



Trade Issues: Forced Labor and Economic Sanctions

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Topics Covered

- Overview: Forced and Slave Labor Prohibitions in US Import Law
- Overview: US Sanctions Laws and Regulations

US Prohibition on Importing Merchandise Mined, Produced, or Manufactured by Forced, Convict, or Child Labor

- The statutory prohibition (19 U.S.C. § 1307) forbids the import of “all goods, wares, articles, and merchandise produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor”
- “Forced labor” is defined as:
 - Forced or indentured child labor
 - Labor by *any person* under the threat of penalty for nonperformance
 - Specific examples of forced labor include, but are not limited to:
 - Laborers working to pay off debt due to recruitment fees
 - Exhausting and inhumane working hours
 - Life-threatening work conditions without safety equipment

The Consumptive Demand Exception and 2016 Legislation

- Before, the “consumptive demand” clause excluded from the forced labor prohibition any goods for which the domestically produced supply was not sufficient to meet the domestic demand.
 - Clause was broadly interpreted; meant few barriers for imports produced using forced labor
- CBP issued just 30 findings against importers from 1930 – February 2016 (without a single WRO issued between 2001 and 2016).
- In February 2016, the “consumptive demand” clause was repealed so that all imports to the United States can no longer be produced in whole or part by forced, indentured, convict, or involuntary child labor.
 - Domestic supply and domestic demand are no longer relevant

Enforcement of the Prohibition

- Enforcing agency is the Department of Homeland Security, Customs and Border Protection (CBP).
 - CBP issues regulations enforcing the prohibition (19 C.F.R. §§ 12.42-12.45)
 - These regulations govern the processes by which the CBP may issue Withhold Release Orders (WROs) and issue formal findings that goods are subject to the provisions of the Forced Labor provision of the Tariff Act
 - WROs are instructions issued by CBP to all port directors to detain specific merchandise at the US border that has been or is likely to be imported, which CBP reasonably believes to have been produced using forced labor
 - CBP posts all Withhold Release Orders and Findings on CBP.gov
 - Visit <https://www.cbp.gov/trade/programs-administration/forced-labor>

Recent Developments

- CBP is now required to annually report to Congress on the steps taken to enforce the prohibition
- Since 2016, CBP has issued 7 new Withhold Release Orders
 - From 2016 to 2018, CBP issued 5 WROs against Chinese producers of textile manufacturing materials, potassium products, Stevia (sweetener), peeled garlic, and certain inflatable toys
 - In 2018, CBP issued a WRO against **all** cotton products from Turkmenistan
 - In February 2019, CBP issued a WRO against tuna products harvested by a fishing vessel registered in Vanuatu
- CBP has also increased its use of Requests for Information regarding potential forced labor in an importer's supply chain (Form CF28)

Reports of Pending Investigations

- CBP will continue to investigate products for compliance with the forced labor laws
- Public reports of pending investigations that could lead to WROs include:
 - Reports that CBP is investigating allegations of forced labor in China for sports apparel
 - Reports that the International Labor Rights Forum has petitioned CBP to investigate cotton products from Uzbekistan
 - Reports that the International Labor Rights Forum has petitioned CBP to investigate cocoa from Cote d'Ivoire

****These reports are provided as examples; we cannot confirm their accuracy or comprehensiveness.*

North Korea Restriction

- In August 2017, Congress passed the Countering America's Adversaries through Sanctions Act (22 U.S.C. § 9421a)
 - The Act creates a presumption that any goods produced or manufactured in whole or in part by North Korean citizens or nationals were produced through forced, indentured, or convict labor.
 - In order to rebut this presumption, CBP must find through *clear and convincing evidence* that the merchandise was not produced with a form of prohibited labor.
- The US Department of Labor's 2018 List of Goods Produced by Child Labor or Forced Labor report mentioned that timber products produced in Russia may be harvested by North Korean nationals.

