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## House Passes Legislation that Would Restrict U.S. Imports of Xinjiang Goods and Require Disclosure of Xinjiang-Related Activities by Public Companies

The Uyghur Forced Labor Prevention Act was passed by the U.S. House of Representatives on September 22, by a vote of 406-3. If adopted, the Act would establish a presumption that goods produced in Xinjiang or through certain government programs are produced using forced labor and therefore prohibited from being imported into the United States under the Tariff Act. The Act also would require disclosure by public companies of specified activities with a potential nexus to human rights abuses. These and other portions of the Act are discussed in this Alert.

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### Prohibition on Importing XUAR Goods into the United States

Section 307 of the Tariff Act prohibits the importation into the United States of “goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part” by convict, forced or indentured labor. The goods are subject to seizure and the importer may be subject to civil and criminal penalties.

The Act would establish a presumption that goods, wares, articles and merchandise mined, produced or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region (XUAR), or by persons working with the XUAR government for purposes of the poverty alleviation program or the pairing-assistance program, come within the Section 307 prohibition. This portion of the Act would take effect 120 days after its enactment.

The import prohibition would not apply if the Commissioner of Customs and Border Protection (CBP) (1) determines, by clear and convincing evidence, that any specific goods, wares, articles or merchandise were not produced wholly or in part by convict, forced or indentured labor under penal sanctions and (2) submits to the appropriate congressional committees and makes available to the public a report containing that determination.

As some readers may recall, Section 302A of the Countering America’s Adversaries Through Sanctions Act (CAATSA), which deals with North Korean labor, is set up similarly. For a further discussion of that Act, which was adopted in late 2017, and the related guidance, see our earlier Alerts [here](#), [here](#) and [here](#). CAATSA and the relevant guidance thereunder are likely to inform CBP’s compliance program expectations under the Act.

Even in the absence of the adoption of the Act, CBP is expected to continue to vigorously enforce Section 307 as it relates to XUAR goods. CBP has issued eight Withhold Release Orders (WROs) involving XUAR goods. Most recently, on September 14, it issued five WROs relating to apparel, computer parts and cotton and hair products produced by specific companies and sites, as well as all goods produced with labor from a named vocational skills education and training center. The prior week, there also were media reports that CBP would be issuing a broader ban on cotton and cotton products originating from the XUAR. There is precedent for this broader approach. In May 2018, CBP issued a WRO banning the importation into the United States of all Turkmenistan cotton or products produced in whole or in part with Turkmenistan cotton.

Reflecting the additional scrutiny being applied to products produced with XUAR labor, in July, the U.S. Department of State, along with the U.S. Department of the Treasury, the U.S. Department of Commerce and the U.S. Department of Homeland Security, issued a business advisory concerning forced labor risks associated with the XUAR. The advisory

contains information to help companies assess XUAR-related forced labor risks, as well as compliance recommendations. Although the advisory is characterized as only being explanatory and not having the force of law, it notes that well-documented and implemented due diligence policies and procedures may potentially be considered as mitigating factors by U.S. authorities in the event businesses inadvertently engage in activity that violates U.S. laws relating to forced labor in supply chains. Accordingly, supply chain compliance policies and procedures should take the advisory into account. For a further discussion of the advisory, see our earlier Alert [here](#).

## Public Company Disclosure Requirements

The preamble to this portion of the Act draws a link between disclosure of human rights abuses and the protection of investors, noting that involvement in human rights abuses can represent clear, material risks to the share values and corporate reputations of listed companies and therefore to investors.

The Act would add a new Section 13(s) to the Exchange Act. Section 13(s) of the Exchange Act would require issuers that file periodic reports under Section 13(a) to disclose in their annual or quarterly reports under the Exchange Act if, during the period covered by the report, the issuer or any of its affiliates:

- 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 systems in the XUAR, including any entity included on the Department of Commerce’s Entity List in the XUAR.

“Mass population surveillance system” is defined in the Act as “installation and integration of facial recognition cameras, biometric data collection, cell phone surveillance, and artificial intelligence technology with the ‘Sharp Eyes’ and ‘Integrated Joint Operations Platform’ or other technologies that are used by Chinese security forces for surveillance and big-data predictive policing.”

- Knowingly engaged in an activity with an entity or an affiliate of an entity building and running detention facilities for Uyghurs, Kazakhs, Kyrgyz and other members of Muslim minority groups in the XUAR.
- Knowingly engaged in an activity with an entity or an affiliate of an entity described in section 7(c)(1) of the Act, including (1) any entity engaged in the pairing-assistance program or (2) any entity for which the Department of Homeland Security has issued a Withhold Release Order under Section 307 of the Tariff Act.

