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Complying with the Uyghur Forced Labor Prevention Act's Strict Supply Chain Rules

The [Uyghur Forced Labor Prevention Act](#) (“UFLPA” or “Act”), which took effect last month, ushers in a new era of supply chain diligence for importers. The Act creates a rebuttable presumption that any goods produced in whole or in part in the Xinjiang Uyghur Autonomous Region (“XUAR”) of the People’s Republic of China (“PRC”), or by entities identified by the U.S. government on the UFLPA [Entity List](#) (“Entity List”), are presumed to be made with forced labor and thus are prohibited from entry into the United States under [Section 307 of the Tariff Act of 1930 \(19 U.S.C. § 1307\)](#). Notably, the presumption applies to downstream products that incorporate restricted goods, regardless of where the downstream products are made.

U.S. Customs and Border Protection (“CBP”) is now authorized to detain and exclude and/or seize goods that it suspects were produced in the XUAR or by entities on the Entity List.

Importers whose supply chains have links to the XUAR and China should be aware of the implications of UFLPA enforcement, including with respect to due diligence considerations, supply chain tracing and management, and the evidence required to overcome the UFLPA's rebuttable presumption. There is no grace period for enforcement.

UFLPA OVERVIEW

President Biden signed the [UFLPA](#) into law on December 23, 2021. Effective on June 21, 2022, the UFLPA established a rebuttable presumption that the importation of any “goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part” in the XUAR, or produced by entities designated by the Forced Labor Enforcement Task Force (“FLETF”) as involved in specified XUAR-related activity, is prohibited by Section 307 of the Tariff Act of 1930, which prohibits the importation of items made from forced labor. The presumption applies unless CBP determines that the importer completely and substantively responded to all CBP inquiries, fully complied with FLETF’s guidance, and established by clear and convincing evidence that the goods were not produced using forced labor.

Importers should consult the FLETF’s [Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China](#) (“FLETF Strategy”), published June 17, 2022, by the U.S. Department of Homeland Security (“DHS”). The FLETF Strategy provides guidance to importers on due diligence, supply chain tracing and management, and the evidence required to show that goods do not fall within the scope of the UFLPA or, if the goods are within scope,

that there is a sufficient basis (under a “clear and convincing” standard) to overcome the rebuttable presumption that they are the product of forced labor.

Additionally, CBP issued [Operational Guidance for Importers](#) (“Operational Guidance”) on June 13, 2022, which serves as a complement to the FLETF Strategy.

Although the FLETF Strategy and Operational Guidance do not specifically delineate the “clear and convincing” evidence standard, CBP officials have stated this standard is higher than a “preponderance of the evidence” standard. During multiple public webinars prior to the June 21, 2022 effective date of the UFLPA, CBP officials directed interested parties to previous CBP [decisions](#) applying the Countering America’s Adversaries Through Sanctions Act (“CAATSA”) (regarding imports from North Korea) for an interpretation of the “clear and convincing” evidence standard in the forced labor context.

The FLETF Strategy and the Operational Guidance call for importers to track information throughout their supply chain. Importers will need detailed information on their entire supply chain process—from raw materials to imported goods and components.

FLETF STRATEGY

As explained in DHS’ [FAQ guidance](#) regarding the UFLPA, the [FLETF Strategy](#) provides: (1) a comprehensive assessment of the risk of importing goods made or produced with forced labor in the PRC; (2) the [UFLPA Entity List](#) and an evaluation and description of forced labor schemes; (3) recommendations on how to trace goods; (4) a description of CBP’s plan to enhance its use of legal authorities; (5) additional resources to prevent the entry of goods made with forced labor into the United States; (6) importer guidance; and (7) the FLETF’s plan to collaborate with other organizations, including NGOs and private-sector entities.

UFLPA Entity List

Section II of the FLETF Strategy sets out the UFLPA Entity List, designating a large number of XUAR-based and XUAR-linked entities that produce items such as textiles, clothing, electronics, hair products, silica-based products, touchscreens, polysilicon, and cotton.

Importer Guidance

A key aspect of the FLETF Strategy is Section VI, “Guidance to Importers.” This section provides guidance regarding how to navigate the UFLPA restrictions and, as needed, seek an exception to the rebuttable presumption.

