

U.S. Government Publishes Opportunity to Comment on Enforcement Strategy for the Uyghur Forced Labor Prevention Act

January 24, 2022

On January 24, 2022, the federal Forced Labor Enforcement Task Force (Task Force) published its notice of an opportunity to comment on the development of the U.S. Government's strategy to enforce the Uyghur Forced Labor Prevention Act (Pub. L. 117-78) (UFLPA). As described in Wiley's prior alert, the UFLPA, which President Biden signed into law on December 23, 2021, amends pre-existing U.S. laws prohibiting the importation of goods made with forced labor to include a rebuttable presumption that all goods made in the Xinjiang Uyghur Autonomous Region (XUAR) of the People's Republic of China, or with materials sourced from the region, use forced labor and are therefore prohibited from entering the United States.

The law extends to certain operations in the XUAR that are involved in and facilitate the use of forced labor (e.g., by recruiting, transporting, receiving forced labor). The UFLPA also requires the imposition of sanctions on individuals and entities involved in forced labor pursuant to an amendment made to the Uyghur Human Rights Policy Act of 2020 that includes "forced labor" in the list of identified gross human rights violations.

The importation prohibition provisions of the UFLPA will go into effect on June 21, 2022. In the meantime, the UFLPA calls upon the Task Force established under the United States-Mexico-Canada Agreement (Section 741) to create an enforcement strategy implementing the prohibition on imports and to seek public engagement in doing so. Public engagement includes the collection of public comments filed with the U.S. Government and participation at a forthcoming hearing. According to the Task Force, "[p]ublic comments will be vital to robust

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implementation of the UFLPA.”

Given the UFLPA’s breadth, it stands to affect the supply chains and the import operations of a vast range of industries. In particular, businesses with suppliers in third countries may be exposed to upstream supply chains in China, no matter how remote. Further, foreign firms exporting products to the United States are also subject to the law. Additionally, all businesses should consider documenting their supply chains, even if they have no perceived exposure to China, in the event that an inquiry by the U.S. Government is made for validation purposes. For businesses not involved in the importation of goods, the import restriction and sanctions implications here can impact the company’s trade compliance and due diligence processes.

The Task Force’s newly announced comment opportunity provides stakeholders with the means to engage the U.S. Government as it determines how to ensure that goods made wholly or in part with forced labor in China, especially in the XUAR, are not imported into the United States. Public comments will also inform rules and standards that the Government will impose for corporate compliance as well as guidance required for firms that seek to overcome the rebuttable presumption through the “clear and convincing” evidentiary standard set forth in the UFLPA.

The Task Force’s comment opportunity includes a list of 18 questions for commenters that concern forced labor in the XUAR and China in general. These questions broadly solicit input on how the United States can best enforce the UFLPA, including:

- information on the risk of importing goods made using forced labor, including identification of means by which goods made with forced labor may be able to enter the United States, and means for reducing the threat;
- public input on the forms that forced labor takes, including China’s “pairing assistance” and “poverty alleviation” programs;
- identification of goods produced with forced labor and the specific entities involved (including exporters);
- supply chains involved in the use of forced labor;
- suggestions regarding industry sectors that should be designated as “high priority” for U.S. Government enforcement;
- identification of methods for determining entities involved in forced labor, as well as tools that U.S. Customs and Border Protection could adopt to enforce the legal prohibition on the importation of goods made from forced labor;
- information on how importers may augment diligence efforts, including effective supply chain tracing and supply chain management, to prevent the importation of prohibited goods; and
- specification of the types of evidence that companies may provide to reasonably demonstrate an absence of forced labor in their supply chains.

Comments are being collected through regulations.gov, the federal government's eRulemaking portal. The Task Force will accept confidential submissions through email. Commenters that provide confidential information must also provide a public version of their comments through regulations.gov. Comments are due to the Task Force no later than March 10, 2022. After comments are collected, the Task Force will hold a public hearing on the enforcement of the UFLPA within 45 days after the close of the comment period.

Wiley's Supply Chain and Customs practice groups have extensive experience in helping clients navigate emergent and existing import enforcement regimes. This includes a team of internationally recognized lawyers, economists, trade professionals, and former U.S. Government trade and supply chain auditors that are able to help clients trace their supply chain exposure and institute practical measures to address risks and liabilities. Additionally, our International Trade, National Security, Government Contracts, Environment & Product Regulation, Telecom, Media & Technology, and Trade Analytics practice groups have extensive expertise across a broad range of industries and are able to help clients navigate evolving laws and regulations impacting domestic and global businesses.

For more information about the UFLPA, questions about how you can participate in the open comment period or hearing, or guidance on developing a UFLPA due diligence and preparedness plan, please contact one of the attorneys listed in this alert.

View our webinar, "How Does the Uyghur Forced Labor Prevention Act Affect Your Company?" [here](#).