TDi Sustainability

Regulation Mapping

UFLPA

TDi

Uyghur Forced Labour Prevention Act (UFLPA)

Applies to:

All companies that import into the United States.

What it says:

US Law prohibiting the importation of goods manufactured wholly or in part with forced labour in the People's Republic of China, especially from the Xinjiang Uyghur Autonomous Region (Xinjiang). The UFLPA relies on a core operating presumption ("the rebuttable presumption") that goods mined, produced, or manufactured wholly or in part in Xinjiang or in connection with an entity on the UFLPA Entity List were made with forced labour and as such are prohibited from importation into the US.

Penalty:

CBP will detain imported goods based on the determination that the UFLPA rebuttable presumption applies to the products' supply chain. The importer may re-export the detained goods away from the US, allow CBP to destroy the detained goods, or challenge the UFLPA detention by either rebutting the forced labour presumption or successfully arguing that the UFLPA does not apply to the products' supply chain. If the challenge is successful, the goods will be released into US commerce

Proposed:

Effective since June 2022

Key Requirements:

- GHG emission tracking
- Supply Chain Mapping
- Third party assurance
- Adverse media reporting
- Xinjiang/WRO mapping
- External reporting
- Supplier / risk monitoring
- Supplier engagement
- Supplier training
- Remediation plan
- Product mapping
- ESG risk analysis
- Supplier assessments
- Supplier corrective action plan

Overview - U.S. Uyghur Forced Labor Prevention Act

Law / Country	Uyghur Forced Labor Prevention Act (Public Law 117-78) (the "Act") (United States)
Goal	To address forced labor in supply chains.
Adoption / Status	The Act was signed into law by President Biden on December 23, 2021. The Act directs the Forced Labor Enforcement Task Force (the "FLETF") to issue enforcement strategies. On June 17, 2022, the FLETF issued the Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China (the "Strategy"). Updates to the Strategy were issued on July 26, 2023 (the "Strategy Updates"). In addition, on June 13, 2022, Customs and Border Protection issued Operational Guidance for Importers that complements the Strategy (the "Operational Guidance"). The Strategy and Operational Guidance are further discussed in this Summary. The forced labor presumption went into effect on June 21, 2022.
Issues Addressed	• Forced labor
Covered Entities	Importers of goods into the United States
Mandatory	Yes
Prohibited Imports	The Act establishes a rebuttable presumption that goods, wares, articles and merchandise mined, produced or manufactured wholly or in part (for brevity, "goods" that are "produced") in the Xinjiang Uyghur Autonomous Region of China (the "XUAR"), or by persons working with the XUAR government for purposes of pairing and other government-sponsored labor programs, are produced using forced labor and therefore are prohibited from being imported into the United States under Section 307 of the Tariff Act. Specific entities found by the Department of Homeland Security ("DHS") to be associated with forced labor in the XUAR are set forth on a published list (the "Entity List"). DHS expanded the Entity List to include additional entities effective June 12, 2023. A significant number of the entities on the Entity List were previously the subject of Withhold Release Orders and all were noted in the U.S. State Department's July 2021 Xinjiang Supply Chain Business Advisory. As framed in the Strategy, U.S Customs and Border Protection ("CBP") indicated it would initially focus on enforcement in four high-risk sectors and the highest-risk goods, which includes goods imported directly from the XUAR into the United States and from entities on the Entity List. The Strategy identifies these four high priority sectors: (i) apparel, (ii) cotton and cotton products, (iii) silica-based products (including polysilicon) and (iv) tomatoes and downstream products. However, goods involving other sectors also are being detained.

