



## MEMORANDUM

To: ACSA Merchant Members  
From: Buddy Allen  
Date: 12/03/2020  
Re: Current WROs and Entity List Designations for China's Xinjiang Region

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For your information, please see the following review of current, relevant sanctions issued by both the U.S. Customs and Border Patrol (CBP) and the U.S. Department of Commerce (DOC) and pending House Resolution 6210, The Uyghur Forced Labor Prevention Act. We have received several questions recently concerning the commercial impacts of these measures to cotton merchants.

### **Regulatory Sanctions:**

Keep in mind there is a difference between the Withhold Release Orders (WRO), which were most recently issued today by the U.S. Customs and Border Patrol (CBP), and the Entity List designations that were issued on July 22 by the Commerce Department's Bureau of Industry & Security (BIS).

**Withhold Release Order Information:** A WRO requires that imports from specific companies will be seized at US Customs. Thus, it is an *import* restriction. Specific to current cotton matters, once the government has developed a reasonable suspicion that merchandise is being, or is likely to be, imported into the U.S. and is produced using forced labor, cargo would be seized.

The companies under WRO are listed here: <https://www.cbp.gov/trade/programs-administration/forced-labor/withhold-release-orders-and-findings>

The most recent WROs issued today captures the Xinjiang Production and Construction Corps (XPCC). Other recent orders capture nine more entities. Three of these entities are also designated on the BIS Entity List, meaning that a U.S. company can neither export U.S. origin products to, nor import the covered products from these entities. Note the products that are covered (in parentheses) by the import prohibitions of the WROs:

- Xinjiang Production and Construction Corps (all apparel, garments, and textiles made of cotton), issued December 3, 2020
- Hetian Taida Apparel Co., Ltd. (all garments), issued September 30, 2019
- Hetian Haolin Hair Accessories Co. Ltd. (hair products), issued May 1, 2020
- Hero Vast Group (garments), issued August 11, 2020

- Lop County Hair Product Industrial Park (hair products), issued August 25, 2020
- No. 4 Vocational Skills Education Training Center (labor), issued August 25, 2020
- Yili Zhuowan Garment Manufacturing Co., Ltd. (apparel), issued September 3, 2020
- Baoding LYSZD Trade and Business Co., Ltd. (apparel), issued September 3, 2020
- Hefei Bitland Information Technology Co. Ltd. (computer parts), issued September 8, 2020
- Xinjiang Junggar Cotton and Linen Co., Ltd. (cotton and processed cotton); issued September 8, 2020

**Entity List Designations:** With respect to the BIS Entity List, U.S. companies may not export certain items (usually, it prohibits the export of virtually any item) to foreign entities (companies or persons) that have been designated to the Entity List. Thus, it is an *export* restriction.

Products must first be subject to the Export Administration Regulations (EAR); for the most part, any U.S.-origin item is prohibited from export to a designated entity. BIS can grant a special license to U.S. exporters upon successful application, which would be required to export raw cotton to a designated entity.

The July 22 Entity List designation identified the following eleven Chinese entities, with the three companies also subject to a WRO, as explained above. DOC press release here:

<https://www.commerce.gov/news/press-releases/2020/07/commerce-department-adds-eleven-chinese-entities-implicated-human>

- Beijing Liuhe BGI
- Changji Esquel Textile Co. Ltd.
- Hefei Bitland Information Technology Co. Ltd
- Hefei Meiling Co. Ltd.
- Hetian Haolin Hair Accessories Co. Ltd.
- Hetian Taida Apparel Co., Ltd.
- KTK Group
- Nanjing Synergy Textiles Co. Ltd.
- Nanchang O-Film Tech
- Tanyuan Technology Co. Ltd.
- Xinjiang Silk Road BGI.

These eleven entities join a very long list of other entities from around the world that have been added to the BIS Entity List. <https://www.bis.doc.gov/index.php/documents/regulations-docs/2326-supplement-no-4-to-part-744-entity-list-4/file> The table of designated entities runs to 406 pages, of which roughly 119 pages are for Chinese entities.

