



# **Forced Labor Enforcement Task Force: Establishing Timelines**

Implementing Section 742 of the United States-Mexico-Canada Agreement Implementation Act

Report to Congress

*July 30 2021, 2021*



Homeland  
Security

*Office of Strategy, Policy, and Plans*

# Message from the Acting Under Secretary for Strategy, Policy and Plans

July 30, 2021

I am pleased to present the following Report to Congress, “Forced Labor Enforcement Task Force: Establishing Timelines,” which was prepared by the U.S. Department of Homeland Security’s (DHS) Office of Strategy, Policy, and Plans.

This document has been compiled pursuant to Section 742 of the United States-Mexico-Canada Agreement Implementation Act of 2020 (Pub. L. 116-113) with contributions from and the approval of the current members of the Forced Labor Enforcement Task Force and in consultation with the appropriate congressional committees, the House Committee on Ways and Means and the Senate Finance Committee.

Combating trade in illicit goods produced with forced labor overseas not only promotes respect for human rights and dignity, it also promotes American values of free and fair global trade and rule of law. Also, combating illicit goods produced with state-sponsored forced labor or convict labor may benefit U.S. national security and interests overseas. As mandated by Section 742, this Report establishes timelines for responding to petitions submitted to the Commissioner of U.S. Customs and Border Protection (CBP) alleging that goods produced with child labor or forced labor are being or are likely to be imported. These timelines are constructed recognizing the limitations of current U.S. law precluding CBP from taking enforcement actions against any child labor that is not forced or indentured child labor.

Pursuant to P.L. 116-113, this Report will be made publicly available and is being provided to:

The Honorable Ron Wyden  
Chairman, Senate Committee on Finance

The Honorable Mike Crapo  
Ranking Member, Senate Committee on Finance

The Honorable Richard Neal  
Chairman, House Committee on Ways and Means

The Honorable Kevin Brady  
Ranking Member, House Committee on Ways and Means

Sincerely,



Kelli Ann Burriesci  
Acting Under Secretary  
Office of Strategy, Policy, and Plans

# Executive Summary

Established by Executive Order 13923 in May 2020, the Forced Labor Enforcement Task Force is responsible for monitoring U.S. enforcement of the prohibition on importing goods produced with forced labor as described in 19 U.S.C. § 1307 (Section 1307).

As mandated by Section 742 of the United States-Mexico-Canada Agreement (USMCA) Implementation Act of 2020,<sup>1</sup> this report establishes timelines for responding to petitions submitted to the Commissioner of U.S. Customs and Border Protection (CBP), a component of the U.S. Department of Homeland Security (DHS), alleging that goods produced with forced labor are being or are likely to be imported.<sup>2</sup>

Beyond the prohibition on importing goods produced with forced labor in Section 1307, there are other relevant federal laws that the U.S. government can use to combat the production of goods with forced labor globally. All members of the Forced Labor Enforcement Task Force have a role to play, as outlined in this report, in supporting effective U.S. government enforcement of such relevant laws.

There are several CBP timelines and investigative benchmarks established in this report. CBP reviews the submitted petition within 30 days to accept or reject the petition for investigation or refer the petition for possible action under other U.S. Department and Agency authorities. Once CBP accepts a petition for investigation, it will commence the investigation. In approximately 90 to 180 days from the initiation of an investigation, CBP will assess whether it possesses information to articulate reasonable suspicion of a violation of Section 1307.

In cases where CBP has reasonable suspicion of a Section 1307 violation, CBP will issue a Withhold Release Order, in accordance with applicable regulations. In approximately 180 to 365 days from the initiation of an investigation, CBP will assess whether it possesses information to articulate probable cause sufficient to issue a Section 1307 Finding. In cases where CBP has probable cause to determine a Section 1307 violation, CBP will take steps to issue a Section 1307 Finding, in accordance with applicable regulations. CBP's coordination with members of the Forced Labor Enforcement Task Force is built into the timelines, as that coordination is critical to achieving effective forced labor enforcement results.

The Forced Labor Enforcement Task Force will continue its critical mission of supporting the U.S. government's ability to effectively combat the illicit activity of importing goods produced with forced labor.

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<sup>1</sup> 19 U.S.C. § 4682.

<sup>2</sup> The CBP timelines established in this report also include timelines for CBP to refer allegations of child labor that is not forced or indentured to the relevant Forced Labor Enforcement Task Force member. However, U.S. law does not provide CBP authority to take enforcement actions against prohibit the importation of goods produced with child labor that is not forced or indentured.



# Forced Labor Enforcement Task Force: Establishing Timelines

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# I. Legislative Language

The United States-Mexico-Canada Agreement Implementation Act of 2020 (Pub. L. 116-113)<sup>3</sup> in Sec. 741 states that “the President shall establish a Forced Labor Enforcement Task Force to monitor United States enforcement of the prohibition under section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307).”<sup>4</sup> The law further includes<sup>5</sup> the following requirement in Sec. 742 of the Act<sup>6</sup>:

## *Timeline required*

### (a) In General—

Not later than 90 days after the establishment of the Forced Labor Enforcement Task Force pursuant to section 741(a), the Task Force shall establish timelines for responding to petitions submitted to the Commissioner of U.S. Customs and Border Protection alleging that goods are being imported by or with child or forced labor.

### (b) Consultation Required—

In establishing the timelines during such 90-day period, the Task Force shall consult with the appropriate congressional committees.

### (c) Report—

The Task Force shall timely submit to the appropriate congressional committees a report that contains the timelines established pursuant to subsection (a) and shall make such report publicly available.

House Report 116-358, which accompanies the United States-Mexico-Canada Agreement Implementation Act of 2020 (Pub. L. 116-113), states<sup>7</sup>:

## Explanation of Change

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Section 742 requires the Task Force to establish timelines for responding to petitions alleging that goods are being imported by or with forced or child labor. The Task Force must establish such timelines within 90 days of being constituted and shall consult with the Committee on Ways and Means and the Senate Finance

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<sup>3</sup> 19 U.S.C. Chapter 29.

<sup>4</sup> Codified at 19 U.S.C. § 4681(a).

<sup>5</sup> Although the law says that “the Task Force shall establish timelines for responding to petitions submitted to the Commissioner of U.S. Customs and Border Protection alleging that goods are being imported by or with child or forced labor,” DHS notes that 19 U.S.C. § 1307 prohibits the importation of goods produced with forced child labor or indentured child labor, but not child labor that is not forced or indentured. DHS also assumes that “by or with child or forced labor” modifies the “goods” as opposed to “being imported,” consistent with 19 U.S.C. § 1307.

<sup>6</sup> Codified at 19 U.S.C. § 4682.

