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Forced Labor Enforcement Task Force Issues Strategy To Prevent Forced Labor Imports From China

Statutorily-Mandated Report Also Includes Key Importer Guidance And Initial List Of Entities Tied To Forced Labor In The Xinjiang Uyghur Autonomous Region

The Forced Labor Enforcement Task Force (“FLETf”) issued a statutorily-mandated report to Congress under the Uyghur Forced Labor Prevention Act (“UFLPA” or “the Act”), which was enacted on December 23, 2021 (the “FLETf Forced Labor Strategy” or the “UFLPA Strategy”). FLETf is an interagency task force that includes representatives from the Department of Homeland Security, U.S. Customs and Border Protection (“CBP”), and other cabinet-level agencies and federal agency participants. This is the first FLETf report to Congress and contains important compliance details for companies with global supply chains (future reports will be sent to Congress on an annual basis).

BACKGROUND

The UFLPA establishes a rebuttable presumption (which took effect on June 21, 2022) that “any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region [(“XUAR”)] of the People’s Republic of China or produced by” certain entities to be identified in the FLETf Forced Labor Strategy are products of forced labor and, therefore, are prohibited entry into the United States pursuant to 19 U.S.C. § 1307. Under the Act, however, the importer may rebut this presumption by providing clear and convincing evidence (on a shipment-specific basis) that the goods are not the product of forced labor and/or do not originate in the XUAR or from the designated entities of concern.



Congress required the FLETF to include Guidance to Importers on due diligence and other supply chain management measures to assist importers with tracing their supply chains and ensuring compliance with the Act. Additional aspects of the FLETF Forced Labor Strategy – including the initial publication of the “UFLPA Entity List” (listed entities are subject to the presumption that their products are prohibited from entry into the United States) – are summarized below.

GUIDANCE TO IMPORTERS

The UFLPA Strategy contains guidance to importers regarding evidence that must be submitted to CBP to overcome the rebuttable presumption that goods manufactured wholly or in part in Xinjiang are the product of forced labor. Under the UFLPA, importers seeking an exception to the rebuttable presumption (and, ultimately, the release of detained goods) must demonstrate that they have fully complied with the requirements set forth in the “Guidance to Importers,” as well as with any future regulations issued by CBP. Importers should understand that CBP expects English translations of any foreign-language documents. CBP independently provided the trade with additional [guidance](#) on UFLPA practice and procedure. More information is available [here](#).

INFORMATION IMPORTERS SHOULD BE PREPARED TO PROVIDE

The Act requires that the UFLPA Strategy provide guidance regarding the following types of information:

- Due diligence, effective supply-chain tracing, and supply-chain management measures;
- The type, nature, and extent of evidence that imported goods were not produced in Xinjiang; and
- The type, nature, and extent of evidence that imported goods detained or seized pursuant to section 1307 were not produced with forced labor.

With respect to due diligence, the UFLPA Strategy states that importers may refer to the U.S. Department of Labor’s (“DOL”) Comply Chain in developing an effective due diligence system. The DOL’s Comply Chain identifies several elements for an effective due diligence system, as summarized in the UFLPA Strategy:

- **Engaging stakeholders and partners:** Importers must engage with suppliers involved directly in the production of goods that will be imported into the United States and either work through those suppliers to engage (or engage directly) with producers of raw materials and components to assess forced labor risk.
- **Assessing risks and impacts:** Importers must map supply chains and identify the steps at risk of forced labor. Importers should consider the origin of imported goods, the transactions among the entities in the supply chain, the locations and identities of the entities, the business relationships among those entities, publicly available datasets that estimate the probability of raw materials and components sourced in Xinjiang, and indications that a supplier is using detainee or ex-detainee labor (or is receiving workers from Xinjiang).
- **Developing a code conduct:** Importers should develop a written code of conduct that expressly forbids the use of forced labor. This code of conduct should also be incorporated into supplier contracts.
- **Communication and training across the supply chain:** Importers must provide training to their employees or agents responsible for selecting suppliers and discuss the risks of forced labor, the prohibition on importation into the United States of forced labor goods, and the rebuttable presumption that goods sourced, in whole or in part, from Xinjiang are goods produced from forced labor.
- **Monitoring compliance:** Importers should monitor supplier compliance with their code of conduct, which may be accomplished through audits by the importer or by a third party. This is likely to present one of the most challenging areas of UFLPA compliance because of the difficulties in conducting supplier audits in the XUAR.



