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CBP to Shift Focus to Traditional Forced Labor Situations, Official Says

CBP will bolster a number of existing initiatives in the coming months aimed at preventing the import of products made with forced labor, said Katie Woodson, assistant director within the operations and forced labor divisions of CBP's Office of Trade, during a panel on forced labor at last week's Western Cargo Conference.

For starters, expect CBP to increase its issuance of withhold release orders and forced labor findings in the coming year amid a shift toward focusing on more "traditional" forced labor situations, according to Woodson.

The agency also plans to increase its engagement with international partners, such as the EU, which passed forced labor regulations in April, and Mexico and Canada, which are partners with the U.S. through the USMCA (see ITT 07/12/2024).

With USMCA, "we don't want this to be a corridor. Shipments that we exclude from the U.S. [going] to Mexico [instead]. Again, it defeats the purpose of stopping forced labor," Woodson said (see ITT 07/03/2024).

As CBP shifts its focus on forced labor beyond the Uyghur Forced Labor Prevention Act, it expects to modify guidance that's on CBP's website on what importers should expect if their imports are stopped, and it will be seeking feedback from traders as it makes these modifications, Woodson continued. The agency also plans to modify guidance related to the standards that companies must meet so that CBP can modify WROs or findings.

Lastly, CBP intends to create a new protest module for the Countering America's Adversaries through Sanctions Act, or CAATSA. The act targets factories that use North Korean forced labor, and it functions similarly to the UFLPA, according to Woodson.

This heightened attention comes as North Korean laborers, particularly those working in seafood factories and in fishing vessels, appear to be working throughout the world and not just in China, she said.

Woodson acknowledged "the difficulties of going through applicability reviews" for UFLPA detentions. She noted that over 300 CBP employees in this past year have undergone training on forced labor enforcement.

"We want to build in the skill sets we have piloted, and we'll be rolling out the new supply chain training for our internal employees as well, so we can build in the skill to conduct these reviews more efficiently and more accurately and uniformly," Woodson said. — Joanna Marsh

DHS Adds Textile Companies to UFLPA Entity List

DHS has updated its Uyghur Forced Labor Prevention Act Entity List to include textile companies that allegedly use forced labor or source material from the Xinjiang autonomous region in China, and it removed one entity from one category of alleged violations and placed it in another category, according to a Federal Register notice.

Esquel Group, also known as Esquel China Holdings Limited; Guangdong Esquel Textile Co. Ltd.; and Turpan Esquel Textile Co., Ltd, have all been flagged by DHS for allegedly sourcing material from the Xinjiang autonomous region. This violations category also includes companies that may work with the government of XUAR or the Xinjiang Production and Construction Corps for the purposes of the “poverty alleviation” program or the “pairing assistance” program or any other government labor scheme that uses forced labor, DHS said.

Hong Kong-based Esquel Group is involved in cotton and garment manufacturing and retail. DHS described them as an “integrated textile and apparel company that engages in cotton research, as well as ginning, spinning, knitting, weaving of cotton and cotton products, in the production of textiles, apparel, and accessories, including packaging and merchandising of these products.” Its subsidiaries include Changji Esquel Textile Co., Ltd., Turpan Esquel Textile Co., Ltd., and Guangdong Esquel Textile Co., Ltd.

Guangdong Esquel Textile, based in Forshan City, Guangdong Province, is engaged in textiles, clothing, and apparel processing and manufacturing. Turpan Esquel Textile, based in Turpan City, deals with cotton, cotton yarn, and cloth production and sales.

An additional entity, Changji Esquel Textile Co., Ltd., also known as Changji Yida Textile Co., Ltd., has also been flagged by DHS for sourcing material from Xinjiang. It has been on the UFLPA list since June 2022. However, DHS moved the company from one category of the UFLPA Entity List to another. This entity, which deals with cotton yard production and sales, is based in Changji Prefecture.

DHS made the announcement today as chair of the Forced Labor Enforcement Task Force (FLETF), an interagency group charged with monitoring the enforcement of the ban on U.S.-bound imported goods made wholly or in part with forced labor.

The agency said in a release that the inclusion of these textile companies builds on the agency’s Textile Enforcement Plan and “demonstrates the FLETF’s commitment to focus on entities in high priority sectors for enforcement under the UFLPA Strategy, including the apparel and cotton and cotton products sectors."

“We are uncompromising in removing forced labor from U.S. supply chains,” DHS Under Secretary for Policy and FLETF Chair Robert Silvers said in a release. “Our enforcement efforts are yielding results. Our Administration is committed to advancing this momentum and strengthening accountability across global supply chains."

The changes to the list are part of DHS' ongoing efforts to create a consolidated register of entities flagged for alleged Uyghur forced labor violations. The last update to this list was earlier this month when it added Baowu Group Xinjiang Bayi Iron and Steel Co., Ltd. and Changzhou Guanghui Food Ingredients Co., Ltd., a steel company and an aspartame producer, respectively, to the list.

DHS says there are now 78 entities on the list. The list includes companies active in the apparel, agriculture, polysilicon, plastics, chemicals, batteries, household appliances, electronics, seafood, and textile sectors, among others. "Identifying these additional entities provides U.S. importers with more information to conduct due diligence and examine their supply chains for risks of forced labor to ensure compliance with the UFLPA," DHS said. — Joanna Marsh

ITC Ends AD/CVD Investigations on Aluminum Extrusions From 14 Countries

Antidumping and countervailing duty investigations launched a year ago on aluminum extrusions from 14 countries will all end without the imposition of AD/CVD, after the International Trade Commission on Oct. 30 announced it didn't find injury in its investigations on China, Colombia, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, South Korea, Taiwan, Thailand, Turkey, United Arab Emirates, and Vietnam.

