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City Bar Center for Continuing Legal Education
New York City Bar
April 28, 2023

The “S” in ESG: International Approaches to Supply Chain Compliance

U.S. Department of Homeland Security Washington, DC 20229 U.S. Customs and Border Protection HQ H317249 March 5, 2021 RES-1-00-OT:RR:BSTC:CCR H317249 MNM CATEGORY: Restricted Merchandise RE: Application for Further Review; 22 U.S.C. § 9241a; 19 U.S.C. § 1307; Protest No. 4601-21-125334; Poof Apparel; Dandong Huayang Textiles and Garments Co., Ltd.; Forced Labor.

Edward Fox
Acting Port Director
U.S. Customs and Border Protection 1210 Corbin Street
Elizabeth, New Jersey 07201

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Dear Mr. Fox:

This is in response to correspondence dated March 1, 2021, forwarded to this office on your behalf by the Trade Remedy Law Enforcement Directorate (TRLED), Office of Trade, U.S. Customs and Border Protection (“CBP”), for our further review of the above-referenced protest and application for further review. Our decision is set forth below.

FACTS

The protestant, Poof Apparel, made [two entries of garments and textiles \(women's and girls' clothing\) on December 22, 2020 and December 21, 2020](#) at the port of New York. According to the entry invoices, the clothing was manufactured by CNDANHUALIA, Dandong Huayang Textiles and Garments Co., Ltd. (“Dandong Huayang”) in Loufang Village, Lifang Town, Zhen'an District, Dandong City, Liaoning Province, China. CBP detained both entries at the Port of Newark, New Jersey, on December 23, 2020 on the basis that the merchandise was subject to the Countering America's Adversaries Through Sanctions Act (CAATSA) Section 321(b) and [22 U.S.C. § 9241a](#) which prohibits goods mined, produced, or manufactured, in whole or in part, by North Korean nationals or North Korean citizens from importation into the United States. On January 8, 2021, CBP requested that Poof submit updated responses to the CBP Form 28 questions Poof had previously submitted to CBP in 2017 as well as documentation detailing how Dandong Huayang employees are recruited, identification cards and payroll records or other proof of payment. Poof submitted this information requested by CBP on January 14, 2021. The port excluded the entries on January 22 and 26, 2021 as prohibited merchandise pursuant to [22 U.S.C. § 9241a\(a\)](#) and [19 U.S.C. § 1307](#). On February 4, 2021, Poof protested the exclusion of the two shipments requesting accelerated disposition of its protest and AFR.

ISSUE

Whether the protestant has established by clear and convincing evidence that the detained apparel, manufactured by Dandong Huayang, was not produced with forced labor.

LAW AND ANALYSIS

**Stumberg, Robert 1/4/2024
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CAATSA Section 321(b) (22 U.S.C. § 9241a), provides that “significant goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by the labor of North Korean nationals or citizens shall be deemed to be prohibited under [section 1307 of title 19](#) and shall not be entitled to entry at any of the ports of the United States” 22 U.S.C. § 9241a(a), unless the “Commissioner of U.S. Customs and Border Protection finds, by clear and convincing evidence, that the goods, wares, articles, or merchandise described in such paragraph were not produced with convict labor, forced labor, or indentured labor under penal sanctions.” 22 U.S.C. § 9241a(b). [Clear and convincing evidence is a higher standard of proof than a preponderance of the evidence, and generally means that a claim or contention is highly probable.](#) See e.g., *Colorado v. New Mexico*, 467 U.S. 310 (1984)(holding that complainant did not meet “clear and convincing” burden of proof because it failed to show that the evidence is [highly and substantially more likely to be true than untrue](#); the fact finder must be convinced that the contention is highly probable). Accordingly, an importer who wishes to import merchandise that is subject to the rebuttable presumption under CAATSA Section 321 carries the burden to overcome the presumption by providing information that meets the clear and convincing standard.

