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Uyghur Forced Labor Prevention Act Signed Into Law

Creates A New Forced Labor “Presumption” That Would Prohibit Certain Imports From Entry Into The United States, Among Other Measures, To Address Forced Labor In China

On December 23, 2021, President Biden signed into law the Uyghur Forced Labor Prevention Act (“UFLPA” or the “Act”). A key aspect of the bipartisan legislation provides for a “rebuttable presumption” that all goods produced, wholly or in part, in the Xinjiang Uyghur Autonomous Region (“XUAR” or “Xinjiang Region”) of the People’s Republic of China (“China”), or by certain entities, are made with forced labor and, thus, are not entitled to entry into the commerce of the United States. Importantly, this presumption notionally can apply to imported goods made outside of the XUAR – and outside China – if they have content sourced from the Xinjiang Region. Congress mandated that the new rebuttable presumption take effect 180 days after enactment of the UFLPA (or on June 21, 2022).

Enactment of the UFLPA provides U.S. Customs and Border Protection (“CBP”) with additional enforcement tools to detain and to exclude from entry into the United States shipments of items that originate from the Xinjiang Region that include products made with forced labor. The UFLPA, however, merely builds on a pre-existing U.S. legal regime. U.S. law has prohibited the importation into the United States of products made from forced labor for almost 100 years, and notably the U.S. legal provisions against forced labor were strengthened by the *Trade Facilitation and Trade Enforcement Act of 2015*. Thus, even before enactment of the UFLPA, CBP already has been undertaking significant enforcement activity at the border to prevent the importation of goods made with forced labor, including the detention and seizure of shipments, and the issuance of millions of dollars in civil penalties. UFLPA is important, however, because along with creating a rebuttable presumption that goods from the Xinjiang Region are made with forced labor, it also



provides for the creation of a regulatory-based burden-shifting regime around which importers should be able to build compliance programs to help ensure their goods are not detained.

According to a White House [statement](#), the Biden Administration intends to “work closely with Congress to implement” the UFLPA “to ensure global supply chains are free of forced labor, while simultaneously working to on-shore and third-shore key supply chains, including semiconductors and clean energy.” Additional information on key aspects of the Act is set forth below.

THE NEWLY-CREATED FORCED LABOR ENFORCEMENT TASK FORCE WILL PLAY A KEY ROLE

The UFLPA leverages a newly created Forced Labor Enforcement Task Force (“Task Force”) (which was established under the United States-Mexico-Canada Agreement Implementation Act) to develop a strategy to prevent the importation into the United States of goods made by forced labor in China. The Act requires the Task Force to publish a Federal Register notice within 30 days of the bill’s enactment in order to solicit public comments on this topic. We anticipate that the Federal Register notice will be published on or before January 21, 2022. The Act also requires the Task Force to hold a public hearing soon after the comment period closes. The purpose of the public hearing will be to develop information regarding forced labor in China and potential measures to prevent the importation of goods made with forced labor into the United States.

The UFLPA also requires the Task Force to prepare significant information on forced labor in the XUAR, including “a list of entities” in the region that are involved with forced labor production or export-related activities, a list of products made using forced labor, and details on facilities that are involved in this supply chain. The Task Force also must develop an “enforcement plan” and designate “high-priority sectors for enforcement,” among other planning initiatives. Congress also mandated that CBP develop and initiate pilot programs “to assist in the examination” of goods at the border in order to “ensure that no goods are entered at any of the ports of the United States in violation of” the forced labor statute.

The Task Force has 180 days (or until June 21, 2022) to submit its first annual report to Congress that will describe its enforcement strategy, including recommendations for efforts, initiatives, tools, and technologies to be adopted to facilitate implementation of the Act by CBP. The Task Force’s initial report also must provide guidance to importers with respect to several relevant topics, including the following:

- “due diligence, effective supply chain tracing, and supply chain management measures” that will be effective for ensuring “that such importers do not import any goods mined, produced, or manufactured wholly or in part with forced labor from China, especially from the” XUAR;
- “the type, nature, and extent of evidence that demonstrates that goods originating in China were not mined, produced, or manufactured wholly or in part in the” XUAR; and
- “the type, nature, and extent of evidence that demonstrates that goods originating in” China, “including goods detained or seized [under 19 U.S.C. § 1307], were not mined, produced, or manufactured wholly or in part with forced labor.”

THE ACT CREATES A NEW REBUTTABLE PRESUMPTION TO PROHIBIT IMPORTS THAT ORIGINATE FROM THE XUAR OR THAT WERE PRODUCED BY CERTAIN ENTITIES

As noted above, the UFLPA requires CBP to presume that any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the XUAR (or produced by certain as-yet-to-be-identified entities) are prohibited from entry into the United States. The Act requires CBP to apply this rebuttable presumption unless the importer of record demonstrates compliance with applicable guidance and regulations. The importer of record also



must fully comply with all information requests from CBP. As a threshold matter, the shipment at issue will not be allowed to enter the United States unless CBP determines “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.” This provision sunsets on December 23, 2029, unless the President earlier determines that “mass internment, forced labor, and any other gross violations of human rights” in the XUAR have ended.

THE ACT FURTHER PROVIDES FOR THE IMPOSITION OF SANCTIONS RELATING TO FORCED LABOR IN THE XUAR

Effective December 23, 2021, the UFLPA amends the Uyghur Human Rights Policy Act of 2020 (“UHRPA”) to add “serious human rights abuses in connection with forced labor” as an additional basis for the imposition of sanctions under the UHRPA. The UFLPA requires the President to submit a report to Congress that identifies each foreign person, including any official of the Chinese government, that the President determines is responsible for serious human rights abuses in connection with forced labor with respect to Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups, or other persons in the XUAR. Subject to executive waiver in the national interest of the United States, the UFLPA requires the President to impose sanctions to block and prohibit all transactions in property and interests in property with respect to each person identified in the President’s report. The UFLPA further incorporates the UHRPA, which authorizes the termination of sanctions under certain circumstances, including in the national security interests of the United States.

KEY TAKEAWAYS

Enactment of the UFLPA provides CBP with more tools to prohibit imports from China’s Xinjiang Region (or imports from other locations that contain raw materials or other inputs from the XUAR). The Act also designates the newly-created Forced Labor Enforcement Task Force with primary responsibility for the development of a new strategy to enforce the prohibition on imports of forced labor goods from the XUAR. Several aspects of the Task Force’s work will play out in the near future, including through a forthcoming request for public comments and a hearing. We also anticipate that CBP will issue new regulations and will provide further guidance to the trade with respect to the agency’s intended approach for enforcing the new rebuttable presumption that imports from the XUAR are prohibited from entry into the United States. Affected companies should consider participating in the process as the Task Force begins work on the strategy in the near future. Affected companies also should begin to assess their current vendor and supplier relationships with an eye toward compliance with the Act and forthcoming regulations so that they can mitigate the risk of potential future supply chain disruptions.

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