

3things



The 3 things you need to know about...

The impact of a new law banning use of forced labor on global supply chains

Summary

#1 A new U.S. law signed in March bans the import of goods produced by forced and slave labor. A wide range of industries, including Technology and Electronics Manufacturing, will be impacted.

#2 The prevalence of forced labor is not insignificant and identifying where it is being used will be challenging given the complexity of global operations and multi-tiered sourcing relationships.

#3 Companies must expand sub-tier supply chain transparency to offset financial, operational, and strategic / reputational risks of non-compliance with U.S. law and evolving legislation abroad.

The Three Things

#1 - A new U.S. law signed in March bans the import of goods produced by forced and slave labor. A wide range of industries, including Technology and Electronics Manufacturing, will be impacted.

On February 24, 2016, President Obama signed into law the Trade Facilitation and Trade Enforcement Act (the “Act”). The Act closed a loophole in the Tariff Act of 1930, called the “consumptive demand” clause, which has allowed the import of goods created by forced labor. This clause refers to situations where the U.S. is unable to meet domestic demand and thereby technically allows the import of goods made using forced labor to meet that demand. The Act, which went into effect on March 10, 2016, eliminates the consumptive demand exception, resulting in a ban on import of “goods” produced using forced labor. The Tariff Act of 1930 defines goods to include “wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country...”¹

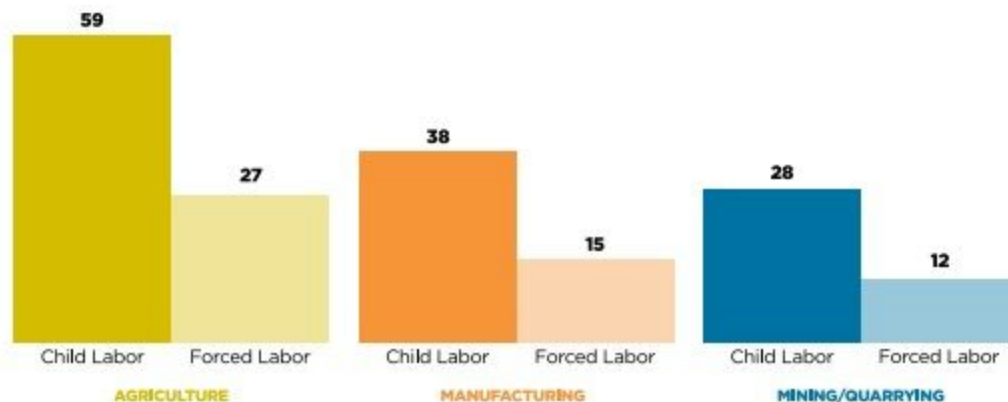
The impetus for this change began, in part, with an expose by the Associated Press in 2015 which found that the U.S. was importing shrimp from Thailand that were being peeled by slaves. The U.S. supermarkets and other major retailers importing the shrimp were not, at the time, scrutinizing their sub-tier supply chain in a way that could identify the use of slave labor.

Enforcement of the new provisions resides with Customs and Border Protection (CBP) who will have the authority to reject or seize shipments where forced labor is suspected, as well as block further imports. While the CBP has enforcement authority, any person suspecting import of goods using forced labor can submit a formal petition to the CBP who will then initiate an investigation. The Act specifies that no later than 180 days after enactment and annually thereafter, the CBP Commissioner must submit a report on compliance, including number of instances merchandise was denied entry and a description of that merchandise, to the Senate Finance Committee and the House Ways and Means Committee.

#2 - The prevalence of forced labor is not insignificant and identifying where it is being used will be challenging given the complexity of global operations and multi-tiered sourcing relationships.

According to the Bureau of International Labor Affairs (ILAB), at least 55 goods, such as cassiterite (tin derivative), cotton, coffee, tungsten, and others, are produced by forced labor globally.² There are an estimated 21 million people subjected to forced labor around the world in the production of electronics in Malaysia, garments in India, and rubber in Burma among others. The chart below illustrates the widespread nature of forced and child labor practices across key production sectors from 37 different countries. The ILAB report is quick to note that a country or good not appearing in the report does not imply that no issues are present.

