



# Foreign Prohibitions on the Importation of Goods Produced by Prison Labor

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South Africa • United Kingdom

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**FOREIGN PROHIBITIONS ON THE IMPORTATION OF GOODS  
PRODUCED BY PRISON LABOR**

The United States generally prohibits the importation of "[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."<sup>1</sup> However, an exception to that rule provides that its prohibitions do not extend to "goods, wares, articles, or merchandise so mined, produced, or manufactured by forced labor or/and indentured labor which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States."<sup>2</sup>

A survey of the customs and import-export laws of foreign nations indicates that there are only five countries that currently have legislation comparable to 19 U.S.C. § 1307. The foreign states that generally prohibit the importation of goods produced by what they term "prison labor" are the United Kingdom, the Republic of Ireland, Canada, New Zealand, and South Africa.<sup>3</sup> The relevant British and Irish prohibitions do not apply to goods imported for nontrading purposes, but they do apply to all goods of a type that are produced domestically regardless of whether the

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<sup>1</sup> 19 U.S.C. § 1307 (1988) (a photocopy of the section as contained in the *United States Code Annotated* is attached).

<sup>2</sup> *Id.* Article XX of the General Agreement on Tariffs and Trade permits parties to it to prohibit the importation of goods produced by prison labor. (See attached note prepared by Dr. Ivan Sipkov, Chief of the European Law Division.)

<sup>3</sup> See attached country reports. The similar prohibition Australia incorporated in the Customs (Prohibited Imports) Regulations, First Schedule, Items 15 & 16, as found in II *Commonwealth Statutory Rules* 1901-1956, has been repealed.

volume of that domestic production is sufficient to satisfy domestic demand. Canada and New Zealand only qualify their bans against foreign prison-made goods with personal use exceptions; South Africa does not qualify its prohibition in any manner whatsoever. Thus, 19 U.S.C. § 1307 is unique not only in expressly extending to "convict, forced, and indentured labor under penal sanctions,"<sup>4</sup> but also in containing a limited exception respecting domestic consumptive demand.<sup>5</sup>

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<sup>4</sup> In 1979, the Customs Service ruled that merchandise produced on an inmate's own time will not be considered to be encompassed by § 1307 if he or she receives adequate pecuniary benefit and no pecuniary benefit from his or her labor flows to the incarcerating state. Unpublished C.S.D. 710306, Sept. 13, 1979. None of the foreign States surveyed in this report has a prohibition that similarly distinguishes between goods produced voluntarily and involuntarily.

<sup>5</sup> This exception appears to apply only to goods produced by "forced or indentured labor." Goods produced by "convict labor" seem to thus fall under the general prohibition of 19 U.S.C. § 1307.

**CANADA**

Under Schedule VII of Canada's Customs Tariff Act, "goods manufactured or produced wholly or in part by prison labour" cannot be legally imported into Canada unless they fall into a class of exempted goods identified in regulations issued by the Governor in Council.<sup>1</sup> The only such order that has yet been adopted by the federal cabinet in Ottawa exempts "[g]oods manufactured or produced wholly or in part by prison labour . . . when imported" for personal use by a nonresident or a returning resident.<sup>2</sup> Thus, Canada presently qualifies its general ban on the importation of articles manufactured by incarcerated persons in a very limited fashion.

Canada's Custom Tariff Act does not establish penalties for violations of any of its provisions. However, § 155 of that country's Customs Act states that "[n]o person shall, without lawful authority or excuse . . . acquire or dispose of any imported goods in respect of which . . . any . . . Act of Parliament . . . prohibits, controls or regulates [t]heir importation."<sup>3</sup> Violations of this provision are punishable by a maximum fine of \$Can. 25,000 and 5 years imprisonment when the proceedings are commenced by way of an indictment.<sup>4</sup> Violators tried in summary proceedings are liable to a maximum fine of \$Can. 2,000 and 6 months' imprisonment.<sup>5</sup> Section 158 of the Customs Act provides that "[w]here a corporation commits an offense under this Act, any officer,

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<sup>1</sup> Customs Tariff Act, R.S.C. ch. 41, §§ 114 and 138 (3d Supp. 1989) and 1987 Can. Stat. ch. 49, Sched. VII, item 9960 (photocopy enclosed).

<sup>2</sup> Can. Consol. Regs. ch. 542, as amended by 1988 Can. S.O.R. No. 84, para. (g).

<sup>3</sup> Customs Act, R.S.C. ch. 1, § 155 (2d Supp. 1988).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted."<sup>6</sup>

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<sup>6</sup> *Id.* § 158.

**THE GENERAL AGREEMENT ON TARIFFS AND TRADE**

The General Agreement on Tariffs and Trade (GATT),\* established in 1948 as a multilateral agreement which aimed to liberalize world trade and place it on a secure basis, includes in its *Article XX. General Exception*, a provision stating that "nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: . . . (e) relating to the products of prison labour."

Thus, any contracting party to this Agreement may or may not introduce legal treatment of the issue concerning prohibitions or restrictions on the importation of goods produced by prison labour.

In October 1988, there were 96 contracting parties to GATT. For a complete list of the GATT contracting parties, see 1 *The European World Year Book*, 1989 (London, 1989), at 50.

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\* H.F. Van Panhuys, *et al.*, eds., *International Organization and Integration. A Collection of the Texts of Documents*. . . 590 (Deventer, Kluwer, 1968).



