

LEGAL UPDATES

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Uyghur Forced Labor Legislation Could Create New Compliance Challenges for Importers

The U.S. House of Representatives passed the Uyghur Forced Labor Prevention Act (the Uyghur Bill) on September 22, 2020, by a vote of 406-3. The Uyghur Bill is in reaction to reports that the government of China has been using forced labor of its Uyghur citizens, mainly in Xinjiang Uyghur Autonomous Province (XUAP). There appears to be widespread support in Congress for the basic provisions of the Uyghur Bill, and we expect that the Senate will act on this bill late in the current session before the new Congress is sworn in, or there will be similar legislation introduced early in the new Congress in January 2021.

The key provision of the Uyghur Bill is to create a rebuttable presumption that labor in the XUAP or by any person in China who is working with the XUAP government in “poverty alleviation” or “pairing-assistance” programs constitutes forced labor under 19 USC § 1307. Section 1307, which prohibits the importation into the United States of goods made from convict labor, forced labor or indentured labor, has been altered by the Uyghur Bill specifically for products from XUAP. The chances of an importer obtaining relief for products claimed to be from the XUAP will become much more difficult than for allegations made against any other areas of the world because of the application of the rebuttable presumption regarding forced labor. Clear and convincing evidence, a high standard, would be required to overcome the presumption. Even if U.S. Customs and Border Protection (CBP) were to find that the importer has satisfied this high burden, CBP then is required to prepare a public report explaining the reasons for that determination. The Uyghur Bill requires that this report must be submitted to a Congressional committee. Thus, there are clear disincentives for CBP to find that the products from XUAP are not produced by forced labor, including possible

criticisms by the Congress. The effects of the Uyghur Bill, if enacted in its present form, will vary depending on whether the importer is a publicly traded company or not.

All companies, whether publicly traded or not, will be required to avoid not only goods from the XUAP but also the following:

goods, wares, articles and merchandise imported into the United States **from the People's Republic of China** and are mined, produced, or manufactured **in part in the Xinjiang Uyghur Autonomous Region** or by persons working with the Xinjiang Uyghur Autonomous Region government for purposes of the "poverty alleviation" program or the "pairing-assistance" program; and

goods, wares, articles and merchandise imported into the United States **from third countries** and are mined, produced or manufactured **in part in the Xinjiang Uyghur Autonomous Region** or by persons working with the Xinjiang Uyghur Autonomous Region government for purposes of the "poverty alleviation" program or the "pairing-assistance" program.

The requirements noted above do not have *de minimis* limitations, and thus any part of an imported product, no matter how small, that is from the XUAP could in principle lead to the banning of the product from the United States. This could affect products manufactured in countries such as Mexico, Thailand or Malaysia, as well as products manufactured in parts of China far from the XUAP, such as Guangdong Province or the Shanghai region. There could be a very real challenge for importers who could be required to trace even the most minute inputs into the goods they are purchasing.

For companies that are publicly traded, there are additional requirements regarding disclosures to the Securities and Exchange Commission. However, it appears that publicly traded companies have been granted some broad exclusions from certain disclosures. Specifically, the disclosures required are that the publicly traded company (including any affiliate) disclose whether it:

"(A) knowingly engaged in an activity with an entity or the affiliate of an entity engaged in creating or providing technology or other assistance to create mass population surveillance systems in the Xinjiang Uyghur Autonomous Region of China, including any entity included on the Department of Commerce's 'Entity List' in the Xinjiang Uyghur Autonomous Region;

(B) knowingly engaged in an activity with an entity or an affiliate of an entity building and running detention facilities for Uyghurs, Kazakhs, Kyrgyz and other members of Muslim minority groups in the Xinjiang Uyghur Autonomous Region;

(C) knowingly engaged in an activity with an entity or an affiliate of an entity described in section 7(c)(1) of the Uyghur Forced Labor Prevention Act, including—

(i) any entity engaged in the ‘pairing-assistance’ program which subsidizes the establishment of manufacturing facilities in the Xinjiang Uyghur Autonomous Region; or

(ii) any entity for which the Department of Homeland Security has issued a ‘Withhold Release Order’ under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307); or

(D) knowingly conducted any transaction or had dealings with—

(i) any person the property and interests in property of which were sanctioned by the Secretary of State for the detention or abuse of Uyghurs, Kazakhs, Kyrgyz, or other members of Muslim minority groups in the Xinjiang Uyghur Autonomous Region;

(ii) any person the property and interests in property of which are sanctioned pursuant to the Global Magnitsky Human Rights Accountability Act (22 U.S.C. 2656 note); or

(iii) any person or entity responsible for, or complicit in, committing atrocities in the Xinjiang Uyghur Autonomous Region.”

The “knowingly” standard appears to apply to engaging in the transactions with named types of businesses. Because the standards apply to doing business not only with XUAP companies, but also with their affiliates, this could require the U.S. companies to be aware of all of the affiliations of its suppliers.

What this means to you

Due to the seemingly broad sweep of requirements, according to the Washington Post and New York Times, several publicly traded companies, including Apple, Nike and Coca Cola, have raised concerns with portions of the bill. Nevertheless, we expect that some form of the House bill will become law by early next year and new compliance guidelines may be needed for many importers. Anyone who uses imported goods from China across industries could be impacted. Those in procurement will want to pay particular interest to upcoming alerts on this issue.

Contact us

We will continue to monitor this issue. If you have questions about how new legislation may impact your supply chain and business, please contact Jeffrey Neeley, Bob Stang or your Husch Blackwell attorney.