

## Steps to Address the Uyghur Forced Labor Prevention Act (UFLPA)

JUNE 22, 2022

Companies in a variety of industries are preparing for enforcement of the Uyghur Forced Labor Prevention Act<sup>[1]</sup> (UFLPA), which went into effect on June 21, 2022. Those working in UFLPA high-risk industries have expressed justifiable concern about enforcement, conducting diligence on opaque and complex supply chains, and the volume of evidence required to prove forced labor was not used in a production cycle. This article provides an overview of the steps and challenges companies face while handling UFLPA compliance.

### KEY TAKEAWAYS

- U.S. Customs and Border Control (CBP) will likely be overinclusive of products in high-risk industries with a China nexus, even if shipped from other regions or countries
- Importers of products in high-risk industries need to document the entire supply chain to the origin of raw material inputs
- Advanced preparation and China experience will be critical to obtain maximum cooperation from foreign sellers and to satisfy the heavy evidentiary requirements

### HOW THE UFLPA OPERATES

The UFLPA itself is simple. The Uyghur Forced Labor Prevention Act works in conjunction with 19 USC § 1307, which prohibits importation and entry of “all goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor.”<sup>[2]</sup> The UFLPA supplements that provision and creates a rebuttable presumption that all goods, wares, articles, and merchandise made wholly or in part in China’s Xinjiang province are manufactured with forced labor and, therefore, are prohibited from importation into the United States.<sup>[3]</sup> That is where the simplicity ends.

### ENFORCEMENT OF THE UFLPA

The complex question is what products are made with inputs from Xinjiang province and how will that be identified. Some high-level answers are provided in the Customs and Border Protection’s (CBP) UFLPA Operational Guidelines for Importers (“Operational Guidelines”)<sup>[4]</sup> and the Department of Homeland Security’s (DHS) Enforcement Strategy for the UFLPA (“Enforcement Strategy”).<sup>[5]</sup> CBP also addressed multiple iterations of these questions in its recent

webinars on enforcement of the UFLPA. Taken together, these documents spell out the plan and methods for enforcement, focus areas and industries, and how enforcement will develop.

CBP, as the main enforcement agency for the UFLPA, will focus on three high-risk industries: tomatoes, cotton, and silicon (including polysilicon).<sup>[6]</sup> Likewise, CBP and DHS are aware that Xinjiang-origin inputs are comingled, transshipped, and otherwise manipulated to have their Xinjiang/China nexus hidden. Thus, companies involved in high-risk sectors should expect that CBP will be overinclusive for items involving high-risk inputs and a China nexus.

For enforcement of the UFLPA, CBP can utilize detention, exclusion, seizure, and forfeiture.<sup>[7]</sup> Upon initiation of enforcement, CBP will notify importers with a notice, such as a Customs Detention Notice, Customs Seizure Notice, etc. The notice will explain the action and rights of the importer, including providing evidence to rebut the presumption under the UFLPA. After a notice is received, importers will have the opportunity to provide documentary evidence to request an exception to the rebuttable presumption that forced labor was used in the manufacture of the product.

To successfully obtain an exception, importers need to provide clear and convincing evidence that no forced labor was used in the manufacture of products. The Operational Guidelines provide a general overview of the evidence that may be required to obtain an exception, including:

- Evidence of an importer due diligence procedure and that it is utilized
- Supply chain evidence, including a detailed description of the entire supply chain, including product components at all stages to the raw material level
- Overall evidence that products do not derive from forced labor

## HOW TO PREPARE

At a high level, companies, particularly importers, dealing with the UFLPA high-risk industries—i.e., industries with a China nexus that may have cotton or silicon inputs—need to conduct heightened due diligence on suppliers and the supply chain. This, in essence, means that companies need to be able to know and document the entire supply chain for products back to the level of raw material extraction.

