

**2024  
Edition**

**Factsheet 5:  
U.S. Uyghur Forced  
Labor Prevention Act**

# An Apparel Supplier's Guide 2.0

**Key Sustainability Legislation  
in the EU, US, and UK**

EU Strategy for Sustainable and Circular Textiles  
EU Corporate Sustainability Due Diligence Directive  
EU Corporate Sustainability Reporting Directive  
New York Fashion Act  
EU Forced Labour Regulation & Guidance  
**US Uyghur Forced Labor Prevention Act**  
EU Ecodesign for Sustainable Products Regulation  
EU Packaging & Packaging Waste Directive & Provisional Regulation  
EU Microplastics Regulation  
UK Plastic Packaging Tax  
EU Product Environmental Footprint Guide  
EU Textiles Regulation  
EU Taxonomy  
The German Due Diligence in the Supply Chain Act  
Lessons for Fashion: How the agricultural sector is tackling commercial compliance through the EU Directive on unfair trading practices

# Acknowledgements

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**The Remedy Project** is a social enterprise that works to improve access to justice and remedy for migrant workers in global supply chains. They work constructively with governments, civil society, law enforcement, and the private sector to translate the UN Guiding Principles on Business and Human Rights into practice. For more information please see [www.remedyproject.co](http://www.remedyproject.co).

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# Introduction

UPDATE

## a. Objective

In July 2023 the first iteration of this guide covering, 12 pieces of legislation, was published. This document is an update to that guide and includes updates to the 12 factsheets issued last year as well as three additional factsheets covering new legislation not previously included.

This document is intended to enable suppliers in the apparel value chain that are established or headquartered outside of the Global North<sup>1</sup>, or whose operations are based outside these jurisdictions or whose supply chains extend to the Global South, to better understand how sustainability-related legislation in the Global North could potentially impact them. While suppliers may not, in all cases, be directly subject to the obligations created by these Global North

laws, they may still experience knock-on effects as they form an integral part of the global apparel value chain and produce goods for multinational brands and retailers who have increasing compliance obligations as they adopt new practices in order to respond to the increased legislation. As such, this document aims to:

- Offer a public resource and roadmap for suppliers to proactively respond to and prepare for the requirements of these Global North laws.
- Provide a platform for dialogue and information exchange where suppliers and manufacturers can explore engagement (where possible) with policy makers in Global North jurisdictions.
- Support suppliers in delivering the fashion industry's social and environmental performance goals, and drive meaningful change for rights holders – whether workers, local communities, cotton farmers– globally.

## b. Important legislative context to understand

As governments in the Global North embark on ambitious plans to transition towards climate neutrality, inclusive and sustainable growth, the body of sustainability legislation is expanding rapidly.

The European Union (EU) is at the forefront of these changes, introducing a plethora of legislative and non-legislative measures to implement priority policies such as the [European Green Deal](#). The European Green Deal is a cornerstone of the EU's industrial strategy, comprising a series of proposals to make the EU's climate, energy, transport, and taxation policies fit for reducing net greenhouse gas emissions by at least 55% by 2030, and to secure the global competitiveness and resilience of European industry<sup>2</sup>. There are also sector-specific initiatives such as the EU Strategy for Sustainable and Circular Textiles, which aim to implement the commitments made

<sup>1</sup> For the purposes of this document, "Global North" encompasses the European Union, United Kingdom, and the United States.

<sup>2</sup> European Commission, [A European Green Deal](#)

under the European Green Deal (see infographic on the next page “**Snapshot of the Legislative Landscape in the Global North**”), by setting out measures to address the design and consumption of textile products, and promote a greener and fairer value chain in the textiles industry. The legislations covered in this document such as the EU Ecodesign for Sustainable Products Regulation and Digital Product Passport, EU Corporate Sustainability Due Diligence Directive, EU Regulation on Prohibiting Products Made With Forced Labour on the Union Market (Forced Labour Regulation), are only some of the initiatives taken by the EU to execute on the European sustainability policy objectives<sup>3</sup>.

These legislations create legally binding obligations on companies to consider how they are managing their social and environmental impact. Many of these laws and regulations have global application and/or will impact apparel manufacturing and sourcing hubs outside of the Global North. As such, while these laws originate from the Global North such as the EU, United Kingdom, and United States, they will impact companies operating outside of these jurisdictions. It is therefore a prescient

time for companies directly subject to these legislations, and for those who have business relationships with them, to align their sustainability policies and practices with these laws.