Number of Goods Produced Globally by Child Labor and Forced Labor by Production Sector



Note: not all sectors are represented by this chart

Concerns about forced labor practices and exploitation are not new. The 2010 Dodd-Frank Act required the SEC to issue a rule addressing conflict minerals in August 2012. The rule was designed to help end the sale of four specific minerals (tantalum, tin, tungsten, gold) that have funded conflicts in and around the Democratic Republic of Congo. The SEC rule forced many companies, such as consumer electronics manufacturers and automakers, to take a closer look at sourcing relationships within their supply chain and trace raw materials back to its source. While it seems that companies subject to the Conflict Minerals rule would have a headstart in complying with the new Forced Labor prohibition, in practice a large percentage of these companies still only have limited visibility into their extended supply chain and business practices of their upstream supply chain partners. Companies should note that the Conflict Minerals rule only requires yearly disclosure while the Act that went into effect this month will require a change in sourcing strategy.

The lack of information and transparency into sub-tier sourcing relationships has already caught many companies by surprise. There have been multiple widely reported allegations and lawsuits citing the use of forced labor practices within the auto tire industry (rubber), apparel and footwear makers (e.g. cotton, textiles), and the candy and coffee industries (cocoa and coffee beans). The issues companies faced within each of these industries were associated with their lack of supply chain transparency and the inability to trace materials to the original source. It is not uncommon

for companies to purchase goods from middlemen and exporters without having insight into their sources which creates a muddled supply chain.

#3 - Companies must expand sub-tier supply chain transparency to offset financial, operational, and strategic / reputational risks of non-compliance with U.S. law and evolving legislation abroad.

The CBP has yet to publicly announce how it intends to enforce the import ban in collaboration with the Department of Homeland Security (DHS), who is responsible for investigations into illicit trade. That said, the CBP considers the Act a major milestone for the agency as it aligns to and strengthens current strategic objectives and is the first reauthorization of the agency since its creation under DHS in 2003. R. Gil Kerlikowske, the Commissioner of the CBP, recently indicated that the CBP will enforce the Act through utilizing and expanding current agency programs which will aid the agency in strengthening its existing enforcement and investigative capabilities.⁴

The Act is not the first of its kind; instead it demonstrates a global effort to strengthen human rights and living conditions through the elimination of forced labor practices. In 2015, the U.K. passed the Modern Slavery Act requiring companies operating in the U.K. with global revenues over \$51 million to publicly disclose their efforts to root out slavery in their supply chains. According to a survey of supply managers conducted by the Chartered Institute of Procurement & Supply, “27% said they didn’t know how to meet the rule’s requirements and only 1 in 5 were aware of the law.”⁴ EU rules requiring supply-chain transparency in all member states will take effect in 2017 with some individual member nations, such as France, already considering legislation of their own. The U.K. law drew from a similar law passed in 2010 in California called the California Transparency in Supply Chains Act. Legal action against multiple companies has already resulted from this law with companies spending hundreds of millions of dollars on corrective actions to eradicate the practice from their supply chains.

With the global focus on ending forced labor, the time for turning a blind eye to sub-tier sourcing relationships and non-key suppliers is over. In order to address the risks of non-compliance with the Act and other global restrictions on using goods produced using forced labor, companies should begin building transparency throughout their entire supply chain, from the customer down to individual sources. There are multiple actions companies should take to address these risks including understanding your bill of materials in detail and setting and enforcing social accountability and responsibility programs. Examples of standards to follow already exist, such as the Social Accountability International SA8000 standard, which companies can review and adopt. This standard is based on the United Nations Declaration of Human Rights, conventions of the International Labour Organization, and others which span all industry sectors.

Through the introduction of the Act as well as other recent regulation such as the Conflict Minerals rule and the California Transparency in Supply Chains Act, the topic of ethical supply chains is becoming increasingly important across a large number of industries. Many issues companies have faced have been the result of allegations from activists and organizations focused on humanitarian efforts or social responsibility. While there are still a number of open questions around the enforcement of the Act it is crucial for companies to be proactive and prepared to respond.

Endnotes

1. Source: Department of Labor: Relevant Provision of the Tariff Act of 1930
<<http://www.dol.gov/ilab/child-forced-labor/Relevant-Provision-of-the-Tariff-Act-of-1930.htm>>
2. Source: Bureau of International Labor Affairs: List of Goods Produced by Child Labor or Forced Labor
<http://www.dol.gov/ilab/reports/pdf/TVPRA_Report2014.pdf>
3. Source: Statement from CBP Commissioner R. Gil Kerlikowske on the Act
<<https://www.cbp.gov/newsroom/speeches-and-statements/2016-02-29-000000/statement-commissioner-r-gil-kerlikowske-trade>>
4. Source: Wall Street Journal: Many UK Businesses Unready for Anti-Slavery Law, Survey Finds
<<http://www.wsj.com/articles/many-uk-businesses-unready-for-anti-slavery-law-survey-finds-1453334460>>

Additional information

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