

Understanding Global Supply Chain Risks



What is Forced Labor?



- ▶ Section 307 of the Tariff Act of 1930 prohibits the importation of merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced or indentured labor.
- ▶ CBP defines forced labor as all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer work or service voluntarily. 19 U.S.C § 1307.
- ▶ Indentured labor is defined as work or service performed pursuant to a contract, the enforcement of which can be accomplished by process or penalties.
- ▶ Forced or indentured labor includes forced or indentured child labor.



Forced Labor in the Xinjiang Uyghur Autonomous Region



- ▶ Uyghur Forced Labor Prevention Act (UFLPA) went into effect on June 21, 2022.
- ▶ New law requires CBP to apply a **rebuttable presumption** that all products made **in whole or in part** in XUAR of China are made with forced labor.
- ▶ The UFLPA includes products **made in China outside of the XUAR region or outside of China** if products contain **inputs** from the XUAR. There is **NO** *de minimis* level.
- ▶ Law includes **certain entities** which use Uyghur labor. Any imported items produced or exported by these entities are subject to the rebuttable presumption. Department of Homeland Security (DHS) publishes and updates the UFLPA restricted entity list. See www.dhs.gov/uflpa-entity-list.

Certain commodities identified as high risk of using forced labor:

COTTON



TOMATOES



POLYSILICON



UFLPA: Rebutting Presumption – Exception



- ▶ Importers whose goods are detained can request an exception to rebut presumption. Within 30 days of the request, they must show that:
 1. They fully complied with CBP policies/regulations on forced labor;
 2. They completely and substantively responded to all inquiries for information submitted by CBP to ascertain whether the goods were mined, produced, or manufactured wholly or in part by forced labor; and
 3. By **clear and convincing evidence**, the imported goods were not produced wholly or in part with forced labor or the goods have no connection with the restricted entities.
- ▶ If importer meets the above requirements, the exception will be warranted, and the goods will be released.
- ▶ Importers must demonstrate exercise of due diligence, effective supply chain tracing, and supply chain management measures. How to do this?

UFLPA: Consequences for Non-Compliance



- ▶ CBP is required to apply this presumption of forced labor for goods originating in wholly or in part from XUAR.
- ▶ The failure by the importer to rebut this presumption will result in the exclusion of the subject goods from entering the U.S.
- ▶ If the importer fails to export the subject goods from the United States, CBP may exercise its seizure authority and destroy the goods.
- ▶ Additional consequences may include the loss of sales and revenue, potential reputational harm, and revocation of membership in CBP's Customs Trade Partnership Against Terrorism (CTPAT) Trade Compliance Program.



Canada SB211

- ▶ Canada passed its own version of the UFLPA, which came into force on January 1, 2024.
- ▶ Requires entities and government institutions to submit an annual report to the Minister of Public Safety before May 31 each year detailing steps taken to reduce forced labor in the supply chain.
- ▶ Entities = any corporation, trust, partnership, or other unincorporated organization that:
 - ▶ Is listed on a Canadian stock exchange;
 - ▶ Has a place of business in Canada;
 - ▶ Conducts business in Canada
 - ▶ Holds assets in Canada
 - ▶ Meets two of the following criteria in the last two financial years:
 - ▶ \$20 million or more in assets
 - ▶ \$40 million or more in revenue
 - ▶ An average of 250 or more employees



CBP Green Trade Strategy

- ▶ Four strategic goals:
 - ▶ Incentivize Green Trade
 - ▶ Strengthen Environmental Enforcement Posture
 - ▶ Accelerate Green Innovation
 - ▶ Improve Climate Resilience and Resource Efficiency
- ▶ The agency works with partner government agencies (“PGAs”) to enforce existing environmental provisions and laws that affect importation and seizure of merchandise.
- ▶ Currently, CBP is not proposing any new laws directly related to this initiative.



EU CBAM

- ▶ The EU aims to stop “carbon leakage,” where a business relocates its operations to a location outside the EU where environmental regulation is less stringent.
- ▶ To counteract this, Regulation (EU) 2023/956 established the EU’s Carbon Border Adjustment Mechanism (“CBAM”), which applies a charge on the import of certain goods that equalizes the cost levied on carbon emissions embedded in those goods relative to the domestic EU carbon cost of producing them.
- ▶ Currently planned to apply to certain types of aluminum, fertilizer, cement, hydrogen, electricity, iron, and steel.
- ▶ Noncompliance may result in:
 - ▶ Fines and penalties;
 - ▶ Inability to export affected goods to the EU and/or import them;
 - ▶ Negative impact on corporate brand and ESG strategy; and/or
 - ▶ Potential loss of customers who may source goods from your competitors.

EU Deforestation Rules

- ▶ The Regulation on Deforestation Free Products (“EUDR”) will apply on December 30, 2024 to address the deforestation linked to the production of cattle, wood, cocoa, soy, palm oil, coffee, rubber, and some of their derived products, such as leather, chocolate, tires, or furniture.
- ▶ Importers/exporters of these commodities to/from the EU market must be able to prove that the products did not originate from recently deforested land or contribute to forest degradation.
- ▶ Companies subject to EUDR must submit a Due Diligence Statement and report the corresponding case reference number and security token on its customs declarations.
- ▶ Mixing compliant and non-compliant commodities/commodities of unknown origin is prohibited. Doing so would render the entire shipment non-compliant and prevent it from entering the commerce of the EU market.

Mesur.io

- ▶ Companies can leverage various supply chain tracing tools to identify gaps and potential issues relating to the previously mentioned regulations.
- ▶ One of these tools is Mesur.io, which continuously monitors supply chains back to their raw materials using invoices, purchases orders, shipping documentation, bills of material, and public data.
- ▶ Based on its review, the software issues a risk assessment score to identify disruptions in the supply chain and enable action.
- ▶ Specifically designed for assessing compliance of products and raw materials with UFLPA, CBP Green Trade Initiative, and EUDR, among others.
- ▶ Mesur.io is a member of the Silicon Valley Innovation Program that collaborated with CBP and the Department of Homeland Security's Science and Technology Directorate for the development of global modernization and interoperability standards.