From a business perspective, companies need to engage in this due diligence and evidence collection early, preferably before the ultimate purchase is made. If the goods are detained, the upstream vendors will have limited motivation to cooperate, though their cooperation is necessary to obtain receipts, shipping information, manufacturing records, employment records, etc., all of which could be necessary to obtain an exception if goods are detained, excluded, or seized. The UFLPA is a sensitive topic in China and supply chains in China are often opaque to protect a business role in the manufacturing process. Suppliers will have concerns about providing detailed information and will likely cite China's privacy laws as a justification for not sharing information. Local knowledge and a keen eye will be needed to spot fraudulent documents, which are common.

Assuming accurate information and documentation about the supply chain is obtained, the next challenge will be documenting the entity and individual relationships throughout the supply chain. Experience investigating Chinese organizational structures is critical, not only to understand the structures but also to effectively explain these to CBP. For example, one identified Chinese silicon manufacturer has over 40 direct subsidiaries and those subsidiaries also have multiple subsidiaries. The legal representative of the parent company has over 30 additional ongoing business interests and a separate director has over 25 additional ongoing business interests. Products that touch upon those types of relationships have an increased enforcement risk.

CBP is planning to map the relationships inside of and from China to other countries to increase and develop enforcement of the UFLPA. Specifically, the Enforcement Strategy discloses a plan to implement technology to access, among other things, foreign corporate registry data to identify entity relationships. Companies need to be one step ahead so that they can clearly and convincingly defend their position that the UFLPA does not apply to their products.

Despite the simplicity of the UFLPA, its application and enforcement promise to be exceedingly complex, particularly as CBP reviews submissions from various importers and obtains macro and micro understandings of high-risk industries and participants. Companies that purchase products with high-risk inputs and a China nexus should take steps to prepare.

The professionals in Winston & Strawn’s international trade group routinely deal with complex and sensitive issues involving China interests. We invite you to reach out with any questions regarding the UFLPA, China-based due diligence and investigations, or risk- or loss-prevention measures that could be taken.

\*\*\*\*\*

***Jacob Harding** is a counsel in Winston & Strawn’s Los Angeles office and has lived in China for over a decade. His practice involves international trade, white collar investigations, and litigation, often involving a China nexus. He has conducted numerous investigations in China, including employee interviews in Mandarin and reviewing Chinese language documentation and evidence.*

***Cari Stinebower** is a partner in Winston & Strawn’s Washington D.C. office and chair of the International Trade practice. She focuses her practice on economic sanctions, export controls, and anti-money laundering. Prior to joining the private sector, Cari served as counsel for the U.S. Department of the Treasury’s Office of Foreign Asset Control (OFAC) and as a Programs Officer for OFAC, where she advised on sanctions and anti-terrorism legislation, drafted United Nations Security Council Resolutions and related executive orders.*

---

<sup>[1]</sup> Public Law 117-78, available at <https://www.govinfo.gov/content/pkg/PLAW-117publ78/pdf/PLAW-117publ78.pdf>.

<sup>[2]</sup> 19 USC § 1307.

<sup>[3]</sup> Public Law 117-78.

<sup>[4]</sup> Customs and Border Protection Guidance for Importers, available at [https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP\\_Guidance\\_for\\_Importers\\_for\\_UFLPA\\_13\\_June\\_2022.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP_Guidance_for_Importers_for_UFLPA_13_June_2022.pdf).

<sup>[5]</sup> Department of Homeland Security UFLPA Enforcement Strategy, available at [https://www.dhs.gov/sites/default/files/2022-06/22\\_0617\\_fletf\\_uflpa-strategy.pdf](https://www.dhs.gov/sites/default/files/2022-06/22_0617_fletf_uflpa-strategy.pdf).

<sup>[6]</sup> All of these areas have previously been subject to Withhold Release Orders. These Withhold Release Orders will be superseded by the UFLPA and the UFLPA has broader application to the Xinjiang entire region.

<sup>[7]</sup> See 19 U.S.C. § 1499 (detention); 19 U.S.C. § 1959a (seizure and forfeiture).

5 Min Read

## Authors

Jacob Harding  
Cari Stinebower

## Related Locations

Los Angeles

New York

Washington, DC

## Related Topics

International Trade

China

Imports

Customs

## Related Capabilities

International Trade

## Related Regions

North America

## Related Professionals

---



Jacob Harding



Cari Stinebower

*This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.*