The U.S. Forced Labor Import Ban: A Tool for Raising Labor Standards in Supply Chains?

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Forced labor is rampant across global supply chains. Addressing it at individual sites of production results in a game of whack-a-mole. An effective response must target the structural drivers of the problem: the large firms at the top and middle of supply chains that pressure suppliers at the bottom to cut labor costs in order to remain competitive. In the absence of other U.S. laws that address the structural causes of forced labor, this Article argues that the forced labor import ban in section 307 of the United States Tariff Act may have the potential to be utilized by civil society organizations and the State in top-down ways to hold lead firms at the top and middle of supply chains accountable for facilitating forced labor. Additionally, it may offer a resource to bottom-up efforts by workers in supply chains and the unions that represent them to demand that both brands and suppliers take responsibility for improving working conditions.

This Article makes three contributions. First, it contends that although enforcement of section 307 to date has been sporadic and often influenced by foreign policy concerns, the U.S. government possesses the legal authority under existing statutes and regulations to target enforcement in ways that address the structural drivers of forced labor both from the top down and the bottom up. Second, it offers the only account to date of how civil society actors have used the law's public petition mechanism and other interventions in efforts to direct government resources towards a systemic enforcement approach. Drawing on interviews with key civil society and government actors and a review of both confidential and public petitions, this Article maps advocates' strategies and the government's response, illustrating the government's resistance to enforcing section 307 against lead firms at the top of supply chains and its partial openness to a structural enforcement approach at the middle and bottom. Third, it highlights the urgency of solutions to forced labor that support the exercise of freedom of association by supply chain workers. Here,

[†] John D. Feerick Professor of Law, Fordham University School of Law. I am deeply grateful to all of the advocates and government officials who gave their time for interviews and follow-up conversations (a list of names is in the Appendix). I would like to thank Fordham Law students and former students Sophie Adelman, Benjamin Gygi, Javier Maldonado, Fernando Ramos, and Cristian Vega, and Fordham Law librarian Wilson Holzhaeuser, for their invaluable research assistance. For very helpful comments on the material in this article, much appreciation to Adelle Blackett, James Brudney, Kathleen Claussen, Harlan Cohen, Franz Ebert, Judy Fudge, Desiree LeClercq, Sarah Ludwig, Maayan Niezna, Jennifer (JJ) Rosenbaum, Linda Steinman, and Anasuya Syam, and also to participants in discussions of the ideas I present in this paper at the Bonavero Institute of Human Rights at Oxford University, Bristol University School of Law, Fordham Law School, the International Labor Organization, and the London Labor Law Discussion Group.

it proposes a novel way for unions to draw on section 307 as leverage when they organize in supply chain contexts.

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INTRODUCTION

Forced labor in global supply chains takes many forms. In garment and electronics factories, migrants labor under heavy loads of debt, their visas tied to a single employer who threatens deportation if they complain.[1] Generations of families live and work in bonded labor, producing commodities such as cocoa and sugar.[2] Fishers are captive for the better part of each year on deep-sea tuna boats, where they cannot speak to their family members, get treatment for illness, or escape abuse.[3] Despite the variation across industries, these disparate manifestations of the problem of forced labor often share a common root: the demands of large firms at the top and in the middle of global supply chains for low prices, high quality, and quick turnaround from their suppliers.[4] To be competitive for contracts in contexts where costs other than labor are fixed, some suppliers seek out the cheapest workers and use sub-minimum wages, long hours, and mobility restrictions to lower their contracting bids.[5] In such contexts, forced labor is not an anomaly but a recurring approach to cost-reduction.[6]

To address forced labor and improve labor conditions in a setting where the drivers of exploitation are structural requires an equally structural response. This Article identifies two directions in which such a solution must operate. The first is top-down. Scholarship on strategic enforcement strategies in response to forced labor in supply chains has generally focused on how to hold brands and retailers at the top of the chain responsible for the pricing and contracting practices that drive forced labor.[7] In the face of the complexity of contemporary

1. *See, e.g.*, Elizabeth Paton, *A Close Look at a Fashion Supply Chain Is Not Pretty*, N.Y. TIMES (July 28, 2020), https://www.nytimes.com/2020/07/28/style/malaysia-forced-labor-garment-workers.html (discussing forced labor among migrant workers in Malaysian garment export factories).

2. For examples of bonded labor in the sugar industry, see, Megha Rajagopalan, *The Brutality of Sugar: Debt, Child Marriage and Hysterectomies*, N.Y. TIMES (Mar. 24, 2024), https://www.nytimes.com/2024/03/24/world/asia/india-sugar-cane-fields-child-labor-hysterectomies.html; INT'L LAB. ORG., CHILD LABOUR IN THE PRIMARY PRODUCTION OF SUGARCANE 15–18 (2017), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@ipec/documents/publication/wcms_ipec_pub_29635.pdf; and in the cocoa industry, see, for example, Corp. Accountability Lab & Afr. L. Found., *CAL and AFRILAW Document Widespread Forced Labor in the Nigerian Cocoa Sector*, CORP. ACCOUNTABILITY LAB BLOG (Jan. 17, 2024) [hereinafter CAL & AFRILAW, *Nigerian Cocoa Sector*], https://corpaccountabilitylab.org/calblog/2024/1/5/cal-and-afrilaw-document-widespread-forced-labor-in-the-nigerian-cocoa-sector. For a discussion of forced labor in cocoa, sugar, and agricultural products generally, see Nicole Tichenor Blackstone, Edgar Rodríguez-Huerta, Kyra Battaglia, Bethany Jackson, Erin Jackson, Catherine Benoit Norris & Jessica L. Decker Sparks, *Forced Labour Risk Is Pervasive in the US Land-Based Food Supply*, 4 NATURE FOOD 596, 597–600 (2023).

3. *See generally* DEPT. OF STATE & NAT'L OCEANIC AND ATMOSPHERIC ADMIN., REPORT TO CONGRESS: HUMAN TRAFFICKING IN THE SEAFOOD SUPPLY CHAIN (2020) [hereinafter DEPT. OF STATE & NOAA, REPORT TO CONGRESS], https://media.fisheries.noaa.gov/2020-12/DOSNOAAReport_HumanTrafficking.pdf?null (describing human trafficking and forced labor in the fishing sector).

4. *See infra* notes 52–57 and accompanying text.

5. *See infra* text accompanying notes 64–67.

6. Genevieve LeBaron, *The Role of Supply Chains in the Global Business of Forced Labour*, 57 J. SUPPLY CHAIN MGMT. 29, 34 (2021); *see infra* notes 57–59 and accompanying text.

7. *See infra* note 60 and accompanying text.

global supply chains, this Article argues that targeting lead firms[8] at the top is essential, yet insufficient. Drawing on recent work demonstrating the increasing role that large supplier firms in the country of production play in perpetuating forced labor, it contends that a top-down structural solution should target these entities in the middle of supply chains as well. The second aspect of the solution is bottom-up. The Article emphasizes the need for structural interventions to support workers and their representatives at the bottom of supply chains as they organize to hold their direct employers and powerful firms higher in the chain accountable for establishing working conditions that comport with their human rights and allow them to live with dignity.

United States domestic law offers little to support efforts to advance a systemic response to forced labor in global supply chains.[9] U.S. labor and employment law generally does not hold U.S. firms liable for the conditions under which their goods are produced abroad.[10] The Supreme Court has curtailed the scope for redress under statutory tort law, even when U.S. firms' policies have a demonstrable connection to serious harms to the workers overseas who make their products.[11] The Trafficking Victims Protection Reauthorization Act creates penalties against firms that benefit from forced labor in supply chains, but recent Supreme Court cases have raised doubts about its application where the violations occur outside of the United States.[12] While some countries in Europe—and, very recently, the European Union as a whole—are moving toward a system that requires lead firms to carry out "due diligence" to ensure that their supply chains do not violate certain human and environmental rights,[13] the United States has resisted this trend.[14] Meanwhile, foreign firms and unions lie entirely outside the jurisdiction of U.S. labor and employment law.[15]

In the absence of meaningful civil penalties accessible to those suffering the consequences of abuse, this Article asks whether a recent development in U.S. trade law offers a resource that the government, advocates, and unions could use to hold lead firms and major suppliers accountable for forced labor in their supply chains. Section 307 of the U.S. Tariff Act of 1930 creates a ban on the importation of products made with forced labor and prison labor ("§ 307" or "import ban").[16] For many years, a loophole made the import ban difficult to

8. "Lead firms" include brands and retailers at the top of supply chains, usually multinational corporations headquartered in the Global North. Lead firms are also referred to as "buyers" in the supply chain literature.

9. *See infra* Subpart.I.B.

10. *See infra* note 76 and accompanying text.

11. *See infra* note 77 and accompanying text.

12. *See infra* notes 78–79 and accompanying text.

13. *See infra* note 74 and accompanying text.

14. *See infra* note 75 and accompanying text.

15. *See infra* note 76 and accompanying text.

16. Tariff Act of 1930 § 307, 19 U.S.C. § 1307.

apply, but in 2015, Congress amended the Act to close it.[17] Section 307 allows the U.S. government to stop goods from entering the country on the reasonable suspicion that they or their components have been made using forced labor.[18] It is enforced by the Trade Remedy Law Enforcement Directorate of United States Customs and Border Protection ("CBP"), an agency within the Department of Homeland Security ("DHS").[19] Section 307 and related laws also permit the imposition of civil and criminal penalties on firms that seek to import goods made with forced labor and authorize the government's use of importer auditing tools such as supply chain surveys.[20] The United States is the only country in the world currently actively enforcing a forced labor import ban and one of the few that has such a law on the books.[21]

Section 307 could easily be dismissed or overlooked as a legal resource for advocates and movements seeking to drive structural change in labor conditions in global supply chains. The law was enacted in 1930 as a mechanism to protect U.S. firms and workers from competition due to imports from countries reliant on forced and prison labor.[22] It is enforced by the U.S. border patrol agency.[23] The imposition of a ban has the potential to close down production at a supplier facility, inflicting economic harm on workers.[24] Enforcement to date has been

17. Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. No. 114-125, 130 Stat. 122, 239 (2016) (codified as amended at 19 U.S.C. § 4301); *see infra* notes 89–92 and accompanying text.

18. 19 C.F.R. § 2.42(e) (2024).

19. *Forced Labor*, U.S. CUSTOMS & BORDER PROT. (Mar. 17, 2025), https://www.cbp.gov/trade/forced-labor; U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-106, FORCED LABOR IMPORTS: DHS INCREASED RESOURCES AND ENFORCEMENT EFFORTS, BUT NEEDS TO IMPROVE WORKFORCE PLANNING AND MONITORING 7 (2020) [hereinafter GAO, FORCED LABOR IMPORTS].

20. *See infra* Subpart.II.C.2 (describing civil penalties as a tool to enforce § 307); *infra* Subpart.II.C.3 (describing criminal penalties as a tool to enforce § 307).

21. Canada and Mexico have recently adopted such bans, as Chapter 23.6(1) of the US-Mexico Canada Agreement (USMCA) required them to do. United States-Mexico-Canada Agreement ch. 23 art. 23.6(1), July 1, 2020. Both are new and neither country has yet actively enforced them. *See* Canada-United States-Mexico Agreement Act, S.C. 2020, c 1 (Can.), as amended by the Fighting Against Forced Labor and Child Labor in Supply Chains Act, S.C. 2023, c 9 (Can.), https://laws.justice.gc.ca/PDF/F-10.6.pdf (amended in 2024); Acuerdo que Establece las Mercancías Cuya Importación Está Sujeta a Regulación a Cargo de la Secretaría del Trabajo y Previsión Social, Diario Oficial de la Federación [DOF] 17-02-2023 (Mex.) [hereinafter, Forced Labor Regulation], https://www.dof.gob.mx/nota_detalle.php?codigo=5679955&fecha=17/02/2023#gsc.tab=0. Regarding non-enforcement to date of Canada's law, see Alexander Panetta, *Canada's Failure to Block Forced-Labour Imports Draws U.S. Scrutiny*, CBC (June 5, 2024, 1:00 AM PDT), https://www.cbc.ca/news/world/canada-us-forced-labour-senator-1.7224599; Regarding non-enforcement of Mexico's Law, see Elizabeth Rosales, *Mexico is Only USMCA Country Not to Investigate Forced Labor; Citizen Request for Action Rejected*, EMPOWER (Jan. 23, 2024), https://empowerllc.net/en/2024/01/23/mexico-usmca-forced-labor.

22. CONG. RSCH. SERV., R46631, SECTION 307 AND U.S. IMPORTS OF PRODUCTS OF FORCED LABOR: OVERVIEW AND ISSUES FOR CONGRESS 3 (Feb. 1, 2021).

23. *See id.* at 1.

24. *See, e.g.*, *Using Master's Tools to Dismantle the Master's House: 307 Petitions as a Human Rights Tool*, CORP. ACCOUNTABILITY LAB (Aug. 31, 2020), https://corpaccountabilitylab.org/calblog/2020/8/28/using-the-masters-tools-to-dismantle-the-masters-house-307-petitions-as-a-human-rights-tool; THE REMEDY PROJECT, PUTTING THINGS RIGHT: REMEDIATION OF FORCED LABOUR UNDER THE TARIFF ACT 1930, at 4 (Apr. 28, 2023), https://static1.squarespace.com/static/5f846df102b20606387c6274/t/644b403dcced135fba5c64c2/1731461346631/TRP+-+CBP+Report+-+Final+-+20230428.pdf

opaque and often problematic.[25] Furthermore, CBP disavows a systemic approach to addressing forced labor.[26] As a customs agency, CBP emphasizes that it is responsible for barring noncompliant goods at the border; its remit is not protecting workers from forced labor or addressing its structural causes.[27] Instead, CBP represents itself as having a complaint-driven, case-by-case approach to implementation of the law, rather than one that is strategic as to diminishing forced labor across a supply chain.[28] Its enforcement record over the past decade reveals a focus on barring Chinese goods that is far out of proportion to the percentage of global forced labor that arises in China,[29] raising the suspicion that its decisions are highly responsive to foreign policy concerns.[30]

Nevertheless, this Article argues that—given how few other legal tools are available—it would be a mistake to walk away from section 307 without fully exploring its potential. One question is whether the State and advocates can deploy section 307 in ways that directly target brands and retailers at the top of supply chains and major suppliers in the middle (which this Article refers to as the "top-down approach"). Another is whether the law offers a bottom-up resource to workers and unions organizing in countries of production (which this Article refers to as the "bottom-up approach").

The top-down approach involves enforcement of the law against brands and retailers in the United States and large suppliers in countries of production where there is evidence of recurring forced labor in their supply chains. Under a top-down approach, target firms are chosen because of their market power in a particular industry and country, and thus for the potential for systemic impact on forced labor in that supply chain if they change their economic behavior. The goal is for CBP to bar the firms' goods that are made with forced labor from entering the United States, which it does by issuing a Withhold Release Order ("WRO"), and to use the other tools at its disposal (such as supply chain surveys and penalties) to incentivize those firms to make changes in their practices that drive forced labor. In turn, this would affect the behavior of other actors that profit from interactions with these firms, including smaller suppliers, recruiters, accounting firms, and investors.

By contrast, in the bottom-up approach, unions and other organizations in the country of production would be the key actors advocating on behalf of the

25. *See infra* notes 39, 114–120 and accompanying text.

26. Virtual Interview with Eric Choy, Exec. Dir., Trade Remedy L. Enf't Directorate, U.S. Customs & Border Prot. (Aug. 30, 2024, 10:00 AM) [hereinafter Interview with Eric Choy, Aug. 30, 2024] (for all interviews cited in this article, job titles reflect the interviewee's position at the time the interview took place); THE REMEDY PROJECT, *supra* note 24, at 12; *see infra* text accompanying note 177.

27. THE REMEDY PROJECT, *supra* note 24, at 12.

28. *See infra* text accompanying note 175.

29. Sebastian Shehadi & Ben van der Merwe, *Why Doesn't Forced Labour in Supply Chains Matter to Western Governments?*, INV. MONITOR (July 6, 2021), https://www.investmentmonitor.ai/features/forced-labour-supply-chainswestern-governments.

30. *See infra* notes 182–185 and accompanying text.

workers facing forced labor, rather than the U.S. government. Here, unions would draw on section 307 as a source of leverage to negotiate enforceable agreements that require lead firms and suppliers to take responsibility for addressing forced labor and improving working conditions at the bottom of supply chains. The union would prepare a petition and share it with the firms it sought to negotiate with, hoping to conclude such an agreement before having to file the petition with CBP. If it did file and thus engage formally with the law, it would work with CBP to approach the section 307 enforcement process in ways that incentivized a worker-driven agreement.

This Article first asks whether CBP has the legal authority and discretion to pursue these approaches under section 307 and related regulation, or whether Congress would need to amend section 307 to permit them to do so. The core tools at CBP's disposal include the ability to impose a ban on the importation of goods on the reasonable suspicion that they are produced with forced labor, to assess civil penalties, and to demand information from firms that seek to import goods into the United States.[31] Homeland Security Investigations (HSI), a sister agency within the DHS, has the power to initiate criminal investigations of firms that benefit from forced labor and to work with the Justice Department on prosecutions of such firms.[32] The Article reviews the statutory and regulatory authority underlying each of these mechanisms and concludes that the agency already has the authority it needs to both pursue a top-down strategic enforcement approach and to deploy its tools in support of the bottom-up approach.

Assuming CBP has the authority to take these actions, does it have the incentive? One shadow that hangs over any discussion of the future of section 307 is CBP's slowdown in enforcement toward the end of the Biden administration, discussed in more detail below.[33] The agency issued no WROs in 2023 and three in 2024, compared to 39 between 2016-2022.[34] During this time, it has shifted its attention to enforcing the new Uyghur Forced Labor Prevention Act (UFLPA), a forced labor import ban law that applies only to the products of Uyghur labor in China.[35] Another open question is how CBP will approach the import ban during the second Trump presidency. During the first Trump administration, CBP actively enforced section 307, establishing the Forced Labor Division within the Office of Trade and imposing over half of the WROs issued since the lifting of the consumptive demand requirement. What

31. *See infra* Subparts.II.C.1, II.C.2 (discussing Withhold Release Orders and Findings and civil penalties); *infra* note 111 (discussing questionnaires).

32. *See infra* text accompanying notes 113–115.

33. *See infra* Subpart.II.B.

34. *Withhold Release Orders and Findings Dashboard*, U.S. CUSTOMS & BORDER PROT. (Mar. 18, 2025) [hereinafter CBP, *WROs and Findings*], https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings (showing forced labor enforcement actions by year from 1991–2023); *see infra* notes 117–120 and accompanying text.

35. *See infra* note 121 and accompanying text.

will happen in the second Trump administration is as yet unknown.[36] Assuming CBP does return to the regular application of section 307, now or under a subsequent president, serious questions remain about whether the agency will be willing to pursue strategic enforcement with the goal of having a systemic impact on forced labor in supply chains.

One indication of what CBP may do in the future lies in its response to petitions brought by advocates under section 307 to date that have requested the imposition of WROs against targets chosen for their potential to have systemic impact on forced labor. This Article offers the only published account of what advocates themselves have sought to achieve by engaging with section 307. The analysis draws on confidential and public legal filings, advocacy documents, and interviews conducted by the author in 2023 and 2024 with twenty one advocates at civil society organizations and government officials selected for their insight into the functioning of the import ban mechanism, together with other primary and secondary sources.[37]

The Article first focuses on the top-down approach, examining the outcome of petitions filed by advocates as part of larger efforts to pressure lead firms in the U.S. and major suppliers abroad to make changes in their business practices. Where advocates have sought WROs against brands and retailers at the highest level of supply chains, CBP has declined to respond.[38] The agency has stated that it would not be willing to take this step unless it has evidence that the brand specifically promoted forced labor, for example, to suppress prices.[39] But with regard to key actors in the middle of supply chains, its reaction has been somewhat more positive. In several instances from 2019 through 2022, CBP imposed bans on major suppliers in countries of production, following petitions that advocates filed against firms they identified as having the potential to structurally impact labor conditions.[40] In the face of the agency's rejection of strategic enforcement at the top and its partial response to strategic enforcement at the middle, the Article discusses ways that advocates on their own have continued to seek to leverage the impact of section 307 to address structural forced labor.

Questions remain about whether the top-down approach is normatively desirable, particularly from the perspective of workers facing forced labor. On balance, given the paucity of other tools in the field, this Article concludes that the top-down approach is worth further exploration by both the agency and advocates alike. But there are serious concerns about CBP's lack of engagement

36. This Article draws on interviews conducted between August 2023 and September 2024 and discusses advocacy strategies and government enforcement of section 307 during the first Trump administration (2017–2020) and the Biden administration (2021–2024). It does not include advocates' or government perspectives on section 307 after the election of Donald Trump as President in November 2024.

37. The Appendix lists the interviewees.

38. *See infra* notes 197–199 and accompanying text.

39. Interview with Eric Choy, Aug. 30, 2024, *supra* note 26.

40. *See infra* notes 225–233 and accompanying text.

with workers in its usual enforcement processes and about the potential negative impact of enforcement on workers as a result. Advocates have repeatedly criticized the agency for failing to consult workers in its investigations, when deciding whether to impose or lift WROs, and in crafting remedies.[41] If the top-down approach is to serve the goals of the people actually experiencing forced labor, a much greater role for workers on all of these fronts is essential.

With the concerns of workers foremost in mind, this Article turns to an alternative possibility for the use of section 307 from the bottom-up. The approach it sets out is largely untested and therefore is framed as a proposal. Under such a strategy, unions and their allies would seek to use section 307 to advance worker organization at the bottom of supply chains. This would require that unions engage with the law differently than traditional advocates do. Rather than petitioning in contexts chosen for the severity of forced labor (as advocacy groups do[42]) and pursuing worker-centered solutions once a ban is in place (as advocacy groups have begun to try[43]), a union and its allies would choose a context in which to petition because it was a location where workers were organizing and conditions reflected at least some of the indicators of forced labor. The goal would be to use the threat of filing the petition to bring key supply chain actors to the table to negotiate an enforceable agreement that would address labor abuses at the facility, thus making it unnecessary to engage with CBP at all.

There appear to have been no section 307 petitions yet filed to explicitly achieve the goal of advancing bargaining between workers and their employers or firms higher up the supply chain. Nor has there been any indication in published scholarship or policy papers that this might be done.[44] However, in

41. THE REMEDY PROJECT, *supra* note 24, at 11–12; Letter from Corp. Accountability Lab, Glob. Lab. Just., Hum. Trafficking Legal Ctr., Liberty Shared, Solidarity Ctr., & Verité, to Alejandro Mayorkas, Sec'y of the Dep't of Homeland Sec. 6 (Mar. 4, 2021) (making recommendations on improved approaches to § 307 enforcement) [hereinafter Letter to Sec. Mayorkas], https://htlegalcenter.org/wp-content/uploads/Letter-to-Secretary-Mayorkas-March-4-2021.pdf; Neha Bhatia, Reaching for Remedy: Improving Remediation Under the U.S. Forced Labor Import Ban 24 (policy analysis completed to fulfill the requirements of the Master's Degree in Public Policy, Kennedy School of Government, Harvard University) (Apr. 2, 2024) (on file with author) [hereinafter Bhatia, Reaching for Remedy] (concluding, based on interviews with advocates and CBP officials, that "[a]n inherent shortcoming of § 307 is worker dialogue and engagement is not built into its design and the tool can be deployed without adequate investigation of downstream effects on workers.").

42. Almost all section 307 petitions filed to date of which I am aware have this characteristic, whether they are service-oriented or strategic.

43. See *infra* Subpart.IV.B.2, for a discussion on the Central Romana case study.

44. The only detailed discussion of this of which I am aware of is in my own unpublished working paper, Jennifer Gordon, The US Forced Labor Import Ban as a Tool to Raise Labor Standards in Supply Chain Contexts: Strategic Approaches to Advocacy (Mar. 4, 2024) [hereinafter Gordon, Strategic Approaches] (unpublished manuscript), https://ssrn.com/abstract=475672, which reports back to advocates on my research into their strategies and begins to lay out how it would look to use § 307 to advance worker organizing. This Article draws on that paper, particularly in Part III.

Desiree LeClercq has also suggested that freedom of association is essential to addressing forced labor and that the US government should approach import bans in ways that advance that right. Desiree LeClercq,

two recent instances that this Article presents as case studies, advocates have pressed CBP to take bottom-up solutions to forced labor into account in its decisions about lifting WROs already in place. In response, during the Biden administration, CBP expressed an interest—surprising to some—in the potential of worker organization and bargaining at the bottom of supply chains to remediate forced labor. At the time, CBP indicated that it would be open to taking into account agreements resulting from worker organizing in deciding whether to impose a ban in the first instance or lift one already in place.[45]

Even under an administration that has declared that its trade policy is "worker-centered," the bottom-up approach has its own risks.[46] However, the Article concludes here too that unions and their allies may want to consider this strategy when organizing in supply chain contexts where working conditions meet the definition of forced labor. In countries where freedom of association and collective bargaining through independent unions is permitted, successful organizing allows workers to address exploitation in ways that are democratic, reflect their own life goals, and include effective mechanisms for enforcement.[47] In global supply chains, however, even a collective bargaining agreement is unlikely to deliver sustained improvements if it only binds unions and individual suppliers.[48] The brands, retailers, and major suppliers that effectively set labor prices through their contracting practices must also make enforceable commitments to support suppliers that end forced labor through bargaining.[49] The possibility of insuring against the stoppage of goods at the border under section 307 may offer the rare incentive that can bring these lead firms to the table.[50]

This Article proceeds as follows. Part I first explains the structural drivers of forced labor in supply chains and the corresponding need for a structural response, including top-down (targeting powerful firms at the top and middle of supply chains) and bottom-up (supporting worker organizing at the bottom); it then describes the paucity of U.S. domestic law that serves these ends. Part II asks whether the statutory and regulatory framework of section 307 of the U.S.

Forced Labor in International Economic Law: U.S. and Chinese Initiatives, and the Persistent Silence of the Exploited, INT'L ECON. L. & POL'Y BLOG (Aug. 14, 2022, 1:21 PM) [hereinafter LeClercq, *Forced Labor in International Economic Law*], https://ielp.worldtradelaw.net/2022/08/forced-labor-in-international-economic-law-us-and-chinese-initiatives-and-the-persistent-silence-of-.html; Desiree LeClercq, *Three Reasons the Biden Administration Should Stop Fetishizing Forced Labor*, HILL (May 12, 2023, 3:30 PM ET), https://thehill.com/opinion/civil-rights/4000056-three-reasons-the-biden-administration-should-stop-fetishizing-forced-labor.

45. *See infra* note 147 and accompanying text.

46. For a discussion of the Biden administration's worker-centered trade policy, see infra note 303.

47. In countries where forced labor is state-imposed, the right to freedom of association is unlikely to be protected. By contrast, privately-imposed forced labor—the focus of this Article—occurs in supply chain production across a range of countries, some of which do guarantee the right to freedom of association and collective bargaining. *See* discussion *infra* Part.IV.

48. *See infra* Subpart.IV.A.

49. *See infra* Subpart.IV.A.

50. *See infra* Subpart.IV.C.

Tariff Act gives the agency the power to enforce the law in ways that could fill that gap. It sets out the law, describes CBP's limited enforcement strategy to date, and argues that the agency has the legal authority to use the statutory and regulatory tools at its disposal to target forced labor in a structural way. Part III documents the ways that advocates have recently sought to persuade the agency to take a top-down strategic approach to enforcement of section 307 against key brands, retailers, and suppliers in certain supply chains; it then maps the agency's response and sets out the approaches that advocates have turned to with regard to section 307 in the face of agency inaction. Part IV argues for the importance of worker organizing in response to labor abuses at the bottom of supply chains and the concurrent need for lead firms to agree to continue to source from suppliers that eradicate forced labor. It describes recent efforts by advocates to move CBP towards increasing engagement with worker organizing efforts in its enforcement of section 307 and CBP's stated interest in response to these efforts. Part IV then proposes an alternative way for unions in the country of production and their allies to engage with section 307, short of filing a petition with CBP, seeking to incentivize lead and major supplier firms to bargain with such unions in the shadow of the law. Part V concludes.

