

**PUBLIC SECTOR PROCUREMENT:
IASC letters to permanent secretaries on
goods subject to US import bans**

April 2022

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Introduction

On 22 November 2021, Independent Anti-Slavery Commissioner Dame Sara Thornton wrote to 16 permanent secretaries of major government departments. She asked for reassurance that adequate measures were being taken to stop goods made with forced labour, and subject to US import bans, from entering departmental supply chains.

The letters were in response to a question asked in Parliament about Malaysian glove manufacturer Supermax. US Customs and Border Protection (CBP) issued an import ban against the manufacturer and its subsidiaries in October 2021¹. CBP issued the ban, also known as a withhold release order (WRO), after identifying 10 of the International Labour Organization's indicators of forced labour² during its investigation.

On 2 November 2021, Lord Alton of Liverpool asked the UK government what assessment the Department of Health and Social Care (DHSC) had made of alleged labour abuses by the company, how many of the company's products they had purchased, and the cost of those purchases.

DHSC Parliamentary Under Secretary of State Lord Kamall responded that the department had placed an order with Supermax for 135 million gloves at a cost of £7.9 million in July.

Despite his reference to an investigation into claims made against Supermax, and safeguards to terminate a contract in the event of substantiated allegations, no actual termination of the Supermax contract nor practical safeguarding measures for its workers were mentioned.

IASC letters

Subsequently, Dame Sara wrote to the permanent secretaries of 16 major government departments to understand more about their activities to safeguard their supply chains from forced labour.

Referring to the Supermax question, she raised concerns that the UK government may have other contracts with companies producing, handling or supplying goods that are subject to WROs.

Enclosing a list of the US government's most recent and relevant WROs against products that had the highest likelihood of entering the UK, including palm oil, personal protective equipment (PPE), tomatoes, tech products, textiles and apparel, Dame Sara wrote:

"I would ask that you share this list with your procurement teams and enquire whether they have let contracts with suppliers, producers or importers of goods that are in whole, or in part, produced by these companies. And, if so, what steps are they taking to work with the businesses to address modern slavery concerns."

¹ <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-supermax-corporation-bhd-and-its>

² https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm

Permanent secretary responses

Dame Sara received responses from all 16 departments. On checking for WRO-listed products in supply chains, the majority provided assurance that there were no contracts with the organisations listed in the letter.

DHSC response

One exception was the DHSC, which confirmed that it had purchased goods from two providers subject to WROs: Top Glove and Supermax. Top Glove has subsequently undergone a DHSC investigation, and worked closely with the department to improve its standards. DHSC noted that the US government has recently withdrawn the WRO raised against this manufacturer as a result of the improvements it had made.

On Supermax, DHSC said:

“We are currently investigating workforce practices at Supermax facilities and will take action accordingly. We assure you that this investigation is a priority for the department.”

The department has introduced enhanced contractual provisions and additional auditing to prevent labour exploitation in all future PPE contracts. This includes training buyers, category leads and contract managers, as well as working in partnership with suppliers to make tangible improvements to worker conditions where issues are identified. DHSC has also strengthened its due diligence, so that it can immediately terminate contracts from suppliers that fail to meet its standards, and remove them from purchasing frameworks so that they are excluded from future procurement considerations.

New legislation

On 21 April 2022, the government tabled a landmark amendment to the Health and Care Bill, introducing new regulations designed to eradicate the risk of the NHS procuring goods or services tainted by slavery and human trafficking. The regulations will set out steps that the NHS should be taking to manage risk associated with individual suppliers, and the basis on which suppliers should be excluded from the tendering process.

Responses from other departments

The responses from other departments varied. Some said that there had been no ‘direct purchases from’ or alternatively ‘no direct contracts’ with companies on the WRO list. HMRC went further and said that it had checked back and found that there had been no direct purchases with the listed companies within the last five years.

The use of careful phrasing, in particular, the word ‘direct’ suggests that the analysis was limited to tier one suppliers. This raises further questions on the limited scope of response: for example, many newly appointed suppliers of PPE equipment that the government signed direct contracts with during the pandemic were frequently importers and distributors of the products. This limited scope would not have included manufacturers subject to import bans.

Nevertheless some departments demonstrated that they were looking at their supply chains in more detail.

