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The TASK Act – Proposed Disclosure Requirements for Public Companies Relating to Xinjiang Labor and Other China Activities

The forced labor presumption in the Uyghur Forced Labor Prevention Act took effect on June 21. While that Act garnered significant attention from the time it was proposed, more recent disclosure-based legislation proposed in the Senate relating to Xinjiang labor and other China activities has largely been overlooked. The Transaction and Sourcing Knowledge Act, or TASK Act, would require publicly traded companies to disclose sourcing and due diligence activities related to products utilizing forced labor from the Xinjiang Uyghur Autonomous Region of China and transactions involving certain Chinese companies, among other things. In this Alert, we describe the TASK Act and discuss its likelihood of passage. We also discuss the TASK Act in the broader context of recent U.S. legislation relating to XUAR forced labor.

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An Overview of the TASK Act

On April 27, Senator Rick Scott (R-FL) introduced the TASK Act in the Senate. The bill is co-sponsored by Senators Marco Rubio (R-FL) and Mike Braun (R-IN). The TASK Act is disclosure legislation. It would require the U.S. Securities and Exchange Commission to mandate reporting of the following by publicly traded companies:

- Their sourcing and due diligence activities involving supply chains of products imported into the United States that are directly linked to products utilizing forced labor from the XUAR.
- Transactions with companies that have been (1) placed on the Entity List by the Department of Commerce or (2) designated by the Department of the Treasury as Chinese Military-Industrial Complex Companies.
- If the company has facilities in China, (1) whether there is a Chinese Communist Party committee in the operations of the company and (2) a summary of the actions and corporate decisions in which the committee may have participated. This disclosure would be required annually.

The Entity List of the Department of Commerce’s Bureau of Industry and Security contains the names of foreign persons – including businesses, research institutions, government and private organizations, individuals and other types of legal persons – that are subject to specific license requirements for the export, reexport and/or transfer (in-country) of specified items. BIS first published the Entity List in 1997 as part of its efforts to inform the public of entities who have engaged in activities that could result in an increased risk of the diversion of exported, reexported and transferred items to weapons of mass destruction programs. Since its initial publication, grounds for inclusion on the Entity List have expanded to include activities sanctioned by the State Department and activities contrary to U.S. national security and/or foreign policy interests.

“Chinese Military-Industrial Complex Companies” are included on a list published by the Department of the Treasury’s Office of Foreign Assets Control.

The TASK Act is not the First Bite at the Apple

The TASK Act is not the first piece of U.S. federal legislation seeking disclosures specific to the XUAR and Uyghur labor. In 2021, Representative Jennifer Wexler (D-VA) re-introduced the Uyghur Forced Labor Disclosure Act, which she had previously proposed in 2020. The UFLDA was subsequently folded into the much broader Corporate

Governance Improvement and Investor Protection Act, which was approved by the House in June 2021, albeit without any Republican support. The bill never made it out of committee in the Senate.

The UFLDA provisions would have amended the Exchange Act to require the Securities and Exchange Commission to, within 180 days after its enactment, adopt rules requiring issuers to disclose in their annual report or proxy statement, during the period it covers:

- Whether the issuer or any of its affiliates directly or indirectly engaged with an entity or that entity's affiliates to import (1) manufactured goods, including electronics, food products, textiles, shoes, auto parts, polysilicon and teas, sourced from or through the XUAR, (2) manufactured goods containing materials sourced from or through the XUAR or (3) goods manufactured by an entity engaged in labor transfers from the XUAR.
- With respect to any goods or materials described above, whether the good or material originated in forced labor camps.

“Forced labor camp” would have been defined as (1) any entity engaged in the “mutual pairing assistance” program that subsidizes the establishment of manufacturing facilities in the XUAR, (2) any entity using convict labor, forced labor or indentured labor described under Section 307 of the Tariff Act (which prohibits the importation into the United States of goods produced using forced labor) and (3) other entities that the Commission determined to be appropriate.

- With respect to each manufactured good or material described above, (1) the nature and extent of the commercial activity related to the good or material, (2) the gross revenue and net profits, if any, attributable to the good or material and (3) whether the issuer or one of its affiliates intends to continue importing the good or material.

In addition, the version of the Uyghur Forced Labor Prevention Act adopted by the House in 2021 contemplated disclosure obligations for public companies, as discussed in our earlier Alert [here](#). That requirement, which did not have support in the Senate, was later stripped out and not part of the adopted UFLPA.

Is Adoption of the TASK Act Likely?

At this time, we give the TASK Act long odds. However, by having Republican sponsorship, it arguably starts from a stronger position than most other ESG disclosure legislation, since a large number of Democratic lawmakers have been supportive of enhanced ESG disclosure requirements for public companies. For example, last year's Democrat-sponsored Corporate Governance Improvement and Investor Protection Act had sufficient Democratic support to pass in the House, although in today's polarized political climate perhaps there would be less support for a Republican-originated ESG disclosure bill. Republicans in contrast generally have not been supportive of mandatory ESG disclosure, instead advocating for a private ordering approach. A prime example in the news these days is the debate over climate risk disclosure.

Another potential differentiator here is that, specific to the XUAR and Uyghurs, there has been strong bi-partisan support for legislation directed at the business community. Last year's Uyghur Forced Labor Prevention Act passed in the House 428–1 and in the Senate 100–0. But, as noted, the public company disclosure provisions in the House bill ultimately were not adopted.

The UFLPA and Recent Guidance

The TASK Act would require additional public company disclosures in some cases. It would not by its terms create new substantive requirements or prohibitions, although it would undoubtedly drive some changes to business practices, which typically is the intent of ESG disclosure requirements. The TASK Act also would likely have fairly narrow incremental

impact on most public companies. In contrast, the Uyghur Forced Labor Prevention Act has widespread commercial implications – which already have begun to be felt – for a large number of companies, whether public or private.

As earlier noted, the forced labor presumption of the UFLPA took effect on June 21. The UFLPA creates a presumption for purposes of Section 307 of the Tariff Act that goods produced in the XUAR, or by entities specified by the U.S. government, are produced using forced labor. Our earlier Alert describing the UFLPA is available [here](#).

In the last few weeks in the lead-up to the effectiveness of the UFLPA's forced labor presumption, the U.S. Department of Homeland Security delivered to Congress its *Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China*. In addition, U.S. Customs and Border Protection issued *Operational Guidance for Importers* to complement the Strategy. The Strategy and Guidance indicate that businesses should undertake heightened due diligence to ensure compliance with the Tariff Act and identify potential supply chain exposure to companies operating in the XUAR, linked to the XUAR or utilizing Uyghur and other Muslim minority laborers. Our Alert describing the Strategy and Guidance in detail is available [here](#).

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For further information on the practice, click [here](#).