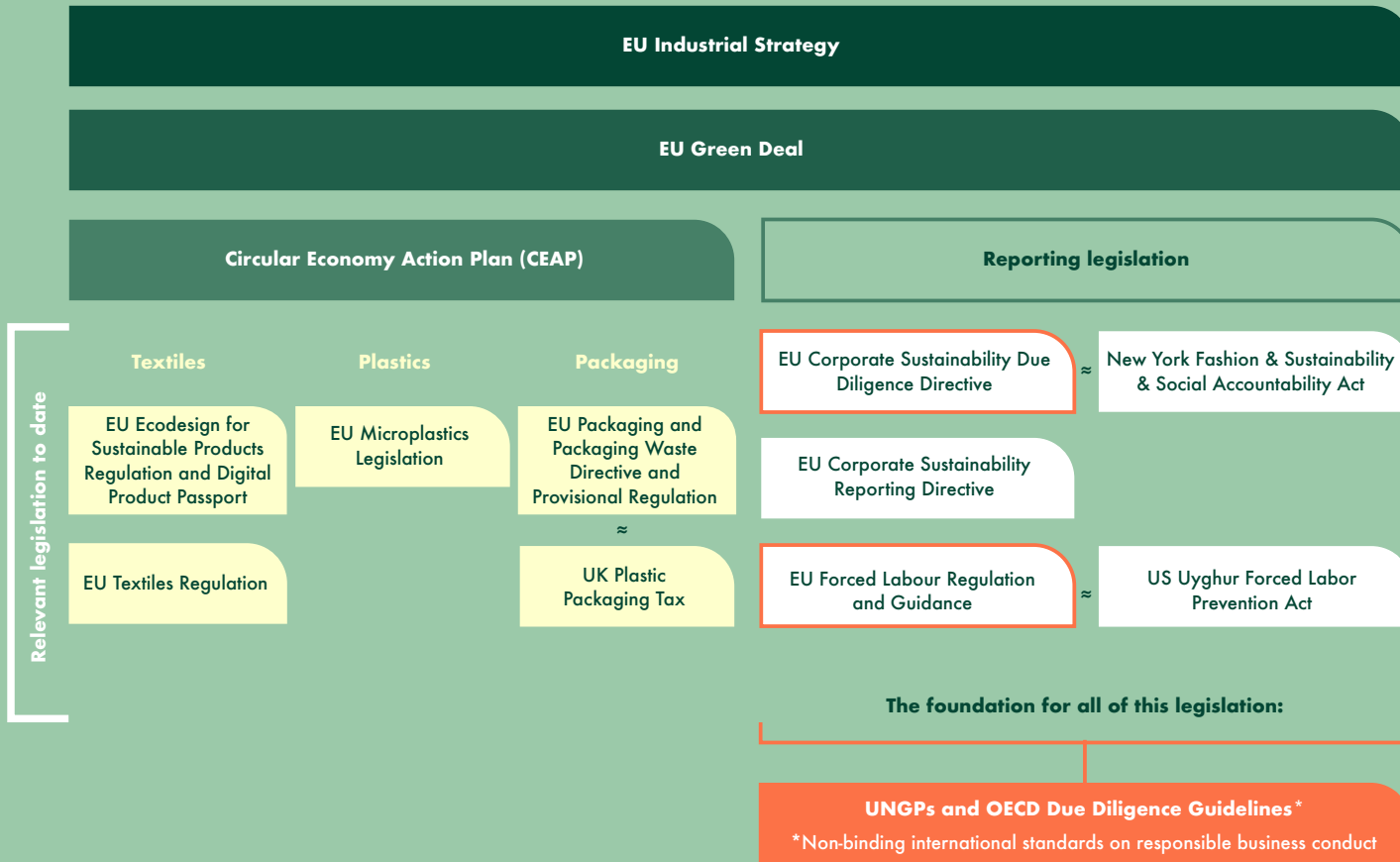
At a high level, these laws (especially those relating to mandatory human rights due diligence) can be collectively understood as a legal framework that translates elements of the United Nations Guiding Principles on Business and Human Rights (UNGPs) into binding legal obligations. The UNGPs represent the authoritative framework on how businesses should operationalize their commitments to human rights. As businesses are increasingly required to comply with different (and sometimes overlapping) laws in this area, it is The Remedy Project’s view that businesses that are able to operate in accordance with the UNGPs and other international frameworks such as the OECD Due Diligence Guidance for Responsible Business Conduct will be more successful in making this transition. Complying with the highest international standards could help future-proof business against future legislative changes and may also be more efficient from a process perspective. Furthermore, the Remedy Project sees a trend of many

brands upgrading their internal compliance and value chain requirements based on the UNGPs and international frameworks. Thus, complying with these international standards could help businesses position themselves to align with brands’ expectations and easily and effectively adapt to future legislative requirements, as well as satisfy the requirement of other business partners and customers. Instead of having to operate in accordance with different standards of compliance for each jurisdiction and each counterparty, the business can adopt a less fragmented, and thus less burdensome, approach to compliance. Of course, even if suppliers align with established international frameworks, different brands will continue to set varying detailed procedural requirements on their supply chain partners, particularly in the near future. We therefore continue to recommend that suppliers proactively work with brands and retailers on implementation to reduce the risk of multiple interpretations.

