



The Uyghur Forced Labor Prevention Act is Law. Now What?

By Jasmin Malik Chua



President Joe Biden attends a meeting with his task force on supply chain issues, Wednesday, Dec. 22, 2021, in the South Court Auditorium on the White House campus in Washington. CREDIT: AP Photo/Patrick Semansky

Tune into Sourcing Journal Radio on major podcasting platforms as this 3-part series discusses salient points from our joint survey research report: “2021 AlixPartners + Sourcing Journal Fashion in Focus: Investing in a Future Forged by Adversity.”

President [Joe Biden](#) has signed into law legislation that bans imports from [China](#)'s northwestern [Xinjiang](#) Uyghur Autonomous Region over concerns of [forced labor](#), the White House announced Thursday.

RELATED ARTICLES

- [Port of Long Beach Secures \\$52 Million to Fund Rail Project](#)
- [Why Futures Contracts May Be the Key to Stabilizing Freight Rates](#)

The move comes one week after the Senate and House of Representatives passed compromise text that reconciled their versions of the [Uyghur Forced Labor Prevention Act](#), which in its current form creates a “rebuttable presumption” that all products from Xinjiang have been made under coercion by persecuted Muslim minorities—and therefore barred from entering the United States under the 1930 Tariff Act—unless “clear and convincing” evidence proves otherwise.

Previous Xinjiang-related [Withhold Release Orders](#) from the Custom and Border Protection (CBP), which targeted cotton products, tomatoes and some polysilicon products, only blocked goods if forced labor was suspected.

Democratic Senator Jeff Merkley of Oregon, who co-authored the Senate version of the bill with Florida Republican Marco Rubio, said in a statement that the legislation sends a “powerful, bipartisan message that the United States will not turn a blind eye” as Beijing tries to “whitewash their genocide.”

“The United States must send a resounding and unequivocal message against genocide and slave labor wherever these evils appear,” he added. “Now that the Uyghur Forced Labor Prevention Act has reached President Biden’s desk and been signed into law, we can finally ensure that American

consumers and businesses can buy goods without inadvertent complicity in China's horrific human-rights abuses."

White House press secretary Jen Psaki told reporters that American businesses "should never feel the need to apologize for standing up for fundamental human rights or opposing repression."

"As we've said before, we call on all industries to ensure that they are not sourcing products that involve forced labor, including forced labor from Xinjiang," she said. "The reality is that companies that fail to address forced labor and other human rights abuses in their supply chains face serious legal risk [and] reputational and customer risks, not just in the United States but in Europe and other regions of the world."

Experts believe that Xinjiang authorities have detained up to 1.8 million Uyghurs, Kazakhs and other Turkic Muslim groups in prisons and work camps as part of a broader campaign of oppression. Many have also been torn from their homes and sent to toil in factories in other parts of China under the guise of poverty alleviation and counter-terrorism, but which [leaked high-level Chinese documents](#) revealed are meant to reduce the Uyghur population density in Xinjiang while "influence[ing], fus[ing] and assimilat[ing] Uyghur minorities."

In its [annual human-rights report](#), which was released in March, the Biden administration labeled the ruling Chinese Communist Party's abuse of Uyghurs, which include extrajudicial imprisonment, forced sterilization, high-tech surveillance, forced family separations and cultural and religious repression, as genocide. Former detainees of the camps have also reported systematic physical harm such as starvation, sexual abuse, rape and torture.

"The Chinese government is conducting a brutal campaign of genocide against Uyghur Muslims and other Turkic ethnic minority groups in the Uyghur region. As part of that campaign, Chinese authorities have forced millions of Uyghurs into slavery at labor camps," Robert McCaw, government affairs director at the Council on American-Islamic Relations, said in a statement. "By signing the Uyghur Forced Labor Prevention Act, President Biden has provided our government with a powerful tool to ensure that no American corporation is able [to] profit from Uyghur slave labor and thereby contribute to China's genocide."

Next steps

The Forced Labor Enforcement Task Force, a cross-agency unit established under the United States-Mexico-Canada Agreement Implementation Act, has 30 days to publish in the Federal Register a notice soliciting public comments on "how best to ensure that goods mined, produced, or manufactured

wholly or in part with forced labor in the People's Republic of China, including by Uyghurs, Kazakhs, Kyrgyz, Tibetans, and members of other persecuted groups in the People's Republic of China, and especially in the Xinjiang Uyghur Autonomous Region, are not imported into the United States." Within 45 days from the close of the comment period, the task force must hold a hearing with testimony on the measures to be taken. CBP is also required to employ the rebuttable presumption 180 days from the law's enactment, meaning it will take effect sometime in June.

