

FORCED LABOR LAWS YEAR IN REVIEW

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INTRODUCTION

In 2023, there was an expansion in scope of the discussion around forced labor in the global supply chain. In the United States, the enforcement of the Uyghur Forced Labor Prevention Act (UFLPA) continued to be the main focus, but with added pressure to demonstrate impact. In addition, congressional scrutiny zeroed in on the auto, food, and retail industries. Questions about direct and passive investments implicated in forced labor were also raised as well as the loophole created by the de minimis threshold. Canada and Mexico adopted legislation to address goods and materials made with forced labor entering their markets in accordance with the United States-Mexico-Canada Agreement (USMCA).

The European Union is currently working through a series of directives aimed at eradicating forced labor in supply chains and markets. In addition, there are investigations and litigation in EU member states aimed at the auto, retail, and energy industries.

In the United Kingdom, an important ruling opened the door for the National Crime Agency to investigate companies that import goods made or assembled by forced laborers on the grounds that the products may constitute the proceeds of crime. In addition, a proposed amendment to the UK Energy Bill was introduced to address the systemic use of forced labor in the energy industry, particularly in the import of polysilicon for solar energy installations.

The momentum of these developments has carried into 2024 with the US House Homeland Security Committee's Oversight, Investigations, and Accountability Subcommittee holding its first hearing on "Exploitation and Enforcement Part II: Improving Enforcement in Countering Uyghur Forced Labor." We anticipate the activities noted below to continue to develop in 2024.

Given the complexity and ubiquitous nature of the global supply chain, most businesses are involved at some level. As the approach to eliminating forced labor in the global supply chain has evolved, the risk portfolio for companies has diversified as well. Add in the sustained focus on environmental, social and governance (ESG), and forced labor concerns will continue to be front and center. Keeping abreast of the developments is critical to managing the risks.

UNITED STATES

Enforcement Update: Uyghur Forced Labor Prevention Act

The UFLPA took effect on June 21, 2022, and created a rebuttable presumption that any goods that were mined, produced, or manufactured, wholly or in part, in the Xinjiang Uyghur Autonomous Region (XUAR), were made with forced labor, and bars their importation into the United States. In 2023, US Customs and Border Protection (CBP) and the US Department of Homeland Security (DHS) took steps to bring more clarity to the import process and added to their enforcement mechanisms:

- **Dashboard:** CBP established a [dashboard](#) to track UFLPA enforcement. Data includes status of detentions by number and value of shipments that can be broken out and filtered by industry and region. Through FY 2023, 5,558 shipments worth \$1.9 billion were detained, with about 40% released, about 50% denied, and just over 500 unresolved. Approximately half of the detentions were in the electronics category, with

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nearly 1,000 each in apparel, footwear, and textiles, and industrial and manufacturing materials.

- **UFLPA Entity List:** The interagency Forced Labor Enforcement Task Force (FLETF), chaired by the DHS, maintains a list of companies alleged to use forced labor in their facilities (UFLPA Entity List). FLETF added 10 companies to the list in 2023, bringing the UFLPA Entity List to 30 companies, including companies in the agriculture and prepared products, apparel, footwear, and textiles, electronics, industrial and manufacturing materials, and pharmaceuticals, health, and chemicals categories. The addition of 10 companies to the UFLPA Entity List was lower than expected, given the pressure from Congress to increase enforcement, and Congress continues to press CBP to expand the UFLPA Entity List. Each addition to the list means detentions for goods or materials produced by those entities regardless of origin, which may cause disruption along global supply chains.
 - Ninestar Corporation has challenged its inclusion on the UFLPA Entity List by filing a lawsuit against the DHS and other related parties of the US government before the US Court of International Trade. According to the complaint, the DHS added Ninestar and certain of its subsidiaries to the UFLPA Entity List without offering any explanation or justification for the designation. The lawsuit is ongoing.
- **Guidance:** In February 2023, CBP issued both [best practices](#) and [guidance](#) documents on preparing a UFLPA applicability review submission in response to a detention. In addition, CBP updated the [FAQs](#) and UFLPA [strategy](#) document.

Early versions of legislation aimed at combating forced labor in the US supply chain contemplated requiring disclosures by public companies. Ultimately, that provision was dropped from the law that became the UFLPA. However, in 2023, the US Securities and Exchange Commission (SEC) issued a [notice](#) on enhanced disclosures related to China-specific matters, and included a sample letter of inquiry. One of the three areas of concern included making disclosures about the potential impact to their business of China-related statutes, namely the UFLPA.

