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Enforcement of the Uyghur Forced Labor Prevention Act Begins in the United States

Client Alert | June 23, 2022

The Uyghur Forced Labor Prevention Act ("UFLPA" or "Act")—and its stringent import restrictions—took effect on June 21, 2022.[1] The Act, the latest effort by the United States concerning the Uyghur population in China's Xinjiang Uyghur Autonomous Region (the "XUAR" or "Xinjiang"), greatly increases the showing that companies need to make to prove that goods produced in the XUAR, in full or in part, are entitled to entry into the United States. All products manufactured in the region or produced by a list of entities that have now been designated by the interagency Forced Labor Enforcement Task Force ("FLETF") are presumptively barred from entry into the United States unless the importer can present "clear and convincing" evidence that the product has not been tainted by the use of forced labor.[2]

As U.S. Customs and Border Protection ("CBP") begins to enforce the Act, importers of certain products and products that may incorporate raw materials or manufactured parts or components that are suspected to have touchpoints with the XUAR or with several of China's "anti-poverty alleviation" programs should be aware of heightened diligence and supply chain tracing requirements necessary to rebut the UFLPA's presumptive import ban on XUAR-linked shipments.

I. Background

As we have shared in past client alerts, the UFLPA is the latest in a long line of U.S. executive and legislative efforts targeting alleged forced labor in the supply chains of goods entering the United States.

For nearly a century, the 1930 Tariff Act has authorized CBP to prevent the importation of "[a]ll goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by . . . forced labor" by issuing Withhold Release Orders ("WROs").[3] CBP's authority under the Tariff Act was strengthened in 2016 when Congress eliminated a loophole that allowed importation of merchandise made with forced labor if the merchandise was not also available in the United States in quantities sufficient to meet U.S. consumptive demand.[4]

More recently, the U.S. reaffirmed its broad commitment to preventing imports tainted by forced labor in the 2020 United States-Mexico-Canada Agreement ("USMCA"). Under this free trade agreement, each North American country agreed to "prohibit the importation of goods into its territory from other sources produced in whole or in part by forced or compulsory labor."[5] To oversee the implementation of this commitment, former President Trump issued an executive order creating the FLETF, chaired by the Secretary of Homeland Security and including representatives from the Departments of State, Treasury, Justice, Labor, and the Office of the U.S. Trade Representative.[6]

The measures described above target forced labor wherever it occurs, but, in recent years, the U.S. has focused increasingly on allegations of forced labor and other human

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rights abuses in the XUAR. New legislation authorized sanctions for these alleged abuses in 2020,[7] and, in 2021, CBP's heightened scrutiny of imports from the XUAR led to a region-wide WRO affecting cotton and tomato imports[8] and an additional WRO targeting silica-based products from Xinjiang.[9]

After passing both houses of Congress with broad bipartisan support, President Biden signed the UFLPA into law on December 23, 2021.[10] The UFLPA represents the U.S.'s most forceful effort to date to address this issue in the XUAR. Experts estimate that the UFLPA will have an impact on the global economy "measured in the many billions of dollars."[11]

The Act's reach is broad, presumptively banning the importation of "any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in" the XUAR, as well as those produced by a number of entities identified by the FLETF.[12] To rebut this presumptive ban, importers must show: (1) their compliance with all of the Act's implementing regulations and FLETF's due diligence guidance,[13] (2) that they responded "completely and substantively" to all agency inquiries,[14] and (3) "clear and convincing evidence" that their goods were not produced with forced labor.[15]

II. FLETF Enforcement Strategy

The Act requires the FLETF to promulgate an enforcement strategy[16] which will include specific guidance to importers regarding due diligence, the amount and type of evidence that importers will need to show to rebut the Act's presumption, and what entities will be presumptively barred.[17] In the months following the UFLPA's enactment, the FLETF solicited input from the public to inform its eventual Enforcement Strategy,[18] holding a public hearing,[19] and receiving 180 written comments from U.S. and foreign businesses, industry associations, civil society, academics, and private individuals.[20] After the close of this public comment period, the FLETF published its enforcement strategy and submitted it as a report to Congress on June 17, 2022.[21] To supplement this strategy, CBP published "Operational Guidance for Importers" on June 13, 2022.[22]

