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POLICY BRIEF

26-14 The New Section 301 Tariffs for Forced Labor Are Vastly Excessive

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SUMMARY

The 10 to 12.5 percent tariffs the Trump administration has imposed under its interpretation of the forced-labor provision of Section 301 of the Trade Act of 1974 are about 40 to 50 times the magnitude that could be warranted on the basis of US exports lost and US imports increased as a consequence of trade in goods produced using forced labor. The basic reason is that in economic terms, the global forced-labor workforce is small, accounting for an estimated 5.5 million workers in tradable goods sectors, compared with almost 2 billion workers in these sectors globally. As a consequence, the forced-labor provision does not constitute a credible basis for replacing the "reciprocal" tariffs ruled illegal by the Supreme Court.

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THE NEW TARIFFS

The Trump administration based its authority to impose "reciprocal" protection in its 2025 global tariff war on the International Emergency Economic Powers Act of 1977 (IEEPA). In February 2026 the Supreme Court ruled the use of that authority illegal.[1] The ruling reflected the facts that IEEPA does not mention the use of tariffs and hence does not meet the "major questions" test and, more fundamentally, that it is Congress and not the executive branch that has the power to tax.[2]

The administration had argued that if the use of IEEPA were rejected, it could impose the same tariffs using alternative legislation, albeit only after more cumbersome procedures. The most prominent prospective substitute was the "unfair trade" Section 301 of the Trade Act of 1974. On June 2, the Office of the US Trade Representative announced proposed tariffs of 10 to 12.5 percent on 60 economies, applying part of Section 301 involving *forced labor* (USTR 2026b).[3,4] On July 24, 2026, these tariffs came into effect.

CALCULATING THE WARRANTED FORCED-LABOR TARIFF

In broad terms, most forced labor is located in emerging-market and developing economies. The argument that it causes economic damage to the United States is twofold. First, US

1 Ann E. Marimow, "Justices Strike Down Trump's Tariffs," *New York Times*, February 20, 2026.

2 Article I of the US Constitution states in Section 8: "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises ...; To regulate Commerce with foreign Nations, and among the several States..." (Library of Congress 2026, 6). For a brief review of the debate on constitutionality of using IEEPA for new tariffs as of late 2025, see Cline (2025, 47–48).

3 Catie Edmondson, "Trump Aims New Tariffs at 59 Countries and the European Union," *New York Times*, June 3, 2026. The tariff was set at 12.5 percent for 46 countries without forced-labor import prohibitions, and at 10 percent for 14 economies with such prohibitions in place or pledged in specific trade agreements reached with the United States (see the appendix).

4 The term "forced" occurs only once in Section 301. See note 14.

imports from countries with forced labor will have an unfair advantage in competing with US domestic substitutes. Second, as justification invoked by the Trump administration for applying a forced-labor tariff even against advanced-country partners, these economies will import unduly large amounts of the relevant products from the emerging-market and developing economies. As a consequence, they will import less from the United States, disadvantaging US exporters.

TRADE MAGNITUDES BY COUNTRY GROUP

This Policy Brief examines the plausible size of US trade losses from forced labor in two parts: (1) forgone US exports to economies importing competing goods from countries with forced labor and (2) excess US imports from countries with forced labor. The estimates apply a framework that divides the world into three groups: the United States; other advanced economies; and the emerging-market and developing economies. The estimates treat all forced-labor exports as coming from the emerging-market/developing group.[5]

The Organization for Economic Cooperation and Development (OECD) has 38 members, including all the advanced economies and a few middle-income economies.[6] Define the "Rest of the OECD" as ROECD, the OECD excluding the United States. In 2024, the most recent year before the global tariff war, total merchandise imports of the 37 ROECD countries (including from each other and the United States) amounted to $11.00 trillion.[7]

5 Notable examples of forced labor in these economies include Uyghur and other Muslim workers in China's western Xinjiang province, and labor conditions in cattle ranching in northern Brazil. Simon Lewis, "Blinken Says Genocide in Xinjiang is Ongoing in Report Ahead of China Visit," Reuters, April 22, 2024; "Brazil: Cattle Ranching, Forced Labor Driving Deforestation Ahead of COP30," Climate Rights International, October 9, 2025.

