



## Customs Puts Forced Labor Under a Spotlight

Leonard L. Fleisig

WILLCOX SAVAGE

The Uyghur Forced Labor Prevention Act (UFLPA) was signed into law by President Biden on December 23, 2021. It establishes a rebuttable presumption that the importation of goods produced, or manufactured wholly or in part, in the Xinjiang Uyghur Autonomous Region of the People's Republic of China, are the product of forced labor and prohibited from entry into the United States. The implementation by Customs and Border Protection (CBP) of the UFLPA with regard to Chinese-origin products from the region, combined with the existing prohibition (since 1930) against the importation of forced and/or convict labor goods under 19 USC §1307 produced anywhere in the world, serves to put the import community on notice that CBP has significantly tightened its enforcement of these prohibitions against convict/forced labor products. As noted below, Customs Trade Partnership Against Terrorism (CTPAT) members are also now about to face heightened scrutiny of the provisions of those importers' Minimum-Security Criteria (MSC) required for CTPAT validation.

Importers should be aware that CBP's new enforcement of the UFLPA and its ongoing enforcement of 19 USC § 1307 has created a comprehensive global enforcement program that applies not just to products made and shipped from the Uyghur region but for any product (or components) anywhere that is the product, in whole or in part, of forced labor.

Importers should be aware that there is a bifurcated process for dealing with CBP holds on goods suspected of violating 19 USC §1307 or the UFLPA. When CBP detains a shipment based upon a suspected violation of 19 USC §1307 from an area outside the scope of the UFLPA, it places

a Withhold Release Order (WRO) on the goods. A WRO is placed when information "reasonably but not conclusively" indicates that merchandise produced by forced labor is being, or is likely to be, imported into the United States. CBP will release the merchandise if the importer establishes "by satisfactory evidence" that the merchandise is admissible. Essentially the burden of proof falls on CBP to establish that the product is, in fact, the result of forced labor. However, when a shipment is held on suspicion that it is a product of forced labor under the UFLPA, that hold carries with it a "rebuttable presumption" that the goods are the product of forced labor that can only be overcome by "clear and convincing" evidence, a much more difficult hurdle for an importer to overcome. Essentially the burden of proof shifts from CBP to the importer and the importer will essentially be obligated to create supply chain mapping/tracing protocols and management protocols as part of its obligation to use reasonable care in its dealings with CBP.

Implementation of the UFLPA also places a new layer of responsibility on CTPAT participants. CTPAT's revised forced labor requirements went into effect on August 1, 2022, and enhanced MSC requirements go into full force on January 1, 2023. Specifically, Section 3.9 of Importers MSC, must have an active and complete "social compliance program" as that module transitions from a "should have" to a "must have" in January 2023. There are six new social compliance program requirements: risk-based mapping; a corporate Code of Conduct; evidence of implementation of social compliance tools; social compliance due diligence training; remediation plan in the event of violations; and a shared best practices program. Taken together

the additional requirements must be in place in order for the CTPAT validation process to move forward.

CBP's renewed vigor in enforcing prohibitions against the importation of the products of forced labor puts the import community on notice that it must proceed with heightened due diligence with regard to the importation of products from regions where forced labor remains a concern.

Leonard L. Fleisig  
Willcox Savage  
440 Monticello Avenue, Suite 2200  
Norfolk, Virginia 23510  
[lfleisig@wilsav.com](mailto:lfleisig@wilsav.com)  
(757) 628-5605