

U.S. Customs Releases Importer Guidance for Forthcoming Implementation of the Uyghur Forced Labor Prevention Act

June 14, 2022

On June 13, 2022, U.S. Customs and Border Protection (CBP) released highly anticipated guidance regarding the forthcoming implementation of the Uyghur Forced Labor Prevention Act (UFLPA), which will go into effect on June 21, 2022. CBP's newly released guidance provides importers with:

- an overview of how CBP will process detentions, exclusions, and seizures of imported goods under UFLPA;
- an overview of the types of evidence that CBP will expect importers to provide in order to overcome UFLPA's rebuttable presumption regarding forced labor usage;
- guidance relevant to the enforcement of the UFLPA with respect to cotton/apparel, tomato, and polysilicon products that are currently covered by existing Withhold Release Orders (WROs) under 19 U.S.C. § 1307.

Passed last December, the UFLPA amends 19 U.S.C. § 1307 (Section 307 of the Trade Act of 1930), a federal statute prohibiting the importation of goods made in whole or in part with forced labor, to reflect a rebuttable presumption that forced labor (and therefore the import prohibition) affects all goods made in China's Xinjiang Uyghur Autonomous Region (XUAR) or in whole or in part by entities that enable the use of forced Uyghur labor. This presumption can only be rebutted by "clear and convincing evidence."

The UFLPA directed an intergovernmental Forced Labor Enforcement Task Force (FLETF) to develop guidance for importers, including a list of companies/entities using forced labor in the XUAR or enabling the

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use of Uyghur forced labor. That guidance is due to be released on June 21, the same date that UFLPA itself goes into effect.

CBP's newly released guidance explains that the agency's administration of detentions, exclusions, and seizures under UFLPA will vary somewhat from its practice under the pre-amendment 19 U.S.C. § 1307. Prior to the UFLPA, Section 1307 was mainly implemented through CBP's issuance of WROs upon receiving information that created a reasonable suspicion that goods manufactured by a particular company or in a particular region were made with forced labor. Importers whose goods are detained under a WRO typically have 90 days in which to either export the goods or present evidence sufficient to allow CBP to conclude that no forced labor was used in producing the merchandise. However, importers whose goods are detained under UFLPA will have 30 days to present clear and convincing evidence that the detained goods were not made, in whole or in part, in the XUAR/with forced Uyghur labor.

CBP's guidance also explains that, in order to rebut the presumption by clear and convincing evidence, the agency may require an importer

- to show that it has implemented a due diligence system to prevent forced labor from affecting its supply chains;
- be able to trace the supply chain for imported goods "from raw materials to the imported good;" and
- For high-risk commodities (such as cotton, polysilicon, and tomato products) to keep production records that document the "entire supply chain" and that demonstrate that raw materials or components from the XUAR or made with forced Uyghur labor have been commingled with non-XUAR inputs.

Pursuant to the UFLPA, evidence presented to CBP to overcome the rebuttable presumption may be shared with Congress pursuant to the UFLPA.

Wiley's Supply Chain and Customs practice groups have extensive experience in helping clients navigate emergent and existing import enforcement regimes. For more information about the UFLPA and its implementation, please contact one of the attorneys listed in this alert.

To register for our webinar on the June 21 UFLPA guidance, **[click here](#)**.