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Avoiding Forced Labor in International Supply Chains

November 18, 2020

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Panelists

- **Francesca Guerrero**, Partner, International Trade, Thompson Hine LLP
- **M. Scott Young**, Partner, Labor & Employment, Thompson Hine LLP
- **Lisa Gelsomino**, President/CEO Avalon Risk Management; Customs and Border Protection Commercial Customs Operations Advisory Committee (COAC) Member
- **Gabriella Herzog**, Vice President, Corporate Responsibility and Labor Affairs, United States Council for International Business



FORCED LABOR BACKGROUND

The United States Council for International Business (USCIB)

The Power to Shape Policy.
The Power to Expedite Trade.

- **Founded in 1945**
- **Active membership base of some 300 multinational companies, law firms and business associations**
- **Advocates for inclusive multilateralism that promotes peace & prosperity**
- **U.S. affiliate of 3 key global business organizations**
 - International Chamber of Commerce
 - International Organization of Employers
 - Business at the OECD



International Labor Organization (ILO)

The Power to Shape Policy.
The Power to Expedite Trade.

- **United Nations agency for the world of work**
 - Founded in 1919
 - The critical body for establishing global labor standards
- **Tri-partite membership**
 - Governments, Employers Associations, and Trade Unions
 - **USCIB is the US Employer Representative**
- **Authoritative source for global forced labor standards, data & programs**
 - 2017 Global Estimates of Modern Slavery
 - 25 million people in forced labor worldwide
 - One in 4 are children



Understanding Forced Labor

The Power to Shape Policy.
The Power to Expedite Trade.

The 1930 ILO Forced Labor Convention (No 29)

- Defines forced labor as “All work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

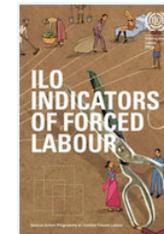
Over the years, new terms and definitions have evolved to reflect contemporary systems of slavery – bonded labor, modern day slavery, human trafficking, child labor, etc.

The 2014 Protocol to the 1930 ILO Forced Labor Convention

- Provides specific guidance on effective measures to be taken regarding prevention, protections and remedy to eliminate all forms of forced labor.

Selected resources:

- [ILO Indicators of Forced labor](#) (booklet)
- [ILO Global Business Network on Forced Labor](#)
- [U.S. State Department Trafficking in Persons Report](#)
- U.S. Department of Labor – [International Child Labor and Forced Labor reports](#)
- U.S. Department of Labor - [Sweat and Toil and Comply Chain mobile apps](#)



Business and Society

Increasing Expectations + Collaboration Opportunities

The Power to Shape Policy.
The Power to Expedite Trade.

- Stakeholder expectations re: the role of business in society continuously evolve
- Businesses recognize that deep-rooted challenges contributing to forced labor require collective action among business, government, CSOs, investors, media
- Many examples of new legislation, regulation and frameworks on modern slavery, human rights and business ethics
- Business is committed to supporting the global fight to address forced labor, working together with governments and civil society.



FORCED LABOR AND HUMAN RIGHTS LAWS

Forced Labor & Human Rights Due Diligence Laws

A few examples...

The Power to Shape Policy.
The Power to Expedite Trade.



2010

Dodd-Frank
Wall Street
Reform and
Consumer
Protection
Act



2015

UK Modern
Slavery Act



2018 – EU Non-
Financial
Reporting Law



2020 - Dutch
Child Labor
Due
Diligence Law

Coming soon?



German Human
Rights Due
Diligence Law?



2012

California
Transparency
in Supply
Chains



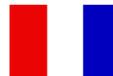
2015

US Trade
Facilitation
& Trade
Enforcement
Act



2017

French Duty
of Care Law



2019

Australia
Modern
Slavery Act



EU Legislation on
Mandatory Human
Rights Due
Diligence

Australia Modern Slavery Act Sample elements



The Power to Shape Policy.
The Power to Expedite Trade.

- Came into force January 1, 2019
- Applies to companies based or operating in Australia with annual revenue of at least AUD 100 million
- Creates reporting requirement of annual Modern Slavery Statements within six months of the end of the entity's financial year
- Statements to include (selected examples):
 - company structure, operations and supply chains;
 - any potential risks for modern slavery;
 - actions taken to address reported risks, including due diligence and remediation efforts;
 - how company measures effectiveness of actions taken;
 - descriptions of stakeholder engagement.
- Statements will be made publicly available by the government via an internet-based register
- No penalties for noncompliance, but the Act to be reviewed every 3 years to ensure effectiveness



Xianjiang Supply Chain Business Advisory

- July 1, 2020 – joint advisory from State, Commerce, Homeland Security, and Treasury on supply chain risk exposure, including:
 - Labor or goods sourced in Xinjiang, given the prevalence of forced labor and other abuses, or from factories elsewhere implicated in the forced labor of individuals from Xinjiang under the guise of “vocational training”
 - Exporting certain products that assist in the human rights abuses.
- Advisory cites various enforcement and sanctions authorities:
 - BIS export control and licensing
 - CBP prohibition on imports on goods benefiting from forced labor
 - FAR provisions related to trafficking in persons (FAR 52.222-50)
 - Trafficking Victims Protection Act (TVPA) that criminalizes knowingly or recklessly benefiting from forced labor
 - Uyghur Human Rights Policy Act of 2020 – allows sanction of foreign persons
 - Global Magnitsky sanctions authorities

Sanctions and Liability in Action

- Nearly 50 Chinese entities added to the Entity List in July 2020 due to human rights abuses against Uighurs and Kazakh minority in Xianjiang, including forced labor camps
- Beginning in 2019 with notable additions this past summer OFAC has also sanctioned Chinese entities and officials for related actions under the Global Magnitsky sanctions authority
- Claims under 1789 Alien Tort Claims Act against companies alleged to have benefited from forced labor in their supply chain to be heard by the Supreme Court.

California Transparency in Supply Chains Act / Forced Labor Law

A company, which (a) identifies itself as a retail seller or manufacturer on its tax returns; (b) does business in California; and (c) has annual worldwide gross receipts exceeding \$100,000,000 must on its website, or if no website, then in writing and accessible to consumers disclose to what extent, if any, it:

- Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.
- Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.
- Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.
- Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.
- Provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.

Hotels and motels in California once every two years must provide human trafficking awareness training and education for each employee likely to interact or come into contact with victims of human trafficking and, within six months of his or her employment in that role, to each new employee likely to interact or come into contact with victims of human trafficking.

USMCA Labor Provisions

Labor Principles Include:

- Elimination of compulsory labor and child labor
- Acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health
- Freedom of association and right of collective bargaining

Enforcement:

- Access to Rapid Response Labor Panel with power to enforce labor rights and provide remedies

USMCA Rapid Response Labor Mechanism

Rapid Response Mechanism will provide for monitoring and expedited enforcement of labor rights at facilities as provided for in USMCA:

- Parties shall establish and maintain three lists of Rapid Response Labor Panelists.
- As between Mexico and the United States, each Party shall appoint three individuals to one list each and appoint, by consensus, three individuals to a joint list. The individuals in the joint list shall be non-nationals of either Mexico or the United States.
 - Labor Panelists appointed for a minimum of 4 years or until the Parties constitute new lists.
 - Labor Panelists shall be appropriately qualified.
- Panel shall comprise five members, unless agreed to be three members, where if five members, the Parties shall jointly agree on the Chairman and then select two panelists who are not a citizen of the choosing Party.

USMCA Rapid Response Labor Mechanism: Function of Panel

Function of Panel is to make an objective assessment of matter before it and to present a report that contains:

- findings of fact, and
- determinations as to whether:
 - allegations of behavior at issue is inconsistent with obligations in Agreement,
 - a Party has otherwise failed to carry out its obligations in Agreement,
 - the behavior at issue is causing nullification or impairment within the meaning of the scope of the Agreement, or
 - any other determination requested in the terms of reference;
 - recommendations, if the disputing Parties have jointly requested them, for the resolution of the dispute; and
 - the reasons for the findings and determinations.

Remedies may include suspension of preferential tariff treatment for goods manufactured at the Covered Facility or the imposition of penalties on goods manufactured at or services provided by the Covered Facility.

CBP ENFORCEMENT

DHS Blue Campaign

OUT OF THE SHADOWS EXPOSING THE MYTHS OF HUMAN TRAFFICKING

LOOK BENEATH THE SURFACE

MYTH	TRUTH
HUMAN TRAFFICKING IS ONLY SEX TRAFFICKING	OF THE 20.9 MILLION VICTIMS OF HUMAN TRAFFICKING IN 2015: 88% FORCED LABOR 22% SEXUALLY EXPLOITED 10% STATE-IMPOSED FORCED LABOR
HUMAN TRAFFICKING VICTIMS WILL SELF IDENTIFY	50% OF VICTIMS HAD CONTACT WITH A HEALTH CARE PROFESSIONAL NONE WERE IDENTIFIED AS A VICTIM
HUMAN TRAFFICKING IS NOT IN MY COMMUNITY	30,000+ CASES OF POTENTIAL HUMAN TRAFFICKING REPORTED IN ALL 50 STATES, DC & US TERRITORIES
HUMAN TRAFFICKING ONLY AFFECTS THE VICTIM	THE CRIME OF HUMAN TRAFFICKING IS A SYMPTOM OF A SOCIETAL PROBLEM HOW TO HELP: REPORT TO THE POLICE, CALL AN ORGANIZATION, ASK TO SEE THE VICTIM, & REPORT TO THE MEDIA
HUMAN TRAFFICKING ONLY HAPPENS TO CHILDREN	SINCE 2012, NATIONAL HOTLINE CASES REPORTED: 62% ADULTS
HUMAN TRAFFICKING ONLY HAPPENS TO WOMEN	SINCE 2012, NATIONAL HOTLINE CASES REPORTED: 18% MEN

Human Trafficking is a crime and you can make a difference.

