

118TH CONGRESS
1ST SESSION

H. R. 6909

To ensure that goods made using or containing cobalt refined in the People's Republic of China do not enter the United States market under the presumption that the cobalt is extracted or processed with the use of child and forced labor in the Democratic Republic of Congo.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 29, 2023

Mr. SMITH of New Jersey (for himself, Mr. VAN DREW, and Mr. NUNN of Iowa) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Foreign Affairs, and Oversight and Accountability, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To ensure that goods made using or containing cobalt refined in the People's Republic of China do not enter the United States market under the presumption that the cobalt is extracted or processed with the use of child and forced labor in the Democratic Republic of Congo.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “China’s Odious and
3 Brutally Atrocious Labor Trafficking Supply Chain Act”
4 or the “COBALT Supply Chain Act”.

5 **SEC. 2. FINDINGS.**

6 Congress makes the following findings:

7 (1) Cobalt is an essential component of lithium-
8 ion batteries, which are predominantly used for elec-
9 tric vehicles, smartphones, and laptops, among other
10 electronic devices. According to the International
11 Energy Agency, the world is expected to see a
12 fortyfold increase in lithium demand and a twenty-
13 fold increase in cobalt demand by 2040, as the de-
14 mand for electric vehicles is expected to grow signifi-
15 cantly during this period.

16 (2) More than one-half of the world’s cobalt re-
17 sources are in the DRC, which supplied approxi-
18 mately 70 percent of the global cobalt mine produc-
19 tion in 2021.

20 (3) Fifteen of the DRC’s 19 cobalt mines were
21 owned or financed by PRC companies.

22 (4) Firms based in the PRC hold a near mo-
23 nopoly in the DRC’s cobalt sector, according to the
24 Biden Administration.

1 (5) The mining industry in the DRC is beset
2 with child labor and forced labor, disregard for
3 worker safety, and environmental degradation.

4 (6) Approximately 15 to 30 percent of cobalt
5 produced in the DRC comes from artisanal and
6 small-scale mining. An estimated 255,000 miners
7 work in artisanal and small-scale mining in the
8 DRC, of whom at least 40,000 are children.

9 (7) Artisanal production was chiefly exported to
10 the PRC or processed within the DRC by PRC
11 firms, according to an article “China, the Demo-
12 cratic Republic of the Congo, and artisanal cobalt
13 mining from 2000 through 2020” published in Pro-
14 ceedings of the National Academy of Sciences
15 (PNAS), a peer reviewed journal of the National
16 Academy of Sciences (NAS).

17 (8) In the 2022 Trafficking in Persons Report,
18 the Department of State emphasized that “In the
19 [DRC,] artisanal and small-scale mining of cobalt
20 has been associated with forced child labor and other
21 abuses”, noting further that “Since 2015, the TIP
22 Report narratives on the DRC have highlighted
23 forced labor of children in artisanal cobalt mines.”.
24 The DRC is on the Tier 2 Watch List, and will be
25 automatically downgraded to Tier 3, subjecting it to

1 sanctions, if it does not substantively and consist-
2 ently improve its record on trafficking.

3 (9) Section 307 of the Tariff Act of 1930 (19
4 U.S.C. 1307) states that it is illegal to import into
5 the United States “goods, wares, articles, and mer-
6 chandise mined, produced, or manufactured wholly
7 or in part” by forced labor, including forced or in-
8 dentured child labor. Such merchandise is subject to
9 exclusion or seizure and may lead to criminal inves-
10 tigation of the importer.

11 **SEC. 3. STATEMENT OF POLICY.**

12 It is the policy of the United States to—

13 (1) ensure that the PRC does not undermine
14 the effective enforcement of section 307 of the Tariff
15 Act of 1930 (19 U.S.C. 1307);

16 (2) lead the international community in ending
17 child labor and forced labor practices wherever such
18 practices occur through all means available to the
19 United States Government, including by prohibiting
20 the importation of goods made with cobalt or con-
21 taining cobalt extracted from the DRC by companies
22 from the PRC;

23 (3) recognize that the PRC’s dominance in
24 DRC’s cobalt extraction and the processing and re-
25 fining of cobalt is a national security concern of the

1 United States that requires a strategy developed
2 jointly by the Secretary of State, the Secretary of
3 Defense, the Secretary of Commerce, and the heads
4 of other appropriate Federal agencies; and

5 (4) coordinate with Mexico and Canada to ef-
6 fectively implement Article 23.6 of the United
7 States-Mexico-Canada Agreement to prohibit the im-
8 portation of goods produced in whole or in part by
9 forced labor or compulsory labor, including those
10 goods produced in the Xinjiang Uyghur Autonomous
11 Region (XUAR), including the processing of cobalt
12 and goods made with cobalt.