<sup>7</sup> DHS also held a meeting on June 9, 2020 with the House Committee on Ways and Means and the Senate Finance Committee in which staffers clarified Congressional intent was for CBP timelines to cover allegations of goods produced with forced labor or forced child labor that are being or are likely to be imported, not goods produced with child labor that is not forced.

Committee. The Task Force shall submit the timelines in a report to the Committee on Ways and Means and the Senate Finance Committee and make it publicly available.

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Reason for Change

Section 307 of the Tariff Act of 1930 prohibits the importation of goods made by or with forced labor. The USMCA also includes a provision that requires parties to prohibit the importation of goods made by or with forced labor.

This subtitle requires the U.S. government to better coordinate its enforcement efforts and report to Congress on a regular basis regarding such efforts. Further, it requires the Task Force to build upon the monitoring efforts currently being completed by the Department of Labor regarding forced and child labor.

## II. Forced Labor Enforcement in the United States

U.S. law prohibits importing goods mined, produced, or manufactured wholly or in part in any foreign country by convict labor, forced labor, or indentured labor under penal sanctions, including forced or indentured child labor, as described in 19 U.S.C. § 1307.

This law is derived from the Tariff Act of 1930, passed at the start of the Great Depression to keep foreign industry with unfair labor practices from undermining the U.S. economy and its workers.

In February 2016, the Trade Facilitation and Trade Enforcement Act of 2015 repealed the “consumptive demand” clause contained within 19 U.S.C. § 1307 since the 1930s. This clause permitted the importation of goods made by forced labor “if the goods were not produced in such quantities in the United States as to meet the consumptive demands of the United States.” Repealing this clause removed a significant barrier to full enforcement of the law.

Critically, because the law prohibits the importation of goods made “wholly or in part” by forced labor, entities importing merchandise in the United States are liable for enforcement actions if there is forced labor at any tier of their supply chain, down to every input into the products actually or potentially destined for importation into the United States.<sup>8</sup>

The definition of forced labor in 19 U.S.C. § 1307 is “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 himself voluntarily,” and includes two key elements:

- Menace of penalty, i.e., using or threatening to use penalties to compel someone to work. Examples include violence, threats of violence, physical confinement, and debt bondage; and
- Involuntariness, i.e., a lack of freedom to leave a job at any time. Examples include identity documents being taken away, being physically or linguistically isolated in the area of work, being forced to work without wages, and being forced to work a different job or for different employers than consented or a more hazardous job without protection and consent.

Any goods produced by North Korean nationals or citizens are presumed to be prohibited from importation under 19 U.S.C. § 1307, regardless of where they are produced.<sup>9</sup> This is a rebuttable presumption. Such North Korean-made goods<sup>10</sup> may be imported into the United States if the

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<sup>8</sup> For example, if fish feed was produced with forced labor, then farmed fish given that feed are products of forced labor under this law. Similarly, for example, if gold was mined with forced labor and that gold is used to build semiconductors put in smartphones, then those smartphones are products of forced labor under this law.

<sup>9</sup> 22 U.S.C. § 9241a(a).

<sup>10</sup> If goods, services, or technology were produced wholly or in part *from* North Korea, then they are prohibited from importation into the United States without a license from the U.S. Department of Treasury Office of Foreign Assets Control (OFAC) or an applicable exemption, in accordance with Executive Order 13570.

Commissioner of U.S. Customs and Border Protection (CBP) finds, by clear and convincing evidence, the goods were not produced with forced labor.<sup>11</sup>

The Trafficking Victims Protection Act of 2000 (TVPA) made forced labor a federal crime under 18 U.S.C. § 1589 and labor trafficking a federal crime under 18 U.S.C. § 1590 and instituted numerous protections for victims. With respect to imported goods,<sup>12</sup> 18 U.S.C. § 1589(b) and 1593A criminalize knowingly benefiting, financially or by receiving anything of value, “from participation in a venture which has engaged in the providing or obtaining of labor or services [described in subsection (a) of the statute], knowing or in reckless disregard of the fact that the venture has engaged in providing or obtaining” of forced labor or in labor trafficking, which includes knowingly recruiting, harboring, transporting, providing, or obtaining a person for forced labor. Under 18 U.S.C. § 1596, U.S. courts have extra-territorial jurisdiction over the federal crimes of forced labor and labor trafficking.<sup>13</sup> That statute provides that prosecutions may be brought against an alleged offender (person or entity) for forced labor that occurred anywhere in the world, as long as the alleged offender is a U.S. national, a U.S. lawful permanent resident, or, irrespective of nationality, present in the United States.

It is also a federal crime to knowingly transport in U.S. interstate commerce or from any foreign country into the United States prison-made goods, which includes goods produced wholly or in part by convicts, prisoners, or in any penal or reformatory institution, with limited exceptions, under 18 U.S.C. § 1761. This criminal statute was originally enacted by the Ashurst-Sumners Act of 1935. It was part of a movement to further regulate the U.S. prison system and “sought to stop inmate-manufactured goods from flooding the market and undermining [American non-convict] labor.”<sup>14</sup> Anyone who violates this criminal statute shall be fined or imprisoned up to two years, or both.<sup>15</sup> Such prison-made goods shall be forfeited to the United States.<sup>16</sup>

As with 19 U.S.C. § 1307 above, the language “wholly or in part,”<sup>17</sup> indicates that corporations in the United States may be liable if their supply chain their supply chains are not free of goods produced by prisoners, convicts, or anyone in any penal or reformatory institution, unless one of the stated exceptions applies.

It is also a federal crime under 18 U.S.C. § 1762, for any goods produced, wholly or in part, by convicts, prisoners, or anyone in any penal or reformatory institution that are shipped or transported in interstate or foreign commerce, with limited exceptions, to not be plainly and clearly marked (i.e., readily ascertained on inspecting the outside of a package) with:

- the name and address of the shipper,

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<sup>11</sup> 22 U.S.C. § 9241a(b).

<sup>12</sup> 18 U.S.C. § 545 criminalizes smuggling goods into the United States, and is another example of a federal crime that may apply to those who fraudulently or knowingly import goods produced with forced labor.

<sup>13</sup> 18 U.S.C. § 1596.

<sup>14</sup> Bosworth, Mary. *Encyclopedia of Prisons and Correctional Facilities*. India: SAGE Publications, 2005. Pg. 43.

<sup>15</sup> 18 U.S.C. § 1761(a).

<sup>16</sup> 18 U.S.C. § 1762(b).

<sup>17</sup> See 18 U.S.C. §§ 1761 and 1762.