Enforcement Process

- Enforcement (19 C.F.R. §§ 12.42-12.45)
 - Withhold Release Orders (WROs):
 - Standard of proof: Product can be held if “reasonably but not conclusively” in violation of Section 307
 - Goods are detained at port of entry; Burden shifts to importer to submit proof establishing that the goods are admissible
 - In order to demonstrate that the goods are admissible, importer must submit:
 - A certificate of origin, and
 - A statement detailing efforts to ascertain the good’s source and production process
 - Formal findings:
 - Standard of proof: “Probable cause”
 - Published in the Customs Bulletin and Federal Register
 - Goods will be seized and forfeiture proceedings commenced

Risk Assessment

- Understand factors that create a risk of forced labor in the wood products industry generally
- Know your company's unique risks
 - Know your suppliers
 - Know the regions they come from
 - Know the types of labor utilized
- Watch for red flags, including:
 - Unusual prices or deals, unusual locations or shipping routes
 - Difficulty obtaining paperwork
 - Track record of supplier
- Review CBP's "List of Goods Produced by Child Labor or Forced Labor"
<https://www.dol.gov/sites/default/files/documents/ilab/ListofGoods.pdf>
- Visit <https://www.responsible sourcing tool.org>

DHS Compilation of Guidance

- DHS/CBP has compiled resources on Supply Chain Due Diligence
 - Department of Labor Guidance: <https://www.dol.gov/ilab/complychain/>
 - CBP Rulings: <https://rulings.cbp.gov/>
 - CBP Compliance Publications: <https://www.cbp.gov/trade/rulings/informed-compliance-publications>
 - Department of Labor List of Goods Produced by Child Labor or Forced Labor: <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-products>
 - Responsible Sourcing Tool: <http://www.responsiblesourcingtool.org/>
 - OECD publications on supply chain management: <http://www.oecd.org/>

https://www.cbp.gov/sites/default/files/assets/documents/2017-Jan/170103_Forced%20Labor%20Importer%20Due%20Diligence%20Fact%20Sheet.pdf

Other Industry Considerations – California Law

California Transparency in Supply Chains Act

- Covered companies (>\$100 Mil) report on actions to eradicate slavery and human trafficking in supply chains
- Reports include whether the company conducts:
 - Third-Party Verification
 - Audits of suppliers
 - Requires direct suppliers to certify inputs comply
 - Maintains internal accountability standards and procedures
 - Provides training

<https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf>

Other Industry Considerations – AAFA/FLA and Supplier Social Audits

Responsible Recruitment

American Apparel & Footwear Association and Fair Labor Association commitment to the fair treatment of workers and desire to eliminate conditions that can lead to forced labor.

Involves asking global supply chain partners to create conditions so that:

- No workers pay for their jobs
- Workers retain control of their travel documents and have full freedom of movement; and
- All workers are informed of the basic terms of their employment before leaving home

[https://www.aafaglobal.org/AAFA/Solutions_Pages/Commitment to Responsible Recruitment.aspx](https://www.aafaglobal.org/AAFA/Solutions_Pages/Commitment_to_Responsible_Recruitment.aspx)

Use of Supplier Social Audits

Brief Overview of Economic Sanctions

US Economic Sanctions: The Basics – Goals

- Advance Foreign Policy Goals and National Security Interests
- Restrict Exports of Goods and Technology That Could Contribute to the Military Potential of Adversaries
- Prevent Proliferation of Weapons of Mass Destruction
- Prevent Terrorism
- Fulfill International Obligations
- Balance These Objectives Against Impact on US Economy

US Economic Sanctions: The Basics – Types of Primary Sanctions

- **Comprehensive Embargoes (Territory-Based):**
 - Cuba, Iran, North Korea, Syria, and Crimea region of Ukraine
 - Need a license for nearly all transactions involving these territories

- **Partial/Sectoral Sanctions (Territory-Based):**
 - Russia and Venezuela
 - Prohibitions target certain types of transactions only

