



**The Continued Rise of Forced Labor: An Analysis of the Successes
and Failures of U.S. Legislation Banning the Importation of Goods
Made with Forced Labor**

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“At the vegetable farm, I regularly worked from 6 am to midnight with only an hour lunch break. The employer got angry anytime we took a break to stretch our bodies. So when I felt a sharp pain, I had to stand up when he wasn’t looking and did it quickly – I didn’t dare to linger. It was unfair because the Korean workers were allowed to rest but not us migrants. There was no toilet so we had to dig a hole in the ground to do our business. When that filled up, we dug another. My employer also paid me late once every two months or in installments. When I complained to the job center, the caseworker just called my boss and accepted at face value the promise he made to her. She did not follow up so nothing changed.”

- A Cambodian Migrant in South Korea as an agricultural worker through the government’s Employment Permit System, interviews by Amnesty International first released in 2014.¹

“I would spend 24 hours down in the tunnels. I arrived in the morning and would leave the following morning.”

- “Paul, [a] 14-year-old orphan and cobalt miner,” was interviewed by Amnesty International and first released in 2016².

1. Introduction

Under international law,³ the conditions described above constitute forced labor, a form of modern slavery.⁴ Since the Convention Concerning Forced or Compulsory Labour came into force in May 1932, forced labor not only continues to be a significant human rights problem globally, but estimates by the International Labour Organization (ILO) report that these numbers have increased significantly, with a 2.7 million increase between 2016 and 2021 and a 4 million increase between 2012 and 2016.⁵ From the construction of stadiums for the 2022 FIFA World Cup in Qatar

¹ Amnesty International. 2014. *South Korea: Bitter Harvest: Exploitation and Forced Labour of Migrant Agricultural Workers in South Korea*. <https://www.amnesty.org/en/documents/asa25/004/2014/en/>.

² Amnesty International. 2016. “Exposed: Child Labour behind Smart Phone and Electric Car Batteries,” <https://www.amnesty.org/en/latest/news/2016/01/child-labour-behind-smart-phone-and-electric-car-batteries/>.

³ Convention Concerning Forced or Compulsory Labour, 1930 (No.29)

⁴ “Modern slavery covers a set of specific legal concepts including forced labour, debt bondage, forced marriage, slavery and slavery-like practices, and human trafficking. Although modern slavery is not defined in law, it is used as an umbrella term that focuses attention on commonalities across these legal concepts.” “What is Modern Slavery?” *WalkFree Foundation*. <https://www.walkfree.org/what-is-modern-slavery/>.

⁵ ILO, Walk Free, and IOM UN Migration. 2022. *Global estimates of modern slavery forced labour and forced marriage*. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf (November 28, 2023).

to mining for cobalt in the Democratic Republic of Congo, the examples of modern slavery, specifically forced labor, are staggering.⁶

With the founding of the United Nations in 1945 and the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, Article 4 of this Declaration directly addresses slavery and conditions of forced labor stating that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”⁷ From this Declaration came two legally binding documents, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which were adopted by the UN General Assembly in 1966 and came into force in 1976.

Beyond a growing body of international law in this area in the post-World War II period, in the last ten years, a subset of countries globally have adopted national-level legislation to address the problem of forced labor and modern slavery. Specifically, nations such as the United States, the United Kingdom, the Netherlands, Germany, France, Australia, and Canada have introduced or amended legislative measures to either ban the importation of goods made with forced labor or encourage corporate supply chain due diligence. Forced labor usually exists in supply chains used by multinational enterprises/corporations and can be difficult to track due to their complexity, and the fact that multinational companies sub-contract to third-party producers, over whom they fail to oversee. Legislative attempts to address this issue typically try to incentivize supply chain due diligence by companies, which as defined by the ILO, is a “systematic and ongoing risk management process that enables companies to proactively address environmental and human

⁶ OHCHR. 1948. “Universal Declaration of Human Rights.” (December 3, 2023). <https://www.ohchr.org/en/universal-declaration-of-human-rights>.

⁷ OHCHR. 1948. “Universal Declaration of Human Rights.” (December 3, 2023). <https://www.ohchr.org/en/universal-declaration-of-human-rights>.

rights impacts and conduct their business in a responsible manner.”⁸ Legislation has also banned the importation of goods made with forced labor to enforce accountability.

The first legislation in the United States to address forced labor was the U.S. Tariff Act of 1930. Specifically, under Section 307 of this legislation, “all goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions [is denied] entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision.”⁹ The Tariff Act of 1930 defines forced labor as “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.”¹⁰ In 2000 the term “forced labor or/and indentured labor” was expanded to include “forced or indentured child labor.”¹¹ However, until 2016, Section 307 contained a “consumptive demand” exemption, which stated that “in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.”¹²

This exemption was removed from Section 307 with the enactment of the Trade Facilitation and Trade Enforcement Act (TFTEA) of 2015, which went into effect in February 2016. This resulted in a complete legislative ban on the importation of products, goods, and wears made with forced labor, whether consumptive demand existed or not. Since this time (February

⁸ “Due Diligence | Accountability Framework Initiative.” Accessed December 3, 2023.

<https://accountability-framework.org/issues/due-diligence/>.

⁹ Tariff Act of 1930, 19 U.S.C. § 1201-1641 (Suppl. 2 1934).

¹⁰ Tariff Act of 1930, 19 U.S.C. § 1201-1641 (Suppl. 2001).

¹¹ Tariff Act of 1930, 19 U.S.C. § 1201-1641 (Suppl. 2 1934).

¹² Tariff Act of 1930, 19 U.S.C. § 1201-1641 (Suppl. 2 1934).

2016) through January 2024, there have been forty-three total bans, referred to as Withhold Release Orders (WROs), enacted by the overseeing agency, Customs and Border Control (CBP), on the importation of goods suspected of being produced with forced labor.¹³ Of these forty-three, fifteen are now inactive,¹⁴ which happens when companies file proof of remediation or proof that the allegations were false, which are specified in press releases on the ban removal, but many have now been archived. Thus, updating through February 2024, there are currently twenty-eight active WROs since the TFTE went into effect in 2016.

Prior to the enactment of TFTEA in 2016, Section 307 of the 1930 Tariff Act was rarely used to block the import of goods suspected of being produced with forced labor. Specifically “the International Trade Commission reported that between 1930 and the mid-1980s there were 60 to 75 instances when either interested parties requested or Customs considered the application of Section 307. Of those instances, merchandise was denied entry into the United States at least 10 times (6 times from Mexico, and once each from Japan, the Dominican Republic, Canada, and the former Soviet Union).”¹⁵ In the 1990s, the application of Section 307 increased substantially with the rise of exports from China to the United States, however. Specifically, a report done by the U.S. Congressional Research Service (CRS)¹⁶ found that “[b]etween 1991 and 1995, CBP issued 27 WROs against manufacturers in China,”¹⁷ due to accusations “that Chinese political prisoners

¹³ “Withhold Release Orders and Findings List | U.S. Customs and Border Protection.” Accessed October 31, 2023. <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>.

¹⁴ Higgins, Matthew M. 2023 “Closed Loophole, Open Ports: Section 307 of the Tariff Act and the Ongoing Importation of Goods Made Using Forced Labor.”

¹⁵ Cimino-Isaacs, Cathleen D., Christopher A. Casey, and Katarina C. O’Regan. 2023. *Section 307 and Imports Produced by Forced Labor products of forced labor*. <https://crsreports.congress.gov/product/pdf/IF/IF11360>. March, 2024).

¹⁶ Cimino-Isaacs, Cathleen D., Christopher A. Casey, and Katarina C. O’Regan. 2023. *Section 307 and Imports Produced by Forced Labor products of forced labor*. <https://crsreports.congress.gov/product/pdf/IF/IF11360>. March, 2024).

¹⁷ Congressional Research Service (CRS), is “a federal legislative branch agency” working under the Library of Congress. CRS staff serves both congressional committees and Members of Congress, to provide support and insight at each stage of the legislative process, including; “early considerations that precede bill drafting, through committee hearings and floor debate, to the oversight of enacted laws and various agency activities.” CRS. “About This Collection.” *Congressional Research Service*. <https://crsreports.congress.gov/Home/About>.

were being used to produce goods for export to the U.S.”¹⁸ Following this uptick in the 1990s, for the next sixteen years, between 2000 and the passing of the Trade Facilitation and Trade Enforcement Act in 2016,¹⁹ CBP issued no WROs. Some ascribe this decline as due to “the strictures of the consumptive demand provision... to ensure Americans did not lose access to commodities like ‘coffee, tea, and rubber’ that then were produced entirely abroad, often with forced labor.”²⁰ For example, in the 2005 case of the International Labor Rights Fund (ILRF) v. United States, the United States Court of International Trade ruled that “cocoa produced with forced child labor was allowed entry because no domestic cocoa production industry existed sufficient to meet domestic demand.”²¹ ILRF filed the lawsuit alleging that CBP failed to enforce laws against forced labor after CBP declined a petition to investigate and did not issue a WRO against cocoa from the Ivory Coast.²²

During this sixteen-year period, from 2000 to 2016, Congress continued to show interest in passing legislation to address conditions of forced labor internationally including amendments to the definition of forced labor in Section 307 of the 1930 Tariff Act to include “forced and indentured child labor” in 2000, as well as passing the Trafficking Victims Protection Act (TVPA) of 2000, by allowing for remediation for victims of forced labor and labor trafficking victims. In addition, they included worker rights provisions in several U.S. trade agreements.²³ Nonetheless,

¹⁸ U.S. Department of State. 2009. *6/17/97 fact sheet on Chinese prison labor exports*.

https://1997-2001.state.gov/regions/eap/fs-china_prison_exp_970617.html (March 2024).

¹⁹ Cimino-Isaacs, Cathleen D., Christopher A. Casey, and Katarina C. O’Regan. 2023. *Section 307 and Imports Produced by Forced Labor products of forced labor*. <https://crsreports.congress.gov/product/pdf/IF/IF11360>. March, 2024).

²⁰ Cimino-Isaacs, Cathleen D., Christopher A. Casey, and Katarina C. O’Regan. 2021. *Section 307 and U.S. imports of products of forced labor*. <https://sgp.fas.org/crs/misc/R46631.pdf> (March, 2024).

²¹ Cimino-Isaacs, Cathleen D., Christopher A. Casey, and Katarina C. O’Regan. 2021. *Section 307 and U.S. imports of products of forced labor*. <https://sgp.fas.org/crs/misc/R46631.pdf> (March, 2024).

²² Brevetti, Rossella. 2005. “International Trade Chocolate Manufacturers Group Intervenes in Suit on Côte d’Ivoire’s Forced Child Labor.” *Global Labor Justice-International Labor Rights Forum*. <https://laborrights.org/in-the-news/international-trade-chocolate-manufacturers-group-intervenes-suit-c%C3%B4te-divoires-forced-0> (March 2024).

²³ Cimino-Isaacs, Cathleen D., Christopher A. Casey, and Katarina C. O’Regan. 2021. *Section 307 and U.S. imports of products of forced labor*. <https://sgp.fas.org/crs/misc/R46631.pdf> (March, 2024).

the next WRO issued would not be until the closing of the consumptive demand exemption under the TFTEA in 2016.

The next significant piece of legislation on forced labor after the TFTEA was the Uyghur Forced Labor Prevention Act (UFLPA) of December 2021, enacted with an effective date of June 2022. This legislation addresses the detention and forced labor of over one million Muslims, most being Uyghurs, a Turkic-speaking ethnic group, in “reeducation” camps in the Xinjiang region of China.²⁴ The UFLPA of 2021 prohibits the importation of “all goods, wares, articles, or merchandise mined, produced, or manufactured, wholly or in part, by forced labor from the People’s Republic of China and particularly any such goods, wares, articles, or merchandise produced in the Xinjiang Uyghur Autonomous Region of China.”²⁵ This legislation is unique in that rather than relying on governmental or non-government organizations to trigger an investigation of goods suspected of being produced with forced labor, which can result in an import ban (WRO), it issues a product-wide ban on all goods emanating from the Xinjiang region in China and places the burden of proof onto importers to produce evidence of ethical supply chains for imports to be allowed entry into the U.S.

Despite the fact that the 2021 Uyghur Forced Labor Prevention Act (UFLPA) has only been in effect since June 2022, comparative analysis of the impacts of the 1930 Tariff Act, the 2015 Trade Facilitation and Trade Enforcement Act (TFTEA), and the 2021 Uyghur Forced Labor Prevention Act (UFLPA) reveals that the UFPLA has been significantly more effective in preventing the importation of goods made with forced labor. The central question of this thesis is what explains this? That is, despite the 2015 TFTEA finally closing the consumptive demand clause of the 1930 Tariff Act, resulting in a significant increase in bans of goods suspected of being

²⁴ Flacks, Marti, and Madeleine Songy. *The Uyghur Forced Labor Prevention Act goes into effect*. <https://www.csis.org/analysis/uyghur-forced-labor-prevention-act-goes-effect> (March 2024).

²⁵ Uyghur Forced Labor Prevention Act. 2021. H.R. 1155. Section 4

made with forced labor, what explains the continued failures of this legislation and why has the UFPLA been significantly more effective? This study seeks to answer these questions through a comparative historical analysis of the development, implementation, and impact of each of these three main legislative acts focused on banning imported products made with forced labor. In so doing, this study not only seeks to contribute to the legal and legislative scholarship in this area, but also to put forward recommendations for further revision of the 1930 Tariff Act, as well as recommendations for future scholarship in this area.

2. Literature Review

This study integrates insights from two main areas of scholarship. The first focuses on the effectiveness of different legislative oversight mechanisms, specifically proactive versus reactive oversight. The second body of literature examines the impacts of national economic interests on human rights policy, specifically labor rights. This literature explains how national economic interests can influence countries' success or failure to protect human rights. This is important to the study because it will provide insight into the United States' interests and incentives in successfully prohibiting the entry of goods made with forced labor.

2.1 Enforcement Mechanisms

There are two main types of enforcement mechanisms legislation relies on: proactive and reactive. Reactive enforcement refers to the process in which a legislative procedure “does not operate until there is probable cause of wrongdoing within an organization.”²⁶ This is the mechanism currently used by CBP for the Trade Facilitation and Trade Enforcement Act (2015) and was previously used for the Tariff Act of 1930. Specifically, investigations of forced labor in both of these legislative acts rely on the submission of petitions with forced labor allegations by an

²⁶ Schmidt, Matthias. “‘Whistle Blowing’ Regulation and Accounting Standards Enforcement in Germany and Europe—An Economic Perspective.” *International Review of Law and Economics* 25(2). <https://www.sciencedirect.com/science/article/pii/S0144818805000311#fn21>.

NGO, other governmental agency, scholar, or individual.²⁷ The second type of enforcement mechanism relies on proactive oversight, which is adopted in the 2021 Uyghur Forced Labor Prevention Act (UFLPA) through the use of a “rebuttable presumption.” Rebuttable presumption assumes all goods from listed entities in the Xinjiang region have been made with forced labor unless importers can provide proof of compliance with “stringent procedures, and... sho[w] clear and convincing evidence to the contrary.”²⁸ The rebuttable presumption, therefore, takes on a more proactive approach by banning the importation of all products made wholly or in part in the Xinjiang region, placing the burden of proof on importers to provide evidence of legislative compliance, rather than investigating legislative violations after allegations of wrong-doing are submitted.

Debates surrounding the effectiveness of the two mechanisms for enforcing human rights policies have a long literature, with many scholars arguing that both harbor shortcomings. One such evaluation is done by Gauthier de Beco in his book *Human Rights Monitoring Mechanisms on the Council of Europe*.²⁹ He assesses the monitoring and enforcement mechanisms used for human rights treaties and policies by the Council of Europe. Throughout the book, he finds that proactive measures, which “do not depend on [individual] complaints,” “encourage compliance with human rights...” by going “beyond a case-by-case basis.”³⁰ This book exemplifies the large literature that finds that reactive enforcement mechanisms do not adequately enforce human rights legislation and policies, because they rely on enforcement only after a violation has already taken place and narrowly investigate cases. Accordingly, requiring the submission of a petition to report

²⁷ Moore, Laura. 2023. “Cutting Slavery from U.S. Supply Chains: How Supplementing U.S. Customs and Border Protection Withhold and Release Order Procedures Will More Effectively Address Forced Labor in Supply Chains.” *Florida State* 50(2).

²⁸ Moore. 2023.

²⁹ De Beco, Gauthier. 2012. *Human Rights Monitoring Mechanisms of the Council of Europe*. 1st ed. Taylor & Francis. doi:10.4324/9780203808337.

³⁰ De Beco. 2012.

forced labor accusations by third parties would not catch the importation of all goods made with forced labor. Alternatively, a rebuttable presumption as a proactive oversight mechanism would better enforce the bans because a petition does not need to be filed, effectively prohibiting the importation of all goods specified in the legislation and shifting the burden of proof on importers.

In another assessment, “Paths to Compliance: Enforcement, Management, and the European Union,” Jonas Tallberg reviews the different enforcement mechanisms comparatively across different European Union legislations.³¹ He finds that enforcement across legislation, notably including human rights and environmental protections, was most effective when combining the proactive and reactive mechanisms. He argues that reactive mechanisms provide the benefits of lowering costs and the burden placed on governmental agencies. However, reactive enforcement approaches leave more space for violations to be missed due to their reliance on reporting, making capturing the effectiveness more difficult.³² Similarly, CBP under the TFTEA reacts after there has been an accusation that goods being imported into the U.S. are made with forced labor. Therefore, following the findings of Tallberg, this mechanism would alleviate the strain on CBP, but fail to prevent the entry of all goods made with forced labor. In contrast, the use of a rebuttable presumption would require greater expenditures (cost and labor), but better enforce the legislation if these expenditures are available.

However, research on the enforcement mechanisms used by CBP has found that the proactive measure of rebuttable presumption in fact alleviates cost and labor expenditures, due to the burden of proof being placed on individual companies/enterprises. Scholars have asserted these importers already possess or have easier access to information on supply chain compliance or violation. This is outlined in Matthew Higgin’s law review note “Closed Loophole, Open Ports:

³¹Tallberg, Jonas. 2002. “Paths to Compliance: Enforcement, Management, and the European Union.” *International Organization* 56(3): 609–43. doi: 10.1162/002081802760199908.

³² Tallburg. 2002.

Section 307 of the Tariff Act and the Ongoing Importation of Goods Made Using Forced Labor,” where he explains importing entities have the “relevant information from their normal efforts to monitor supply chains, satisfy reporting requirements imposed by other statutes [transparency laws or bans in other nations], or obtain third-party certifications [such as the Kimberly Process, which works to reduce the flow of conflict diamonds].”³³

The literature has differing findings on the effectiveness of each depending on the goals of the legislation. Most commonly scholars have found that human rights legislation is most effective when combining both proactive and reactive measures.³⁴ Nonetheless, when used in isolated cases, proactive measures more effectively enforce legislation, but can generally result in an increased strain on cost and labor for enforcement agencies when compared to regulatory measures, which rely on outside organizations or individuals to report legislative violations. Moreover, there is a higher likelihood that legislative violations will not be enforced when only reactive measures are used because the enforcing agency will not take action until after it has received a report from an outside source.

2.2 Economic Interest

There is a large and growing literature on how states’ economic interests influence their human rights policies. Realist theory argues that international human rights policy results from states acting rationally to “maximize their interests given their perceptions of the interests of other states and their distributions of state power.”³⁵ This means that when considering human rights

³³ Higgins, Matthew. 2023. “Closed Loophole, Open Ports: Section 307 of the Tariff Act and the Ongoing Importation of Goods Made Using Forced Labor.” *Stanford Law* 75.

<https://review.law.stanford.edu/wp-content/uploads/sites/3/2023/04/Higgins-75-Stan.-L.-Rev.-917.pdf>.

³⁴ Buhmann, Karin. 2018. “Neglecting the Proactive Aspect of Human Rights Due Diligence? A Critical Appraisal of the EU’s Non-Financial Reporting Directive as a Pillar One Avenue for Promoting Pillar Two Action.” *Business and Human Rights Journal* 3(1): 23–45. doi: 10.1017/bhj.2017.24.