I. FORCED LABOR IN SUPPLY CHAINS: CAUSES AND RESPONSES

Forced labor is defined by the International Labor Organization ("ILO") as "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."[51] The phenomenon is widespread, affecting an estimated 27.6 million people around the world as of 2021.[52] The ILO's list of indicators of forced labor includes abusive living and working conditions, excessive overtime, withholding of wages, intimidation and threats, physical and sexual violence, debt bondage, and restriction of movement.[53] As this list indicates,

51. *Forced Labour Convention, 1930 (No. 29)*, INT'L LAB. ORG., https://www.ilo.org/media/21026/download (last visited Mar. 21, 2025).

52. INT'L LAB. ORG., WALK FREE & INT'L ORG. MIGRATION, GLOBAL ESTIMATES OF MODERN SLAVERY: FORCED LABOR AND FORCED MARRIAGE 2 (2022), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@ipec/documents/publication/wcms_854733.pdf. Methods for counting the number of people subject to forced labor are disputed. For an account of the ways (and reasons) that statistics and methodologies to measure forced labor have been manipulated and misused, see generally LINDSEY BEUTIN, TRAFFICKING IN ANTIBLACKNESS: MODERN DAY SLAVERY, WHITE INDEMNITY, AND RACIAL JUSTICE ch. 4 (2023). For a critique of the lines drawn between free and unfree labor for the purpose of estimating the number of people experiencing forced labor, see generally Jens Lerche, *The Unfree Labor Category and Unfree Labor Estimates: A Continuum Within Low-End Labor Relations* (Manchester
Papers in Pol. Econ., Working Paper No. 10, 2011), https://eprints.soas.ac.uk/14855/1/Lerche_unfree_working_paper_2011.pdf.

53. INT'L LAB. OFF., ILO INDICATORS OF FORCED LABOUR 3 (2012), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_203832.pdf ("The indicators represent the most common signs or 'clues' that point to the possible existence of a forced labor case.").

forced labor shares characteristics with many other forms of labor exploitation.[54] Likewise, there is not a clear dichotomy between "forced laborers" and other vulnerable workers. Workers in precarious job markets move in and out of forced labor over time.[55] The vast majority of the world's forced labor occurs at the hands of private employers (rather than being state-sponsored),[56] and is tied to global supply chains.[57] This Article examines responses to recurring private forced labor within supply chain contexts.[58]

54. *See* LeBaron, *supra* note 6, at 33–34; Jens Lerche, *A Global Alliance Against Forced Labour? Unfree Labour, Neo-Liberal Globalization and the International Labour Organization*, 7 J. AGRARIAN CHANGE 425, 431–36 (2007); Hila Shamir, *A Labour Paradigm for Human Trafficking*, 60 UCLA L. REV. 76, 82, 110 (2012) [hereinafter Shamir, *Labor Paradigm*]; Francis Portes Virginio, Brian Garvey, Luís Henrique da Costa Leão & Bianca Vasquez Pistório, *Contemporary Slave Labor on the Amazonian Frontier: The Problems and Politics of Post Rescue Solidarity*, 19 GLOBALIZATIONS 937, 944 (2022).

55. *See* LeBaron, *supra* note 6, at 33; Shamir, *Labor Paradigm*, *supra* note 54, at 111–12; Virginio et al., *supra* note 54, at 940.

56. The ILO estimates that only 14% of the world's forced labor is state-sponsored, representing 3.9 million people. 63% (17.3 million) are in private forced labor, and 23% (6.3 million) are in forced commercial sexual exploitation. INT'L LAB. ORG. ET AL., *supra* note 52, at 25. Importantly, forced labor is not isolated in the Global South. The ILO estimates that "more than half of all forced labour occurs in either upper-middle income or high-income countries." *Id.* at 29. Although the distinction between private and state-sponsored forced labor is an important one, see *supra* note 47, the phrase "private forced labor" wrongly suggests that states are uninvolved in situations where the forced labor occurs at the hands of companies rather than the government.(CITE) States play central roles in facilitating and enabling forced labor in the private sector, for example by creating migration regimes that restrict worker mobility, denying workers freedom of association and other fundamental rights, and failing to enforce baseline workplace standards. Genevieve LeBaron & Nicola Phillips, *States and the Political Economy of Unfree Labor*, 24 NEW POL. ECON. 1, 2 (2019).

57. GENEVIEVE LEBARON, NEIL HOWARD, CAMERON THIBOS & PENELOPE KYRITSIS, CONFRONTING ROOT CAUSES: FORCED LABOR IN GLOBAL SUPPLY CHAINS 46–47 (2018), https://cdn-prod.opendemocracy.net/media/documents/Confronting_Root_Causes_Forced_Labour_In_Global_Supply_Chains.pdf; Franz Christian Ebert, Francesca Francavilla & Lorenzo Guarcello, *Tackling Forced Labor in Supply Chains: The Potential of Trade and Investment Governance*, *in* 2 INTEGRATING TRADE AND DECENT WORK: THE POTENTIAL OF TRADE AND INVESTMENT POLICIES TO ADDRESS LABOUR MARKET ISSUES IN SUPPLY CHAINS 103, 104–06 (Marva Corely-Coulibaly, Franz Christian Ebert & Pelin Sekerler Richiardi eds., 2023), https://www.ilo.org/publications/integrating-trade-and-decent-work-volume-2-potential-trade-and-investment.

58. I focus exclusively on private rather than state-sponsored forced labor in this Article because the potential strategic responses to forced labor differ considerably between the two. To be sure, the basic economics are the same: lead firms in a supply chain benefit financially from the suppression of labor costs that result from forced labor, whether imposed by the state or not. However, with regard to strategies for intervention, where there is state-imposed forced labor, worker engagement will be difficult or impossible. Efforts to challenge individual suppliers will be futile because their labor practices are facilitated by the state and broadly affect the market. Enforcement occurs against entities, but its primary target is the government. Lead firms are likely to be encouraged to abandon the context altogether until the government changes its policy, rather than being cautioned not to "cut and run" as is the usual demand in private contexts. For all of these reasons, a discussion about top-down and bottom-up structural responses to forced labor in supply chains is more relevant as to the private sector than in state-imposed contexts.

A. KEY CAUSES OF STRUCTURAL FORCED LABOR AND POINTS OF INTERVENTION

It is by now well-established that the purchasing practices of brands and retailers can facilitate forced labor.[59] Supply chain structures are complex, varying by firm, industry, and country. Where there are relatively few lead firms at the top of the chain and many suppliers at the bottom—a market structure that economists refer to as a monopsony—brands and retailers have tremendous power to shape the conditions under which production takes place far below them in the chain.[60] Lead firms pursue different contracting strategies. Some build longer-term relationships with suppliers and invest in improvements over time.[61] Others, however, spread orders between many suppliers in different locations, requiring them to compete against each other on price and timing.[62] Firms in the latter group demand the lowest possible prices from their suppliers, place high-volume orders on short deadlines with little advance notice, and often withhold payment until delivery of the finished goods.[63] In contexts where the price of inputs such as raw materials and machinery is beyond suppliers' control,

59. This view that forced labor is often facilitated by the global economics of supply chain production stands in contrast to localized or individualized explanations, such as that forced labor is rooted in intractable local cultural practices or that it is the product of bad actors who are best targeted through a criminal law regime. A number of scholars have argued persuasively for this economic model of forced labor in supply chains. *See, e.g.*, LEBARON ET AL., *supra* note 57, at 6–7; Shamir, *Labor Paradigm*, *supra* note 54, at 80.

60. ASHOK KUMAR, MONOPSONY CAPITALISM: POWER AND PRODUCTION IN THE TWILIGHT OF THE SWEATSHOP AGE 31, 189–94 (2020); DEV NATHAN, SHIKHA SILLIMAN BHATTACHARJEE, S. RAHUL, PURUSHOTTAM KUMAR, IMMANUEL DAHAGHANI, SUKHPAL SINGH, PADMINI SWAMINATHAN, REVERSE SUBSIDIES IN GLOBAL MONOPSONY CAPITALISM: GENDER, LABOUR, AND ENVIRONMENTAL INJUSTICE GARMENT VALUE CHAINS 51–53, 67–68 (2022). While most of the literature on monopsony in supply chains has emphasized its detrimental effect on workers, Laura Boudreau and co-authors argue that under certain circumstances, monopsony power may enable long-term relationships between lead firms and suppliers, with positive effects on labor conditions. They contend that whether monopsony power in lead firms is beneficial or detrimental to workers at the bottom of supply chains depends on the industry, country, and contracting model pursued by the lead firm, among other factors. Laura Boudreau, Julia Cajal-Grossi & Rocco Macchiavello, *Global Value Chains in Developing Countries: A Relational Perspective from Coffee and Garments*, 37 J. ECON. PERSPECTIVES 59, 71–76 (2023).

61. This model is sometimes called relational contracting. Julia Cajal-Grossi, Rocco Macchiavello & Guillermo Noguera, *Buyers' Sourcing Strategies and Suppliers' Markups in Bangladeshi Garments*, 138 Q.J. ECON. 2391, 2392 (2023).

62. This model is sometimes called spot sourcing or spot purchasing. *Id.* For a comparison of relational and spot sourcing strategies, see Boudreau et al., *supra* note 60, at 70. On the relationship between a spot sourcing strategy and labor violations, see Mark Anner, Jennifer Bair & Jeremy Blasi, *Towards Joint Liability in Global Supply Chains: Addressing the Root Causes of Labor Violations in International Subcontracting Networks*, 35 COMPAR. LAB. L. & POL'Y J. 1, 8–14 (2013); Jeremy Blasi & Jennifer Bair, *An Analysis of Multiparty Bargaining Models for Global Supply Chains* 10–11 (Int'l Lab. Off. Conditions of Work and Employment Series, Paper No. 105, 2019), https://www.ilo.org/media/412791/download; LEBARON, ET AL., *supra* note 57, at 41–43; LeBaron, *supra* note 6.

63. The devastating effects of such purchasing practices was particularly evident when brands canceled pending orders en masse at the onset of the Covid pandemic and refused to pay suppliers for materials already bought or work done to fulfill the orders. The result of cancellations in March 2020 alone was $3.19-5.79 billion owed in wages to workers. Mark Anner, *Power Relations in Global Supply Chains and the Unequal Distribution of Costs During Crises: Abandoning Garment Suppliers and Workers During the COVID-19 Pandemic*, 161 INT'L LAB. REV. 59 *passim*. (2022).

suppliers may respond to these pressures by seeking to reduce labor costs. Common tactics include paying very low wages and withholding wage payments, demanding long working hours, and using harassment and violence to extract increased production.[64] Many suppliers hire migrants, both because they can often be paid less than local workers and because recruitment debt and visas tied to a single employer-sponsor limit their ability to protest or leave.[65] They locate worksites in unsafe structures and house workers in substandard dormitories, restricting their movement to maximize their availability for overtime on demand.[66] These business models map directly onto the indicators of forced labor. They are particularly common in global supply chains in food and other commodities, and in garment, electronics, and other manufacturing sectors.[67]

While supply chain scholars have largely focused on how the contracting practices of brands and retailers incentivize labor exploitation, in some sectors, the concentration of power within large supplier firms in countries of production is also an important part of the story.[68] While such major suppliers still must comply with the demands of the lead firms to which they sell, they also have the market power to replicate those pressures in their dealings with the firms that they source from lower in the chain. Furthermore, in addition to purchasing from other companies, some are themselves direct producers, managing factories, mines, plantations, and other sites marked by conditions of severe forced labor. Recent consolidation among suppliers in industries from garments to electronics has increased the power of these actors.[69] Where these dynamics are in play, a

64. Mark Anner, *Predatory Purchasing Practices in Global Apparel Supply Chains and the Employment Relations Squeeze in the Indian Garment Export Industry*, 158 INT'L LAB. REV. 705, 706–08 (2019); LeBaron, *supra* note 6 ("[F]orced labor is merely a practice that producers invoke to balance the books and stay afloat in cutthroat, competitive supply chains."); LEBARON ET AL., *supra* note 57, at 44; Shamir, *Labor Paradigm*, *supra* note 54, at 86–87.

65. Jennifer Gordon, *In the Zone: Work at the Intersection of Trade and Migration*, 23 THEORETICAL INQUIRIES L. 147, 164–65 (2022); LEBARON, *supra* note 57, at 35–39.

66. LEBARON ET AL., *supra* note 57, at 51–52*; see also* Andrew Crane, Vivek Soundararajan, Michael J Bloomfield, Genevieve LeBaron & Laura J Spence, *Hybrid (Un)freedom in Worker Hostels in Garment Supply Chains*, 75 HUM. RELS. 1928, 1928 (2022).

67. LeBaron, *supra* note 6, at 30–31; Ebert et al., *supra* note 57, at 106.

68. KUMAR, *supra* note 60, at 197–202; Trang (Mae) Nguyen, *Hidden Power in Global Supply Chains*, 64 HARV. INT'L L.J. 35, 50–51 (2023) (noting consolidation of power in first-tier suppliers in global supply chains, and arguing that alongside brands, such "Big Suppliers" have become critical sites for the contestation and diffusion of labor norms). Jimmy Donaghey & Juliane Reinecke, *Towards Worker-driven Supply Chain Governance: Developing Decent Work Through Democratic Worker Participation*, 57 J. SUPPLY CHAIN MGMT. 1, 15 (2020) (noting a "focus in the current literature on buyer-driven supply chains" and observing that "[t]here is ample opportunity and need for research that challenges this assumption by focusing on supplier driven supply chains.").

69. On supplier consolidation in garment production in particular, see KUMAR, *supra* note 60, at 197–202; Nguyen, *supra* note 68, at 51–52. On electronics, see Gale Raj-Reichart, *The Changing Landscape of Contract Manufacturers in the Electronics Industry Global Value Chain*, *in* DEVELOPMENT WITH GLOBAL VALUE CHAINS: UPGRADING AND INNOVATION IN ASIA 20, 36 (Dev Nathan, Meenu Tawari & Sandip Sarkar eds., 2018); Nguyen, *supra* note 68, at 53–54; Tim Culpan, *Taiwanese Companies Are Guiding Global Supply Chains*, TAIPEI TIMES (June 16, 2024), https://www.taipeitimes.com/News/editorials/archives/2024/06/16/2003819407.

strategy to address forced labor can have a significant impact if it succeeds in changing the practices of the largest firms at the middle of the chain.

Finally, interventions that target the top and middle of supply chains are incomplete without a central role for workers and unions at the bottom. The growing field of business and human rights has generally supported private and public initiatives to foment top-down change in the firms' policies, but has often cast workers as victims rather than potential agents.[70] Of late, however, a number of unions and civil society organizations, and a few scholars, have begun to argue that responses to forced labor and other forms of severe labor exploitation must both draw on and support worker organizing.[71] These actors emphasize freedom of association, collective bargaining, and other strategies that center workers' concerns as essential to developing fair and effective solutions to forced labor at the bottom of supply chains. This perspective is consistent with the fundamental structure of labor rights as established by the ILO, which emphasizes that freedom of association and collective bargaining are the "enabling" rights that allow for the establishment and enforcement of all other rights, including the elimination of forced labor.[72]

B. U.S. DOMESTIC LAW LACKS TOOLS TO ADDRESS SUPPLY CHAIN FORCED LABOR

Addressing structural forced labor in supply chains, then, requires action both from the top-down and the bottom-up. Firms at the top and middle of supply chains must be pressured to change their sourcing and production practices.

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70. *See, e.g.*, *OHCHR and Business and Human Rights*, UNHROHC, https://www.ohchr.org/en/business-and-human-rights (last visited Mar. 21, 2025) (containing multiple references to workers as victims and few that characterize workers as agents); *see also* Shamir, *Labor Paradigm*, *supra* note 54, at 129 ("The human rights framework is individualistic and victim centered . . . . The labor framework, in contrast, focuses on structural causes of power disparities.").

71. *See, e.g.*, Samuel Okyere, *Case Study 7: Worker Voice and Organizing in Efforts to Eliminate Child Labor*, *in* WORKER VOICE: WHAT IT IS, WHAT IT IS NOT, AND WHY IT MATTERS 82, 83 (2023) [hereinafter WORKER VOICE], https://www.dol.gov/sites/dolgov/files/ILAB/Worker-Voice-Report-Final-3-6-24.pdf (report prepared for the U.S. Department of Labor); LeClercq, *Forced Labor in International Economic Law*, *supra* note 44; Desiree LeClercq, *Invisible Workers*, 116 AJIL UNBOUND 107, 107, 111–12 (2022) [hereinafter LeClercq, *Invisible Workers*]; BUS. & HUM. RTS. RES. CTR., JUST FOR SHOW: WORKER REPRESENTATION IN ASIA'S GARMENT SECTOR & THE ROLE OF FASHION BRANDS & EMPLOYERS 3 (2024), https://media.business-humanrights.org/media/documents/2024_FoA_report.pdf; Alessandra Mezzadri, *Debt, Wage Theft and Coercion Drive the Global Garment Industry—The Only Answer Is Collective Action,* THE CONVERSATION (Jan. 24, 2024, 11:47 AM EST), https://theconversation.com/debt-wage-theft-and-coercion-drive-the-global-garment-industry-the-only-answer-is-collective-action-220924.

72. INT'L LAB. ORG., FREEDOM OF ASSOCIATION AND DEVELOPMENT 4, 12 (2011), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_160208.pdf. At the same time, the ILO's structure of tripartite governance—with roles for governments, employers, and workers—relies on formal trade unions as the sole voice for workers. Guy Mundlak, *Tri-Plus: Reflections on Opening the ILO's Tripartite Structure*, *in* INT'L LAB. ORG., ILO100: LAW FOR SOCIAL JUSTICE 311, 314–15 (George P. Politakis, Tomi Kohiyama & Thomas Lieby eds., 2019). Given that the most marginalized workers often organize through structures other than formal unions, inclusion of a broader range of worker representatives will be necessary if the ILO is to address severe forms of labor exploitation in ways that grow from and support bottom-up organizing. *Id.* at 317–18.

Workers and unions at the bottom of supply chains must be empowered to hold these firms accountable. As this section describes, U.S. domestic law has few, if any, legal tools to achieve these goals. U.S. labor, employment, and tort law do not hold U.S.-based brands and retailers legally responsible for forced labor in their supply chains abroad. Anti-trafficking law has provided a limited avenue for redress that the Supreme Court may soon close.[73] Meanwhile, supplier firms, unions, and workers in other countries generally lie wholly outside the jurisdiction of U.S. law.

A number of countries in Europe and elsewhere—and, most recently, the EU as a whole—have begun to require that lead firms exercise human rights due diligence as a condition of doing business. These laws create an obligation for brands and retailers to monitor, reveal, and in some cases remedy human rights violations in their supply chains, including forced labor.[74] The United States has been conspicuously absent from this trend. It has no national mandatory human rights due diligence legislation regarding labor standards.[75] The U.S. Congress and the federal courts also have rejected other approaches to holding lead firms accountable for labor abuses in their global supply chains through labor and employment law. U.S. labor and employment law only apply to a company's treatment of its own employees (and generally only within the United States),

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73. *See infra* notes 78–79 and accompanying text.

74. For discussion and critique of mandatory human rights due diligence laws with regard to labor standards in supply chains, see generally INGRID LANDAU, HUMAN RIGHTS DUE DILIGENCE AND LABOUR GOVERNANCE (2023) (offering an overview of mandatory human rights due diligence laws as they address labor standards); James Brudney, *Hiding in Plain Sight: An ILO Convention on Labor Standards in Global Supply Chains*, 23 CHI. J. INT'L L. 272 (2023) (discussing features that would need to be added to mandatory human rights due diligence laws for them to be effective in addressing labor violations in supply chain contexts); SHELLEY MARSHALL, INGRID LANDAU, HILA SHAMIR, TAMAR BARKAY, JUDY FUDGE & AURET VAN HEERDEN, MANDATORY HUMAN RIGHTS DUE DILIGENCE: RISKS AND OPPORTUNITIES FOR WORKERS AND UNIONS (2023), https://www.trafflab.org/_files/ugd/11e1f0_eab816ce329043d5b50d8e59d3d881c6.pdf (challenging the notion that mandatory human rights due diligence laws are the optimal way of improving workers' rights). Some due diligence laws only mandate disclosure of certain information; others additionally require firms to undertake specific due diligence activities. Until very recently, due diligence laws only penalized firms for failure to comply with the required procedures, rather than when substantive violations were found in their supply chains. The latest laws, including the German Supply Chain Due Diligence Act that went into effect in 2023, and the new EU-wide Corporate Sustainability Due Diligence Directive that as of 2024 was to be implemented starting in 2027, have more robust requirements related to ultimate outcomes. LANDAU, *supra*, at 127–30.

A recent Canadian Supreme Court case illustrates a different possible route to holding domestic corporations liable for human rights violations against workers abroad. In *Nevsun Resources Ltd. v. Araya*, a case brought against Canadian mining company Nevsun for the treatment of Ethiopian workers who suffered forced labor at a subsidiary mine in Ethiopia, the Court concluded that "[s]ince the customary international law norms raised by the Eritrean workers form part of the Canadian common law, and since Nevsun is a company bound by Canadian law, the claims of the Eritrean workers for breaches of customary international law should be allowed to proceed." [2020] S.C.R. 166, 170 (Can.).

75. Noting as the two examples of corporate human rights due diligence laws in the United States the California Transparency in Supply Chains Act (which includes certain labor standards but is statewide rather than national) and the Dodd-Frank Act (which is national but does not include labor standards), see LANDAU, *supra* note 74, at 118, 122–23.

not to the conditions of workers for other companies with which it contracts for commodities, components, or finished goods.[76]

While advocates had long hoped that statutory tort law, and in particular the Alien Tort Statute, 28 U.S.C. § 1350, would be a way to hold U.S. firms accountable for severe human rights abuses in their supply chains abroad, the Supreme Court has substantially narrowed the scope of this statute.[77] The one remaining route is the Trafficking Victims Protection Reauthorization Act (TVPRA), which provides a cause of action against firms and individuals in the United States for facilitating human trafficking.[78] This avenue may soon be

76. The default rule in U.S. law is that statutes do not apply extraterritorially except where Congress has expressly indicated that it intends for them to do so. *See, e.g.*, RJR Nabisco v. Eur. Cmty., 579 U.S. 325, 335 (2016); E.E.O.C. v. Arabian Am. Oil Co., 499 U.S. 244, 248 (1991). In the labor and employment arena, Congress has only done so for Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act—and in those cases only for U.S. citizens directly employed by the U.S. company in question. Neither the National Labor Relations Act (NLRA), which governs union organizing, nor the Fair Labor Standards Act (FLSA), which governs wages, apply outside the United States. Foley Bros. v. Filardo, 336 U.S. 281, 284–85 (1949) (holding that FLSA has no extraterritorial application); Comput. Scis. Raytheon, 318 N.L.R.B. 966, 968–69 (1995) (finding that the NLRA has no extraterritorial application).

77. Beginning with *Kiobel v. Royal Dutch Petrol.,* 569 U.S. 108, 124 (2013), the Supreme Court has narrowed the applicability of the Alien Tort Statute (ATS) so that there appear to be few scenarios under which it could be used to hold U.S. firms liable for human rights abuses in supply chains abroad. The most recent decision on this question came in *Nestlé USA, Inc. v. Doe*, 593 U.S. 628 (2021). In *Nestlé*, the litigants sought to hold US-based companies Nestlé and Cargill liable for purchasing cocoa from farms where children were enslaved. *Id.* at 631. They argued that the Court's prior bar on liability under the ATS for conduct occurring outside the US should not apply, as the two companies made all "major operational decisions" leading to their sourcing practices from the United States. *Id.* at 634. The Court held that this was an insufficient jurisdictional basis to find the companies liable under the ATS, leaving some commentators concluding that *Nestlé* was "the end of the . . . line" for efforts to use the law to hold US-based defendants liable for conduct occurring outside the country. *Id.*; *see* William Dodge, *The Surprisingly Broad Implications of* Nestlé USA, Inc. v. Doe *for Human Rights Litigation and Extraterritoriality*, JUST SEC. (June 18, 2021), https://www.justsecurity.org/77012/the-surprisingly-broad-implications-of-nestle-usa-inc-v-doe-for-human-rights-litigation-and-extraterritoriality. Not all are as pessimistic as Dodge. *See, e.g.*, Desiree LeClercq, *Nestlé United States, Inc. v. Doe. 141 S. Ct. 1931 (2021)*, 115 AM. J. INT'L L. 694, 697, 699–700 (2021) (highlighting as an advance five justices' agreement in dicta that the ATS could be used to hold U.S. corporations liable just as it applies to natural persons, even though the Court did not actually find the defendant corporations liable in the case before it). James Brudney also notes that, following *Nestlé,* liability still might attach in a situation where there was evidence of the corporation having affirmatively aided and abetted the harm (beyond exercising general corporate oversight) (communication to the author Aug. 14, 2024).

78. The Trafficking Victims Protection Reauthorization Act (TVPRA) creates both criminal and civil causes of action to address human trafficking. *See* 18 U.S.C. §§ 1589–90, 1595–96. Specifically, 18 U.S.C. § 1595 allows victims of trafficking to directly sue their traffickers for damages. There are several pending cases in which plaintiffs who have suffered forced labor in supply chains abroad seek to hold corporate actors at the top of those supply chains accountable in the U.S. using the TVPRA, relying on statements in the legislative history at the time the Act was amended in 2008 that clarified Congress's intent to extend the law's coverage to contexts where the conduct occurred abroad. ASHLEY MERRYMAN, HUM. TRAFFICKING LEGAL CTR., USING STRATEGIC LITIGATION TO COMBAT FORCED LABOR 10 (Maggie Lee & Martina E. Vandenberg eds., 2023), https://htlegalcenter.org/wp-content/uploads/Global-Justice_Using-Strategic-Litigation-To-Combat-Forced-Labor-2023.pdf. Some, but not all, U.S. district courts have ruled for plaintiffs on this theory where the conduct occurred abroad. *See, e.g.*, Hawkins v. Mantech Int'l Corp. No. 15-2105, 2024 WL 4332117, at *29 (D.D.C. Sept. 27, 2024). For discussions of this litigation, see Ramona Lampley, *A Haven for Traffickers: How the United States Provides a Legal Safe-Haven for Businesses that Rely on Forced Labor or Slave Labor in the Supply*

blocked by the Supreme Court, however, consistent with recent limits the Court has imposed on the extraterritorial application of other statutes.[79] Once a firm begins production outside U.S. borders, it may escape all direct liability for the conditions under which its goods are made.

II. TRADE LAW AS A RESPONSE? SECTION 307 OF THE U.S. TARIFF ACT AND A STRATEGIC APPROACH TO COMBATTING FORCED LABOR

Trade is the one arena in which the U.S. government has consistently sought to regulate labor conditions in production in other nations.[80] U.S. unilateral trade legislation offers preferential treatment for goods from countries that comply with the workers' rights mandated by the legislation, which invariably include a prohibition on forced labor.[81] Likewise, all bilateral and regional U.S. trade agreements negotiated since 2001 include labor provisions that set the ILO core labor standards as a baseline.[82] Importantly, though, trade is generally understood as a matter between states. The labor provisions in both unilateral trade laws and negotiated agreements have historically targeted governments, rather than corporate actors, and their sanction mechanisms have been applied infrequently.[83] This focus on state actors limits their usefulness in

Chain, 51 PEPP. L. REV. 75, 81 (2024); Matthew Higgins, Note, *Closed Loophole, Open Ports: § 307 of the Tariff Act and the Ongoing Importation of Goods Made Using Forced Labor*, 75 STAN. L. REV. 917, 933–35 (2023). For a discussion of two recent cases in which advocates have sought to use the TVPRA to recover damages for workers in contexts where CBP has issued a WRO, see *infra* notes 211–09 and accompanying text.

79. Given the Supreme Court's recent narrowing of the extraterritorial application of not only the ATS but RICO, there is reason for concern that this avenue may also be closed in the near future. RJR Nabisco, Inc. v. Eur. Cmty., 579 U.S. 325, 354 (2016) ("[RICO] does not allow recovery for foreign injuries"). For discussion of Supreme Court's evolving jurisprudence on extraterritoriality and its impact on the ability of people who have suffered forced labor and human trafficking abroad to bring claims in US courts, see Higgins, *supra* note 78, at 932–33; Lampley, *supra* note 78, at 117–18.