For more information about risk factors in disclosures, please see our previous [LawFlash](#).

Congressional Update

The US House [Select Committee](#) on Strategic Competition between the United States and the Chinese Communist Party (Select Committee) was formed on January 10, 2023 and actively engaged in hearings and letter writing campaigns throughout 2023. Among other issues, the Select Committee agenda included forced labor in the global supply chain. A March 2023 hearing was exclusively focused on "The Chinese Communist Party's Ongoing Uyghur Genocide." Some of the policy [recommendations](#) from the hearing included legislative action such as the following:

- Passing the Uyghur Human Rights Sanctions Review Act (H.R. 1324), which would require the US Department of the Treasury to make sanction determinations on 10 People's Republic of China (PRC) technology companies for their complicity in alleged human rights abuses of the Uyghur population
- Passing the bipartisan Uyghur Policy Act (H.R. 2766) authorizing the creation of a special coordinator for Uyghur issues within the State Department to coordinate Uyghur human rights policy in the United States

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- Passing legislation amending the Tariff Act of 1930 to reduce the de minimis threshold for duty-free shipments into the United States
- Passing legislation prohibiting the federal-retirement Thrift Savings Plan (TSP) from offering investments in Chinese companies that are under US human-rights sanctions or prohibited from importing into the United States because of the UFLPA
- Passing legislation for outbound investment restrictions or providing other disincentives for institutional investors, such as university endowments and pension funds, to invest in PRC companies that support the Chinese Communist Party's policies in the XUAR and the alleged human rights abuses of the Uyghur population

Recommendations also called for more resources to the DHS for the enforcement of the UFLPA, expansion of the UFLPA Entity List and increased used of Magnitsky sanctions.¹

The Select Committee engaged in a sustained letter writing campaign covering a variety of topics:

- Inquiry to Retailers about Forced Labor in their Supply Chains: [Letters](#) to Nike, Adidas, Shein, and Temu alleging ties to forced labor and requesting that they respond to a series of questions about the allegations and actions to comply with the UFLPA and maintain a supply chain free of forced labor. (May 2023)
 - Request for Increased Enforcement of UFLPA on Clothing Imports: US Senators Bill Cassidy, M.D. (R-LA), Ron Wyden (D-OR), and five colleagues sent a [letter](#) to Acting CBP Commissioner Troy Miller with four recommendations to enhance enforcement. (November 2023)
- Inquiry on Shipments Entering the US under the De Minimis Exception: [Letter](#) to the United States Postal Service Postmaster General Louis DeJoy requesting documents and data on inbound mail from the PRC. (June 2023)
 - In June, the Select Committee released its Interim [Findings](#) on Fast Fashion.
- Inquiry about Chinese Battery Partnership: [Letter](#) to Ford Motor Company CEO Jim Farley requesting information on the relationship and agreement with Contemporary Amperex Technology Co. Limited (CATL) and the proposed facility in Michigan. (July 2023)
- Restricting US Investments in China: [Letter](#) to President Joseph Biden with recommendations on core principles for an executive order on outbound investment. (August 2023)
- Call for Sanctions for Uyghur Genocide: [Letter](#) to Secretary of State Antony Blinken and Secretary of Homeland Security Alejandro Mayorkas with a list of senior PRC officials to be considered for sanctions and entities that should be considered for inclusion on the UFLPA Entity List. (September 2023)
- Cooperation with Investigation into Chinese Battery Partnership: [Letter](#) to Ford Motor Company CEO Jim Farley with a request to produce the information outlined in the July

¹ The purpose of the Global Magnitsky Act is to authorize the imposition of sanctions against foreign persons in any location who are responsible for "extrajudicial killings, torture, or other gross violations of internationally recognized human rights" and "controlling, or otherwise directing acts of significant corruption".

