

Future of Thai Fisheries Products in the U.S. Market

By Dornnapha Sukkree
TLCS Legal Advocate Co., Ltd.

These are challenges the Thai fisheries industry is confronting:

- the United States has ranked Thailand as a Tier 3 country in its Trafficking in Persons Report for two consecutive years, 2014 and 2015;
- the US-Department of Labor’s List of Goods Produced by Child or Forced Labor¹ has categorized Thai fish, shrimp, and garment as products produced by forced labor;
- Negative news coverages from AP², Reuters³, New York Times⁴ ;
- Negative campaigns of international NGOs such as Environmental Justice Foundation⁵, Antislavery International⁶; and, consumers boycotts;
- Class action lawsuits against U.S. importers and Thai suppliers;
- The attempt to label “the Produce of Slavery” on Thai seafood products⁷.

A prime question is whether Thai fisheries industry adjusting themselves and be prepared in response of these adversities?

§1307 of the U.S. Tariff Act of 1930 stresses that no products produced by forced labor shall enter to the U.S. market. The law, however, has a big loophole called, “Consumptive Demand Exception”. By this loophole, imports of goods produced by forced, coerced or indentured labors are permitted when the U.S. supply does not meet consumer demand. There have been many attempts to eliminate the consumptive demand exception of the 1930 Tariff Act. These followings evidenced such attempts:

- the Customs Facilitation and Trade Enforcement Reauthorization Act of 2009;

¹ <http://www.dol.gov/ilab/reports/child-labor/list-of-goods/>

² <http://www.pri.org/stories/2015-03-25/seafood-you-eat-may-have-been-caught-slaves>

³ <http://www.reuters.com/article/2015/05/05/us-thailand-rohingya-trafficking-idUSKBN0NQ0PP20150505>

⁴ <http://mobile.nytimes.com/2015/07/27/world/outlaw-ocean-thailand-fishing-sea-slaves-pets.html>

⁵ http://eifoundation.org/sites/default/files/public/EJF_Thailand_TIP_Briefing.pdf

⁶ http://www.antislavery.org/english/campaigns/campaign_stop_slavery_in_thai_fishing_industry/

⁷ Three California law firms are seeking an injunction to stop the US retail chain Costco selling prawns unless they are labelled as the produce of slavery. See <http://www.theguardian.com/global-development/2015/aug/19/costco-cp-foods-lawsuit-alleged-slavery-prawn-supply-chain>

- **H.R. 5247**⁸ (113th, 2013-2015)/ **H.R. 1903**⁹ (114th Congress, 2015-2017): To amend the Tariff Act of 1930 to eliminate the consumptive demand exception to prohibition on importation of goods made of goods made with convict labor, forced labor, or indentured labor, and for other purposes
- **S. 662** (113th): Trade Facilitation and Trade Enforcement Reauthorization Act¹⁰
- **H.R. 1916**: Trade Enforcement and Trade Facilitation Act of 2015¹¹
- **S. 1269**¹²/ **H.R. 644**¹³: Trade Facilitation and Trade Enforcement Act of 2015

Trade Facilitation and Trade Enforcement Act of 2015 has progress since this bill passed in the Senate and the House, but the House made changes and sent it back to the Senate on June 12, 2015. It would authorize and fund United States Customs and Border Protection (CBP), an agency within the Department of Homeland Security. CBP regulates trade of foreign products entering the United States. The bill would expand requirements on imports to ensure health, safety, and the protection of intellectual property rights. The most important is to prohibiting the import of products made by forced or indentured labor to which currently a “consumptive demand” exception allows importing.

While the bill to eliminate consumptive demand exception is awaiting of becoming law, the *Presidential Executive Order 13627* in 2012 is strengthening protections against trafficking by exclusion of products in associate with all forms of human trafficking and forced labor out of governmental contracts. The Executive Order 13627 requires contractors and their subcontractors to agree to cooperate fully in providing reasonable access to allow contracting agencies and other responsible enforcement agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act, this executive order, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor.

The Executive Order requires each contractor and subcontractor maintains a compliance plan during the performance of the contract or subcontract that is appropriate for the size and complexity of the contract or subcontract and the nature and scope of the activities performed, including the risk that the contract or subcontract will involve services or supplies susceptible to trafficking. The compliance plan shall be provided to the contracting officer upon request, and relevant contents of the plan shall be posted no

⁸ <https://www.govtrack.us/congress/bills/113/hr5247>

⁹ <https://www.govtrack.us/congress/bills/114/hr1903>

¹⁰ <https://www.govtrack.us/congress/bills/113/s662>

¹¹ <https://www.govtrack.us/congress/bills/114/hr1916>

¹² <https://www.govtrack.us/congress/bills/114/s1269>

¹³ <https://www.govtrack.us/congress/bills/114/hr644>

later than the initiation of contract performance at the workplace and on the contractor or subcontractor's website.

Further, the California Transparency in Supply Chains Act of 2010 provides consumers with critical information about the efforts that companies are undertaking to prevent and root out human trafficking and slavery in their product supply chains. This Act requires large retailers and manufacturers doing business in California to disclose on their websites their “efforts to eradicate slavery and human trafficking from their direct supply chain for tangible goods offered for sale.

Recently, a class action filed by a California resident, *Monica Sud*, against Costco and its Thai supplier, *CP Foods*, alleges that shrimps from Thailand produced by slave labor. The lawsuit is seeking an injunction to stop the US retail chain Costco selling prawns unless they are labelled as the produce of slavery.¹⁴

Similar lawsuit filed by a group of consumers against Nestle’ and its Thai supplier, Thai Union, accusing Nestlé’s Fancy Feast supply chain tainted by slave labor and human trafficking. The lawsuit said that Nestle works with Thai Union to import more than 28 million pounds of seafood based pet food for top brands sold in the United States.¹⁵

The class action lawsuits are only the early stage of difficulties Thai seafood industry has to get through. Given that the elimination of consumptive demand exception is entering into forced, it is foreseeable that there will be much more consumers and NGOs filing lawsuit against individual Thai companies. The bill will entry into force 15 days after the president signs the legislation. It is not enough for a company to inform public that they are unaware of labor abuses or human trafficking tainted their supply chain. It is better for Thai individual companies be well prepared.

We, *TLCS Legal Advocate*, a Thai law firm, in coordination with *Kelley Drye & Warren* of Washington DC, are here to help Thai exporters improve their supply chain transparency. Steps taken by Thai exporters to combat human trafficking and eliminate forced labor from their supply chain need to be advocated making clear to consumers and law makers. We are experienced lawyers in advocacy and helping industries to design and implement the compliance program for individual companies. Thai fishing industry cannot afford losing U.S. market or consumers’ confidence. It is a time to put an end to modern slavery in business supply chain. It is a time to bring back reputation and dignity of Thai fisheries and aquaculture products.

TLCS Legal Advocate’s and ***Kelley Drye & Warren’s*** company profiles are enclosed.

¹⁴ <http://www.theguardian.com/global-development/2015/aug/19/costco-cp-foods-lawsuit-alleged-slavery-prawn-supply-chain>

¹⁵ <http://www.dispatchtimes.com/lawsuit-accuses-nestl-of-using-slave-caught-fish-in-fancy-feast/72368/>