Nevertheless, the FLETF expects importers to take steps to monitor compliance, including through the use of onsite audits.

- **Remediating violations:** Where forced labor is found in a supply chain, importers must demonstrate that they have fully remediated all such conditions of forced labor before continuing to use that supplier in the future. In practice, remediating a harm sustained at the hands of a third party in Xinjiang is likely to prove extremely difficult. Accordingly, in circumstances where forced labor is identified, importers are likely to be required to terminate relationships with suppliers implicated in forced labor.
- **Independent reviews:** A third-party verification can demonstrate the implementation and effectiveness of an importer's due diligence system. (Again, this is one area that presents significant challenges in the XUAR, and it is unclear how CBP will apply this guidance as enforcement activity ramps up).
- **Reporting performance and engagement:** Timely and public reporting on an importer's due diligence system may also serve to demonstrate the effectiveness of the importer's diligence efforts.

Under this framework, importers must know their suppliers and labor sources at all levels of the supply chain. Specifically, tracing goes beyond mapping the supply chain by demonstrating the chain of custody of goods and materials from the beginning of the supply chain to the buyer of the finished product. Identity preservation and segregation are noted in the UFLPA Strategy as established methods of supply-chain tracing. A key point here is that importers should also be aware that if their imports involve inputs from factories that source materials both from within Xinjiang and outside of Xinjiang, there is a risk that these imports will be detained because of commingling concerns. In these situations, CBP likely will expect the importer to verify that the supply chain to the United States is not commingled with Xinjiang-sourced goods.

Affected companies should develop clear processes to vet potential suppliers, including contractual language binding suppliers to take corrective actions and outlining consequences if no corrective action is taken. Importers should also understand the expectation that they utilize information systems to manage supply-chain management data (including all supply-chain mapping and risk assessment information) that can be updated on a regular basis. Ultimately, the UFLPA Strategy explains that importers should be able to use risk and impact assessment information to prevent and mitigate forced labor risks in the supply chain.

These processes are substantially similar to those that qualifying U.S. companies will be required to implement in order to comply with the proposed EU Sustainability Due Diligence Directive (see our [client alert](#)).

UFLPA PRACTICE AND PROCEDURE SCENARIOS

The UFLPA Strategy includes two scenarios under which importers are likely to present information with respect to goods that are held at the border due to forced labor concerns within the meaning of the Act.

Scenario 1: Goods Are Not Produced In Xinjiang And Not Subject To The UFLPA

If an importer can demonstrate that its imported goods (and their inputs) are sourced completely outside of Xinjiang and are not otherwise linked to forced labor concerns within the scope of the UFLPA, CBP may release the goods as not subject to the UFLPA. The UFLPA Strategy states that an importer must completely trace its supply chain (to the component level, including in cases where there are multiple sources of components that may be commingled in the ordinary course of business) and explain or identify: (1) all stages of sourcing and manufacturing (e.g., raw materials to finished good); and (2) the entities involved at all steps of the supply chain and their associated business relationships.



