

GOVERNMENT

U.S. Fashion Industry Association, NRF express disappointment over anti-Xinjiang legislation

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The U.S. House of Representatives has passed the Uyghur Forced Labor Prevention Act, lauded by some lobbies and criticized by others. Image credit: U.S. House of Representatives

By LUXURY DAILY NEWS SERVICE

The U.S Fashion Industry Association and fellow associations in retail and manufacturing are opposing the passage of legislation passed in the U.S. House of Representatives that bans import of goods produced through forced labor from China's Xinjiang province.

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The legislation H.R. 6270, the "Uyghur Forced Labor Disclosure Act of 2020," and H.R. 6210, the "Uyghur Forced Labor Prevention Act" imposes various restrictions related to China's Xinjiang Uyghur Autonomous region, including by prohibiting certain imports from Xinjiang and imposing sanctions on those responsible for human rights violations there.

"We share the goals of the legislation to end forced labor and the larger campaign of oppression it is fueling yet we fear this bill will not help us get closer to that end goal," said a joint statement from AAFA, NRF, RILA, and USFIA.

"Instead, the legislation would establish a guilty until proven innocent' blanket standard, directly contradicting U.S. jurisprudence and due process, branding anything and everything associated with XUAR as made with forced labor.

"Such an approach would do further harm to human rights, economic development, legitimate supply chains, and will jeopardize the livelihoods of millions of workers worldwide without specifically addressing human rights concerns."

What is the Uyghur Forced Labor Prevention Act?

This legislation imposes various restrictions related to China's Xinjiang Uyghur Autonomous region, including by prohibiting certain imports from Xinjiang and imposing sanctions on those responsible for human rights violations there.

Per the legislation, "goods manufactured or produced in Xinjiang shall not be entitled to entry into the United States

unless the Customs and Border Protection service (1) determines that the goods were not manufactured by convict labor, forced labor, or indentured labor under penal sanctions; and (2) reports such a determination to Congress and to the public.

"The [U.S.] President shall periodically report to Congress a list of foreign entities and individuals knowingly facilitating (1) the forced labor of Uyghurs, Kazakhs, Kyrgyz, and members of other Muslim minority groups in Xinjiang; and (2) efforts to contravene U.S. laws regarding the importation of forced labor goods from Xinjiang. The President shall impose property-blocking sanctions on the listed individuals and entities and impose visa-blocking sanctions on the listed individuals.

"Securities issuers required to file annual or quarterly reports with the Securities Exchange Commission shall disclose in such reports certain information related to Xinjiang, including instances where the issuer knowingly (1) engaged in activities with an entity helping to create mass surveillance systems in Xinjiang, (2) engaged in activities with an entity running or building detention facilities for Muslim minority groups in Xinjiang, or (3) acquired a significant amount of textiles produced in Xinjiang. After being notified of such a disclosure, the President shall determine whether to investigate if sanctions or criminal charges are warranted."

While the intention was lauded by leading U.S. trade associations, the legislation's unintended consequences alarm those in manufacturing and retail of apparel and accessories.

The latest joint statement from the National Retail Federation, USFIA, RILA and AAFA could not be stronger in its disappointment.

"What we are witnessing in XUAR is of great concern to our entire industry. Forced labor in any form is intolerable, as is repression of ethnic minorities, wherever it takes place," the statement said.

"The situation in this region is of a scale, scope, and complexity that is unprecedented in modern supply chains. Our country and world must unite to end these practices.

"We share the goals of the legislation to end forced labor and the larger campaign of oppression it is fueling yet we fear this bill will not help us get closer to that end goal. Instead, the legislation would establish a "guilty until proven innocent" blanket standard, directly contradicting U.S. jurisprudence and due process, branding anything and everything associated with XUAR as made with forced labor.

"Such an approach would do further harm to human rights, economic development, legitimate supply chains, and will jeopardize the livelihoods of millions of workers worldwide without specifically addressing human rights concerns.

"A successful solution for all involved, above all for the workers themselves, will require state-to-state engagement and collaborative partnerships.

