

US approach to preventing imports of goods made using forced labour

In recent years, the US has taken a range of steps to strengthen US legislation and enforcement practice from a human rights, trade and foreign policy perspective in the fight against the widespread use of forced labour in the increasingly complex global supply chains of the 21st century. A prominent example is the Uyghur Forced Labour Prevention Act of 2021. It bans imports from the Xinjiang Uyghur Autonomous Region (XUAR) in the north-west of China, except where importers can rebut the presumption that all goods from this region are made with forced labour. Enforcing the law can put businesses between a rock and a hard place, given the XUAR's central role in a host of global supply chains and Chinese retaliation and economic coercion.

Forced labour in international law and its unabated global prevalence

A 2017 International Labour Organization (ILO) [report](#) estimates that in 2016 about 25 million people were victims of different forms of forced labour imposed by private or state actors. Forced or compulsory work is defined in [Article 2](#) of the 1930 ILO Forced Labour Convention (C029) as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself [or herself] voluntarily'. As of January 2022, C029 had been ratified by [179](#) of the [187 ILO members](#) and thus enjoys almost universal acceptance. China and the US are [not](#) parties to it, but bound by a related ILO [Declaration](#). US law and the practice of subcontracting the operation of prisons to US firms that may [force](#) convicts to perform prison labour [conflict](#) with C029. By contrast, the US has ratified the ILO Convention on the Abolition of Forced Labour (C105), which addresses state-imposed forced labour and requires its parties to [undertake](#) 'to suppress and not to make use of any form of forced or compulsory labour' ... 'as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system'. China [has not ratified](#) C105.

US legislation on third-country forced labour and its enforcement

[Section 307](#) of the US Tariff Act of 1930, as amended, [mirrors](#) the forced labour definition of C029 and prohibits US imports of goods 'mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions'. Historically, the law was rarely used as it contained a '[consumptive demand](#)' clause, which allowed forced labour imports if comparative products were not made or not made in sufficient quantities in the US. In 2015, Congress [closed](#) the loophole by removing the exception through the Trade Facilitation and Trade Enforcement [Act](#).

This has given a significant boost to enforcement action by Customs Border Protection (CBP). CBP investigations can result in 'withhold release orders' (WROs), blocking entry into the US of goods made using forced labour, and 'forced labour findings', allowing the CBP to [seize](#) detained imports. Since 2016, the CBP has been conducting self-initiated [investigations](#) more frequently or initiating them in response to petitions submitted under Section 307 alleging goods produced by forced labour are being imported. Whereas there were [no new WROs](#) between 2000 and 2016, [37 new WROs](#) and two new forced labour findings were issued between 2016 and 2021. Since the 1990s, the CBP has issued 66 WROs, of which 44 alone concerned China, including 35 still active in January 2022, the remaining 18 WROs currently active concern a range of countries. Since 2019, the CBP has [published](#) six WROs on seafood harvested using forced labour on Chinese-owned fishing vessels, coinciding with [growing related US concern](#). As Section 307 does not include a penalty provision, the CBP [relies](#) on other provisions to determine civil penalties. In 2020, the CBP [closed](#) its first penalty case, collecting US\$575 000 from a firm for importing shipments of stevia powder and derivatives processed in China using prison labour.

In recent years, the scope of WROs has broadened from concerning only specific [manufacturers](#) to relating to an entire industry, region or country. [Section 321\(b\)](#) of the Countering America's Adversaries through Sanctions Act (CAATSA) of 2017 [creates](#) a presumption that North Korean labour is forced labour within the