- the name and address of the consignee,
- the nature of the contents, and
- the name and location of the penal or reformatory institution where produced wholly or in part

Anyone violating this law shall be fined and the goods transported in violation of the statute shall be forfeited to the United States.<sup>18</sup>

### **Establishment of the Forced Labor Enforcement Task Force**

Section 741 of the U.S.-Mexico-Canada Agreement Implementation Act (USMCA), signed into law in January 2020, requires establishment of a Forced Labor Enforcement Task Force.<sup>19</sup> Executive Order 13923 established the Forced Labor Enforcement Task Force in May 2020.

The U.S. Department of Homeland Security (DHS) chairs the Task Force, which must meet quarterly. Members of the Task Force include the Office of the U.S. Trade Representative (USTR), the Departments of Labor (DOL), State, Justice (DOJ), Treasury, and Commerce (DOC), and the U.S. Agency for International Development (USAID). The National Security Council (NSC) and Domestic Policy Council (DPC) participate as observers. An overview of each agency's role in forced labor enforcement is described below.

### **U.S. Department of Homeland Security**

DHS enforces through its component agencies the prohibition on importing goods produced with forced labor. The agencies undertake enforcement primarily through trade enforcement and criminal enforcement.

#### *U.S. Customs and Border Protection*

CBP enforces Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) prohibiting the importation of goods made with convict labor, forced labor, or indentured labor under penal sanctions, including forced or indentured child labor.

CBP investigates allegations received from other U.S. government agencies, civil society organizations, non-governmental organizations (NGOs), academia, media reports, and the private sector. CBP also initiates investigations of circumstances that present a high risk of forced labor use in the production of goods. To develop an allegation, CBP combines on-the-ground knowledge about foreign producers, growers, and manufacturers with information gathered by its Centers of Excellence and Expertise, Attachés, and/or Regulatory Audit and Agency Advisory Services through official correspondence, interviews, audits, and other engagements of importers. CBP refers cases to U.S. Immigration and Customs Enforcement

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<sup>18</sup> 18 U.S.C. § 1762.

<sup>19</sup> 19 U.S.C. § 4681(a).

(ICE) Homeland Security Investigations (HSI) for criminal investigation, as appropriate. CBP employs a risk-based enforcement strategy to prioritize and investigate cases.

CBP has civil law enforcement authority to detain, seize, or exclude goods produced with forced labor and convict labor at the ports of entry.

To issue a detention order (also known as a Withhold Release Order or WRO) on goods produced with forced labor, regulations require that CBP finds the information “reasonably but not conclusively” indicates the goods are produced with forced labor,<sup>20</sup> and that the “class of merchandise” is being or is “likely to be” imported into the United States.<sup>21</sup> A WRO determination is made exclusively by the Commissioner of CBP (the head of the agency) or the Commissioner’s designated representative.<sup>22</sup> Shipments of merchandise falling under WRO are subject to detention and/or exclusion. Once a WRO is issued, CBP works to facilitate the flow of legitimate goods while effectively prohibiting goods made with forced labor from entering U.S. commerce.

If CBP detains a shipment subject to a WRO, then within three months, the importer may respond to the allegation by providing evidence of admissibility,<sup>23</sup> or the importer may redirect (i.e., export from the U.S. port) the goods to a location outside of the United States at any time prior to seizure.<sup>24</sup> To request release of a particular shipment, importers may submit proof of admissibility petitions to the port of entry where the shipment is being detained. Importers and/or manufacturers may also request a WRO modification or revocation, which CBP reviews. CBP posts notifications of WRO modifications and revocations on CBP.gov, and endeavors to also issue media releases announcing the changes. WRO are also published online and announced in the media as well.

If CBP receives information sufficient to find probable cause that certain imported goods are produced with forced labor, CBP with the approval of the Secretary of Homeland Security will publish a formal “finding” to that effect in the Customs Bulletin and in the Federal Register.<sup>25</sup> Merchandise covered by a Finding is subject to seizure and forfeiture.<sup>26</sup> CBP may also issue penalties against those who facilitated the importation of goods produced with forced labor.<sup>27</sup>

Existing regulations provide that if a CBP port director identifies any apparent violation of the prohibition against knowing importation or the inappropriate marking of goods produced by

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<sup>20</sup> A reasonableness standard is one of the lowest thresholds among various burdens of proof in the U.S. legal system. As explained further, a Withhold Release Order only leads to detaining, not seizing, such goods, and shifts the burden to the importer to provide information to CBP demonstrating that the allegations are not valid.

<sup>21</sup> 19 C.F.R. § 12.42.

<sup>22</sup> See 19 C.F.R. § 12.42.

<sup>23</sup> 19 C.F.R. § 12.43.

<sup>24</sup> 19 C.F.R. § 12.44.

<sup>25</sup> See 19 C.F.R. § 12.42. The Secretary of the Treasury delegated this authority to the Secretary of Homeland Security pursuant to Treasury Order 100-16, May 15, 2003.

<sup>26</sup> 19 C.F.R. § 12.44.

<sup>27</sup> For example, 19 U.S.C. § 1592 provides that CBP may issue penalties for import violations involving fraud, gross negligence, and negligence, and 19 U.S.C. § 1595a provides that CBP may issue penalties against individuals who aid in unlawful importation..

convicts, prisoners, or anyone in any penal or reformatory institution,<sup>28</sup> then the CBP port director must detain the goods and report the facts to the appropriate U.S. Attorney, who will advise CBP on whether action should be taken against the goods.<sup>29</sup>

CBP's Office of Trade, Trade Remedy Law Enforcement Directorate (TRLED) leads CBP's forced labor enforcement work. The Forced Labor Division within TRLED handles the processing of allegations/petitions and law enforcement investigations. The Forced Labor Division manages the entire cycle of a civil forced labor case, from allegation, through investigation, respective enforcement actions, as well as adjudication of any requests for modification or revocation of WROs, and coordination for any civil penalties, criminal investigation referrals, and publishing of findings of forced labor. Offices beyond Forced Labor Division within CBP contribute to the investigations and enforcement actions, including:

- Office of Trade
  - National Threat Analysis Division (NTAD), also within TRLED
  - Regulatory Audit and Agency Advisory Services (RAAAS)
  - Regulations and Rulings
  - Trade Intelligence Division
- Office of Chief Counsel
- Office of Field Operations
  - Trade Operations Division
  - National Targeting Center
  - Centers of Excellence and Expertise
  - Field Offices and Port personnel.

CBP also conducts outreach to educate stakeholders about the prohibition in 19 U.S.C. § 1307. Stakeholders include other agencies in the U.S. government, industry associations and companies, and civil society and non-governmental organizations. CBP regularly posts guidance on CBP.gov.

CBP leverages all of its enforcement tools, including targeting, auditing, and commodity expertise, to conduct investigations of forced labor allegations.

