

Trade Compliance Flash: GAO Report: Forced Labor Enforcement is on the Rise, but CBP's Forced Labor Division Also Needs More Resources

International Alert

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In a [report](#) issued last week, the Government Accountability Office (GAO) found that U.S. Customs and Border Protection's (CBP's) Forced Labor Division (FLD) has been short-staffed and currently lacks the specialized skills and training to fully carry out its mission of investigating allegations of forced labor and coordinating with other CBP offices to enforce the prohibition on imports made with forced labor. The GAO report also found that, despite its limitations, the FLD has significantly increased forced labor investigations and civil enforcement actions since 2018. Specifically:

- From the time the FLD began operations in 2018, to March 2020, the FLD initiated more than 100 investigations (*i.e.*, more than five times as many investigations as CBP had in 2016 and 2017).
- In Fiscal Year 2020, CBP issued 13 [Withhold Release Orders](#) (WROs) (*i.e.*, detention notices issued by CBP pursuant to 19 U.S.C. §1307 whenever information reasonably but not conclusively indicates that merchandise made with forced labor is being, or is likely to be, imported into the United States). The WROs cover a variety of merchandise, including garments and hair products from China, disposable rubber gloves from Malaysia, tobacco from Malawi, and seafood from a shipping vessel.
- CBP recently issued the first [civil penalty](#) for forced labor violations against a U.S. importer of stevia from China. CBP also issued a formal "[Finding](#)" related to stevia sourced in China, the first of its kind since 1996. The practical effect of that Finding is that CBP will seize and commence forfeiture proceedings on the merchandise; the importer will not be offered the opportunity to re-export the detained goods, as is the case with WROs.
- The FLD coordinates with U.S. Customs and Immigration Enforcement (ICE) on criminal investigations. The GAO report found that ICE increased spending on activities related to forced labor criminal enforcement since 2016.

Given the GAO's finding that FLD needs more resources and the growing attention given to forced labor issues, particularly concerning products sourced directly or indirectly from China's Xinjiang Uyghur Autonomous Region (XUAR) (see our [client alert](#) on the pending legislation), we expect that CBP and its partner agencies will continue to ramp-up its capabilities and enforcement in 2021, regardless of who wins the presidential election.

In this context, companies' efforts to prevent forced labor may receive increased scrutiny from enforcement authorities and a broad range of stakeholders, giving rise to substantial legal as well as reputational risks. To be prepared for such scrutiny, companies should systematically take stock of their forced labor risks and existing anti-forced labor compliance initiatives to identify areas for potential enhancement. By memorializing and continually improving anti-forced labor compliance efforts, companies can distinguish themselves from "bottom feeders" who turn a blind eye to forced labor risks and demonstrate to stakeholders and enforcement officials that the company is making good faith efforts to prevent forced labor and mitigate enforcement risks.

Miller & Chevalier's Business & Human Rights practice is guiding companies through these novel challenges, including:

- Developing and updating anti-forced labor policies and procedures
- Risk mapping and assessment processes
- Collaboration with specialized forced labor auditors on-the-ground in high-risk regions

- In-depth due diligence on high-risk operations
- Remediation of forced labor indicators identified in audits
- Interactions with CBP regarding WROs to secure reversals
- Developing and updating stakeholder communications regarding forced labor compliance efforts

Please contact [Richard Mojica](#), [Nate Lankford](#), or [Dana Watts](#) for further details on how Miller & Chevalier's Business & Human Rights is helping companies develop strategic approaches to anti-forced labor compliance.

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