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U.S. to Ban Products from Xinjiang Region of China Made with Forced Labor

12.27.2021

In a dramatic extension of existing U.S. policies designed to prevent trading partners from utilizing forced labor to produce products exported to the United States, over the Christmas holiday on December 23rd, President Biden signed a law recently passed by Congress focused specifically on the Xinjiang Uyghur Autonomous Region (*Xinjiang*) in China. This region is home to the Muslim minority Uyghurs and other minority groups. The recently passed law entitled the Uyghur Forced Labor Prevention Act (UFLPA) has several broad implications for U.S. trade policy of concern to importers. In direct contrast to the the long established U.S. legal principle that parties are presumed innocent by the government and that the government has the burden of proof in establishing violation of the law, the new UFLPA requires U.S. Customs and Border Protection (CBP) to presume that all goods manufactured wholly or in part in the Xinjiang region are made with forced labor and therefore prohibited from entry into the U.S.

This presumption can be overcome by the exporter and importer only if (1) the importer provides “clear and convincing evidence” to CBP that the goods were not made with forced labor and (2) the importer has fully complied with guidance and regulations relating to due diligence to be issued by the U.S. government and responded to all related inquiries from CBP. Although it is unclear at this point the exact impact that this import ban from one Chinese region will have on U.S. importers, the danger is that it clearly is an unprecedented and elevated burden placed on importers and exporters from China that could lead to use of these same standards in other import related actions involving China and other countries. The legal basis for this action already existed under Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) which states that it is illegal to import into the United States “goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in

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part” by forced labor. Such merchandise is subject to exclusion or seizure and may lead to criminal investigation of the importer. The dramatic change included in the new UFLPA is essentially the rebuttable presumption that all goods from the Xinjiang region are made with forced labor and should be excluded or seized or the importers made subject to criminal investigations unless the importers can prove otherwise by clear and convincing evidence.

Since the first days of the Biden administration those in charge of trade policy issues in the Commerce Department, The U.S. Trade Representatives Office, CBP and key majority committee staffers on capitol hill have indicated that future trade policy decisions would now take into account non-trade related objectives linked to such social agendas of human rights, enhancement of workers rights and participation and benefits to minority communities. Now these broad policy guidelines are taking effect in the form of clear mandates that will impact the import community, with the UFLPA being only the most recent example. While many of the products produced in the Xinjiang region are agricultural such as cotton, there are product such as polysilicon and electronics products exported for industrial uses. The language of the law is particularly broad covering the following categories of products.

Under the law, the following goods are presumed to be the product of forced labor and are banned from entering the United States:

- goods that are mined, manufactured, or produced in Xinjiang, wholly or in part;
- goods produced by entities that work with the Xinjiang regional government to recruit, transport, transfer, harbor, or receive forced labor out of Xinjiang;
- export products to the United States that are (i) made wholly or in part in Xinjiang or (ii) made by entities that work with the Xinjiang regional government to recruit, transport, transfer, harbor, or receive forced labor out of Xinjiang;
- source material from Xinjiang; or
- source material from persons working with the Xinjiang regional government or the Xinjiang Production and Construction Corps. (XPCC) in connection with government programs that use forced labor such as the “poverty alleviation” and “pairing-assistance” programs

What makes this burden particularly difficult for U.S. importers is that the presumption is not limited to goods produced by companies that are physically located in Xinjiang. It also applies to products made by companies based outside of the Xinjiang region and even outside of China that source material from or produce even a portion of the product inside Xinjiang. The law also includes provisions on sanctions, asset blocking and reporting to the Securities Exchange Commission.

What Actions can Importers and Exporters take? This import ban will not take effect until 180 days after the bill was signed into law on December 23, 2021. Within 30 days of enactment, a Federal Register notice will be published soliciting public comments and within 45 days of the end of the comment period, a public hearing will be held focusing on possible new measures to be taken to prevent the import of goods produced with forced labor. Butzel Long attorneys have assisted clients in similar proceedings in the past and have years of experience in trade and legislative matters. Butzel’s

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Chinese speaking attorneys can assist in analyzing potential products from the Xinjiang region and various China supply chain scenarios.

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