

RECOMMENDED SUBMISSION/ PETITION TEMPLATE

Attn: Forced Labor Division
Trade Remedy Law Enforcement Directorate
Customs and Border Protection
U.S. Department of Homeland Security
1331 Pennsylvania Ave, N.W.
9th floor, Mailstop #1142
Washington, D.C. 20229
United States

Date:

**FORMAL SUBMISSION TO U.S. CUSTOMS AND BORDER PROTECTION TO
EXCLUDE IMPORTS MADE USING FORCED LABOR UNDER SECTION 307 OF THE
U.S. TARIFF ACT, 1930 (19 U.S.C. §1307)**

SUBMITTED UNDER THE REQUIREMENTS OF 19 C.F.R § 12.42.

SUBMITTED BY [Individual/ Organization Name and Contact Details¹]

I. OVERVIEW OF THE SUBMISSION:

This petition is submitted pursuant to Section 307 of the Tariff Act (19 U.S.C. §1307) to request that U.S. Customs and Border Protection issue a Withhold Release Order to halt the importation of [NAME COMMODITY] into the United States.

It is also helpful to provide at the outset of the submission:

- 1) An executive summary of the complaint:
 - The commodity alleged to be tainted with forced labor;
 - The commodity's country of origin;
 - The U.S. importer alleged to be importing the commodity.

- 2) A summary of the evidence presented in the submission, including sources and limitations:
 - Evidence used to substantiate forced labor and the link to U.S. imports.

¹ Providing an e-mail is useful for communication with CBP. CBP may confirm receipt by email and may send follow-up requests.

- Information on how the evidence was obtained. Methods may include first-hand accounts through interviews of workers and witnesses, satellite imagery, photographs from site visits, investigative media reports, official government accounts, customs records, commercial and other databases, international organizations, NGO reports, company documents/contracts of employment, e-mail correspondence, and any other documentation.
- Information on the limitations of the evidence. If site visits or interviews of affected workers were not possible, explain why this could not be done. If connections to specific U.S. imports could not be made, explain why this was the case. Evidence collection may be precluded by a hostile government, the danger of retaliation, state-sanctioned forced labor, lack of access to internment camps, etc.

II. COUNTRY OF ORIGIN AND PRODUCT BACKGROUND:

1) Petitioners should provide information on the product, method of production, the location where it is produced, and whether it is produced in whole or in part with forced labor.

Information on the prevalence of forced labor in the country of origin – and in this sector – is also useful. This information may be found in the State Department’s annual Trafficking in Persons Report country chapters. Petitioners should provide information on the particular region or sector and any available research on the commodity.

2) Petitioners should provide information on the workers mining/manufacturing the commodity.

Provide any available information on workers involved in the production of the goods. Are the workers foreign workers or internal migrants? Are there women and children? Prisoners? Minorities held in detention centers? Sources for this information may include newspapers, NGO or government reports, UN reports, multilateral organization reports, and public statements.

3) Petitioners should also provide information on any steps taken by the government in the country of origin and/or the corporation importing the good.

Has the country/corporation taken steps to curtail forced labor? Is there any pending litigation relating to forced labor in this sector? Are there any criminal cases? If possible, provide CBP with additional context on the history of forced labor in the country of origin and specific examples of government or corporate policy.

III. EVIDENTIARY COMPONENTS OF THE PETITION:

1) Part One: Statement of reasons for the belief that the goods made with forced labor are being imported or are likely to be imported into the United States.

The statement should state:

In light of the information gathered by petitioner and set forth below, there is a reasonable belief that [goods] produced by [manufacturer/producer] in [country] were made using [specify type of **forced labor**], and are being, or are likely to be, imported into the United States.

The statement should include information about the party making the submission to establish its credibility on this subject, as well as the credibility of the evidence presented. For example, "The party making this submission is a [type of organization/mission] located in [city/country] with specific knowledge of the petition contents based on [desk research, field research, worker interviews, investigative reporting, organizational affiliations, or collaborations]."

