laboratory reports, provided by an importer to support the claimed admissibility of detained goods. However, the Xinjiang Uyghur Autonomous Region (XUAR) WRO also covers downstream products so additional documentation will most likely be required to demonstrate a shipment was not produced with forced labor.

Q. Does CBP feel that additional legislation is required or would be helpful to curb or control the importations of goods made with forced labor? Does CBP have the statutory authority they feel is needed?

CBP is responsible for enforcing Section 307 of the Tariff Act of 1930 (19 U.S.C. §1307) which prohibits imports of any product mined, produced, or manufactured, wholly or in part, by forced labor. Currently, CBP is not seeking to petition Congress for an expansion of statutory authority for the enforcement of forced labor of U.S. imports.

Q. Question for Ms. Randazzo: You mention FAQs coming soon on the silica fabric WRO; can you give us a preview of any information that will be covered? Specifically, what types of documents can importers require of their suppliers to prove that Hoshine-produced silica is not used in the production of downstream products?

The Hoshine Silicon Industry Co. Ltd FAQs can be found on [CBP.gov](#). One of the answers describes the kind of evidence CBP expects to see from importers. Importers should be able to trace their supply chains on imports, including the production of the component silica, to determine whether the silica used in the manufacture of their imported goods is being produced in violation of 19 U.S.C. §1307. Importers should provide information on the sourcing of the silica-based component materials in their imported goods. The information submitted to CBP should show that the silica used in

the production of the imported product was not sourced directly or indirectly from Hoshine or any of its subsidiaries.

Q. First, kudos to CBP on efforts in this space, and being a leader globally on this human rights issue. We all know that Forced Labor is a global issue. What role is CBP playing to help educate partner government agencies on identifying red flags and develop enforcement strategies to eradicate Forced Labor in the United States?

CBP is actively engaged with partner government agencies to eradicate forced labor in United States' supply chains. CBP regularly consults with other agencies, including the Departments of Labor and State, in the development of enforcement strategies.

Q. Does CBP use the Department of Labor ILAB goods and country list to target Forced Labor in the supply chain? CBP often states they can't just open a container or look at advance data to target Forced Labor, so how is CBP tackling enforcement of Forced Labor in the supply chain.

In the past, CBP has investigated and issued WROs against goods found on the Department of Labor's (DOL's) [List of Goods Produced by Child Labor or Forced Labor](#). A few examples include gold from the Democratic Republic of the Congo, cotton from Turkmenistan, and tobacco from Malawi. However, CBP is not limited to investigating the goods on DOL's list. CBP uses information from other sources such as nongovernmental and civil society organizations, open-source information, witness testimony, trade data, and records of importers to validate allegations of forced labor, and trace goods made with forced labor imported into the United States.

If information reasonably, but not conclusively, indicates that merchandise made with forced labor is or is likely to be imported, CBP issues WROs instructing the ports of entry to detain that merchandise. Detained merchandise is excluded from entry into the United States unless the importer can demonstrate that it was not produced with forced labor. CBP will only modify a WRO or finding if all forced labor indicators identified by the agency are remediated and forced labor is no longer occurring.