As a result, the Commerce Department will not issue AD/CVD orders on those countries, and all duties collected during the investigations will be refunded. Existing AD/CVD orders on a smaller subset of aluminum extrusions from China will remain in place.

FMC Warns of 'Significant Penalties' Against Carriers, MTOs for Shipper Retaliation

The Federal Maritime Commission urged carriers and terminal operators not to retaliate against shippers for questioning an invoice or filing a complaint with the FMC, warning the cargo shipping industry this week that it will pursue serious penalties against those that violate the anti-retaliation provisions of the Ocean Shipping Reform Act.

The FMC said it wanted to emphasize—"in light of the significant supply chain challenges currently facing the freight delivery system"—that retaliation against a shipper, ocean transportation intermediary or motor carrier "is a serious violation of the law that carries significant penalties." The commission said shippers should be able to question invoices, surcharges, or other practices by a carrier or marine terminal operator (MTO) if they believe those measures are unfair.

The FMC asked anyone with information about retaliation by a carrier or MTO to contact the Bureau of Enforcement, Investigations and Compliance.

FDA Eyeing Increased Compliance With FSVP Program, Agency Official Says

SAN DIEGO—The FDA is ramping up scrutiny on food importers that aren't fully complying with Foreign Supplier Verification Program requirements, said Dan Solis, assistant commissioner for import operations with the agency's Office of Regulatory Affairs.

"The major reason for a lot of noncompliance with FSVP is not having an FSVP program at all. For legislation that's been out since 2011, that's not an excuse anymore, and we're going to elevate up our enforcement action for those who continue to not have an FSVP program and you're importing food into the United States," Solis said during a panel discussion with representatives of other partner government agencies at the Western Cargo Conference last week.

Actions that the FDA could take for noncompliance include barring the company from importing into the U.S. or revoking a company's registration information, Solis continued. Because the agency is planning to increase its FSVP enforcement, brokers should message clients, which may not be aware that they don't have an FSVP program but should be part of it, he said.

Solis also said the FDA is looking at ways to "entice" industry to participate in the VQIP program, potentially tying it to partnerships such as CBP's Customs-Trade Partnership Against Terrorism (CTPAT). There are currently only five participants in the FDA's trusted trader program, which has been in place since 2020.

Meanwhile, importers should be seeing the effects of the FDA's latest internal reorganization. Under the FDA Office of the Commissioner are two newly created offices, the Office of Inspections and Investigations (OII), which is Solis' office, and the Human Foods Program. The Food Centers and the Food Laboratories have been incorporated into the Human Foods Program, while the Office of Cosmetics and the Office of Medical Products and Specialty Laboratory Operations are in the Office of the Chief Scientist.

The Human Foods Program encapsulates any food-related activities under the FDA, while the Office of Cosmetics will track importers' compliance with new requirements that are part of the Modernization of Cosmetics Regulation Act of 2022, or MoCRA.

Lab results will also be coming from different offices now and not the brokers' local FDA office, according to Solis' presentation.

"When investigators go to your firm to collect the sample, where does it go? It goes into a Food Lab or Chemistry [Lab]. Those labs are no longer attached to our Office of Regulatory Affairs or OII," Solis said.

This latest reorganization kept the Office of Import Operations intact, which bodes well for customs brokers because it ensures that expediting legitimate trade compliance functionality and decisions remain with the broader Office of Inspections and Investigations, according to Solis.

Within the OII, one of the changes is that the Division of Food Defense Targeting, which receives all the imported food notices per the Bioterrorism Act, is now being called the Division of Targeting Analysis, according to Solis.

“Not only [is this division] doing more data analysis and intelligence research- or risk-informed decision making, but they’ve been able to get pre-manifest data and evaluate and analyze that. So that means pre-entry, a lot of that information is being supplied” to CBP’s Commercial Targeting and Analysis Center, Solis said. — Joanna Marsh

Importers of Industrial Machinery May Now Apply for Section 301 Exclusions

The Office of the U.S. Trade Representative opened a portal to be used for submitting exclusion requests for industrial machinery outside the solar sector.

While the changes to the Section 301 action on Chinese imports granted automatic exclusions to about a dozen kinds of solar panel and solar cell manufacturing equipment, businesses will have to apply for an exclusion for equipment included in more than 100 8-digit tariff lines in headings 8417-8420, 8422, 8429, 8430, 8432-8439, 8441, 8442, 8444-8449, 8451-8465, 8468, 8475, 8477-8479, 8486, 8514, 8515 and 8543.

The same portal will accept responses to exclusion requests, which must be submitted within 30 days of the request being published. Importers are allowed to rebut those comments, and that must be done either 15 days after the response, or 45 days after the request was posted, whichever is later.

The rollback of Section 301 tariffs on accepted exclusions will apply starting on the date it is publicly granted; the exclusions will last less than a year, until May 31, 2025.

If someone wishing to file for an exclusion has a question on customs classification, they should email traderemedy@cbp.dhs.gov. For general questions about the notice, contact the chairs of the Section 301 Committee at (202) 395-5725. — Mara Lee.

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