



The Bottom Line

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CBP ISSUES BAN ON ALL PRODUCTS BASED ON UYGHUR FORCED LABOR

Summary

President Joe Biden signed a bill on December 23 that bans imports from Xinjiang and imposes sanctions on individuals responsible for forced labor in the region.

Background

The latest estimate by the International Labor Organization reveals that about 25 million people in the world are trapped in forced labor. While victims can be found almost anywhere—even in the United States—most of the indentured work is in Asia, Africa, and Latin America. According to the Department of Labor, seventy-five countries, including China, Russia, Thailand, and India, are among the nations where forced labor exists.

For well over a century, the U.S. has taken steps to stop imports of products manufactured using forced labor, beginning with the 1890 McKinley Tariff Act, which banned products made by prisoners. The Smoot-Hawley Tariff Act of 1930 prohibited imports made by enslaved people and, later, forced labor or children. But there was a catch: Goods made by forced labor could still be imported into the U.S. if those goods couldn't be sufficiently provided domestically—cocoa or coffee beans, for instance. In 2016, the Trade Facilitation and Trade Enforcement Act removed the loophole, strengthening CBP's authority to stop suspected shipments. CBP expects importers to have procedures to show their goods comply with the law.

In 2020, the Office of Foreign Assets Control (OFAC) added China's Xinjiang Production and Construction Corporation (XPCC) to its Specially Designated Nationals List on July 31 for significant rights abuses against ethnic minorities in China's Xinjiang Uyghur Autonomous Region. More than 1 million Uyghurs are believed to be held in camps in the Xinjiang province of northwestern China, where they work as slave laborers and are forced to abandon their cultural practices. The Biden administration has previously described the abuse of Uyghurs and members of other Muslim minorities in the Xinjiang region as "widespread, state-sponsored forced labor" and "mass detention."

Current Status

This bill imposes importation limits on goods produced using forced labor in China, especially the Xinjiang Uyghur Autonomous Region, and imposes sanctions related to such forced labor. The Forced Labor Enforcement Task Force has been directed to devise a strategy for preventing the importation of goods produced in China using forced labor. This strategy must contain certain information, including a list of entities (1) producing goods in Xinjiang using

forced labor; or (2) working with the government in Xinjiang to move forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of Xinjiang. As part of this strategy, U.S. Customs and Border Protection will presume that goods produced by these entities involving Chinese government forced labor programs are barred from importation into the United States. It will be the importer's responsibility to rebut this presumption by establishing, with clear and convincing evidence, that the goods in question were not produced wholly or in part using forced labor. The bill is scheduled to take effect June 21, 2022.

Impact

When information reasonably indicates that merchandise produced by forced labor is being, or is likely to be, imported into the United States, Customs will issue a Withhold Release Order (WRO). If information conclusively demonstrates that merchandise is being produced by forced labor, Customs will issue a Finding. Shipments of merchandise subject to WROs will be detained. Importers will have the opportunity to either re-export the detained shipment(s) or submit information to CBP demonstrating that the goods are not in violation of the order. Shipments subject to Findings shall be excluded or seized unless the importer establishes that the merchandise is admissible by satisfactory evidence.

In issuing a WRO or Finding, CBP increases importers' responsibility to ensure that the products they seek to import are not made using forced labor at any point in their supply chain, including the production or harvesting of the raw material. Given the industrial realities of these supply chains, such as lack of visibility in upstream harvesters, aggregation/comingling of raw inputs, and information asymmetry, CBP's expanded enforcement posture will prove burdensome to importers that are caught off guard. It is now more critical than ever for importers to develop comprehensive compliance plans to reduce risk to operations.

RESOURCES

[CBP Takes Aim at Forced Labor](#) (U.S. Customs & Border Protection)

[CBP Begins 2021 With Expansive New Enforcement Against Forced Labor](#) (Arent Fox)

[U.S. Bans Imports from China's Xinjiang Region, Citing Human Rights Abuses](#) (CNBC)

[US Congress Passes Import Ban on Chinese Uyghur Region](#) (BBC)

[Biden Signs Bill Banning Imports Made by Forced Uyghur Labor in China](#) (Forbes)

[H.R.6256 - 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, and for other purposes](#) (Congress.gov)