**REPUBLIC OF IRELAND**

Under the Foreign Prison-made Goods Act, 1897<sup>1</sup> prison made goods are prohibited from importation into Ireland unless it is proved to the satisfaction of the Commissioners that they are in transit or not imported for trade or are of a type not manufactured in Ireland.

Under the Customs Consolidation Act, 1876, § 177,<sup>2</sup> prohibited goods imported into the country must be forfeited by any officer of the customs. Under § 186 of the same statute, importers of illegal goods are liable to the penalty of treble the value of the goods, or £100.

No amendments of the statutes have been located.

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<sup>1</sup> 60 & 61 Vict. ch. 63. This is a pre-independence British statute which continues to apply in Ireland (*Customs and Excise Tariff of Ireland* xiv (1988)). A copy is attached.

<sup>2</sup> 39 & 40 Vict. ch. 36. The provisions from the statute appear in *The Garda Siochana Guide* 211-215 (5th ed. 1981). A copy is attached.

**NEW ZEALAND**

A list of prohibited imports is contained in the first schedule to New Zealand's Customs Act, 1966.<sup>1</sup> Until November 23, 1983, this schedule encompassed "[g]oods manufactured or produced wholly or in part by prison labour, or within or in connection with any prison, jail, or penitentiary; also goods similar in character to those manufactured or produced in such institutions when sold or offered for sale by any person, firm, or corporation having a contract for the manufacture or production of such articles in such articles in such institutions, or by any agent of such persons, firm, or corporation, or when originally purchased from or transferred by any such contractor."<sup>2</sup> The Customs Acts Amendment (No. 2) Act, 1983 created an exception to this rule by adding the phrase "excluding a bona fide gift made by a prisoner for the personal use of a private individual" after the word "penitentiary."<sup>3</sup> This minor amendment does not substantially qualify New Zealand's broad prohibition on the importation of goods produced by prison or slave labor.

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<sup>1</sup> 2 R.S. 57 (1979).

<sup>2</sup> *Id.* at 211.

<sup>3</sup> § 25, 1983 N.Z. Stat. 474.

The maximum penalty for bringing prohibited imports into New Zealand is the greater of NZ\$1,000 and three times the value of those goods.<sup>4</sup> Prohibited imports are also forfeited.<sup>5</sup>

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<sup>4</sup> Custom Act, 1966, Z.R.S. 57, § 48(10).

<sup>5</sup> *Id.* § 48(11).

**SOUTH AFRICA**

The Customs and Excise Act of South Africa<sup>1</sup> does not provide special penalties for violating the prohibition of importation of prison and penitentiary-made goods. However, under the general penal provisions of the act, a person may be fined up to one thousand *rand* or up to the three times the value of the goods imported in violation, whichever is higher, or imprisonment up to six months, or both. Within three years, if the same offense is committed again, the fine may go up to fifteen hundred *rand* and imprisonment to nine months.<sup>2</sup>

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<sup>1</sup> Act No. 91 of 1964 in *Statutes of the Republic of South Africa Classified and Annotated From 1910-*. 121-1020 (Durban, Butterworth).

<sup>2</sup> *Id.* at 213(2) (photocopy attached).

**UNITED KINGDOM**

Goods manufactured in foreign prisons have long been prohibited from importation into the United Kingdom. The Foreign Prison-Made Goods Act, 1897,<sup>1</sup> a short statute consisting of only one section, applies the prohibition to goods proved to the satisfaction of the Commissioners of Customs to have been made wholly or in part in any foreign prison, gaol, house of correction, or penitentiary. The prohibition does not apply to goods that are in transit, or are not being imported for purposes of trade or are of a description not manufactured in the United Kingdom. In an amendment made by a regulation, prison-made goods originating or in free circulation in another member state of the European Economic Community were removed from the prohibition under the statute.<sup>2</sup> The regulation was introduced in order to ensure compliance with Article 30 of the EEC Treaty prohibiting quantitative restrictions on the import of goods from other member states.

The 1897 statute does not appear to have been applied in any reported decision. A statutory aid in interpreting the application of the Act to goods "in transit" is available under a related statute, the Customs and Excise Management Act, 1979,<sup>3</sup> which imposes general controls on the importation of goods into the United Kingdom. Section 1(1) defines "transit or transshipment" in relation to the entry of goods as "transit through the United Kingdom or

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<sup>1</sup> 60 & 61 Vict. ch. 63.

<sup>2</sup> The Foreign Prison-made Goods Act, 1897 (Amendment) Regulations 1988, S.I. 1988, No. 1772.

<sup>3</sup> Ch. 2.

transshipment with a view to the re-exportation of the goods in question." The section further defines "transit goods" to be "imported goods entered on importation for transit or transshipment."

The 1979 statute also makes provisions concerning offenses arising on the improper importation of goods. Under § 49, any goods that are imported contrary to any prohibition under any enactment are liable to forfeiture. Further, under § 50, the penalty for the improper importation of goods on summary conviction (i.e., on trial without a jury) is a prescribed sum or three times the value of the goods, whichever is higher, and/or imprisonment for a term not exceeding six months. On conviction on indictment (i.e. in a trial before a jury) the penalty may be imposed in any amount, and/or imprisonment for a term not exceeding two years.

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