13 **SEC. 4. REBUTTABLE PRESUMPTION THAT COVERED**
14 **GOODS ARE GOODS THAT ARE MADE WHOLLY**
15 **OR IN PART WITH FORCED LABOR OR CHILD**
16 **LABOR.**

17 (a) IN GENERAL.—Except as provided in subsection
18 (b), the Commissioner of U.S. Customs and Border Pro-
19 tection—

20 (1) shall apply a presumption that covered
21 goods are goods that are made wholly or in part
22 with forced labor or child labor; and

23 (2) shall prohibit the entry of such goods at any
24 of the ports and the United States, and shall other-
25 wise prohibit the importation of such goods, in ac-

1 cordance with section 307 of the Tariff Act of 1930
2 (19 U.S.C. 1307).

3 (b) EXCEPTION.—The requirements of paragraphs
4 (1) and (2) of subsection (a) shall not apply with respect
5 to covered goods if the Commissioner determines that the
6 importer of record of the covered goods has demonstrated
7 by clear and convincing evidence that such goods do not
8 contain cobalt refined in the PRC.

9 (c) REPORT REQUIRED.—The Commissioner shall
10 submit to the appropriate congressional committees and
11 make available to the public, not later than 30 days after
12 making a determination to apply the exception under sub-
13 section (b) with respect to any covered goods, a report
14 identifying the evidence for such determination.

15 (d) REGULATIONS.—The Commissioner may pre-
16 scribe regulations—

17 (1) to implement subsection (b); or

18 (2) to amend any other regulations in order to
19 implement this section.

20 (e) EFFECTIVE DATE.—This section takes effect on
21 the date that is 180 days after the date of the enactment
22 of this Act.

23 (f) RULE OF CONSTRUCTION.—Nothing in this sec-
24 tion may be construed to limit the application of regula-
25 tions in effect on, or measures taken before, the date of

1 the enactment of this Act to prevent the importation of
2 goods mined, produced, or manufactured, wholly or in
3 part, with forced labor into the United States, including
4 withhold release orders issued before such date of enact-
5 ment.

6 **SEC. 5. ENFORCEMENT STRATEGY TO ADDRESS CHILD**
7 **LABOR AND FORCED LABOR RELATING TO**
8 **COVERED GOODS.**

9 (a) IN GENERAL.—Not later than 120 days after the
10 date of the enactment of this Act, the Forced Labor En-
11 forcement Task Force, established under section 741 of
12 the United States-Mexico-Canada Agreement Implementa-
13 tion Act (19 U.S.C. 4681), in consultation with the heads
14 of other relevant Federal agencies, shall submit to the ap-
15 propriate congressional committees a report that—

16 (1) contains an enforcement strategy of the
17 United States Government to effectively address en-
18 forcement of section 307 of the Tariff Act of 1930
19 (19 U.S.C. 1307) to prevent the importation into the
20 United States of covered goods that includes meas-
21 ures that—

22 (A) can be taken to trace the origin of
23 goods, offer greater supply chain transparency,
24 and identify third country supply chain routes
25 for the covered goods; and

1 (B) ensure that covered goods do not enter
2 the United States;

3 (2) contains a strategy to ensure that covered
4 goods do not enter the United States market as
5 goods imported from third countries, including from
6 Canada or Mexico;

7 (3) contains a strategy to ensure that covered
8 goods denied entry to the United States market do
9 not later enter the United States market through
10 third countries;

11 (4) describes authorities to seize or destroy cov-
12 ered goods denied entry to the United States; and

13 (5) describes measures to address child labor
14 and forced labor in the mining, production, smelting,
15 or processing of metals or minerals, in particular co-
16 balt and lithium and their derivatives, in the DRC.

17 (b) MATTERS TO BE INCLUDED.—The strategy re-
18 quired by subsection (a) shall include the following:

19 (1) A list of—

20 (A) covered goods;

21 (B) entities that refine cobalt in the PRC;

22 (C) entities that mine cobalt in the PRC

23 and whether any of these entities operate in the

24 Xinjiang Uyghur Autonomous Region (XUAR);

1 (D) entities that import covered goods in
2 the United States;

3 (E) entities, in the DRC, owned or con-
4 trolled by PRC entities, or financed by PRC
5 state-owned banks or institutions that mine or
6 process cobalt; and

7 (F) priority sectors for enforcement of im-
8 ports made with covered PRC goods, with a
9 sector-specific enforcement plan for each pri-
10 ority sector.

