

Biden Signs Uyghur Forced Labor Prevention Act

Key Notes:

- President Biden signed the Uyghur Forced Labor Prevention Act into law on December 23, 2021 to continue efforts to prevent the importation into the United States of goods produced in whole or in part with forced labor in China.
- The Act creates a rebuttable presumption that all goods produced in whole or in part in the Xinjiang region of China or imported from certain designated entities are produced from forced labor and must be denied entry into the United States.
- The law will go into effect on June 21, 2022.

On December 23, 2021, President Biden signed into law the [Uyghur Forced Labor Prevention Act](#), H.R. 6256 (Public Law No. 117-78) (the “Act”), which is part of a concerted U.S. government effort to address the use of state-sponsored forced labor in China’s Xinjiang Uyghur Autonomous Region (“Xinjiang”).

The bipartisan bill was passed by voice vote in the House and without amendment by unanimous consent in the Senate. The law sets forth a broad framework for the development of a strategy to enforce the prohibition on the importation of goods produced using forced labor from China and establishes a “rebuttal presumption” that imports of products made in whole or in part in Xinjiang or by certain designated persons are produced from forced labor. It also amends the Uyghur Human Rights Policy Act of 2020 to authorize sanctions against persons responsible for “serious human rights abuses in connection with forced labor.” The Act goes into effect on June 21, 2022.

Background on U.S. Efforts to Address Forced Labor

Section 307 of the Tariff Act of 1930, 19 U.S.C. 1307, has since its inception prohibited the importation into the United States of “goods, wares, articles and merchandise mined, produced or manufactured wholly or in part in any foreign country by ... forced labor.” Since the consumptive demand exception to Section 307 was repealed by the Trade Facilitation and Trade Enforcement Act of 2015, enforcement of Section 307 through Withhold Release Orders (WROs) issued by Customs and Border Protection (CBP) has rapidly increased. WROs identify goods for which there is a reasonable assumption of production using forced labor. A WRO typically covers a particular manufacturer but may cover certain goods from an entire region. From 2016 to 2022, CBP issued 36 WROs, nearly half of them targeting China.

In addition, the Office of Foreign Assets Control and the Bureau of Industry and Security have increasingly focused sanctions and export controls on addressing forced labor in China. For example, from 2020 to 2021, numerous officials and companies, including one of China’s largest producers, Xinjiang Production and Construction Corps (XPCC), were sanctioned for engaging in serious human rights abuses and forced labor involving ethnic minorities in Xinjiang. The Departments of State, Treasury, Commerce, Homeland Security, Labor and the Office of the U.S. Trade Representative joined forces to issue the Xinjiang Supply Chain Advisory warning of heightened risk of forced labor in China. Representatives of these agencies and the Justice

Department have created a Forced Labor Enforcement Task Force (“Task Force”) to further these policies.

The passage of the Act culminates congressional efforts to address growing concerns about the use of forced labor in Xinjiang and, once fully implemented, it should provide clearer direction and guidance for industry with supply chain concerns in China.

Due Diligence Guidance Expected

Within 30 days of the Act’s enactment, the Task Force will issue a notice in the *Federal Register* seeking public comment in order to determine how best to ensure that goods produced in whole or in part using forced labor in China are not imported into the United States. Thereafter, industry will have 45 days to comment on measures that may be taken to prevent the use of forced labor, including those taken to “trace the origin of goods, offer greater supply chain transparency, and identify third country supply chain routes.” After a public hearing, the Task Force will develop an official strategy to prevent importation of goods produced in whole or in part using forced labor in China. Notably, the strategy must include:

- Risk assessment to identify goods produced in whole or in part using forced labor in China;
- Description and evaluation of Chinese government labor schemes, like the “pairing assistance” and “poverty alleviation” programs used to disguise the use of forced labor;
- Lists of the products produced in whole or in part by any facility or entity involved with forced labor;
- Lists of high-priority sectors for enforcement, including cotton, tomatoes and polysilicon; and
- Lists of entities (i) in Xinjiang that produce goods in whole or in part from forced labor; (ii) that work with the Xinjiang local government to recruit, transport, transfer, harbor or receive Uyghurs or other persecuted minorities for forced labor; and (iii) that source materials from Xinjiang or that work with the government of Xinjiang or XPCC for purposes of forced labor.

In addition to providing recommendations to CBP, the Task Force will also prepare long-awaited formal guidance for importers on the due diligence efforts and measures needed to effectively trace and manage their supply chains

to prevent the use of forced labor and the type, nature and extent of evidence they must provide to prove to CBP that their goods are not produced using forced labor or in Xinjiang. The strategy must be completed and submitted to Congress no later than June 21, 2022.

Rebuttable Presumption That Imports from Xinjiang or Designated Entities Are Produced from Forced Labor

Probably the Act’s most significant impact is that it creates a rebuttable presumption that certain products are produced using forced labor and must be denied entry into the United States pursuant to Section 307 of the Tariff Act. Specifically, the presumption is that goods, wares, articles or merchandise that are either (i) mined, produced or manufactured in whole or in part in the Xinjiang region or (ii) produced by an entity designated by the Task Force as noted above, are produced using forced labor and are not entitled to entry at any U.S. ports.

This presumption is rebuttable; that is, it will not apply if CBP determines the importer of record has:

- Fully complied with the due diligence guidance issued by the Task Force and related regulations issued along with the guidance;
- Completely and substantively responded to all inquiries for information submitted by CBP on whether the goods were produced in whole or in part using forced labor; and
- Established by clear and convincing evidence that the goods were not produced using forced labor.

Whenever CBP makes this exception, it must make public the imported good and the evidence it considered in not applying the presumption. CBP is expected to issue regulations providing more guidance on the interpretation of these requirements.

Additional Sanctions

The Act also amends the Uyghur Human Rights Policy Act of 2020 to authorize the imposition of sanctions against persons responsible for serious human rights abuses in connection with forced labor against the Uyghurs and other persecuted minorities in China. Such sanctions may include

(i) asset blocking; (ii) ineligibility for visas and admission to the United States; and (iii) potential penalties under the International Emergency Economic Powers Act for foreign persons that violate – or attempt to violate – the law.

Diplomatic Strategy

The new law also requires the Secretary of State to prepare a report setting forth a strategy to promote initiatives to enhance international awareness of and address forced labor in Xinjiang. The report will include supply chain due diligence guidance as well as identification of other entities in China or affiliates of such entities that use or benefit from forced labor in the region, as well as any foreign persons that acted as agents of the entities or affiliates of any identified entities to import goods into the United States.

Sunset Clause

The law establishes a sunset clause, which provides that it will expire eight years after enactment, or on an earlier date on which the president notifies Congress that China has “ended mass internment, forced labor, and any other gross violations of human rights experienced by Uyghurs, Kazakhs, Kyrgyz, Tibetans, and members of other persecuted groups in the Xinjiang Uyghur Autonomous Region.”

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