

# Examining the Uyghur Forced Labor Prevention Act and Department of Homeland Security Enforcement

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## Key Highlights

- Review the UFLPA Strategy and CBP Operational Guidance for Importers;
- Conduct supply chain due diligence and instate reliable measures to prevent the use of forced labor; and
- Maintain recommended documentation to demonstrate that imported goods are not subject to the UFLPA or should be granted an exemption.

The Uyghur Forced Labor Prevention Act (UFLPA) was signed into law by President Biden on December 23, 2021. The UFLPA creates a rebuttable presumption that “any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region [XUAR] of the People’s Republic of China”—or by entities listed by the U.S. as having ties to forced labor in the XUAR—were made using forced labor and cannot be imported into the U.S. per Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307). As we have [previously discussed](#), the UFLPA went into full effect on June 21, 2022, meaning that U.S. Customs and Border Control (CBP) now has the authority to detain, exclude, or seize any goods that the agency believes were made using forced labor.

Several important documents are now available to aid importers in complying with the UFLPA. On June 17, 2022, the U.S. Department of Homeland Security (DHS) issued the [UFLPA Strategy](#), which covers a range of topics including risks related to forced labor, enforcement of the UFLPA, and guidance for importers. The guidance in the UFLPA Strategy is complemented by more practical [Operational Guidance](#) for importers, which was issued by CBP on June 13, 2022. Finally, on August 4, 2022, DHS published an updated [UFLPA Entity List](#). The UFLPA requires CBP to apply the rebuttable presumption of forced labor to goods mined, produced, or manufactured by entities on this

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list.

Importers whose shipments are detained will have a choice between (1) providing information to CBP indicating that the goods are not subject to the UFLPA (i.e., goods and inputs were sourced outside of the XUAR and are not connected to any entities on the [UFLPA Entity List](#)), or (2) requesting an exemption to the rebuttable presumption. The burden for receiving an exemption under the UFLPA is significant. If an importer of record can:

- Demonstrate by “clear and convincing evidence” that the goods in question were NOT produced wholly or in part by forced labor;
- Fully respond to ALL CBP requests for info about goods under review; AND
- Demonstrate that it has fully complied with the guidance outlined in the UFLPA Strategy,

Then, the Commissioner of CBP may grant an exemption. All such exemptions must be submitted to Congress within 30 days, along with a public report outlining the evidence supporting the exemption.

## **UFLPA Strategy**

The UFLPA Strategy guidance to importers focuses on 3 topics:

1. Due diligence and supply-chain measures to prevent importation of goods produced with forced labor in China or the XUAR;
2. Evidence needed to show that goods originating in China were not produced wholly or in part in Xinjiang; and
3. Evidence needed to show that goods originating in China, including goods detained, excluded, or seized for violations of the UFLPA, were not produced with forced labor.

The bulk of FLETF’s recommendations are focused on due diligence, including effective supply chain tracing and management. Such due diligence is vital for preventing the importation of goods produced using forced labor, but also serves as the foundation for ensuring importers have sufficient evidence to present to CBP when shipments are detained.

## **CBP Operational Guidance for Importers**

The CBP Operational Guidance for Importers provides more practical information on how CBP plans to enforce the UFLPA, including how CBP plans to approach the detention, release, exclusion, seizure, and forfeiture of shipments. This information includes:

- Resources to assist trade stakeholders in conducting supply chain due diligence, tracing, and management;
- Documentation that may be helpful in demonstrating that imported goods are not subject to the UFLPA or should be granted an exemption; and

- Commodity-specific documentation that importers may consider submitting for commodities at high risk of forced labor (cotton, polysilicon, tomatoes).

Companies should make every effort to proactively review their supply chains and institute reliable measures in accordance with the UFLPA Strategy and CBP's Operational Guidance for Importers. Also, companies should be prepared to respond to inquiries from CBP with sufficient evidence and support to demonstrate that their goods are either not subject to the UFLPA or were not produced with forced labor.

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