

Congressional Committee Requests Further Enforcement of the Uyghur Forced Labor Prevention Act

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In 2023, U.S. Customs and Border Protection (**CBP**) **heightened enforcement** of the Uyghur Forced Labor Prevention Act (**UFLPA**). The UFLPA established a rebuttable presumption prohibiting the importation of goods mined, produced, or manufactured, in whole or part in the Xinjian Uyghur Autonomous Region (**XUAR**) of the People's Republic of China (**PRC**) or by a party listed under the UFLPA (**UFLPA Entity**). Increasing enforcement and political pressure means that importers should take steps now to prevent a potential shipment seizure by CBP.

Since implementation of the UFLPA in June 2022, shipments valuing \$2.6 billion have been subject to UFLPA scrutiny and review per **CBP's UFLPA Enforcement Statistics Dashboard**. Of that \$2.6 billion, there have been a total of 7,058 shipments stopped, with 2,972 being denied, 2,974 being released, and 1,112 still pending review. The number of shipments being stopped appears to be on an upward trend, as the last three months have seen more shipments being stopped and reviewed: 258 shipments in November 2023, 390 shipments in December 2023, and 402 shipments in January 2024.

Although CBP is increasing its scrutiny and review of shipments under the UFLPA, members of Congress in the Select Committee on the Chinese Community Party have urged the Department of Homeland Security (**DHS**) for even more enforcement of the UFLPA. **In a letter sent** to the Secretary of DHS on January 19, 2024, the committee expressed its concern that goods from the XUAR of the PRC are still entering the United States, despite CBP's efforts.

The committee outlined several factors that it believes undermine the effective enforcement of the UFLPA:

1. Companies are transferring forced laborers from the XUAR to other regions in the PRC to avoid enforcement;
2. Beijing is increasing transshipment of forced labor products through third countries, including U.S. free trade agreement partners; and
3. The de minimis provision in U.S. trade law, which was raised from \$200 to \$800 in 2015, has created an avenue for products of forced labor to enter the U.S. due to the overwhelming volume of small packages and lack of actionable data.

To enhance enforcement, the committee has recommended several mitigating solutions. The following recommended solutions may affect your business by limiting suppliers and delaying shipments for inspection at the border:

1. Include numerous companies and entities located outside the XUAR as UFLPA Entities because of their affiliation to companies and entities in the region, particularly those involved in the seafood, gold, and critical minerals industries;
2. Add companies outside the PRC that profit from the use of Uyghur forced labor as a UFLPA Entity;
3. Increase testing of goods at ports of entry;
4. Increase CBP onsite inspection of production sites in free trade agreement countries to conduct rule of origin verification investigations; and

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5. Enhance collaborations between other federal agencies, such as the Departments of Commerce and Justice, to identify suspicious trade patterns, prosecute violators, and assess penalties.

The committee has further posed numerous questions to DHS to better enforce the UFLPA, assess the resources necessary, and the clarify process for listing of entities as a UFLPA Entity. The committee anticipates a response from DHS by March 1, 2024.

For advice and assistance on how to streamline your customs due diligence and uncover hidden risks by enhancing supplier screening and embedding UFLPA compliance within your broader customs compliance strategy, please contact your Miller Canfield attorney or one of the authors of this alert.