

ISSN 0276-8275

WTTOnline.com

A Weekly Report for Business Executives on
U.S. Trade Policies, Negotiations, Legislation,
Trade Laws and Export Controls

Washington Tariff & Trade Letter®

Vol. 42, No. 25

June 20, 2022

Ughyur Forced Labor Prevention Act

Ughyur Forced Labor Prevention Act becomes effective on June 21. The UFLPA establishes a rebuttable presumption that goods mined, produced, or manufactured wholly *or in part* in Xinjiang or by an entity on the UFLPA Entity List are prohibited from U.S. importation under 19 U.S.C. § 1307.

If an importer of record can demonstrate by clear and convincing evidence that the goods in question were not produced wholly or in part by forced labor, fully respond to all CBP requests for information about goods under CBP review and demonstrate that it has fully complied with the guidance provided, the Commissioner of CBP may grant an exception to the presumption.

CBP Operational Guidance for importers includes specific supply chain documentation to submit for “high-enforcement priority” commodities with a high-risk of forced labor. Examples for Cotton, Tomatoes and Polysilicon are included in the CBP Strategy Document (Xinjiang produces about one-fifth of the world’s cotton and about half of the world’s polysilicon).

The fourth “high-enforcement priority” sector- Textiles - represents a more complex enforcement challenge. A 2021 USAID- funded Sheffield Hallam University study detailed the practice of PRC textile companies that, although not using forced labor in their own mid-tier third country facilities, rely on prohibited Xinjiang raw materials or semi-finished goods.

There is no mention of Polyvinyl Chloride Resin (PVC), the manufacture of which is a major source of coerced employment and environmental damage in Xinjiang. An effective ban of UFLPA non-compliant PVC would profoundly rock the building materials supply chain.

Laura Murphy, Professor of Human Rights and Contemporary Slavery at Sheffield Hallam University recently published with others a comprehensive study of the downstream supply chain associated with Xinjiang Zhongtai Chemical Company, a Chinese government-owned petrochemical firm that is world’s second largest manufacturer of PVC.

© Copyright 2022 Gilston-Kalin Communications LLC P.O. Box 5325, Rockville, MD 20848-5325
All rights reserved. Subscription and corporate site license information 301.460.3060 www.wttonline.com

Publisher: Martin Kalin
Editor: Frank Ruffing 703.283.5220. fruffing@traderegs.com

“Xinjiang Zhongtai ships to manufacturers in Vietnam, Indonesia, India, the Philippines, U.A.E., Singapore, and Russia. Those companies then ship PVC-based flooring, pipes and fittings, and electronics coverings to the U.S., U.K., Hong Kong, Myanmar, Singapore, China, Taiwan, Belize, Nepal, Tanzania, Seychelles, Bhutan, Zambia, Sierra Leone, Indonesia, Sri Lanka, and Iraq. Caustic soda goes on to be used in manufacturing in Canada, the U.S., India, Spain, Denmark, Hong Kong, England, Russia, Germany, Mexico, Poland, Australia, and the P.R.C.”

CBP will employ a “risk-based approach, dynamic in nature, that prioritizes the highest-risk goods based on current data and intelligence.” According to CBP the “highest-risk goods” include those imported directly from Xinjiang into the United States and from entities on the UFLPA Entity List.

BIS/RPTAC – Stay Vigilant

BIS Enforcement will continue to grow in aggressiveness and scope, and companies will do well to ensure their compliance programs are up to the job. The Bureau’s Rules and Procedures Technical Advisory Committee (RPTAC) met June 14.

BIS Enforcement Chief (and former federal prosecutor) Matt Axelrod kept his message to Committee’s open session in line with what he’s been saying all year:

“My view is that our tools here at export enforcement have never been a better match for the national security threats our country is facing them right now... Our tools are front and center when it comes to Russia, when it comes to China. They are spot on matches for the challenges we face.

“Our view here is that we need to ensure we're using our tools as effectively as possible and that's why we've been undergoing a series of policy reviews.