### *U.S. Immigration and Customs Enforcement Homeland Security Investigations*

ICE HSI conducts criminal investigations into actors or entities engaging in illicit activity with a nexus to the United States, who violate 18 U.S.C. § 1589 by participating in a venture knowingly or in reckless disregard that the venture has engaged in forced labor and who knowingly benefit, financially or by receiving anything of value, from such venture. For a case to be viable for criminal prosecution under 18 U.S.C. § 1589(b), it requires a probable cause showing necessary elements of the crime—knowledge or reckless disregard of forced labor, benefit, and a venture—

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<sup>28</sup> 18 U.S.C. §§ 1761 – 1762.

<sup>29</sup> 19 C.F.R. § 12.45.

are present. Criminal conviction requires proving the elements of the crime beyond a reasonable doubt.

ICE HSI does not require a CBP-issued WRO or Finding to be in effect to criminally investigate or refer a case for prosecution for violating U.S. law regarding goods produced with forced labor. Prosecuting criminal violations of forced labor requires a higher evidentiary burden of proof than what is required for CBP to determine to issue a WRO or Finding.

Criminal cases may begin as an investigation or prosecution for violating 18 U.S.C. § 1589. Alternatively, the criminal investigation or prosecution might develop from information identified in other investigations, such as intellectual property violations, commodity smuggling, or financial crimes that indicate the goods being seized or sought may have been produced with forced labor.

If CBP or ICE receives any original information from the public on violations of the prohibition on the importation of goods produced with forced labor, the informer may be entitled to compensation, not to exceed 25% of any fine, penalty, or forfeiture incurred or \$250,000 for any case.<sup>30</sup> An informant's identifying information shall be kept confidential.<sup>31</sup>

#### *Other DHS Agencies*

The DHS Office of the Inspector General (OIG) and certain DHS Components may investigate and take criminal or administrative enforcement action<sup>32</sup> against contractors or other suppliers of the U.S. government who violate U.S. law or the Federal Acquisition Regulations (FAR) prohibition on human trafficking in U.S. government acquisitions, per FAR clauses 52.222-18, -19, and -50.<sup>33</sup>

#### **Office of the U.S. Trade Representative**

USTR is within the Executive Office of the President whose role is to develop and coordinate U.S. international trade, commodity, and direct investment policy. USTR also monitors and negotiates trade agreements and administers trade preference programs, which include U.S. government priorities to end the forced labor of adults and children.

The trade agreements to which the United States is a party have long included provisions to require parties to adopt, maintain, and enforce legal provisions on the elimination of all forms of forced or compulsory labor. In addition, the USMCA includes a ground-breaking provision requiring all three countries to prohibit the importation of goods produced wholly or in part with forced labor.

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<sup>30</sup> 19 U.S.C. § 1619.

<sup>31</sup> 19 C.F.R. § 161.15.

<sup>32</sup> Administrative enforcement action includes suspension and debarment.

<sup>33</sup> See also Executive Order 13627 *Strengthening Protections Against Trafficking in Persons in Federal Contracts*, Executive Order 13126 *Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor*, and Office of Management and Budget Memorandum: *Anti-Trafficking Risk Management Best Practices & Mitigation Considerations* (October 21, 2019).

The trade preference programs that USTR administers continue to be powerful tools in strengthening labor standards around the world, including against the use of forced labor. The Generalized System of Preferences and the African Growth and Opportunity Act require countries receiving these preferential benefits to meet all of the eligibility criteria, including with respect to forced labor. Through USTR's enforcement and review processes, they ensure that countries benefiting from these programs are indeed meeting these requirements. USTR's efforts have resulted in strengthened protections for workers, including strengthened protections against forced labor.

USTR also co-chairs the Interagency Labor Committee for Monitoring and Enforcement with DOL and is a member of the Forced Labor Enforcement Task Force. It continues to work within those entities to help address issues related to forced labor.

### **U.S. Department of Labor**

DOL's Bureau of International Labor Affairs (ILAB) combats some of the most abusive labor practices, including the use of child labor, forced labor, and human trafficking. ILAB represents DOL as co-chair for the Interagency Labor Committee for Monitoring and Enforcement and serves as a member of the Forced Labor Enforcement Task Force.

ILAB broadly combats abusive labor practices through international research, awareness, policy engagement, and technical cooperation. ILAB also engages in negotiations of international labor standards that strengthen the legal framework to protect workers from forced labor and provide guidance on how to tackle the problem. ILAB works to ensure that United States trading partners live up to their commitments through ILAB negotiation, monitoring, and enforcement of labor provisions of trade agreements and trade preference programs, including on forced labor.

For example, ILAB supports the implementation of the USMCA by working with its interagency partners and foreign government counterparts. ILAB has been working closely with the Government of Mexico and key stakeholders to support efforts that create meaningful and legitimate labor relations for workers and a fair playing field for U.S. businesses. ILAB is supporting implementation of Mexico's historic labor law reform, including through technical assistance, cooperation, and policy engagement, and has posted labor attachés in Mexico to serve as liaisons in advancing these efforts and the mission of the Bureau, including an attaché focused on child labor, forced labor, and human trafficking issues.

ILAB publishes three annual/periodic reports on international child and forced labor that serve as valuable resources for research, advocacy, government action, and corporate responsibility. These reports are the Department of Labor's *Findings on the Worst Forms of Child Labor*; the *List of Goods Produced by Child Labor or Forced Labor*; and the *List of Products Produced by Forced or Indentured Child Labor*. Each of these reports has a distinct mandate, focus and set of implications, but taken collectively, they document the current situation of child labor, forced labor, and forced child labor around the world. ILAB's *Sweat & Toil: Child Labor, Forced Labor, and Human Trafficking Around the World* is a comprehensive resource available as a smartphone app and includes data and research from ILAB's three flagship reports. ILAB also provides resources for private sector companies and industry groups to reduce forced labor in

their supply chains through its smartphone and web-based app: *Comply Chain: Business Tools for Labor Compliance in Global Supply Chains*.

ILAB provides technical assistance cooperation by funding programs to increase capacity of governments and other stakeholders to combat forced labor. More information about these resources can be found on DOL's website at <https://www.dol.gov/agencies/ilab/our-work/child-forced-labor-trafficking>.

### **U.S. Department of Justice**

DOJ has sole authority to criminally prosecute federal forced labor violations under 18 U.S.C. § 1589, including offenses connected to the importation of goods produced by forced labor. DOJ's Civil Rights Division's Human Trafficking Prosecution Unit (HTPU) prosecutes and provides subject matter expertise on forced labor and other human trafficking crimes. The Department's 94 U.S. Attorneys' Offices also prosecute forced labor cases, often in collaboration with HTPU. DOJ's Criminal Division's Money Laundering and Asset Recovery Section (MLARS) prosecutes and provides expertise on the investigation and prosecution of financial crimes, including money laundering, as part of human trafficking cases. DOJ's Criminal Division's Human Rights and Special Prosecutions (HRSP) Section also works with HTPU and MLARS to prosecute forced labor and human rights offenses.

