

Guide to Uyghur Forced Labor Prevention Act Compliance

The U.S. enacted the Uyghur Forced Labor Prevention Act to discourage businesses from benefiting from forced labor in Xinjiang. Find out how to comply.



If your business sources anything from China, you are probably aware of the growing concerns about forced labor in the Xinjiang region. Some businesses located there, or sourcing products from the area, have been accused of using Uyghur forced labor, raising serious ethical, reputational, and legal risks.

The Uyghur Forced Labor Prevention Act (UFLPA) is a critical law to address the issue of forced labor in Xinjiang. In this article, we explore the key features and implications of the UFLPA and explain how businesses can comply with it. Whether you source products from Xinjiang or are simply concerned about human rights and corporate social responsibility, this article provides valuable insights and guidance on the UFLPA.

Background: The Forced Labor Problem in China's Xinjiang Region

The Xinjiang Uyghur autonomous region (XUAR) in the northwest of the People's Republic of China (PRC) is home to about 26 million people, mostly from ethnoreligious Muslim minorities like the Uyghurs, the Kazakhs, and the Kyrgyz.

After violence and unrest in the region, the Chinese government set up multiple internment camps, which they called reeducation centers or vocational schools, allegedly for the indoctrination of these minorities.

The estimated number of prisoners in these camps ranged from 800,000 to 1.5 million in 2019. Since 2018, reports of torture, forced labor, and other human rights abuses have been trickling out from the region. We'll review some of the business sectors where forced labor is allegedly being used.



Which Industries Are Using Forced Labor From Xinjiang?

As of 2023, the following three high-priority sectors are identified as having greater risks of forced labor in their supply chains.

I Cotton Garments and Textiles

The Xinjiang region is a major area for cotton cultivation and a hub of cotton production, so businesses in the industry are at risk. Here are some figures about the cotton and apparel sector:

- Fifty percent of your apparel is made in China: It accounts for 30% of global consumption, about 50% of the global textile production capacity, and exports more than 30% of the world's textiles and garments.
- Most of China's cotton comes from Xinjiang: In 2022, about 90% of China's total cotton production was in Xinjiang.
- There are half a million forced laborers: The estimated number of forced laborers in Xinjiang's cotton farms was half a million in 2020.
- Forced labor is encouraged by economic benefits: China's higher labor costs make textile production uncompetitive compared to cheaper places like Bangladesh. Forced labor enables it to stay competitive.

I Tomatoes and Processed Tomato Products

Another sector at high risk of forced labor is tomato farming and its downstream products like tomato seeds, canned tomatoes, and tomato sauce.

Polysilicon and Downstream Products in the Solar Industry

The U.S. intends to get 30% of all its energy from solar by 2030. Many businesses are switching to solar for their environmental responsibilities and carbon emission offsets. The U.S. Department of Labor (DOL) points out that much of the equipment for solar is coming from the PRC:

- Over 80% of solar cells are made in China.
- Forty-two percent of all solar cells and panels came from China in 2020.
- Seven of the top 10 solar panel producers in the world are Chinese companies.
- Ninety-seven percent of all solar wafers, essential for solar cells and panels, are made in China.
- Over half of all the solar-grade polysilicon, a raw material for wafers, is produced in Xinjiang. All the quartz required for it is also mined in Xinjiang.

The DOL cautions that "solar companies around the world face risks from solar products produced in China. America's top four solar trade partners (Malaysia, Vietnam, Thailand, and South Korea) also import large quantities of solar materials from China."

What Is the Uyghur Forced Labor Prevention Act?