A. The UFLPA Entity Lists

In addition to presumptively prohibiting imports originating, in whole or in part, in the XUAR, the UFLPA's rebuttable presumption extends to goods, wares, articles, and merchandise produced by various entities identified by the FLETF in its enforcement strategy.[23] These include entities that work with the XUAR government to recruit, transport, or receive alleged forced labor from the XUAR, as well as entities that participate in "poverty alleviation" and "pairing-assistance" programs in the XUAR.[24] These PRC government-administered labor programs reportedly target Uyghurs, Kazakhs, Kyrgyz, Tibetans, and other persecuted groups, placing them in farms and factories in the XUAR and across China. Workers in these schemes are reportedly subjected to systemic oppression through forced labor.[25] In "pairing-assistance" programs, for example, Chinese companies are reportedly encouraged to create satellite factories in the XUAR that then rely on internment camps for low-skilled labor.[26] The FLETF found that indicators of forced labor are particularly strong across the four sectors it has identified as high-priority sectors for enforcement under the UFLPA: apparel, cotton, silica-based products, and tomatoes.[27]

The UFLPA Entity List[28] that the FLETF published on June 17 remains relatively narrow, including only entities subject to existing WROs or listed to the Department of Commerce Bureau of Industry and Security's ("BIS") Entity List for their use of forced labor.[29] Notably, no downstream solar cell or solar module producers have been added to the UFLPA Entity List at this time, which was a specific concern raised by some in the solar industry.[30] A number of Chinese polysilicon firms, however, are listed.

However, the Act requires the FLETF to update the UFLPA Entity List at least annually, and the whole-of-government approach that the FLETF will be taking to identify new

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entities suggests that the FLETF could be aggressive in its designation of new Chinese entities linked to forced labor violation allegations going forward.

B. Priority Sectors for Enforcement

As part of its enforcement strategy, the UFLPA requires the FLETF to identify a list of "high-priority sectors for enforcement," which the statute indicates must include cotton, tomatoes, and polysilicon.[31]

The enforcement strategy published on June 17, 2021 does not stray significantly from the statutorily mandated list of high-priority sectors. It expands this list slightly to include:

- Apparel;
- Cotton and cotton products;
- Silica-based products (including polysilicon); and
- Tomatoes and downstream products.

However, since there is no de minimis exception in the Act, importers of a wide range of products may find their products the target of a potential exclusion order, detention or seizure. To illustrate, in its report to Congress, CBP notes that these silica-based products may include aluminum alloys, silicones, and polysilicon, which are themselves used in building materials, automobiles, petroleum, concrete, glass, ceramics, electronics, and solar panels, among other goods. Especially for importers with final products or with products that may have any of the foregoing as material inputs, importers will need to be familiar with and meet the evidentiary burden in reference to the entire supply chain, no matter how small or remote a supplier's input may be to a final product.[32]

For XUAR-linked cotton, tomatoes, and polysilicon, CBP has published specific guidance on supply chain documentation that may be necessary to overcome the UFLPA's rebuttable presumption against importation. While this recommended documentation varies slightly across the three sectors, at a high level, CBP recommends the following:

- Documentation showing the entire supply chain;
- A flow chart mapping all steps of the procurement and production processes;
- Maps of the region(s) where the production processes occur; and
- A list of all entities involved in each step of the production processes, with citations denoting the business records used to identify each upstream entity with whom the importer did not directly transact.

The CBP's enforcement of the UFLPA's presumptive import ban on each of these high-priority sectors will have a substantial effect on global supply chains involving these products. More than 40 percent of the world's polysilicon, a quarter of its tomato paste, and a fifth of its cotton supplies originate in the XUAR.[33] Industry groups from these targeted sectors have already begun to prepare for increased scrutiny and mitigate the threat of supply shortages by developing industry-wide standards for supply chain traceability.[34] Even these standards, however, may not be sufficient to overcome the presumption that products which incorporate any amount of material sourced from the XUAR have been produced with prohibited labor inputs.

