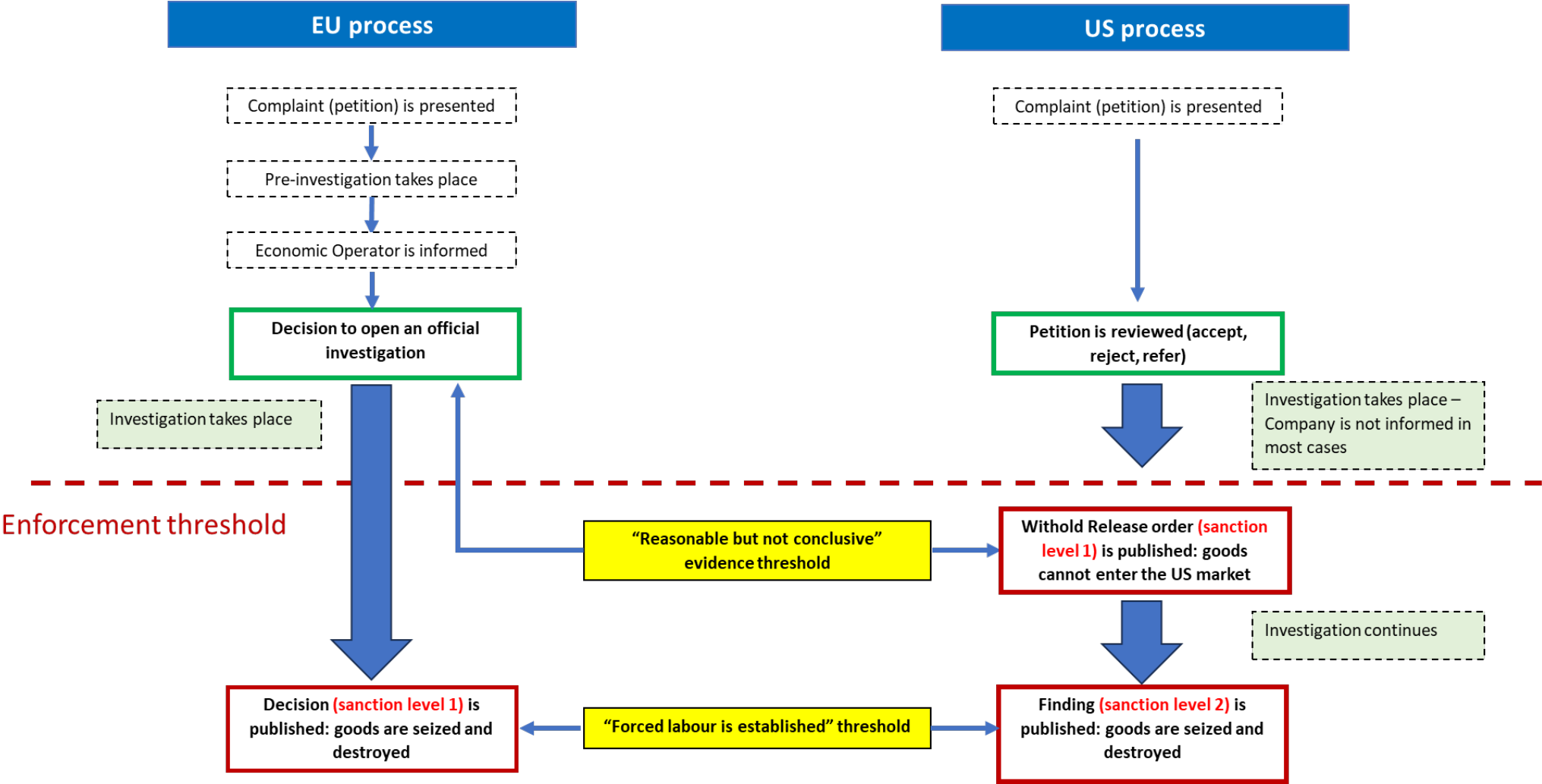


# FORCED LABOUR BAN

## COMPARISON OF INVESTIGATION PROCESSES AND SANCTION LEVELS UNDER EU AND US LAWS

Visualisation of the EU & US processes in relation to evidentiary standards:



	<b>European Commission proposal on investigation process</b>	<b>US Tariff Act (TA) Section 307 investigation process</b>
<b>Lodge a complaint</b>	Art 10.1: Submissions of information by any natural or legal person or any association not having legal personality, to competent authorities on alleged violations of Article 3 <u>shall contain information on the economic operators or products concerned and provide the reasons substantiating the allegation.</u>	Claimants need to include evidence relating both to <u>menace of penalty and involuntariness, and evidence that the good enters the US.</u> The actual wording on petition requirements in law is: (1) A full statement of the reasons for the belief; (2) A detailed description or sample of the merchandise; and (3) All pertinent facts obtainable as to the production of the merchandise abroad. A <u>checklist</u> has been provided as a guidance by the Customs and Border Protection Agency (CBP).
<b>Approval of complaint &amp; decision to investigate</b>	Art 4.1: Competent authorities shall follow a <u>risk-based approach</u> in <u>assessing the likelihood</u> that economic operators violated Article 3. That assessment shall be based on <u>all relevant information available to them</u> , including the following information: [...]  Art 4.2: In their assessment of the likelihood that economic operators violated Article 3, competent authorities shall <u>focus on the economic operators involved in the steps of the value chain as close as possible to where the risk of forced labour is likely to occur and take into account the size and economic resources of the economic operators, the quantity of products concerned, as well as the scale of suspected forced labour</u>	The statute does not define additional constraints to open an investigation. CBP has a great deal of discretion under U.S. law in implementing this concept.
<b>Notice of initiation to Companies</b>	Art. 4.3: Before initiating an investigation in accordance with Article 5(1), the competent authority shall request from the economic operators under assessment information on actions taken to identify, prevent, mitigate or bring to an end risks of forced labour in their operations and value chains with respect to the products under assessment, including on the basis of any of the following: [...]  Art. 4.4: Economic operators shall respond to the request of the competent authority referred to in paragraph 3 within 15 working days from the day they received such request. [...]	Under US TA, <u>in most cases</u> , companies are made aware of the investigation <u>only when a decision to prevent goods from entering the US market is published.</u>  However, we know of two examples (re: cocoa investigation and Xinjiang cotton) of CBP sending questionnaires to big U.S. buyers/brands requesting detailed supply chain documentation and evidence of corrective measures when forced labour was identified, even before a WRO was issued. Both these petitions were also public. CBP has authority to send these questionnaires but seems to have a lot of discretion to do so or not.  Under the US TA, CBP can consider any information offered by foreign interests, importers, domestic producers, or other interested persons

