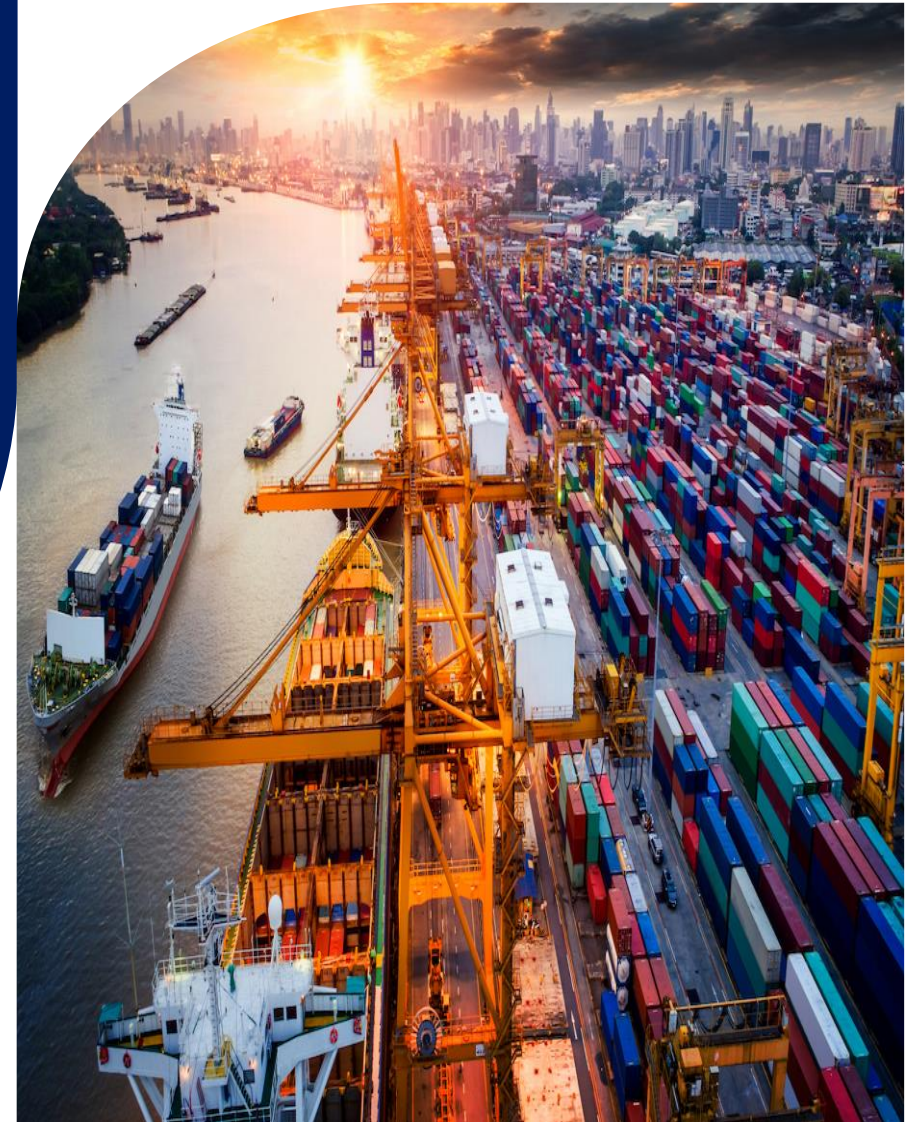


# Uyghur Forced Labor Prevention: Implementation and Enforcement Update

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## Presenters:

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# Our Speakers

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# UFLPA: Implementation and Enforcement Update

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## Agenda

- Overview of the UFLPA
- CBP enforcement and importer guidance
- Improvements and enhancements of current compliance program
- Audits and supply chain mapping
- Anti-Foreign Sanctions Law (AFSL)
- Impact of UFLPA on corporate transactions



# UFLPA Overview

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UFLPA: Import Ban for Goods from China for Forced Labor reasons

- The Uyghur Forced Labor Prevention Act (UFLPA), signed into law by President Biden on December 23, 2021, went into effect on June 21, 2022.
- It establishes a rebuttable presumption that the importation 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, is made using forced labor.
- The presumption applies unless the Commissioner of U.S. Customs and Border Protection determines that the importer of record has complied with specified conditions and, ***by clear and convincing evidence***, that the goods, wares, articles, or merchandise were not produced using forced labor.