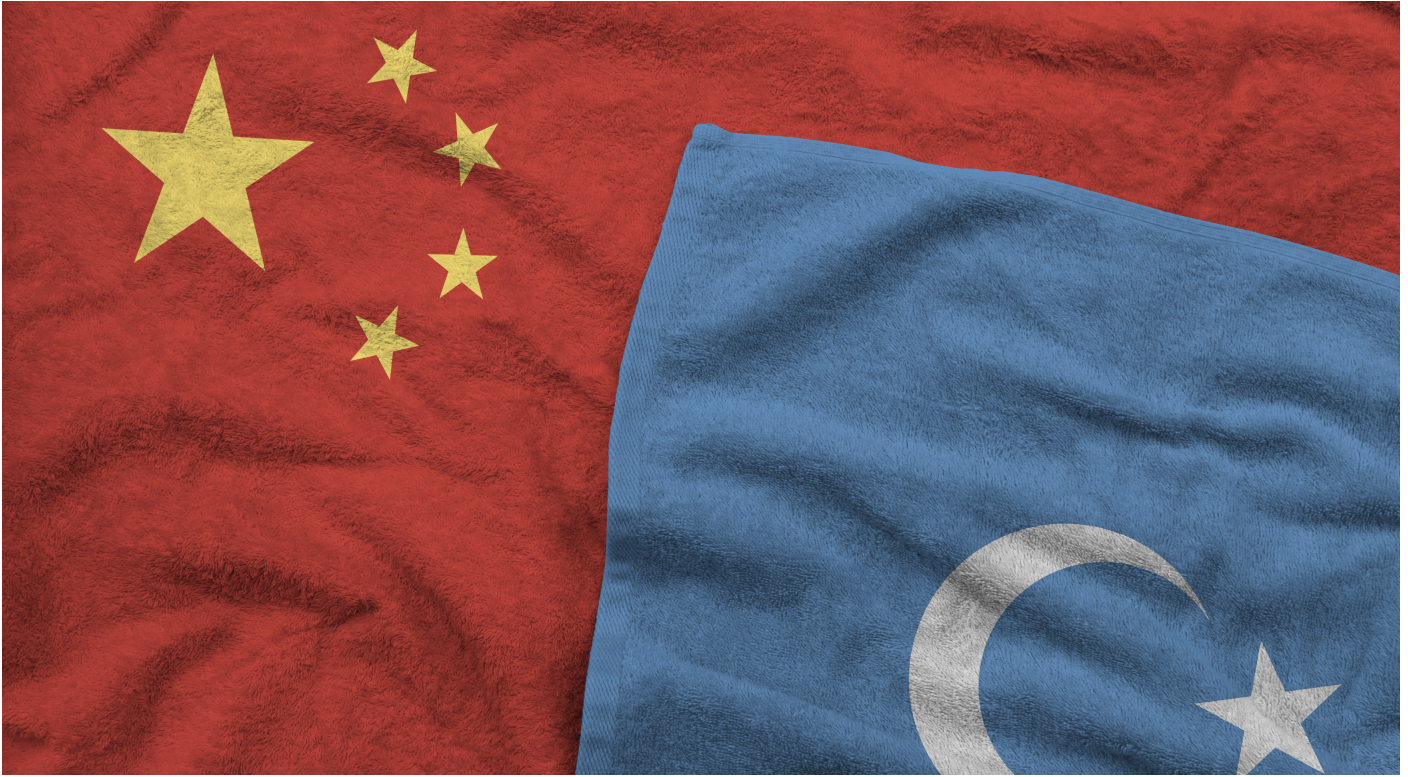
Through the Tariff Act of 1930, the U.S. maintains a principled stand against the use of any kind of forced labor in international trade. The Uyghur Forced Labor Prevention Act, enacted in 2021 with bipartisan support in the House of Representatives and the Senate, empowers the U.S. government to develop a UFLPA strategy to discourage the private sector from benefiting from forced labor in Xinjiang.

What Is the UFLPA Strategy?

The UFLPA strategy is a set of administrative initiatives enforced by the stakeholders of the Forced Labor Enforcement Task Force (FLETF). Some of the key departments and measures are:

- **Department of Homeland Security (DHS):**
The DHS is responsible for interagency coordination. It also publishes, in the Federal Register, the UFLPA entity list of businesses suspected of exploiting Xinjiang's forced labor.
- **U.S. Customs and Border Protection (CBP):**
The CBP prevents the import of forced labor goods by issuing Withhold Release Orders (WROs) against suspected products and suppliers. Under the rebuttable presumption rule, all high-risk imports from Xinjiang are presumed to use forced labor, and it's on the supplier to prove otherwise.
- **Department of Commerce (DOC):**
The DOC maintains an entity list of foreign persons and entities to whom certain exports, such as equipment for forced labor industries, are prohibited.
- **Department of the Treasury (USDT):**
The USDT's Office of Foreign Assets Control enforces economic sanctions against individuals and entities that run Xinjiang's forced labor program.
- **Department of State (DOS):**
The DOS enforces visa and entry restrictions against blocked persons suspected of running forced labor schemes.
- **Department of Labor (DOL):**
The DOL adds any tainted products to its list of forced labor goods.
- **Department of Justice (DOJ):**
The DOJ and its law enforcement agencies can investigate persons and entities suspected of exploiting forced labor.





