



## Global Trade Advisory Alert

### US Customs and Border Protection increases its focus on investigating and enforcing US restrictions on the use of forced labor

On 14 September 2020, as part of its increasing focus on the issue of forced labor, US Customs and Border Protection (CBP) issued five Withhold Release Orders (WROs) on goods it alleges were produced with forced labor in violation of 19 USC § 1307. This statute, commonly referred to as the “Forced Labor Ban,” prohibits the importation of goods into the US that are mined, manufactured, or produced using any form of forced, convict, or indentured labor. The five WROs issued targeted certain hair, apparel, cotton, and computer products from China.

Inclusive of these five WROs, CBP has now taken enforcement actions under the Forced Labor Ban 25 times since 2016, when it began increasing its enforcement of this law. CBP has also messaged its intentions to continue ramping up its enforcement activities in this area during the CBP Virtual Trade Week session it presented on 9 September 2020.

## Background on the Forced Labor Ban

The US enforces the Forced Labor Ban primarily through two mechanisms: penalties and WROs, as further described below.

- Penalties can target specific actors associated with imports of prohibited goods. They can be assessed against importers of forced-labor-tainted goods, those who assist with or facilitate their importation, and those who transport or store the goods after importation.
- WROs can result in one or multiple suspect shipments being detained. Issuance of a WRO means CBP presumes that an entire class of goods is produced with prohibited labor. Such goods will be automatically detained. Also, WROs put the burden of proof on the importer to establish that its goods were not produced with prohibited labor.

Prior to 2016, CBP did not issue many WROs or prioritize enforcement of the Forced Labor Ban, but recent developments show that the agency has changed course since the US Congress eliminated the “consumptive demand exception,” a feature of the law that had previously made the Forced Labor Ban difficult to enforce. Following this change to the law, CBP, in 2017, established a permanent Forced Labor Division with its own dedicated staff and budget, and the Forced Labor Division has since issued numerous WROs, as noted above. Further, in August 2020, CBP collected its first forced-labor civil penalty amounting to \$575,000.

In addition to the change in the law, several other factors also seem to have contributed to increased enforcement in this area. Specifically, CBP is now required to annually report its forced labor enforcement statistics to Congress. Members of Congress are also asking CBP to issue more WROs. For example, several Congresspersons have demanded in open letters that CBP issue WROs on cocoa from the Ivory Coast and on all goods from Xinjiang, China. Further, the Congress has recently introduced several bills that, if passed, may result in CBP’s issuance of more forced labor penalties and WROs. Finally, this area has also attracted the attention of various human rights organizations that have demanded the enforcement of this law.

For these reasons, potentially impacted companies should consider reviewing and enhancing their import compliance programs to adequately address growing forced labor risks.

### How we can help

Deloitte’s Global Trade Advisory specialists are part of a global network of professionals who can provide specialized assistance to companies in global trade matters. Our professionals can help companies seeking to manage the impacts and potential impacts of the developments described above by:

- Helping companies develop their strategies for managing forced labor risks;
- Providing on-the-ground specialists in foreign locations in support of self-investigations;
- Reviewing supply chain structures along with trade compliance policies and processes to determine whether they adequately address forced labor risks;
- Designing processes to screen and investigate third parties for the forced labor indicators being monitored by CBP; and

- Monitoring news reports, legislation, and enforcement actions for emerging forced labor risks.

**For more information, contact:**

**United States**

Kristine Dozier  
[kdozier@deloitte.com](mailto:kdozier@deloitte.com)

Helen Cousineau  
[hcousineau@deloitte.com](mailto:hcousineau@deloitte.com)

Suzanne Kao  
[skao@deloitte.com](mailto:skao@deloitte.com)

Pablo Lecour  
[pablolecour@deloitte.com](mailto:pablolecour@deloitte.com)

**Global/Americas**

Kristine Dozier  
[kdozier@deloitte.com](mailto:kdozier@deloitte.com)

**EMEA**

Johan Hollebeek  
[jhollebeek@deloitte.nl](mailto:jhollebeek@deloitte.nl)

**Asia-Pacific**

Meng Yew Wong  
[mewong@deloitte.com](mailto:mewong@deloitte.com)



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