



The Bottom Line

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CBP FOCUSES ON FORCED LABOR

Summary

U.S. Customs and Border Protection (CBP) has published its semiannual regulatory agenda, outlining the regulations affecting international trade that could be issued within the next year. Among them is a proposed rule to update, modernize, and streamline the process for enforcing the prohibition against the importation of goods mined, produced, or manufactured in any foreign country by convict or forced labor or indentured labor under penal sanctions.

Background

Slavery and human trafficking are crimes under state, federal, and international law and yet, slavery and human trafficking exist in every country, including the United States. The response of the Federal Government has been developing over the last two decades.

By Executive Order in June 1999, all government contractors were required to investigate and certify that no forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract. Violations could result in the termination of the contract in question and debarment of the contractor for three years. These provisions were strengthened in 2012 to include other forms of forced labor, including trafficked humans. In September 2009, the United States Department of Labor released a report which named 122 goods from 58 countries that were believed to be produced by forced labor or child labor in violation of international standards. Consumers and businesses were inadvertently promoting and sanctioning these crimes through the purchase of goods and products that had been tainted in the supply chain. The Trade Facilitation and Trade Enforcement Act of 2015 amended customs regulations on forced labor products to remove the exception which allowed for the importation of forced labor-produced goods if they were not available in the United States to meet “consumptive demand”.

Current Status

On July 1, 2020, the U.S. Departments of State, Treasury, Commerce, and Homeland Security jointly issued an Advisory called “Risks and Considerations for Businesses with Supply Chain Exposure to Entities

Engaged in Forced Labor and other Human Rights Abuses in Xinjiang”. Although this Advisory does not set out any new laws, it was published shortly after the Uyghur Human Rights Policy Act of 2020 was signed into law on June 17, 2020. These developments suggest a shift in enforcement focus on the Xinjiang Uyghur Autonomous Region (XUAR), including imports from XUAR, exports and technology transfers to XUAR, and other business activity in China that may implicate XUAR.

The Advisory urges U.S. and non-U.S. businesses, academic institutions, research service providers, and investors with connections to XUAR, to implement appropriate human rights due diligence policies, procedures, and internal controls to mitigate reputational, economic, and legal risks. The Advisory suggests that failure to take appropriate due diligence steps may increase the risk of sanctions or law enforcement activity by the U.S. government. Specifically highlighted in the Advisory are industries which directly or indirectly contribute to the crisis, including:

- Exports to China of technologies relating to biometrics or surveillance;
- Joint ventures with Chinese government or Chinese companies who have been known to aid in the development of surveillance systems used against minority groups;
- Imports of cotton (XUAR is responsible for most of China’s domestic cotton production); and
- Imports of hair products.

Impact

Public expectations of companies’ control over labor standards and human rights in their supply chains have intensified in recent years. A growing number of consumers are attuned to issues of labor abuse, particularly in industries such as apparel, footwear, and electronics. In addition, with the explosion of social media, exposés revealing child labor, forced labor or other degrading working conditions in a supply chain can more easily reach consumers and damage a brand’s reputation and adversely impact sales or stock prices. The Advisory could be a precursor to increased sanctions and enforcement actions by U.S. agencies related to activities in XUAR.

RESOURCES:

[Risks and Considerations for Businesses with Supply Chain Exposure to Entities Engaged in Forced Labor](#) (U.S. Treasury Department)
[Forced Labor](#) (U.S. Customs and Border Protection)