



US-China Business Council Comments Regarding Enforcement of the Uyghur Forced Labor Prevention Act

Docket Number DHS-2022-0001

March 10, 2022

The US-China Business Council (USCBC) welcomes the opportunity to submit comments to the Department of Homeland Security (DHS) and the Forced Labor Enforcement Task Force (FLETF) on the enforcement of the Uyghur Forced Labor Prevention Act (UFLPA). USCBC represents over 260 American companies that do business with China. Our members oppose forced labor in all its forms and work to eliminate forced labor from global supply chains. We hope to work in partnership with the government to provide practical solutions to implementing the requirements in this law.

Trade with China brings many important benefits to the US economy and American workers. It also acts as a stabilizing force for one of the most consequential bilateral relationships in the world today. China's economic development has resulted in its deep integration with US company supply chains—from retailers to advanced manufacturers, and from SMEs to large multinationals. American businesses and consumers have benefited from globally integrated supply chains that have improved efficiency and lowered production costs for US firms. This has enabled US businesses to grow and create jobs in the US. It is critically important to address forced labor concerns in supply chains, but to do so while minimizing impacts to commerce that is free of forced labor.

Many US companies have longstanding global policies and practices to ensure that their suppliers do not use forced labor. They conduct labor audits of their worldwide operations and have robust supplier codes of conduct. US importers conduct supply chain due diligence but depending on the industry, a company may not directly own or operate all the manufacturing facilities in their supply chains. Some companies work with hundreds of first tier suppliers to source components, let alone second tier suppliers and beyond.

Upstream raw materials may be comingled and difficult to trace, and companies often do not have contractual relationships with upstream suppliers so they must rely on their relationships with first or second tier suppliers for information, making it difficult to obtain documentation. Tracing recycled content is particularly challenging because it often involves intermingled inputs from multiple sources. Supply chain mapping and due diligence challenges are only amplified

for SMEs. While importers are making efforts to improve supply chain transparency, this takes time and cooperation across many stakeholders.

Implementation timeline

USCBC is concerned that overlapping deadlines in UFLPA will fail to provide sufficient time for industry to develop compliance protocols, conduct due diligence, collect required documentation, and adjust supply chains. FLETF must submit its enforcement strategy to Congress and publish implementation guidance to importers on June 21—the same date that the rebuttable presumption goes into effect. This means that industry may not know what requirements it must comply with until the deadline to comply.

If the administration fails to provide sufficient guidance before implementation, it will create an incredibly unpredictable environment for importers, adding more volatility to already strained supply chains, intensifying inflation, and disproportionately disadvantaging American companies. In some cases, shipments may already be in transit before enforcement requirements are released, and more complex products require procurement of components well in advance. It will also disproportionately impact SMEs, which lack the same level of resources as larger companies to conduct due diligence and collect documentation.

USCBC recommends US Customs and Border Protection (CBP) provide a transitional period of at least one year from the issuance of FLETF guidance to allow companies time to conduct due diligence, collect documentation, and adjust supply chains. Draft EU supply chain due diligence [requirements](#) proposed in February 2022 would only go into effect two years after their passage, so a one-year transitional period would still be ambitious in comparison. Further, requirements should not apply to products shipped or parts ordered prior to the issuance of FLETF guidance. CBP could also consider a tiered approach, providing more time for companies to comply with suppliers further up the supply chain, which are more challenging to conduct due diligence on. In the leadup to enforcement and afterwards, CBP should maintain close contact with industry and create a central inquiry point for UFLPA-related questions.

Defining the scope of enforcement focus

The rebuttable presumption under UFLPA that anything with a nexus to the Xinjiang Uyghur Autonomous Region (XUAR) is produced with forced labor could apply to an extremely broad range of goods imported from China and even third countries. To minimize unnecessary disruption to companies and allow CBP to focus resources on entities of greatest concern, it is critical to clearly outline the focus of enforcement.

The UFLPA requires the FLETF to compile lists of problematic entities, sectors, and products that are involved in forced labor. USCBC recommends these lists be entered into a public database to aid in industry compliance and due diligence. Transparency going both ways between CBP and industry is critical for effective enforcement. Importers are committed not to use forced labor in their supply chains, but this becomes difficult if CBP refuses to divulge the

reason goods are detained or which suppliers are problematic. The FLETF should instruct CBP to disclose the basis upon which it is detaining goods in a forced labor context.

The FLETF should outline clear procedures and criteria for inclusion on the required lists of entities (i.e., a nexus to the Xinjiang Uyghur Autonomous Region (XUAR) and/or use of forced labor) and use the standards of “clear and convincing evidence” to determine which entities to include on the lists of problematic entities. The rebuttable presumption should only apply to entities on the lists and not subsidiaries or affiliates unless they are also specifically included. The FLETF should clearly outline the types of evidence that are required to meet this threshold.

