

Administration Takes New Actions to Address China Forced Labor in Silica-Based Products Supply Chain

June 25, 2021

On Thursday, June 24, the White House announced new actions to combat the use of forced labor in the production of silica-based products, including but not limited to solar-grade polysilicon in the Xinjiang province of the People's Republic of China (PRC). These actions are an important step toward addressing the serious problem of forced labor in the PRC's supply chain and globally. Actions include:

- A Withhold Release Order (WRO) issued by U.S. Customs and Border Protection (CBP) under a federal law that prohibits importation of goods made with forced labor;
- The inclusion of five Chinese entities on the Entity List maintained by the Commerce Department's Bureau of Industry and Security (BIS); and
- The inclusion of polysilicon produced with forced labor on the Department of Labor's (DOL) "List of Goods Produced by Child Labor or Forced Labor."

The WRO affects Xinjiang-based Hoshine Silicon Industry Co., Ltd. and its subsidiaries, producers of raw material silicon, as well as processed polysilicon products. Issued under 19 U.S.C. § 1307, the WRO requires CBP to detain imported merchandise containing the silicon produced by Hoshine and its subsidiaries, as well as downstream products derived from, or produced using, those silica-

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based products, such as polysilicon, solar panels, and semiconductors. Silica is a raw material that is used to make components for solar panels, electronics, and other goods. These goods must be detained pending export, destruction, or a showing by the importer that the goods were not made with forced labor. Hoshine is not the first Xinjiang-based entity to be affected by such a broad-based WRO. Earlier this year, CBP issued WROs broadly prohibiting the importation of cotton, cotton products, tomatoes, and tomato products produced in Xinjiang, inclusive of downstream products made outside of Xinjiang that incorporate these inputs.

BIS's Entity List identifies foreign entities that have been determined by the United States Government to be acting contrary to the foreign policy and/or national security interests of the United States. These entities are ineligible to receive U.S. exports of any item subject to the Export Administration Regulations (EAR) without an appropriate license, as specified in Supplement No. 4 to Part 744 of the EAR. Notably, inclusion on the Entity List can affect exportation even of "EAR99" items that are otherwise exportable without a license. The five companies newly included on the Entity List (listed below) for acting contrary to the foreign policy interests of the United States are significant producers of silicon, polysilicon, and related products which benefit from the use of forced labor:

- Hoshine Silicon Industry (Shanshan);
- Xinjiang Daqo New Energy;
- Xinjiang East Hope Nonferrous Metals;
- Xinjiang GCL New Energy Material Technology; and
- Xinjiang Production and Construction Corps.

Licenses to these entities are subject either to a license policy of case-by-case review for certain items subject to the EAR and a license review policy of presumption of denial for other items subject to the EAR. According to BIS, no license exceptions are available for exports, reexports, or transfers (in-country) to the entities.

Finally, to highlight the severity of the ongoing human rights abuses in Xinjiang, the Administration took the unusual step of updating, outside of its normal update cycle period, the DOL's Child and Forced Labor list. Typically every two years, the DOL maintains and updates the "List of Goods Produced by Child Labor or Forced Labor" to raise awareness about child and forced labor in global supply chains. This is the first time that List has been updated outside the typical two-year cycle, and it has been done so to specifically include the PRC's use of forced labor in the production of polysilicon. Polysilicon from the PRC joins a host of other Chinese products on the list, including artificial flowers, bricks, Christmas decorations, cotton, textiles, and tomato products.

This announcement underscores the Biden Administration's firm commitment to holding accountable those entities who engage in forced labor and ensuring that the United States continues to remove goods made with forced labor from its supply chains.

Wiley has a robust Customs and Supply Chain practice, as well as unparalleled experience and expertise in International Trade, National Security, CFIUS, Telecom, Media & Technology, Environmental Law, Food & Drug, Government Contracts, and Trade Analytics, and can help clients navigate evolving supply chain developments. For any questions regarding Customs enforcement efforts and compliance with the WRO, supply chain disruptions, national security matters, as well as export controls, entity list designations, and DOL forced-labor actions, please contact the attorneys listed on this alert.