

UFLPA Strategy Includes New Entity List, but Leaves Many More Details to Come

The published [strategy](#) to stop imports of goods with Xinjiang region content is lengthy, but it also shows how many blanks are left to be filled in. The rebuttable presumption that goods with a nexus to Xinjiang or Uyghur workers are banned took effect on June 21.

The strategy says that CBP “plans to adopt” translation technology, advanced search engines to link companies suspected or known to use forced labor “with their related business structures and transactions.” It said that if it can automate translation of pages written in Chinese it could “significantly enhance forced labor enforcement efforts by allowing CBP to quickly and accurately identify those entities that attempt to bypass the law through fraudulent documentation or shipping practices.” But the agency said all these technologies are still being assessed, as is the ability to use remote sensing “to support the digital traceability of raw materials sourced from Xinjiang.”

It says that the State Department will work to identify companies that “participate in recruitment, transfer, receipt, or other facilitation of forced labor and labor transfer of members of persecuted groups,” and will be able to recommend the addition or removal of companies to the UFLPA Entity List, found at pages 22-25 of the strategy, as will the Bureau of Industry and Security.

CBP says it will prioritize the “highest-risk goods based on current data and intelligence,” but its priority sectors are the same ones that have already been identified through withhold release order actions—apparel, cotton and cotton products, silica-based products (including polysilicon), and tomatoes and products made from cotton, polysilicon or tomatoes. They did not add PVC or luxury vinyl flooring, or iPhones, or other items that academic researchers have said have ties to Uyghur forced labor. They said that in addition to goods imported directly from Xinjiang, or from companies on the UFLPA Entity

List, CBP will examine illegally transshipped goods to see if they have inputs from Xinjiang, “as well as goods imported into the United States by entities that, although not located in Xinjiang, are related to an entity in Xinjiang (whether as a parent, subsidiary, or affiliate) and likely to contain inputs from that region.”

A blog [post](#) from Wiley issued June 21 said it’s surprising that the document’s entity list is fairly narrow. “The lists include, as expected, a number of Chinese companies subject to pre-existing WROs. They also include certain Chinese companies that are on the Department of Commerce’s [Entity List](#) due to their use of forced labor. However, the lists do not identify any companies not previously named in WROs. The lists do not include every company previously placed on the Entity List due to their involvement with forced labor in China. The lists also do not include any Chinese solar cell or solar module producers, even though several are known to have used polysilicon from the XUAR [Xinjiang Uygur Autonomous Region],” the lawyers wrote.

CBP said that while the \$27.5 million CBP has received to ramp up enforcement is useful, it will need another \$70 million in the coming fiscal year.

“The increase in staff actions at ports of entry and headquarters to enforce UFLPA provisions has the potential to overcome other trade-enforcement priorities and requirements that are risk-based, such as intellectual property rights, detection and interdiction of opioids and other contraband, duty collections, and antidumping and countervailing duty evasion cases,” the document said.

Sen. Marco Rubio, R-Fla., the bill’s foremost champion in the Senate, [wrote](#) in a published opinion piece: “If our customs agents enforce the UFLPA strictly, they will protect American consumers from unknowingly sending their hard-earned money to companies that use forced labor. Other countries may even follow America’s ethical leadership in an effort to end state-sponsored slavery.

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"But we cannot take that outcome for granted. The Biden administration is under immense pressure from nationless corporations and the regime in Beijing to find loopholes and carve-outs that would effectively gut the new law. For example, CBP is under pressure to limit its detention of goods, particularly solar and cotton, to the smallest geographical region or sector possible."

Lawyers had warned importers that it would be better to gather evidence that the goods they are purchasing have no connection to Xinjiang or to Uyghurs than to have to prove that Xinjiang goods are not made with forced labor.

