

## Report on Supply Chain Compliance Volume 3, Number 17. September 03, 2020 CBP continues to enforce forced labor provisions

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By Sascha Matuszak

On Aug. 13, United States Customs and Border Protection (CBP) announced<sup>[1]</sup> it had collected USD 575,000 in penalties from PureCircle USA Inc. for importing goods manufactured using forced labor. The penalty is significant not due to the amount collected—which, according to PureCircle,<sup>[2]</sup> was less than 7% of what the CBP sought—but rather due to the precedent the penalty set and to the damage the enforcement action did to PureCircle’s business.

“PureCircle saw a 13.4% drop in sales between the first half of 2016 and 2017 due to lost U.S. market access over a forced labor allegation against a Chinese manufacturer,” said Sarah Carpenter, manager of business & human rights at Assent Compliance. “So, while the penalty of \$575,000 may seem low, it comes on the heels of over \$7M in lost revenue—not to mention reputational damage—as a direct consequence of CBP action.”

According to a CBP news release,<sup>[3]</sup> the penalty is the first of its kind since the passage of the Trade Facilitation and Trade Enforcement Act (TFTEA) in 2015. TFTEA<sup>[4]</sup> empowered CBP to take a variety of different actions to protect the U.S. economy, most relevant in this case being the repeal of the “consumptive demand” clause<sup>[5]</sup> in 19 U.S.C. § 1307 of the Tariff Act of 1930. The clause had allowed importation of certain forced labor-produced goods if the goods were not produced “in such quantities in the United States as to meet the consumptive demands of the United States.” Repeal of the consumptive demand exception enhanced CBP’s ability to prevent products made with forced labor from being imported into the United States. “US Customs and Border Protection Agency has the authority under [ 19 U.S.C. § 1595a(b) ] to issue fines against importers for introducing goods into the U.S. contrary to law,” Carpenter added. “These fines can be issued for forced labor violations as well as other violations, like intellectual property.”

PureCircle allegedly imported stevia products made using prison labor from 2014 to 2016.<sup>[6]</sup> CBP began an investigation after receiving an allegation from an unnamed nongovernmental organization.<sup>[7]</sup> This too is significant, as CBP has stepped up its collaboration with nongovernmental organizations and other civil society groups.

As RSCC reported in October 2019,<sup>[8]</sup> CBP “signed a Memorandum of Understanding with Liberty Shared, establishing a data-sharing relationship with the mission to prevent human trafficking in supply chains,” while activists also launched a Freedom Fund to “fund on-the-ground investigations of forced labor in supply chains and pass that information on to CBP.” The result has been a year of rigorous enforcement of the forced labor provisions<sup>[9]</sup> within TFTEA and the issuance of multiple withhold release orders (WROs) for goods suspected of being manufactured using forced labor.

A report by Arent Fox pointed out that, “[s]ince September 2019, CBP has issued 12 WROs to prevent merchandise made with forced labor from entering the United States, including four WROs on products from China. These WROs range across industries from consumer goods such as seafood, hair products, and disposable gloves

to commodities such as tobacco, gold, and rough-cut diamonds.”

## Steps to take

CBP has put together multiple resources to help companies understand what forced labor in the supply chain looks like and what measures to take to mitigate risk and comply with U.S. regulations.

A September 2017 *Informed Compliance Publication*, “[What Every Member of the Trade Community Should Know: Reasonable Care](#),”<sup>[10]</sup> provides a list of questions companies can pore over to determine how far they have gone with their compliance efforts, and what more they must do in order to meet the thresholds of “informed compliance,” “reasonable care,” and “shared responsibility.”

“Despite the seemingly simple connotation of the term reasonable care, this explicit responsibility defies easy explanation,” the authors wrote. “The facts and circumstances surrounding every import transaction differ—from the experience of the importer to the nature of the imported articles. Consequently, neither CBP nor the importing community can develop a foolproof reasonable care checklist which would cover every import transaction.”

Instead, CBP points entities to the list of questions for guidance.

Another helpful resource is the International Labour Organization’s “[ILO Indicators of Forced Labour](#),”<sup>[11]</sup> published in 2012. The guidance contains examples of red flags that can tip companies off to forced labor within the supply chains, as well as common protocols and solutions to mitigate risk and prevent violations of existing U.S. law.

