



International Trade & Regulatory ADVISORY ■

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UFLPA Enforcement Updates

U.S. law prohibits the importation of goods produced with forced labor. The Uyghur Forced Labor Prevention Act (UFLPA) enhances the law by mandating a “rebuttable presumption” that any products made wholly or in part in China’s Xinjiang region or by any company on the UFLPA Entity List are made with forced labor and prohibited from U.S. import. Our previous advisory on the UFLPA enforcement strategy and how to prepare is available [here](#).

If U.S. Customs and Border Protection (CBP) detains a shipment that it suspects violates the UFLPA, the importer may choose to export the goods or to provide evidence to CBP to show that the goods have no connection to Xinjiang (the UFLPA is not applicable) or that any Xinjiang content did not involve forced labor (rebutting the presumption).

UFLPA Enforcement Updates

Targeted products

To date, CBP has targeted enforcement on goods containing cotton, polysilicon, tomatoes, polyvinyl chloride (PVC), and aluminum. CBP has targeted these sectors based on the government’s own research and investigations and on information received from the public. In particular, reports by the Helena Kennedy Centre for International Justice at the UK’s Sheffield Hallam University have closely preceded CBP’s actions against the subjects of those reports, including, recently, flooring containing PVC.

Thus, the university’s December 2022 report on forced labor in automobile production (including frames, electronics, batteries, glass, tires, aluminum, steel, and copper) has received significant attention. The Senate Finance Committee has sent questionnaires to major automakers, and legislators have questioned CBP’s enforcement of the new law, especially as it relates to the automobile sector.

Additionally, speakers at an April 18 Congressional-Executive Commission on China (CECC) hearing [reported](#) that “billions of dollars’ worth of raw materials, rare earth minerals, and products are exported from Xinjiang each year, including a significant percentage of global lithium-ion batteries, 20% of global production of calcium carbide (used to make PVC among other materials), 10% of global production of rayon (used to manufacture apparel and home good items), 9% of global beryllium deposits (a key rare earth mineral used for the production of satellite and aviation components), and 8% of global pepper production.”

The Department of Homeland Security (DHS) has [announced](#) that it is “looking closely at any other product category where forced labor may come into play.” Thus, importers should anticipate that the range of products CBP detains will continue to expand. Trade associations and interest groups have also been pressuring the UFLPA’s Forced Labor Enforcement Task Force to expand the [UFLPA Entity List](#), which could lead to a broader scope of targeted imports.

CBP’s enforcement dashboard

On March 14, CBP published a [dashboard](#) with statistics on shipments detained under the UFLPA. As of April 2023, the dashboard shows a total of 3,588 detentions (\$1,078 million total shipment value), of which 490 shipments have been excluded and 1,323 have been released. The dashboard also shows the value of detained shipments by country of origin and by industry. At its annual Trade Facilitation and Cargo Security Summit, held April 17 to 19 this year, CBP said these detentions represent 4.2% by value of all imports since the UFLPA’s effective date. The dashboard shows that the countries with the highest shipment values are Malaysia (\$576 million), Vietnam (\$381.90 million), and China (\$109.71 million). The industries with the highest number of shipment counts are electronics (1,753) (which includes solar panels made with polysilicon), apparel, footwear, and textiles (678), and industrial and manufacturing materials (510) (which includes vinyl flooring made with PVC).

The high value from third countries is a reminder that CBP is not only detaining products finished in China. CBP often detains goods finished in third countries because CBP suspects that a raw material or intermediate component is from Xinjiang. In other cases, goods may be transshipped through third countries, and DHS’s June 2022 [UFLPA implementation strategy](#) confirmed that combating illegal transshipment is a priority. CBP made this point at its recent summit too, noting that CBP is actively looking for goods from companies that were major Xinjiang producers before the UFLPA and have disappeared from Xinjiang but are now shipping the same goods from other locations.

This confirms the need for due diligence into all suppliers, not just those located in China. At its summit, CBP reminded importers not to wait for a detention to begin tracing their supply chains.

The de minimis debate

Low-value “de minimis” shipments, which are not subject to import duty and may enter without the filing of a formal entry, have attracted recent attention for many reasons. Historically, the greatest worry was that shippers divided up shipments to stay under the de minimis threshold specifically to avoid duty payment. CBP’s recent Section 321 and Type 86 pilot programs have revealed, however, that CBP aims to collect more data about these shipments to identify illegal narcotics shipments, goods subject to other government agency regulation, shipments divided up to avoid trade remedy duty (especially Section 301 duty on Chinese goods), and, as [reported](#) at the April 18 CECC hearing, to find forced labor in supply chains.

De minimis shipments are often direct-to-consumer shipments of goods purchased online. Individual consumers may not be aware of the risks of forced labor in supply chains, and foreign shippers may use de minimis rules to circumvent UFLPA scrutiny. At its summit, CBP assured the trade community that it is targeting de minimis shipments for UFLPA compliance too.

