US Government Updates Forced Labor Strategy, Expands UFLPA Entity List

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Key Points

- U.S. forced labor enforcement efforts now extend beyond the traditional focus on cotton, textiles, tomatoes and polysilicon to encompass automotive components and copper, steel, aluminum and their downstream products.
- A majority of detained and blocked imports now involve products produced in or shipped from Malaysia or Vietnam that contain Chinese inputs.
- Increased funding for enforcement is likely to lead to more sophisticated and in-depth investigations of the source of products, and more blocked shipments.
- The expanded enforcement makes it even more critical for companies to conduct thorough supply chain due diligence.

Over the past few weeks, the interagency Forced Labor Enforcement Task Force (FLETF) has signaled a shift in its strategy for enforcing the Uyghur Forced Labor Prevention Act (UFLPA). On July 26, 2023, the FLETF issued its annual strategy update (Strategy Update)[1] and added two new entities to the UFLPA Entity List: (1) Camel Group Co., Ltd. (Camel) and (2) Chenguang Biotech Group Co., Ltd. and its subsidiary, Chenguang Biotechnology Group Yanqi Co. Ltd. (Chenguang). Camel is China's leading producer of lead-acid batteries, while Chenguang produces a variety of plant-based products, including supplements, food additives, extracts and dyes.

As Camel and Chenguang have been added to the UFLPA Entity List, U.S. Customs and Border Protection (CBP) will now apply a rebuttable presumption that all goods produced or manufactured by these companies are made with forced labor and prohibited from importation into the United States. This presumption covers any goods that incorporate Camel and Chenguang products in whole or in part, and it applies irrespective of the finished item's country of origin.

These measures indicate that CBP intends to expand its enforcement efforts beyond the sectors and products that typically have received most attention (*e.g.*, cotton, textiles, tomatoes and polysilicon). Specifically, CBP has indicated that it intends to target products such as automobile components; lead-acid and lithium-ion batteries; and copper, steel, aluminum and their downstream products. This appears to track recent reporting by NGOs and academics concerning the forced labor risks associated with these product categories. For companies, these developments underscore the importance of assessing and mitigating supply chain risk and exposure to possible UFLPA enforcement action.

UFLPA Overview

Passed with strong bipartisan support, the UFLPA[2] entered into force in June 2022. Since the law's inception, CBP has detained more than 4,000 shipments for review.[3] Such enforcement is authorized under the Section 307 of the Tariff Act of 1930 (19 U.S.C. §1307), which prohibits the importation of goods mined, produced or manufactured wholly or in part with forced labor. But the UFLPA expands on Section 307's prohibition and establishes a rebuttable presumption. Specifically, under the UFLPA, all merchandise produced, in whole or in part, in Xinjiang province in China or by entities on the UFLPA Entity List is presumed to be made with forced labor and thus denied entry into the United States.

[1] Dep't Of Homeland Sec., *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, Strategy* (2023).

[2] Public Law No. 117-78.

[3] Strategy Update, p. 5 ("Since the UFLPA went into effect through May 20, 2023, CBP has stopped more than 4,000 shipments of goods valued at over $1.3 billion for enforcement action review").

The presumption does not apply if imported goods are sourced entirely from outside Xinjiang. But any inputs from Xinjiang, no matter how small, taint the supply chain and trigger the presumption. To rebut the presumption requires clear and convincing evidence that the goods are not the product of forced labor. In practice, this is an exceedingly difficult showing to make.

UFLPA Entity List

At its inception in June 2022, the UFLPA Entity List included 20 entities.[4] Each of these entities was already either the target of a previous CBP withhold release order (WRO) or included on the Entity List maintained by the Bureau of Industry and Security (BIS) at the U.S. Department of Commerce (Commerce). This initial group of entities produced goods in the following sectors: cotton, textiles, clothing and apparel; hair products; electronics and computer components; and silica-based products such as polysilicon.

The UFLPA Entity List remained static for its first year. But in June 2023, the FLETF added two new entities to the list: Xinjiang Zhongtai Chemical Co., Ltd., Ninestar Corporation and eight Zhuhai-based Ninestar subsidiaries. Two months later, Camel and Chenguang were added.

