

Alert | International Trade



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Uyghur Forced Labor Prevention Act Takes Effect: What Importers Need to Know

The Uyghur Forced Labor Prevention Act (UFLPA) is in effect as of June 21, 2022. Congress passed the Act in December 2021 to increase enforcement of longstanding U.S. policy prohibiting the importation of goods, or components thereof, made with forced labor and to create a “rebuttable presumption” that merchandise from the Xinjiang Uyghur Autonomous Region (XUAR) or by an entity on the UFLPA Entity List is made with forced labor and thereby prohibited from entry into the United States. The rebuttable presumption applies to downstream products that incorporate inputs from XUAR, regardless of where the finished products are manufactured, including goods from outside XUAR in the People’s Republic of China (PRC), or in third countries. There is no *de minimis* provision in the law – any prohibited content, no matter how small, will make a product subject to the rebuttable presumption made by the law. If an importer can demonstrate by “clear and convincing” evidence that the goods were not produced wholly or in part by forced labor, U.S. Customs and Border Protection (CBP) will grant an “exception” to the presumption. The UFLPA provides for increased detentions and seizures of merchandise and potential civil and criminal penalties. See prior [GT Alerts on the UFLPA](#).

Pursuant to the UFLPA, a multi-agency task force chaired by the Department of Homeland Security was mandated to develop a strategy for the Act’s implementation. On June 17, in anticipation of the June 21 effective date, DHS released the “Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China” (*Enforcement Strategy*), which includes:

- An assessment of risk of importing goods mined, produced, or manufactured, wholly or in part, in the PRC; according to the strategy, complex supply chains that touch XUAR are “highly susceptible to contamination by goods made using forced labor.”
- A **list of entities affiliated with forced labor**; therefore, their products are subject to the presumption that their goods are prohibited from entry. The Entity list will be updated multiple times per year and will be publicly available.
- A list of high priority sectors and products including apparel and textiles, cotton and cotton products, polysilicon, and tomato products. Other products listed include footwear, nails, electronics, and toys.
- Guidance to importers advising that companies need heightened due diligence to ensure compliance with UFLPA and to identify potential supply chain exposure to Xinjiang. Supply chain tracing is the general method to demonstrate that goods are free of inputs from Xinjiang, but CBP expects that barriers to supply chain tracing may make it difficult for importers to be compliant and has stated that third-party audits alone are insufficient to demonstrate due diligence.

Should CBP detain goods on suspicion of being made wholly or in part with forced labor, the importer has options. It can re-export the goods (up until CBP seizes them); it can abandon the goods; it can seek an “exception” for the goods, to get them released from CBP custody; it can also provide information to CBP demonstrating that the goods are not subject in any way to the Act. The evidence and documentation needed for the “exception” must be “clear and convincing.”

It should be noted that in order to obtain an “exception” for goods that have been detained, an importer must meet all three of the following requirements:

- Provide clear and convincing evidence that the detained goods were not made in whole or in part with forced labor, or were sourced from entities on the Entity List.
- Fully and substantively respond to any questions from CBP.
- Show that it has complied with all of the requirements set out in the *Enforcement Strategy* and CBP’s *Operational Guidance* (i.e., due diligence, supply chain tracing and management, etc.).

The *Enforcement Strategy* document provides importers with guidance in the following three areas:

- Due diligence, effective supply chain tracing, and supply chain management measures to ensure that no goods violating the Act enter the importer’s supply chain.
- The type, nature, and extent of evidence that demonstrates that goods originating in China were not mined (or grown), produced, or manufactured wholly or in part in Xinjiang.
- The type, nature, and extent of evidence that demonstrates goods originating in China, including goods detained under Section 307 of the Tariff Act, were not mined (or grown), produced, or manufactured wholly or in part with forced labor.

CBP has made it clear that should there be a detention, participants in the Customs and Trade Partnership Against Terrorism program (C-TPAT) will be prioritized for review of submissions to rebut the presumption that the merchandise was made with forced labor.

Importers may wish to plan for contingencies should CBP detain imported merchandise, map complex supply chains and review purchase agreements and supplier codes of conduct.

On June 28, Greenberg Traurig is hosting a webinar on the UFLPA. [Click here to register.](#)

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