

Trade Compliance Flash: Government Seeks Input from Public on Enforcement of Uyghur Forced Labor Prevention Act

International Alert

01.24.2022

On January 24, 2022, in connection with the enactment of the Uyghur Forced Labor Prevention Act (UFLPA) (discussed in this previous [Trade Compliance Flash](#)), the U.S. Department of Homeland Security (DHS), on behalf of the Forced Labor Enforcement Task Force (FLETF), published a [Federal Register Notice](#) that requests public comments on "how best to ensure that goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part with forced labor in the People's Republic of China are not imported into the United States." **The deadline for submitting comments is March 10, 2022 at 11:59 PM EST.**

As background, UFLPA requires the Secretary of the Treasury and the Secretary of Homeland Security, in consultation with the Secretary of Labor, the United States Trade Representative (USTR), the Secretary of State, and the Director of National Intelligence (DNI), to develop a strategy for preventing the imports of merchandise made in whole or in part with forced labor in China, which must be submitted to the appropriate congressional committee no later than 180 days after the UFLPA's enactment (June 21, 2022). The request for public comments represents one of two opportunities required under the UFLPA for stakeholders to provide input on and potentially shape the U.S. government's strategy for enforcing what may be significant restrictions on imports of merchandise from China imposed under the UFLPA. The second opportunity is a public hearing required to be held by March 10, 2022 that will invite witnesses to testify both regarding the use of forced labor in China and "potential measures ... to prevent the importation of goods mined, produced, or manufactured wholly or in part with forced labor in the People's Republic of China into the United States."

The Federal Register Notice describes public comments as "vital to robust implementation of the UFLPA" and encourages all relevant stakeholders to provide comments "to ensure that the FLETF accounts for a diverse and wide range of perspectives" in developing the enforcement strategy. The Federal Register Notice also provides a "non-exhaustive" list of 18 questions that stakeholders should consider in drafting comments but notes that this list is "not intended to restrict the issues that commenters may address." The questions provided by DHS track closely with UFLPA's list of required elements for the "Enforcement Strategy" that the FLETF must create. With that in mind, submitting comments that directly respond to these questions are more likely to be impactful, though the Federal Register Notice emphasizes parties can submit any additional information relevant to the implementation of the UFLPA.

Certain questions appear aimed at identifying additional goods produced in China that should be subject to import restrictions (*e.g.*, withhold release orders (WROs)) under the UFLPA. For example, question six asks:

In addition to cotton, tomatoes, and polysilicon, are there any other sectors which should be high priority for enforcement?

Other questions invite comments on longstanding "big picture" issues that U.S. Customs and Border Protection (CBP) and U.S. importers have long grappled with in enforcing and complying with WROs. For example, question 14 asks:

What type, nature, and extent of evidence can demonstrate that goods originating in the People's Republic of China, including goods detained or seized pursuant to section 307 of the Tariff Act of 1930, as amended, were not mined, produced, or manufactured wholly or in part with forced labor?

Several questions seem to suggest that enforcement agencies, including CBP, may be carefully considering the practical realities facing importers in establishing the standards and guidance for proving an item's admissibility. This would generally be a welcome sign for U.S. importers.

For example, question 12 asks:

*What type, nature, and extent of evidence can companies provide to **reasonably** demonstrate that goods originating in the People's Republic of China were not mined, produced, or manufactured wholly or in part with forced labor in the Xinjiang Uyghur Autonomous Region? (Emphasis added).*

While this generally tracks the language of the UFLPA, it's notable that question 12 adds the word "reasonably" – not mentioned in the UFLPA – which appears to invite companies to provide details on the types of evidence that a company can feasibly obtain.

Additionally, question seven asks:

What unique characteristics of such high-priority sector supply chains, including cotton, tomato, and/or the polysilicon supply chains, need to be considered in developing measures to prevent the importation of goods mined, produced, or manufactured wholly or in part with forced labor in the People's Republic of China?

U.S. importers should strongly consider providing feedback on these questions, given that many of the difficulties in anti-forced labor compliance stem from the mismatch between a) the kinds of documentation that CBP expects importers to produce to prove admissibility and b) the actual documentation available to importers and their supply chain partners. Solar panel importers, for example, may want to provide technical explanations on why their polysilicon suppliers cannot conduct batch-to-batch traceability, while clothing and apparel importers may want to explain the difficulties of obtaining timecards or other documents concerning raw cotton production at the farm level.

The list also includes questions aimed at identifying ways for the U.S. government to coordinate and collaborate with nongovernmental organizations and the private sector to combat forced labor in supply chains.

Importantly, the Federal Register Notice includes instructions on how to submit and label comments in a manner that keeps business confidential information (including trade secrets) or commercial or financial information that is confidential or privileged, from being released to the public. Carefully follow the submission and labeling instructions to ensure comments will not be released publicly.

Given the breadth and potential impact of the UFLPA and considering the uphill battles that importers have faced to date in seeking to comply with anti-forced labor laws and regulations, this Federal Register Notice provides a valuable opportunity for potentially impacted stakeholders to shape how the UFLPA will be enforced in practice. **Companies that ultimately decide not to file comments should, nonetheless, strongly consider utilizing the time before the UFLPA's import restrictions take effect on June 21, 2022 to examine their supply chains and determine if they have any links to or inputs sourced from China's Xinjiang Uyghur Autonomous Region (XUAR) or any other entities subject to WROs.**

Miller & Chevalier's Business and Human Rights Practice is intimately familiar with the challenges of complying with U.S. anti-forced labor laws and regulations, having advised numerous businesses on how to navigate WROs and having regularly interfaced with CBP in connection with detained shipments. Please reach out to a member of our Business and Human Rights Practice if you

are considering submitting comments or have any questions about how the UFLPA might impact you or your company.

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