The additions that occurred in June and August 2023 are noteworthy in several respects. First, they mark the first time that FLETF has included entities not subject to the BIS Entity List or a pre-existing WRO. This could indicate FLETF's increased willingness to exercise its independent authority under the UFLPA. Second, both Camel and Chenguang operate in sectors not represented on the initial list. Their inclusion reflects the U.S. government's growing commitment to enforce the UFLPA beyond the traditional high-priority sectors of cotton, tomatoes and polysilicon products.

As background, for an entity to be added to the UFLPA Entity List, it must be identified by FLETF as meeting one of the following criteria:

- The entity mines, produces or manufactures, wholly or in part any goods, wares, articles and merchandise with forced labor.
- The entity works with the Xinjiang government to recruit, transport, transfer, harbor or receive forced labor of Uyghurs, Kazakhs, Kyrgyz or members of other persecuted minority groups.
- The entity exports to the U.S. products produced by entities in the first two categories.
- The entity or facility sources material from Xinjiang or from persons working with the Xinjiang government or the Xinjiang Production and Construction Corps (XPCC) on government-led schemes involving forced labor.

[4] Notice on the Addition of Entities to the Uyghur Forced Labor Prevention Act Entity List, 87 Fed. Reg. 47777 (Aug. 4, 2022).

FLETF added Camel to the second category of the list, whereas Chenguang and its subsidiary were added under the fourth category. The FLETF announcement does not provide specific analysis underlying these designations, but Chenguang's subsidiary is located in Xinjiang, and Camel appears to operate a production facility in Xinjiang, as well.

While FLETF offers a path for listed entities to request removal, it would require clear and convincing evidence that their production does not involve forced labor and no longer meets the criteria under the applicable sub-list. To date, no entity has been removed from the UFLPA Entity List.

Evolving Enforcement Priorities

The addition of Camel and Chenguang to the Entity List is consistent with an apparent evolution in U.S. government enforcement priorities. The 2023 Strategy Update issued by FLETF underscores this apparent shift, and states that, in addition to the traditional "high-priority sectors" set forth in the UFLPA — cotton, tomatoes and polysilicon — "FLETF will emphasize the importance of monitoring all sectors identified by NGOs… as potential risk areas, including *red dates and other agricultural products, vinyl products and downstream products, aluminum and downstream products, steel and downstream products, lead-acid and lithium-ion batteries, copper and downstream products, electronics, and tires and other automobile components.*"[5]

The reference to batteries and automobile components echoes CBP's most recent enforcement statistics, which show that, since February 2023, 48 shipments categorized as automotive and aerospace were detained under the UFLPA. CBP ultimately denied entry to 10 of these shipments, and 37 cases remain pending.[6] In July 2023 alone, CBP reviewed 18 automotive and aerospace shipments, a threefold increase from the previous five-month average.

Notably, CBP has not limited its detention efforts to goods of Chinese origin. CBP's most recently published data shows that 60% of detained goods originated in Malaysia, and 87% of all denied shipments originated in Vietnam or Malaysia.[7] As explained in the 2023 Strategy Update, CBP "prohibits imports from any producer of finished products found to utilize inputs from Xinjiang or entities on the UFLPA Entity List, *irrespective of the country of final manufacture*," and "*prioritizes manufacturing in third countries* and illegally transshipped goods with inputs from Xinjiang."[8]

[5] Strategy Update, p. 16.

[6] *See* Uyghur Forced Labor Prevention Statistics.

[7] *See id.*

[8] Strategy Update, p. 10.

CBP also stated that it prioritizes enforcement with respect to goods "imported into the United States by entities that, although not located in Xinjiang, are both *related to an entity in Xinjiang (whether as a parent, subsidiary, or affiliate)* and are also *likely to contain inputs from Xinjiang*."[9]

CBP received increased funding in FY2022 to enforce the UFLPA,[10] and the 2023 Strategy Update urges Congress to allocate additional resources to FLETF, CBP and ICE to support growing enforcement requirements.[11] As time goes on, CBP's enforcement efforts likely will continue to widen in scope and become more sophisticated, reflecting the addition of new hires and technical tools, as well as enhanced training. This increases the likelihood that CBP will be able to accurately trace shipments with a Xinjiang nexus further up the supply chain, and highlights the importance of having robust diligence measures in place.

[9] *Id.*

[10] Dep't of Homeland Sec., Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China, Strategy (2022), at 37.

[11] Strategy Update, pp. 11-13.

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