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Supply Chain Gazette



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CBP Releases New Guidance for Importers on UFLPA, Including Applicability Review Tips

CBP published a set of new guidance documents for importers on the agency's enforcement of the Uyghur Forced Labor Prevention Act on Feb. 23, including new answers to [frequently asked questions](#) on its website, [best practices](#) for submitting documentation to prove detained goods aren't subject to UFLPA, and [guidance](#) on how executive summaries and tables of contents should be put together for that documentation.

According to the FAQs, importers that want to submit documentation for an "applicability review" on whether their goods are subject to the UFLPA should submit transaction and supply chain records, documents demonstrating the parties participating in the transaction and documentation related to payment and transportation for the associated raw materials. The FAQs referred importers to CBP's Operational Guidance for Importers on UFLPA for specific examples (see [ITT 06/14/2022](#)).

The FAQs include information for importers of shipments identical to those CBP has already detained and released after review. CBP has said it may still detain future identical shipments after one has been released (see [ITT 01/27/2023](#)), but importers should "clearly indicate" on their submission packages "that the supply chain is identical to a previously reviewed supply chain for which the goods were found admissible (either through an applicability review, a UFLPA exception request, or an advance ruling)," CBP said in the FAQs.

When applicability reviews are involved, "importers can significantly accelerate the applicability review process for

shipments from a supply chain identical to one previously reviewed and cleared by CBP by providing a summary tracing report to the" assigned Center of Excellence, CBP said. The report should "include the suppliers/producers for all production stages and a business record—such as an invoice number, contract number, or purchase order number—involved in the production of the merchandise being imported," the agency said.

"This information enables CBP to quickly verify that the new shipment is from the same supply chain," CBP said of the summary tracing reports. "Using this approach, the detention period for detained shipments that employ a supply chain identical to one previously cleared has declined to an average of ten to 14 days."

Likewise, importers of shipments from supply chains that rely on "inputs commingled during the production process with materials suspected of being manufactured using forced labor" should expect such shipments "to be detained pending CBP's review of documents demonstrating that the imported merchandise complies with the UFLPA," but "can accelerate the review process for future shipments relying on the same commingled supply chain by providing a summary tracing report with their submission package," CBP said.

CBP's new document on best practices for submitting documentation for admissibility reviews "identifies and summarizes best practices drawn from importer submissions," CBP said. "These practices facilitated the release of goods and streamlined the CBP review process."

Best practices include preparing a plan for responding to a detention under the UFLPA before any detention occurs, including confirming that suppliers are aware of UFLPA

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and maintaining supply chain documentation, and communicating “early” with the appropriate Center before it arrives at the port of entry. Importers should also submit a complete, well-organized package with English translations and provide a list of suppliers that identifies each supplier’s role in the production of the goods, among other things.

The best practices document includes two brief examples of “properly prepared applicability review packages,” one from a solar panel importer and the other from an apparel importer.

It says that, “As an importer gains experience with submitting applicability packages and CBP becomes familiarized with consistent supply chains, the processing time for the importer’s applicability reviews generally will decrease.”

Finally, CBP’s guidance on executive summaries and sample tables of contents for UFLPA applicability review submissions “identifies documents that typically facilitate CBP’s review and should be included in importer submissions,” it said. “Each package of documents should be well organized and include an Executive Summary explaining the documents contained in the package,” and should include an annotated document list, a summary of the supply chain and additional summary information.

The guidance includes both a general sample table of contents listing recommended documentation, as well as a sample table of contents for a solar panel importer that includes documentation importers should get from the module producers, solar cell suppliers, wafer suppliers, ingot suppliers, polysilicon suppliers, metallurgical grad silicon suppliers and quartzite suppliers.

In the FAQs, CBP said it still plans on adding UFLPA enforcement statistics to its website. “This information will include an interactive dashboard containing data on the total number and value of shipments detained pursuant to the UFLPA, with an anticipated release date of March 31, 2023,” CBP said. — *Brian Feito*

No Chinese Postal Code Required If Seller MID Used for Non-Textile Entries, CBP Official Says

Importers of non-textile goods that are of Chinese origin but sourced from a seller in another country may not have

to transmit the Chinese postal code as will be required on March 18 (see [ITT 12/21/2022](https://www.shipamerican.com/itt/12/21/2022)) under a new ACE Uyghur Forced Labor Prevention Act “Region Alert,” according to a CBP official speaking during a webinar hosted by the agency Jan. 26.

Currently, though textile importers are always required to report the actual manufacturer in the manufacturer ID, importers of other types of merchandise can choose between the manufacturer or the seller, Katie Woodson of CBP’s Forced Labor Division said during the webinar. CBP won’t change that policy as it moves forward with the Chinese postal code requirement, she said.

So even after the postal code requirement takes effect March 18, importers of, for example, a Chinese-origin good sourced from a Canadian company may transmit the manufacturer ID of the Canadian company, and in that case “the postal code requirements will not be active,” Woodson said. “In other words, there is no requirement to transmit that postal code for China if you’re using a Canadian ID,” she said.