6 The middle-income economies in the OECD are Chile, Colombia, Costa Rica, Mexico, and Turkey.

7 Calculated from the United Nations Comtrade database (UN 2026).

US exports to ROECD countries in 2024 amounted to $1.42 trillion.[8] So the share of US exports in total ROECD imports was 12.91 percent (1.42/11.00). On this basis, the US complaint of lost exports caused by global forced labor, with respect to the ROECD, can be estimated at about 13 percent of the ROECD imports attributable to global forced labor.

HOW LARGE IS THE GLOBAL FORCED-LABOR WORKFORCE?

The International Labor Organization (ILO) estimates that in 2021, there were 27.6 million people in forced labor globally. Of this total, 6.35 million were in forced sexual exploitation, and 3.86 million were in state-imposed forced labor. Of the remaining 17.39 million, most were in nontradable sectors: domestic work (8.2 percent); other services (32 percent); and construction (16.3 percent). The tradable sectors comprised 5.5 million workers, with 3.2 million in manufacturing, 2.1 million in agriculture, and 0.2 million in mining.[9]

The striking feature of the ILO estimates, for purposes of the tariff war analysis, is that *the number of forced workers is extremely small relative to global labor totals*. The World Bank (2026a) reports ILO estimates of the total global labor force at 3.74 billion workers in 2025. So *forced labor accounts for only 0.74 percent of global labor supply* (27.6 million/3.74 billion).

The proportion is even smaller for the forced-labor component of the non-OECD labor force in tradable sectors. The total labor force in the OECD in 2021 was 666.4 million (OECD 2023, 8). So the non-OECD labor force amounted to 3.074 billion workers (3.74 billion – 0.6664 billion). The World Bank (2026b, 2026c) reports that in 2024, 26 percent of the global labor force was employed in agriculture and 24 percent in industry. On this basis, roughly half of the labor force was employed in tradable goods production.

Applying this fraction, the total non-OECD labor force working in tradable goods in 2021 amounted to 1.537 billion workers

8 Calculated from BEA (2025, exhibit 13).

9 ILO (2022, pp. 2, 31). In addition, 1.9 million were estimated to be in "other" sectors, including begging and illicit activities.

(0.5 x 3.074 billion). So the *5.5 million* forced-labor workers in tradable goods estimated by the ILO would have been *0.36 percent* of the non-OECD labor force working in tradable goods.

IMPACT ON TRADE

Suppose that the entirety of this forced labor were set free and exited from the labor force. How much would one expect OECD imports from non-OECD economies to fall? Labor accounts for only part of production. Plausible fractions for the contribution of capital to production in non-OECD economies might be 0.4 in manufacturing and 0.2 in agriculture. So a decline of 0.36 percent in the relevant labor force might be expected to reduce total tradable goods production by 0.36 x 0.7 = 0.25 percent.[10]

On this basis, *a reasonable estimate is that the complete elimination of forced labor in tradable goods production in non-OECD economies could be expected to reduce OECD imports from them by about one-fourth of one percent*.

WARRANTED FORCED-LABOR TARIFF AGAINST ROECD

The estimates above place total ROECD imports at $11.00 trillion in 2024. They place ROECD imports from the United States at $1.42 trillion. So ROECD imports from non-OECD countries amounted to the difference, $9.58 trillion. The calculations on eliminating forced labor indicate that this amount would decline by 0.25 percent, or by $23.95 billion. The US share in ROECD imports is calculated above at 12.9 percent. So *elimination of global forced labor in tradable goods production could be expected to raise US exports to ROECD partners by $3.09 billion* (23.95 x 0.129).