³⁵ McGuinness, Margaret E. 2006. “Exploring the Limits of International Human Rights Law.” *Georgia Journal of International and Comparative Law* 34(2).
https://heinonline.org/HOL/Page?men_tab=srchresults&handle=hein.journals/gjicl34&id=411&size=2&collection=journals&terms=realist&termtype=phrase&set_as_cursor=.

legislation and policy, countries will act in a way that better supports their economic or national security interests, especially against other states. As Koldo Casla explains in “Realism: Human Rights Foe?” from a realist perspective, human rights as an international regime “either... does not make a difference, so states will not be really bothered about it; or it does make a difference, but only as one more tool at the hands of the strong to impose their hegemonic power over the weak.”³⁶

This debate is further discussed in “Globalization, Economic Freedom and Human Rights,” by Axel Dreher, Martin Gassebner, and Lars-H. R. Siemer.³⁷ In this article, they explain how economic ties between less and more developed countries provide for an asymmetric power dynamic in policymaking, resulting in more developed states promoting human rights when it does not affect their economic interest. They found developed states would promote the protection of “narrow basic human rights” (for example, “absence of torture, extrajudicial killings, political imprisonments, and disappearance”) in less developed countries, but not for “empowerment rights” (for example, “freedom of movement, freedom of speech, workers’ rights, political participation, and freedom of religion”). This study supports the literature that states promote rights that do not impact their interests, such as narrow basic human rights, but not empowerment rights because they are less beneficial to their interests, such as limiting the extraction of natural resources and lowering the costs of labor.³⁸

According to the realistic perspective, human rights policy in the United States is similarly used strategically, in an attempt to maximize their economic and national interest. This is exemplified in Lowell Dittmer’s article “Chinese Human Rights and American Foreign Policy: A

³⁶ Casla, Koldo. 2018. “Realism: Human Rights Foe?” *E*. <https://www.e-ir.info/2018/02/06/realism-human-rights-foe/> (March 2024).

³⁷ Dreher, Axel, Martin Gassebner, and Lars-H. R. Siemers. (June 1, 2012) “Globalization, Economic Freedom, and Human Rights.” *Journal of Conflict Resolution* 56, no. 3: 516–46. <https://doi.org/10.1177/0022002711420962>.

³⁸ Dreher, Axel, Martin Gassebner, and Lars-H. R. Siemers. (June 1, 2012) “Globalization, Economic Freedom, and Human Rights.” *Journal of Conflict Resolution* 56, no. 3: 516–46. <https://doi.org/10.1177/0022002711420962>.

Realist Approach” where he analyzed the United States’ historical promotion of human rights in China in comparison with realist theory.³⁹ He found that human rights were used as an anti-communist foreign policy mechanism when they strategically supported U.S. economic and national interests. However, he also reported the U.S. was “willing to make far more compromises on the human rights issues”⁴⁰ when compared to China. He attributed this phenomenon to either the United States’ unwillingness to damage material interest or the over-exaggeration of the post-Cold War hegemonic structure (which assumes the United States is at the top of this structure).⁴¹ In either case, the United States would compromise human rights when economic interests, such as consumer demand, are threatened. This analysis, therefore, found that human rights policies were promoted when they supported the United States’ foreign interests, particularly anti-communism, and were compromised when conflicting with economic interests.

Finally, in his chapter “Trade and Human Rights,” T.N. Srinivasan explores several studies that assessed the relationship between the support of labor rights policies and economic interest.⁴² He summarizes that in a 1997 study, scholars found that “members of U.S. Congress representing districts with relatively many unskilled workers, who are most likely to compete with child labor, are less likely to support a ban on imports made with child labor.”⁴³ This finding asserted that protectionist economic interests, referring to an attempt to protect domestic industries, would influence the support of labor rights internationally. He also notes several other studies that examine the relationship between the promotion of labor rights and economic competition, describing how while empirical links between the two are not always persuasive, there is evidence

³⁹ Dittmer, Lowell. 2001. “Chinese Human Rights and American Foreign Policy: A Realist Approach.” *The Review of Politics* 63(3): 421–60. doi: 10.1017/S0034670500030916.

⁴⁰ Dittmer. 2001.

⁴¹ Dittmer. 2001.

⁴² Srinivasan, T. N. 1998. “Trade and Human Rights.” In *Constituent Interests and U.S. Trade Policies*, Ann Arbor, MI: University of Michigan Press, 225–60. <https://www.jstor.org/stable/10.3998/mpub.15469.16>.

⁴³ Srinivasan. 1998.

that countries will enact measures to protect domestic industries when they believe unfair competition exists.⁴⁴

The large literature on realist theory, therefore, argues that human rights will only be promoted if they maximize or do not hinder state interests and power. Specifically, this perspective argues that economic interests will be prioritized over international human rights interests, and subsequently, powerful states will only promote human rights interests when they are beneficial or have little impact on their economic interests.

3. Research Design and Methodology

In order to better understand the effectiveness of different oversight mechanisms banning the importation of goods made with forced labor, as well as whether there are instances where human rights norms may trump U.S. economic interests in this area, this study provides a historical comparative analysis of the development and impact of the three major legislative acts in this area in the United States: (1) the Tariff Act of 1930, (2) the Trade Facilitation and Trade Enforcement Act (TFTEA) of 2015, and (3) the Uyghur Forced Labor Prevention Act (UFLPA) of 2021.

3.1 Dependent Variable

The dependent variable of this study is the enforcement of import bans on products suspected of being made with forced labor. Successful enforcement is defined as preventing the entry into the United States of products and goods from producers or entities accused of forced labor. Failed enforcement is defined as the inability to prevent the entry of products and goods from producers or entities accused of forced labor. To assess the impact of the 1930 Tariff Act and the 2015 Trade Facilitation and Trade Enforcement Act (TFTEA), I examine the number of “Withhold Release Orders” or “Findings” associated with each. “Withhold Release Orders,” or

⁴⁴ Srinivasan. 1998.

WROs, are issued by Customs and Border Protection (CBP) “when the agency has reasonable evidence of the use of forced labor in the manufacturing or production of a good or goods entering the U.S. supply chain. A WRO allows CBP to detain the products in question at U.S. ports of entry until/unless importers can prove the absence of forced labor in their product’s supply chain.”⁴⁵ “Findings,” on the other hand, are cases where CBP “has conclusive evidence of the use of forced labor in the manufacturing or production of a good or goods entering the U.S.”⁴⁶ Moreover, to assess the impact of the TFTEA, I also examine the total shipments targeted, defined as total shipments detained by CBP under the suspicion of forced labor, as reported in the agency's annual Trade and Travel Report.⁴⁷ (This information was not available prior to the passage of the TFTEA and, therefore, cannot be assessed for the Tariff Act of 1930.)

To assess the failure of the Tariff Act of 1930, I examine the years in which there were no bans issued and assess the circumstances in which WROs were issued, despite the consumptive demand loophole. The assessment of failures under the Tariff Act of 1930 is limited due to the lack of data available.⁴⁸ To determine failures of the TFTEA of 2015, I use the database on e-allegations provided by CBP to compare annual WRO issuances versus the annual number of allegations made to CBP. This database, however, only has information from January 2021 to March 2024. Therefore, the number of allegations is not available from the enactment of the TFTEA in 2016 to January 2021.

I also use the database generated by the U.S. Bureau of International Labor Affairs (ILAB), which falls under the auspices of the U.S. Department of Labor, and which lists products “which

⁴⁵CBP. <https://www.cbp.gov/sites/default/files/assets/documents/2021-Jan/Active%20WRO.pdf> (March 31, 2024).

⁴⁶CBP. <https://www.cbp.gov/sites/default/files/assets/documents/2021-Jan/Active%20WRO.pdf> (March 31, 2024).

⁴⁷ Trade and Travel Reports are published annually and summarize CBP’s “trade and travel facilitation and enforcement efforts.” *CBP Trade and Travel Report*. 2022.

<https://www.cbp.gov/sites/default/files/assets/documents/2023-Jun/fy-2022-cbp-trade-and-travel-report.pdf>.

⁴⁸CBP does not have shipment detention data for WROs issued prior to 2015, nor does the agency provide information for all petitions received. This makes it impossible to fully assess how effective the legislation was.

[the agency] has reason to believe are produced by child labor or forced labor in violation of international standards.”⁴⁹ ILAB’s Office of Forced Labor, Child Labor, and Human Trafficking, maintains two datasets. The first is dedicated to reporting a list of products produced by forced and indentured child labor, and the second lists goods made by child labor or forced labor. The main difference between these datasets is the first does not report all kinds of forced labor, instead focusing on indentured or forced labor involving children. Therefore, I use the second database that produces a list of goods made by child or forced labor, which collects information regarding allegations of forced labor through submissions “by national governments, international organizations, businesses and corporations, trade and workers' organizations, NGOs, academia, and the general public.”⁵⁰ ILAB then reviews submitted allegations and based on their findings, releases reports on products and goods at high risk of being made with forced and/or child labor. The ILAB list was last updated on September 28, 2022.⁵¹

While CBP is not required to investigate products or entities without a formal petition, and there is no formal report of ILAB submitting a petition for all the products on its list, it is recognized that CBP receives petitions from other governmental agencies and can “self-initiate” petitions for investigation. Moreover, ILAB states on its website that the “inclusion of a good on either of ILAB’s two lists is not a ban on importation of those goods into the United States, the inclusion of that good flags that CBP should pay particular attention to the listed goods in their WRO investigations. CBP also relies on ILAB’s reporting to make determinations in issuing,

⁴⁹DOL. “List of Products Produced by Forced or Indentured Child Labor.” Accessed October 22, 2023. <http://www.dol.gov/agencies/ilab/reports/child-labor/list-of-products>.

⁵⁰DOL. “List of Products Produced by Forced or Indentured Child Labor.” Accessed October 22, 2023. <http://www.dol.gov/agencies/ilab/reports/child-labor/list-of-products>.

⁵¹DOL. “List of Products Produced by Forced or Indentured Child Labor.” Accessed October 22, 2023. <http://www.dol.gov/agencies/ilab/reports/child-labor/list-of-products>.

revoking, or modifying WROs.”⁵² For this reason, I use the ILAB lists to discern failure in prohibiting importation, but acknowledge the limitation that a formal petition may not have been submitted for every ILAB finding.

To assess the impact of the Uyghur Forced Labor Prevention Act (UFLPA) of 2021, I examine three categories of shipments: (1) detained shipments, defined as “shipments subjected to UFLPA reviews or enforcement actions;”⁵³ (2) shipments subsequently denied entry, defined as shipments found in violation of the UFLPA after detention investigation; and (3) shipments released, which are shipments not found in violation of the UFLPA after detention investigation.⁵⁴ To capture the failures of the UFLPA, I examine congressional reports conducted by the Congressional Research Service (CRS), as well as transcripts of congressional hearings throughout 2023 and early 2024.⁵⁵

3.2 Independent Variables

This study has two main independent variables: (1) the oversight and enforcement mechanisms of the legislation, and (2) U.S. economic interest. “Oversight mechanism” is defined as the process by which products suspected of being produced by forced labor are investigated and

⁵² *FLETF - establishing timelines congressional report*.

https://www.dhs.gov/sites/default/files/publications/fletf_-_establishing_timelines_congressional_report.pdf (March 2024).

⁵³ “Uyghur Forced Labor Prevention Act Statistics.” *U.S. Customs and Border Protection*.

<https://www.cbp.gov/newsroom/stats/trade/uyghur-forced-labor-prevention-act-statistics> (March, 2024).

⁵⁴ CBP. 2023. *Uyghur Forced Labor Prevention Act (UFLPA) Data Dictionary*.

<https://www.cbp.gov/document/stats/uyghur-forced-labor-prevention-act-data-dictionary>.

⁵⁵ Congressional hearings were watched through the U.S. Department of Homeland Security’s Committee Event’s youtube channel. I also read the “Letter to Secretary Mayorkas on Enforcement of the Uyghur Forced Labor Prevention Act” from the Select Committee on the Chinese Communist Party. Select Committee on the Chinese Communist Party. 2024.

<https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/1-19-24-dhs-letter-on-uflpa.pdf>.

either banned or released, depending on findings. U.S. economic interest is defined in two different ways (1) U.S. consumptive demand, and (2) U.S. economic protectionism.

The first independent variable examines the success or failure of the legislative oversight and enforcement mechanisms in prohibiting or failing to prohibit the importation of goods made with forced labor. This variable is defined as reactive enforcement in the cases of the Tariff Act of 1930 and TFTEA of 2015, and proactive enforcement (the rebuttable presumption) in the case of UFLPA of 2021. This independent variable for the Tariff Act of 1930 is measured through WRO issuances from 1930 to 2015 under the Tariff Act and congressional reports. For the TFTEA, this is measured through WRO issuances compared to petition submissions and ILAB cases, and shipment detentions reported in the annual Trade and Travel Reports. Finally, for the UFLPA, this is measured through shipment detentions, transcripts of congressional hearings, and congressional reports.

The second independent variable is U.S. economic interest. Economic interest is defined in two ways: (1) U. S. consumptive demand, as defined in the Tariff Act of 1930 under the consumptive demand loophole,⁵⁶ and (2) U.S. protectionism, defined as a mechanism to protect U.S. domestic markets from foreign competition.⁵⁷ Economic interest is operationalized for each of the three legislation acts (the Tariff Act, the TFTEA and UFLPA) by historically analyzing reports on the reasons motivating the passage of the legislation.⁵⁸ Economic interest is further measured for the Tariff Act by analyzing the context in which WROs were or were not issued compared to the TFTEA, to discern the impacts of the consumptive demand loophole. This independent variable is also operationalized for the TFTEA through in-depth analysis of three products that

⁵⁶Cases in which “goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.” Tariff Act of 1930, 19 U.S.C. § 1201-1641 (Suppl. 2 1934).

⁵⁷ Srinivasan, T. N. 1998. “Trade and Human Rights.” In *Constituent Interests and U.S. Trade Policies*, Ann Arbor, MI: University of Michigan Press, 225–60. <https://www.jstor.org/stable/10.3998/mpub.15469.16>.

⁵⁸ I specifically read reports done by the Congressional Reserach Service and Press Realases posted on CBP’s website.

have a WRO issuance for one country, despite there being multiple countries or regions suspected of forced labor on the ILAB database. These products are selected due to the fact that their WROs were implemented after the enactment of the TFTEA, and based on the availability of production and exportation data. For each of these products, I first examine the product's production data from the United States, the recipient country of the WRO, the other ILAB countries using various governmental databases, and, if necessary, third-party nongovernmental datasets. I then research the individual entities receiving the WRO to determine if they were major producers in the country. Finally, to further assess the role that U.S. economic interest might play in the development and implementation of the UFLPA, I review scholarly articles on U.S. trade relations with China and congressional reports.⁵⁹ In assessing the role of U.S. economic interest I weigh this against evidence of human rights interest, operationalized as normative concern for diminishing conditions of forced labor globally by preventing imports of goods made with forced labor.

3.3 Hypotheses and Theory

My research employs comparative qualitative case study analysis to answer the following question: What conditions most effectively explain the success or failure of U.S. legislation designed to prohibit the importation of goods made wholly or in part with forced labor?

The first independent variable, legislative oversight and enforcement mechanisms, generates two hypotheses:

- **H1A:** The implementation of a proactive oversight mechanism, the rebuttable presumption, more successfully prevents the entry of goods made with forced labor, compared to the reactive oversight mechanism used by WROs.

⁵⁹ These reports include those done by the Congressional Research Service and statements on the websites of the four Congressional members who introduced the bill (in the senate James McGovern (D) and Sen. Marco Rubio and James P. McGovern (D))

I theorize that the implementation of rebuttable presumption (with the UFLPA) will more successfully prevent the entry of goods made with forced labor, by proactively banning all goods from this region. This theory is formulated based on the existing literature that evaluates the shortcomings of reactive measures, specifically claiming that the requirement of submissions for accusation by third parties results in enforcement agencies not catching all violations of the legislation. While the literature also finds that proactive mechanisms can be more costly, scholars find that they are nonetheless more successful in investigating legislative violations than reactive measures because they operate beyond a case-by-case basis.⁶⁰ Under this theory, the implementation of rebuttable presumption, a more proactive enforcement mechanism, would better enforce the prohibition of goods made with forced labor by requiring all importers with goods made wholly or in part in the Xinjiang region to show compliance with the UFLPA.

The second hypothesis that the first independent variable generates is as follows:

- **H1B:** The implementation of proactive oversight mechanisms, and specifically rebuttable presumption, will be too strenuous on CBP's resources and, therefore, will not have a significant impact on preventing the entry of goods made with forced labor when compared to the reactive measures used by WROs.

This theory is based on the literature that proactive measures are more resource intensive (costs and labor), thus making them less effective if these resources are not available. According to these claims, I theorize that if there is no significant difference between proactive and reactive enforcement mechanisms for preventing the entry of goods made with forced labor, it can be

⁶⁰ De Beco, Gauthier. 2012. *Human Rights Monitoring Mechanisms of the Council of Europe*. 1st ed. Taylor & Francis. doi:10.4324/9780203808337.

attributed to the strain put on CBP's resources. If CBP does not possess the resources to investigate shipments as required through rebuttable presumption, the agency will not be able to prevent importation in greater effect when compared to WROs.

The second independent variable, U.S. economic interest, generates two additional hypotheses:

- **H2A:** If a ban conflicts with US economic interests, then the legislation will fail to be successful in prohibiting the importation of goods made with forced labor.

This hypothesis is based on the scholarship in this area, specifically realist theory.

Realist theory predicts that states will fail to promote human rights if they conflict with policies or standards that maximize their economic interests.⁶¹ This is supported by Dittmer's findings that the United States would compromise human rights interests with China if the policies threatened the United States' material interests. Therefore, I argue that if a ban conflicts with U.S. consumptive demand, a WRO will not be issued because it goes against the national economic interest.⁶² The failure to issue a ban will result in the legislation's failure to successfully prohibit the importation of goods made with forced labor, because they are the enforcement mechanism for all three pieces of legislation.

The second hypothesis generated by the second independent variable, U.S. economic interest, is as follows:

- **H2B:** If a ban supports U.S. economic interest, then legislation will be successful in prohibiting the importation of goods made with forced labor.

⁶¹ McGuinness, Margaret E. 2006. "Exploring the Limits of International Human Rights Law." *Georgia Journal of International and Comparative Law* 34(2).

⁶² Dittmer, Lowell. 2001. "Chinese Human Rights and American Foreign Policy: A Realist Approach." *The Review of Politics* 63(3): 421–60. doi: 10.1017/S0034670500030916.

I theorize if a ban supports United States protectionist policies then it will be issued, thus more successfully prohibiting the importation of goods made with forced labor. This theory is also based on the insights of realist theories. If a ban supports the U.S.'s economic interests, the ban will be issued, thus also supporting human rights norms, but only because these align with its economic interests. To restate, if the ban can be used as a mechanism to promote economic interests, such as narrowing foreign competition, it will be more successfully implemented. This hypothesis also relies on the literature focused on protectionist trade policies as an economic interest when considering human rights. This scholarship argues that the United States is more likely to support labor rights legislation if it is believed that the goods imported are competing with United States domestic industries. This is specifically because lower labor rights standards create unfair labor competition. In this case, the ban would be more successfully implemented because of the belief that forced labor is creating unfair labor competition.⁶³

3.4 Scope and Limitations

This thesis examines the success and failure of import bans on goods made with forced labor as the result of three legislative acts: (1) the Tariff Act of 1930; (2) the Trade Facilitation and Trade Enforcement Act (TFTEA) of 2015, and (3) the Uyghur Forced Labor Prevention Act (UFPLA) of 2021. Dating from the month and year each legislative act became effective, analysis of the 1930 Tariff Act spans from May 1932 through February 2016, when the consumptive demand exemption was removed by the TFTEA. Analysis of the impact of the TFTEA spans from February 2016 through December 2022 (the last Trade and Travel report). Finally, an analysis of

⁶³ Srinivasan, T. N. 1998. "Trade and Human Rights." In *Constituent Interests and U.S. Trade Policies*, Ann Arbor, MI: University of Michigan Press, 225–60. <https://www.jstor.org/stable/10.3998/mpub.15469.16>.

the impact of the UFPLA dates from June 2022 through January 2024 (the last update to the UFLPA database).

