



STEPTOE OUTSIDE COUNSEL

The Uyghur Forced Labor Prevention Act – one year on

Forced labor risk in supply chains has become an increasing focus of compliance officers and corporate boards alike in recent years. The trend began before the Uyghur Forced Labor Prevention Act (“UFLPA”) was enacted in December 2022, but has quickly accelerated since then. And companies in a wide range of industries – not just the widely publicized cotton and silica – have good reason to evaluate their supply chains to take steps to reduce their risk.

The UFLPA establishes an Entity List, different from that of the Bureau of Industry and Security (“BIS”), of entities alleged to be engaged in forced labor in Xinjiang. The UFLPA also establishes a rebuttable presumption that goods sourced from entities on the UFLPA Entity List or the Xinjiang region of China are made with forced labor. If US Customs and Border Protection (“CBP”) detains items believed to meet these criteria, importers must provide clear and convincing evidence that no forced labor was used in the production of the goods. In practice, the bar is exceedingly high,

with CBP demanding almost unattainable proof from importers. If a shipment from outside China is targeted by CBP on concerns that it might come from a UFLPA entity or Xinjiang, the importer

Companies should start to address forced labor risks now and not wait until their industry is an area of focus

must prove that the supply chain does not contain any products from Xinjiang or UFLPA entities – i.e., that the shipment falls outside of the scope of the UFLPA. While CBP requires that importers provide thorough documentation of their supply chain before it will release goods detained under this element of the UFLPA, some importers – particularly those who conducted thorough due diligence and organized relevant documentation before their goods were detained – have been successful.

In all of Fiscal Year 2021,¹ CBP targeted 1,469 shipments worth an estimated \$486 million on forced labor grounds. Since CBP began implementing the

rebuttable presumption on 21 June 2022, reporting suggests that it has targeted up to \$1.3 billion in goods for forced labor – a more than twofold increase in nearly half the time.

Initially, CBP focused on a few key industries, beginning with cotton and textiles. Then silica, with reports of more than 1,000 shipments of solar energy components targeted in the last half of 2022. CBP’s Forced Labor Enforcement Task Force (“FLET”) is actively considering other entities, sectors, and regions of the world to target. The automotive industry is currently the subject of Congressional scrutiny, and other potential FLET targets include polyester, elastane, viscose, lyocell, pharmaceuticals, spices, food additives, car batteries, aluminium, polyvinyl chloride (“PVC”), and flooring made from PVC. But the key takeaway is that, with a seemingly ever-expanding list of products affected, companies should start to address forced labor risks now and not wait until their industry is an area of focus.

The US government’s tools to address forced labor concerns extend beyond CBP. The Treasury Department’s Office of Foreign Assets Control (“OFAC”) has used its Global Magnitsky program to sanction several individuals in the Xinjiang region, and a company involved in the surveillance technology sector, for example. BIS has also increased its focus on human rights in connection with US supply chains, adding companies to the Entity List for alleged forced labor abuses. But the enactment of the UFLPA, and its entry into force last June, dramatically increased the need for importers into the United States to scrutinize their supply chains for forced labor.

Finally, human rights in supply chains is not just a US concern – it is a global one. The new Director of the International Labour Organization announced in October that forced labor would be a growing focus for the organization. Canada, UK, and the EU have all passed legislation authorizing sanctions for human rights abuses. In May 2022, the UK announced a Modern Slavery bill. In September 2022, the EU proposed to prohibit products made with forced labor from its market. With a renewed global focus on forced labor, corporate boards and compliance officers will be increasingly expected to ensure that supply chain monitoring is sufficiently robust to address the concerns of these jurisdictions, their own shareholders, and other stakeholders. ■

About the authors:

Meredith Rathbone is a Partner and Sean Gallagher is a Pre-Law Fellow at Steptoe.

www.steptoe.com

¹ CBP’s Fiscal Year extends from 1 October to 30 September.