The corresponding warranted tariff can be calculated by asking what percent increase in US exports would this outcome represent. The increase in US exports by $3.09 billion would amount to 0.218 percent of the $1.42 trillion base value of US exports to OECD partners (3.09/1,420). Applying a unitary import price elasticity of demand, by implication *the warranted forced-labor tariff against*

10 Treating the factor share as the elasticity of output with respect to the production factor.

ROECD partners can be estimated as only 0.22 percent rather than the 10 to 12.5 percent range posted in the US Trade Representative's announcement of the new Section 301 forced-labor tariffs (USTR, 2026c).[11] The new forced-labor tariff would be 45 times higher than the warranted level for ROECD countries qualifying for the 10 percent tariff, and 57 times the warranted level for those not qualifying (10/0.22 and 12.5/0.22, respectively).

WARRANTED FORCED-LABOR TARIFF AGAINST NON-OECD COUNTRIES

For imports from non-OECD countries into the United States, the estimated excess attributable to their forced labor would be the 0.25 percent estimated as the proportion by which their production would decline from elimination of forced labor. Applying a unitary import price elasticity, the warranted forced-labor tariff against non-OECD countries would be 0.25 percent. In 2024, total US imports from non-OECD countries were $1,225 billion, or 37.5 percent of total US imports.[12] With a unitary price elasticity of demand, the excess imports from these countries attributable to forced labor would be $3.06 billion (0.25% x 1,225). The 12.5 percent US forced-labor tariff against non-OECD countries would be 50 times the warranted level (12.5/0.25).

ARE THE NEW TARIFFS EQUIVALENT TO THE BURDEN IMPOSED ON US COMMERCE?

Section 301(a)(3) of the Trade Act of 1974 states:

> (3) Any action taken under paragraph (1) to eliminate an act, policy, or practice shall be devised so as to affect goods or services of the foreign country in an amount that is equivalent in

11 That is: if the United States sacrifices $3.09 billion annually in forgone exports to the ROECD because of ROECD imports of goods produced in non-OECD countries using forced labor instead of from the United States, then the warranted trade penalty would reduce US imports from the ROECD by this amount. A tariff of 0.22 percent against the ROECD would do so.

12 Calculated from BEA (2025, Exhibit 13).

value to the burden or restriction being imposed by that country on United States commerce. (Trade Act of 1974, 125).[13]

Technically, the Trump administration's new forced-labor tariffs are under Section 301(b) "Discretionary Action" rather than Section 301 (a) "Mandatory Action."[14] Section 301(b) does not repeat this proportionality clause. However, it is highly implausible that Congress intended to invite or allow highly excessive penalties under Section 301(b) by omitting such repetition. The estimates calculated in this analysis indicate that *forced-labor tariffs of 10 to 12.5 percent would grossly violate the sense of proportionality* as indicated in Section 301(a)(3). The basic reason the warranted tariff would be so small is that the number of workers in forced labor globally is extremely small compared with the relevant total. There are 5.5 million workers in forced labor globally in tradable goods. Total labor globally in tradable goods is about half of the total global labor force, or about 1.9 billion workers (0.5 x 3.74 billion).

NEGOTIATED DEALS VERSUS PROSPECTIVE IMPORTER LAWSUITS

It might be asked why the legal rejection of using IEEPA for the Trump reciprocal tariff matters for the important trade deals that were already completed in 2025. The foreign trading partners in question agreed to the US tariff levels negotiated after making concessions of their own. Indeed, on June 30 the European Union announced that its tariff reductions agreed with the United States at Turnberry, Scotland, on July 27, 2025, would come into force on July 1, 2026, and remain in force through the end of 2029.[15]

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13 Trade Act of 1974, Title III, Chapter 1, Section 301. Public Law 93-618, as amended through P.L. 119–75, enacted February 3, 2026, https://www.govinfo.gov/content/pkg/COMPS-10384/pdf/COMPS-10384.pdf.

