

Congress of the United States

Washington, DC 20515

December 5, 2022

Acting Commissioner Troy A. Miller
U.S. Customs and Border Protection
1300 Pennsylvania Ave. N.W.
Washington, DC 20229

Secretary Alejandro Mayorkas
U.S. Department of Homeland Security
301 7th St. S.W.
Washington, DC 20528

Dear Acting Commissioner Miller and Secretary Mayorkas,

We write to express our concern regarding the Customs and Border Protection's (CBP) enforcement of the bipartisan *Uyghur Forced Labor Prevention Act* (P.L. 117-78, or UFLPA). We are concerned in particular that the recently passed Inflation Reduction Act (IRA) may discourage CBP from fully enforcing the UFLPA with regard to imported solar panels. Under the IRA, U.S. taxpayers will likely pay tens of billions of dollars in subsidies, grants, and tax credits for solar panels. Absent vigorous oversight however, this funding it is likely to go directly toward subsidizing the Chinese Communist Party's (CCP's) forced labor apparatus that produces a vast majority of solar panels in the PRC. Strictly enforcing existing US laws to prevent American support for Uyghur forced labor is all the more important now given the recent protests in China catalyzed by a fire in Urumqi, Xinjiang following the CCP's brutal treatment of its citizens.

The UFLPA was passed in response to the CCP's atrocities targeting Uyghurs, Kazakhs, and other predominantly Muslim ethnic groups in the Xinjiang Uyghur Autonomous Region (XUAR). The law presumptively bans the import of goods, wares, articles, and merchandise mined, produced, or manufactured wholly, or in part, in the XUAR or by certain entities identified by the administration as being engaged in labor transfer programs unless "clear and convincing evidence" to the contrary is presented by importers.¹

The IRA showers hundreds of billions of dollars in subsidies, grants, and tax credits on renewable energy and electricity production. A large portion of this taxpayer-funded splurge will likely go toward the manufacture or production of electricity from solar panels—many of which will involve inputs produced by forced labor.

The People's Republic of China (PRC) now accounts for over 80% of every stage of the solar panel manufacturing process, such as polysilicon production, and accounts for 97% for wafers.²

¹ Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78 (2021), Sec. 3,

² <https://www.iea.org/reports/solar-pv-global-supply-chains>.

Given the PRC's dominance of the solar industry, IRA solar subsidies, grants, and tax credits could be used extensively on Chinese solar panels and solar panel components. We are deeply concerned that the American taxpayer will be subsidizing the CCP's solar industry and therefore subsidizing forced labor and human rights abuses.

As a recent report concluded, the Chinese "solar industry is particularly vulnerable to forced labour," and all Xinjiang polysilicon companies "have reported their participation in labour transfer programmes and/or are supplied by raw materials that have."³ Furthermore, numerous reports have demonstrated that Uyghurs are often transferred outside of the XUAR to work in factories throughout the country, including the solar industry.⁴ Most Chinese polysilicon products are therefore potentially tainted by the forced labor practices inflicted on the Uyghur population. Because polysilicon is necessary for 84% of U.S. solar panels⁵, and the XUAR produces about 56%⁶ of China's polysilicon, most solar panel products from the PRC are likely produced using forced labor, especially once the products produced by transferred Uyghur labor are included. Thus, under the UFLPA, unless an importer can prove by "clear and convincing evidence" that forced labor was not used, CBP should not permit the importation of Chinese solar panels from China or elsewhere.

We have several concerns with CBP enforcement of the UFLPA as it pertains to solar panels. For one, CBP's short list of companies whose products will be banned from the U.S. risks setting a precedent that signals that companies not on this list are free to import products tainted with slave labor into the U.S.⁷ We also remain concerned that CBP has yet to provide a list of banned exporters, as is required by UFLPA. Even after the CBP blocked imports of solar panels produced by LONGi Solar, Jinko Solar, and Trina Solar, it has refused to blacklist any of these firms, allowing U.S. importers to continue to import from them. This is despite these companies' documented ties to Uyghur forced labor and the Commerce Department's listing of several solar companies and Hoshine polysilicon company, which provides polysilicon to most of these solar companies, on its Entity List for their links to forced labor in the XUAR.⁸

Furthermore, the Biden Administration has sent signals that seem to encourage importing solar panel products in violation of the UFLPA. President Biden's decision to stop investigating solar panels imported from Southeast Asian countries using components from the PRC sends a further wrong signal that this administration is unconcerned with America's reliance on forced labor.⁹ There is bipartisan agreement to enforce the law.

Going forward, we urge you to fully enforce the Uyghur Forced Labor Prevention Act as required by law, particularly when it comes to solar panels made with forced labor, which will

³ <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/in-broad-daylight>.

⁴ Id; <https://www.aspi.org.au/report/uyghurs-sale>; <https://www.hrw.org/news/2022/08/31/china-new-un-report-alleges-crimes-against-humanity>.

⁵ <https://www.energy.gov/sites/default/files/2022-02/Solar%20Energy%20Supply%20Chain%20Fact%20Sheet.pdf>

⁶ <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/in-broad-daylight>.

⁷ <https://www.dhs.gov/uflpa-entity-list>.

⁸ <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/firms-with-xinjiang-ties-lead-us-solar-imports-62204298>.

⁹ <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/06/declaration-of-emergency-and-authorization-for-temporary-extensions-of-time-and-duty-free-importation-of-solar-cells-and-modules-from-southeast-asia/>; <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/in-broad-daylight>; <https://www.aspi.org.au/report/uyghurs-sale>; <https://www.hrw.org/news/2022/08/31/china-new-un-report-alleges-crimes-against-humanity>.

get subsidies, grants, and tax credits under the IRA. American taxpayers cannot be allowed to subsidize the effective enslavement of the Uyghurs and other predominantly Muslim ethnic groups.

With these concerns in mind, we respectfully request an answer by December 16, 2022.

- (1) How is CBP planning to enforce the UFLPA to ensure that no solar panels or solar panel components are imported directly or indirectly from the PRC that are tainted by Uyghur forced labor?
- (2) Will CBP be closely monitoring the importation of solar panels and solar panel components to ensure that none are imported unless there is “clear and convincing” evidence that forced labor was not used?
- (3) What strategies and tools are CBP planning to employ to ensure that the American taxpayer does not subsidize Uyghur forced labor through the IRA?

Thank you for your consideration of these concerns, and we look forward to a prompt response.

Sincerely,



Mike Gallagher
Member of Congress



Marco Rubio
U.S. Senator



Chris Smith
Member of Congress



Tom Cotton
U.S. Senator