“You know my view is that administrative enforcement is a powerful tool, but its power had been diluted a little bit because, when we brought administrative charges, no one no one knew it. And because no one knew it, there was an incentive for companies to try to resolve matters quickly. And other companies sometimes didn't maybe feel the right sense of urgency about upgrading their compliance program if they had the sort of similar issues as a company that we are bringing administrative charges against. So, we changed that.

“I think you’re all aware we changed the regulation a few weeks ago, and now charging letters are public once they're filed with the ALJ. Look, it's not to say we’ll always go straight to a charging letter. In appropriate cases we will still do precharging letters, which are not public, but which allow us to give a company notice of what we think they've done wrong. In appropriate cases it allows us to have conversations and negotiations about a resolution prior to a charging letter being issued.

“We have other potential administrative enforcement changes that we’re considering. For example, if we got rid of no admit no deny resolutions? We want to know what you think the impact from an enforcement perspective would be if we raised penalty amounts.

Or if we were to change how we process our voluntary self-disclosures so that VSDs that disclose minor technical violations get processed and returned very quickly, while those that disclose more serious

violations get a more intensive review and investigation, so that we'd be using our finite resources to dig into the disclosures that disclose more serious activity.

“On our antiboycott compliance program ... what would be the impact if we got rid of no admit no deny? What if we impose higher penalties for violations there too? What if what if we reorder the categories of violations in the reg to give a clear sense to all of you and everyone else how we view the relative severity of antiboycott violations?”

Kathleen Ryan of the Office of Antiboycott Compliance (OAC) picked up the topic:

“The anti-boycott regulations haven't changed a lot, but we thought it would be helpful to all of you to remember there's still out there, and given the considerations that we're looking at, policy changes practices in straight enforcement we thought it'd be very worthwhile to give you a little more refresher course on the anti-boycott regulations.

“We coordinate antiboycott policy with our other government agencies and partners with USTR with Treasury with State so we sort of have a whole of government and a harmonious approach to the enforcement of anti-boycott issues.

“I guess the question you all are saying is, do these regulations have anything to do with me? Yes they do. I know the regulations have something to do for each of you because they apply to individuals, to companies, associations, even for government agencies and foreign subsidiaries.

“The first requirement is reporting if you receive a boycott request. Where would you see those boycott requests? They're in letters of credit, in contracts in tenders. It could be in a conversation on the telephone, it could be an e-mail. If you receive a boycott request, regardless of the medium, it will be reportable to our office.

“In addition to reporting requirement, there are several prohibited actions that you cannot take. You cannot refuse to do business with the boycotted country or the blacklisted person, so if someone asks you to not deal with a certain supplier because he's blacklisted, you could not agree to that.

“Interestingly enough, in our regulations is a prohibition against discriminatory practices. That is actually very important because it affects the employment practices of a company. If they refuse to hire a certain individual because they were blacklisted, or they were of a certain national origin, or a certain religion for a boycott reason. we can bring in administrative enforcement action against you.

“Treasury has its own set of regulations, and they maintain a list of boycotting countries as well that comports with their regulations. That list is not our list. Of course, any country on their list is a country of concern for us, but we have others that we watch that we've seen boycott requests coming from.

“The only thing you really need to take away from this conversation is our advice line number: 202 482 2381 It is personed all day, every day, and the duty officer does not go home until every call that day has been returned.”

WTO Adopts “Geneva Package”

In a conference described as a “roller coaster” by its Director General, the World Trade Organization (WTO) adopted the “Geneva Package”. The trade outcomes secured include decisions on fisheries subsidies, limited intellectual property waiver for COVID-19 vaccines, food security, and digital trade. After intense negotiations aimed at handling significant opposition from many countries, including India, the 164 member-nations finally came to a consensus in responding to some of the crises affecting global trade.

The agreement on curbing fishing subsidies may be the most meaningful element of the package. The deal, only the second multilateral agreement on global trading rules in the organization’s history, is the culmination of 22 years of ministerial wrangling. The agreement seeks to ban subsidies for illegal, unreported, and unregulated fishing, and would be enforced by the WTO by using a self-reporting mechanism.