C. Guidance on Effective Due Diligence & Supply Chain Tracing

As a key element of their rebuttal to the UFLPA's presumption, importers must show that they have complied with CBP and FLETF guidance on due diligence, including effective

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supply chain tracing and supply chain management practices. In its enforcement strategy, the FLETF outlines critical elements of this due diligence process, while also raising concerns that effective diligence may not always be possible in the XUAR.

1. Effective Due Diligence

The FLETF strategy refers largely to the Department of Labor's *Comply Chain* program[35] in defining the elements of an effective due diligence system. These elements include:

Engaging stakeholders and partners;

Assessing risks and impacts;

Developing a code of conduct;

Communicating and training across the supply chain;

Monitoring compliance;

Remediating violations;

Independent reviews; and

Reporting performance and engagement.

However, FLETF raises concerns that some of these elements may not be possible when dealing with goods made in the XUAR or made using the labor of workers from certain PRC labor schemes. For example, the FLETF notes that importers may be unable to sufficiently engage with stakeholders, such as employees of its suppliers, or conduct credible audits due to restrictions on access to Xinjiang and reported government surveillance and coercion that renders witnesses unable to speak freely about working conditions.[36] At a minimum, because of these concerns, audits of compliance by suppliers and subcontractors in the XUAR must "go beyond traditional auditing." The FLETF suggests that importers may need to use technology or partnerships with civil society to collect evidence to rebut the presumption, but does not provide more concrete guidance on the what technology and partnerships will be deemed by CBP to provide credible evidence.[37]

Additionally, an importer's ability to conduct due diligence and remediate violations may be limited by Chinese laws, such as the PRC's Anti-Foreign Sanctions Law. In fact, the FLETF received written comments from industry groups reporting that the Chinese government had retaliated against Chinese companies for complying with U.S. requirements to eliminate supply chain inputs from the XUAR.[38]

2. Effective Supply Chain Tracing

At a minimum, importers seeking to rebut the UFLPA's presumption must conduct a complete mapping of the supply chains that provide inputs to their products, "up to and including suppliers of raw materials used in the production of the imported good or material."[39] Per the FLETF enforcement strategy, effective supply chain mapping must go beyond a mere list of names of suppliers and their sub-tiers and include accounts of the conditions under which work is being done on the inputs at each step in the sourcing process.[40]

In addition to mapping, the FLETF strategy emphasizes the importance of identity preservation and segregation to prevent the commingling of inputs at any point in the supply chain. This risk is particularly high for importers whose suppliers source raw or partially processed material inputs from both Xinjiang and areas outside of the XUAR. Without strong identity preservation or segregation protocols, these importers risk their shipments being detained because of the difficulty of verifying that their supply chain uses only non-Xinjiang inputs.

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3. Effective Supply Chain Management Measures

The FLETF defines "supply chain management measures" as those measures "taken to prevent and mitigate identified risks of forced labor."[41] Such measures may involve processes to vet potential suppliers for forced labor prior to contracting or outlining specific consequences for a supplier's breach of its forced labor commitments. Practically speaking, the design and implementation of these measures will require robust information systems to manage and regularly update supply chain data.

Notably, however, an importer's ability to demand these supply chain management measures may be limited by the leverage it holds over its suppliers and its visibility into its supply chains. Therefore, importers with static supply chains involving long-term fulfillment contracts may be better positioned to enforce such measures than those participating in one-time transactions involving a supply chain with frequently changing inputs.

