

CBP Issues Operational Guidance for Importers Regarding the Uyghur Forced Labor Prevention Act

On June 13, 2022, U.S. Customs and Border Protection (“CBP”) published Operational Guidance for Importers in advance of the June 21 effective date for the Uyghur Forced Labor Prevention Act (“UFLPA” or the “Act”) (“CBP UFLPA Guidance”). Under the UFLPA, CBP will prohibit the entry of “any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People’s Republic of China or produced by” certain entities unless the importer can rebut this presumption by clear and convincing evidence (on a shipment-specific basis) to demonstrate that the goods are not the product of forced labor. CBP’s operational guidance provides important information about how CBP intends to handle procedural aspects relating to imported goods that may be detained at the border under the UFLPA.

Companies must understand, however, that the CBP UFLPA Guidance is distinct from a document that was released by the Forced Labor Enforcement Task Force (“FLETF”) (of which CBP is a member) on June 17, 2022. **The FLETF Report – which contains Guidance for Importers that must be followed to overcome the rebuttable presumption (and includes a list of entities in China to whom the presumption applies) – will be the subject of a separate Client Alert in the near future.**

CBP’s complementary Operational Guidance for Importers describes the UFLPA enforcement process and provides information regarding the types of documentation importers should be prepared to submit to CBP to overcome the presumption. Specifically, importers are expected to be able to provide extensive documentation and information to CBP on due diligence, supply chain tracing, and supply chain management measures that tie to the imported goods on a shipment-specific basis.

The Operational Guidance for Importers presents a “non-exhaustive” list of the documentation and information CBP may request from the importer. The list of the types of information required includes, but is not limited to:

- Purchase orders, invoices for suppliers and sub-suppliers, packing lists, bills of materials, certificates of origin, payment, and inventory records;
- Documents showing that the information is part of an operating system or an accounting system that includes audited financial statements;
- A description of the supply chain, including imported merchandise and its components and a supply chain map identifying all entities involved in the production of the goods;
- Documents showing engagement with suppliers and other stakeholders to assess and address forced labor risk; and
- An independent verification of the implementation and effectiveness of the due diligence system and credible audits to identify forced labor indicators.

Taking a “big picture” view, we anticipate that the early phase of UFLPA enforcement activity creates the potential for significant delays at the border, at least for imported products that fall within “high-risk” enforcement areas (*e.g.*, cotton, tomatoes, and polysilicon, *etc.*). Another factor that could contribute to potential supply chain challenges is the fact that CBP intends to prioritize requests by importers for an exception from the UFLPA import ban to members in good standing of the Customs Trade Partnership Against Terrorism (“CTPAT”) Trade Compliance program. This underscores the need for all members of the trade community (particularly non-CTPAT members) to take steps now with respect to UFLPA compliance.

KEY TAKEAWAYS

CBP’s Operational Guidance to Importers provides additional context on how CBP intends to enforce UFLPA. As stated above, CBP’s guidance is separate from the FLETF Report (which includes mandatory compliance tools) that must be followed to demonstrate compliance with the Act.

Nevertheless, CBP’s guidance materials confirm that importers should continuously assess their current vendor and supplier relationships to mitigate the risk of potential future supply chain disruptions. Importers also should work with experienced counsel on border enforcement issues relating to UFLPA detentions, exclusions, and seizures.