

UPS Brokerage Customer Alert: Withhold Release Order for Cotton and Tomato Products



Background

Effective January 13, 2021, U.S. Customs and Border Protection (CBP) issued a Withhold Release Order (WRO) for imports into the United States of cotton and tomato products (and their downstream products) produced in the Xinjiang Uyghur Autonomous Region (“XUAR”) of China based on information that reasonably indicates the use of detainee or prison labor and situations of forced labor. CBP noted that its investigation reasonably indicates the presence of the following forced labor indicators: debt bondage, restriction of movement, isolation, intimidation and threats, withholding of wages, and abusive living and working conditions. This new WRO follows numerous other WROs that CBP issued targeting specific companies in the XUAR and state entities, such as Xinjiang Production and Construction Corps (“XPCC”) and its affiliates. The legal authority for CBP to issue a WRO is based on the “forced labor” statute, 19 U.S.C. § 1307, and its implementing regulations – 19 C.F.R. § 12.42(e). The WRO also follows enforcement actions of other Departments and agencies targeting alleged human rights abuses in the XUAR, including by the Department of Commerce and The Office of Foreign Assets Control. The WRO comes on the heels of intense Congressional and public attention on the XUAR.

What does this WRO include?

This WRO directs CBP personnel at all U.S. ports of entry to detain cotton products and tomato products grown or produced in the XUAR – regardless of which entity or farm produced them. Because of the statute – which prohibits the entry of goods made with forced labor, in whole or in part, the WRO will potentially embrace cotton or tomato products that are manufactured outside of the XUAR, provided that cotton or tomato inputs (e.g., cotton fibers and tomatoes) originate in the XUAR. These products include apparel, textiles and footwear made with cotton, tomato seeds, canned tomatoes, tomato sauce, ketchup and any other goods made with cotton or tomatoes. The WRO is unique in that it effectively operates as a regional wide ban on classes of products, rather than those that focus on companies or entities.

When is the order effective?

The order is effective January 13, 2021 at all U.S. ports of entry.

Who must ensure compliance?

CBP has insisted that importers of record and other parties causing the introduction of goods into the United States are responsible for ensuring that their imported products are not made in whole or in part with proscribed forced labor. As a consequence, under the WRO, importers of record and their supply chain partners, in order to demonstrate admissibility to CBP, should ensure that cotton or tomato products are not manufactured or grown, at any stage of production or harvesting, with forced labor.

How will CBP enforce this new WRO?

CBP will no doubt increase detentions of cotton and tomato products at U.S. ports of entry. Importers will have an opportunity to demonstrate that the products are not made with forced labor or can even export them under a WRO. For any allegations of intentional and knowing

violations, however, CBP has recently shown that it can deploy significant penalty authority. As noted, CBP expects importers to police supply chains and to root out any proscribed forced labor. Audits, third party validations and certifications, as well as rigorous codes of conduct, are some of the key elements in eliminating the risk, although it is difficult when suppliers in the XUAR may be five or six tiers removed in the supply chain. Eventually, new technologies may provide assistance. In an online press conference, Mr. Mark Morgan, CBP Acting Commissioner has stated, "CBP is working on new technologies to address enforcement challenges including the use of a new 'pollen technology that has come out'". Brenda Smith, CBP Executive Assistant Commissioner - Office of Trade, stated the agency is also employing artificial intelligence and link analysis, "as well as other technological capabilities that will help us to test origin."

What steps should my company take?

UPS recommends customers first review material CBP makes available on its website (links below) and to understand their supply chains. Second, customers should also review the inter-agency Xinjiang Supply Chain Business Advisory dated July 1, 2020, which highlights risks and considerations for businesses with exposure to the XUAR. Finally, customers should consult with a customs attorney or supply chain consultant on other steps they can take to avoid impact and protect their supply chain from forced labor.

CBP Resources

Link to CBP Announcement: [CBP Issues Region-Wide Withhold Release Order on Products Made by Slave Labor in Xinjiang | U.S. Customs and Border Protection](#)

- [Forced Labor Process Map](#)
- [CBP Responsible Business Practices on Forced Labor](#)
- [Forced Labor Frequently Asked Questions](#)
- [Forced Labor Resource Page](#)
- [Xinjiang Supply Chain Business Advisory](#)

Best Regards,
UPS Customs Brokerage