CBP will not release a list of Chinese postal codes nor a list of postal codes in the Xinjiang Uyghur Autonomous Region as it deploys the UFLPA Region Alert, Woodson said. “Everyone needs to do the due diligence to know” their supply chains, and “part of that due diligence” is the knowledge of where a shipment came from, including the manufacturer’s name and address, which includes the postal code, she said. — *Brian Feito*

CBP Now Targeting PVC Products Under UFLPA, Adds PVC Questions to Detention Notices, Lawyer Says

CBP is now detaining polyvinyl chloride products for forced labor under the Uyghur Forced Labor Prevention Act, customs lawyer Ted Murphy said in a client [alert](#) Feb. 7. That’s in addition to a newfound focus on aluminum (see [ITT 01/12/2023](https://www.shipamerican.com/itt/01/12/2023)), as well as the high priority sectors listed in the UFLPA statute: cotton, tomatoes and polysilicon, Murphy said.

PVC products and aluminum “have been the subject of numerous NGO or news reports in recent months about possible connections to Xinjiang and CBP is likely responding to those reports,” Murphy said. “CBP recently

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revised its UFLPA detention notice supplement/product specific addendum to include these two categories of products (in addition to cotton, tomatoes and polysilicon) and we have recently seen a meaningful increase in the number of detentions,” he said.

Reached for comment, a CBP spokesperson said the agency is “unable to disclose information about specific goods detained under UFLPA due to law enforcement sensitive and business confidential information,” but that it “employs a dynamic, risk-based approach to enforcement that prioritizes action against the highest-risk goods based on current data and intelligence to prevent goods made from forced labor from entering U.S. commerce.”

Luxury vinyl tile has been singled out as problematic by nongovernmental organizations. One has said the majority of luxury vinyl tile has PVC content from Xinjiang made from forced labor (see [ITT 06/23/2022](#)).

Importers of PVC products and aluminum products, as well as the three original UFLPA priority sectors, “should be making sure they have their supply chain mapping and supplier documentation in order to help facilitate CBP’s review of any detention (which can take months),” Murphy said. The addition of the product-specific addendums for PVC products and aluminum mean companies faced with detentions are now “expected to be able to provide documentation back to the raw material stage” for these products, like they’ve had to with cotton, tomatoes and polysilicon. “This level of tracing can be a challenge,” Murphy said. — **Brian Feito**

First Sale Valuation Method Often Worth the Risk, Experts Say

The first sale valuation method can be an effective means of minimizing tariff liability but does not come without risks, said James Mulvehill, trade and customs managing director at KPMG, during a Feb. 16 KPMG [webinar](#).

First sale allows imports to be valued at previous sale prices in the transaction chain, usually sales to middlemen in the originating country and almost always at a lower value, potentially saving importers tariff expenses, said Mulvehill. There is a misnomer that first sales must capture the “actual first sale,” said Mulvehill, but the practice can actually cite

any sale price in the transaction chain. “Ideally, importers want to get the lowest appraisal value,” he said, but transactions early in the chain often lack the documentation required by Customs to affirm that lower value.

There are inherent risks of “running afoul” of CBP’s various compliance programs, so importers need to weigh the risks of lower appraised value vs. what they can prove, said Mulvehill. Suppliers control most of the required records, said Regina Topolinskaya, KPMG trade and customs manager. Therefore, suppliers partnering in first sale programs need to be reliable and trustworthy. Documentation like product descriptions and item numbers must match down the chain for compliance reasons and that documentation is largely out of the hands of the importers, she said.

Companies need to keep “ongoing diligence” over their first sale programs in partnership with their suppliers, said Mulvehill. Vendors are sometimes reluctant to share previous sale information for a variety of reasons, such as being afraid of being cut out of purchases or sharing proprietary finances. However, suppliers can be coaxed into partnering in first sale processes, said Mulvehill. Long-term partnerships and savings sharing can coax suppliers into sharing data and participating in first sale programs, he said, and being a good first sale partner is a competitive advantage against other suppliers.

For all the risk, said Mulvehill, both Customs and the courts have consistently upheld first sale as a legitimate and useful practice. Recently, the Federal Circuit upheld the use of first sale even in nonmarket economies and Customs headquarters rulings have largely upheld first sale uses when proper documentation is provided, he said. — **Ben Perkins**

Recent CIT Decision May Be ‘Reset’ of Substantial Transformation Law, Customs Lawyer Says

The Court of International Trade’s recent tariff classification decision on Cyber Power’s uninterruptible power supplies “may be a meaningful reset of the law of substantial transformation,” moving the analysis back to a comparison between parts and finished components after a period of focus on essence or critical components, customs lawyer Larry Friedman said in a Feb. 27 [blog post](#).

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Though Cyber Power only prevailed on one of the six models of power supplies and surge protectors at issue in the decision, also issued Feb. 27 (see [ITT 02/27/2023](#)), Friedman said that, nevertheless, “the Court has some good things to say.”