D. Guidance on the "Clear and Convincing" Standard

Neither the FLETF's enforcement strategy nor CBP's operational guidance clearly define the contours of the "clear and convincing" standard for evidence necessary to rebut the UFLPA's presumption. In a series of unrecorded webinars, however, CBP officials have stated that they view this standard as higher than a preponderance of the evidence standard and will require a much greater showing than the current standard required for WROs.[42] CBP indicated that it would model its interpretation of this "clear and convincing evidence" standard on the Countering America's Adversaries Through Sanctions Act ("CAATSA") which it also applies to enforce import prohibitions on North Korea.[43]

As in the UFLPA, under CAATSA, only "clear and convincing evidence" can rebut the presumption that all North Korean labor is forced labor.[44] CBP interprets CAATSA's "clear and convincing" standard to mean "highly probable,"[45] suggesting that the burden will only be met "if the material [] offered instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence . . . offered in opposition."[46]

Under this standard, much evidence which might have been sufficient under the WRO standard will not be adequate to rebut the presumption of exclusion. For example, while CBP staff indicated that supplier audits might be relevant evidence in determining whether forced labor was used while producing detained goods,[47] audits are likely insufficient on their own to overcome UFLPA's presumption.[48] Amidst allegations of surveillance and harassment of auditors in the XUAR, employees may not feel free to fully discuss their employers, working conditions, or governmental programs, and local suppliers might limit the access of auditors to the premises.[49] As such, CBP staff implied that even third-party audits will be presumptively defective unless the company presents sufficient evidence to convince the agency of the audit's independence and effectiveness.[50] Amidst these uncertainties, it is more likely that CBP will find that no one piece of evidence is sufficient on its own, and that importers' efforts to support their arguments with multiple pieces of evidence will be more likely to be accepted as compelling by CBP.[51]

Furthermore, the fact that a product has received an exception to the presumption in the past is not a guarantee that the same supply chain will be approved in the future. While CBP stated that evidence of past exceptions is clearly relevant and should be submitted to the agency, it has not given any definitive rule regarding past exceptions.[52] However, this does imply that importers using more regular supply chains, involving the same suppliers and sub-tier suppliers over time, will be able to more easily provide clear and convincing evidence than will importers using less-regular supply chains.

III. Enforcement Procedures

A. Enforcement Timeline

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The UFLPA's changes to CBP's mandate and authorities became effective on June 21, 2022. Going forward, CBP will review each shipment for UFLPA applicability on a case-by-case basis, based on the UFLPA Entity List and a variety of other sources.

The UFLPA's shortened timeline for CBP's identification of dispositioning of potentially problematic imports places a premium on supplier planning and preparation. Under UFLPA, CBP derives its detention authority from 19 CFR § 151.16, making the timeline for enforcement much shorter than under the preexisting WROs.[53] As opposed to the 90-day period under a WRO, importers whose shipments have been detained pursuant to the UFLPA have only 30 days to challenge this detention.

After a shipment has been presented for examination, CBP will have five days, excluding weekends and holidays, to determine whether the shipment should be released or detained.[54] If CBP determines that a shipment falls within the scope of the UFLPA—either based on links to the XUAR or to listed entities—CBP will issue a detention notice instructing the importer to submit information rebutting the UFLPA's presumption.[55] After 30 days, CBP is required to issue a final ruling on the goods' admissibility.[56]

Because of this accelerated timeline for review, CBP has emphasized that importers should be prepared to submit evidence in support of their requests promptly and in accessible formats, noting that submitting documentation in English will facilitate an efficient review.[57] In turn, CBP will attempt to prioritize requests from importers who are Customs Trade Partnership Against Terrorism (CTPAT) Trade Compliance members in good standing.[58]

If CBP issues a final ruling excluding the shipment, the importer may protest that decision within 180 days.[59] CBP then has 30 days to respond to the protest, after which it will be deemed denied.[60] Having exhausted this administrative procedure, importers then have 180 days from the denial of the protest to file a court action challenging CBP's ultimate decision.[61]

Certain shipments determined to be in violation of the UFLPA may be subject to seizure and forfeiture.[62] In an unrecorded webinar on June 7, 2022, however, CBP officials indicated that seizure would only occur in cases of obvious fraud, as opposed to good faith mistakes.[63]

B. Challenging Detention of a Shipment

An importer whose shipment has been detained pursuant to the UFLPA can pursue two different claims to obtain the release of their merchandise: (1) that the shipment is not subject to the UFLPA, and (2) that the shipment is entitled to an exception from the UFLPA.