### **U.S. Department of State**

The Department of State (State) leads the United States' global engagement to combat human trafficking and supports the coordination of anti-trafficking efforts across the U.S. government. State is responsible for bilateral and multilateral diplomacy, targeted foreign assistance, and conducting public engagement on human trafficking, including forced labor.

State engages year-round with foreign governments to discuss ways to combat human trafficking and encourage measurable progress through recommendations in the annual Trafficking in Persons (TIP) Report and national action plans. The TIP Report is the U.S. government's principal diplomatic and diagnostic tool to guide engagement with foreign governments on human trafficking. State also issues its annual Country Reports on Human Rights Practices, and in Section 7 Worker Rights includes information on forced labor laws and their application in practice. Through this consistent monitoring and reporting, State supports U.S. trade enforcement efforts by providing additional context on countries and labor concerns, facilitating in-country research on or outreach to particular industries, and raising with foreign counterparts how U.S. authorities with regard to U.S. trade oversight can complement other governments' law enforcement efforts. State is also responsible for delivering critical training to foreign government officials on labor issues.

State deploys several authorities to combat forced labor. State has foreign assistance programming aimed at helping partner countries address and mitigate security threats posed by transnational crime and illicit threats, including human trafficking. Governments of countries ranked Tier 3 in the TIP Report may also be subject to certain restrictions on non-humanitarian

and non-trade-related foreign assistance, votes on funds provided through international financial institutions to the government, and in certain circumstances, on educational and cultural exchange programs for government officials. The U.S. government can also place financial sanctions and visa restrictions on persons connected to serious human rights abuse, including those involving forced labor.

For example, State officials meet with labor stakeholders to discuss the importance of the additional USCMA labor protocol negotiated at the end of 2019 in advancing labor reform in Mexico, which is critically important to the USMCA's success. State does so to demonstrate support for labor law reforms and USMCA implementation efforts in Mexico. State also works with DOL and USTR to follow the implementation of the reforms in Mexico's 32 states and receives reporting from all consular districts on labor-related issues, including forced labor.

### **U.S. Department of the Treasury**

Treasury brings significant financial expertise to the fight against human trafficking and is committed to leveraging the Department's economic tools to target, disrupt, and counter those who undermine our values and engage in forced labor.

Treasury has various tools and authorities to support the mission of combating forced labor, including anti-money laundering, countering the financing of terrorism, and sanctions authorities. The Office of Terrorism and Financial Intelligence (TFI) integrates countering the financial operations of human trafficking networks into Treasury's strategy to safeguard the financial system and combat illicit threats. TFI, through the Office of Terrorist Financing and Financial Crimes (TFFC), the Financial Crimes Enforcement Network (FinCEN), the Office of Foreign Assets Control (OFAC), and the Office of Intelligence Analysis (OIA), coordinates with other federal agencies, state and local law enforcement, and foreign governments to combat human trafficking.

The Internal Revenue Service (IRS) collects and analyzes financial intelligence and data to identify human traffickers and their networks and support law enforcement investigations that lead to accountability and justice. The IRS's Criminal Investigation (IRS-CI) division is the law enforcement arm of the IRS. IRS-CI partners with DOJ, as well as federal, state, local, tribal, and foreign law enforcement to investigate labor trafficking and sex trafficking cases from a financial perspective.

Treasury also has authority to approve regulations implementing 19 U.S.C. § 1307 prohibiting the importation of goods mined, produced, or manufactured, wholly or in part, in any foreign country by forced labor or indentured labor, including convict labor and forced child labor.

### **U.S. Department of Commerce**

DOC's Bureau of Industry and Security (BIS) has added a total of 53 entities to the Entity List for their involvement in the implementation of China's campaign of repression, mass arbitrary detention, forced labor, and high-technology surveillance targeted at Muslim minority groups in the Xinjiang Uyghur Autonomous Region (XUAR).

A BIS license is required for the export, reexport, or transfer (in-country) of any item subject to the Export Administration Regulations (EAR) to any of the 53 entities, and no license exceptions are available. License applications involving most items subject to the EAR that are destined for any of these entities are reviewed under a presumption of denial. BIS has an ongoing process in place to identify and review activities of the Chinese government and commercial entities to determine whether placement of additional entities on the Entity List is warranted.

BIS specifically worked with interagency partners to urge businesses with potential exposure in their supply chain in Xinjiang, or to facilities outside Xinjiang that use labor or goods from Xinjiang, to be aware of the reputational, economic, and legal risks of involvement with entities that engage in human rights abuses. On July 1, 2020, the Departments of Commerce, State, Homeland Security, and the Treasury issued the *Xinjiang Supply Chain Business Advisory* that encouraged businesses to apply industry human rights due diligence policies and procedures to mitigate reputational, economic, legal, and other risks with regard to entities engaged in human rights abuse in XUAR.

### **U.S. Agency for International Development**

USAID is committed to identifying and reducing trafficking in persons in all its forms, including the forced labor of adults and children, in other countries throughout the world, including Mexico. Per the USAID Counter-Trafficking in Persons Policy, launched in 2012 and currently under revision, USAID uses rigorous research methodologies to gain a deeper understanding of the nature and scale of the approaches and to measure impact. In funded assistance around the world, preventing and prosecuting trafficking for forced labor is an important component in USAID's Counter Trafficking in Persons programs, which have been implemented in over 81 countries and regions since 2001. USAID's efforts to combat harmful child labor and trafficking of children involves targeting places where children are vulnerable to trafficking, such as schools, orphanages, and in the agricultural sector. Similarly, USAID programming to combat this crime is focused on behavior change communications interventions, policy development, and livelihood training in target communities. These efforts have been implemented in Africa, Asia, Latin America, the Middle East and Europe and Eurasia.



### III. Timeline Required

The Forced Labor Enforcement Task Force, responsible for monitoring U.S. enforcement of the prohibition in 19 U.S.C. § 1307, establishes the following timelines for responding<sup>34</sup> to petitions<sup>35</sup> submitted to the CBP Commissioner alleging that goods produced with child<sup>36</sup> or forced labor are being imported or likely to be imported.<sup>37</sup>

There are two stages to CBP's process for responding to relevant petitions. First, CBP preliminarily reviews submissions to accept or reject the petition for CBP investigation or refer for possible action under other U.S. Department and Agency authorities. If CBP rejects a petition for investigation, the petitioner may update the petition with additional evidence and re-submit it to CBP for possible acceptance and investigation. Then, if CBP accepts a petition for investigation, CBP will investigate its allegations for possible action under CBP authorities.