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<sup>3</sup> See for example the summaries of EU legislation on environment and climate change.

# Snapshot of the Legislative Landscape in the Global North



**Note \*** The legislations, regulations and directives in this diagram are not the complete set laid out under the umbrella strategies. Head to the [European Commission](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1111) website to learn more.

## c. General implications for companies supplying apparel & beyond

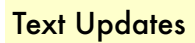
These legislative developments make clear that businesses will need to re-think the way they approach sustainability. This new era of legislation moves sustainability from “nice to have” to “must-have” and requires companies to implement human rights and environmental risk management practices. With this transition, we expect to see more cross-functional efforts to embed considerations of human rights and environmental impacts into business’ day-to-day operations and overall strategy. In this new landscape, in-house legal teams must work closely with procurement and sourcing, operations, product teams, and in-house sustainability experts to achieve compliance. There must also be executive and management level buy-in, and attention given to sustainability issues.

# How to Use ● This Document

This document comprises a series of factsheets. For each legislation, the factsheet will cover the following topics on the right.

Updates to Factsheets will be identified by these indicators:

UPDATE 

 Text Updates

## 1. Key Changes

A summary of key changes to the legislation since August 2023.

## 2. Overview

A summary of the key aspects of the legislation.

## 3. Context

A description of the political context and policy objectives that the legislation seeks to address or achieve.

## 4. Status

Whether the legislation is in effect and if not, the current stage of the legislative procedure. If known, the expected timeline for implementation is also provided. For proposed EU legislation, users may find it helpful to refer to the [European Parliament's infographic](#) for information on the different stages of the EU legislative procedure.

## 5. Scope

This section sets out the types of companies or products that fall within the scope of the legislation. This may include, for example, an explanation of the thresholds that a certain company must meet for the legislation to apply. Our suggestion to suppliers is to start by identifying whether they are directly in-scope and, if so, review the obligations and compliance recommendations for companies in-scope (Sections 5 & 6). If a supplier has established that they are not directly in-scope, it is our suggestion that those suppliers review whether the brands for which they produce are in scope. If a supplier's customer is within scope, our suggestion is to review the potential implications for suppliers to companies in-scope (see Section 7).

## **6. Obligations for companies in-scope**

A description of the duties and responsibilities that must be undertaken by the companies that are directly subject to the legislation.

## **7. Compliance recommendations for companies in-scope**

Suggested recommendations for companies to prepare for compliance with the legislation (where the legislation is not yet in effect), or considerations for companies seeking to improve their compliance (where the legislation is already in effect). For the avoidance of doubt, these compliance recommendations do not constitute legal advice or opinion; companies should seek legal advice from attorneys concerning any specific situation or legal question they may have. Moreover, as the text of the laws in many cases remains subject to change, companies should refer to the most updated version of the legislation in developing their compliance strategy. The enforcement actions undertaken by the relevant regulator (once the law is in effect) will also determine the scope of compliance obligations.

## **8. Potential implications for suppliers to companies in-scope**

In some instances, suppliers in the apparel value chain who are not directly subject to the concerned legislation, may still be impacted by the legislation as they supply to companies in-scope (i.e., a fashion brand or fashion retailer in-scope). These may include requirements around transparency and traceability, or obligations to undergo audits or obtain certifications. This section sets out the potential implications of the legislation for suppliers. For the avoidance of doubt, companies in-scope will approach compliance differently and many of the legislations covered in this document are in nascent stages of development. Moreover, the enforcement actions undertaken by the relevant regulator will also affect how companies in-scope respond to the legislation. As such, the guidance provided herein is only intended to represent our best estimates of the knock-on effects of the concerned legislation and is for informational purposes only.

## **9. Penalties for non-compliance**

Where applicable or known, the penalties for companies in-scope that fail to comply with the legislation are set out.

## **10. Form of Enforcement**

A description of the key forms of enforcement action that may be taken by the relevant authorities.

## **11. Reporting/disclosure for companies in-scope**

An overview of the key information disclosure obligations (if any) for companies in-scope.

## **12. Access to remedy mechanisms and litigation risk**

This section notes where the relevant legislation provides a right for legal action to be taken against a company for alleged non-compliance.

## **13. Opportunity to participate and engage in legislative development**

Where applicable, opportunities to participate in public consultation.

