

CLIENT ALERT

Forced Labor of North Korean Nationals Sent Abroad: Supply Chain Compliance and Oversight

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On March 30, 2018, the Department of Homeland Security (“DHS”) published guidance regarding an existing law aimed at restricting the import of goods produced by the forced labor of North Korean nationals sent to other countries.

By way of background, section 321(b) of the Countering America’s Adversaries Through Sanctions Acts (“CAATSA”)¹ creates an automatic presumption that any goods mined, produced, or manufactured wholly or in part by North Korean nationals or citizens, outside of North Korea, are considered to be produced through forced labor. Since goods made by forced or indentured labor have long been prohibited from importation under the Tariff Act of 1930, the consequence is that any goods made, even in part, by North Koreans, in or outside of North Korea, are prohibited from import and subject to seizure.² Civil and criminal penalties may be imposed for violations. The release of this guidance likely indicates increased focus on this issue from DHS.

Only if the Commissioner of the U.S. Customs and Border Protection (“CBP”) finds, by clear and convincing evidence, that the goods manufactured by North Korean nationals were not made by forced labor, are they able to be imported and not subject to seizure. Even if that high hurdle is passed, other sanctions or federal prohibitions like 31 C.F.R. § 510.205 may still separately restrict imports of goods produced with the labor of North Korean nationals.

The guidance makes clear that there is no specific formula or checklist to follow in conducting due diligence on an import supply chain. It is a risk-based process that may vary based on the size of the company and industry. Still, DHS offers examples of possible importer supply-chain oversight:

- Having 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; and
- Integrating these commitments and assessments into internal control and oversight systems of company operations and supply chains.

Other examples of supply-chain due diligence are listed in a CBP fact sheet, available [here](#). DHS notes that the risk of non-compliance may be higher in certain countries and sectors known to use North Korean workers. To identify those areas and fields, DHS suggests referencing State Department reports, such as the [Country Reports on Human Rights Practices](#)³ and the [Trafficking in Persons Report](#), or various non-governmental organization (NGO) reports, such as the [Database Center for North Korean Human Rights](#), the [ASAN Institute](#), [C4ADS](#), and the [Committee for Human Rights in North Korea](#).

Relatedly, DHS also offers non-comprehensive examples of how to demonstrate reasonable care and how to provide CBP with information necessary to allow the release of merchandise from CBP custody, such as providing material that shows:

- Your company’s meaningful engagement with affected stakeholders, including workers and trade unions, as part of the due diligence process;
- Workforce composition at the location in question;
- Training materials on North Korean forced labor prohibitions that have been provided to suppliers and sub-contractors;
- Company policies, and evidence of implementation, on using North Korean laborers;
- Contracts with suppliers and subcontractors that state your policy on North Korean forced labor;
- Publishing the full names of all authorized production units and processing facilities, the worksite addresses, the parent company of the business at the worksite, the types of products made, and the number of workers at each worksite;
- Information on how and to whom wages are paid at the location;
- Information demonstrating that recruitment agencies are within the scope of any third-party audit with your suppliers;
- Documents verifying the use of authorized recruitment agencies and brokers or that you use direct recruitment;
- Documents verifying that the fee structure presented by the recruitment agency is transparent and has been verified through worker interviews;
- If you have reimbursed any fees paid, verification of such reimbursement;
- Demonstrated commitment to human rights and labor due diligence at the highest levels of your company; and
- Results of your human rights and labor impact assessments.

Further information is available at the recently updated CBP publication, [Informed Compliance Publication, What Every Member of the Trade Community Should Know: Reasonable Care](#), specifically on pages 14 and 15.

All told, the guidance released by DHS does not alter any legal provision or obligation, but it does offer insight into suggested compliance methods and the seriousness with which DHS and CBP view prohibited imports from North Korea. Companies who import from countries known to use North Korean labor would be wise to take DHS’s guidance as a signal that CBP will be more actively enforcing CAATSA and the prohibition on importing goods made from forced North Korean labor.

¹ We have previously written about [CAATSA as a whole](#), as well as more specific portions and corresponding developments involving [Russian](#) sanctions, [North Korean](#) sanctions, and [Iranian sanctions](#).

² See [22 U.S.C. § 9241a](#) (the CAATSA provision); see also [19 U.S.C. § 1307](#) (the Tariff Act of 1930, prohibiting entry of goods made by forced or indentured labor), and 19 C.F.R. 12.42–.45 (accompanying regulations regarding forced labor).

³ According to the U.S. Department of State Country Reports on Human Rights Practices for 2016: Democratic People’s Republic of Korea, Sec. 7b., “There were an estimated 50,000 to 80,000 North Korean citizens working as overseas laborers, primarily in Russia and China. The UN special rapporteur on the DPRK noted that while the state sent most to Russia and China to work, they were also reportedly found in Algeria, Angola, Bangladesh, Burma, Cambodia,

Equatorial Guinea, Ethiopia, Ghana, Indonesia, Kyrgyzstan, Kuwait, Libya, Malta, Malaysia, Mongolia, Mozambique, Nepal, Nigeria, Oman, Poland, Qatar, Singapore, South Sudan, Tanzania, and the United Arab Emirates.”

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