

### CBP Detaining Batteries Under UFLPA, Lawyer Says

CBP is now detaining imports of batteries under the Uyghur Forced Labor Prevention Act, customs lawyer Richard Mojica said in a [post](#) on LinkedIn. “CBP’s Detention Notice Addendum—a document that lists commodity-specific supply chain tracing requirements—now references batteries,” Mojica said.

Among other things, the detention notices are now requesting “a complete list of raw materials (e.g., lithium ion phosphate, lead, copper, PCBAs), together with their manufacturer and country of origin,” as well as “flowcharts of the battery production processes (e.g., mineral extraction, slurry prep, electrode coating),” Mojica said.

The notices also request “a list of battery manufacturing equipment owned by each manufacturing party (e.g. coating machines, vacuum mixers),” and “transportation documents between suppliers and manufacturers indicating the movement of all components through the finished product,” he said.

CBP did not immediately comment. — *Brian Feito*

### CBP to Expand CTPAT Preliminary Hold Notification Benefit to WROs, Forced Labor Findings

CBP will expand its preliminary hold notification benefit for Trade Compliance program members of the Customs Trade Partnership Against Terrorism (CTPAT) to include withhold release orders (WROs) and forced labor findings, the agency announced in a May 30 [letter](#) to CTPAT participants. Preliminary hold notifications were first offered as a benefit for Uyghur Forced Labor Prevention Act (UFLPA) holds back in March (see [ITT 04/26/2023](#)).

The original benefit for CTPAT Trade Compliance members was that CBP would provide, to the best of its ability, “advanced notice of a possible hold, detention, exclusion, and/or seizure of merchandise after the entry is filed for

cargo arriving in the United States and subject to the UFLPA,” CBP said in the letter. That benefit will be expanded to include both WROs and forced labor findings.

Preliminary notifications will be provided to points of contact within the Trade Compliance program and who have the “email notification” box marked to receive notifications, CBP said. “The notification will include the entry number and associated lines that may be subject to a detention, exclusion, and/or seizure due to an active Withhold Release Order or Finding of Forced Labor pursuant to 19 U.S.C. § 1307,” the agency said.

Further information regarding the entry can be obtained from the licensed customs broker used for the shipment; as with preliminary hold notifications for UFLPA, CBP will be unable to provide further information “beyond what is provided in the notification” for WROs and forced labor findings, it said. “The notification does not denote any final decision made by CBP but may be used by the importer to prepare for a possible shipment hold, detention, exclusion, and/or seizure,” CBP said. — *Noah Garfinkel*

### Report Lists Chinese Industries, Companies Tied to Uyghur Forced Labor

Products tainted by Uyghur forced labor include a “vast array” of agricultural products, raw materials and manufactured goods and are not just limited to the few industries CBP has specifically targeted, according to a [report](#) from Sheffield Hallam University released May 15. While tomatoes, cotton and polysilicon do have a large market share of goods produced through forced labor, China’s extensive production of raw materials, agricultural products, and manufacturing products means that many industries have some sort of tie to the Xinjiang Uyghur Autonomous Region (XUAR).

“The role of Uyghur forced labor in global supply chains is much more extensive than simply a few sectors and extends far beyond direct suppliers because the XUAR is a source of raw materials, component parts, and products that can be

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incorporated in finished goods at multiple points along the value chain during manufacturing or production,” the report said.

Other products that have been made in the XUAR include agricultural products such as dates and food additives, raw materials such as aluminum, steel, and copper, and manufacturing goods such as textiles, polyvinyl chloride (PVC) and batteries. There has also been a surge in electronics being produced in XUAR and automotive parts as well, the report said.

The report said that the total share of global production of products that originated in Xinjiang can be high for certain products. The share of total global production originating in Xinjiang is 20% for cotton, 25% for tomato paste, 45% for polysilicon, 10% for PVC, and 12% for aluminum, the report said.

The report found a few commonalities between all industries that operate within the XUAR. They include the “rapid expansion to occupy a significant share of national and global markets; (ii) incentives and subsidies for corporate relocation; (iii) artificially deflated cost of production due to low coal-based energy costs, lack of environmental regulation, and forced labor,” the report said.

