

CBP Releases Guidance for Compliance Requirements Under the Uyghur Forced Labor Prevention Act

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Key Takeaways:

- Starting on June 21, 2022, all goods produced in whole or in part in the Xinjiang region or by entities on the UFLPA Entity List will be presumed to be made with forced labor and will be prohibited from entry into the U.S.
- Importers must provide “clear and convincing” evidence to CBP to rebut the presumption of forced labor.
- Guidance recently released by the Biden administration describes the documentation and supply chain due diligence required to release a detained shipment.

On June 13, 2022, the U.S. Department of Homeland Security’s Customs and Border Protection (“CBP”) published [guidance for importers](#) regarding compliance requirements under the Uyghur Forced Labor Prevention Act (“UFLPA”), which is effective as of June 21, 2022. Under the UFLPA, all goods produced in whole or in part in the Xinjiang Uyghur Autonomous Region (“XUAR”) of China, or produced by entities on the UFLPA Entity List, are presumed to be made with forced labor and are prohibited from entry into the U.S. This presumption also applies to goods made in, or shipped through, other parts of China and other countries that include inputs made in the XUAR. When the UFLPA goes into effect on June 21, 2022, importers must produce “clear and convincing” evidence in order to rebut the presumption of forced labor after a shipment is detained. Importers should be aware that restrictions under the UFLPA are stricter than the current restrictions in place under the Tariff Act regarding the import of goods made with forced labor.

CBP’s new guidance for importers provides information on what evidence is required from importers to overcome the presumption that goods are made with forced labor so that a detained shipment can be released. The guidance also describes the detention/release process and provides information regarding supply chain due diligence, tracing, and management. This guidance has been anticipated by industry, especially importers sourcing products from China, since December 23, 2021, when the UFLPA was signed into law by President Biden.

In addition to the guidance, CBP will release a forthcoming “UFLPA Strategy.” The UFLPA Strategy will contain specific due diligence requirements for importers who must comply with the UFLPA Strategy in order to overcome the rebuttable presumption that detained goods are made with forced labor. In addition to the UFLPA Strategy, the UFLPA will also contain an UFLPA Entity List, which will be composed of entities operating in the XUAR or working with the XUAR government to move forced labor out of the region. All items produced by entities on the UFLPA Entity List are presumed to be made with forced labor and prohibited from entry into the U.S., even if such items did not originate in the XUAR. Both the UFLPA Strategy and the UFLPA Entity List are scheduled for release by June 21, 2022.

The key provisions of CBP’s new guidance are as follows:

General Provisions

- Under the UFLPA, an importer will have 30 days to challenge a detention, instead of the 90 day period pursuant to the Tariff Act, which currently blocks the import of all products made with forced labor into the U.S. The guidance also states that for imports made on or after June 21, 2022, the UFLPA supersedes the withhold release orders (“WRO”) previously issued on cotton from the XUAR and products made by the Xinjiang Production and Construction Corps. [CBP issues WROs](#) upon evidence that reasonably –

but not conclusively – indicates that a product is made with forced labor to block such products from entry into the U.S.

- After a shipment is detained, importers must (a) respond to all CBP requests for information about merchandise under CBP review; (b) demonstrate by clear and convincing evidence that the good, ware, article, or merchandise was not mined, produced, or manufactured wholly or in part by forced labor, and (c) demonstrate due diligence processes, effective supply chain tracing, and supply chain management measures to ensure that they do not import any goods made, in whole or in part, by forced labor.
- If an importer believes that a detained shipment is outside the scope of the UFLPA, an importer may provide information to CBP that the imported goods are sourced completely from outside the XUAR and have no connection to entities on the UFLPA Entity List. In the event that CBP determines that the information provided by the importer demonstrates that the merchandise is outside the scope of the UFLPA, the importer will not need to overcome the UFLPA rebuttable presumption and CBP will release the shipment.
- If an importer demonstrates by clear and convincing evidence that the goods were not made wholly or in part with forced labor, CBP will grant an exception to the UFLPA presumption and allow the goods to be imported into the U.S. The UFLPA mandates that when an exception is granted, CBP must submit to Congress and the public a report identifying the good and the evidence considered in reaching the determination that an exception is warranted.

Due Diligence Processes

The guidance states that importers should be able to provide to CBP documentation showing a due diligence system or process that may include the following:

- Engagement with suppliers and other stakeholders to assess and address forced labor risk;
- Mapping of the supply chain and assessment of forced labor risks along the supply chain from raw materials to production of the imported good;
- Written supplier code of conduct forbidding the use of forced labor and addressing the risk of use of Chinese government labor schemes;
- Training on forced labor risks for employees and agents who select and interact with suppliers;
- Monitoring of supplier compliance with the code of conduct;
- Remediation of any forced labor conditions identified or termination of the supplier relationship if remediation is not possible or is not timely completed;
- Independent verification of the implementation and effectiveness of the due diligence system; and
- Reporting performance and engagement publicly on its due diligence system.

Supply Chain Tracing Information

The guidance provides the following examples of information that importers may provide (or that may be requested by CBP to provide) to demonstrate their imports are either (1) not subject to the UFLPA because their supply chains are wholly outside of Xinjiang and unconnected to listed entities; or (2) to show that their imports are free of forced labor and in compliance with the UFLPA.

Evidence Pertaining to Overall Supply Chain

- A detailed description of the supply chain, including imported merchandise and related components across all stages of mining, production, or manufacturing;
- The role of the entities in the supply chain, including shippers and exporters (for instance, CBP will need to determine whether a supplier is also a manufacturer);
- A list of suppliers associated with each step of the production process, including names and contact information (addresses, email addresses, and phone numbers); and
- Affidavits from each company or entity involved in the production process.

Evidence Pertaining to Merchandise or Any Component Thereof

- Purchase orders;

- Invoices for all suppliers and sub-suppliers;
- Packing lists;
- Bill of materials;
- Certificates of origin;
- Payment records;
- Seller's inventory records, including dock/warehouse receipts;
- Shipping records, including manifests and bills of lading; and
- Import/export records.

Evidence Pertaining to Miner, Producer, or Manufacturer

Regarding information pertaining to a miner, producer, or manufacturer, the guidance calls for the evidence listed above as it relates to merchandise or any of its raw material components. For high-risk commodities such as cotton and polysilicon, however, the guidance calls for additional evidence, including:

- Mining, production, or manufacturing records;
- Documents that allow CBP to trace raw materials to merchandise mined, produced, or manufactured;
- Production orders;
- Reports on factory production capacity for the merchandise;
- Reports on factory site visits by the importer, a downstream supplier sourcing from this factory, or a third party expert; and
- Evidence that the volume of inputs of component materials matches the volume of output for the merchandise produced.

Commodity-Specific Supply Chain Tracing Documentation

The guidance's appendix also provides specific direction for supply chain documentation that importers may consider submitting to address commodities associated with a high risk of forced labor, such as cotton, polysilicon, and tomatoes. The guidance notes that the lists in the appendix are not exhaustive and that CBP may request additional documentation based on individual circumstances.

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