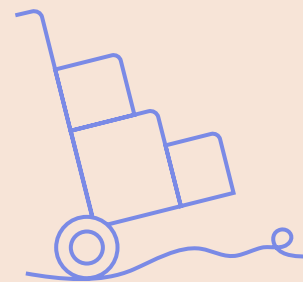


Policy brief:

# Effectiveness of forced labour import bans

## Annexes



Authors: Irene Pietropaoli, Owain Johnstone, Alex Balch

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## Annex 1: Comparison of recent developments in key jurisdictions

In the US, since 1930, [Section 307 of the Tariff Act](#) has prohibited the importation of merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced labour. Originally, the central aim of Section 307 was not addressing forced labour itself, but rather the protection of American business against competition from producers abroad using forced labour to lower their costs.

The agency tasked with implementing the law, US Customs and Border Protection (CBP), rarely applied and enforced the ban until recently. This was at least in part because the law included a significant loophole, the '[consumptive demand](#)' clause, which allowed goods made with forced labour into the US if domestic production of the goods was not sufficient to meet domestic demand. As more goods were manufactured exclusively abroad, it became easier for importers to make use of the exception. The US Congress closed this loophole in 2016 with the enactment of the [Trade Facilitation and Trade Enforcement Act](#), and since then enforcement efforts have increased substantially. As of 11 November 2021, CBP had 55 Withhold Release Orders (WROs) active. WROs are orders denying entry of goods into the United States based on reasonable information that they may be the product of forced labour.

Although most WROs have been issued in connection with specific categories of goods produced by individual companies, WROs can equally be issued against international vessels, such as the WRO issued against the [fishing vessel Da Wang](#) in August 2020, or against whole regions that produce a certain product linked to forced labour practices, such as the WRO against all [Turkmenistan cotton](#) issued in 2018.

The majority of WROs have been issued in connection to China, with several centring on concerns over systemic forced labour of ethnic Uyghurs and other Turkic- and Muslim-majority groups in Xinjiang. CBP has issued a total of [44 WROs](#) against goods from China, with the most recent WRO of 23 June 2021 banning the importation of all silica-based products manufactured by Hoshine Silicon Industry Co. Ltd. (based in Xinjiang) and its subsidiaries. Silica is used in the production of solar panel components and other electronic goods.

This follows the introduction, in March 2021, of the Keep China Out of Solar Energy Bill. If passed, the Bill would prohibit federal funds from being used to buy solar panels manufactured or assembled in China. The rationale for the introduction of the Act is [specifically linked to the potential involvement of Uyghur forced labour in solar panel manufacturing](#).

In January 2021, the Uyghur Forced Labor Prevention Bill (S.65) was introduced to the US Senate, where it passed in July 2021. The Bill is now with the House of Representatives, where there is a high likelihood of it succeeding, since a [similar Bill](#) (H.R.6210) passed the House in the previous

Congress in September 2020. This bipartisan Bill would ban all imports from China's Xinjiang region unless it is certified they are not produced with forced labour. At the heart of the bill is a ['rebuttable presumption'](#) that assumes goods from Xinjiang are made with forced labour and banned from the US unless there is 'clear and convincing' evidence to the contrary.

Other Governments and Parliaments have recently announced or considered measures specifically to address forced labour from the Xinjiang region in China.

A recent **Australian private senator's Bill was proposed, seeking** to ban imports of goods produced using Uyghur forced labour. The Senate Foreign Affairs, Defence and Trade Legislation Committee held an [inquiry into the Bill](#), concluding that they supported its objectives but that an alternative approach would be preferable. That [approach would be to](#) 'introduce a global ban on the import to Australia of goods produced by forced labour [from any location]; provide the legislative framework for the relevant authorities to take targeted actions in the case of particularly egregious abuses; and then take such targeted action with respect to Uyghur forced labour.' The Committee proposed accomplishing this through amending Australian customs law. The Bill subsequently passed the Senate and was introduced to the House of Representatives. However, it is unlikely to succeed given that the Government has to date not supported it in its current form and holds a majority in the House.

