

## Human Rights and Global Strategy

# Ten Questions Answered About Implementation of the Uyghur Forced Labor Prevention Act

By: [Rachel K. Alpert](#), [Ali I. Alsarraf](#), and Ariella P. Katz

Can you prove the absence of forced labor in your supply chain? As of June 21, 2022, US Customs and Border Protection (CBP) will presume that all goods manufactured in whole or in part in the Xinjiang Uyghur Autonomous Region of China (Xinjiang) or by certain designated entities are made with forced labor and are therefore barred from entering the United States. At the outset, CBP enforcement will focus on apparel, cotton, silica-based, and tomato products. If CBP bars a shipment from entry, importers will generally have 30 days to prove through clear and convincing evidence that the goods were not made with forced labor. This underscores the importance of supply chain due diligence, tracing, management, and documentation for global companies – particularly those with components of high-risk industries in their supply chains.

This alert answers ten key questions about how the [Uyghur Forced Labor Prevention Act](#) (UFLPA) will work in practice, based on recently-issued guidance from [CBP](#) and the [Forced Labor Enforcement Task Force](#) (the Taskforce), which developed the strategy to implement the UFLPA.

### 1. How deep into the supply chain does the UFLPA apply?

The UFLPA applies to the **entire supply chain**. There is a presumption of forced labor for “any goods, wares, articles, and merchandise mined, produced, or manufactured” in Xinjiang or by an entity designated on the new [UFLPA Entity List](#). This encompasses all stages of mining, production, or manufacture, from raw materials to finished product and includes in-house manufacturing, sub-assembly operations, and outsourced production related to the imported goods.

### 2. Is there a *de minimis* exception for goods that might contain only trace amounts from Xinjiang?

No. Goods with **any amount** of content derived from Xinjiang or designated entities are subject to the forced labor presumption and exclusion from the United States. The law applies to goods sourced or manufactured “wholly or in part” in Xinjiang or by an entity on the UFLPA Entity List.

### 3. Does the UFLPA apply only to goods from Xinjiang?

No. The UFLPA also applies to goods from entities that are implicated in **forced labor outside of Xinjiang**. These include entities and (where specified) subsidiaries that (1) employ persecuted groups transferred from Xinjiang, (2) collaborate with the Xinjiang government, or (3) source materials from the foregoing or other Chinese government labor schemes that use forced labor. The Taskforce has [published](#) a list of more than twenty entities subject to the UFLPA. These are Chinese companies and forced labor camps that produce textiles, clothing, hair products, silica-based products, transportation equipment, and electronics using forced labor. For example, Tanyuan Technology, a touch-screen producer that is headquartered outside of Xinjiang, is included for employing Uyghur workers forcibly transferred from the region. The Taskforce may add additional entities in the future.

### 4. Are Withhold Release Orders (WROs) for Xinjiang cotton and tomatoes still in effect?

No. The UFLPA replaces WROs for Xinjiang goods imported on or after June 21, 2022. For example, Xinjiang cotton and tomatoes, which were previously subject to WROs, are now barred under the UFLPA. As a result, detained cotton and tomato shipments will now be subject to the “clear and

convincing evidence” standard to prove that the goods were not made with forced labor. The UFLPA also reduces the deadline to respond to CBP’s notice of detention from three months under the WROs to 30 days under the UFLPA.

## 5. Which industries are at greatest risk under the UFLPA?

The Taskforce’s [UFLPA Strategy](#) identifies high priority sectors for enforcement as **apparel, cotton, silica-based products** including polysilicon, and **tomatoes** and down-stream tomato products. Within these sectors, CBP will prioritize the highest risk goods for UFLPA enforcement, including those imported directly from Xinjiang or designated entities, those imported by entities with corporate ties to Xinjiang, and illegally transshipped products.

## 6. How does CBP become aware of Xinjiang forced labor in supply chains?

CBP utilizes numerous sources to identify forced labor. In particular, CBP plans to adopt **advanced technologies** such as artificial intelligence, machine learning, and remote sensing to trace the origin of imported goods. Additionally, **private parties** and **NGOs** can alert CBP to potential forced labor violations. CBP encourages civil society organizations and community groups throughout the supply chain to provide information and inform risk assessments, including by reporting allegations of forced labor to CBP through an [online portal](#).

## 7. How can my company comply with the UFLPA?

Implementing policies and procedures to carry out supply chain due diligence, tracing, management, and documentation is critical to UFLPA compliance and ensuring that there is no forced labor in your supply chain.

- ✓ Assess risks by mapping and then documenting the origin and method of production at **each step in the supply chain**, from the raw materials to the imported product, including the identity of all entities in the chain and their role in production.
- ✓ Institute **explicit policies** against forced labor within your company and your supply chain and **monitor compliance**.
- ✓ Collect information about **labor conditions in China**, including recruitment methods, wage payment, and production output per worker.
- ✓ Implement supply chain management measures to **vet suppliers** and **terminate relationships** that create risk of exposure to Xinjiang labor while mitigating impact on workers to the extent possible.
- ✓ **Provide training** on forced labor risks for employees and agents who interact with suppliers.
- ✓ Conduct comprehensive and independent **external audits** to verify implementation and efficacy of policies and procedures.
- ✓ **Take action** to remediate and address any forced labor identified.