Documentation requirements

On February 23, CBP published [Best Practices for Applicability Reviews](#) and [Guidance on Executive Summaries and Sample Tables of Contents](#), guiding importers on the types of documentation CBP requires of them to show that a supply chain is free of Xinjiang content. At its summit, CBP confirmed that it also intends to publish implementing

regulations for the UFLPA but indicated these regulations are still in the early stages. Such regulations would be published in proposed form and subject to notice and public comment before they could take effect.

Importers have continued to ask for more guidance, noting the frustration of trying to “prove a negative,” when CBP alleges that a supply chain may contain Xinjiang content. At the summit, Maya Kumar, acting deputy executive director of the Trade Remedy Law Enforcement Directorate, told importers that CBP is aware that the UFLPA demands a “deeper” level of tracing than CBP has ever required, which is challenging for CBP too. Bruce Coulliette, chief of CBP’s Trade Admissibility Branch, said the UFLPA’s standards are “probably the highest bar there is.”

While most importers are seeking to prove that the UFLPA does not apply to their products, Eric Choy, executive director of CBP’s Trade Remedy Law Enforcement Directorate, confirmed that three importers so far have requested exception reviews. They are importers of agricultural and pharmaceutical products, and all three requests are still pending. CBP has not granted or denied any UFLPA exception yet.

New technologies

On March 14 and 15, CBP hosted a Forced Labor Technical Expo, dedicated to sharing the best practices from around the world on the latest technologies in supply chain transparency. Nineteen presenters discussed technological approaches to supply chain mapping, forensic testing of raw materials and products, and researching companies and individuals in supply chains.

Similarly, at its summit, CBP hosted a breakout session on leveraging technologies for supply chain due diligence. New technologies can offer more multi-tier visibility into supply chains, and panelists described layering different technologies together, each of which addresses a different piece of the problem, as a part of a strong due diligence strategy. Panelists also noted that supply chain tracing is important beyond the UFLPA, and investments in technology now could help importers comply with whatever comes next.

Technology can help reduce potential, or identify existing, noncompliance risk. For instance, on November 20, 2022, [Bloomberg reported](#) that apparel shipped to U.S. consumers by fast fashion giant Shein had Xinjiang cotton, based on the results of a laboratory test. On February 9, [U.S. senators posed several questions](#) to Shein’s CEO to confirm Shein’s supply chain ties to Xinjiang, and the U.S.-China Economic and Security Review Commission [reported](#) its concern that Shein (and perhaps other fast fashion producers, like Temu) may be sourcing goods in violation of the UFLPA.

Importantly, CBP emphasized that no technology is a “silver bullet.” Technologies are not a substitute for supply chain documents in the case of a detention.

Due diligence for CTPAT members

At last year’s summit, CBP previewed new minimum security criteria for Customs-Trade Partnership Against Terrorism (CTPAT) members, including six new criteria for Trade Compliance Members and a social compliance program requirement for other CTPAT partners.

At this year’s summit, CBP discussed the intersection of CTPAT’s goals and supply chain tracing for forced labor. Even CTPAT participants, however, may still see repeated detentions of goods from certain suppliers. CBP noted that “every entry stands on its own,” and that, if CBP has “strong enough” information about a particular supply chain, those shipments will always be subject to review. CBP suggested that, in certain cases, importers may need to evaluate changes to their supply chains to minimize the number of detentions and reviews.

At the same time, CBP said that a past detention does not mean an importer's future shipments will be stopped, because CBP is targeting products and supply chains with suspected Xinjiang content or Entity List connections. CBP is "not targeting importers."

Automated detention process

On April 21, CBP announced that it will deploy to its Automated Commercial Environment (ACE) newly automated Form 6015D detention notices, starting on May 20, 2023. This enhancement should give importers the ability to view, search, and respond to CBP detention notices using the ACE forms application within the ACE secure data portal. The automated notices are an administrative change with no impact on which shipments CBP will detain, but the process is significant, because CBP hopes it will better standardize detention procedures across the various U.S. ports of entry. Automated notices should also give importers more timely notice of detentions.

Conclusion

In a recent interview with *The Wall Street Journal*, DHS Undersecretary Robert Silvers stated that "compliance professionals—and, indeed, C-suite executives—need to understand that forced labor is now a top-tier compliance issue. . . . [A]nticorruption and sanctions compliance have come to be standard pillars of corporate compliance programs. Forced labor needs to be one of those pillars as well."

The volume of detentions since the UFLPA took effect, the expanding scope of targeted products, and the high bar for successful detention responses show why this level of corporate commitment is important. Moreover, CBP noted at its summit that the UFLPA targets forced labor from one specific region of the world, but forced labor occurs across the globe. CBP stated that it currently has 53 active investigations under its traditional withhold release order (WRO) framework, and it is possible that future UFLPA-styled legislation could create presumptions about other world regions.

Prior to receiving a detention notice, U.S. importers should review their internal diligence efforts, production processes, and raw materials sources, and identify where additional actions may be needed, keeping in mind that tracing must extend beyond first-tier suppliers, all the way back to raw material sources.

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