14 The single mention of the term "forced" in Section 301 is in subsection (d) "Definitions and Special Rules." Section 301(d)(3)(B)(iii)(III) states: (3)(B) "Acts, policies, and practices that are unreasonable include…any…which…(iii) constitutes a persistent pattern…that (III) permits any form of forced or compulsory labor…." (Trade Act of 1974, 128).

15 Phil Blenkinsop, "EU's Side of US Trade Deal to Come into Force on July 1," Reuters, June 30, 2026.

The issue for the EU and other deals has become not whether the trading partners will honor the commitments they have made, but whether US importers will succeed in challenging the new US tariffs in court. For the tariff revenues already collected under the new Trump IEEPA-based tariffs of 2025 through early 2026, an estimated $166 billion will have to be returned to importers.[16] By early August, about $100 billion had been refunded to importers, including $2.2 billion to Apple, $1.3 billion to Ford, and $600 million to Amazon.[17]

On July 24, lawsuits against the new forced-labor tariffs were filed in the US Court of International Trade by the same organizations representing small businesses that had won the IEEPA case in the Supreme Court.[18] On August 3, a coalition of 25 states sued the Trump administration over the forced-labor tariffs.[19]

LEGAL PROSPECTS FOR THE REPLACEMENT TARIFFS

A predominant view seems to have been that the Trump administration can fairly easily replace the tariffs that had been based on IEEPA, by using Section 301 and/or other legislation.[20]

16 Tony Romm and Ana Swanson, "U.S. Begins First Steps to Refund $166 Billion Taken for Illegal Tariffs," *New York Times*, April 21, 2026. By March some 330,000 importers had paid IEEPA duties on more than 53 million entries. More than 3,000 businesses, including FedEx and Costco, had sued the administration by late April when the companies could begin submitting documentation for refunds.

17 Julie Z. Weil, "$100 Billion in Tariffs Has Been Refunded. Will You Get Any?" *Washington Post*, August 8, 2026.

18 Liberty Justice Center representing a spice company and a watch retailer; and educational toy company Learning Resources. Mae Anderson, "Small Businesses File Lawsuits against Trump's New Sweeping Tariffs," AP News, July 15, 2026.

19 Antone Gonsalves, "25 States Sue Trump over Section 301 Forced-labor Tariffs," *Manufacturing Dive*, August 4, 2026.

20 In November 2025, columnist Ana Swanson argued "Tariffs Are Here to Stay, Even If the Supreme Court Rules Against Trump" (*New York Times*, November 5, 2025), reporting that "The Trump administration says it has plenty of other options to impose tariffs." Some think tank studies suggested a similar view (Shane and Litan 2025). Other reports subsequent to the Supreme Court decision have continued to anticipate successful replacement of IEEPA (Chalecki 2026, Manak 2026).

In contrast, Alan Wm. Wolff argues that the use of Section 301 to reimpose the Trump administration's "reciprocal tariffs" is "unlikely to survive court challenge…" (Wolff 2026, 1).[21] He argues that:

> …it will be clear to the courts that this is mainly an attempt once again to transfer the full tariff power from the Congress to the president…" (p. 3). The Court will first look to the language of the statute. The language is clear: It addresses the "act, policies, and practices of "a foreign country" using the singular. There is no indication that Congress meant "one or more, or multiple foreign countries"…. Section 301 cannot be deployed to reach a result that it does not authorize—exercise by the executive branch of the country's full tariff power. For this reason, sweeping use of retaliatory authority to impose tariffs covering most US imports is unlikely to survive judicial review. (p. 4)

Before 2026, Section 301 of the Trade Act of 1974 was never used to impose tariffs on goods produced using forced labor.[22] Instead, Section 307 of the Tariff Act of 1930 (Smoot-Hawley) was applied to address forced labor. It states: "All goods…mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor…shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited."[23] Standard application of Section 307 requires

21 Wolff was the chief legal official for international trade in the Ford administration, and was responsible for drafting the Trade Act of 1974, and especially its Section 301. In 2017–21, Wolff was Deputy Director General of the World Trade Organization.