**Commercial Impacts and Potential Repercussions:** The Entity List effectively blocks your ability to engage in commerce with the designated companies. Technically, U.S. law does not prohibit you from engaging in any business at all with a foreign company on the Entity List, but

BIS will tell you that they consider any business relationship to be a “red flag” and would warrant closer scrutiny.

In either case, whether doing even legally permitted business with a company subject to a WRO or designated on the Entity List, there is very serious reputational risk that a U.S. company must consider. In the case of the Xinjiang companies (whether those on the Entity List or those subject to the WROs), the U.S. government has formally determined that they are engaging in violations of human rights due to the use of forced labor. There is virtually no sympathy for any of these Chinese entities, within the Trump administration or on Capitol Hill. To the contrary, it is expected that more designations and WROs will be issued in the future, with full support on both sides of the aisle in Congress. This Congressional interest is displayed in pending legislation, which will be subsequently described.

If there are pending shipments on the water at the time of an entity’s designation, they can be completed by means of the following “Savings Clause.”

*“Savings Clause”*

*“Shipments of items removed from eligibility for a License Exception or for export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on July 22, 2020, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).”*

For any U.S. exporter, it will be very important to pay close attention to the specific dates of sale and shipment. Even an inadvertent violation of an Entity List designation could be grounds for severe penalties. Companies that think they should be allowed to complete the delivery should seek advice from counsel who can review their specific transactions.

### **Pending Legislation:**

#### **HR # 6210, The Uyghur Forced Labor Prevention Act:**

The Uyghur Forced Labor Prevention Act passed the U.S. House of Representatives on September 22, 2020 with 406 affirmative votes and only 3 opposed. The bill was received by the Senate and referred to the Committee on Foreign Relations. This legislation is likely to receive further consideration in the coming Lame Duck Session of Congress, following the election.

This bill imposes various restrictions related to China's Xinjiang Uyghur Autonomous Region, including prohibiting certain imports from Xinjiang and imposing sanctions on those responsible for human rights violations there. Cotton has been designated in the legislative language as a “high-priority sector for enforcement.” Analysts suggest that passage and implementation of this legislation could essentially cease cotton trade within the Xinjiang Uyghur Autonomous Region, which would be scheduled to sunset eight years following its passage. This certainly raises broad questions concerning derivative implications to the supply chain and the potential response from China concerning ag purchase commitments.

Goods manufactured or produced in Xinjiang shall not be entitled to entry into the United States unless Customs and Border Protection (1) determines that the goods were not manufactured by convict labor, forced labor, or indentured labor under penal sanctions; and (2) reports such a determination to Congress and to the public.

The President shall periodically report to Congress a list of foreign entities and individuals knowingly facilitating (1) the forced labor of Uyghurs, Kazakhs, Kyrgyz, and members of other Muslim minority groups in Xinjiang; and (2) efforts to contravene U.S. laws regarding the importation of forced labor goods from Xinjiang. The President shall impose property-blocking sanctions on the listed individuals and entities and impose visa-blocking sanctions on the listed individuals.

Securities issuers required to file annual or quarterly reports with the Securities Exchange Commission shall disclose in such reports certain information related to Xinjiang, including instances where the issuer knowingly (1) engaged in activities with an entity helping to create mass surveillance systems in Xinjiang, (2) engaged in activities with an entity running or building detention facilities for Muslim minority groups in Xinjiang; or (3) conducted a transaction with any person sanctioned for the detention or abuse of Uyghurs or other Muslim minority groups in Xinjiang. After being notified of such a disclosure, the President shall determine whether to investigate if sanctions or criminal charges are warranted.

The Forced Labor Enforcement Task Force and the Department of State shall report to Congress further strategies to address forced labor in Xinjiang.

Complete language and a summary document for H. R. 6210 can be found here: <https://acsa-cotton.org/2020/10/28/h-r-6210-uyghur-forced-labor-prevention-act/>

We will track this pending legislation moving forward and provide additional information as it develops.