

# INTERNATIONAL BUSINESS ALERT

JULY 21, 2022

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## The Uyghur Forced Labor Prevention Act: Practical approaches to compliance for US importers

The [Uyghur Forced Labor Prevention Act](#) (UFLPA) was passed at the end of 2021 to deny importation of goods from the Xinjiang Uyghur Autonomous Region of the People's Republic of China. Specifically, the UFLPA directs the Customs and Border Protection agency (CBP) to deny entry (through seizure) of goods imported to the United States that are "wholly or in part" originating from the Xinjiang Uyghur Autonomous Region. The denied goods are presumed to include inputs from the use of forced labor in the region or other regions of China. It is important for those in the trade community who import from China to review the most recent guidance on the UFLPA issued by the U.S. government. Additionally, we offer recommended best practices for effective trade compliance with the UFLPA.

The UFLPA expands on existing authority that the U.S. government has to restrict import of items mined, produced or manufactured wholly or in part using forced labor. The CBP currently enforces these restrictions through Withhold Release Orders (WROs) covering identified classes of goods and sources by country, region and/or producers (e.g. [WRO on polysilica](#)). The UFLPA does not require specific issuance of a WRO to detain goods and increases the standard for an importer to rebut the presumption that imported goods contain forced labor inputs.

### UFLPA implementation guidance for importers

The UFLPA became effective on June 21, 2022. In conjunction with this effective date, the U.S. government issued [additional guidance materials](#) and a series of [designations of parties in China](#) that are presumed to be

engaged in forced labor practices, regardless of their physical location in Xinjiang.

The UFLPA guidance issued by the U.S. Department of Homeland Security (DHS) provides the following:

- Expected due diligence by importers, including:
  - Engagement by importer with suppliers and other supply chain participants.
  - Assessment of forced labor risks along the supply chain, from raw material inputs to production of the product to be imported into the U.S.
  - Adoption by importer of a written supplier code of conduct forbidding the use of forced labor.
  - Training on forced labor risks for importer employees and agents who select and interact with suppliers.
  - Monitoring of supplier compliance with the code of conduct.
  - Obtaining evidence of supplier remediation of any forced labor conditions identified or termination of the supplier.
  - Obtaining independent verification of the implementation and effectiveness of importer's due diligence.
  - Publication and public engagement by importer regarding its due diligence system.
  - Utilization of effective supply chain tracing and supply chain management measures to support due diligence processes.
- The type, nature and extent of evidence that can overcome presumption that goods originating in China were not created "wholly or in part" in Xinjiang or are not otherwise products of forced labor programs, including:
  - Evidence regarding inputs from China generally or Xinjiang specifically, including identity and location of all parties.
  - Evidence permitting tracing of specific materials or component inputs.
  - Evidence permitting tracing to specific manufacturing, mining or production sites.
  - Evidence regarding internal controls, labor and recruitment policies, conduct of audits or other site specific information demonstrating verification of no forced labor inputs.

### **Best practices on UFLPA compliance**

- **Using a risk-based approach to conduct due diligence:** DHS implementation guidance notes designated high-risk products/ industries (e.g. cotton, polysilica, tomatoes). Additional public information will be issued identifying other potential high-risk products, with recent reports flagging vinyl flooring and batteries as products of

concern. Importers should maintain awareness of red flags for forced labor in their product lines and use those to guide how to prioritize their due diligence.

- **Addressing inputs from poverty alleviation and pairing assistance programs in Chinese regions other than Xinjiang:** Suppliers in China that use these programs may be considered presumed to have forced labor inputs. Importers will need to factor this into their due diligence on suppliers not sourcing products directly from Xinjiang.
- **Effective supply chain tracing:** Importers likely will need to use a combination of direct questionnaires to first tier suppliers, contractual flow-down requirements and third-party produced due diligence and/or screening of UFLPA listed entities and all parties identified in the supply chain. Importers should consider using a risk-based approach to prioritize their reviews that accounts for the location of suppliers, high-risk industry/products or inputs, and other red flags.
- **Documentation needed to support rebutting presumption of forced labor input:** The CBP standard will be very difficult to meet, but the minimum requirement likely would be documentation that provides the following for each tier of supplier:
  - Name and address of specific location from which items were sourced.
  - Description of item supplied.
  - Purchaser of item supplied.
  - Date of transaction and value of transaction.
  - Evidence of controls or risk mitigation measure taken by specific supplier and/or site location to minimize risk of forced labor inputs.
- **Other risk mitigation:** Importers may consider amending contractual provisions in their supply agreements or standard terms and conditions on representations and warranties regarding compliance with laws, indemnity and/or force majeure events. Additional considerations may include audit requirements for high-risk or significant suppliers. Ultimately, some importers may wish to seek alternative sourcing that reduces forced labor input risks.

For more information on the UFLPA, please contact [Matt Lapin](#) or any member of Porter Wright's [International Business & Trade Practice Group](#).

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