Overview
The US executive and legislative branches are ratcheting up pressure on companies to address forced labor in their supply chains. The US Department of Homeland Security's Customs and Border Protection agency (CBP) has in recent months announced a series of Withhold Release Orders (WROs) and a Finding following investigations into forced labor. Additionally, the US House of Representatives has passed two bills that together would impose import bans, sanctions, and strict reporting requirements on activities related to allegations of forced labor and China's Xinjiang Uyghur Autonomous Region (XUAR). These actions are in addition to the export controls and sanctions restrictions that have been implemented to target the Xinjiang Production and Construction Corps (XPCC) and other entities in the XUAR. The European Union, United Kingdom, and Canada are considering similar actions; and industry groups are increasingly cautioning companies against sourcing products from areas implicated by forced labor, especially XUAR.

Based on the scope and scale of these activities, companies should review their compliance programs to see how they address forced labor and human rights issues in their supply chains. Recent Steptoe posts provide additional background concerning the current US government-wide approach regarding allegations of forced labor in XUAR, including sanctions, export controls, and WROs.

Congressional Action
In September, the US House of Representatives passed two separate bills intended to combat alleged forced labor and other human rights abuses in XUAR. Taken together, the bills would mandate that the executive branch impose a suite of actions that could have a significant impact on US importers. Members of Congress have also directly cautioned industry about the need to ensure supply chain integrity, especially with respect to XUAR.

H.R. 6210 – Uyghur Forced Labor Prevention Act
On September 22, the House passed the "Uyghur Forced Labor Prevention Act" (H.R. 6210) by an overwhelming margin, 406-3. The bill is expansive and would, among other restrictions and requirements, impose the following:
An import ban on goods from XUAR or those produced as part of the XUAR "poverty alleviation" and "pairing assistance" programs. (There is an exception for goods shown not to be the product of forced labor by "clear and convincing" evidence.)

Blocking sanctions and visa restrictions on foreign persons who are found to have knowingly facilitated forced labor in XUAR or engaged in efforts to contravene relevant US import prohibitions.

A new Securities and Exchange Commission (SEC) disclosure requirement for publicly traded companies and affiliates that knowingly:

- "engaged in an activity with an entity or the affiliate of an entity engaged in creating or providing technology or other assistance to create mass population surveillance system" in XUAR;
- "engaged in an activity with an entity or an affiliate of an entity building and running detention facilities" for ethnic minorities in XUAR;
- engaged in an activity with an entity or an affiliate of an entity described by the bill's diplomatic strategy-related reporting requirements (see below), including any entity engaged in the "pairing-assistance" program or for which a WRO has been issued;
- transacted with persons sanctioned by the Secretary of State under the Global Magnitsky Human Rights Accountability Act for the detention or abuse of ethnic minorities in XUAR, or otherwise responsible for, or complicit in, committing atrocities in XUAR.

A requirement for the Forced Labor Enforcement Task Force, as established under the United States-Mexico-Canada Agreement Implementation Act, to provide a detailed enforcement strategy to Congress, including lists of products made wholly or in part by forced or involuntary labor in XUAR, companies that sell goods in the United States made in whole or in part with forced labor, facilities, and entities (to include the Xinjiang Production and Construction Corps) that source products from XUAR under the "pairing-assistance" and "poverty alleviation" programs, and a list of high-priority enforcement sectors.

A requirement for the Secretary of State, in coordination with other federal agency heads, to submit to Congress a diplomatic strategy, including lists of Chinese persons who use, directly or indirectly, forced labor in XUAR or who serve as their agents.

A related bill in the Senate with similarly sweeping restrictions has bipartisan support.

