

“Exploitation and Enforcement: Evaluating the Department of Homeland Security’s Efforts to Counter Uyghur Forced Labor”
October 19, 2023

*Hearing before the House Homeland Security
Subcommittee on Oversight, Investigations, and Accountability*

*Prepared statement by
Peter Mattis
President, The Jamestown Foundation*

The Uyghur Forced Labor Prevention Act (P.L. 117-78) was written to address one aspect of the Chinese Communist Party’s (CCP) ongoing genocide of the Uyghur people—a situation that has been recognized as genocide by both the Trump and Biden administrations. Evidence continues to accumulate showing that the CCP has a systematic policy to subjugate Uyghurs and others of Turkic or non-Han ethnicities in the Xinjiang Uyghur Autonomous Region (XUAR). A core component of that policy is forced labor. Forced labor contributes to the genocide as part of Beijing’s policies to reduce and dilute Uyghur population and eradicate Uyghurs’ cultural identity by separating families, dispersing Uyghurs across the People’s Republic of China (PRC), and increasing Han migration to the region. The driving purpose behind the law was that Americans should not be complicit in this genocide, nor should the CCP be allowed to profit from it.

To fulfill that purpose, the Uyghur Forced Labor Prevention Act created a “rebuttable presumption” that goods made in the XUAR or made with raw materials produced in the XUAR and by companies participating in PRC coercive labor transfer programs that moved Uyghurs outside of the XUAR to work would be considered made with forced labor and ineligible for import into the United States. The PRC’s use of large scale and systemic forced labor in the region and practice of preventing routine monitoring and due diligence in the XUAR and other places that use Uyghur forced labor meant that previous practices related to identifying forced labor products (and other supply chain risks) were insufficient. It was simply not possible to identify specific locations where forced labor was employed and trace those products or materials through the supply chain to the United States.

The Uyghur Forced Labor Prevention Act places a large burden on the Forced Labor Enforcement Task Force (FLETF). The FLETF was authorized by the USMCA Implementation Act and officially established by Executive Order 13923. The Secretary of Homeland Security chairs the FLETF, and other members include representatives from the Department of State, the Department of the Treasury, the Department of Justice, the Department of Labor, and the Office of the United States Trade Representative. The Secretary also can invite other relevant parts of the U.S. Government, such as the National Security Council, to participate.

The law required FLETF to hold a public comment period and conduct a public hearing to ensure consultation with the private sector and civil society as part of its process for drafting an implementation strategy. The Uyghur Forced Labor Prevention Act mandated that the strategy

for ensuring the rebuttable presumption was enforced included, among others, recommendations for U.S. Customs and Border Protection, guidance for importers on how to keep their supply chains clean, and a plan for working with civil society and private sector organizations on enforcement.

The FLETF also has responsibility for maintaining the entity lists created under the Uyghur Forced Labor Prevention Act. The entity lists were created, because the PRC's labor transfer programs moved Uyghurs outside the XUAR. Drawing a line around the XUAR for the rebuttable presumption would not have been enough and would have created the unintended incentive for Beijing to move Uyghurs out of the XUAR, where their coerced work product would not be subject to the rebuttable presumption. Such an unintended incentive for the PRC to depopulate the XUAR, especially of its Uyghur population, arguably would have accelerated the genocide. The entity lists were intended to create a mechanism to which FLETF members could identify programs and participants whose use of Uyghur forced labor should make them subject to the rebuttable presumption.

This task, however, appears to be beyond the capacity of the FLETF. As I understand the original purpose of the FLETF, it was never intended to serve as an operational interagency body. Executive Order 13923 states that participating agencies will need to fund their own related staff work. Combatting forced labor has been U.S. policy since 1930, so one could be forgiven for lacking sympathy for officials at the FLETF members complaining about a lack of budget and personnel. But resources identify priorities. In sum, the Uyghur Forced Labor Prevention Act gave elements of the policymaking and enforcement to a body that was never intended or sufficiently resourced to be an active operational element of the interagency process.

The Uyghur Forced Labor Prevention Act entity lists are a critical element of fulfilling the law's intent, because, absent an effort to create a comprehensive listing of these coercive labor transfer programs and participating entities, the U.S. Government is creating an inadvertent incentive for the CCP to accelerate the genocide and depopulate the XUAR of its Uyghur and other Turkic or Muslim minorities. Both parts of the rebuttable presumption need to be operative. The more comprehensive these lists become, the more guidance is available for companies on with whom to partner and for U.S. Customs and Border Protection on where to focus their efforts.

