
Public Consultation by the U.S. Department of Homeland Security on behalf of the
Forced Labor Enforcement Task Force (FLETF)

The Implementation of the Uyghur Forced Labor Prevention Act

Statement by the German Industry Association SPECTARIS on challenges and suggestions for
improvement of the Act

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Table of contents

About SPECTARIS and the possible impacts of the UFLPA on the SPECTARIS members and their U.S. customers	3
■ Introduction of support mechanism for affected companies for their risk management and to reduce the administrative burden on companies.....	4
■ Facilitation and carve outs for small and medium-sized enterprises.....	5
■ Practical Challenges in Origin Tracing.....	5
■ Clear communication on due diligence requirements and necessary documents to rebut the presumption for U.S. importers and non-U.S. exporters	6

The German industry association SPECTARIS is grateful for the opportunity to provide input to the U.S. Department of Homeland Security's consultation prior to the implementation of the Uyghur Forced Labor Prevention Act (UFLPA) and to inform about commercial realities and business practices when conducting supply chain due diligence.

SPECTARIS and its members generally welcome the efforts by the United States authorities to tackle and address forced labor in supply chains and support adopting measures to prevent the importation of goods produced by or assumed to be produced with the help of forced labor. The adoption of additional legislation to address forced labor in supply chains has been a growing focus across many jurisdictions not only in the United States but also in Germany and the European Union where new laws on supply chain, human rights and environmental due diligence have been adopted or proposed recently.

In regards to the provisions of the UFLPA, we assume that our members and their U.S. customers might be highly affected by the UFLPA and we also see some practical and compliance challenges for our members and their customers in the United States, which we would like to highlight below.

About SPECTARIS and the possible impacts of the UFLPA on the SPECTARIS members and their U.S. customers

SPECTARIS is the German industry association for the high-tech medium-sized business sector and representative body in the areas of medical technology, consumer optics, analytical, bio and laboratory technology as well as photonics. We pool the interests of more than 400 companies. Technologies developed by our members are used in almost all branches of industry, making them an essential motor for the European but also the U.S. economy. Access to foreign markets is vital for our members, with the United States of America being one of the top two export markets for our industries. Additionally, many of our members have subsidiaries in the United States which receive components and finished goods from their German or European parent company.

As producers of high-tech items, our member companies have long and complex supply chains which often run through China before goods are assembled in Germany and then supplied to the U.S. market. Especially small electronic components, raw materials and minor components originate in the People's Republic of China.

The UFLPA will introduce a statutory presumption that any good made in the XUAR or produced by certain persecuted minorities in China (including Uyghurs, Kazakhs, Kyrgyz and Tibetans) is made with forced labor and therefore, prohibited from being imported in the United States.

As the UFLPA extends the scope to all products the statutory presumption is significantly broader than the product specific Withhold Release Orders previously issued by the U.S. Customs and Border Protection (CBP). The UFLPA therefore, has the potential to create significant logistical challenges and administrative burdens as well as delays for companies that import goods or products or products including components originating in China into the United States.

Below, we have listed a few areas where SPECTARIS and its members see practical and implementational challenges in complying with the UFLPA and where further guidance from the relevant U.S. authorities would be needed and helpful to guarantee a frictionless supply of goods:

■ Introduction of support mechanism for affected companies for their risk management and to reduce the administrative burden on companies

In Section 3(a) the UFLPA creates a new rebuttable presumption that all goods mined, produced or manufactured in Xinjiang or produced by certain persecuted minorities anywhere in China were produced with forced labor and therefore are subject to a pre-existing statutory prohibition on imports of such products. In order to rebut the Section 3(a) presumption and to demonstrate that Chinese-originating goods were produced neither in XUAR nor otherwise with forced labor by persecuted minority groups within China, the importers are tasked with scrutinizing, mapping, and documenting the entire end-to-end supply chain, from the earliest procurement of raw materials through foreign manufacturing and ultimately import to the United States.

This approach increases the administrative burden for suppliers as all products and components are now within the scope of the UFLPA and could potentially lead to a seizure of the shipment or even a penalty against the importer. The UFLPA also shifts the administrative burden and the increased due diligence requirements to the importers who will most likely pass these duties on to their suppliers outside the United States.

Generally, our member companies conduct a thorough due diligence of their direct suppliers (first-tier-suppliers and often also second-tier suppliers through contractual obligations) through regular screenings and have taken several other preventive measures, such as the integration of supplier code of conducts or punitive guarantees for forced-labor free supplies into their contractual frameworks.

Due to the lengthy and tightly branched supply chains in the field of the SPECTARIS industries, identifying potential forced labor risks further up the supply chain, managing and mitigating these risks are usually conducted by using a risk-based approach.

As the UFLPA extends the scope to raw materials, components and goods, it is impossible for companies themselves to get a full overview, where even the smallest components are sourced or originate from. Even if the suppliers further up the supply chain can be identified, it is still very difficult to assess and to identify, if these (second-, third- tier supplier or even further up suppliers) use forced labor in their respective supply chain and who their suppliers are.

Screening the entire supply chains from raw materials until the finished goods creates a huge administrative burden on the U.S. importers and is practically impossible in our industry sectors, due to the depth and the complexity. Besides this, it is also very unlikely that second-tier or third-tier suppliers will disclose information about their respective supply chains to non-contractual partners, especially if there is no contractual obligation or legal ground to do so in the sourcing country.

