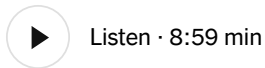


Trump Administration Turns to a New Rationale to Justify Old Tariffs

The administration has settled on a more legally and politically durable way to impose tariffs, but some say the focus on forced labor laws is merely a pretext for protectionism.



By Ana Swanson

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Since the Supreme Court struck down President Trump's global tariffs in February, his administration has been busily working to reconstruct them, exploring legal options that would allow them to build back the tariff wall between the U.S. economy and the rest of the world.

Late Tuesday night, the Trump administration unveiled part of its Plan B: a tariff of 10 percent to 12.5 percent on 59 countries and the 27-member European Union. The levies were intended to pressure governments that the United States says have not enacted or enforced laws against trading goods made with forced labor.

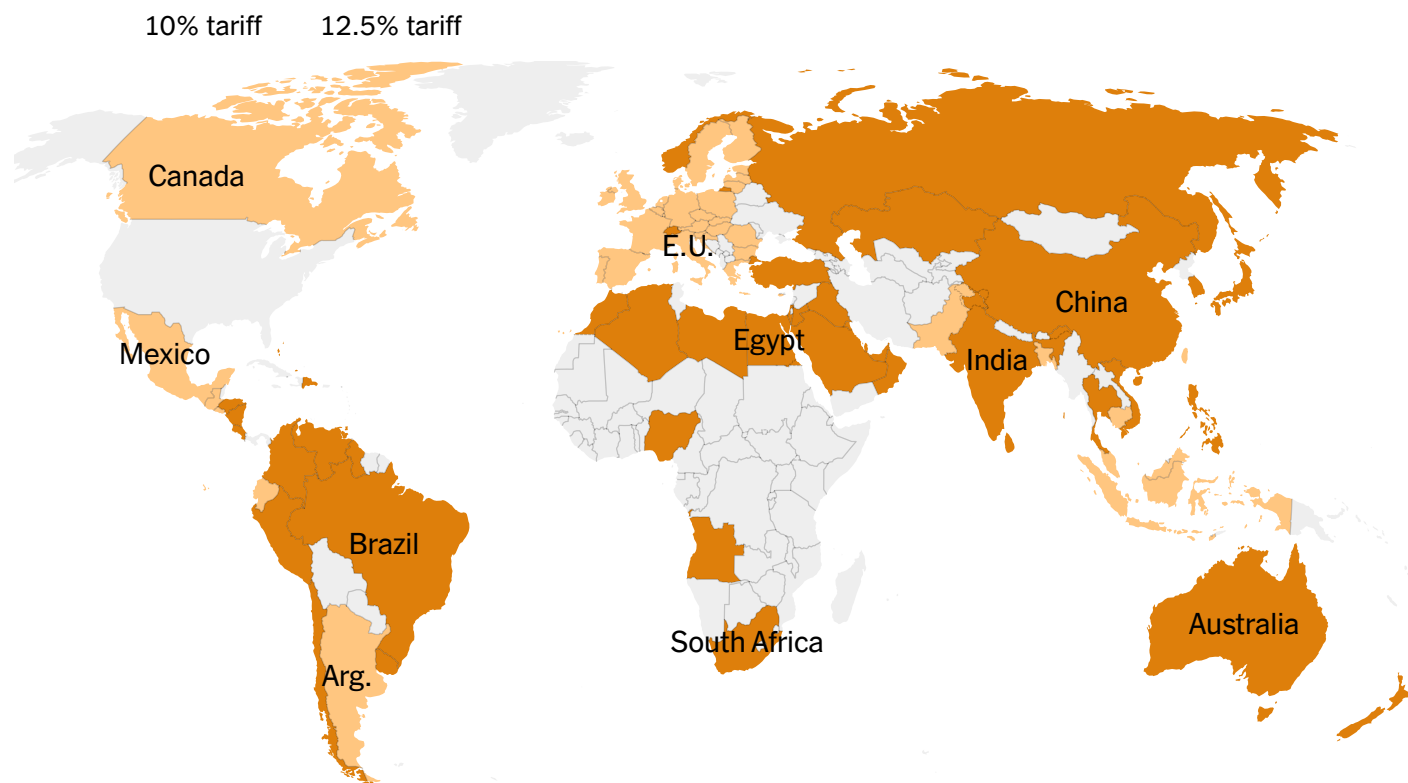
Those tariffs could go into effect as soon as July, and they are unlikely to be the last ones. The administration is working on another slate of tariffs related to countries' manufacturing practices that will presumably be added to the forced labor ones.



The tariffs will be rolled out at a sensitive time for the administration, as voters who are dissatisfied with higher prices from the war with Iran and trade policies prepare to head to the polls. But officials appear intent on patching back together Mr. Trump’s vision for replacing the decades-old global trade order, which he argues has been unfair to American business and left the country with fewer factories and growing trade deficits.

The new tariffs will be imposed under Section 301 of the Trade Act of 1974, a law that allows the president to issue tariffs to respond to other countries’ trade practices. Legal experts said they are likely to be more durable than the initial law Mr. Trump used to enact tariffs, the International Emergency Economic Powers Act.

Countries targeted with the “forced labor” tariff



Note: Informational materials, imports already subject to sectoral tariffs, imports entering under the U.S.-Mexico-Canada agreement, some textile goods from Central American and Caribbean countries, and other individual import classifications outlined by the administration are exempt. By Lazaro Gamio / The New York Times

Mr. Trump used Section 301 in his first term to wage a trade war with China, and the tariffs he put in place have survived multiple court challenges. No administration, however, has ever used the provision in such a sweeping way.

