



STEPTOE OUTSIDE COUNSEL

Addressing forced labor and human rights

The US government has intensified efforts to address forced labor and other human rights abuses in global supply chains. Recent examples include trade-related restrictions targeting a wide array of imports linked to, and actors in, China's Xinjiang Uyghur Autonomous Region ("XUAR"), as well as certain palm oil imports from Malaysia. The US Congress has passed bills, and proposed even more, calling for further restrictions on, and transparency related to, activities involving forced labor or other human rights abuses. US government measures and proposals to date include import bans, economic sanctions, export controls, and reporting requirements.

These developments have left compliance personnel at US and non-US companies in a variety of industries – including agriculture and food processing, apparel and footwear, automobiles, extractives, toys, electronics, and construction – scrambling to plug holes in existing compliance programs and establish new procedures to address legal, reputational, and business risks.

Recent developments include:

- **Import restrictions:** The US Department of Homeland Security's Customs and Border Protection agency ("CBP") has increasingly issued withhold release orders

("WROs") on entities allegedly using forced labor in or from China's XUAR, and more recently from a Malaysian entity. The WROs bar the import into the US of various goods alleged to be produced by forced labor linked to the XUAR region, and products from the Malaysian palm oil producer. Apart from the risks of seized goods at the border, companies can face civil or criminal penalties for violations.

- **Economic sanctions:** OFAC has added China's Xinjiang Production and Construction Corps ("XPCC") – a quasi-military state-owned organization – to the Specially Designated Nationals ("SDN") list under the Global Magnitsky sanctions regime, restricting US persons from engaging in transactions or dealings with XPCC. Among other products, XPCC is reported to control a significant proportion of cotton production in the XUAR, which produces 20% of the world's cotton. Other persons have been added to the SDN list for similar reasons, and entities named in WROs are candidates for addition to the SDN List.
- **Export controls:** The US Department of Commerce's Bureau of Industry and Security ("BIS") has blocked exports to dozens of technology and other companies allegedly involved in

forced labor, suppression of ethnic minorities, or state-surveillance in XUAR. This affects not only sales to XUAR, but potentially also sourcing from XUAR if any items or technology subject to US export controls jurisdiction, such as formulae or drawings, are shared with restricted entities in the process.

- **Proposed legislation:** The US House of Representatives recently passed two pieces of legislation that would, among other things, bar imports from XUAR absent "clear and convincing" evidence the goods are not products of forced labor and require publicly traded companies to disclose information relating to involvement with goods originating in, or made with materials sourced from, XUAR.

Apart from these legal risks, companies need to be mindful of news reports and civil society pressure campaigns encouraging further actions to address forced labor in supply chains. Compliance personnel should consider reviewing and, if necessary, enhancing their existing compliance programs to address these risks. These steps include:

- Conducting risk assessments and due diligence, including by obtaining necessary information and assurances from suppliers at various tiers, while accounting for limitations on information gathering acknowledged in a July 2020 inter-agency business advisory regarding XUAR;
- Implementing policy and procedure enhancements to ensure compliance while limiting the business impact;
- Developing and providing training;
- Establishing audit protocols and performing audits;
- Ensuring that reporting and response mechanisms adequately address forced labor and human rights risks;
- Monitoring developments in this fast-evolving area.

The risks of engaging in activities potentially linked to forced labor continue to evolve. By reviewing and refreshing their corporate compliance programs with an eye toward both existing and potential future requirements, compliance personnel can protect their companies from these legal risks, and at the same time satisfy corporate ethical standards and stakeholder expectations. ■

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