As noted above, the ILAB database is used to assess failures in the TFTEA (from June 2016 until September 2022, which is when ILAB last updated the list with new findings). One limitation of this approach is that there is no evidence that ILAB cases have been submitted as petitions to CBP. ILAB's and CBP's WRO databases exist as separate U.S. governmental entities, and while CBP acknowledges its affiliation and reliance on ILAB, this does not mean CBP investigates all cases on the ILAB database.⁶⁴ CBP is confined to investigating products only once an allegation has been submitted. CBP also does not disclose information on product allegations prior to 2021, and the products and entities on these allegations are not disclosed, making it impossible to assess how many petitions were submitted prior to 2021. CBP also does not disclose how it investigated consumptive demand before 2016, making it impossible to assess consumptive economic interest in a similar manner to how it was previously considered by the agency. In response to a request to CBP for information on how they investigated consumptive demand prior to 2016, they responded that they were unable to share this information without filing a Freedom of Information Act request. Due to the processing time of these requests, unfortunately, I could not get the information I would need in time for thesis research.

4. Definitions and Historical Context

According to the ILO Forced Labor Convention of 1930, forced labor refers to “all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.”⁶⁵ The ILO further elaborates this definition in the

⁶⁴Bureau of International Labor Affairs. *Information and resources on withhold release orders (wros)*. <https://www.dol.gov/agencies/ilab/comply-chain/steps-to-a-social-compliance-system/step-6-remediate-violations/key-topic-information-and-resources-on-withhold-release-orders-wros> (March 2024).

⁶⁵ International Labor Organization. 1930. Forced Labor Convention (No. 29). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C029:NO

Forced Labour Protocol (Article 1(3)) to include three parts: 1) service or work which includes “all types of work occurring in any activity, industry or sector including in the informal economy,” 2) “[m]enace of any penalty, referring to “a wide range of penalties used to compel someone to work,” and 3) “[i]nvoluntariness” which occurs when a person does not offer themselves voluntarily and is unable to give “free and informed consent... to take a job and [given the] freedom to leave at any time.” An example of violating “free and informed consent” would include when an employer or recruiter “makes false promises so that a worker takes a job they would not otherwise have accepted.”⁶⁶

The ILO also provides eleven indicators of forced labor to aid in the understanding and identification of forced labor. These indicators are: “abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime.”⁶⁷

There have been multiple attempts at the international level to address both slavery and forced labor. The first international body to address slavery was the League of Nations in the 1926 Slavery Convention.⁶⁸ This is significant because it was the first time that slavery was addressed internationally, requiring “signatories to eliminate slavery, the slave trade, and forced labor in their territories.”⁶⁹ Shortly thereafter, the ILO passed several conventions to prevent forced labor and conditions of modern slavery, as well as to protect workers’ rights. These include: the Forced

⁶⁶What are forced labour, modern slavery and human trafficking? (*forced labour, Modern Slavery and human trafficking*). <https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm> (March 2024).

⁶⁷ SAP-FL. 2012. *Ilo Indicators of Forced Labour*. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf (December 5, 2023).

⁶⁸An international treaty to “prevent and suppress the slave trade and” and “to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms.” League of Nations. 1926. “Slavery Convention.” (March, 2024). <https://www.ohchr.org/en/instruments-mechanisms/instruments/slavery-convention>

⁶⁹Library of Congress, Washington, D.C. 20540 USA. “Slavery Convention.” Compressed data. <https://www.loc.gov/item/2021667888/>.

Labour Convention (1930) (and its 2014 Protocol), the Freedom of Association and Protection of the Right to Organise Convention (1948), the Right to Organise and Collective Bargaining Convention (1949), the Equal Remuneration Convention (1951), Abolition of Forced Labour Convention (1957), the Minimum Age Convention (1973), the Occupational Safety and Health Convention (1981), the Worst Forms of Child Labour Convention (1999), and the Promotional Framework for Occupational Safety and Health Convention (2006).⁷⁰ Of these conventions, the United States has ratified two: the 1957 Abolition of Forced Labour Convention and the 1999 Worst Forms of Child Labour Convention.

With the establishment of the U.N. in 1945, the U.N. General Assembly has also endorsed numerous declarations and covenants that address forced labor and slavery. The first of these was the Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly on December 10, 1948.⁷¹ Of specific relevance for this thesis is Article 4 of the UDHR, which states that “no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms” (UDHR 1948). In addition, Article 23 of the UDHR protects workers’ “right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”⁷² From this Declaration came two legally binding documents, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which were adopted by the UN General Assembly in 1966 and came into force in 1976. A final relevant U.N. document related to forced labor is the UN Guiding Principles on Business and Human Rights (UNGPR), which establishes

⁷⁰ International Labor Organization. “Conventions and Recommendations.” (December 3, 2023.) <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>.

⁷¹ OHCHR. 1948. “Universal Declaration of Human Rights.” *United Nations*. (December 3, 2023). <https://www.ohchr.org/en/universal-declaration-of-human-rights>.

⁷² OHCHR. 1948. “Universal Declaration of Human Rights.” *United Nations*. <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (December 3, 2023).

guidelines for companies and states to protect human rights within business through varying voluntary frameworks.⁷³ Of these UN declarations, conventions, and agreements, the United States has endorsed the UDHR (1948),⁷⁴ ratified the ICCPR (1992), and signed the UNGP (2011).⁷⁵ Notably, the U.S. has signed, but not ratified, the ICESCR.⁷⁶

With the development of international agreements and laws in this area, a subset of countries has recently enacted new national legislation and policies to address forced labor and modern slavery. In the last eleven years (since 2012), the United States, the United Kingdom, France, the Netherlands, and Australia have all passed new national legislation in an attempt to address the issue of forced labor. Specifically, the United Kingdom (UK) (2015) and Australia (2017), have both passed transparency laws designed to incentivize multinational corporations to practice supply chain due diligence through self-reporting procedures. The transparency legislation in the UK and Australia is similar in that they incentivize self-reporting, but do not require it. They also do not publish reports or lists of companies who fail to make reports available to the public.

While this legislation is important because it demonstrates that these countries are aware of the problem, and it perhaps provides evidence of political will in addressing the forced labor, these legislative initiatives have been relatively ineffective due to their lack of enforcement authority.⁷⁷ Countries such as the Netherlands, France, Germany, and Canada have also adopted legislation.

This legislation includes: child labor laws that mandate transparency and due diligence action

⁷³ ECCJ. “Justice Delayed: 10 Years of UN Guiding Principles on Business & Human Rights.” Accessed October 22, 2023. <https://corporatejustice.org/news/justice-delayed-10-years-of-un-guiding-principles/>.

⁷⁴ “Stand up for Human Rights.” 2023. *Article of the Universal Declaration of Human Rights | Stand up for human rights | UN Human Rights Office*. <https://www.standup4humanrights.org/en/article.html> (March 2024).

⁷⁵ “Stand up for Human Rights.” 2023. *Article of the Universal Declaration of Human Rights | Stand up for human rights | UN Human Rights Office*. <https://www.standup4humanrights.org/en/article.html> (March 2024). and “Signatories for United Nations Guiding Principles on Business and Human Rights.” *The Human Rights Guide to the Sustainable Development Goals*. <https://sdg.humanrights.dk/en/instrument/signees/16> (March 2024).

⁷⁶ “View the Ratification Status by Country or by Treaty.” *tbinternet.ohchr.org*. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/treaty.aspx (March 2024).

⁷⁷ Justine, Nolan. Bott, Gregory. “Global Supply Chains and Human Rights: Spotlight on Forced Labour and Modern Slavery Practices.” 2018. *Australian Journal on Human Rights* 24(1). <https://www.tandfonline.com/doi/citedby/10.1080/1323238X.2018.1441610?scroll=top&needAccess=true>.

plans, where failure to submit is punishable by fines and available to the public in the Netherlands;⁷⁸ annual reporting⁷⁹ with threats of financial punishment for violating corporations in France;⁸⁰ and two-pronged transparency laws that address both forced labor and environmental concerns in Germany.⁸¹

Following the United States-Mexico-Canada Agreement (USMCA) of 2020, Canada amended its Customs Tariff Act 2020 to prohibit the importation of products made with forced labor. However, since this amendment, only one ban has been issued as of December 2023.⁸² In the last year, the European Union has also introduced a bill that aims at banning forced labor imports, but the EU has not yet ratified this new legislation. Finally, California has also passed transparency legislation to incentivize self-reporting, but like this type of legislation in the UK and Australia, it has been relatively ineffective due to not requiring self-reporting.⁸³

Despite these efforts, the ILO estimates that in 2021, 27.6 million people experienced forced labor.⁸⁴ Moreover, estimates of forced labor saw a 2.7 million increase between 2016 and

⁷⁸ Stacey H. Mitchell, Suzanne Kane. (2019). “Supply Chain Due Diligence Laws Go Orange—Netherlands Latest to Pass Legislation.” Akin Gump Strauss Hauer & Feld LLP.

<https://www.akingump.com/en/insights/alerts/supply-chain-due-diligence-laws-go-orange-netherlands-latest-to>.

⁷⁹ Human Rights First. “How the French Are Tackling Modern Slavery.” (December 4, 2023).

<https://humanrightsfirst.org/library/how-the-french-are-tackling-modern-slavery/>.

⁸⁰ Human Rights First. “How the French Are Tackling Modern Slavery.” (December 4, 2023).

<https://humanrightsfirst.org/library/how-the-french-are-tackling-modern-slavery/>.

⁸¹ Library of Congress, Washington, D.C. 20540 USA. “Germany: New Law Obligates Companies to Establish Due Diligence Procedures in Global Supply Chains to Safeguard Human Rights and the Environment.” Web page. (December 3, 2023).

<https://www.loc.gov/item/global-legal-monitor/2021-08-17/germany-new-law-obligates-companies-to-establish-due-diligence-procedures-in-global-supply-chains-to-safeguard-human-rights-and-the-environment/>.

⁸² Michael R. Littenberg, Samantha Elliott, Kelley R. Cohen. (2023). “Canada to Implement New Modern Slavery Reporting Requirements and Child Labor Import Ban – Slotting into Global Compliance by U.S.-Based Multinationals | Insights | Ropes & Gray LLP.” (December 5, 2023).

<https://www.ropesgray.com/en/insights/alerts/2023/05/canada-to-implement-new-modern-slavery-reporting-requirements-and-child-labor-import-ban>.

⁸³ Cusumano, Emma. 2017. “Is the California Transparency in Supply Chains Act Doing More Harm Than Good?” *Corporate Accountability Lab*.

<https://corpaccountabilitylab.org/calblog/2017/7/25/is-the-california-transparency-in-supply-chains-act-doing-more-harm-than-good#:~:text=First%2C%20it%20does%20not%20consider,a%20result%20of%20this%20statute>.

⁸⁴ ILO, Walk Free, and IOM UN Migration. 2022. *Global estimates of modern slavery forced labour and forced marriage*. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf (November 28, 2023).

2021, with a 4 million person increase between 2012 and 2016.⁸⁵ With continued globalization making subcontracting and supply chain oversight increasingly challenging, and the lack of accountability of multinational corporations due to liberalized market standards, supply chains have steadily increased coercive and exploitative labor methods to meet market demand.⁸⁶

5. Case Studies and Data

To date, the United States has enacted three pieces of legislation that address forced labor through importation bans: (1) the Tariff Act of 1930, (2) the Trade Facilitation and Trade Enforcement Act of 2015, and (3) the Uyghur Forced Labor Prevention Act of 2021. The sections below provide an in-depth explanation of each of these legislative acts, as well as an analysis of their successes and failures in banning the importation of goods made with forced labor.

5.1 The Tariff Act of 1930

The first legislation in the United States to address the issue of forced labor is the Tariff Act of 1930. Specifically, Section 307 of the Act bans “[a]ll goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor.”⁸⁷ The ban was originally enforced by the U.S. Customs Service, however, in 2003 Customs and Border Protection (CBP) was established and enforcement was assigned to this agency.⁸⁸

Since the creation of CBP, the process outlined in Figure 2 (below) has been used, which includes the following steps in determining if a “Withhold Release Order,” or WRO will be issued. WROs “direct CBP’s Port Directors at ports of entry— places where one may lawfully enter a

⁸⁵ ILO, Walk Free, and IOM UN Migration. 2022. *Global estimates of modern slavery forced labour and forced marriage*. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf (November 28, 2023).

⁸⁶ Kara, Siddharth. 2017. “Modern Slavery: The ‘Dark Underbelly’ of Globalization.” *UN News: Global perspective Human stories*.

⁸⁷ Tariff Act. 1930. 19 U.S.C. § 1307

⁸⁸ Cimino-Isaacs, Cathleen D., Christopher A. Casey, and Katarina C. O’Regan. 2021. *Section 307 and U.S. imports of products of forced labor*. <https://sgp.fas.org/crs/misc/R46631.pdf> (March 31, 2024).

country and/or import goods” to “detain a shipment of goods.”⁸⁹ First, CBP receives an allegation made by “non-profit and non-governmental organizations, partner government agencies, the press, and individuals,” or in some cases “[CBP forced labor] analysts may self-initiate a case based on information from internal government sources or public reporting.”⁹⁰ Although these allegations can be made anonymously, CBP encourages providing contact information so they may follow up during the investigative process. The allegation check-list⁹¹ can be found on CBP’s website and can be turned in through the trade violation portal, which is also on CBP’s website.⁹² The checklist includes questions about the type of forced labor (prison, forced, or forced child), the time frame, supply chain details, and supporting information and evidence.

Following the submission of an allegation, CBP’s forced labor analysts review the petition to determine if there are grounds for initiating an investigation. This process typically takes around 30 days⁹³ and results in CBP deciding whether or not to accept or reject the petition. A petition is accepted when there are “articulable facts” and a likelihood of “U.S [importation].”⁹⁴ Once a petition is accepted, CBP refers this and any additional relevant evidence to the Department of Justice (DOJ) and/or U.S. Immigrations and Customs Enforcement, Homeland Security Investigations (ICE HSI), “as appropriate, for a potential violation of 18 U.S.C. §§ 1589, 1761, 1762.”⁹⁵ The petition is also sent to the U.S. Treasury’s Office of Foreign Assets Control (OFAC),

⁸⁹ Bureau of International Labor Affairs. *Information and resources on withhold release orders (wros)*. <https://www.dol.gov/agencies/ilab/comply-chain/steps-to-a-social-compliance-system/step-6-remediate-violations/key-topic-information-and-resources-on-withhold-release-orders-wros> (March 2024).

⁹⁰ CBP. *Forced labor investigations and allegations – how to write ...* https://www.cbp.gov/sites/default/files/assets/documents/2021-Jan/Forced%20Labor%20Article%20Part%202%20for%20.gov__0.pdf (March 2024).

⁹¹ CBP. *Forced labor investigations and allegations – how to write ...* https://www.cbp.gov/sites/default/files/assets/documents/2021-Jan/Forced%20Labor%20Article%20Part%202%20for%20.gov__0.pdf (March 2024).

⁹² CBP. *E-allegations program*. <https://www.cbp.gov/trade/e-allegations> (March 2024).

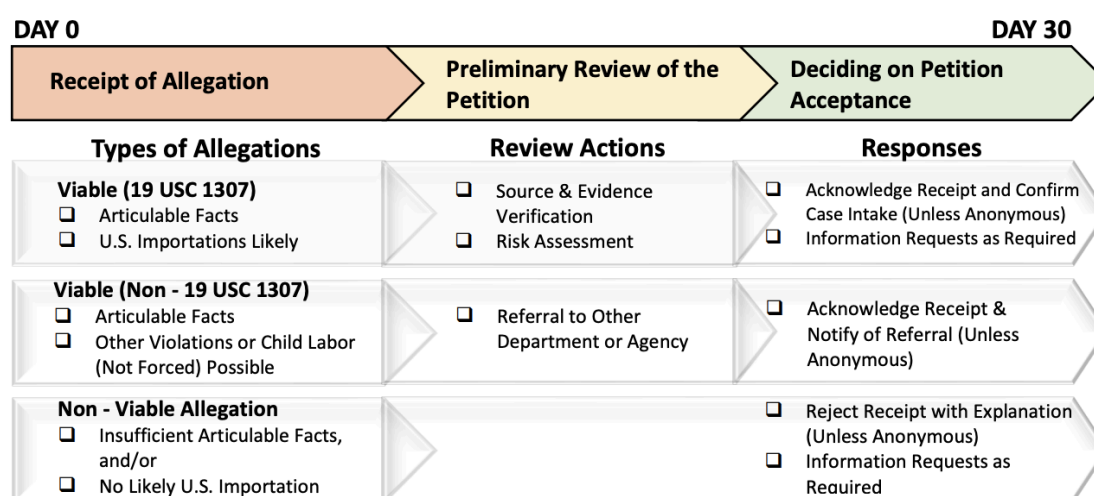
⁹³ Figure 2.

⁹⁴ Figure 1.

⁹⁵ U.S. Homeland Security, Office of Strategy, Policy and Plans. (2021). *Forced Labor Enforcement Task Force: Establishing Timeline*. (March, 2023). https://www.dhs.gov/sites/default/files/publications/fletf_-_establishing_timelines_congressional_report.pdf.

if it involves allegations of importation from North Korea, as it would violate North Korea Sanctions Regulations.⁹⁶ If a petition is rejected, meaning it will not be investigated for a WRO issuance, it could be sent to other agencies if there is reasonable suspicion that other United States laws were violated. Regardless of whether the petition is sent to other agencies, if the petitioner identifies themselves and provides contact information (since petitions can be filed anonymously), CBP will notify them that the agency is not going to move forward with an investigation and provide information about why the petition “does not conform.”⁹⁷

Figure 1: “Process for accepting or rejecting petitions”⁹⁸



If a petition is accepted, CBP will then initiate an investigation, which usually takes 90 to 180 days. In this process, CBP utilizes the forced labor indicators provided by the International Labor Organization (ILO), which CBP contends “represent the most common signs that point to

⁹⁶ 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.” *Forced labor investigations and allegations – how to write ...* https://www.cbp.gov/sites/default/files/assets/documents/2021-Jan/Forced%20Labor%20Article%20Part%202%20for%20gov__0.pdf (March 2024)

⁹⁷ Title 19 - Customs Duties. (2011). 19 C.F.R. § 12.42(c)

⁹⁸ U.S. Homeland Security, Office of Strategy, Policy and Plans. (2021). *Forced Labor Enforcement Task Force: Establishing Timeline*. (March, 2023). https://www.dhs.gov/sites/default/files/publications/fletf_-_establishing_timelines_congressional_report.pdf.

the possible existence of a forced labor case.⁹⁹ CBP’s investigation includes “witness testimonies, payroll and financial records, audits, photographs, and other supporting documents” (including academic reports and media articles) and “initiat[ing]... relationships with public and private partners to collaborate on cases and gain further clarification to help connect the dots.”¹⁰⁰ If there is “reasonable suspicion” of forced labor, CBP issues a Withhold Release Order (WRO) and issues a press release reiterating its commitment to eradicating forced labor, identifying the type or types of forced labor, and what products will be banned under the WRO.¹⁰¹

Under this legislation, CBP also considered the consumptive demand exemption during an investigation, but will not provide information on how this was determined, if it applied.¹⁰² If evidence of forced labor was found, and the product did not conflict with US consumptive demand, then the goods were barred entry into the United States through the issuance of a WRO. However, if the product did conflict with United States consumptive demand, a WRO was not issued and the goods were allowed to enter the United States, despite evidence of forced labor.

