

WORTH THE PAIN: THE COSTS AND BENEFITS OF A STRICT IMPLEMENTATION OF THE UYGHUR FORCED LABOR PREVENTION ACT

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Notice Seeking Public Comments on Methods to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China, Especially in the Xinjiang Uyghur Autonomous Region, into the United States

Agency: US Department of Homeland Security

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The US Department of Homeland Security (DHS) is seeking comment on the implementation of the Uyghur Forced Labor Prevention Act.¹ We are senior research fellows at the Mercatus Center at George Mason University, a center dedicated to advancing knowledge about the effects of government policy on society, including those of trade policy. Accordingly, our comments here seek to aid the DHS in the implementation of the aforementioned law.

The Uyghur Forced Labor Prevention Act directs Customs and Border Protection (CBP) and other federal agencies to prevent the importation of products made with forced labor in China. The implementation of this law is not straightforward because goods are produced in complex supply chains that extend across multiple countries. The complexity of supply chains increases the difficulty in determining the origin of all parts of an imported product and excluding products with parts of relatively small value (e.g., the cotton threads used in sewing polyester or the leather upholstery used in automobiles) if they are made with forced labor. CBP will have to weigh the economic costs of demanding strict compliance against the moral costs of implementing the law leniently.

On balance, we believe that it would be preferable to err on the side of strict compliance with the law. We believe that strict compliance will encourage diligence among companies and customs

1. Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78, 135 Stat. 1525 (2021).

brokers. CBP nevertheless should strive to anticipate the consequences of being stringent and should be thorough when designing the evidentiary process under this act.

DIRECT COSTS OF STRICT COMPLIANCE

As the global economy has become more interconnected, supply chains have become more layered and multipronged. There is, consequently, a high likelihood that forced labor is involved in some parts of a given supply chain without a firm's knowledge. This is especially true if firms are not conducting reliable audits of their suppliers.

Enforcing strict compliance with the letter of the law could mitigate that problem. Erring on the side of strict compliance would induce economic agents in supply chains to ensure that products headed for the US market are not made with forced labor in China. Despite the complexity of supply chains, businesses still have the greatest knowledge about the origins of their products, and they are best placed to exercise diligence and investigate the origin of parts across their supply chains. Over time, requiring strict compliance with the law may induce Chinese exporters to adopt audits as standard procedures, thus rendering this law effective.

Moreover, available data allow a rough calculation of the potential price increases resulting from the act. In the case of cotton, the probable price effects for consumers are unlikely to be large. Xinjiang cotton makes up about 20 percent of global cotton production.² If one applies this one-to-five ratio to the US apparel industry and assumes unit elasticities of demand (which seems reasonable, given available data),³ then an all-out ban on Xinjiang cotton from global supply chains would suggest a 20 percent increase in the price of cotton.

Cotton prices are approximately \$1.15 to \$1.20 per pound (up from \$0.50 one year ago). Although the cost share of cotton in clothing varies by garment, one pair of jeans, for example, contains about 1.5 pounds of cotton,⁴ which means that, on average, the cotton cost in a pair of jeans would increase from \$1.80 to \$2.16 as a result of the act. For an \$8.00 pair of boy's all-cotton jeans at Target,⁵ for example, this would translate to a 4.5 percent increase in price. The extent of this price increase that would be passed on to consumers depends on a number of factors, such as the degree of market competition and consumer responses to price increases. Also, to the extent that Xinjiang, US, and Egyptian cotton are interchangeable, or to the extent that noncotton fabrics such as cheaper synthetic fibers may be substituted, or both, this estimated price increase is an upper bound.

INDIRECT OR UNINTENDED COSTS OF THE ACT

Strict implementation of the act will impose costs on consumers and businesses because all producers and importers of Chinese materials will have to, at the very least, certify that the goods were not produced with forced labor. Also, they will have to initiate some sporadic audits.

2. Emma Cosgrove, "Uighur Labor Will Be Tough to Avoid with about 20% of Cotton Connected to Xinjiang: GlobalData," *Supply Chain Dive*, October 1, 2020.

3. Lauren A. Martinez, "The Country-Specific Nature of Apparel Elasticities and Impacts of the Multi-Fibre Arrangement" (economic honors project, Macalester College, 2012).

