



Due Diligence Under the UFLPA

A QAD Leadership White Paper

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INTRODUCTION

Consumer standards and expectations are evolving. In fact, [roughly 80 percent](#) of consumers actively care if products are ethically sourced. This consumer awareness has not declined the rate of forced labor unfortunately, and modern slavery has risen significantly over the past five years. There were roughly [50 million people living in modern slavery in 2021, a big spike from the 10 million in 2016.](#)

This rise in modern slavery is a risky business when it comes to ethical supply chains. If consumer preference isn't enough for

organizations to dedicate themselves to eradicating forced labor in supply chains, governments across the world are now mandating them through regulatory compliance policies and initiatives.

One of the main government policies to emerge is the Uyghur Forced Labor Prevention Act (UFLPA), U.S. legislation that changed policy on China's Xinjiang Uyghur Autonomous Region. A number of governments around the world have accused China of committing human rights atrocities, including forced labor on the Uyghur ethnic minority.



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THE UYGHURS: A BRIEF HISTORY

In the Xinjiang Autonomous Region, it is incredibly difficult to separate the regular economy from the forced labor economy. Roughly 11 million Uyghurs live in the far northwestern corner of China, and they are mostly Muslim and Turkic speaking. Though China itself is roughly 90 percent Han Chinese, the Uyghurs have their own distinct cultural, religious and political practices.

Since [2017 over a million, with some estimates of up to 2 million](#) Uyghurs have been involuntarily detained in what the Chinese government refers

to as “vocational education and training centers.” However, these facilities are forced labor camps where Uyghurs are forced to work for little or no wages. Additionally, Uyghur families and entire communities are being separated, where some are shipped to other factories throughout China [in the government’s attempt to fully assimilate their cultural ties](#) and instill government mandated identities.

Undoubtedly, the ongoing atrocities and crimes against humanity facing the Uyghurs is enough for consumers and other governing countries to react and initiate repercussions.



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A WORLDWIDE RESPONSE

It is completely understandable as to why consumers are concerned with ethically sourced goods, it would be inhumane to not be concerned about the enslavement of over a million people. Unfortunately, profit margins are more of a concern to some companies than human rights, which is why governments across the globe have enacted supply chain due diligence policies. The UFLPA is one that trade-dependent companies need to prepare to navigate when importing into the U.S.

On July 1, 2020 the [Xinjiang Supply Chain Business Advisory](#) was issued by various U.S. government agencies including the Department of Treasury, Commerce, Labor and Homeland Security as well as the Office of the U.S. Trade Representative. The document describes “horrific abuses” of the Uyghurs and highlights the importance of the implementation of the UN Guiding Principles on Business and Human Rights. On December 23, 2021, President Joe Biden signed the UFLPA into law, and [U.S. Customs and Border Protection began implementing the act on June 21, 2022](#). Essentially, the UFLPA assumes that any trace of material that was sourced or touched in Xinjiang is automatically guilty of forced labor unless otherwise proven.

The Xinjiang Supply Chain Business Advisory has issued guidance for companies to ensure that their goods are not the product of forced labor in the region and how to prove that products are being made and moved ethically. Among this guidance is the extensive urgency of supply chain visibility, traceability and documentation. Importers must first really understand their products, the entire supply chain has to be completely linked and documentation of those links is required so that products can be traced back to the source.

NAVIGATING THE UFLPA

Trade compliance comes with a significant amount of due diligence. Importing under the UFLPA requires extensive documentation where the Importer must prove “by clear and convincing evidence, the goods were not produced with forced labor.” This includes not only the product, but any party that took part in the handling, storage or movement of the goods which have been added to the UFLPA Entity List. Adding to the complexity is the increasing number of commodities that the UFLPA targets. What began as cotton and tomatoes and any commercial goods containing those raw materials, now includes a growing list of other raw materials and their associated finished goods, such as silica and solar panels, and rare-earth metals and electrical components.