80. From the 1990s through the early 2000s, the US led an unsuccessful effort to introduce labor standards at the World Trade Organization (WTO). *See* Christopher L. Erickson & Daniel J.B. Mitchell, *Labor Standards and Trade Agreements: U.S. Experience*, 19 COMP. LAB. L. & POL'Y J. 145, 146–47 (1998); Shima Baradaran & Stephanie Barclay, *Fair Trade and Child Labor*, 43 COLUM. HUM. RTS. REV. 1, 23 nn.104–05 (2011). Both prior to and since then, it has pursued the same ends through unilateral legislation and negotiated trade agreements. Bureau of Int'l Lab. Affs., *Our Trade Tools*, U.S. DEP'T OF LAB., https://www.dol.gov/agencies/ilab/our-work/advancing-labor-rights-through-US-trade-programs-and-partnerships/our-trade-tools (last visited Mar. 25, 2025).

81. *See, e.g.*, OFF. OF THE U.S. TRADE REPRESENTATIVE, GENERALIZED SYSTEM OF PREFERENCES GUIDEBOOK 17 (2020), https://ustr.gov/sites/default/files/gsp/GSPGuidebook_0.pdf ("A GSP beneficiary must have taken or is taking steps to afford internationally recognized worker rights, including . . . a prohibition on the use of any form of forced or compulsory labor."). The GSP has lapsed pending required re-approval by Congress. *See Generalized System of Preferences (GSP)*, U.S. CUSTOMS & BORDER PROT. (Apr. 10, 2024), https://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences (noting the expiration of the program on December 31, 2020).

82. Bureau of Int'l Lab. Affs., *supra* note 80.

83. For a review of those that target governments rather than firms, see Kathleen Claussen, *Trade Policing*, 65 HARV. INT'L L.J. 25, 27–29 (2023); James Harrison, *Trade Agreements and Sustainability: Exploring the Potential of Global Value Chain (GVC) Obligations*, 26 J. INT'L ECON. L. 199, 200 (2023) [hereinafter Harrison, *Trade Agreements and Sustainability*]. For a critique of the failure of labor provisions in particular trade agreements to effectively protect workers' rights, see Jeffrey Vogt, *The Evolution of Labor Rights and Trade—*

contexts such as structural forced labor, where the problem is primarily driven by private supply chain actors rather than state policy.[84]

In the past decade, however, the U.S. government has begun to experiment with trade-related labor provisions that target firms directly.[85] One example is the U.S.-Mexico-Canada Agreement ("USMCA") Rapid Response Mechanism.[86] The Rapid Response Mechanism allows the U.S. government to penalize certain Mexican firms for violations of freedom of association.[87] The other—to which this Article now turns—is the recently-reinvigorated U.S. forced labor import ban.

A. SECTION 307: AN OVERVIEW

The United States has long banned the importation of goods made with forced labor.[88] As originally enacted, however, section 307 of the U.S. Tariff Act of 1930 could only be enforced in a limited range of circumstances, where it could be shown that the goods to be banned were also produced inside the

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Transatlantic Comparison and Lessons for the Transatlantic Trade and Investment Partnership, 18 J. INT'L ECON. L. 827, 842–43, 856, 859–60 (2015); LANCE COMPA, JEFFREY VOGT & ERIC GOTTWALD, INT'L LAB. RTS. F., WRONG TURN FOR WORKERS' RIGHTS: THE U.S.-GUATEMALA CAFTA LABOR ARBITRATION RULING—AND WHAT TO DO ABOUT IT 16 (2018), https://laborrights.org/sites/default/files/publications/Wrong%20Turn%20for%20Workers%20Rights%20-%20March%202018.pdf.

84. In response, Kevin Kolben argues for rooting labor provisions in trade agreements in a "supply chain approach," which he defines as a set of "context specific and coordinated private and public regulatory interventions that focus on improving labor rights and standards in key export industries." Kevin Kolben, *A Supply Chain Approach to Trade and Labor Provisions*, 5 POL. & GOVERNANCE 60, 61 (2017).

85. Claussen, *supra* note 83, at 28; Harrison, *Trade Agreements and Sustainability*, *supra* note 83, at 200–01.

86. United States-Mexico-Canada Agreement ch. 31 Can.-Mex.-U.S., July 1, 2020 [hereinafter USMCA], https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between; Although the mechanism went into effect only a few years ago, it has drawn considerable interest from scholars. *See, e.g.*, Kathleen Claussen & Chad R. Bown, *Corporate Accountability by Treaty: The New North American Rapid Response Labor Mechanism*, 118 AM. J. INT'L L. 98, 98–99 (2024); Desiree LeClercq, *Biden's Worker-Centered Trade Policy: Whose Workers?*, INT'L ECON. L. POL'Y BLOG (May 16, 2021, 3:52 PM), https://ielp.worldtradelaw.net/2021/05/bidens-worker-centered-trade-policy-whose-workers.html; Desiree LeClercq, *The U.S. "Worker-Centered Trade Policy" Is Helping Some Workers in Mexico but Not in America*, INT'L ECON. L. POL'Y BLOG (Sept. 3, 2023, 11:30 AM) [hereinafter LeClercq, *Worker-Centered Trade Policy*], https://ielp.worldtradelaw.net/2023/09/the-us-worker-centered-trade-policy-is-helping-some-workers-in-mexico-but-not-in-america.html; Álvaro Santos, *Reimagining Trade Agreements for Workers: Lessons from the USMCA*, 113 AJIL UNBOUND 407, 408–09 (2019).

87. On paper, the mechanism appears to apply to all three parties to the Agreement, but as Desiree LeClercq and others have pointed out, it is structured in ways that limits its functional operation to firms in Mexico. LeClercq, *Worker-Centered Trade Policy*, *supra* note 86.

88. Tariff Act of 1930 § 307, 19 U.S.C. § 1307. Section 307 added forced labor to a prohibition on the importation of products manufactured with prison labor, originally passed in 1890. Tariff Act of 1890 § 51, 26 Stat. 567, 624 (repealed 1894). The 1930 Act also expanded the prohibition so it included goods mined or produced using forced and prison labor in addition to those so manufactured. Notably, the United States continues to ban the importation of goods made with prison labor to the present day, while allowing prison labor within its own borders. Adelle Blackett & Alice Duquesnoy, *Slavery Is Not a Metaphor: U.S. Prison Labor and Racial Subordination Through the Lens of the ILO's Abolition of Forced Labor Convention*, 67 UCLA L. REV. 1504, 1514–19 (2021); Lan Cao, *Made in the USA: Race, Trade, and Prison Labor*, 43 N.Y.U. REV. L. & SOC. CHANGE 1, 6 (2019).

United States in quantities that met the demand for their consumption[89] (the so-called "consumptive demand" exception). This protected domestic producers from competition in sectors where there was a U.S.-based industry, while ensuring that U.S. consumers still had access to commodities such as coffee, sugar, and rubber, even when they were made with forced labor.[90] In part because of the consumptive demand loophole, the law was applied only intermittently for the ensuing eighty-five years.[91] In 2015, Congress closed the loophole through a bill signed into law in 2016.[92]

The enforcement of section 307 increased sharply in the following years. While Canada and Mexico have also adopted their own versions of such bans,[93] and the EU is poised to do the same,[94] the U.S. law is the only one that has been meaningfully implemented.[95] In addition, in 2021 Congress passed the Uyghur Forced Labor Prevention Act ("UFLPA"), which went into effect in 2022.[96] The UFLPA creates a rebuttable presumption against the importation of goods produced through state-sponsored forced labor in the Xinjiang Uyghur Autonomous Region of China or involving other uses of Uyghur labor.[97]

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89. CONG. RSCH. SERV., R46631, SECTION 307 AND U.S. IMPORTS OF PRODUCTS OF FORCED LABOR: OVERVIEW AND ISSUES FOR CONGRESS 3–4 (Feb. 1, 2021).

90. *Id.* at 5.

91. *Id.* at 4–6. For example, the court dismissed a case in 2005 brought by three NGOs to compel enforcement of § 307 against the importation of cocoa made with forced child labor. Int'l Lab. Rts. Fund v. United States, 391 F. Supp. 2d 1370, 1375 (2005) ("The parties agree that no domestic cocoa production industry exists in the United States sufficient to meet domestic consumptive demand. In such instances, the statute expressly prohibits application of *any* of the provisions found within it."). The law was sporadically enforced in the 1990s, almost exclusively against China, but during the period from 2001–2015 no new WROs were issued at all. *See* CBP, *WROs and Findings*, *supra* note 34.

92. The consumptive demand requirement was removed from § 307 via the Trade Facilitation and Trade Enforcement Act of 2015, which was signed into law by President Obama in early 2016 and went into effect on March 10 of that year. The change came at a time when bipartisan concern about human trafficking was mounting, and followed among other things a call from advocates who argued that the requirement should be repealed on humanitarian grounds as it made the law unavailable precisely in the sectors where forced labor was most common. CONG. RSCH. SERV., R46631, at 6; Testimony of Neha Misra, Senior Specialist, Migration and Hum. Trafficking Solidarity Ctr., before the Tom Lantos Hum. Rts. Comm'n, U.S. House of Representatives 12, *passim* (July 24, 2014) (on file with author); Esmeralda López, *Combatting Forced Labor and Enforcing Workers Rights Using the Tariff Act*, INT'L LAB. RTS. F. (Feb. 25, 2020), https://laborrights.org/sites/default/files/publications/Tariff_Act_Briefing_Paper.pdf.

93. The USMCA also required Mexico and Canada to pass forced labor import bans. Both countries now have such bans, but neither is actively enforcing them. *See supra* note 21 and accompanying text.

94. The EU Forced Labour Regulation, passed by the European Parliament in April of 2024, will go into effect in 2027. Directive 2024/. . . of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market and amending Directive (EU) 2019/1937, https://www.europarl.europa.eu/doceo/document/TC1-COD-2022-0269_EN.pdf.

95. *See supra* note 86 and accompanying text.

96. Uyghur Forced Labor Prevention Act (UFLPA), Pub. L. No. 117-78, § 1, 135 Stat. 1525 (2021) (codified at 22 U.S.C. § 6901).

97. The rebuttable presumption applies to all goods "mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region" and to other goods made by entities that the US government has identified as benefitting from Uyghur labor. UFLPA § 3(a). Because of the rebuttable presumption, advocates do not need to file petitions under § 307 to ban goods that fall within the UFLPA. Instead, companies must

Section 307 is enforced by the Trade Remedy Law Enforcement Directorate of the United States Customs and Border Protection ("CBP").[98] Anyone, anywhere in the world, can petition CBP to impose a ban by using a link on the agency's website.[99] CBP can also open an investigation on its own initiative or at the recommendation of Congress or another agency. CBP has complete discretion over its investigatory procedures and the evidence it will consider during that process.[100] The goal of the investigation is to determine whether there is a basis for the agency to issue a Withhold Release Order ("WRO"), which directs Customs officials to hold items at the border rather than allowing them into the country.

To issue a WRO, CBP must have a "reasonable suspicion"[101] that forced labor was involved at any stage of production of the items in question, using the ILO indicators of forced labor (including abusive living and working conditions, excessive overtime, withholding of wages, intimidation and threats, physical and sexual violence, debt bondage, and restriction of movement) as a measure.[102] A WRO can be very broad, covering, for example, all tobacco from Malawi,[103] or very narrow, for example, banning only the fish caught by a single boat at sea.[104] If the agency conclusively determines that goods were made abroad with forced labor, which would require a higher evidentiary showing, it will issue a Finding,

affirmatively demonstrate that any products they wish to import that are covered by the UFLPA are free of forced labor. UFLPA § 3(b). Although this and a number of other features distinguish the UFLPA from § 307, it is enforced by the same CBP division as § 307 and impacts many of the same companies. See *infra* note 110 for a discussion on the relationship between the two laws.

98. 19 C.F.R. §§ 12.42–.45 (2024).

99. *Id.* § 12.42(b); CONG. RSCH. SERV., R46631, SECTION 307 AND U.S. IMPORTS OF PRODUCTS OF FORCED LABOR: OVERVIEW AND ISSUES FOR CONGRESS 8 (Feb. 1, 2021). The petition, which does not have to conform to a particular format, must include "(1) A full statement of the reasons for the belief; (2) A detailed description or sample of the merchandise; and (3) All pertinent facts obtainable as to the production of the merchandise abroad." 19 C.F.R. § 12.42(b). CBP has supplemented these regulations with guidance for petitioners. U.S. CUSTOMS & BORDER PROT., RECOMMENDED GUIDELINES FOR SUBMISSIONS OF FORCED LABOR SUPPORTING DOCUMENTS, (2023), https://www.cbp.gov/sites/default/files/assets/documents/2023-May/CBP_Forced_Labor_SupportingDocs_Submissions_Guide_0.pdf; U.S. CUSTOMS & BORDER PROT., FORCED LABOR ALLEGATION SUBMISSION CHECKLIST (2024), https://www.cbp.gov/sites/default/files/2024-04/Forced_Labor_Guidance_CBP_Forced_Labor_Allegation_Submission_Checklist.pdf.

100. 19 C.F.R. § 12.42(d); *see also* CONG. RSCH. SERV., R46631, at 8.

101. U.S. Customs and Border Protection is authorized to issue a WRO after "reasonably but not conclusively" determining that the goods were made abroad with forced labor and otherwise fall within the purview of § 307. 19 C.F.R. § 12.42(e).

102. U.S. Customs and Border Protection is not required to use the ILO indicators as a measure of forced labor but began doing so at the urging of civil society organizations in 2019. ANASUYA SYAM & MEG ROGGENSACK, HUM. TRAFFICKING LEGAL CTR., IMPORTING FREEDOM: USING THE US TARIFF ACT TO COMBAT FORCED LABOR IN SUPPLY CHAINS 13 (Martina E. Vandenberg ed., 2020), https://htlegalcenter.org/wp-content/uploads/Importing-Freedom-Using-the-U.S.-Tariff-Act-to-Combat-Forced-Labor-in-Supply-Chains_FINAL.pdf; INT'L LAB. ORG., *supra* note 53.

103. CBP, *Forced Labor Enforcement Actions*, *supra* note 91.

104. *Id.*

which permits CBP to seize the goods and begin forfeiture proceedings, rather than just barring them from entry to the United States.[105]

A firm whose goods are subject to a WRO can re-ship them to another country, or the firm can seek to have the ban lifted.[106] One way for a firm to pursue the lifting of a WRO is by presenting evidence to CBP the suspicion of forced labor was unfounded in the first place or that the problems have been addressed. CBP can respond by leaving the WRO in place, modifying it, or revoking it. The agency will modify a WRO if it determines that forced labor has been "remediated," meaning forced labor is no longer occurring at the facility in question.[107] A modification leaves open the theoretical possibility that the WRO could be reimposed if matters deteriorate again in the future.[108] CBP can also revoke a WRO. Revocation reflects a determination by CBP that the supplier was not, in fact, engaged in forced labor at the time the WRO was imposed.[109] A firm also has the option of contesting the WRO through

105. 19 C.F.R. § 12.42(f) (regarding standard for findings); *id.* § 12.44(b) (regarding seizure). As with the initial imposition of a WRO, the investigatory process and evidence necessary for a finding are left to the agency's discretion. *Id.* § 12.42(d); *see also* CONG. RSCH. SERV., R46631, at 8.

106. 19 C.F.R. § 12.44(a). The fact that goods denied entry to the U.S. under § 307 can simply be re-exported to another country that does not have an import ban has led advocates to call for more countries to pass and enforce import bans. *See No More Safe Harbors: The International Need for Import Prohibitions on the Products of Forced Labor*, CORP. ACCOUNTABILITY LAB BLOG, (Dec. 13, 2021), https://corpaccountabilitylab.org/calblog/2021/12/13/no-more-safe-harbors-the-international-need-for-import-prohibitions-on-the-products-of-forced-labor; *Coalition Against Forced Labor in Trade*, HUM. TRAFFICKING LEGAL CTR., https://htlegalcenter.org/our-work/coalition-against-forced-labour-in-trade (last visited Mar. 25, 2025).

107. U.S. CUSTOMS & BORDER PROT., HOW ARE WRO AND/OR FINDING MODIFICATIONS AND REVOCATIONS PROCESSED? (2023), https://www.cbp.gov/sites/default/files/assets/documents/2023-Nov/How%20are%20WRO%20and%20or%20finding%20modifications_0.pdf ("[A modification is when] CBP suspends enforcement of a WRO once it determines the foreign entity subject to the WRO has remediated all indicators of forced labor."). Remedy for workers is sometimes a part of this process, and sometimes not. For example, the Remedy Project highlights that CBP modified a WRO regarding tobacco in Malawi after determining that the companies in question had "[minimized] the risks of forced labor from [their] supply chain," without requiring the provision of remedy to any workers. THE REMEDY PROJECT, *supra* note 24, at 11–13. CBP has not provided any public explanation as to how it decides whether to pursue a remedy for workers in a given case.

108. CBP confirms that it is within its authority to do this, but that it has never done so. Interview with Eric Choy, Aug. 30, 2024, *supra* note 26.

109. The GAO reports that CBP revoked one of the 13 WROs it imposed between February 2016 and March 2020. The revocation was of the WRO issued against the fishing vessel Tunago No. 61, registered in Vanautu. CBP states that it revoked the WRO based on information provided by the importer (not the supplier) which showed "measures in place that remediate the forced labor indicators identified by CBP." U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-441, FORCED LABOR: BETTER COMMUNICATION COULD IMPROVE TRADE ENFORCEMENT EFFORTS RELATED TO SEAFOOD 18 (2020) [hereinafter GAO, FORCED LABOR]. Eric Choy explains that a revocation may reflect a situation where CBP imposes a WRO following allegations of forced labor in a petition, and later learned that the supplier had remediated the forced labor between the time the petition was filed and the time the WRO was imposed. CBP has yet to revoke a WRO. Interview with Eric Choy, Aug. 30, 2024, *supra* note 26.

administrative channels on the grounds it was improperly imposed, and the firm can also challenge final agency decisions in the Court of International Trade.[110]

In addition to its ability to impose a WRO, CBP has the power to engage with firms in other ways as well. It can ask companies to complete questionnaires about their supply chains in industries where the agency has concerns about recurring forced labor.[111] It can issue civil fines against entities that violate the law with regard to the importation of goods made with forced labor.[112] Criminal penalties are also available. The Forced Labor Program of U.S. Immigration Customs and Enforcement Homeland Security Investigations ("HSI"), which sits within CBP's parent agency the Department of Homeland Security, is charged with carrying out criminal investigations related to the importation of goods made with forced labor.[113] HSI is responsible for coordinating with the Justice Department on prosecutions.[114] As discussed below, to date, no HSI investigation has led to a prosecution for the importation of goods made with forced labor.[115]

B. ENFORCEMENT OF SECTION 307 TO DATE

The closing of the consumptive demand loophole initiated a period of intensified enforcement of section 307. Since 2016, CBP has received scores of petitions under section 307.[116] The agency issued thirty-nine WROs and four related Findings against facilities and products in a range of countries around the

110. Decisions of the Court of International Trade (CIT) can be appealed to the Federal Circuit, formerly the U.S. Court of Customs and Patent Appeals. The CIT has decided few cases challenging CBP's decision to exclude goods pursuant to a WRO issued under § 307. The last decision on the merits came thirty years ago in *China Diesel Importers, Inc. v. United States*, where the CIT found that the importer had not produced sufficient evidence to overcome CBP's reasonable suspicion that the goods were made with forced labor. 855 F. Supp. 380, 386 (1994). More recent cases contesting CBP actions in the context of § 307 have been dismissed without reaching the merits. *See, e.g.*, Complaint at 1, Virtus Nutrition LLC v. United States, 606 F. Supp. 3d 1360 (Ct. Int'l Trade 2022) (No. 21-00165) (challenging exclusion of Malaysian palm oil pursuant to WRO against Sime Darby on the grounds that the excluded oil was not made by Sime Darby, dismissed in *Virtus Nutrition*, 606 F. Supp. 3d at 1362). The CIT has also weighed in on issues of forced labor in the context of the UFLPA. *See, e.g.*, Ninestar Corp. v. United States, 687 F. Supp. 3d 1308, 1345 (2024) (upholding the inclusion of importer Ninestar on the list of entities barred from importing to the United States under the UFLPA).

111. See *infra* notes 207–209 and accompanying text for discussion of questionnaires CBP has issued in the context of cocoa, cotton, and solar power imports.

112. See *infra* notes 156–168 and accompanying text for discussion of CBP's authority to impose civil penalties on firms that import goods made with forced labor.

113. U.S. IMMIGR. & CUSTOMS ENF'T, U.S. DEP'T OF HOMELAND SEC., FORCED LABOR AND FORCED CHILD LABOR: FISCAL YEAR 2023 TO CONGRESS 2–3 (2024), https://www.dhs.gov/sites/default/files/2024-04/2024_0202_ice_forced_labor_and_forced_child_labor.pdf; *see also infra* text accompanying note 171 (discussing HSI and criminal investigations related to forced labor).

114. GAO, FORCED LABOR IMPORTS, *supra* note 19, at 33–34.

115. *See infra* notes 198–200 and accompanying text.

116. Eric Choy notes that over 65 petitions were filed with CBP between late 2021 and late 2023. Virtual Interview with Eric Choy, Exec. Dir., Trade Remedy L. Enf't Directorate, U.S. Customs & Border Prot. (Nov. 14, 2023, 3:00 PM) [hereinafter Interview with Eric Choy, Nov. 14, 2023]. There is no further public information on the number of petitions CBP has received since 2016. Interview with Eric Choy, Aug. 30, 2024, *supra* note 26.

world between 2016 and 2022,[117] a dramatic increase over the seven WROs and single Finding issued in the prior twenty years.[118] CBP reports that since the closing of the loophole, it has collected over $200 million as part of the WRO remediation process, consisting of recruitment fee reimbursements and back pay for workers subjected to forced labor.[119]

CBP's enforcement of the law has slowed considerably since 2021. The agency imposed only three WROs in 2022 (two of which it then lifted), none in 2023, and three in 2024.[120] Most of the resources of CBP's Trade Remedy Law Enforcement Directorate appear to be going instead to matters related to enforcement of the UFLPA.[121] In addition, the agency is increasingly under legal and political attack from importers, which observers assume is a factor in delaying its issuance of WROs.[122] Nonetheless, CBP has repeatedly stated that there are new WROs in the pipeline and that it intends to issue them soon.[123]

Advocates have called for CBP to respond more swiftly to petitions and resume actively issuing WROs.[124] They have also roundly critiqued other aspects of CBP's approach to enforcement of section 307.[125] Commonly

117. CBP, *WROs and Findings*, *supra* note 34.

118. *Id.*

119. U.S. Chamber of Commerce, *Combating Forced Labor in Supply Chains*, YOUTUBE (Nov. 13, 2023) [hereinafter Choy Chamber of Commerce Remarks, Nov. 13, 2023], https://www.youtube.com/watch?v=3p4dvZ4cx54&t=5655s.

120. CBP, *WROs and Findings*, *supra* note 34.

121. During this period, CBP has directed a significant number of resources to hiring and training personnel and developing systems to implement the UFLPA, passed by Congress in 2021 and enforced by the same division of the agency as § 307. OFF. OF STRATEGY, POL'Y & PLANS, DEP'T OF HOMELAND SEC., 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 12–13 (2023), https://www.dhs.gov/sites/default/files/2023-08/23_0728_plcy_uflpa-strategy-2023-update-508.pdf.
At the same time, advocates interviewed for this Article argue that the agency has the resources to continue issuing new WROs under § 307 even as it begins the UFLPA, for which it received significant new funding from Congress on top of its existing funds for the enforcement of § 307. They suggest that the high volume of political and legal pushback against the agency from businesses subject to enforcement under the UFLPA and § 307 is an important factor in the agency's hiatus from issuing new WROs and Findings between December 2022 and March 2024. *See* CBP, *WROs and Findings*, *supra* note 34. This pushback is likely to intensify if CBP begins using its enforcement tools against lead firms in the ways suggested in this Article. It seems likely that concern about the negative political effect of issuing WROs and fines against large US corporations is a significant reason that CBP has not exercised its legal authority in this direction.

122. Advocates repeatedly referred to this in their interviews.

123. Interview with Eric Choy, Nov. 14, 2023, *supra* note 116; Interview with Eric Choy, Aug. 30, 2024, *supra* note 26.

124. *Modernizing Customs Policies to Protect American Workers and Secure Supply Chains: Hearing Before the Subcomm. on Trade of the H. Comm. on Ways and Means*, 118th Cong. 3 (2023) (testimony of Martina E. Vandenberg, President, Human Trafficking Legal Center) [hereinafter Vandenberg Testimony], https://waysandmeans.house.gov/wp-content/uploads/2023/05/Vandenberg-Testimony.pdf; Letter to Sec. Mayorkas, *supra* note 41, at 2–3, 5–6.

125. Over the period since the lifting of the consumptive demand requirement, advocates have repeatedly identified concerns about CBP's approach to enforcement of § 307, and made recommendations as to how the agency could implement the law more effectively. Among many others, these recommendations include clearer communication with petitioners about the agency's timelines, processes, and priorities; limiting the agency's

expressed concerns include the agency's lack of transparency regarding evidentiary standards and investigative processes and its reliance on flawed auditing methodology to determine whether forced labor has been remediated.[126] Particularly central to the concerns of this Article are two additional critiques: that CBP and other agencies within DHS have failed to make use of civil and criminal penalties against companies that import goods made with forced labor[127] and that CBP has failed to consistently consult workers or pursue direct remedies on their behalf as part of the remediation process.[128] The following sections take up these issues as they arise in the context of CBP's response to petitions seeking top-down and bottom-up strategic enforcement.

C. CBP HAS THE LEGAL AUTHORITY TO TAKE A STRATEGIC APPROACH TO COMBATING FORCED LABOR

The first question in an inquiry about the potential for top-down and bottom-up strategies for using section 307 is how they relate to CBP's current legal authority and enforcement model. In other words, can CBP approach the law in these ways, and has it?

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reliance on social audits, which have often failed to detect forced labor when it is present; ensuring that workers personally receive compensation for the full range of harms of forced labor as a part of remediation; and CBP using the tools at its disposal to penalize importers in the US alongside suppliers abroad. Recent recommendations can be found, for example, in THE REMEDY PROJECT, *supra* note 24; THE REMEDY PROJECT, ACCESS TO REMEDY AND FORCED LABOUR 'IMPORT BANS': RECOMMENDATIONS FOR THE PROPOSED REGULATION ON PROHIBITING PRODUCTS MADE WITH FORCED LABOUR ON THE UNION MARKET COM(2022) 453, at 2 (2023), https://static1.squarespace.com/static/5f846df102b20606387c6274/t/644b455d3988cc1018100fac/1682654561296/TRP+-+EC+Recommendations+-+Final+-+20230428.pdf; THE REMEDY PROJECT, ACCESS TO REMEDY AND FORCED LABOUR 'IMPORT BANS': RECOMMENDATIONS FOR U.S. CUSTOMS AND BORDER PROTECTION 1 (2023), https://static1.squarespace.com/static/5f846df102b20606387c6274/t/644b4588473b195c68059875/1682654604321/TRP+-+CBP+Policy+Briefing+-+Final+-+20230428.pdf; *The Global Challenge of Forced Labor in Supply Chains: Strengthening Enforcement and Protecting Workers: Hearing Before the Subcomm. on Trade of the H. Comm. on Ways and Means*, 118th Cong. 2 (2021) (testimony of Jennifer (JJ) Rosenbaum, Exec. Dir., Global Labor Justice—International Labor Rights Forum), https://waysandmeans.house.gov/wp-content/uploads/2021/07/Witness-3-Jennifer-Rosenbaum-Testimony.pdf [hereinafter Rosenbaum Testimony]; Vandenberg Testimony, *supra* note 124, at 3; GLOBAL LABOR JUSTICE-INTERNATIONAL LABOR RIGHTS FORUM, GLOBAL LABOR JUSTICE-INTERNATIONAL LABOR RIGHTS FORUM SUBMISSION TO THE EUROPEAN COMMISSION'S CALL FOR EVIDENCE ON AN EU FORCED LABOUR INSTRUMENT 2 (n.d.), https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13480-Effectively-banning-products-produced-extracted-or-harvested-with-forced-labour/F3316158_en; *Effectively Banning Products Produced, Extracted, or Harvested with Forced Labour*, EUR. COMM'N (2022), https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13480-Effectively-banning-products-produced-extracted-or-harvested-with-forced-labour/feedback_en?p_id=30824789 (showing search results for recommendations to the EC from other advocacy organizations); IRENE PIETROPAOLI, OWAIN JOHNSTONE & ALEX BALCH, MOD. SLAVERY & HUM. RTS. POL'Y & EVIDENCE CTR., POLICY BRIEF: EFFECTIVENESS OF FORCED LABOUR IMPORT BANS 1 (2021), https://modern-slavery.files.svdcdn.com/production/assets/downloads/ImportBans_briefing-updated-final.pdf?dm=1639503511.

