Key Considerations Related to U.S. Customs and Border Protection’s Interim Ruling Regarding the Trade Facilitation and Trade Enforcement Act of 2015
October 20, 2016

The purpose of this document is to report on the implications of the U.S. Customs and Border Protection’s ruling regarding recent trade laws. This document should not be construed as legal advice.

What is the interim rule?
As a part of the Trade Facilitation and Trade Enforcement Act of 2015 (H.R. 644), U.S. Customs and Border Protection (CBP) is required to set procedures to investigate claims of noncompliance regarding the updated trade law, including the repeal of the Tariff Act of 1930’s consumptive demand clause.

How is CBP enforcing H.R. 644?
In part, CBP is enforcing the new trade laws through a petition system. This system allows anyone to file a CBP petition to allege that forced labor is associated with a product being imported. After an allegation is filed, CBP follows a set timeline to determine whether noncompliance has occurred. CBP is also required to submit annual reports on products associated with forced labor to Congress.

- To view CBP’s timeline for investigating trade law violations, refer here.

Compliance with the New Ruling
As legislation strengthens to prevent forced labor from entering U.S. supply chains, it is important to evaluate importation and due diligence practices to ensure a company is compliant with the new rulings. The following practices may be beneficial in the path to compliance:

- Avoid products that have already been blocked (often referred to as withheld) by CBP.
  - CBP’s List of Withholdings can be found here.
- Review contracts and ensure that all parties commit to preventing forced labor from entering supply chains.
- Conduct due diligence:
  - Analyze supply chains and focus on products, source countries, and/or suppliers with the highest risk.
    - FishWise can conduct a risk assessment for a company’s seafood products to identify countries and products at a high risk of trafficking, forced labor, and government response to these issues. For more information, please contact info@fishwise.org.
- Share concerns with vendors, and stipulate that continued procurement will be based on compliance with trade law and implementation of best practice guidance.
- Conduct periodic visits with your suppliers and support unannounced labor audits throughout your supply chains.
- When relevant, seek certifications for good labor practices.

**Moving Forward**
The processes put in place by CBP are an encouraging step towards the continued enforcement of trade laws preventing forced labor. However, more information is needed regarding what evidence is needed to investigate a product for violation of these trade laws. In the face of regulatory uncertainty, it is important to follow supply chain best practices and stay tuned for updates on this legislation and its enforcement.

The following resources provide more information on CBP’s role in enforcing the Trade Facilitation and Trade Enforcement Act of 2015:

- CBP’s Full Interim Ruling
- CBP and the Trade Facilitation and Trade Enforcement Act Webpage
- CBP Forced Labor Enforcement Fact Sheet
- CBP Supply Chain Due Diligence Fact Sheet

For more information, please contact FishWise Project Director Aurora Alifano at (humanrights@fishwise.org).