- The Department for Environment, Food and Rural Affairs is further investigating its main suppliers with a risk-based focus on PPE and IT equipment categories, and said that these investigations are being incorporated into existing assurance activities planned with those suppliers.
- The Department for Education (DfE) has engaged with IT hardware suppliers who confirmed that the companies subject to WROs did not feature in their supply chains. One DfE supplier was continuing to seek assurances, due to the size and complexity of its cloud-based supplier base.
- The Home Office said that its commercial specialists were engaging with some of its suppliers to identify whether companies subject to the WRO list featured in their supply chains, and to establish what steps were being taken to ensure workers were not being exploited.
- The Department for Levelling Up, Housing & Communities said that it had sought assurance from its suppliers that provide it with the types of goods placed on the WROs, including for ICT hardware. The department said that investigations provided no evidence that its supply chain included those companies.

On the principle of monitoring WROs, most departments agreed that, even though they were issued under a different legal framework, the WROs were a useful data source. The Home Office and Cabinet Office will be actively considering how they might be included in further guidance to departments.

All reported that they had voluntarily published their first modern slavery statement last November.

Conclusions

With the appointment of anti-slavery advocates in government departments, the writing of modern slavery statements and continued engagement with suppliers, central government departments are taking encouraging steps to improve scrutiny and minimise risk in their supply chains over the longer term. This is setting a good example, not only to their supply chains, but also the wider public sector.

It is encouraging to see some departments beginning to map out multiple tiers of their supply chains. This is essential to build a thorough understanding of risk. For example a cleaning contractor with whom there is a direct relationship might be purchasing PPE equipment that is subject to US import bans due to forced labour concerns. Dialogue is important, but requirements could also be specified or strengthened in commercial contracts.

Independent Anti-Slavery Commissioner Dame Sara Thornton said:

“Leadership and guidance from the Home Office has been apparent in the replies and I look forward to seeing how this is developed in coming months. I would expect to see consideration of these issues in the next departmental statements in 2022.

“I welcome the proposed regulations in the Health and Care Bill to strengthen due diligence protocols in NHS supply chains and would encourage this principle to be extended to all other areas of high risk public sector procurement.”

Notes:

Import bans or WROs

Under section 307 of the 1930 Tariff Act, the US government prohibits the importation of any product that was mined, produced or manufactured wholly or in part by forced labour. Withhold Release Orders can be issued against companies, regions or individual shipments. Companies have 90 days to provide evidence that these issues have been addressed, or risk bans on future shipments.

Since a legislative loophole was closed in 2016, US Customs and Border Protection Agency has been increasing the number of WROs it issues.

The table of recent WROs is attached to the letter in the appendix on the following pages.

22 November 2021

Dear

I am writing in my capacity as the Independent Anti-Slavery Commissioner, a statutory provision of the Modern Slavery Act 2015. My UK-wide remit is to encourage good practice in the prevention, detection, investigation and prosecution of modern slavery and human trafficking offences and the identification of victims.

Today, I am seeking reassurance that your department is taking adequate measures to stop goods that are made from forced labour, and subject to international import bans, from entering your department's supply chains.

Public procurement is an important area where governments can demonstrate leadership in tackling modern slavery. I welcome this government's commitment to extending Section 54 of the Modern Slavery Act to cover reporting to the public sector, and the leadership that your department is showing by publishing its own modern slavery statement ahead of new legislation.

However, I would like to draw your attention to a series of withhold release orders (WROs), or import bans, that the USA has placed on goods that are made under the conditions of modern slavery or forced labour.

Under section 307 of the 1930 Tariff Act, the US government prohibits the importation of any product that was mined, produced or manufactured wholly or in part by forced labour. Companies have 90 days to provide evidence that these issues have been addressed, or risk bans on future shipments.

Withhold release orders can force dramatic turnarounds in corporate behaviour, as was recently demonstrated in Malaysia's disposable glove manufacturing sector. Decades of traditional audits had failed to make any lasting impression, but a series of WROs and investigations by the US Customs and Border Protection (CBP) agency, watched closely by investors and stock exchanges, triggered improvements at an unprecedented pace. Over the past year, the four major Malaysian glove manufacturers have not only improved working conditions but have also repaid more than 20,000 workers an estimated US\$100 million in costs and recruitment fees. The speed and scale of reform has surprised the most seasoned experts in the sector.

WROs are not perfect, nor are they the sole answer to the endemic problem of forced labour. But, based on credible evidence and investigations, they can be a powerful accelerator for change. Nevertheless, without international harmonisation there is a high risk that banned goods will be diverted to nations that are taking a less robust stance, such as the UK.

In October 2021, CBP issued a WRO against Malaysian glove producer Supermax. Responding to this event, Lord Alton of Liverpool asked the UK government what assessment they have made of alleged labour abuses by the company; how many of the company's products they had purchased, and the cost of those purchases.

