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New Law Enhances Restrictions on Goods Made from Forced Labor in China: What Your Business Needs to Know

February 23, 2022

Outline

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Background on Forced Labor Issues in XUAR and U.S. Responses

The Xinjiang Uyghur Autonomous Region

- XUAR is largest province in China and has roughly 22 million inhabitants with varied ethnic/religious identities:
 - 45.84% Uyghur; 40.48% Han;
6.50% Kazakh; 4.51% Hui;
2.67% Other – 2010 CCP Census
- History of ethnic/sectarian tensions goes back centuries.
- State-operated **Xinjiang Production and Construction Corps (XPCC)** – paramilitary org. responsible for economic development, agriculture cultivation. XPCC is a major political force in the region and has significant reach – thousands of potential subsidiaries.

Xinjiang Uyghur Autonomous Region (XUAR)



“Poverty Alleviation” & “Re-Education”

- **2014-2015:** CPP leadership develop anti-terrorism policies focused on “**re-education**” and “**poverty alleviation**” – aim to make the ethnic minority population more like the Han Chinese through “**work discipline.**”

*2017 Detention Camp Construction
Shufu County, Xinjiang*



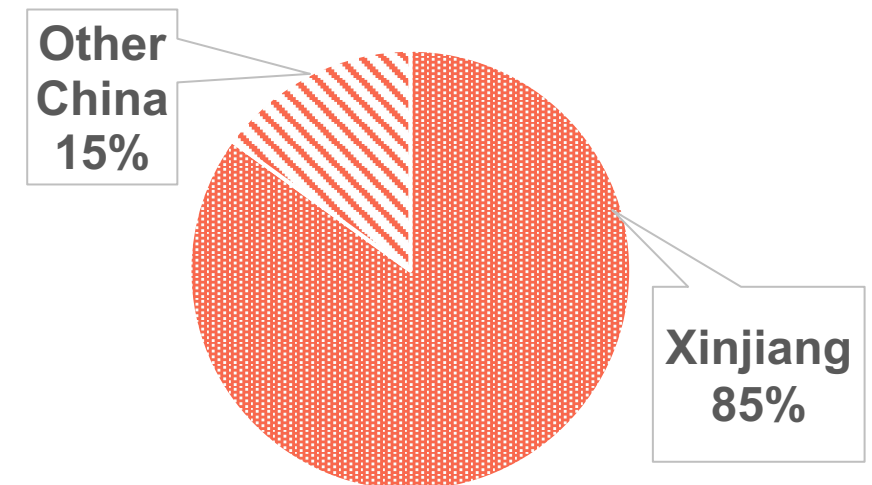
via Google Earth

- **2017:** Reports of large numbers of ethnic Uyghurs being extrajudicially detained and sent to “re-education camps” or “vocational training” in the XUAR begin to circulate. Satellite imagery shows significant new factory construction in the region, with facilities featuring high fences, guard towers, other security features.

Cotton Production in the XUAR

- Xinjiang has not historically been a manufacturing hub, but the XPCC has long been responsible for the cultivation and harvest one of the provinces' main exports – cotton.
- XPCC directed to build out vertical cotton supply chain, develop XUAR into textiles, apparel export hub.
- First Apparel Detentions:
 - **December 2018** – *AP* report on Badger Sportswear/Hetian Tiada Apparel Co., Ltd. is first major report on forced labor in the XUAR.
 - Several more reports implicating yarn suppliers (Huafu, Esquel, Texhong, & Liutan) published since.

2021 Est. China Cotton Production



Source: [U.S. Department of Agriculture](#)

Pairing Program

- The PRC has also established a “Pairing Program” where parts of Xinjiang are matched with Eastern provinces. Provinces are required to:
 - 1 Invest in Xinjiang by:
 - Having companies build and run factories in their “paired” XUAR region
 - Sending employees to XUAR facilities and assist in “re-education”/ “vocational training.”
 - 2 Accept “Worker Transfers” where:
 - Eastern companies accept detention and vocational training “graduates” into their manufacturing operations.
- **February 2020** – ASPI [report](#) identifies Uyghur “transfers” implicating 83 global brands. Sectors affected include apparel, automobiles, consumer electronics, footwear, and household appliances.