Scenario 2: Goods Produced In China But Not Made With Forced Labor

To the extent an importer is attempting to enter Chinese-origin goods that are potentially subject to the UFLPA, the importer may request an exception to the rebuttable presumption that those goods are made with forced labor. According to the UFLPA Strategy, importers should provide evidence that the indicators of forced labor, as outlined in the ILO Forced Labour Convention, either do not exist or have been fully remediated. In addition, the UFLPA Strategy explains that importers should provide:

- Mapping of the entire supply chain for the good, including all entities involved;
- For shipments relating to UFLPA Entities, a complete list of all workers at the relevant facility(ies), including: (1) how and to whom wages are paid; (2) whether each worker comes from Xinjiang and their residency status; (3) whether their production output is consistent with documented workers (e.g., number workers in each job category, volume of materials or goods input, volume of outputs of materials or goods, documents of hours worked and daily production output);
- Evidence that none of the workers were recruited, transported, transferred, harbored, or received with the involvement of the government or any entity on the UFLPA Entity List; and
- Evidence demonstrating that every worker from Xinjiang is working voluntarily and without menace or threat of penalty.

If an importer conducts an audit and provides the results of the audit as evidence, the importer must include an explanation of the audit methodology, a description of how the audit was conducted to determine the presence or absence of forced labor indicators, the evidence upon which the determination was based, and how the auditors determined the reliability of the evidence used to reach their conclusions.

In sum, it will be very difficult for members of the trade to develop and prepare strong responses to detention notices and/or requests for information by CBP if they do not take steps in advance.

FORCED LABOR SCHEMES AND UFLPA ENTITY LIST

To assist companies and businesses with identifying forced labor risks in their respective supply chains, the FLETF Forced Labor Strategy describes the types of labor programs in China that target members of persecuted groups (e.g., Uyghurs and members of other ethnic and religious minority groups) for use in forced labor. Three of the more well-known labor programs in China that have been determined to raise forced labor concerns are the “Mutual Pairing Assistance” program, the “Poverty Alleviation” program, and land transfer and reemployment programs.

The FLETF Forced Labor Strategy also includes the UFLPA Entity List (which also took effect on June 21). The UFLPA Entity List identifies the entities, facilities, and products that are subject to the presumption that their products are prohibited from entry into the United States. The initial version of the list (which may be updated at any time) is based upon existing Withhold Release Orders (“WROs”) and the U.S. Department of Commerce’s Bureau of Industry and Security’s Entity List.

The initial list is attached to this alert in the **Appendix** and includes known, high-priority product categories for enforcement, including textiles, apparel, electronics, hair products, silica-based products (including polysilicon), tomatoes, and cotton products. In addition, the FLETF Forced Labor Strategy notes that CBP will implement an enforcement plan using a risk-based approach that identifies goods from high-priority sectors that are found to have a nexus to producers in Xinjiang. Currently, the highest-risk goods are those that are imported directly from Xinjiang, although CBP also intends to prioritize illegally transshipped goods with inputs from Xinjiang and from entities related to



entities in Xinjiang. Future updates to this list will be published in the Federal Register and, therefore, it is imperative that importers monitor the list for revisions over time.

CBP'S ENHANCED USE OF ENFORCEMENT AUTHORITY

The UFLPA requires CBP to describe how it plans to enhance its use of legal authorities and other tools to ensure that forced labor goods do not enter the United States. In the UFLPA Strategy, FLETF identified CBP's detention and exclusion authority under 19 U.S.C. § 1499 and seizure authorities under 19 U.S.C. § 1595a(c). The UFLPA Strategy notes that CBP is currently considering regulatory revisions that focus on responding more quickly to allegations of forced labor, providing importers with clear procedural guidance (*e.g.*, processes, requirements, and timeframes for admissibility and exception determinations), and uniformly implementing admissibility determinations. CBP's desire to implement new regulations to streamline the process suggests that affected importers should be prepared for extensive delays during the early phase of UFLPA enforcement activity.

KEY TAKEAWAYS

Enforcement of the UFLPA began on June 21, 2022. Companies with global supply chains should carefully review the FLETF Forced Labor Strategy and take steps now to mitigate detention and seizure risks at the U.S. border. We anticipate that the early phase of UFLPA enforcement activity will present significant challenges to affected members of the trade in a wide range of industries. It is important to leverage existing resources from around the company and specialist external support on forced labor due diligence to gather, collate, and present responsive information (*e.g.*, Environmental, Social, and Governance ("ESG"), compliance, procurement, *etc.*). Due to the technical nature of UFLPA practice and procedure, it will be equally important to work with experienced customs counsel when responding to any actions taken by CBP at the border.