What many leaders considered a vital important “pillar” of the conference, a mutual emergency declaration resolved to facilitate trade with net food-importing countries and reaffirmed to not impose export bans on food items. The World Health Organization notes that around a tenth of the global population – up to 811 million people – were undernourished in 2020.

A narrow IP waiver has been granted limiting patent protection on COVID-19 vaccines for five years, though therapeutics and diagnostics remain outside the scope. Striking this “delicate balance” is a meaningful accomplishment in optics.

The members also agreed to temporarily extend the moratorium on tariffs on digital trade.

That trade deals are hard to negotiate is a known fact. WTO’s producing agreements by consensus makes the task even more challenging, granting an effective veto to all participating nations. That the organization was successful in managing profound differences between developing countries like India and the developed world, is a hopeful moment for the future of global trade.

At the same time, critics have argued that the agreements did not go far enough to make a difference, thereby raising crucial organizations on the effectiveness of a consensus-based global trade organization. The conference failed to reach a consensus on various other sticky issues such as wider agricultural subsidies.

GAO Interagency Review of University Export Controls

GAO released a public version of its review [GAO-22-105727]. examining the extent to which agencies are assessing universities' risk of unauthorized deemed exports to prioritize outreach. The agencies identified outreach as a key enforcement mechanism, conceding preventing sensitive technology transfers is easier and more effective than investigating and prosecuting a violation resulting from the transfer after it has occurred.

The report finds room for improvement. For example, BIS Export Enforcement (EE) does not base its outreach on analysis of universities’ risk levels, and has not identified any risk factors to guide its

outreach priorities. The FBI and ICE applies only one risk factor. Both EE and ICE field offices said they have prioritized outreach primarily on the basis of investigative leads.

ICE and FBI have developed academia-focused outreach programs in recent years and provide academia-specific presentation templates and other materials to field offices to support outreach efforts: **ICE's Project Shield America–Academia** and **FBI Office of Private Sector's (OPS) Academia Program**. In addition, EE, ICE, and FBI officials present at conferences hosted by university associations, such as the Association of University Export Control Officers and the Academic Security and Counter Exploitation Program.

Commerce (EE) has not undertaken broad efforts to identify risk factors that may indicate universities at greater risk for sensitive technology transfers. Moreover, field offices lack the analytical tools or personnel needed for systematic analyses that could inform outreach prioritization. Nor has EE provided specific direction to field offices on how to prioritize university outreach.

ICE developed a list of approximately 150 U.S. universities ranked according to one unspecified risk factor, which is not “the presence of export-controlled items or other sensitive technologies on campus.” ICE officials said their selection of the single factor they used to develop the university risk ranking was based in part on discussions with DHS's Office of Intelligence and Analysis.

GAO Identified ten risk factors that may indicate an increased risk of sensitive Technology transfers:

- **Foreign students or scholars:** Studies or conducts research at a graduate or postgraduate level in a sensitive field; receives research or scholarship funding from a foreign entity of concern; is a citizen of or associated with a foreign country of concern.
- **U.S. universities:** Has doctoral programs with high research activity; has export-controlled items or technology on campus; receives large amounts of funding from federal agencies; uses or is developing a technology that a foreign adversary is targeting; or collaborates on research with foreign entities of concern.

Recommendations include:

- **Commerce (EE) should identify relevant risk factors** to identify universities at greater risk for sensitive technology transfers, including unauthorized deemed exports, shares the results of any analyses implements a mechanism to periodically assess the relevance and sufficiency of risk factors used.
- **ICE should assess which, if any, additional risk factors are relevant** for identifying universities at greater risk for sensitive technology transfers, including unauthorized deemed exports, periodically assess the relevance and sufficiency of risk factors , and share with field offices the results of any analyses aimed at identifying U.S. universities at greater risk for sensitive technology transfers.
- **FBI should ensure that the appropriate offices assess which, if any, additional risk factors** should be considered in identifying universities at greater risk for sensitive technology transfers,

including unauthorized deemed exports. And ensure that the appropriate offices periodically assess the relevance and sufficiency of risk factors considered in identifying at-risk universities.

