

Alert | International Trade



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Focus on Forced Labor for Imported Products

“CBP will not tolerate modern slavery in U.S. commerce...We expect every U.S. importer to ensure that its supply chains are free of forced labor” (Brenda Smith, Executive Assistant Commissioner, U.S. Customs and Border Protection, October 2020).

Importers are on notice that they must ensure imports are free of forced, indentured, child, or convict labor (forced labor). To protect their brand and integrity of their supply chains, importers must vigorously tackle the issue of forced labor and expend effort to ensure the strength of internal controls and visibility into its supply chain, including component sourcing. Importers must prepare for increased enforcement by U.S. Customs and Border Protection (CBP) for goods from all countries, and in particular from China, Southeast Asia, and Africa. Additionally, both CBP and Congress have focused on goods from China’s Xinjiang Uyghur Autonomous Region (XUAR).

Recently, CBP significantly increased enforcement of the import prohibition on goods made from forced labor, including issuing a “finding” of forced labor, the first since 1996, its first civil penalty, and additional withhold release orders (WROs) on the importation of specific products. In fact, in 2020 CBP issued 13 WROs, which are promulgated when CBP has reason to believe that the imported products are made with forced labor.

CBP’s authority stems from 19 USC §1307: “All 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.” Such merchandise is subject to seizure,

exclusion, and criminal investigation of the importer. Section 1307 not only covers finished goods, but also “goods...in part.” Therefore, it covers inputs as well.

More detentions and penalties are expected from CBP. Importers should review supply chains and internal controls, do risk assessments and onsite visits, ensure all suppliers adhere to a code of conduct including provisions on forced labor, and edit customer agreements to protect against late or missed delivery. The importance of third-party audits to confirm compliance with forced labor or social responsibility programs cannot be overstated. Importers are advised to review component sourcing and the specifics of their supply chains to determine how far down the supply chain they need to investigate.

Congress has also increasingly focused on the issue of imports made with forced labor impacting private and public companies. The Uyghur Forced Labor Prevention Act, which was recently overwhelmingly passed by the House of Representatives with bipartisan support, states that all goods produced, even in part, in Xinjiang, will be deemed to be goods made by forced labor, and banned from import, unless the CBP commissioner “determines, by clear and convincing evidence, that any specific goods, wares, articles, or merchandise [from Xinjiang were] not produce[d] wholly or in part by convict labor, forced labor or indentured labor under penal sanctions.” The Uyghur Forced Labor Disclosure Act requires public companies to disclose imports of manufactured goods and materials that originate or are sourced from Xinjiang. The Disclosure Act was also passed by the House but does not have bipartisan support. At this time, it is unclear when either bill will be passed by Congress and signed by the president, but the Prevention Act will go into effect 120 days and the Disclosure Act 180 days after enactment. Accordingly, timetables are short; importers are advised to prepare so that they are fully compliant if and when implementation takes effect.

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