Since 2007, the National Human Trafficking Hotline has received over 168,554 calls and identified over 25,243 potential cases of human trafficking.
You can receive help, report a tip, or request information or training by calling:
National Human Trafficking Hotline
888-373-7888

BLUE CAMPAIGN
One Voice. One Mission. End Human Trafficking.

To report suspected human trafficking to Federal law enforcement:
1-866-347-2423

To get help from the National Human Trafficking Hotline:
1-888-373-7888
or text **HELP** or **INFO** to BeFree (233733)

https://www.dhs.gov/blue-campaign/tools?utm_source=blue_campaign_slideshow&utm_medium=web&utm_campaign=dhsgov

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Department of Labor (DOL)

UNITED STATES DEPARTMENT OF LABOR

Bureau of International Labor Affairs

List of Products Produced by Forced or Indentured Child Labor

ILAB maintains a list of products and their source countries which it has a reasonable basis to believe are produced by forced or indentured child labor, pursuant to Executive Order 13126. This List is intended to ensure that U.S. federal agencies do not procure goods made by forced or indentured child labor. Under procurement regulations, federal contractors who supply products on the List must certify that they have made a good faith effort to determine whether forced or indentured child labor was used to produce the items supplied. [Read More](#)

Current Countries and Products

Filter list by: Country Good Clear all filters

Showing 1 to 3 of 54 entries

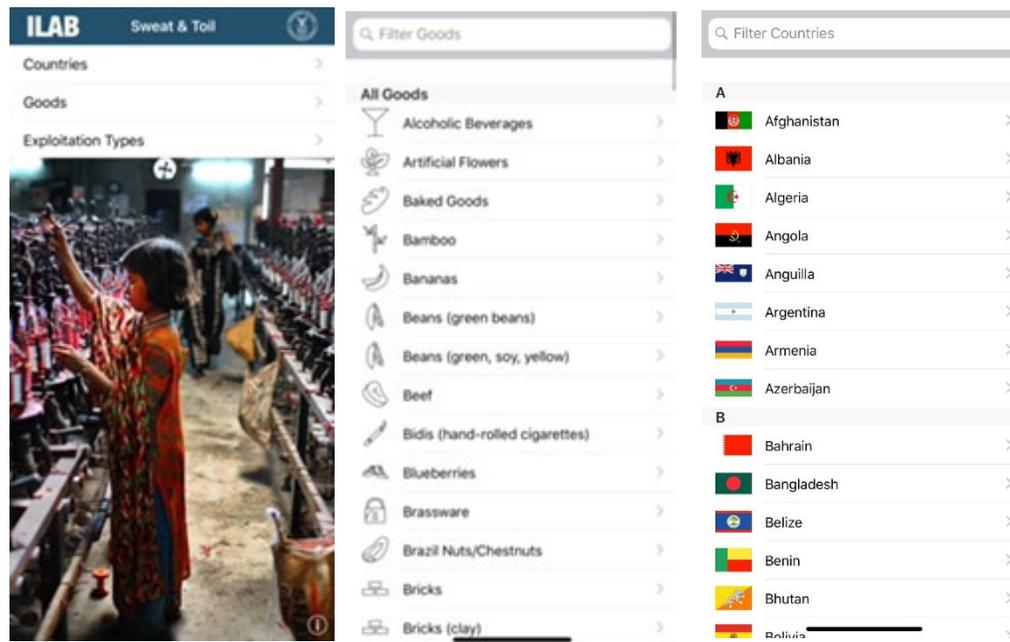
Country	Good
Afghanistan	Bricks There are reports that children as young as age four in Afghanistan are working in conditions of forced labor and in debt bondage at brick kilns. Based on the most recently available data from non-governmental organizations (NGOs) and media sources, up to 200 children were working at each of the 90 kilns in the Surkhrod District and more than 2,200 children were working as debt bonded laborers in 38 brick factories in Nangarhar Province in eastern Afghanistan. These children are bound by their parents' debt and work alongside their families making bricks. The bonded families are required to work under a contract between the families and the kiln owners; under the contracts, workers can be bought and sold among kiln owners. Some children are held at the kiln as collateral for their parents' debt, and will inherit their parents' outstanding debt. Pashto translation Dari translation
Argentina	Garments There are reports that children from Bolivia are forced to produce garments in informal workshops in the city of Buenos Aires and its surrounding municipalities. According to media outlets, NGOs, and government officials, some children from Bolivia are victims of deceptive recruitment and trafficking with false promises of decent working conditions and fair wages. Once in Argentina, these children have restricted freedom of movement, their identity documents are confiscated, they live and work within locked factories, and they are too fearful to leave due to threats of imprisonment. Some end up in conditions of bonded labor, in debt for fees that were charged for transport to Argentina, and are prohibited from leaving their workplaces for years until the debt is paid through wage deductions. These children suffer physical and verbal abuse from their employers, and are only given one meal per day. Some children are forced to work excessive hours, up to 20 hours per day. Spanish translation



<https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-products>

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DOL “Sweat & Toil” App



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TFTEA

- Signed into law February 24, 2016
- <https://www.cbp.gov/trade/trade-enforcement/tftea>



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Forced Labor Defined

19 U.S.C. § 1307

“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...”

<https://www.govinfo.gov/content/pkg/USCODE-2016-title19/html/USCODE-2016-title19-chap4-subtitleII-partI-sec1307.htm>



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Repeal of Demand Clause



Trade Facilitation and Trade Enforcement Act of 2015 *Repeal of the Consumptive Demand Clause*

Background:

Section 307 of the **Tariff Act of 1930** (19 U.S.C. § 1307) prohibits the importation of merchandise that has been mined, produced, or manufactured, wholly or in part, in any foreign country by forced labor – including prison labor and forced or indentured child labor. Such merchandise is subject to exclusion and/or seizure, and may lead to criminal investigation of the importer(s).

The **Trade Facilitation and Trade Enforcement Act of 2015**, signed by the President on February 24, 2016, strengthens the capabilities of U.S. Customs and Border Protection (CBP) to enforce U.S. trade laws and regulations. More specifically, the new law repeals the “consumptive demand” clause in 19 U.S.C. § 1307, which allowed importation of forced-labor goods, “if the goods were not produced in such quantities in the United States as to meet the consumptive demands of the United States.”

The **repeal of the consumptive demand exception enhances CBP’s ability to prevent products made with forced labor** from being imported into the United States.

How can you support CBP’s efforts to prevent forced labor imports?

CBP depends and acts on information. CBP encourages anyone with reason to believe that merchandise produced by forced labor is being, or is likely to be imported into the United States, to communicate his or her belief to any U.S. port director or the commissioner of CBP.

- Submit a **detailed information to CBP** that satisfies the requirements of 19 C.F.R. § 12.42(b)
- Instructions on how to submit information are provided at: <http://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations>
- The above information is necessary as the law is **not an automatic ban** on whole categories of goods from specific countries

The repeal of the consumptive demand clause will promote the following benefits:

- Enhanced ability for CBP to prevent products made by forced labor (i.e., slave, convict, indentured, or forced or indentured child labor) from being imported into the United States
- Levelled playing field for U.S. industry through a fair environment in which American manufacturers do not compete with foreign manufacturers or U.S. importers benefiting from the use of forced labor
- Increased ability to safeguard human rights and improve labor standards in the global supply chain through CBP’s enhanced authority to address violations and prevent future abuses from forced labor
- Expedited review, after CBP determines that sufficient information has been provided to warrant a withhold release order (WRO), consumptive demand considerations will no longer hinder issuance of the order

CBP Next Steps:

- Amend the regulations at 19 CFR § 12.42(b), which require certain information pertaining to consumptive demand, in order to comport with the updated law
- Continue to collaborate with U.S. Immigration and Customs Enforcement and other agencies to vigorously enforce U.S. trade laws

CBP Publication # 2130-0316

<https://www.cbp.gov/sites/default/files/assets/documents/2016-Oct/Fact%20Sheet%20-%20Repeal%20of%20the%20Consumptive%20Demand%20Clause.pdf>

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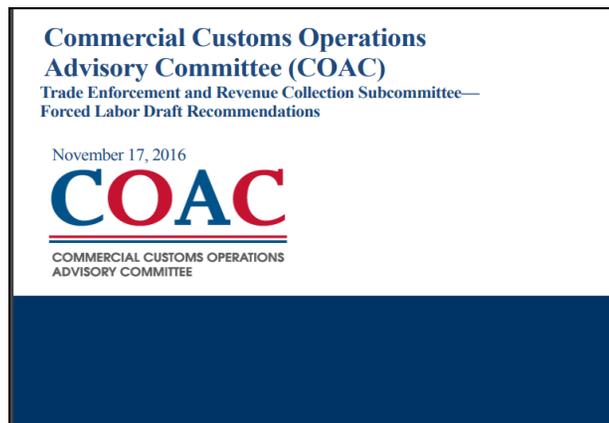
North Korea Sanctions Act (P.L. 115-44)



<https://www.congress.gov/115/plaws/publ44/PLAW-115publ44.pdf>

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COAC Forced Labor WG



<https://www.cbp.gov/sites/default/files/assets/documents/2016-Nov/TERC%20COAC%20Recommendations%20November%202017%202016%20%28003%29.pdf>

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CBP Forced Labor Page

The screenshot shows the U.S. Customs and Border Protection website. The page title is "U.S. Customs and Border Protection". The navigation menu includes "About CBP", "Newsroom", "Travel", "Trade", "Border Security", and "Careers". The current page is "FORCED LABOR" under the "TRADE" category. The "Trade" sidebar menu includes: Basic Import and Export, ACE and Automated Systems, Border Interagency Executive Council, Programs and Administration, Priority Trade Issues, Rulings and Legal Decisions, Stakeholder Engagement, and Trade Facilitation and Trade Enforcement Act. The main content area is titled "Forced Labor" and contains the following text:

Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) prohibits the importation of merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced or indentured child labor – including forced child labor. Such merchandise is subject to exclusion and/or seizure, and may lead to criminal investigation of the importer(s).