Figure 2: Forced Labor Process

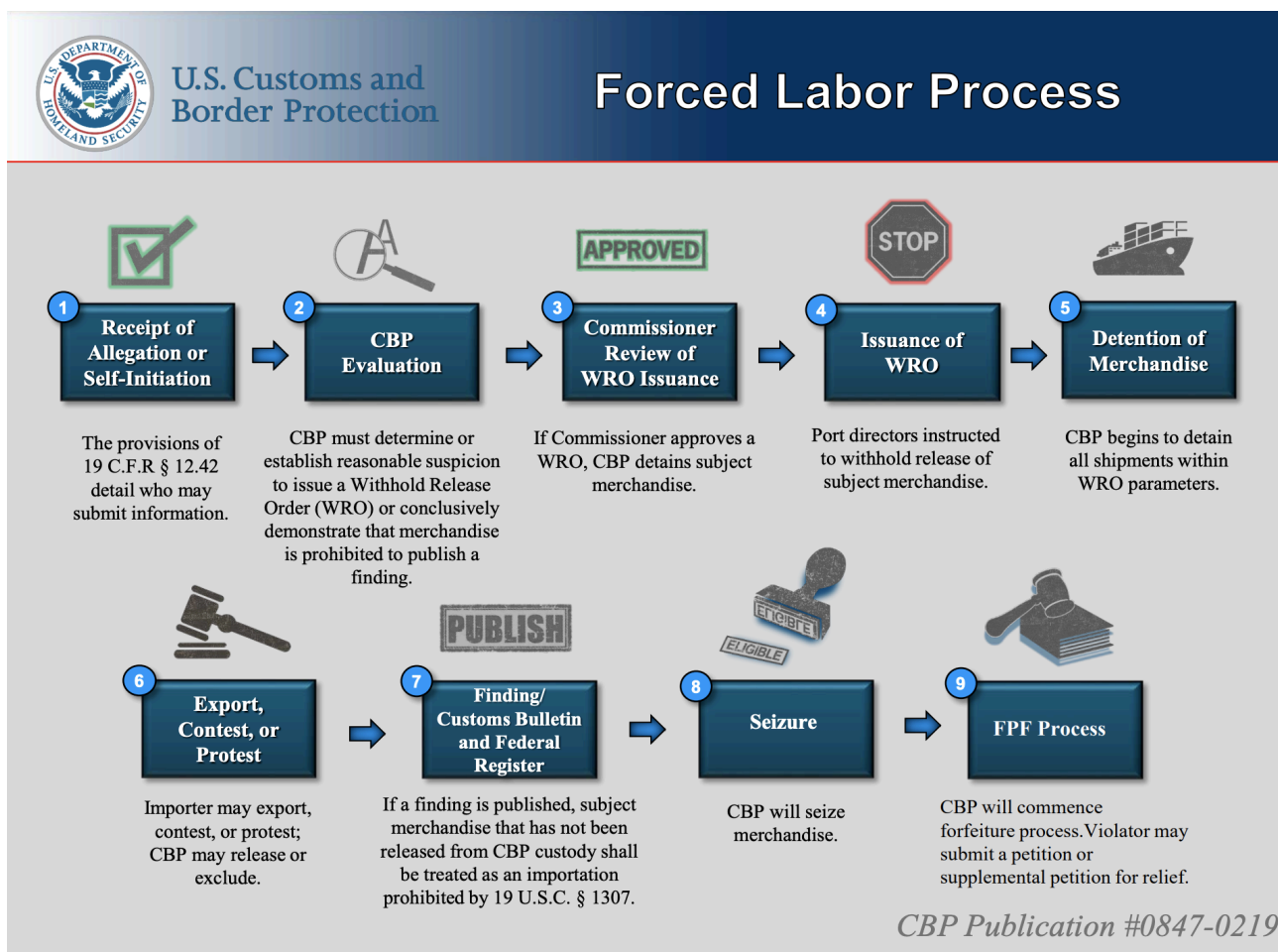
⁹⁹ U.S. Customs and Border Protection, *Forced Labor* (last modified May 25, 2023), available at <https://www.cbp.gov/trade/forced-labor>.

¹⁰⁰ *Forced labor investigations and allegations – how to write ...* https://www.cbp.gov/sites/default/files/assets/documents/2021-Jan/Forced%20Labor%20Article%20Part%202%20for%20gov__0.pdf (March 2024).

¹⁰¹ U.S. Homeland Security, Office of Strategy, Policy and Plans. (2021). *Forced Labor Enforcement Task Force: Establishing Timeline*. (March, 2023).

https://www.dhs.gov/sites/default/files/publications/fletf_-_establishing_timelines_congressional_report.pdf.

¹⁰² After reaching out to CBP to inquire about the process for determining consumptive demand I received the following response “Thank you for contacting the U.S. Customs and Border Protection (CBP) Information Center. Notice: The DHS Freedom of Information Act (FOIA) has moved to a NEW system. The CBP FOIA office has a significant backlog of FOIA requests. The expected response time for a FOIA request for travel documents is 6-9 months. If you do not receive a response to your FOIA request within 20 business days, please do not resubmit the same FOIA request as it creates further delays. The FOIA Office is working very hard to clear the FOIA backlog and we thank you in advance for your cooperation. Federal law requires CBP to process FOIA requests on a first-in/first-out basis. Requesters can use the SecureRelease Portal to send requests to [https://urldefense.com/v3/_https://www.securerelease.us_!!Mih3wA!HH1NkniYxTMnxjEwBhxoFAuAol3l7MvB3eF8Qw3pUFpzx7zVxQJ4_DV61HtboDEW9Ic085jUch30CbUwbmuBScDgwLc\\$](https://urldefense.com/v3/_https://www.securerelease.us_!!Mih3wA!HH1NkniYxTMnxjEwBhxoFAuAol3l7MvB3eF8Qw3pUFpzx7zVxQJ4_DV61HtboDEW9Ic085jUch30CbUwbmuBScDgwLc$).” Due to time limitations I was unable to file a FOIA to access the information.”



Throughout this process, CBP collaborates and shares information with several other government agencies. Once a shipment is detained, CBP notifies the importer and they are allowed to “either prove to CBP that the goods were not made with forced labor, forced child labor, or prison labor, or they can have the goods re-exported.”¹⁰³ “After a period with no resolution,” CBP has the jurisdiction to destroy the goods or product.¹⁰⁴ While a WRO is the minimum necessary documentation to detain a shipment, CBP will also issue a “Finding” if probable cause is found

¹⁰³ Bureau of International Labor Affairs. *Information and resources on withhold release orders (wros)*. <https://www.dol.gov/agencies/ilab/comply-chain/steps-to-a-social-compliance-system/step-6-remediate-violations/key-topic-information-and-resources-on-withhold-release-orders-wros> (March 2024).

¹⁰⁴ U.S. Homeland Security, Office of Strategy, Policy and Plans. (2021). *Forced Labor Enforcement Task Force: Establishing Timeline*. (March, 2023).

180 to 365 days following the initiation of an investigation. The main difference between the issuance of a Finding and WRO is that a Finding requires “probable cause,” meaning “conclusive evidence,” to make a determination that the goods in question are subject to the provisions of 19 U.S.C. § 1307,¹⁰⁵ while a WRO only requires “reasonable suspicion.” Findings are rarely issued (as indicated by the asterisks in Figure 3, below),¹⁰⁶ with only four currently active on CBP’s “WRO and Findings list,” under the Tariff Act of 1930 (prior to the TFTEA).

Finally, CBP can modify or revoke a WRO or Finding once a foreign entity provides evidence that it has “remediated all indicators of forced labor” or it did not “engage in forced labor.”¹⁰⁷ Between 1930 and January 2024, there were ninety total bans issued for violation of Section 307. However, only fifty-one are currently active or partially active, meaning that CBP has revoked or modified thirty-nine. Of these still active on CBP’s website, twenty-two are from Section 307 of the 1930 Tariff Act.

Historical Context

The Tariff Act was designed to protect the United States’s agricultural and other industries during the Great Depression. At the time, European industries were being revitalized as they recovered from World War I. In response, the U.S. federal government passed the 1930 Tariff Act as a protectionist trade policy aimed at safeguarding US domestic industries from foreign competitors.¹⁰⁸ This was achieved through the Act by increasing tariffs on foreign goods.¹⁰⁹ Despite

¹⁰⁵ CBP. *Fact sheet: Forced labor procedures*. [https://www.cbp.gov/sites/default/files/assets/documents/2016-Aug/FactSheet-Forced Labor Procedures.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2016-Aug/FactSheet-ForcedLaborProcedures.pdf) (March 2024).

¹⁰⁶ “Withhold Release Orders and Findings List | U.S. Customs and Border Protection.” Accessed October 31, 2023. <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>.

¹⁰⁷ CBP. *How are WRO or finding modifications processed?* https://www.cbp.gov/sites/default/files/assets/documents/2021-Oct/Slicksheet_ForcLaborHowareWROFindingModificationsorRevocationsProcessed508Compliant_0.pdf.

¹⁰⁸ Higgins, Matthew. 2023. “Closed Loophole, Open Ports: Section 307 of the Tariff Act and the Ongoing Importation of Goods Made Using Forced Labor.” *Stanford Law* 75. <https://review.law.stanford.edu/wp-content/uploads/sites/3/2023/04/Higgins-75-Stan.-L.-Rev.-917.pdf>.

¹⁰⁹ Berglund, Abraham. “The Tariff Act of 1930.” *The American Economic Review* 20, no. 3 (1930): 467–79. <https://www.jstor.org/stable/1802590>.

Section 307 having significant human rights implications by incentivizing ethical labor practices, “few members brought up humanitarian concerns during the debate.”¹¹⁰ According to Cimino-Issacs et al., the main purpose of Section 307 was to protect “domestic producers from competing with products made with forced labor.”¹¹¹

Moreover, as mentioned above, Section 307 included a loophole known as the “consumptive demand exemption.” This exemption allowed for the continued entry of “goods, wares, articles, and merchandise” produced with forced labor if they were “not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.”¹¹² As Higgins explains, this “guarantee[ed] that many goods—including virtually all tropical goods, like cocoa, palm oil, or bananas, which are not produced at scale within the United States—could never be barred,”¹¹³

For this reason, Cimino-Issacs et al. report that between 1930 through 1980, only eight shipments of merchandise were prevented entry into the United States, despite anywhere from 60 to 75 requests from NGOs, governmental agencies (including U.S. Customs Service, the predecessor to CBP), individuals, and scholars to apply Section 307.¹¹⁴ This means that in the first fifty years of the Tariff Act of 1930, Section 307 was only applied eight times.

¹¹⁰Cimino-Isaacs, Cathleen D., Christopher A. Casey, and Katarina C. O’Regan. 2023. *Section 307 and U.S. imports of products of forced labor*. <https://crsreports.congress.gov/product/pdf/IF/IF11360>. (March 31, 2024).

¹¹¹Cimino-Isaacs, Cathleen D., Christopher A. Casey, and Katarina C. O’Regan. 2023. *Section 307 and U.S. imports of products of forced labor*. <https://crsreports.congress.gov/product/pdf/IF/IF11360>. (March 31, 2024).

¹¹²Trade Facilitation and Trade Enforcement Act. 2015. Public Law 114–125. § 910.

¹¹³Higgins, Matthew. 2023. “Closed Loophole, Open Ports: Section 307 of the Tariff Act and the Ongoing Importation of Goods Made Using Forced Labor.” *Stanford Law* 75. <https://review.law.stanford.edu/wp-content/uploads/sites/3/2023/04/Higgins-75-Stan.-L.-Rev.-917.pdf>.

¹¹⁴Cimino-Isaacs, Cathleen D., Christopher A. Casey, and Katarina C. O’Regan. 2023. *Section 307 and Imports Produced by Forced Labor products of forced labor*. <https://crsreports.congress.gov/product/pdf/IF/IF11360>. March, 2024).

Importantly, a December 1984 report on “International Practices and Agreements Concerning Compulsory Labor and U.S. Imports of Goods Manufactured by Convict Forced or Indentured Labor”¹¹⁵ by the U.S. International Trade Commission found:

wide variations in the nature of the investigations conducted [for all aforementioned 60-75 requests] and the amount of information gathered [for the period 1930-1984]. In part, these variations are a necessary result of the discretion customs must exercise in each case because of the varying amount and degree of reliability of the information available relating to the imports of goods made with compulsory labor. In addition, the bases for the final disposition of the cases are not always provided. In addition, customs have adopted certain administrative practices that have allowed certain goods made with compulsory labor to enter the United States. On an ad hoc basis, customs has permitted the importation of prison goods where the size of the shipment was small, where the prisoners were working voluntarily and were compensated, or where importers promised not to enter subsequent shipments.¹¹⁶

This report was requested by the U.S. Senate’s Committee on Finance and was the result of increased interest in applying Section 307 in the 1980s. This interest came after the emergence of international human and worker rights policies, such as the ILO Minimum Age Convention (1973), the U.N. General Assembly adoption and enactment of the ICCPR (1976) and the ICESCR (1976), as well as increasing tensions in the Cold War and “growing public awareness of the role of forced

¹¹⁵Committee of Finance, United States Senate. 1984. International Practices and Agreements Concerning Compulsory Labor and U.S. Imports of Goods Manufactured by Convict, Forced, or Indentured Labor. No. 332-178.

¹¹⁶Committee of Finance, United States Senate. 1984. International Practices and Agreements Concerning Compulsory Labor and U.S. Imports of Goods Manufactured by Convict, Forced, or Indentured Labor. No. 332-178.

labor in the Soviet Union and China.”¹¹⁷ This, in turn, led to the issuance of two additional bans (in the 1980s) bringing the total in the first sixty years up to ten WROs.¹¹⁸

The 1990s were the most active time period for Section 307 of the Tariff Act of 1930, with thirty-seven WROs being issued between 1991 and 2001 (see Figure 3, below). Of these thirty-seven, thirty-three were issued against China, and one each was issued to Japan, Nepal, India, and Mongolia.¹¹⁹ Notably in the 1990s, there were prominent reports that the Chinese government was placing people in forced labor camps, with congressional reports claiming that following “the suppression of the democracy movement in June 1989,” hardliners subjected “dissidents and supporters of the democracy movement” to “reform through labor or reeducation through labor.”¹²⁰

Figure 3: Forced Labor Enforcement Actions WROs and Findings by Year

1991-2022¹²¹

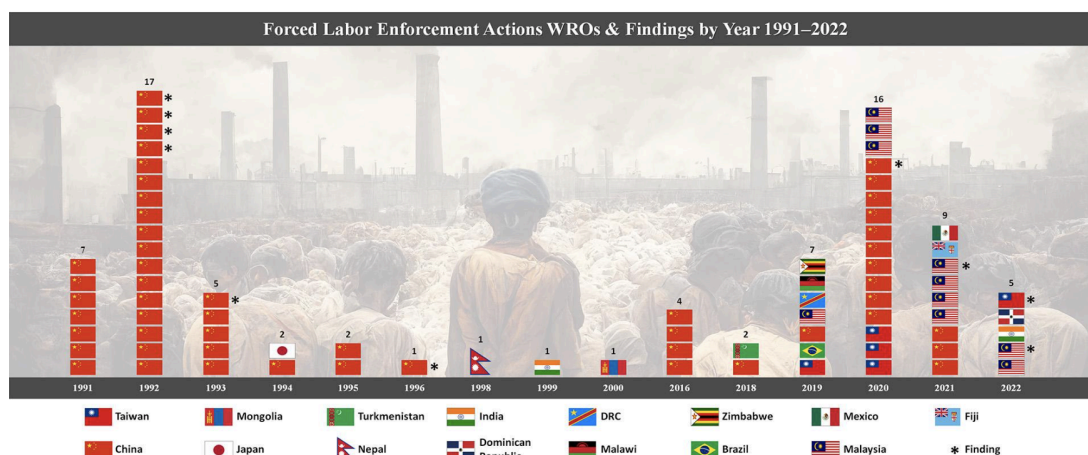
¹¹⁷Cimino-Isaacs, Cathleen D., Christopher A. Casey, and Katarina C. O’Regan. 2021. *Section 307 and U.S. imports of products of forced labor*. <https://sgp.fas.org/crs/misc/R46631.pdf> (March 31, 2024).

¹¹⁸Cimino-Isaacs, Cathleen D., Christopher A. Casey, and Katarina C. O’Regan. 2023. *Section 307 and Imports Produced by Forced Labor products of forced labor*. <https://crsreports.congress.gov/product/pdf/IF/IF11360>. March, 2024).

¹¹⁹See Appendix B.

¹²⁰U.S Congress Senate. Library of Congress. 1990. *FORCED LABOR IN THE PEOPLE’S REPUBLIC OF CHINA*. (March, 2024.) <https://tile.loc.gov/storage-services/service/l1/lglrdppub/2019668533/2019668533.pdf>.

¹²¹ Ten are indicated on the figure, because the two in Malaysia have since been revoked. Taiwan is also indicated as having several WROs, due to fishing vessel WROs, which are Taiwanese flagged and owned. 2020. *CBP issues U.S. Customs and Border Protection*. 2020. *Withhold release order on seafood harvested with forced labor by Lien Yi Hsing no. 12*. “Withhold Release Orders and Findings List.” *U.S. Customs and Border Protection*. <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings> (2024). <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-seafood-harvested-forced-labor> (March 2024).



5.2 The Trade Facilitation and Trade Enforcement Act of 2015

In 2015, Congress enacted the Trade Facilitation and Trade Enforcement Act (TFTEA). Section 910 of the TFTEA removed the consumptive demand loophole from Section 307 of the 1930 Tariff Act. This was significant because it banned “[a]ll goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor,”¹²² whether consumptive demand existed or not. According to CBP’s “Trade Facilitation and Trade Enforcement Act of 2015—Overview,” the TFTEA was passed “with the overall objective to ensure a fair and competitive trade environment.”¹²³ Thus, according to CBP the removal of the consumptive demand clause from Section 307 was partly done to eliminate unfair competition due to the lower cost of forced labor, consistent with protectionist ideologies.

