



BPE Global Hot Topic – July 2022

Uyghur Forced Labor Prevention Act – Are you vetting?

The Uyghur Forced Labor Prevention Act (UFLPA) went into effect on June 21st. To the trade community, this means that the U.S. Customs and Border Protection (CBP) now presumes any goods manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region (the “XUAR”) to be unfit for entry at any U.S. port. CBP will require “clear and convincing evidence” to allow these goods to clear. The UFLPA also sanctioned specific foreign individuals related to forced labor. This Act has not only impacted companies that import, but also export. Companies are expected to have full transparency up their supply chain and are also expected to not transact with the sanctioned individuals and entities. The lead up to June 21st and now the post-enactment period, has been one of great transition. We’ve spoken about it on a podcast, which you can [listen](#) to, or you can read on to learn about how companies have been tackling the Act and how companies are preparing themselves with “clear and convincing” evidence should their shipments be questioned.

Prior to June 21st, CBP’s guidance to companies importing goods into the U.S. was to “look to recognized international standards to conduct due diligence of their supply chains to identify potential ties to the XUAR.” The companies who were best prepared for this transition approached the Act with a framework approach. The framework approach towards complying with the Act leverages three areas: people, processes and systems.

People

It is important for organizations to think about the people they can leverage within their organization to help vet. Companies that worked closely with their Sourcing, Procurement, and Sales teams were able to identify whether they had any suppliers within those regions. Forming a “tiger team” within the organization enables open lines of communication, both internally and externally to suppliers to vet for any potential ties back to the XUAR region. Following the 21st, for companies that were not well prepared, targeting these departments was key to expeditiously vetting for compliance with the UFLPA.

Processes

With the tiger team in place, companies can then turn to their existing processes. Rather than scramble to roll out a new vetting process, many companies were able to identify existing annual processes and leverage those to vet for UFLPA compliance. Examples of these processes were supplier statements, screening procedure, partner onboarding documentation, and other trade programs with review processes in place (e.g. CTPAT or ISA). CBP has never allowed entry of forced labor or prison labor-produced products. Most companies address this within existing Terms and Conditions documents and were able to expand upon the language to specify UFLPA compliant language. Companies with membership in existing programs like CTPAT have contacts and visibility into their suppliers, and annual review processes to retain membership, and were able to include an extra few questions in their program for suppliers. Companies with screening programs in place to comply with U.S. Exports were able to screen suppliers and other known contacts to vet against the UFLPA’s restricted entities.



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Systems

There are also existing systems within organizations that can help comply with the ULFPA requirements. The Automated Commercial Environment (ACE) is a free tool the importing community which can help identify the suppliers within China and specifically provide visibility to any who might be within the XUAR region. From there, a company can issue targeted questions to those suppliers to vet for any upstream “Tier 2” suppliers within the XUAR. Some companies leveraged their Trade Management systems or their freight forwarders tracing tools to obtain transparency on whether they had suppliers either directly within or nearby the XUAR region.

Following the review of their supply chains, companies are now preparing themselves with “clear and convincing evidence” should their shipments be called into question. As stated in HQ H317249, clear and convincing evidence is a higher standard of proof than a preponderance of the evidence, and generally means that a claim or contention is highly probable. It is recommended that companies review the rulings within the Customs Ruling Online Search System (CROSS). In summary, companies that may have a risk of having shipments held can begin collecting information such as payment records, employee records, company history, supplier statements, any photographs or videos that a supplier can provide, etc...

Although the enforcement of the UFLPA is burdensome to the industry, it is important to remember, and empathize with, the rationale behind it. Companies of any size should be well-aware of their supply chain and not forgo, even unintentionally, human rights, for the tradeoff of lower costs or other reasons that would be considered advantageous.

BPE Global is a global trade consulting and training firm. We are committed to helping companies understand the nuances of the UFLPA and help navigate the process of “clear and convincing evidence.” Reach out should you have any questions on the topic. You can follow us on [LinkedIn](#) where we publish topical opinions on the ever-changing rules and regulations governing the landscape of global trade.