When information reasonably but not conclusively indicates that merchandise within the purview of this provision is being imported, the Commissioner of U.S. Customs and Border Protection (CBP) may issue withhold release orders pursuant to 19 C.F.R. § 12.42(e). If the Commissioner is provided with information sufficient to make a determination that the goods in question are subject to the provisions of 19 U.S.C. § 1307, the Commissioner will publish a formal finding to that effect in the Customs Bulletin and in the *Federal Register* pursuant to 19 C.F.R. § 12.42(f).

How You Can Help

CBP regulations state that *any* person who has reason to believe that merchandise produced by forced labor is being, or is likely to be, imported into the United States may communicate his belief to any Port Director or the Commissioner of CBP (19 C.F.R. § 12.42). This may be accomplished by submitting detailed information to CBP which satisfies the requirements of 19 C.F.R. § 12.42(b).

If you wish to meet with CBP to discuss CBP enforcement of the forced labor statute or to report allegations of forced labor violations, please contact the Office of Trade at trade.enforcement@cbp.dhs.gov or you may send information to:

U.S. Customs and Border Protection
1300 Pennsylvania Avenue NW
Washington, DC 20533

There is also a "Questions?" box with a question mark icon and the text: "Find answers at the CBP Info Center."

<https://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations>

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Forced Labor Enforcement

U.S. Customs and Border Protection
Commercial Enforcement Division
Forced Labor Enforcement

Forced Labor Enforcement, Withhold Release Orders, Findings, and Detention Procedures

FACT SHEET

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.

Withhold Release Orders
When information reasonably but not conclusively indicates that merchandise within the purview of this provision is being imported, the Commissioner may issue withhold release orders (WROs), 19 C.F.R. § 12.42(c).

- CBP requires information that is reasonable but not conclusive for issuance of a WRO.
- If your merchandise is withheld from release (detained).
- Importers may export the detained shipments or contend that the goods were not made with forced labor. Shipments subject to WROs may be subject to exclusion.
- To obtain release of shipments subject to WRO, importers must submit, within 3 months following the importation, a certificate of origin and a detailed statement demonstrating that the subject merchandise was not produced with forced labor, e.g., a supply chain audit report. Evidence will be evaluated on a case-by-case basis. If the proof submitted by the importer is deemed satisfactory, CBP will release the goods.
- If the proof submitted does not establish the admissibility of the merchandise, or if none is provided, CBP will exclude the shipment.

Findings
If the Commissioner is provided with information sufficient to make a determination that the goods in question are subject to the provisions of 19 U.S.C. § 1307, the Commissioner will publish a formal finding to that effect in the Customs Bulletin and in the Federal Register, 19 C.F.R. § 12.42(f).

- Findings require conclusive evidence, i.e., probable cause that the imported goods are made with forced labor.
- If your imported merchandise is subject to a finding you may seek release by:
 - Submitting, within 3 months following the importation, a certificate of origin and a detailed statement demonstrating that the subject merchandise was not produced with forced labor, e.g., a supply chain audit report. Evidence will be evaluated on a case-by-case basis. If the proof submitted by the importer is deemed satisfactory, CBP may release the goods.
 - If the proof submitted does not establish the admissibility of the merchandise, or if none is provided, the merchandise shall be seized for violation of 19 U.S.C. § 1307, for goods subject to a finding only.

WRO or Finding Modifications

- WROs/findings stay in effect until revoked; they may be revoked or modified if evidence shows the subject merchandise was not made with forced labor, or is no longer being produced with forced labor, or is no longer being, or likely to be, imported into the U.S.

For additional information and a complete list of WROs and Findings, please visit: <https://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations>

CBP Publication # 0950-0124

U.S. Customs and Border Protection
Commercial Enforcement Division
Forced Labor Enforcement

Detained Shipments

Office of Trade

Forced Labor Enforcement
CBP works diligently to prevent goods produced using forced labor from being imported into the U.S. by enforcing the Withhold Release Orders (WRO) and findings issued under 19 U.S.C. 1307.

Withhold Release Orders
When information reasonably, but not conclusively, indicates that merchandise within the purview of this provision is being imported, the Commissioner may issue a WRO, 19 C.F.R. § 12.42(c). CBP requires information that is reasonable, but not conclusive, for issuance of a WRO.

Findings
If the Commissioner is provided with information sufficient to make a conclusive determination that the goods in question are subject to the provisions of 19 U.S.C. § 1307, the Commissioner will publish a formal finding to that effect in the Customs Bulletin and in the Federal Register, 19 C.F.R. § 12.42(f).

Merchandise Subject to a WRO
The importer may export its merchandise to a location outside the United States within 3 months of the importation. The detained shipment will be excluded from entry if:

- The importer fails to either re-export the detained shipment or timely furnish the required certificate of origin by the foreign seller or owner and a detailed statement demonstrating that the goods were not manufactured with forced labor
- CBP determines the proof submitted by the importer does not establish the admissibility of the merchandise

Merchandise Subject to a Finding
The importer must submit to the port director, within 3 months following the importation, a certificate of origin and a detailed statement demonstrating that the subject merchandise was not produced with forced labor. If the proof submitted does not establish the admissibility of the merchandise, or if none is provided, the merchandise is subject to seizure for a violation of 19 U.S.C. § 1307.

Amendment or Revocation of a WRO/Finding
WROs/findings stay in effect until revoked; they may be revoked or modified if evidence shows the subject merchandise was not made with forced labor, or is no longer being, or likely to be, imported into the U.S. If the proof submitted to the Office of Trade is deemed satisfactory, CBP will modify or revoke the appropriate records.

Monitoring Your Supply Chain
CBP encourages stakeholders in the trade community to closely examine their supply chains to ensure goods imported into the United States are not mined, produced or manufactured, wholly or in part, with prohibited forms of labor, i.e., slave, convict, forced child, or indentured labor. Consider the resources below as starting places.

- Department of Labor's site provides guidance on setting up a social compliance system. <https://www.dol.gov/lab/child-forced-labor/>
- KnowTheChain is a resource for businesses and investors who need to understand and address forced labor abuses within their supply chains. <https://knowthechain.org/>
- Blockchain allows business managers to track shipments and invoices moving through their supply chain. <https://www.blockchain.com/>

For additional information and a complete list of WROs and Findings, please visit: <https://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations>

CBP Publication # 0991-1216

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Withhold Release Order

- Pursuant to 19CFR§ [12.42\(e\)](#), if CBP is presented with reasonable (not necessarily conclusive) evidence of forced labor, the Commissioner can issue a WRO.
- If CBP has sufficient evidence to determine that the merchandise in question was produced with any forced labor, the Commissioner will publish a formal finding in the Federal Register
- WRO Investigations may be initiated through various ways, including a self (CBP) initiated investigation, news reports, and tips from either the public or trade community.



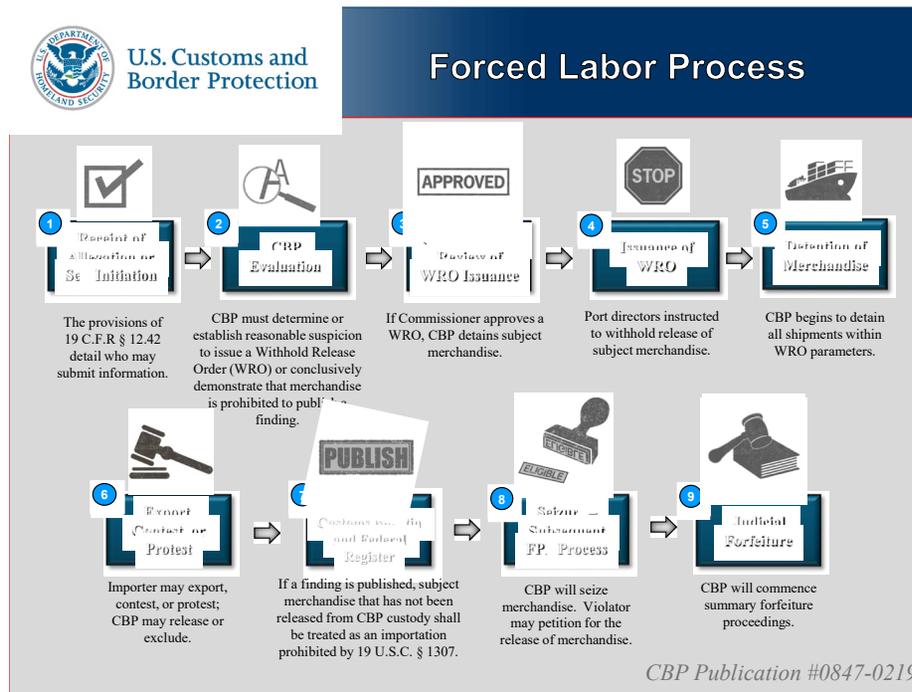
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Finding and Revocations

- **Subject to WRO:** You may export your shipment to another country within three (3) months of the initial importation.
- **Subject to Finding:** Within three (3) months of importation, the importer must submit “a certificate of origin and a detailed statement demonstrating that the subject merchandise was not produced with forced labor. If the proof submitted does not establish the admissibility of the merchandise, or if none is provided, the merchandise is subject to seizure for a violation of 19 U.S.C. § 1307”.
- **Amendment or Revocation of a WRO/Finding:** WROs have no expiration date and stay in effect until they are revoked. WROs may be revoked if CBP is presented with sufficient evidence.