meaning of [Section 307](#) of the Tariff Act of 1930 and that US imports of goods produced using North Korean labour are prohibited. Under CAATSA, it is the importer's responsibility to provide 'clear and convincing evidence' that their goods were not produced with forced labour. As [research](#) increasingly [provided evidence](#) of state-led forced labour in the XUAR, in January 2021 the CBP [issued](#) its first region-wide WRO against cotton and tomato products from the XUAR, on the basis of [ILO forced labour indicators](#). An [inferential approach](#) is used, since traditional fact-finding in the XUAR is not possible. In June 2021, the CBP [issued](#) a company-related WRO against XUAR-made silica-based products (silicon is used among other things to produce [solar panels](#)), taking a first step against [sensitive](#) global supply chains for the [clean energy](#) transition. The US administration's updated Xinjiang Supply Chain Business [Advisory](#) of July 2021 stresses that given the prevalence of forced labour in the XUAR, 'businesses and individuals that do not exit supply chains, ventures, and/or investments connected to Xinjiang could run a high risk of violating US law'. This stronger US legislation on forced labour is [in line with](#) the Biden administration's [worker-centric](#) trade policy. It also has bipartisan support in US Congress, as demonstrated by the insertion in the [Infrastructure Investment and Jobs Act](#), in force since November 2021, of a requirement for the executive branch to submit to Congress a study on the impact of forced labour in China on the electric vehicle supply chain.

The Uyghur Forced Labour Prevention Act

In December 2021, the US Congress passed and President Joe Biden [signed](#) into law the [Uyghur Forced Labour Prevention Act](#) that creates a rebuttable CBP presumption that all imports from the XUAR are made using forced labour under Section 307 of the 1930 Tariff Act and are thus prohibited from entry into the US.

The law broadens the scope of the US prohibition from selected goods through WROs to all goods made in the XUAR. It requires firms to show that their imported goods from the XUAR are not made using forced labour by, i) complying with government guidance, ii) completely replying to inquiries, and iii) providing 'clear and convincing evidence'. Exceptions to the import ban must be reported to Congress within 30 days. The law mandates the [task force](#) in charge of the enforcement of forced labour provisions in the US-Mexico-Canada trade agreement ([USMCA](#)) (see [recent](#) CBP [action](#) on Mexico) to develop an enforcement strategy and to provide [detailed lists](#) of firms with operations in the XUAR. The task force will draft guidance for importers regarding due diligence, supply chain tracing, and supply chain management. The law provides for sanctions against foreign persons under the Uyghur Human Rights Policy [Act](#) of 2020, as amended, such as asset blocking, ineligibility for visas, admission or parole and penalties. It mandates a US diplomatic strategy to raise awareness of forced labour in the XUAR and to address it with US allies and partners.

Challenges for the enforcement of US forced labour legislation on the XUAR

In June 2021, China enacted an Anti-Foreign-Sanctions [Law](#) that prohibits companies operating in the country from complying with foreign sanctions targeting China and it has mobilised its large [consumer](#) base to retaliate with [boycotts](#). Tougher US forced labour legislation and enforcement is therefore likely to present businesses with a [compliance dilemma](#) between US and Chinese laws. Indeed, several major companies, including global brands, [lobbied](#) against the Uyghur Forced Labour Prevention Act. An Australian Strategic Policy Institute [report](#) has identified 82 global brands that are allegedly implicated in forced labour in a range of sectors in the XUAR, but also elsewhere in China as a result of [worker transfers](#).

Potential policy responses to China's anti-sanctions law and its acts of economic [coercion](#) were discussed with US stakeholders at a recent [hearing](#) of the US Congressional Executive Commission on China. [Researchers](#) and [business](#) agree that third-party audits for the XUAR are unreliable given the [pervasive](#) Chinese government authority, and information and access controls, and make the case for a [mix](#) of policy responses. Given the XUAR's [central](#) role in some global [supply chains](#), businesses have [warned](#) of the impact of bans, notably of supply chain [disruptions](#).

The EU has no comparable ban in place. Council conclusions of 2020 [task](#) the Commission with tabling a proposal for an EU legal framework on sustainable corporate governance, including cross-sector corporate due diligence obligations along global supply chains. This [proposal](#) is expected [in 2022](#). Parliament has called for an [initiative](#) of this kind on a [number of occasions](#), including in a 2021 [resolution](#) on corporate due diligence and accountability.