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2023 letter and request for preservation of related documents and communications. (September 2023)

- Forced Labor in Chinese Fishing Industry: [Letter](#) to National Oceanic and Atmospheric Administration (NOAA) Administrator Richard Spinrad with a request for the agency to enforce trade restrictions on specific seafood products implicated by forced labor, if certain conditions are not met. (October 2023)
- Enhanced UFLPA Enforcement: [Letter](#) to US Department of Homeland Security (DHS) Secretary Alejandro Mayorkas identifying the need to expand the UFLPA Entity List, and address transshipments and the de minimis exception and requesting answers and information on a series of specific inquiries. (January 2024)
- Follow-up Letters Regarding Ford Partnership with CATL: Letters sent to [Commerce Secretary Gina Raimondo](#) and [Treasury Secretary Janet Yellen](#), requesting that the Biden administration immediately blacklist four undisclosed companies that Ford plans to use in its new factory with Chinese battery maker CATL. A separate letter to Ford requests it to make available for an interview a company official who will be able to speak about the due diligence Ford conducted before and after it entered into the agreements with CATL. (January 2024)

Letter writing, hearings, and other pressure applied to CBP and other agencies had the effect of increased scrutiny on imports. The increase in detentions has not yet shown up in the UFLPA statistics, but the market is already feeling the impact on the supply chain.

Another way the US government may address forced labor is through regulatory mechanisms to restrict US investment in China. The Select Committee, in particular, is focused on whether legislation is needed that would prohibit US investment in certain Chinese companies engaged in activities adverse to US national security or foreign policy interests, which could include companies connected to forced labor.

For more information about investment concerns, view our sanctions landscape [webinar](#).

As noted above, 2024 started with the US House Homeland Security Committee's Oversight, Investigations, and Accountability Subcommittee holding its first hearing on "Exploitation and Enforcement Part II: Improving Enforcement in Countering Uyghur Forced Labor." The subcommittee received testimony from the following:

- Office of Strategy, Policy, and Plans, US Department of Homeland Security
- Office of Trade, US Customs and Border Protection
- Bureau of International Labor Affairs, US Department of Labor

The hearing was bipartisan, with members from both parties focused on achieving results. In general, members of the subcommittee were most concerned about textiles, critical minerals from Africa, seafood, and de minimis shipping.

Chairman Dan Bishop noted that, according to his information, 85% of the cotton used in China was sourced from the XUAR. He contrasted that with the 30 entities on the UFLPA Entity List and pushed the DHS and the advisory committee to expand the list. Members also questioned whether some products, including textiles, could be coming to US markets through other countries, including Mexico, Central, and South America. Witnesses noted that CBP has already established one isotopic testing facility in Savannah, Georgia, and CBP expects to soon open two other testing facilities for cotton tracing.

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While not specifically cotton related, members were alarmed at the importers' option to reexport shipments that are withheld. CBP noted that it had the ability to seize shipments but that seizure came at greater cost to the agency given the legal process. That said, members were curious if there was more that Congress could do to ensure that products determined by the US government to be made with, or deemed likely made with, forced labor are seized and destroyed.

In general, there remains bipartisan consensus to support the UFLPA and a desire to see the UFLPA Entity List and priority sectors expanded. There is continued emphasis on the importance of international partnerships, private sector compliance, and enhanced capabilities in supply chain monitoring to combat forced labor. Below is a summary of the focal points:

- **Enforcing the UFLPA:** The hearing highlighted the significant challenge posed by China's state-sponsored system of forced labor, particularly in XUAR. This issue impacts a range of economic sectors, including textiles, minerals, and seafood. Difficulties faced in enforcing the UFLPA were highlighted due to tactics used to conceal forced labor in supply chains, such as rerouting shipments through different countries or mixing tainted with untainted goods. It was explained that the criteria used for monitoring entities involved in forced labor entails input from member agencies and non-governmental organizations, supply chain mapping, and research into the corporate structures of entities. This approach helps determine the origin of goods and the nature of the organizations involved.
- **Discussion on Textiles and Minerals:** Various speakers discussed the challenges in ensuring that textiles and minerals imported into the United States are not products of forced labor. This includes audits, cargo inspections, and the use of isotopic testing. Witnesses reported that textiles, including apparel and footwear, have received increased scrutiny, partly due to reports of forced labor in their production. Approximately 17% of all shipments stopped by CBP for UFLPA reviews are textiles, with around 63% of these shipments being denied entry due to non-compliance. In 2023, CBP's [actions](#) in the textile sector included issuing commercial fraud penalties totaling about \$19 million. Additionally, CBP conducted audits, laboratory analyses, and factory verification visits, uncovering over \$2 million in additional duties owed to the US government.
- **Supply Chain Tracing:** Technologies like isotope testing, especially for textiles, were discussed as important tools in identifying products from specific areas like Xinjiang. Isotope testing, supported by resources provided by Congress, helps in identifying goods produced with forced labor. As noted above, aside from the existing facilities for isotopic testing in Savannah, Georgia, there are plans to set up additional labs in New York City and Los Angeles within six to eight months. Ranking Member Glenn Ivey's (D-MD) interest in isotopic testing indicates that the textile industry is supportive of expanding this testing method and has even expressed willingness to lobby for additional resources to extend its use, recognizing its effectiveness in identifying products made with forced labor.
- **Tracing Minerals:** Ranking Member Ivey used his first round of questions to inquire about critical mineral mining in Africa and enforcement efforts. He asked if there was a technology similar to isotopic testing that could be used. The witnesses informed him that the CBP does not have a way to test the products and relies on supply chain tracing and some new in-country programs in Central Africa.
- **De Minimis Shipments:** An increase in de minimis shipments (small-value imports exempt from duties and taxes) originating from China presents additional enforcement

