



**Homeland
Security**

June 9, 2023

The Honorable Jeffrey A. Merkley
Cochair, Congressional-Executive Commission on China
United States Senate
Washington, DC 20510

Dear Senator Merkley:

Thank you for your April 11, 2023, letter regarding the Uyghur Forced Labor Prevention Act (UFLPA)¹, and for your support of the U.S. Department of Homeland Security's (DHS) robust implementation of this law. Forced labor is a scourge that violates human rights, undermines the rule of law, and harms American workers and businesses. The state-imposed nature of forced labor occurring in the Xinjiang Uyghur Autonomous Region (Xinjiang) of the People's Republic of China is particularly reprehensible. DHS is committed to enforcing all forced labor laws under its purview. We could not take this issue more seriously.

To date, our enforcement of the UFLPA has been speedy and strong. Speedy because we released the UFLPA Strategy ahead of the 180-day schedule required by law, and strong because we have devoted the full weight of our resources to enforcing it. In this fight to combat forced labor, DHS has worked closely with civil society organizations to uncover potential violations of the UFLPA and to hold violators accountable. With industry, DHS has stressed that corporate leaders have a responsibility to ensure their supply chains are free of forced labor, and that we expect forced labor to be a top-tier compliance issue in the board room and C-Suite.

I appreciate the Congressional-Executive Commission on China's (the Commission) engagement with the Forced Labor Enforcement Task Force (FLETF) and its efforts to eliminate forced labor from U.S. and global supply chains. I address the issues raised in your letter below, and also am pleased to offer a briefing to you and your staff to engage in more detailed, data-driven discussions if that would be helpful. Congress has equipped us with powerful tools to combat forced labor, and it is important to us that we offer Congress transparency so that you can understand the full scope of our efforts to put those tools to work.

U.S. Customs and Border Protection's (CBP) Applicability Review and UFLPA Reporting Requirement

The UFLPA's rebuttable presumption applies to goods mined, produced, or manufactured wholly or in part in Xinjiang or by an entity on the UFLPA Entity List.² CBP reviews high-risk imports on a shipment-by-shipment basis to determine whether the UFLPA rebuttable

¹ Pub. L. No. 117-78, 135 Stat. 1525 (2021).

² Pub. L. No. 117-78, § 3(a), 135 Stat. 1525 (2021).

presumption applies. When CBP analyzes risk factors to identify shipments considered high risk, it must then conduct a review to determine whether in fact the goods were made, in whole or in part, in Xinjiang.

Our applicability reviews are thorough. We have in many instances detained shipments for months as our enforcement officers review and examine supply chain documentation rigorously, ask detailed follow-up questions, and request additional documentation from importers. We release cargo only after an applicability review demonstrates that the contents of a shipment are not subject to the UFLPA's restrictions. In many instances our applicability reviews have resulted in decisions to exclude cargo from entering the United States. We are confident that our applicability reviews honor both the letter and the spirit of the UFLPA.

If CBP determines that an import is subject to the UFLPA rebuttable presumption, the importer may obtain an exception to the rebuttable presumption if the importer proves by clear and convincing evidence that the good is not mined, produced, or manufactured wholly or in part with forced labor, among other requirements.³ Regarding the UFLPA's related statutory reporting requirements, the law requires CBP to submit a report to Congress "after making a determination of an exception under subsection (b)."⁴ CBP is committed to reporting to Congress any exception that it may grant to a U.S. importer whose goods are subject to the rebuttable presumption. To date, CBP has granted no such exceptions.

