



The Bottom Line

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Uyghur Forced Labor Protection Act Takes Effect June 21

Summary

The Uyghur Forced Labor Protection Act establishes a presumption that the importation of any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People's Republic of China is prohibited by Section 307 of the Tariff Act of 1930 and that such goods, wares, articles, and merchandise are not entitled to entry to the United States. The rebuttable presumption goes into effect on June 21st, 2022.

Background

For 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 the domestic market could not sufficiently provide those goods—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 31st 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

Despite the attention to the region, a new report finds there may be an increase in Beijing's coercive labor campaign targeting the predominantly Muslim ethnic group in Xinjiang, expanding a widely condemned program China has long denied. "Despite the decrease in concrete publicly available evidence, the new developments are increasing both the scale and the scope of coercive labor, expanding it to higher-skilled sectors," stated a report posted this week on the Washington-based Jamestown Foundation's website.

This bill, signed December 23rd, 2021, imposes an import ban on all goods produced in the Xinjiang Uyghur Autonomous Region, presuming that the goods were made using forced labor. The presumption applies unless the Commissioner of U.S. Customs and Border Protection (CBP) determines that the importer of record has complied with specified conditions and, by clear and convincing evidence, that the goods, wares, articles, or merchandise were not produced using forced labor. 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.

In advance of June 21st, CBP has been issuing letters to importers identified as having previously imported merchandise that may be subject to the Act to encourage them to address any forced labor issues in their supply chains. All importers must review their supply chains thoroughly and institute reliable measures to ensure imported goods are not produced wholly or partially with convict labor, forced labor, or indentured labor (including forced or indentured child labor).

Impact

CBP's authority to detain merchandise under the UFLPA will be according to 19 CFR § 151.16, which provides a much different timeline for the detention of cargo than the standard Withhold Release Order (WRO) process. An importer that has had its merchandise detained under a WRO generally has 90 days to provide proof of admissibility of the merchandise to CBP. The appeals process for merchandise detained under the UFLPA is on a much shorter timeline than that typical for detained goods. CBP will have five business days from the entry filing to determine if it will detain or release the goods. If CBP affirmatively decides to detain the merchandise or fails to release the merchandise within five days, the merchandise will be considered detained. Once the merchandise is officially detained, CBP will issue a notice of detention to the importer no later than five days after the decision to detain or failure to release. Within 30 days, CBP will decide the admissibility of the detained merchandise.

Under this process, goods are automatically excluded if Customs does not make a timely decision regarding admissibility. At this point, the importer can request that CBP permit it to overcome the burden of the presumption. However, the importer then bears the burden of proof and must provide clear and convincing evidence that its imported merchandise was not mined, produced, or manufactured wholly or partly by forced labor.

RESOURCES

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

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

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

[Uyghur Forced Labor Prevention Act Is Coming - Are You Ready? CBP Issues Hints at the Wave of Enforcement to Come](#) (The National Law Review)

[Uyghur Forced Labor Prevention Act](#) (U.S. Customs & Border Protection)

["Scale" and "Scope" of Forced Labor in Xinjiang Increasing, Report Says](#) (Voice of America)

[Xinjiang Uyghur Autonomous Region WRO Frequently Asked Questions](#) (U.S. Customs & Border Protection)

[CBP Issues Minimal UFLPA Guidance](#) (Conventus Law)