Case Studies in Enforcement of the UFLPA

The next section lists some strategies to stay on the right side of the UFLPA

Case Studies in Enforcement of the UFLPA:

- **Uniqlo shirts:**
A shipment of Uniqlo cotton shirts, possibly made using forced labor in Xinjiang, was blocked from Los Angeles in January 2021. Uniqlo had failed to rebut the suspicion by producing an outdated code of conduct letter, illegible contracts, and suspicious customs declarations.
- **Cotton products:**
In December 2020, CBP detained shipments of cotton products made by a prohibited Chinese company on the UFLPA entity list.
- **Solar panels from top suppliers:**
In November 2022, CBP seized as many as 1,000 shipments of solar panels from three Chinese companies that supply a third of all the panels entering the U.S.

5 Strategies for UFLPA Compliance

While there are several challenges companies are likely to face in getting compliant with UFLPA, the good news is that if you focus on getting your due diligence, supply chain, risk management, and official documentation right, you'll find it smooth sailing.

Plus, keep all your procurement orders, regulatory documents, and reports in a centralized system with strong information security, access controls, and non-repudiation measures — making it easier when it comes to warehouse checks, regulatory inspections, or audits.

I Conduct Due Diligence on Your Suppliers

Adopt a comprehensive and wide-ranging [due diligence system](#) for managing your suppliers:

- Follow a risk-based strategy. [Assess each supplier](#) as a potential source of risks based on its ownership, reputation, legal history, financial history, nationality, media reports, and similar factors.
- Use the UFLPA entity list and related databases to regularly [vet your suppliers](#).
- Implement ongoing due diligence through [continuous monitoring](#) and periodic risk reassessments.
- To mitigate any risk as and when it's identified, use [risk controls](#) like contractual terms, operational reviews, financial reporting requirements, field inspections, and audits.

I Use High-Tech Supply Chain Tracing

Set up a system to realize highly effective supply chain tracing of all your inputs and finished products. For organic products like cotton and tomatoes, you can use advanced traceability techniques like [DNA tagging](#).

Strengthen Your Risk-Based Supply Chain Management

Through risk-based [supply chain management](#) measures, you can reduce your exposure to [operational risks](#) of having your production or imports disrupted, [reputational risks](#) of being associated with forced labor or human rights abuses, legal and compliance risks, and the financial risks of transacting with suspected suppliers.

Follow the DOS' [Xinjiang supply chain business advisory](#) for a comprehensive set of recommendations.

I Keep Your Documentation Flawless

You may be eligible for UFLPA's rebuttable presumption relief if you have all the necessary documentation and information outlined in CBP's operational guidance. They include things like:

- Code of conduct for all suppliers, warning them about the use of forced labor
- Independent verification and monitoring reports
- Details about all the suppliers in the chain
- Purchase orders, receipts, and other standard accounting documents
- Mining and production orders

Secure Your Business with Certa's Cutting-Edge UFLPA Compliance Solutions

Certa's procurement, risk management, supply chain, and contract management capabilities are tailor-made to help your business comply with laws like the Uyghur Forced Labor Prevention Act. Key features include:

- Conduct due diligence on your suppliers, sub tiers, importers, and other third parties.
- Lookup entities, prohibitions, and exclusions through Certa's integration with the U.S. government's System Award Management databases and other proprietary lists
- Get intelligence about third parties and ownership structures from Certa's partners like Moody's, Sayari, and D&B.
- Manage all your questionnaires, contracts and other documentation.
- Manage your social responsibilities like preventing forced labor using Certa's ESG platform to target risky businesses.

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