Following the implementation of this legislation on February 24, 2016, CBP issued four WROs in that year alone, and forty-three between March 2016 and December 2023 (as seen in Figure 3). While this indicates that finally closing this loophole resulted in more success in

¹²² Tariff Act. 1930. 19 U.S.C. § 1307

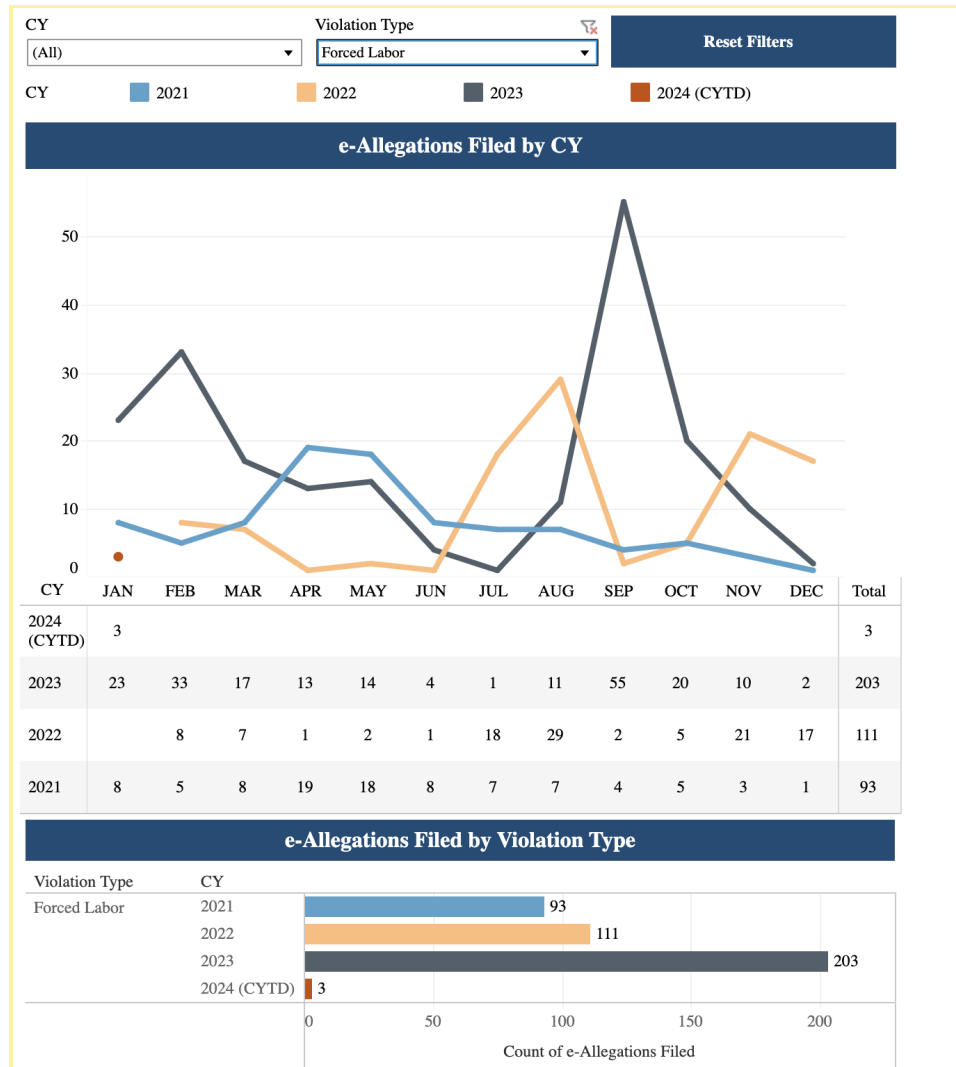
¹²³ U.S. Customs & Border Prot., U.S. Dep’t of Homeland Sec., CBP Publ’n No. 0544-0716, Trade Facilitation and Trade Enforcement Act of 2015—Overview (2016), <https://www.cbp.gov/sites/default/files/assets/documents/2016-Oct/Trade%20Facilitation%20and%20Trade%20Enforcement%20Act%20of%202015%20-%20Overview.pdf>

prohibiting the importation of goods potentially made with forced labor into the U.S., as Higgins documents, “goods covered by WROs make up only a minuscule fraction of the high-risk products imported into the United States each year.”¹²⁴

Moreover, CBP reported in its e-Allegation Statistics dashboard that the agency received 93 forced labor petitions in 2021, 111 in 2022, and 203 in 2023 (see Figure 4, below).¹²⁵ Despite the large number of petitions in 2021, only six WROs were issued: two in the Xinjiang region in China, one for tomatoes in Mexico, one for disposable gloves in Malaysia, and two for fishing vessels (which are not distinguished by country). Furthermore, in 2022, only one WRO was issued against the Dominican Republic for raw sugar, and none were issued in 2023. However, as previously explained, the investigation process can take up to 180 days, meaning that many of the petitions filed could still be under investigation.

¹²⁴ Higgins, Matthew. 2023. “Closed Loophole, Open Ports: Section 307 of the Tariff Act and the Ongoing Importation of Goods Made Using Forced Labor.” *Stanford Law* 75.
<https://review.law.stanford.edu/wp-content/uploads/sites/3/2023/04/Higgins-75-Stan.-L.-Rev.-917.pdf>.

¹²⁵ CBP. “E-Allegations Statistics by Calendar Year.” *e-Allegations Statistics*.
<https://www.cbp.gov/trade/e-allegations/statistics>.

Figure 4: Petitions Filed to CBP

The ILAB list, which was last updated on September 28, 2022, reported over 159 goods from 78 countries and regions were made, produced, harvested, or manufactured by forced and/or child labor. Comparing this to the 51 WROs issued (11 of which are now superseded by the

UFLPA), only eleven countries, and five shipping vessels, there is evidently a large gap between the ILAB database and CBP's enforcement through WROs. To investigate these disparities I study three products that come from multiple countries or regions listed as using forced and/or child labor under ILAB, but with only one WRO issued. In the studies of these products, I investigate all relevant information in the ILAB cases and the WROs.

5.2.1 Diamonds

Customs and Border Patrol (CBP) issued a WRO against Zimbabwe's Marange Diamond fields on October 1, 2019, citing evidence of workers being unable to leave "by threats of violence."¹²⁶ The Marange Diamond field, which is the mine banned in the WRO, was discovered in 2006, and experts believed it was possibly the largest diamond discovery in generations.¹²⁷ However, the fields have faced overwhelming accusations of human rights violations. In 2010, Human Rights Watch released a report detailing the revenue from the diamonds as a means of corrupt funding for the then-newly instated ZANU-PF party. The report states that the government did little to investigate accusations of military oversight at the mines, where personnel would accept smuggling bribes, harass and beat workers, and prevent workers from leaving.¹²⁸

Significantly, Zimbabwe produced approximately 4,461,450 million carats, totaling around 424 million US dollars in 2022, making it the eighth largest producer in the world.¹²⁹ Despite the evidence of forced labor, the country has eluded exportation suspension by the Kimberly Process, a multilateral trade regime "established in 2003 with the goal of preventing the flow of conflict

¹²⁶ Syam, Anasuya, and Meg Roggensack. 2020. *Importing freedom*. https://htlegalcenter.org/wp-content/uploads/Importing-Freedom-Using-the-U.S.-Tariff-Act-to-Combat-Forced-Labor-in-Supply-Chains_FINAL.pdf (March 2024).

¹²⁷ Eastwood, Victoria, and Robyn Curnow. 2012. "Inside Zimbabwe's Controversial Marange Diamond Field | CNN Business." *CNN*. <https://www.cnn.com/2012/03/15/business/zimbabwe-marange-diamond-field/index.html> (March 2024).

¹²⁸ "World Report 2011: Rights Trends in World Report 2011: Zimbabwe." 2023. *Human Rights Watch*. <https://www.hrw.org/world-report/2011/country-chapters/zimbabwe> (March 2024).

¹²⁹ *Diamond production by country 2024*. <https://worldpopulationreview.com/country-rankings/diamond-production-by-country> (March 2024).

diamonds.”¹³⁰ The Kimberly Process, which includes representatives from several governments such as the EU, has failed to impose a significant suspension on exports due to the narrow definition of “conflict diamonds,” which covers diamonds belonging to rebel and dissident government groups that use diamond mines to finance their campaigns.¹³¹ With Zimbabwe not falling under either category, the organization has only enacted several short-lived bans, but none with lasting effects on the issue.¹³²

The enactment of the WRO against Zimbabwe’s Marange Diamond fields comes after years of sanctions enacted by the United States due to accusations of human rights abuses. The Zimbabwean government has been in crisis since the turn of the twentieth century, with failing attempts at constitutional reforms and elections marked with violence, intimidation, and resource withholding to influence voter behavior.¹³³ Throughout this political crisis, the United States, along with the European Union, have enacted several sanctions in an attempt to incentivize adherence to human rights standards. The first sanctions were implemented in 2003 and have since included travel bans, as well as financial penalties. On December 9, 2011, the Marange Diamond field was added to the sanctions list by the Office of Foreign Assets Control¹³⁴ in accordance with a 2008 Executive Order that blocked “Zimbabwean parastatals and entities that are owned or controlled by the Government of Zimbabwe.”¹³⁵

¹³⁰ “What Is the KP.” *KimberleyProcess*. <https://www.kimberleyprocess.com/en/what-kp> (March 2024).

¹³¹ Tempt Le. 2020. *Diamond trade still fuels human suffering*. <https://www.hrw.org/news/2018/05/10/diamond-trade-still-fuels-human-suffering> (March 2024).

¹³² Marima, Tendai. 2021. “Zimbabwe’s Chance to Shine.” *Foreign Policy*. <https://foreignpolicy.com/2021/12/03/zimbabwe-diamond-mining-conflict-mineral-kimberley-process/> (March 2024).

¹³³ Grebe, J. 2010. “And They Are Still Targeting: Assessing the Effectiveness of Targeted Sanctions against Zimbabwe. *Africa Spectrum*,” 45(1), 3-29. <https://doi.org/10.1177/000203971004500101>

¹³⁴ The Treasury Department’s Office of Foreign Assets Control. 2011. “Statement Regarding Recent Identification of Two Zimbabwean Diamond Mining Entities.” (March 2023). <https://ofac.treasury.gov/media/25901/download?inline>

¹³⁵ “Treasury and IRS Announce Regulations To Be Issued With Respect to Certain Triangular Reorganizations Under Section 368(a) Involving Foreign Corporations.” 2006. *U.S. Department of the Treasury*. <https://home.treasury.gov/news/press-releases> (March 2024).

Notwithstanding the WRO against Zimbabwe, in comparison, the Bureau of International Labor Affairs (ILAB) database found evidence of six additional countries utilizing forced labor in diamond mining, which include: Angola, the Central African Republic, the Democratic Republic of Congo (DRC), Guinea, Liberia, and Sierra Leone. All six countries have been subject to lasting accusations of severe child and forced labor for the past ten years. In the ILAB report, the Department of Labor (DOL) found children in Angola,¹³⁶ the Central African Republic,¹³⁷ Guinea,¹³⁸ and Liberia¹³⁹ “are subjected to the worst forms of child labor.” The DRC has been subject to egregious human rights abuses in diamond mining, including workers being killed and “held without charge in appalling conditions by security forces who have no formal authority to detain them.”¹⁴⁰ Finally, Sierra Leone has been the subject of accusations of several human rights violations, involving conditions of forced labor, such as employing child laborers as young as ten. Harvard Law School’s International Human Rights Clinic reported that in interviews with children in Sierra Leone, they claim to work from morning to evening, six days a week, often suffering from diseases, such as malaria, and injuries for as little as \$0.15 to \$0.60 in U.S. dollars a day.¹⁴¹ Despite evidence of these conditions, none of the six other countries on the ILAB list are subject to a WRO.

Moreover, all six countries on the ILAB report, along with Zimbabwe, are within the top twenty diamond producers in 2022. However, Zimbabwe is the only country to have received a

¹³⁶ “Findings on the Worst Forms of Child Labor - Angola.” *DOL*.

<https://www.dol.gov/agencies/ilab/resources/reports/child-labor/angola> (March 2024).

¹³⁷ “Findings on the Worst Forms of Child Labor - Central African Republic.” *DOL*. (March 2024).

<https://www.dol.gov/agencies/ilab/resources/reports/child-labor/central-african-republic>

¹³⁸ “Findings on the Worst Forms of Child Labor - Guinea.” *DOL*. (March 2024).

<https://www.dol.gov/agencies/ilab/resources/reports/child-labor/guinea>

¹³⁹ “Findings on the Worst Forms of Child Labor - Liberia.” *DOL*. (March, 2024).

<https://www.dol.gov/agencies/ilab/resources/reports/child-labor/liberia>

¹⁴⁰ Amnesty International. 2002. *The diamond trade in government-controlled DRC*.

<https://www.amnesty.org/en/wp-content/uploads/2021/06/afr620172002en.pdf> (March, 2024).

¹⁴¹ *Diggin in the Dirt*. 2009. International Human Rights Clinic Harvard Law School.

https://hrp.law.harvard.edu/wp-content/uploads/2014/07/Digging_In_The_DirtLR.pdf.

WRO by CBP. Zimbabwe produces the third highest quantity of diamonds of the countries on the list, behind only Angola and the Democratic Republic of Congo.¹⁴² It is impossible to track the exact quantity of imports to the United States, because diamonds can be distributed to other countries and entities for production into goods such as jewelry, and then imported to the United States from the second party buyer. However the United States Geological Survey (USGS) estimates that from 2018 to 2021 nineteen percent of United States raw imports came from the Democratic Republic of Congo and ten percent from Sierra Leone, making them two of the largest importers to the United States for rough cut stones.¹⁴³ Moreover, USGS reported Russia (37%), DRC (24%), Botswana (15%), South Africa (13%), and Zimbabwe (9%) as the leading producers of natural diamonds, producing “98% of the world’s natural industrial diamond.”¹⁴⁴

Table 1: Diamond Production by Country Suspected of Forced Labor in 2023

Country	Angola	Central African Republic	DRC	Guinea	Liberia	Sierra Leone	Zimbabwe
Diamond Production (carats)	8,763,309	118,044	9,908,998	128,771	52,165	688,970	4,461,450
Diamond Production in US dollars	\$1.97 Bn	\$15.17 Mn	\$64.96 Mn	\$6.56 Mn	\$17.79 Mn	\$142.91 Mn	\$423.61 Mn

Table 1 contains information compiled by geologist Hobart M. King and USGS Mineral Commodity Summaries.¹⁴⁵ The table compares the diamond production in carats and United States

¹⁴² “Diamond Production by Country 2024.” 2024.

<https://worldpopulationreview.com/country-rankings/diamond-production-by-country>.

¹⁴³ U.S. Geological Survey, *Mineral Commodity Summaries*. 2023.

<https://pubs.usgs.gov/periodicals/mcs2023/mcs2023-diamond.pdf>.

¹⁴⁴ U.S. Geological Survey, *Mineral Commodity Summaries*. 2023.

<https://pubs.usgs.gov/periodicals/mcs2023/mcs2023-diamond.pdf>.

¹⁴⁵ King, Hobart M. 2024. *Which Countries Produce the Most Gem Diamonds?*

dollars between Zimbabwe, which is subject to a WRO, and the six countries on the ILAB database that are reasonably suspected of forced labor but not subject to a WRO. As can be seen in the table, Angola and the Democratic Republic of Congo have significantly higher production rates compared to Zimbabwe, with both producing about two times the amount of diamonds in 2023. Also significant is that ten percent of imports into the United States came from raw diamonds from Sierra Leone, making the country one of the largest diamond importers to the United States. This could be attributed to the fact that the sanctions and WRO against Zimbabwe were in place in 2023, requiring the United States to source diamonds from another country. While Sierra Leone is significantly behind Zimbabwe in the amount of carats produced (688970 vs. 4,461,450), Sierra Leone was the next largest producer of diamonds in comparison to other countries on the ILAB list. Thus, the WRO may simply have resulted in a shift of importing diamonds from Zimbabwe to another country suspected of forced labor.

5.2.2 Palm Oil

On October 30, 2020, CBP issued a WRO against FGV Holdings Berhad and its subsidiaries and joint ventures in Malaysia.¹⁴⁶ FGV is one of the largest global producers of palm oil, with the company estimating an output of three million metric tonnes annually.¹⁴⁷ CBP's press release stated that the WRO was imposed after a year-long investigation that found indicators of forced labor including: "abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime."¹⁴⁸ CBP revealed findings of child labor in the production process. The CBP report

¹⁴⁶ Appendix A

¹⁴⁷ "Company Overview." *FGV*. <https://www.fgvholdings.com/about-fgv/company-overview/>.

¹⁴⁸ CBP. 2020. "CBP Issues Detention Order on Palm Oil Produced with Forced Labor in Malaysia." *U.S. Customs and Border Protection*. <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-palm-oil-produced-forced-labor>

released with the WRO also stated that the ban on palm oil traced to FGV impacts a wide variety of imports because palm oil is “increasingly found in processed foods, cosmetics, pharmaceuticals, soap and biodiesel.”¹⁴⁹ The most notable aspect of the ban is FGV’s position as one of the largest producers of palm oil in Malaysia. The United States Department of Agriculture (USDA) reports that Malaysia is the second largest producer of palm oil in the world, with an output of nineteen million metric tonnes in the 2023 marketing year (October-September), making it responsible for 24 percent of global production.¹⁵⁰

The WRO issued against FGV was one of two issued against a Malaysian palm oil enterprise in 2020, with the second having gone into effect on December 30th against Sime Darby. Sime Darby is another one of the world's largest palm oil producers, operating in several countries, but most prominently in Malaysia, where the company originates. The WRO was imposed due to “information that reasonably indicates the presence of all eleven of the International Labour Organization’s forced labor indicators in Sime Darby Plantation’s production process.”¹⁵¹ Immediately after the WRO was issued, Sime Darby released a statement vowing to work alongside CBP to remedy the allegations.¹⁵² After two years with the active WRO, Sime Darby “no longer produce palm oil and its derivative products using forced labor,” with the Acting

¹⁴⁹CBP. 2020. “CBP Issues Detention Order on Palm Oil Produced with Forced Labor in Malaysia.” *U.S. Customs and Border Protection*.

<https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-palm-oil-produced-forced-labor>

¹⁵⁰ USDA. 2024. “Top Producing Countries.” *Production - Palm Oil*.

<https://fas.usda.gov/data/production/commodity/4243000>.

¹⁵¹CBP. 2020. “CBP Issues Detention Order on Palm Oil Produced with Forced Labor in Malaysia.” *U.S. Customs and Border Protection*.

<https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-palm-oil-produced-forced-labor>

¹⁵² “USA: Malaysian Company Sime Darby Plantation Issued with ‘withhold Release Order’ over Allegations of Forced Labour in Its Palm Oil Production; Incl. Co. Response.” 2020. *Business and Human Rights Resource Center*. <https://www.business-humanrights.org/en/latest-news/usa-malaysian-company-sime-darby-plantation-issued-with-withhold-release-order-over-allegations-of-forced-labour-in-its-palm-oil-production-incl-co-response/>.

Commissioner of CBP, Troy Miller, stating “every modification as a tremendous success.”¹⁵³ The issuance of the WRO against Sime Darby, and the WRO’s subsequent deactivation, proves the effectiveness of the mechanism in the remediation of forced labor conditions. Moreover, in 2021, Sime Darby released a fourteen-page statement on “Human Rights and Trafficking,” where they reported on their supply chains, and responded to CBP’s concerns with the implementation of “sweeping measures across the Malaysian operations to enhance and strengthen compliance with ILO standards and also to ensure that these new measures are effective and sustainable,” and several other initiative and objectives to maintain remediation.¹⁵⁴ Finally, RemedyProject¹⁵⁵ was able to corroborate through interviews with workers for the enterprise that Sime Darby self-reports on remediation including “recruitment fee reimbursement,” “improved working and living conditions,” and improved grievance channels.”¹⁵⁶ However, the NGO was unable to obtain interviews that corroborated the self-reported remediation of recruitment and employment policies. Nonetheless, the case of Sime Darby provides evidence that WROs can be effective in incentivizing ethical labor practices and remediating forced labor in a global supply chain.

Table 2: Palm Oil Production in Metric Tons from Malaysia and Indonesia

Year	2019	2020	2021	2022	2023	Ten-year average (2014-2023)

¹⁵³ CBP. 2023. “CBP Modifies Findings on Sime Darby Plantation Berhad in Malaysia.” *U.S. Customs and Border Protection*.

<https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-finding-sime-darby-plantation-berhad-malaysia>.

¹⁵⁴ Sime Darby. 2021. *Modern Slavery and Human Trafficking Statement*.

<https://sime-darbyplantation.com/wp-content/uploads/2022/07/UKMSA-FY2021Statement-002.pdf>.

¹⁵⁵ A nonprofit organisation founded in 2021, as a sister org to ReAct, RemedyProject, works with several other NGOs, including the ILO, UN bodies, and other governmental agencies to help ensure and instill “responsible business conduct, mechanisms for the remediation of worker grievances in supply chains, and combating trafficking in persons, forced labour, and other forms of exploitation” The Remedy Project. “Our Work.” *The Remedy Project*.

<https://www.remedypoint.co/work>.

¹⁵⁶ The Remedy Project. 2023. *Putting Things Right: Remediation of Forced Labor Under the Tariff Act of 1930*.

<https://www.remedypoint.co/remediation-of-forced-labour-under-the-tariff-act-1930>.

Malaysia	19.3 Million	17.9 Million	18.2 Million	18.39 Million	19 Million	18.96 Million
Indonesia	42.5 Million	43.5 Million	42 Million	46.5 Million	47 Million	40.35 Million

Despite the passage of the WRO, Malaysian Palm oil remains one of the largest exports for the country. According to UFDA, the country’s annual output remains steady despite the current WRO and the deactivated WRO against Sime Darby.