#### **Accepting Petitions**

The timeline begins when CBP receives from "any person outside of CBP"<sup>38</sup> a petition alleging that goods produced with forced labor, including forced child labor, convict labor, or indentured labor under penal sanctions, are being or are likely to be imported.

CBP next conducts a preliminary review of the submission, which includes source and evidence verification, risk and impact assessment, and case prioritization.

Before formally accepting and acknowledging receipt of the petition, CBP will find one of the following three outcomes within 30 days of submission of the petition:

#### *Outcome A: When the petition is viable for possible action under CBP authorities*

- CBP accepts the petition for investigation of potential violation(s) of 19 U.S.C. § 1307.
- If the petition has information on the existence of goods produced in whole or in part by forced labor, convicts or prisoners, (except convicts or prisoners on parole, supervised release, or probation) or in any penal or reformatory institution and the goods are being or are likely to be imported, CBP also refers the petition and any additional, relevant evidence to DOJ and/or ICE HSI, as appropriate, for a potential violation of 18 U.S.C. §§ 1589, 1761, 1762.
- If the petition has information on the existence of goods produced with the labor of North Korean nationals or citizens *within* North Korea and the goods are being or are likely to be imported, CBP also refers the petition and any additional, relevant evidence CBP has to Treasury's Office of Foreign Assets Control (OFAC), which may assess whether there

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<sup>34</sup> DHS assumes that "responding to petitions" means both accepting and investigating petitions.

<sup>35</sup> Sec. 742 of the USMCA Implementation Act (19 U.S.C. § 4682) uses the term "petitions." DHS interprets a "petition" to refer only to a submission of a petition in writing to CBP pursuant to 19 C.F.R. § 12.42(b).

<sup>36</sup> DHS notes that 19 U.S.C. § 1307 prohibits the importation of goods produced with forced child labor or indentured child labor, but not child labor that is not forced or indentured.

<sup>37</sup> CBP will share petitions with the Forced Labor Enforcement Task Force and update the Task Force on any determinations related to the petitions, such as if CBP initiates an investigation or issues an enforcement action, as soon as possible.

<sup>38</sup> 19 C.F.R. § 12.42(b).

has been a violation of the North Korea Sanctions Regulations, which at 31 C.F.R. § 510.205(a) prohibits the importation into the United States, directly or indirectly, of any goods, services, or technology from North Korea. Within two days of OFAC responding to CBP to confirm that the goods, services, or technology are prohibited from importation, in the absence of an applicable OFAC license or exemption, CBP will alert its port directors of the prohibited import.

- If the petition has information on the existence of goods produced with the labor of North Korean nationals or citizens *outside* North Korea and the goods are being or are likely to be imported, CBP alerts its port directors of an apparent violation of 22 U.S.C. § 9241a with instructions on how to proceed.<sup>39</sup>
- If the petition could be viable for possible action under other Department and Agency authorities not already specified, CBP refers the petition and any additional, relevant evidence CBP has to those relevant Departments and Agencies.
- If there is adequate contact information for the petitioner, CBP acknowledges receipt of the petition for action under all relevant authorities and, if needed, CBP requests additional information from the petitioner.

*Outcome B: When the petition is not viable for possible action under CBP authorities, but could be viable for possible action under other Department and Agency authorities*

- CBP rejects the petition for investigation of potential violation(s) of 19 U.S.C. § 1307.
- If the petition has information on the existence of goods produced with child labor that is not forced or indentured,<sup>40</sup> CBP also refers the petition and any additional, relevant evidence CBP has to DOL, in accordance with established information exchange protocols.
- If the petition could be viable for possible action under other Department and Agency authorities not already specified, CBP refers the petition and any additional, relevant evidence CBP has to those relevant Departments and Agencies, in accordance with established information exchange protocols.
- CBP notifies the petitioner, if there is adequate contact information, of the rejection of the petition for investigation under CBP authorities and the petition's referral to other Departments and Agencies. CBP provides the petitioner "detailed written advice as to the respects in which [the petition] does not conform."<sup>41</sup>

*Outcome C: When the petition is not viable for possible action under CBP authorities and is very likely not viable for possible action under other Department and Agency authorities*

- CBP rejects the petition for investigation of potential violation(s) of 19 U.S.C. § 1307.
- CBP notifies the petitioner, if there is adequate contact information, of the rejection of the petition for investigation under CBP authorities, provides the petitioner "detailed written advice as to the respects in which [the petition] does not conform,"<sup>42</sup> and requests additional information from the petitioner.

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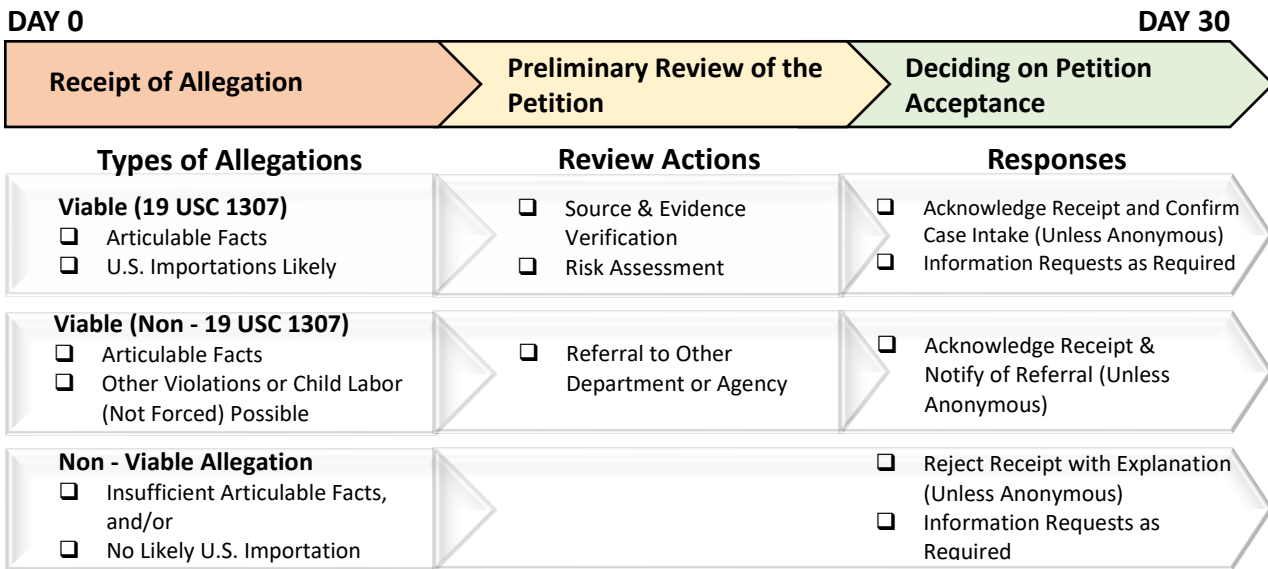
<sup>39</sup> Any further action by CBP in following up on these allegations falls outside the process outlined in 19 C.F.R. §§ 12.42 – 12.45.