Though both can result in a released shipment, these two claims apply in very different situations. The former arises when an importer alleges that their shipment does not contain any inputs linked to the XUAR or entities on the UFLPA Entity List. In contrast, the latter arises if the importer can prove that—even though the shipment is linked to the XUAR or an entity of the UFLPA entity list—no part of the shipment was produced with forced labor.

1. For Imports Not Subject to the UFLPA

A shipment is considered outside the scope of the UFLPA's rebuttable presumption if both the imported goods and their inputs are "sourced completely from outside Xinjiang and have no connection to the UFLPA Entity List."[64]

CBP's operational guidance indicates that importers looking to establish that a shipment is not subject to the UFLPA must make showings under both of the following categories of evidence: (1) supply chain mapping information, and (2) evidence that the goods were not

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mined, produced, or manufactured wholly or in part in the XUAR. The former should include evidence pertaining to the overall supply chain, as well as to merchandise or any component thereof as well as to the miner, producer, or manufacturer. CBP's guidance provides non-exhaustive examples of the types of evidence that might satisfy these requirements.

2. For Imports Subject to UFLPA's Rebuttable Presumption

In contrast, shipments are subject to the UFLPA if they contain goods that are either "mined, produced, or manufactured wholly or in part in" the XUAR or produced wholly or in part by an entity on the UFLPA entity. These shipments will only be released if the importer requests an "exception" to the UFLPA and can demonstrate (1) their compliance with all of the Act's implementing regulations and FLETF's due diligence guidance,[65] (2) that they responded "completely and substantively" to all agency inquiries,[66] and (3) "clear and convincing evidence" that their goods were not produced with forced labor.[67]

To meet these requirements, CBP states that an importer must make a showing under each of the following categories of evidence:

Due Diligence System Information

Supply Chain Tracing Information

Information on Supply Chain Management Measures

Evidence Goods Originating in China Were Not Mined, Produced, or Manufactured Wholly or In Part by Forced Labor

In its guidance, CBP provides a non-exhaustive list of evidence that may be able to satisfy these requirements. If CBP determines that this evidence is "clear and convincing," the presumption will be rebutted and the goods will be released under an exception to the Act. Within 30 days of any decision to grant an exception to the UFLPA, CBP must submit a publicly available report to Congress, outlining the evidence supporting this exception.[68] However, importers may seek to have certain information withheld from the public report pursuant to any applicable exemptions contained in the Freedom of Information Act.[69]

C. Predicting Enforcement Strategies and Trends

While the government has expressed an intent to enforce the UFLPA to its fullest extent, CBP resources are finite. In the immediate future, therefore, we expect to see enforcement focused on the UFLPA Entity List and on the four sectors identified by the FLETF as high-priority sectors: apparel, cotton, silica-based products, and tomatoes. Beyond these key sectors, CBP's early enforcement attention will likely be focused by media reporting, Congressional scrutiny, and civil society tips.

Even U.S. companies not in any of these immediately prioritized enforcement sectors must, however, remain mindful of their supply chain exposure to the XUAR and be prepared to focus compliance program resources on their supply chains. This is especially true as enforcement of the UFLPA expands with the availability of new technologies, additional funding for UFLPA enforcement, and increased collaboration among enforcement agencies, industry groups, and civil society.

1. Enhanced Supply Chain Tracing Technologies

Given the ever-increasing complexity of global supply chains, effective identification of shipments subject to the UFLPA will require sophisticated supply chain tracing technologies. Accordingly, the FLETF enforcement strategy instructs CBP to prioritize a wide range of technological capabilities. These include:

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- Advanced search engines that would allow CBP to more easily link known forced labor violators with related businesses, including shell companies and layered ownership structures;
- Foreign corporate registry data that would allow CBP to map the structures or multinational companies and networks;
- Scanning, translation, and data extraction of non-text-searchable documents;
- Remote sensors to support digital traceability of raw materials sourced from Xinjiang; and
- Enhanced modeling tools and machine leaning.[70]

As CBP acquires and refines these technologies, the agency will be able to expand enforcement of the UFLPA beyond shipments most obviously tied to listed entities and high-priority sectors in the XUAR.

