



Understanding Xinjiang Sanctions: What You Need To Know



November 2022

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The Uyghur Forced Labor Prevention Act (UFLPA) is the latest move by the US government to use regulations to keep China-sourced goods made with forced labor out of the US market. According to the UFLPA, without documented proof that imported goods containing material sourced from, mined, or manufactured in the Xinjiang Uyghur Autonomous Region (XUAR) are made without forced labor, US Customs and Border Protection (CBP) will presume that production of the goods involved forced labor and will not allow those goods into the US. These regulations, in concert with other recent world and economic events, highlight the importance of understanding your suppliers and supply chain risk, and the effect this understanding will continue to play in your business continuity, reputation management, and regulatory compliance.

Background

Since at least 2017, the Chinese government has pursued a policy of mass arrest and internment of predominantly Muslim ethnic minorities—including Uyghurs, Kazakhs, and Kyrgyz—in the XUAR, located in the northwest of the country. According to the US Department of State, Beijing's domestic and international propaganda campaign justifies these mass internments in camps it calls 'Vocational Education and Training Centers' as a part of the government's poverty alleviation and anti-terrorism policies, effectively equating Uyghur nationalism, religion, and ethnic identity with fundamentalist Islamic terrorism.

Academic researchers and human rights groups have alleged that interned individuals are subjected to constant surveillance, political indoctrination, and bans on non-Mandarin Chinese languages. According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), individuals in the camps are not allowed to leave and are at times subjected to torture, sexual violence, or sterilization. As details of Beijing's internment policy and use of forced labor in the XUAR have emerged, international pressure to investigate and respond to these abuses has intensified.

In July 2021, the US government began characterizing the Chinese government's actions as genocide targeting minority Muslim ethno-religious groups. While the European Parliament and Office of the UN High Commissioner for Human Rights (OHCHR) have declined to use this label, as recently as mid-2022, both have indicated that there is credible information to suggest that crimes against humanity may be occurring in the XUAR.

UFLPA: The Law

The US' Uyghur Forced Labor Prevention Act (UFLPA), Public Law No. 117-78, places the burden of proof on importers to provide clear and convincing evidence that any XUAR-sourced goods or materials have not been made with forced labor. The law was signed into law by President Biden on 23 December 2021 and went into effect on 21 June 2022.

The UFLPA was enacted as a means of instituting mechanisms that better ensure companies' compliance to Section 307 of the Tariff Act of 1930, which bars imports of goods or inputs made with forced or convict labor. More specifically, the UFLPA prohibits the import of any goods manufactured or sourced

from the XUAR that have been made with forced labor—no matter how far down the supply chain these final or intermediary goods or materials may be.

While the US Department of Labor notes that Chinese authorities have been known to work with companies to transport Uyghur workers to factories in other areas of China, the text of the UFLPA directs CBP to apply greater scrutiny to goods or inputs from the XUAR. Along with the greater scrutiny they will apply to goods from the XUAR, CBP will also continue to screen for goods made through the forced labor of Uyghurs, other predominantly Muslim minorities, and convicts in other provinces. It is still unclear what methods CBP will use to screen for such goods.

The UFLPA is a step further than the US government's ongoing use of Withhold Release Orders (WROs)—enforcements that prohibit US companies from importing goods from companies identified as using forced labor by the US government. WROs have been used by the US government to cut down on the risk of importing goods made with forced labor in the XUAR in various sectors, including in the cotton and tomato industries. The UFLPA has a broader scope than WROs, which only target specific companies the US government has determined use forced labor.

Impacted Industries

Although media attention has focused on XUAR cotton in textile goods or polysilicon in tech and solar panel components, the US Department of Labor has identified 18 types of goods commonly made with forced labor in China. Of these goods, CBP indicated that ten goods are most frequently produced using forced labor in the XUAR.

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| 1. Footwear | 10. Textiles |
| 2. Garments | 11. Artificial Flowers |
| 3. Gloves | 12. Bricks |
| 4. Hair Products | 13. Christmas Decor |
| 5. Cotton | 14. Coal |
| 6. Electronics | 15. Fireworks |
| 7. Polysilicon | 16. Fish |
| 8. Thread and Yarn | 17. Nails |
| 9. Tomato Products | 18. Toys |

Companies that import goods either directly from China or from third countries whose goods may contain inputs from China should also be aware that XUAR-sourced inputs may be commingled with inputs sourced from other areas. This commingling may potentially obfuscate the material's origin and complicate supply chain tracing efforts. In its guidance to importers issued shortly before the UFLPA came into effect, CBP stated: "Importers should be aware specifically that imports of goods from factories that source polysilicon both from within Xinjiang and outside of Xinjiang risk being subject to detention, as it may be harder to verify that the supply chain is using only non-Xinjiang polysilicon and that the materials have not been replaced by or co-mingled with Xinjiang polysilicon at any point in the manufacturing process."

In situations where components from multiple countries have been co-mingled, CBP has advised that importers should be able to provide evidence of how it has identified the sources of raw materials.

Guidance

In June 2022, CBP and the Forced Labor Enforcement Taskforce (FLETF), chaired by the US Department of Homeland Security, respectively released operational guidance for importers and the strategy for enforcing Section 307 of the Tariff Act of 1930. FLETF will update this strategy annually. CBP will release more guidance by the end of FY 2022 on due diligence and supply chain tracing strategies and resources available through the government. Until then, the US Department of Labor has highlighted eight policies importers may implement to establish and maintain effective due diligence:

1. Engage stakeholders and partners
2. Assess risks and impacts
3. Develop a code of conduct
4. Communicate and train across supply chain
5. Monitor compliance
6. Remediate violations
7. Independent review
8. Report performance and engagement

CBP has indicated that it plans to thoroughly enforce the UFLPA. For example, CBP will not accept de minimis—an administrative exemption that allows low monetary value shipments (those with valuation under USD 800) to be imported duty- and tax-free—as a valid rebuttal to the forced-labor presumption.

By signaling that de minimis shipments will also be subject to the UFLPA, CBP implies that it will seek to enforce the law no matter how small the quantity of XUAR-processed, mined, or manufactured material is in the finished product. This poses a large risk for importers of complex goods such as electronics, which may contain thousands of components from many different suppliers. Importers should be aware of the increased scrutiny with which they are expected to be vetting the components of their complex goods.

[Operational Guidance for Importers](#)

[Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China](#)



How Can TDI Help?

For US firms working with Chinese manufacturers, UFLPA compliance requires effective supply chain due diligence and proactive supply chain monitoring to identify forced labor. TDI's due diligence investigations and monitoring programs include targeted searches to identify indicators of forced labor in China. These searches rely on the institutional knowledge of our professional analysts on the subject of forced labor in XUAR and a deep understanding of how the issue has evolved. In addition to due diligence, TDI provides independent consulting services and on-site compliance training programs for multinational companies across various sectors, including the manufacturing, energy, technology, textile, medical technology, and professional services industries, to safeguard their commercial opportunities in China.

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