

International Trade Today

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Right Third-Party Auditor Critical for Removal From WRO, Customs Lawyer Says

TOP NEWS | 21 Oct 2022 | Ref: 2210210052 | by Brian Feito

The right third-party auditor is critical to the chances of success a foreign supplier may have in getting a withhold release order lifted on its products, customs lawyer Jessica Rifkin of Ben L. England and Associates said on Oct. 20. “The most important decision” that a producer can make is selecting an auditor whose results will be “credible and reliable,” she said during a webinar hosted by the National Customs Brokers & Forwarders Association of America.

Among other factors, CBP has in the past emphasized that the independent third-party auditor should be one who specializes in human rights or labor rights “because the determination of whether [forced labor] indicators are present and have been remediated can be quite complex, and industry specific,” Rifkin said.

The scope and methodologies that the auditor uses also should be clearly explained, and worker interviews are critical and should be conducted in the workers’ native language, Rifkin said. Interviews should not be anonymous, she said, and should be outside the presence of management or other entities affiliated with the producer. The auditor should also be the one that independently determines the number of workers to interview and selects the interviewees, she said.

Corrective action plans subsequently submitted to CBP by producers seeking modification of a WRO should have “definite timeframes and milestones for each action that is going to be taken to remedy” each forced labor indicator, as well as “verification procedures to make sure those actions have been taken,” Rifkin said.

Examples of remedies CBP may be looking for are remediation of fees workers may have paid to third-party recruiters, including repayment schedules; measures to ensure the recruitment process is done ethically, including tight control on the use of sub-recruiters; and the establishment of an accountability committee to prevent a recurrence of the problems that led to the WRO, she said.

It’s important to reach out to CBP “right off the bat” and “establish a good relationship,” and be prepared to follow up and to “document what you’ve done to remediate” any indicators of forced labor, Rifkin said. “CBP can and does request fairly extensive documentation of any remediation payments that have been made to workers,” including bank transfers and payslips, and the agency may ask for an additional “sub-audit” of the remediation documents, she said.

CBP generally gets its regulatory audit division involved in examining documentation and determining whether adequate proof has been submitted and the actions the

supplier says have been taken actually were, Rifkin said. “And if you’ve proceeded to a finding, this is an even harder process,” she said.

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