

How Will the Industry's ESG Policies Impact the EV Transition?

In our last publication, the Firm's East Asia Practice Group took a critical look at the tension between U.S. policy makers and the realities of the EV industry in the U.S., and more specifically, East Asia's importance in the U.S.'s plans to electrify. When it comes to lithium batteries, it is evident to those in the industry that the U.S. will only achieve its short term goals by sourcing from companies in East Asia; however, what about further up the supply chain? Where will the industry turn and how will the U.S. and European Union policies impact the sourcing decisions of major OEMs in the U.S.?

One of the hottest topics in today's marketplace is "ESG." An acronym for the lesser understood concept of "Environment, Social and Governance." Every major OEM has an ESG policy [[GM](#), [Ford](#), [Stellantis](#), [Toyota](#), [Tesla](#)], and presumably all of these companies intend for their policies to affect their sourcing decisions. The invention of ESG policies is not novel, but their importance in the industry has never been greater. With recent legislation in the U.S. and Europe demanding the industry take a critical look at their supply chains, ESG is no longer just aspirational, it is front and center as companies weigh their sourcing decisions. One notable law in the U.S. that has recently tied together both the relevance of ESG policies and U.S. politics is the Uyghur Forced Labor Prevention Act (UFLPA). Originally introduced by the House in February 2021, it quickly passed through both chambers of Congress and was signed into law by President Biden in December 2021, with an effective date of June 21, 2022. The law, at its core, empowers the U.S. Customs and Border Patrol (CBP) to detain goods imported into the U.S. that were made wholly or in part from Xinjiang Uyghur Autonomous Region in western China.

Xinjiang Province, mostly known for its cotton production, would seemingly have little to do with the EV supply chain. But, caught in the cross-hairs of the U.S.'s pressure on Chinese sourced goods, and the U.S.'s need to source large quantities of raw materials that support lithium batteries, regardless who the producer of those batteries are, the UFLPA will pose another hurdle for the industry to navigate. On the eve of the UFLPA coming into law, the New York Times published an [article](#) on one of the largest companies in Xinjiang, Xinjiang Nonferrous Metal Industry, which produces minerals and metals, including lithium, nickel and copper. It has exported metals to the United States, Germany, U.K., Japan and India, the Times reported.

Having a presence in Xinjiang, even one as substantial as Xinjiang Nonferrous Metal Industry, is not synonymous with engaging in forced labor; however, this distinction is little recognized by CBP because the UFLPA establishes a *rebuttable presumption* that “importation of any goods ... produced or manufactured wholly or in part in the Xinjiang is prohibited and that such goods ... are not entitled to entry to the United States.” Given that almost all of the processing required to turn essential raw materials into batteries takes place in China, it is not surprising that the UFLPA may become the main focus in the EV transition. China processes between 50 to 100% of the world's lithium, nickel, cobalt, manganese and graphite, and makes 80 percent of the cells that power lithium ion batteries, according to Benchmark Mineral Intelligence, a research firm. Even battery makers outside of China rely on Chinese sourced materials to support their products. This market dominance alone is reason to believe that U.S. policy makers will grapple with whether zealous enforcement of the UFLPA should be front and center in Washington's pressure on Beijing. For its part, China continues to deny U.S. allegations of forced labor and calls the condemnation of forced labor as the biggest lie of the century.

On February 23, 2023, the CBP issued new guidance for importers on the agency's enforcement website. This includes additional guidance in the form of frequently asked questions ([FAQs](#)), [guidance](#) setting forth best practices for submitting documentation to prove that detained goods are not subject to the UFLPA, and guidance on executive summaries and sample tables of content for importer applicability review submissions.

While enforcement of the UFLPA is expected to be ratcheted up in the coming months, the industry is readying to assure that its supply lines will not be disrupted and that its entire supply chain avoids unnecessary entanglements in troubled hot spots throughout the world.

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EV Manufacturing Underscores Need for Skilled Workers, Requiring Employers to Seek Talent Globally

While the shift to electric vehicles represents a reformation of the automotive industry in terms of new technologies, infrastructure requirements, and supply chain considerations, often overlooked is the challenge of developing a workforce equipped with the skills to adapt to the associated changes in traditional manufacturing. Production of battery-electric vehicles will require a workforce that has both traditional skills, such as vehicle assembly, as well as new skills like electrical equipment assembly. According to the [Bureau of Labor Statistics](#), vehicle electrification is expected to generate demand for labor in three main areas: the design and development of electric vehicle models, the production of batteries that power them, and the installation and maintenance of charging infrastructure.

The CHIPS and Science Act of 2022 will provide \$52.7 billion for American semiconductor research, development, and manufacturing, but also earmarked are funds for workforce development. The Inflation Reduction Act of 2022 will invest \$369 billion to promote a clean energy economy, in part by offering generous incentives for U.S.-made electric cars. The need to train a new group of skilled workers explains why funds in the CHIPS Act are set aside for workforce development, and the push to rev up production within the U.S. to take advantage of financial incentives requires building up a manufacturing industry that is already facing a [massive shortage of labor](#).

DW's Take

The push is on to provide the necessary training that will be required to meet the labor demands driven by these changes in manufacturing. The American Association of Community Colleges, for example, has [announced](#) a national apprenticeship program in partnership with major tech companies to provide EV training. In addition, the state of Michigan has announced an [Electric Vehicle Jobs Academy](#), which partners with universities and companies to develop education and training solutions. On March 1, 2023, Michigan state officials [announced](#) the Michigander EV Scholars program, which will provide up to \$10,000 scholarships for up to 350 top tech students at participating universities.

