

PUBLICATION

Uyghur Forced Labor Bill Signed – Companies Should Conduct Supply Chain Due Diligence

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President Joe Biden signed the Uyghur Forced Labor Prevention Act (H.R. 6256) into law on December 23, 2021. The act seeks to ensure that goods produced using forced labor do not enter the United States. U.S. Customs and Border Protection (Customs) will presume that all goods produced in China's Xinjiang Uyghur Autonomous Region (XUAR) are made with forced labor and block entry of those goods and items containing such goods. Moreover, this presumption of forced labor will be extended to the following entities that may not be located in XUAR:

1. Entities that mine, produce, or manufacture in whole or in part in the XUAR;
2. Entities that work with the Xinjiang regional government to recruit, transport, transfer, harbor, or receive forced labor out of XUAR;
3. Entities that export products mined, produced, or manufactured wholly or in part by entities in 1) or 2); and
4. Entities and facilities that work with the government of the XUAR or the Xinjiang Production and Construction Corps to source material for the purpose of any government labor scheme that uses forced labor, including "poverty alleviation" or "pairing-assistance."

The import ban extends upstream to capture finished goods that use inputs from the XUAR, regardless of where the finished good is completed. U.S. companies should immediately conduct due diligence on their supply chains to determine whether or not they import goods subject to this new rule and, if so, create a compliance strategy.

Rebuttable Presumption of Forced Labor and Customs Guidance

The act requires Customs to presume that goods mined, produced, or manufactured wholly or in part in the XUAR or produced by an entity identified above are made with forced labor. In other words, an import is banned if the good is produced in XUAR or if an input in a good is produced in XUAR. Imports of such goods will be prohibited from entering the U.S., unless companies can prove with "clear and convincing" evidence that forced labor was not used. The prohibition on these goods will take effect on June 21, 2022 – 180 days from signature.

Customs is required to issue compliance guidance for importers for this new rule. The guidance will include:

5. Due diligence, effective supply chain tracing, and supply chain management measures to ensure that imported goods were not produced using forced labor from China;
6. The type and extent of evidence necessary to demonstrate that goods were not produced in the XUAR; and
7. The type and extent of evidence necessary to demonstrate that goods were not produced with forced labor.

Using the Guidance to be released by Customs, companies may rebut the presumption by showing that the U.S. importer has (1) complied with importer guidance and (2) completely and substantively responded to all inquiries for information from Customs.

Sanctions and Potential Expansions

In addition to the import ban, the act includes a provision that seeks to sanction entities and individuals responsible for serious human rights abuses in connection with forced labor in China.

Moreover, the act directs the Forced Labor Enforcement Task Force to develop a strategy to prevent the importation of goods produced with forced labor, including an assessment whether entities are utilizing forced labor of "Uyghurs, Kazakhs, Kyrgyz, Tibetans, or members of other persecuted groups." This Task Force also will identify third country supply chain routes that could be used to mask the forced labor. Import restrictions and sanctions may be applied to entities identified by the Task Force.

Coordination with Canada and Mexico

The act envisions the U.S. working with its trading partners to enforce the forced labor ban. The Administration is instructed to coordinate with Mexico and Canada to effectively implement Article 23.6 of the United States-Mexico-Canada Agreement to prohibit the importation of goods produced in whole or in part by forced labor.

Request for Comments

Customs will publish a notice within 30 days of December 23 requesting comments on how to ensure that goods mined, produced, or manufactured wholly or in part with forced labor in the People's Republic of China, including by Uyghurs, Kazakhs, Kyrgyz, Tibetans, and members of other persecuted groups in China, are not imported into the U.S.

For assistance with compliance or if you have questions, please contact [Lee Smith](#), [Rob Gardner](#), or any member of Baker Donelson's [Global Business](#) Team.