126. *See supra* note 125 and accompanying text.

127. *See, e.g.*, Letter to Sec. Mayorkas, *supra* note 41, at 2–3; Rosenbaum Testimony, *supra* note 125, at 7; Vandenberg Testimony, *supra* note 124, at 4.

128. *See supra* note 41 and accompanying text.

A systemic approach to addressing forced labor through section 307 would require CBP and other relevant agencies to use at least some of their resources quite differently than they currently do. CBP would affirmatively pursue investigations, issue WROs, and apply the civil penalties at its disposal against lead firms at the top and large suppliers in the middle of supply chains. In a parallel way, Homeland Security Investigations, a division of Immigration and Customs Enforcement within the Department of Homeland Security charged with enforcing criminal laws against forced labor, would investigate and work with the Justice Department to criminally prosecute lead firms and major suppliers in relation to forced labor in their supply chains. The goal would be for a WRO and associated enforcement to trigger key firms at the top and middle of supply chains to change their own practices that incentivize forced labor, and in turn alter the practices of other entities in their ecosystem that profit by turning a blind eye to forced labor. These agencies would also approach the investigation of petitions, the imposition and lifting of WROs, and the use of fines in ways that supported efforts to build worker power at the bottom of supply chains. This Part examines the relevant statutory and regulatory framework, and it concludes that all of these actions are within the current legal authority and discretionary powers of the relevant agencies.

1. Withhold Release Orders and Findings

The text of section 307 is very brief. In its entirety, 19 U.S.C. § 307 currently reads as follows:

> 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 shall not be entitled to 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.
>
> "Forced labor", as herein used, shall mean 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. For purposes of this section, the term "forced labor or/and indentured labor" includes forced or indentured child labor.[129]

The regulations implementing the law[130] grant the agency broad discretion as to most decisions related to its enforcement of section 307. There is no guidance or limitation on how CBP should define the target entity for a WRO or the target class of goods. The regulations simply state that CBP can apply section 307 to "any class of merchandise that is being, or is likely to be, imported into

129. 19 U.S.C. § 307.

130. 19 C.F.R. § 12.42 (2024). The regulations were promulgated by CBP together with the Treasury Department. *Id.*

the United States."[131] As a result, CBP has blanket authority to choose the level at which it frames a WRO and the goods and entities it names within it. CBP is almost as free to set its own evidentiary standards for imposing a WRO. To impose a WRO, CBP must only "reasonably but not conclusively" believe that there was forced labor involved in the production process.[132] There is no limitation on the evidence the agency can consider in that process. The regulations permit CBP to "cause such investigation to be made as appears to be warranted by the circumstances of the case," authorizing the agency to "consider any representations offered by foreign interests, importers, domestic producers, or other interested persons."[133] Although the standard is higher for a Finding, which requires a conclusive determination[134] as noted above, the agency's discretion as to what evidence to consider or how to frame the Finding is no more limited than in the case of a WRO.[135]

If the statute and regulations touch only lightly on how CBP should approach the imposition of WROs and Findings, they are essentially silent on how the agency should go about deciding whether to lift them. The statute says nothing about what happens after a ban is in place.[136] The regulations require only that an importer who wishes to contest a WRO come forward within three months with evidence demonstrating that the products were not or are no longer made with forced labor.[137] CBP has issued several guidance documents, but they offer little substance.[138] CBP's public statements simply indicate that the agency will lift a WRO or Finding only after it "has evidence demonstrating that the subject merchandise is no longer produced, manufactured, or mined using forced labor."[139] Reflecting this discretion, the agency has stated that rather than having a systematic approach to revocation or modification, it views "each case [as]

131. *Id.* § 12.42(a).

132. *Id.* § 12.42(e).

133. *Id.* § 12.42(d).

134. *Id.* § 12.42(f).

135. *Id.* § 12.42(a); *Id.* § 12.42(d).

136. 19 U.S.C. § 1307.

137. 19 C.F.R. § 12.43.

138. CBP has issued two one-page guidance documents for importers, both in a large font and with more graphics and white space than text. U.S. CUSTOMS & BORDER PROT., WHAT IS IN A PETITION FOR A WRO AND/OR FINDING MODIFICATION OR REVOCATION? (2023), https://www.cbp.gov/sites/default/files/assets/documents/2023-Nov/What%20is%20in%20a%20petition%20for%20a%20WRO%20and%20or%20finding%20modification%20or%20revocation_0.pdf; U.S. CUSTOMS & BORDER PROT., *supra* note 107. In its entirety, the latter document indicates that the process for modification or revocation is as follows: "1) Petitioner Submits Information to CBP 2) CBP & Petitioner Engagement 3) CBP Determines ILO Indicators Remediated 4) CBP Modifies or Revokes." *Id.*

139. *See, e.g.*, *CBP Modifies Withhold Release Order Against Supermax Corporation Bhd. and its Subsidiaries*, U.S. CUSTOMS & BORDER PROT. (Sept. 19, 2023), https://www.cbp.gov/newsroom/announcements/cbp-modifies-withhold-release-order-against-supermax-corporation-bhd-and-its. Setting out the same process for Findings as WROs, *see* U.S. CUSTOMS & BORDER PROT., *supra* note 107 (setting out the same process for Findings as WROs). Despite these statements, the agency has at times lifted a WRO without relying on evidence that the product is no longer made with forced labor. THE REMEDY PROJECT, *supra* note 24, at 11–13.

unique, based on the industry, the structure of the individual company, and the supply chain." [140]

Were the agency interested in using its powers under section 307 in strategic ways to address systemic forced labor in supply chains, this broad authority and scope for discretion would allow CBP to take all necessary steps to do so, both from the top-down and the bottom-up. (The question of whether the agency is actually *willing* to use its discretion to these ends, and some concerns about what might happen if it did so, are addressed below.) As to strategic enforcement against brands and retailers at the highest level of a supply chain, nothing in the statute or regulations precludes CBP from issuing a WRO naming a lead firm. Where CBP determines that there is a reasonable suspicion of forced labor across a class of merchandise that consists of the brand or retailer's supply of a particular commodity or product from a given country, it may issue a WRO against "all [commodity or product] imported from Country X by Brand Y"—for example, "all sugar imported from India by Hershey's."[141] (This is in contrast to the conventional supplier-focused WRO, which would name the Indian sugar company but not the U.S .brand.) CBP could also use the softer tools within its arsenal to create an enforcement environment that would make lead firms aware of the possibility of legal consequences for forced labor in their supply chains. For instance, it could use its power to request information from businesses that sell imported goods to gather information that would allow it to identify brands and retailers whose practices create a high risk of forced labor.

With regard to firms at the middle of the supply chain, there is no contest over whether the law authorizes CBP to issue WROs. It is squarely within CBP's statutory authority to issue WROs naming suppliers and squarely within its discretion to prioritize major suppliers as targets for WROs when their employment and contracting practices facilitate forced labor.

At the bottom of the supply chain, for CBP to use its enforcement powers under section 307 in support of efforts to negotiate enforceable agreements involving unions (or other worker organizations) together with suppliers and brands, it would need to approach the law somewhat differently; but, again, these changes are fully within its authority. The agency would first have to understand collective bargaining and enforceable brand agreements as ways to prevent and remediate forced labor and it would also have to be willing to work with workers, unions, and civil society organizations as they sought to conclude such agreements. Many of the ways that CBP could further productive negotiation in

140. CBP has stated that rather than having a systematic approach to revocation or modification, the agency views remediation in "each case [as] unique, based on the industry, the structure of the individual company, and the supply chain." U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-259, FORCED LABOR: CBP SHOULD IMPROVE COMMUNICATION TO STRENGTHEN TRADE ENFORCEMENT 15 (2021) [hereinafter GAO, CBP TRADE ENFORCEMENT].

141. Virtual Interview with Charity Ryerson, Exec. Dir., Corp. Accountability Lab (Sept. 19, 2023, 11:30 AM).

such contexts relate to the agency's procedures during investigations.[142] For example, it could issue a formal acknowledgement that a petition had been filed and an investigation begun.[143] It could publicize and adhere to a relatively consistent timeline for investigations, creating a temporal framework for negotiations to motivate parties to resolve the issues before the end of that period.[144] These are matters that fall within its discretion.[145]

The agency would also need to be willing to give enforceable agreements substantial weight in its decisions about whether to impose or lift a WRO.[146] For example, if an agreement was reached that resolved the forced labor while a petition was pending, CBP could permit petitioners to withdraw the petition, with the withdrawal ending CBP's investigation.[147] The ability to withdraw a petition would be necessary for firms to trust that signing an agreement would release them from the risk of a WRO and its threat to the viability of the supplier

142. Interview with Jennifer (JJ) Rosenbaum, Exec. Dir., Glob. Lab. Just., in Washington, D.C. (Nov. 14, 2023, 1:30 PM).

143. Such a letter would allow advocates to provide proof to the firms they sought to bring to the table that the agency had opened a case regarding allegations of forced labor in their production processes, with the goal of jump-starting negotiations. Rosenbaum notes that in the arena of US domestic labor standards enforcement, advocates have been able to use proof of receipt of filing provided by a government agency to initiate negotiations that end in resolution of the labor violations before the government agency has to act. Interview with Jennifer (JJ) Rosenbaum, *supra* note 142. CBP for a brief period provided exactly such an acknowledgment. Letter from U.S. Customs & Border Prot., to advocate (2021) (on file with author) (acknowledging receipt of 2021 petition). For several years thereafter, however, the agency responded to a petition submitted by email by replying to confirm receipt, with no further details. E-mail from Anasuya Syam, Hum. Rts. Trade & Pol'y Dir., Hum. Trafficking Legal Ctr., to author (Feb. 26, 2024, 2:07 PM) [hereinafter e-mail from Anasuya Syam] (on file with author). CBP recently created a new forced labor reporting portal. *Trade Violations Reporting (TVR)*, U.S. CUSTOMS & BORDER PROT., https://eallegations.cbp.gov/s/?language=en (last visited May 1, 2025). Before the portal launched, the agency told advocates that the portal would offer petitioners access to a record of receipt and information about whether a case is open or closed and whether an investigation is underway. *See* supra, e-mail from Anasuya Syam.

144. The agency recently published a timeline indicating that it would determine whether to accept, refer, or reject a petition within 30 days, and—if the petition entered the investigative phase—would reach a final determination within a year. U.S. CUSTOMS & BORDER PROT., WHAT ARE THE TIMELINES AND INVESTIGATIVE BENCHMARKS FOR FORCED LABOR PETITIONS? (2023), https://www.cbp.gov/sites/default/files/assets/documents/2023-Nov/What%20are%20the%20timelines%20and%20investigative%20benchmarks%20for%20forced%20labor%20petitions_0.pdf. However, advocates state that the agency has not complied with this timeline.

145. *See infra* Part.III.C.

146. To be clear, it seems highly unlikely that CBP would *require* an individual firm to remediate by adopting such an agreement, and even more unlikely that CBP would issue regulations that required the agency to respond in particular ways in the face of an agreement. The issues raised here in relation to the bottom-up strategy would arise when a firm voluntarily signed an enforceable agreement.

147. Eric Choy notes that the agency would consider the presence of a worker-driven agreement "potentially to guide our decisions on either whether to move forward on a WRO or whether to modify the WRO. Or even revoke it, right? . . . We want to be able to redirect resources where there isn't a positive kind of movement moving forward between labor and their employers." Interview with Eric Choy, Nov. 14, 2023, *supra* note 116. He adds that the agency would revoke (as opposed to modifying) a WRO only "if it was demonstrated that no conditions of forced labor exist and that there either wasn't a basis to issue the WRO in the first place or the issues had been remediated before a WRO was issued." E-mail from Eric Choy, Exec. Dir., Trade Remedy L. Enf't Directorate, Customs & Border Prot., to author (Feb. 13, 2024, 10:31 AM) (on file with author).

business.[148] If such an agreement was reached after a WRO was imposed, the agency would lift it on a showing that the agreement had addressed the conditions of forced labor. If the signatories later violated the accord, it would consider reimposing the WRO. Because of CBP's extensive discretion as to how to use the tools at its disposal, there seem to be few, if any, statutory or regulatory impediments to it taking this approach. Indeed, as described below, during the Biden administration the agency indicated a willingness to consider many of these actions.[149]

2. Civil Penalties

A quick note on the concept of the "importer of record" may be helpful in understanding what follows. Most customs law addresses the responsibilities of the importer of record. As defined by the Tariff Act of 1930, importers of record can include the owners or purchasers of the goods to be imported, or licensed customs brokers.[150] The importer of record is responsible for exercising "reasonable care" to ensure that the goods to be imported are in compliance with relevant U.S. law, including that forced labor is not involved in their production,

148. Rosenbaum points to precedent for such an off-ramp in other contexts of complaint-based government enforcement on issues related to labor standards. Interview with Jennifer (JJ) Rosenbaum, *supra* note 142. She offers as an example the conciliation process of the Federal Equal Opportunity Employment Commission, during which the parties explore possible resolutions of the employment discrimination issue that motivated the employee's complaint. *Id.* If they reach an agreement, the EEOC does not issue a charge against the employer. She also highlights the Rapid Response Mechanism within the US-Mexico-Canada Agreement, through which parties can raise issues of interference with freedom of association at plants covered by the trade agreement. The goal of the agency-facilitated process that results, which involves both the Office of the US Trade Representative and the US Department of Labor, is to address the freedom of association problem. If that is not successful, the goods produced by the plant can be seized. Rosenbaum observes that adopting such a process would require a different metric for internal and external evaluation of CBP's work. Currently the agency tracks WROs imposed; it would also need to track WROs averted (just as the EEOC counts successful conciliations as positive outcomes for the agency and the process for enforcing the Rapid Response Mechanism counts as successes the agencies' work to remediate of freedom of association issues in order to avoid the seizure of goods). *Id.*

149. *See infra* notes 245–246 and accompanying text.

150. 19 U.S.C. § 1484(a)(2)(B). For requirements for the licensing of customs brokers, see 19 U.S.C. § 1641; see also U.S. CUSTOMS & BORDER PROT., CUSTOMS DIRECTIVE NO. 3530-002A, RIGHT TO MAKE ENTRY (2001), https://www.cbp.gov/sites/default/files/documents/3530-002a_3.pdf (interpreting section 484 of the Tariff Act of 1930).

and for attesting as much to CBP.[151] A lead firm in the U.S.[152] or a supplier abroad[153] can serve as an importer of record, or either of them can choose to contract with another firm to play that role.[154] Actual arrangements are complex and vary not just between firms but from product to product within firms.[155] Thus, determining the importer of record for a particular shipment is a first step in assessing where liability for non-compliance with section 307 lies.

Two statutory provisions authorize CBP to impose civil fines against entities in relation to the importation or attempted importation of goods made with forced labor.[156] 19 U.S.C. § 1595a(b) provides for civil penalties for importation, attempted importation, or aiding importation of an article contrary to law. 19 U.S.C. § 1592(a)(1)(A) provides for civil penalties against an importer for false information or material omissions in relation to forced labor.[157] These

151. The Customs Modernization Act makes the importer responsible for providing information that allows CBP to determine whether imports are in compliance with the law. North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182, Title VI, 107 Stat. 2057, 2200–01 (1993); *see also* U.S. CUSTOMS & BORDER PROT., EO13891-OT-110, WHAT EVERY MEMBER OF THE TRADE COMMUNITY SHOULD KNOW: REASONABLE CARE 3 (2017), https://www.cbp.gov/sites/default/files/assets/documents/2018-Mar/icprescare2017revision.pdf (describing the requirement of reasonable care); *id.* at 14–15 (listing the questions importers are required to answer with regard to the potential for forced labor in their imports including the overarching question "Have you taken reliable measures to ensure imported goods are not produced wholly or in part with convict labor, forced labor, and/or indentured labor (including forced or indentured child labor)?").

CBP advises importing companies to fulfill these responsibilities through a "comprehensive and transparent social compliance system," but it has almost never penalized importers for noncompliance with the duties in these provisions. U.S. CUSTOMS & BORDER PROT., NO. 3449-1123, WHAT CAN IMPORTERS DO TO HELP COMBAT FORCED LABOR? (2023), https://www.cbp.gov/sites/default/files/assets/documents/2023-Nov/What%20can%20importers%20do%20to%20help%20combat%20forced%20labor_0.pdf.

152. Lead firms can legally serve as importers of record where they are the owner or purchaser of the goods, or—under certain circumstances—as resellers of the goods without ownership. *See, e.g.*, U.S. CUSTOMS & BORDER PROT., NO. H318453, REQUEST FOR A DETERMINATION OF THE RIGHT TO ACT AS IMPORTER OF RECORD BY QUALITY BRAND IMPORTS, INC. (2021), https://rulings.cbp.gov/ruling/h318453 ("[T]he terms owner and purchaser include any party with a financial interest in a transaction, including a selling agent.").

153. US law permits a company incorporated outside the US to serve as an importer of record so long as it has an agent in the US port and has paid a bond. 19 C.F.R. § 141.18 (a)–(b). Foreign suppliers can also contract with another firm to provide that service. *Id.*

154. *All Importers*, IMPORTINFO, https://www.importinfo.com/importers (last visited Mar. 26, 2025). The top 20 importers list is dominated by import and logistics companies, although it also contains recognizable brands. The top company, Expeditors International of Washington, has more than triple the imports of the next company on the list. *Id.*

155. For example, with regard to some goods, Walmart and Nike use Expeditors International of Washington as the importer of record. *Expeditors International of Washing*, IMPORTINFO, https://www.importinfo.com/expeditors-international-of-washing (last visited Mar. 26, 2025). For other goods Walmart and Nike are themselves the importer of record. *All Importers: Walmart*, IMPORTINFO, https://www.importinfo.com/importers?s=walmart (last visited Nov 26, 2025) (showing importers for Walmart); *All Importers: Nike*, IMPORTINFO, https://www.importinfo.com/importers?s=nike (last visited Nov. 26, 2025) (showing importers for Nike).

156. § 307 itself does not contain a penalty provision. CBP has the power to assess penalties for the importation of goods made with forced labor under other related provisions as noted in this paragraph. *See* GAO, CBP TRADE ENFORCEMENT, *supra* note 140, at 12.

157. 19 U.S.C. § 1592(a)(1)(a)

penalties unquestionably apply to the importer of record.[158] The title and text of 19 U.S.C. § 1595a(b) makes clear that the provision applies to "importation,"[159] and 19 U.S.C. § 1592(a) repeatedly refers to the entities responsible for compliance as "importers."[160] Thus, where the lead firm or supplier *is* the importer of record, it is directly subject to liability under provisions that apply to the importer of record. However, in the frequent case where the lead firm or supplier has contracted with a separate importer of record, a top-down strategy would require applying penalties for failure to comply with section 307 against the lead firm or supplier in addition to the importer of record. The question is whether the law allows CBP to do this.

It is critical to note, therefore, that both of these provisions are broader than they initially appear. The civil penalties in 19 U.S.C. § 1595a(b) for importation or attempted importation in violation of the law explicitly apply to "[e]very person who directs, assists financially or otherwise, or is in any way concerned in"[161] the importation of an article contrary to law. The door is thus open to the agency using this provision against lead firms in the United States and suppliers abroad when any of their actions can be shown to aid, attempt, or directly effectuate the importation of goods made with forced labor, independent of whether the firm or supplier was itself acting as an importer.[162]

With reference to the civil penalties in 19 U.S.C. § 1592(a)(1), the text states that "no person . . . may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States" through false statements or material omissions.[163] In cases unrelated to section 307, entities have argued that the "introduce" language limits the application of this provision to the importer of record.[164] However, in *United States v. Trek Leather*, the Federal Circuit rejected this argument, holding that Section 1592(a)(1) is not so constrained.[165] That case involved CBP's imposition of penalties on a supplier that was not the importer of record for the undervaluation of a series of

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1) General rule… no person, by fraud, gross negligence, or negligence—(A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of—(i) any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or (ii) any omission which is material, or (B) may aid or abet any other person to violate subparagraph (A).

Id. § 1592(a)

158. *See* U.S. CUSTOMS & BORDER PROT., *supra* note 150.

159. For example, the title of 19 U.S.C. § 1595a is "Aiding unlawful importation."

160. 19 U.S.C. § 1592(c)(5)–(13).

161. 19 U.S.C. § 1595a(b).

162. See *infra* notes 229–233 and accompanying text for discussion of concerns about a call for more vigorous use of these tools by CBP as a part of a top-down strategic enforcement approach.

163. 19 U.S.C. § 1592(a)(1).

164. *See, e.g.*, United States v. Trek Leather, 767 F. 3d 1288, 1294 (Fed. Cir. 2014) (featuring the defendant supplier's argument that it should not be liable for penalties under section 1592(a)(1) for undervaluation of a shipment of imports because it was not the importer of record).

165. *Id.* at 1300 ("[T]he 'introduce' language of subparagraph (A) covers acts by persons other than importers of record.").

shipments of men's suits.[166] The court upheld the penalties, holding that "person" included all persons without limitation,[167] and that "introduce" was "broad enough to cover, among other things, actions" carried out by "persons other than the importer of record."[168] Thus, where a lead firm makes false statements or material omissions regarding forced labor in goods it seeks to import, or a major supplier does the same with regard to goods it seeks to export, CBP should be able to fine them under this provision even where they are not themselves the importer of record.

3. Criminal Penalties

Finally, 18 U.S.C. § 1589(b)[169] establishes criminal penalties for individuals and entities that benefit from forced labor. The provision penalizes "[w]hoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services" by force, harm, abuse of legal process, or threats of the same, "knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means."[170] HSI carries out criminal investigations related to both domestically-produced and imported goods alleged to be made with forced labor under this provision.[171]

By the text of the statute, criminal penalties clearly are not limited to importers and could be applied to lead and major supplier firms where the facts support prosecution. HSI could investigate and the Department of Justice ("DOJ") could prosecute either a lead firm or a major supplier under 18 U.S.C. § 1589(b), where the firm benefited financially from participating in a venture that had provided or obtained forced labor, with knowledge or reckless disregard of that fact.

D. CBP'S CURRENT ENFORCEMENT APPROACH IS STRATEGIC AS TO FOREIGN POLICY, BUT NOT FORCED LABOR

Political scientists distinguish between complaint-driven and strategic government agency approaches to enforcement.[172] In complaint-driven enforcement, the agency investigates the cases that individuals or organizations

166. *Id.* at 1291.

167. *Id.* at 1296 ("There is simply no basis for giving an artificially limited meaning to this most encompassing of terms. . . . [T]he term ['person'] 'includes' partnerships, associations, and corporations; no exclusion of individuals." (citations omitted)).

168. *Id.* at 1300.

169. 18 U.S.C. § 1589(b).

170. *Id.*

171. CONG. RSCH. SERV., R46631, SECTION 307 AND U.S. IMPORTS OF PRODUCTS OF FORCED LABOR: OVERVIEW AND ISSUES FOR CONGRESS 18 (Feb. 1, 2021); GAO, FORCED LABOR IMPORTS, *supra* note 19, at 8 n.18.

172. For a discussion setting out such a distinction in the context of the Wage and Hour Division of the US Department of Labor, see David Weil, *Creating a Strategic Enforcement Approach to Address Wage Theft: One Academic's Journey in Organizational Change*, 60 J. INDUS. RELS. 437, 439–48 (2018).

file with it, and decides which to pursue based on whether the individual case reveals a violation of the law as the agency interprets it.[173] Under a strategic approach, by contrast, the agency proactively decides which sectors or entities to target for enforcement, based on an analysis of where violations are greatest, and then selects cases to pursue based on where the agency's potential impact would be most deeply felt across the field as a whole.[174] Some agencies operate exclusively on one or the other approach, while others combine them.

CBP characterizes itself as a quintessentially complaint-driven agency, pursuing individual violations of section 307 as it becomes aware of them, rather than setting an affirmative strategic course to address the problem of forced labor systematically.[175] Although CBP has the authority to self-initiate investigations and issue WROs in the absence of a petition, Eric Choy, Executive Director of the Trade Remedy Law Enforcement Directorate of CBP, estimates that 98% of investigations relate to petitions filed with the agency.[176] Furthermore, CBP has disavowed efforts to use section 307 in ways that seek to produce outcomes beyond the immediate case. It primarily interprets its responsibilities under the law as relating to the goods at the border, rather than any obligation to address the drivers of forced labor in the supply chain in question.[177] Choy explains that "from a customs perspective . . . the authority to enforce against forced labor is

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173. Janice Fine, Daniel J. Galvin, Jenn Round & Hana Shepherd, *Strategic Enforcement and Co-enforcement of U.S. Labor Standards Are Needed to Protect Workers Through the Coronavirus Recession*, *in* BOOSTING WAGES FOR U.S. WORKERS IN THE NEW ECONOMY 13, 17 (2021), https://equitablegrowth.org/strategic-enforcement-and-co-enforcement-of-u-s-labor-standards-are-needed-to-protect-workers-through-the-coronavirus-recession/#citation-21.

Discussing government enforcement of wage laws and health and safety standards, Fine and co-authors write,

> Complaint-based enforcement tends to embrace an individualized regulatory approach that conceives of each individual case—or worker complaint—as an isolated and idiosyncratic incident. This means that even a high number of individual cases or complaints are unlikely to lead to structural reforms across an industry. Agencies handle each worker complaint as a separate transaction that yields no other regulatory actions beyond opening and closing the particular case at hand; the case itself is considered apart from the broader structural context from which it emerged and without an eye toward systemic reform.

Id. at 18.

174. For a contrast of complaint-based and strategic logics of enforcement in the wage and hour context, see Janice Fine & Jennifer Gordon, *Strengthening Labor Standards Enforcement Through Partnerships with Workers' Organizations*, 38 POL. & SOC'Y 552, 556–57 (2010).

175. *See supra* text accompanying note 28.

176. Interview with Eric Choy, Nov. 14, 2023, *supra* note 116. Note, however, that this does not mean that a petition is the starting point for CBP's investigation in 98% of cases. As several interviewees noted, CBP prefers to act based on a petition, and may request one from advocates *after* it becomes aware of allegations of forced labor in a facility or sector.[Interview source] The source of the agency's awareness may well be a report issued by advocates themselves or investigative reporting, often in collaboration with advocates, which functions as a sort of pre-petition call to the agency to look more closely at a facility or sector. My description of these practices comes from the sources cited herein and from interviews with advocates and government officials in other agencies, reflecting their communications with CBP in relation to § 307 enforcement. The interviewees asked to remain anonymous as to these communications.

177. Interview with Eric Choy, Nov. 14, 2023, *supra* note 116.

really on the goods themselves[] . . . not on remediating the issues of forced labor at the source."[178]

Yet the agency's self-description as complaint-driven stands in contrast to some of its actual practices.[179] First, counter to its assertion that it is merely responding to complaints brought to its attention by others, CBP at times solicits petitions from advocates.[180] Advocates surmise that this happens either when the agency wants to pursue an investigation and needs political cover or when it has initiated an investigation but needs additional information that it hopes petitioners' research will provide.[181] In this sense, CBP works behind the scenes to shape some of the complaints it receives.

Second, although it eschews strategic decision-making as to a given WRO's potential impact on systemic forced labor, CBP's record supports the inference that it directs its enforcement resources to achieve other strategic goals. Foreign policy is clearly a dominant consideration. For example, fifty seven percent of all WROs between the lifting of the consumptive demand requirement in 2015 and the passage of the UFLPA in 2021 were imposed against companies and industries in China, far disproportionate to China's four percent of world goods made with forced labor as assessed by the U.S .Department of Labor.[182] This is consistent with the U.S. government's ongoing economic and political conflicts with China.[183] Other agencies also influence the agency's decision-making. CBP notifies other agencies that work on forced labor two weeks before issuing a WRO,[184] and in the ensuing conversations, officials have the opportunity to raise concerns about proceeding with a WRO. For example, national security priorities have led to a decision not to impose a WRO in a country where forced labor is well-documented and severe.[185] CBP then, is clearly more of a strategic actor with regard to import bans than it represents itself to be, at least as to foreign policy and national security matters.