The report, part of a series of “evidence briefs” from the university’s Forced Labor Lab, led by Professor Laura Murphy, summarizes reports on the use of Uyghur forced labor in supply chains for various products, as well as reports on specific companies that have been linked to forced labor.

For cotton, the report says Xinjiang Production and Construction Corps (XPCC) uses prison labor and conscripted labor of unincarcerated citizens, the report said. As much as 90% of China’s cotton comes from the XUAR, it said. There is also a state-run conscripted labor program that forces children “as young as elementary school age” and adults to pick cotton during harvest seasons.

Two XPCC-owned companies produce tomatoes, including Xinjiang Guannong Fruit & Antler Co., Ltd. and Chalkis Health Industry Co., Ltd., the report said. Both companies are involved in the state-sponsored labor transfer program, the report said. These companies sell their tomato paste under “various brands, including several that are very popular

in West Africa and others that are misleadingly labeled as originating from Italy,” the report said.

Dates can also originate from XPCC. Some of these dates have “entered the United States with labels clearly indicating their origin,” despite the passage of the Uyghur Forced Labor Prevention Act, the report said.

As for supplements and food additives, Chenguang Biotech Group Co., Ltd., helps produce “lutein supplements, paprika oleoresin, and other plant-based products such as extracts and dyes,” the report said. The company has “documented ties to state-sponsored labor transfers and poverty alleviation efforts,” and has “at least twelve separate subsidiaries and factories” within XUAR, the report said.

China has also made substantial investments in steel, aluminum, and copper production. Eight top aluminum producers located in XUAR have participated in the labor transfer program. Two of those companies are owned by XPCC, the report said.

Chinese company Baowu produces 6% of the world’s total steel, the report said, and also has engaged in “repressive programs” in Xinjiang, including labor transfer programs.

China has also become “the most significant location for copper processing and smelting,” the report said, and two of the largest Chinese companies involved in copper processing, Xinjiang Nonferrous and Zijin Mining, have engaged in “repressive” programs as well, including labor transfers.

A portfolio of products ranging from textiles and solar panels to electronics and automotive parts is touched by Uyghur forced labor, the report said. A recent report found over 40 automotive manufacturers were sourcing from the XUAR and more than 50 international automotive parts or car manufacturers sourcing directly from companies operating in the XUAR, and over 100 manufacturers with some exposure to goods made with Uyghur forced labor.

There also is evidence of ties to forced labor in Chinese lead-acid and lithium-ion battery supply chains, the report said. “Camel Group Co., Ltd. is one of China’s largest lead-acid battery manufacturers and recyclers,” and “is directly involved in and benefits from state-sponsored labor transfer programs,” the report said. As for lithium-ion

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batteries, “both Ganfeng Lithium (one of the world’s most important miners and producers of lithium products) and CATL (one of the world’s most significant EV battery manufacturers) moved into the Uyghur Region, in an effort to develop the region’s lithium exploration, mining, and manufacturing,” the report said.

“Because the Chinese government has invested vast resources in this unprecedented system of compulsory labor and because that system so clearly contravenes the conventions that govern labor rights internationally, we must examine all supply chains across all tiers,” the report said. “This brief demonstrates the extent to which the systematic forced labor of Uyghurs permeates a wide range of industries and goods, but it only scratches the surface. Due diligence strategies and procurement protocols will have to be enhanced with these factors in mind.” — *Noah Garfinkel*

### **CBP’s UFLPA Enforcement Sets ‘Nearly Impossible’ Requirements for Small Businesses, Lawyer Says**

CBP’s approach to enforcing the Uyghur Forced Labor Prevention Act has been “especially damaging” to small and medium-sized businesses (SMEs) forced to confront “nearly impossible” supply chain documentation requirements and that lack the ability to easily restructure their supply chains, a customs lawyer said in a recent [post](#) on the China Law Blog.

SMEs lack the leverage needed to secure documentation from their suppliers, as well as the resources needed to perform the due diligence specified in CBP guidance, said Robert Kossick of law firm Harris Bricken. They also lack the “financial muscle to pursue a China + 1, nearshoring, or similar operational engineering strategy,” as well as the opportunity to procure goods “essential to their operational viability” from alternative suppliers, Kossick said.