2) **Part Two: Detailed product description (optional)**²

This section should provide as much information as possible about the product. This information will enable CBP to open an investigation using its own internal trade data and records, including data on entry into the U.S. market. If possible, petitioners should provide evidence that the product is entering the U.S. market: CBP must be persuaded that the product has been, is, or is likely to be, imported into the United States.

At a minimum, this should include:

- Product description – photo, sample, label, other physical description³
- Production location – factory, field, mine, farm, vessel
- Producer – name, business location

To demonstrate likelihood that the good will be imported to the United States, it is helpful, but not mandatory, to provide the name of U.S. buyer or consumer; port of entry, if known; or any information on U.S. consumers of similar goods.

3) **Part Three: Evidence to show the existence of forced labor**

Section 307 of the Tariff Act (19 U.S.C. §1307) defines forced labor as "labor that is **not performed voluntarily** and is performed under threat or **menace of penalty**."

The evidence presented must meet the legal standard for forced labor. Forced labor under Section 307 of the Tariff Act is modeled on the International Labor Organization (ILO) Forced Labor Convention No. 29 definition. The ILO Forced Labor Convention No. 29 defines forced labor as "[a]ll 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."⁴ The definition also includes "indentured labor" and "convict

² Organizations working in the field may be unable to source commercial information on the products, such as bills of lading. This is not a barrier to submitting a petition under Section 307 of the Tariff Act. Based on the information submitted, CBP can identify specific commercial and customs information on the products.

³ *Id.*

⁴ See *ILO Guidelines Concerning the Measurement of Forced Labor*, 20th International Conference of Labor Statisticians (2018) for examples of what can constitute 'menace of penalty' and 'involuntariness.' https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms_648619.pdf.

labor.” Indentured labor under the Tariff Act refers to *debt bondage*⁵ and *peonage*⁶. Peonage is work without pay performed involuntarily to discharge a real or imagined debt. Debt bondage arises from a pledge of personal services of the debtor or someone under the debtor’s control, where either the reasonable value of services is not applied to liquidate the debt, or the length and nature of services is not defined or limited. This typically arises in the context of migrant worker recruitment by brokers and indebtedness for recruitment fees charged.

The facts and evidence presented in the submission should track these legal definitions. Section 307 of the Tariff Act does not encompass child labor that is not forced, or labor obtained by fraud alone. Without evidence of force or coercion, wage theft facts will not suffice. Evidence of poor or exploitative working conditions, while important, will not alone be sufficient. Similarly, evidence of fraud or deception, standing alone, will not suffice to trigger action by CBP.

Because of the similarities between the ILO definition on forced labor and the definition under 307 of the Tariff Act, CBP routinely references ILO standards and indicators of forced labor.⁷ The ILO has developed eleven indicators of forced labor (relied on by CBP to categorize practices that amount to forced labor). The ILO indicators can be used to support a case of forced labor:

- abuse of vulnerability,
- deception,
- restriction of movement,
- isolation,
- physical or sexual violence,
- intimidation and threats,
- retention of identity documents,
- withholding of wages,
- debt bondage,
- abusive working and living conditions, and
- excessive overtime.

A separate law provides for sanctions when the workers are North Korean. Section 321(b) of Countering America’s Adversaries Through Sanctions Act (CAATSA), presumes goods made using North Korean labor are products of forced labor and are prohibited from entry into the United States. Unlike the Tariff Act, petitioners need only prove that North Korean workers are involved in the supply chains of goods entering the United States. For more information, please refer to [DHS’s FAQs on CAATSA and North Korean Forced Labor](#).

This portion of the submission should state the facts showing the product was made by a person under conditions that constitute **forced labor**. The narrative should be supplemented with evidence. Footnotes should link to supporting, publicly available documentation. Petitioners may also submit affidavits and video testimony. For evidentiary documents that are not public, it is best to footnote to

⁵ The term “debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined. See 22 U.S.C. § 7102(7).

