

Checklist: How to Navigate the Uyghur Forced Labor Prevention Act

By PracticalESG.com

The Uyghur Forced Labor Prevention Act (the “Act” or UFLPA) was signed by President Biden on December 23, 2021, and went into full effect on June 21, 2022. This law limits imports from the Xinjiang Uyghur Autonomous Region (XUAR) and provides stringent guidelines for companies doing business in Xinjiang or with certain identified entities. The most significant aspect of the UFLPA is that the U.S. government can — as of the effective date — wholly ban importation of goods, products and materials that U.S. Customs and Border Protection (CBP) deems to be manufactured in the XUAR or with certain entities associated with the XUAR.

- 1. What is the Uyghur Forced Labor Prevention Act?** The Act is designed to prevent U.S. companies from importing materials, goods or products made with forced labor in the Xinjiang region of China. China allegedly has been sponsoring the use of forced and coerced labor among the Uyghur and other minority populations through government “work programs.”

Previously, high-risk products originating in Xinjiang were potentially subject to the standards process for CBP Withhold Release Orders (WROs); however, the Act created new requirements for:

- 1) All goods produced in and imported from the XUAR;
- 2) All goods that contain components produced in the XUAR; and
- 3) Any goods that are produced in association with any of the named entities on the UFLPA Entity List.

All such merchandise is flagged and subject to detention or seizure. The law establishes a rebuttable presumption that any such goods were produced using forced labor and may not enter the United States. Importers can overcome this presumption through “clear and convincing evidence” that either 1) their shipment is not subject to the law or 2) an exception should be made.

There are many agencies involved in enforcing the Act, although the primary authority is the Department of Homeland Security through Immigration and Customs Enforcement and CBP. CBP is primarily responsible for screening

incoming shipments and will be the primary agency discussed in this checklist. There are also several documents that are central to the Act and its enforcement:

- A. [H.R.6256 The Uyghur Forced Labor Prevention Act](#) — This is the statutory authority and framework laying out the goals of the Act and directing agencies to take action to achieve those goals.
 - B. [FLETF Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China](#) — This document is from the Forced Labor Enforcement Task Force (FLETF), a subsection of the Department of Justice. It is a report to Congress containing their overall strategy and guidance on enforcing the Act. This document also contains the UFLA Entity List discussed below as well as guidance on what the agency considers to be effective due diligence.
 - C. [U.S. Customs and Border Protection Operational Guidance for Importers](#) — This is CBP’s document regarding the processes for detainment and release along with acceptable evidence for rebutting the Act’s rebuttable presumption discussed above.
- 2. Who is Affected by the Act?** Any company importing any materials, components, goods or products from the XUAR will be subject to potential enforcement under the Act. Imports with any known ties to an entity listed in the UFLPA Entity List may be detained. This means that if your company’s supply chain touches the Xinjiang region in any way, you need to be prepared to submit ample evidence to CBP that your imports were not made using forced labor.

The UFLPA Entity List is to be updated on an annual basis, so your company will need to review that list at least annually to ensure compliance yearly. Additionally, the UFLPA has identified a number of “high priority” sectors in the Xinjiang region. Given the limited nature of CBP resources, these sectors will likely be given heightened enforcement. These sectors are:

- 1) Apparel;
- 2) Cotton and cotton products;
- 3) Polysilicon and polysilicon-based products; and

4) Tomatoes and downstream products.

Anyone importing products in these sectors will need to conduct due diligence that may differ from existing due diligence processes, gather evidence that tracks their supply chain and be able to prove to CBP that their products didn't originate from the Xinjiang region or that they qualify for an exception.

3. CBP Procedure and Timeline. The Act introduces a presumption that all goods within its scope were produced using forced labor. As a result, the default position of CBP is that these goods will not be allowed to enter the United States. CBP's process under the UFLPA differs from the process for traditional WROs in a few respects: timing and evidentiary burden (the presumption is rebuttable through "clear and convincing evidence" discussed below). The process and timeline for seizure and appeal are as follows:

1. After your shipment arrives at a U.S. port, CBP will have five business days to determine if the shipment should be released or detained.
2. If CBP determines that a shipment should be detained, they will issue a detention notice within five days of that decision stating the reason for the detention and instructing you to submit evidence to rebut the presumption.
3. Companies have 30 days from the date the merchandise is presented to CBP to challenge the detention either on the grounds that 1) the shipment is not subject to the UFLPA or 2) that the shipment should be granted an exception from the UFLPA.
4. Within 30 days from the date the merchandise is presented to CBP, CBP shall make a final determination on whether the merchandise should be admitted.
5. A company may protest the final decision within 180 days of CBP issuing its final decision.
6. CBP has 30 days to respond to a company's protest. If CBP does not respond, then after the 30th day, the protest will be deemed denied.
7. A company then has 180 days from the denial of protest to file a court challenge to CBP's decision.