However, only 27 unique entities and their subsidiaries have been added to the entity list since June 2022 when the rebuttable presumption went into effect and the FLETF's strategy was delivered. Nearly a full year passed before two entities and eight of their subsidiaries were added to the entity list on June 12, 2023. An additional two entities were added on August 1, 2023, and three more on September 26, 2023. This relatively small number of entities barely scratches the surface of potential listings. A research team led by Laura Murphy of Sheffield Hallam University identified roughly 55,000 companies that likely or certainly warrant being on the entity lists. Moreover, many of the entities among these 27 companies already were subject to Withhold Release Orders that prevented their goods from entering the United States.

The gap between the 27 entities listed and the 55,000 entities that probably should be listed also suggests that enforcement of the Uyghur Forced Labor Prevention Act, more broadly, suffers from a similar gap in enforcement. U.S. Customs and Border Protection is stopping a great deal

of goods, but how much is entering the United States through the *de minimis* channel? How much of the seafood being imported should be subject to the rebuttable presumption? How much of the goods or materials made in or sourced from the XUAR enter the United States through third countries?

At least some of the problems in building out the entity lists come from a lack of resources, particularly related to knowledge, skills, and access related to researching PRC-related topics. Much of the research necessary to support this work requires Chinese-language ability and the ability to access websites, corporate records, commercial databases, and other relevant information on the other side of the Great Firewall. Beijing's information crackdown on due diligence and consulting firms as well as more effective tools for tracking and blocking the activities of foreign users of the PRC Internet has raised the bar for researchers even higher.

In light of the above framing, as a concerned individual representing my own views, I would make the following recommendations for improving the FLETF's ability to guide the enforcement of the Uyghur Forced Labor Prevention Act and on implementation of the act more generally:

- The White House and the Secretary of Homeland Security must signal to the interagency that expanding the entity lists appropriately and comprehensively is a priority. The lists were intended to be a responsive tool rather than the cumbersome legal process for a Withhold Release Order. The demand signal is important for setting day-to-day priorities, and it must come from the top.
 - In next year's budget cycle, Congress and the Biden Administration should work on identifying the budgetary and personnel requirements to better staff FLETF so that it can fulfill its mandate effectively.
- To improve implementation of the entity list process, an interagency process should be required only for removing or blocking the addition of entities. Instead, any FLETF member should be able to nominate an entity for inclusion, and, unless the FLETF chair provides evidence to refute the addition of the nominated entity or labor transfer program within 14 days, then they will be added to the entity list.
 - Relatedly, other U.S. Government agencies that are not FLETF members also should be able to nominate entities for automatic inclusion after a set period of time to allow the task force to review. In this case, a longer timeline to refute should be considered, perhaps 30 to 60 days.
 - Although it would be advisable to include non-governmental organizations in this process, the potential for abuse to stall the entity list process requires more careful consideration than simply setting a timeline.
- The Uyghur Forced Labor Prevention Act amends the Uyghur Human Rights Policy Act (P.L. 116-145) to include involvement in forced labor as one of the sanctionable offenses. The sanctions authorities under the Uyghur Human Rights Policy Act have not been used

on a single PRC or CCP official in any of the categories, much less involvement in forced labor as provided by the Uyghur Forced Labor Prevention Act. Instead of requiring the State Department to report to Congress when actions are taken—creating a disincentive for U.S. officials in the executive branch who do not want to go through the process of releasing a report to Congress to take action—Congress should require reports every 60 days that these sanctions authorities go unused. These reports for why authorities are not used should be required, given prevalence of forced labor and the Department of State’s determination that genocide is occurring. As long as those two conditions hold, inaction should trigger Congressional oversight.

- The lack of PRC-related research skills and capabilities among the FLETF members, particularly in those departments without a traditional foreign policy focus, suggests the need for a larger effort to build “China competence” and capabilities across the U.S. Government that can be leveraged across the government.
 - Congress should create a new open source information and intelligence organization to collect, process, and exploit publicly and commercially available information. The nature of the PRC and CCP systems require the sprawling and overlapping central, provincial, and local structures to communicate many objectives and guidance out in the open. Open source research has been the foundation for much of the global conversation about the Uyghur genocide and forced labor. The PRC, however, is getting much better at restricting access and shutting off access to researchers who look at sensitive topics. The United States needs a professional, government-scale effort rather than relying on hobbyists and individual researchers for such work.
 - Congress should invest in expertise building inside and outside the U.S. Government. Researching sensitive topics, like human rights abuses, requires a great deal of knowledge, and the number of people inside or outside government who can perform this work are much smaller than Americans should be comfortable with. Although the growth of private companies doing some of this work is welcome, they profit from (rightfully) keeping their information and tools proprietary. The U.S. Government and public interest is best served by information that can be discussed publicly. I have not read a single one of the various U.S.-PRC competition bills over the past three Congresses that has made investments in developing expertise and language skills at sufficient scale. This stands in stark contrast to the early Cold War, when the White House and Congress understood the need for building a broad base of public and private sector expertise.