



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 23-01]

Determination That Maintenance of Finding of January 28, 2022, Pertaining to Certain Palm Oil and Derivative Products Made Wholly or in Part With Palm Oil Produced by the Malaysian Company Sime Darby Plantation Berhad, its Subsidiaries, and Joint Ventures, is No Longer Necessary

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Determination that merchandise is no longer subject to 19 U.S.C. 1307.

SUMMARY: On January 28, 2022, U.S. Customs and Border Protection (CBP), with the approval of the Secretary of the Department of Homeland Security, issued a Finding that certain palm oil and derivative products made wholly or in part with palm oil produced by Sime Darby Plantation Berhad, its subsidiaries, and joint ventures, were being produced with the use of forced labor, and were being, or were likely to be, imported into the United States. CBP has now determined, based upon additional information, that such merchandise is no longer being produced with the use of forced labor in violation of section 307 of the Tariff Act of 1930, as amended.

DATES: This determination applies to any merchandise described in this notice that is imported on or after [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Jason Leffler, Assistant Director, Forced Labor Division, Trade Remedy Law Enforcement Directorate, Office of Trade, (202) 325-1601 or forcedlabor@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307), “[a]ll goods, wares, articles, and merchandise mined, produced, or manufactured wholly

or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited.” Under this section, “forced labor” includes “all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily” and includes forced or/and indentured labor or forced or indentured child labor.

The U.S. Customs and Border Protection (CBP) regulations promulgated under the authority of 19 U.S.C. 1307 are found at sections 12.42 through 12.45 of title 19, Code of Federal Regulations (CFR) (19 CFR 12.42-12.45). Among other things, these regulations allow any person outside of CBP to communicate his or her belief that a certain “class of merchandise . . . is being, or is likely to be, imported into the United States [in violation of 19 U.S.C. 1307].” 19 CFR 12.42(a), (b). Upon receiving such information, the Commissioner of CBP (Commissioner) “will cause such investigation to be made as appears to be warranted by the circumstances” 19 CFR 12.42(d). CBP also has the authority to self-initiate an investigation. 19 CFR 12.42(a). If the Commissioner finds that the information available “reasonably but not conclusively indicates that merchandise within the purview of section 307 is being, or is likely to be, imported,” the Commissioner will order port directors to “withhold release of any such merchandise pending [further] instructions.” 19 CFR 12.42(e). After issuance of such a withhold release order, the covered merchandise will be detained by CBP for an admissibility determination and will be excluded unless the importer demonstrates that the merchandise was not made using labor in violation of 19 U.S.C. 1307. 19 CFR 12.43-12.44. The importer may also export the merchandise. 19 CFR 12.44(a).

These regulations also set forth the procedure for the Commissioner to issue a Finding when it is determined that the merchandise is subject to the provisions of 19

U.S.C. 1307. Pursuant to 19 CFR 12.42(f), if the Commissioner determines that merchandise within the purview of 19 U.S.C. 1307 is being, or is likely to be, imported into the United States, the Commissioner will, with the approval of the Secretary of the Department of Homeland Security (DHS), publish a Finding to that effect in the *Customs Bulletin* and in the *Federal Register*.¹ Under the authority of 19 CFR 12.44(b), CBP may seize and forfeit imported merchandise covered by a Finding.

On December 16, 2020, CBP issued a withhold release order (made effective on December 30, 2020) on “palm oil,” including all crude palm oil and palm kernel oil and derivative products, made wholly or in part with palm oil traceable to Sime Darby Plantation Berhad (Sime Darby Plantation), with reasonable evidence demonstrating that the Sime Darby Plantation, including its subsidiaries and joint ventures, primarily located in Malaysia, harvested the fruit and produced the palm oil using forced labor. Through its investigation, CBP determined that there was sufficient information to support a

¹ Although the regulation states that the Secretary of the Treasury must approve the issuance of a Finding, the Secretary of the Treasury delegated this authority to the Secretary of Homeland Security in Treasury Order No. 100-16 (68 FR 28322). In Delegation Order 7010.3, Section II.A.3, the Secretary of Homeland Security delegated the authority to issue a Finding to the Commissioner of CBP, with the approval of the Secretary of Homeland Security. The Commissioner of CBP, in turn, delegated the authority to make a Finding regarding prohibited goods under 19 U.S.C. 1307 to the Executive Assistant Commissioner, Office of Trade.

Finding that the Sime Darby Plantation, its joint ventures, and subsidiaries were using forced labor on Sime Darby's plantations in Malaysia to harvest fresh fruit bunches, which are used to extract palm oil and produce derivative products, and also produce such palm oil and derivatives, and that such palm oil and derivative products produced by the company were likely being imported into the United States. Pursuant to 19 CFR 12.42(f), CBP issued a Finding (CBP Dec. 22-02) to that effect in the *Federal Register* on January 28, 2022 (87 FR 4635).²

Since that time, the Sime Darby Plantation has provided additional information to CBP, which CBP believes establishes by satisfactory evidence that the subject palm oil and derivative products are no longer mined, produced, or manufactured in any part with forced labor. 19 CFR 12.42(g).

II. Determination

Pursuant to 19 U.S.C. 1307 and 19 CFR 12.42(g), it is hereby determined that the articles described below are no longer being mined, produced, or manufactured wholly or in part with the use of convict, forced, or indentured labor by the Sime Darby Plantation, its subsidiaries, and joint ventures.

The subject articles are palm oil and derivative products classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 1207.10.0000, 1511.10.0000, 1511.90.0000, 1513.21.0000, 1513.29.0000, 1517, 3401.11, 3401.20.0000, 3401.19.0000, 3823.12.0000, 3823.19.2000, 3823.70.6000, 3823.70.4000, 3824.99.41 and any other relevant subheadings under Chapters 12, 15, 23, 29 and 38, which are produced or manufactured wholly or in part by the Sime Darby Plantation, its subsidiaries, and joint ventures.

Dated: January 31, 2023

² The Finding was also published in the *Customs Bulletin and Decisions* (Vol. 56, No. 6, p. 4) on February 16, 2022.

AnnMarie R. Highsmith,
Executive Assistant Commissioner,
Office of Trade.

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