US Economic Sanctions: The Basics – Types of Primary Sanctions

- **Targeted Sanctions (List-Based):**
 - Aimed at individuals, entities, and/or vessels engaged in activity deemed contrary to US national security (e.g., terrorism, WMD proliferation, human rights abuses)
 - Dealings with Specially Designated Nationals (SDNs) prohibited
 - 50% Rule: Entities owned 50% or more by one or more SDNs treated as SDNs
 - “Blocking” required for any interests in property of an SDN subject to US jurisdiction

Practice Points

- Sanctions laws and regulatory regimes are all unique and differ from program to program; 30+ programs
 - Do not assume one sanctions regime is the same as another.
 - Checking specific regulatory regimes at issue is essential.
- Sanctions regulations are highly dynamic
 - Any week may bring a new sanctions program
 - Any week may bring changes to an existing program
 - New SDN designations and other sanctions list updates announced frequently

US Economic Sanctions: Basics – Who is covered in primary jurisdiction?

- US citizen or US permanent resident, wherever located
- Any person physically present in the US
- Entity organized in the US
- Foreign *branch* of entity organized in the US
- Foreign *subsidiary* of US entity (only in certain sanctions regimes, e.g., Iran and Cuba)
- Use of US financial institutions, including solely as US dollar-clearing intermediary bank
- Activities routed through the US, including through IT and data processing systems
- US good, software, and technology

US Economic Sanctions: Basics – SDN List Screening

- **SDN List Screening for List-Based Sanctions Regimes:**
 - OFAC search tool available at: <https://sanctionssearch.ofac.treas.gov/>
 - Can search by name, address, OFAC sanctions program, or other information
 - Use fuzzy logic (“Minimum Name Score” below 100) to ensure misspellings or slight differences in names are caught
 - Other online search tools consolidate SDN List with other lists maintained by US Department of Commerce, US Department of State, etc.
 - Consolidated Screening List available at:
<https://www.export.gov/article?id=Consolidated-Screening-List>
 - Built-in fuzzy logic
 - More complex sanctions screening tools (e.g., MK Denial) are available for purchase; can be integrated into company accounting or tracking systems
 - Public databases (e.g., Bloomberg) or private resources (e.g., Dunn & Bradstreet) can be used to identify an entity’s ownership interests, management, etc. for screening in compliance with the 50% Rule.

US Economic Sanctions: The Basics – Sample SDN Search: Fuzzy Logic and Misspellings

 **OFAC**
Office of Foreign Assets Control

<https://sanctionssearch.ofac.treas.gov/>

Sanctions List Search

This Sanctions List Search application ("Sanctions List Search") is designed to facilitate the use of the Specially Designated Nationals and Blocked Persons list ("SDN List") and all other sanctions lists administered by OFAC, including the Foreign Sanctions Evaders List, the List of Persons Identified as Blocked Solely Pursuant to E.O. 13599, the Non-SDN Iran Sanctions Act List, the Part 561 list, the Sectoral Sanctions Identifications List and the Non-SDN Palestinian Legislative Council List. Given the number of lists that now reside in the Sanctions List Search tool, it is strongly recommended that users pay close attention to the program codes associated with each returned record. These program codes indicate how a true hit on a returned value should be treated. The Sanctions List Search tool uses approximate string matching to identify possible matches between word or character strings as entered into Sanctions List Search, and any name or name component as it appears on the SDN List and/or the various other sanctions lists. Sanctions List Search has a slider-bar that may be used to set a threshold (i.e., a confidence rating) for the closeness of any potential match returned as a result of a user's search. Sanctions List Search will detect certain misspellings or other incorrectly entered text, and will return near, or proximate, matches, based on the confidence rating set by the user via the slider-bar. OFAC does not provide recommendations with regard to the appropriateness of any specific confidence rating. Sanctions List Search is one tool offered to assist users in utilizing the SDN List and/or the various other sanctions lists; use of Sanctions List Search is not a substitute for undertaking appropriate due diligence. The use of Sanctions List Search does not limit any criminal or civil liability for any act undertaken as a result of, or in reliance on, such use.

