

## Questions And Answers About The Uyghur Forced Labor Law

By **Rachel Alpert, Ali Alsarraf and Ariella Katz** (June 29, 2022, 5:58 PM EDT)

This article answers 10 key questions about how the Uyghur Forced Labor Prevention Act[1] will work in practice, based on recently issued guidance from U.S. Customs and Border Protection[2] and the interagency Forced Labor Enforcement Task Force,[3] which developed the strategy to implement the UFLPA.

How does a company prove the absence of forced labor in its supply chain? Effective June 21, CBP will presume that all goods manufactured in whole or in part in the Xinjiang Uyghur Autonomous Region of China, or by certain designated entities, are made with forced labor and are therefore barred from entering the U.S.

At the outset, CBP enforcement will focus on apparel, cotton, and silica-based and tomato products. If CBP bars a shipment from entry, importers will generally have 30 days to prove through clear and convincing evidence that the goods were not made with forced labor.

This underscores the importance of supply chain due diligence, tracing, management and documentation for global companies — particularly those with components of high-risk industries in their supply chains.

### 1. How deep into the supply chain does the UFLPA apply?

The UFLPA applies to the entire supply chain. There is a presumption of forced labor for "any goods, wares, articles, and merchandise mined, produced, or manufactured" in Xinjiang or by an entity designated on the new UFLPA entity list.[4]

This encompasses all stages of mining, production or manufacture, from raw materials to finished product, and includes in-house manufacturing, subassembly operations, and outsourced production related to the imported goods.

### 2. Is there a de minimis exception for goods that might contain only trace amounts of materials from Xinjiang?

No. Goods with any amount of content derived from Xinjiang or designated entities are subject to the



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forced labor presumption and exclusion from the U.S. The law applies to goods sourced or manufactured wholly or in part in Xinjiang, or by an entity on the UFLPA entity list.

### **3. Does the UFLPA apply only to goods from Xinjiang?**

No. The UFLPA also applies to goods from entities that are implicated in forced labor outside Xinjiang. These include entities and — where specified — subsidiaries that (1) employ persecuted groups transferred from Xinjiang; (2) collaborate with the Xinjiang government; or (3) source materials from the foregoing or other Chinese government labor schemes that use forced labor.

The Forced Labor Enforcement Task Force has published a list of more than 20 entities subject to the UFLPA.[5] These are Chinese companies and forced labor camps that produce textiles, clothing, hair products, silica-based products, transportation equipment and electronics using forced labor.

For example, Tanyuan Technology Co. Ltd., a touch-screen producer that is headquartered outside Xinjiang, is included for employing Uyghur workers forcibly transferred from the region. The task force may add additional entities in the future.

### **4. Are withhold release orders for Xinjiang cotton and tomatoes still in effect?**

No. The UFLPA replaces withhold release orders for Xinjiang goods imported on or after June 21. For example, Xinjiang cotton and tomatoes, which were previously subject to withhold release orders, are now barred under the UFLPA.

As a result, detained cotton and tomato shipments will now be subject to the clear and convincing evidence standard to prove that the goods were not made with forced labor. The UFLPA also reduces the deadline to respond to CBP's notice of detention from three months under the withhold release orders to 30 days under the UFLPA.

### **5. Which industries are at greatest risk under the UFLPA?**

The task force's UFLPA strategy identifies apparel, cotton, silica-based products including polysilicon, and tomatoes and downstream tomato products as high-priority sectors for enforcement.[6]

Within these sectors, CBP will prioritize the highest-risk goods for UFLPA enforcement, including those imported directly from Xinjiang or designated entities, those imported by entities with corporate ties to Xinjiang and illegally transshipped products.

### **6. How does CBP become aware of Xinjiang forced labor in supply chains?**

CBP utilizes numerous sources to identify forced labor. In particular, CBP plans to adopt advanced technologies such as artificial intelligence, machine learning and remote sensing to trace the origin of imported goods.

Additionally, private parties and nongovernment organizations can alert CBP to potential forced labor violations.