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CBP Forced Labor Process



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CBP Binding Ruling

The screenshot displays the CBP Rulings website interface. The search results table is as follows:

Date	Rank	Ruling Category	Tariff No.	Ruling Reference	Related
1/28/2003	2%	Classification	9505.00.0000	Classification of a Stone Upright	References: 950504
2/8/2007	1.8%	Classification	9505.00.0000	Reconsideration of HQ 950503, Affirmed	References: 950503, 950504
5/24/2002	1.3%	Concessions	115676	Concessions for U.S.C. 9.1307	
8/19/2016	1.3%	Valuation	12086549	Request for U.S.C. 1407A, First Sale, Multi-tiered Transaction	References: 545702, 545703, 545704, 545705, 545706, 545707, 545708, 545709

The detailed view for ruling HQ 115676 is shown on the right. It includes the following text:

HQ 115676
 HQ 115676
 RES-SUNRITTEC 115676.0E/V
 OUTDOOR Recycled Merchandise
 Robert J. Leo, Esq.
 Maxwell & Shepper 330 Madison Avenue 39th Floor New York, N.Y. 10017
 HQ, Concessions, Packaging, U.S.C. 9.1307

This is in response to your fax of April 30, 2002, enclosing a copy of your letter to us requesting a ruling regarding the admissibility of merchandise packaged by convict labor. Our ruling on this matter is set forth below.

FACTS:
 The consumer product, women's athletic beauty accessories, will be manufactured in a country in Europe in a private, non-plant factory. Clear, rectangular blister packs and printed inserts for the product will be manufactured in a second country in Europe, also in a private, non-plant facility. The finished product, blister packs, and printed inserts will be sent to a port of entry in the United States where the merchandise will place the inserts and the product in the blister pack, seal the pack closed, and then ship it. The product will be clearly visible through the packs. No further processing or operations will be done to the product, inserts, or the blister packs. The packaged product will then be placed inside a larger shipping container which will be picked up from the prison by a forwarder for shipment to the United States.

The prisoners will have a choice of whether or not to participate in the packaging operation and will be paid for their labor. This packaging operation will cost only 15% of the cost of the finished, packaged product. - 2 -

ISSUE:
 Whether the packaging of merchandise by convict labor in an operation whereby such merchandise is considered to be "manufactured in part" by such labor so as to be within the purview of the prohibitions contained in 19 U.S.C. § 1307.

LAW AND ANALYSIS
 Title 19, United States Code, § 1307 (19 U.S.C. § 1307), provides, in pertinent part, as follows:
 "All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor... shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited. (Emphasis added.)
 The Customs Regulations promulgated pursuant to 19 U.S.C. § 1307 are found at 19 CFR, Code of Federal Regulations, §§ 12.42-12.45, (19 CFR §§ 12.42-12.45).
 With respect to the issue under consideration, neither the plain language of the statute nor its legislative history provide any degree of guidance upon which Customs may rely; the latter only reflecting the Congressional intent to protect domestic producers and workers from unfair competition that would result from the importation of foreign goods produced by forced labor, only allowing access to such goods when they are in short supply domestically. (See McKinney v. United States Dept. of Treas., 759 F.2d 1544, 1547 (Fed. Cir. 1985).) Furthermore, neither the courts nor Customs have ever ruled on whether the mere packaging of a product by convict labor falls within the scope of the phrase "manufactured in part" set forth in 19 U.S.C. § 1307.
 Notwithstanding this dearth of legislative, judicial and administrative authority in this matter, we nonetheless find instructive a 1920 Opinion of the Attorney General (35 Op. Atty. Gen. 500) addressing the issue of whether phosphate rock that was mined by convict labor was considered to be "manufactured wholly or in part" within the meaning of 19 U.S.C. § 1307. Although this decision predated the amendment to this statute which included "mining" by convict labor as a prohibited activity enumerated therein, it thus far constitutes the sole - 3 -
 application of this statute that is responsive to the operative language in this case and therefore merits our review as set forth below.
 At the outset, we note that the Attorney General, upon reviewing the entirety of the original statutory text (§ 301 of the Tariff Act of September 21, 1922, 42 Stat. 555), stated that:
 "A reading of the entire statute does not justify the inference that Congress used the term "manufactured" in any local, colloquial, or general sense. On the contrary, throughout the Act the discriminating choice of words in the sections, where it is essential to the process, reveals an intent to use language with accuracy and even nicety. (35 Op. Atty. Gen. 500, 502.)
 when Congress in section 307 used the word "manufactured," we are justified in applying it only where it is plainly appropriate. I do not find that the courts have attempted to frame a completely inclusive and exclusive definition of the word "manufactured." It is a term of description rather than of definition. Certain principles, however, have been settled. It is not a word which is to be applied in regard to the above-referenced principles, the Attorney General's Opinion cited two cases decided by the Supreme Court in Hartnett v. Viegman, 171 U.S. 609 (1897). The Court determined that shells subject to cleaning, grinding and polishing were not manufactured. The Court stated that: "The application of labor to an article, either by hand or by machinery, does not make the article necessarily a manufactured article, within the meaning of that term as used in the tariff laws." (Emphasis added.) Id. at p. 615.
 In Andrew-Burns (Brewery Association) v. The United States, 207 U.S. 556 (1903), the other Supreme Court case cited by the Attorney General, the Court held that the mere subjecting of coals to a cleaning and cooling process to adapt them to a special use did not amount to a manufacturing for purposes of the drawback statute. The Court stated:
 4. Manufacture implies a change, but every change is not a manufacture, and yet every change in an article is the result of treatment, labor and manipulation. But something more is necessary, as set forth and illustrated in Hartnett v. Viegman, 171 U.S. 609. There must be transformation, a new and different article must emerge, having a distinctive name, character or use."

<https://www.cbp.gov/trade/rulings>

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CBP 28 Request

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection
REQUEST FOR INFORMATION
19 CFR 151.11

OMB No. 1651-0023
Exp. 03-31-2014

Any text that scrolls will not print

3. Manufacturer/Seller/Shipper		4. Carrier		1. Date of Request	
5a. Invoice Description of Merchandise		5b. Invoice No.		2. Date of Entry and Importation	
7. Country of Origin/Exportation		8. CBP Broker and Reference or File No.		5. Entry No.	
9. TO:		10. FROM:		6. HTSUS Item No.	
<small>Production of Documents and/or Information Required by Law: If you have provided the information requested on this form to U.S. Customs and Border Protection at other ports, please indicate the port of entry to which it was supplied, and furnish a copy of your reply to this office, if possible.</small>		11a. Port		11b. Date Information Furnished	

General Information and Instructions on Reverse

<p>12. Please Answer Indicated Question(s)</p> <p><input type="checkbox"/> A. Are you related (see reverse) in any way to the seller of this merchandise? If you are related, please describe the relationship, and explain how this relationship affects the price paid or payable for the merchandise.</p> <p><input type="checkbox"/> B. Identify and give details of any additional costs/expenses incurred in this transaction, such as:</p> <p><input type="checkbox"/> (1) packing</p> <p><input type="checkbox"/> (2) commissions</p> <p><input type="checkbox"/> (3) proceeds that accrue to the seller</p> <p><input type="checkbox"/> (4) assists</p> <p><input type="checkbox"/> (5) royalties and/or license fees</p>	<p>13. Please Furnish Indicated Item(s)</p> <p><input type="checkbox"/> A. Copy of contract (or purchase order and seller's confirmation thereof) covering this transaction, and any revisions thereto.</p> <p><input type="checkbox"/> B. Descriptive or illustrative literature or information explaining what the merchandise is, where and how it is used, and exactly how it operates.</p> <p><input type="checkbox"/> C. Breakdown of components, materials, or ingredients by weight and the actual cost of the components at the time of assembly into the finished article.</p> <p><input type="checkbox"/> D. Submit samples: Article number and description _____ from container _____ mark(s) and number _____ Samples consumed in analysis, and other samples whose return is not specifically requested, will not normally be returned.</p>
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COAC Recommendations

Meaningful CBP Form 28 related to Forced Labor

Statutory Guidance: Disclosure Process & Benefits

- Develop guidelines on the disclosure procedure and reporting requirements that importers should follow when an incident of forced labor is found to reasonably exist in their supply chain.

