

## CBP Issues Region-Wide Ban on Xinjiang Cotton and Tomato Products

January 15, 2021

### Key Points

- CBP has issued a “region-wide” WRO on cotton and tomato products “grown or produced” by entities “operating in” the XUAR. In a press release, CBP states that the order covers “apparel, textiles, tomato seeds, canned tomatoes, tomato sauce, and other goods made with cotton and tomatoes.” Unless or until the agency clarifies the scope of the order, and consistent with the underlying statute, importers should anticipate that CBP will enforce the WRO broadly to any imported cotton or tomato product that was sourced, produced, refined, or manufactured, in whole or in part, in the Xinjiang region or by companies that operate in XUAR.
- This action follows months of increased scrutiny by Congress, the executive branch and NGOs on labor conditions in the XUAR, including numerous other XUAR-related WROs issued in 2019 and 2020. This latest action will have significant economic and compliance implications for companies in global cotton and tomato supply chains, and the apparel industry in particular given China’s critical role in the cotton industry.
- Importers and their suppliers, especially those with links to China and materials or labor from the XUAR, should expect increased scrutiny of their supply chains and be prepared to answer detailed questions about the provenance and production of their imported goods. Importers of record should also take special care to understand supply chain due diligence standards and the mechanics of forced labor investigations, and to reinforce compliance programs consistent with CBP’s forced labor enforcement guidelines.
- It will be critical in the near- and mid-term for those in the cotton and tomato industries to work with CBP to clarify the scope of the order and identify potentially affected products. Importers will also need to closely follow any immediate reactions or policy statements from the incoming Biden administration with respect to scope and enforcement.

### Introduction and Background

On January 13, 2021, the Department of Homeland Security and U.S. Customs and Border Protection agency (CBP) announced a long anticipated Withhold Release

### Contact Information

**Akin Gump has extensive experience advising importers and their affiliates and suppliers throughout the supply chain and at each stage of the forced labor investigation and adjudication process. If you have questions about this alert or would like more information, please contact:**

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Order (WRO) against cotton products and tomato products produced in the Xinjiang Uyghur Autonomous Region (XUAR), citing indications of the use of detainee or prison labor and situations of forced labor. [CBP Issues Region-Wide Withhold Release Order on Products Made by Slave Labor in Xinjiang](#) (Jan. 13, 2021). According to a press release, CBP will direct personnel at all U.S. ports of entry to “detain cotton products and tomato products grown or produced by entities operating in [the XUAR].” The release states that the WRO covers “apparel, textiles, tomato seeds, canned tomatoes, tomato sauce, and other goods made with cotton and tomatoes.”

As we described in earlier publications in [March](#) and [July](#) 2020, this action follows more than a year of increased scrutiny by Congress, the executive branch and non-governmental organizations (NGOs) on labor conditions in the XUAR, including numerous other XUAR-related WROs issued in 2020. CBP, [Withhold Release Orders and Findings](#).

## Scope and Related Authorities

Historically, CBP has not issued detailed text to accompany WROs, and it is unclear whether or when it might take additional steps to clarify the scope of this new WRO. This challenge is exacerbated by the agency’s issuance of an order of this magnitude only one week before the incoming Biden administration takes responsibility for its application and enforcement. In the meantime, importers and their suppliers can look to the underlying statutory and regulatory authorities for guidance on how to interpret and apply the order.

The foundational authority for regulating imports of goods produced from forced labor is Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) (see our earlier [Client Alert on Section 307](#)). This law prohibits the importation of “[a]ll goods, wares, articles, and merchandise mined, produced, or **manufactured wholly or in part** in any foreign country by convict labor[,] forced labor[, or] indentured labor,” which includes forced or indentured child labor. [Emphasis added.] Merchandise subject to a WRO is subject to exclusion and may not be released from CBP custody without an importer demonstrating that merchandise is not made with proscribed forced labor. The entry and release into commerce of merchandise without validation that goods such as cotton and tomato products are not made with forced labor may lead to civil or criminal investigation of the importer and other parties involved in the import transaction—and the imposition of civil or criminal penalties (e.g., 19 U.S.C. § 1592 (penalties for fraud, gross negligence or negligence), 19 U.S.C. § 1595a(b) (penalties for importations contrary to law) and 18 U.S.C. § 545 (smuggling goods in the United States)).

With that background, importers and their suppliers should anticipate attempts by CBP to apply the order broadly to **any** imported product that incorporates cotton fibers or tomato ingredients that are sourced, cultivated, refined, manufactured or otherwise produced, in whole **or in part**, in the Xinjiang region or by companies operating in the XUAR. In other words, CBP will likely enforce the WRO with respect to any good that has any cotton fibers or tomato ingredient originating in the XUAR, regardless of the country of origin. Notably, while CBP’s press release states the order applies to goods produced by entities “operating in Xinjiang,” CBP, the Trump administration, the NGO community and Congress have also expressed concern about goods produced by individuals **from** Xinjiang used to produce goods elsewhere in China under forced labor conditions (i.e., outside of the XUAR. Akin Gump, [U.S. Agencies Issue Business Advisory Warning of Xinjiang-Related Supply Chain Exposure and OFAC Imposes](#)

**Blocking Sanctions on Chinese Persons Related to Human Rights Abuse in Xinjiang** (July 9 2020)). Accordingly, importers should be alert to the possibility that CBP attempts to apply the order to goods produced from the labor of individuals working outside of the Xinjiang region but in connection with “entities operating in” Xinjiang.

## **Enforcement**

In practical effect, this latest WRO creates a rebuttable presumption that cotton and tomato products with a nexus to Xinjiang are the product of forced or otherwise prohibited labor and are, as a result, inadmissible into the United States. Assuming CBP proceeds with enforcement consistent with its standard WRO process (see our detailed description here), importers of record can expect the agency and personnel at U.S. ports of entry to begin detaining presumptively covered merchandise.

In the event an importer or record’s goods are detained at a port of entry, importers may export the detained goods or contest the order. To obtain release of such shipments, the importer must submit within three months of the importation a certificate of origin and a “detailed statement... e.g., a supply chain audit report” demonstrating the subject merchandise was not produced using forced labor.

Depending on the outcome of this submission, CBP will then either release or exclude (i.e., reject entry of) the detained goods. Ultimately, if as a result of this process CBP finds probable cause to believe the goods were produced using forced labor and thus subject to the provisions of Section 307, it will publish a formal finding in the Customs Bulletin and in the Federal Register accordingly. WROs and findings remain in effect until revoked, but may be revoked or modified if evidence shows the merchandise at issue “was not made with forced labor, is no longer being produced with forced labor, or is no longer being, or likely to be, imported into the U.S.”

Importers facing a detention order should take note of CBP’s unorthodox identification in its press release on the WRO of specific “forced labor indicators” that it identified in the course of its cotton and tomato investigations. These “indicators” include “debt bondage, restriction of movement, isolation, intimidation and threats, withholding of wages, and abusive living and working conditions.” In light of these identifications, importers should attempt, if possible, to provide specific evidence rebutting the presence of these conditions in their supply chains and with respect to the detained goods in question. Importers should also be aware that CBP’s Regulatory Audit division has issued specific requests for information and guidance on forced labor in the form of Risk Analysis and Survey Assessments (RASAs), which may come to serve as an effective “roadmap” for compliance and the framework through which CBP will evaluate evidence and release detained merchandise.

In the coming weeks and months, it will be critical for importers of record and their suppliers in the cotton and tomato industries to engage with CBP and Port Directors to clarify the scope of the order and identify the agency’s enforcement priorities.

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