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challenges, given their high volume and limited data. US Representative Dale Strong (R-AL) focused on the role that de minimis shipping may play in limiting enforcement. The discussion also touched upon the role of large ecommerce platforms in the surge of de minimis shipments and how this impacts the enforcement of forced labor laws. Witnesses attributed the increase of de minimis shipments to a variety of factors and recognized that the environment is increasingly challenging to navigate. One of the key difficulties mentioned is the limited amount of information available for enforcing forced labor laws, which complicates the efforts of the ecommerce platforms.

- **Seafood industry:** US Representative Mike Ezell (R-MS) informed the witnesses that seafood processed in China by forced labor was making Gulf Coast fisheries uncompetitive. He noted a lack of action from CBP since 2022 and sought clarification on this. The witness from the US Department of Labor and member of the Forced Labor Task Force informed Representative Ezell that the Task Force is seriously considering adding fishing processing, as well as vessel operations, as a priority sector when the strategy is updated. A CBP official confirmed that CBP takes allegations in the seafood industry seriously and has issued withhold release orders against certain fishing vessels. The CBP official mentioned UFLPA's impact on investigations and CBP's plans to increase staffing for examining allegations.

Litigation

In July 2023, the US District Court for the Southern District of California denied a motion to dismiss made by Nestle USA in *Renee Walker v. Nestle USA Inc*, a putative consumer class action alleging deceptive product labeling. This lawsuit is among a growing number of false advertising claims over sustainability and other ESG-related disclosures and claims.

Later in 2023 and into 2024, there was an increase in class actions alleging "greenwashing," including claims related to supply chains being free of forced and child labor. A number of food and food service companies have been tagged with litigation based on claims of false advertising and violations of consumer protection statutes for alleged "greenwashing." This rise in claims is tied to a wave of ESG litigation more broadly.

CANADA AND MEXICO

In 2020, under the terms of the USMCA, the United States, Mexico, and Canada agreed to implement measures to ban the importation of goods produced with forced labor. Since then, all three countries have passed laws and taken actions to uphold those obligations. As noted above, the United States passed the UFLPA and has increased the number of shipments detained at the border for forced labor concerns.

Canada implemented a forced labor ban and passed S-211, which requires supply chain due diligence reporting with first reports due May 31, 2024. In December 2023, Public Safety Canada issued guidance on the reporting requirements introduced in S-211. The Canada Ombudsperson for Responsible Enterprise (CORE), created in 2019 to investigate alleged corporate human rights and ethics violations, has initiated investigations into several clothing brands alleging potential forced labor in their supply chains. To date, CORE has opened inquiries into a number of clothing companies, including Nike, Levi Strauss & Co., Diesel, and Zara Canada, among others, signaling its willingness to go after high-profile brands.

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Mexico also passed a resolution to ban the importation of goods produced with forced labor effective May 18, 2023. The enforcement of the ban is still ramping up and has yet to make much impact. There has been an increase in the import of goods and materials from China to Mexico. The potential for those goods to arrive in the United States via Mexico is under increased scrutiny.