Indonesia is the top global producer of palm oil, with the USDA reporting an output of around 47 million metric tons in the 2023 marketing year, accounting for 59 percent of global palm oil production.¹⁵⁷ Indonesian palm oil is also on ILAB’s list of products made with forced labor. In the 2022 TVPRA report on goods made with forced and child labor, Indonesian palm oil was the subject of an in-depth case study which found that downstream at-risk goods included “animal feed, baked goods, beverages, biofuels, cooking oils, household and industrial products, infant formula, personal care, and cosmetic products” making it one of the most “common ingredients used in consumer goods.”¹⁵⁸ The report also stated that in 2020, the United States imported “\$600 million in refined palm oil and over \$200 million in refined palm kernel oil from Indonesia.” The report also identified the conditions of forced labor that workers accused Indonesian palm oil enterprises of using, including: “wage theft and unfair deductions,” “serious health risks through exposure to pesticides and fertilizers without the right protective equipment,” “excessive daily [harvesting] targets set by employers” resulting in child involvement in tasks “such as picking up fruit bunches and pulling out weeds,” “debt bondage” and an inability “to leave their employer.”¹⁵⁹

¹⁵⁷ USDA. 2024. “Top Producing Countries.” *Production - Palm Oil*.

<https://fas.usda.gov/data/production/commodity/4243000>.

¹⁵⁸ DOL. 2022. *2022 List of Goods Produced by Child Labor or Forced Labor*.

https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2021/2022-TVPRA-List-of-Goods-v3.pdf.

¹⁵⁹ DOL. 2022. *2022 List of Goods Produced by Child Labor or Forced Labor*.

https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2021/2022-TVPRA-List-of-Goods-v3.pdf.

The conditions of forced labor in the Indonesian palm oil industry have not only been reported by ILAB, but by other human rights NGOs such as Amnesty International. Amnesty found similar conditions of forced and child labor in “palm plantations owned by two Wilmar subsidiaries and three Wilmar suppliers in Kalimantan and Sumatra in Indonesia.”¹⁶⁰ During their investigation, which interviewed 120 Wilmar workers, Amnesty received reports of extreme underpay, with some making as little as 2.50 in U.S. dollars a day, child labor starting as young as eight, “injuries from paraquat, an acutely toxic chemical still used in the plantations despite being banned in the EU and by Wilmar itself,” the lack of respiratory safety equipment, and long hours required to achieve impossible production targets and penalties for not reaching said targets.

Despite these reports, as well as similar reports from United States bureaucratic agencies and human rights NGOs, CBP has failed to issue a WRO against Wilmar International and other Indonesian palm oil harvesting companies and refineries. However, CBP issued a WRO when similar reports emerged about Malaysian palm oil producers. But Indonesia, on average, produced 2.1 times the amount of palm oil in metric tons compared to Malaysia over a ten year period (2013-2023), making Indonesia more important to the United States’ economic interests. This interest is heightened by the wide array of products, goods, and wares that use palm oil in their production process, the United States’ inability to produce palm oil domestically because oil palm trees only grow in tropical regions, and the limited number of other countries able to grow and harvest the trees.

5.2.3 Cotton

There are four active WROs for cotton, three of which are for enterprises operating in China and the fourth is a region-wide ban on all cotton from Turkmenistan. The WROs against

¹⁶⁰ Amnesty International. 2016. *Palm Oil: Global Brands Profiting from Child and Forced Labour*. <https://www.amnesty.org/en/latest/news/2016/11/palm-oil-global-brands-profiting-from-child-and-forced-labour/>.

Chinese cotton are now superseded by the Uyghur Forced Labor Protection Act of 2021 (UFLPA) because the forced labor allegations were against enterprises operating in the Xinjiang region. The WRO on cotton from Turkmenistan was issued on May 18, 2018, and resulted from accusations of the “government force[ing] public sector employees under threat of punishment, including loss of wages and termination of employment, to pick cotton.”¹⁶¹ The report also claimed children as young as ten were forced to pick cotton. CBP’s ban on cotton in Turkmenistan was only the fifth WRO issued against an entire industry in a country or region. The others were against tobacco from Malawi, gold from products from the DRC, diamonds from the Marange Diamond Fields of Zimbabwe, and tomatoes and cotton from the Xinjiang region in China, which was issued prior to the UFLPA. The WRO issued against all cotton from Turkmenistan was due to the government’s involvement in forced labor, which meant the country was the “entity” subject to the WRO.

Below is the USDA’s data on top-producing cotton countries in order of highest output.

Table 3: Cotton Production by Year (2015-2023)

Market	% of Global Output	Total Production 2015 Market Year, 480 lb. Bales	Total Production 2017 Market Year, 480 lb. Bales	Total Production 2019 Market Year, 480 lb. Bales	Total Production 2021 Market Year, 480 lb. Bales	Total Production 2023 Market Year, 480 lb. Bales	Ten-Year Production Average
1. China	24 %	22 Mil	27.5 Mil	27.4 Mil	26.8 Mil	27.5 Mil	27.23 Mil
2. India	22 %	25.9 Mil	29Mil	28.5 Mil	24.3 Mil	25 Mil	26.9 Mil
3. Brazil	13 %	7.2 Mil	7 Mil	13 Mil	10.8 Mil	14.56 Mil	10.12 Mil
4. United States	11 %	12.9 Mil	20.9 Mil	19.9 Mil	17.5 Mil	12.43 Mil	16.46 Mil

¹⁶¹ Hadfield, Frances P., and John Brew. 2018. “U.S. Customs and Border Protection (CBP) Halts Imports of Cotton and Cotton Goods from Turkmenistan.” *Crowell*. <https://www.cmtradelaw.com/2018/05/u-s-customs-and-border-protection-cbp-halts-imports-of-cotton-and-cotton-goods-from-turkmenistan/>

5. Pakistan	6 %	7 Mil	8.2 Mil	6.2 Mil	6 Mil	6.7 Mil	6.84 Mil
6. Australia	4 %	2.9 Mil	4.8 Mil	625,000	5.8 Mil	4.8 Mil	3.61 Mil
7. Turkey	3 %	2.6 Mil	4.0 Mil	3.5 Mil	3.8 Mil	3.2 Mil	3.5 Mil
8. Uzbekistan	3 %	3.8 Mil	4.4 Mil	2.4 Mil	2.9 Mil	2.9 Mil	3.39 Mil
9. Argentina	2 %	873,000	1.1 Mil	1.4 Mil	1.4 Mil	1.7 Mil	1.21 Mil
10. Mali	1 %	975,000	1.4 Mil	1.4 Mil	1.4 Mil	1.3 Mil	1.1 Mil
11. European Union	0.9 %	1.3 Mil	1.5 Mil	2 Mil	1.7 Mil	1.05 Mil	1.56 Mil
12. Benin	0.9 %	500,000	1.1 Mil	1.4 Mil	1.4 Mil	1.04 Mil	1.11 Mil
13. Mexico	0.8 %	943,000	1.6 Mil	1.6 Mil	1.2 Mil	952,000	1.26 Mil
14. Turkmenistan	0.8%	1.4 Mil	1.3 Mil	920,000	900,000	900,000	1.11 Mil

Turkmenistan and China are only two of sixteen countries on ILAB's database with reports of forced labor. The others include Argentina, Azerbaijan, Benin, Brazil, Burkina Faso, Egypt, India, Kazakhstan, Kyrgyz Republic, Mali, Pakistan, Tajikistan, Turkey, and Zambia. According to the United States Department of Agriculture (USDA), Turkmenistan is only the fourteenth largest cotton producer in the world, with eight of the countries on the ILAB list ranking higher, as can be seen by the bolded countries in the table. Turkmenistan, therefore, only produces more cotton than half of the countries on ILAB's list of products made with forced labor, which include: Azerbaijan, Burkina Faso, Egypt, Kazakhstan, Kyrgyz Republic, Pakistan, Tajikistan, and Zambia. Turkmenistan's cotton production is also notably lower than the other at-risk cotton producers, only producing 0.8 percent of the global cotton output.

In some cases, NGOs have made petitions to CBP publicly available. The International Labor Rights Forum has submitted two petitions on cotton. The first petition was filed in 2013 for

cotton from Uzbekistan and the second petition was filed in 2016 for the cotton in Turkmenistan.¹⁶² The first petition for a WRO against cotton in Uzbekistan alleged that “all cotton is produced for a government monopoly through a “state order system” for cotton production in which adults and children are forcibly mobilized to grow and harvest cotton by the government.”¹⁶³ The petition then detailed the involuntary labor at the hands of the government, which penalized adults and children who refused to work by “suspension, expulsion or other disciplinary action at school or work; loss of state welfare payments; fines; social ostracization, verbal abuse, and public humiliation; expulsion from farmland (loss of livelihood); and physical abuse.”¹⁶⁴ The petition went on to provide two exhibits of evidence in which the entity acknowledged the use of forced labor and proved that there was the risk of importation, stating that “620 tons of cotton yarn and fabric has been imported into the United States from facilities in Uzbekistan.”¹⁶⁵ Finally, the petition also argued that the issuance of a WRO against cotton from Uzbekistan would not conflict with United States consumptive demand, which was still an issue since the consumptive demand loophole was not closed until 2016. It is notable that Uzbekistan, which is the eighth largest producer of cotton and responsible for three percent of the global output (see Table 3), has still not received a WRO.

The second petition was filed in 2016 and was for the WRO against cotton in Turkmenistan. As discussed above, the WRO was issued against all cotton from Turkmenistan. What is notable is that the consumptive demand loophole was closed by the enactment of the

¹⁶² “Preventing the Importation of Goods Made with Forced Labor.” *Human Trafficking Serach*. <https://humantraffickingsearch.org/take-action/cbp-forced-labor/>.

¹⁶³ Campbell, Brian. 2013. “Petition to exclude cotton yarn and fabric manufactured “wholly or in part” with forced labor in Uzbekistan by Daewoo International Corporation and Indorama Kokand Textile” https://laborrights.org/sites/default/files/publications/Petition_to_US_Custom_April_30_2013.pdf.

¹⁶⁴ Campbell, Brian. 2013. “Petition to exclude cotton yarn and fabric manufactured “wholly or in part” with forced labor in Uzbekistan by Daewoo International Corporation and Indorama Kokand Textile” https://laborrights.org/sites/default/files/publications/Petition_to_US_Custom_April_30_2013.pdf.

¹⁶⁵ Campbell, Brian. 2013. “Petition to exclude cotton yarn and fabric manufactured “wholly or in part” with forced labor in Uzbekistan by Daewoo International Corporation and Indorama Kokand Textile” https://laborrights.org/sites/default/files/publications/Petition_to_US_Custom_April_30_2013.pdf.

TFTEA in February of 2016, and the WRO was issued against Turkmenistan in May 2018.

Moreover, the United States domestically produced around 16.46 million 480-pound bales of cotton per year for the last ten years,¹⁶⁶ making Turkmenistan cotton of even lower economic interest. This seems to show the importance of the consumptive demand exemption and the United States' economic interest in the decision to issue a WRO. Nonetheless, the issuance of the WRO is significant, as it is one of the few bans issued across all enterprises within a country.

5.2.4 Shipment Detention Data (all WROs)

Since the passage of the TFTEA, CBP has targeted approximately 862.87 million U.S. dollars worth of imports due to WROs.¹⁶⁷ Table 4 (shown below) shows the fiscal year data on “entries targeted” by WROs. “Entries targeted” refers to “entries of merchandise which CBP has determined may be subject to a Withhold Release Order (WRO) or Finding.”¹⁶⁸ The merchandise is eventually either denied entry, in which case the importer can reexport or (after some time with no response) CBP can destroy the merchandise, or the merchandise is released. The number of WROs issued does not refer to the total number active, but rather the number CBP issued that year.

The years following the enactment of the Trade Facilitation and Trade Enforcement Act (TFTEA) saw fewer shipment detentions, with the most prior to 2020 being in 2016, with 44 entries targeted. This “record-breaking year in forced labor enforcement efforts,”¹⁶⁹ could be the result of several factors, including the growing number of WRO issuances annually. But it is important to note the United States-Mexico-Canada Agreement (USMCA) was enacted the same year, going into effect on July 1, 2020, and it included a “[prohibition of] imports of goods made by forced labor.” This marked the first time the United States included this policy in a foreign trade

¹⁶⁶ USDA. 2023. *Production - Cotton*. <https://fas.usda.gov/data/production/commodity/2631000>.

¹⁶⁷ Table 4

¹⁶⁸ CBP. 2023. “CBP Trade Statistics.” *Trade Statistics*. <https://www.cbp.gov/newsroom/stats/trade>.

¹⁶⁹ U.S. Department of Homeland Security. 2023. *2023 Updates to the Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China*. https://www.dhs.gov/sites/default/files/2023-08/23_0728_plcy_uflpa-strategy-2023-update-508.pdf

agreement.¹⁷⁰ Moreover, from 2020 to 2021, the entries targeted again dramatically increased (a 367.8 percent increase from 2020 to 2021), which coincided with the introduction and passage of the UFLPA in December of 2021. These legislative and trade agreement changes are important because they show congressional and government interest in forced labor.

Finally, in 2022, the “entries targeted” again rose to 2,396 through WROs alone. Notably, in June of the same year, the UFLPA went into effect and superseded 12 WROs.

Table 4: Shipment Detentions under WROs by Fiscal Year¹⁷¹

Year	FY 2016 ¹⁷²	FY 2017 ¹⁷³	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Number of WROs issued	4	0	2	6	13	7	6	Not yet released
Forced Labor Entries Targeted through WROs	44	26	6	12	314	1,469	2,396	Not yet released
Forced Labor Entry Value	\$8.75 million	\$1.6 million	\$218 Thousand	\$1.2 million	\$49.8 million	\$486 million	\$316.5 million	Not yet released

5.3 The Uyghur Forced Labor Prevention Act of 2021

¹⁷⁰ Congressional Research Service. 2023. *USMCA: Labor Provisions*.

<https://crsreports.congress.gov/product/pdf/IF/IF11308>.

¹⁷¹ CBP. 2023. “CBP Trade Statistics.” *Trade Statistics*. <https://www.cbp.gov/newsroom/stats/trade>.

¹⁷² CBP. 2017. “CBP Facilitates Record Level of Travelers and Modernizes Trade Systems in FY2016.” *U.S. Customs and Border Protection*. <https://www.cbp.gov/newsroom/national-media-release/cbp-facilitates-record-level-travelers-and-modernizes-trade-systems>.

¹⁷³ CBP. 2018. *CBP Trade and Travel Fiscal Year 2017 Report*.

<https://www.cbp.gov/sites/default/files/assets/documents/2018-Feb/CBP-FY17-Trade-and-Travel-Report-Final.pdf>.

The most recent legislation in this area in the United States is the Uyghur Forced Labor Prevention Act (UFLPA) of 2021. The legislation targets products being produced in the Xinjiang region of China. In 2017 the Chinese government was accused of arbitrarily detaining and forcing Uyghur Muslims to work in “reeducation camps” for “political indoctrination” and “forced cultural assimilation.”¹⁷⁴ The bill was passed in both the House and the Senate with near-unanimous support in December of 2021 and signed into law by President Biden later the same month.

The UFLPA specifically bans the importation of all goods from the Xinjiang region in China due to their violation of Section 307 of the 1930 Tariff Act. Congressional motivation for enacting this legislation came from findings that the Chinese government had arbitrarily detained and “subjected detainees to forced labor, torture, political indoctrination, and other severe human rights abuses.”¹⁷⁵ However, an additional motivation for Congress was a continuation of protectionist interests, arguing that the use of forced labor by the Chinese government “leave[s] American businesses and workers to compete on an uneven playing field by allowing firms to gain advantage over their competitors by exploiting workers and artificially suppressing wages.”¹⁷⁶

The passage of the UFLPA was important because it shifted the burden of proof onto importers through what is known as “rebuttable presumption.” This standard requires importers to prove compliance with the legislation rather than CBP proving a violation of the legislation after the agency had been alerted to do so. It was also the first ban that blocked the importation of all products coming from a region, rather than specific products from specific entities or

¹⁷⁴ Amnesty International. 2018. “Up to One Million Detained in China’s Mass ‘Re-Education’ Drive,” <https://www.amnesty.org/en/latest/news/2018/09/china-up-to-one-million-detained/>.

¹⁷⁵ Uyghur Forced Labor Prevention Act, H.R. 1155, 117th Cong. § 2(1) (2021).

¹⁷⁶ The White House. 2021. “Press Release, White House, Fact Sheet: New U.S. Government Actions on Forced Labor in Xinjiang” <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/24/fact-sheet-new-u-s-government-actions-on-forced-labor-in-xinjiang/>.

manufacturers.¹⁷⁷ Therefore, when a shipment arrives that has parts from or is manufactured in the Xinjiang region, it is detained until the corporation can prove that forced labor was not used in the production process. If a company can not provide evidence, then the shipment is denied entry. If the company can provide evidence, then the product is allowed entry. The legislation went into effect in June 2022 and has since resulted in the detention of approximately 2.096 billion dollars worth of imports.¹⁷⁸

The oversight and enforcement of the UFLPA was given to the Forced Labor Enforcement Task Force (FLETF), which is under the Department of Homeland Security and includes observer agencies that contribute to FLETF's efforts.¹⁷⁹ The UFLPA is unique in its use of rebuttable presumption, therefore, requiring importing entities to prove their adherence to the legislation, with no parts or products being sourced from Xinjiang. The legislation specifically allows for "[t]he Commissioner of CBP [to] grant an exception to the presumption if an importer meets specific criteria outlined in Section 3(b) of the UFLPA." Section 3(b) provides that an exception may be granted if the Commissioner determines: (1) the importer of record "fully complied with the guidance [FLETF's] guidance described in section 2(d)(6)," ¹⁸⁰ which counsels importers with respect to supply chain tracing and management measures, and the "type, nature, and extent of evidence" need to ensure the goods detained did not originate from the Xinjiang region and were not "mined, produced or manufactured wholly or in part with forced labor," ¹⁸¹ (2) the importer of record "completely and substantively responded to all inquiries for information submitted by the

¹⁷⁷Higgins, Matthew. 2023. "Closed Loophole, Open Ports: Section 307 of the Tariff Act and the Ongoing Importation of Goods Made Using Forced Labor." *Stanford Law* 75.

<https://review.law.stanford.edu/wp-content/uploads/sites/3/2023/04/Higgins-75-Stan.-L.-Rev.-917.pdf>.

¹⁷⁸ "Uyghur Forced Labor Prevention Act Statistics | U.S. Customs and Border Protection." (March 2024).

<https://www.cbp.gov/newsroom/stats/trade/uyghur-forced-labor-prevention-act-statistics>.

¹⁷⁹ U.S. Department of Homeland Security. "Forced Labor Enforcement Task Force." *FLETF*.

<https://www.dhs.gov/forced-labor-enforcement-task-force>.

¹⁸⁰Uyghur Forced Labor Prevention Act. 2021. Public Law. Sec 3(b)(1)(A)

¹⁸¹Uyghur Forced Labor Prevention Act. 2021. Public Law. Sec 2(d)(6)(A)-(C)

Commissioner;”¹⁸² and (3) by “clear and convincing evidence” that the goods detained were not made in part or wholly using forced labor.¹⁸³ If the Commissioner grants the exception, the products or goods detained may be released and allowed future importation.

To summarize, supply chain entities in Xinjiang are investigated and identified by the FLETF. The task force also identifies multinational enterprises that use materials or goods from these supply chains, and CBP prevents their importation at United States ports of entry using rebuttable presumption. If importers who are subject to the UFLPA wish to have their merchandise released and allowed entry they comply with Section 3(b). If they do not wish to submit the required information they can reexport the goods or merchandise. These supply chains from Xinjiang are identified in Appendix A.

5.3.1 Shipment Detentions

From the enactment of the Uyghur Forced Labor Prevention Act (UFLPA) in June 2021 to January 2024, Customs and Border Patrol (CBP) has detained 7,058 shipments due to their supply chains tracing back to the Xinjiang region in China, as seen in Figure 5A. Of those 7,058 detained, 2,972 have been released, meaning the entities have filed release petitions and proof of clean supply chains, and 2,974 have been denied entry because the entity either did not file a release petition or was unable to prove clean supply chains in a petition submission. Moreover, 1,112 shipments are still in holding, either awaiting a petition investigation or in the grace period awaiting a submission from the importing company/enterprise.

