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Top News

Uyghur Forced Labor Guidance Likely Vague; Importers Should Begin Due Diligence Efforts Now, Lawyer Says

Upcoming and much anticipated guidance on compliance with the Uyghur Forced Labor Prevention Act (UFLPA) could very well be less detailed than the trade community would like, so importers should treat it like “gravy” and focus on starting now on due diligence efforts in preparation for the new law’s effective date in June, customs lawyer Richard Mojica of Miller & Chevalier said.

Speaking during a webinar put on by his law firm on April 21, Mojica said the guidance, which CBP is in the process of developing (see [2202150037](#)), will likely be “helpful but only to a point.” It may be “high level,” and will prompt companies to do due diligence into their own supply chains,” Mojica said. But while it may provide “good data points to incorporate,” companies “need to start now, if we haven’t

already, to incorporate due diligence so you are prepared to go above and beyond what the government is requesting,” he said.

The UFLPA, which takes effect June 21, 2022, creates a rebuttable presumption that goods made in Xinjiang were made with forced labor, and leaves it up to importers to demonstrate otherwise if their supply chain is connected to the Chinese province. It also requires the government to create a list of entities and products involved with forced labor. But though industry has called for the list to be made public, it’s still an open question whether it will be available as an aid to compliance efforts (see [2203160041](#)), Mojica said.

Importers should prepare for the new law by mapping their supply chains, especially for high-risk goods, as set forth in a State Department advisory issued in 2020 and updated in 2021 (see [2107130046](#)), said Mary Mikhaeel, also with Miller & Chevalier. They should also screen their suppliers to determine whether they have links to Xinjiang, and implement contractual provisions that require suppliers to cooperate with any UFLPA compliance efforts.

Meanwhile, the withhold release order remains CBP’s “primary mechanism” for forced labor enforcement, Mikhaeel said. The threshold is “very high” for importers to get their products released once detained under a WRO, though Mojica said work with CBP on the process is starting to bear fruit.

While Mojica has been unable to obtain release of his clients’ goods in many instances, a working relationship built with various CBP offices “over the past year or two” has also resulted in some success, he said. “We’re moving toward an environment where there is a process that can lead to the release of merchandise,” which has been a “very positive development.” Recently, importers and CBP have been becoming familiar with high risk supply chains, resulting in a “mutual understanding” of collaboration to achieve the release of goods with documentation that supports it, Mojica said.

“A lot of the press is on detentions” in the hundreds and thousands of shipments, based on forced labor, Mojica said. “However, the real news for us, I think, is the fact that this process is starting to yield positive results.”

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Seeking CBP Ruling May Help Importers of Manufactured Goods With Supply Chains in Asia

The director of CBP’s Office of Trade told an audience that importers who are considering importing a good that has a new supply chain and are concerned about running afoul of the ban on imports of goods made with forced labor can submit a request for a binding ruling that the product’s supply chain is free of forced labor. CBP Executive Assistant Commissioner AnnMarie Highsmith, speaking at a webinar hosted by the University of Illinois Chicago School of Law on April 20, noted she was not presenting CBP’s official position in her remarks.

Jessica Rifkin, who leads Benjamin L. England’s Customs, Trade and Litigation Team, said if a good has an established supply chain and is clearly subject to a withhold release order, it’s not possible to convince CBP otherwise. It’s a heavy lift to make, Rifkin said, even in cases where the good is detained because CBP suspects it has an input that is subject to a WRO, and the importer believes it doesn’t.

She noted that Trina Solar announced it was the first solar panel importer to successfully prove to CBP that its modules didn't contain any inputs manufactured by Hoshine in the China Xinjiang region. That successful release of goods took 8.5 months. "So importers need to think long and hard about whether they want to go through the process, or whether it's simply more preferable to export the goods elsewhere, possibly sell them elsewhere, or return them to the producer," she said.

