

Casting a Wider Net: Further Expansion of UFLPA Enforcement

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The Uyghur Forced Labor Prevention Act (UFLPA) enforcement landscape continues to evolve, as evident in several recent developments:

- On October 24, 2023, the Congressional-Executive Commission on China (the Commission) held a [public hearing](#) focused on the presence of forced labor in Chinese seafood supply chains.
- On September 26, 2023, the Department of State published the [Addendum to the Xinjiang Supply Chain Business Advisory](#) (Advisory Addendum), which sheds light on U.S. government enforcement priorities with respect to the UFLPA.
- On September 26, 2023, the interagency Forced Labor Enforcement Task Force (FLETF) [added three new entities](#) to the UFLPA Entity List.
- Legislative developments and statements from government officials indicate interest in enhancing UFLPA scrutiny of low-value shipments that have typically been imported under the de minimis exemption, which exempts goods that are valued at less than \$800 from duties and taxes.

In this Skadden client alert, we address each of these developments, which may impact importers from a range of industries.

Forced Labor in Seafood Supply Chains

On October 24, 2023, the Commission heard testimony from a series of witnesses about allegations of forced labor in seafood supply chains. The hearing focused on the findings of a four-year investigation on forced labor practices in the seafood industry conducted by The Outlaw Ocean Project in collaboration with *The New Yorker*. Witnesses testified that thousands of workers have been forcibly relocated from Xinjiang to work in at least 10 seafood processing plants in Shandong province, which supplies dozens of major U.S. seafood brands. An additional set of processing plants in China tied to U.S. seafood importers was alleged to rely on state-sponsored forced labor involving North Korean workers. Testimony further alleged links between Chinese forced labor and U.S. government suppliers, who sent \$200 million of seafood to military bases, federal prisons and the National School Lunch Program over the last five years.

This is not the first time that seafood imports have come under scrutiny because of alleged ties to forced labor. In 2020 and 2021, U.S. Customs and Border Protection (CBP) issued five Withhold Release Orders (WROs) with respect to seafood products and producers with alleged ties to forced labor. In issuing these orders, CBP relied on its authority under 19 U.S.C. 1307 to enforce the prohibition on the importation of goods that are the product of forced labor.

Although seafood has not been a primary CBP enforcement target in recent years, the publicity occasioned by the hearing — and any subsequent report issued by the Commission — may prompt an uptick in CBP detention of seafood shipments, particularly if there are links to Xinjiang or other indicia of forced labor. The Commission's activities and findings have influenced legislation and Biden administration policy priorities in the past, and may do so again here.

Addendum to the Xinjiang Supply Chain Business Advisory

In July 2021, an interagency group led by the Department of State published the Xinjiang Business Advisory. Building on that initial report, the Advisory Addendum issued on September 26, 2023, notes the continuing allegations of human rights abuses and forced labor in China's Xinjiang Uyghur Autonomous Region (Xinjiang). Two aspects of the Advisory Addendum are particularly noteworthy.

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First, the Advisory Addendum highlights the U.S. government's increasing focus on mining and metal refining industries in Xinjiang. Citing the 2022 Country Report on Human Rights Practices in China, the Advisory Addendum observes that the problem of forced labor in Xinjiang not only involves cotton, tomatoes and other goods that are already the subject of much attention, but also extends to *coal, uranium and asbestos mining along with lead and zinc smelting*. This message echoes the FLETF's 2023 Strategy Update, which identified lead-acid batteries, lithium-ion batteries, steel and its downstream products, and copper and its downstream products as potential risk areas in addition to the traditional "high-priority sectors" set forth in the UFLPA.

Second, the Advisory Addendum underscores the extent to which the U.S. government appears to rely on nongovernmental organization (NGO) reporting in formulating its UFLPA enforcement strategy. The Advisory Addendum supports its analysis with extensive references to the reporting of NGOs. As discussed in our [August 2023 client alert](#), the 2023 Annual Strategy states that NGO reporting can help FLETF identify sectors at risk of forced labor. And in his July 11 [testimony to Congress](#), Robert Silvers, the FLETF chair, explained that FLETF continues to collaborate with NGOs, has an "active pipeline of referrals that our agencies are examining" and "will continue to ... act on these referrals."¹

As the preceding suggests, importers should carefully scrutinize their supply chains for products and goods identified in the 2023 Annual Strategy and Advisory Addendum.

Additions to the UFLPA Entity List

Through its September 26 notice, the FLETF has continued to expand the UFLPA Entity List. This is the third tranche of additions to occur since June 2023 — a level of activity that Chair Silvers previewed during his July testimony to Congress.² The notice adds the following three entities:³

¹ On November 6, 2023, Laura Murphy, professor of human rights and contemporary slavery at the Helena Kennedy Centre for International Justice's Forced Labour Lab at Sheffield Hallam University, was seconded to the Biden administration. She will serve as a policy advisor for the under secretary in the Office of Strategy, Policy, and Plans in the Department of Homeland Security and will focus on forced labor policy and enforcement. The Forced Labour Lab has published numerous reports on Xinjiang, forced labor and supply chain risk.

² *Corporate Complicity: Subsidizing the PRC's Human Rights Violations*, Testimony of Robert Silvers, Under Secretary for Strategy, Policy, and Plans, Chair, Forced Labor Enforcement Task Force, before the Congressional-Executive Commission on China, Washington, D.C. (July 11, 2023) ("The FLETF is committed to expanding the UFLPA Entity List by identifying companies that utilize or facilitate the use of forced labor in or from Xinjiang in line with the statutory standards. This commitment was recently demonstrated by the addition of two new entities to the UFLPA Entity List. There is more work to do, and the FLETF will continue to add entities to the UFLPA Entity List as warranted by the facts and the law.")