The document, as it laid out what importers would have to prove, said that companies could be asked to provide a "complete list of all workers at an entity subject to the rebuttable presumption," as well as evidence to demonstrate how wages were paid at each workplace in the entire supply chain, evidence to identify whether each worker comes from Xinjiang, and that worker's residency status; the number of workers in each job category compared with the total volume of goods produced; evidence that none of the employees was recruited or transferred with the involvement of the Chinese government, the Xinjiang Production and Construction Corps or entities on the UFLPA Entity List. — *Mara Lee*

CBP Issues UFLPA 'Operational Guidance for Importers'

CBP released an "[operational guidance for importers](#)" June 13 that explains the processes involved in Uyghur Forced Labor Prevention Act enforcement. The guidance puts in writing much of what was described in recent webinars (see [ITT 06/08/2022](#) and [ITT 06/02/2022](#)) hosted by CBP on the UFLPA rebuttable presumption that goods involving the Xinjiang region of China are made with forced labor and illegal to import unless the importer can prove otherwise. The rebuttable presumption goes into effect June 21, and CBP plans to issue a more detailed "strategy" document on that day.

While the webinars covered much of the guidance, "of particular note is the section on the types of documents CBP may require from importers seeking to establish that imported articles are not covered by the UFLPA (because the articles do not contain Xinjiang content or are uncon-

nected to listed entities) and/or seeking to rebut the UFLPA presumption of forced labor," Sidley Austin lawyer Ted Murphy said in a June 14 [blog post](#). "There is nothing particularly new (or helpful) here, but it does further evidence CBP's intent to require importers be able to trace the supply chain from the raw materials through to the finished goods. While a risk-based approach is the only feasible option to UFLPA compliance, there is no acknowledgement of this fact in CBP's guidance."

The list of possible documents to show a supply chain doesn't involve the Xinjiang region includes product-specific lists focused on cotton, polysilicon and tomatoes. Those products were already largely covered by withhold release orders but will become subject to the tougher UFLPA standards as of June 21.

Importers can request exemptions from the rebuttable presumption after CBP takes action, but the request must come in different forms depending on whether the importer gets a detention notice, an exclusion notice or a seizure notice, the agency said.

Any imports allowed for merchandise subject to the UFLPA will be reported publicly and to Congress. "If the CBP Commissioner determines that an exception to the rebuttable presumption is warranted for a particular importation, CBP will notify the appropriate Congressional committees and, not later than 30 days after the Commissioner determines an exception is warranted, make available to the public a report identifying the good and the evidence considered in granting the exception," it said. CBP plans to prioritize requests for UFLPA exemptions from current Customs Trade Partnership Against Terrorism members, the agency said.

When an exemption is granted "importers may also identify additional shipments that have identical supply chains to those that have been reviewed previously and determined to be admissible by CBP, to facilitate the faster release of identical shipments," it said. — *Tim Warren*

CBP Can Request Redelivery Due to UFLPA Concerns 30 Days After Import

CBP has 30 days following import to issue a redelivery notice for goods suspected of violating the Uyghur Forced

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Labor Prevention Act, said JoAnne Colonnello, director of the Pharmaceuticals Center of Excellence and Expertise, on June 16 during a webinar on UFLPA compliance. “CBP, by law, can request redelivery of items up to 30 days after the goods have been imported,” she said. “So, if CBP finds that those goods are wholly or part made in the Xinjiang, CBP can request redelivery.” The UFLPA takes effect on June 21.

Ocean Shipping Reform Act Signed Into Law

The Ocean Shipping Reform [Act](#), which would punish carriers who reject exports from West Coast ports if the Federal Maritime Commission deems those decisions as unreasonable, was signed into law June 16. The FMC is directed to begin a rulemaking on the matter. The law also puts the burden of proof on the reasonableness of demurrage and detention fees on ocean carriers, rather than the parties who were charged the fees.

American Farm Bureau President Zippy Duvall told the audience at the White House that American agricultural exporters lost out on \$25 billion in sales in the last six months because they couldn’t get their containerized shipments on a sailing. “This law will empower the [FMC] to hold ocean shippers accountable,” he said.