UNITED KINGDOM

NCA Decision on Investigating Cotton

In January 2023, the UK High Court issued a [ruling](#) in a case brought by the World Uyghur Congress against the Home Secretary, HM Revenue and Customs, and the National Crime Agency (NCA) alleging that the defendants had failed to investigate potential breaches of the Foreign Prison-Made Goods Act 1897 and to launch a money laundering probe or start civil confiscation processes under the Proceeds of Crime Act 2002. While the judge denied the relief sought, he said it was clear that “these agreed concerns continue to trouble the Defendant and are the subject of active policy work and engagement” and that there “may be other tools or measures available to the executive and law enforcement agencies, or other evidence which they could receive meeting the requirements [...] which could provide an effective basis for tackling the concerns in respect of cotton production in the XUAR.” The ruling suggests a willingness for the NCA to investigate companies that import goods made or assembled by forced laborers on the grounds that the products may constitute the proceeds of crime.

UK Energy Bill – Proposed Amendment (Clause 47)

This proposed amendment sought to address the systemic use of forced labor in the XUAR. The implications of this forced labor are particularly salient for the UK Energy Bill, as the Xinjiang region is reported to be the source of 35%–40% of the world’s solar-grade polysilicon, the key raw material in the solar photovoltaic supply chain. The proposed amendment would require solar energy companies to prove that their supply chains are free of slave labor. More specifically, the amendments would require the Planning Inspectorate in England to ban any nationally significant infrastructure project over 50MW if it could not be proven beyond doubt that forced labor had not been involved. The measure was tabled in September 2023 but provides some indication of the intention of some members of Parliament to address this concern.

EUROPEAN UNION

Notable Legislative Developments

- **Proposed Forced Labor Ban:** The potential legislative scope of the Forced Labour Regulation would prohibit the “placing” and “making available” on, and the export from, the EU market of any products where “*forced labour* has been used in whole or in part at any stage of its extraction, harvest, production or manufacture, including working or processing related to a product at *any stage of its supply chain*.” The Forced Labour Regulation would seek to create a decentralized enforcement mechanism involving the competent authorities and/or customs authorities of each member state. The proposed regulation is currently being discussed in the European Council. The regulation will require joint endorsement by the European Parliament and the Council prior to formal adoption.
- **Corporate Sustainability Reporting Directive:** The directive is in force and is not meant to provide a private right of action, but the details in the reporting and disclosures could lead to class actions.

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- **Corporate Sustainability Due Diligence Directive:** The directive covers more than forced labor and is being heavily debated. The directive would be implemented at the EU level and supersede any national provisions. It explicitly allows for a private right of action.
- **'Greenwashing Directive':** On January 17, 2024, the European Parliament formally endorsed its provisional agreement with the European Council on the Directive Empowering Consumers for the Green Transition through Better Protection against Unfair Practices and Better Information. The Council is expected to endorse the provisional agreement as well. The Greenwashing Directive requires companies to substantiate all sustainability claims in a business-to-consumer (B2C) context. Claims include social characteristics claims, such as those that relate to forced labor in the supply chain. The directive will be published in the *Official Journal of the European Union*, and member states will have two years to adopt the new law in their national legislation.

Developments in France

French Duty of Vigilance Law

The law No. 2017-399 of March 17, 2017, created a duty of vigilance for companies, supplementing the law No. 2016-1691 of December 9, 2016 (loi Sapin 2) in a context of renewal of French compliance rules. Since 2017, Article L. 225-102-4 of the French Commercial Code provides that (almost) every company, with at least 5,000 employees and its head office in France, or with at least 10,000 employees and its head office abroad, must "identify any risk and prevent serious infringements of human rights and fundamental freedoms, of the health and safety of individuals and of the environment" resulting from the activities of the head company and its subsidiaries as well as from subcontractors or suppliers, when these activities are related to that relationship. This, of course, encompasses forced labor.

This duty of vigilance takes the form of a vigilance plan listing potential risks and infringements in the company and presenting reasonable and proportionate measures to prevent and mitigate said risks. This plan is used as an effective transparency communication tool, as it must be published by the company.

Before 2024, this vigilance plan was inserted in the Declaration of Extra-Financial Performance (DPEF) published by companies. Since January 1, 2024, pursuant to the new Article L. 232-6-3, I of the French Commercial Code, the vigilance plan is to be inserted in the Sustainability Report, replacing the DPEF. Indeed, France is the first European country that implemented the above-mentioned European Corporate Sustainability Reporting Directive (CSRD) with the ordinance No. 2023-1142 of December 6, 2023.

Several disputes arose from the publication of their first vigilance plans by companies regarding their lack of conformity with ESG rules.