## **14. Useful resources to support compliance**

Links to third-party resources and guidance are provided for further detail on how companies in-scope may approach compliance and how suppliers or business partners to companies in-scope may prepare for cascaded compliance requirements.



# Glossary

**A glossary of key terms used in this document is set out below.**

**Brands:** For the purposes of this document, this refers to a multinational company that is engaged in the business of offering branded apparel products.

**Companies in-scope:** Companies that are directly subject to the obligations set out in the relevant legislation.

**Due Diligence:** A process that businesses should carry out to identify, prevent, mitigate, and account for how they address the actual and potential adverse human rights or environmental impacts in their operations, their value chain and other business relationships.

**EU Decision:** A “decision” is binding on those to whom it is addressed (e.g., an EU country or an individual company) and is directly applicable.<sup>4</sup>

**EU Delegated Act:** A delegated act is an EU legislative mechanism to ensure that EU

laws that are passed can be implemented properly or reflect developments in a particular sector.

**EU Directive:** A directive is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals<sup>5</sup>.

**EU Regulation:** A regulation is a binding legislative act. It must be applied in its entirety across the EU<sup>6</sup>.

**EU negotiation position:** A particular stance taken by a European Institution in a negotiation where it outlines the preferred result.

**EU provisional agreement:** When after negotiations, an informal agreement is reached on the text of a legislative proposal that then needs to be formally approved by the European Parliament and the Council of the European Union during the legislative procedure.

**Adopted:** When a law is officially approved at the end of the legislative procedure.

**Approved:** Used as a synonym for adopted or used in cases of approval of draft versions of the law.

**Derogated:** Not included or not applied.

**European Commission:** The European Commission is the EU’s politically independent executive arm. It is responsible for drawing up proposals for new European legislation, and it implements the decisions of the European Parliament and the Council of the EU.

**European Council:** The European Council is the EU institution that defines the general political direction and priorities of the European Union.

**European Parliament:** The European Parliament is the EU’s law-making body that is directly elected by EU voters every 5 years.

**Grievance Mechanism:** Any routinized, State-based, or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought<sup>7</sup>.

<sup>4,5,6</sup> European Union, Types of legislation

<sup>7</sup> UNGPs Principle 25 and commentary

## Types of EU legislation

- **Directive:**  
A legislative act that sets out a goal for EU countries who then have to devise their own laws on how to reach these goals.
- **Regulation:**  
A binding legislative act which must be applied in its entirety across the EU.
- **Decision:**  
A binding law only on those to whom it is addressed (e.g. an EU country or an individual company) and is directly applicable (it does not have to be implemented by the recipient).
- **Delegated and Implementing Acts:**  
Non-legislative acts adopted by the European Commission aimed at supplementing elements of a legislative act for uniform implementation.

**Supplier:** For the purposes of this document, unless otherwise specified, this refers to a supplier in the apparel value chain. While the information provided herein is applicable across the entire value chain, it is primarily intended for Tier 1 suppliers and sub-contractors who produced finished goods for fashion brands and retailers, and Tier 2 suppliers and sub-contractors who provide services and goods, such as knitting, weaving, washing, dyeing, finishing, printing for finished goods, and components (e.g., buttons, zippers, soles, down and fusible) and materials for finished goods.

**Value Chain:** A value chain encompasses all activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream business relationships of the company.

**Intentionally added:** Deliberately utilized in the formulation of a material or component where its continued presence is desired in the final product to provide a specific characteristic, appearance or quality.

# U.S. Uyghur Forced Labor Prevention Act



UPDATE

## 1. Key Updates

U.S. Customs and Border Protection (**CBP**) has been actively enforcing the Uyghur Forced Labor Prevention Act (the **UFLPA**). The first case challenging an entity's inclusion on the UFLPA Entity List began proceedings in January 2024 (see Chapter 10). Updates to the Strategy (as defined herein) were issued on July 26, 2023. The Updates relate to evaluation and description of forced-labor schemes and UFLPA entity list. The main changes relate to Section 2, 3, 4, 5, 8, 10 and 14.

## 2. Overview

The **UFLPA** is an amendment to the U.S. Tariff Act of 1930 (the **Tariff Act**). Section 307 of the Tariff Act prohibits the importation into the United States of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by forced labor, including by forced child labor.

The UFLPA establishes a rebuttable presumption for purposes of Section 307 of the Tariff Act that goods produced in the Xinjiang Uyghur Autonomous Region of China (**XUAR**), or by persons working with the XUAR government for purposes of pairing and other government-sponsored labor programs are produced using forced labor and therefore prohibited from being imported into the United States under Section 307 of the Tariff Act. Specific entities found by the U.S. Department of Homeland Security (DHS) to be associated with forced labor in XUAR are set forth on a published list (the UFLPA Entity List).

