

Uyghur Forced Labor Prevention Act increases pressure on U.S. businesses to address human rights in their supply chains

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On December 23, 2021, U.S. President Joe Biden signed into law the **Uyghur Forced Labor Prevention Act** (UFLPA).

Having been originally proposed in March 2020, the final version (H.R.6256) passed both chambers with strong bipartisan support. The UFLPA is the latest development in a wide-ranging effort by the U.S. government to respond to allegations of forced labor and other human rights abuses in the Xinjiang Uyghur Autonomous Region (Xinjiang) of the People's Republic of China (PRC). Widespread media coverage of alleged forced labor practices and human rights abuses targeting Uyghurs and other mainly Muslim ethnic minorities in Xinjiang resulted in expansive sanctions and other penalties prior to the UFLPA. The new law builds on these efforts by effectively prohibiting all imports from Xinjiang into the United States, and heightens the risks for businesses with connections to Xinjiang.

The UFLPA includes three provisions particularly likely to affect U.S. businesses. The UFLPA provides that:

- U.S. Customs and Border Protection (CBP) shall apply a “rebuttable presumption” that any goods produced wholly or in part in Xinjiang are not entitled to enter the United States.
- The Forced Labor Enforcement Task Force (FLETF) will develop and publish a strategy to enforce the prohibition of goods produced using forced labor in the PRC.
- The U.S. shall impose sanctions against non-U.S. persons that commit human rights abuses in connection to forced labor, including PRC Government officials.

U.S. businesses with significant exposure to Xinjiang through their supply chains (including those operating in particularly at-risk industries such as the solar and textiles sectors) may be especially impacted by these forthcoming restrictions.

U.S. customs and border protection to apply “rebuttable presumption” to Xinjiang-related imports

Under the UFLPA, CBP shall presume that any goods sourced from Xinjiang are prohibited from entering the United States. Effective 180 days from enactment (i.e., by June 21, 2022), CBP will begin applying the presumption that any goods, wares, articles, and merchandise, “mined, produced or manufactured wholly or in part in [Xinjiang]” are prohibited under section 307 of the Tariff Act of 1930 (Tariff Act). The presumption also applies to entities identified by FLETF, as discussed further below. In addition, CBP may prescribe new regulations—or amend existing regulations—relating to Withhold Release Orders (WRO), to implement the presumption.

CBP may allow for an exception to the (rebuttable) presumption if the importer of record has: (i) fully complied with all import guidance with respect to due diligence and supply chain tracing from CBP and any regulations issued to implement that guidance; and (ii) completely and substantively responded to all inquiries for information submitted by CBP. CBP must also determine 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.” In practice, this rebuttable presumption will be difficult for many importers to meet given the restrictions on independent auditing in Xinjiang. As such, the UFLPA’s “rebuttable presumption” may effectively amount to a complete import ban, with potentially significant impacts on businesses with supply chain exposure to Xinjiang.

Forced labor enforcement task force entity report

The UFLPA requires the FLETF to develop a strategy to enforce Section 307 of the Tariff Act to prohibit goods made through forced labor in Xinjiang within 180 days of enactment (i.e., by June 21, 2022). The strategy must include guidance to importers with respect to due diligence, supply chain tracing, and supply chain management. It will also advise on the type, nature and extent of evidence that importers must provide in order to obtain a determination by the Commissioner of an exception to the “rebuttable presumption” policy. Finally, the strategy will include a comprehensive description and evaluation of:

- (i) entities in Xinjiang that mine, produce or manufacture wholly or in part any goods, wares, articles and merchandise with forced labor;
- (ii) entities working with the government of Xinjiang to recruit, transport, transfer, harbor or receive forced labor of Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of Xinjiang;
- (iii) entities that exported goods produced by entities in lists (i) or (ii) from the PRC into the United States; and

(iv) facilities and entities, including the Xinjiang Production and Construction Corps (XPCC)^[1], that source material from Xinjiang or from persons working with the government of Xinjiang or XPCC for purposes of the “poverty alleviation” program or the “pairing-assistance” program or any other government labor scheme that uses forced labor.

