



UNITED STATES OF AMERICA

The Uyghur Forced Labor Prevention Act

FACTSHEET

BACKGROUND

On 21 June 2022, the Uyghur Forced Labor Prevention Act (UFLPA), came into effect in the United States (US) after it was signed into law in December 2021. The UFLPA reinforces existing prohibitions outlined in Section 307 of the Tariff Act (1930) which bans the import of "goods, wares, articles and merchandise mined, produced or manufactured wholly or in part" by forced labour into the US.

WHAT IS THE UFLPA?

The UFLPA is a legislative measure that is part of the US's commitment to promote human rights and support a global trade system free of forced labour. It aims to prevent the imports of goods produced through forced labour in Xinjiang Uyghur Autonomous Region of China (XUAR) into the US.

The legislation recognises the **inherent challenges** faced by **traditional audits** and similar **due diligence** efforts in XUAR, which have become unreliable due to a number of factors, including the widespread implementation of repressive practices in XUAR, such as labour camps and other labour schemes, and the level of surveillance that workers are subjected to in the region preventing them from speaking out.

It addresses concerns regarding Uyghurs, Kazakhs, Kyrgyz, Tibetans or members of other persecuted groups, who have been subjected to widespread serious human rights abuses, such as arbitrary detention, forced labour, torture, and political indoctrination and assimilation in mass internment camps and detention centres.

WHAT ARE THE HIGH-PRIORITY SECTORS?

The UFLPA aims to increase scrutiny on all sectors, including electronics, machinery, pharmaceuticals, automotive, and agriculture.

However, it identifies specific **high-priority sectors** for enforcement, which include:

- Silica-based products (incl. polysilicon);
- Cotton and cotton products;
- Tomatoes and downstream products; and
- Apparel.



For each one of these sectors, the US Customs and Border Protection (CBP) offers detailed guidance on supply chain documentation for importers.

The UFLPA follows the definition of forced labour under Section 307, which is defined as follows:

“[a]ll work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily.”



WHAT IS PROHIBITED UNDER THE UFLPA?

In principle, the Act prohibits the importation of goods mined, produced or manufactured in Xinjiang or by entities operating in Xinjiang or by any entity on the UFLPA Entity list.

The Act establishes a **rebuttable presumption** that applies to goods, wares, articles, and merchandise. Products that meet one of the following criteria are presumed to be made with Uyghur forced labour and prohibited from entering the US:*

1 Mined, produced or manufactured wholly or in part in XUAR.

or

2 Mined, produced or manufactured by any entity included on the Entity List.

* **Unless** proven otherwise by **clear and convincing evidence**.

CAN IMPORTERS CHALLENGE THE PRESUMPTION OF FORCED LABOUR?

The presumption introduced by the UFLPA sets a foundational basis for enforcement measures. However, importers can refute the presumption by providing **clear and convincing evidence** to the US CBP, demonstrating that their goods were obtained ethically and without resorting to forced labour.

In the event of a detention, after an exclusion or during the seizure process on shipments, importers may pursue two courses of action: **(1)** argue that their importation falls outside the UFLPA scope because their goods and components originate entirely outside the Xinjiang region and have no association with UFLPA-listed entities. In which case, importers may provide supply chain tracing information to provide evidence of no nexus; or **(2)** request an exemption to the presumption.

The final decision lies with the CBP Commissioner, who may determine, through clear and convincing evidence, not to apply the presumption, if the following is met:

- The importer has fully complied with the UFLPA Strategy and any associated regulations and guidance; and
- The importer has completely and substantively respond to all requests for information posed by the Commissioner; and





FULL COMPLIANCE WITH THE UFLPA STRATEGY AND ANY ASSOCIATED GUIDANCE

Full compliance with the UFLPA Strategy entails comprehensive due diligence, effective supply chain tracing and transparent supply chain management. The US CBP provides a non-exhaustive list of evidence and elements importers may provide, including:

SUPPLY CHAIN DUE DILIGENCE

This includes **assessing**, **preventing** and **mitigating** forced labour **exposure**.