Section 7(c)(1) of the Act requires the Secretary of State to periodically prepare a report that, among other things, includes, to the extent practicable, a list of (1) entities in China or affiliates of those entities that directly or indirectly use forced or involuntary labor in the XUAR and (2) foreign persons that acted as agents of the foregoing entities or their affiliates to import goods into the United States.

- Knowingly conducted any transaction or had dealings with (1) any person whose property and interests in property were sanctioned by the Secretary of State for the detention or abuse of Uyghurs, Kazakhs, Kyrgyz or other members of Muslim minority groups in the XUAR, (2) any person whose property and interests in property are sanctioned pursuant to the Global Magnitsky Human Rights Accountability Act or (3) any person or entity responsible for or complicit in committing atrocities in the XUAR.

“Atrocities” has the meaning given the term in Section 6(2) of the Elie Wiesel Genocide and Atrocities Prevention Act, which is “war crimes, crimes against humanity and genocide.”

The foregoing disclosure requirement would not include activities relating to (1) the importation of manufactured goods, including electronics, food products, textiles, shoes and teas, that originated in the XUAR or (2) manufactured goods containing materials that originated or are sourced in the XUAR.

If an issuer or one of its affiliates has engaged in any of the activities requiring disclosure, the issuer would be required to provide a detailed description of each such activity, including (1) the nature and extent of the activity, (2) the gross revenues and net profits, if any, attributable to the activity and (3) whether the issuer or its affiliate intends to continue the activity.

In addition, the issuer would be required to separately file with the Securities and Exchange Commission, concurrently with the annual or quarterly report containing the disclosure, a notice that (1) the disclosure of that activity has been included in the report and (2) contains the information described in the preceding paragraph. Upon receiving the notice, the SEC would be required to promptly transmit the report to the President, the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives and the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate. It also would be required to make the information provided in the disclosure and the notice available to the public by posting it on the SEC's website.

Upon receiving a report from the SEC, the President would be required to determine whether an investigation is needed into the possible imposition of sanctions under the Global Magnitsky Human Rights Accountability Act or under the Act, or whether criminal investigations are warranted arising out of the importation of goods produced by forced labor.

Section 13(s) would take effect with respect to reports required to be filed with the SEC after the date that is 180 days following the Act's enactment. The Section 13(s) reporting requirement would sunset on the earlier of the eighth anniversary of the Act and the date on which the President submits to the appropriate congressional committees a determination that the Chinese government has ended mass internment, forced labor and any other gross violations of human rights experienced by Uyghurs, Kazakhs, Kyrgyz and members of other Muslim minority groups in the XUAR.

### **Other Provisions of the Act**

Other provisions of the Act also could impact companies and their supply chains, although it is too early to speculate on what those impacts may be.

Among other things, within 120 days after its enactment, the Act would require the Forced Labor Enforcement Task Force established under the United States-Mexico-Canada Agreement Implementation Act to submit to the appropriate congressional committees a report that contains an enforcement strategy to effectively address forced labor in the XUAR. The enforcement strategy would be required to describe the specific enforcement plans of the U.S. government regarding (1) goods, wares, articles and merchandise imported into the United States directly from the XUAR, (2) goods, wares, articles and merchandise imported into the United States from China that are mined, produced or manufactured in part in the XUAR or by persons working with the XUAR government for purposes of the poverty alleviation program or the pairing-assistance program and (3) goods, wares, articles and merchandise that are imported into the United States from third countries that are mined, produced or manufactured in part in the XUAR or by persons working with the XUAR government for purposes of the poverty alleviation program or pairing-assistance program.

The strategy would be required to include, among other things, (1) a description of the actions taken by the U.S. government to address forced labor in the XUAR, (2) a list of products made wholly or in part by forced or involuntary labor in the XUAR and a list of businesses that sold products in the United States made wholly or in part by forced or involuntary labor in the XUAR, (3) a list of facilities and entities that source material from the XUAR or by persons working with the XUAR government for purposes of the poverty alleviation program or pairing-assistance program, a plan for identifying additional facilities and entities and facility- and entity-specific enforcement plans, including issuing specific WROs with regard to the listed facilities or entities, and (4) a list of high-priority sectors for enforcement, which will be required to include cotton and tomatoes, and a sector-specific enforcement plan for each high-priority sector.

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