# UFLPA: CBP Enforcement

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## CBP Enforcement of UFLPA

- Major tool for enforcement: Detentions and Exclusions
- Impact of Detentions on Companies
  - Significant business delays to supply chain if goods detained by CBP
    - 30 days to provide documents for UFLPA detention
    - Limited extensions have been granted
  - Scramble to gather documents and prepare detention submission
- Exclusion of goods if CBP is not satisfied with the detention submission
- Potential civil and criminal penalties



# UFLPA: Importer Guidance

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- CBP released importer guidance on June 13, 2022, to assist the trade community in preparing for the implementation of the UFLPA rebuttable presumption
- The Forced Labor Enforcement Task Force (FLETF) released the “Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China.”
  - The FLETF is an interagency task force that includes DHS, the Office of the U.S. Trade Representative, and the Departments of Labor, State, Justice, Treasury, and Commerce.



# Forced Labor Document List for Detention Release and Responses

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CBP guidance document recommends importers obtaining “cradle to grave” supply chain documents, such as:

1. Bills of materials (BOM)
2. Purchase orders
3. Invoices
4. Source/manufacturers of all inputs (e.g., thread used in a glove) including ownership
5. Map and address of each factory location
6. Factory production records for all manufacturers and source of raw materials
7. Worker contracts and employment agreements for each factory
8. Payroll and time records for employees
9. Transportation records for all inputs
10. Payment records for each transaction



# UFLPA Enforcement Details

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- In fiscal year 2022, CBP targeted 3,600 entries valued at about \$816 million based on the suspicion they were made with forced labor
  - Some 1,600 of those entries, worth about \$486 million, were targeted under the UFLPA
- In late October, CBP first announced that it had released shipments targeted under the UFLPA
  - The release was based on “applicability,” where the importer successfully proved the goods aren’t subject to the UFLPA because they weren’t connected to the Xinjiang region of China
  - CBP announced that the agency has yet to see an attempt to prove goods subject to UFLPA aren’t made with forced labor





# Improvement and Enhancement of Current Forced Labor/UFLPA Processes and Responsible Sourcing Audits



# Corporate Policies and Agreements

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- Review corporate documents to ensure meet industry standard
  - Vendor Code of Conduct and Human Rights Policy
  - Vendor/buying agreements
  - Procurement, supply chain and trade compliance policies
  - Online statements
- Confirm that the International Labour Organization (ILO) standards for forced labor compliance are used throughout the organization and in communications with suppliers
  - CBP uses the 11 ILO Indicators of Forced Labor when assessing whether forced labor is in a company's supply chain, including in its "Reasonable Care" requirements for importers
  - China recently adopted the ILO standards
- Confirm that there are no references to foreign law applicability in outward facing documents or documents available in China for AFSL compliance



# Compliance Goals and Processes

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- Develop formal processes to monitor CBP/DHS enforcement of UFLPA/forced labor laws and strengthen internal compliance
  - Update entity lists, NGO targets, companies participating in China’s Pairing and Poverty Alleviation Programs, etc.
  - Revise onboarding of new suppliers to include forced labor compliance
- Remain active in trade associations and benchmarking activities
  - Continue to Benchmark with Peers, RILA and NRF on a Routine Basis



# Strengthen Current Audit Program

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- Review current audit program to identify potential risks in the supply chain and identify areas of high-risk exposure of forced labor
- Enhance supply chain mapping
  - Expand BOMs to include details about sub-tier supplier information
  - Conduct due diligence on Tier 2 suppliers and beyond
- Consider use of third-party auditors to conduct due diligence
  - Many have developed search engines that identify risks such as ownership by parent on the entity lists, focus of NGO reports, participants in the Pairing and Poverty Alleviation Programs, etc.
  - Some are on the ground in China and are able to navigate AFSL concerns by conducting ESG and supplier onboarding audits/reviews that also identify forced labor/Uyghur risks
  - CBP recommends the use of third party consultants as a tool for importer reasonable care