In effect, **importers of goods produced in XUAR will need to be able to prove**

**that the goods were not mined, produced, or manufactured wholly or in part by forced labor**, otherwise the goods will not be permitted to enter the United States. This can be done, in theory, by demonstrating **due diligence, effective supply chain tracing and supply chain management measures to ensure that goods are not made, in whole or in part, by forced labor.**

The Forced Labor Enforcement Task Force (the **FLETF**), chaired by DHS, then developed a strategy for supporting the enforcement of Section 307 to prevent the importation into the United States of goods produced with forced labor in China.

Further, on June 13, 2022, CBP issued an Operational Guidance for Importers (the **Guidance**) that complements the Strategy. The Guidance reflects CBP's interpretation of the UFLPA and therefore offers practical information to importers on how they may seek to comply with the UFLPA.

On January 19, 2024, the House Select Committee on the Chinese Communist Party sent a letter to the DHS Secretary regarding strengthening enforcement of the UFLPA. If implemented, the actions detailed in the letter would impact importers and their downstream commercial customers.

## 3. Context

On June 17, 2022, the **DHS** delivered to Congress its Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China (the **Strategy**). The Strategy sets out guidance to importers on how they can become eligible for an exception to the rebuttable presumption. Updates to the Strategy were issued on July 26, 2023 (the Strategy Updates).

## 4. Status

The UFLPA was signed into law on December 23, 2021, and the forced labor presumption went into effect on June 21, 2022. **CBP** has been actively enforcing the UFLPA. Statistics around UFLPA enforcement actions taken are available on CBP's [website](#). Hundreds of shipments relating to the apparel, footwear and textiles sectors have been subjected to CBP detainment and investigation. The main countries of origin of the detained apparel shipments include China, Vietnam, the Phillipines, Nicaragua, and Sri Lanka.

## 5. Scope

Under the UFLPA, all goods, wares, articles and merchandise mined, produced or manufactured, wholly or in part, (i) in XUAR, or (ii) by persons working with the XUAR government for purposes of pairing and other government-sponsored labor programs, are presumed to be made from forced labor and therefore prohibited from being imported into the United States under Section 307 of the Tariff Act.

This presumption applies to all goods made in, or shipped through any country, if the product includes inputs from XUAR. For example, a shirt that contains cotton grown in XUAR would fall under the presumption, irrespective of where the finished shirt was produced, or where the ginning, spinning or fabric mill processes occurred.

### UPDATE

The forced labor presumption applies unless it is determined by the Commissioner that it has been rebutted. In order to find that an exception exists, the Commissioner of CBP must find that:

- By clear and convincing evidence, the goods in question were not produced wholly or in part with forced labor;
- The importer has fully complied with guidance and implementing regulations issued pursuant to the Act; and
- The importer has completely and substantively responded to all inquiries for information submitted by the Commissioner to ascertain whether the goods were produced wholly or in part with forced labor.



## 6. Obligations for companies in-scope

Importers should work to ensure that their supply chains are free of forced labor and be able to produce a paper trail to prove it. According to the Strategy, importers should have in place due diligence, effective supply chain tracing and supply chain management measures to ensure that they do not import any goods mined, produced, or manufactured wholly or in part with forced labor from the XUAR.

### Due Diligence Obligations

For purposes of the Strategy, due diligence includes assessing, preventing, and mitigating forced labor risks in the production of goods imported to the United States. According to the Strategy, an effective due diligence system in any industry may include the following elements:

stakeholder engagement, forced labor risk assessments, a code of conduct addressing the risk of forced labor, training and monitoring compliance of suppliers, remediation and public reporting.

### Supply Chain Tracing

The Strategy indicates that effective supply chain tracing is a critical first step of due diligence and that importers are required to know their suppliers and labor sources at all levels of the supply chain.

- Importers should conduct comprehensive supply chain tracing by mapping and showing the chain of custody of goods and materials, from raw materials to the buyer of the imported goods or materials.

According to the Strategy, importers should be aware that if their imports have inputs from factories that source materials from both within the XUAR and outside the XUAR, they risk having their imports subject to detention as it may be more difficult to verify that the supply chain for imports is using only non-XUAR materials that have not been replaced by or commingled with XUAR materials at any point in the manufacturing process.

## Supply Chain Management Measures

Supply chain management measures form a part of importers' due diligence and are taken to prevent and mitigate identified risks of forced labor. According to the Strategy, effective supply chain management measures include:

- Having a process to vet potential suppliers for forced labor before entering into an agreement with them;
- Requiring that agreements with suppliers require corrective action by suppliers if forced labor is identified in the supply chain and outlining consequences if corrective action is not taken (including a termination of contractual relationship).
- Having access to supplier documentation, personnel, and workers to verify the absence of forced labor indicators, including at the recruitment stage.