Recent developments highlight the “chilling effect” on U.S. economic engagement with China, especially as it relates to SMEs, which account for about 40% of all Chinese imports into the U.S., Kossick said. Forced labor detentions are up 124% so far in 2023, in a per month comparison to 2022, and detentions are up from 39 per month to 98 per month, a 151% increase, he said, adding that the uptick could “reflect the growing number of human resources CBP is now deploying in connection with forced labor issues.”

And more forced labor scrutiny is expected, especially after recent attention in the form of a letter from Congress to CBP on UFLPA implementation (see [ITT 04/11/2023](#)), Kossick said. And there seems to be little interest from either CBP or Congress in helping SMEs, as evidenced by CBP’s reticence on the matter of making available information that the trade community could use to better comply with UFLPA, he said.

“Notwithstanding the detailed nature of official forced labor guidance and strategy documents, CBP’s unwillingness to furnish information that might ‘show its hand’ (and, consequently, enable better UFLPA compliance), ends up working to the detriment of those importers with the scarcest resources available for conducting forced labor due diligence—i.e., SMEs,” the blog post said. The agency declines to publish tariff schedule subheadings or other detailed information on the products it targets, nor does it regularly update its UFLPA Entity List or release shipment data or Xinjiang postal codes that could be used by SMEs “to map their supply chains, avoid forced labor bad actors, and respond more effectively to UFLPA detentions,” Kossick said.

“The simple truth is that each of these inputs could be made available to U.S. importers, and doing so would uphold the worthy objectives of the UFLPA in a way that avoided causing unnecessary collateral damage to resource-restricted SMEs,” Kossick said. “But, at the end of the day, CBP chooses not to. And SMEs are now at a greater risk of being thrown under the bus.”

The lack of information provided by CBP, “considered in conjunction with the fact that an estimated 45% of U.S. supply chain managers do not have visibility beyond their tier one suppliers/manufacturers, ... [is] significant,” Kossick said, citing a McKinsey study.

The situation is compounded by the reluctance or inability of Chinese suppliers to cooperate with U.S. importers in providing supply chain information, Kossick said. Poor record-keeping practices may mean a supplier doesn’t know who is in its supply chain, and agreements to provide information can be signed “with no real intent of being honored.” Even where a Chinese supplier wants to comply, it may be prevented from doing so by China’s anti-foreign sanctions and blocking laws, he said.

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“The forced labor burden placed on U.S. business, generally, and SMEs, particularly, is substantial and growing,” Kossick said. “Information is imperfect, the stakes are high, there is no silver bullet, and expectations are stringent.”

In the post, Kossick included a lengthy list of “practice pointers” that can be used by importers “to navigate the diverse considerations that go into the “business judgments” which the UFLPA almost invariably requires.”

“We have reached the point where import transactions must be structured with forced labor in mind,” Kossick said. Agreements must be reached and documents sourced at the front end of a transaction, including forced labor questionnaires and agreements and bills of material. “Importers stand their best chance of securing this level of cooperation while deals are coming together. Once agreements are in place and merchandise is being produced/shipped, Chinese suppliers/manufacturers have a diminished incentive to cooperate,” he said. Nonetheless, importers should not “over-rely” on documents from their suppliers.

If a supplier wants to cooperate but has concerns about the confidentiality of “potentially sensitive or proprietary information,” importers can ask the supplier to transmit the documentation directly to CBP through the relevant Center of Excellence and Expertise, or arrange to have the sensitive information sent to a secure portal maintained by a “trusted attorney,” Kossick said.

And as a “qualified hedge against the uncertainty associated with the forced labor scrutiny CBP will afford an unvetted product, importers should adopt an import strategy that involves testing the waters by entering a number of smaller value shipments before moving to shipments involving larger quantities and values,” Kossick said. “Though past performance is never a guarantee of future results, this approach can help importers incrementally evaluate the forced labor scrutiny their products will receive and, by extension, avoid potentially expensive surprises.” — *Brian Feito*

### CBP Releases Guidance on Forced Labor Allegations, WRO Modification Submissions

CBP released two guidance documents May 16 on the [information](#) that should be included in allegations of forced labor in U.S.-bound supply chains filed through

CBP’s e-allegations system, as well as how to compile [supporting documentation](#) for both allegations and requests to modify Withhold Release Orders and forced labor findings. The latter guidance document has instructions on how to organize supporting documents, preserve open-source documents, preserve time and date information and submit documents in languages other than English, among other things.