8. If CBP grants an exception for a company, then they must submit a publicly available report to Congress within 30 days of granting the exception. The report must outline all the evidence supporting the exception; however, companies can request that certain information be excluded if it fits any exemption contained in the Freedom of Information Act.

This timeframe is shorter than the usual timeframe for WROs. This means that if a company believes that its shipments are at risk of detention, it should have ample evidence at the ready to present to CBP.

4. **Evidentiary Considerations.** The standard of proof under the Act is “clear and convincing evidence.” Typical standards of proof run a gamut from a preponderance of the evidence being the easiest to prove and beyond a reasonable doubt being the most difficult. “Clear and convincing evidence” lies in between these two and requires the evidence to be “highly and substantially more probable to be true rather than untrue.” This means that the evidence will have to be highly persuasive to convince CBP to release your shipment and is probably a higher bar than most companies are accustomed to in relation to social/supply chain audits or traceability systems.

CBP asks that all evidence be submitted in English to expedite the review process. Additionally, it should be noted that CBP has acknowledged that there may be circumstances when companies cannot conduct adequate due diligence because of a lack of transparency in the Xinjiang region. Chinese government efforts have frustrated attempts by companies to properly audit supply chains and stand as major roadblocks to due diligence efforts. In these cases, CBP will NOT release a company’s shipment. This is because the burden of proof under the Act lies with the company attempting to rebut the presumption that their goods were made with forced labor. If due diligence can’t be properly done, then the company is left without proof that would rebut the presumption. As such, the presumption stands and the goods will not be allowed into the country.

CBP has said that audits alone will not be enough to prove that forced labor was not used because there is a significant risk of the Chinese government tampering with the audit process. CPB has stated that companies should identify any shipments that use an identical supply chain to shipments

previously reviewed by CBP pursuant to the Act and deemed admissible by CBP, then this will facilitate a faster release of identical shipments.

- 5. What Evidence to Provide.** The evidence you'll need to present largely depends on which argument you're making. A company can either argue that its shipment is 1) not subject to the UFLPA or 2) should be granted an exception.

For claims under Category 1, companies will need to prove that their shipment is not subject to the UFLPA by showing clear and convincing evidence of supply chain mapping indicating that the goods in question were not mined, produced, or manufactured wholly or in part in the Xinjiang region. To do this, a company will need to show where the merchandise and its components originated in accordance with the CBP Guidance below.

Companies under Category 2 that want to import merchandise from the Xinjiang region will have to rebut the presumption that such merchandise was made using forced labor. To do so, a company will have to demonstrate through clear and convincing evidence:

- 1) Their compliance with all of the Act's regulations and FLETF's due diligence guidance;
- 2) That they responded "completely and substantively" to all agency inquiries; and
- 3) That their goods were not produced with forced labor.

CBP Guidance on Evidence. To prove their claims, companies must make a sufficient showing under each category of evidence:

- A) Due diligence system information;
- B) Supply chain tracing information;
- C) Information on supply chain measurement measures;
- D) Evidence goods were not mined, produced, or manufactured wholly or in part in the XUAR; and
- E) Evidence that goods originating in China were not mined, produced, or manufactured wholly or in part by forced labor.

CBP Guidance provides specific examples of what types of information fall into these categories; however, the list is not exhaustive. Below are CBP's given examples taken directly from [CBP's Guidance](#) beginning on page 13. Our notes are added in brackets.

A) Due Diligence System Information

Documentation showing a due diligence system or process that may include the following:

- Engagement with suppliers and other stakeholders to assess and address forced labor risk;
- Mapping of the supply chain and an assessment of forced labor risks along the supply chain from raw materials to production of the imported good;
- Written supplier code of conduct forbidding the use of forced labor and addressing the risk of use of Chinese government labor schemes;
- Training on forced labor risks for employees and agents who select and interact with suppliers;
- Monitoring of supplier compliance with the code of conduct;
- Remediation of any forced labor conditions identified or termination of the supplier relationship if remediation is not possible or is not timely completed;
- Independent verification of the implementation and effectiveness of the due diligence system; and
- Reporting performance and engagement publicly on its due diligence system.