Establishing that items are not produced in the XUAR or by UFLPA Entity List entities

As a threshold matter, the guidance makes clear that importers can seek to establish that goods targeted for CBP enforcement “are not in any way subject to the UFLPA, i.e., its importations, and inputs, are sourced completely from outside Xinjiang and have no connection to the UFLPA Entity List.” Importers can establish this through supply chain tracing, supported by documentation providing a “detailed description” of the supply chain of the item and its components, along with the provenance (tracked back to raw materials) of each component. As an alternative to supply chain tracing, importers can use DNA traceability or isotopic testing.

Measures needed to overcome the rebuttable presumption

With respect to items sourced from the XUAR or from UFLPA Entity List-designated entities, Section VI of the guidance sets out the required measures for importers to overcome the rebuttable presumption.

This includes steps that the importer must take to comply with the FLETF guidance, including:

- Due diligence (including through engagement of stakeholders, risk assessment, implementation of a code of conduct, communication and training across the supply chain, monitoring of compliance, remediation of violations, independent third-party review, and public reporting regarding the due diligence system)
- Supply chain tracing (including through mapping the supply chain back to raw materials and establishing the chain of custody)
- Supply chain management (including through a process to vet potential suppliers, incorporation of forced labor-related terms into supply contracts, and use of an information system to manage supply chain data)

Furthermore, the guidance provides details regarding the evidence needed to overcome the rebuttable presumption, including:

- Mapping of the entire supply chain
- A list of all workers engaged in production of the items at an entity subject to the rebuttable presumption, along with wage information, residency status, and evidence to substantiate that output is consistent with the number of documented workers
- Evidence regarding the voluntary recruitment of the workers

CBP OPERATIONAL GUIDANCE

The CBP's [Operational Guidance](#) complements the FLETF Strategy. It outlines CBP's importation process and enforcement of the Act by describing CBP's approach to detentions, exclusions, and seizures of goods. It sets out steps an importer must take in requesting an exception to the rebuttable presumption, and it offers further resources for supply chain due diligence, tracing, and management.

The Operational Guidance includes a section on the "Type and Nature of Information that May Be Required by CBP" if the importer requests an exception to the UFLPA's rebuttable presumption. The following information is not an exhaustive list, and importers must respond completely and substantively to all CBP inquiries. The following five categories are intended to complement the FLETF Strategy:

- Due diligence system information (i.e., documentation showing a due diligence system or process)
- Supply chain tracing information (i.e., documentation tracing the supply chain from raw materials to the imported goods)
- Information on supply chain management measures (i.e., documentation on supply chain management measures)
- Evidence goods were not mined, produced, or manufactured wholly or in part in the XUAR
- Evidence goods originating in China were not mined, produced, or manufactured wholly or in part by forced labor

The Operational Guidance also provides specific guidance for supply chain documentation for importers who deal in the following high-risk commodities:

- Cotton
- Polysilicon
- Tomatoes

As explained in the Operational Guidance and DHS' FAQ guidance, the UFLPA requires CBP to presume that goods manufactured in the XUAR or by entities identified by the [Entity List](#) violate 19 U.S.C. § 1307. Thus, the rebuttable presumption applies to goods shipped from other countries if any input of those goods was produced in the XUAR. Notably, the UFLPA does not require CBP to issue [Withhold Release Orders](#) or Findings pursuant to the regulations under 19 U.S.C. § 1307.

KEY TAKEAWAYS

The implementation of the UFLPA marks a major development in the context of supply chain diligence. Importers with potential exposure to UFLPA-restricted items should consider adopting the measures identified in Section VI of the FLETF Strategy with respect to due diligence, supply chain tracing, and supply chain management.

Notably, importers of items targeted for enforcement are required to furnish a substantial amount of information confirming that the subject items are not sourced from the XUAR or UFLPA Entity List-designated entities or, if the items are from such sources, are required to furnish voluminous evidence establishing that they are not the product of forced labor.

For more information or assistance, contact [Anthony Rapa](#), [Matthew J. Thomas](#), [Patrick F. Collins](#), or a member of Blank Rome's [International Trade](#) practice.

Anthony Rapa
202.420.2683 | anthony.rapa@blankrome.com

Matthew J. Thomas
202.772.5971 | matthew.thomas@blankrome.com

Patrick F. Collins
202.420.2594 | patrick.collins@blankrome.com