

# Congress Passes Uyghur Forced Labor Prevention Act

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## ***Legislation Will Block Imports Linked to Human Rights Abuses in China***

On December 16, 2021, Congress passed H.R. 6256, known as the Uyghur Forced Labor Prevention Act (UFLPA). The UFLPA establishes a rebuttable presumption that certain goods produced in China are made with forced labor, and so are inadmissible into the United States pursuant to the U.S. forced labor import ban, Section 307 of the Tariff Act of 1930 (“Section 307”, or the “forced labor import ban”).

This legislation, which President Biden has indicated he will sign, represents a significant evolution in the U.S. enforcement of the forced labor import ban, and stands to have an impact on any company sourcing goods from China.

## **The Presumption Established by the UFLPA**

Beginning 180 days after the date of enactment, the rebuttable presumption established by the UFLPA will apply to two categories of goods.

First, the presumption will apply to goods produced wholly or in part in the Xinjiang Uyghur Autonomous Region of China (Xinjiang). In other words, as a result of the UFLPA, any good that is wholly or partially manufactured in Xinjiang will be presumably inadmissible into the United States.

Second, the presumption will apply to goods produced, wholly or in part, by any of a number of Chinese entities that the U.S. government comes to identify as having links to Xinjiang, or being a beneficiary or participant in forced labor involving Uyghurs, anywhere in China. Specifically, the UFLPA requires the U.S. government to compile, on an ongoing basis, four different lists of Chinese entities:

1. a list of entities in Xinjiang that produce goods with forced labor;
2. a list of entities working with the government of Xinjiang to “recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups” out of Xinjiang;
3. a list of entities that export from China products made by the entities on lists (1) and (2); and
4. a list of facilities and entities that source material from Xinjiang, or from persons working with the government of Xinjiang or the Xinjiang Production and Construction Corporation (XPCC) for purposes of the “poverty alleviation” program or the “pairing-assistance” program or any other government labor scheme that uses forced labor.

Any good produced wholly or in part by any entity on one of these four lists, will be presumptively inadmissible into the United States under Section 307.

### **Rebutting the Presumption**

As noted, the presumption established by the UFLPA is a rebuttable presumption. If an importer wishes to import goods that were produced wholly or in part in Xinjiang, or by an entity identified on one of the four lists, the UFLPA lays out a path by which an importer can seek to do so.

To rebut the presumption, an importer must persuade U.S. Customs and Border Protection (CBP) by clear and convincing evidence that the merchandise the importer seeks to import was not in fact produced, wholly or in part, with forced labor (notwithstanding the nexus to Xinjiang or a listed entity).

The importer must also demonstrate that it has complied with all due diligence guidance that will be published by the U.S. government, including supply chain tracing and management requirements. The importer will also have to completely and substantively respond to all requests for information it receives from CBP.

If CBP agrees that an importer has complied with these steps and has rebutted the presumption by clear and convincing evidence, CBP may decide to permit the importation of goods produced in Xinjiang or by an entity on one of the four lists. If CBP finds that an importer has rebutted the presumption, it must issue a report to that effect to relevant congressional committees within 30 days of CBP's determination.

### **Strategy for Enforcing the UFLPA**

The UFLPA marks the first time that enforcement of Section 307 will be guided by a single overarching strategy that has been informed by input from the public, including the importing community.

Across the board, Section 307 is enforced against specific imported shipments by CBP. In January 2020, the United States-Mexico-Canada Agreement Implementation Act was signed into law, which established a Forced Labor Enforcement Taskforce ("Taskforce"), imbued with authority to provide guidance on CBP's enforcement of Section 307. The Taskforce is chaired by the Secretary of Homeland Security, and includes representatives from the Office of the U.S. Trade Representative, and the U.S. Department of Labor.

The UFLPA charges the Taskforce with developing a strategy for how to enforce the UFLPA's rebuttable presumption, against specific shipments of goods that might enter the United States from China or even from other third countries.

The first step in the formation of this strategy is to be a public comment period, commencing no later than 30 days after the enactment of the UFLPA. The Taskforce will hold a public hearing not later than 45 days after the close of the public comment period.

Taking into account input from the public comments and hearing, the Taskforce is responsible for developing a strategy of enforcement, in consultation with the Secretary of Commerce and the Director of National Intelligence. In addition to the lists of Chinese entities and due diligence guidance discussed above, the enforcement strategy will also include:

- recommended technical enhancements to CBP's ability to identify and trace imports of concern;
- guidance on CBP's use of available legal authorities to ensure no prohibited goods are entered;
- recommended funding that CBP should receive to enable effective enforcement; and,
- a plan to coordinate and collaborate with appropriate NGOs and private sector entities to implement and update the strategy.

The strategy must be published within 180 days of enactment, concurrent with the effective date of the rebuttable presumption. The strategy will be implemented by, among other things, new customs regulations. The four lists of affected Chinese entities will be updated at least annually.

## **Conclusion**

The UFLPA represents a new front in the U.S. government's efforts to prevent the importation of goods made with forced labor. It does not replace or supersede existing enforcement actions already taken by CBP in response to forced labor in Xinjiang, including withhold release orders (WROs) that are already in place, such as those targeting cotton and tomatoes produced in Xinjiang, and targeting cotton and products containing cotton produced by the XPCC. Importantly, with respect to all other countries, CBP enforcement of the forced labor law will remain unchanged, unless CBP decides to undertake a new initiative not required by UFLPA.

Any company reliant on imports from China should assess its supply chain for enforcement risk under the new legislation. Please reach out to the contacts for further guidance.