President Joe Biden said, “Thank you, thank you, thank you, for working across the aisle, for working so quickly.” Rep. Dusty Johnson, R-S.D., one of the main champions of the action in the House, attended the signing ceremony, as did Sen. Amy Klobuchar, D-Minn., who led the charge in the Senate.

“This bill is going to help bring down inflation, at least marginally,” Biden said. — *Mara Lee*

FMC Announces Three Initiatives to Address Supply Chain Issues

The Federal Maritime Commission this week [announced](#) three new initiatives it hopes will aid shippers and address supply chain issues, including one that will establish a new International Ocean Shipping Supply Chain Program and another that will reestablish the commission’s Export Rapid Response Team. The FMC will also “take the steps necessary” for carriers and marine terminal operators to employ a designated FMC compliance officer.

All three initiatives were recommended in a report released last week by Commissioner Rebecca Dye, which stemmed from her two-year investigation of the effects of the COVID-19 pandemic on the international ocean freight delivery system (see [ITT 06/01/2022](#)). One of the “most common” complaints Dye heard throughout her investigation, the FMC said, was the “excessive amounts of demurrage and detention fees” faced by shippers and truckers. The commission hopes its new initiative centered around designated FMC compliance officers “will aid in ensuring industry-wide observance of legal and regulatory requirements.”

Another initiative will create a dedicated International Ocean Shipping Supply Chain Program, which will allow the FMC to better identify supply chain issues and “offer proposals” for solutions. “The need for a dedicated International Ocean Shipping Supply Chain Program grows out of the recognition that there are longstanding, systemic problems and shortcomings in the networks and facilities serving America’s ocean commerce,” the FMC said.

A third recommendation will reestablish the Export Rapid Response Team, which will “provide a dedicated resource for shippers to use in resolving emergency commercial disputes,” FMC Chair Daniel Maffei said in a statement. Lawmakers and shippers have urged FMC to penalize carriers that decline to carry U.S. exports in favor of imports (see [ITT 03/11/2021](#)). “U.S. export shippers have been particularly challenged by both supply chain disruptions and ocean carrier policies and practices that can sometimes make it difficult to meet deadlines to get cargoes aboard ships in a timely manner,” Maffei said.

Hapag-Lloyd Reaches \$2 Million Settlement With FMC for Violations of Detention, Demurrage Rule

The Federal Maritime Commission this week [approved](#) a \$2 million [settlement agreement](#) with Hapag-Lloyd for alleged shipping violations involving the company’s detention and demurrage practices. Hapag-Lloyd also agreed to take several steps to improve its billing practices, including posting an updated tariff policy to its website, conducting a “training session” on the FMC’s detention and demurrage rule for all employees involved in billing, and publishing on its website a “complete list of locations that it has authorized to accept empty Hapag-Lloyd containers.”

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The FMC “must ensure powerful ocean carriers obey the Shipping Act when dealing with American importers and exporters,” Chair Daniel Maffei said. “The case that was concluded today is just part of an ongoing effort to investigate any conduct alleged to violate FMC rules—and in particular, the interpretive rule on detention and demurrage charges.”

A U.S. administrative law judge in April initially ordered Hapag-Lloyd to pay \$822,220 after an FMC investigation determined the carrier imposed unfair detention fees on a drayage provider that was unable to make appointments to return empty containers (see [ITT 04/26/2022](#)). The FMC ultimately finalized a higher penalty with Hapag-Lloyd as part of the settlement, saying in an [order](#) that the commission has a “longstanding policy of encouraging settlements.”

Hapag-Lloyd is “pleased” to have reached an agreement to drop the detention fee case, a spokesperson said in a June 9 email. The settlement “creates a common understanding in close cooperation and coordination with the authority on the future handling of demurrage & detention charges in the U.S.,” the spokesperson said.