The March report's other two objectives were to examine the challenges U.S. agencies face in their efforts to enforce export control regulations, particularly as they pertain to deemed exports at U.S. universities and examine the extent to which agencies coordinate their efforts to enforce export control regulations and share information with one another. The Departments of State, Homeland Security (DHS), Justice, and Defense deemed some of the information related to those two objectives to be sensitive information, which must be protected.

This is the second GAO report on the topic. The first report, published in May 2020, addressed the efforts that agencies undertake to educate and provide guidance to U.S. universities about export control regulations. That report also discussed the export control compliance practices of a selected group of universities. See GAO, *Export Controls: State and Commerce Should Improve Guidance and Outreach to Address University-Specific Compliance Issues*, [[GAO-20-394](#)]

Razorback EE Prof Sentenced, Hid Patents in China

A former University of Arkansas professor of Electrical Engineering with 30 years tenure was sentenced June 16 to a year in prison plus one year of supervised release for making a false statement to the FBI about the existence of patents for his inventions in the People's Republic of China (PRC).

According to court documents, Simon Saw-Teong Ang, 64, of Fayetteville, filed 24 patents in the PRC which bear his name or Chinese birth name. The University of Arkansas, where Ang worked as a professor, required individuals such as Ang to promptly furnish to the university "full and complete" disclosures of inventions, and university policy provided that it, not individual inventors, would own all inventions created by those subject to the policy.

Despite this requirement, Ang did not disclose his Chinese patents to the university and, when interviewed by an FBI agent, lied about his involvement in the inventions. In addition, Ang also received numerous talent awards from the PRC government, which he did not list on the university's annual conflict of interest disclosure forms.

A full professor until his dismissal, Ang taught at the University since 1988. Prior to that, he spent seven years with Texas Instruments as a section chief in IC power systems development.

SEC Calls Ericsson on ISIS Financing

Ericsson announced June 9 that it had been notified that the SEC has "opened an investigation concerning the matters described in the company's 2019 Iraq investigation report, adding "too early to determine or predict the outcome of the investigation, but Ericsson is cooperating fully with the SEC."

The announcement follows the March 2 disclosure that Justice intended to find it in violation of its 2019 Deferred Prosecution Agreement (DPA) after the International Consortium of Investigative

Journalists published “The Ericsson List,” documenting the firm’s extensive dealings with the terrorist group Islamic State in Iraq between 2011 and 2019.

In 2013 Ericsson disclosed that it was cooperating with U.S. authorities investigating bribery allegations elsewhere, resulting in a \$1 billion bribery settlement in 2019. That settlement contained no mention of Iraq. Shareholders voted March 29 to hold CEO Börje Ekholm and the Board personally liable for the scandal.

*** Briefs ***

President Biden signed into law the Ocean Shipping Reform Act, giving the Federal Maritime Commission new powers to regulate fees and the flow of shipping information. The new law does not impact the carriers’ exemption from anti-monopoly prosecution in the 1998 Shipping Act.

White House Ends Scientific and Technological Cooperation with Russia “Consistent with U.S. domestic and international law, we will wind down institutional, administrative, funding, and personnel relationships and research collaborations in the fields of science and technology with Russian government-affiliated research institutions and individuals who continue to be employed by or work under the direction of those institutions.”

At The Three Seas Summit in Riga on June 20-21, leaders will discuss cooperation with Ukraine and political developments in the Baltic Region. The Three Seas Initiative is a partnership bloc from the Baltic to the Black and Adriatic Seas aimed at deepening the integration of Central and Eastern Europe. The main focus of the Initiative is on the development of infrastructure projects.

Paris – Washington Announce Defense Trade Forum. Following up on the discussion between the French and American Presidents on the margins of the G20 Summit in October last year, delegates have launched the *US-France Defense Trade Strategic Dialogue*, to discuss market access, efficiency of transnational acquisitions, and export control regimes.

Commerce and Saudi Ministry of Commerce launched the U.S.-Saudi Arabia Commercial Partnership Shared Work Plan, including a Clean Tech Trade Mission; a connector program with pitches from Saudi SMEs to U.S.-based incubators and accelerators; webinars on harmonizing standards; and engagement with Saudi Arabia’s Data and Artificial Intelligence Authority and U.S. industry representatives to provide input on Saudi regulations impacting U.S. businesses in sectors including cloud computing, financial services and e-commerce, cross-border data flows and interoperability.