In addition, U.S. Customs and Border Protection (CBP) has now identified an increasing trend where Xinjiang-related goods are being transshipped through other countries, such as Vietnam and Malaysia, in an attempt to avoid detection. As a result, Importers must now devote additional scrutiny to the products they are purchasing and the origin of the raw materials and components within the product’s bill of material.

The UFLPA can be described as a policy that treats importers as guilty until proven innocent, quite the opposite of the general American judicial system and founding principles. However, the horrors surrounding the Uyghur people is enough to justify an increase in digitization traceability and ESG concerns. These increased accountability standards translate into an absolute need for visibility and traceable documentation of end-to-end supply chains, if companies want to remain viable in the global marketplace. From June 2022 through June 2023, [CBP has detained](#) over 4,200

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shipments valued at \$1.4 billion dollars, resulting in 679 denials.

The [UFLPA does not require CBP to issue Withhold Release Orders \(WROs\)](#) as the evidence needed to rebut a presumption under the UFLPA is higher than the requirements of a WRO. There are major consequences for violating the UFLPA including expensive storage fees, reexportation to another country and brand reputation.

UFLPA COMPLIANCE BEST PRACTICES: PEOPLE, PROCESSES, AND SOLUTIONS

To effectively comply with the Uyghur Forced Labor Prevention Act (UFLPA), companies should consider implementing these best practices:

PEOPLE

To effectively address forced labor and related environmental, social and governance (ESG) issues, it is recommended to appoint dedicated personnel as point-of-contact and subject-matter-experts.

Additionally, establishing a corporate ESG council with representation from key business operations, including third-party service providers, can foster collaboration and comprehensive ESG management. Staying connected with ESG industry groups is crucial to remain updated on best practices and industry trends. Regular education and awareness training sessions should be conducted to ensure all stakeholders are well-informed and equipped to address these critical issues.

PROCESSES

To effectively manage supply chain risks, it is important to conduct an initial review of products to establish a risk baseline. Proactively vetting

suppliers and products before issuing purchase orders, taking into account other risk factors, is essential.

Aligning sourcing and procurement with trade and customs departments promotes better collaboration and risk management. Implementing supplier questionnaires and sourcing affidavits helps gather necessary documentation. Developing and publishing policies and procedures on internal websites, reviewed by legal counsel, ensures compliance with the standard of 'reasonable care'.

Finally, highlighting ESG-related activities and achievements can enhance brand reputation and consumer trust, emphasizing a commitment to responsible business practices.

SUPPORTING SOLUTIONS

To optimize supplier management, it is recommended to utilize [supplier relationship management](#) (SRM) tools that facilitate supplier selection, performance monitoring and compliance documentation management. Employing supplier portals streamlines data collection and management processes.

Deploying [screening tools](#), such as those for denied party lists, helps identify entities and products associated with UFLPA. Exploring risk mitigation systems capable of thorough supplier relationship reviews enhances risk management efforts. Additionally, leveraging [automated trade management](#) solutions brings process efficiencies, enables fast CBP clearance and supports duty/tax minimization strategies. These technological solutions play a vital role in enhancing overall supply chain operations.

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SUPPORTING CHANGE WITH HUMANE SUPPLY CHAINS

Global companies who import to the U.S. have to ensure compliance or risk losing a more engaged consumer market, as well as face the financial consequences. Digitizing the supply chain from sourcing to last-mile delivery to end customers is essential for meeting regulatory compliance requirements, mitigating risk and boosting supply chain agility. As Martin Luther King Jr. famously said, “injustice anywhere is a threat to justice everywhere,” and involuntary enslavement is an enormous injustice.

Ending child and forced labor is going to take a monumental and global effort, and the UFLPA is only one piece to meeting overall ESG goals. Companies who participate in global trade should be concerned about human rights abuses up and down their supply chains not only because of governmental mandates and customer opinion, but simply because it is the moral and right thing to do.

For more information, please [contact us](#).



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