³ See "US Restricts Imports From Three More Chinese Companies Tied to Forced Labor," Reuters, September 27, 2023, and "DHS Announces Three Additional PRC-Based Companies as a Result of Forced Labor Enforcement," U.S. Department of Homeland Security, September 26, 2023.

- **Xinjiang Tianmian Foundation Textile Co., Ltd.** (manufactures yarn and other textile products).
- **Xinjiang Tianshan Wool Textile Co. Ltd.** (manufactures cashmere and wool garments, as well as velvet and other textile products).
- **Xinjiang Zhongtai Group Co. Ltd.** (produces polyvinyl chloride (PVC) and other textile, chemical and building materials).

All three companies are headquartered in Xinjiang, and, according to the September 26 notice, the FLETF added these entities because they have worked with the XUAR government to receive forced labor. Although the notice does not provide any amplifying information, some commercial analysts have identified public statements and press releases in which the entities acknowledged their participation in government-run programs that the FLETF has determined involve the use of forced labor.⁴

This brings the total number of designated entities to 27. As with the previous two tranches of additions, these three companies were not the focus of previous WROs and have not been designated on other lists. As such, they demonstrate the FLETF's continued willingness to leverage its analytic capabilities and make use of the statutory authorities it enjoys under the UFLPA.

Notably, Xinjiang Zhongtai Group Co. Ltd. is the first PVC manufacturer that FLETF has added to the UFLPA Entity List. In its 2023 Annual Strategy, the FLETF signaled its intent to monitor vinyl and its downstream products more closely.

UFLPA Enforcement and the De Minimis Exemption

Recent developments indicate a heightened interest in addressing what some have characterized as a loophole in UFLPA enforcement — entries made using the de minimis exemption. Under Section 321 of the Trade Facilitation and Trade Enforcement Act, shipments of goods valued below \$800 are exempt from duties or taxes and need not go through the formal entry process.⁵ CBP historically has applied less scrutiny to these shipments, as it has less information concerning de minimis shipments and may be hindered in its ability to determine whether these shipments raise potential UFLPA concerns. The House Select Committee on the Chinese Communist Party (the House Select Committee) has [highlighted this concern](#) in its recent investigation into the use of the exemption, particularly with respect to goods imported from China.

This summer, two bills were introduced in the U.S. Congress to limit the scope of the de minimis exemption and enhance information requirements:

⁴ See, e.g., "[Foreign-Owned Joint Ventures in Xinjiang Tied to Entities Engaged in Forced Labor](#)," Kharon, November 16, 2022.

⁵ 19 U.S.C. § 1321(a)(2)(C).

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- **Import Security and Fairness Act:** Sens. Sherrod Brown and Marco Rubio, along with Reps. Neal Dunn and Earl Blumenauer, introduced this bill on June 15, 2023. It would carve out from the de minimis exemption goods that originate in countries that are nonmarket economies and that are listed on the Office of the United States Trade Representative's Priority Watch List (at present, only China and Russia meet both criteria). In addition, the bill would require CBP to collect a range of additional information on shipments that are subject to the de minimis exemption, including the classification of goods, country of origin of the article and country from which the article is shipped.
- **De Minimis Reciprocity Act of 2023:** This bill, which was introduced by Sens. Bill Cassidy and Tammy Baldwin on June 14, 2023, would maintain the \$800 cap but apply lower thresholds with countries on the basis of reciprocity. The bill would preclude use of the de minimis exemption for imports of goods from countries designated by the secretary of treasury, based on their involvement in UFLPA violations, counterfeit goods, human trafficking, drug trafficking and terrorism. Like the Import Security and Fairness Act, the De Minimis Reciprocity Act would enhance information requirements for informal entries.

Since their introduction, these bills have stayed in committee. But it is possible that language from these bills could find its way into further legislative proposals. The chair of the House Select Committee, Rep. Mike Gallagher, recently expressed optimism

that changes to the de minimis exemption will come in the current legislative cycle.⁶

For its part, the FLETF has signaled that it may increase scrutiny of de minimis entries using its existing authorities. In testimony to Congress on July 11, 2023, FLETF Chair Silvers announced a renewed focus on combatting the entry of goods made with forced labor into the United States through de minimis shipments.⁷ He noted that FLETF is "firmly committed" to address the de minimis challenge, and that it is working to "increase information availability and assess risk in the *de minimis* environment." Chair Silvers stated that he and the FLETF "welcome the opportunity to work with Congress to address these challenges together."

Companies whose business may be impacted by changes to the de minimis exemption should carefully monitor developments in this area.

⁶As reported by *Politico*, Rep. Gallagher stated that "[o]n de minimis, I think we'll be able to do something." While recognizing that any such legislation would fall within the jurisdiction of the House Ways and Means Committee, Rep. Gallagher stated that "we're working closely with them." He further noted that "Chairman [Jason] Smith and [Trade Subcommittee ranking member Earl] Blumenauer, I think they're directionally aligned." *Politico Pro Morning Trade*, October 27, 2023.

⁷Testimony of Robert Silvers, Under Secretary for Strategy, Policy, and Plans, Chair, Forced Labor Enforcement Task Force, Before Congressional-Executive Commission on China on "Corporate Complicity: Subsidizing the PRC's Human Rights Violations," July 11, 2023, Washington, D.C., 3.

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