Friday, June 25, 2021

Yesterday, the U.S. Customs and Border Protection ("CBP") issued a Withhold Release Order ("WRO") against Hoshine Silicon Industry Co. Ltd., a company located in China’s Xinjiang Uyghur Autonomous Region ("XUAR"). The WRO has instructed personnel at all U.S. ports of entry to immediately begin to detain shipments containing silica-based products made by Hoshine and its subsidiaries. The WRO applies not only to silica-based products made by Hoshine and its subsidiaries but also to materials and goods derived from or produced using those silica-based products. CBP’s investigations into allegations of forced labor have produced six WROs this fiscal year.

CBP’s move comes the day after the Department of Commerce placed Hoshine and four other companies operating out of the XUAR on its Entity List. The Department imposed a license requirement for all items subject to the Export Administration Regulations (EAR) and a license review policy of case-by-case review for certain
Export Control Classification Numbers (ECCNs) and certain items designated as EAR99. The administration made clear at the G7 summit that it would take action to ensure global supply chains are free from the use of forced labor. We noted in March that the Biden administration would use all of the tools at its disposal to combat forced labor, and we continue to expect the pace and scope of enforcement to increase.

Companies in the solar industry should take increasing care to ensure compliance programs are up to date, that new (and current) suppliers are carefully vetted, and supply chain audits are completed to their satisfaction. The State Department has recently noted that the employees of at least one supply chain auditor located in China were detained and interrogated for several days, and that supply chain audit companies are beginning to fear for their employees’ safety. If these allegations are credible, companies sourcing materials from China will need to reevaluate the effectiveness of their compliance programs and diligence procedures and, if they are dissatisfied with the results of their supply chain audits, consider sourcing from elsewhere.

Companies doing business with Hoshine – particularly those who have shipments en-route to U.S. ports – should review their contracts for force majeure and other compliance provisions. Companies should also review their commercial project contracts to determine the impact of supply chain delays and determine compliance with relevant notice provisions. Companies importing silicon of any kind should evaluate whether they have sufficient tracing information to ensure compliance with the WRO. CBP will be on the lookout for potential transshipment attempts by Chinese companies, to try to evade the WRO. If your company acts as an importer of record, it will be held responsible for any such attempt, underscoring the importance of full-spectrum supply chain due diligence for the solar industry.

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