I was disturbed by Lord Kamall's response that government had placed an order with Supermax in July for 135 million gloves at a cost of £7.9 million. Despite his reference to safeguards to terminate a contract in the event of substantiated allegations against a provider, no actual termination of the Supermax contract nor practical safeguarding measures were mentioned.

Consequently, I am concerned that the UK government may have other contracts with companies producing, handling or supplying goods that are subject to WROs. Overleaf is a list of the most recent and relevant WROs against products that have a high likelihood of entering the UK, including palm oil, PPE, tomatoes, tech products, textiles and apparel.

I would ask that you share this list with your procurement teams and enquire whether they have let contracts with suppliers, producers or importers of goods that are in whole, or in part, produced by these companies. And, if so, what steps are they taking to work with the businesses to address modern slavery concerns.

As the UK prides itself on leading the anti-slavery agenda, it is vital that government upholds this commitment by sending a strong warning to unscrupulous producers and importers.

I look forward to receiving your response. In the interests of transparency, please respond in a way that enables me to publish your letter on my website.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Sam Yuen". The signature is written in a cursive, flowing style.

DATE	Company/Area	Products	Application	Status
CHINA				
23.06.21	Hoshine Silicon Industry Ltd and subsidiaries	Silica-based products	Applies to silica-made goods made by Hoshine and subsidiaries, as well as materials and final goods made from or using those products, regardless of where those products are produced	Active
13.01.21	China's Xinjiang Uyghur Autonomous Region (XUAR)	Cotton, tomatoes and downstream products	Applies to products produced in whole or in part in the XUAR region, as well as downstream items produced outside the region	Active
30.11.20	Xinjiang Production and Construction Corporation (XPCC) and subordinates	Cotton and cotton products	Applies to all products produced by XPCC, its subsidies and also any goods made in whole or part derived from that cotton, including apparel, garments, textiles	Active
08.09.20	Hefei Bitland Information Technology Co Ltd	Computer parts	CBP statement: "information reasonably indicates that Hefei uses both prison and forced labour to produce electronics"	Active
08.09.20	Xinjiang Junggar Cotton and Linen Co, Ltd in the XUAR region	Cotton and processed cotton	CBP statement: "information reasonably indicates that this entity and its subsidiaries use prison labour in their raw cotton processing operations"	Active
03.09.20	Yili Zhuowan Garment Manufacturing Co., Ltd. and Baoding LYSZD Trade and Business Co Ltd	Apparel	CBP statement: "information reasonably indicates that these entities use prison and forced labour." CBP identified forced labour indicators include restriction of movement, isolation, intimidation and threats, withholding of wages, and abusive	Active

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			working and living conditions.	
25.08.20	No. 4 Vocational Skills Education Training Center (VSETC), XUAR	All products	CBP statement “information indicates that this “re-education” internment camp...is providing prison labour to nearby entities in Xinjiang.” CBP identified forced labour indicators include highly coercive/unfree recruitment, work and life under duress, restriction of movement	Active
MALAYSIA				
04.11.21	Smart Glove group (including GX Corporation Sdn Bhd, GX3 Specialty Plant, Sigma Glove Industries, and Platinum Glove Industries Sdn Bhd)	Disposable gloves	Seven ILO indicators of forced labour found during CBP’s investigation	Active
21.10.21	Supermax Corporation and subsidiaries (Maxter Glove Manufacturing Sdn Bhd, Maxwell Glove Manufacturing Bhd and Supermax Glove Manufacturing)	Disposable gloves	Ten of 11 ILO forced labour indicators found during investigation	Active
30.12.20	Sime Darby Plantation Berhad and subsidiaries and joint ventures	Palm oil and palm oil products	All 11 ILO forced labour indicators were found in its production process (palm oil is found in cosmetics, processed foods, biodiesel, soaps)	Active
30.09.20	FGV Holdings Berhad, subsidiaries and JVs	Palm oil and palm oil products	As well as many forced labour indicators, there is also evidence of forced child labour used in the production process	Active
15.07.20	Top Glove Corporation Bhd	Disposable gloves	WRO lifted 09.09.21 – WRO modified after CBP	Inactive

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			review, finding that TG had addressed all 11 forced labour indicators in its facilities – including \$30 million in remedial payments to workers	
30.09.19	WRP Asia Pacific Sdn Bhd	Disposable gloves	WRO lifted on 24.03.20 – CBP reviewed evidence and found that the company was no longer operating forced labour conditions	Inactive

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