- For instance, in March 2023, Mexican citizens and the European Center for Constitutional and Human Rights (ECCHR) brought a case against a subsidiary of Electricité de France (EDF) demanding the inclusion of the protection of indigenous rights in the company's vigilance plan as it was developing a wind farm in Mexico. As a consequence, the Judicial Court of Paris ordered a mediation procedure in order to adapt the company's vigilance plan.
- Another dispute was brought against Vigie Groupe (formerly Suez Group) by French human rights associations and Chilean associations regarding Vigie Groupe's updated vigilance duties in Chile after an oil spill in a water treatment plant exploited by a company in which Vigie had interests. However, this action was dismissed, as the summoning parties did not respect the procedural rules regarding the obligation of prior formal notice.

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- Total Énergies has been sued three times by several environmental organizations and municipalities to demand a complete and exhaustive cartography of risks regarding global warming and climate change resulting from the company's activities in its vigilance plan and the inclusion of measures to mitigate its emission of greenhouse gases, in line with Intergovernmental Panel on Climate Change (IPCC) recommendations. However, all of these claims have been dismissed on procedural grounds.
- Only one procedure has so far been declared admissible, leading to the conviction of La Poste by the Judicial Court of Paris, on December 5, 2023, after a postal workers union sued the public postal service in order to complete its vigilance plan, especially regarding the safety and health of its workers, including those employed by its subsidiaries and subcontractors, the evaluation of the workers' tasks' drudgery, and the inclusion of clear measures to fight undeclared work and illicit supply of workers by subcontractors. The court therefore ordered that La Poste to update its vigilance plan by inserting a cartography of risks, including with its subcontractors, but rejected the union's demands both to publish La Poste's exhaustive list of subcontractors and to implement measures against illicit and undeclared work.

Forced Labor Claims in France

In 2021, a French non-government organization (NGO) filed a claim against several fashion retailers for alleged crimes against humanity for having made profits from forced labor of the Uyghur minority in China. On July 2021, the French national anti-terrorist prosecutor's office opened an investigation for concealment of crimes against humanity. Subsequently, in April 2023, the anti-terror prosecutor's office decided to close the case without further action, determining that the claim lacked jurisdiction.

On May 17, 2023, several NGOs filed a new complaint in France against clothing companies, such as for having profited from forced labor of the Uyghur minority in China. The claim still targets the concealment of crime against humanity, genocide, aggravated reduction to servitude, and organized human trafficking. The case is pending.

German Supply Chain Act

The German Supply Chain Act went into effect at the beginning of 2023 for companies with 3,000+ employees with a location in Germany. The first report is due April 30, 2024. The act came into effect for companies with 1,000+ employees in January 2024. The act obliges companies within its scope to observe human rights and environmental standards and obligations in their supply chains in an appropriate manner. The obligations that companies must fulfill vary depending on their scope of influence, in particular with regard to (1) their own business field, (2) the actions of contractual partners (direct suppliers), and (3) the actions of other (indirect) suppliers. The Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA) is the competent agency to enforce the act. Violations of the act are subject to administrative fines and can lead to a ban from public procurement proceedings.

Since the effectiveness of the act, 13 proceedings are pending at BAFA based on complaints by NGOs. Five of these proceedings relate to China, two to Ecuador, and two to Bangladesh. One proceeding relates to Türkiye and another one to Germany. Five proceedings relate to the automotive industry, two to food, two to textiles, one to chemicals, and another one to home improvement stores. None of the proceedings have yet been concluded.

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CHINA

The Chinese government continues to oppose and categorically deny the XUAR forced labor accusations and has vowed to respond strongly to the enforcement of the UFLPA, including by the imposition of countersanctions. China has a number of tools to use in response, including the Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures, issued by the Ministry of Commerce in January 2021 and the PRC Anti-Foreign Sanctions Law, issued in June 2021.

In 2023, escalating tensions resulted in high-profile raids and detentions relating to the China operations of multinational companies. The reason for the raids focused on data and national security, though may be linked to audit and due diligence activities in China. Morgan Lewis published a [report](#) on China's new Anti-Espionage Law, the latest tool the Chinese Communist Party has developed to address concerns with the transfer of information relating to national security to foreign parties. The law identifies an expanded scope of espionage activities and defines broad criteria for determining espionage behavior, the extent of the investigative power granted to national security agencies, and the legal liability for espionage activities. This law is understood to cover due diligence activities related to alleged human rights abuses in the XUAR. Restricted access to the information needed to clear the UFLPA presumptions could become an increasing hurdle for importers to the United States.

