

Alert | International Trade



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Update 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).

Beginning Jan. 13, 2021, U.S. Customs and Border Protection (CBP) will detain all tomato and cotton products from China’s Xinjiang Uyghur Autonomous Region (XUAR). CBP identified the following **forced labor indicators**: debt bondage, restriction of movement, isolation, intimidation and threats, withholding of wages, and abusive living and working conditions. CBP has significantly increased enforcement of the import prohibition on goods made from forced labor, including issuing withhold release orders (WROs) on the importation of specific products. In 2020 CBP issued 13 WROs, which are promulgated when CBP has reason to believe that the imported products are made with forced labor. Demonstrating the unprecedented enforcement trend, the 13 WROs were more than the previous four years combined. CBP also detained 90 shipments between Oct. 1 and Dec. 31, due to the possibility of products made by forced labor. So far in 2021 CBP has already issued four WROs. CBP’s authority stems from 19 USC §1307, which not only covers finished goods, but also “goods...in part.” Therefore, the statute covers inputs as well.

The US. Department of Labor’s (DOL) Office of Child Labor, Forced Labor, and Human Trafficking (OCFT) in the Bureau of International Labor Affairs (ILAB) works to eradicate labor abuses, and coordinates closely with the United Nations’ International Labor Organization (ILO) on these and related matters. The DOL recently released reports on international child labor and forced labor that highlight China’s labor abuses. The DOL’s latest **List of Goods Produced by Child Labor or Forced Labor**, as

required by the Trafficking Victims Protection Reauthorization Act of 2005, contains 155 goods from 77 countries that the DOL believes are made using forced labor in violation of international standards.

Importers and transnational employers are on notice that they must ensure their supply chains, global operations, and products are free of forced, indentured, child, or convict labor. To protect their brands 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 their supply chains, including component sourcing. Importers must prepare for increased enforcement by CBP for goods from all countries, and in particular from China, Southeast Asia, and Africa.

More detentions and penalties may be forthcoming from CBP. Importers must know their supply chains and ensure robust internal controls, including conducting risk assessments and taking preventive measures, ensuring all suppliers receive and adhere to an effective code of conduct including provisions on forced labor, and editing 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 reintroduced in the new Congress 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 Act also calls for a public hearing and the administration to develop a strategy for CBP to identify goods made in Xinjiang and to enhance its enforcement to stop goods made with forced labor from entering the United States. The Act will go into effect 120 days after enactment. Accordingly, importers are advised to review supply chains and internal controls to ensure their merchandise and components of their imported products are not made with forced labor. Finally, importers also should prepare for the contingency that CBP will in fact determine that the importer has not established that the goods were not made with forced labor and thus denies admittance to their merchandise.

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