Seizing goods for suspicion of forced labor is rare—just about four times out of every 100,000 shipments into the U.S. But the Uyghur Forced Labor Prevention Act, effective June 21, could make seizures more common because any good that has a nexus to Xinjiang will be subject to seizure, and other factories in China are likely to be affected, too, as CBP is instructed to make a list of factories outside Xinjiang that transport Uyghur or other religious minority workers from Xinjiang to those sites.

"The best thing to do, if you can, is get out of buying things that have Xinjiang inputs," Rifkin said.

A listener asked Highsmith how importers can figure out who sells to their supplier, when their contractual relationship is with only the supplier, and CBP could seize goods due to suppliers' actions many steps down in the supply chain, all the way back to raw materials.

Highsmith said reasonable care is already required under law to avoid importing goods made with forced labor, and that means knowing that every input is free of forced labor. "I get it, a shipment of tomatoes from Mexico is far easier for that importer to trace than a highly manufactured product from a diffuse supply chain." But, she said, if you're importing a product that is touched by a lot of companies before it gets to your business partner, you have to learn what that supply chain is.

However, she also said that "we don't want this to be a gotcha situation," and that CBP is eager to help companies figure out if they have forced labor in their supply chains. She said webinars in the next few weeks will focus on the Uyghur Forced Labor Prevention Act.

Still, she dismissed the concerns of company officials that they cannot get visibility far enough into their supply chains to be compliant. "For importers that are concerned that I have some secret information that they don't have, that I'm ferreting out, you know, deep, deep instances of forced labor in their supply chains, that there is information that I can get that they cannot get—of the WROs, of the findings that I have signed since I have been in this job, every single one, you could figure out by just getting on the internet. It's all open and notorious."

Many allegations of U.S. apparel being made with forced labor or containing Xinjiang cotton have been published either by nongovernmental organizations or by journalists in China. Highsmith said the office that investigates forced labor couldn't operate without its partnerships with NGOs.

"Bottom line, companies exploit forced labor to lower their production costs, giving them an unfair advantage over law-abiding companies," she said. While she said that the original ban on goods made with forced labor was clearly protectionist—it was part of the notorious Smoot-Hawley Tariff Act, and exempted products not made at scale in the U.S.—now the emphasis is on supporting human rights and making sure merchandise sold here isn't ethically compromised. — *Mara Lee*

Customs

Miscellaneous CBP Releases

CBP issued the following releases on commercial trade and related matters:

- Area Port of Cleveland Sees Record Number of Drugs and Counterfeits: 16,000 Pounds of Narcotics and \$252 Million of Counterfeits Seized by CBP ([here](#))
- Quota Bulletin 22–313 2022 Specialty Sugar Period 4 Results: TRQ for Specialty Sugar Period 4 opened on April 15 and oversubscribed at opening moment ([here](#)).


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CBP AD and CV Messages as of April 20

A listing of recent Commerce Department antidumping and countervailing duty messages posted to CBP's website April 20, along with the case number(s) and CBP message number, is provided below. The messages are available by searching for the listed CBP message number at CBP's [ADD CVD Search](#) page.

- Rescission of administrative review in part of antidumping duty order on **welded line pipe** from Turkey (A-489-822) Message # 2110403
- Automatic liquidation instructions for certain **softwood lumber** products from Canada for the period 01/01/2021 through 12/31/2021 (C-122-858) Message # 2110402

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Commerce Dept.

FTZ Board Actions and Notices for April 21

The Foreign-Trade Zones Board issued the following notices April 21:

- FTZ 44: Approval of Subzone Status; All Ways Pacific LLC, Dayton, New Jersey ([here](#)).

