

## A Review of CBP Actions on Forced Labor in 2020 and Outlook for 2021

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Withhold Release Orders (“WROs”) are a key part of Customs and Border Protection’s (“CBP”) efforts to [enforce the Tariff Act](#), which prohibits the importation of merchandise mined, produced or manufactured, wholly or in part, by forced labor, including prison labor. [CBP issues WROs](#) upon evidence that reasonably – but not conclusively – indicates that a product is made with forced labor. After issuance, such products are blocked from entering the U.S. Since the repeal in 2016 of the “[consumptive demand](#)” clause of the Tariff Act, which previously allowed goods made with forced labor to enter the U.S. if they were needed to meet supply demands, WRO issuance has increased exponentially.

WRO activity in 2020 focused on products originating in China, a trend that has continued into 2021. Of the 15 WROs issued in 2020, nine involve products originating from China, with the majority involving products originating from the Xinjiang region, where Uighurs and other ethnic minorities are subjected to mass detention, arbitrary surveillance, and other human rights abuses. The six other WROs target rubber gloves and palm oil from producers in Malaysia (3 WROs) and seafood from Taiwanese-affiliated fishing vessels (3 WROs). Cotton, seafood, palm oil, apparel and hair products were among the products most commonly subject to WROs in 2020.

On January 13, 2021, CBP issued a WRO [on all cotton and tomato products produced in Xinjiang](#), including all downstream goods made with these products. This follows a July 2020 [State Department advisory](#) warning businesses of the risk of forced labor in Xinjiang and an earlier WRO issued in November 2020 on all cotton products made by the massive Xinjiang Production and Construction Corps (“XPCC”). While WROs generally target a specific producer or manufacturer, the January 2021 Xinjiang WRO applies to an entire region in China. There are other territory-based WROs currently in effect, including all cotton from Turkmenistan and tobacco from Malawi, although as described below, certain tobacco producers were excluded from the WRO in 2020.

A complete list of all CBP actions related to forced labor are [available here](#). The WROs issued in 2020 are listed below:

### China:

1. 5/1/2020: Hair products produced by Hetian Haolin Hair Accessories Co., Ltd.
2. 6/17/2020: Hair products produced by Lop County Meixin Hair Products Co., Ltd.
3. 8/11/2020: Garments produced by Hero Vast Group.
4. 8/25/2020: Hair products produced by Lop County Hair Product Industrial Park.
5. 8/25/2020: Products made with labor from No. 4 Vocation Skills Education Training Center (VSETC).
6. 9/3/2020: Apparel produced by Yili Zhuowan Garment Manufacturing Co., Ltd. and Baoding LYSZD Trade and Business Co., Ltd.
7. 9/8/2020: Cotton and processed cotton produced by Xinjiang Junggar Cotton and Linen Co., Ltd.
8. 9/8/2020: Computer parts produced by Hefei Bitland Information Technology Co., Ltd.
9. 11/30/2020: Cotton and cotton products produced by XPCC and its subordinate and affiliated entities.

### Malaysia:

1. 7/15/2020: Disposable gloves produced by Top Glove Sdn Bhd and TG Medical Sdn Bhd.
2. 9/30/2020: Palm oil & palm oil products produced by FGV Holdings Berhad and its subsidiaries and joint ventures.

3. 12/30/2020: Palm oil & palm oil products produced by Sime Darby Plantation Berhad and its subsidiaries and joint ventures.

#### Taiwan-Affiliated Fishing Vessels:

1. 5/11/2020: Seafood from the fishing vessel Yu Long No. 2.
2. 8/18/2020: Seafood from the fishing vessel Da Wang.
3. 12/31/2020: Seafood from the fishing vessel Lien Yi Hsing No. 12.

In addition to the above WROs, on October 20, 2020, CBP issued its first [finding of forced labor since 1996](#) on stevia extracts and derivatives produced in China by Inner Mongolia Hengzheng Group Baoanzhao Agriculture, Industry, and Trade Co., Ltd. A finding is issued when CBP determines that, as a result of its investigation following the initial WRO, products made with forced labor are being imported into the U.S. As a result, such products are then seized at ports of entry to the U.S. and subject to forfeiture proceedings. The WRO that preceded the finding of forced labor was issued four years earlier and CBP's investigation was initiated by an allegation of forced labor received from a non-governmental organization.

WROs can also be revoked or revised. [As previously reported](#), on December 4, 2020, a WRO on bone black charcoal produced in Brazil by Bonechar Carvao Ativado Do Brasil Ltda ("Bonechar") was revised to allow Bonechar's products to enter the U.S. based on information addressing the International Labour Organization's [indicators of forced labor](#). Earlier, on March 24, 2020, a WRO applying to disposable rubber gloves made by WRP Asia Pacific Sdn. Bhd. in Malaysia [was revoked by CBP](#) as a result of "close, continuous communication between CBP and WRP Asia Pacific Sdn. Bhd to address concerns over working conditions and adherence to the International Labour Organization's labor standards."

While there is currently a WRO in effect from November 1, 2019, applying to all tobacco produced in Malawi, the WRO was revised on [June 3, 2020](#), and again on [August 1, 2020](#), to exclude two different tobacco plantations from the scope of the WRO (Alliance One International, LLC and Limbe Leaf Tobacco Company Ltd., respectively). CBP stated that in both cases, the WROs were revised based on evaluation of the producers' social compliance programs and their efforts to identify and minimize the risks of forced labor from their supply chains.

New resources released by CBP in 2020 include Fact Sheets on [the Trade Facilitation and Trade Enforcement Act of 2015](#), [Responsible Business Practices](#), and [Helpful Hints for Submitting Proof of Admissibility](#). These resources provide greater clarity into the often opaque WRO process.

#### Outlook and Recommendations

We expect that with the Biden administration's focus on human rights we will continue to see an increase in WRO activity as a way to combat forced labor in 2021. Companies should ensure that they have effective compliance programs in place to address the risk of forced labor in their global supply chains, including:

- A formal written policy that addresses the sourcing of foreign goods and includes minimum labor standards, such as those specified by the International Labor Organization;
- Contract terms with suppliers that require compliance with the company's policy on forced labor and includes the policy as an addendum;
- Periodic unannounced supply chain audits conducted by independent auditors;
- Anonymous reporting mechanisms;
- Internal controls to detect any instances of noncompliance and enforce the compliance policy; and
- Remediation plans to address and deter noncompliance.

Foley Hoag's [Trade Sanctions & Export Controls](#) and [Global Business & Human Rights](#) practice groups can provide guidance on compliance with U.S. laws and regulations, as well as implementing best practices for supply chain management and developing tailored compliance procedures.

#### RELATED PRACTICES

- [Trade Sanctions & Export Controls](#)

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