

U.S. Expands Xinjiang Regional Import Restriction to Cover All Cotton and Tomato Products

by Dave Townsend and T. Augustine Lo

On January 13, U.S. Customs and Border Protection (“CBP”) issued a new Withhold Release Order (“WRO”) under Section 307 of the Tariff Act of 1930 on all cotton products and tomato products from the entire Xinjiang region of China.¹ The WRO subjects all imports of cotton products and tomato products made by entities operating in Xinjiang to CBP detention and potential seizure and forfeiture upon arrival at U.S. ports because the U.S. Government believes that forced labor from Uyghur and other minority Muslim groups in Xinjiang is so commonly involved in the production of such items. Notably, the new WRO also includes goods sourced from Xinjiang but that have gone through intermediate production steps in other regions of China or in third countries before importation into the United States. Accordingly, the WRO covers a potentially vast amount of imports into the United States, and importers of cotton or tomato products must now be prepared to demonstrate to CBP that their products and any inputs to those products either were not produced in Xinjiang or that no forced labor was involved in any step of their production.

CBP’s action will likely cover billions of dollars in U.S. imports, and the impact is potentially broad because the Xinjiang region accounts for most cotton production and significant tomato production in China. In announcing the WRO, CBP stated that it expects companies to perform due diligence to ensure their imports are not the product of forced labor at any point in their supply chain, “including the production or harvesting of the raw material.” As such, the WRO is intended to reach products that incorporate cotton or tomato products as raw materials, such as cotton yarn or textiles, cotton apparel, tomato seeds, canned tomatoes, tomato sauce, and other such items. Thus, CBP’s WRO potentially could reach imports that may have undergone further processing and even substantial transformation in locations outside Xinjiang (including other regions of China or in third countries), but that incorporate cotton or tomato materials originating in Xinjiang.

In response to the January 13 WRO, the American Apparel & Footwear Association, National Retail Federation, Retail Industry Leaders Association, and The United States

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Fashion Industry Association issued a joint statement confirming their members' commitment to avoiding goods produced with forced labor.² However, these trade associations expressly requested CBP's assistance with their due diligence efforts by providing the evidence for alleged use of forced labor in Xinjiang and the evidentiary standards used to arrive at CBP's conclusions, in the interest of transparency and efficiency. This joint statement underscores the WRO's potentially broad impact on U.S. textile imports from China because these trade associations represent some of the best known brands in the U.S. apparel and textile industries and in the retail sector.

CBP's WRO represents a long-anticipated expansion of earlier WROs issued in late 2020 that had begun to target goods originating in Xinjiang, which we had described [here](#), [here](#), and [here](#). In those 2020 actions, CBP had issued company-specific WROs and indicated that it was considering a region-wide WRO for Xinjiang, but CBP had previously declined to do so based on a lack of evidence tying the alleged human rights violations and use of such forced labor of Uyghur or other Muslim minority groups to all such goods originating in the Xinjiang region. In this latest action, CBP acknowledged that a significant share of imports from China were already covered by those 2020 WROs but asserted that the new region-wide WRO will sweep in yet more Chinese exports to the United States.

In announcing the Xinjiang-wide WRO on January 13, CBP cited the following international labor violations as justifying a region-wide rather than company-specific designation: debt bondage, restriction of movement, isolation, intimidation and threats, withholding of wages, and abusive living and working conditions. CBP's WRO follows a number of U.S. Government bulletins, committee hearings, and non-governmental organizations that have alleged the widespread use of forced labor in Xinjiang, including the U.S. Department of Labor's 2020 List of Goods Produced by Child Labor or Forced Labor that had included Xinjiang-origin textiles and tomato products. The Chinese Government continues to dispute these charges vigorously and to assert that the Uyghur and other minority Muslim population in Xinjiang voluntarily participate in government-sponsored education and training programs and choose to work in various state-owned enterprises for their own economic advancement.

As drastic as this new WRO might seem, Congress has been pressing CBP for even broader action. For example, in 2020, the U.S. House of Representatives passed the Uyghur Forced Labor Prevention Act by nearly a unanimous vote, although it was not brought up for a vote in Senate. The bill would effectively reverse the traditional Section 307 process by creating a rebuttable presumption that all goods from Xinjiang are the product of forced labor. Although this legislation will now need to be reconsidered in both the House and Senate in the new 117th Congress, its broad bipartisan appeal in 2020 indicates a strong likelihood that it will gain momentum again, perhaps very quickly, in the current session of Congress.

Depending on how CBP chooses to apply the January 13 WRO at the border and ports, it could well effectively have the same effect as the proposed Uyghur Forced Labor Prevention Act, at least with respect to cotton and tomato products. As a result, to avoid

CBP deeming any imports of cotton- or tomato-based goods subject to the Xinjiang regional WRO, U.S. importers should examine carefully each step in their supply chains and should be prepared to prove the origin of their products and of any cotton or tomato inputs of those imports. Otherwise, importers should be prepared to demonstrate that the production of such goods did not involve forced labor at any point, which could be difficult, especially given the limitations that Chinese officials have placed upon supply chain auditing firms, many of whom have indicated they will no longer provide such services with regard to Xinjiang. With the January transition to a new Administration, it is unclear how extensively CBP will scrutinize imports under this new WRO and how far CBP might apply the WRO to goods imported from regions of China outside Xinjiang or from third country locations and exactly what sorts of evidence CBP will expect from importers to prove their merchandise should not be subject to detention and potential seizure under this region-wide WRO.

The bipartisan support for stern measures regarding the situation in Xinjiang also appears to be shared between senior foreign policy officials in the Trump Administration that has just left Washington and in the new Biden Administration team that is just taking office. On January 19, as one of his final actions, outgoing Secretary of State Michael Pompeo declared China was committing “genocide” in Xinjiang and specifically stated those government-directed activities included “the arbitrary imprisonment or other severe deprivation of physical liberty of more than one million civilians, forced sterilization, torture of a large number of those arbitrarily detained, forced labor, and the imposition of draconian restrictions on freedom of religion or belief, freedom of expression, and freedom of movement.” Later on that same day, President Biden’s nominee to be the new Secretary of State, Anthony Blinken, was testifying at his own confirmation hearing before the U.S. Senate Foreign Relations Committee and said he accepted his predecessor’s stark assessment about Xinjiang. Blinken said, “I think we’re very much in agreement. . . . The forcing of men, women and children into concentration camps; trying to, in effect, re-educate them to be adherents to the ideology of the Chinese Communist Party, all of that speaks to an effort to commit genocide.” Further, indicating that the Biden Administration is likely to support enforcement of measures such as this latest CBP WRO, Blinken also went on to say at his hearing: “I think we should be looking at making sure that we are not importing products that are made with forced labor from Xinjiang...”

Dorsey & Whitney attorneys are experienced in helping U.S. and international companies, including Chinese companies, to assess and mitigate the risks in their global supply chains, including under U.S. import and export laws.

¹ <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-region-wide-withhold-release-order-products-made-slave>.

² [nrf.com/media-center/press-releases/joint-statement-aafa-nrf-rila-usfia-response-ban-all-cotton-imports](https://www.nrf.com/media-center/press-releases/joint-statement-aafa-nrf-rila-usfia-response-ban-all-cotton-imports).