## Types and Nature of Information Required to Request

The Guidance then sets out the following **five** categories of types and nature of information that may be required by the CBP if importers seek to rebut the UFLPA's forced labor presumption (i.e., to release a detained shipment) or as may be requested by CBP:

- i. Due diligence system information;
- ii. Supply chain tracing;
- iii. Supply chain management measures;
- iv. Evidence that goods were not mined, produced, or manufactured wholly or in part in the XUAR; and
- v. Evidence that goods originating in China were not mined, produced or manufactured wholly or in part by forced labor.

The Guidance provides a further explanation of the detailed information that CBP will consider. A summary is provided in this factsheet, and we would recommend that companies in-scope refer to the [Guidance](#) for further detail.





## 1. Due Diligence System Information

Importers' due diligence systems should be designed to ensure that importers will not import goods that are mined, produced, or manufactured by forced labor. According to the Guidance, documentation showing a due diligence system or process that may include the following:

- Engagement with suppliers and other stakeholders in order to assess and address forced labor risks;
- Mapping of supply chain and assessment of forced labor risks from raw materials to the production of imported goods;
- Developing a written code of conduct for suppliers, forbidding the use of forced labor and addressing the use of Chinese government labor schemes;
- Trainings on forced labor risks for employees and agents who select and interact with suppliers;
- Monitoring of compliance with the code of conduct;
- Remediation of any forced labor conditions identified or termination of supplier relationships if remediation is not possible or not completed in a timely manner;
- Independent verification of the implementation and effectiveness of the due diligence system; and
- Reporting performance and engagement.



## 2. Supply Chain Tracing Information

Supply chain tracing information may be provided by importers or requested by the CBP in order to demonstrate that imports are either not within the purview of the UFLPA as supply chains are wholly outside of the XUAR and unconnected to listed entities or to show that imports are free of forced labor and in compliance with the UFLPA. This includes evidence pertaining to (i) the overall supply chain; (ii) merchandise or any component thereof; and (iii) miner, producer, or manufacturer.



### Points to Note

Refer to the [Guidance](#) for a detailed list of the types of evidence that CBP may request. In particular, for products made with cotton, CBP has specified that importers may consider submitting the following evidence (although this is not intended to be an exhaustive list):<sup>1</sup>

- Provide **sufficient documentation**, including any records that may be kept in the ordinary course of business (e.g., purchase orders, payment records, etc.), to show the entire supply chain, from the origin of the cotton at the bale level to the final production of the finished product.
- Provide a **flow chart** of the production process and maps of the region where the production processes occur. Number each step along the production process and number any additional supporting documents associated with each step of the process.
- Identify all the **entities involved** in each step of the production process, with citations denoting the business records used to identify each upstream entity with whom the importer did not directly transact.

<sup>1</sup> Appendix A. Commodity-Specific Supply Chain Tracing Document

### 3. Supply chain management measures

Information on supply chain management measures may include internal controls to prevent or mitigate forced labor risk and remediate any use of forced labor identified in the mining, production, or manufacture of imported goods. Importers should also be able to demonstrate that documents provided are part of an operating system or an accounting system that includes audited financial statements.

### 4. Evidence that goods were not mined, produced, or manufactured wholly or in part in the XUAR

Evidence that goods were not mined, produced, or manufactured wholly or in part in the XUAR includes documentation that traces the supply chain for the goods (as set out above under “supply chain tracing information”).

### 5. Evidence that goods originating in China were not mined, produced or manufactured wholly or in part by forced labor

Evidence that goods originating in China were not mined, produced, or manufactured wholly or in part by forced labor may include (but is not limited to):

- Supply chain map identifying all entities involved in production of the goods;
- Information on workers at each entity involved in the production of the goods in China, such as wage payment and production output per worker;
- Information on worker recruitment and internal controls to ensure that all workers in China were recruited and are working voluntarily; and
- **Credible audits** to identify forced labor indicators and remediation of these if applicable.



## Points to Note

The Strategy includes an explanation of what CBP would consider to be a credible audit. A **credible audit** should include the following key elements:

- Unannounced arrival at the worksite and at a time when the workforce, especially workers at risk of forced labor, are likely to be present;
- Examination of ILO indicators of forced labor, in particular intimidation or threats, abuse of vulnerability, restriction of movement, isolation, abusive working conditions and excessive overtime.
- Worker, management, and labor broker or recruiter interviews completed in the interviewee's native language and free of employer or government intimidation;
- Unrestricted access to the worksite and any associated locations, such as cafeterias and dormitories, to observe conditions; and
- Review of documents and other information to provide additional proof of compliance and to identify or corroborate discrepancies in the information and observations of the worksite and associated facilities. This should also include documentation of the supplier's involvement with labor transfer programs in China, receipt of workers from XUAR, and measures to ensure voluntary participation by all workers in the supply chain.

