

Continuing and Updated Guidance Regarding Forced Labor in Xinjiang, China and The Uyghur Forced Labor Prevention Act of 2021

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Practices

Doing Business With China
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PUBLIC COMMENT PERIOD NOW OPEN

Updates:

As previously reported in earlier client alerts, the United States has long prohibited the importation of goods made through forced labor. With respect to China, a bipartisan effort in Washington at the end of 2021 resulted in the signing of Public Law 117-78 by President Biden on December 23, 2021. The [Uyghur Forced Labor Prevention Act of 2021](#) (the “Uyghur Act”) will strengthen the prohibition on U.S. imports of goods made through forced labor by focusing on goods mined, produced, or manufactured in whole or part in the Xinjiang Uyghur Autonomous Region in China (“Xinjiang”), or by entities to be specified by the U.S. government that use forced labor. The challenges associated with compliance are numerous. [Both the overall breadth and heightened evidentiary standard required to rebut the Uyghur Act’s presumptive prohibition on all imports from Xinjiang pose daunting challenges to importers.](#)

The Uyghur Act tasks the US Government with issuing guidance on compliance with the Uyghur Act, following a period of stakeholder comment. The Forced Labor Enforcement Task Force (“FLETf”) is to prepare both a list of high-priority sectors subject to CBP enforcement and a sector-specific enforcement plan for each of these high-priority sectors. [Building upon prior CBP guidance, the Uyghur Act mandates that cotton, tomatoes, and polysilicon must be among these high-priority sectors.](#) The addition of polysilicon on this list of high-priority sectors directly impacts the U.S. solar energy industry: nearly half of the world’s polysilicon — a key material for the manufacture of solar panels — is produced in Xinjiang.

[The FLETf has just published a notice soliciting public comment](#) on how best to ensure that goods mined or produced with forced labor in China — and particularly in Xinjiang — are not imported into the United States. [This](#)

Public Comment period will end on March 10. Public Comments can be submitted at:

[https:// www.regulations.gov](https://www.regulations.gov) (Docket No. DHS–2022–0001)

Prior Guidance:

We encourage the trade community to actively participate in this process, and we can also assist. However, please note that enforcement of the longstanding ban on importation of goods made by forced labor has been and will continue to be in effect during this public comment period. When information reasonably indicates that forced labor merchandise 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 now, in advance of the anticipated guidance described above. 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 non-compliance and deter weak business practices?

Chinese companies that export to the U.S. market should also take active steps, as described above, and as follows:

Action Items for Chinese Companies

- Investigate and document the sourcing of your goods and their components, so you can establish to customers/ US importers, and the US customs authorities, that you made a serious effort to ensure 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.