<https://www.cbp.gov/sites/default/files/assets/documents/2020-Apr/COAC%20FLWG%20Recommendations%20April%202020.pdf>

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CBP Forced Labor Audits

Over the next several months, we will be conducting a FA FL of [REDACTED] import activities for importer identification number(s) [REDACTED] during the period January 1 through December 31, 2018. The objective of the FA FL is to determine whether:

- [REDACTED] has demonstrated its awareness of and commitment to addressing forced labor.
- [REDACTED] conducted forced labor risk assessments, which include a process to trace/map its supply chain and provide relevant policies/procedures to address the risk that workers will be exploited by labor recruiters.
- [REDACTED] has purchasing and monitoring activities to address the risk that imported goods have been mined, produced, or manufactured, wholly or in part, with a prohibited form of labor (i.e., slave labor, prison/convict labor, forced child labor, and indentured labor under penal sanctions.)

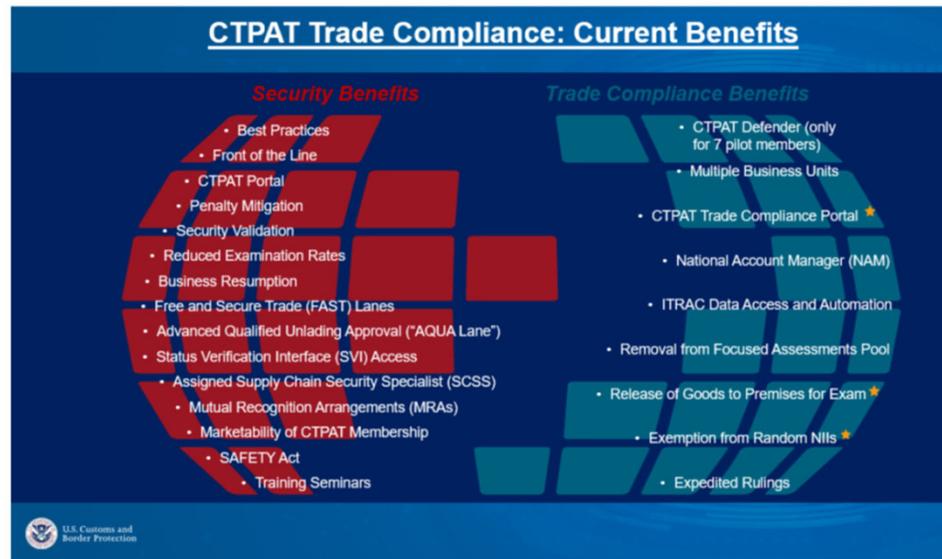
During the entrance conference, the FA FL team will provide an overview of the draft Forced Labor audit program; planned audit objectives; audit criteria; audit approach; explain the reporting process; and coordinate estimated completion dates of audit objectives.

Enclosed are a FL Questionnaire (Enclosure I) and list of entry line items and the types of documentation to have ready during the interview and walkthrough discussions (Enclosure II.)

After the entrance conference the FA team will begin conducting interviews and walkthrough discussions to obtain information about [REDACTED] corporate social responsibility (CSR) program. Knowledgeable personnel from the appropriate departments should be available to explain [REDACTED] processes and procedures relating to the CSR program. The selected walkthrough entries may assist in demonstrating typical processes and procedures and it is recommended to have ready any documentation that exemplifies the performance of the procedures.

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CBP Trusted Trader Pilot



<https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/COAC%20STL%20Trusted%20Trader%20DRAFT%20Trade%20Compliance%20Forced%20Labor%20Strategy.pdf>

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COMPLIANCE STRATEGIES

Fundamental Questions

- Do you know where your goods are made?
- Do you know what industries and regions pose elevated risks in your supply chain?
 - Have you reviewed the DOL reports on child and forced labor risks <https://www.dol.gov/agencies/ilab?>
- Do your key employees understand red flags for child and forced labor?
 - https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm

Compliance Best Practices

- It is important to implement a global compliance strategy and not rely on ad hoc issue-spotting.
- CBP Updated the Reasonable Care Checklist in 2017 to include Forced Labor <https://www.cbp.gov/document/publications/reasonable-care>
- Forced labor is a component of Corporate Social Responsibility initiatives (Social Compliance System).
 - This can be leveraged to help meet compliance requirements.
 - You can work with your CSR program to ensure it is informed by legal requirements.

A Social Compliance System

- “An integrated set of policies and practices through which a company seeks to ensure maximum adherence to the elements of its code of conduct that cover social and labor issues.”
- DOL resources:
<https://www.dol.gov/ilab/complychain/>



Third Party Vetting and Management

- In-house due diligence or use of third party certification programs can both be good options
- Joining an industry platform or initiative can be a great step but does not take the place of your own risk-assessment
- Include appropriate contractual terms or certifications
- Educate suppliers on your code of conduct and requirements

DISTRIBUTOR SUPPLIER ASSESSMENT QUESTIONNAIRE

Supplier Name: _____ Date: _____

COMPANY DATA	
Name and Title of the person completing the assessment:	
Business address:	
Business phone number:	
Business fax number:	
Business e-mail:	
Company President:	
Head of Quality:	
Number of employees:	
Primary product you are selling to Flexfab:	
List the part numbers (attached a list if necessary):	
Name of the manufacturer that you represent:	
Are you third party registered to ISO9001, TS16949 or AS9100? If yes, enclose a copy of your certificate and you don't need to answer the questions below.	

	TS ELEMENT	REQUIREMENT	Y	N	R/A	COMMENTS
1	7.2.2 Contract Review	Are contracts (purchase orders) reviewed and records kept on the reviews?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2	7.4.2 Purchasing Information	Does the P.O. adequately describe the material to be purchased?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3	7.4.3 Verification of Purchased Materials	Are purchased materials inspected and tested to the extent necessary to ensure materials received meet specification requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4	7.5.3 Material Identification	Are materials properly identified and status clearly identified?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5	7.6 Control of Inspection, Measuring & Test Equipment	Is there a calibration system in place that ensure that inspection and measuring equipment is accurate and traceable to NIST?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6	7.5.3.1 Identification and Traceability	Are materials identified and traceability maintained, when required.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Could you pass a CBP Forced Labor Audit?

FORCED LABOR QUESTIONNAIRE	
FL 1	Control Environment
FL 1.01	Is someone in your company responsible for corporate social responsibility (CSR)? If so, identify them. Please have the individual available for discussion when the auditors are on-site.
FL 1.02	Does XYZ's Code of Conduct <u>specifically</u> clearly prohibit forced labor, trafficking of recruits, abuse of vulnerability, deception, physical/sexual violence, intimidation and threats, withholding wages, abusive working/living conditions, debt bondage, and isolation from authorities. Is there any specific XYZ policy that addresses the use of Forced Labor for manufacture of XYZ products? And/or is CSR covered in the company's annual report or financial notes? If so, please provide a copy.
FL 1.03	When does your company communicate the code of conduct, code of ethics, or equivalent statement of values to its employees? How often is this communicated?
FL 1.04	Does your company convey the code of conduct, code of ethics, or equivalent statement of value to new and existing suppliers? If so, please explain when and how.
FL 1.05	Does your company have any written policy that specifically prohibits the use of forced labor (i.e., slave labor, prison/convict labor, forced child labor, and indentured labor under penal sanctions)? If so, please identify the policy. If possible, provide copies or have copies available for the auditors when they perform an on-site visit. <i>If the answer to this question is no, please skip question FL 2.01</i>
FL 1.06	How/when is the written policy that specifically prohibits the use of forced labor

FORCED LABOR QUESTIONNAIRE	
FL 3	Information and Communication
	<u>Purchasing, Procurement, and/or Contracting</u>
FL 3.01	Do supplier contracts include supply chain standards and prohibit the use of forced labor. If so, please have a contract available for the auditors to review when they perform an on-site visit.
FL 3.02	Does the company require that direct suppliers (i.e., first tier supplier) ensure that their own suppliers prohibit the use of forced labor and implement standards that are in line with the importer's supply chain standards? If so, briefly explain how this is communicated (i.e., how suppliers throughout the supply chain are made aware of the requirement and how disclosure is made to your company). Also, briefly explain how sub-contractors' CSR is verified to conform to your supply chain standards.
FL 3.03	Does your company require suppliers in the supply chain to disclose when they use labor recruiters? If so, briefly explain how this is communicated (i.e., how suppliers throughout the supply chain are made aware of the requirement and how disclosure is made to your company).
FL 3.04	Do supplier contracts prohibit worker payment of labor recruitment fees or require the supplier to explain how any recruitment fees are charged? If so, please have a contract available for the auditors to review when they perform an on-site visit.
FL 3.05	Does your company require suppliers in the supply chain to hire foreign migrant workers directly, when practical? If so, briefly explain how this is communicated

Recordkeeping

- Do you have a reliable procedure to maintain Customs entry documentation and supporting information?
- To fill out reporting forms required by non-US statutes?
- To support your position in the event of a lawsuit?



Questions?





**THOMPSON
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Always Innovating



Avoiding Forced Labor in International Supply Chains

November 18, 2020

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International Trade
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Overview

Francesca is a partner in the firm's International Trade practice group. She regularly counsels clients on compliance with export controls, sanctions, import regulations, and the FCPA and anti-bribery laws. She works closely with companies to develop tailored compliance programs that fit their specific needs. She regularly advises clients on some of their most challenging international transactions, involving dealings in high risk jurisdictions or with high risk counterparties. Francesca also counsels companies through all phases of internal investigation of potential trade and anti-bribery violations, and represents companies across industries before related government agencies.

Francesca also has extensive experience counseling clients on national security issues relevant to foreign investment in the United States. She has represented investors and U.S businesses before the Committee on Foreign Investment in the United States from diverse sectors including energy generation and transmission, pharmaceutical development, heavy manufacturing, defense and aerospace, telecommunications, and software technology.