CBP could also, if it so decided, take an enforcement approach to section 307 that is strategic as to addressing forced labor itself. The question is whether it would. The description of the agency's enforcement model and practices set out above make some of the obstacles clear, including regarding the agency's capacity and its incentives. And yet at times since 2016, CBP has proven

178. *Id.*

179. Interviews with advocates and government officials in other agencies.

180. Interviews with advocates and government officials in other agencies.

181. Interviews with advocates.

182. Shehadi & van der Merwe, *supra* note 29. Since 1990, the majority of WROs that CBP has issued have targeted facilities in China, with particular concentrations of Chinese WROs from 1991–1993 and from 2016 to the present. CONG. RSCH. SERV., R46631, SECTION 307 AND U.S. IMPORTS OF PRODUCTS OF FORCED LABOR: OVERVIEW AND ISSUES FOR CONGRESS 7 (Feb. 1, 2021).

183. Anshu Siripurapu & Noah Berman, *The Contentious U.S.-China Relationship*, COUNCIL ON FOREIGN RELS.: BACKGROUNDER (May 14, 2024, 3:15 PM EST), https://www.cfr.org/backgrounder/contentious-us-china-trade-relationship.

184. GAO, CBP TRADE ENFORCEMENT, *supra* note 140, at 19–20.

185. Communication from a former government employee present for an inter-agency discussion in which such a decision was reached. The former employee asked to remain anonymous.

responsive to efforts by advocates to move the agency in the direction of a strategic approach through petitions seeking top-down enforcement against key actors in supply chains. The following discussion traces those interactions and their outcomes.

III. THE STRATEGIC TOP-DOWN APPROACH

Since the closing of the consumptive demand loophole, civil society organizations have taken a range of approaches to petitioning for the enforcement of section 307.[186] Many petitions have a service aim, seeking primarily to help individual groups of workers facing forced labor.[187] Others, however, are filed with the goal of bringing the agency's resources to bear at points where they could have a broader systemic impact in addition to assisting particular affected workers.[188] To date, advocates have filed such strategic petitions targeting actors at the top and middle of supply chains.[189] During the Biden administration, in the context of such petitions, they also began to argue for CBP to use the remedial phase following the imposition of a WRO to advance outcomes that support worker organizing at the bottom of supply chains, a development addressed in Part IV.

This Part traces the interplay between these interventions by advocates, CBP's response, and advocates' efforts to maximize the impact of section 307 petitions in light of the agency's action or inaction. It offers the first published study of advocacy strategies in relation to the import ban. Among other sources, it is based on formal interviews conducted by the author in 2023-2024 with twenty one advocates at civil society organizations and U.S. government officials engaged in the enforcement of section 307.[190] It also draws on the author's extensive informal conversations and email correspondence with advocates and government officials in the field, in addition to a review of confidential and publicly available petitions, civil society organizations' communications with government agencies, Congressional testimony, other legal documents, and relevant laws and government guidance documents interpreting them.[191]

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186. For a full exploration of the distinction between service-oriented and strategic advocacy approaches, see Gordon, Strategic Approaches, *supra* note 44, at 10–19.

187. *Id.* at 11.

188. *Id.* at 12–19.

189. *Id.* at 13–17; *see supra* notes 186–188 and accompanying text.

190. Interviewees are listed in the Appendix. The interviews were conducted in person, by Zoom, or (in one case) by phone. They were semi-structured and lasted between 1-2 hours, with some informants being interviewed more than once. The interviews were recorded and transcribed. The initial transcription was by Grain, an AI service. A law student research assistant reviewed each transcription together with its recording and corrected it for accuracy (my thanks to Sophie Adelman and Cristian Vega for doing this work). The transcripts were then coded by the author using Atlas.ti.

191. Secondary sources included academic articles, other scholarly writing, policy reports and blogs, reports published by the ILO and other international organizations, and news articles.

A. RECENT EFFORTS BY ADVOCATES AND CBP'S RESPONSE AT THE TOP OF THE SUPPLY CHAIN: BRANDS AND RETAILERS

Advocates have, on several occasions, sought to persuade CBP to enforce section 307 and use related tools against brands and retailers in the United States. For example, in 2020 the Corporate Accountability Lab ("CAL") and International Rights Advocates ("IRA") filed a petition with CBP that asked the agency to issue a WRO prohibiting entry into the United States of chocolate harvested in Cote d'Ivoire by major brands including Hershey, Mars, and Nestlé.[192] The petition offers evidence that the brands have been "knowingly benefiting from the use of forced or trafficked child labor for at least 20 years[.]"[193] In 2021, Greenpeace, a Taiwanese NGO, and five Indonesian migrant fishers' associations filed a petition with CBP asking the agency to issue a WRO barring all seafood traded by FCF, a major Taiwanese tuna trader and—as the petition repeatedly notes—the parent company of the U.S. brand Bumble Bee.[194] The petition argues that Bumble Bee imports tuna from suppliers with a

192. Petition from Int'l Rts. Advocs., Corp. Accountability Lab & Civ. Rts. Litig. Clinic, to Mark A. Morgan, Acting Comm'r, U.S. Customs & Border Prot. (n.d.) [hereinafter Cote D'Ivoire Cocoa Petition] (on file with author) (petitioning CBP to exclude Cocoa produced in Cote D'Ivoire and imported by Nestle, Mars, Hershey, Barry Callebaut, World's Finest Chocolate, Inc., Blommer Chocolate Co., Cargill, Mondelēz, and Olam); *Petition to Customs and Border Protection Challenging the Importation of Forced Labor Produced Cocoa and Cocoa Products*, CORP. ACCOUNTABILITY LAB (Feb. 2020), https://corpaccountabilitylab.org/petition-to-cbp-challenging-the-importation-of-forced-labor-produced-cocoa-and-cocoa-products. The organizations subsequently filed a supplemental petition with CBP. Press Release, Corp. Accountability Lab & Int'l Rts. Advocs., CAL and IRAdvocates Provide New Evidence of Forced Child Labor in Major Chocolate Producers' Supply Chain (June 25, 2021), https://static1.squarespace.com/static/5810dda3e3df28ce37b58357/t/60d602b5815e265a8d3e5abb/1624638133368/Press+Release+Supplemental+Petiton+June+2021.pdf. When CBP did not issue a WRO following these petitions, IRA sued the agency in the Court of International Trade, arguing that once the advocates had presented conclusive evidence that cocoa from Cote D'Ivoire was made with forced labor, the language of § 307 mandated the issuance of a WRO, and that CBP's failure to enforce § 307 in this case represented "agency action unlawfully withheld or unreasonably delayed," actionable under the Administrative Procedures Act. Complaint at 67–69, Int'l Rts. Advocs. v. Mayorkas, 719 F. Supp. 3d 1376 (Ct. Int'l Trade 2024) (No. 1:23-cv-00165) (filed Aug. 10, 2023). The complaint sets out in detail the complainants' reasons for requesting that a WRO be issued barring each named brand from importing chocolate from Cote D'Ivoire. *Id.* at 20–54. The case is currently pending.

193. Cote d'Ivoire Cocoa Petition, *supra* note 192, at 2 (emphasis omitted).

194. Greenpeace USA, et al., Petition to exclude seafood traded by FCF…, n.d. [hereinafter Taiwan FCF and Bumble Bee Seafood Petition], (confidential petition on file with author); Press Release, Greenpeace Se. Asia, Organizations Urge U.S. to Block Imports from Taiwanese Seafood Giant Over Forced Labor Concerns (Sept. 9, 2021), https://www.greenpeace.org/southeastasia/press/44640/organizations-urge-u-s-to-block-imports-from-taiwanese-seafood-giant-over-forced-labor-concerns.

The Taiwan FCF and Bumble Bee Seafood Petition is both firm-lead and supplier-driven, since FCF, in addition to owning the brand Bumble Bee, is also a supplier, with subsidiaries and investments in tuna processing plants in a range of countries, through which FCF enterprises store, process, and ship the fish. Taiwan FCF and Bumble Bee Seafood Petition, *supra*; *Our Partnerships*, FCF CO., https://fcf.com.tw/our-partnerships (last visited Mar. 27, 2025); *Our Products*, FCF CO., https://fcf.com.tw (last visited Mar. 27, 2025) ("FCF is a leading supplier of tuna to the US, Japan and China markets."). Petitions targeting both the top and middle of the supply chain have also been filed in other contexts where major brands control production processes in the country of export, as is the case, for example, against companies like Callebaut producing cocoa in Cote d'Ivoire, Goodyear in rubber in Malaysia, and Firestone in rubber in Liberia. *See, e.g.*, Cote D'Ivoire Cocoa Petition, *supra* note 192.

high risk of forced labor and has failed to take action to reduce that risk, and it asks CBP to, among other actions, stop imports from 166 vessels supplying Bumble Bee.[195] Both of these petitions are part of ongoing civil society campaigns seeking to change corporate practices in the cocoa and seafood industries as a whole.[196]

Such petitions ask for WROs to name specific brands and retailers, barring U.S. imports of particular goods in their supply chains due to recurring forced labor in their production. The goal of the advocates' engagement with section 307 is for CBP to issue a WRO or Finding.[197] Beyond WROs and findings, civil society organizations and unions have also called for CBP to apply civil penalties against U.S. brands and retailers, and for HSI to criminally investigate them.[198] These efforts have been unavailing. CBP has never issued a WRO enforcing section 307 that names a brand or retailer at the top of a supply chain. Although Eric Choy acknowledges that the agency has the power to name a U.S. firm in a WRO, he states that CBP would only be able to do this where the agency had evidence that the brand or retailer was actively involved in the promotion of forced labor.[199]

CBP also has never penalized a lead firm for actions related to a violation of section 307. The only time that the agency has pursued civil penalties against any entity in relation to section 307, it targeted a "small fry"—a single first line importer, rather than a consumer-facing brand.[200] In this instance, it fined importer Pure Circle $575,000 in 2021 under Section 1595a(b)[201] for importing stevia from a Chinese firm whose products had been banned by a 2016 WRO due to prison labor.[202] The agency appears never to have penalized any entity

195. Taiwan FCF and Bumble Bee Seafood Petition, *supra* note 194.

196. For descriptions of cocoa and seafood campaigns, see generally Judy Gearhart, *Building Worker Power in Global Supply Chains: Lessons from Apparel, Cocoa, and Seafood* (Accountability Rsch. Ctr., Accountability Working Paper No. 15, 2023), https://accountabilityresearch.org/wp-content/uploads/2024/01/Gearhart_worker_power_apparel_cocoa_seafood_WP_15_ADA.pdf.

197. Restating this goal may seem redundant, but it is intended to differentiate the top-down approach from the one discussed in Part IV, in which the goal of a petition is *not* a WRO, but instead a negotiated agreement between unions, suppliers, and brands that addresses the forced labor prior to the imposition of a WRO.

198. *See, e.g.*, Letter from Martina Vandenberg, Hum. Trafficking Legal Ctr., Shawn Macdonald, Verité, Jeff Vogt, Solidarity Ctr. & Esmeralda Lopez, Glob. Lab. Just.—Int'l Lab. Rts. F., to Mark A. Morgan, Senior Off. Performing the Duties of the Comm'r, Therese Randazzo, Executive Dir., Forced Lab. Div., U.S. Customs & Border Prot. 6 (Nov. 19, 2020), https://htlegalcenter.org/wp-content/uploads/Letter-to-CBP-re.-Effective-Enforcement-November-19-2020.pdf.

199. Interview with Eric Choy, Aug. 30, 2024, *supra* note 26. He offers the example of a situation where CBP had evidence that the U.S. brand or retailer was actively involved in promoting forced labor in its supply chain to suppress prices. *Id.*

200. The same penalties are available in the UFLPA context as well, but CBP has not used them against lead firms. All UFLPA penalties to date have exclusively been imposed against importers of record rather than major US brands and retailers for their role in importing goods made with Uyghur forced labor. *Id.*

201. *See supra* notes 147–148, 150, and accompanying text for a discussion of this provision.

202. Press Release, U.S. Customs & Border Prot., CBP Collects $575,000 from Pure Circle U.S.A. for Stevia Imports Made with Forced Labor (Aug. 13, 2020), https://www.cbp.gov/newsroom/national-media-release/cbp-collects-575000-pure-circle-usa-stevia-imports-made-forced-labor. The press release does not state

under Section 1592(a)(1)(A)[203] for a violation related to section 307. Regarding criminal prosecution, officials within DHS have made statements to the effect that the DOJ is "willing to prosecute retailers[,] . . . online marketplaces[,] and so on" for trading in goods made with forced labor.[204] HSI has opened at least one investigation targeting a lead firm, as confirmed by Duncan Jepson of the former Hong-Kong based organization Liberty Shared.[205] Jepson worked with HSI on an investigation of Goodyear Rubber that resulted in a settlement.[206] Yet there has never been a prosecution of a lead firm for profiting from forced labor under this provision.

CBP's ongoing decision not to exercise its authority to issue WROs naming brands and retailers or to pursue penalties against them is likely driven at least in part by concerns about the political consequences that would ensue if it enforced section 307 directly against powerful economic actors in the United States. In one small way, however, CBP has responded to advocates' urging that the agency hold brands and retailers accountable for forced labor in their supply chains. CBP's Trade Regulatory Audit unit routinely asks importers for documentation regarding their suppliers.[207] While most of those the agency contacts in this process are lower-level importers, in the context of the Cote d'Ivoire cocoa petition filed by CAL and IRA, CBP sent all of the major confectionary brands a questionnaire about issues raised by the petition.[208] Charity Ryerson of CAL notes that although a WRO has never been issued in response to that petition, the survey itself had an impact:

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the provision under which the fine was levied, but Eric Choy of CBP confirms that it was under 19 U.S.C. § 1595a(b). Interview with Eric Choy, Nov. 14, 2023, *supra* note 116; GAO, CBP TRADE ENFORCEMENT, *supra* note 140, at 12. CBP states that this fine was related to importation of goods banned by a WRO imposed in 2016 against the stevia and derivatives produced by a Chinese firm. GAO, CBP TRADE ENFORCEMENT, *supra* note 140, at 12 n.31. The ban is still in place as of March 2025. U.S. CBP, *WROs and Findings*, *supra* note 34.

203. See *supra* notes 157–59, 163–168, and accompanying text for a discussion of this provision.

204. CONG. RSCH. SERV., R46631, SECTION 307 AND U.S. IMPORTS OF PRODUCTS OF FORCED LABOR: OVERVIEW AND ISSUES FOR CONGRESS 11 n.74 (Feb. 1, 2021) (quoting Kenneth Kennedy, Head of the ICE Forced Labor Program from a November 2019 press release).

205. Virtual Interview with Duncan Jepson, former Managing Dir., Liberty Shared (Oct. 3, 2023, 2:00 PM; Oct. 4, 2023, 1:00 PM).

206. *Id.*

207. This unit of CBP "[a]dministers importer surveys to examine supply chain labor practices." GAO, FORCED LABOR IMPORTS, *supra* note 19, at 13. Eric Choy indicates that CBP follows up on responses that highlight potential issues with forced labor in a supply chain. He also notes that the surveys "may serve to put importers on notice" that their supply chains are under scrutiny. Interview with Eric Choy, Nov. 14, 2023, *supra* note 116. Among other industries, CBP has done surveys in seafood and the solar and cotton industry in China. GAO, FORCED LABOR, *supra* note 109, at 15; Ari Natter & Sheridan Prasso, *US Queries Solar Supply Import Chains Amid China Crackdown*, BLOOMBERG (Feb. 27, 2024, 9:20 AM PST), https://www.bloomberg.com/news/articles/2024-02-26/us-customs-questions-solar-importers-about-supply-chains-amid-crackdown-on-china; Bobbi Jo (BJ) Shannon, Jason M. Waite & Lian Yang, *International Trade & Regulatory Advisory: U.S. Customs Doesn't Cotton to XPCC's Use of Forced Labor*, ALSTON & BIRD (Dec. 7, 2020), https://www.alston.com/en/insights/publications/2020/12/us-customs-doesnt-cotton-to-xpcc.

208. Interview with Charity Ryerson, *supra* note 141.

> All of these companies then are suddenly on notice that they might be subject to a WRO. That . . . changed the conversation and the way that people were engaging in terms of, like, 'not my responsibility, I don't own these farms, I don't have anything to do with it.' That flipped when that questionnaire went out. So, I think that there's different ways that CBP can use their power . . . to create more of a deterrent.[209]

In this regard at least, advocacy strategies targeting the top of a supply chain have had an effect on CBP's use of its auditing powers to reinforce brand and retailer responsibility for forced labor in their supply chains. Yet no enforcement action against any entity importing cocoa from Cote D'Ivoire, whether a supplier, an importer, or a lead firm, followed from that audit.

In the absence of direct enforcement of section 307 by CBP against lead firms, advocates themselves continue to engage with the law with the goal of pressuring brands and retailers to take responsibility for facilitating forced labor in their supply chains. They maximize the impact of a petition that names brands and retailers by generating media attention around the filing, with the goal of making consumers aware of the companies' links to forced labor. They also use the filing of supplier-focused petitions, discussed in greater depth below, to draw media attention to the brands and retailers that purchase from the named suppliers.[210] Where CBP ultimately imposes a WRO against a lead firm's suppliers although not against the lead firm itself, advocates may also attempt to use that WRO to create legal consequences for the lead firm in the U.S. or other jurisdictions. For example, after CBP issued a WRO against Malaysian rubber glove producers in the Brightway Group in 2021, International Rights Advocates (IRA) sued brands Kimberly-Clark and Ansell, both of which imported rubber gloves from Brightway, under the U.S. Trafficking Victims Protection Reauthorization Act (TVPRA).[211] Similarly, following CBP's imposition of a WRO on Milwaukee Tool in April of 2024, advocates filed a lawsuit seeking to hold the U.S.-based, Hong-Kong-owned firm liable for forced labor under the

209. *Id.*

210. *See, e.g.*, Press Release, Corp. Accountability Lab & Int'l Rts. Advocs., Rights Groups Demand that CBP Order Chocolate Companies to Demonstrate They Have Changed their Practices within 180 days or Face Import Ban, https://static1.squarespace.com/static/5810dda3e3df28ce37b58357/t/5e460a665c4c40794018afd6/1581648486569/Final+PR+Sec.+307.pdf; Press Release, Greenpeace Se. Asia, *supra* note 194.

211. Complaint at 4, Mia v. Kimberly-Clark Corp., No. 1:22-cv-02353, 2025 WL 752564 (D.D.C. Mar. 10, 2025). International Rights Advocates filed the case on behalf of a group of Bangladeshi migrant workers who worked in Brightway factories. *Id.* at 1. The complaint specifically referenced the WROs, stating that the plaintiffs "endured the specific conditions found by CBP to constitute 'forced labor' in the Brightway-specific WROs." *Id.* at 3. The complaint alleged that Ansell and Kimberly-Clark "knew, or should have known, about forced labor in their disposable gloves supply chains," *id.* at 4, and thus were liable for civil damages under the TVPRA, 18 U.S.C. § 1595, for violations of the TVPRA under 18 U.S.C. §§ 1589–90. For another example, after the 2021 WRO against Malaysian glove company Supermax, UK lawyers brought a case before the High Court challenging the UK government's decision to contract with Supermax. Peter Bengtsen, *UK Faces Legal Action for Approving Firm Accused of Using Forced Labour as PPE Supplier*, GUARDIAN, (Jan. 6, 2022, 9:43 AM EST), https://www.theguardian.com/global-development/2022/jan/06/uk-faces-legal-action-for-approving-firm-accused-of-using-forced-labour-as-ppe-supplier. On paper, a WRO against a supplier could also lead to the criminal prosecution of a lead firm in the United States under 18 U.S.C § 1589(b), but as explained, see *supra* text accompanying note 203, this has never happened.

TVPRA.[212] The complaint repeatedly mentions the WRO, which had been issued only two months earlier.[213]

In addition, where a brand or retailer operates both in the U.S. and in a country with a mandatory human rights due diligence law, advocates may be able to use a U.S. WRO against one of the lead firm's suppliers to trigger an investigation of the brand or retailer in the country with the due diligence law, arguing that the U.S. WRO raises the concern that the lead firm has failed to comply with its due diligence obligations. With the EU having recently passed both a Corporate Sustainability Due Diligence Directive and a Forced Labor Regulation, there will be new opportunities for this kind of synergy between the U.S. import ban and related laws in other countries.[214]

B. RECENT EFFORTS BY ADVOCATES AND CBP'S RESPONSE IN THE MIDDLE OF THE SUPPLY CHAIN: MAJOR SUPPLIERS

Advocates have also filed strategic petitions seeking to focus CBP on enforcement against major supplier firms in the country of production. Such petitions have taken one of two routes: either requesting a blanket WRO against all imports of a product from a given country, or targeting one or more named suppliers chosen for their potential strategic impact.

Blanket WROs might appear to be a particularly effective strategy for addressing forced labor in the production of commodities. Forced labor is

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212. *See generally* Complaint, Xu Lun v. Milwaukee Elec. Tool Corp., No. 2:24-cv-00803-NJ (E.D. Wis. June 27, 2024) (alleging that work gloves sold in the US under the Milwaukee Tool brand were manufactured using forced prison labor in China).

213. *Id.* at 2–3, 30.

214. *See generally* Directive 2024/1760, of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence and Amending Directive 2019/1937 and Regulation (EU) 2023/2859, 2024 O.J. (L 1760) (new EU-wide law mandating that corporations operating in the EU take steps to report on and address adverse human rights impacts in their supply chains); Regulation (EU) 2024/3015 of the European Parliament and of the Council of 27 November 2024, on prohibiting products made with forced labour on the Union market and amending Directive (EU) 2019/1937 (new EU-wide law prohibiting import, export, or sale of products made with forced labor). As of 2024, the two regulations are scheduled to take effect in 2027. *Id.*

The EU forced labor ban is different than the one in the US. Among other things, it bans the sale and export of products made with forced labor as well as imports, and it has a considerably higher evidentiary bar than the US ban. For the authorities to even *initiate an investigation* under the EU ban, it must meet a threshold higher than the "reasonable suspicion" required in the US for *actually imposing* a WRO. Fatmanur Caygın Aydın, Anti-Slavery Int'l & Eur. Ctr. for Const. Hum. Rts., *Out of Reach: Analysis of Evidentiary Standards in EU and US Import Bans to Combat Forced Labour in Supply Chains*, ANTI-SLAVERY, Dec. 2023, at 8, https://www.antislavery.org/wp-content/uploads/2023/12/231206-Evidentiary-Standard-Research_Final_digital.pdf.

On the potential for import controls and mandatory human rights due diligence laws in the same country to work in complementary ways, see ANTI-SLAVERY INT'L & EUR. CTR. FOR CONST. & HUM. RTS., ANTI-SLAVERY INTERNATIONAL AND EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS' POSITION ON IMPORT CONTROLS TO ADDRESS FORCED LABOUR IN SUPPLY CHAINS 3 (2021), https://www.antislavery.org/wp-content/uploads/2021/06/Anti-Slavery-International-ECCHR-Import-Controls-Position-Paper-1.pdf.

Genevieve LeBaron and Judy Fudge point out that the design of the particular import ban is important in determining whether the two laws can enhance each other. Judy Fudge & Genevieve LeBaron, *Regulatory Design and Interactions in Worker-Driven Social Responsibility Initiatives: The Dindigul Agreement*, 163 INT'L LAB. REV. 575, 592 (2024) [hereinafter Fudge & LeBaron, *Regulatory Design*].

entrenched and widespread in the extraction and processing of raw materials such as cotton,[215] seafood,[216] cocoa[217] and sugar.[218] Commodities are fungible and usually commingled before processing, making identification of an origin facility nearly impossible. Blanket petitions and WROs seek to incentivize all parties in the industry to sort the problem out among themselves. They do not require advocates or the agency to choose a target. CBP issued several blanket WROs in response to petitions regarding private sector forced labor in 2018 and 2019, including against tobacco from Malawi, diamonds from Zimbabwe's Marange Diamond Fields, and gold from small artisanal mines in the DRC.[219] It has not done so since, despite pending petitions framed in this way. Advocates report that CBP has expressed concerns to them about the negative impact on the economy of the target country of banning an entire commodity, and that the agency is also facing political pressure to be more surgical in its actions.[220] Furthermore, several blanket WROs have been critiqued as ineffective in blocking the actual import of the targeted product or in alleviating forced labor.[221] While some advocates continue to see the blanket WRO as a useful tool in certain contexts,[222] others voice concerns that as to private forced labor, certain blanket WROs might result in greater job loss for workers and other

215. *See, e.g.*, John Sudworth, *China's 'Tainted' Cotton*, BBC, (Dec. 2020), https://www.bbc.co.uk/news/extra/nz0g306v8c/china-tainted-cotton.

216. *See, e.g.*, DEPT. OF STATE & NOAA, REPORT TO CONGRESS, *supra* note 3, at 1.

217. *See, e.g.*, CAL & AFRILAW, *Nigerian Cocoa Sector*, *supra* note 2; Blackstone et al., *supra* note 2, at 598–600.

218. Rajagopalan, *supra* note 2; Blackstone et al., *supra* note 2, at 599–602.

219. CBP has also issued blanket WROs in contexts of state-sponsored forced labor, for example the 2018 WRO against all products containing cotton from Turkmenistan, and—prior to the UFLPA—the 2021 WROs against all cotton and tomatoes from the Xinjiang Uyghur Autonomous Region. CBP, *WROs and Findings*, *supra* note 34. CBP has removed particular producers from the scope of several of the broad WROs. Three producers were removed from the Malawi WRO and one importer from DRC gold mines WRO. *Id.*

220. That said, the agency recognizes the limitations of a facility-by-facility approach in some contexts. In fishing, for example, Eric Choy notes that while imposing WROs against individual vessels has some effect, it would be necessary to scale up enforcement to get maximum impact in the industry. Interview with Eric Choy, Nov. 14, 2023, *supra* note 116.

221. For example, several years after the 2019 blanket WRO against all tobacco from Malawi, the Remedy Project interviewed thirty tenant farmers across the three main tobacco-growing regions of the country. "[A]ll reported that there had been no changes or improvements in their working conditions since 2019." THE REMEDY PROJECT, *supra* note 24, at 69. The 2018 blanket WRO against all cotton from Turkmenistan (a context of state-sponsored forced labor) is often cited as an enforcement failure, with advocates repeatedly identifying products made with Turkmen cotton for sale in stores and online platforms in the following years even as the WRO has remained in effect. CONG. RSCH. SERV., R46631, SECTION 307 AND U.S. IMPORTS OF PRODUCTS OF FORCED LABOR: OVERVIEW AND ISSUES FOR CONGRESS 3 (Feb. 1, 2021).

222. Interview with Neha Misra, Global Lead on Migration and Forced Labor, Solidarity Ctr., AFL-CIO, in Washinton, D.C. (Sept. 14, 2023, 11:15 AM); Interview with Terry Collingsworth, Exec. Dir., Int'l Rts. Advocs., in Washington, D.C. (Sept. 14, 2023, 3:00 PM).

unintended consequences than more closely targeted forms of enforcement.[223] Most advocates appear to have begun to file more targeted petitions.[224]

Petitions targeting major players at the middle of supply chains name supplier firms that advocates identify as having the financial wherewithal, managerial capacity, and power to address the forced labor arising from their own management and contracting practices, and the market share to generate changes in the practices of others in the industry. As with top-focused approaches just discussed, advocates file petitions where they can document particularly severe forced labor. For a WRO to have an economic impact on the supplier, the U.S. must also be a significant market for the supplier's goods. The goal of the strategy is for CBP to issue a WRO. The hope is that a WRO will incentivize the target firm to make top-down changes in its labor contracting or direct labor management practices, thereby affecting others with a stake in the industry, including smaller firms in the same sector, investors, and service providers (such as accountants and recruiters) that benefit from revenue generated by the company using forced labor. The target suppliers are also chosen because of their importance to the economy of the country of production, with the goal of moving the country's government to make changes in its policies, generating further systemic improvements in forced labor. Advocates seek to identify firms that are large enough to have these impacts, without being so large that a WRO will threaten the economy of the country as a whole.