⁶ “Peonage” is defined as “a condition of enforced servitude by which the servitor is compelled to labor against his will in liquidation of some debt or obligation, either real or pretended.” See 42 U.S.C. § 1994.

⁷ See Press Conference with CBP Office of Trade (Oct. 1, 2019), <https://www.youtube.com/watch?v=Fb2D4Ebucn8&t=13s>.

an annex and include the materials confidentially. It is also important to note that petitions should be based on information and evidence that is no more than 12-18 months old.



Practice Pointer:

The fact that a worker is restricted from leaving factory or farm premises may not, by itself, amount to forced labor under § 307. Similarly, the fact that a recruiter did not fulfill his/ her promise of a well-paid, decent job may be insufficient to prove forced labor. However, when this restriction of movement or deception is combined with threats of physical violence, psychological threats, non-payment of wages or a loss of rights or privileges (such as a promotion, transfer, or access to new employment), we may conclude that conditions of forced labor exist in a particular case.

For additional information, see the ILO Q&A on Business and Forced Labor.⁸

Strong petitions include multiple, unique sources of credible, verifiable information and evidence corroborating the submission, combining on-the-ground research with published governmental sources.

Evidentiary Standard:

The evidence required to establish the existence of forced labor is “reasonable but not conclusive,” a lower standard than “credible evidence” or “probable cause.” Section 307 of the Tariff Act only requires evidence that would create a *reasonable belief* for CBP that goods imported or likely to be imported into the United States are made with forced labor. Although there is little to no guidance on what this standard actually requires, it is widely understood⁹ that in practice the agency prefers a stronger evidentiary threshold to satisfy its internal clearance processes.

CBP’s public statements indicate that a successful petition rests on multiple consistent sources, including:

- U.S. government reports, such as U.S. Department of Labor and Department of State reports;
- Strong first-hand evidence, such as site visit documentation or witness testimony (affidavits or video testimony);
- Documentary evidence, including photos or maps of the work site illustrating working and/ or living conditions, wage records, personnel lists or other information about shift or roster demographics.

⁸ ILO Q & As on Business and Forced Labor, https://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_FL_FAQ_EN/lang--en/index.htm. Also see ILO Indicators of Forced Labor (2012), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf.

⁹ This assertion is based on discussions with NGOs that have previously submitted petitions under Section 307.

IV. CONCLUSION:

The petition should conclude with the request that CBP determine, pursuant to 19 C.F.R. §12.42, that the [specific good] imported from [country] is being/has been produced wholly or in part with [forced labor, convict labor, indentured labor, forced child labor] and is prohibited from importation into the United States.

Petitioners may also request more creative remedies, such as a demand that corporations publicly reveal their supply chain within a particular period of time, before a WRO is issued.¹⁰ Whether CBP will in fact act on such requests remains to be seen.



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¹⁰ A petition submitted to CBP by the Corporate Accountability Lab and International Rights Advocates in February 2020 proposed an alternative remedy, requesting that CBP require companies to demonstrate they had changed their practices within 180 days of the petition or face an import ban, see <https://static1.squarespace.com/static/5810dda3e3df28ce37b58357/t/5e4607e90bd7ed452a1c8c6e/1581647858374/FINAL+307+PETITION+WITH+EXHIBITS.pdf>. Pursuant to such a request or otherwise, CBP sent a 25-part questionnaire to the cocoa companies named in the petition, asking among other things, GPS coordinates for all suppliers, corrective plans for when child labor is identified, a list of all suppliers of imports into the United States from 2017-19 and audits by certification schemes. See, Ange Aboa, et al., *Exclusive: U.S. Investigates Child Labor in Ivory Coast Supply Chains*, Reuters, Mar. 30, 2020, <https://www.reuters.com/article/us-cocoa-ivorycoast-childlabor-exclusive/exclusive-u-s-investigates-child-labor-in-ivory-coast-cocoa-supply-chains-idUSKBN21H0QW>.