



ONE HUNDRED EIGHTEENTH CONGRESS
REPRESENTATIVE CHRISTOPHER H. SMITH, CHAIR
SENATOR JEFF MERKLEY, COCHAIR

April 11, 2023

Robert P. Silvers
Under Secretary for Strategy, Policy, and Plans
Chair, Forced Labor Enforcement Task Force (FLETF)
Department of Homeland Security

Dear Under Secretary Silvers:

As the lead sponsors of the bipartisan *Uyghur Forced Labor Prevention Act* (P.L. 117-78, or UFLPA), we write regarding the law's implementation. We appreciate the candor and professionalism of officials from the Department of Homeland Security, including U.S. Customs and Border Protection (CBP), who have regularly briefed our offices on UFLPA's implementation. We believe that UFLPA's enforcement is making an impact, putting substantial political and economic pressure on the government of the People's Republic of China (PRC) and forcing global corporations to investigate and disclose supply chains. Nonetheless, despite the welcome introduction of the new UFLPA Statistics Dashboard, we remain concerned that Congress lacks sufficient information and transparency to accurately assess whether implementation of the law comports with congressional intent.

The UFLPA presumptively bans the import of goods, wares, articles, and merchandise mined, produced, or manufactured wholly, or in part, in the Xinjiang Uyghur Autonomous Region (XUAR) or by entities engaged in forced labor transferred from the region unless "clear and convincing evidence" to the contrary is presented by importers. The rebuttable presumption sets a high bar for companies seeking to import any goods from the PRC, especially those in high-risk sectors, such as textiles, agriculture, and solar panels. This section covers all goods with any links to forced labor from the region and subjects them to potential detention unless importers can prove that the products are clean and are not tainted by forced labor.

Section 3(c) of the UFLPA requires that there be a report to Congress whenever cargo is released for entry into the United States after having been stopped due to evidence or reasonable suspicion of links to the XUAR or the forced labor of Uyghurs and other persecuted groups outside of the XUAR. We are concerned that importers whose goods are detained are claiming that UFLPA does not apply and these goods receive an "applicability review" which CBP does not believe needs to be reported publicly or to Congress. Such reviews seem to skirt the intent of UFLPA, which already gives importers the opportunity to rebut CBP's detention orders.

We understand that there have been instances where importers have had cargo released, even though CBP initially stopped it because of evidence of a link to the forced labor of Uyghurs outside of the XUAR. We also learned that nearly 300 cargo shipments were stopped and later released because the importer claimed—and CBP accepted—that the UFLPA didn't apply. The goods released included items from high-risk sectors with significant ties to the XUAR and labor transfer

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programs. **While we appreciate the difficulty and scope of enforcing UFLPA, we seek greater transparency about this review process and more clarity why goods stopped based on evidence of a link to the XUAR or labor transfer programs outside the XUAR are being cleared without congressional or public reporting.**

The CBP's UFLPA Statistics Dashboard is an important first step in increased transparency, though more is needed to help Congress, nongovernmental organizations, and the public understand the tools, processes and decisions that the agency uses to enforce the law, toward our shared goal of robust implementation of UFLPA.

Secondly, we also have concerns regarding the number of entities included under the Entity List required by the UFLPA. It is our contention that UFLPA implementation requires a robust Entity List that can be a useful guide for importers and CBP operations. Numerous civil society groups have compiled data on many entities that are linked to the XUAR and forced labor that are not currently included in the Forced Labor Enforcement Task Force (FLETF) list. We want to understand whether this discrepancy is a matter of criteria or process or both. FLETF has received information from nongovernmental organizations and researchers that detail a wide scope of entities engaged in forced labor in Xinjiang and beyond. But all this information has not led to additional listings. Based on the briefing our staff received on the FLETF deliberative process, we are concerned that the process is too bureaucratically cumbersome to allow for effective decision-making on listings. Additionally, we do not see in the current listings any entity engaged in the state-sponsored labor transfer program. For us, the volume and scope of entity listing is an important measure of the FLETF's commitment to implementing UFLPA. Therefore, **we request that the FLETF accelerate its efforts to expand the Entity List as soon as possible, and to continually update that list during the year as circumstances require, utilizing fully the data provided by reputable civil society organizations.**

Thirdly, we agree with CBP that addressing transshipment from third countries is a major challenge in implementation of the law amid global supply chains, and we would like to help CBP improve its enforcement process to ensure that the law—which also imposes a rebuttable presumption on goods from third countries as long as those goods use inputs produced in XUAR—is implemented as intended. **We request that, in its annual reporting to Congress on updating the implementation strategy under UFLPA, CBP report on how it intends to address this challenge of transshipment of XUAR-related goods, what kind of tools and technology it plans to employ, and what, if any, further resources it needs in this effort.**

In addition, we ask that FLETF provide information on the current status of (1) Canadian enforcement of its new forced-labor import ban as required under United States-Mexico-Canada Agreement (USMCA), given press reports that Canada has detained only one shipment on suspicion of forced labor, which it subsequently released; (2) obstacles that CBP faces for enforcing UFLPA in cases of rail, road and air transportation; (3) whether CBP has prioritized particular countries for risk-based targeting of transshipments; (4) statistics on the unit/value of all goods from the PRC that fall under high-risk sectors and the proportion of those goods that have been detained since June 2022; and (5) an overall update on whether USMCA-mandated actions on forced-labor imports are currently met by Mexico as well as Canada.

Finally, we acknowledge that the “de minimis” importation channel presents a further concern for U.S. ability to enforce the UFLPA. News reports about Chinese companies such as SHEIN and TEMU raise concerns about direct-to-consumer purchases. We know that de minimis shipping allows vendors to send materials without having to report basic data, such as country-of-

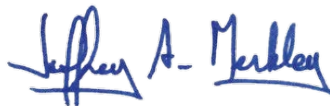
origin and manufacturer, if they claim that the value is under \$800, using Section 321 of the Tariff Act of 1930. In order to better understand how the “de minimis” rules affect the UFLPA implementation as we contemplate legislative actions to address this loophole, **we request more information about how CBP enforces UFLPA with regard to “de-minimis” shipments from the PRC and to report to us about how CPB intends to update the UFLPA implementation strategy to address the challenges posed by direct-to-consumer businesses such as TEMU, whose Superbowl ads signaled its efforts to expand its reach in the United States and whose app is now the one of the most downloaded in the United States. The fact that the Google Play Store recently suspended the app of TEMU’s Chinese parent company Pinduoduo (PPD)—citing security concerns about malware—only makes a concerted response to TEMU based imports all the more urgent.**

As we continue to support the full enforcement of this historic law that passed Congress with near unanimity, please understand our intention is to empower the FLETF and CBP to be at the forefront of this critical fight against modern slavery. We stand ready to work with you in identifying obstacles and addressing challenges in fulfilling the congressional intent in implementing this law, and we appreciate the candor and transparency you have demonstrated to date in briefing Congress.

To advance our mutual goal of robust implementation of the law, the Congressional-Executive Commission on China will hold a hearing later this month with a panel of experts on trade, forced labor, and labor trafficking to examine UFLPA implementation. While we understand that scheduling conflicts make it impossible for you to attend this hearing, we hope that you and other administration officials tasked with addressing forced labor issues related to the PRC can testify at a future hearing. In the meantime, we look forward to your response.



Representative Christopher Smith
Chair



Senator Jeffrey A. Merkley
Cochair



Representative James P. McGovern
Ranking Member



Senator Marco Rubio
Ranking Member