		during the investigation stage before a WRO, but it does not mean that CBP is required to consult with the foreign producer or importer or give them an opportunity to provide information. See <a href="#">here</a> .
<b>Close of pre-investigation stage</b>	Art 4.5: Within 30 working days from the date of receipt of the information submitted by economic operators pursuant to paragraph 4, the competent authorities shall conclude the preliminary phase of their investigation <u>as to whether there is a substantiated concern of violation of Article 3 on the basis of the assessment referred to in paragraph 1 and the information submitted by economic operators pursuant to paragraph 4.</u>	Within 30 days after receiving the petition See CBP <a href="#">presentation</a> of its investigation timeline. However, these timelines are indicative and vary from case to case.
<b>Opening of main investigation</b>	Art. 5.1: Competent authorities that, pursuant to Article 4(5), <u>determine that there is a substantiated concern of a violation of Article 3</u> , shall decide to initiate an investigation on the products and economic operators concerned.	Upon review of the complaint, no threshold or conditions above the one defined to submit a complaint are requested. CBP does a rigorous assessment of whether the facts and evidence of forced labour correspond to the different ILO indicators of forced labour, whether CBP is able to verify the information in the petition with documentary evidence or other forms of corroborating evidence such as media, labour inspection reports, government reports, international organisation reporting and so forth. However, this is not prescribed under the statute.
<b>Consultation of companies</b>	Art. 5.2: Competent authorities that initiate an investigation pursuant to paragraph 1 shall inform the economic operators subject to the investigation, within 3 working days from the date of the decision to initiate such investigation about the following: [...]	See above: CBP can take into account information received but is not compelled to consult companies.
<b>Decision level 1</b>	Art. 6.1: Competent authorities shall assess all information and evidence gathered pursuant to Articles 4 and 5 and, on that basis, <u>establish whether Article 3 has been violated</u> , within a reasonable period of time from the date they initiated the investigation pursuant to Article 5(1)	Under Section 307 of the US Tariff Act, CBP has the power to issue <u>Withhold Release Orders</u> if there is a <b>reasonable belief/suspicion</b> that forced labour was used for the subject products. To establish such belief, the information available should <b>reasonably but not conclusively indicate that subject products are made with forced labour</b> . It means that available information is <b>sufficient for a reasonable person</b> to conclude that products are made with forced labour. (Reference to the <a href="#">Guide</a> of Human Trafficking Legal Center). The investigation typically takes six months or more, but no precise timeline is indicated in the legislation. See CBP <a href="#">timeline</a> .
<b>Sanction level 1</b>	N/A as the EU does not foresee a first level of sanction where the product property rights is not infringed upon.	If the <a href="#">Commissioner</a> of CBP finds at any time that information available <b>reasonably but not conclusively indicates that merchandise within the purview of section 307</b> is being, or is likely to be, imported, he will

		<p>promptly advise all <a href="#">port directors</a> accordingly and the <a href="#">port directors</a> shall thereupon withhold release of any such merchandise pending instructions from the <a href="#">Commissioner</a> as to whether the merchandise may be released otherwise than for <a href="#">exportation</a>.</p> <p>A “Withhold Release Order” is a level 1 sanction to prevent access to the US market (the company is free to re-export them elsewhere and free to contest the WRO/detention)</p>
<p><b>Sanction level 2</b></p>	<p>Art. 6.4: Where competent authorities <a href="#">establish that Article 3 has been violated</a>, they shall without delay adopt a decision containing:</p> <ul style="list-style-type: none"> <li>(a) a prohibition to place or make the products concerned available on the Union market and to export them;</li> <li>(b) an order for the economic operators that have been subject to the investigation to withdraw from the Union market the relevant products that have already been placed or made available on the market;</li> <li>(c) an order for the economic operators that have been subject to the investigation to dispose of the respective products in accordance with national law consistent with Union law.</li> </ul>	<p>If it is determined on the basis of the foregoing that the <a href="#">merchandise is subject to the provisions of the said section 307</a>, the <a href="#">Commissioner</a> of CBP, with the approval of the <a href="#">Secretary</a> of the Treasury, <a href="#">will publish a finding</a> to that effect in a weekly issue of the <a href="#">Customs</a> Bulletin and in the Federal Register.</p>