Xinjiang Business Advisory

- On **July 1, 2020** (and then again in an update on **July 13, 2021**), the Secretaries of the Departments of Homeland Security, Commerce, Treasury and State issued an unprecedented joint **Xinjiang Supply Chain Business Advisory** which:
 - Warns U.S. business against commercial activity in the XUAR, citing potential civil and criminal liability under U.S. law.
 - Encourages companies operating in China to undertake extensive human rights due diligence, but also warns that due diligence conducted in the XUAR is “not credible.”

Known XUAR Manufacturing

- U.S. State Department has evidence of XUAR manufacturing in all the sectors listed here.
- Sectors that have received the most attention are cotton/textiles and polysilicon
- Viscose, rayon also known to be produced in XUAR

<u>Industry</u>
Agriculture (including such products as hami melons, korla pears, tomato products, and garlic)
Cell Phones
Cleaning Supplies
Construction
Cotton Yarn, Cotton Fabric, Ginning, Spinning Mills, and Cotton Products
Electronics Assembly
Extractives (including coal, copper, hydrocarbons, oil, uranium, and zinc)
Fake Hair and Human Hair Wigs, Hair Accessories
Food Processing Factories
Hospitality Services
Noodles
Printing Products
Footwear
Stevia
Sugar
Textiles (including such products as apparel, bedding, carpets, wool)
Toys

Illustrative List of Active WROs

Date Issued	Product	Manufacturer	Manufacturer Country
Jun 23, 2021	Silica-based products	Hoshine Silicon Industry Co. Ltd. and Subsidiaries	China (XUAR)
Jan 13, 2021	Cotton, Tomatoes, and Downstream Products	Xinjiang Uyghur Autonomous Region (XUAR)	China (XUAR)
Nov 30, 2020	Cotton and Cotton Products	Xinjiang Production and Construction Corporation (and subsidies/affiliates)	China (XUAR)
Sep 8, 2020	Computer Parts	Hefei Bitland Information Technology Co., Ltd.	China (XUAR)
Sep 8, 2020	Cotton and Processed Cotton	Xinjiang Junggar Cotton and Linen Co., Ltd.	China (XUAR)
Sep 3, 2020	Apparel	Yili Zhuowan Garment Manufacturing Co., Ltd. and Baoding LYSZD Trade and Business Co., Ltd.	China (XUAR)
Aug 25, 2020	Labor	No. 4 Vocation Skills Education Training Center (VSETC)	China (XUAR)
Aug 25, 2020	Hair Products	Lop County Hair Product Industrial Park	China (XUAR)
Aug 11, 2020	Apparel	Hero Vast Group	China (XUAR)
Jun 17, 2020	Hair Products	Lop County Meixin Hair Products Co., Ltd.	China (XUAR)
May 1, 2020	Hair Products	Hetian Haolin Hair Accessories Co., Ltd.	China (XUAR)
Sep 30, 2019	Apparel	Hetian Taida Apparel Co., Ltd.	China (XUAR)

Uyghur Forced Labor Prevention Act

Uyghur Forced Labor Prevention Act

- On December 23, 2021, President Biden signed the Uyghur Forced Labor Prevention Act (the “UFLPA”) into law.
- The UFLPA was authored by the Chairs and Co-Chairs of the Congressional Executive Commission on China (Sens. Merkley & Rubio, Reps. McGovern & Smith) and received widespread bipartisan support
 - Passed by unanimous consent in the Senate.
 - Passed the House 428-1.
- It is the latest in a series of U.S. efforts to address what the State Department has declared is a **genocide** of Uyghurs and other minority groups taking place in the XUAR.

The Rebuttable Presumption

- The UFLPA establishes a “rebuttable presumption” that *all goods* made in whole or in part in the Xinjiang Uyghur Autonomous Region (“XUAR”) of China are forced labor goods and are therefore prohibited from entry into the United States unless importers can provide *clear and convincing evidence* that their goods are not forced labor goods.
- Rebuttable presumption goes into effect **June 21, 2022** (180 days following enactment).
- This *does not* impact CBP’s existing authority under Section 307 of the Tariff Act of 1930, as amended, to detain suspected forced labor goods from anywhere, including the XUAR.