Xinjiang supply chain business advisory and additional U.S. government actions

In addition to the UFLPA, the U.S. government has taken a number of recent actions with respect to the situation in Xinjiang.

On July 13, 2021, several federal agencies (including the Departments of State, Treasury, Commerce, Homeland Security, and Labor, as well as the Office of the United States Trade Representative), issued an updated **Xinjiang Supply Chain Advisory** (the Supply Chain Advisory), warning businesses of potential violations of U.S. law and exposure to reputational and other risks relating to business activities connected to Xinjiang.

The Supply Chain Advisory warns U.S. businesses to be alert to a range of warning signs of forced labor, including:

- use of certain terminology, including “Education Training Centers”, “Legal Education Centers”, poverty alleviation efforts (g., Xinjiang Aid or “Mutual Assistance Programs”), “re-skilling” or “re-education;”
- involvement of goods included on Department of Labor’s List of Goods Produced by Child Labor or Forced Labor;
- government development assistance being received by entities in Xinjiang, including through various subsidies received for participating in the government’s “poverty alleviation efforts;”
- irregular recruitment of employees, particularly through government recruitment;
- facilities being located in close proximity, or otherwise related, to internment camps, prisons, or within the confines of industrial parks;
- involvement of any entities targeted by U.S. sanctions, export controls, or import controls (including Withhold Release Orders (WROs)), including XPCC; and
- lack of transparency in corporate structure.

Although much of the guidance in the Supply Chain Advisory has effectively been superseded by the UFLPA’s effective ban on imports from Xinjiang, U.S. companies with connections to Xinjiang would do well to be mindful of the guidance to the extent that any such connections persist. All U.S. companies would be well-advised to scrutinize their supply chains to identify potential links to Xinjiang and proactively take steps to mitigate risk exposure under the UFLPA.

Sanctions

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) has also imposed sanctions targeting Chinese entities in Xinjiang, including **XPCC** and the **Xinjiang Public Security Bureau (XPSB)**, along with related current and former high-ranking government officials in Xinjiang. The UFLPA also amends a previously-enacted law, the Uyghur Human Rights Policy Act of 2020, expanding the scope of sanctions authorized therein to target any non-U.S. person, including any PRC government official, found responsible for "serious human rights abuses in connection with forced labor." These sanctions block all property and interests in property of the targets that are in the United States or in the possession or control of U.S. persons. U.S. persons are also effectively prohibited from any dealings with or for the benefit of XPCC, XPSB, or any other targeted persons. Accordingly, U.S. persons risk breaching sanctions by engaging in any business dealings which may directly or indirectly benefit XPCC and other sanctions targets, including as a result of sourcing goods or materials from XPCC affiliates. Non-U.S. persons that engage in transactions or dealings with or for the benefit of XPCC and other sanctioned persons in Xinjiang risk being targeted with sanctions themselves.

Other actions

In June, the **White House announced** a series of steps that the U.S. government had taken related to Xinjiang, including: (i) **issuing a WRO targeting certain Chinese companies**; (ii) **subjecting certain Chinese companies to additional export control-based restrictions**; (iii) **including polysilicon produced with forced labor in China to the List of Goods Produced by Child Labor or Forced Labor maintained by the Department of Labor** (this list now includes cotton, garments, footwear, electronics, gloves, hair products, textiles, thread/yarn and tomato products); and (iv) imposing sanctions targeting Chinese entities in Xinjiang (see above).

Future prospects

Businesses in the solar and textiles sectors, and any other industries with exposure to supply chains involving Xinjiang, should carefully monitor the rollout of regulations and sanctions under the UFLPA, and meanwhile consider how their supply chains might be adjusted to avoid potential links to Xinjiang.

Addressing alleged human rights violations in Xinjiang is a rare area of bipartisan consensus in U.S. politics. Further sanctions and trade regulations may arise at any time, and U.S. businesses should take notice as new policies come to light. The time is now to carefully scrutinize your supply chains and ensure that they are not linked to Xinjiang or other similar worker rights or human rights issues.

[1] XPCC is closely connected with polysilicon production in Xinjiang, operating industrial parks where manufacturers are located. XPCC also provides warehousing, transport, and other logistical and financial support to these manufacturers.