CIT reiterated its 2022 decision in the same case (see [ITT 02/24/2022](#)) that rejected “an approach that asks whether only essential or critical components have been substantially transformed,” Friedman said. “The Court also rejected an approach that performed a component-by-component analysis.” And while not mentioning pre-determined end use, which has become a feature of CBP’s recent substantial transformation analysis (see [ITT 03/01/2022](#) and [ITT 03/03/2022](#)), the trade court said intended use of components is one of many factors the court should consider.

“Instead, the Court looked to evidence of ‘the potentially transformative processing’ in relation to the nature of the product,” Friedman said. “That means whether the finished product has a different name, character, and use than the parts from which it was made.” He noted language in the decision on the classification of the one model of power supply on which Cyber Power prevailed that said the change from the components to the finished product “is a changed so marked” as to prove Cyber Power’s case.

“The Court seems to have rejected the essence or critical components tests, including the notion that the location where the main PCBAs are assembled will generally be the country of origin,” Friedman said. “It also seems clear that the proper point of comparison is between the parts and the finished products rather than the parts before and after assembly.”

“That is good for importers trying to manage their supply chain. Clarity, consistency, and predictability are always helpful for compliance,” Friedman said. “It is too soon to make major decisions based on this opinion, but this is a positive step.” — *Brian Feito*

U.S. Hikes Tariffs on Russian Aluminum to 200%, Hikes Other Tariffs to 70% or 35%

On the first anniversary of the Russian invasion of Ukraine, the White House [said](#) that, beginning March 10, there will be a 200% tariff on Russian [aluminum exports](#), including

derivative products, and, beginning on April 10, aluminum articles from other countries that used any aluminum from Russia will also be tarified at 200%, unless those third countries also impose 200% tariffs on imported Russian aluminum.

The U.S. will also [increase](#) the tariffs on more than 570 groups of Russian products [previously](#) subject to a 35% tariff to 70%—and will increase non-most-favored-nation tariffs to 35% on some minerals and chemicals from Russia.

The White House said it will be increasing tariffs on “more than 100 Russian metals, minerals, and chemical products worth approximately \$2.8 billion to Russia.” — *Mara Lee*

FDA Set to Reorganize Food Regulatory Offices Into ‘Human Food Program’

FDA plans to create a new, integrated food safety and nutrition “program” that will combine aspects of its existing organization structure to allow FDA to “oversee human food in a more effective and efficient way,” FDA Commissioner Robert Califf said in a Jan. 31 [statement](#). The “Human Foods Program” will be led by a new deputy commissioner that reports directly to the FDA commissioner, and will be charged with keeping “the foods we regulate safe and nutritious, while ensuring the agency remains on the cutting edge of the latest advancements in science, technology, and nutrition,” Califf said.

Under the proposed reorganization, the unified Human Foods Program will be created by combining the Center for Food Safety and Applied Nutrition, the Office of Food Policy and Response and some functions of the Office of Regulatory Affairs under one leader, FDA said in a [fact sheet](#). A Center for Excellence in Nutrition will be created.

The realignment also will see a shift in the portfolio of FDA’s Office of Regulatory Affairs, though details were scant. “ORA’s operating structure will be transformed into an enterprise-wide organization that supports the Human Foods Program and all other FDA regulatory programs (e.g., agency centers) by focusing on its critical activities,” Califf said. “This realignment will allow ORA to be singularly focused on excellence in its core mission—inspections, laboratory testing, import, and investigative operations,” he said.

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“Certain other functions of ORA will be aligned in other parts of the FDA to create an overall stronger agency,” Califf said. For example, state and local food safety partnership functions will be shifted to the new Human Foods Program, the FDA fact sheet said.

to production, and creating greater flexibilities for the third-party certification process,” the agency said. The final rule takes effect March 23.

The proposal follows an external [study](#) commissioned by FDA on the “culture, structure and leadership, resources, and authorities” of the agency’s human food regulation, as well as an internal study on FDA’s response to the recent infant formula crisis.

“As a next step, the FDA will need to develop the vision announced today into a concrete reorganizational proposal in close coordination and communication with internal and external stakeholders while ensuring we meet our labor obligations,” Califf said. “While details of this proposal continue to be developed, CFSAN, ORA, and OFPR will continue to operate under their current structures, with my direct oversight. I look forward to providing additional public updates by the end of February on our progress, organizational design and timeline.”

EPA Updates Composite Wood Formaldehyde Standards

The Environmental Protection Agency is updating its standards on formaldehyde in composite wood to incorporate recent changes to voluntary industry standards previously adopted into the regulations, it said in a Feb. 21 [notice](#). In the final rule, EPA also is formally adopting its “interpretation” that remote inspections by third-party certifiers “are allowed in certain circumstances in the event of unsafe conditions such as the on-going COVID-19 pandemic or other unsafe conditions such as natural disasters, outbreaks, political unrest, and epidemics,” it said. Through the final rule, EPA also is making other “technical corrections and conforming changes,” including “updating standards within the definitions section, clarifying language as it relates

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