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FDA

New and Revised FDA Import Alerts for April 20

On April 20, FDA posted new and revised versions of the following Import Alerts on the detention without physical examination of:

- 99-35: Fresh Produce that appears to have been Prepared, Packed or Held Under Insanitary Conditions ([here](#))
- 99-23: Produce due to Contamination With Human Pathogens ([here](#))
- 99-08: Processed Foods for Pesticides ([here](#))
- 89-08: Class III Devices without Approved PMAs or IDEs and Other Devices Not Equivalent or No 510(k) ([here](#))
- 66-41: Unapproved New Drugs Promoted in the U.S. ([here](#))
- 31-03: Guanabana (Soursop) ([here](#))
- 16-124: Aquaculture Seafood Products due to Unapproved Drugs ([here](#))
- 16-105: Seafood and Seafood Products from Specific Manufacturers/Shippers due to Decomposition and/or Histamines ([here](#))
- 16-81: Seafood Products due to the Presence of Salmonella ([here](#))
- 16-50: Molluscan Bivalve Shellfish ([here](#)).

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FDA Enforcement Report on Recalls and Field Corrections for April 20

FDA has issued its [Enforcement Report](#) for April 20, listing the status of recalls and field corrections for food, cosmetics, tobacco products, drugs, biologics and devices. The report covers both domestic and foreign firms. —**BF**

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AD/CV - Patent

ITC Issues General Exclusion Order on Imported Container Openers

The International Trade Commission issued a general exclusion order banning imports of container openers that infringe patents held by Draft Top, ending a Section 337 investigation that began in early 2021, the ITC said in a [notice](#) (ITC Inv. No. 337-TA-1255). The ITC found seven respondents—KKS Enterprises Co., Ltd. of Hangzhou, China; Kingskong Enterprises Co., Ltd. of Hangzhou, China; Du Zuojun of Shenzhen, Guangdong, China; WN Shipping USA, Inc. of Inwood, New York; Shuje Wei of Pomona, California; Express Cargo Forwarded, Ltd. of Los Angeles, California; Hou Wenzheng of Hebron, Kentucky—in default, after they didn't participate in the case. The ITC set bond at 100% of the entered value of the excluded products imported during the period of Presidential review.

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Liquidation 'as Entered' for AD/CVD Admin Reviews on Ribbons, OCTG, Garlic, Etc.

The Commerce Department is [rescinding](#) 13 antidumping duty administrative reviews after review requests for all respondents in each proceeding were withdrawn, it said in a notice.

Cash deposit rates for these AD orders will not change as a result of these reviews, and entries from companies subject to these reviews during the review periods listed below will be liquidated “as entered” at the cash deposit rate in effect at the time of entry.

AD Proceedings		
<i>(Review Period:</i>	<i>09/01/2020 - 08/31/2021)</i>	
Mexico	Heavy Walled Rectangular Welded Carbon Steel Pipes And Tubes	A-291-847
South Korea	Oil Country Tubular Goods	A-580-870
Taiwan	Narrow Woven Ribbons With Woven Selvedge	A-583-844
China	Narrow Woven Ribbons With Woven Selvedge	A-579-952
<i>(Review Period:</i>	<i>10/01/2020 - 09/30/2021)</i>	
Mexico	Carbon and Certain Alloy Steel Wire Rod	A-201-830
Netherlands	Hot-Rolled Steel Flat Products	A-421-813
China	Polyvinyl Alcohol	A-570-879
<i>(Review Period:</i>	<i>11/01/2020 - 10/31/2021)</i>	
Mexico	Seamless Refined Copper Pipe and Tube	A-201-838
China	Diamond Sawblades and Parts Thereof	A-570-900
China	Fresh Garlic	A-570-831
China	Polyethylene Terephthalate Film, Sheet, and Strip	A-570-924
<i>(Review Period:</i>	<i>05/28/2020 - 11/30/2021)</i>	
India	Forged Steel Fittings	A-557-891
<i>(Review Period:</i>	<i>12/01/2020 - 11/30/2021)</i>	
China	Refillable Stainless Steel Kegs	A-570-093

Commerce said this notice “serves as the only reminder to importers of merchandise subject to AD orders of their responsibility ... to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.” See the notice for full instructions, including liquidation timelines, etc.

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