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CBP continues to enforce forced labor provisions

By Sascha Matuszak

On Aug. 13, United States Customs and Border Protection (CBP) announced[1] it had collected USD 575,000 in penalties from PureCircle USA Inc. for importing goods manufactured using forced labor. The penalty is significant not due to the amount collected—which, according to PureCircle,[2] was less than 7% of what the CBP sought—but rather due to the precedent the penalty set and to the damage the enforcement action did to PureCircle's business.

"PureCircle saw a 13.4% drop in sales between the first half of 2016 and 2017 due to lost U.S. market access over a forced labor allegation against a Chinese manufacturer," said Sarah Carpenter, manager of business & human rights at Assent Compliance. "So, while the penalty of $575,000 may seem low, it comes on the heels of over $7M in lost revenue—not to mention reputational damage—as a direct consequence of CBP action."

According to a CBP news release,[3] the penalty is the first of its kind since the passage of the Trade Facilitation and Trade Enforcement Act (TFTEA) in 2015. TFTEA[4] empowered CBP to take a variety of different actions to protect the U.S. economy, most relevant in this case being the repeal of the "consumptive demand" clause[5] in 19 U.S.C. § 1307 of the Tariff Act of 1930. The clause had allowed importation of certain forced labor-produced goods if the goods were not produced "in such quantities in the United States as to meet the consumptive demands of the United States." Repeal of the consumptive demand exception enhanced CBP's ability to prevent products made with forced labor from being imported into the United States. "US Customs and Border Protection Agency has the authority under [19 U.S.C. § 1595a(b)] to issue fines against importers for introducing goods into the U.S. contrary to law," Carpenter added. "These fines can be issued for forced labor violations as well as other violations, like intellectual property."

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