

US companies importing certain products from China may be facing additional supply chain challenges in the near future. On July 14, 2021, the Uyghur Forced Labor Prevention Act (UFLPA) was passed unanimously by the US Senate. It now moves to the House, where it is expected to pass easily – a previous version of the bill passed 406-3 in September 2020. The UFLPA sets a new standard for goods produced in Xinjiang, banning all goods unless Customs and Border Protection (CBP) can firmly establish that the goods were not made using forced labor. The UFLPA reverses the previously applied burden of proof, creating a presumption that goods produced in Xinjiang involve forced labor.

The CBP has previously offered at least some guidance on the kind of evidence importers seeking release of detained shipments must be prepared to provide, at least with regard to a Withhold Release Order concerning a silica-based product. In addition to the Certificate of Origin and importer's statement set forth in 19 CFR § 12.43 that must be "sufficiently detailed and include proof that the goods were not produced with forced labor," the CBP has highlighted the following information:

- Affidavit from the provider of the product and identification of its source
- Purchase orders, invoices, and proofs of payment
- List of production steps and production records from the imported merchandise back through the supply chain
- Transportation documents at all stages of the supply chain
- Daily process reports

This increased burden of proof will no doubt create a burden for some US importers. For example, some estimates have suggested that Xinjiang supplies more than 80% of Chinese cotton. A State Department advisory also describes a range of industries and products where Uyghur forced labor may be present, which includes electronics, solar energy, motor vehicles, agriculture, coal, uranium and asbestos.

The proposed legislation has collected mixed reactions from US organizations. A number of human rights organizations have suggested that this could be an important step in driving companies to carry out proper due diligence on their supply chains.

Others have been less enthusiastic. The US Chamber of Commerce wrote a letter to Congress, noting that while the Chamber of Commerce condemns human rights abuses, it believed that the Act "would prove ineffective and may hinder efforts to prevent human rights abuses." Likewise, the president of the American Apparel and Footwear Association predicted that the law "would no doubt make headlines, but... would wreak havoc on human rights, economic development, and legitimate supply chains, themselves already battered by COVID-19 all over the world."

Assuming the bill passes, US companies will need to increase their awareness of what goes on in their Chinese supply chains. Technology may help; some vendors claim to be able to verify the supply chain of cotton products, for example, through genetic testing. However, where that is not possible, in-country supplier investigations may be the only solution. How detailed these investigations need to be, the CBP has not made entirely certain, although full supply chain mapping and unannounced audits are likely to be the bare minimum of what is required. Companies wishing to do such investigations should be sure to include the right to do so in their supplier contracts – and they should make sure to flow down the obligation to sub-suppliers as well. In the meantime, however, companies with supply chains in China await further guidance from the CBP.

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