22 Personal communication with Alan Wm. Wolff. He observes that it appears from a search of the record that Section 301 measures had been imposed only against four economies (the European Union, Japan, China, and Canada) and had never been used to apply countermeasures with respect to forced labor, and certainly not as a secondary sanction. He also notes that Section 301 measures against Nicaragua announced by USTR in December 2025 (on "Labor Rights" and other rights and practices) do not include the "forced labor" words in Section 301, in contrast to their inclusion in the new Section 301 forced-labor tariffs on 60 economies implemented on July 24, 2026 (USTR 2026c).

23 Tariff Act of 1930, https://www.govinfo.gov/content/pkg/COMPS-8183/pdf/COMPS-8183.pdf, September 2025, p. 9.

demonstration of use of forced labor. However, its amendment at the end of 2021 in the Uyghur Forced Labor Prevention Act (UFLPA) introduced a “rebuttable presumption” that all goods from the Xinjiang region of China are made with forced labor, greatly expanding the scope of goods subject to import prohibition.[24]

Neither Section 301 (1974 Act) nor Section 307 (1930 Act) grants authority to the Executive branch to apply protection in the manner of a secondary sanction. Unfair trade (301) or forced-labor trade (307) is to be penalized or prohibited, respectively, for the exporting country and product in question, not by levying tariffs on third-party countries importing such goods from that country. Moreover, neither Section 301 protection nor Section 307 prohibition imposes an irremediable penalty. Yet the new forced-labor tariffs imposed in late July cannot be brought below the 10 percent minimum regardless of corrective action by the trading partner. These two features of the new tariffs substantially strengthen the case that they exceed authority extended by Congress to the executive branch.[25]

The estimates in this Policy Brief indicate that quite apart from the question of legality, applying the forced-labor provision of Section 301 would be wholly unjustified on economic grounds alone as the basis for imposing comprehensive tariffs on the order of 10 to 12.5 percent. This range is more than 40 to 50 times the level that could be warranted (a tariff of 0.25 percent or less).

24 Since the enactment of the UFLPA, imports blocked by it have amounted to 24,300 shipments with a value of nearly $1 billion (US Department of Homeland Security 2026).

25 Lincicome (2026) aptly summarizes the legal shortcomings of the new tariffs as follows. “The findings were clearly predetermined. The methodology is thin to the point of embarrassment. The remedy is both ridiculously blunt and wildly out of proportion to any measurable economic distortion. The action gives targeted countries no way to get the tariffs lifted by eliminating their supposedly bad behavior... (p. 2).

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APPENDIX

PROPOSED SECTION 301 FORCED-LABOR TARIFF RATES BY ECONOMY

A. 10 PERCENT

Argentina, Bangladesh, Cambodia, Canada, Ecuador, El Salvador, European Union, Guatemala, Indonesia, Malaysia, Mexico, Pakistan, Taiwan, and United Kingdom.

B. 12.5 PERCENT

Algeria, Angola, Australia, the Bahamas, Bahrain, Brazil, Chile, China, Colombia, Costa Rica, Dominican Republic, Egypt, Guyana, Honduras, Hong Kong, India, Iraq, Israel, Japan, Jordan, Kazakhstan, Kuwait, Libya, Morocco, New Zealand, Nicaragua, Nigeria, Norway, Oman, Peru, the Philippines, Qatar, Russia, Saudi Arabia, Singapore, South Africa, South Korea, Sri Lanka, Switzerland, Thailand, Trinidad and Tobago, Turkey, United Arab Emirates, Uruguay, Venezuela, and Vietnam.

Source: Morgan and Dama (2026).

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