2. Increased Funding for UFLPA Enforcement

Despite its intention to enforce the UFLPA robustly, CBP's resources are finite. Various funding requests included in the FLETF's enforcement strategy, however, indicate how the agency may scale its enforcement of the Act in the coming years.

In addition to budget requests related to the tracing technology discussed above, the strategy focuses largely on three areas for increased spending, both at CBP and at DHS: staffing, strategy and coordination, and outreach.[71] Notably, the strategy indicates that CBP has already received funding to create 65 additional positions, as well as funding to cover overtime, to ensure sufficient staffing to enforce the UFLPA.[72] Likewise, funding for strategy efforts will allow DHS to engage with international partners and coordinate other U.S. government initiatives related to Chinese forced labor.[73]

3. Inter-Agency Collaboration and Stakeholder Engagement

Lastly, the FLETF enforcement strategy emphasizes the need for coordination and collaboration with relevant stakeholders in order to effectively enforce the UFLPA. This collaboration will span the private sector, civil society, and other government agencies.

FLETF has indicated an intention to host a number of joint-interagency meetings and working-level meetings with both NGOs and the private sector to discuss UFLPA enforcement on at least a biannual basis.[74] While these meetings may allow industry groups to voice concerns with the UFLPA's impact on their business, they will also facilitate NGO tips about forced labor in supply chains beyond the UFLPA's high-priority sectors.

Moreover, increased interagency coordination may lead to the designation of additional entities to the UFLPA Entity List and the identification of additional high-priority enforcement sectors. For example, the Department of Labor regularly produces detailed reports on Goods and Products Produced by Forced or Indentured Child Labor. Although FLETF has focused UFLPA enforcement on apparel, cotton, silica-based products, and tomatoes, these Department of Labor reports already list a number of other products tainted by forced labor in China, such as bricks, electronics, and artificial flowers. Increased communication between the Department of Labor and the FLETF could lead to these additional sectors being designated as high-priority.

IV. Expected PRC Response

The PRC government has long denied any allegations of forced labor in the XUAR and has viewed foreign attempts to address this issue as attacks on Chinese sovereignty.[75] Immediately following the passage of the UFLPA in December 2021, the PRC Ministry of Foreign Affairs reiterated these concerns, characterizing the act as "violat[ing]

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international law" and "grossly interfer[ing] in China's internal affairs."[76] In light of these comments, the PRC government is likely to view U.S. enforcement of the Act as an escalation of this perceived attack on Chinese sovereignty.

Given this strong reaction from Beijing, it is likely that China may implement new countersanctions and increase enforcement of its existing blocking statute, described in detail in our previous alert. By creating significant legal consequences for Chinese persons who comply with prohibited extraterritorial applications of foreign law, enforcement of this blocking statute will have the added effect of making effective diligence in the XUAR even more challenging. U.S. importers may be left unable to gather from their Chinese suppliers the documentation necessary to satisfy the UFLPA's high evidentiary standard.

Notably, the increased tension between the U.S. and China caused by the UFLPA coincides with the continued economic isolation of Russia. In coming months, we can expect China to continue to be pushed closer toward Russia and the small group of non-aligned countries that have remained neutral with respect to Russia.

Despite the prospect of countersanctions and increased trade between China and Russia, neither the Biden administration nor the U.S. Congress are likely to be sympathetic to Chinese concerns about the UFLPA's reach. Instead, robust enforcement of the UFLPA can be expected to continue, motivated by bipartisan support for forced labor initiatives and U.S. concerns about China's position as an economic and strategic competitor. Companies with substantial resources may be able to leverage changes to their supply chains to comply with the UFLPA's demands. Still, they may consider bifurcated supply chains, with one supply chain leading to the Chinese market and the other destined for the U.S. and other jurisdictions where forced labor initiates are on the rise. Companies with fewer resources, however, may be forced to source their raw materials and other inputs from other jurisdictions.

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[2] Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78, § 3(a), (b)(2) (2021).

[3] 19 U.S.C. § 1307.