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Education

- Harvard Law School, J.D., 2006
 - Princeton University, B.A., 2002, *magna cum laude*
-

Experience

- Conducted an export control compliance of an audit of a Chinese company as mandated under a settlement agreement with the U.S. Department of Commerce.
- Prepared OFAC license applications for an education services company to conduct business related to Sudan, Iran and Syria.
- Represented a U.S. importer in a prior disclosure of violations of customs regulations with respect to five years of imports from China and other Asian countries.
- Prepared BIS license applications for various technology, manufacturing, and service providers seeking to export items subject to the EAR to companies on the Entity List.
- Represented a U.S. defense and aerospace company in the voluntary disclosure of violations of the ITAR to the Directorate of Defense Trade Controls.
- Represented a foreign government-owned energy company in multiple CFIUS notices regarding the sale of interests in wind energy projects, including the sale to another foreign government-owned investor.

- Represented a Chinese company in the acquisition of a U.S. pharmaceutical company.
- Advised a U.S. manufacturer and global distributor in the development of comprehensive anti-bribery policies and procedures.
- Represented a global leader in solar, wind and battery technology in the acquisition of the world leader in modeling and optimization software for microgrids.

Publications

- [“New CFIUS Critical Technology Mandatory Filing Requirements Take Effect October 15,”](#) Thompson Hine *International Trade Update*, October 2020
- [“BIS Publishes Advance Notice of Proposed Rulemaking to Identify and Review Controls on Foundational Technologies: What's Next?,”](#) Thompson Hine *International Trade Update*, September 2020
- [“FAR Council Publishes Interim Rule on Section 889 Part B Increasing Prohibitions on Contracting with Companies Using Certain Chinese Telecommunications Equipment and Services,”](#) Thompson Hine *Government Contracts & International Trade Update*, August 2020
- [“President Trump Signs the Hong Kong Autonomy Act and Issues Executive Order on Hong Kong Normalization,”](#) Thompson Hine *International Trade Update*, July 2020
- [“Departments of State, Commerce, Homeland Security and the Treasury Caution Businesses Regarding Human Rights Abuses in Xinjiang,”](#) Thompson Hine *International Trade Update*, July 2020
- [“Section 889 Part B Expands Ban on Federal Contracting with Companies Using Chinese Company Equipment and Services,”](#) Thompson Hine *International Trade & Government Contracts Update*, July 2020
- [“Beyond NAFTA: USMCA Goes into Effect July 1,”](#) Thompson Hine *International Trade Update*, June 2020
- Co-author, [“COVID-19 Mitigation May Trigger New Tech Export Restrictions,”](#) *Law360*, June 2020
- [“INSIGHT: Companies Must Prioritize Anti-Bribery Compliance During the Pandemic,”](#) *Bloomberg Law*, May 2020
- [“Commerce Issues Interim Final Rule Addressing Foreign-Produced Direct Products and Specifically Targets Huawei Technologies Co., Ltd.,”](#) Thompson Hine *International Trade Update*, May 2020
- [“Recent Executive Actions Focus on Bulk-Power System Grid Security and Supply Chain,”](#) Thompson Hine *International Trade Update*, May 2020
- [“GSA Class D&F Provides TAA and BAA Non-Availability Exception for Certain Supplies,”](#) Thompson Hine *COVID-19 Update*, April 2020
- [“Petitions by Vehicle Producers for Alternative Staging Regime for Compliance with USMCA Rules of Origin for Automotive Goods Due to USTR by July 1,”](#) Thompson Hine *International Trade Update*, April 2020
- [“OFAC Issues Fact Sheet on Providing Humanitarian Aid to Combat COVID-19 Under Various Sanctions Programs,”](#) Thompson Hine *COVID-19 Update*, April 2020
- Quoted, “Thompson Hine Nabs Winston & Strawn Int'l Trade Atty In DC,” *Law360*, April 2020

- ["Government Measures Worldwide in Response to COVID-19," Thompson Hine COVID-19 Update, April 2020](#)
 - ["FEMA Announces Export Restrictions on Personal Protective Equipment \(PPE\)," Thompson Hine COVID-19 Update, April 2020](#)
 - Quoted, ["Pandemic Puts National Security Focus on Biotech, Health Sectors," Bloomberg Law, April 2020](#)
 - ["COVID-19 and International Trade: Status of Trade-Related U.S. Government Agencies & Courts and Helpful Online Resources," Thompson Hine COVID-19 Update, March 2020](#)
 - ["Treasury Proposes Regulations to Institute CFIUS Filing Fees; Comments Due April 8," Thompson Hine International Trade Update, March 2020](#)
-

Professional & Civic

- Arlington County Board Commission on Neighborhood Complete Streets, Vice Chair
-

Admissions

- U.S. Court of International Trade
 - District of Columbia
 - Virginia
-



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Labor & Employment
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Life Sciences

Overview

Scott advises employers on, and litigates, all aspects of labor and employment law. This includes cases involving alleged employment discrimination and wrongful discharge, harassment, unlawful retaliation, whistleblower claims, restrictive covenants, breach of employment contract, breach of collective bargaining agreements, trade secrets, wage and hour issues under the Fair Labor Standards Act and related state statutes, safety and health, employment torts, state unemployment tax account liability, workers' compensation, disability and leave issues, and unfair labor practice charges. He counsels employers on employment investigations, terminations, employment handbooks and written policies, benefits, insurance, unions and related collective bargaining agreements, employment and independent contractor agreements, alleged misappropriation of trade secrets and intellectual property.

Scott serves as outside general counsel for clients. He counsels clients on, and assists clients with meeting, regulatory compliance obligations involving federal, state, and international laws involving a variety of business issues. This includes issues relating to, but not limited to, privacy and security, employment, sales and distribution of products, business services, and the Coronavirus (COVID-19). Scott also assists clients with, and litigates, contracts, issues of breach of contract, torts, intellectual property, general liability, unfair competition, and international law.

Scott's litigation experience includes single party, collective, and class actions. He has successfully represented clients at jury trials, bench trials, and administrative proceedings. His experience includes representing clients before state and federal courts, the Equal Employment Opportunity Commission and related state agencies, Occupational Safety and Health Commission and related state agencies, Mine Safety and Health Review Commission, Ohio Civil Rights Commission, Industrial Commission of Ohio, National Labor Relations Board, American Arbitration Association, among other forums.

Scott represents clients, which range from small to Fortune 500 size companies, involved in retail, manufacturing, health care, distribution, cosmetics, energy, logistics, beverages, food services, auto parts, general merchandise, construction, technology, banking, pharmaceutical development, life sciences, real estate, aerospace, workforce solutions, printing and packaging, steel, agriculture, and insurance, among others. These clients are based throughout the world.

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Education

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 - St. John's College, B.A., 1989
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Experience

Labor and Employment

- Counseling clients on, and successfully defending, complaints filed by employees alleging wrongful discharge, retaliation, and harassment based upon, but not limited to, alleged disability discrimination, race discrimination, age discrimination, gender discrimination, sexual harassment, and whistleblower retaliation. Successfully defending employers against these types of claims before the EEOC, OSHA, DOL, various state agencies, state and federal courts.
- Representing and advising clients on legal implications of the Coronavirus (COVID-19), including compliance with applicable federal, state, and local orders and laws for employees, contractors, customers, and other business matters. Defending clients, and advising clients, as relating to COVID-19 claims by employees and third parties before state and federal agencies, and courts.
- Representing and advising clients on all facets of OSHA compliance, related investigations, and litigation involving alleged citations. This includes, but is not limited to, fall protection, training, safety policies, lockout tagout, crane and lift truck safety, asbestos and other potentially hazardous exposures, chemical spills and response, compliance with design and build, demolition, and electrical standards.
- Counseling clients on, and successfully defending claims, alleging breach of contract and failure to pay appropriate wages under federal and state laws. Successfully defending employers against these types of claims before agencies, state and federal courts.
- Counseling clients on, and successfully defending claims, alleging violations of collective bargaining agreements and unfair labor practices. Successfully obtained dismissal of numerous complaints and charges.
- Representing client in federal court against wage and hour claim by current and former employees, asserting collective and class action status, involving alleged failure to pay for all hours worked, unpaid overtime, and related claims.
- Representing clients in court against employee claims of breach of contract. Successfully defended claims and resolved on terms favorable for clients.
- Counseling clients on, and successfully representing clients in court, on issues involving alleged violations of noncompete agreements and thefts of trade secrets.
- Representing client relating to the EEOC's investigation of claim by employee that she was unlawfully discharged from her employment based upon her gender. Successfully defended client in front of EEOC where after investigation, EEOC dismissed complaint.
- Representing client relating to the EEOC's investigation of claim by employee that he was unlawfully discharged from his employment based upon his age and race. Successfully defended client in front of EEOC where after investigation, EEOC dismissed complaint.
- Representing client relating to the EEOC's investigation of claim by employee that she was unlawfully discharged from her employment after making complaints of sexual harassment. Successfully defended client in front of EEOC where after investigation, EEOC dismissed complaint.