"The U.S. Government must take a leadership role in an effort that combines industry, NGOs, unions, Congress, the U.S. government, and other governments. That effort must develop and implement a comprehensive and holistic strategy that most effectively advances us to our mutual end goal to end forced labor practices and the larger campaign they fuel.

"We stand ready to work with all stakeholders to find an enforceable solution that effectively protects human rights."

The U.S. Chamber of Commerce also sent a letter to the U.S. House of Representatives stating its opposition to the way the legislation was formulated.

"The U.S. Chamber of Commerce strongly condemns human rights abuses, including the persecution and detention of the Uyghur ethnic minority in China. We urge Congress and the Administration to deploy targeted foreign policy tools and to work with the business community to combat these abuses.

"However, the Chamber believes that H.R. 6270, the "Uyghur Forced Labor Disclosure Act of 2020," and H.R. 6210, the "Uyghur Forced Labor Prevention Act," would prove ineffective and may hinder efforts to prevent human rights abuses.

"Past attempts to utilize domestic U.S. securities law to combat human rights abuses provide a cautionary tale.

For example, a well-intentioned effort to resolve abuses related to the mining of conflict minerals in the Democratic Republic of the Congo (DRC) in many cases worsened the situation on the ground in that country.[1][2] In that instance, Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act required public

companies to disclose if any of their products used a defined list of minerals, if the minerals were mined in the DRC, and if the products were conflict mineral-free.

The absence of a qualified inspection and audit systems made it nearly impossible for companies to ensure accurate disclosures. This in turn caused many companies to implement a de facto embargo against material sourced in the region, which then hurt legitimate miners.

"At the same time, the original targets of the provision simply shifted their activities to avoid being impacted. In addition to the measure's unintended consequences, aspects of the conflict minerals disclosure were ultimately struck down by the courts.

"The Chamber looks forward to working with Congress and the administration to ensure that workable, appropriate actions and initiatives are implemented to aid the Uyghurs."

Hawks applaud

However, the Coalition for a Prosperous America long a proponent of a U.S. decoupling from China took a more hawkish stance and lauded the House's passage of the legislation in its public statement.

"The Coalition for a Prosperous America (CPA) today strongly praised House passage of the Uyghur Forced Labor Prevention Act' (H.R. 6210). The bill, which passed by an overwhelming 406-3 margin, would designate most goods produced in the Xinjiang Uyghur Autonomous Region of China as being manufactured through forced labor. Doing so would preclude such products from being sold in the United States. CPA has frequently expressed serious concern about the treatment of ethnic Uyghurs in Xinjiang, particularly those transferred to forced labor camps.

"China has an ugly record of human rights abuses," said CPA Chair Dan DiMicco. "Washington is finally paying attention to Beijing's detention programs, forced labor, and mass surveillance systems. There's no reason for the United States to buy products made under such conditions. We look forward to working with the Senate and administration to ensure that this bipartisan bill becomes law as soon as possible."

"H.R. 6210 imposes various restrictions related to China's Xinjiang Uyghur Autonomous region including a ban on certain imports and sanctions for those involved in human rights violations. The bill would block all goods produced in Xinjiang via forced labor except specific items cleared by U.S. Customs and Border Protection.

"A recent study by the Australian Strategic Policy Institute (ASPI) found that more than 1 million Uyghurs and other minority groups in China have been forced into a vast network of "indoctrination" camps since 2017. Many are then transferred to factories in nine separate Chinese provinces, with at least 80,000 Uyghurs transferred out of Xinjiang between 2017 and 2019 alone. ASPI notes that at least 83 well-known global brands have used this labor to manufacture their products, including Apple, BMW, Gap, Huawei, Nike, Samsung, Sony, and Volkswagen.

"China's human rights abuses are consistently and extremely disturbing," said Michael Stumo, CEO of the CPA. "We shouldn't be surprised, however, given Beijing's callous disregard for human life. This is a government that pays no heed to labor rights, individual freedoms, or internationally recognized environmental standards. The American people don't want to buy products made under such conditions. This bill is a helpful start toward a wider decoupling from China's predatory economy."