[4] Pub. L. No. 114-125 § 910 (2016)

[5] United States-Mexico-Canada Agreement art. 23.6, Dec. 10, 2019, Pub. L. 116-113 (2020).

[6] Exec. Order No. 13923, 85 Fed. Reg. 30587 (2020).

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[12] Pub. L. No. 117-78 § 3(a) (2021).

[13] *Id.* § 3(b)(1)(A).

[14] *Id.* § 3(b)(1)(B).

[15] *Id.* § 3(b)(2).

[16] *Id.* § 2(c).

[17] *Id.* § 2(e).

[18] Notice Seeking Public Comments on Methods To Prevent the Importation of Goods Mined, Produced, or Manufactured With Forced Labor in the People's Republic of China, 87 Fed. Reg. 3567 (Jan. 24, 2022).

[19] *FLETF Public Hearing on the Uyghur Forced Labor Prevention Act*, Regulations.gov, https://www.regulations.gov/document/DHS-2022-0001-0192 (last visited June 10, 2022).

[20] Report to Congress, *Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China* at 8, U.S. Dep't of Homeland Sec. (Jun. 17, 2022), https://www.dhs.gov/sites/default/files/2022-06/22_0617_fletf_uflpa-strategy.pdf (hereinafter "FLETF Enforcement Strategy").

[21] *Id.*

[22] *Uyghur Forced Labor Prevention Act: Operational Guidance for Importers*, U.S. Customs & Border Prot. (Jun. 13, 2022), https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP_Guidance_for_Importers_for_UFLPA_13_June_2022.pdf (hereinafter "CBP Operational Guidance for Importers").

[23] Pub. L. 117-78 § 3(a) (2021).

[24] *Id.* at § 2(d)(2)(B).

[25] Xinjiang Supply Chain Business Advisory (Jul. 2, 2020, updated Jul. 13, 2021), U.S. Department of the Treasury, https://home.treasury.gov/system/files/126/20210713_xinjiang_advisory_0.pdf (joint advisory by Departments of Treasury, State, Commerce, Labor, and Homeland Security and the Office of the U.S. Trade Representative).

[26] FLETF Enforcement Strategy at 19.

[27] *Id.* at 18.

[28] UFLPA Entity List, U.S. Dep't of Homeland Sec., https://www.dhs.gov/uflpa-entity-list (last visited Jun. 22, 2022).

[29] FLETF Enforcement Strategy at 22.

[30] Kelly Pickerel, *Solar industry prepares for Uyghur Forced Labor Prevention Act*

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[31] Pub. L. 117-78 § 2(d)(2)(B)(viii) (2021).

[32] Jane Luxton, *Imports From China: The Clock Is Ticking On Implementation Of Uyghur Forced Labor Prevention Act*, Lewis Brisbois (June 9, 2022), https://lewisbrisbois.com/newsroom/legal-alerts/imports-from-china-the-clock-is-ticking-on-implementation-of-uyghur-forced-labor-prevention-act?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration.

[33] Swanson, *supra* note 11.

[34] *See*, Solar Supply Chain Traceability Protocol, Solar Energy Industries Assoc., https://www.seia.org/research-resources/solar-supply-chain-traceability-protocol (last visited Jun. 22, 2022).

[35] *Comply Chain*, U.S. Dep't of Labor, https://www.dol.gov/ilab/complychain/ (last visited Jun. 22, 2022)

[36] FLETF Enforcement Strategy at 42, 44.

[37] *Id.* at 44.

[38] United States Council for International Business Comment to the Forced Labor Enforcement Task Force, Regulations.gov, 29 (Mar. 10, 2022), https://downloads.regulations.gov/DHS-2022-0001-0137/attachment_1.pdf.

[39] FLETF Enforcement Strategy at 45.

[40] *Id.* at 46.

[41] *Id.*

[42] Angela M. Santos et al., *Uyghur Forced Labor Prevention Act Is Coming… Are You Ready?: CBP Issues Hints at the Wave of Enforcement To Come*, NAT. L. REV. (June 2, 2022), https://www.natlawreview.com/article/uyghur-forced-labor-prevention-act-coming-are-you-ready-cbp-issues-hints-wave.