Before adding an entity to a list, the FLETF should engage in comprehensive consultations with all affected stakeholders. Even before formal consultations, CBP should consider informal sharing of non-confidential information with companies to encourage more proactive, targeted due diligence. This will alert importers to potential issues and provide an opportunity to rebut the assertion that the supplier uses forced labor. After the final lists are published, there should be a six-month period before beginning enforcement to provide a chance for remediation and allow importers to conduct due diligence and shift supply chains while minimizing disruption. Lists should be updated regularly to account for shifts in the supply chain. After the designation of each new entity to an exclusion list, CBP should allow an additional six months for remediation. CBP should outline clear standards for what would be required to rebut an assertion of forced labor and develop a clear procedure for companies to be taken off a list. Without a clear pathway to be removed from a list, there is no incentive for listed entities to change labor practices or adjust supply chains. The absence of a clear pathway also incentivizes disingenuous behavior, for example, a listed company closing shop and reestablishing itself under a different name at a different location.

UFLPA also requires the FLETF to identify priority enforcement sectors and products. The FLETF should define sectors and products clearly, have objective criteria for determining enforcement priority, designate sectors or products as high priority through an open and transparent process with an opportunity for public comment, and specify a process for removing sectors or products from these lists. Due to the nature of operations and complexity of supply chains, it is important that FLETF does not take a one-size-fits-all approach to enforcement. Clear enforcement priorities will help provide predictability for businesses and allow CBP to prioritize enforcement resources.

Clear evidentiary standards and documentation

For industry to be an effective partner, the FLETF must develop guidance on due diligence practices and related documentation that qualify as “clear and convincing evidence” to rebut the presumption. This will not only help companies focus their compliance efforts and create more predictability, but also help CBP obtain the most relevant information to determine if a shipment may contain products made with forced labor.

Under the current withhold release order (WRO) system, CBP has created expectations that companies submit reams of documentation that may not be necessary, which has strained CBP bandwidth, added administrative burden to companies (especially SMEs), and raised concerns about the protection of confidential business information. Without proper guidance, such challenges will only intensify under the even broader remit of UFLPA. It is critical that the FLETF provide clear guidance on what evidence and documentation is required to show a product is not made with forced labor. Guidance should be developed with industry input and released with sufficient lead time before compliance is required.

CBP should also specifically define what documentation will be needed to demonstrate “clear and convincing evidence” that goods are not made with forced labor. Otherwise, importers will not know what sort of information to begin collecting and retaining from suppliers or to present to CBP in the case of a detention.

Evidence that CBP should consider accepting as demonstrating screening for forced labor or connections to XUAR in supply chains includes:

- Supplier codes of conduct or affidavits that prohibit forced labor in their supply chain
- Detailed supply chain mapping that demonstrates no nexus with XUAR
- Evidence of contractual requirements with suppliers prohibiting forced labor in their supply chain
- Internal and third-party labor audits of suppliers
- Delivery of worker rights training to suppliers

For XUAR-based suppliers, there should be clearly articulated criteria to rebut the presumption that all goods produced there are made with forced labor. Without a clear pathway to rebut the presumption, UFLPA will effectively serve as a trade embargo and there will be no incentive for XUAR-based suppliers to change problematic labor practices.

Third-party audit certification schemes

CBP should consider working with industry to develop audit certification schemes for suppliers to show that supply chains have no nexus with XUAR and/or demonstrate acceptable labor conditions. Such certification schemes do not currently exist for forced labor. Standards would ideally be drafted through industry-led standards development organizations with government participation in a voluntary, transparent, inclusive, and consensus-based manner. The FLETF could then create a program for accrediting third-party auditors worldwide to certify companies against these standards and issue certificates showing that a company’s supply chain does not have a nexus to XUAR and/or that there is no evidence of forced labor. It will be critical to outline a clear process and criteria for accrediting third party auditors.

Certifications should be valid for a period of time subject to renewal. Where importers present a certification, CBP should not detain goods produced by certified entities. In the case that goods are detained, CBP should release them upon presentation of certification.

Leveraging existing initiatives

CBP can leverage existing initiatives in both supply chain traceability and labor standards to build on the foundation of industry experience and ensure imports do not contain products made with forced labor.