The Uyghur Forced Labor Prevention Act, according to Leonardo Bonanni, founder and CEO of [Sourcemap](#), a supply-chain risk platform, will have a "limited impact" on companies that have already made it a practice to map their supply chains, whether for sustainability reasons or to combat Covid-19-related disruptions.

"Companies that map their supply chains know where all of their products are sourced, down to the raw materials, which is exactly the [degree of visibility](#) needed to comply with CBP guidance," Bonanni told Sourcing Journal. "The legislation poses a much greater challenge to companies that don't know where their raw materials come from—they will need to scramble to put in place technology to map their suppliers and where needed, find alternate sources of materials to comply with U.S. regulations."

As sourcing heads into 2022, companies may find the United States, [Canada](#) and countries in the [European Union](#) seizing more imports to comply with tightening forced-labor and due-diligence measures, said Kate Larsen, CEO of SupplyESChange, a responsible-sourcing consultancy. Business leaders must therefore apply human-rights due-diligence frameworks to their sourcing strategies, perhaps "shifting back to nominated raw materials from approved countries and suppliers, to help screen out global risks in cotton, rubber, viscose, leather and more," Larsen told Sourcing Journal. Laggards will need to catch up with leaders and learn how to collaborate in industry initiatives, especially those led by worker representatives, that "engage and incentivize" to promote traceability, she added.

Indeed, one sticking point is that the law, which comes nearly two years after the bill was first drafted, comes "quite late," said Adrian Zenz, a German researcher known for his work on Xinjiang's labor camps, as well as a key witness who provided testimony during Congressional hearings about the subject. "I believe we're going to see more efforts on the Chinese side to conceal production in Xinjiang," he told Sourcing Journal. Besides the difficulties in "chasing up" more straightforward supply chains in Xinjiang, there's also the challenge of tracking labor transfers outside the region, something that isn't covered by the bill and is a "moving target."

There's also the issue of China "[laundering](#)" its cotton through other countries. Because of an export strategy that "obscures cotton's origin," Xinjiang cotton, which accounts for 85 percent of China's supply, can easily end up in items from household brands such as American Eagle, Calvin Klein, Gap, Ralph Lauren, J.Crew and Uniqlo even if they profess otherwise, a recent study by Sheffield Hallam University's Helena Kennedy Centre for International Justice found. Even so-called "sustainable" cotton

certifications such as the Better Cotton Initiative, Cotton made in Africa and the Global Organic Textile Standard aren't guarantees of fair labor conditions, a [policy paper](#) by Berlin's European Center for Constitutional and Human Rights noted earlier this month.

[The law] is a very important step but it basically triggers a lot of follow-ups," Zenz said. "There's a great need now to increase the capacity of the enforcement authorities. Source tracing mechanisms have to be strengthened—it almost probably has to be made a requirement."

Though companies generally do not want to buy or sell products made with forced labor, the overriding obstacle is that many supply chains are "deep and opaque," Angela Santos, a partner who leads ArentFox Schiff's task force on forced-labor risks in the supply chain, told Sourcing Journal. But the regulation also provides some clarity that the Withhold Release Orders did not.

"While some view the bill as draconian, the benefit is that the enforcement process will hopefully be more transparent and uniform," Santos said. "The government will be required to provide importers with guidance regarding supply chain due diligence and what documentation will be required to prove that goods are not produced with forced labor. Historically, CBP's requests were often arbitrary and differed depending on the port. In addition, through the comment and hearing process, U.S. importers will have the opportunity to advise the government of the challenges they have faced in the forced labor enforcement process."

For Justin Dillon, founder and CEO of FRDM (pronounced "freedom"), a San Francisco-based traceability platform, Biden's signing of the bill sends a signal that ethical and transparent supply chains are "a requirement, not a luxury."

"He has prioritized supply chain [transparency](#) at the C-Suite level, which will open up resources for procurement teams to steadily reverse engineer ethical and resilient supply chains," Dillon told Sourcing Journal.

TAGS

■ CHINA ■ FORCED LABOR ■ GARMENT WORKERS ■ JOE BIDEN ■ TRANSPARENCY ■ U.S. CUSTOMS AND