



International Trade & Regulatory ADVISORY ■

JUNE 29, 2022

Uyghur Forced Labor Protection Act: Enforcement Strategy, Key Takeaways, and How to Prepare

The Uyghur Forced Labor Prevention Act (UFLPA) applies a rebuttable presumption that imports of merchandise produced wholly or in part in China's Xinjiang Uyghur Autonomous Region is made with forced labor and therefore prohibited to enter the United States, unless the importer can demonstrate a lack of forced labor through clear and convincing evidence. After U.S. Customs and Border Protection (CBP) held webinars and released its [Operational Guidance](#) for importers, the Forced Labor Enforcement Task Force (FLETF) issued its statutorily mandated [enforcement strategy](#) and released the UFLPA Entity List (which contains only previously blacklisted entities, but it is subject to modification under the UFLPA) just ahead of the June 21, 2022 implementation date.

Enforcement of the UFLPA

The [UFLPA](#) was enacted on December 23, 2021 to strengthen the existing prohibition against the importation into the United States of goods made wholly or in part with forced labor. Among its mandates, the UFLPA charged the FLETF, chaired by the U.S. Department of Homeland Security (DHS), to develop a strategy to meet these goals.

Enforcement of the UFLPA and application of the statute's rebuttable presumption apply to merchandise imported on or after June 21, 2022. CBP has stressed that it intends to vigorously enforce the UFLPA from that date. CBP has also said that enforcement will be risk based and systematic.

Shipments imported before June 21, 2022 and subject to an existing withhold release order (WRO) or finding will continue to be adjudicated through that process. The UFLPA will supersede current WROs related to Xinjiang for goods imported on or after June 21, 2022, and those goods will now be processed under UFLPA procedures and subject to detention, exclusion, or seizure.

CBP will issue notices to importers when enforcement actions are taken on their shipments. An importer may provide documentation to CBP to request an exception to the UFLPA's rebuttable presumption or to demonstrate that its goods are outside the scope of the UFLPA.

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

The Rebuttable Presumption

To rebut the presumption, the importer must provide “clear and convincing evidence” that the goods made in Xinjiang or with content made in Xinjiang were not made with forced labor. For guidance on this clear and convincing evidence standard, CBP has directed importers to the standard contained in the Countering America’s Adversaries Through Sanctions Act, which requires importers to establish that their supply chain does not contain labor from North Korean nationals.

The importer also needs to show that it has complied with due diligence requirements and has fully responded to all CBP inquiries. For instance, the UFLPA requires that importers demonstrate 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 from Xinjiang. This requirement extends throughout the entire supply chain, including goods that may be shipped from elsewhere in China and to third countries for further processing.

CBP must report to Congress whenever it finds that the presumption has been rebutted and grants an exception. The clear and convincing evidence required to rebut the presumption is a very high standard, and both CBP and the FLETF have expressed doubt about the validity of documentation and labor audits from producers in Xinjiang. The requirement to report to Congress on any exception granted, the high evidentiary standard, and the difficulty in obtaining reliable audits from the region mean that CBP will likely rarely grant exceptions.

Distinguishing Out-of-Scope Imports

Separately from rebutting the presumption for goods with Xinjiang content, importers can provide detailed supply chain documentation to show that a shipment is free of any input from Xinjiang or blacklisted entities and thus falls outside the scope of the UFLPA. CBP has characterized this review as distinct from the process required for obtaining an exception from the UFLPA.

To determine whether goods are outside the UFLPA’s scope, CBP may review documentation that shows that neither a finished product nor its raw materials or components had any connection to Xinjiang or any company on the UFLPA Entity List. Notably, the UFLPA does not require CBP to find this evidence to reach the level of “clear and convincing” or to report to Congress on the release of out-of-scope shipments. But the required documentation is still significant and may be difficult to obtain, especially for raw materials that are several tiers removed from an importer’s direct supplier.

Timeline

CBP has five business days following the date merchandise is presented for examination to CBP to determine whether to detain the merchandise. Merchandise not released within five days will be considered detained. Importers of detained merchandise may respond to the detention or export the goods within 30 days from the date the merchandise is presented for examination to CBP. The regulation sets forth that, within 30 days of presentation for examination, CBP should make a determination to exclude or release merchandise, with CBP’s failure to take any action being considered an exclusion. Goods denied entry may be exported.

Thus, in contrast to existing WRO procedures that allow three months, importers have only 30 days to provide evidence to rebut the UFLPA’s presumption or to demonstrate that imports are out of scope. CBP has indicated in its webinars that importers can request CBP to extend the 30-day deadline. Moreover, experience has shown that CBP may take more than 30 days to issue a decision under the UFLPA, especially if the importer provides documentation within the 30-day window.