For example, CBP could consider expanding existing Trusted Trader programs like the Customs Trade Partnership Against Terrorism (CTPAT) to include forced labor due diligence and benefits for importers. Satisfying additional recordkeeping and reporting requirements and demonstrating that their forced labor compliance programs meet certain standards would allow CBP to identify low-risk importers while strengthening security. Third-party providers will need to be evaluated and recognized as being competent in this specialized area, as it is different from evaluating shipments for physical and technical compliance.

Other existing initiatives include the International Labour Organization (ILO) Special Action [Programme](#) to Combat Forced Labour and the OECD Due Diligence [Guidance](#) for Minerals.

Government involvement in developing technology solutions for supply chain traceability

Technological solutions to trace the origins of certain types of raw materials like cotton are currently under development. However, many of these technologies are still in the pilot phase and are either cost prohibitive, time intensive, or unreliable. Furthermore, it is unclear what technologies CBP will accept as sufficient evidence to show there is no nexus with XUAR. USCBC would encourage CBP to partner with industry in developing technological traceability solutions, which will increase the trust level between industry and government and also give industry confidence that investing in a given technology solution will help it meet CBP standards.

Pre-detention procedures and process for detained shipments

It is most efficient for CBP and companies to resolve any issues before goods are imported, so the FLETF should aim to create a system that minimizes cases where goods must be detained. The FLETF and CBP should establish procedures for an importer to confirm prior to importation whether their due diligence measures and evidentiary support are sufficient to overcome the UFLPA presumption. Creating such a mechanism would avoid the need for CBP to seize the merchandise upon importation and offer the importer a meaningful way to engage with the FLETF and CBP about what is required under the UFLPA.

If CBP suspects that a supplier is using forced labor or has a nexus to XUAR, it should notify importers and provide them an opportunity to present evidence to the contrary. That supplier should already be listed in the public database of problematic entities. The importer may submit documentation of evidence as discussed in the previous section to demonstrate that goods do not have a nexus to Xinjiang or contain inputs made with forced labor. If an importer fails to address CBP concerns or provides insufficient evidence and a product is imported anyway, the importer should not be subject to any enforcement action aside from detention of the relevant goods.

Sound pre-importation procedures should ensure that detentions are rare. However, in the case that goods are detained, within three months of the detention, the importer must submit documentation evidencing that goods were not produced with forced labor. CBP should review this evidence and issue a decision within 30 days. Goods in the same shipment outside of the scope of the detention should be separated and released as soon as possible. The importer may submit documentation of evidence as discussed in the previous section for goods to be released. If a product is declined entry, there should be clear instructions on what the importer can do with it.

CBP should stand up a central body with the sole focus of UFLPA forced labor enforcement and specially trained staff. This will prevent different standards being used at different ports of entry and contribute to transparent and predictable enforcement. Detained goods should be assigned a specialist from this body.

Clearly defined liability

While the statute clearly states that the importer of record is the party to rebut the presumption, the statute is silent on the liability for the party importing a shipment that is ultimately responsible for complying with this law. Customs brokers, who may act as importers of record, have neither the visibility into a shipment's supply chain nor the ability to substantiate any claims regarding its supply chain and must rely on the information the shipper, owner, or consignee provides. As such, the responsible party should be the party with actual knowledge that the goods may have been produced with forced labor, such as the owner or purchaser.

Where a customs broker acts as importer of record, reliance on the provided documents to evaluate a shipment should be considered reasonable. An importer of record that is not the actual owner or purchaser of the goods should be able to reasonably rely on the supply chain documentation provided to it in the rebutting of the presumption and should not be subject to any government action should the documentation be incomplete or inaccurate.

Similarly, cargo carriers should not be responsible for determining whether a shipment may contain goods made with forced labor. Carriers have no control or insight into the supply chains behind each shipment, and as such, should not be expected to police this obligation or be liable in the event they unintentionally carry covered goods.

Working with allies

UFLPA implementation will be more effective at combating forced labor and less damaging to US competitiveness if the United States is aligned with allies and foreign competitors are subject to similar standards. The US government should consider partnering with other countries to form a multilateral certification scheme where party governments agree on standards and common conformity mechanisms in support of attestations that suppliers do not employ forced labor or have a nexus with XUAR. Under such a scheme, US CBP should recognize certificates issued by foreign governments.

Short of a formal multilateral agreement, there are also forums where the US government can align with allies such as the US-EU Trade and Technology Council (TTC), the forthcoming Indo-Pacific Economic Framework (IPEF), and other regional and multilateral venues. The US government should coordinate with likeminded countries on existing initiatives like the draft EU supply chain due diligence [requirements](#) proposed in February 2022 in an effort to achieve convergence rather than creating separate processes and adding additional bureaucratic layers for companies operating in multiple jurisdictions.