Entity List Expansion

DHS and the FLETF, which I chair, are committed to expanding the UFLPA Entity List. We appreciate your support for that commitment, and the FLETF has recently approved two new additions to the UFLPA Entity List: Xinjiang Zhongtai Chemical Co. Ltd. and Ninestar Corporation, to include Ninestar's eight subsidiaries based in Zhuhai, China.⁵ The FLETF will continue to expand the UFLPA Entity List and is actively assessing additional nominations. As FLETF Chair, DHS has prioritized this mission at Secretary Mayorkas's direction, and has redirected resources to create entirely-new operating procedures for the federal agencies to nominate and consider UFLPA Entity List designations. DHS and other FLETF Members have developed robust partnerships with civil society organizations, labor organizations, and academia, which have been invaluable to the FLETF's work in this vein. The FLETF is dedicated to fulfilling its mandate to identify companies that perpetuate forced labor practices in China, and to holding them accountable.

Addressing Transshipment

In response to your request that CBP report on how it intends to address the challenge of transshipment, CBP has contended with the illegal transshipment of merchandise to evade trade

³ *Id.* § 3(b).

⁴ *Id.* § 3(c).

⁵ The eight Ninestar subsidiaries included are: Zhuhai Ninestar Information Technology Co. Ltd., Zhuhai Pantum Electronics Co. Ltd., Zhuhai Apex Microelectronics Co., Ltd., Geehy Semiconductor Co., Ltd., Zhuhai Pu-Tech Industrial Co., Ltd., Zhuhai G&G Digital Technology Co., Ltd., Zhuhai Seine Printing Technology Co., Ltd. and Zhuhai Ninestar Management Co., Ltd.

enforcement activity for many years; this issue is not limited to UFLPA enforcement. CBP employs a range of techniques to combat illegal transshipment, to include: identifying risk factors for shipments that pose an illegal transshipment risk; leveraging trade analysts to identify potential violators and enforcement personnel to identify the true provenance of imported merchandise; and investing in modernized trade platforms that allow the agency to focus its resources to identify areas of highest risks, such as illegal transshipment, while simultaneously facilitating lawful and compliant trade. The agency also works to identify new technologies to counter illegal transshipment. CBP hosted a technical expo in March where the trade community was able to learn more about new supply chain tracing technology. I was pleased to see a number of congressional staff at the event.

CBP through the FLETF will provide an update on how it is addressing transshipment in the 2023 UFLPA Strategy. The FLETF also publishes biannual enforcement reports on key issues, which recently have touched on UFLPA implementation, that we would be happy to provide to the Commission if requested.

De Minimis Enforcement

In response to your request for information regarding “de-minimis” shipments, CBP enforces the UFLPA on all importations regardless of value. There is no de minimis exception for forced labor. All shipments, regardless of value, pass through CBP systems and are subject to CBP’s risk assessment and screening. De minimis shipments pose unique challenges not only in forced labor but in all areas of trade enforcement, given that the advanced data required for those shipments is not as detailed as the data required for other types of entries. CBP has multiple initiatives underway that will increase data available to CBP and enhance its ability to assess risk, and take appropriate enforcement action, in the de minimis shipments context. We also would welcome the opportunity to work with Congress as it considers the many facets of the de minimis challenge.

Conclusion

I appreciate the Commission’s continued support of DHS’s efforts to implement the UFLPA. Thank you again for your letter and invitation to testify at a future hearing. I look forward to continued discussions with the Commission on the critical issue of combatting forced labor in China and around the world. I would appreciate your support in ensuring that DHS, CBP, and the FLETF are provided the necessary resources to continue to fully implement and enforce the UFLPA. This is intensive work and we need more resources, even as we pull assets away from other missions to ensure we are fully meeting our responsibilities under this important mandate.

Enforcing our forced labor laws is a top priority for us. It is important for human rights, workers’ rights, and our values. It is the right thing to do. We are committed to this work and we appreciate your oversight and support for us.

The Honorable Jeffrey A. Merkley
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The cosigners of your letter will each receive a separate, identical response. Should you require any assistance, please do not hesitate to contact the DHS Office of Legislative Affairs at (202) 447-5890.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert Silvers". The signature is fluid and cursive, with a large initial "R" and a long, sweeping tail.

Robert Silvers
Under Secretary for Policy
Chair, Forced Labor Enforcement Task Force