

## Is Your Import Supply Chain Forced Labor Free?

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It has long been illegal to import merchandise produced by convict, forced, or indentured labor. (19 U.S.C § 1307, 19 CFR § 12.42) I think we would all agree that prohibiting these types of importations is a good thing.

You might be surprised to learn that, prior to the passage of the Trade Facilitation and Trade Enforcement Act (TFTEA) in the spring of 2016, there was a loophole within the law that exempted importations of merchandise produced from so-called forced labor that was not produced in sufficient quantities in the United States to meet U.S. demand. TFTEA closed that loophole. Who could disagree with that?

In August of 2017, Congress passed the [Countering America's Adversaries Through Sanctions Act](#) (CAATSA). Through this legislation Congress assigned new responsibilities to CBP to enforce U.S. economic sanctions against the North Korean regime of Kim Jong-un and its sources of financing. Most would also likely agree with the sentiments of this legislation. After all, everyone knows you can't do business with North Korea right?

And there's the rub! What CAATSA states in part is that "any significant goods, wares, articles, and merchandise mined, produced, or manufactured wholly **or in part** by the labor of North Korean nationals or citizens shall be deemed to be prohibited." This means anywhere, not just North Korea. Whether you are aware of it or not, it is a common practice for some supply chains to incorporate components from North Korea or to employ North Korean labor outside of North Korea.

This prohibition does not apply if CBP finds "by clear and convincing evidence, that the goods (...) were not produced with convict labor, forced labor, or indentured labor."

So great! CBP has to prove... Oh, wait a minute. You mean, we have to prove a negative?

Yep! And that's the second rub. Until the passage of CAATSA, the burden of proving that goods were produced by forced labor was on the government. CAATSA turns that on its head. Importers must now demonstrate that their goods are neither produced by North Korean forced labor nor contain components produced by North Korean forced labor.

This means U.S. importers, must investigate their supply chains to ensure they are free from forced labor and be prepared to supply "convincing evidence" of that fact when requested by CBP. Anecdotally, CBP is already taking advantage of this new authority and is making inquiries of importers.

What should an importer do? CBP has issued [guidance at its website](#) including a [due diligence fact sheet](#). CBP has also updated its informed compliance [reasonable care checklist](#) to include a section on forced labor.

From that checklist we find the following:

1. Have you established reliable procedures to ensure you are not importing goods in violation of 19 U.S.C. § 1307 and 19 C.F.R. §§ 12.42-12.44?
2. Do you know how your goods are made, from raw materials to finished goods, by whom, where, and under what labor conditions?
3. Have you reviewed CBP's ["Forced Labor"](#) webpage, which includes a list of active withhold release orders and findings, as well as forced labor fact sheets?
4. Have you reviewed the Department of Labor's ["List of Goods Produced by Child Labor or Forced Labor"](#) to familiarize yourself with at-risk country and commodity combinations?
5. Have you obtained a "ruling" from CBP regarding the admissibility of your goods under 19 U.S.C. § 1307 (see 19 C.F.R. Part 177), and if so, have you established reliable procedures to ensure that you followed the ruling and brought it to CBP's attention?
6. Have you established a reliable procedure of conducting periodic internal audits to check for forced labor in your supply chain?
7. Have you established a reliable procedure of having a third-party auditor familiar with evaluating forced labor risks conduct periodic, unannounced audits of your supply chain for forced labor?
8. Have your reviewed the International Labour Organization's ["Indicators of Forced Labour"](#) booklet?
9. Do you vet new suppliers/vendors for forced labor risks through questionnaires or some other means?
10. Do your contracts with suppliers include terms that prohibit the use of forced labor, a time frame by which to take corrective action if forced labor is identified, and the consequences if corrective action is not taken, such as the termination of the contractual relationship?
11. Do you have a comprehensive and transparent social compliance system in place? Have you reviewed the Department of Labor's ["Comply Chain"](#) webpage?

Whatever your plans were for your trade compliance program in 2018, they have just changed to include demonstrating that your supply chain is free from forced labor.

Happy New Year!