In **the UK**, in January 2021 the Foreign Secretary [announced](#) a review into which UK products can be exported to Xinjiang and the introduction of financial penalties for organisations that do not meet their obligations under the UK Modern Slavery Act. Both the House of Commons Business, Energy and Industrial Strategy Select Committee and the House of Commons Foreign Affairs Committee recently conducted inquiries into Uyghur forced labour in Xinjiang, China. Each published a report (in [March 2021](#) and [July 2021](#), respectively) calling on the UK Government to take certain additional actions. The [Foreign Affairs Committee recommended](#) that the UK Government explore the introduction of a ban on the import of cotton products (and potentially other goods) produced in whole or in part in the Xinjiang region. NGOs have also called for further action, [recommending](#) that the government should consider laws that allow for import bans on products linked to severe human and labour rights violations including forced labour. As of 14th November 2021, the [UK Government's position](#) was that it had no plans to introduce such an instrument. This was stated in [the Government's response to the Foreign Affairs Committee Inquiry report](#), where the Government said: 'Whilst we do not currently have plans to place import controls on goods from China, we are working with our international partners through the G7 trade track to ensure that global supply chains are free from the use of forced labour. We will continue to keep our policy response to goods produced using forced labour under close review.' Recent [judicial review filings](#) seek to challenge HM Revenue and Customs' decision not to seize imported goods with alleged links to forced Uyghur labour under the UK's Foreign Prison-Made Goods Act 1897.

The **European Parliament** [has called](#) for a legislative proposal on an effective traceability mechanism for goods produced through forced or child labour since 2010. A [study](#) commissioned by the Greens/EFA Group in the European Parliament has analysed options for import bans on forced labour. As the EU [is developing](#) a directive on corporate human rights and environmental due diligence, which is focused on company behaviour, the commissioned study [suggested](#) that a related complementary instrument that focuses on products, allowing for restrictions or bans, is needed. On 15th September 2021, the [European Commission President announced](#) that the Commission would propose a ban on the import of products made using forced labour. The shape and scope of this ban are not yet clear. The proposed import ban instrument discussed in the study mentioned would allow for the immediate halting of goods at EU borders when there is reasonable suspicion that they are made with forced labour. The onus would then be on the company to prove that this is not the case, or to take action to remedy the situation on the ground before these products are allowed in.

Canada [has](#) banned the import of goods produced in whole or in part by forced or compulsory labour since 1 July 2020, pursuant to the Canada–United States–Mexico Agreement Implementation Act (see also [the United States–Mexico–Canada Agreement](#) itself). As of 29 April 2021, [no enforcement action had been taken](#), but, in May 2021, Employment and Social Development Canada confirmed that they were investigating a number of forced labour allegations. Relevant Canadian officials [have been consulting](#) with US CBP to learn about their work and to coordinate approaches. Also in 2020, lawmakers [introduced](#) a Canadian version of the UK Modern Slavery Act (Bill S-216), which, if passed, would further amend the Customs Tariff, extending the existing import ban to include goods made in whole or in part by child labour (as well as forced labour). The Act would also require that the definitions of forced and child labour used for the purpose of implementing the import ban should be those contained within the Act. The relevant Canadian Customs Tariff provision is S.C. 1997, c. 36 (Section 132(m)(i.1)). See: <https://www.cbsa-asfc.gc.ca/publications/dm-md/d9/d9-1-6-eng.pdf>. There had been no further progress on this Bill as of the end of the most recent session of the Canadian Parliament on 15th August 2021. It may be re-introduced in the next Parliamentary session.

## Annex 2: Analysis of the implementation of the US Withhold Release Order (WRO) system

US Customs and Border Protection (CBP) may initiate investigations into forced labour violations involving specific exporters and specific merchandise based on internal allegations or on allegations from an outside source. Anyone may submit to the CBP a petition showing [‘reasonably but not conclusively’](#) that imports were made at least in part with forced labour. After [evaluation](#), the CBP can issue a Withhold Release Order (WRO).