- Representing client before the Ohio Civil Rights Commission (OCRC) in connection with claim by employee that he was unlawfully discharged based upon his age. Successfully defended client in front of OCRC where after investigation, OCRC dismissed complaint.
- Representing client relating to OSHA's investigation of claim by employee that he was unlawfully discharged from his employment for making claim of a safety issue to OSHA. Successfully defended client in front of OSHA where after investigation, OSHA dismissed complaint.
- Representing client relating to OSHA's investigation of claim by employee that he was unlawfully discharged from his employment for participating in an OSHA investigation. Successfully defended client in front of OSHA where after investigation, OSHA dismissed complaint.
- Representing client relating to OSHA's investigation of unanticipated collapse of a multilevel parking garage during construction resulting in multiple injuries. Client was responsible for building garage. After investigation, OSHA made no finding that client violated an OSHA standard causing collapse.
- Representing client relating to OSHA's investigation of unanticipated collapse of a multilevel parking garage during construction. Client was involved with inspecting the processes relating to building this garage, preceding the collapse. After investigation, OSHA made no finding that client violated an OSHA standard causing collapse.
- Representing client relating to OSHA's investigation of an unanticipated collapse of a bridge over an interstate highway during its demolition resulting in fatality and other injuries. After investigation, OSHA made no finding that client violated an OSHA standard causing collapse.
- Representing client relating to OSHA's investigation of incident resulting in electrocution of worker while working around power transmission machinery. After litigation before the Occupational Safety and Health Review Commission, OSHA made no finding that client violated an OSHA standard causing incident.
- Representing client relating to OSHA's investigation of unanticipated drop of a 23 ton steel coil from a crane's lifting device resulting in a fatality. After investigation, OSHA made no finding that client violated an OSHA standard causing unanticipated drop of coil and fatality.
- Representing client relating to OSHA's investigation of electrocution and death of worker electrocuted when working on an electrical control panel. After investigation, OSHA made no finding that client violated an OSHA standard proximately causing the electrocution and death of worker.
- Representing clients in connection with grievances filed by unions on behalf employees alleging breaches of collective bargaining agreements relating to discipline, discharge, and pay, successfully obtaining dismissals of claims.
- Representing client against state agency in court over issue involving appropriate state unemployment tax rates after reorganization of company into multiple corporate entities. Won on summary judgment.
- Representing client before state agency over issues involving alleged underpayment of state unemployment taxes. Won following hearing before state administrative agency law judge.
- Counseling clients on, and successfully defending, claims of alleged employee injuries and related extent of disability issues in connection with workers' compensation claims before state agencies and in courts.

Business Litigation

- Representing clients before courts on breach of contract, tortious interference, fraud, and other business law claims.
- Representing client in federal court challenging program utilized by government entity to deny client an award of a construction contract. Won on summary judgment.
- Representing client before American Arbitration Association on claim of breach of contract relating to distribution agreement, including allegations involving breach of contract, fraud, breach of duty of good faith and fair dealing, tortious interference with contractual and/or business relationships, promissory estoppel, and unjust enrichment. Case resolved on terms favorable for client.
- Representing client on issues relating to alleged breach of intellectual property rights and distribution agreement subject to American Arbitration Association.
- Representing client before civil rights commission as relating to allegations of disability discrimination by reason of alleged failure to comply with state and federal law concerning handicap accessibility. Following hearing before civil rights commission, won judgment for client.
- Representing client in connection with claims that it violated the on Federal Telephone Consumer Protection Act, related state telemarketing act, consumer sales practice act, and invasion of privacy claims in federal court.
- Representing client in court in connection with claim that it is liable for damages under theory of product liability. Won on summary judgment.
- Representing client on claim of breach of contract against other partial owners of movie theatre chain in court, recovering full amount alleged to be owed, plus attorney fees and interest. Won on summary judgment.
- Representing client on breach of contract claim filed by construction contractor against client in court. Won on dismissal.
- Counseling clients on, and successfully litigating, issues relating to insurance coverage for liability claims. Successfully defending numerous cases subject to insurance coverage.
- Representing clients against claims of toxic tort. Won cases on summary judgment.
- Representing clients in connection with claims of breach of real estate agreements with associated claims for damages. Won cases at trial.
- Representing clients in connection with claims involving alleged intentional tort, negligence, premises liability, and other general liability theories in both court and before arbitrators. Won cases on summary judgment, following trial, and arbitration hearings.

Life Sciences

- Representing clients in connection with meeting regulatory compliance obligations for distribution and sales of life science products and services throughout United States, Europe, South Korea and other parts of Asia. This includes pharmaceutical, non-pharmaceutical, cosmetics, diets, bedding, among other products.
- Representing and advising clients on legal implications of the Coronavirus (COVID-19), including compliance with applicable federal, state, and local orders and laws.

- Assisting clients in connection with growing business through negotiating, drafting, and securing contracts, products, and services with related protections of rights and meeting legal compliance obligations.
- Counseling clients on, and litigating issues relating to, development and distribution of laboratory animals and related products both in the United States and internationally. This includes assisting clients with obtaining trademarks, negotiating distribution agreements, technical transfer agreements, addressing and protecting patent rights, and application of international law.
- Counseling clients on issues relating to intellectual property and distribution rights for various life science products considering United States and international laws. These clients include companies and government agencies in the United States, Europe, South Korea and other parts of Asia.

Publications

- ["Ohio Provides Qualified Liability Shield From COVID-19 Claims," Thompson Hine COVID-19 Update, September 2020](#)
- ["DOL Revises FFCRA Regulations in Response to Court Decision," Thompson Hine COVID-19 Update, September 2020](#)
- ["Federal Court Expands FFCRA Paid Leave," Thompson Hine COVID-19 Update, August 2020](#)
- ["Virginia First State to Enact COVID-19 Workplace Safety Standard," Thompson Hine COVID-19 Update, July 2020](#)
- ["Supreme Court Rules Title VII Protects LGBTQ Individuals," Thompson Hine Labor & Employment @Iert, June 15, 2020](#)
- ["OSHA Issues Updated COVID-19 Enforcement Plan and Guidance for Employers," Thompson Hine COVID-19 Update, May 2020](#)
- ["Employment Law Considerations as Our Economy Begins to Reopen," Thompson Hine COVID-19 Update, May 2020](#)
- ["CARES Act: Implications for Businesses," Thompson Hine COVID-19 Update, March 28, 2020](#)
- ["Federal CARES Act Provides Substantial Relief to Employers from Effects of COVID-19," Thompson Hine COVID-19 Update, March 2020](#)
- ["DOL Issues Employer Guidance on Implementing Families First Coronavirus Response Act," Thompson Hine COVID-19 Update, March 2020](#)
- ["House Passes Families First Coronavirus Response Act," Thompson Hine COVID-19 Update, March 2020](#)
- ["OSHA Issues COVID-19 Guidance for Employers," Thompson Hine COVID-19 Update, March 2020](#)
- ["Severance Pay Now Mandatory for Some New Jersey Terminations," Thompson Hine Labor & Employment @Iert, January 2020](#)
- [Thompson Hine Compliance Check 2020: OSHA Inspections, November 2019](#)
- ["Illinois Legalizes Recreational Use of Marijuana Effective January 1, 2020," Thompson Hine Labor & Employment @Iert, July 2019](#)
- ["DOL Issues New Opinion Letters Regarding FLSA Compliance," Thompson Hine Labor & Employment @Iert, July 2019](#)
- ["New Pregnancy Accommodation Law for Kentucky Employers," Thompson Hine Labor & Employment @Iert, April 2019](#)

- ["New Jersey Enacts Limits on Employment and Settlement Agreements," Thompson Hine Labor & Employment @Iert, April 2019](#)
- ["New York State Department of Labor Publishes Materials Necessary for Employers to Comply with New State Sexual Harassment Laws," Thompson Hine Labor & Employment @Iert, October 2018](#)
- ["Massachusetts Enacts Expansive Paid Family and Medical Leave Legislation," Thompson Hine Labor & Employment @Iert, August 2018](#)
- ["Supreme Court Holds Class and Collective Action Waivers Are Enforceable in Employment Arbitration Agreements," Thompson Hine Labor & Employment @Iert, May 2018](#)
- ["DOL Issues New Opinion Letters on FLSA and CCPA," Thompson Hine Labor & Employment @Iert, April 2018](#)
- ["California Departs from FLSA on Flat Sum Bonuses for Calculating Overtime Pay," Thompson Hine Labor & Employment @Iert, March 2018](#)
- ["Biometric Data: Convenient or Cause for Concern?" Thompson Hine Labor & Employment @Iert, March 2018](#)
- ["Digital Workplace Discussions and Employer Liability," Thompson Hine Labor & Employment @Iert, January 2018](#)
- ["DOL Sides with Circuit Courts, Adopts New Intern Test," Thompson Hine Labor & Employment @Iert, January 2018](#)
- ["NLRB Reverts Back to Pre-Browning-Ferris Joint Employer Test," Thompson Hine Labor & Employment @Iert, December 2017](#)
- ["Termination Does Not Always Lead to a Voluntary Abandonment Defense in Ohio," Thompson Hine Labor & Employment @Iert, October 2017](#)
- ["Is Your Company Prepared for the New York Paid Family Leave Law?" Thompson Hine Labor & Employment @Iert, August 2017](#)
- ["EEOC Seeks Comment on Proposed Unlawful Harassment Guidance," Thompson Hine Labor & Employment @Iert, February 2017](#)
- ["OSHA Update: New Anti-Retaliation Guidance, Walking-Working Surfaces and Fall Protection Standards, and Beryllium Exposure," Thompson Hine The Law@Work Newsletter, Winter 2017](#)
- ["Ohio Businesses Should Ensure Compliance With Amended Concealed Carry Laws," Thompson Hine Corporate Law and Labor & Employment Update, January 2017](#)
- ["Bill Gives Ohio Employers Exclusive Authority Over Schedule and Benefits Policies, Limits Minimum Wage," Thompson Hine Labor & Employment @Iert, January 2017](#)
- ["Washington, D.C. Council Passes Generous Paid Family Leave Bill," Thompson Hine Labor & Employment @Iert, December 2016](#)
- ["Federal Judge Enjoins New FLSA Overtime Regulations," Thompson Hine Labor & Employment @Iert, November 2016](#)
- ["Legalizing Recreational Marijuana Use: Business as Usual for Employers," Thompson Hine Labor & Employment @Iert, November 2016](#)
- ["Supreme Court to Hear Transgender Bathroom Case," Thompson Hine Labor & Employment @Iert, November 2016](#)
- ["Reminder: FLSA Overtime Rule Effective December 1," Thompson Hine Labor & Employment @Iert, October 2016](#)
- ["DOJ & FTC Release Antitrust Guidance for HR Professionals," Thompson Hine Antitrust & Employment Update, October 2016](#)
- ["Voting Leave Laws – Is Your Company Ready for Election Day?" Thompson Hine Labor & Employment @Iert, October 2016](#)