Due to restrictions on information and access in Xinjiang, it may not be possible for companies to perform full due diligence and external audits. In such cases, compliance may require use of alternative technologies and/or termination of contracts with at-risk suppliers. Companies bear the burden of proving compliance even when they face barriers to information beyond their control.

The CBP guidance and UFLPA Strategy also recommend the [UN Guiding Principles on Business and Human Rights](#), [OECD Guidelines for Multinational Enterprises](#), the International Labour Organization (ILO)’s [Combating Forced Labor](#) handbook, and numerous US Government Resources, such as the Department of Labor (DOL)’s [Comply Chain](#), to identify and combat forced labor in supply chains.

Companies do not have to navigate compliance alone. Industry-wide initiatives provide additional

resources for companies to responsibly source raw materials such as [minerals](#), [cotton](#), and other products.

## 8. What happens if my shipment is detained at the border?

The UFLPA authorizes CBP to detain goods suspected of being sourced from Xinjiang or designated entities. CBP makes a detention decision within five days after goods are presented at the border for examination. Detained goods in violation of the UFLPA are subject to exclusion from the United States or seizure and forfeiture.

CBP may release detained goods if it determines the goods are outside the scope of the UFLPA. If a company believes that its goods were detained in error, it may **provide documentation** that the goods and their components were **sourced entirely from outside of Xinjiang** with no connection to entities on the UFLPA Entity List. Companies should be prepared to provide:

- ✓ A detailed **description of the supply chain** of the imported goods and components, including all stages of sourcing and manufacture.
- ✓ **Names and contact information of suppliers** associated with each step of the production process.
- ✓ **Affidavits** from each entity involved in production.
- ✓ Supporting **documentation**, such as production orders, reports on factory production capacity and factory site visits, purchase orders, invoices for suppliers and sub-suppliers, packing lists, bills of materials, certificates of origin, payment records, inventory records, shipping records, and other import/export records.

If a company's goods were in fact sourced in whole or in part from Xinjiang or entities on the UFLPA Entity List, additional evidence is necessary to overcome the forced labor presumption (see Question 9).

## 9. How do I overcome the UFLPA presumption of forced labor?

Companies can overcome a UFLPA forced labor presumption by providing “clear and convincing evidence”<sup>[1]</sup> that the goods in question were not made with forced labor. Evidence to demonstrate the absence of forced labor includes:

- ✓ A map of the **entire supply chain**, transport along the supply chain, including the entities involved at each stage.
- ✓ A complete **list of workers** at the location suspected of forced labor, including the workers' wages, origin, and residency.
- ✓ Proof of outputs consistent with the number of documented workers **in each job category**, the **volume of material inputs and outputs**, and **workers' hours and production output**.
- ✓ **Controls** in place to ensure all workers are employed voluntarily and evidence demonstrating that every worker from Xinjiang is **working voluntarily** without threat of penalty.
- ✓ Records to show that **recruitment, receipt, transportation, and living conditions** of all workers are free from forced labor indicators such as restricted movement, required activities, and government surveillance or reporting.

If the CBP Commissioner determines that an exception is warranted, CBP must then make a report available to Congress and to the public within 30 days identifying the goods and the evidence considered in granting the exception.

## 10. How long do I have to rebut a presumption of forced labor?

Companies that receive a notice of **detention** under the UFLPA will generally have **30 days** to provide evidence to CBP. The clock begins to run when goods are presented to CBP for inspection. This timeline is substantially shorter than the 3-month timeline for contesting detention under the WROs.

Companies also have **30 days** after a notice of **seizure** or **180 days** after a notice of **exclusion** to rebut the presumption of forced labor.

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The UFLPA poses complex challenges for global supply chains. Attorneys in Jenner and Block's [Human Rights & Global Strategy Practice](#) are prepared to help companies navigate UFLPA requirements and business human rights best practices.

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[1] This standard is demanding. [DHS guidance](#) on Section 321(b) of the North Korea CAATSA (Countering America's Adversaries Through Sanctions Act) explains that clear and convincing evidence is "a higher standard of proof than a preponderance of the evidence, and generally means that a claim or contention is highly probable."

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## Contact Us



**Rachel K. Alpert**

[ralpert@jenner.com](mailto:ralpert@jenner.com) | [Download V-Card](#)



**Ali I. Alsarraf**

[aalsarraf@jenner.com](mailto:aalsarraf@jenner.com) | [Download V-Card](#)

[Meet Our Team](#)

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## Practice Leaders

### **Amb. Keith M. Harper**

Co-Chair

[kharper@jenner.com](mailto:kharper@jenner.com)

[Download V-Card](#)

### **Amb. David Pressman**

Co-Chair

[dpressman@jenner.com](mailto:dpressman@jenner.com)

[Download V-Card](#)

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