<sup>40</sup> CBP does not have the authority to act against goods produced wholly or in part with child labor that is not forced or indentured that are or are likely to be imported into the United States.

<sup>41</sup> 19 C.F.R. § 12.42(c)

<sup>42</sup> 19 C.F.R. § 12.42(c)

Figure 1: Process for Accepting or Rejecting Petitions



### Investigating Petitions Viable for Possible Action Under CBP Authorities

CBP’s timeline for responding to petitions continues to an investigative phase after CBP accepts a petition for investigation of potential violation(s) of 19 U.S.C. § 1307 and acknowledges receipt of the petition to the petitioner.<sup>43</sup>

CBP undertakes the following steps after accepting a petition for investigation.

#### Initiating Investigations

CBP will consider the investigation initiated once CBP has accepted a petition for investigation of potential violation of 19 U.S.C. § 1307, and responded to the petitioner accordingly.

#### Reasonable Suspicion for a Withhold Release Order

In approximately 90 to 180 calendar days from the initiation of an investigation, CBP determines whether reasonable suspicion of violation(s) of 19 U.S.C. § 1307 exists and, if so, issues WROs and a corresponding press release.<sup>44</sup>

There are a number of information sharing opportunities with relevant government agencies. On a monthly basis, CBP hosts the DHS Interagency Forced Labor Working Group. During these meetings, agencies are encouraged to share information regarding their agency’s activities related to forced labor. Additionally, during these monthly meetings, CBP provides a forecast of cases in the investigative queue as they are maturing. CBP also strives to provide a two-week

<sup>43</sup> If at any time CBP detains goods at a port of entry pursuant to 19 C.F.R. § 12.45, then CBP will initiate an investigation for a violation of 19 U.S.C. § 1307, report the facts to the appropriate United States attorney, and follow procedures in accordance with 19 C.F.R. § 12.45.

<sup>44</sup> Extraordinarily complicated investigations, case prioritization, available resources, and other significant factors may affect the actual timeline of certain cases.

advance notification of an impending WRO. CBP meets with specific agencies to clarify any information related to an impending WROs following receipt of interagency notifications. Finally, CBP will provide regular reports to the FLETF on a quarterly basis with regards to its enforcement activities.

### Probable Cause for a Finding

CBP may not necessarily find probable cause to issue a Finding in all cases where a WRO is issued. If, taking into account benchmarks established above, in approximately 180 to 365 days from the initiation of an investigation, CBP finds probable cause that certain goods that are being or are likely to be imported were produced by or with forced labor, including forced child labor, convict labor, or indentured labor under penal sanctions, CBP will proceed to issue a Finding.<sup>45</sup>

Within approximately 60 calendar days after finding probable cause of a violation of 19 U.S.C. § 1307, CBP, with the approval of the Secretary of the Homeland Security,<sup>46</sup> publishes a Finding to that effect in the weekly issue of the Customs Bulletin and in the Federal Register per 19 C.F.R. § 12.42(f).<sup>47</sup>

If CBP identifies any apparent violation of 18 U.S.C. §§ 1761 or 1762, it will detain the subject goods and notify ICE HSI and the appropriate U.S. attorney. If CBP at any time indicates reasonable suspicion or finds probable cause of a violation of 19 U.S.C. § 1307 relating to “convict labor” exists, then CBP will take appropriate enforcement action consistent with title 19, United States Code, and applicable regulations, including notification to ICE HSI and DOJ pursuant to 19 C.F.R. § 12.45, where appropriate.

Also, unless an investigation would be seriously jeopardized by sharing with other U.S. Departments or agencies, CBP – when possible – will notify the Forced Labor Enforcement Task Force of a determination of a WRO at least two weeks before it is publicly issued. With regard to Findings, there are a number of factors that affect publication timing. However, CBP will endeavor to provide as much advanced notice as possible to Task Force member agencies prior to release of both WROs and Findings.

It should be noted that the timelines in Figure 2 (below) generally reflect the lifecycle of CBP responding to a petition; however, responding to a petition is a law enforcement investigation and not a linear administrative process.

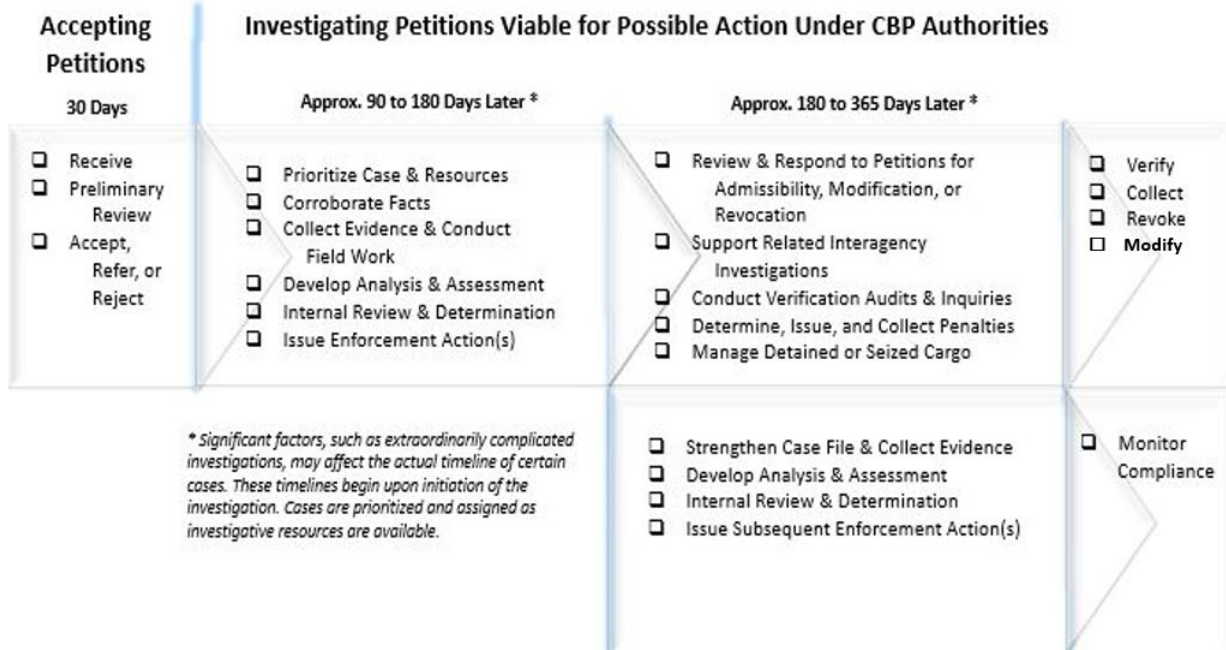
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<sup>45</sup> Extraordinarily complicated investigations, case prioritization, available resources, and other significant factors may affect the actual timeline of certain cases.

