

## Import Requirements

# Supply Chain Diligence Under the UFLPA: What You Need to Know for Compliance

By **Andrew Bisbas**

The Uyghur Forced Labor Prevention Act (UFLPA) was signed into law in December 2021 to address the use of forced labor in Xinjiang, China. It establishes a rebuttable presumption that the importation of any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in Xinjiang, or produced by entities on the UFLPA Entity List, is prohibited.

Here is what companies need to know to ensure compliance with UFLPA import and supply chain requirements:

- The UFLPA's import prohibition went into force on June 21, 2022, and applies to all suppliers and steps in the supply chains of products entering the U.S., from raw materials to finished products.
- There is no de minimis exception for products with small or minor inputs/raw materials from Xinjiang.
- In terms of enforcement priorities, U.S. Customs and Border Protection (CBP) is employing a dynamic risk-based approach that prioritizes the highest-risk goods based on CBP's current data and intelligence. Currently, the highest-risk goods include those imported directly from Xinjiang into the U.S. and from entities on the UFLPA Entity List.
- High-priority sectors for enforcement include tomatoes, agricultural goods, cotton, textiles, apparel, chemicals, polysilicon, and silica-based products, including the raw materials used to make aluminum alloys, silicones, and polysilicon. CBP has also ramped up detentions of electronics, footwear, and various industrial/manufacturing materials under the UFLPA.
- In terms of enforcement, if CBP suspects a shipment contains Xinjiang-origin inputs based on the data and intelligence available to it, CBP will detain the shipment and inform the importer, at which point the importer will have the opportunity to export the merchandise or try to get it cleared and released into the U.S. by rebutting the presumption of forced labor or demonstrating that the supply chain does not involve Xinjiang or any parties on the UFLPA Entity List.
- To rebut the presumption of forced labor and have the merchandise released into the U.S., an importer must:
  - Demonstrate by clear and convincing evidence that the goods in question were not produced wholly or in part by forced labor.
  - Fully respond to all CBP requests for information about the goods under CBP review.
  - Demonstrate that it has fully complied with the government's UFLPA compliance guidance.
- The importer has 30 days from the day the merchandise is presented to CBP for examination at the U.S. port of entry to provide all the information necessary and answer all CBP questions in an effort to obtain an exception (or prove that there is no connection whatsoever between the supply chain in question and Xinjiang or parties on the UFLPA Entity List, in which case the UFLPA would not apply).
- Importantly, as a threshold matter, importers must comply with the government's UFLPA compliance guidance in order to be eligible for an exception to the rebuttable presumption.
- In order for an importer to demonstrate that it has fully complied with the government's UFLPA compliance guidance, the importer is expected to conduct thorough supply chain due diligence and institute reliable measures to ensure goods imported into the U.S. are not produced wholly or in part with forced labor (including convict labor, indentured labor, and indentured child labor). More specifically, such due diligence

includes tracing supply chains, identifying and communicating with supply chain partners and stakeholders, assessing risks, creating and disseminating a code of conduct, training agents and employees, monitoring compliance, remediating violations, and conducting independent reviews.

- Any exception that CBP grants to the rebuttable presumption must be reported to Congress, so the level of evidence that will be required to overcome the rebuttable presumption, namely “clear and convincing” evidence, is very high. No U.S. importer has successfully rebutted this presumption to date.
- To satisfy the “clear and convincing” evidentiary standard, an importer must:
  - Provide evidence mapping the entire supply chain, all entities involved, and all transport along the supply chain.
  - With respect to the entities in the supply chain subject to the UFLPA, provide lists of all workers, whether they are from Xinjiang and their residency status, hours worked and daily production output, and how and to whom wages are paid, as well as evidence that none of the workers were recruited/

transferred by the Chinese government or entities on the UFLPA Entity List and that every worker from Xinjiang is working voluntarily without menace or threat of penalty.

- In order to prove that goods and their inputs are sourced completely from outside Xinjiang and have no connection to the UFLPA Entity List (in which case the UFLPA would not apply), an importer must:
  - Trace and document the complete supply chain and be able to provide CBP with detailed descriptions of all the steps of the chain from raw materials to finished product, all the entities involved in these steps, and the roles and relationships of all the entities involved.
  - Provide evidence of the origin of each input of the finished good, using unique identifiers to track inputs where possible.

## Contact

Please contact the listed attorney for further information on the matters discussed herein.



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