Advocates have filed a number of strategic petitions targeting major suppliers. Beginning in 2019, for example, independent activist Andy Hall filed petitions against a series of large Malaysian disposable glove manufacturers that employed migrant workers under conditions of forced labor.[225] Civil society organizations filed two petitions in 2019 against major Malaysian palm oil company FGV for forced labor among the migrant workforce on its plantations.[226] Liberty Shared filed a petition against major Malaysian palm oil

223. *See* PIETROPAOLI ET AL., *supra* note 125, at 8. Charity Ryerson of CAL notes that the question is highly dependent on context, and that in certain countries and industries a regional WRO (for example, barring all entry of a certain commodity from a particular state within a country) might be a way to balance the need for breadth in order to impact industry behavior with concerns about harm to workers. Interview with Charity Ryerson, *supra* note 141.

224. Confidential information shared with the author by interviewees.

225. Tim Warren, *Multiple Malaysian Companies Facing Forced Labour Allegations*, INT'L TRADE TODAY (May 24, 2021), https://internationaltradetoday.com/news/2021/05/24/multiple-malaysian-companies-facing-forced-labor-allegations-2105240022 (citing Hall as the source of multiple Malaysian glove petitions and also FGV petition); *see also* Anders Melin, *'Playing God': This Labor Activist's Relentless Emails Force Companies to Change*, BLOOMBERG: BUSINESSWEEK (Feb. 14, 2024, 2:00 PM PST), https://www.bloomberg.com/news/features/2024-02-14/workers-rights-activist-andy-hall-forces-change-with-email?srnd=premium-asia&leadSource=uverify%20wall&embedded-checkout=true (crediting 5 CBP investigations of Malaysian glovemakers and WROs against 6 Malaysian glove companies to information provided by Hall).

226. THE REMEDY PROJECT, *supra* note 24, at 41.

company Sime Darby.[227] Outside of Malaysia, examples of strategic supplier-focused petitions include two filed against the major Dominican sugar company Central Romana, described more fully below.[228] All of these petitions—and numerous others, for example against key suppliers in the seafood industry—represent efforts by advocates to address pervasive forced labor across a sector in a country by directing CBP's attention to violations by supplier firms with dominant positions in that sector.

For a time, CBP responded positively to this strategy. Pursuant to the petitions just noted, Malaysia was a particular focus, with the agency imposing eight WROs and two Findings there between 2019-2022, making up more WROs applied to any country other than China in the past decade.[229] Six of the WROs were against rubber glove companies in Malaysia, with a Finding against one of those companies, Top Glove.[230] It issued WROs in 2020 against Malaysian palm oil producers FGV[231] and Sime Darby, with a subsequent finding against Sime Darby in 2022.[232] It also issued a WRO against major supplier Central Romana in 2022.[233] Of course, many other petitions filed on this model did not result in WROs.

Because the Malaysian WROs were so concentrated in terms of industry and location, the results offer some opportunity to consider the potential impact of a strategic supplier-focused enforcement strategy. Outcomes appear to have been mixed. In some cases, Malaysian companies have done little to change their practices in response to the WROs, several of which remain in place.[234] As to the companies where CBP lifted the WROs, observers have different views. Some conclude that the Malaysian rubber glove WROs in particular generated meaningful results at the individual supplier, industry, and government level.

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227. CBP, *WROs and Findings*, *supra* note 34. The WRO was lifted in 2023. Press Release, U.S. Customs & Border Prot., CBP Modifies Finding on Sime Darby Plantation Berhad in Malaysia (Feb. 3, 2023), https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-finding-sime-darby-plantation-berhad-malaysia (indicating the WRO was imposed in 2020, and a Finding was imposed in 2022, and that both were modified in 2023).

228. *See infra* Subpart.IV.A.

229. CBP, *WROs and Findings*, *supra* note 34.

230. *Id.*; Press Release, U.S. Customs & Border Prot., CBP Modifies Finding on Top Glove Corporation Bhd. (Sept. 9, 2021), https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-forced-labor-finding-top-glove-corporation-bhd. These WROs and Finding have now been lifted, with the exception of a WRO still in place against the Brightway Group. CBP, *WROs and Findings*, *supra* note 34.

231. Press Release, U.S. Customs & Border Prot., CBP Issues Detention Order on Palm Oil Produced with Forced Labor in Malaysia (Sept. 30, 2020), https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-order-palm-oil-produced-forced-labor-malaysia. The WRO remains in place. CBP. *WROs and Findings*, *supra* note 34.

232. CBP, *WROs and Findings*, *supra* note 34. The WRO was lifted in 2023. Press Release, U.S. Customs & Border Prot., *supra* note 227.

233. CBP, *WROs and Findings*, *supra* note 34; *see also infra* Part.IV.B.2 (discussing the Central Romana case study).

234. The WROs against FGV in Malaysia for palm oil and against the Brightway Group in Malaysia for disposable gloves remain in place, four and three-and-a-half years after they were imposed, respectively. CBP, *WROs and Findings*, *supra* note 34.

They point to the repayment of substantial recruitment fees to workers as a part of remediation, the creation of an industry association and agreement on systematic changes in industry practices regarding the treatment of migrant workers, and the Malaysian government's announcement of a new government policy as to migrant labor.[235] However, these analysts also note that it is difficult to assess how much of this (beyond the repayment of fees) to attribute to the enforcement of section 307, given the significant number of other pressures coming to bear on the industry and government at the same time.[236] Other observers are less positive. They note that illegal recruitment fees—which were only partially repaid—represent only a portion of the harm that workers suffered and for which they were not compensated, and they characterize the supplier, industry, and public policy changes just described as largely cosmetic.[237]

Advocates believe that the impact of bans on large suppliers would be much greater if CBP combined WROs with the use of other tools at its disposal. CBP has never imposed civil penalties on a major supplier, and the DOJ has also never criminally prosecuted a supplier abroad for forced labor. HSI is reportedly investigating a possible criminal case against the Dominican sugar producer Central Romana, in conjunction with the WRO currently in effect against the company,[238] but no prosecution has yet resulted.

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235. *See, e.g.*, Ebert et al., *supra* note 57, at 115–20; *id.* at 117–19 (noting measures taken by individual firms, including reimbursement of fees and changes in human resources policies; by the Malaysian government, including a National Action Plan on Forced Labor; and by industry groups, including the creation of the Responsible Glove Alliance); *id.* at 119 ("[Import bans] can be considered a driver of change in the Malaysian rubber glove sector."). The Remedy Project's assessment of the impact of the Top Glove WRO is similarly positive. THE REMEDY PROJECT, *supra* note 24, at 61–63.

236. During the same time period when CBP imposed the Malaysia WROs, the US State Department downgraded Malaysia to Tier 3 in its Trafficking in Persons (TIP) report; the US Department of Labor listed Malaysian rubber gloves and palm oil on its List of Goods Produced by Child or Forced Labor; Canada terminated public procurement contracts with one Malaysian glove company; the Norwegian Government Pension Fund put the same company under observation, and; several companies faced domestic proceedings for forced labor in Malaysia. These acts all drew substantial media attention. Ebert et al., *supra* note 57, at 117. Ebert, Pietropaoli, and the Remedy Project all observe that it is difficult to disaggregate the impact of the WROs from these other actions. THE REMEDY PROJECT, *supra* note 24, at 14; Ebert et al., *supra* note 57, at 126; PIETROPAOLI ET AL., *supra* note 125, at 1, 9.

237. *See, e.g.*, Zsombor Peter, *Forced Labor Claims at Malaysian Firms Spur Spate of US Import Bans,* VOICE OF AM. (Feb. 10, 2022, 7:19 AM), https://www.voanews.com/a/forced-labor-claims-at-malaysian-firms-spur-spate-of-us-import-bans-/6433838.html (citing Lee Hwok Aun, a professor and Malaysian labor migration expert, and Andy Hall, labor rights advocate, critiquing the Malaysian Government's National Action Plan on Forced Labor as a half measure that—even so—has not been implemented; the plan is not binding and "addresses few, if any, of the main problems with Malaysia's labor laws and policies, including work permits that tie migrants to a specific employer."); *see also* Lee Hwok Aun & Adrian Pereira, *Can Malaysia Eliminate Forced Labour by 2030?*, 2023 ISEAS—YUSOF ISHAK INST., no. 2, at 1, 29, https://www.iseas.edu.sg/wp-content/uploads/2022/11/TRS2_23.pdf ("Despite the new, broader professed aim, the redeployment of punitive methods that failed to address the systemic roots in the past, raises concerns about whether Malaysia has mustered adequate resources and political will to truly eradicate forced labour practices.").

238. Sandy Tolan & Michael Montgomery, *Federal Agents Investigate Sugar Exporter Over Allegations of Forced Labor*, MOTHER JONES (Oct. 20, 2023), https://www.motherjones.com/politics/2023/10/central-romana-homeland-security-sugar.

In the absence of the government's pursuit of fines and prosecutions, some advocates have themselves used WROs to trigger other legal consequences for the major supplier firms abroad that are subject to them. As noted above, several advocates have filed lawsuits under the U.S. TVPRA following the issuance of WROs.[239] Although there are few mechanisms to do this in the United States, supplier countries' legal systems and other nations' mandatory human rights due diligence laws offer important openings. Duncan Jepson, the founder of Liberty Shared, emphasizes that where supplier firms are located in countries with functional regulatory, legal, and political environments, a WRO can be used to mobilize domestic legal pressures against the supplier to make the required changes.[240] In these settings, a WRO can be a trigger for other mechanisms because it represents an official statement that the U.S. government suspects the entity's products have been made using forced labor.[241]

Liberty Shared's approach to the WRO resulting from its petition against Malaysian palm oil producer Sime Darby illustrates this strategy. Within hours of CBP issuing a WRO in late 2020, the organization filed a securities complaint against Sime Darby with the Malaysian Stock Exchange as well as a complaint with the UK Modern Slavery Commission, to leverage the impact of the WRO.[242] The Securities Commission of Malaysia was soon reported to have initiated an investigation.[243] CBP issued a Finding against Sime Darby in early 2022. The enforcement and surrounding publicity made it more difficult for the company to maintain relationships with lead firms. Brands Hershey, Cargill, and Ferrero soon announced that they would stop sourcing palm oil from Sime

239. *See supra* note 211.

240. Interview with Duncan Jepson, *supra* note 205.

241. *Id.* Jepson further notes that firms with outside financing, ideally those that are publicly traded, will be subject to pressure from investors and regulators in the face of a WRO, as opposed to family-owned businesses that respond largely to the dictates of their own priorities and pocketbooks. He also highlights the importance of using tools from the financial crimes context. *Id.*

242. *Id.* The securities complaint was for Sime Darby's failure to disclose human rights violations in its required filings with the Stock Exchange. *Id.* Sometimes the WRO leads to additional consequences without civil society taking action. After CBP imposed a WRO on the Taiwanese fishing vessel the Da Wang in 2020, Taiwanese prosecutors charged the captain of the Da Wang and eight others for perpetrating forced labor aboard the fishing vessel. *Nine Indicted Over Abuse of Migrant Fishers*, TAIPEI TIMES (Apr. 22, 2022), https://www.taipeitimes.com/News/taiwan/archives/2022/04/22/2003777029. The WRO against the Da Wang also led the Taiwanese government to publish (and partially implement) an Action Plan for Fisheries and Human Rights, and to tuna trader FCF (which owns the US brand Bumble Bee) announcing that it would cease sourcing from the Da Wang. THE REMEDY PROJECT, *supra* note 24, at 82–83.

243. Mei Mei Chu, *Malaysia's Securities Panel Probes Sime Darby Plantations After U.S. Import Ban*, REUTERS (Mar. 11, 2021, 1:10 AM PST), https://www.reuters.com/article/malaysia-simedarby-idUSL1N2L90FK. Sime Darby then sued Duncan Jepson, the head of Liberty Shared. It dropped the suit when the Malaysian authorities stated that no investigation was underway. Mei Mei Chu, *Malaysia's Sime Darby Plantation Drops Lawsuit Against Activist*, REUTERS (Mar. 16, 2021, 5:43 AM PDT), https://www.reuters.com/article/business/malaysia-s-sime-darby-plantation-drops-lawsuit-against-activist-idUSKBN2B81QR.

Darby.[244] Sime Darby began taking meaningful steps to address the forced labor in its production process, and CBP lifted the WRO in 2023.[245]

As with the brand-focused strategy just discussed, advocates using a strategic supplier approach will usually publicize the filing of the petition itself to put all parties on notice of potential enforcement of the law and to impact the supplier's reputation among consumers. Media attention to the petition may itself generate changes in firm policies and government action independent of whether CBP ultimately issues a WRO. For example, a Thomson Reuters Foundation investigative report on the use of prison labor to manufacture fishing nets in Thailand in 2021, which was followed two months later by a petition for a WRO submitted by a group of civil society organizations, had a substantial impact.[246] Within ten days of the submission of the petition, the Thai government had announced that it was ending the use of prison labor in fishing nets.[247]

C. CONCERNS

If CBP responded in a sustained way to advocates' efforts to encourage a strategic top-down approach to enforcement of section 307, there would be meaningful concerns to consider. Chief among them, given the focus of this Article, is the lack of any institutionalized role for workers in CBP's enforcement process. As advocates have repeatedly pointed out, CBP has often failed to attend to workers' concerns while investigating, imposing, and lifting a WRO, even in the most basic of ways.[248] Consistent with its focus on the goods as the target of enforcement,[249] the agency usually approaches both investigation and remediation through engagement with the importer of record rather than the

244. THE REMEDY PROJECT, *supra* note 24, at 50 (discussing Hershey); *id.* at 56 (discussing Cargill and Ferrero).

245. The steps Sime Darby took included a new recruitment policy, repayment of past recruitment fees, reduction in hours worked, and the creation of a grievance mechanism. THE REMEDY PROJECT, *supra* note 24, at 52–56. Duncan Jepson assesses these changes as having a meaningful impact. Interview with Duncan Jepson, *supra* note 205. As a result of these changes, CBP modified its findings. Press Release, U.S. Customs & Border Prot., *supra* note 227.

246. The organizations included Global Labor Justice (GLJ) and the Seafood Working Group. Global Labor Justice (GLJ) merged with the International Labor Rights Forum (ILRF) in 2020, and for several years was known as GLJ-ILRF. Jennifer (JJ) Rosenbaum, *ILRF and Global Labor Justice Are Joining Forces to Defend Worker Rights and Build Worker Power in the Global Economy*, GLOB. LAB. JUST.: BLOG (July 1, 2020), https://laborrights.org/blog/202007/ilrf-and-global-labor-justice-are-joining-forces-defend-worker-rights-and-build-worker. In 2024, the organization shortened its name to Global Labor Justice. Jennifer (JJ) Rosenbaum, *Message from the Executive Director: A New Global Labor Justice, Building Momentum for a More Just Global Economy,* GLOB. LAB. JUST., https://globallaborjustice.org/message-from-the-executive-director-a-new-global-labor-justice-building-momentum-for-a-more-just-global-economy (last visited Mar. 30, 2025). For consistency, I use Global Labor Justice or GLJ when referring to the organization at any time following the merger.

247. *See* THE REMEDY PROJECT, *supra* note 24, at 74–78; (noting that it was likely the combination of the investigative report and the WRO petition that led to such swift action).

248. *See supra* notes 114–120 and accompanying text.

249. *See supra* notes 25–27 and accompanying text; *supra* text accompanying note 162.

workers, relying on an auditing approach that has been widely condemned to establish whether forced labor is present and then to demonstrate that all indicators have been fully addressed.[250] Although in some cases it has pursued repayment for workers as a part of the remediation process, it often does not require a remedy for workers; indeed, in many instances it never consults with workers before it lifts a WRO.[251] The agency's lack of engagement with workers in the context of section 307 threatens both the effectiveness and the legitimacy of enforcement actions under the law. These concerns echo those that scholars such as Joy Gordon have raised about the U.S. government's imposition of

250. Third-party auditors of corporate social responsibility in supply chains have been widely critiqued. Core concerns include that auditors rely on repeat hiring by the firms they are auditing, disincentivizing thorough investigations and the publication of negative conclusions; industry practices often do not involve unannounced inspections or interviews with workers offsite; audit results are not made public; and audits do not extend beyond first-tier suppliers, while violations are often found at lower levels. For an overview of the literature criticizing the supply chain audit regime. *See* Galit A. Sarfaty, *Global Supply Chain Auditing*, *in* THE CAMBRIDGE HANDBOOK OF COMPLIANCE 977, 980–84 (Benjamin van Rooij & D. Daniel Sokol eds., 2021); *see also* Genevieve LeBaron, Jane Lister & Peter Dauvergne, *Governing Global Supply Chain Sustainability Through the Ethical Audit Regime*, 14 GLOBALIZATIONS 958, 959 (2017).

CBP appears increasingly aware of concerns about third-party audits paid for by the firms being audited but continues to rely heavily on them. A FAQ published by CBP on its website presents an "answer" to a question about audits (while attributing it to an advocate): "There is ample evidence-based research that demonstrates social audits, as they are currently administered, are ineffective in identifying and reducing forced labor. Instead, more investment should be made in worker-driven solutions. Examples of how this can be achieved are the Fair Food Program and Bangladesh Accord." U.S. CUSTOMS & BORDER PROT., VIRTUAL TRADE WEEK: FORCED LABOR FREQUENTLY ASKED QUESTIONS (FAQS) 1 (2021) [hereinafter VIRTUAL TRADE WEEK], https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/CBP%202021%20VTW%20FAQs%20%28Forced%20Labor%29.pdf. The FAQ then refers readers to several articles by Genevieve LeBaron, a scholar who is highly critical of audits in a supply chain context. *Id.* Meanwhile, advocates report that CBP continues to recommend that importers hire third-party auditors as the starting point for remediation. In March 2024, three years after the publication of the FAQ cited above, CBP informed advocates that it recommends that companies subject to a WRO conduct a third-party audit and develop a corrective action plan to address the indicators revealed by CBP's investigation and the audit. Companies should then implement the plan and provide a clean audit by the same auditor to demonstrate that forced labor is no longer present. CBP reviews the audit finding as the basis for determining whether forced labor has been addressed and the audit can be lifted. *CBP FY24 Q2 Community Service Organization Roundtable*, *cited* in NEHA BHATIA, REACHING FOR REMEDY, *supra* note 41, at 26–27. Most companies subjected to a ban follow the remediation path described by CBP, doing a baseline audit followed by a corrective action plan and a clean audit. *See* THE REMEDY PROJECT, *supra* note 24, at 22. In at least two cases—Natchi Apparel in India, discussed below, and Annapurna Carpet in Nepal—CBP lifted WROs based on evidence submitted by trade unions and civil society organizations, rather than company-commissioned audits, illustrating the possibility of an alternative approach. *Id.* at 19.

251. THE REMEDY PROJECT, *supra* note 24, at 11–12. The Remedy Project examined the outcomes for workers in nine cases where WROs were imposed. In only two of those cases did remediation of WROs involve direct payments to workers. *Id.* at 18–19. It is not clear to observers why the agency chooses to require payment of a remedy to workers in one case rather than another, or whether there is a consistent methodology for calculating such payments if pursued. *Id.* at 12.

As noted above, CBP reports that it has facilitated the repayment of over $200 million in recruitment fees and unpaid wages to workers (Choy Chamber of Commerce Remarks, Nov. 13, 2023, *supra* note 119), largely stemming from remediation in the context of the Malaysian rubber and palm oil WROs. Even in those contexts, however, advocates express frustration with the time it took workers to be repaid, the low amount relative to the extent of the harm workers had suffered, and the fact that many of the companies appear not to have made systemic changes in their practices. *See generally* author-conducted interviews.

unilateral economic sanctions more generally,[252] a critique that Desirée LeClercq has recently extended to the U.S. government's use of trade sanctions for labor rights violations in the absence of engagement with affected parties abroad.[253]

For a top-down enforcement approach such as the one discussed in this section to succeed, CBP would need to increase its engagement with workers at every stage of the process. Unless it does so, while the agency may choose its targets strategically, it will miss the mark on effective interventions to address the systems that perpetuate forced labor. Without tying enforcement to in-depth consultation with workers, the agency will have no access to key information about the scope and contours of the problem, will accept "remediation" that remedies little from the workers' perspective, and will risk harming workers in lieu of helping them. Meaningful engagement with workers and other actors in the country where sanctions are applied is also central to the perception of the legitimacy of U.S. government actions, and therefore, as LeClercq and others have argued, to pragmatic compliance.[254]

As advocates continue to engage with CBP around particular petitions as well as more generally, they have sought to move the agency in the direction of greater responsiveness to worker interests and concerns.[255] CBP's understanding of its remit is not static.[256] As the following Part explains, during

252. *See, e.g.*, Joy Gordon, *A Peaceful, Silent, Deadly Remedy: The Ethics of Economic Sanctions*, 13 ETHICS & INT'L AFFS. 123, 123 (1999); Joy Gordon, *Smart Sanctions Revisited*, 25 ETHICS & INT'L AFFS. 315, 329–32 (2011).

253. Desiree LeClercq, *Rights-Based Sanctions Procedures*, 75 ADMIN. L. REV. 105, 153 (2023) [hereinafter LeClercq, *Rights-Based Sanctions*] (critiquing the U.S. Treasury Department's application of its Office of Financial Asset Control (OFAC) sanctions and the U.S. Trade Representative (USTR)'s application of trade sanctions for violations of labor rights, absent consultative mechanisms). LeClercq argues that these concerns would be reduced in the trade context if the USTR were required to engage with foreign governments, employers, and workers regarding the substantive content of the labor rights to be enforced, in ways tracking U.S. administrative and labor laws as well as the ILO's tripartite procedures. *Id.* at 136–58; LeClercq, *Worker-Centered Trade Policy*, *supra* note 86, at 779–81.

254. LeClercq, *Worker-Centered Trade Policy, supra* note 86, at 764–65.

255. *See supra* text accompanying note 39.

256. For example, contrast the agency's public-facing description of its role in combatting forced labor in 2016 with its website in 2024. "CBP Forced Labor Enforcement[:] CBP acts on information concerning specific manufacturers/exporters and specific merchandise. The agency does not generally target entire product lines or industries in problematic countries or regions. CBP enforces Withhold Release Orders and Findings to prevent goods made with forced labor from entering the U.S. commerce." *Forced Labor Enforcement, Withhold Release Orders, Findings, and Detention Procedures*, U.S. CUSTOMS & BORDER PROT. (Aug. 2016), https://web.archive.org/web/20170103053213/https://www.cbp.gov/sites/default/files/assets/documents/2016-Aug/Fact%20Sheet%20-%20Forced%20Labor%20Procedures.pdf.
In 2024, the agency's description stated:

> Forced labor is a violation of basic human rights. CBP is committed to identifying products made by forced labor and preventing them from entering the U.S., therefore denying access to the U.S. economy for those that engage in the egregious human rights abuses associated with the use of forced labor. Eradicating the use of forced labor is a moral imperative. Additionally, forced labor is an unfair trade practice that undermines the ability of companies that treat workers fairly to compete in the global economy. CBP is determined not only to prevent goods made with forced labor from entering

the Biden administration CBP responded with some openness to the idea of worker-driven remediation, although it did not operationalize this new understanding. At the same time, even if CBP were to fully engage with workers and their representatives during the process of investigating and remediating forced labor, there are limits to an approach that seeks to address worker exploitation only through top-down changes in corporate policy. The next section considers whether and how section 307 might come into play in complementary efforts to build worker power and engagement from the bottom up.

IV. EXPLORING A BOTTOM-UP STRATEGIC APPROACH

The top-down strategic approach to section 307 just discussed seeks to exert pressure on powerful firms in a supply chain to make changes in their purchasing and contracting practices that drive forced labor. Such pressure is critically important, but it is not sufficient on its own. Top-down policies are designed by corporations, and their contents and implementation will reflect business priorities.[257] For a response to reflect and address the needs of the workers, and for it to be effective in institutionalizing new conditions, efforts must also be driven from the bottom-up. As noted, consultation with workers is critical to ensure that a remedy is responsive to the harm they have suffered. But without a shift in the power dynamics on the ground, consultation about remedy is unlikely to lead to lasting change. Worker organizing is necessary to raise the floor on wages and working conditions in supply chains in a durable way.[258] Both democratic legitimacy and the hope of achieving an impact that reflects workers' own goals demand that workers participate in building collective power; making decisions about the goals, trade-offs, and risks of forward-looking efforts to improve their own working conditions; and enforcing the

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> the United States, but also to do everything within our authority to stop them from being made in the first place.

Forced Labor, U.S. CUSTOMS & BORDER PROT., https://www.cbp.gov/trade/forced-labor (last visited Sept. 27, 2024).

257. *See, e.g.*, THE REMEDY PROJECT, *supra* note 24, at 21 ("Company Remediation efforts in response to import bans are typically designed from the top-down, using a risk-driven audit/compliance approach, and with limited stakeholder engagement – especially with workers and their credible representatives, trade unions, and civil society. This hinders the ability of company Remediation efforts to create systemic-level changes, and provide improved access to remedies for workers and other affected rights holders.").

258. MARK ANNER & MATTHEW FISCHER-DALY, WORKER VOICE, *supra* note 71, at 10; OFF. TO MONITOR & COMBAT TRAFFICKING IN PERS., U.S. STATE DEPT., TRAFFICKING IN PERSONS REPORT 32 (2024) [hereinafter U.S. STATE DEPT., TRAFFICKING IN PERSONS REPORT], https://www.state.gov/wp-content/uploads/2025/02/TIP-Report-2024_Introduction_V10_508-accessible_2.13.2025.pdf ("One of the most effective ways to prevent worker exploitation is to guarantee workers' full rights to freedom of association and collective bargaining. Independent and democratic labor unions, led by workers, are best able to represent workers' collective interests at multiple levels, including at the national, subnational, regional, and international levels. Collaborating with local workers, regional international organizations, and global union federations, these unions . . . . are well positioned to engage powerful transnational companies to address forced labor in their supply chains"); LeClercq, *Invisible Workers*, *supra* note 71, at 109.

agreements that result from organizing. Freedom of association and collective bargaining are the key building blocks of such a power shift. But as the next section details, freedom of association in supply chains faces particular challenges, which are only intensified in contexts where forced labor is present.

A. FREEDOM OF ASSOCIATION IN SUPPLY CHAINS: CHALLENGES AND EMERGING RESPONSES

In supply chain contexts, bottom-up organizing is an uphill battle even absent forced labor. Hard-won victories are constantly in danger of being undermined by actors higher up the supply chain. When a union negotiates a collective bargaining agreement with the firm that directly employs the workers, those parties are bound to respect the terms of that contract by the domestic industrial relations regime of the country where they are located.[259] But in global supply chains, economic actors outside the agreement are often more important in deciding its outcome than those within it. Where a factory's costs increase as a result of higher wages or other benefits in a collective bargaining agreement, the factory is less able to compete for business from firms higher in the supply chain, especially from lead firms that use a low-cost, high-competition sourcing strategy. Buyer firms can simply walk away from a factory that becomes more costly as a result of unionization, leaving both the firm and its workers worse off.[260]

The presence of forced labor makes collective action even more challenging. Forced labor can restrict the individual autonomy and mobility required to organize. In addition, in contexts where forced labor is common, unions are sometimes banned or restricted; those that exist may be state-dominated, allied with employers, corrupt, or uninterested in organizing the worst-off workers at the bottom of the labor market.[261] Migrants, who make up a disproportionate share of people in forced labor,[262] are sometimes prohibited

259. *See, e.g.*, Erin Johansson, *Collective Bargaining 101*, JOBS WITH JUST. (Mar. 3, 2017), https://www.jwj.org/collective-bargaining-101 ("[In the United States,] [c]ollective bargaining results in a collective bargaining agreement (CBA), a legally binding agreement . . . ."); NISHITH DESAI ASSOCS., INDIA: TRADE UNIONS AND COLLECTIVE BARGAINING 7 (2019), https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/India-Trade-Unions-and-Collective-Bargaining.pdf ("In India . . . collective bargaining agreements . . . drawn up in voluntary negotiations between the employer and the trade union . . . are binding.").

