

New U.S. Department of Labor Reports Portend Forced Labor Trade Enforcement

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The U.S. Department of Labor (“DOL”)’s Bureau of International Labor Affairs (“ILAB”) published a [series of reports](#) on September 5, 2024, with extensive new insights into the incidence of forced and child labor in global supply chains. Under U.S. law, it is illegal to import goods that are made “wholly or in part” with forced labor – a phrase construed by U.S. Customs and Border Protection (“CBP”) as encompassing forced labor at any point in the global supply chain. If evidence indicates that forced labor may exist in the upstream supply chain for a given product, that downstream product is at risk of trade disruption. Companies involved in trading such products face risk of legal consequences, including civil and possible criminal penalties. The new DOL reports also contain substantial new information about downstream consumption of content tainted by forced labor, information that is actionable by CBP in the context of forced labor trade enforcement.

The most prominent of the new DOL reports is the [2024 List of Goods Produced by Child Labor or Forced Labor](#) (DOL List). The DOL List is published every two years, and identifies nodes in global supply chains (on a product & country basis, outside the United States) where forced and child labor is documented to have occurred. This year, the DOL List identifies 138 such nodes where pervasive forced labor has been documented, an 13% increase over the previous report. Among the products newly understood to be made with forced labor are certain critical minerals, including gold from Chad, cobalt ore from the Democratic Republic of the Congo, and nickel from Indonesia, agricultural products including shrimp from India and fish from Burma, and several products linked to forced Uyghur labor in China: caustic soda, metallurgical-grade silicon, polyvinyl chloride (PVC), squid, jujubes, and aluminum. Although goods produced with child labor are not subject to the same trade restrictions in the United States as goods produced with forced labor, the 2024 DOL List contains a record 423 nodes of documented child labor on a product & country basis. As a whole, the DOL List is heavily populated with agricultural products, minerals and simple manufactured products—all goods frequently traded internationally, and often consumed by subsequent production and manufacturing processes downstream.

Because U.S. law prohibits the importation of goods made *wholly or in part* with forced labor, downstream products that incorporate content produced with forced labor are at risk of trade enforcement activity. Reflecting an updated statutory mandate, the 2024 DOL List contains more information on such downstream products than any previous version of the list. For example, the DOL List includes information on downstream products that may have consumed aluminum, cotton or polysilicon produced by forced Uyghur labor in China: auto parts manufactured in China; garments, textiles and yarn from China and Vietnam; and solar industry products from China. All of these downstream products are currently subject to enforcement under the Uyghur Forced Labor Prevention Act (UFLPA). In the first two years of UFLPA enforcement, CBP has detained more than

10,000 shipments valued at over \$3.5 billion, at least 90% of which value has been in the form of downstream products.

The DOL List also includes information on downstream products that may contain inputs produced by forced labor outside of China, including inputs that are currently subject to enforcement action by CBP under Section 307 of the Tariff Act of 1930, such as palm fruit from Malaysia, tobacco from Malawi, and sugarcane from the Dominican Republic. The 2024 DOL List includes the variety of information that CBP would need to begin enforcing the forced labor import ban (Section 307 of the Tariff Act of 1930) in a manner comparable to how it has already enforced the UFLPA—by detaining downstream products on a theory of supply chain linkage to forced labor, requiring supply chain proof as a condition of releasing goods.

A consolidated, deduplicated and alphabetized list of downstream products that could be exposed to detention activity by CBP, based on WROs in effect as of the publishing of the 2024 DOL List is as follows:

Also new this year, the DOL has published [reports on a series of studies that ILAB has undertaken](#), consisting of extensive original research into the existence of forced and child labor, and the resulting supply chain implications. The first such report (on forced labor in cobalt mining in the DRC) was published in May 2023, and the remaining eight reports were published in September 2024. The underlying studies include both quantitative and qualitative elements, were designed to be statistically valid, and should be considered essential reading for affected industries, including the [automotive](#), renewable energy ([cobalt](#)), and [fishing industries](#), among others.

Companies dependent on the importation of goods into the United States should understand that the presumptive cure for all forced labor trade enforcement lies in mapping and tracing supply chains in a manner that establishes the provenance of traded goods, “wholly or in part.” To the extent that supply chains are dependent on products from jurisdictions known to be affected by forced labor, combining proof of the actual condition of labor in the supply chain (such as might be generated by effective human rights due diligence) with rigorous traceability will solve the challenge of exposure.

Kelley Drye’s forced labor trade practice is equipped to assist with every aspect of this challenge—from assessing risk to conducting human rights and supply chain due diligence, to mapping and tracing supply chains with a view toward successfully navigating forced labor trade enforcement.

This client advisory was developed with assistance from Kaylin Woodward, Research Assistant.