

# Prison Labor

*Prison Labor is “work that is performed by incarcerated and detained people”.*

– [Freedom United](#)

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It is not uncommon for prisons to have “work programs” where those incarcerated work and perform duties, like laundry or maintenance, within the institution. While not all prison labor is forced labor, there are inherent risks of modern slavery that come with the power imbalance and confinement inherent to prisons. In addition, prisoners often have little to no ability to directly voice concerns or grievances to the companies utilizing prison labor. Without the ability to call attention to abuses behind bars, prisoners are at higher risk of exploitation.

*“A company engaging prison labour should ensure that, if a prisoner refuses the work offered, there is no menace of any penalty, such as loss of privileges or an unfavourable assessment of behaviour which could jeopardize any reduction in his or her sentence.”* – [International Labour Organization](#) (ILO)

Not all prison labor programs are exploitative, but in order for them to be considered responsible or at-will, those being enrolled in them should do so voluntarily (i.e., give free consent). If there is any threat of punishment or coercion, prison labor becomes exploitative. The ILO also [lists indicators](#) that, if absent, could point to forced labor. These indicators include consent forms with rates and explanations of work, wages, and hours comparable to those of free workers, proper safety and health measures, and the right to revoke consent to work at any time. These factors must all be considered together when determining if prison laborers are working voluntarily. In summary, companies must verify and monitor that the ILO provisions are being met within a prison work program.

The line between voluntary prison labor and forced prison labor is difficult to define and concrete legal protections for incarcerated and detained people are lacking. While the ILO requires [free consent by prisoners to work](#), Article 2 of the ILO [Forced Labor Convention 1930](#) also states “forced or compulsory labor shall not include”... any work or service exacted from any person as a consequence of a conviction in a court of law”. This statement establishes that prison labor is legally justifiable if those being exploited have been convicted of a crime. The [13th Amendment](#) of the United States’ Constitution echoes the ILO’s statement, defining slavery or involuntary servitude to be legal, “as a punishment for crime

whereof the party shall have been duly convicted.” The 13th Amendment does not include a stipulation for a prisoner’s free consent to work.

## Can consent really be given by a prisoner?

Under American [federal regulation](#), due to their diminished autonomy, prisoners are considered a vulnerable population and their ability to make informed and voluntary decisions is considered compromised. There are ongoing discussions around the possibility of prisoners giving informed/free consent; the majority of these conversations revolve around [the ethics of biomedical research on prisoners](#). The two requirements, under American law, to establish informed consent are “information and voluntariness.” Voluntariness demands that the person consenting must be able to exercise free power of choice without any element of force or coercion. As prisoners are involuntarily confined, it can be challenging to verify free consent.

## Prison labor and seafood

Recently, attention has been drawn to seafood raised and processed by prison laborers. While most situations of prison labor are not illegal, [UN guidelines](#) regarding the use of prison labor are not always followed, which may cause abusive or exploitative situations. The following case studies illustrate the complicated nature of utilizing prison labor in seafood.

### In the U.S.

[Colorado Correctional Institute \(CCI\)](#) has a large and varied prison work program. Prison laborers do jobs that range from sewing garments to rearing livestock. CCI also has an aquaculture program that uses prison labor to farm tilapia, trout, and other seafood. U.S farm-raised tilapia and trout are generally regarded as sustainably produced environmentally. However, companies should consider that environmental sustainability and social responsibility are measured separately. An environmentally sustainable product may not meet aspects of social responsibility, and vice versa.

Companies face increasing pressure from consumers, governments, and NGOs to be proactive about transparency in seafood supply chains. For example, in 2015, several food products from CCI including tilapia were [found in the supply chain of Whole Foods](#). The tilapia labeling and packaging did not reveal that the fish had been farmed by incarcerated laborers, indicating a larger transparency issue. In fact, most products exported from prisons are not labeled for consumers with their points of origin. In the case of CCI, the prison partners with companies who buy their fish then process, prepare, and repackage the product under the companies’ own brands. Therefore, although when the fish leaves CCI, it may be labeled as coming from a prison, by the time it gets to the retailer, point of origin information is no longer available. When the connection to CCI became public, consumers demanded that Whole Foods pull those products from the shelves and halt the practice of sourcing food produced with prison labor. Whole Foods responded with a commitment to do so.