H.R. 6270 - Uyghur Forced Labor Disclosure Act of 2020

A week later, on September 30, the House passed the "Uyghur Forced Labor Disclosure Act of 2020" (H.R. 6270). While narrower in general scope than H.R. 6210 (detailed above), the bill would impose more demanding SEC disclosure requirements than H.R. 6210. Specifically, by amending the Securities Exchange Act of 1934, it would require publicly traded companies in the United States to disclose:

- Whether the publicly traded company (issuer) or an affiliate "directly or indirectly, engaged" with an entity or the affiliate of an entity that manufactured goods originating in XUAR (including electronics, food products, textiles, shoes, and teas) or manufactured goods with materials that were sourced or originated in XUAR;
- Whether any of the aforementioned materials/goods were produced in forced labor camps; and
- The nature and extent of the commercial activity related to the materials/goods, revenue and profits attributable to the materials/goods, and whether the issuer or affiliates intends to continue importing such materials/goods.

Key terms, including "affiliate" and "engaged with," are not defined in the bill. The terms are potentially very broad, but of uncertain scope. The bill also leaves undefined the steps companies are required to take to determine whether goods are produced with forced labor to ensure their disclosures are accurate.

Direct Senate Outreach

Prominent Senators have also reached out directly to industry and cabinet secretaries to encourage action on forced labor and related human rights issues. In late October, Senators Brown and Wyden, ranking members of the Banking, Housing, and Urban Affairs Committee and the Finance Committee, respectively, wrote the CEO of the US Chamber of Commerce urging Chamber members "to take immediate action to ensure goods manufactured for them are not complicit in the China’s [sic] state-directed human rights abuses, including by relocating production from the XUAR." Citing civil society reports, the Senators called global brands' alleged relationships with entities involved in XUAR forced labor programs "unconscionable" and asked members of the Chamber to commit to three actions:

1. Cease production in, and sourcing relationships with, XUAR;
2. Adopt heightened transparency in supply chains; and
3. Assure workers have a "meaningful voice at all facilities in their US supply chains."
Further, Brown and Wyden committed to "push the US government to take all action necessary to eradicate forced labor and protect human rights." In a response to Senators Brown and Wyden, dated November 6, the Chamber of Commerce and other trade associations expressed a "shared goal" of ending forced labor and assured the Senators that members were "deploying a range of best practices to prevent, identify, and mitigate instances of forced labor," while also noting the "scale, scope, and complexity" of the issue in XUAR.

Additionally, exercising their oversight function, a bipartisan group of Senators – Rubio, Cornyn, Merkley, and Cardin – wrote to US Secretary of State Pompeo asking for the continued use of Global Magnitsky sanctions and other tools to hold accountable "individuals or entities complicit in the implementation of the mass arbitrary internment, forced labor, and coercive population control policies as well as any other human rights abuses." The Senators also renewed their request that the Secretary determine whether atrocity crimes are being committed in XUAR and whether those crimes constitute genocide.

Administrative Actions

In addition to these XUAR-specific legislative efforts, CBP has announced a series of WROs to block imports of goods into the United States. Under a WRO, CBP is entitled to withhold the release of imported goods when there is information available to "reasonably" indicate that the goods or materials were produced by forced, indentured, or convict labor as authorized under Section 307 of the Tariff Act of 1930. Pursuant to a WRO, importers must either export detained shipments or submit, within three months, a certificate of origin and detailed statement demonstrating the merchandise was not produced with forced labor. If CBP determines the proof submitted is insufficient, it will exclude the shipment. Where CBP finds "probable cause" that goods or materials were produced with forced labor, it will publish a formal "Finding" in the Federal Register.

Recent WROs have focused largely on XUAR-related producers, but on September 30, CBP issued a WRO barring imports of palm oil from a large Malaysian palm oil producer, FGV Holdings Berhad (FGV), as described below. The FGV order underscores CBP’s willingness to aggressively employ the administrative tool outside of China and against major global producers of widely used products. In addition, on October 20, CBP issued its first "Finding" following issuance of a WRO since 1996, empowering port directors to seize merchandise and begin forfeiture proceedings.

