

National Security, Sanctions, and Export Controls

A New Frontier in Supply Chain Diligence: Uyghur Forced Labor Prevention Act Becomes Law

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On Thursday, December 23, 2021, President Biden signed the [Uyghur Forced Labor Prevention Act](#) (the “Act”) into law. The Act aims to “ensure that goods made with forced labor in the Xinjiang Uyghur Autonomous Region of the People’s Republic of China do not enter the United States market.” It does so by targeting forced labor from China through multiple means, including by mandating broad prohibitions on the importation of all goods from Xinjiang. It is now more critical than ever for companies to know and document every step of their supply chains to ensure that they do not involve forced labor at any point.

I. Presumption Prohibiting Entry of All Items from Xinjiang

Of greatest significance for companies importing goods into the United States, Section 3 of the Act requires that the Commissioner of US Customs and Border Protection (“CBP”) “apply a presumption that ... any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part” in Xinjiang or produced by Xinjiang entities to be identified by the [Forced Labor Enforcement Task Force](#) (established under the US-Mexico-Canada Agreement Implementation Act) (“Task Force”), are prohibited from importation under [Section 307](#) of the Tariff Act of 1930 (“Tariff Act”). **In short, upon implementation, importers of record must be prepared to prove, by clear and convincing evidence, that their supply chains do not involve Xinjiang forced labor.**

While section 307 of the Tariff Act prohibits importing any product that was mined, produced, or manufactured wholly or in part by forced labor, CBP has historically implemented this provision through the identification of company-specific Withhold Release Orders (“WROs”) or Findings of forced labor. Recent exceptions to this targeted practice have been the issuance of a broad WRO in January 2021 applicable to all cotton, tomatoes and downstream products manufactured in whole or in part in Xinjiang, as well as the presumption of forced labor for all North Korea labor under section 321(b) of the Countering America’s Adversaries Through Sanctions Act (“CAATSA”). Now, the newly-enacted Act essentially serves to broaden the presumption currently applicable to Xinjiang cotton and tomato products to all products from Xinjiang. Unlike the CAATSA-based North Korea presumption, however, which [prohibits all items produced by North Korean nationals or citizens](#) regardless of whether they are made in North Korea or not, the Act’s Xinjiang-based presumption is geographically limited to goods from Xinjiang and to certain Xinjiang entities.

II. Overcoming the Presumption of Xinjiang Forced Labor

As with other WROs, the Act allows importers to overcome the presumption of forced labor applicable to items from Xinjiang if they can prove by “clear and convincing evidence” that the item in question was not the product of forced labor. Specifically, the Act allows an exception to the presumption of forced labor upon the CBP Commissioner’s determination by “clear and convincing evidence that the good, ware, article, or merchandise was not mined, produced, or manufactured wholly or in part by forced labor”, and that the importer of record has:

1. Fully complied with all guidance regarding diligence, goods, and evidence issued by the Task Force; and
2. Responded to all inquiries for information regarding whether the item is the product of forced labor.

Whenever the CBP Commissioner makes such an exception to the Act's presumption of inadmissibility, the Commissioner must, within 30 days, submit a report to certain congressional committees and the public that identifies both the good excepted and the evidence relied-upon. Once implemented, such reports may provide helpful insights to importers seeking to overcome the Act's Xinjiang forced labor presumption.

III. Additional Steps to Prevent Entry of Items Produced from Forced Labor in China

Several other provisions of the Act further aim to ensure that items produced as a result of forced labor in the People's Republic of China do not enter the United States. Under Section Two of the Act, the Task Force will take a number of steps towards this end:

- Within 30 days after the Act's enactment, the Task Force will solicit public comment on how to ensure items produced as a result of forced labor anywhere within the People's Republic of China are not imported into the United States. **Businesses will have the opportunity to provide input into this process.**
- Within 45 days after the close of the above comment period, the Task Force will conduct a public hearing and invite witnesses to testify regarding the use of forced labor in the People's Republic of China and potential measures to prevent the importation of items resulting from such forced labor into the United States;

Following the public comment period and hearing noted above, the Task Force will, in consultation with the Secretary of Commerce and the Director of National Intelligence, develop a strategy to prevent items produced using forced labor in the People's Republic of China from being imported into the United States. This strategy will provide important insights into forced labor practices and steps companies should take to ensure that their supply chains are free of such labor. The strategy will include:

- An assessment of the risk of importing goods resulting from forced labor, including threats that could lead to the importation of such goods via third countries;
- A description and evaluation of various government labor schemes in which certain persecuted groups non-voluntarily provide work or services, and identifying "a list of high-priority sectors for enforcement," which will include cotton, tomatoes, and polysilicon (all industries with existing WROs);
- A recommendation of steps that can be taken to ensure goods made in Xinjiang that enter into the United States are accurately identified and traced;
- A description of legal and other steps, including pilot programs, that CBP can use to ensure that no goods wrongfully enter US ports, along with a description of additional resources that are needed for this purpose;
- Issuance of guidance to importers covering several topics, including due diligence, effective supply chain tracing, and supply chain management measures; and
- A plan for coordinating and collaborating with appropriate nongovernmental organizations and private sector entities.

The foregoing steps will take place in the context of a multilateral diplomatic strategy for addressing forced labor in Xinjiang, as mandated in Section 4 of the Act. This strategy is consistent with the approach the US is already taking in conjunction with its partners and allies to encourage other countries to impose similar prohibitions on the importation of goods made with Xinjiang forced labor.

IV. Prepare Now

The broad Xinjiang forced labor presumption takes effect on June 21, 2022 – 180 days following enactment of the Act. Taking steps now to ensure due diligence and to document supply chains is

especially important for businesses in sectors the US Government has identified in its revised [Xinjiang Supply Chain Business Advisory](#) as industries using forced labor (i.e., agriculture, cell phones, cleaning supplies, construction, cotton, electronics assembly, extractives such as copper and hydrocarbons, hair products, food processing, footwear, gloves, hospitality, metallurgical grade silicon, noodles, printing products, renewable energy, stevia, sugar, textiles, and toys). To this end, as detailed in our prior alert, [Six Best Practices for Excising Xinjiang Forced Labor from Supply Chains](#), until CBP and the Task Force issue specific guidance implementing the Act, engaging in human rights due diligence and applying lessons learned from CBP's implementation of the North Korea presumption and the Xinjiang cotton and tomato WROs will help companies to ensure that they remove Xinjiang forced labor from supply chains and appropriately document every step of their supply chains so that they are prepared to overcome a future presumption of Xinjiang forced labor.

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