The protestant argues that North Korean nationals did not produce the excluded garments. In support of its protest, the protestant has provided a [Worldwide Responsible Accredited Production \(WRAP\) report](#) which has determined that the manufacturer, Dandong Huayang, uses Chinese nationals and photocopies of employees' Chinese (national) Resident Identity Cards.

WRAP Report

Initially, we note that [the footer on the WRAP report indicates it was issued in July 2020](#); however, the signature page of the report indicates that the initial audit was conducted on [November 2-4, 2020](#) and the follow up audit was on [November 16, 2020](#). Based on the WRAP report findings, the protestant asserts that WRAP auditors who reviewed the Dandong Huayang facilities are native-speaking Chinese and that they could that have easily distinguished between Chinese-born workers and North Korean workers. Notwithstanding the foregoing statement is self-serving, considering the [auditors only interviewed 10 out of the 49 workers during the audit](#), there was likely no opportunity for the auditors to make such a distinction regarding the nationality of the workers.

With regard to the number of employees Dandong Huayang employs, we have found inconsistencies between the WRAP report and statements in the protest, and within the protest itself. The protest states that there are “approximately 50 employees” on page 4, but on page 10, states there are 46 employees. Page 20 of the WRAP report and the Dandong Huayang payroll indicate there are 49 employees; however, only 45 worker's identification cards are included among the exhibit of Resident Identity Cards. Page 17 of the WRAP report states that the employee number decreased from 88 to 49 (44.3%) in the past 12 months.” Last, on page 20 of the WRAP report, the auditors indicate they only interviewed 10 of 49 employees at the factory during their audit. It is likely that if the auditors were native-speaking Chinese, they could not interview the remaining workers because they spoke Korean, which is likely the reason Dandong Huayang has sought Korean translators. In the past <https://jobs.51job.com/dandong/co3221046.html+&cd=1&hl=en&ct=clnk&gl=us> (last accessed March 23, 2020).

The WRAP report also included photographs of the Dandong Huayang production facility that are date-stamped November 3, 2020. Although the photographs are slightly blurry, one particular photograph stood out from the rest.

The photograph labeled “Production process: Packing” depicts Dandong Huayang workers next to a stack of boxes of personal protective equipment (PPE), specifically disposable clothing. [These boxes of PPE are identical to images of PPE boxes featured in The Guardian's November 2020 exposé of North Korean forced labor used in Dandong Province factories in the production of PPE coveralls.](#) The three-month investigation found evidence that protective coveralls ordered for the UK Department of Health and Social Care (DHSC) originated from Dandong factories, including Dandong Huayang, using North Korean forced labor. The exposé further revealed that the PPE has been exported to the United States, Italy, Germany, South Africa, Japan, South Korea, the Philippines, and Myanmar. Accordingly, the photograph does not establish with clear and convincing evidence that the excluded garments were not made with forced labor, rather it establishes that it is highly likely the workers that were making the subject excluded garments were also making the disposable PPE garments and therefore, likely were North Korean nationals.

Dandong Huayang Employees' Resident Identity Cards

In further support of its assertion that only Chinese nationals are employed by the Dandong Huayang factory, the protestant has provided photocopies of the Dandong Huayang workers Resident Identity Cards, which indicate the worker's ethnicities as Han or Mongolian. As these ethnic designations are only for Chinese citizens, the protestant argues that the workers cannot be North Korean nationals. [The majority of the photocopies of the worker's identification cards are either too dark or overexposed to be able to discern the authenticity of the cards.](#)

Based on the evidence submitted the protestant has not established by clear and convincing evidence that Dandong Huayang did not use North Korean forced labor in the manufacture of the excluded garments.

HOLDING

The protestant has not established by clear and convincing evidence that the detained garments, manufactured by Dandong Huayang, were not produced with forced labor.

The protest is DENIED.

Sincerely,

Lisa Burley Chief/Supervisory Attorney-Advisor
Cargo Security, Carriers and Restricted Merchandise Branch
Regulations and Rulings Directorate
Office of Trade
U.S. Customs and Border Protection