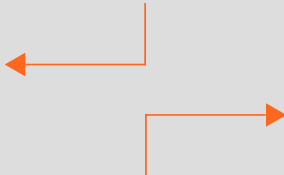
An effective due diligence process may include engaging with stakeholders, assessing risks and impacts, developing a supplier code of conduct, communicating and training across supply chain, monitoring compliance, and remediating violations.

Importers who fail to end ties with a supplier or take appropriate remedial action can be subject to criminal liability.

SUPPLY CHAIN TRACING

Mapping the entire supply chain, from start to finish, incl. gathering information from suppliers of every phase from mining, production or manufacture of finished goods (incl. those carried out in third countries) and all relevant data to demonstrate **chain of custody**.

Who, what, where and how?



What's the origin?

Gathering evidence of the **origin**, **source** and **journey** of each component within the imported product, accounting for, and addressing, the commingling of materials.

SUPPLY-CHAIN MANAGEMENT MEASURES

This involves taking steps to **prevent** and **mitigate identified risks** of forced labour in the management systems of companies. Such measures include evaluating prospective suppliers for forced labour before entering into contractual agreements, establishing information management systems, and including a mandatory clause obligating suppliers to rectify instances of forced labour within the supply chain.



OTHER EVIDENCE IMPORTERS MAY PROVIDE

The US CBP allows importers **flexibility** to provide documentation within the scope of importers' business operations. In addition to the non-exhaustive list of elements above, other evidence can demonstrate that indicators of forced labour do not exist or have been fully remediated. This evidence may include, but is not limited to:

- A complete list of workers, along with wage information;
- Documentation proving that workers were neither recruited, transported, transferred, harboured nor received with the involvement of the Chinese or XUAR government, or other entities listed on the UFLPA Entity List; and
- Evidence that workers in XUAR are working on a voluntarily basis.

While the translation of documents into English is not strictly required, it will facilitate the review process.

RECOMMENDATIONS TO COMPANIES

Strengthened Due Diligence

Companies should bolster due diligence procedures to assess, prevent, and mitigate forced labour risks within their supply chains, including identifying existing exposure to XUAR. Due diligence processes may include engaging with stakeholders, conducting thorough risk assessments, and developing robust codes of conduct.

Transparency

To understand the extent of exposure to materials mined, produced, or manufactured in XUAR, companies should foster transparency by meticulously mapping the entire supply chain and tracing raw material sources to finished goods. In this context, companies are encouraged to consider leveraging third-party services for comprehensive supply chain tracing.

Presumption of Forced Labour

In line with the principles of the UFLPA, companies should adopt a rebuttable presumption approach that all products mined, produced or manufactured in XUAR are tainted by state-sponsored forced labour.

Beyond Conventional Audits

Companies should acknowledge the limitations of traditional audit methods in uncovering instances of forced labour in XUAR and explore innovative approaches and technologies to enhance supply chain transparency and accountability.

Urgent disengagement

Companies with ties to XUAR through should immediately disengage to avoid complicity in human rights abuses and atrocity crimes. Failure to do so could carry legal, reputational, and financial ramifications to companies.



ABOUT US

We are Business and Human Rights Compliance, the business and human rights arm of Global Rights Compliance an international human rights legal practice based in the UK and the Netherlands, specialising in international human rights, criminal, and humanitarian law.

We advise businesses, trade associations, and investors on both the legal and practical aspects of human rights due diligence. Our approach is centred around actively assisting and supporting organisations in developing responsible business models that not only respect human rights but also minimize legal liability and enhance sustainable practices.

FOR INQUIRIES, CONTACT US.



Wayne Jordash
Managing Partner



Lara Strangways
Head of Business and Human Rights



www.businesshumanrightscpliance.co.uk



hello@businesshumanrightscpliance.co.uk



www.linkedin.com/showcase/business-human-rights-compliance/



[@BizHumanRights](https://twitter.com/BizHumanRights)



[@GlobalRightsCompliance](https://www.facebook.com/GlobalRightsCompliance)