Figure 5B shows the breakdown of detentions by product type because the UFLPA bans all importations with supply chain ties to the Xinjiang region. The highest number of detentions come from the electronics industry, which was previously the subject of WROs against silica-made

¹⁸²Uyghur Forced Labor Prevention Act. 2021. Public Law. Sec 3(b)(1)(B)

¹⁸³Uyghur Forced Labor Prevention Act. 2021. Public Law. Sec 3(b)(2)

products, such as polysilicon used in electronics, solar panels,¹⁸⁴ and computer parts.¹⁸⁵ The WROs, which are now superseded by the UFLPA, previously found that the entities Hoshine Silicon Industry Co. Ltd and Hefei Bitland Information Technology Co., Ltd. in Anhui, China were operating in the region with the use of Uyghur forced labor in the “reeducation camps.” Both of these entities are on the list of entities identified and banned for violating the UFLPA and can be identified in Appendix A. The second highest industry of detained goods is apparel, footwear, and textiles, which again can be linked to the five WROs that the UFLPA now supersedes. Before the UFLPA, eleven WROs were issued due to reasonable suspicion of using forced labor in the Uyghur “reeducation camps.” All entities identified in these eleven WROs are now entities banned under the UFLPA¹⁸⁶ and are, therefore, subject to rebuttable presumption.

¹⁸⁴ CBP. 2021. *The Department of Homeland Security Issues Withhold Release Order on Silica-Based Products Made by Forced Labor in Xinjiang*.
<https://www.cbp.gov/newsroom/national-media-release/department-homeland-security-issues-withhold-release-order-silica>.

¹⁸⁵ CBP. 2020. *DHS Cracks Down on Goods Produced by China’s State-Sponsored Forced Labor*.
<https://www.cbp.gov/newsroom/national-media-release/dhs-cracks-down-goods-produced-china-s-state-sponsored-forced-labor>.

¹⁸⁶ Appendix A

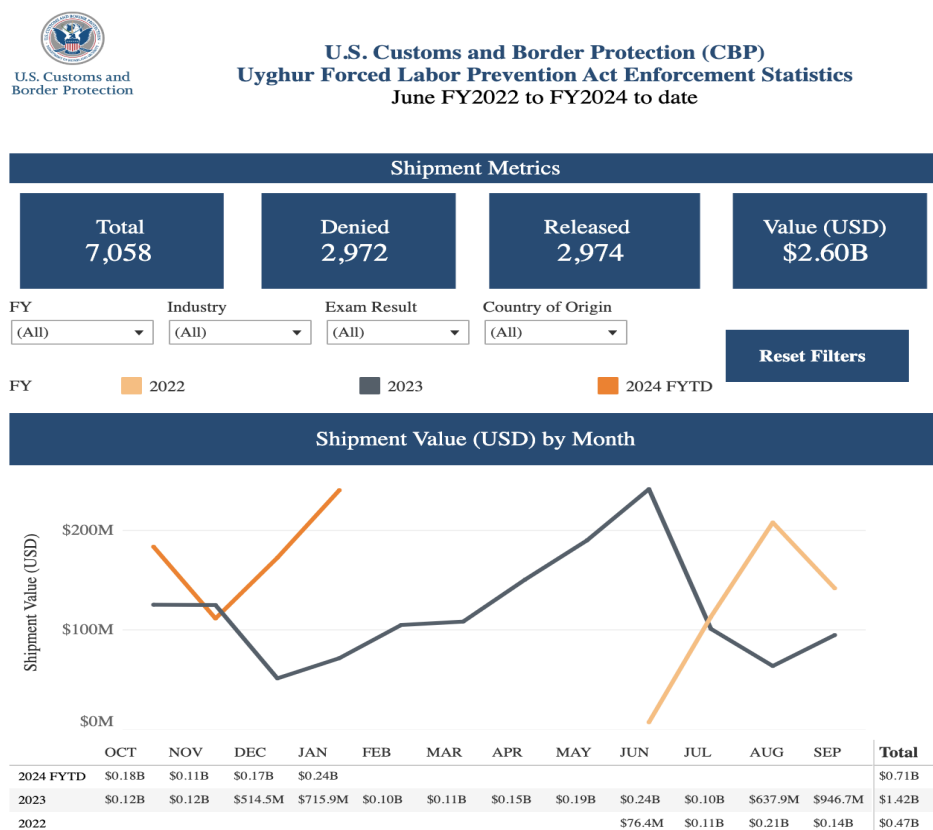
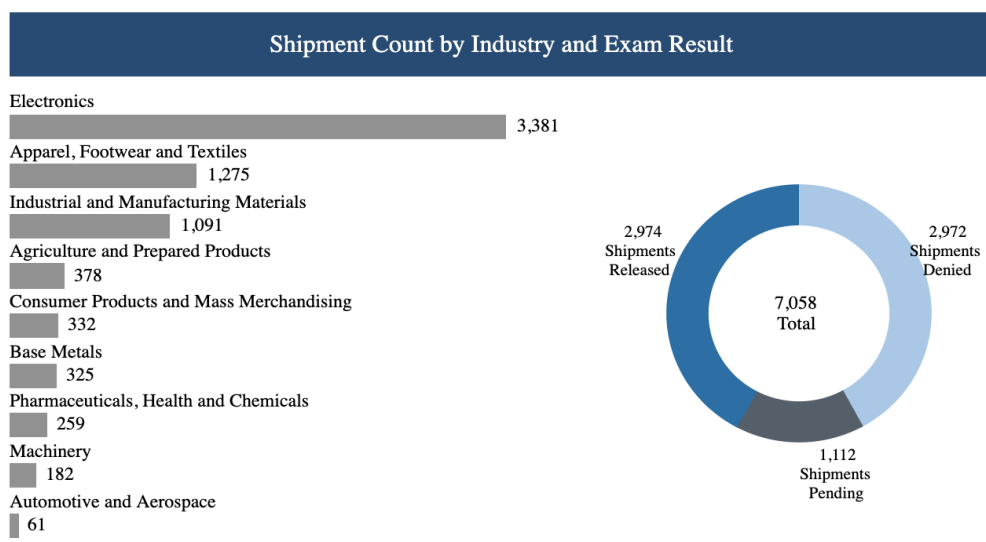
Figure 5A: UFLPA Enforcement Statistics¹⁸⁷

Figure 5B: UFLPA Enforcement Statistics



¹⁸⁷ “Uyghur Forced Labor Prevention Act Statistics | U.S. Customs and Border Protection.” (March, 2024). <https://www.cbp.gov/newsroom/stats/trade/uyghur-forced-labor-prevention-act-statistics>.

It is important to note that despite the rise in shipment detentions, the legislation has repeatedly been the center of bipartisan congressional frustration. This concern is attributed to skepticism of CBP's abilities to successfully prohibit the importation of goods from Xinjiang. Following the implementation of the UFLPA, on June 21, 2023, the bipartisan and bicameral Congressional-Executive Commission on China released a letter to the Department of Homeland Security expressing concerns for the "implementation and enforcement of the UFLPA."¹⁸⁸ The letter was written by Representative Christopher H. Smith (R-NJ) and Senator Jeff Merkley (D-OR), and signed by Senator Marco Rubio (R-FL) and Representative James P. McGovern (D-MA), who were the lead sponsors of the UFLPA. It outlined concerns about "direct-to-consumer" goods from companies such as SHEIN and TEMU, expressed apprehension regarding the lack of transparency in reporting why a shipment is released, and raised questions about the limited number of entities required by the UFLPA. The letter requested CBP to report to Congress on initiatives to prevent the importation of transshipment goods from third-party countries sourced in Xinjiang, and asked for more on statistics and obstacles.¹⁸⁹ These concerns highlight the enforcement limitations that persist despite the use of rebuttable presumption.

Moreover, the letter brings to the forefront a serious concern regarding CBP's ability to prevent importation regarding "*de minimis*," which refers to the "[allowance of] vendors to send materials without having to report basic data, such as country-of-origin and manufacturer, if they claim that the value is under \$800, using Section 321 of the Tariff Act of 1930."¹⁹⁰ The letter explains how this exemption allows for clothing shipments from Chinese companies, such as Shien

¹⁸⁸ Select Committee on the Chinese Communist Party. 2024.

<https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/1-19-24-dhs-letter-on-uflpa.pdf>.

¹⁸⁹Smith, Christopher H., and Jeff Merkley. 2023. *Bipartisan Group of Lawmakers Seeks Answers From Administration about Enforcement of Forced Labor Legislation*.

<https://www.cecc.gov/media-center/press-releases/bipartisan-group-of-lawmakers-seeks-answers-from-administration-about>.

¹⁹⁰ *Tariff Act*. 1930. 19 U.S.C. § 321(a)(2)(c)

and Temu, to be imported through “direct-to-customer” shipping.¹⁹¹ Hearings regarding the legislation in April 2023 included investigations that found Shien and Temu used Xinjiang cotton in their clothing production.¹⁹² New hearings began in February 2024 regarding similar concerns to the ones outlined in the letter. The concerns of Congress outline several issues regarding the UFLPA, and rebuttable presumption, including a need for increased transparency to better assess the effectivity of the legislation and further amendments or jurisdiction to United States policy, such as Section 321 of the Tariff Act of 1930.

The influences of the United States’ economic interest on the Uyghur Forced Labor Prevention Act (UFLPA) are more difficult to discern. The UFLPA was introduced by Senators Marco Rubio (R-FL) and Jeff Merkley (D-OR), and representatives Chris Smith (R-NJ) and James P. McGovern (D-MA) in 2020, and it was introduced as an attempt to “hold the Chinese Communist Party accountable for their use of slave labor.”¹⁹³ However, the United States history of using forced labor bans as a means to advance protectionist economic agendas provides economic incentives for the passage of the legislation, along with the evidence that this legislation has a similar protectionist function. Moreover, the United States has a historically complex relationship with China, which involves years of sanctions, tariffs, and complex foreign policies.¹⁹⁴ One of the main sources of this contentious relationship comes from the United States and China being the world's two largest economies,¹⁹⁵ resulting in high competition. Therefore, China’s status as the

¹⁹¹ Smith, Christopher H., and Jeff Merkley. 2023. *Bipartisan Group of Lawmakers Seeks Answers From Administration about Enforcement of Forced Labor Legislation*. <https://www.cecc.gov/media-center/press-releases/bipartisan-group-of-lawmakers-seeks-answers-from-administration-about>.

¹⁹² O’Dell, Hope. 2023. “How Shein and Temu Get around US Labor Laws That Ban Products Made with Forced Labor.” *Bluemarble*. <https://globalaffairs.org/bluemarble/how-shein-and-temu-get-around-us-labor-laws-ban-products-made-forced-labor>.

¹⁹³ “Rubio-Merkley Uyghur Forced Labor Prevention Act Becomes Law.” 2021. *Marco Rubio U.S. Senator for Florida*. <https://www.rubio.senate.gov/rubio-merkley-uyghur-forced-labor-prevention-act-becomes-law/>.

¹⁹⁴ Siripurapu, Anshu, and Noah Berman. 2023. “The Contentious U.S.-China Trade Relationship.” *Council on Foreign Relations*. <https://www.cfr.org/background/contentious-us-china-trade-relationship>.

¹⁹⁵ “The Top 10 Largest Economies in the World in 2024.” 2024. *Forbes India*. <https://www.forbesindia.com/article/explainers/top-10-largest-economies-in-the-world/86159/1>.

United States' largest competitor fits within the United States' economic incentive and pattern of protectionist policies to ban the entry of goods from China.

6. Data Analysis

The historical analysis and data reported in the previous sections provide insights into the enforcement success and failures of the three main pieces of legislation used to prohibit the entry of goods made with forced labor. In this section, I will compare these findings between the three pieces of legislation to discern how they improve upon each other in practice and evaluate the findings with my hypotheses.

The comparison of shipment detentions in 2022 between the Trade Facilitation and Trade Enforcement Act (TFTEA) and Uyghur Forced Labor Prevention Act (UFLPA) shows preliminary support for hypothesis 1A, which states: “The implementation of a proactive oversight mechanism, rebuttable presumption, more successfully prevents the entry of goods made with forced labor, compared to the reactive oversight mechanism used by WROs.” In 2022, according to CBP’s Trade and Travel Reports, 2,396 shipments were detained by WROs (see Table 4). In June of the same year, the UFLPA went into effect, meaning it was active for only six months in 2022. Despite being active for half the year, 1,529 shipments were detained under the UFLPA. This is significant because in six months, the UFLPA led to the detention of nearly two thirds (63.8%) of the amount of detentions that came from the TFTEA over an entire year. This, therefore, preliminarily supports hypothesis 1A because it shows that the rebuttable presumption, a proactive mechanism, is more effective than reactive oversight mechanisms. However, the findings are limited by the short time horizon and data, which was only available for the fiscal year 2022 (June 2022 to June 2023).

I also want to note the influence the UFLPA has seemingly had on CBP's ability to better enforce and mandate WROs. The main change comes from the rise in funding CBP has received as a result of the implementation of the UFLPA. In 2018, CBP's Forced Labor division had expenditures estimated at one million U.S. dollars. This total rose to only 1.4 million in 2019.¹⁹⁶ However, since the implementation of the UFLPA and expansion of the forced labor division to include the Forced Labor Enforcement Task Force (FLETF), CBP has requested greater funding and staffing, to expand their resources and ability to fulfill enforcement. In 2023, CBP requested a record 70.3 million dollar budget for combating forced labor. This request also outlined its support for hiring 300 new staff members to improve their enforcement abilities. Furthermore, since the enactment of the UFLPA, shipment detentions from WROs have steadily increased, showing the importance of expenditures when enforcing legislation and disproving the 2B hypothesis stating: "the implementation of proactive measures, the rebuttable presumption, will be too strenuous on CBP's resources and, therefore, does not have a significant impact on preventing the entry of goods made with forced labor when compared to reactive measures used by WROs."

The eighty-five year history after the Tariff Act of 1930 was passed supports hypothesis 2A, which states: "If a ban conflicts with US economic interests then the legislation will fail to be successful in prohibiting the importation of goods made with forced labor." Following the passage of the Tariff Act in 1930 until the passage of the Trade Facilitation and Trade Enforcement Act (TFTEA) in 2015, only forty-seven WROs were issued.¹⁹⁷ Then from the enactment of the TFTEA in 2016 to January 2024, forty-three WROs were issued (see Figure 3).¹⁹⁸ This means that in the eighty-five years under the Tariff Act, only four more WROs were issued than in the first seven

¹⁹⁶ Higgins, Matthew. 2023. "Closed Loophole, Open Ports: Section 307 of the Tariff Act and the Ongoing Importation of Goods Made Using Forced Labor." *Stanford Law* 75.

<https://review.law.stanford.edu/wp-content/uploads/sites/3/2023/04/Higgins-75-Stan.-L.-Rev.-917.pdf>.

¹⁹⁷ "Withhold Release Orders and Findings List." *U.S. Customs and Border Protection*. <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings> (2024).

¹⁹⁸ See Appendix 2.

years (June 2016-January 2024) of the TFTEA. The relatively small number of WROs issued in the eighty-five years followed by the immediate uptick in WROs issued after the consumption demand loophole was closed support the hypothesis that bans were not issued because they conflicted with U.S. economic interest as reflected by the Tariff Act's consumption demand exception. Thus, U.S. economic interests were prioritized over banning goods made with forced labor.

It is also notable that the 2015 TFTEA's elimination of the consumptive demand loophole may contradict hypothesis 2A. This is because by removing the loophole, the TFTEA arguably limited the consideration of U.S. economic interest in the form of market demand, in determining whether to impose a WRO. The data also shows that eliminating the loophole increased the number of WROs issued, indicating that after 2016, U.S. economic interests may have played less of a role in banning goods from forced labor.¹⁹⁹ However, the forced labor advocacy organization, WalkFree, estimates that the "US imports US\$169.6 billion products at-risk of being made using forced labor annually."²⁰⁰ This can be attributed to the fact that there are 159 goods, and 78 countries and regions, reported as being in violation of forced labor laws according to the ILAB database, yet less than one third of these, only fifty-one, resulted in a WRO.²⁰¹ Moreover, on CBP's e-Allegations Statistics dashboard, the agency has reported the number of petitions received from 2021 to 2023.²⁰² This is significant because in 2021, the agency received 93 allegations, but only issued six WROs, meaning only six percent of these allegations resulted in a ban. Moreover, in 2022, 111 petitions were submitted, but only one WRO was issued, meaning only 0.9 percent of

¹⁹⁹ "Withhold Release Orders and Findings List." *U.S. Customs and Border Protection*. <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings> (2024). And Figure 3.

²⁰⁰ "Modern Slavery in the United States" *WalkFree*. <https://www.walkfree.org/global-slavery-index/country-studies/united-states/>.

²⁰¹ DOL. 2022. *2022 List of Goods Produced by Child Labor or Forced Labor*. https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2021/2022-TVPR-List-of-Goods-v3.pdf.

²⁰² CBP. "E-Allegations Statistics by Calendar Year." *e-Allegations Statistics*. <https://www.cbp.gov/trade/e-allegations/statistics>.

allegations resulted in a ban. Finally, in 2023, 203 petitions were filed, however, no WROs have since been issued (see Figure 4), although, considering the investigative process takes up to 180 days, some may still be under review. CBP does not specify if the submissions are all rejected during the petition reviewal process or during investigation. While the failure to issue WROs despite the evidence of at-risk goods still being imported into the U.S. cannot definitively be attributed to U.S. economic interest, there is a strong implication through “selective application [that] WRO procedures mock that the consumptive demand loophole was ever repealed.”²⁰³ To summarize, findings show that while legislation in the last eight years has moved in the right direction, the TFTEA is still not nearly as effective in prohibiting imports made with forced labor, especially when compared to the preliminary results of the UFLPA. However, the limitations in this section cannot conclusively support or reject hypothesis 2A.

Alternatively, individual product studies overall tentatively support hypothesis 2A, due to the failure to issue WROs to the largest at-risk producers and/or producers with evidence of high importation into the United States. Despite the WRO issued against the Zimbabwe Marange Diamond field, six of the other top diamond producers on the ILAB report, all of which were top twenty diamond producers in 2022, have not received a WRO. Also, while Zimbabwe was the third largest diamond producer, the top two producers, Angola and the Democratic Republic of Congo (DRC), are not subject to a WRO. Finally, Sierra Leon, who with the DRC, is one of the top importers of diamonds to the U.S., is not subject to a WRO. Therefore, the absence of WROs against Angola and the DRC, as well as the other top diamond producers on the ILAB report, support hypothesis 2A. Moreover, while the WRO for the third largest producer is seemingly

²⁰³ Moore, Laura. 2023. “Cutting Slavery from U.S. Supply Chains: How Supplementing U.S. Customs and Border Protection Withhold and Release Order Procedures Will More Effectively Address Forced Labor in Supply Chains.” *Florida State* 50(2).
<https://heinonline.org/HOL/Page?handle=hein.journals/flsclr50&id=421&collection=journals&index=>.

significant, it is notable that sanctions against the Marange Diamond field have been in place since 2011,²⁰⁴ therefore, lowering the economic impacts of the WRO issuance due to the already prohibited entry of these goods, which again supports hypothesis 2A. Also, while Zimbabwe is the third largest diamond producer, it produced significantly less diamonds than both Angola and the DRC (see Table 1).

Similarly, the fact that CBP has issued a WRO against the two Malaysian entities, FGV and Sime Darby (which was deactivated), but has not issued a WRO against Indonesia supports hypothesis 2A. Indonesia is the top global producer of palm oil.²⁰⁵ From 2019 through 2023, it produced more than double the amount of palm oil as Malaysia (see Table 2). Because palm oil is used in the production of a wide variety of products, the fact that a WRO has not been imposed against Indonesia supports hypothesis 2A. However, again it is notable that the WRO against the Malaysian entities does not support hypothesis 2A. Although Malaysia produces much less palm oil than Indonesia, it is still the second largest producer in the world.²⁰⁶

The WRO against Turkmenistan supports hypothesis 2A. This is because Turkmenistan has one of the lowest production rates of cotton and the United States domestically is a top producer (fourth largest globally), with eleven percent of global production (see Table 3). Thus, Turkmenistan's cotton production is of low economic interest to the U.S. All together, the product studies show tentative support of hypothesis 2A through the pattern of not issuing WROs to the largest producers. But the studies make many assumptions, such as the likelihood of importation

²⁰⁴ The Treasury Department's Office of Foreign Assets Control. 2011. "Statement Regarding Recent Identification of Two Zimbabwean Diamond Mining Entities." (March 2023). <https://ofac.treasury.gov/media/25901/download?inline>

²⁰⁵ USDA. 2024. "Top Producing Countries." *Production - Palm Oil*. <https://fas.usda.gov/data/production/commodity/4243000>.