260. Blasi & Bair, *supra* note 62, at 5.

261. Michelle Ford, *Trade Unions, Forced Labour and Human Trafficking*, ANTI-TRAFFICKING REV., Sept. 2015, at 11, 27 [hereinafter Ford, *Trade Unions*]. For example, in Malaysia, where many WROs have been issued in the migrant-dependent disposable glove sector, migrants are forbidden from forming unions, although they may join those established by Malaysians. *See Empowering Trade Unions Crucial to Ending Labour Exploitation*, INT'L LAB. ORG. (Mar. 31, 2022), https://www.ilo.org/resource/article/empowering-trade-unions-crucial-ending-labour-exploitation.

262. INT'L LAB. ORG. ET AL., *supra* note 52, at 34, 36.

by law from forming or joining trade unions.[263] Where forced labor is long entrenched and happens in dispersed settings such as small farms or artisanal mines, worker organizing can be nearly impossible. In the context of the Tariff Act, advocates may have unintentionally reinforced the idea that forced labor is incompatible with freedom of association by seeking to use section 307 only where there is evidence of the most severe forms of forced labor.

On the other hand, forced labor is not a self-contained status, but instead a set of practices closely related to "ordinary" labor exploitation. Over time, workers may move in and out of settings characterized by forced labor.[264] People facing forced labor are often portrayed as victims who require rescue, not actors in their own right.[265] But there are settings where working conditions meet the ILO's indicators of forced labor, and yet there *is* the potential for worker organizing. The bottom of supply chains in key industries (agriculture and food processing, manufacturing, and resource extraction) is rife with withholding of wages, long hours, harassment and violence, mobility restrictions, and immigration regimes that tie workers to their employers and coerce them into debt with high fees for recruitment and migration.[266] Each of these practices is recognized by the ILO as an indicator of forced labor.[267] And yet, again and again, workers facing such conditions have organized to demand better wages and treatment.[268] To win sustained changes, like all other workers

263. *See* Stanfia Marino, Heather Connolly, & Miguel Martinez Lucio, *Trade Unions and Migrant Workers: The Challenges of Inclusion*, *in* RESEARCH HANDBOOK ON MIGRATION AND EMPLOYMENT 152, 152–53 (Guglielmo Meardi ed., 2024). Like Malaysia, see Ford, *Trade Unions*, *supra* note 261, in Thailand migrants are prohibited from forming unions. KIMBERLY ROGOVIN, INT'L LAB. RTS. F., TIME FOR A SEA CHANGE: WHY UNION RIGHTS FOR MIGRANT WORKERS ARE NEEDED TO PREVENT FORCED LABOR IN THE THAI SEAFOOD INDUSTRY 6 (Liana Foxvog ed., 2020), https://laborrights.org/sites/default/files/publications/ILRF_TimeforaSeaChange.pdf.

264. *See supra* note 54 and accompanying text.

265. For examples of the rescue paradigm, see *Our Work*, IJM, https://www.ijm.org/our-work (last visited Mar. 30, 2025) (highlighting rescue stories and work to "Rescue and restore victims" of "modern slavery, exploitation and abuse"); *About Us*, FREE THE SLAVES, https://freetheslaves.net/about-us (last visited Mar. 30, 2025) ("We help those in slavery escape the brutality of bondage."); LINDSEY P. BEUTIN, MODERN DAY SLAVERY, WHITE INDEMNITY, AND RACIAL JUSTICE 153 (2023) ("The video about Sakdouri, titled *What Freedom Looks Like*, begins with the South Asia director for Free the Slaves saying, 'people in slavery have to be rescued.'") For critiques of the rescue paradigm, see BEUTIN, *supra*, at 157; ELENA SHIH, MANUFACTURING FREEDOM: SEX WORK, ANTI-TRAFFICKING REHAB, AND THE RACIAL WAGES OF RESCUE 2 (2023).

266. LeBaron, *supra* note 6, at 33–34; INT'L LAB. ORG. ET AL., *supra* note 52, at 39–41.

267. INT'L LAB. OFF., *supra* note 51. Note, however, that from the ILO's perspective (which is not necessarily shared by CBP), forced labor indicators are warning signs that forced labor may be present, but a definitive conclusion would require an assessment that the situation falls within the definition of forced labor in Int'l Lab. Org [ILO] Convention No. 29: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself [or herself] voluntarily." *Id.* art. 2(1); e-mail from Franz Ebert, Rsch Off. in Lab. Law, Int'l Lab. Org., to author (Sept. 10, 2024, 5:11 PM) (on file with author).

268. *See, e.g.*, Ben Rogaly, *Migrant Workers in the ILO's "Global Alliance Against Forced Labor" Report: A Critical Appraisal*, 29 THIRD WORLD Q. 1431, 1437–38 (2008) (emphasizing the agency of migrants in conditions of forced labor in agriculture in rural Asia); LeClercq, *Invisible Workers*, *supra* note 71; Ford, *Trade Unions*, *supra* note 261, at 7–9; Siobhán McGrath, Ben Rogaly & Louise Waite, *Unfreedom in Labor Relations:*

in supply chain settings, workers and their unions must figure out a way to bring lead firms to the table and get them to commit to respecting the deals they have negotiated.

Labor organizations have experimented with various ways to do this over the past few decades.[269] The most relevant innovation for the purposes of this article is the enforceable brand agreement, negotiated by labor rights NGOs, Global Union Federations (international federations of national unions, organized by sector), local unions, and lead firms, through which lead firms make legally-binding commitments to support and help pay for improved supplier-side standards and to respect freedom of association.[270] The garment industry has several prominent examples. These include the Bangladesh and Pakistan Accords, though which garment brands have committed to pay for safety improvements at factories in those countries;[271] the Agreements to Prevent and Combat Gender-Based Violence and Harassment in Lesotho, which is an initiative involving unions, civil society organizations, suppliers, and garment brands to address gender-based violence and harassment affecting

From a Politics of Rescue to a Politics of Solidarity, 19 GLOBALIZATIONS 1, 6–7 (2022); Julia O'Connell Davidson, *Slavery Versus Marronage as an Analytic Lens on "Trafficking," in* THE PALGRAVE HANDBOOK OF GENDER AND MIGRATION, at 425, 430–31 (Claudia Mora & Nicola Piper eds., 2023); Francis Portes Virginio, Brian Garvey, Luís Henrique da Costa Leão & Bianca Vasquez Postório, *Contemporary Slave Labor on the Amazonian Frontier: The Problems and Politics of Post Rescue Society*, 19 GLOBALIZATIONS 937, 948–50 (2022).

Acknowledging this, both the ILO and the US State Department recognize freedom of association and collective bargaining as critical ways to address forced labor. INT'L LAB. ORG. ET AL., *supra* note 52, at 79; U.S. STATE DEPT., TRAFFICKING IN PERSONS REPORT, *supra* note 259, at 32; *see also* Ebert et al., *supra* note 57, at 126 (emphasizing "how important it is to address forced labour in conjunction with other labour rights issues that may render workers more prone to abuse, such as deficits in . . . freedom of association").

269. The Global Union Federations, which bring together national unions by sector, have also negotiated Global Framework Agreements with some lead firms. The agreements pre-commit signatory brands such as Volkswagen, Bosch, and Chiquita to respect workers' rights, including freedom of association, across their global supply chains. FELIX HADWIGER, INT'L LAB. ORG, GLOBAL FRAMEWORK AGREEMENTS: ACHIEVING DECENT WORK IN GLOBAL SUPPLY CHAINS 8 (2016), https://www.ilo.org/media/427041/download. Such agreements usually only cover the first tier of a lead firm's suppliers. *Id.* at 30.

270. Fudge and LeBaron define enforceable brand agreements as agreements through which "corporate brands commit to using their supply chain relationships and leverage to support raising labor standards at certain worksites or sectors." Fudge & LeBaron, *Regulatory Design*, *supra* note 214, at 2. Enforceable brand agreements are often associated with Worker-Driven Social Responsibility (WSR), a framework that—by contrast with voluntary, top-down Corporate Social Responsibility (CSR)—involves worker-driven mechanisms for setting, monitoring, and enforcing labor rights within global supply chains, and including legally-binding commitments by brands to help pay for measurable improvements in conditions for workers, with economic consequences for suppliers that do not comply. *Statement of Principles*, WSR NETWORK, https://wsr-network.org/what-is-wsr/statement-of-principles (last visited Mar. 30, 2025); *see also* Fudge & LeBaron, *Regulatory Design*, *supra* note 214, at 5–8. One thing that distinguishes some enforceable brand agreements from other examples of WSR is that they have trade union involvement, marrying collective bargaining to the hallmarks of WSR.

271. *Bangladesh: Bangladesh Safety Agreement on Health and Safety in the Textile and Garment Industry*, INT'L ACCORD, https://internationalaccord.org/countries/bangladesh (last visited Mar. 30, 2025); *Pakistan: Pakistan Accord: Health and Safety in the Textile and Garment Industry,* INT'L ACCORD, https://internationalaccord.org/countries/pakistan (last visited Mar. 30, 2025).

10,000 workers at factories in Lesotho, in Southern Africa[272]; and the Dindigul Agreement in Tamil Nadu, India, described in the Natchi case study below.[273] In agriculture, examples include the Fair Food Program and Milk with Dignity.[274] All share the following features: they commit brands to requiring and paying for improved working conditions at their suppliers' factories,[275] are legally binding (usually through arbitration), have significant worker participation in their design and monitoring, and are enforced through an independent investigation regime, as opposed to being enforced by the firms themselves or by an auditor they hire.[276]

As important as these examples are, they remain the exception rather than the rule. Overwhelmingly, lead firms have been reluctant to sign legally-binding commitments that they fear will increase production costs.[277] U.S. firms have been particularly resistant.[278] With few legal constraints on U.S. brand behavior with regard to the working conditions at the factories they contract with in other countries, U.S. firms have instead sought out voluntary, self-generated corporate social responsibility regimes, or equally voluntary multi-stakeholder initiatives, wherever possible.[279] The question is whether section 307 might offer workers and unions a tool to bring lead firms to the table to negotiate agreements that address the forced labor and establish standards and grievance procedures going forward.

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272. Press Release, Workers Rts. Consortium, Leading Apparel Brands, Trade Unions, and Women's Rights Organizations Sign Binding Agreements to Combat Gender-Based Violence and Harassment at Key Supplier's Factories in Lesotho (Aug. 15, 2019), https://www.workersrights.org/press-release/leading-apparel-brands-trade-unions-and-womens-rights-organizations-sign-binding-agreements-to-combat-gender-based-violence-and-harassment-at-key-suppliers-factories-in-lesotho.

273. For an in-depth description of the enforceable brand agreements mentioned here, as well as others, see Sifat Amita & Mark Anner, *Case Study 1: Worker Voice and Enforceable Brand Agreements (EBAs)*, *in* WORKER VOICE, *supra* note 71, at 17, 17–27; Blasi & Bair, *supra* note 62 at 15–20.

274. Blasi & Bair, *supra* note 62, at 18–20; *About: The Power of Prevention*, FAIR FOOD PROGRAM, https://fairfoodprogram.org/about (last visited Mar. 30, 2025); *About the Milk with Dignity Program*, MIGRANT JUST., https://migrantjustice.net/about-the-milk-with-dignity-program (last visited Mar. 30, 2025).

275. For a comparison of the ways that the agreements structure these financial commitments, see Blasi & Bair, *supra* note 62, at 23–27.

276. *Id.* at 6; Fudge & LeBaron, *Regulatory Design*, *supra* note 214, at 6.

277. This presumption may be unfounded. In some circumstances, the emerging literature on relational contracting in supply chains suggests that long-term investment in relationships, including commitments to source from a smaller number of factories for a longer period at higher rates, can produce rates, stability and quality for buyers that exceed those available through short-term strategies of buyers that change suppliers frequently and award contracts to the lowest bidder. *See, e.g.*, Boudreau, et al., *supra* note 60, at 60–61.

278. See, for example, a description of US brands' unwillingness to sign the Bangladesh Fire Safety Accord in the wake of the Rana Plaza building collapse because of its legally-binding nature, by contrast with the many EU lead firms that were signatories, Jimmy Donaghey & Juliane Reinecke, *When Industrial Democracy Meets Corporate Social Responsibility: A Comparison of the Bangladesh Accord and Alliance as Responses to the Rana Plaza Disaster*, 56 BRIT. J. INDUS. RELS. 14, 25 (2018).

279. *Id.* at 16; Emma Avetisyan & Michel Ferrary, *Dynamics of Stakeholders' Implications in the Institutionalization of the CSR Field in France and in the United States*, 115 J. BUS. ETHICS 115, 118 (2013).

B. EXPERIENCE TO DATE IN THE SECTION 307 CONTEXT: ADVOCATES' EFFORTS TO WORK WITH CBP ON BOTTOM-UP REMEDIATION AFTER A WRO IS IMPOSED

The strategy considered here is a novel one. To my knowledge, in the eight years following the 2016 closing of the consumptive demand loophole, no petitions were filed under section 307 with the goal of supporting a particular worker organizing effort.[280] However, in at least two cases advocates have sought to advance worker-driven solutions to forced labor in relation to section 307 at the remediation stage, once CBP had already imposed a WRO in response to a petition filed for other reasons (as opposed to a petition affirmatively filed to advance worker organizing underway); both arose in 2022. Surprising some observers, over the ensuing two years, CBP responded positively to this call, in words if not in deeds. A closer look at these two WROs are important in understanding how section 307 might relate to a forward-looking and enforceable response to forced labor that centers workers and their concerns. The first case sets the stage for an understanding of CBP's emerging openness to worker-centered solutions to forced labor. The second illustrates some of the obstacles on the road ahead.

280. This is not to say that unions and workers' representatives have been uninvolved in § 307 claims. Several petitions of which I am aware—for example, the Greenpeace petition on FCF and the Liberty Shared petition on Irish fishing—were filed in coordination with migrant workers' organizations and/or trade unions in the country and industry where the forced labor was occurring. However, while these petitions served important goals for the unions, they were not filed in order to advance a specific worker organizing effort. Likewise, unions and NGOs organizing workers have expressed support for the granting of a WRO in the context of petitions filed by others (as happened, for example, with the Central Romana petition as noted in that case study, with NGO leaders asking the US government to impose a WRO in the hope that it would help improve conditions in the industry, see *supra* text accompanying notes 248–252) or had the experience that a pending petition filed by another group focused firms' attention on the question of forced labor in a context where the union was organizing. This happened with WRO petitions filed by Liberty Shared regarding garment factories for the BooHoo brand and other garment manufacturers in East Leicester, UK. The British Trades Union Congress was supporting an affiliated union seeking to organize workers in those factories. While the union was not involved in the filing of the petition, once it was filed it experienced increased cooperation from lead firms, at least for a time. E-mail from Stephen Russell, Senior Int'l Officer, Trades Union Congress, to author (May 17, 2024, 2:50 PM) (on file with author).

1. Natchi Apparel/Eastman Exports[281]

Natchi Apparel is located in the Natchi-Dindigul region of Tamil Nadu, India.[282] Its parent company is Eastman Exports, which has supplied garments to brands such as H&M, PVH, and Gap among others.[283] For many years, workers at Natchi had been organizing against gender- and caste-based violence and harassment at the factory, with the support of the Tamil Nadu Textile and Common Labor Union (TTCU).[284] They faced severe retaliation, and in January 2021, Jeyashre Kathiravel, a garment worker and union activist at the factory, was murdered by her supervisor.[285] Her killing spurred a global campaign by the TTCU, the Asia Floor Wage Alliance (AFWA) and Global Labor Justice (GLJ), an international labor rights NGO based in the U.S., to pressure all actors in the supply chain to address the mistreatment of workers at the factory.[286] Labor and industry stakeholders also invited the Worker Rights Consortium to conduct an independent investigation of conditions at Natchi Apparel.[287]

In April 2022, the campaign resulted in the signing of two interlocking sets of agreements.[288] One was a collective bargaining agreement between the TTCU, as the union representing the workers, and Eastman, as their direct employer.[289] The other was an enforceable brand agreement between TTCU, Eastman, and H&M, together with AFWA and GLJ.[290] The Gap and PVH, buyers from other units of Eastman Exports, signed similar accords soon after.[291] (Together with the collective bargaining agreement between TTCU and

281. In addition to the published sources cited herein, this case study is based on interviews with Jennifer (JJ) Rosenbaum, Allison Gill, and Scott Nova. Interview with Jennifer (JJ) Rosenbaum, *supra* note 142; Interview with Allison Gill, Glob. Lab. Justice, in Washington, D.C. (Sept. 15, 2023, 10:00 AM); Virtual Interview with Scott Nova, Workers Rts Consortium (Sept. 5, 2023, 2:00 PM). For a review of documents from the Natchi case provided by GLJ, see WORKER RTS. CONSORTIUM, FACTORY ASSESSMENT: NATCHI APPAREL (INDIA) FINDINGS, RECOMMENDATIONS AND CORRECTIVE ACTIONS 4 (2022), https://www.workersrights.org/wp-content/uploads/2022/05/WRC-Assessment-of-Natchi-Apparel-05-22-22.pdf; GLOB. LAB. JUST.-INT'L LAB. RTS. F., FACT SHEET: THE DINDIGUL AGREEMENT TO END GENDER-BASED VIOLENCE AND HARASSMENT 1 (2022), https://laborrights.org/sites/default/files/publications/Dindigul%20Agreement%20Fact%20Sheet%20Jan.%202023.pdf; GLOB. LAB. JUST.-INT'L LAB. RTS. F., ASIA FLOOR WAGE ALLIANCE & TAMIL NADU TEXTILE & COMMON LAB. UNION, DINDIGUL AGREEMENT YEAR 1 PROGRESS REPORT 13–15 (2023) [hereinafter GLOB. LAB. JUST. ET AL., DINDIGUL AGREEMENT YEAR 1 PROGRESS REPORT], https://laborrights.org/sites/default/files/publications/DINDIGUL%20AGREEMENT%20YEAR%201%20PROGRESS%20REPORT%202023_0.pdf.

282. WORKER RTS. CONSORTIUM, *supra* note 281, at 4.

283. *Id.*

284. Interview with Jennifer (JJ) Rosenbaum, *supra* note 142.

285. WORKER RTS. CONSORTIUM, *supra* note 281, at 15–27.

286. Interview with Jennifer (JJ) Rosenbaum, *supra* note 142; *see* JUSTICE FOR JEYASRE, https://justiceforjeyasre.com (last visited Mar. 31, 2025) (#Justiceforjeyasre campaign website).

287. WORKER RTS. CONSORTIUM, *supra* note 281, at 4.

288. GLOB. LAB. JUST. ET AL., DINDIGUL AGREEMENT YEAR 1 PROGRESS REPORT, *supra* note 281, at 27.

289. The agreement between TTCU and Eastman is public. *Id.* at 111–17. The agreements between the brands and Eastman are confidential. E-mail from Jennifer (JJ) Rosenbaum to author (Aug. 30, 2024, 11:00 AM) (on file with author).

290. GLOB. LAB. JUST. ET AL., DINDIGUL AGREEMENT YEAR 1 PROGRESS REPORT, *supra* note 281, at 16.

291. *Id.* at 27.

Eastman, this set of interlocking documents is referred to collectively as the "Dindigul Agreement."[292]) The Dindigul Agreement legally binds the parties to address the violence and harassment (as well as discrimination based on gender, caste, and migration status) affecting over 5,000 women workers at the Natchi Apparel/Eastman Exports factories, and to protect their right of freedom of association.[293] In May 2022, the Worker Rights Consortium issued its report, documenting the history of gender-based violence and other abuses at the factory, and prominently featuring the Dindigul Agreement as a corrective action taken by the factory, brands, the union, and other stakeholders.[294]

The Agreement had been publicly announced and was already being implemented when CBP imposed a WRO against Natchi Apparel/Eastman Exports on July 29, 2022.[295] The petition that led to the WRO is confidential, so the identity of the person who filed it is not publicly known,[296] but it did not come from any of the organizations endorsing the campaign that led to the signing of the agreement[297] or from its labor stakeholders TTCU, GLJ, and AFWA.[298] The effect of the WRO was to inflict economic pain on a supplier that had just taken a significant step to combat the mistreatment of workers and to imperil the jobs of workers who had taken the risk of organizing.[299] GLJ's Legal Department, TTCU, and AFWA responded by providing CBP with extensive documentation that the agreements had remediated the indicators of forced labor at the factory before the ban was imposed.[300] They did this in collaboration with Eastman, drawing on a relationship of mutual trust that had been built through collective bargaining.[301] In response, CBP modified the WRO on September 7, 2022, allowing all Natchi imports to enter the United States.[302]

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292. *Id.* at 16.

293. For a comprehensive overview and assessment of the Dindigul Agreement as an example of WSR, see generally Fudge & LeBaron, Regulatory Design, *supra* note 214.

294. WORKER RTS. CONSORTIUM, *supra* note 281, at 4.

295. Eastman had begun to take corrective action during the year of negotiations leading up to the Agreement; the Agreement moved that remediation from the realm of a voluntary initiative into a legally binding commitment. E-mail from Jennifer (JJ) Rosenbaum to author (Feb. 23, 2024, 12:58 PM) (on file with author).

296. Because the petition and its source are not public, I was not able to review the filing or interview the petitioner. I was therefore unable to establish whether the petition was based on evidence regarding conditions prior to or after the signing of the Dindigul Agreement, how the petitioner was positioned in relation to the events described here, or what the petitioner's goals were in filing the petition.

297. *Global Vigil*, JUSTICE FOR JEYASRE, https://justiceforjeyasre.com/global-vigil (last visited Mar. 31, 2025) (highlighting organizations that endorsed the campaign on slide 2).

298. Interview with Jennifer (JJ) Rosenbaum, *supra* note 142.

299. *Id.*

300. *Id.*

301. *Id.*

302. Press Release, U.S. Customs & Border. Prot., CBP Modifies Withhold Release Order on Natchi Apparel (P) Ltd., (Sept. 7, 2022) [hereinafter CBP, Press Release on Natchi Apparel], https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-natchi-apparel-p-ltd.

The outcome of the Natchi WRO appeared to seed a new understanding at CBP of the possibility of approaching section 307 in ways that center workers' concerns and support forward-looking solutions to forced labor. In the wake of its modification of the Natchi Apparel/Eastman Exports WRO, CBP publicly and privately expressed an interest in exploring worker-centered approaches to remediating forced labor, and in particular in enforceable brand agreements such as the Dindigul Agreement as a model for such remediation.[303] In a press release announcing the end of the Eastman Exports ban, CBP cited the work of the union and NGOs in relation to the Dindigul Agreement as fundamental to addressing the forced labor at the factory.[304] The agency's head of section 307 enforcement later stated that CBP saw enforceable brand agreements such as the Dindigul Agreement as a model for remediation, and that he would consider the presence of such an agreement in deciding whether to impose a ban or lift one already in place.[305] While the timing of the imposition of the Natchi WRO was troubling from a worker power perspective, statements such as these opened the door to further exploration by advocates of how to advance toward this goal, and they

303. Eric Choy confirmed this to me. *See supra* note 147. Various advocates also told me that CBP had communicated this to them, both in general and with specific reference to Dindigul Agreement as a model. Although CBP did not mention the Dindigul Agreement by name in its press release announcing the lifting of the Natchi Apparel/Eastman Exports WRO, the press release quoted Secretary of Homeland Security Alejandro Mayorkas on the importance of the work of the union and NGOs in remediating forced labor in that context. CBP, Press Release on Natchi Apparel, *supra* note 302. These statements were consistent with the US Presidential Memorandum on Advancing Worker Empowerment, Rights, and High Labor Standards Globally, announced in November 2023. Memorandum from The White House on Advancing Worker Empowerment, Rights, and High Labor Standards Globally, Joseph R. Biden, 46th President of the U.S. (Nov. 16, 2023), https://www.presidency.ucsb.edu/documents/memorandum-advancing-worker-empowerment-rights-and-high-labor-standards-globally. The Memorandum calls for a whole-of-government approach to raising labor standards around the world, with a focus on the importance of freedom of association and collective bargaining. *Id.* It contains an extensive section on incorporating this perspective into trade, in line with US Trade Representative Katherine Tai's emphasis on the Biden administration's goal of worker-centered trade. *See, e.g.*, *Remarks of Ambassador Katherine Tai Outlining the Biden-Harris Administration's "Worker-Centered Trade Policy,"* OFF. OF THE U.S. TRADE REPRESENTATIVE (June 30, 2021), https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2021/june/remarks-ambassador-katherine-tai-outlining-biden-harris-administrations-worker-centered-trade-policy.

CBP has—in an ambiguous fashion—also issued a public document endorsing freedom of association and solutions to forced labor that center workers and their organizations. VIRTUAL TRADE WEEK, *supra* note 250. This FAQ is posted on CBP's website and appears to have been prepared by the agency. However, it frames the positive view of worker empowerment and freedom of association as arising from an advocate. *Id.* It presents the "Q" as: "What does Ms. Syum [sic] recommend using for evaluating labor standards if a widely accepted and adopted social compliance audit mechanism is not effective based on her remarks?" *Id.* The "A" states:

> Anasuya Syum [sic] with the Human Trafficking Legal Center comments that any mechanism should meaningfully include worker agency to monitor and report working conditions. Workers should be given the freedom to organize and negotiate improved living and working conditions. Companies should also prioritize suppliers that have negotiated a collective agreement with independent trade unions, and companies should communicate to their suppliers that any efforts to undermine workers' efforts to form or join a union, or bargain in good faith, will not be tolerated. Freedom of association is considered fundamental to ending forced labor.

Id. This is followed by the critique of audits discussed above. *See supra* note 250 and accompanying text.

304. CBP, Press Release on Natchi Apparel, *supra* note 302.

305. *See supra* note 281.

put firms on notice that such binding agreements might offer some protection against section 307 enforcement.

Just two months after lifting the Natchi WRO, CBP imposed a new WRO in the Dominican Republic.[306] There, advocates—building on insights gained during the process of the Natchi WRO—attempted to negotiate the creation of a worker-driven system to remediate forced labor as a form of remediation. As set forth in the following case study, both CBP and the relevant firms were initially cooperative, but serious obstacles soon emerged.

2. Central Romana[307]

On November 3, 2022, CBP issued a WRO against Central Romana, a major sugar supplier in the Dominican Republic that exports to the U.S. under the Domino brand (among others).[308] The Central Romana WRO followed extensive media reporting on forced labor at the company,[309] a U.S. government report highlighting forced labor among Haitian workers in the Dominican sugar industry,[310] and at least two petitions based on intensive investigations by experienced NGOs and others active in the forced labor field.[311] The publicity and petitions grew out of efforts to address profound and longstanding concerns about the treatment of Haitian cane sugar workers laboring in the Dominican

306. Press Release, U.S. Customs & Border Prot., CBP Issues Withhold Release Order on Central Romana Corporation Limited (Nov. 23, 2022), https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-central-romana-corporation.

307. This case study is based on interviews with Charity Ryerson, Allie Brudney, Kelly Fay Rodriguez, Neha Misra, and Duncan Jepson. Interview with Charity Ryerson, *supra* note 141; Virtual Interview with Allie Brudney, Senior Staff Att'y, Corp. Accountability Lab (Sept. 22, 2023, 2:00 PM); Telephone Interview with Kelly Fay Rodriguez, Trade Couns. for the U.S. House of Representatives Comm. on Ways and Means, Trade Subcomm. (Nov. 20, 2022, 2:00 PM); Interview with Neha Misra, *supra* note 222; Interview with Duncan Jepson, *supra* note 205. It also draws on a review of the 2021 Central Romana petition filed by Liberty Shared and on Avery Kelly & Allie Brudney, *Remediation Under U.S. Section 307 of the Tariff Act of 1930: Opportunities for Forced Labour Remediation for Migrant Workers*, GLOB. LAB. RTS. REP., July 2023, at 61, 66 (2023).

308. Press Release, U.S. Customs & Border Prot., *supra* note 306.

309. *See, e.g.*, Zoeann Murphy, Debbie Cenziper, Will Fitzgibbon, Whitney Shefte & Salwan Georges, *Bitter Sugar*, WASH. POST (Oct. 13, 2021), https://www.washingtonpost.com/business/interactive/2021/central-romana-tax-haven-south-dakota; Sandy Tolan & Euclides Cordero Nuel, *The High Human Cost of America's Sugar Habit*, MOTHER JONES (Sept. 17, 2021), https://www.motherjones.com/politics/2021/09/sugar-central-romana-fanjul-dominican-republic.