CBP encourages civil society organizations and community groups throughout the supply chain to provide information and inform risk assessments, including by reporting allegations of forced labor to

CBP through an online portal.[7]

## **7. How can a company comply with the UFLPA?**

Implementing policies and procedures to carry out supply chain due diligence, tracing, management and documentation is critical to UFLPA compliance and ensuring that there is no forced labor in a supply chain.

Companies should take the following steps:

- Assess risks by mapping and then documenting the origin and method of production at each step in the supply chain, from the raw materials to the imported product, including the identity of all entities in the chain and their role in production.
- Institute explicit policies against forced labor within the company and the supply chain, and monitor compliance.
- Collect information about labor conditions in China, including recruitment methods, wage payment and production output per worker.
- Implement supply chain management measures to vet suppliers and terminate relationships that create risk of exposure to Xinjiang labor while mitigating impact on workers to the extent possible.
- Provide training on forced labor risks for employees and agents who interact with suppliers.
- Conduct comprehensive and independent external audits to verify implementation and efficacy of policies and procedures.
- Take action to remediate and address any forced labor identified.

Due to restrictions on information and access in China in general and Xinjiang in particular, it may not be possible for companies to perform full due diligence and external audits.

In such cases, compliance may require termination of contracts with at-risk suppliers or use of alternative technologies that can track specific raw materials and other inputs through the supply chain or that identify the origin of goods or materials through reliable scientific means.

Companies bear the burden of proving compliance even when they face barriers to information beyond their control.

The CBP guidance and UFLPA strategy also recommend referring to the United Nations Guiding Principles on Business and Human Rights;<sup>[8]</sup> the Organization for Economic Cooperation and Development's Guidelines for Multinational Enterprises;<sup>[9]</sup> and the International Labor Organization's Combating Forced Labour handbook.<sup>[10]</sup>

There are also numerous U.S. government resources, such as the U.S. Department of Labor's Comply Chain app,<sup>[11]</sup> to help identify and combat forced labor in supply chains.

Companies do not have to navigate compliance alone. Industrywide initiatives provide additional resources for companies to responsibly source raw materials.

The Responsible Minerals Initiative,[12] Better Cotton Initiative[13] and other supply chain-focused initiatives leverage industry collaboration and partnerships to help businesses implement best practices for responsible sourcing and measure supply chain performance.

## **8. What happens if my shipment is detained at the border?**

The UFLPA authorizes CBP to detain goods suspected of being sourced from Xinjiang or designated entities. CBP makes a detention decision within five days after goods are presented at the border for examination. Detained goods that violate the UFLPA are subject to exclusion from the U.S. or to seizure and forfeiture.

CBP may release detained goods if it determines the goods are outside the scope of the UFLPA. If a company believes that its goods were detained in error, it may provide documentation that the goods and their components were sourced entirely outside Xinjiang, with no connection to entities on the UFLPA entity list.

Companies should be prepared to provide:

- A detailed description of the supply chain of the imported goods and components, including all stages of sourcing and manufacture;
- Names and contact information of suppliers associated with each step of the production process;
- Affidavits from each entity involved in production; and
- Supporting documentation, such as production orders, reports on factory production capacity and factory site visits, purchase orders, invoices for suppliers and subsuppliers, packing lists, bills of materials, certificates of origin, payment records, inventory records, shipping records, and other import and export records.

If a company's goods were in fact sourced in whole or in part from Xinjiang or from entities on the UFLPA entity list, additional evidence is necessary to overcome the forced labor presumption.

## **9. How does a company overcome the UFLPA presumption of forced labor?**

Companies can overcome a UFLPA forced labor presumption by providing clear and convincing evidence that the goods in question were not made with forced labor. This standard is demanding.

For example, U.S. Department of Homeland Security guidance in the similar context of North Korea explains that clear and convincing evidence, as set forth in Section 321(b) of the Countering America's Adversaries Through Sanctions Act is "a higher standard of proof than a preponderance of the evidence, and generally means that a claim or contention is highly probable." [14]

Evidence to demonstrate the absence of forced labor includes:

- A map of the entire supply chain, showing transport along the supply chain, including the entities involved at each stage;
- A complete list of workers at the location suspected of forced labor that includes the workers' wages, origin and residency;
- Proof of outputs consistent with the number of documented workers in each job category, the volume of material inputs and outputs, and workers' hours and production output;
- Controls in place to ensure all workers are employed voluntarily and evidence demonstrating that every worker from Xinjiang is working voluntarily without threat of penalty; and
- Records to show that the recruitment, receipt, transportation and living conditions of all workers is free from forced labor indicators, such as restricted movement, required activities and government surveillance or reporting.