Palm Oil WRO

The same day the House passed H.R. 6270, CBP announced a WRO on "palm oil and palm oil products made by FGV Holdings Berhad and its subsidiaries and joint ventures," effective as of September 30. The Malaysia-based firm is a major global producer of palm oil and other products, and closely connected to Malaysian state-owned firm Felda.

The US government investigation that preceded the order was reportedly triggered by a civil society complaint submitted last year, which alleged forced labor and other abuses on FGV and Felda plantations. The complaint also directly named major US firms alleged to be partnering with and/or importing from FGV, including major consumer goods, oil-manufacturing, cosmetics, and baking and confectionery companies. FGV has denied the allegations.

In announcing the FGV order, CBP noted that its year-long investigation of FGV had:

> revealed forced labor indicators including abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime. The investigation also raised concerns that forced child labor is potentially being used in FGV’s palm oil production process.

Stevia Finding

On October 20, CBP issued a "Finding" against Inner Mongolia Hengzheng Group Baoanzhao Agriculture, Industry, and Trade Co., Ltd. determining that stevia extracts and derivatives produced by the company "with the use of convict, forced or indentured labor, are being, or are likely to be, imported into the United States." This was the first Finding issued by CBP since 1996. A Finding, as noted in the section above, requires a higher evidentiary burden (conclusive evidence) that imported goods are produced with forced labor. The stevia finding authorizes port directors to seize covered merchandise and commence forfeiture proceedings.

CBP had previously issued, in May 2016, a WRO against Inner Mongolia Hengzheng Group Baoanzhao Agriculture, Industry, and Trade Co., Ltd. That WRO was reportedly based on an allegation submitted to the agency by an NGO.

Additional Considerations
The palm oil WRO, alongside other recent forced-labor-related WROs, and the stevia Finding—as well as the bills described above, if passed into law—are indicators of potentially far-reaching legal, commercial, and reputational risks for many companies importing into the United States. Those risks may also be expanding into other jurisdictions with reports suggesting that UK and Canadian lawmakers are considering the use of sanctions and other enforcement tools to respond to alleged human rights abuses in Xinjiang. The European Commission and the High Representative of the EU for Foreign Affairs and Security Policy also recently brought forward a proposal for a Magnitsky-style sanctions program for the EU. The proposal would afford the EU greater flexibility in using sanctions to target alleged human rights abuses and abusers in places like XUAR.

There is also growing customer-driven pressure to move supply chains away from regions and/or producers implicated by allegations of forced labor, especially XUAR. For example, the Solar Energy Industries Association (SEIA) recently called on companies to move their supply chains out of Xinjiang, which produces polysilicon. “We will not tolerate industry suppliers being involved in these types of abuses,” said John Smirnow, a vice president at SEIA. Other industries—like retail and food processing—which source goods and materials from XUAR could make similar determinations.

With respect to exports to XUAR, many companies around the world are undertaking efforts to determine whether customers and/or beneficiaries of their products may be linked to a restricted party—a challenging task in light of the complicated corporate structures and relatively limited information available. Given the broad involvement of the XPCC in the region, and the regulators’ stated goal of furthering human rights of the local population, it may be appropriate for regulators to consider creating a general license to allow for the export of items such as medicine, food, and other humanitarian items to minimize “de risk” by companies providing those critical products to XUAR.

Implications

Given ramped-up enforcement activities in the United States and increasing potential for concerted global action, companies are encouraged to take a fresh look at how their existing compliance programs address the risks of forced labor and related labor and human rights issues in their supply chains. This review should include related economic sanctions and export controls risks as described in our prior alerts (here and here). Following a careful risk assessment, enhancements to policies and procedures, due diligence and auditing processes, training, and reporting and response mechanisms may be warranted.

For specific advice on navigating the impacts of a possible WRO or related US sanctions and export controls, and other legal risks described above, contact a member of Steptoe’s Business & Human Rights, Economic Sanctions, Export Controls, or Customs teams.

Practices

Economic Sanctions

Export Controls

Customs

Business & Human Rights