INDUSTRY UPDATE

While forced labor regulations and enforcement applied to all industries, supply chains in the following industries attracted the most attention in 2023:

Automotive

- Senate Finance Committee Chair Ron Wyden (D-OR) sent letters to eight automakers in December 2022 questioning whether their supply chains may include materials sources from the XUAR based on a report by researchers at the Helena Kennedy Centre for International Justice at Sheffield Hallam University. Citing insufficient responses to the December letters, the committee sent a second round of letters to the automakers and added five tier 1 suppliers.
- CATL is a Chinese battery manufacturer and technology company that specializes in the manufacturing of lithium-ion batteries for electric vehicles and energy storage systems, as well as battery management systems. As noted above, CATL was tagged in several letters from Congress about the proposed partnership with Ford, which was followed by an investigation led by the Select Committee and House Committee on Energy and Commerce. In September, Ford announced a pause in the construction of the plant that relied on the partnership with CATL. In January 2024, the chairs of both committees sent letters to Commerce Secretary Gina Raimondo and Treasury Secretary Janet Yellen to request that they investigate the four companies identified in the committees' investigation and take appropriate action, such as adding the companies to the UFLPA Entity List and applying sanctions. The letters were shared with Ford's CEO with a request to make an executive available to speak with the committees.
- Please refer to the [key takeaways](#) from our program on Human Rights and Supply Chain Issues: Impacts on the Automotive Industry for more information

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Retail

- Sysco has been in the headlines for terminating a seafood supplier with alleged ties to forced labor in processing plants in the XUAR. The termination is in reaction to a letter from US Representative Jared Huffman (D-CA) to Sysco linking Sysco's supply chain to the seafood processors and referencing the UFLPA, which prohibits imports from Xinjiang.
- Members of the Homeland Security Committee, as well as the House Committee on Ways and Means, have expressed interest in limiting the use of the de minimis threshold for imports, which would have significant impacts on the operations of many shippers and retailers. Pressure to address the loophole will face resistance from online retailers and shippers. Although changes to the threshold could raise revenue for other government programs, additional funding will be needed to enforce any change.
- In November, US Senators Bill Cassidy, M.D. (R-LA), Ron Wyden (D-OR), and five colleagues sent a [letter](#) to the acting Commissioner of CBP to enhance oversight and enforcement against Chinese companies that may evade US laws against forced labor. Specifically, the letter stressed the enforcement of the Dominican Republic-Central American Free Trade Agreement and the United States-Mexico-Canada Agreement, which provides for CBP to conduct oversight of trading partners' supply chains, including audits of apparel factories.

Energy-Solar

- Solar industry players have been in the spotlight for detentions associated with the UFLPA creating concerns about the supply chain for solar companies particularly in the United States. A 2023 US Solar Market Insight by Solar Energy Industries Association (SEIA) and Wood Mackenzie reports that developers have been adapting supply chains through challenges since 2021. However, US Congress has applied consistent pressure on CBP, and players in the solar industry are needing to make adjustments to address the impact.
- Solar suppliers Trina and Boviet proactively published statements on their methods for keeping their supply chain free of forced labor.
- Please refer to the below for more information on developments in:
 - [Power & Pipes Blog](#)
 - *Power Magazine* [article](#), written by Morgan Lewis lawyer Carl Valenstein

WHAT TO WATCH

US

- UFLPA statistics
- Increased focus on the food supply chain, especially tomatoes, sugar, and seafood
- Supply chain for minerals used in technology and batteries
- De minimis exception
- US capital, including pension, retirement, and endowment funds, flowing to China through passive investment vehicles and indices

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- Use of tracing technologies to determine country of origin

UK

- Securities litigation arising from the impact of investigations into allegations of forced labor
- Monitoring any developments regarding reforms to the Modern Slavery Act.

EU

- Interplay of the various directives and reporting requirements related to addressing forced labor in the EU supply chain

HOW WE CAN HELP

Morgan Lewis assists clients with third-party risks, including ensuring responsible labor in their supply chains and navigating the conflict of laws, including between the United States and China. Our cross-disciplinary global team works collaboratively to advise clients regarding compliance with legislation and trade policies and to represent them in contentious governmental agency proceedings.

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