11 (2) Recommendations for efforts, initiatives,
12 and tools and technologies to be adopted to ensure
13 that U.S. Customs and Border Protection can accu-
14 rately identify and trace covered goods.

15 (3) A description of the additional resources
16 necessary for U.S. Customs and Border Protection
17 and other Federal entities, including the Forced
18 Labor Enforcement Task Force, to effectively imple-
19 ment the strategy.

20 (4) A description of how the list of entities re-
21 quired by subparagraphs (B), (C), and (D) of para-
22 graph (1) shall be regularly updated and reported to
23 the appropriate congressional committees.

24 (5) A strategy to coordinate and collaborate
25 with appropriate nongovernmental organizations and

1 private sector entities to implement the enforcement
2 strategy for covered goods and to create and update
3 the list of entities required in subparagraphs (B)
4 and (C) of paragraph (1).

5 (c) FORM.—The report required by subsection (a)
6 and any publicly published updates described by sub-
7 section (d) shall be submitted in unclassified form, but
8 may include a classified annex, if necessary.

9 (d) UPDATES.—After the submission of the strategy
10 required by subsection (a), the Forced Labor Enforcement
11 Task Force shall provide briefings to the appropriate con-
12 gressional committees on a quarterly basis and, as applica-
13 ble, on any updates to the strategy required by subsection
14 (a) or additional actions taken to address the importation
15 of covered goods, including actions described in this Act.

16 (e) SUNSET.—This section shall cease to have effect
17 on the earlier of—

18 (1) the date that is 8 years after the date of the
19 enactment of this Act; or

20 (2) the date on which the President submits to
21 the appropriate congressional committees a deter-
22 mination that child labor and forced labor in the
23 mining industry of the DRC has ended, including
24 artisanal and small-scale mining sectors.

1 **SEC. 6. CERTIFICATION THAT FEDERAL VEHICLE PUR-**
2 **CHASES ARE FREE OF PARTS MADE OR**
3 **MINED WITH CHILD LABOR OR FORCED**
4 **LABOR.**

5 (a) IN GENERAL.—Except as provided in subsection
6 (b), not later than 90 days after the date of the enactment
7 of this Act, and annually thereafter, the President shall
8 certify whether all vehicles purchased in the prior year by
9 the United States Government are completely free of parts
10 made or mined, wholly or in part, with child labor or
11 forced labor in the DRC or the Xinjiang Uyghur Autono-
12 mous Region (XUAR).

13 (b) EXCEPTION.—The certification required by sub-
14 section (a) shall not apply with respect to vehicles pur-
15 chased in the prior year by the Department of Defense.

16 (c) SUBMISSION TO CONGRESS; PUBLICATION IN
17 FEDERAL REGISTER.—The President shall—

18 (1) submit the certification required by sub-
19 section (a) to the appropriate congressional commit-
20 tees; and

21 (2) publish such certification in the Federal
22 Register.

23 (d) DOCUMENTATION FOR CERTIFICATION.—Docu-
24 mentation mapping the supply chains of all the vehicles
25 and their parts, procured in the prior year by the United
26 States Government, shall be available upon request by

1 Members of Congress from the Department of Homeland
2 Security.

3 **SEC. 7. DEFINITIONS.**

4 In this Act:

5 (1) APPROPRIATE CONGRESSIONAL COMMIT-
6 TEES.—The term “appropriate congressional com-
7 mittees” means—

8 (A) the Committee on Foreign Affairs, the
9 Committee on Financial Services, and the Com-
10 mittee on Ways and Means of the House of
11 Representatives; and

12 (B) the Committee on Foreign Relations,
13 the Committee on Banking, Housing, and
14 Urban Affairs, and the Committee on Finance
15 of the Senate.

16 (2) ARTISANAL AND SMALL-SCALE MINING.—
17 The term “artisanal and small-scale mining”—

18 (A) means mining with minimal to no
19 mechanization; and

20 (B) includes the use of intensive handtools.

21 (3) CHILD LABOR.—The term “child labor”
22 means work that deprives children of their child-
23 hood, their potential, and their dignity, and that is
24 harmful to physical and mental development, as such

1 term is commonly used by the International Labour
2 Organization.

3 (4) COVERED GOODS.—The term “covered
4 goods” means goods, wares, articles, or merchandise
5 that contain cobalt refined in the PRC.

6 (5) DRC.—The term “DRC” means the Demo-
7 cratic Republic of the Congo.

8 (6) FORCED LABOR.—The term “forced labor”
9 has the meaning given that term in section 307 of
10 the Tariff Act of 1930 (19 U.S.C. 1307).

11 (7) PRC.—The term “PRC” means the Peo-
12 ple’s Republic of China.

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