## 7. Compliance recommendations for companies in-scope

**Companies in-scope (i.e., importers to the United States) should implement a robust due diligence system, conduct supply chain tracing, and implement the supply chain management measures described in the CBP Strategy documents.** Where the company in-scope has existing due diligence programs and supply chain management measures, and already conducts supply chain tracing, the company should evaluate their current systems to determine whether there are any gaps based on the CBP Strategy. Areas that may warrant heightened attention could include:

- ▶ Whether the auditing program undertaken by the company meets CBP's definition of credible audits
- ▶ Whether the company's supply chain tracing is sufficiently comprehensive to meet CBP's requirements (this is likely to be challenging with respect to chain of custody issues for companies in-scope that engage in the production of products that contain cotton)
- ▶ Whether the company could better engage with its stakeholders (including civil society partners) to identify, and address forced labor risk
- ▶ Whether the company could invest in improving the capacity of their suppliers to identify and address forced labor risk, e.g., by offering trainings.

In determining whether to grant an exception to the rebuttable presumption under the UFLPA, the CBP will take into consideration the effectiveness of the concerned company's due diligence systems, and supply chain management measures. As such, it is critical that companies focus on strengthening their risk management systems and practices.

Companies in-scope should also review the CBP Guidance and verify whether they have access to the information and types of evidence that may be requested by the CBP. Companies in-scope may need to request information from suppliers to address any information gaps. Companies in-scope may also need to upgrade document and record management systems to ensure that this information is readily available and easily accessible.



## 8. Potential implications for suppliers to companies in-scope

While the CBP Guidance is aimed at U.S. importers, suppliers face the risk of repercussions from their clients' goods being held at U.S. customs. If this occurs, the client may come to the supplier and ask them to provide evidence of the supply chain and that forced labor is not involved. To mitigate against this risk and to be able to provide the necessary information to clients, suppliers will also need to:

- implement effective due diligence policies and processes
- undertake supply chain tracing
- develop supply chain management processes
- properly document these policies and processes.

In other words, the requirements imposed on companies in-scope will likely cascade up the supply chain to suppliers.

Suppliers to companies in-scope should expect to be subjected to renewed requests for information from buyers relating to their due diligence policies and processes, supply chain tracing and management processes. The information requested will likely cover all the categories described in Section 6 above and include (but is not limited to):<sup>2</sup>

- Documentation showing a due diligence system or process to identify, monitor and remediate forced labor risks, especially with respect to any sourcing and production in China, including e.g., a supplier code of conduct that prohibits use of forced labor;
- Documentation tracing the supply chain that demonstrates their goods are either not subject to the UFLPA because their supply chains are wholly outside of Xinjiang and unconnected to listed entities, or to show that their imports are free of forced labor and in compliance with the UFLPA, such as (but not limited to):
  - Detailed description of supply chain including imported merchandise and components thereof, including all stages of mining, production, or manufacture;
  - Shipping records, including manifests, bills of lading (e.g., airway/vessel/trucking);
  - Certificates of origin;
  - Mining, production, or manufacturing records;
- Evidence showing that goods originating in China were not produced or manufactured wholly or in part by forced labor
  - Information on workers at each entity involved in the production of the goods in China such as wage payment and production output per worker.

Companies in-scope are also likely to request suppliers to make declarations or affidavits that they do not source from XUAR, and that their goods are not produced (wholly or partly) by forced labour. These disclosures will be subjected to independent verification and assurances will likely to be sought in the form of contractual indemnities and warranties that aim to protect the buyer if the disclosures made around supply chain tracing and management and due diligence practices are incorrect.

<sup>2</sup> This is non-exhaustive list. Please refer to the Guidance for further details on the documentation required.




## 9. Penalties for non-compliance

While not dictated by the UFLPA, generally, failure by importers to take appropriate remedial action after they learn of forced labor in their supply chain can expose them to potential criminal liability if they continue to benefit, financially or by receiving anything of value, from participating in a venture engaged in forced labor, while knowing of or recklessly disregarding the forced labor. The CBP also has the authority to issue civil penalties against those who facilitate import of goods produced with forced labor.

## 10. Form of enforcement

### Enforcement Actions

The CBP is the main enforcement agency under the UFLPA and may use detention, exclusion, forfeiture, and seizure in order to enforce the UFLPA.