Importers that receive an exclusion notice may file an administrative protest within 180 days of receiving the exclusion notice. CBP may also seize high-risk shipments, and then importers may file petitions according to the timelines set forth in 19 C.F.R. Part 171.

Documentation CBP May Require

To request an exception to the UFLPA's rebuttable presumption, an importer must comply with all guidance in the FLETF enforcement strategy, respond completely and substantively to all CBP inquiries, and clearly demonstrate the merchandise was not mined, produced, or manufactured wholly or in part by forced labor. Examples of the documentation are due diligence system information, supply chain tracing information, information on supply chain management measures, and evidence that goods originating in China were not mined, produced, or manufactured wholly or in part by forced labor.

To demonstrate that neither the goods nor the components were produced in Xinjiang or by entities on the UFLPA Entity List, the importer must provide supply chain tracing information (including evidence pertaining to overall supply chain, to the merchandise and any component thereof, and to the producer or manufacturer). Supporting documentation likely includes—for both finished imports and raw materials—purchase orders, invoices, packing lists, bills of materials, certificates of origin, payment records, inventory records, shipping records, and import/export records. Because this documentation is so extensive, importers should not wait until goods are detained to begin tracing their supply chains.

Importers may request a binding ruling for their supply chain to help provide certainty for future imports. If CBP determines there is no forced labor, the determination will apply to future imports using the approved supply chain.

High-Risk Commodities and Affected Sectors

The enforcement strategy outlines four high-priority sectors: apparel, cotton, silica-based products, and tomatoes. Downstream products from silica include aluminum alloys, silicone, and polysilicon, which are used in buildings, automobiles, petroleum, concrete, glass, ceramics, sealants, electronics, solar panels, and other goods. Several of the entities on the UFLPA Entity List are also in other sectors such as electronics, hair products, and rail transportation equipment. Goods in these sectors, especially from China, are most likely to be part of CBP's initial UFLPA enforcement efforts.

Conclusion

Guidance from CBP and the FLETF has been broad and high-level, but two things are clear: CBP plans to begin enforcing the UFLPA immediately and CBP will not recognize any de minimis exception for limited Xinjiang content. Importers should review their supply chains and compliance practices based on the FLETF's enforcement strategy and the guidance published by CBP. Importers in high-risk industries (cotton, apparel, tomatoes, and polysilicon) and importers of these industries' downstream products, in particular, should proactively develop and implement a supplier due diligence system and supply chain tracing in order to identify and address any Xinjiang content or other forced labor risk in their supply chain. If CBP issues a detention notice under the UFLPA, the importer will have a short window to provide the requested documentation. Our international trade team has significant experience in tracing international supply chains, forced labor enforcement, and the release of goods detained by CBP.

You can subscribe to future *International Trade & Regulatory* advisories and other Alston & Bird publications by completing our [publications subscription form](#).

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Jason M. Waite
202.239.3455
jason.waite@alston.com

Bobbi Jo (BJ) Shannon
202.239.3344
bj.shannon@alston.com

Kenneth G. Weigel
202.239.3431
ken.weigel@alston.com

Chunlian Yang
202.239.3490
lian.yang@alston.com

Brian Frey
202.239.3067
brian.frey@alston.com

John O'Hara
202.239.3131
john.ohara@alston.com

Lucas Queiroz Pires
202.239.3235
lucas.queirozpires@alston.com

Michael Press
202.239.3643
michael.press@alston.com

ALSTON & BIRD

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2022

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86.10.85927500
BRUSSELS: Rue Guimard 9 et Rue du Commerce 87 ■ 3rd Floor ■ 1000 Brussels ■ Brussels, 1000, BE ■ +32.2.550.3700 ■ Fax: +32.2.550.3719
CHARLOTTE: One South at The Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
DALLAS: Chase Tower ■ 2200 Ross Avenue ■ Suite 2300 ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
FORT WORTH: Bank of America Tower ■ 301 Commerce ■ Suite 3635 ■ Fort Worth, Texas, USA, 76102 ■ 214.922.3400 ■ Fax: 214.922.3899
LONDON: 4th Floor ■ Octagon Point, St. Paul's ■ 5 Cheapside ■ London, EC2V 6AA, UK ■ +44.0.20.3823.2225
LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, North Carolina, USA, 27601-3034 ■ 919.862.2200 ■ Fax: 919.862.2260
SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001
SILICON VALLEY: 1950 University Avenue ■ Suite 430 ■ East Palo Alto, California, USA 94303 ■ 650.838.2000 ■ Fax: 650.838.2001
WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333