



International Trade & Regulatory ADVISORY ■

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U.S. Customs Doesn't Cotton to XPCC's Use of Forced Labor

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U.S. Customs and Border Protection (CBP) recently took two broad actions to prevent U.S. imports of goods made with forced labor.

XPCC WRO

CBP announced on December 2, 2020 a withhold release order (WRO) on all cotton produced by, and all products made in whole or in part of cotton produced by, Xinjiang Production and Construction Corporation (XPCC) or its subsidiaries or affiliates.

This WRO aligns with sanctions imposed on XPCC by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC), which have prohibited any financial nexus with XPCC since July 31, 2020, and any wind down transactions since November 30, 2020. The WRO presents similar, but also additional, compliance challenges. First, like the OFAC sanctions, the WRO requires importers to determine whether companies are related to XPCC, and this may not always be clear even for companies an importer deals with directly.

But, second, importers of yarns, fabrics, and finished apparel and textile articles rarely deal directly with the harvesters of the cotton fiber. Cotton fibers are often mixed, and fiber may pass through numerous intermediaries from ginning to combing to spinning to dyeing to knitting or weaving to cutting and sewing to finishing or printing or packaging. Companies seeking to trace cotton fiber to its source increasingly benefit from certification programs and supply chain software, but the task may be difficult or impossible for many importers.

Moreover, XPCC and its related companies may produce about 7% of the world's cotton, but news sources estimate XPCC is responsible for only 15% to 33% of the cotton from the Xinjiang region. So simply tracing cotton to the Xinjiang region may be overbroad (and it is for this reason that many companies and industry groups oppose the region-wide WRO that CBP says it is still considering), but XPCC subsidiaries and affiliates are so numerous that identifying all the individual entities covered by the WRO may also be difficult.

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Importers should ensure they are not sourcing directly or indirectly from XPCC companies. New CBP questionnaires (or preparing to receive them) may aid in this process. If CBP does withhold a shipment pursuant to this WRO, the importer has three months to reexport the goods or to provide CBP with a certificate of origin and proof that the subject merchandise was not produced with forced labor. If CBP does not determine that the proof establishes admissibility of the merchandise, CBP will seize the goods.

RASA Questionnaires

Importers are also getting a preview of how CBP may approach questions of tracing and internal controls. CBP has recently started issuing Risk Analysis and Survey Assessment (RASA) Questionnaires about possible forced labor in the production of imports containing cotton from China.

The questionnaires have two parts – a Procedural Questionnaire and a Transactional Questionnaire. The Procedural Questionnaire asks the company to describe its supply chain and the labor used at each step, to describe its corporate social responsibility procedures and its controls on forced labor, and to provide evidence of its risk assessments and internal controls. The Transactional Questionnaire is entry-specific and asks the importer to map its supply chain all the way from cultivation or extraction of raw materials to the export shipment to the United States, and to provide commercial and production documents, including certificates of origin or manufacturers' affidavits.

The questionnaires are very detailed and, more importantly, request information that may be difficult or impossible for recipients to obtain. Providing information that is unclear, contradictory, or unverifiable may lead to follow-up questions or other unfavorable action by CBP.

Importers of goods containing cotton – especially if the goods or the cotton are of Chinese origin – may therefore want to prepare now to respond to questionnaires by ensuring their compliance procedures and manuals are up to date, that they have implemented CBP's best practices for preventing forced labor, and that they have as much visibility as possible into their supply chains. Given the current level of attention to cotton products, these importers may want to ask suppliers for more than general assurances that they do not employ forced labor or allow it in their own supply chains. Importers may want to self-audit sample entries and seek more specific production records, certificates of origin, and manufacturers' affidavits.

We are available to answer questions about the WRO or the questionnaires and to provide more specific guidance for establishing internal controls or responding to CBP inquiries.

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