B) Supply Chain Tracing Information

Documentation tracing the supply chain from raw materials to the imported good. This following documentation is provided to illustrate the types of information that importers may provide, or that may be requested by CBP, to demonstrate their imports are either not subject to

the UFLPA because their supply chains are wholly outside of Xinjiang and unconnected to listed entities, or to show that their imports are free of forced labor and in compliance with the UFLPA.

Evidence Pertaining to Overall Supply Chain

- Detailed description of the company’s supply chain including imported merchandise and components thereof, including all stages of mining, production, or manufacture;
- The role(s) of the entities in the supply chain, including shippers and exporters: for example, CBP will need to determine whether a supplier is also a manufacturer; [Give as highly detailed information as possible regarding the entities in your supply chain. While CBP will make the final determinations as to how these entities interact and what their roles are, the information you provide should be as transparent as possible.]
- For entities in the supply chain, identify any relationships in accordance with [19 C.F.R. § 152.102\(g\)](#); [This regulation defines “Related Persons” and therefore determines what relationships you must identify for CBP.]
- A list of suppliers associated with each step of the production process, including names and contact information (addresses, email addresses, and phone number);
- Affidavits from each company or entity involved in the production process.

Evidence Pertaining to Merchandise or Any Component Thereof

- Purchase orders
- Invoices for all suppliers and sub-suppliers
- Packing list
- Bills of materials
- Certificates of origin
- Payment records

- Seller’s inventory records, including dock/warehouse receipts
- Shipping records, including manifests, bills of lading (*e.g.*, airway/vessel/trucking)
- Buyer’s inventory records, including dock/warehouse receipts
- Invoices and receipts for all suppliers and sub-suppliers
- Import/export records

Evidence Pertaining to Miner, Producer, or Manufacturer

- Evidence listed above pertaining to merchandise or any component thereof for raw materials. See below for specific examples related to high-risk commodities, such as cotton, polysilicon, and tomatoes.
- Mining, production, or manufacturing records including:
 - Documents allowing CBP to trace raw materials to merchandise mined, produced, or manufactured
 - Production orders
 - Reports on factory production capacity for the merchandise
 - Reports on factory site visits by the importer, a downstream supplier sourcing from this factory, or a third party
 - Evidence that the volume of inputs of component materials matches the volume of output for the merchandise produced
- Any other evidence to demonstrate that a good was not mined, produced, or manufactured wholly or in part by forced labor

C) Information on Supply Chain Management Measures

Documentation on supply chain management measures, which may include:

- Internal controls to prevent or mitigate forced labor risk and remediate any use of forced labor identified in the mining, production, or manufacture of imported goods.

- An importer should be able to demonstrate that documents provided are part of an operating system or an accounting system that includes audited financial statements.

D) Evidence Goods Were Not Mined, Produced, or Manufactured Wholly or In Part in the Xinjiang Uyghur Autonomous Region

- Documentation that traces the supply chain for the goods (refer to Section IV, B on supply chain tracing for information on the types of documents).

E) Evidence Goods Originating in China Were Not Mined, Produced, or Manufactured Wholly or In Part by Forced Labor

Documentation may include, but is not limited to:

- Supply chain map identifying all entities involved in production of the goods;
- Information on workers at each entity involved in the production of the goods in China such as wage payment and production output per worker;
- Information on worker recruitment and internal controls to ensure that all workers in China were recruited and are working voluntarily; and
- Credible audits to identify forced labor indicators and remediation of these if applicable. [A “credible audit” is defined on page 44 of the [FLEFT strategy](#) as containing the following five core elements:
 - (1) unannounced arrival at the worksite and at a time when the workforce, especially workers at risk of forced labor, are likely to be present;
 - (2) examination of ILO indicators of forced labor, in particular those described in Section II [found on page 18];
 - (3) worker, management, and labor broker or recruiter interviews completed in the interviewee’s native language and free of employer or government intimidation;

(4) unrestricted access to the worksite and any associated locations, such as cafeterias and dormitories, to observe conditions; and

(5) review of documents and other information to provide additional proof of compliance and to identify or corroborate discrepancies in the information and observations of the worksite and associated facilities.]