In some cases, reports from outside sources, such as NGOs, have been key in providing the CBP with enough information to issue a WRO. For example, in February 2019, CBP [issued](#) a WRO – the first of this kind – against tuna and tuna products from fishing vessel Tunago No. 61. The vessel had been the subject of a [series of reports](#) documenting the prevalence of labour violations in Taiwan’s distant water fishing fleets. The reports led CBP to issue the WRO based on the ‘reasonable belief’ that the imported tuna products were in breach of the forced labour prohibition.

Import bans in the US may target products from particular regions or countries or may target individual companies. For example, UK online fashion company Boohoo is [currently facing](#) the possibility of a US import ban following repercussions from a 2020 [exposé](#) of working conditions in its supplier factories in Leicester.

CBP has published [an approximate timeline](#) of its enforcement process:

- Within 30 days of receiving a petition, CBP will conduct a preliminary review
- If an investigation is initiated, within approximately 90–180 days CBP will introduce WROs
- And within 180–365 days CBP will, if appropriate, issue a formal finding

Once a WRO is in place, an importer has three months to contest it and must demonstrate that it has made ‘every reasonable effort’ to determine both the source of and the type of labour used to produce the merchandise and its components. If the importer does not either successfully contest the WRO or remove the goods from the US, CBP has the power to seize and destroy the goods.

According to published [guidance](#), CBP may consider a company's statements of commitment and due diligence efforts when considering enforcement. In [a published letter](#) from CBP to the clothing company Uniqlo, in relation to a detained shipment of goods, CBP set out by implication a number of types of evidence that may be important for companies to provide in order to demonstrate that particular goods were not made in whole or in part with the use of forced labour. Law firms [advise](#) that companies importing goods to the US should address the risk of forced labour in their supply chains through various measures, including ongoing operational and supply chain due diligence, and the inclusion of forced labour provisions in contract terms. As such, import bans can put pressure on companies to undertake human rights due diligence across their value chains.

Studies have raised a number of [concerns](#) about effective implementation of Section 307 bans. First, although CBP has increased its enforcement, there are still a relatively small number of actions. [It has been argued](#) that, in order to be effective in preventing forced labour and having a real impact on corporate behaviour, a higher and more regular number of WROs should be issued. Enhancing enforcement would likely hinge on greater resources. CBP [has cited](#) staff shortages as causing the agency to drop investigations and limiting its ability to monitor existing cases. CBP also attributed difficulties to limited resources and a lack of sufficient evidence, caused in part by the infeasibility of spot inspections that would provide evidence of forced labour.

Second, the Tariff Act was originally developed as a [protectionist tool](#) meant to protect American companies against unfair trade practices. As such, it is a mechanism that simply stops the goods at the border. It was not designed to require remediation of forced labour abuses. Rather, the onus is on the importer to demonstrate that the goods they wish to import were not produced using forced labour. While they may do this through stopping and remediating any forced labour abuses found, they may also choose to re-export the shipment and/or choose to source material from a different location for the manufacture of future goods. If issued without accompanying remedial requirements, a WRO may not have real effects on addressing the particular forced labour that gave rise to it. Some commentators [have argued](#) that what is needed is a more remedy-centred mechanism, that focuses on the rights of workers, i.e. a condition for the lifting of bans should always be that companies take measures to remedy forced labour violations and prevent future reoccurrences.

Third, CBP enjoys wide discretionary enforcement powers. Whether to issue a WRO and its scope as well as what efforts constitute adequate remediation in order to lift a WRO remains solely at the discretion of CBP. Also, there is a lack of clear evidentiary standards required in petitions, and a lack of transparency by CBP on explanations of enforcement actions. The initiative of the US Congress for an [annual report](#) by the commissioner of the CBP is a critical first step toward greater transparency and accountability.

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Modern Slavery and Human Rights Policy and Evidence Centre  
c/o British Institute of International and Comparative Law  
Charles Clore House, 17 Russell Square, London, WC1B 5JP

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[office@modernslaverypec.org](mailto:office@modernslaverypec.org)

[www.modernslaverypec.org](http://www.modernslaverypec.org)