[Download the SDN List](#) [Visit The OFAC Website](#)
[Download the Consolidated Non-SDN List](#) [Program Code Key](#)

Lookup

Type: Address:
Name: City:
ID #: State/Province:
Program: Country:
561-Related
BALKANS
BELARUS List:
Minimum Name Score: Search Reset

Lookup Results: 0 Found

Name	Address	Type	Program(s)	List	Score
Your search has not returned any results					

US Economic Sanctions: The Basics – Sample SDN Search: Fuzzy Logic and Misspellings



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[Program Code Key](#)

Lookup

Type:

Name:

ID #:

Program:
561-Related
BALKANS
BELARUS

Minimum Name Score:

Address:

City:

State/Province:*

Country:

List:

Lookup Results: 49 Found

Name	Address	Type	Program(s)	List	Score
MAHAN AIR	No. 21, Mahan Air Tower, Azadegan Street, Jenah Expressway, Beginning of Sheykh Fazlollah Exp. Way, First of Karaj High Way	Entity	IFSR, SDGT	SDN	88
MAHARLIKA		Vessel	IRAN	SDN	85

US Economic Sanctions: Sanctions Penalties

- Penalties for violating OFAC sanctions regulations
 - Civil penalties: up to greater of \$250,000 or twice the value of the transaction, per violation
 - Enforced on a strict liability basis
 - Note: maximum penalty amounts might differ depending on applicable law
 - Criminal violations: up to \$1,000,000 per violation, up to 20 years imprisonment
 - Violation of specific sanctions laws may add additional penalties
 - Settlements with OFAC generally become public, and court cases are always public

US Economic Sanctions: Secondary Sanctions

- Restrict entirely extraterritorial transactions; no US jurisdiction or nexus necessary
- Only available in certain US sanctions regimes: Iran, North Korea, Russia/Ukraine, and Cuba
- Sanctions typically involve denying access to US markets, e.g.:
 - loss of access to US financial markets
 - ineligibility to receive US export licenses
 - loss of US Export-Import Bank assistance
 - prohibitions against US persons investment
 - exclusion from the United States of officer, principal, shareholder
- Secondary sanctions provisions also allow for SDN designation

US Economic Sanctions: Early 2019 Enforcement Actions

Enforcement actions highlight supply chain and foreign affiliate risks:

- **e.l.f. Cosmetics (“ELF”):**
 - \$1M fine for alleged violations of North Korea sanctions.
 - OFAC asserted that ELF imported \$4M+ worth of fake eyelashes from suppliers in China, over five years, containing material from North Korea.
- **Kollmorgan Corp.:**
 - \$13,000 fine for alleged violations of Iran sanctions.
 - In 2013, Kollmorgan acquired a Turkish subsidiary. Despite Kollmorgan’s instructions to cease all dealings with Iran as part of acquisition, subsidiary continued to do so, even "fraudulently" certifying to Kollmorgan that it had ceased all Iran work.
- **AppliChem GmbH:**
 - \$5.5M settlement imposed on foreign subsidiary of US-based Illinois Tool Works, Inc. (ITW) for alleged violations of Cuba sanctions.
 - AppliChem continued to deal with Cuba after it was acquired by ITW, concealing it from ITW. OFAC found egregiousness, citing that ITW failed to root out AppliChem continuing trade with Cuba despite being put on notice in both 2013 and 2015.

Be Aware: Other Sanctions-Related Laws

- Export Administration Regulations (US Department of Commerce) control the export, reexport and in-country transfer in certain circumstances. Unlikely to apply to transfer of raw wood material, but highly fact-specific inquiry usually required.
- The European Union, United Nations and local jurisdictions might have their own independent sanctions regimes
- Some countries have blocking statutes that *prohibit* compliance with US sanctions (e.g., Canada/Cuba)
- Need to be aware of possible enforcement of local sanctions regulations *in each country you do business*

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