In order to make it easier to support the implementation of the UFLPA, we would therefore suggest that the relevant authorities also apply a risk-based approach to identify areas and sectors which are at a high risk of using forced labor and at the same time indicate which products are not deemed to have been produced by using forced labor.

For example, the [Congressional-Executive Commission on China \(“CECC”\) published a report in March 2020](#), which linked a large variety of product lines to forced labor in XUAR, including cotton and other textiles, cell phones, computers, electronics, and foodstuffs.

In order to reduce the burden on the importers and companies and support them in their efforts, it would be very helpful, if the U.S. authorities would highlight areas and goods which are considered to be produced with forced labor by continuing to publish business advisories or other sources of information. In practice, it would also be helpful and easier to implement in the daily business operations, if the U.S. authorities could publish a list of Chinese suppliers which have been flagged for potentially using forced labor within their respective supply chains.

■ Facilitation and carve outs for small and medium-sized enterprises

We would also like to mention that especially in the high-tech sector the majority of the companies are small and medium-sized enterprises (SME). Among the SPECTARIS members are around 90 per cent SMEs which are often hidden champions in their respective field and which supply vital products to the U.S. economy and whose customers are in some cases also SMEs.

SMEs in particular do not have the financial, administrative or human resources to conduct a deep-dive risk analysis into their entire supply chains. Therefore, we think it is important that the Forced Labor Enforcement Task Force also explores avenues to facilitate the requirements in the UFLPA especially in regards to the due diligence process and provides additional support and guidance for the SMEs.

■ Practical Challenges in Origin Tracing

Our members generally exercise a high level of diligence and a risk-based approach when sourcing and selecting suppliers. Within the first-tier and where possible into the next tiers our members conduct an in-depth screening of their suppliers and their business partners. Further upstream in the supply chain it becomes however more difficult to assess which company actually provided which component.

In the high-tech-industry mainly small electronic components or certain raw materials originate in China and could therefore fall within the scope of the UFLPA. These components are usually purchased centrally through one or depending on the volume several purchasers to reduce shipping costs. These central purchasers on their end source from different suppliers or other purchasing organisations.

The purchaser usually provides a supplier’s declaration in the form of a single supplier’s declaration or a long-term supplier’s declaration. These supplier’s declarations are usually made out on a commercial invoice, a delivery note or any commercial document which clearly identifies the goods. The supplier’s declaration can also be an ad hoc document (including pre-printed form), which refers and is annexed to a commercial invoice or other commercial document describing the goods.

These supplier declarations, especially when purchasing occurs centrally, usually do not state any information about the respective suppliers for each item and the origin of the items. For custom preference reasons China might be listed as a place of origin but further details about the provinces or the supplier from which the items originate, are usually not given.

Based on the set up of the supply chains in the high-tech sector, we would like to highlight that the exact location or province, from which certain components originate within China, can often not be determined easily by foreign recipients. This is especially the case, when the purchasing and ordering of many different items is done centrally through one designated purchaser and long-term suppliers declarations are used. Therefore, we would welcome it, if the Forced Labor Enforcement Task Force could take into consideration to also adopt a list-based approach in which it highlights entities with a high-risk of using forced labor.

■ **Clear communication on due diligence requirements and necessary documents to rebut the presumption for U.S. importers and non-U.S. exporters**

As already mentioned above, we assume that the rebuttable presumption will increase the inspection time for shipments to the United States and will hence also have significant influence on delivery times which have already extended due to the pandemic, the shortage of freight capacities and port congestions.

The UFLPA provides for an exception to its ban on imports from the XUAR, if the importer has fully complied with the guidance described in the Act, has responded to all inquiries for information submitted by U.S. CBP to ascertain the origin of the goods, and “by clear and convincing evidence,” proved that “the good, ware, article or merchandise was not mined, produced, or manufactured wholly or in part by forced labor.”

Notably, the Act currently does not specify how “clear and convincing evidence” that no forced labor was used is going to be defined and which types of evidence might suffice to establish by clear and convincing evidence that goods are not the product of forced labor. Until the enforcement strategy is formalized and more detailed implementing regulations are issued under the Act, the law remains unclear on a number of important diligence questions relevant to international importers with complex supply chains.

The rebuttable presumption will come into effect on June 21st 2022 which does not give companies within the scope of the UFLPA a lot of time for obtaining the necessary evidences in order to demonstrate that Chinese-originating goods were produced neither in XUAR nor with forced labor by other persecuted minority groups within China, and to allow shipments to reach their customers in the United States frictionless.

Therefore, we would welcome a transitional period as June 21st is a very ambitious date, taking into consideration that no guidelines have been issued yet about the documents which need to be provided to rebut the presumption and to receive shipments frictionlessly. It also needs to be taken into consideration that importers will need a reasonable time to implement the processes in accordance to the guidelines published by CBP or by the Forced Labor Enforcement Task Force. Additionally, it would be important to issue clear guidelines from CBP for importers before the implementation on June 21st 2022 about the type, nature, and extent of evidence, which needs to be provided in order to rebut the presumption and to not delay any shipments.

The guidance should contain a list of documents such as a Certificate of Origin which will need to be provided. The guidance document should also include clear guidelines and documents which should be provided to CBP as additional evidence.

SPECTARIS is the German Industry Association for Optics, Photonics, Analytical and Medicinal Technologies. The association SPEC represents 450 mainly small and medium sized German companies. The represented industries achieved a total turnover of around 72 billion euros in 2020 and employed around 327,0000 people. Our members are very exportoriented with an average of two thirds of their products being exported.