

Frequently Asked Questions: Tariff Act Legal Fund

MARCH 2022

What is the aim of the Tariff Act Legal Fund?

The Tariff Act Legal Fund supports civil society to effectively leverage Section 307 of the U.S. Tariff Act to disrupt the trade in goods produced with forced labour or prison labour. By providing dedicated funding to groups to conduct on-the-ground investigations of forced labour that can be linked to imports into the U.S. and provide this evidence to U.S. Customs and Border Protection (CBP), our goal is to support the active enforcement of the law. We believe that the Fund can play an important role in increasing the number and diversity of groups across the globe that are engaging with the Tariff Act mechanism as part of their work to address forced labour in supply chains.

How many investigations will the Fund support?

Our goal is to fund ten investigations over the next two years. Investigations will be identified and selected via two global requests for proposals: in October 2021 and May 2022.

What organisations are eligible for funding?

The Fund will provide grants to non-profit organisations (NGOs, watchdog organisations, worker groups etc.) that are registered in their country of operation. Individual researchers or investigative journalists are also encouraged to apply. Applicants must have a presence on the ground in the target country or have a pre-existing partnership with local groups. Priority will be given to applications from groups and/or individuals based in the Global South.

Applicants must demonstrate experience in conducting human rights research and/or investigations, including internal staff capacity to document primary evidence of forced labour and safely interview workers and survivors. Organisational expertise in tracing supply chains is not required.

What type of investigation/evidence collection can be funded?

The purpose of the Fund is to support on-the-ground investigations to collect primary evidence of forced labour in the manufacture of goods exported to the U.S. This can be complemented by secondary evidence, for example by using open-source investigative techniques, however investigations solely based on this information are not eligible for funding.

What costs will grant funding cover?

The maximum grant size is \$50,000 USD. Grant funds can only be used to cover costs associated with the proposed Tariff Act investigation. This includes staff costs, translation, travel and accommodation, and specific equipment costs (e.g., mobile phones). For applications that envisage a collaboration between Global North and Global South groups, the proposal budget should clearly indicate the proportion of grant funds to be allocated to each group.

Why is the Fund only supporting petitions to US Customs and Border Protection?

Although similar legislation has been introduced in Canada, and is under consideration in other countries, Section 307 of the U.S. Tariff Act as enforced by CBP is currently the only mechanism with an official process through which to receive petitions from civil society actors. The Freedom Fund will work with grantees to identify opportunities to provide evidence to authorities in other countries, as and when they develop similar mechanisms.

Is the Fund prioritising specific countries or industries?

No, this is a global call for proposals. Forced labour occurs across all industries and regions, however most of the withhold release orders that have been issued to date focus on goods from a small number of

countries. For the purposes of the Fund, the only requirements are that applicant organisations demonstrate some evidence of forced labour occurring within the targeted sector/industry in a specified country, and that a withhold release order (WRO or detention order) has not already been issued. A list of existing withhold release orders can be found on CBP's [website](#).

A recommended resource to assess the risk of forced labour in a specific sector or industry is the U.S. Department of Labor Bureau of International Labor Affairs (ILAB) [List of Goods Produced with Forced Labour](#). We will consider investigations of industries and regions that are not included in this list.

What is the definition of forced labour that is used by CBP?

The definition of forced labour under the U.S. Tariff Act closely mirrors the definition under the ILO Forced Labour Convention, 1930 (No. 29). The standard of forced labour under section 307 requires evidence to demonstrate "menace of penalty" and "involuntariness", for which [the ILO indicators of forced labour](#) are a useful reference point.

What types of evidence are required for a petition?

The evidence presented in a petition should reasonably (but need not conclusively) indicate that there is forced labour in the supply chain of goods entering the U.S. Goods made in whole or in part using forced labour are prohibited from entering the United States. Goods made with prison labour are also prohibited from entering the U.S. market.