- [“Tell Us How You Really Feel: OSHA’s Reinforced Criticism of Safety Incentive Programs,”](#) Thompson Hine *The Law@Work Newsletter*, Summer 2016
- [“OSHA Delays Enforcement of New Anti-Retaliation Rule Until November 1, 2016,”](#) Thompson Hine *Labor & Employment @lert*, July 2016
- [“DOL Updates Sex Discrimination Regulations,”](#) Thompson Hine *Labor & Employment @lert*, June 2016
- [“OSHA Reports Its Year One Results for Revised Employer Reporting Obligations,”](#) Thompson Hine *The Law@Work Newsletter*, Spring 2016
- [“New OSHA Reporting Requirements and Anti-Retaliation Remedy,”](#) Thompson Hine *Labor & Employment @lert*, May 2016
- [“EEOC/Obama Administration Propose Rule to Collect Pay Data From Employers,”](#) Thompson Hine *Labor & Employment @lert*, February 2016
- [“OSHA’s Increased Potential Fines & Decreased Deference,”](#) Thompson Hine *The Law@Work Newsletter*, Fall 2015
- [“New EO: Government Contractors Must Cough Up Sick Days for Covered Employees,”](#) Thompson Hine *Government Contracts Update*, September 2015
- [“Supreme Court Holds Motivation to Avoid Religious Accommodation May Violate Title VII,”](#) Thompson Hine *The Law@Work*, Summer 2015
- [“The Silver Lining in the DOL’s Proposed Changes to the FLSA Salary Basis Test,”](#) Thompson Hine *Labor & Employment @lert*, July 2015
- [“OSHA: Updated Guidelines for Preventing Workplace Violence,”](#) Thompson Hine *The Law@Work*, May 2015
- [“Supreme Court Adopts Pregnancy Discrimination Claim Standard,”](#) Thompson Hine *Labor & Employment @lert*, March 2015
- [“DOL Rule Expands FMLA Coverage for Same-Sex Couples,”](#) Thompson Hine *Labor & Employment @lert*, March 2015
- [“Whistleblower Complaints Filed With OSHA Increase in 2014,”](#) Thompson Hine *The Law@Work*, January 2015
- [“Employers’ Email Systems Become Union Tools,”](#) Thompson Hine *Labor & Employment @lert*, December 2014
- [“Supreme Court Holds Time Spent by Workers in Post-Shift Security Screenings Is Not Compensable Time under the Fair Labor Standards Act,”](#) Thompson Hine *Labor & Employment @lert*, December 2014
- [“OSHA/NIOSH Announce Recommended Practices for Temporary Workers,”](#) Thompson Hine *The Law@Work*, October 2014
- [“EEOC Issues Guidance on Pregnancy Discrimination, Including Light Duty Policies,”](#) Thompson Hine *Labor & Employment @lert*, July 2014
- [“Supreme Court Strengthens First Amendment Protection for Public Employees,”](#) Thompson Hine *Labor & Employment @lert*, June 2014
- [“New Guidance for Employers from EEOC and FTC,”](#) Thompson Hine *Labor & Employment @lert*, March 2014
- [“Seventh Circuit Rejects Failure to Conciliate as Defense to Title VII Lawsuit,”](#) Thompson Hine *Labor & Employment @lert*, January 2014
- [“ADA Claim: Job Descriptions Should Define Essential Functions of Position,”](#) Thompson Hine *Labor & Employment @lert*, December 2013
- [“Sixth Circuit Holds Employment Agreement Cannot Shorten FLSA or EPA Claim Period,”](#) Thompson Hine *Labor & Employment @lert*, August 2013
- [“Supreme Court Issues Title VII Decisions,”](#) Thompson Hine *Labor & Employment @lert*, June 2013

Presentations

- Numerous presentations on labor and employment issues including, but not limited to, investigating employee claims, proper hiring and discharge procedures, employer wellness programs, employee benefits, GINA, COBRA, ADA, FMLA, employee safety and health, OSHA, workers' compensation, and insurance coverage. Presentations have been sponsored by Lorman's Educational Services, National Business Institute, PBS Television, and the Associated General Contractors of America, among others.

Distinctions

- Selected for inclusion in *The Best Lawyers in America*® 2018-2021 in the fields of Employment Law-Management, and Litigation-Labor and Employment
- Selected for inclusion in Ohio Super Lawyer Rising Stars by *Law & Politics* magazine
- Named a *Cincy Business* magazine *Leading Lawyer*

Professional & Civic

Professional Associations

- Defense Research Institute
- American Bar Association
- Ohio State Bar Association
- District of Columbia Bar Association

Admissions

- Ohio
- District of Columbia
- U.S. Court of Appeals for the Sixth Circuit
- U.S. Court of Appeals for the Federal Circuit
- U.S. Court of Federal Claims
- U.S. District Court for the Northern District of Illinois
- U.S. District Court for the Southern District of Indiana
- U.S. District Court for the Northern District of New York
- U.S. District Court for the Northern District of Ohio
- U.S. District Court for the Southern District of Ohio
- U.S. Supreme Court



Lisa Gelsomino

Committee Member, Commercial Customs Operations Advisory Committee (COAC) to U.S. Customs and Border Protection (CBP); President/CEO, Avalon Risk Management
lgelsomino@avalonrisk.com

Lisa Gelsomino is the President/CEO and founding partner of Avalon Risk Management, a leading provider of customs bonds and other insurance solutions for the international trade and logistics industry. Lisa has over 25 years of experience in the industry, and is an active member of the National Customs Brokers and Forwarders Association (NCBFAA), the Pacific Coast Council (PCC), and the Trade Support Network (TSN). She serves on the NCBFAA ISF subcommittee and is part of the Trade Leadership Council for the TSN co-chairing the Supply Chain Security subcommittee that assisted with CTPAT Portal outreach. She also serves on the TSN Revenue, eBond, and Surety Account subcommittees. Ms. Gelsomino is on the Board of the International Trade Surety Association and works with CBP through the Customs Surety Executive Committee (CSEC). Ms. Gelsomino has conducted extensive outreach to help the trade better understand CBP's trade and enforcement initiatives. Ms. Gelsomino is the licensed corporate insurance holder for Avalon nationwide and is pursuing her ARM, CPCU, and CCS professional designations. She holds an M.B.A. from Northwestern University's Kellogg School of Business and B.S. (Magna Cum Laude) from Northern Illinois University.

During the 14th Term of COAC, Ms. Gelsomino served as the Trade Co-Chair for the Trade Enforcement & Revenue Collection (TERC) subcommittee and continues to be the trade lead for the AD/CVD, Bond, Forced Labor, Foreign Trade Zone (FTZ), and Pipeline Working Groups. She also serves on the COAC 1USG, Global Supply Chain, and Trade Modernization subcommittees, which provide guidance to CBP on ACE, eCommerce, CTPAT, CBP Centers, in-bond regulations, international engagement, and other important trade matters as they arise. Ms. Gelsomino was reappointed to COAC for the 15th term.



Gabriella Rigg Herzog

Vice President, Corporate Responsibility and Labor Affairs, United States Council for International Business

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Gabriella Rigg Herzog is the Vice President, Labor Affairs and Corporate Responsibility. She works out of the New York office and leads the work on labor and employment policy, corporate responsibility, business and human rights, and corporate governance.

Prior to joining USCIB, Gabriella served as Senior Manager for Corporate Social Responsibility (CSR) at Hess Corporation, where she led development and integration of key CSR and human rights governance, employee training and assurance processes into Hess management systems, and provided field-level support for implementation. This industry-leading work reduced operational, financial and reputational risks and contributed to Hess being named to the 100 Best Corporate Citizens and Dow Jones Sustainability Index lists.

Prior to her work with Hess, Gabriella served as a Policy Advisor at the U.S. Department of State in the Bureau of Democracy, Human Rights and Labor, where she led the Bureau's global CSR policy and program practice. She also worked at the U.S. Department of Labor developing and implementing labor cooperation programs to help labor ministries improve enforcement capacity.

Gabriella is a Fellow with The Aspen Institute's Business and Society Program and holds a Certificate of International Business Management from Georgetown University, a Master of Arts in Law and Diplomacy from The Fletcher School at Tufts University, and a Bachelor of Arts in Political Science from Northeastern University.