APPENDIX
UFLPA ENTITY LIST

Section 2(d)(2)(B)(i) A list of entities in Xinjiang that mine, produce, or manufacture wholly or in part any goods, wares, articles and merchandise with forced labor

Baoding LYSZD Trade and Business Co., Ltd.
Changji Esquel Textile Co. Ltd. (and one alias: Changji Yida Textile)
Hetian Haolin Hair Accessories Co. Ltd. (and two aliases: Hotan Haolin Hair Accessories; and Hollin Hair Accessories)
Hetian Taida Apparel Co., Ltd (and one alias: Hetian TEDA Garment)
Hoshine Silicon Industry (Shanshan) Co., Ltd (including one alias: Hesheng Silicon Industry (Shanshan) Co.) and subsidiaries
Xinjiang Daqo New Energy, Co. Ltd (including three aliases: Xinjiang Great New Energy Co., Ltd.; Xinjiang Daxin Energy Co., Ltd.; and Xinjiang Daqin Energy Co., Ltd.)
Xinjiang East Hope Nonferrous Metals Co. Ltd. (including one alias: Xinjiang Nonferrous)
Xinjiang GCL New Energy Material Technology, Co. Ltd (including one alias: Xinjiang GCL New Energy Materials Technology Co.)
Xinjiang Junggar Cotton and Linen Co., Ltd.
Xinjiang Production and Construction Corps (including three aliases: XPCC; Xinjiang Corps; and Bingtuan) and its subordinate and affiliated entities

Section 2(d)(2)(B)(ii) A list of entities working with the government of Xinjiang to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of Xinjiang

Aksu Huafu Textiles Co. (including two aliases: Akesu Huafu and Aksu Huafu Dyed Melange Yarn)
Hefei Bitland Information Technology Co., Ltd. (including three aliases: Anhui Hefei Baolongda Information Technology; Hefei Baolongda Information Technology Co., Ltd.; and Hefei Bitland Optoelectronic Technology Co., Ltd.)
Hefei Meiling Co. Ltd. (including one alias: Hefei Meiling Group Holdings Limited)
KTK Group (including three aliases: Jiangsu Jinchuang Group; Jiangsu Jinchuang Holding Group; and KTK Holding)
Lop County Hair Product Industrial Park
Lop County Meixin Hair Products Co., Ltd.
Nanjing Synergy Textiles Co., Ltd. (including two aliases: Nanjing Xinyi Cotton Textile Printing and Dyeing; and Nanjing Xinyi Cotton Textile)
No. 4 Vocation Skills Education Training Center (VSETC)
Tanyuan Technology Co. Ltd. (including five aliases: Carbon Yuan Technology; Changzhou Carbon Yuan Technology Development; Carbon Element Technology; Jiangsu Carbon Element Technology; and Tanyuan Technology Development)
Xinjiang Production and Construction Corps (XPCC) and its subordinate and affiliated entities



Section 2(d)(2)(B)(iii) A list of products mined, produced, or manufactured wholly or in part by entities on the list required by clause (i) or (ii)