Forced Labor Enforcement Strategy

- The UFLPA requires the Forced Labor Enforcement Task Force (FLETF) established under the USMCA implementing legislation to publish an enforcement strategy. The process for developing the enforcement strategy will proceed as follows:
 - 1. Within 30 days of enactment (Jan 25, 2022):** The FLETF will publish a notice soliciting public comment on how best to ensure that goods mined or produced with forced labor in China — and particularly in the XUAR — are not imported into the United States.
 - 2. No less than 45 days after notice is given (Mar. 10, 2022):** The public, including private sector businesses and non-governmental organizations, will submit comments in response to the FLETF's notice.
 - 3. Within 45 days of the public comment period closing (by Apr. 22, 2022):** The FLETF will hold a public hearing, inviting witnesses to testify regarding measures that can be taken to trace supply chains for goods mined or produced in whole or in part with forced labor in China and to ensure that goods made with forced labor do not enter the United States.
 - 4. No later than 180 days after enactment (by June 21, 2022):** The FLETF, in consultation with the Secretary of Commerce and the Director of National Intelligence, must submit to Congress a strategy for supporting CBP's processes for enforcing the Act. The Forced Labor Enforcement Task Force must update this strategy yearly.

Forced Labor Enforcement Strategy Requirements

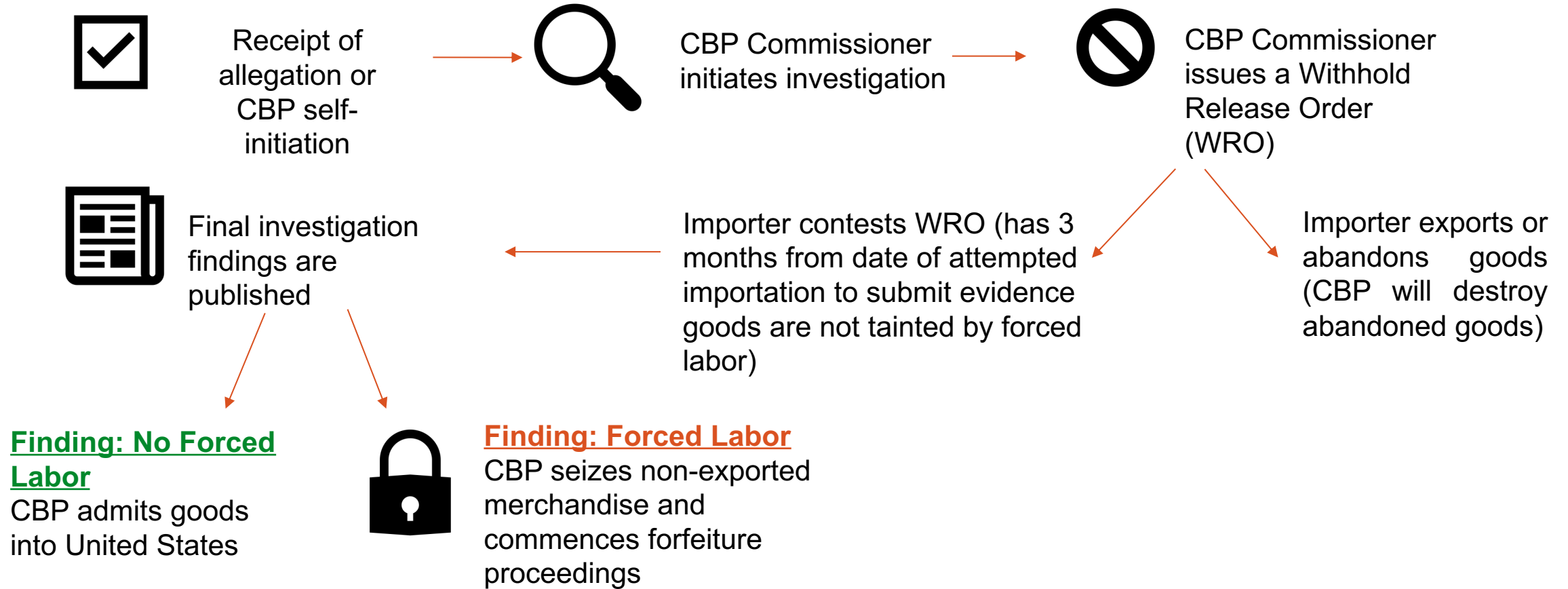
- ① A list of entities using forced labor in the XUAR or connected to the recruitment or transfer of Uyghurs and other minorities, and a list of items produced by those entities.
- ② A list of entities exporting those products to the United States, and a list of entities sourcing from the XUAR or connected to persons working for the XUAR or the Xinjiang Production and Construction Corps to facilitate forced labor programs.
- ③ Specific enforcement strategies for cotton, tomatoes, and solar panels, as those are identified as a high-priority sectors.
- ④ Recommendations for tools and technologies to be adopted to ensure that U.S. Customs and Border Protection can accurately identify and trace goods made in the XUAR attempting to be imported into the United States.
- ⑤ A description of how U.S. Customs and Border Protection plans to enhance its efforts to ensure that no goods are entered into the United States, including through the initiation of pilot programs to test the viability of technologies to assist in the examination of such goods
- ⑥ Guidance to importers on due diligence and the type, nature, and extent of evidence that could demonstrate or constitute “clear and convincing” evidence a good was not produced in whole or in part in the XUAR or by forced labor.

