

Insights

U.S. TARGETS IMPORTS BENEFITTING FROM UYGHUR FORCED LABOR WITH BLANKET BAN ON GOODS PRODUCED IN XINJIANG, CHINA

Jan 06, 2022

On December 23, 2021, President Biden signed the bipartisan Uyghur Forced Labor Prevention Act (UFLPA or the “Act”), Pub. L. No. 117-78, which will ban the importation of all goods sourced from the People’s Republic of China’s northwest Xinjiang Uyghur Autonomous Region (XUAR or “Xinjiang”), or by entities operating in the region, effective June 21, 2022. The human rights-oriented trade restriction establishes a rebuttable presumption that such goods have been produced using forced labor—particularly by the Uyghur Muslim community—which are banned by existing statute. Importers, especially of Chinese goods, may rebut the presumption by following forthcoming guidance based on public comment and hearing, or choose to structure their supply chains to avoid Xinjiang altogether.

The Trump and Biden Administrations have alleged that the Chinese Government has engaged in a years-long genocide in Xinjiang against China’s Uyghur and other minority Muslim populations, accusing it of forced labor, among other crimes against humanity. Section 307 of the Tariff Act of 1930, [19 U.S.C. § 1307](#), presently bans the importation into the United States of any foreign “goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part” by forced or convict labor, or indentured labor under penal sanctions. Such goods are subject to exclusion or seizure, and importers of such goods may be subject to civil or criminal penalties. The statute defines forced labor as all labor done “under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily.”

U.S. Customs and Border Protection (CBP) has historically enforced Section 307 reactively. Under [19 C.F.R. § 12.42](#), CBP must first have or receive reason to believe that imported goods are being produced under forced labor conditions, and conduct an investigation to confirm, primarily relying on the [International Labour Organization \(ILO\) indicators](#) of forced labor. When CBP raises concerns about forced labor, importers may present evidence that the supply chain does not implicate forced labor, typically including supplier affidavits, business documentation, or an anti-forced labor compliance program. If the investigation finds a reasonable but not necessarily conclusive indication of forced labor concerns, the agency will then issue a withhold release order (WRO), which directs ports to detain and dispose of any subject goods, whether by geography or

manufacturer. An interested party may request that CBP modify or revoke the WRO by showing that an entity has remediated the ILO indicators or was not engaged in forced labor practices.

Congress passed the UFLPA unanimously in the Senate and with one dissenting vote in the House to reverse the burden of demonstrating that a supply chain is free of forced labor—effectively to issue a WRO covering Xinjiang. Under Section 3(a) of the Act, CBP will affirmatively enforce Section 307 against all goods of Xinjiang, rather than only those it has already determined were made with forced labor. The burden is now on the importer with respect to all imports from Xinjiang to disprove to CBP, by “clear and convincing evidence,” the presence of such labor to rebut the presumption. This exception mirrors Section 302A(a) of the North Korea Sanctions and Policy Enhancement Act of 2016, [22 U.S.C. § 9241a\(a\)](#), added by Section 321(b) of the Countering America’s Adversaries Through Sanctions Act of 2017 (CAATSA), aimed at goods made by North Korean nationals.

Although not the first, the UFLPA is the strongest action yet against imports and importers potentially benefitting from the conditions in Xinjiang. In 2021 alone, CBP [issued](#) WROs targeting, among other products, tomatoes and cotton on a regional basis, and polysilicon and silica-based products on an entity basis; China and Xinjiang in particular produce a high proportion of the world’s supply of these items. And as we previously [reported](#), a multiagency [advisory](#) issued in July 2021 warned of the risks of exposure to entities found to engage in human rights abuses, including by sourcing of goods or labor from Xinjiang, or from other locations connected to forced labor in Xinjiang or that rely on inputs from Xinjiang. These measures are part of a wide range of economic, trade, and diplomatic sanctions and pressure against China and those who do business in or with Chinese entities.

Importers, particularly those that source from China at large should prepare for greater scrutiny upon implementation of the Act, and develop compliance plans to ensure they avoid Xinjiang manufacturers and Xinjiang-derived goods unless they can meet the high clear-and-convincing-evidence standard to rebut its presumption. The goods subject to the ban may be divided into three categories: those produced (1) wholly in Xinjiang, (2) partially in Xinjiang, or (3) by certain entities operating in China or third countries that produce in or export from Xinjiang, or work with the Xinjiang government or Xinjiang Production and Construction Corps to facilitate forced labor. The second and third categories will require examination of not only finished goods but also of materials, components, or other inputs upstream through the supply chain, and the suppliers’ backgrounds. CBP does not apply a *de minimis* exception to Section 307 violations.

Guidance is forthcoming after public input. The Act directs that by January 22, 2022, the multiagency Forced Labor Enforcement Task Force (the “Task Force”) established under Section 741 of the United States–Mexico–Canada Agreement (USMCA) Implementation Act, [19 U.S.C. § 4681](#), solicit public comments and hold subsequent public hearings to develop a strategy to prevent the importation of banned goods by the effective date. Under Section 2(d)(6) the strategy must include guidance to importers on “due diligence, effective supply chain tracing, and supply chain management measures” and “the type, nature, and extent of evidence that demonstrates that”

Chinese-originating goods were produced neither in Xinjiang nor otherwise with forced labor. The Section 3(a) presumption may be rebutted under Section 3(b) where CBP is satisfied that an importer has followed this guidance and cooperated with CBP inquiries. Some considerations exist in the criteria CBP considers for WRO investigations, CAATSA enforcement history, and the aforementioned supply chain advisory. The guidance will also include a list of offending facilities and entities.

We expect CBP to enforce the UFLPA strictly, aggressively, and quickly upon its effective date, which will create risks for any companies doing business in China, often in the agriculture, textile, and solar industries. The experienced international trade team at BCLP is available to assist companies with preparing comments and testimony to the Task Force once the submission periods are announced, conducting due diligence on current supply chains, advising on purchase agreements, and developing programs to comply with these new requirements.

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