



CBP Taking a Stronger Position on Enforcing Forced Labor Laws

The Trade Facilitation and Trade Enforcement Act made changes to the language on goods made with convict labor, forced labor, or indentured labor. There was a provision with a small exemption for certain products produced with such labor. With this change and with intent expressed by Congress, U.S. Customs and Border Protection (CBP) is taking a much more thorough enforcement stance on forced labor. CBP will act on information supplied to them about sources using forced labor and put holds on those shipments. With information that reasonably indicates that imported merchandise is in violation, CBP will issue a Withhold Release Order (WRO) for 180 days on that shipment. A WRO is not the same as a detention. An importer has 180 days to supply proof that the product was completely free of forced labor. With a WRO, an importer has the option to re-export the goods at any time. If after 180 days the importer does not provide proof that forced labor was not used, the goods are automatically refused must be abandoned or destroyed. A WRO refusal of a shipment is subject to a formal protest. If at any time, CBP confirms that the goods were made from forced labor, the goods would be subject to immediate seizure.

With the elimination of the exemption, CBP is going deeper into the supply chain. If parts of a product issued by the manufacture are suspected of being made through the use of forced labor, then the shipment is subject to a WRO hold. For example, if rayon yarn is woven by a source using forced labor and that yarn is sold to a mill; a shipment of finished fabric from that mill would be subject to a WRO. Further into the supply chain, if a shirt was made by that same fabric, the shirt would be subject to a WRO.

CBP will not make these decisions arbitrarily. They must have a reasonable suspicion that the product has materials made from forced labor.

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CBP is actively engaging with non-governmental organizations, industry stakeholders, and others encouraging them to come forward with information regarding suspected use of forced labor with respect to U.S.-imported goods. This includes information being supplied from human rights groups working in foreign countries. CBP will act on the suspicion by issuing a WRO. It will be the importer's responsibility to supply proof that the product is free from any forced labor materials.

Agriculture Holds on Hard Goods?

Recently we are seeing importers experiencing agriculture holds with fumigation being required of shipments with hard goods. Sometimes when U.S. Customs and Border Protection (CBP) performs an exam on cargo, they find contaminants like soil, or noxious seeds on the floors of some containers. CBP- Agriculture officer (CBP-ag), determines if a fumigation is necessary, which will be an additional expense for the importer. This type of find is also added to CBP's targeting data that may trigger future exams.

Each day, CBP helps to prevent the intentional and unintentional introduction of potentially harmful plant pests and foreign animal diseases from entering the United States at more than 300 ports of entry. Contaminants like soil, manure, seeds, plant and animal material may harbor invasive pests and diseases. Eliminating contaminants in conveyances and cargo will decrease holds, delays, and commodity returns or treatments. This includes contaminants attached to pallets used in moving the cargo. Pallets of all kinds, as well as wood pallets or properly treated Wood Packing Materials, should be examined, both top and bottom, for contaminants before cargo is stacked on them. This is especially important when pallets are stored outdoors. Seeds, soil, and other materials can stick to a pallet when left outdoors. They can easily be brushed off before loading cargo. This is a helpful hint to add a simple process at the time of loading to avoid potential CBP-ag exam problems.

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Section 321 (\$800.00 De Minimis) **Update**

U.S. Customs and Border Protection (CBP) has issued temporary guidelines for dealing with the increase in the de minimis amount for a value exemption in the Trade Facilitation and Trade Enforcement Act. The Act has increased the amount allowed for a "Section 321" release from \$200.00 to \$800.00. This rule allows for a shipment under that value to be released without payment of Customs duties and fees. However this rule is still administered with specific processes and conditions. The rule specifically allows for a claim for one shipment per person or company per day. It instructs CBP that if a shipment is one of several lots covered by a single order that was shipped separately to avoid duties, it will not be allowed this exemptions. Multiple shipment for the same importer on the same day has been difficult for CBP to enforce, but they are stopping multiple small value shipments arriving for the same consignee on the same conveyance and requiring entry.

This exemption is also not allowed for any merchandise provided, any tariff rate quota merchandise, and for any shipment of alcoholic beverage, perfume containing alcohol, cigars, and cigarettes. Also, there are several Partner Government Agencies (PGA) that do not have a de minimis rule for shipments under their jurisdiction. Food and Drug Administration and U.S. Fish and Wildlife have clearly stated that under their regulations such low value shipments will not qualify for this exemption and an entry must be filed. CBP is currently in talks with PGA concerning the possible requirements. We expect regular announcements.

CBP had previously programmed section 321 release submission with the use of electronic manifests filed by couriers, air carriers, rail and trucks at the Northern and Southern borders for small package shipments. CBP takes in the electronic manifest that is submitted and sets up a manual posting. At the ports, mainly the airports where sample and smaller shipments arrive, section 321 requests are submitted in a paper format that must be completely manually, reviewed and processed by the CBP Officers.

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We are seeing a two or three day delay in processing the release at most airports. Importers must decide between saving the small amount of duties on a small shipment with a few day delay compared to paying the duty and fees with an electronic informal entry submission for a much quicker release. The minimum Merchandise Processing Fee (MPF) for an informal entry is only \$2.00, not the \$25.00 minimum MPF for a formal entry.

CBP is currently working on an Interim Final Rule for the de minimis rule for entry and for a programming solution to the many paper submissions that are currently backlogging several ports. Carmichael will be watching this very closely.



By Todd Boice, President