It is recommended that petitions include recent evidence of forced labour that can be traced to a specific farm, factory or mine. This includes first-hand worker testimony, witness accounts based on on-site interviews and copies of employment contracts.

Where possible, petitions should include information to demonstrate that forced labour goods are being imported into the U.S. The Fund can support grantees to access import/export data via subscription databases if necessary.

A detailed overview of petition requirements can be found in the [Tariff Act Practice Guide](#), published by Human Trafficking Legal Center, also available in [Thai](#), [Malay](#), [Spanish](#) and [French](#). Grantee organisations will also receive detailed guidance from Human Trafficking Legal Center to support supply chain tracing, evidence collection and drafting of petitions.

How are petitions submitted?

Petitions are submitted directly to Customs and Border Protection.-The Freedom Fund and our partners will provide support to grantees on the submission process.

Do petitions have to be public?

Some organisations have decided to make their petitions to CBP public as part of a broader advocacy strategy. This is not a requirement of the Fund, which is focused on supporting groups to submit allegations to CBP. However, the Freedom Fund is open to working with grantees to develop complementary communications and/or advocacy strategies where appropriate. Petitions submitted to CBP are confidential and not publicly disclosed by the agency.

Can I submit a petition anonymously?

We understand the sensitivities involved for civil society in submitting allegations of forced labour to a U.S. government agency. CBP does not disclose the filing of petitions, and its regulations prevent it from disclosing information shared by petitioners. It is possible for organisations or individuals to submit a petition anonymously. However, this limits CBP's ability to follow up with requests for additional information after a petition has been submitted.

Organisations that have security concerns, especially those operating in high-risk contexts, will receive support from the Freedom Fund and our partners to identify alternative solutions to submit petitions.

What happens after I submit a petition?

CBP's Forced Labour Division will conduct a preliminary review of the information included within the petition. Petitioners will be informed within 30 days if CBP has determined that adequate evidence has been provided to open an investigation to corroborate the allegations. CBP will then determine whether there is a reasonable suspicion that forced labour goods are entering the U.S. and if a WRO should be issued. CBP estimates that this stage will take approximately 3-6 months, however this is likely to vary substantially depending on the specific allegations and case prioritisation. During this time, CBP is unlikely to share any information with petitioners on the status of the investigation. Information on CBP's forced labour investigation timelines can be found [here](#).

If CBP issues a WRO (detention order), shipments that are covered by the WRO will be prohibited from entering U.S. markets and detained at entry to the U.S. border. Importers have three months from the date of importation to either export the goods or submit evidence that demonstrates that the goods were not produced with forced labour. If this evidence is deemed satisfactory by CBP, the goods may be released. If CBP finds conclusive evidence that the goods were produced with forced labour, it will issue a formal finding that gives it the power to seize goods. Additional information on CBP's timelines and processes can be found on the Forced Labour Division's [website](#).

How will the Fund ensure the safety and security of grantee organisations?

The Freedom Fund is committed to ensuring the safety of investigators as well as affected workers, survivors and witnesses involved in the evidence gathering process. We are doing this in the following ways:

- All communications with organisations will take place over secure channels. This covers both the application process and any subsequent contact with grantees.
- We will not publicise Fund grantees and will follow robust internal procedures to maintain grant confidentiality.

We recognise that organisations have differing access to, resourcing and experience in managing and reducing risk. Although we expect applicants to demonstrate some existing risk management policies and procedures, assessed via a survey during the application process, we are also committed to providing organisations with additional support to improve risk mitigation processes. All grantee organisations will have access to our risk management specialist partner to provide training and guidance on risk assessment and mitigation plans, prior to commencing investigations.

Where do I get additional information about the Tariff Act Legal Fund or the U.S. Tariff Act?

For any questions related to the Tariff Act Legal Fund, please contact Chloe Bailey cbailey@freedomfund.org.

Further information about the U.S. Tariff Act can be found here:

[Customs and Border Protection Agency website](#)

[Importing Freedom: Using the Tariff Act to Combat Forced Labor in Supply Chains](#)