Inevitably, despite these efforts to build up the U.S. workforce, the [critical need for skilled workers](#) will at times require employers to source from or compete for global talent. Many employers may also find that a diverse work force comprised of individuals from various cultures and backgrounds fosters an innovative environment that is able to solve new problems and also

create products that address the preferences of both domestic and international consumers the drive the global economy.

In its current state, the U.S. immigration system is facing unprecedented backlogs, and sponsorship options remain limited and, in most cases, highly scrutinized. The Biden Administration has taken [steps to clarify adjudication policies](#) with respect to certain filings in STEM fields, but to date, the actual application of these policies on the ground has not greatly expanded opportunities for employers or highly skilled workers.

While U.S. immigration laws are byzantine in addressing current labor needs of U.S. employers, there are several options that may be available to seek work visas on behalf of specialized, highly skilled employees:

- H-1B – The H-1B visa classification is for those individuals employed in specialty occupations, which generally refers to those occupations that require the attainment of at least a bachelor’s degree or higher. The H-1B classification is not restricted to individuals of a particular nationality, and is therefore very highly sought after. There are only 85,000 H-1Bs available each year, of which 20,000 are reserved for those with U.S. master’s degrees or higher. Each year, the U.S. Citizenship and Immigration Services (USCIS) requires employers to register any employees they are seeking to sponsor for an H-1B. These registrations are then subjected to a lottery in order to select those lucky individuals who may file for an H-1B to take effect in the upcoming fiscal year, which begins in October. This year, employers must complete their registrations by no later than noon eastern on March 17 to be included in the annual lottery. Companies considering submitting H-1B registrations should reach out to counsel as soon as possible.
- L-1 – The L-1 visa classification is for intracompany transfers. The petitioning U.S. employer must have a qualifying relationship with the foreign employer, and the sponsored employee must have been employed abroad for at least one year in a managerial, executive, or specialized knowledge position with the qualifying foreign organization. The employer must also seek to transfer the employee into a position that is managerial, executive, or requires the application of specialized knowledge.
- E-1/E-2 – The E visa classification is for traders and investors from certain countries with treaty-based agreements with the United States. The U.S. company must meet certain nationality requirements, as well as other requirements including either investment or volume of trade requirements. The employee must share the same nationality as the petitioning company, and must be employed in a managerial, executive, or essential skills position.
- O-1 – The O-1 visa classification is for individuals with extraordinary ability or achievement in the sciences, arts, education, business, or athletics, demonstrated by sustained national or international acclaim.

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- TN – The TN visa classification is for citizens of Mexico or Canada who are seeking to work in the U.S. in certain occupations designated by the U.S.-Mexico-Canada Agreement (formerly NAFTA). Typical occupations in manufacturing include Engineers, Scientific Technicians, and Management Consultants.

This list is not exhaustive, but demonstrative of the types of nonimmigrant visas that may be available to U.S. companies seeking to employ a foreign worker in a skilled position. Some business activities may qualify for limited B-1 business visitor admissions, such as participation in business meetings or seminars, or certain activities tied to the installation, service, or repair of equipment tied to a contract of sale.

The U.S. immigration system is due for some reform that creates a more agile, efficient, and consistent system for attracting and retaining global talent, but in the meantime we are left to navigate the system as it stands. Perhaps the demand for labor tied to the growth of the EV industry, and associated manufacturing practices driven by electrification and automation, will be the tipping point to drive change and open new windows for sponsorship opportunity.

Heather Frayre | Member

Round-Up From Previous Edition

I would like to thank everyone who took the time and effort to comment on my article appearing in last month's edition of *Plugged In* entitled: "A Second Look." I had numerous interesting discussions with our readers, majority of whom seemed to agree with the underlying premise of the article that Toyota's multi-technology product offering strategy might be favorable for Toyota and for the auto industry, given the significant uncertainties inherent in the challenging rapid transition to EV vehicles.

In addition to the challenges to the projected rapid adoption raised in my article, a number of respondents focused on the performance and safety risks associated with adopting the evolving new technologies to a mass production scale. One respondent pointed to a recent article in Reuters Business that summarized the J.D. Power 2023 Customer Service Index (CSI) Study, which reported a year-over-year score decline for the first time in 28 years and cited recall rates for BEV's, which were reported to be more than double the rate for ICE vehicles, as a leading factor.

On the other hand, a few readers pointed out that while the challenges I discussed to an all-in EV strategy are "not to be taken lightly" and will require enormous collaboration from many stakeholders, they should not be considered insurmountable; all of the economic investment is

backed by a strong vision and motivation to meet customer demand with a goal to move away from fossil fuel emissions. Many companies, new and old, are coming to the fore to explore unexplored opportunities and expanding existing ones such as battery recycling, renewable energy, design, safety, autonomy, and more. Plus, new lithium reserves are continuously being discovered around the world. Some readers expressed that this is unquestionably a long-game and the stakes are high, but so are the odds of winning it. And Toyota is losing sight of the end prize.

Thanks again to those who have shared their perspectives with us. We very much appreciate hearing from you regarding your views (pro or con) regarding the subjects addressed in *Plugged In*.

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To learn more about our EV practice, visit our website at <https://www.dickinson-wright.com/practice-areas/electric-vehicles?tab=0>.

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