²⁰⁶ USDA. 2024. "Top Producing Countries." *Production - Palm Oil*. <https://fas.usda.gov/data/production/commodity/4243000>.

into the United States of top producers due to that status, therefore, limiting the support for the hypothesis.

The passage of the Uyghur Forced Labor Prevention Act of 2021 (UFLPA) supports hypothesis 2B, which states: “If a ban supports U.S. economic interest then legislation will be successful in prohibiting the importation of goods made with forced labor.” The UFLPA bans the sale of goods by China, the U.S.’s largest economic competitor. Therefore, the UFLPA supports protectionist trade policies and competition against China.

However, hypothesis 2A is not supported by the UFLPA. This is due to China being the largest producer of cotton, responsible for 24 percent of global production (see Table 3) but is still banned by the UFLPA. This effect is limited by the U.S.’s status as the fourth largest producer of cotton (see Table 3).

7. Conclusion, Recommendations, and Areas for Future Research

The issue of forced labor has continued to rise since the banning of slavery internationally. Several countries and international conventions have attempted to address this issue, including three pieces of legislation in the United States: (1) the Tariff Act of 1930, (2) the Trade Facilitation and Trade Enforcement Act (TFTEA) of 2015, and (3) the Uyghur Forced Labor Prevention Act (UFLPA) of 2021. This paper sought to answer the question, “What explains the successes and failures of U.S. legislation in banning the importation of goods made wholly or in part with forced labor?” I investigated two main independent variables that I theorized were the main influences on the successes or failures; enforcement mechanisms, specifically the use of reactive measures versus proactive measures, specifically the rebuttable presumption, and the United States' economic interest. I found that enforcement mechanisms did affect the success of the legislation,

with the rebuttable presumption oversight mechanism more successfully resulting in the detention of goods made with forced labor. This resulted in the UFLPA being more effective in banning the importation of goods made wholly or in part with forced labor.

U.S. economic interest also affects the success of U.S. legislation in banning the importation of goods made with forced labor. U.S. economic interest influenced the issuance of WROs under both the Tariff Act of 1930, and the TFTEA of 2015, despite the closure of the consumptive demand exemption in the 2015 legislation. This resulted in bans not being issued to top producers under either legislation. Significantly, however, WROs were issued to entities at-risk of using forced labor that were among the top three largest producers in two out of the three product case studies, once the consumptive demand loophole was closed with the 2015 legislation. This demonstrates that while U.S. economic interest are considered in issuing WROs, there are cases where large producers are still banned, despite the impact this may have on U.S. economic interests, specifically in the form of consumptive demand. The actual impact that import bans have on consumptive demand remains an educated guess since I was unable to gain access to information on how the consumptive demand clause was implemented before its elimination. Moreover, all three pieces of legislation have been tied to protectionist trade policies making their passage and enforcement support economic interest, by protecting U.S. domestic markets from unfair competition.

To improve the enforcement of United States legislation banning goods made with forced labor, I posit the following recommendations. WROs should function similarly to the UFLPA, with CBP identifying entities at high risk and implementing a rebuttable presumption. This recommendation comes from the evidence that the UFLPA leads to higher shipment detentions, and therefore, greater success in prohibiting the entry of goods made with forced labor. This

standard would also alleviate cost and labor within CBP, as it shifts the burden of proof onto importers who have the information more easily available. I also recommend the repeal of the *de minimis* standard from Section 321 of the Tariff Act of 1930, as it would lead to a more complete ban on the importation of goods made with forced labor, by expanding the jurisdiction of CBP to investigate shipments. Removing the *de minimis* standard would help improve the success of both WROs and the UFLPA. There also needs to be greater transparency and uniformity across CBP reporting. The lack of transparency and uniformity makes it difficult for the public and members of Congress to effectively assess what needs to be done to improve CBP's abilities to enforce the bans on goods made with forced labor.

Finally, future studies should look to compare shipment detentions between WROs and the UFLPA over a longer period of time, as the timeframe of this study was limited by the short period in which the UFLPA was active. Future research should also expand the studies on products across ILAB to better determine the influences and patterns of CBP's WRO issuance. Additionally, research in this area would greatly benefit from CBP providing detailed information on (1) how the consumptive demand mechanism operated to allow importation of goods made with forced labor from the enactment of the Tariff Act in May 1932, until this loophole was effectively closed in February of 2016, and (2) on how consumptive demand may still function in practice, given the disparities between ILAB cases of forced labor through the current period, compared to WROs issued.

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Appendix A UFLPA Entities Banned²⁰⁷

“A list of entities in Xinjiang that mine, produce or manufacture wholly or in part any goods, wares, articles, and merchandise with forced labor” violating Section 2(d)(2)(B)(i)

Name of Entity	Effective Date
Baoding LYSZD Trade and Business Co., Ltd.	June 21, 2022
Changji Esquel Textile Co. Ltd. (and one alias: Changji Yida Textile)	June 21, 2022
Hetian Haolin Hair Accessories Co. Ltd. (and two aliases: Hotan Haolin Hair Accessories; and Hollin Hair Accessories)	June 21, 2022
Hetian Taida Apparel Co., Ltd (and one alias: Hetian TEDA Garment)	June 21, 2022
Hoshine Silicon Industry (Shanshan) Co., Ltd (including one alias: Hesheng Silicon Industry (Shanshan) Co.) and subsidiaries	June 21, 2022
Xinjiang Daqo New Energy, Co. Ltd (including three aliases: Xinjiang Great New Energy Co., Ltd.; Xinjiang Daxin Energy Co., Ltd.; and Xinjiang Daqin Energy Co., Ltd.)	June 21, 2022
Xinjiang East Hope Nonferrous Metals Co. Ltd. (including one alias: Xinjiang Nonferrous)	June 21, 2022
Xinjiang GCL New Energy Material Technology, Co. Ltd (including one alias: Xinjiang GCL New Energy Materials Technology Co.)	June 21, 2022
Xinjiang Junggar Cotton and Linen Co., Ltd.	June 21, 2022
Xinjiang Production and Construction Corps (including three aliases: XPCC; Xinjiang Corps; and Bingtuan) and its subordinate and affiliated entities	June 21, 2022

“A list of entities working with the government of Xinjiang to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of Xinjiang” violating Section 2(d)(2)(B)(ii)

²⁰⁷ “UFLPA Entity List: Homeland Security.” *U.S. Department of Homeland Security*. <https://www.dhs.gov/uflpa-entity-list> (March 2024).

Name of Entity	Effective Date
Aksu Huafu Textiles Co. (including two aliases: Akesu Huafu and Aksu Huafu Dyed Melange Yarn)	June 21, 2022
Anhui Xinya New Materials Co., Ltd. (formerly known as Chaohu Youngor Color Spinning Technology Co., Ltd.; and Chaohu Xinya Color Spinning Technology Co., Ltd.)	December 11, 2023
Camel Group Co., Ltd.	August 2, 2023
COFCO Sugar Holdings Co., Ltd.	December 11, 2023
Hefei Bitland Information Technology Co., Ltd. (including three aliases: Anhui Hefei Baolongda Information Technology; Hefei Baolongda Information Technology Co., Ltd.; and Hefei Bitland Optoelectronic Technology Co., Ltd.)	June 21, 2022
Hefei Meiling Co. Ltd. (including one alias: Hefei Meiling Group Holdings Limited)	June 21, 2022
KTK Group (including three aliases: Jiangsu Jinchuang Group; Jiangsu Jinchuang Holding Group; and KTK Holding)	June 21, 2022
Lop County Hair Product Industrial Park	June 21, 2022
Lop County Meixin Hair Products Co., Ltd.	June 21, 2022
Nanjing Synergy Textiles Co., Ltd. (including two aliases: Nanjing Xinyi Cotton Textile Printing and Dyeing; and Nanjing Xinyi Cotton Textile)	June 21, 2022
Ninestar Corporation and its eight Zhuhai-based subsidiaries, which include Zhuhai Ninestar Information Technology Co. Ltd., Zhuhai Pantum Electronics Co. Ltd., Zhuhai Apex Microelectronics Co., Ltd., Geehy Semiconductor Co., Ltd., Zhuhai Pu-Tech Industrial Co., Ltd., Zhuhai G&G Digital Technology Co., Ltd., Zhuhai Seine Printing Technology Co., Ltd., and Zhuhai Ninestar Management Co., Ltd.	June 12, 2023
No. 4 Vocation Skills Education Training Center (VSETC)	June 21, 2022
Sichuan Jingweida Technology Group Co., Ltd. (also known as Sichuan Mianyang Jingweida Technology Co., Ltd. and JWD Technology; and formerly known as Mianyang High-tech Zone Jingweida Technology Co., Ltd.)	December 11, 2023
Tanyuan Technology Co. Ltd. (including five aliases: Carbon Yuan Technology; Changzhou Carbon Yuan Technology Development; Carbon Element Technology; Jiangsu Carbon Element Technology; and Tanyuan Technology Development)	June 21, 2022
Xinjiang Production and Construction Corps (XPCC) and its subordinate and	June 21, 2022

affiliated entities	
Xinjiang Tianmian Foundation Textile Co., Ltd.	September 27, 2023
Xinjiang Tianshan Wool Textile Co. Ltd.	September 27, 2023
Xinjiang Zhongtai Chemical Co. Ltd.	June 12, 2023
Xinjiang Zhongtai Group Co. Ltd	September 27, 2023

“A list of facilities and entities, including the Xinjiang Production and Construction Corps, that source material from Xinjiang or from persons working with the government of Xinjiang or the Xinjiang Production and Construction Corps for purposes of the “poverty alleviation” program or the “pairing-assistance” program or any other government-labor scheme that uses forced labor” violating Section 2(d)(2)(B)(v)

Name of Entity	Effective Date
Baoding LYSZD Trade and Business Co., Ltd.	June 21, 2022
Chenguang Biotech Group Co., Ltd. and its subsidiary Chenguang Biotechnology Group Yanqi Co. Ltd.	August 2, 2023
Hefei Bitland Information Technology Co. Ltd.	June 21, 2022
Hetian Haolin Hair Accessories Co. Ltd.	June 21, 2022
Hetian Taida Apparel Co., Ltd.	June 21, 2022
Hoshine Silicon Industry (Shanshan) Co., Ltd., and Subsidiaries	June 21, 2022
Xinjiang Junggar Cotton and Linen Co., Ltd.	June 21, 2022
Lop County Hair Product Industrial Park	June 21, 2022
Lop County Meixin Hair Products Co., Ltd.	June 21, 2022
No. 4 Vocation Skills Education Training Center (VSETC)	June 21, 2022
Xinjiang Production and Construction Corps (XPCC) and its subordinate and affiliated entities	June 21, 2022
Yili Zhuowan Garment Manufacturing Co., Ltd.	June 21, 2022

Appendix B: Active (both fully and partial) WROs as of March 25, 2024

China

#	Date	Merchandise	Entities	Status
35	06/23/2021	Silica-based products	Hoshine Silicon Industry Co. Ltd. and Subsidiaries	Active <i>(Enforcement of WRO superseded by enforcement of UFLPA rebuttable presumption)</i>
34	01/13/2021	Cotton, Tomatoes, and Downstream Products	Xinjiang Uyghur Autonomous Region (XUAR)	Active <i>(Enforcement of WRO superseded by enforcement of UFLPA rebuttable presumption)</i>
33	11/30/2020	Cotton and Cotton Products	Xinjiang Production and Construction Corporation (XPCC) and its subordinates	Active <i>(Enforcement of WRO superseded by enforcement of UFLPA rebuttable presumption)</i>
32	9/8/2020	Computer Parts	Hefei Bitland Information Technology Co., Ltd.	Active <i>(Enforcement of WRO superseded by enforcement of UFLPA rebuttable presumption)</i>

31	9/8/2020	Cotton and Processed Cotton	Xinjiang Junggar Cotton and Linen Co., Ltd.	Active (Enforcement of WRO superseded by enforcement of UFLPA rebuttable presumption)
30	9/3/2020	Apparel	Yili Zhuowan Garment Manufacturing Co., Ltd. and Baoding LYSZD Trade and Business Co., Ltd.	Active (Enforcement of WRO superseded by enforcement of UFLPA rebuttable presumption)
29	8/25/2020	All Products	No. 4 Vocational Skills Education Training Center (VSETC)	Active (Enforcement of WRO superseded by enforcement of UFLPA rebuttable presumption)
28	8/25/2020	Hair Products	Lop County Hair Product Industrial Park	Active (Enforcement of WRO superseded by enforcement of UFLPA rebuttable presumption)
27	8/11/2020	Garments	Hero Vast Group	Active
26	6/17/2020	Hair Products	Lop County Meixin Hair Products Co., Ltd.	Active (Enforcement of WRO superseded by enforcement of UFLPA rebuttable presumption)

25	5/1/2020	Hair Products	Hetian Haolin Hair Accessories Co., Ltd.	Active (Enforcement of WRO superseded by enforcement of UFLPA rebuttable presumption)
24	9/30/2019	All Garments	Hetian Taida Apparel Co., Ltd.	Active (Enforcement of WRO superseded by enforcement of UFLPA rebuttable presumption)
23	3/5/2018	All Products	Huizhou Mink Industrial CO. LTD.	Active
22	9/16/2016	Peeled Garlic	Hongchang Fruits & Vegetable Products Co., Ltd.	Active
21	5/20/2016	Stevia and its Derivatives	Inner Mongolia Hengzheng Group Baoanzhao Agricultural and Trade LLC	Active
20	3/29/2016	Soda Ash, Calcium Chloride, and Caustic Soda	Tangshan Sanyou Group and its Subsidiaries	Partially Active
19	10/6/1995	Malleable Iron Pipe Fittings	Tianjin Malleable Iron Factory, a/k/a Tianjin Tongbao Fittings Company, a/k/a Tianjin No. 2 Malleable Iron Plant, a/k/a Tianjin Secondary Mugging Factory, a/k/a Tianjin No. 2 Prison	Active
18	4/27/1995	Tea	Nanhu Tree Farm, Zhejiang Sanmei Tea Co., Ltd.; Imaizumi Tea Manufacturing & Trading Co., Ltd. (of Nagoya, Japan)	Active

17	12/21/1994	Artificial Flowers	Guangzhou No. 1 Reeducation-Through-Labor Camp, a/k/a Guangdong Province No. 1 Reeducation-Through-Labor Camp; Kwong Ngai Industrial Company	Active
16	9/3/1993	Rubber Vulcanization Accelerators	Shenyang Xinsheng (New Life) Chemical Works, a/k/a Shenyang Dongbei Assistant Agent Main Factory, a/k/a Xinsheng Chemical Factory, a/k/a Shenyang No. 1 Laogai Detachment, a/k/a Shenyang Reform Through Labor Second Reform Division	Active
15	9/1/1993	Rubber Gloves, Condoms, Rubber Raincoats, and Rubber Footwear	Shenyang New Life Rubber Factory, a/k/a Shenyang Xingsheng (or Xinsheng) (New Life) Rubber Plant, a/k/a Shenyang No. 2 Laogai Detachment, a/k/a Shenyang Dabei Prison, a/k/a Shenyang Model Prison	Active
14	8/6/1993	Hoists	Wuyi Machinery Plant, a/k/a Zhejiang Light Duty Lifting Machinery Factory China, a/k/a Zhejiang Province No. 1 Prison	Active
13	7/8/1993	Hoists	Wulin (or Wuling) Machinery Works, a/k/a Hangzhou Wulin Machinery Plant, a/k/a Hangzhou Wulin Machinery Works, a/k/a Zhejiang Province No. 4 Prison	Active
12	8/14/1992	Asbestos	Hsin Kang Asbestos Mine, a/k/a Sichuan (Szechuan) Pin Chiang Enterprise Company	Active
11	8/3/1992	Electric Fans and Zinc-Coated Wire	Sichuan (Szechuan) Xinsheng (New Life) Labor Factory, a/k/a	Active

			Xinsheng (New Life) Labor Factory	
10	7/17/1992	Sulfuric (Sulphuric) Acid	Da Wei Chemical Factory	Active
9	7/15/1992	Drilling Machines	Zi Gong Machinery Factory, a/k/a Zigong Machinery Factory, a/k/a Sichuan (Szechuan) Zigong Labor Reform Detachment	Active
8	7/15/1992	Auto Parts and Machinery	Ya An Auto Parts Factory, a/k/a Sichuan (Szechuan) Bin-Jiang Enterprises Company	Active
7	6/26/1992	Tea	Miao Chi Tea Farm	Active
6	6/26/1992	Cast Iron Items	Wang Tsang Coal and Iron Factory	Active
5	5/22/1992	Sheepskin and Leather	Qinghai Hide & Garment Factory, a/k/a Qinghai Leather and Wool Bedding and Garment Factory, a/k/a Qinghai Fur and Cloth Factory	Active
4	2/25/1992	Galvanized Pipe	Shandong Laiyang Heavy Duty Machinery Factory	Active
3	12/2/1991	Machine Presses	Xuzhou Forging and Pressing Machine Works	Active
2	11/14/1991	Diesel Engines	Yunnan Machinery, a/k/a Golden Horse (JinMa) Diesel Factory, a/k/a Yunnan 1st Prison	Active
1	11/6/1991	Planing Machines	Xiang-Yang Machinery Plant	Active

Democratic Republic of Congo

1	9/30/2019	Gold	Artisanal Small Mines	Partially Active
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Dominican Republic

1	11/23/2022	Raw sugar and sugar-based products	Central Romana Corporation Limited	Active
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India

1	11/23/1999	Beedie Cigarettes and Other Tobacco Products	Mangalore Ganesh Beedie Works	Active
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Japan

1	06/12/1994	Video Games and Connector Plugs Thereof	Fuchu Prison; Union Kogyo Co., Ltd.	Active
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Malawi

1	11/1/2019	Tobacco	Tobacco produced in Malawi and products containing tobacco produced in Malawi	Partially Active
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Malaysia

5	12/20/2021	Disposable Gloves	Brightway Holdings Sdn Bhd, Laglove (M) Sdn Bhd, and Biopro (M) Sdn Bhd (collectively, Brightway Group)	Active
3	10/21/2021	Disposable Gloves	Maxter Glove Manufacturing Sdn Bhd, Maxwell Glove Manufacturing Berhad, and Supermax Glove Manufacturing	Inactive

1	11/1/2019	Tobacco	Tobacco produced in Malawi and products containing tobacco produced in Malawi	Partially Active
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Mexico

1	10/21/2021	Fresh Tomatoes	Agropecuarios Tom S.A. de C.V. and Horticola Tom S.A. de C.V. and their subsidiaries	Active
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Nepal

1	7/21/1998	Carpets, Hand-Knotted Wool	Kumar Carpet Pvt., Singhe Carpet Pvt., Ltd., Norsang Carpet Industries Pvt., Ltd., Annapurna Carpet, Everest Carpet, Valley Carpet, and K.K. Carpet Industries; Kathmandu.	Partially Active.
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Turkmenistan

1	05/18/2018	Cotton	All Turkmenistan Cotton or products produced in whole or in part with Turkmenistan cotton.	Active
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Zimbabwe

1	9/30/2019	Artisanal Rough Cut Diamonds	Marange Diamond Fields	Active
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Fishing Vessels

5	08/04/2021	Seafood	Fishing Vessel: Hangton No. 112	Active
4	05/26/2021	Seafood	Fishing Vessels owned by Dalian Ocean Fishing	Active

			Co. Ltd.	
3	12/31/2020	Seafood	Fishing Vessel: Lien Yi Hsing No. 12	Active
2	8/18/2020	Seafood	Fishing Vessel: Da Wang	Active
1	5/11/2020	Seafood	Fishing Vessel: Yu Long No. 2	Active