# Additional Due Diligence for High Risk Suppliers and Products

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- Mini WRO/UFLPA audit of key suppliers and products
  - Test whether suppliers are capable of providing necessary supply chain documents in a timely manner
  - Identify gaps and areas where suppliers must improve to meet forced labor/UFLPA compliance
- Develop templates by supplier/industry to ensure all necessary screening and documents are maintained and provided on a timely basis
  - CBP stresses that importers must collect supply chain documents prior to import to meet the 30-day response time if there is a detention



# Example of Commodity Targeted by NGOs: PVC/Vinyl Flooring

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- PVC producers in Xinjiang alleged to use forced labor by NGOs:
  - Xinjiang Tianye -
  - Fukang Energy
  - Zhongtai Huatai
  - Xinjiang Mahatma/Shengxiong
  - Xinjiang Taksun
  - Xinjiang Yihua
  - Xinjiang Qingsong
  - Xinjiang Jinhui Zhaofeng Energy
- Importers undertaking supply chain mapping of sub-tier suppliers and origin confirmation of materials
- Challenges: Uncooperative sub-tier suppliers (including SOEs), resources, AFSL



# Forced Labor and Developments with the China Antiforeign Sanctions Law



# Affects All Imports from China

- **Xinjiang Uyghur Autonomous Region**

- **What's a Uyghur?**

- There are 56 recognized “minority” groups in China.

- Impacts anything that comes from China – think **batteries, solar, auto components, airbags. Goods with cotton and plastics.**

- **Seizures of imports in the US can be devastating to the business**





# China Antiforeign Sanctions Law (AFSL)

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- Effective Date: June 10, 2021
- AFSL provides the PRC government with the legal authority to take corresponding countermeasures “if a foreign country violates international law and basic norms of international relations..., or adopt[s] **discriminatory restrictive measures** against Chinese citizens and organizations, and interfere[s] in [the PRC]'s internal affairs.”
- The breadth and general language of the AFSL provides the PRC government with flexibility in taking “other necessary countermeasures for acts that endanger China's sovereignty, security, and development interests.”
  - Suspension of visas for executives and families
  - Seizure of assets in China
  - “Blacklisting”



# China Antiforeign Sanctions Law (AFSL)

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- **Private Right of Action**: The AFSL provides aggrieved Chinese parties with the right to sue multinational companies in Chinese courts as well as refer the matter to the PRC government for imposition of countermeasures.
- **Chinese Objective**: Blunt Western actions that are perceived as interference in Chinese domestic affairs, including matters involving Taiwan, Hong Kong, Tibet, Xinjiang/Uyghur forced labor, Chinese maritime sovereignty claims in the South China Sea and near Japan, the COVID-19 pandemic and other issues. This law addresses the “unilateral sanctions” imposed by Western countries like the United States on Chinese companies and military-related entities.



# AFSL China Litigation Risk Increasing

- Chinese companies are quickly becoming sensitive to how the AFSL protects their legal interests.
- If a current or prospective relationship with a Chinese company is terminated because the multinational company elects to comply with non-China law, the aggrieved Chinese party may sue the multinational for monetary losses in Chinese courts.

## Examples:

- Export controls/sanctions
  - UFLPA
  - Non-Chinese laws include compliance with EU/UK laws
- We are now participating in the defense of multinational companies who have received litigation demands from PRC companies
  - Review and sanitize communications and agreements for AFSL risk.
    - Memorandum of Understandings
    - Commercial Agreement drafts
    - Training materials



# Impact on Corporate Transactions – Due Diligence

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- Make sure to ask questions about how the target company is addressing U.S. import compliance, including the UFLPA, EARLY IN THE PROCESS
  - Provide all information about any inquiry or audit that has been conducted or is currently being conducted that identifies or attempts to identify (1) the geographic source of the product within the PRC (and the components and any other inputs used in the manufacture of such product, down to the raw materials) and/or (2) the use of labor from Xinjiang or any other minorities in China.
  - Provide any third party reports that implicate the company or its supply chain in use of material or labor from Xinjiang.
  - Companies are scrambling, have an organized approach.
  - Sell side/Buy side considerations
  - Don't wait to do the due diligence. There is no “certificate” to obtain.



**Thank you!**

