

CLIENT ALERTS

Customs New Guidance on Compliance with Laws Prohibiting Imports Made with Forced Labor

Client Alert

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On December 27, 2021 Butzel issued a Client Alert on the subject of the passage of a new law signed by President Biden on December 23, 2021 (U.S. to Ban Products from Xinjiang Region of China). The law was designed to supplement existing laws contained in Section 307 of the Tariff Act 1930, as amended (19 U.S. § 1307) which prohibits the importation of all "... goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions." The new law entitled The Uyghur Forced Labor Prevention Act (UFLPA), was signed into law on December 23, 2021 and has an effective date of June 21, 2022 and is designed to reinforce the United States prohibition against the importation of goods made with forced labor. On June 13, 2022 U.S. Customs and Border Protection (CBP) issued a new guidance document entitled "UYGHUR FORCED LABOR PREVENTION ACT U.S. CUSTOMS AND BORDER PROTECTION OPERATIONAL GUIDANCE FOR IMPORTERS." China has repeatedly denied allegations of use of forced labor or mistreatment of the Uyghurs. Of particular interest to the automotive industry is the fact that the global auto industry could face its own disruptions given Xinjiang's deep ties to raw materials needed for next-generation technology. See "Red Flags Forced Labor Found in China's Car Battery Industry" New York Times, June 20, 2022.

The new law was focused on claims that China was using the minority Muslim population in the Xinjiang region known as the Uyghurs as forced labor, including prison labor and indentured servants. This new initiative is part of the Biden Administration's effort to expand enforcement of the provisions dealing with forced labor that had been in existence for many years. It is part of the Biden Administration's newly developed trade policy described in our December 27, 2021 Client Alert as follows:

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- “The U.S. Trade Representative’s 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.”
- The UFLPA focused on abuses in the Xinjiang region of China and its minority Uyghur population but created concerns in the wording of the law that CBP is required to apply a presumption that imports of all goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region (Xinjiang) of the People’s Republic of China (PRC), or by entities identified by the U.S. government on the UFLPA Entity List, are presumed to be made with forced labor and are prohibited from entry into the United States. The presumption also applies to goods made in, or shipped through, the PRC and other countries that include inputs made in Xinjiang. U.S. CUSTOMS AND BORDER PROTECTION OPERATIONAL GUIDANCE FOR IMPORTERS (Guidance Document) issued on June 13, 2022. The new Guidance documents summarized procedures involved in enforcing the new UFLPA. Much of it is consistent with already existing CBP regulations and procedures dealing with seizure and detention of goods. There is the reference in the Guidance to another document that importers must comply with. The Guidance states:
- “Importers must consult the Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China (UFLPA Strategy), to be published by the Department of Homeland Security (DHS), in its role as the chair of the Forced Labor Enforcement Task Force (FLETF), on June 21, 2022, for specific importer guidance as required by the UFLPA. Section 2(d)(6) of the UFLPA requires the FLETF to develop guidance to importers on due diligence, supply chain tracing and management, and evidence to demonstrate goods were not mined, produced, or manufactured wholly or in part in the Xinjiang region of China or by forced labor. Importers must comply with the importer guidance in the UFLPA Strategy in order to be eligible for an exception to the rebuttable presumption” (Guidance Document, emphasis added).

Some in the trade community find this a disturbing approach to shift the burden to importers with a rebuttable presumption that they must overcome, and it could be a dangerous precedent. In most CBP investigations involving seizures and detentions, it is CBP that conducts its own investigation that leads to a seizure. CBP and related Homeland Security personnel have great resources and experience in this area with a CBP attaché in most embassies and foreign and U.S. personnel in many countries tracking shipments for possible illegality. For example, there are numerous prosecutions each year for companies that export a product legally to countries like the UAE or Turkey and then it is illegally reshipped to sanctioned countries such as Iran and Sudan. It is clear that CBP with its huge international reach is in a better position to determine if a material produced in the Xinjiang region is using Uyghur workers who are not paid, and if those goods are being shipped to plants in other areas of China or other countries prior to exportation to the U.S., than an importer in Michigan would. It is likely this approach will be subject to court challenges once importers start receiving seizure and detention notices.

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A complete copy of the new Guidance Document as well as other relevant government documents are available from Butzel attorneys who can guide you through this process and can assist you if you receive a seizure or detention notice from CBP. Please contact the authors of this Client Alert or your Butzel Attorney for further assistance.

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