

## Trade Compliance Flash: New Enforcement Action on Imports of Cotton Products Underscores Importance of Due Diligence on Forced Labor

International Alert

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U.S. Customs and Border Protection (CBP) issued a [Withhold Release Order](#) (WRO) on cotton and cotton products made by Xinjiang Production and Construction Corps (XPCC), its subsidiaries and affiliated entities and any products that are made in whole or in part with, or derived from, that cotton, such as apparel, garments, and textiles. CBP issued the WRO based upon information that XPCC uses forced labor and internment camps in producing its cotton. In a press briefing announcing the WRO, CBP Acting Commissioner Mark A. Morgan emphasized that the WRO is an effort to combat human rights violations in the Xinjiang region, stating that "forced labor is a human rights violation that hurts vulnerable workers and introduces unfair competition into global supply chains. CBP will continue taking decisive action to prevent goods made with forced labor from entering the United States."

This WRO has a larger impact than past WROs aimed at cotton and cotton products because XPCC is the largest producer of cotton in the Xinjiang Region. The WRO is broad in scope, also covering all products made with or derived from XPCC cotton and cotton products, even if those products are made outside of China. The impact of this WRO poses a challenge for companies in the apparel industry. XPCC's subsidiaries and affiliates are rumored to number in the thousands, and there is no readily accessible database or compilation of these entities. Thus, identifying whether XPCC may be involved in a U.S. company's supply chain could be a daunting task. Since XPCC produces most of the cotton in the Xinjiang region and the Xinjiang region produces around 85 percent of China's cotton, it can be difficult to distinguish whether cotton coming from China is subject to the WRO. This makes it important now, more than ever, that companies perform due diligence and establish formal processes to carefully trace the source of their cotton and cotton products.

CBP indicated that it is imperative that the WRO is rigorously enforced and not simply a broad prohibition on paper. However, many are now wondering how the recent WRO will be implemented in practical terms. CBP has already begun detaining shipments for further investigation in connection with the WRO. Another method by which CBP may enforce this WRO is through conducting Risk Analysis and Survey Assessments (RASAs) specifically focused on forced labor. In a RASA, CBP submits inquiries to companies covering topics such as the company's policies and procedures to address forced labor, and conducts "virtual visits" to walk-through select entries of imported products and to discuss the company's anti-forced labor compliance initiatives, including processes to trace the origin of cotton in products.

Given the focus of the new WRO, companies dealing in cotton products, garments, apparel, and textiles would benefit from taking a proactive approach to compliance in this area. In particular, companies in relevant industries should systematically take stock of their risks related to sourcing of cotton and cotton products, as well as their existing anti-forced labor compliance initiatives, to identify any areas for potential enhancements. To be prepared for CBP scrutiny in the context of potential RASAs, companies should also ensure that their anti-forced labor compliance initiatives are formalized and appropriately documented to facilitate responses to possible CBP inquiries on specific compliance program components.

Miller & Chevalier's [Business & Human Rights practice](#) is guiding companies through these new restrictions and enforcement risks in order to ensure full compliance and avoid disruption to their business by:

- Conducting in-depth due diligence on high-risk operations
- Developing and updating anti-forced labor policies and procedures

- Risk mapping and assessment processes
- Collaborating with specialized forced labor auditors on-the-ground in high-risk regions
- Remediating forced labor indicators identified in audits
- Interacting with CBP regarding WROs to secure reversals
- Developing and updating stakeholder communications regarding forced labor compliance efforts

Please contact the [Richard Mojica](#), [Nate Lankford](#), [Dana Watts](#), or [Mary Mikhaeel](#) for a copy of a Due Diligence Work Plan, or for further details on how Miller & Chevalier's Business & Human Rights practice is helping companies develop strategic approaches to anti-forced labor compliance.

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