U.S.- U.K. Prize to Accelerate Privacy-Enhancing Technologies. The U.S.-U.K. collaboration on the PETs prize challenges was first announced at the Summit for Democracy in December 2021. Since then, the White House Office of Science and Technology Policy, the U.S. National Institute of Standards and Technology, and the U.S. National Science Foundation have been working with the U.K.’s Center for Data Ethics and Innovation and Innovate U.K. to take the prize challenges forward. White House Office of Science and Technology Policy is soliciting public feedback and insights, with comments due by July 8.

Brazilian Steelmakers were cheered by reports that President Biden promised his Brazilian counterpart Jair Bolsonaro the United States will reconsider tariffs levied on Brazilian steel, according to Reuters.

Export-Import Bank of the United States (EXIM) Advisory Committee met June 13 to discuss the final recommendations of EXIM's June 2022 Report to the U.S. Congress on Global Export Credit Competition. The report is not yet released.

USMCA A filing made by non-governmental organization Oceana claims the U.S. is not holding up its environmental laws regarding the protection of endangered North Atlantic right whales could open US to trade restrictions under the USMCA.

Nicaragua Treasury's Office of Foreign Assets Control (OFAC) issued Nicaragua-related General License 3. OFAC is also publishing one related Frequently Asked Question and names have been added to the Specially Designated Nationals (SDN) list.

Iran OFAC is soliciting comments concerning their Iranian Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts [87 FR 36206].

North Korea (DPRK) White House issued Continuation of the National Emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the existence and risk of the proliferation of weapons-usable fissile material on the Korean Peninsula. [87 FR 36049]

Western Balkans (Albania, Bosnia, N. Macedonia) White House issued Continuation of the National Emergency in the territory of the former Yugoslavia and the Republic of Albania (the Western Balkans) due to the undermining of post-war agreements and institutions following the breakup of Yugoslavia, as well as widespread corruption within various governments and institutions. The order was initiated June 2001. [87 FR 36051]

License Exemptions and Exclusions BIS to identify areas where export licensing requirements may be relaxed without jeopardizing U.S. national security or foreign policy. [87 FR 36107]

BE-120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons. Commerce Bureau Economic Analysis (BEA) call for comments on changes. The BE-120 benchmark survey covers the universe of selected services and intellectual property transactions of U.S. companies with foreign persons and is BEA's most comprehensive survey of such transactions. Comments close August 15. [87 FR 36091].

***** AD/CVD Updates*****

Barium Chloride From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination [87 FR 36460].

Aluminum Extrusions From the People's Republic of China: Preliminary Results of Changed Circumstances Reviews Commerce intends to revoke, in part, the antidumping duty (AD) and countervailing duty (CVD) orders with respect certain rectangular wire, based on a request from 3M Company [87 FR 36461].

Multilayered Wood Flooring From the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review [87 FR 36305].

Sulfanilic Acid From India and the People's Republic of China and Countervailing Duty Order on Sulfanilic Acid From India: Final Results of Sunset Reviews and Revocation of Orders. Because no domestic interested party filed a timely notice of intent to participate in these sunset reviews, Commerce is revoking the AD orders on sulfanilic acid from India and China and the CVD order on sulfanilic acid from India. [87 FR 35968]

***** Appointments & Calendar *****

COMMERCE - BIS Update 2022 June 29 - July 1 The Bureau of Industry and Security (BIS) will offer a hybrid Update Conference on Export Controls and Policy from Wednesday, June 29-Friday, July 1, 2022. This 35th annual conference will be offered in-person at the Marriott Marquis in Washington, D.C., and virtually for the first two days. Use this link <https://events.epl.com/bis2022> to complete registration.

Since 1981, trade practitioners have relied on WTTL for concise, relevant reporting on Trade Policies, Negotiations, Legislation, Trade Laws and Export Controls.

Help us know what's useful to you:

Frank Ruffing 703.283.5220 fruffing@traderegs.com