

Xinjiang Supply Chain Business Advisory

Related Professionals

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Practices

International Law and Services

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For decades the United States has prohibited the importation of merchandise mined, produced or manufactured, wholly or in part, in any foreign country, by forced or indentured labor – including forced child labor. Such merchandise is subject to exclusion and/or seizure at the U.S. port of entry, and may lead to criminal investigation of the importer(s).

Recently, the focus of US Customs and Border Protection (CBP) has turned to China.

On July 1, 2020, CBP issued a Xinjiang Supply Chain Business Advisory that cautioned businesses with potential exposure in their supply chain to the Xinjiang Uyghur Autonomous Region (Xinjiang) of China, or to facilities outside Xinjiang that use labor or goods from Xinjiang. According to CBP, such businesses “should be aware of the reputational, economic, and legal risks of involvement with entities that engage in human rights abuses, including but not limited to forced labor in the manufacture of goods intended for domestic and international distribution.” CBP further advised that, in order to mitigate these risks, businesses should immediately implement industry best-practices, and human rights due diligence policies and procedures.

The US Government issued the following statement as justification for its additional scrutiny:

“The People’s Republic of China (PRC) government continues to carry out a campaign of repression in Xinjiang, targeting Uyghurs, ethnic Kazakhs, ethnic Kyrgyz, and members of other Muslim minority groups. Specific abuses include mass arbitrary detentions, severe physical and psychological abuse, forced labor and other labor abuses, oppressive surveillance used arbitrarily or unlawfully, religious persecution, political indoctrination, forced sterilization, and other infringements of the rights of members of those groups in Xinjiang. Survivor and family member accounts conveyed through Non Governmental Organizations and media reports indicate the PRC government has been using discriminatory immigration policies to cancel the passports of and lure diasporic Uyghurs, ethnic Kazakhs, and ethnic Kyrgyz individuals back to China and intern them, and that some holders of Kazakhstani citizenship have also been

detained while visiting family members in Xinjiang and similarly arrested and interned. There have also been credible reports that the PRC government has facilitated the mass transfer of Uyghurs and others from Xinjiang to factories across China, including under conditions of forced or involuntary labor.”

Please note, however, that businesses and other organizations undertaking due diligence practices should be aware of recent reports of auditors being detained. These efforts must be carefully planned and the US Government should be contacted immediately in the event of any such audit detention.

When information reasonably (but not conclusively) indicates that merchandise within the purview of the above provision is being imported, the Commissioner of CBP may issue withhold release orders pursuant to 19 C.F.R. § 12.42 (e). Such an order will bar the goods from being released at the U.S. port of entry. If the Commissioner is provided with information sufficient to make a determination that the goods in question are subject to the provisions of 19 U.S.C. § 1307, the Commissioner will publish a formal finding to that effect in the Customs Bulletin and in the Federal Register, pursuant to 19 C.F.R. § 12.42(f). The process typically unfolds as follows:

Nexsen Pruet continues to advise clients to formulate, implement, and carefully monitor supply chain protocols. In the context of human rights and forced labor abuses, this supply chain analysis could include these CBP Responsible Business Practices:

Comprehensive Supply Chain Profile

- Does the U. S. importer have a comprehensive understanding of the natural supply chain, from sourcing of raw materials, to subcontracting manufacturing, to the assembly of finished goods that are destined for the U.S.?
- For their products, has the U.S. importer conducted a comprehensive risk assessment of forced labor in the global supply chain, and conducted onsite production visits to the factory, farm, or mine for high-risk countries?
- Does the U.S. importer participate in industry specific initiatives aimed at enforcing compliance?

Written Code of Conduct

- Has the U.S. importer developed and applied a formal written code of conduct for all international interactions associated with the sourcing of foreign goods?
- Is the code of conduct shared with all suppliers in the global supply chain as a stand-alone document or as addendums to purchase orders, contracts, or letters of credit?
- Does the code of conduct include specific language addressing minimum labor standards, as specified by the United Nations International Labor Organization (ILO), other intergovernmental organizations, or industry

initiatives?

Robust Internal Control Process

- Are the internal controls established by the importer according to professionally recognized objective audit standards?
- Does the U.S. importer have sufficient internal controls in place to effectively deter and detect instances of noncompliance with the code of conduct and other best practices?
- Does the U.S. importer conduct periodic compliance audits using in-house personnel or external audit professionals?
- Does the U.S. importer's internal control process cover every level of the product supply chain including relevant business documents?
- Does the U.S. importer have adequate corrective action plans to address noncompliance and deter weak business practices?

All of these factors will be important for Chinese exporters and their U.S. importers in both avoiding costly problems importing Chinese-produced goods. Chinese companies that export to the U.S. market should take active steps to as described above, in light of the CPB's recent focus on the supply-chain issues associated with products manufactured in China.

Action Items for Chinese Companies

- * Investigate and document the sourcing of your goods and their components, so you can establish to the US customs authorities that you made a serious effort to insure there was no forced labor in your supply chain. (Update this investigation periodically.)
- * Adopt a compliance plan / code of conduct aimed at compliance with the recognized international standards.
- * Investigate and document reports of potential violations or compliance issues; retain these investigative files; take corrective action where you determine it is necessary to comply with the recognized international standards and your compliance plan.
- * Respond promptly and accurately in the event that US Customs raises an issue.

It is critical to work with experienced legal counsel in implanting the above recommendations.

Jointide Law Firm and Nexsen Pruet can help you with all the above tasks. We can help your business analyze its supply chain, create an appropriate code of conduct, and formulate internal controls to mitigate forced labor risk exposure. We can also provide prompt and professional assistance in the event that the CPB takes action against your products based upon alleged forced labor violations.