[43] Webinar with CBP staff (June 7, 2022). TJ Kendrick noted that "there is not much difference [between CAATSA and UFLPA] except we have a UFLPA strategy," Joanne Colonnello referred to "several [CBP] rulings" regarding clear and convincing evidence (including on CAATSA) and Elva Muneton confirmed Kendrick and Colonnello's observations.

[44] *Countering America's Adversaries Through Sanctions Act FAQs*, DHS, February 11, 2021 (accessed: https://www.dhs.gov/news/2021/02/11/countering-america-s-adversaries-through-sanctions-act-faqs). Find CAATSA § 302A at 22 U.S.C. § 9241(a) and find a side-by-side comparison of the relevant sections of CAATSA and UFLPA in the Appendix.

[45] *Id. See also,* Poof Apparel Application for Further Review, HQ H317249, Protest No. 4601-21-125334 (Mar. 5, 2021), available at https://rulings.cbp.gov/ruling/H317249).

[46] *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984) (finding in an equitable apportionment case that Colorado failed to meet the "clear and convincing" standard). *Cited in* Poof Apparel Application for Further Review, HQ H317249, Protest No. 4601-21-125334 (Mar. 5, 2021), available at https://rulings.cbp.gov/ruling/H317249).

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[47] Luxton, *supra* note 32.

[48] Webinar with CBP staff (June 7, 2022).

[49] Alexandra Stevenson & Sapna Maheshwari, *'Escalation of Secrecy': Global Brands Seek Clarity on Xinjiang*, New York Times (May 29, 2022), https://www.nytimes.com/2022/05/27/business/cotton-xinjiang-forced-labor-retailers.html.

[50] Webinar with CBP staff (June 7, 2022).

[51] *See, e.g.,* 545231, Application for Further Review of Protest 1303-92-100212, U.S. Customs & Border Prot. (Nov. 5, 1993), https://rulings.cbp.gov/ruling/545231.

[52] *Id.*

[53] Santos et al., *supra* note 42. Furthermore, future actions taken under the current XUAR WROs will follow the UFLPA timeline. Webinar with CBP staff (June 7, 2022).

[54] 19 C.F.R. § 151.16(b) (2022).

[55] Santos et al., *supra* note 42.

[56] 19 C.F.R § 151.16(e) (2022).

[57] CBP Operational Guidance for Importers at 10.

[58] *Id.* at 9–10.

[59] 19 C.F.R. § 174.12(e) (2022).

[60] *Id.* § 151.16(g).

[61] Santos et al., *supra* note 42.

[62] *See* 19 U.S.C. § 1595a; 19 C.F.R. Part 171

[63] Webinar with CBP staff (June 7, 2022). Joanne Colonnello cited as an example of obvious fraud a shipment from Malaysia where, upon opening the box, CBP could see a label stating "made with Xinjiang cotton."

[64] FLETF Enforcement Strategy at 49.

[65] *Id.* § 3(b)(1)(A).

[66] *Id.* § 3(b)(1)(B).

[67] *Id.* § 3(b)(2).

[68] FLETF Enforcement Strategy at V.

[69] CBP Operational Guidance for Importers at 8.

[70] FLETF Enforcement Strategy at 31.

[71] *Id.* at 35–39.

[72] *Id.* at 37.

[73] *Id.* at 36.

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[74] *Id.* at 53.

[75] *China tells U.N. rights chief to respect its sovereignty after Xinjiang comments*, Reuters (Sep. 11, 2018), https://www.reuters.com/article/us-un-rights-china/china-tells-u-n-rights-chief-to-respect-its-sovereignty-after-xinjiang-comments-idUSKCN1LR0L0.

[76] Press Release, *Foreign Ministry Spokesperson's Statement on US' Signing of the So-called Uyghur Forced Labor Prevention Act*, Ministry of Foreign Affairs of the PRC (Jan. 24, 2021), https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2535_665405/202112/t20211224_10475191.html.

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