Sanctions

- The UFLPA also amends the Uyghur Human Rights Policy Act of 2020 to underscore that sanctions may be imposed due to “serious human rights abuses in connection with forced labor” related to the XUAR.
- Within 180 days of enactment (**June 21, 2022**), the President is required to submit an initial report to Congress identifying non-U.S. persons subject to sanctions under this new provision.
- The XPCC, the Xinjiang Public Security Bureau and several members of CCP leadership have been subject to Treasury Department Sanctions since June 31, 2020.

Forced Labor Enforcement Going Forward

Current Forced Labor Enforcement Process



CBP Increasing Detentions

- CBP trade data indicates that detentions of suspected forced labor goods were ramping up significantly, even before the passage of the UFLPA:

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022 (as of as of 1/31/22)
Total Number Detained Cargo Related to WROs	6	12	314	1,469	1,120
Total Value Detained Cargo Related to WROs	\$218 thousand	\$1.2 million	\$49.8 million	\$486 million	\$227 million

Source: CBP Trade Statistics - <https://www.cbp.gov/newsroom/stats/trade>

Heightened Due Diligence & Traceability Requirements for Importers

- **CBP's XUAR WRO FAQ:** If cargo is detained, cotton importers are required to provide documentation to show the entire supply chain from the origin of the cotton at the bale level through the final production of the finished product. This includes:
 - Certificate of Origin
 - List of suppliers, with associated production process, to including names and addresses and wage cards for employees
 - Flow chart of the production process
 - Maps of the region where the production processes occurred

Enforcement Example



- **January 5, 2021:** CBP detains a shipment of Uniqlo cotton men's shirts under the XPCC WRO.
- Uniqlo provides CBP evidence the shirts contained U.S. and Brazilian cotton.
- **May 10, 2021:** CBP ruling states that Uniqlo did not “[provide] **substantial evidence to establish that the entities within the XPCC that processed that cotton into the subject goods did so without the use of forced labor.**” The shirts were not allowed into the United States.

Traceability Technologies

- CBP is actively evaluating new technologies to enhance forced labor enforcement.
- On June 28-29, 2021, CBP held “Forced Labor Industry Days” where they heard from service providers that that could address:
 - Forced labor risk analysis (generally AI solutions)
 - Forensic Geographic origin determination (DNA tagging, isotopic analysis)
- Congress is increasing funding – House FY 22 package currently includes **additional \$10 million** for DHS Science and Technology Directorate to partner with CBP in evaluating existing and future investments to combat forced labor



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Trade Strategy to Combat Forced Labor

- **January 25, 2022:** Vice President Harris announced the first convening of the President's **Interagency Task Force to Monitor and Combat Human Trafficking**.
- United States Trade Representative (USTR) to develop the first-ever focused trade strategy to combat forced labor.
 - Strategy will establish objectives, priorities, new tools, and key action items to advance the Administration's goals to combat forced labor, including the implementation of the Uyghur Forced Labor Prevention Act.
- The White House also announced that in 2021 the Department of Homeland Security also initiated the first-ever criminal investigations to hold accountable companies and individuals who use forced labor to produce goods abroad.

QUESTIONS?

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