[Seattle Fish Co.](#), a sustainable distributor, also sources its rainbow trout from CCI. They practice transparency in their supply chains and openly share that this fish is raised using prison labor. The brand believes that, by sourcing from the prison, they are supporting a positive rehabilitation program as [prison work may contribute to lower rates of recidivism](#). With complete transparency, they then leave it to their buyers to decide whether or not to purchase the product and support prison labor programs.

## In Thailand

As of February 2021, the Department of Corrections and the Industrial Estate Authority of Thailand released a [policy proposal](#) to invest in vocational training for inmates. The proposed program would hire inmates to work on labor-intensive jobs like agriculture processing, furniture assembly, handicrafts, rubber collection, and metal work. It also includes a push for prisoners to work in the processing of seafood with the intent that prisoners might secure similar jobs once they are released. The Thai government believes that successful prisoner training programs may reduce the country's dependence on migrant workers.

In 2015, the Thai government planned to recruit prisoners to fill the labor shortage on fishing vessels. This plan posed great risk to the prison laborers as the Thai fishing fleet already had high risk for exploitation. As prisoners, the fishers would have even less agency and fewer protections and would be further at risk for forced labor and other human rights abuses. The Thai government rescinded that plan after the [International Labor Rights Forum](#), and other civil society organizations (including [FishWise](#)) condemned the project.

## Industry actions regarding prison labor

### Map Supply Chains

Sourcing goods from prison work programs creates reputational risk for a company. Prison labor is not often supported by consumers and can be a controversial topic. When it was revealed that Whole Foods was sourcing goods from CCI, there were calls to boycott Whole Foods and demands to stop selling all goods made with prison labor.

Prison labor also poses legal risk for business. Federal trade bans may be enacted against countries or regions known to use forced labor. Trade holds, such as [Withhold Release Orders \(WRO\)](#), may also be issued against specific companies or regions known to use forced labor and exploitative practices in prisons. If a business is not aware of the country and company of origin of a product, they run the risk of violating federal trade laws. While a business may not be buying directly from companies on the WRO list, their suppliers may still be sourcing from them, putting the business at risk of violating federal law.

Businesses should adequately map their supply chains and prioritize transparency in order to assure consumers, governments, and other stakeholders that their products are free from exploitation.

## ILO Guidance

Due to the uncertainty surrounding informed/free consent and voluntary prison work, it is difficult to guarantee that businesses that engage with prison labor have supply chains free of exploitation. Meeting all the safeguards outlined by the ILO, including those below, require thorough investigation, financial resources, and capacity.

Following are the ILO [recommendations to businesses](#) that chose to utilize prison labor within their supply chains:

1. Businesses should verify if suppliers use any form of prison labor, and, if so, that prison laborers are freely consenting without coercion or threat of penalty.
2. Businesses should observe the conditions of prison work programs to guarantee that prison laborers:
  - a. Are working under the same conditions as a free labor arrangement.
  - b. Have access to similar wages and the same occupational health and safety standards as a free laborer doing the same work.
3. Businesses should take action and establish methods for engaging directly with prison laborers to verify that they are working freely and voluntarily. Important to note: The privacy and anonymity of prisoners volunteering information should remain confidential in all such activities.
4. Businesses should assess the occupational health and safety of prison work programs by conducting active inspections.
5. Businesses should speak directly with suppliers to review prison labor contracts, practice, and policy and:
  - a. Ensure that prisoners do not suffer loss of privileges if employers have reduced work.
  - b. Review wage records to ensure wages are comparable to those of free laborers.