

Client Alert: The Uyghur Forced Labor Prevention Act Goes Into Effect Soon

On December 23, 2021, the United States enacted the Uyghur Forced Labor Prevention Act (the “UFLPA”),¹ which prevents the importation of goods made with forced labor in China unless businesses can prove the goods were made without forced labor. Why the ban? There are reports that Uyghurs, the Muslim minority population in China, have been kept in forced labor camps and subjected to numerous human rights abuses, including killings, rape, forced sterilization and human trafficking.² The UFLPA goes into effect on June 21, 2022.

Specifically, the UFLPA creates a rebuttable 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 China (XUAR), or produced by certain designated entities, is prohibited by Section 307 of the Tariff Act of 1930. Simply put, the UFLPA bars such goods from entry to the United States. This presumption applies unless CBP determines that the importer of record has complied with specified conditions and shown (by clear and convincing evidence) that the goods were not produced using forced labor.

The industries most directly impacted by the UFLPA, and those CBP identified as high priorities for enforcement, are cotton and textiles, tomatoes, and polysilicon (a key raw material for solar panels).³ CBP sent out letters to known importers advising of the UFLPA and imminent guidance for compliance and enforcement. Moreover, CBP urged these importers to “apply due diligence, effective supply chain

¹ [Uyghur Forced Labor Prevention Act, H.R. 6256 \(Public Law No. 117-78\) PUBL078.PS \(congress.gov\)](#)

The UFLPA continues the efforts of U.S. Customs and Border Protection (“CBP”) to prohibit the importation of goods from any country using forced labor pursuant to Section 307 of the Tariff Act of 1930, 19 U.S.C. 1307.

² See Statement by UN High Commissioner for Human Rights, Michelle Bachelet, after official visit to China: <https://www.ohchr.org/en/statements/2022/05/statement-un-high-commissioner-human-rights-michelle-bachelet-after-official>. For a brief discussion of China’s Uyghur minority and related U.S. import controls and private sector initiatives prior to the UFLPA, see “ESG and Human Rights in Modern Supply Chains: The Limits of Transparency,” [Business Law Section | Michigan Business Law Journal Fall 2021 \(higherlogicdownload.s3.amazonaws.com\)](#).

³ Xinjiang produces approximately 20 percent of the world’s cotton and 50 percent of the world’s polysilicon. *Id.* China also accounts for 35 percent of global tomato production, according to the UN Food and Agriculture Organization.

tracing, and supply chain management measures” to ensure that their imports are not produced or manufactured in the XUAR, and therefore barred from entry.

Before allowing goods from XUAR to enter the United States, CBP must determine that importers (i) fully complied with CBP guidance and regulations, (ii) completely and substantively responded to all information requests by CBP to ascertain whether or not the goods were made with forced labor, and (iii) shown by clear and convincing evidence that the goods were not made wholly or in part with forced labor. The CBP will include goods that meet this standard in a public list 30 days after they are cleared.

While organizations await an implementation strategy and guidance from the Forced Labor Enforcement Task Force created by the UFLPA, importers of goods originating from China should audit their entire supply chains to ascertain which goods are at risk of being barred and whether and how those goods can overcome the rebuttable presumption set forth by the UFLPA. Immediate measures for a wholesale supply chain analysis include:

- Identifying any suppliers, from raw materials to manufacturing to the finished goods, based in or that do business in the XUAR;
- Issuing questionnaires to major suppliers to further identify connections with Xinjiang;
- Analyzing and verifying supplier responses to questionnaires;
- Requiring verifying documentation of all transactions and phases of production along supply chains;
- Assessing and mitigating potential exposure in current supply contracts; and
- Reviewing existing code of conduct and internal controls relating to forced labor.

As part of their compliance plan, importers should identify products produced outside the XUAR that incorporate products from inside the XUAR—they, too, are subject to the presumption of use of forced labor.

Given the prominence of Xinjiang in the global textile and solar industries, companies should take immediate action to avoid the possibility of severe disruption to their supply chains once the UFLPA takes effect on June 21, 2022. Once the CBP issues guidance, we will update this alert.

FisherBroyles attorneys are knowledgeable in Customs, Trade, ESG and Employment Law and are able to advise and assist you with responding to regulatory inquiries as well as enforcement matters. We can

advise on proactive measures to build and maintain a risk and/or compliance program to minimize supply chain disruption.

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