Name of entity listed in clause (i) or (ii)	Products mined, produced, or manufactured wholly or in part by each entity
Aksu Huaifu Textiles Co. (including two aliases: Akesu Huaifu and Aksu Huaifu Dyed Melange Yarn)	Textiles; Clothing
Baoding LYSZD Trade and Business Co., Ltd.	Apparel
Changji Esquel Textile Co. Ltd. (and one alias: Changji Yida Textile)	Textiles; Clothing
Hefei Bitland Information Technology Co., Ltd. (including three aliases: Anhui Hefei Baolongda Information Technology; Hefei Baolongda Information Technology Co., Ltd.; and Hefei Bitland Optoelectronic Technology Co., Ltd.)	Computer parts; Electronics
Hefei Meiling Co. Ltd. (including one alias: Hefei Meiling Group Holdings Limited)	Electronics
Hetian Haolin Hair Accessories Co. Ltd. (and two aliases: Hotan Haolin Hair Accessories; and Hollin Hair Accessories)	Hair Products
Hetian Taida Apparel Co., Ltd (and one alias: Hetian TEDA Garment)	Garments
Hoshine Silicon Industry (Shanshan) Co., Ltd (including one alias: Hesheng Silicon Industry (Shanshan) Co.) and subsidiaries	Silica-Based Products
KTK Group (including three aliases: Jiangsu Jinchuang Group; Jiangsu Jinchuang Holding Group; and KTK Holding)	Rail Transportation Equipment
Lop County Hair Product Industrial Park	Hair Products
Lop County Meixin Hair Products Co., Ltd.	Hair Products
Nanjing Synergy Textiles Co., Ltd. (including two aliases: Nanjing Xinyi Cotton Textile Printing and Dyeing; and Nanjing Xinyi Cotton Textile)	Textiles; Clothing
Tanyuan Technology Co. Ltd. (including five aliases: Carbon Yuan Technology; Changzhou Carbon Yuan Technology Development; Carbon Element Technology; Jiangsu Carbon Element Technology; and Tanyuan Technology Development)	Touch Screens for Handheld Devices and Cars; Other Similar Products. Electronics
Xinjiang Daqo New Energy, Co. Ltd (including three aliases: Xinjiang Great New Energy Co., Ltd.; Xinjiang Daxin Energy Co., Ltd.; and Xinjiang Daqin Energy Co., Ltd.)	Polysilicon, including Solar-Grade Polysilicon
Xinjiang East Hope Nonferrous Metals Co. Ltd. (including one alias: Xinjiang Nonferrous)	Polysilicon, including Solar-Grade Polysilicon
Xinjiang GCL New Energy Material Technology, Co. Ltd (including one alias: Xinjiang GCL New Energy Materials Technology Co.)	Polysilicon, including Solar-Grade Polysilicon
Xinjiang Junggar Cotton and Linen Co., Ltd.	Cotton; Processed Cotton
Xinjiang Production and Construction Corps (including three aliases: XPCC; Xinjiang Corps; and Bingtuan) and its subordinate and affiliated entities	Cotton and Cotton Products
Yili Zhuowan Garment Manufacturing Co., Ltd.	Apparel



Section 2(d)(2)(B)(iv) A list of entities that exported products described in clause (iii) from the PRC into the United States

Entities identified in sections (i) and (ii) above may serve as both manufactures and exporters. We have not identified additional exporters at this time but will continue to investigate and gather information about additional relevant entities.

Section 2(d)(2)(B)(v) A list of facilities and entities, including the Xinjiang Production and Construction Corps, that source material from Xinjiang or from persons working with the government of Xinjiang or the Xinjiang Production and Construction Corps for purposes of the “poverty alleviation” program or the “pairing-assistance” program or any other government-labor scheme that uses forced labor

Baoding LYSZD Trade and Business Co., Ltd.
Hefei Bitland Information Technology Co. Ltd.
Hetian Haolin Hair Accessories Co. Ltd.
Hetian Taida Apparel Co., Ltd.
Hoshine Silicon Industry (Shanshan) Co., Ltd., and Subsidiaries
Xinjiang Junggar Cotton and Linen Co., Ltd.
Lop County Hair Product Industrial Park
Lop County Meixin Hair Products Co., Ltd.
No. 4 Vocation Skills Education Training Center (VSETC)
Xinjiang Production and Construction Corps (XPCC) and its subordinate and affiliated entities
Yili Zhuowan Garment Manufacturing Co., Ltd.

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