310. U.S. DEP'T OF LAB., SEVENTH PERIODIC REVIEW OF IMPLEMENTATION OF RECOMMENDATIONS IN THE U.S. DEPARTMENT OF LABOR'S PUBLIC REPORT OF REVIEW OF SUBMISSION 2011-03 (DOMINICAN REPUBLIC) 10–11 (Sept. 13, 2022), https://www.dol.gov/sites/dolgov/files/ILAB/DOL-Seventh-Periodic-Report-on-Submission-2011-03-Dominican-Republic-Sugar-v2.pdf.

311. The first petition was filed in 2021 by Liberty Shared (petition on file with author); the second was filed in 2022 by the Law Office of Robert T. Vance with support from CAL. *See Advocates Urge CBP to Block Imports of Sugar from the Dominican Republic, Citing Forced Labor*, CORP. ACCOUNTABILITY LAB (Aug. 18, 2022), https://corpaccountabilitylab.org/calblog/2022/8/18/advocates-urge-cbp-to-block-imports-of-sugar-from-the-dominican-republic-citing-forced-labor.

Republic.[312] At the time the petitions were filed, Central Romana produced nearly 60% of the sugar in the Dominican Republic and exported a large proportion of it to the United States for sale to consumers under the Domino label or to U.S. buyers such as Hershey.[313]

The Central Romana petitions reflected a supplier-focused advocacy approach; they did not emerge from a worker organizing effort.[314]Although there is a union in the Dominican sugar cane industry, it does not represent Haitian workers and played no role in the decision to petition.[315] Nonetheless, a local civil society organization was engaged with Haitians at the time in an effort to improve conditions in the rural communities where they lived and worked.[316]

Once the WRO was in place, for a time it seemed like a worker-driven social responsibility agreement might emerge from the remediation phase of the WRO. Following the imposition of the WRO, the Corporate Accountability Lab ("CAL") initiated a series of meetings with Central Romana, CBP, and other actors in early 2023.[317] The parties began discussing the possibility of "a legally binding agreement between workers, an independent democratic union or worker organization, supporting civil society groups, and the company."[318] The worker-driven social responsibility scheme that CAL sought to craft would have established forward-looking standards for Central Romana's treatment of workers, with independent monitoring and enforcement mechanisms.[319]

For several months, Central Romana was actively engaged with CAL in considering how to craft a worker-driven agreement that would remediate the forced labor at the company.[320] In mid-2023, however, Central Romana ended its participation in the negotiations and took an adversarial stance toward CAL

312. Interview with Charity Ryerson, *supra* note 141; Interview with Allie Brudney, *supra* note 307; Interview with Kelly Fay Rodriguez, *supra* note 307; Interview with Neha Misra, *supra* note 222; Interview with Duncan Jepson, *supra* note 205.

313. Ana Swanson, *U.S. Blocks Dominican Republic Sugar Imports, Citing Forced Labor*, N.Y. TIMES (Nov. 23, 2022), https://www.nytimes.com/2022/11/23/business/economy/us-sugar-imports-forced-labor.html.

314. Interview with Charity Ryerson, *supra* note 141; Interview with Allie Brudney, *supra* note 307; Interview with Neha Misra, *supra* note 222; Interview with Duncan Jepson, *supra* note 205.

315. Interview with Charity Ryerson, *supra* note 141; Interview with Allie Brudney, *supra* note 307.

316. *See "Modern Form of Slavery": Haitians at Dominican Sugar Plantations Work Under Inhumane Conditions*, DEMOCRACY NOW (Aug. 30, 2023), https://www.democracynow.org/2023/8/30/dominican_republic_sugar_plantations_bateyes (interviewing Epifania St. Chals regarding the Reconocido movement and its efforts to help Haitian sugarcane workers in the Dominican Republic).

317. Interview with Charity Ryerson, *supra* note 141; Interview with Allie Brudney, *supra* note 307.

318. Kelly & Brudney, *supra* note 307, at 66.

319. Most worker-driven social responsibility agreements require signatory brands to pay for suppliers' increased costs under the agreement and create economic penalties for leaving the program by conditioning suppliers' continued ability to sell to brands on compliance with the agreement. Here, however, CAL's view was that brand participation was probably not necessary, at least in the short term. Central Romana itself was such a large and profitable economic entity that it could fund its own costs. In lieu of tying brand purchasing from Central Romana to compliance with the agreement, a key element of the enforcement regime would have been the threat that CBP would re-impose the WRO if Central Romana failed to comply with its terms. Interview with Charity Ryerson, *supra* note 141.

320. Interview with Charity Ryerson, *supra* note 141; Interview with Allie Brudney, *supra* note 302.

and CBP. It engaged the U.S. law firm Akin Gump, which filed Freedom of Information Act requests seeking all communication between CAL and CBP as well as other government agencies. Central Romana then began asking CBP to lift the WRO in light of steps it reported taking to remediate forced labor, while CAL opposed the change, presenting evidence of continuing forced labor practices by the company.[321] The WRO remained in place throughout 2024.[322] In March 2025, two months after President Trump took office, CBP quietly lifted the WRO.[323]

The Central Romana case study illustrates the significant work that remains to be done before CBP would be able to move forward on a path of enforcement that advances worker-driven solutions to forced labor. By the time the Central Romana WRO was in place, CBP had publicly expressed support for the concept that a worker-driven agreement could remediate forced labor and had stated that it could, in principle, reinstate a WRO that it had lifted if a company stopped complying with the terms of remediation. Yet CBP had provided no publicly-available guidance on what an agreement would need to contain for the agency to use it as the basis for ending an investigation underway or lifting a WRO in place, nor as to at what point and how the WRO would be reinstated if the company failed to participate appropriately in the new program after modification.[324]

The initial engagement of Central Romana in discussing worker-driven remediation after the imposition of the WRO, and its subsequent withdrawal from negotiations and turn to an adversarial strategy, further raises the question of how lead firms and major suppliers are likely to react to efforts to demand worker-driven solutions to forced labor once a WRO is in place. Advocates have

321. Virtual Interview with Charity Ryerson, Exec. Dir., Corp. Accountability Lab (Sept. 23, 2024, 11:30 AM).

322. *Withhold Release Orders & Findings Dashboard*, U.S. CUSTOMS & BORDER PROT., https://www.cbp.gov/newsroom/stats/trade/withhold-release-orders-findings-dashboard (last visited May 1, 2025) (listing Central Romana WRO as modified on March 17, 2025).

323. *Id.* According to the New York Times, "A U.S. official, who declined to be named because the person was not authorized to speak publicly, said that the decision to rescind the rule and allow the company to begin exporting had not followed established processes. The official cited Central Romana's powerful ownership, and said that the decision was most likely made at the top levels of U.S. Customs and Border Protection." The Times further notes that the Fanjul Corporation, which partly owns Central Romana, made donations in 2024 of $1 million to Make America Great Again and over $400,000 to the Republican National Committee, with smaller donations to Democrats. Ana Swanson & James Wagner, *Trump Administration Quietly Lifted Ban on Dominican Sugar Company Over Forced Labor*, N.Y. TIMES (Mar. 19, 2025), https://www.nytimes.com/2025/03/19/business/economy/trump-sugar-forced-labor-ban-lifted.html.

324. As noted above, during the period when it seemed possible that Central Romana would agree to a worker-driven agreement to remediate the forced labor, the idea was that the incentive for compliance with the agreement would be the threat that CBP would reimpose the WRO if it was violated. Interview with Charity Ryerson, *supra* note 321. The structure for such an enforcement mechanism had not been established when Central Romana terminated negotiations. Even if these questions are resolved, there remains the issue of how the agreement would be monitored in order to catch violations when they occur, and through what process participants in the agreement would seek to resolve worker grievances before asking CBP to reimpose the WRO. Effective WSR requires an independent monitoring and body; that is expensive, and in order to ensure impartiality the funds must come from somewhere other than the brand or supplier being monitored.

quite different assessments of this question. Some believe that a WRO itself could create the conditions for firms to enter a negotiation where they previously had been unwilling to come to the table. For example, Kelly and Brudney—writing before the collapse of the Central Romana negotiations—argue that "[o]nce a WRO is issued, worker and civil society interests suddenly align with company interests in significant ways. Both are looking to remediate the forced labor, and generally, for the WRO to be modified."[325] This, they believe, offers a "unique opportunity to work collaboratively" toward structural change through what they call "Worker-Driven Remediation."[326] Others are less optimistic. Martina Vandenberg of the Human Trafficking Legal Center notes that companies have increasingly begun to take an adversarial stance in response to the imposition of a WRO, which diminishes the chances of collaboration.[327] Shawn Macdonald of Verité, a civil society organization that monitors labor rights violations in global supply chains, expresses the concern that firms may be least likely to take risks at a moment when their ability to bring goods into the United States is at stake.[328] "[W]hen you're in an enforcement action," he states, "it's kind of unrealistic to expect corporate actors to behave innovatively and experimentally."[329] Rather than negotiating with workers to resolve the forced labor, he fears that once a WRO is in place, firms will default to audits and other "box-ticking" approaches that CBP has accepted as proof of remediation in the past, creating the appearance of compliance without actually addressing the underlying problem.[330]

C. AN ALTERNATIVE STRATEGY: UNIONS USING SECTION 307 TO SUPPORT WORKER ORGANIZING AT THE BOTTOM OF SUPPLY CHAINS *BEFORE* A WRO IS IMPOSED

The prior Part notes some of the complications that have arisen in the course of efforts to engage with firms and CBP on worker-centered remediation *after* a WRO is in place. This section explores whether there are alternative ways for unions and their allies to engage affirmatively with section 307 to create leverage to advance worker organizing at the bottom of supply chains *before* the imposition of a WRO, an approach that had not yet been tried at the time I conducted the interviews for this Article.

Might workers, unions, and their allies be able to engage with section 307 in ways that incentivize lead firms that import products into the U.S. to sign enforceable brand agreements? A union pursuing such a strategy would interact with the law in ways that differ in at least two important regards from the advocacy strategies tried to date. First, the union would choose the target for the

325. Kelly & Brudney, *supra* note 307.
326. *Id.*
327. E-mail from Eric Choy to author, *supra* note 147.
328. Virtual Interview with Shawn Macdonald, CEO, Verité (Sept. 26, 2023, 2:00 PM).
329. *Id.*
330. *Id.*

petition specifically to support workers with an organizing campaign underway, rather than because the facility in question had a particularly severe situation of forced labor. Second, the goal of preparing the petition would be to conclude an agreement that addressed the forced labor *before* filing or engaging with CBP, rather than—as with the advocacy strategies used to date—to spur CBP to initiate an investigation and impose a WRO. As a whole, such a strategy would seek to address forced labor through a forward-looking bargaining regime that involves the workers and union at the location of production, rather than through a one-time intervention by the U.S. government.

The path to such an outcome might look as follows. The union and its allies would consider using this strategy in situations where they were engaged in an organizing campaign involving a supply chain production facility. As a preliminary matter, for section 307 to be available as a tool in such a context, the products of the workers' labor would need to be exported to the U.S., and the conditions under which the work took place would need to plausibly meet one or more of the ILO indicators of forced labor (as noted above, given the prevalence of illegally low wages, uncompensated overtime, and migrant labor under restrictive visa regimes in supply chain production for export, there are a considerable number of facilities that meet these thresholds).

In light of the concern that a WRO has the potential to inflict serious economic harm on the workers, the union and its allies would consider additional factors in deciding whether to prepare a petition under section 307. They would analyze whether the lead firms in that particular context have an incentive to stay and work toward improvements if forced labor is revealed, rather than abandoning their relationship with the suppliers where there is evidence of forced labor.[331] The union would assess the economic situation of the supplier that would be the petition's target, determining to the extent possible that it has the capacity to survive a WRO if one was imposed. Finally, it would share this information with the workers, who would make a final decision, weighing the risks of economic damage to their employer and therefore their own livelihoods against the possible benefits in terms of leverage. This is a familiar step in labor organizing, much like workers voting on whether to strike.[332]

If they decided to proceed, the union or its allies would then prepare the petition, documenting both the forced labor and the connection to the U.S. market. Depending on the union's analysis of the economic relationships and power dynamics in the particular supply chain, it would decide whether to focus its petition for a ban on the particular facility or facilities where the union is

331. For example, the lead firm might have invested time and money in building a long-term relationship with that supplier, have few alternatives for the production of the particular good or commodity, or fear negative publicity if its departure caused further harm to a set of workers after the firm profited from their forced labor.

332. The analogy to a strike vote is not perfect. While both involve a decision to take an action that has the potential to economically harm the workers' employer and therefore the workers themselves, workers can call off a strike. However, once a petition under § 307 has been filed, unless the forced labor has been addressed, they will not be able to call off a CBP investigation or get the agency to lift a WRO in place.

seeking to organize the workers ("all shrimp from the A-1 Seafood Plant in country X"), or a supplier higher up the chain ("all shrimp from Prime Seafood Distributor in country X," where Prime Seafood Distributor is the major shrimp trader in country X, buying shrimp from A-1 Seafood Plant among others with similar labor conditions). The union might also include in the petition the names of brands and retailers that purchase from that plant or supplier. The union would then show the draft petition to the firms with which it sought to bargain. It would argue that signing a collective bargaining agreement (with the workers' direct employer) and an enforceable brand agreement (with firms higher up the supply chain) could offer protection against future enforcement of section 307, benefitting all parties.

The union's goal would be to conclude an agreement before it was necessary to file a petition. The hope would be that the stick of the threat of immediate section 307 enforcement, and the carrot of potential insurance for future importation of the goods in question, would lead to a swift conclusion of an accord that addresses the forced labor and sets a path toward further improvements in the future, while offering firms greater confidence that their goods could continue to enter the US market.

If the union's strategy is unavailing, it would face a difficult decision about whether to file the petition at CBP. Here, it would have to balance concerns about granting CBP a key role in the bargaining process with the potential leverage to be gained from the agency's involvement. The concerns are not insignificant. Filing a petition would give CBP a central role in negotiating a resolution to the campaign. Prior to filing, the company would have been bargaining with the union and its allies. After CBP initiates an investigation or imposes a WRO, fundamentally, the company would be bargaining with CBP. This might have the impact of lowering the bargaining goal. Once CBP initiates an investigation or imposes a WRO, the agency, rather than the workers and their representatives, would be the ultimate decisionmaker about whether to accept conditions that the company offers. For CBP to lift a WRO, it must only be persuaded that forced labor has been addressed. By contrast, the workers' and unions' aims are likely to include things that go well beyond addressing forced labor indicators, such as a living wage, access to medical care, or pensions and other benefits. With CBP in a deciding role, workers would have a diminished ability to make choices about which of their demands they were willing to trade off for others in negotiating a resolution to their campaign.

At the same time, filing would increase the stakes for the companies involved, potentially bringing them to the table during CBP's investigation and before a WRO is imposed. If an agreement results, the union and the relevant firms could approach CBP together to demonstrate that conditions at the facility

had improved and ask that the investigation be closed. CBP has confirmed that it would seriously consider such a request.[333]

Prior to the recent change in the U.S. presidential administration, there were some early indications that an affirmative union strategy to use section 307 to spur bargaining might be successful. First, in the wake of the Natchi WRO and CBP's subsequent statements, several lead firms expressed interest in signing an accord like the Dindigul Agreement prior to any enforcement action, as a way to gain some insurance against the imposition of a WRO in their supply chains.[334] This could represent an important opening. However, if firms begin to negotiate such agreements for this purpose, it will be important to develop guidelines to counteract the incentives for firms to draft and sign accords without meaningful union or worker involvement, commitments to pay for improvements, or enforceable provisions.

Second, in early 2024 worker-focused civil society organizations began to raise the possibility of section 307 enforcement in negotiations with brands over worker treatment in their supply chains with some positive results. For example, garment brands agreed to fully compensate South Asian migrant workers who self-organized to demand repayment of millions of dollars in back wages owed by a Jordanian supplier.[335] The Workers Rights Consortium, which facilitated the negotiations, had informed the brands that non-payment of wages at this scale constituted forced labor, and that the implication of a potential violation of section 307 was important to the success of the workers' organizing effort.[336]

D. CONCERNS

Even under a pro-worker administration, section 307 and its forced labor framework may not be an easy fit with a worker organizing approach. This Article has already considered two practical concerns from the workers' perspective: that in many contexts of forced labor workers do not have the agency, protection, and support necessary to organize, and that the use of the tool carries the risk of job loss. But there are potential conceptual and political tensions as well.

First, forced labor may be an unappealing frame for workers seeking to organize. Even where workers labor under conditions that meet the ILO indicators of forced labor, "forced laborer" may be a self-description relatively few would adopt, at least at the outset. Some are unfamiliar with the label,

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333. *See supra* text accompanying note 149.

334. Confidential firm communications with author and interviewees; Fudge & LeBaron, Regulatory Design, *supra* note 214, at 25–26; GLOB. LAB. JUST. ET AL., DINDIGUL AGREEMENT YEAR 1 PROGRESS REPORT, *supra* note 281, at 98.

335. Nidharshana Raju, *120 Indians Facing Exploitation in Jordan Return with Help From US-based Organization*, NEWS MINUTE (Feb. 21. 2024, 9:42 PM), https://www.thenewsminute.com/tamil-nadu/120-indians-facing-exploitation-in-jordan-return-with-help-from-us-based-organisation.

336. E-mail from Scott Nova, Exec. Dir., Worker Rts. Consortium, to author (Apr. 29, 2024, 12:01 PM) (on file with author).

although this varies by context; in some countries—India for example—the prohibition against forced or bonded labor has deep historical roots and a highly developed jurisprudence.[337] Others are aware of the concept but reject it as a way of characterizing their own situation. They see themselves as human beings with some agency, who made an affirmative decision to migrate or to take the job in question, albeit from a limited range of options.[338] Such workers may experience a forced labor frame as insulting or disempowering.[339] Others, however, may see tools designed to combat forced labor as strategically useful, even if there is a misfit with their self-conception.

Second, trade unions, too, are unlikely to initially conceive of laws banning goods made with forced labor as sources of support for organizing struggles. When a situation is described as involving forced labor, unions are more likely to see the workers as victims who require a remedy through humanitarian channels, rather than as potential members with the capacity to exercise collective power through labor organizing.[340] Furthermore, the actual application of section 307 to date, both by advocates and the government, has done little to signal a potential relationship to organizing. Advocates have used the law in contexts where forced labor is at its worst, and therefore, organizing is usually absent and may not be possible. The government has applied the law narrowly, and the only instance when the government imposed a ban on a factory with a collective bargaining and enforceable brand agreement in place, the action was not intended to support an organizing effort; indeed, it threatened to undermine it. The association of import bans with state-sponsored forced labor, as with the Uyghur Forced Labor Prevention Act, heightens the sense that an import ban is a tool used in settings where workers have no room to act on their own behalf.

If workers and unions decide to proceed, a final, and not insignificant, question remains: how dependent would this strategy be on the degree of ongoing enforcement by CBP? The approach proposed here uses the threat of enforcement of section 307 to incentivize an agreement without actually engaging with CBP. What hope is there that this approach could succeed during

337. *See, e.g.*, People's Union for Democratic Rts. v. Union of India, (1982) 1 S.C.R. 456, 493 (India) (holding that a failure to pay minimum wage constitutes forced labor); Prabha Kotiswaren, *Protocol at the Crossroads: Rethinking Anti-trafficking Law from an Indian Labor Law Perspective*, ANTI-TRAFFICKING REV. (2015), https://antitraffickingreview.org/index.php/atrjournal/article/view/89/110.

338. For an overview of the literature on this in the human trafficking context, see Masja van Meeteren & Jing Hiah, *Self-Identification of Victimization of Labor Trafficking*, *in* THE PALGRAVE INTERNATIONAL HANDBOOK OF HUMAN TRAFFICKING 1, 5–7 (John Winterdyn and Jackie Jones eds., 2019).

339. *Id.*

340. For a fuller exploration of the actual and potential relationship between trade unions and workers in conditions of forced labor, see generally Ford, *Trade Unions*, *supra* note 261 (discussing and assessing trade union efforts to address forced labor and human trafficking); Eliza Marks & Anna Olsen, *The Role of Trade Unions in Reducing Migrant Workers' Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion*, ANTI-TRAFFICKING REV., Sept. 2015, at 111 (discussing labor unions strategies to reduce the incidence of labor and trafficking violations against migrant workers in the region).

a time when CBP is issuing few new WROs, and thus the law casts a very slender shadow?[341]

A threat to file a petition under section 307 will have no impact if CBP walks away entirely from enforcing the law. A more likely scenario is that CBP continues to issue some new WROs, although infrequently. Here, there are reasons to believe that the union approach set out in this Article might still create meaningful incentives for lead firms to sign enforceable agreements. Potential enforcement of section 307 is not the only reason a firm might be concerned to learn from a union-drafted petition about forced labor in its supply chain. As noted above, since the UFLPA went into effect in mid-2022, CBP appears to be concentrating its resources to combat forced labor on the enforcement of that law.[342] This has created a climate of concern among firms about the risks of having products and components stopped at the U.S. border due to suspicion of forced labor, whether under the UFLPA, its analog for North Korea (CAATSA), or section 307, even during a period when CBP has not been issuing new WROs.[343]

In addition, the legal climate in other countries is changing in ways that make notice of a potential section 307 petition a source of concern about liability elsewhere, independent of the likelihood of enforcement in the U.S. The EU's 2024 passage of both forced labor import/export regulations and the Corporate Social Responsibility Due Diligence Directive ("CSDDD"), discussed above,[344] signal a sharp potential rise in liability for forced labor in supply chains; this is especially likely given that the CSDDD as passed in 2024 includes a civil penalty of five percent of net corporate worldwide turnover under circumstances where forced labor or other violations are demonstrated in a firm's supply

341. Early in the second Trump presidency, it is already evident that the new administration is making dramatic changes in U.S. domestic and foreign policy. An assessment of those changes and their impact on the strategy set out here is both premature and beyond the scope of this Article, which focuses on the period encompassed by the first Trump administration and the Biden administration. Nonetheless, it is already clear that the shift will introduce an additional set of concerns among unions and non-governmental organizations about the use of a mechanism, such as the import ban, that relies on the US government for its enforcement.

342. *See supra* note 121 and accompanying text.

343. For example, law firms and trade advisory firms now routinely issue client alerts about growing regulation of forced labor in imports, often combining references to § 307 with UFLPA and other US and foreign regulation. *See, e.g.*, *Human Rights and Forced Labor*, CROWELL, https://www.crowell.com/en/services/practices/international-trade/human-rights-and-forced-labor (last visited Mar. 31, 2025); Lucy Blake, André Nwadikwa & Elizabeth Powers, *Client Alert: The EU Regulation Banning Products Made with Forced Labour: Key Provisions to Note*, JENNER & BLOCK (May 1, 2024), https://www.jenner.com/en/news-insights/publications/the-eu-regulation-banning-products-made-with-forced-labour-key-provisions-to-note; Michael R. Littenberg & Samantha Elliot, *Mexico Bans Imports Made with Forced Labor in Alignment with the USMCA*, ROPES & GRAY (Mar. 6, 2023), https://www.ropesgray.com/en/insights/alerts/2023/03/mexico-bans-imports-made-with-forced-labor-in-alignment-with-the-usmca.

344. *See supra* notes 74, 214 and accompanying text.

chain.[345] Ignoring the threat of a petition, especially if the union publicizes both the allegations and the firm's failure to respond, could trigger investigations and enforcement of EU law as well as of securities and financial crimes laws in domestic markets where production takes place.[346] For all of these reasons, there is cause to believe that even in the absence of vigorous CBP enforcement of section 307, a union threat to petition might incentivize a corporation to negotiate an agreement that would minimize the risk of supply chain interruption.

CONCLUSION

This Article has considered whether and how section 307 of the U.S. Tariff Act might be a tool to address systemic private forced labor in supply chains. It argues that CBP has the legal authority and the discretion to intervene in this dynamic by directing its enforcement resources in a top-down way at firms at the top and middle of supply chains strategically chosen because of their role in driving structural forced labor. It documents advocacy strategies seeking to move the agency in that direction. This Article also highlights a second, bottom-up approach, focusing on supporting workers and unions organizing for better conditions at the bottom of supply chains. Although advocates had succeeded in generating some interest in this option within CBP during the Biden presidency, this Article identifies a series of concerns about CBP's direct engagement in an organizing context even under a supportive administration. As an alternative, it proposes a way for unions and their allies to draw on section 307 as leverage when seeking to bargain with suppliers and firms, while avoiding involvement with CBP if possible.

While this Article has argued that using section 307 as a part of efforts to build worker power may have the potential to be a powerful tool to advance workers' rights in global production contexts—a setting where powerful tools are few and far between—it also recognizes that there are significant concerns and uncertainties. Ultimately, it must be workers, trade unions, and human rights organizations in the Global South that make the decision about whether to use section 307 to advance their own organizing and advocacy strategies. Politically, a decision to engage with the U.S. Tariff Act is likely to be complicated for these actors. The law has protectionist origins and is applied by the U.S. to actors in the Global South in a context of profound and longstanding unequal global economic and geopolitical relationships. These concerns have only intensified with the recent change in the U.S. presidential administration.

In practical terms, section 307 is a mechanism rooted in the U.S. political landscape. While anyone in any country can file a petition, U.S. organizations

345. Directive 2024/1760, art. 27, of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence and Amending Directive 2019/1937 and Regulation (EU) 2023/2859, 2024 O.J (L).

346. *See supra* notes 74, 214 and accompanying text.

have greater access and power in this context. Unions and their allies in the Global South without U.S. connections may be disadvantaged; those who seek to partner with an organization in the U.S. will have to grapple with the challenges of transnational alliances, which can reinforce structural power imbalances and reproduce dynamics of dependence and exclusion.[347] These obstacles are not insurmountable, but they will require deliberate efforts by funders to support Global South-led advocacy in this arena and by the organizations involved to foster what Mexican human rights advocate Alejandra Ancheita has called "genuine transnational collaboration."[348]

This Article's exploration of the legal, strategic, and conceptual issues related to the use of section 307 of the U.S. Tariff Act of 1930 as systemic intervention to address forced labor in supply chain contexts is intended to put the U.S. government, scholars, and advocates and unions around the world, in a better position to consider the challenges and identify the opportunities ahead.

347. Alejandra Ancheita & Carolijn Terwindt, *Towards Genuine Transnational Collaboration between Human Rights Activists from the Global North and Global South*, 4 FORSCHUNGSJOURNAL SOZIALE BEWEGUNGEN 1, 5–7 (2015).

348. *Id.* at 7–11.

APPENDIX: INTERVIEWEES[349]

Allie Brudney	Corporate Accountability Lab
Eric Choy	Trade Remedy Law Enforcement Directorate, CBP
Terry Collingsworth	International Rights Advocates
Kelly Fay Rodriguez	At the time of the interview, served as Trade Counsel for the U.S. House of Representatives Committee on Ways and Means, Trade Subcommittee; later Special Representative for International Labor Affairs, U.S. Department of State
Allison Gill	Global Labor Justice
Sari Heidenreich	Greenpeace
Daniela Ikawa	Open Society Foundations
Jennifer Jahnke	Formerly at Office of Trade, Forced Labor Division, CBP, now at the Tendai Initiative
Duncan Jepson	Formerly at Liberty Shared, now a consultant
Archana Kotecha	The Remedy Project
Shawn Macdonald	Verité
Neha Misra	Solidarity Center, AFL-CIO
Scott Nova	Worker Rights Consortium
Jennifer (JJ) Rosenbaum	Global Labor Justice
Charity Ryerson	Corporate Accountability Lab
Andy Shen	Formerly at ILRF & Greenpeace, now at Principles for Responsible Investment
Anasuya Syam	Human Trafficking Legal Center
Martina Vandenberg	Human Trafficking Legal Center
Jeffrey Vogt	Solidarity Center, AFL-CIO
Jennifer Wascak	Justice in Fashion

In addition to these formal interviews, this Article is informed by background conversations with other United States federal agency and congressional staff who chose to remain anonymous.

I am grateful to the interviewees who allowed me to review confidential documents related to their petitions as well as confidential petitions themselves. I do not cite to or quote from these documents in this Article, but they provided helpful background in the context of other, publicly available information.

[349] Organizational affiliations are accurate as of August 2024. In addition to the people listed here, I also contacted activist Andy Hall, who declined to participate in the study because my research protocol did not permit me to pay him to do an interview.

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