The case and settlement marked the first enforcement ruling alleging a violation of the FMC’s May 2020 rule on detention and demurrage charges, which outlined how the agency views the “reasonableness” of the fees (see [ITT 09/13/2019](#) and [ITT 04/29/2020](#)). — *Ian Cohen*

Court Gives USTR Extra 32 Days to Meet Section 301 Remand Order

The Office of the U.S. Trade Representative has 32 extra days, until Aug. 1, to file its lists 3 and 4A tariff remand results in the Section 301 litigation, a three-judge panel at the Court of International Trade said in a June 22 [order](#). DOJ, on USTR’s behalf, asked for a 60-day extension to Aug. 30 to fix its Administrative Procedure Act violations, citing the volume of work required to meet the remand order, plus the agency’s limited staff resources and the additional projects compounding its workload (see [ITT 06/22/2022](#)).

Akin Gump lawyers for test-case plaintiffs HMTX Industries and Jasco Products urged the court to stick to its original June 30 deadline, arguing that USTR shouldn’t be given more time to do a new *post hoc* review of the submitted lists

3 and 4A comments and hearing testimony. Should USTR require an additional deadline extension beyond Aug. 1, DOJ “should address in greater detail” USTR’s reasons for the request, the June 22 order said. It cited language in the April 1 remand order that the agency may further explain only the justifications it previously gave for imposing the lists 3 and 4A tariffs without introducing new rationales that didn’t exist before. A joint status report from DOJ and the plaintiffs is due 14 days after the remand results are filed, including a proposed schedule “for the further disposition of this litigation,” the court said. — *Paul Gluckman*

CRS Report on China Phase One Says Little Discussion on How to Enforce

A recent Congressional Research Service [report](#) on the phase one deal with China notes that there has been little discussion about how to enforce what China agreed to, and how to address issues that phase one didn’t touch but were highlighted in the Section 301 report.

“Congress might assess the U.S. experience with the Phase One process as it debates the merits of the deal and how to leverage it, the effects of the tariffs, and options to advance U.S. economic interests and counter China’s persistent statist economic practices that the USTR raised in its 2018 report,” the author wrote. It asked: “Should Congress require the USTR to enforce the Phase One provisions and actively use the Phase One dispute process?”

The report said that some domestic business groups, members of Congress and Chinese diplomats are pressuring the Office of the U.S. Trade Representative to lift or mitigate Section 301 tariffs, and that parts of the Biden administration “are also pressing for the elimination, reduction, or exclusion of certain tariffs, to provide relief for U.S. consumers and firms and address inflation.”

“Others in Congress and the Administration argue that the tariffs provide a point of U.S. leverage and should be sustained, some noting that lifting tariffs could signal a lack of U.S. resolve and unwillingness to bear costs associated with actions that address U.S. priorities,” the report said (see [ITT 05/26/2022](#)).

In thinking about the effect of tariffs on the U.S. economy, the report posed these questions:

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How might Congress weigh the tariffs' effects on U.S. firms and consumers against issues of economic competitiveness?

To what extent are tariffs inflationary compared to drivers such as food, energy, housing, labor and supply chain shortages, and monetary policy? Could tariffs help diversify China-based supply chains and counter China's subsidies by raising costs vis-a-vis U.S. and third-market products?

Could tariffs on goods tied to China's industrial policies (e.g., solar panels, electric vehicles, semiconductors, and batteries) help level the playing field, or would this violate U.S. trade commitments and encourage others to follow suit?

USTR proposed but never enacted tariffs on consumer electronics. Could these tariffs counter China's efforts to deepen technology supply chains in China?

The report suggested that members of Congress think about "how difficult it was to secure China's acknowledgement of its practices of concern and limited commitments in these areas, [so] to what extent may the U.S. reasonably expect talks with Beijing to achieve outcomes that further U.S. policy objectives, when measured against the U.S. resources and efforts required? Does focusing on talks with China take U.S. focus and resources away from efforts to deploy or develop U.S. trade tools and joint approaches with other countries that might be required to protect and advance U.S. economic interests?"

It also suggested they think about whether the USTR should make a push in the trilateral negotiations to confront non-market economic distortions. — *Mara Lee*

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