4. Robert Antoshak, "Do Rising Cotton Prices Really Harm Apparel Companies?," *Sourcing Journal*, December 17, 2021.

5. "Boys' Relaxed Straight Fit Jeans - Cat & Jack™ Blue," Target, accessed March 7, 2022, <https://www.target.com/p/boys-39-relaxed-straight-fit-jeans-cat-38-jack-8482-blue-5/-/A-52274283?>

To the extent that textile and apparel prices rise, the economic burden would likely fall more heavily on lower-income households. In this way, such laws are like a tariff, as pointed out by Ed Gresser in 2002 and noted by others more recently.⁶

Also, the price increases would encourage protectionism at home and a less efficient allocation of resources. Companies and workers who would otherwise be doing more value-creating work might instead switch to sectors where prices are artificially high owing to the restrictions.

Finally, to the extent that some of the deterred imports are not produced with forced labor, the act would deny income to firms and workers in Xinjiang, including firms that do not use forced labor but that employ Uyghurs who, albeit paid poorly, are not forced to work without compensation.

That said, lenient implementation of the act risks rendering the law ineffective by fiat of administrative discretion.

CONSIDERATIONS FOR IMPLEMENTING A SENSIBLE EVIDENTIARY PROCESS

Striking the correct tradeoff between enforcement stringency and consumer welfare is not easy because of the complexity of forced labor practices in China. Hence, CBP should be thorough as it designs the evidentiary process for the act.

In the past, many Chinese companies have learned to evade antidumping rules and countervailing duties (AD/CVD). Firms that are listed in AD/CVD cases may change their legal name or ship to the United States through an alternate existing company to escape detection. Tools that CBP has developed over the years to combat such illegal practices may be useful in the implementation of this act as well. The goal, however, should be to induce firms to proscribe practices that violate human rights.

Moreover, the scope of imports subject to the evidentiary process should extend beyond just imports from Xinjiang for two reasons.

First, forced labor in China occurs in places beyond Xinjiang as well. According to a 2020 policy brief from the Australian Strategic Policy Institute, more than 80,000 Uyghurs were transferred out of Xinjiang to work in factories across China between 2017 and 2019,⁷ and some of them were sent directly from detention camps. If the number of forced laborers in Xinjiang is between 1 million and 2 million, such a transfer would account for about 5 percent of laborers.

According to the policy brief, those “transferred” Uyghurs worked under conditions that strongly resemble forced labor and in factories that were in the supply chains of at least 82 well-known global brands in the technology, clothing, and automotive sectors. These factories and the suppliers to whom they ship should be included in the act’s entity list and be subjected to the rebuttable presumption of the law.

Second, many goods imported from outside Xinjiang are nevertheless made in part in Xinjiang and, hence, possibly made in part with forced labor. A report from the Helena Kennedy Centre for International Justice at Sheffield Hallam University examines how Xinjiang cotton has

6. Edward Gresser, “Toughest on the Poor: America’s Flawed Tariff System,” *Foreign Affairs* 81, no. 6 (2002); Jason Furman, Kathryn Russ, and Jay Shambaugh, “US Tariffs Are an Arbitrary and Regressive Tax,” VoxEU, Center for Economic Policy Research, January 12, 2017.

7. Vicky Xiuzhong Xu et al., “Uyghurs for Sale: ‘Re-education,’ Forced Labour and Surveillance beyond Xinjiang” (policy brief, report no. 26/2020, Australian Strategic Policy Institute, Barton, Australian Capital Territory, 2020).

come to be associated with forced labor and considered high risk for international brands.⁸ The report details how China's cotton industry has benefited from an export strategy of obscuring cotton's origin in the Uyghur region by exporting cotton to countries where products are finished and from where they are sold into the global economy.

Such laundering of forced labor has taken place in countries such as Ethiopia, India, Indonesia, Kenya, Mexico, and Vietnam. Factories in countries other than China that import such tainted unfinished cotton and resell it elsewhere should be included in the act's entity list and be subjected to the same evidentiary process.

For these reasons, we recommend that the scope of imports subject to the evidentiary process extend beyond imports from Xinjiang.

8. Laura T. Murphy et al., *Laundering Cotton: How Xinjiang Cotton Is Obscured in International Supply Chains* (Sheffield, UK: Helena Kennedy Centre for International Justice at Sheffield Hallam University, 2021).