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Prohibited Imports	The Act supersedes prior Withhold Release Orders relating to the XUAR for goods imported on or after June 21, 2022. The Act authorizes the Commissioner of CBP (the "Commissioner") to amend any other regulations relating to Withhold Release Orders in order to implement this portion of the Act.
Rebutting the Forced Labor Presumption	The forced labor presumption established by the Act applies unless it is determined by the Commissioner that it has been rebutted. In order to find that an exception exists, the Commissioner must find that: • by clear and convincing evidence, the goods in question were not produced wholly or in part with forced labor; • the importer has fully complied with guidance and implementing regulations issued pursuant to the Act; and • the importer has completely and substantively responded to all inquiries for information submitted by the Commissioner to ascertain whether the goods were produced wholly or in part with forced labor.
Admissibility Submissions	In the event an importer wishes to import detained goods, the Operational Guidance organizes required documentation into five categories: 1. Due diligence system information; 2. Supply chain tracing information; 3. Information on supply chain management measures; 4. Evidence goods were not produced in the XUAR; and 5. Evidence goods originating in China were not produced with forced labor. For importers contending imports are not within the purview of the Act, the second (supply chain tracing information) and fourth (evidence goods were not produced in the XUAR) categories of information apply. Importers requesting an exception to the UFLPA's forced labor presumption are to look to the first (due diligence system information), second (supply chain tracing information), third (information on supply chain management measures) and fifth (evidence goods originating in China were not produced with forced labor) categories. As noted above, importers seeking to import detained goods must respond to all inquiries for information submitted by the Commissioner to ascertain whether the goods were produced using forced labor. The Strategy and Operational Guidance provide examples of documentation that could be used to satisfy the required showing under each category above. The Operational Guidance is not intended to be an exhaustive list of the documentation CBP may request. In February 2023, CBP issued additional guidance for importers when submitting documentation for an applicability review by CBP: Best Practices for Applicability Reviews: Importer Responsibilities (the "Best Practices") and Guidance on Executive Summaries and Sample Tables of Contents: Preparing a UFLPA Applicability Review Submission (the "Submission Guidance"). Like the Operational Guidance, neither the Best Practices nor the Submission Guidance are exhaustive, but they provide examples of the document submissions that an importer may present to CBP when seeking to have a detention lifted. The examples set forth in the Best Practices include:

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Admissibility Submissions (cont)	• Documents Demonstrating the Parties Participating in the Transaction: Records illustrating all parties involved in the sourcing, manufacture, manipulation, transportation, and/or export of a particular good (e.g., summaries of the roles of parties involved as substantiated by other supporting documents, and a flow chart of the supply chain); • Documentation Relating to the Payment and Transportation of Raw Materials: Documents demonstrating the origin of the raw materials and records showing that business transactions related to the payment and transport of inputs (e.g., invoices, contracts, and purchase orders) have occurred, including financial documents substantiating the transaction (e.g., proof of payments) and documents demonstrating that the goods were physically transferred from one entity to another; and • Transaction and Supply Chain Records: Full records of transactions and supply chain documentation that demonstrate the country of origin of the imported good and of its components (e.g., packing list, bill of lading, and manifest). The Best Practices note that CBP takes into consideration the totality of the information provided by the importer. The Best Practices also give examples of documents that could be provided by a solar panel importer and an apparel importer. The Submission Guidance provides illustrative guidance on executive summaries and tables of contents for importer applicability review submissions. The Submission Guidance notes that each package of documents should be well organized and include an executive summary explaining the documents contained in the package, including the following: • Annotated document list: An index of the documents provided, listed out according to supply chain level, and a brief explanation of the purpose of the document and, in some cases, the significance of the document or a highlight of the relationship of the document to the others in the package. The executive summary should also mention any key pieces of information shown on a document (e.g., purchase order, contract number, or other relevant data). Documents should be numbered for ease of reference. • Summary of supply chain: The executive summary should include key information that connects each step in the transportation and manufacturing processes, such as detention number, entry number, bill of lading number, container numbers, contract numbers, purchase order numbers, production or work order numbers and other relevant information. This information may be provided in a spreadsheet or other type of document that illustrates the flow of the supply chain across each level. • Additional summary information: Additional context or other information that the importer believes will be helpful for CBP to understand the documentation provided

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Due Diligence	The Act required the FLETF to provide guidance to importers on due diligence, effective supply chain tracing and supply chain management measures to ensure that importers do not import goods produced with forced labor from China, especially from the XUAR. As used in the Strategy, due diligence includes assessing, preventing and mitigating forced labor risk in the production of goods imported into the United States. This construct is consistent with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. While systems may vary from industry to industry, the Strategy indicates that an effective due diligence system in any industry may include the following elements: • Engaging stakeholders and partners; • Assessing risks and impacts; • Developing a code of conduct; • Communicating and training across the supply chain; • Monitoring compliance; • Remediating violations; • Independent review; and • Reporting performance and engagement
Enforcement	CBP may detain, exclude and seize and forfeit shipments that are within the scope of the Act. Importers may request an exception to the rebuttable presumption during a detention, after an exclusion or during the seizure process. CBP has five business days after being presented with goods to determine whether to release or detain the goods. If not released within the five business days, then the goods are considered detained. If CBP detains goods under the Act, then it will issue a detention notice to the importer, detailing the reason for detention and the anticipated length of detention. An importer is allowed 30 days to address the detention by either exporting the detained goods or providing documentation to contest the detention. If additional time beyond this 30-day period is needed to provide requested documents, an importer may request an extension from the Port Director or the Director of the applicable Center. To request an extension, importers should email the point of contact identified on the detention notice prior to the expiration of the initial 30-day detention period.