If the CBP commissioner determines that an exception is warranted, CBP must then make a report available to Congress and to the public within 30 days, identifying the goods and the evidence considered in granting the exception.

#### **10. How long does a company have to rebut a presumption of forced labor?**

Companies that receive a notice of detention under the UFLPA will generally have 30 days to provide evidence to CBP.[15] The clock begins to run when goods are presented to CBP for inspection. This timeline is substantially shorter than the three-month timeline for contesting detention under withhold release orders.

Companies also have 30 days after a notice of seizure or 180 days after a notice of exclusion to rebut the presumption of forced labor.[16]

The UFLPA poses complex challenges for global supply chains. By learning about and mitigating potential risks, companies can prepare for the UFLPA's requirements and ensure that their products successfully enter the U.S.

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[1] Uyghur Forced Labor Prevention Act, 117th Congress (2021-2022), Library of Congress, <https://www.congress.gov/bill/117th-congress/house-bill/6256/text>.

[2] Operation Guidance for Importers, U.S. Customs and Border Protection (June 13, 2022), [https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP\\_Guidance\\_for\\_Importers\\_for\\_UFLPA\\_13\\_June\\_2022.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP_Guidance_for_Importers_for_UFLPA_13_June_2022.pdf).

[3] Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China, U.S. Department of Homeland Security (June 17, 2022), [https://www.dhs.gov/sites/default/files/2022-06/22\\_0617\\_fletf\\_uflpa-strategy.pdf](https://www.dhs.gov/sites/default/files/2022-06/22_0617_fletf_uflpa-strategy.pdf).

[4] UFLPA Entity List, U.S. Department of Homeland Security (last updated June 17, 2022), <https://www.dhs.gov/uflpa-entity-list>.

[5] Id.

[6] Operation Guidance for Importers, U.S. Customs and Border Protection (June 13, 2022), [https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP\\_Guidance\\_for\\_Importers\\_for\\_UFLPA\\_13\\_June\\_2022.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP_Guidance_for_Importers_for_UFLPA_13_June_2022.pdf).

[7] Trade Violations Reporting, U.S. Customs and Border Protection, <https://eallegations.cbp.gov/s/>.

[8] Guiding Principles on Business and Human Rights, United Nations Office of the High Commissioner for Human Rights (2011), [https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf).

[9] OECD Guidelines for Multinational Enterprises, Organization for Economic Co-operation and Development (2011), <http://mneguidelines.oecd.org/guidelines/>.

[10] Combating Forced Labor, International Labour Organization (2015), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_101171.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_101171.pdf).

[11] Comply Chain, U.S. Bureau of International Labor Affairs, <https://www.dol.gov/general/apps/ilab-comply-chain>.

[12] Responsibility Minerals Initiative (last updated 2022), <https://www.responsiblemineralsinitiative.org/>.

[13] Better Cotton (last updated 2022), <https://bettercotton.org/>.

[14] CAATSA Title III Section 321(b) FAQs, U.S. Department of Homeland Security (March 30, 2018), <https://www.dhs.gov/news/2018/03/30/caatsa-title-iii-section-321b-faqs>.

[15] Operation Guidance for Importers, U.S. Customs and Border Protection (June 13, 2022), [https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP\\_Guidance\\_for\\_Importers\\_for\\_UFLPA\\_13\\_June\\_2022.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP_Guidance_for_Importers_for_UFLPA_13_June_2022.pdf).

[16] Application for Relief, 65 FR 53576, <https://www.ecfr.gov/current/title-19/chapter-I/part-171/subpart-A>; Protests, 35 FR 13429, <https://www.ecfr.gov/current/title-19/chapter-I/part-174>.