-  **Detention** The CBP has **five days** (excluding weekends and holidays) from the date on which goods are presented for examination by the CBP to determine whether they should be released or detained. If goods are not released within this five-day period, they will be considered to be detained goods.
-  **Exclusion** The CBP can prohibit the entry of goods that it considers to be in violation of the UFLPA. If the CBP has not made a decision on admissibility within 30 days after the goods are presented to the CBP for examination, the goods are considered excluded.
-  **Seizure / Forfeiture** Import of goods determined to be in violation of the UFLPA can be subject to seizure and forfeiture. Once CBP has made a decision to seize a shipment, the case will be referred to the Fines, Penalties and Forfeitures (FPFO) officer at the port of entry.





## Responding to enforcement action

The CBP will provide importers with notice when enforcement actions are taken, such as a Customs Detention Notice or a Notice of Seizure which shall contain information on the action to be taken and the rights of the relevant importer. In response to such notices, importers may provide information to the CBP and request an exception to the UFLPA's rebuttable presumption.

- Importers that receive a detention notice concerning their shipments may respond to such notice within the applicable timeframe which is typically 30 days from the date that the goods were presented for examination by the CBP and request an exception from the UFLPA's rebuttable presumption.
- Importers that receive an exclusion notice can file an administrative protest within the applicable timeframe to request an exception from the UFLPA's rebuttable presumption.
- Importers that receive a seizure notice may utilize a petition process to request an exception to the UFLPA's rebuttable presumption.

Importers can also identify other shipments that have identical supply chains to ones that have been previously reviewed by CBP and determined to be admissible to facilitate a quicker release of identical shipments.

Importers can also argue that goods fall outside the scope of the UFLPA in response to enforcement action by the CBP and provide information to that effect to the CBP. The information provided must show that the goods and their inputs are sourced completely outside the XUAR and have no connection to entities on the UFLPA Entity List. If the CBP finds that the information provided by importers shows that the goods are outside the scope of the UFLPA, the importers will not need to obtain an exception from the UFLPA's rebuttable presumption and the CBP will release the contested shipments, provided that they are otherwise in compliance with U.S. law.

## CBP's approach to enforcement

The Strategy sets out the following four high-priority sectors for enforcement: (i) silica-based products (including polysilicon); (ii) apparel; (iii) cotton and cotton products; and (iv) tomatoes and downstream products. The Strategy also includes an initial UFLPA Entity List and a process for updating the UFLPA Entity List going forward. The Strategy Updates reiterate these high priority sectors.

According to the Strategy, the CBP shall employ a risk-based approach to enforcement that is dynamic in nature and prioritizes the highest-risk goods based on current data and intelligence. The CBP shall also prioritize illegally transshipped goods with inputs from the XUAR and goods imported to the United States by entities that, although not located in the XUAR, are related to an entity in the XUAR (whether as a parent, subsidiary, or affiliate) and likely to contain inputs from that region.

### UPDATE

#### Selected litigation

On June 9, 2023, the printing and imaging company Ninestar and its affiliates were added to the UFLPA Entity List. Ninestar denies that it used forced labor and sued the U.S. government. On January 18, 2024, the U.S. Court of International Trade heard arguments in Ninestar's request for a preliminary injunction to remove Ninestar from the Entity List. This will be the first case challenging an entity's inclusion on the UFLPA Entity List.





## 11. Reporting/disclosure requirements (if any) for companies in-scope

The UFLPA contains reporting requirements for the Commissioner, who shall submit to the appropriate congressional committees and make available to the public, no later than 30 days after making a determination of an exception from the rebuttable presumption a report identifying the good and the evidence considered if an exception should be granted.

## 12. Access to remedy mechanisms and litigation risk

Please refer to Sections 9 and 10 above relating to penalties for non-compliance.

## 13. Opportunity to participate and engage in legislative developments

Not applicable.

## 14. Useful resources to support compliance

U.S. DHS, [Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China](#)

U.S. DHS, 2023 Updates to the Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China

U.S. CBP, [Operational Guidance for Importers](#)

US CBP, [Uyghur Forced Labor Prevention Act Statistics](#)

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**EU Strategy for Sustainable and Circular Textiles**

1

**EU Corporate Sustainability Reporting Directive**

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**EU Corporate Sustainability Due Diligence Directive**

3

**New York Fashion Act**

4

**EU Forced Labour Regulation and Guidance**

5

**US Uyghur Forced Labor Prevention Act**

6

**EU Ecodesign for Sustainable Products Regulation**

7

**EU Packaging and Packaging Waste Directive and Provisional Regulation**

8

**EU Microplastics Regulation**

9

**UK Plastic Packaging Tax**

10

**EU Product Environmental Footprint Guide**

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**EU Textiles Regulation**

12

**EU Taxonomy**

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**German Supply Chain Due Diligence Act**

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