

DHS Publishes UFLPA Strategy

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The Department of Homeland Security has published its much-anticipated [Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China](#) (UFLPA Strategy). The Uyghur Forced Labor Prevention Act (UFLPA), enacted December 23, 2021, instructs the Forced Labor Enforcement Task Force (FLETF), chaired by the U.S. Department of Homeland Security (DHS), to develop a strategy for supporting the enforcement of Section 307 of the Tariff Act of 1930, as amended (19 U.S.C. § 1307) to prevent the importation into the United States of goods mined, produced, or manufactured wholly or in part with forced labor in the People's Republic of China (PRC).

The new UFLPA Strategy includes:

- A comprehensive assessment of the risk of importing goods mined, produced, or manufactured, wholly or in part, with forced labor in the PRC;
- An evaluation and description of forced-labor schemes, UFLPA-required lists (including the UFLPA Entity List), UFLPA-required plans, and high priority sectors for enforcement;
- Recommendations for efforts, initiatives, tools, and technologies to accurately identify and trace affected goods;
- A description of how U.S. Customs and Border Protection (CBP) plans to enhance its use of legal authorities and tools to prevent entry of goods at U.S. ports in violation of 19 U.S.C. § 1307;
- A description of additional resources necessary to ensure no goods made with forced labor enter U.S. ports;
- Guidance to importers; and
- A plan to coordinate and collaborate with appropriate nongovernmental organizations (NGOs) and private-sector entities.

The guidance to importers section is particularly important due to the role it plays in the exception process. Under the UFLPA, there is a rebuttable presumption that goods mined, produced, or manufactured wholly or in part in Xinjiang or by an entity on the UFLPA Entity List are prohibited from U.S. importation under 19 U.S.C. § 1307. 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 information about goods under CBP review, and demonstrate that it has fully complied with the guidance outlined in the UFLPA Strategy, the Commissioner of CBP may grant an exception to the presumption.

The guidance section is broken out into three sections:

- Due diligence, effective supply-chain tracing, and supply-chain management measures to ensure that importers do not import any goods mined, produced, or manufactured wholly or in part with forced labor from the PRC, especially from Xinjiang;
- The type, nature, and extent of evidence that demonstrates that goods originating in the PRC were not mined, produced, or manufactured wholly or in part in Xinjiang; and
- The type, nature, and extent of evidence that demonstrates that goods originating in the PRC, including goods detained or seized pursuant to 19 U.S.C. § 1307, were not mined, produced, or manufactured wholly or in part with forced labor.

Under the section covering due diligence, effective supply-chain tracing, and supply-chain management measures, the UFLPA Strategy identifies effective due diligence system elements, explains how they may be implemented, and identifies application challenges importers could face:

- Engage stakeholders and partners
- Assess risks and impacts
- Develop a code of conduct
- Communicate and train across supply chain
- Monitor compliance
- Remediate violations
- Independent review
- Report performance and engagement

In terms of the evidence that demonstrates Chinese goods were not mined, produced, or manufactured wholly or in part in Xinjiang, the guidance acknowledges that the type, nature, and extent of evidence required will vary based on the circumstances of the import. However, the guidance does provide a non-exhaustive list of the documentation CBP may request:

- Detailed description of the supply chain for the imported good and components thereof, including all stages of mining, production, or manufacture, including any step of the sourcing, manufacturing, or processing of goods in third countries.
- Evidence that indicates the origin of each component of the imported good.

- DNA traceability or isotopic testing must have demonstrated reliability and the test results must be traceable to the specific import under CBP review.

For evidence that the goods were not mined, produced, or manufactured wholly or in part with forced labor, the guidance provides another long non-exhaustive list of the documentation CBP may request, including:

- Evidence mapping the entire supply chain, and transport along the supply chain, including which entities were involved at each stage;
- Complete list of all workers at an entity subject to the rebuttable presumption in the production of the imported goods, including:
 - Evidence to demonstrate how and to whom wages are paid;
 - Evidence to identify whether each worker comes from Xinjiang, as well as the worker's residency status;
 - Evidence to demonstrate that output is consistent with the documented workers, including:
 - number of workers in each job category, total volume of material or goods input, and total volume of outputs of materials or goods; and,
 - documents relating to hours worked and daily production output of goods.
 - Evidence that none of the workers who were involved in the production of the product were a) recruited, b) transported, c) transferred, d) harbored, or e) received with the involvement of the government of the PRC, Xinjiang Production and Construction Corps, or entities on the UFLPA Entity List. Evidence should specifically address the controls each entity has in place to ensure that all workers are recruited voluntarily;
 - Evidence that reliably demonstrates that every worker from Xinjiang is working voluntarily, and without menace or threat of penalty, including credible evidence that demonstrates for each such worker that:
 - recruitment to work, including recruitment to any job fair, was fully voluntary;
 - recruitment and continuation at the job were and are not subject to government or entity coercion;
 - recruitment was free of any forced labor indicator;
 - transport from Xinjiang was voluntary and free of any forced labor indicator;
 - transfer to the entity was voluntary and free of any forced labor indicator;
 - living and working conditions at the entity are free of any forced labor indicator; and,
 - receipt of the worker by the entity was undertaken voluntarily and without any indicators of forced labor.

This section also discusses the requirements for audits performed to demonstrate that goods were not made wholly or in part with forced labor. The guidance provides that these audits must include an explanation of methodology, the process for determining the presence or absence of forced labor

indicators, a description of all evidence, and a description of how the auditor evaluated the reliability of the evidence used to reach the audit's conclusions.

The new UFLPA Strategy is a substantial 60-page document, and the guidance for importers represents only a fraction of the information in the text. However, the UFLPA Strategy in conjunction with the [CBP guidance](#) are a valuable tools for importers seeking to bolster and improve their compliance programs. Do not hesitate to contact [any attorney](#) at Barnes, Richardson & Colburn, LLP if you have any questions about forced labor issues, complying with the UFLPA, the new guidance documents, or any other import or export question.