<sup>46</sup> The Secretary of the Treasury delegated this authority to the Secretary of Homeland Security pursuant to Treasury Order 100-16, May 15, 2003.

<sup>47</sup> Extraordinarily complicated investigations, case prioritization, available resources, and other significant factors may affect the actual timeline of certain cases.

Figure 2: Process for Investigating Petitions Viable for Possible Action Under CBP Authorities



## IV. Discussion

Significant factors such as extraordinarily complicated investigations may affect CBP's ability to adhere to the timelines described above. CBP prioritizes cases and assigns investigative resources as they are available.

After CBP initiates an investigation of a petition of potential violation(s) of 19 U.S.C. § 1307, CBP corroborates allegation details, collects additional evidence, conducts field work, and develops its analysis and assessment.

As soon as CBP issues an enforcement action such as a WRO, CBP may begin reviewing and responding to petitions for admissibility, modification, or revocation. CBP will also continue to support related external investigations, such as criminal investigations or investigations of prohibited goods in federal procurement and acquisitions. CBP may also conduct verification audits and inquiries.

CBP may determine, issue, and collect penalties in particular cases where WROs or Findings have been issued, as appropriate. CBP will also be involved in managing detained or seized cargo.

At all times subsequent to CBP enforcement action, CBP may continue to strengthen case files and collect evidence, develop further analysis and assessment, conduct internal reviews and determinations, and issue subsequent enforcement actions.

### **Forced Labor Enforcement Task Force Coordination**

Sec. 741(b)(2) of the United States-Mexico-Canada Agreement Implementation Act of 2020 requires the Forced Labor Enforcement Task Force in its monitoring role to “meet on a quarterly basis regarding active WROs, ongoing investigations, petitions received, and enforcement priorities, and other relevant issues with respect to enforcing the prohibition under Section 307 of the Tariff Act [i.e., 19 U.S.C. § 1307].”<sup>48</sup> Per Executive Order 13923, such agencies involved in the Task Force include the Department of Homeland Security as the Chair, and the Departments of State, Treasury, Justice, Labor, and the Office of the United States Trade Representative. By discretion of the Chair, additional members include: the Department of Commerce and the U.S. Agency for International Development. The National Security Council and the Domestic Policy Council are involved as observers.

Information exchanged in this forum, in accordance with established protocols, shall include ongoing investigations, petitions received, enforcement priorities, and other relevant issues with respect to enforcing the prohibition under section 307 of the Tariff Act. Other relevant issues may include, as appropriate: country of manufacture; goods or merchandise in question; the status of petition, investigation, or issuance of a WRO, Finding, or penalties; and scope of the targeted entity (e.g., whether it is a company, group of companies, or manufacturers in a geographic area).

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<sup>48</sup> 19 U.S.C. § 4681.

The members of the Task Force represent agencies with expertise and information about the risks of unfair labor practices and internationally-recognized workers rights in U.S.-bound supply chains. By monitoring enforcement activity associated with these areas of risk, including but not limited to WROs, the Task Force has a tremendous opportunity to inform the broader U.S. government approach to addressing the challenge of forced labor. The senior-level Task Force is complemented by more frequent engagement of the Interagency Forced Labor Working Group, which receives monthly updates on the status of forced labor cases and is notified before a WRO is issued, providing an opportunity for coordinated communication and complementary action.

## V. Conclusion

CBP is the only agency in the federal government able to issue WROs and Findings ordering the detention and seizure, respectively, of goods produced with forced labor likely to be imported. However, CBP is not the only agency in the U.S. government capable of taking action against perpetrators of forced labor, including those who benefit from forced labor, whether through the importation of goods produced with forced labor or otherwise, or even seizing and forfeiting goods imported into the United States contrary to law.<sup>49</sup>

Certain U.S. government agencies have tools and programs to prevent the importation of goods produced with forced labor, and other agencies are able to leverage existing national security and economic security tools to combat forced labor overseas. Interagency cooperation on investigations related to forced labor is essential to holistic enforcement and prevention that improves the ability to end forced labor globally as it impacts the United States. The CBP timelines in this report acknowledge the important partnership of members of the Forced Labor Enforcement Task Force.

The Forced Labor Enforcement Task Force will continue to monitor United States enforcement of the prohibition on the importation of goods produced with forced labor under 19 U.S.C. § 1307. Establishing and providing the public with CBP's timelines for responding to petitions related to the importation of goods produced with forced labor will support CBP in working with all stakeholders to effectively investigate and enforce the prohibition in 19 U.S.C. § 1307. The Forced Labor Enforcement Task Force looks forward to completing the reports required in Section 743 - 744 of the United States-Mexico-Canada Agreement Implementation Act of 2020.<sup>50</sup>

The Forced Labor Enforcement Task Force membership understand it may modify these timelines at any time in the future by contributing to, and approving, the submission of an updated Report to Congress to the appropriate congressional committees, the House Committee on Ways and Means and the Senate Finance Committee.

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<sup>49</sup> For example, pursuant to 18 U.S.C. § 1762 or 18 U.S.C. § 545.

<sup>50</sup> 19 U.S.C. §§ 4683- 4684.



## VI. Appendix

### List of Abbreviations and Acronyms

BIS	Bureau of Industry and Security
CBP	U.S. Customs and Border Protection
DHS	U.S. Department of Homeland Security
DOJ	U.S. Department of Justice
DOL	U.S. Department of Labor
EAR	Export Administration Regulations
FinCEN	Financial Crimes Enforcement Network
HSI	Homeland Security Investigations
HTPU	Human Trafficking Prosecution Unit
ICE	U.S. Immigration and Customs Enforcement
IRS	Internal Revenue Service
IRS-CI	IRS Criminal Investigation
MLARS	Money Laundering and Asset Recovery Section
NTAD	National Threat Analysis Directorate
OFAC	Office of Foreign Assets Control
OIA	Office of Intelligence Analysis
OIG	Office of the Inspector General
RAAAS	Regulatory Audit and Agency Advisory Services
State	U.S. Department of State
TFFC	Office of Terrorist Financing and Financial Crimes
TFI	Office of Terrorism and Financial Intelligence
TIP	Trafficking in Persons
Treasury	U.S. Department of the Treasury
TRLED	Trade Remedy Law Enforcement Directorate
TVPA	Trafficking Victims Protection Act of 2000
U.S.	United States
USAID	U.S. Agency for International Development
USMCA	United States-Mexico-Canada Agreement
USTR	Office of the United States Trade Representative
WRO	Withhold Release Order