### CBP de Minimis Regs to Cover Parties Eligible for de Minimis, Liability

CBP’s upcoming regulatory changes around de minimis shipments will combine the best of the Section 321 data pilot and the best of the entry type 86 test, adding together “clearance speed of the entry type 86,” CBP’s E-Commerce and Small Business Branch Chief Christine Hogue said on a May 18 [webinar](#) discussion hosted by the World Trade Center Miami.

The new regulations will “implement a new data requirement for de minimis shipments,” and will “lay out which data elements will be necessary to get the speed of clearance going forward,” Hogue said. “It’s also going to clarify who can qualify for the de minimis clearance, and it will address liability,” she said.

While the new procedures adopted in the regulations will replace type 86, the Section 321 data pilot will continue because “as we learn more, we are finding more data elements or seeing what will help us make quicker determinations to determine if your shipments are good, or do we need to take a closer look at them,” Hogue said.

The upcoming regulatory changes are a good reason to sign up for the newly expanded Section 321 data pilot, giving companies opportunities to see what data is required before the regulation is finalized, Hogue said. “So now’s the time, instead of waiting until the regulation becomes final, to start figuring out, how am I going to get my hands on this data if I don’t already have it,” and how to submit the data properly to your broker or express courier, she said.

She added that as more conversations take place over this data pilot, CBP hopes to learn more and figure out what companies could be given as a benefit for providing this information. She said 22 companies have signed up and

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CPB is looking for more. The agency doesn't have a limit on how many companies it can bring on, Hogue said.

Five companies are currently participating in the data pilot: Apple, Pfizer, Burberry, the NBA and MLB, CBP Intellectual Property Rights Policy Branch Chief Jessica Weeks said during an earlier session of the event. "We've seen a lot of success, not only with the data that they have been able to share, but also just some of the tidbits of information that they are able to gather on their particular industry or on their particular commodity," Weeks said. "That's been really helpful because you know, we've also been able to pass that information on to our partner government agencies, who may have further jurisdiction, such as criminal prosecution, that maybe CBP doesn't have so that way we can also criminally prosecute those bad actors." — *Noah Garfinkel*

### **Crapo Says Section 301 Exclusions Language May Not Return in Senate Trade Legislation**

Senate Finance Committee ranking member Mike Crapo, R-Idaho, said that he and Chairman Ron Wyden, D-Ore., have not delved into details about what they might keep and what they might drop from the U.S. Innovation and Competition Act trade title as the Senate tries for a second China competition bill. But, Crapo said, with regard to the Section 301 exclusion process directive that was part of the June 2021 package, it may not be on the agenda.

In USICA, members directed the Office of the U.S. Trade Representative to restart applications for exclusions, but it gave the agency the ability to decline if it "would impair the ability of the United States to maintain effective pressure to remove unreasonable or discriminatory practices" (see [ITT 06/09/2021](#)). While a China package became law, it did not include a trade package.

"The 301 exclusion process—the whole debate about that has kind of moved forward. And so, to a certain extent, that one is one that it may be moot at this point," Crapo said in a hallway interview at the Capitol. However, he noted that he hadn't discussed the measure with Wyden "to see whether there would be a reason to include that or not."

Crapo was more certain about renewing the Generalized System of Preferences benefits program and passing a

Miscellaneous Tariff Bill. He said he feels very strongly that they should be in the bill. The past trade title included a five-year renewal of GSP.

Democrats, too, have been supportive of bringing back GSP, but in the last Congress, they were not willing to do so unless they also could get Trade Adjustment Assistance renewed (see [ITT 12/14/2022](#) and [ITT 11/16/2022](#)).

When asked if he'd support changes to antidumping and countervailing duty law, such as those proposed by Ohio's two senators in the previous Congress (see [ITT 04/16/2021](#)), Crapo didn't say it was out of the question but suggested he was skeptical.