One more resource is an [FAQ on forced labor](#)<sup>[12]</sup> put together by CBP that addresses several key issues, including details on WROs, where to find additional resources and where to look for guidance on establishing an effective compliance program. The Arent Fox [report](#) also lists a few actions companies can take to help remain in compliance:<sup>[13]</sup>

- “A high-level statement of policy demonstrating the company’s commitment to respect human rights and labor rights.
- “A rigorous continuous risk assessment of actual and potential human rights and labor impacts or risks of company activities and relationships, which is undertaken in consultation with stakeholders, including governments, local business partners, and members of civil society such as local communities, workers, trade unions, vulnerable groups, and non-governmental organizations.
- “Integrating these commitments and assessments into internal control and oversight systems of company operations and supply chains.
- “Tracking and reporting on areas of risk.”

## Critical mass

The UK and Australia have implemented legislation to combat human trafficking and, given the strong U.S. dedication to the cause of eradicating forced labor, the legislation is finding its way into other countries, as well. The spread of measures to combat forced labor points to a willingness on behalf of companies and governments to listen to consumers and activists and take action. The recent CBP action regarding PureCircle demonstrates how multiple entities can work together to make supply chains more effective, safe, and free from forced labor.

Preventing forced labor in supply chains has been a challenge that companies, governments, and civil society have contended with for more than two decades. In that time, enough data have been collected to begin creating regulations and enforcement strategies that actually work. Now, with regulations such as the Australian Modern Slavery Act 2018<sup>[14]</sup> and the U.K. Modern Slavery Act of 2015,<sup>[15]</sup> governments are beginning to make a difference.

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## Takeaways

- U.S. Customs and Border Protection is taking forced labor in the supply chain very seriously. Audit your supplier and adjust where necessary to ensure compliance going forward.
- The global push to end forced labor in the supply chain is reaching a critical mass as public, private, and nongovernmental actors cooperate to address the issue.

**1** CBP, “CBP Collects \$575,000 from Pure Circle U.S.A. for Stevia Imports Made with Forced Labor,” news release, August 13, 2020, <https://bit.ly/32tX7Om>.

**2** PureCircle, “PureCircle and U.S. Customs and Border Protection Resolve 2014 Stevia Sourcing,” news release, August 14, 2020, <https://bit.ly/3gAkrin>.

**3** CBP, “CBP Collects \$575,000.”

**4** CBP, “Trade Facilitation and Trade Enforcement Act of 2015— Overview,” October 2016, <https://bit.ly/3gArCXV>

**5** CBP, “Trade Facilitation and Trade Enforcement Act of 2015: Repeal of the Consumptive Demand Clause,” fact sheet, October 2016, <https://bit.ly/3beQbbX>.

**6** PureCircle, “PureCircle and U.S. Customs and Border Protection Resolve 2014 Stevia Sourcing.”

**7** CBP, “CBP Collects \$575,000.”

**8** Sascha Matuszak, “Enforcement of modern slavery regulations reaches critical mass,” *Report on Supply Chain Compliance* 2, no. 20 (October 24, 2019), <https://bit.ly/2W81xYX>.

**9** Teresa Polino, David Salkeld, and Natan Tubman, “CBP Gets Tough on Forced Labor: Turning Supply Chain Risks Into Advantages,” JD Supra, August 20, 2020, <https://bit.ly/3hzNzrm>.

**10** CBP, “What Every Member of the Trade Community Should Know: Reasonable Care,” *Informed Compliance Publication*, September 2017, <https://bit.ly/34ARwZa>.

**11** International Labour Organization, “ILO indicators of Forced Labour,” October 1, 2012, <https://bit.ly/32vXRSX>.

**12** “Forced Labor Frequently Asked Questions,” CBP, last modified June 26, 2019, <https://bit.ly/2ECRZ22>.

**13** Teresa Polino, “CBP Gets Tough.”

**14** Modern Slavery Act, 2018, no. 153 (Austl.).

**15** Modern Slavery Act, 2015, c. 30 (U.K.).

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