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Trade experts have welcomed efforts to end or reduce forced labor, but some have complained that the new tariffs are primarily aimed at finding a way to block foreign products and raise revenue, not ending human rights abuses.

Edward Alden, a trade expert at the Council on Foreign Relations, called the latest announcement a “transparently cynical effort” and “merely a pretext to maintain tariffs that the administration believes have been effective.”

Mr. Alden said that the Section 301 provision being used was written by Congress as a mechanism to try to impel countries to change practices that were harming U.S. commerce. Lawmakers believed tariffs should be used as a tool to persuade countries to change their practices, with higher tariffs reserved for those with the more harmful practices.

Yet the administration’s latest action made little effort to set tariff rates at different levels depending on the severity of violations. The Section 301 investigation on forced labor also excluded some smaller countries where the U.S. government has identified slavery, human trafficking or forced labor, like Afghanistan, Belarus, Myanmar and Mauritania.

Jamieson Greer, the United States trade representative, has also made clear that he believed tariffs were working and intended to keep them in place, Mr. Alden said.

“That shows no serious effort by the administration to force a change in those practices,” he said. “Sometimes you just have to call a spade a spade.”

Eswar Prasad, a professor of trade policy at Cornell University, said the administration had switched its justification for broad tariffs onto a “morally and perhaps also legally more defensible ground.” But he pointed out that the Trump

administration’s apparent concerns about forced labor in other countries seemed inconsistent with domestic stances that were not friendly toward workers and unions.

“While the objective of this round of tariffs seems laudable, it’s difficult to escape the feeling that the administration is opportunistically exploiting whatever rationale works legally in wielding tariffs as a broad economic and geopolitical tool,” he added.

Others praised the move. Representative Jason Smith of Missouri, the chairman of the House Ways and Means Committee, said in a statement that many U.S. trading partners “fall short of even basic cooperation with the United States on this issue,” adding, “very few trading partners even have laws on the books to prohibit trade in goods made with forced labor.”

The new measures could be the final act for the administration after a chaotic year of trying to realize Mr. Trump’s vision for trade. On what he labeled “Liberation Day” last year, Mr. Trump walked into the White House Rose Garden and announced double-digit tariffs on nearly all trading partners, a plan that he claimed would balance out unfair practices in other countries and make trade flows more reciprocal.

Major tariffs in Trump’s second term



E.U. + 15 countries

Forced labor
import bans
60 countries

Note: *A court declared President Trump's 10 percent global tariff illegal on May 7. The administration plans to appeal the ruling. The New York Times

Throughout last year and early into this year, the administration adjusted those rates as it negotiated trade agreements, leaving tariffs on most of the world's countries between 10 and 50 percent.

But that system was demolished in February, when the Supreme Court ruled that Mr. Trump had exceeded his authority in using an international economic emergency law to impose those tariffs.

The Trump administration responded by levying a 10 percent global tariff based on balance of payments issues. That was also struck down by a trade court, though the tariff has been left in place pending appeal. It is set to expire in July regardless, paving the way for the new levies.

The Section 301 investigation on forced labor targets more than 80 countries that together represent more than 99 percent of U.S. imports. In a 98-page report issued Tuesday, the trade representative's office laid out its case on countries varying from Egypt to Canada.

The report said a vast majority of foreign countries had failed to put in place any restrictions against importing goods made with forced labor. It said that Canada, Ecuador, the European Union, Indonesia, Mexico and Pakistan had introduced some laws related to the issue but were failing to adequately enforce them.

The United States is unique in having laws against the trade of goods made with forced labor, though some critics say the Trump administration has not been doing enough to enforce its own forced labor laws. The United States has a nearly century-old ban on imports made with forced, convict or indentured labor, as well as a 2021 law that restricts any imports from Xinjiang, a far-western region of China, unless they can be shown to be free of forced labor.

Trump officials pushed to include a ban on the import of forced labor goods in the U.S.-Mexico-Canada Agreement, which was negotiated during Mr. Trump's first term. And in the past year, the trade agreements the administration negotiated with Argentina, Bangladesh, Cambodia, Ecuador, El Salvador, Guatemala, Indonesia, Malaysia and Taiwan have included commitments to prohibit the import of such goods.

But the Trump administration has issued only a handful of new orders banning imports from specific companies over the use of forced labor. Two of the so-called "withhold release orders" the administration has issued to ban such imports were against companies in Serbia and Mauritius. Neither is included in the list of countries that will be subject to forced labor tariffs.

The report issued by the Trump administration Tuesday also calls out countries like Poland and Spain for importing rice from Burma and tobacco from Malawi that are made with forced labor, but does not impose tariffs on Burma or Malawi.

Some trade analysts said the Trump administration may have chosen a rationale with bipartisan support in an effort to make its tariffs more politically durable. Democrats and labor unions have also fought for tougher rules against forced labor, and could be reluctant to revoke tariffs based on the issue. The strategy also allows the administration to hit nearly all major trading partners with tariffs in one stroke, as no other countries have as advanced laws as the United States does.

Ryan Majerus, a trade lawyer at King & Spalding, said it looked "curious" that new tariff rates were similar to those the administration had imposed before, he added that the brilliance in the solution was that "the forced labor issue is somewhat of concern to everyone." The administration could be sued again for these tariffs, but he thought a court would be unlikely to overturn them.

"It's pretty hard to argue against the notion that countries shouldn't have a forced labor law or that they shouldn't effectively enforce it," he said.

Ana Swanson covers trade and international economics for The Times and is based in Washington. She has been a journalist for more than a decade.