"That was controversial last time. And I believe that controversy remains," he said. He added that he and Wyden had not talked about Level the Playing Field Act proposals. However, the bill did face opposition from many business interests (see [ITT 03/23/2022](#)), who said its "far-reaching changes to U.S. antidumping and countervailing duty laws" had not faced scrutiny in the committee process, and said that the law would result in more and higher tariffs on many imported goods, "including products from economies that are not unfairly subsidized or dumping into the U.S. market."

Still, by the time the last Congress concluded, the [bill](#) had 19 sponsors, including 14 Republicans, so if it received yes votes from most Democrats, it would have enough support to clear the filibuster. Sen. Todd Young, R-Ind., told *International Trade Today* he intends to co-sponsor the bill in this Congress, replacing retired Sen. Rob Portman, R-Ohio. Young was a pivotal actor in getting the first China package through the Senate. — *Mara Lee*

### **Four COVID-Related Section 301 Exclusions to Expire in 16 Days; 77 Others Continue to Sept. 30**

The Office of the U.S. Trade Representative [announced](#) that 77 of 81 items previously granted Section 301 exclusions due to the COVID-19 pandemic will continue through Sept. 30. The rest will expire at the end of May. All the exclusions had been scheduled to end May 15.

The 77 products will now have the same expiration date as 352 products that were [extended](#) back in December.

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USTR said it needed the extra time to consider stakeholder input.

The products that will not be extended past June 1 are:

- 3923.21.095, ethylene polymer sacks. Tariff will be 7.5%.
- 5603.14.9090, other non-woven fabric, manmade. Tariff will be 25%.
- 4818.90.0080, paper bedsheets. Tariff will be 7.5%.
- 9004.90.0010 or 9004.90.0090, protective goggles. Tariff will be 10%, including Section 301 tariff of 7.5%.

**FDA Releases New Small Business Compliance Guide on Food Traceability Regulations**

FDA released a new small entity [compliance guide](#) May 18 intended to help small businesses comply with its new regulations on traceability and record-keeping for high-risk foods. The guide includes information on who must comply with the new regulations, when and what records must be kept, and how to request exemptions. Compliance with the final rule, which was published in November (see [ITT 11/15/2022](#)), is required by Jan. 20, 2026.

**State Dept. Issues Annual List of Countries Certified to Export Shrimp to US, Removes Malaysia**

The State Department on April 30 published its updated [list of countries](#) certified to have a regulatory program for protection of sea turtles that is comparable to that of the U.S., or to fish in conditions that pose no risk to sea turtles, and therefore eligible to export shrimp to the U.S. without a certification from a government official on State Form DS-2031.

The agency removed all previously listed fisheries in Malaysia—Kelantan, Terengganu, Pahang, and Johor—from

the list of fisheries eligible if the shrimp is harvested using turtle excluder devices, “effective for Malaysia with Dates of Export June 1st and after,” the notice said.

Otherwise, the list is unchanged. Countries with a comparable regulatory program include Colombia, Ecuador, El Salvador, Gabon, Guatemala, Guyana, Honduras, Nicaragua, Nigeria, Panama and Suriname. Argentina, Belgium, Canada, Chile, Denmark, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom and Uruguay harvest in an environment that poses no risk; and the Bahamas, Belize, Costa Rica, the Dominican Republic, Fiji, Hong Kong, Jamaica, Oman, Peru and Sri Lanka employ practices that don’t pose a risk to sea turtles, State said.

State is also authorizing importation of shrimp under certain circumstances for certain uncertified countries, and will require certification from a government official from these countries on DS-2031. That includes shrimp harvested using turtle excluder devices from Australia’s Northern Prawn Fishery, Queensland East Coast Trawl Fishery, and Torres Strait Prawn Fishery; and French Guiana’s domestic trawl fishery. It also applies without the turtle excluder device requirement to shrimp harvested in the Spencer Gulf region in Australia, with shrimp baskets in Hokkaido, Japan, with “mosquito” nets in the Republic of Korea, and Mediterranean red shrimp (*Aristeus antennatus*) harvested in the Mediterranean Sea by Spain.

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TRADE TODAY**



The source for trade compliance news

(ISSN 1932-6289)

PUBLISHED BY WARREN COMMUNICATIONS NEWS, INC.

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