

# Debevoise National Security Update: Increased UFLPA Enforcement

April 12, 2024

On April 5, 2024, the Department of Homeland Security (“DHS”) announced that it will crack down on illicit trade, including violations of the Uyghur Forced Labor Prevention Act (“UFLPA”), in the textile industry.<sup>1</sup> As detailed in the *Debevoise National Security Update: Supply Chain Security in 2024*, we expected DHS to increase UFLPA enforcement in response to a bipartisan letter spurring it to do so from the Chairman and Ranking Member of the House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party (the “Committee”).<sup>2</sup> This client alert addresses the implications for affected entities of DHS’s enhanced UFLPA enforcement actions, including textiles, apparel, and retail companies.

## INCREASED ENFORCEMENT AND CIVIL AND CRIMINAL PENALTIES

DHS’s announcement provides that it will issue civil penalties and conduct criminal investigations against textile companies that, among other things, it alleges utilize forced labor in their supply chains.<sup>3</sup> To date, DHS has issued 1,859 penalties and liquidated damages against violators and detained and reviewed over 780 shipments related to forced labor.<sup>4</sup> DHS’s increase in punitive measures also follows reports from last year that 15% of apparel collected for testing by U.S. Customs and Border Protection tested positive for cotton from Xinjiang, including more than 25% of shoes and garments.<sup>5</sup> This also is not the first time that DHS has signaled that it will leverage criminal enforcement to “eradicate” forced labor: in its update to its UFLPA Strategy delivered to Congress on July 23, 2023, DHS stated that its Center for Countering

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<sup>1</sup> See *New DHS Textile Enforcement Actions Crack Down on Illicit Trade to Support 500,000 American Textile Jobs*, dhs.gov (April 5, 2024), available at <https://www.dhs.gov/news/2024/04/05/new-dhs-textile-enforcement-actions-crack-down-illicit-trade-support-500000>.

<sup>2</sup> See *Debevoise National Security Update: Supply Chain Security in 2024*, debevoise.com (March 11, 2024), available at <https://www.debevoise.com/insights/publications/2024/03/debevoise-national-security-update-supply-chain>.

<sup>3</sup> The government of the People’s Republic of China has consistently denied allegations of forced labor in Xinjiang.

<sup>4</sup> See *supra* n.1.

<sup>5</sup> See *Exclusive: US Customs Finds Garments Made With Banned Chinese Cotton*, reuters.com (Sept. 1, 2023), available at <https://www.reuters.com/markets/commodities/us-customs-finds-garments-made-with-banned-chinese-cotton-documents-2023-09-01/>.

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Human Trafficking will send “viable referrals” of forced labor by Chinese entities or their affiliates to Homeland Security Investigations field offices “to pursue criminal investigations and federal prosecution, as appropriate.”<sup>6</sup>

As part of its investigations and physical inspections, DHS will expand its use of country-of-origin, composition, and isotopic testing, which it has previously characterized as “not yet a routine process.”<sup>7</sup> These are advanced scientific techniques where DHS tests the composition signature or ratio of isotopes in detained textile goods, which can vary based on the climate where they are grown, to see if they match those from Xinjiang. Companies with a nexus to China and textiles in their supply chains should therefore verify their compliance with the UFLPA, which could entail deploying similar methods, along with DNA tracing, to stay ahead of DHS enforcement.

In addition to large shipments of textiles, DHS’s targeting for enforcement will also focus on *de minimis* package shipments, which are imports valued at \$800 or less that enter the U.S. without going through formal entry procedures. According to the Committee’s letter, *de minimis* shipments topped over one billion in 2023, and are a major avenue that companies have exploited to avoid UFLPA compliance. Companies that receive *de minimis* textile shipments directly from Chinese suppliers should conduct due diligence to ensure that such goods do not originate in whole or in part from Xinjiang.

### UFLPA ENTITY LIST EXPANSION

DHS will expand the UFLPA Entity List to include textile companies that it and the Forced Labor Enforcement Task Force (“FLETf”) find utilize, or are otherwise associated with promoting, forced labor in Xinjiang.<sup>8</sup> According to DHS Under Secretary for Policy and the Chair of the FLETf Robert Silvers, “DHS is committed to expanding the UFLPA Entity List and sending a strong message to the importing community that the United States has zero tolerance for forced labor in our supply chains.”<sup>9</sup> Such additions can cause significant disruptions for companies whose suppliers (or supplier’s supplier) are designated because the resulting effective import ban takes immediate effect with little to no advanced notice. Companies, especially those involved in textiles, apparel, and retail, should assess their UFLPA risk. It is also advisable to

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<sup>6</sup> See 2023 Updates to the Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China at 9-10, dhs.gov (July 23, 2023), available at <https://www.dhs.gov/uflpa-strategy>.

<sup>7</sup> See *supra* n. 5 (internal quotation marks omitted).

<sup>8</sup> See *supra* n. 6 at pp. 6-7.

<sup>9</sup> See *supra* n. 1.

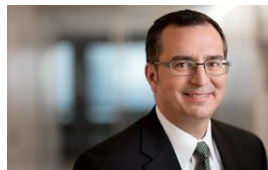
establish a mitigation and response plan in the event that an entity in their supply chain is added to the UFLPA Entity List.

**KEY TAKEAWAYS**

- DHS has announced its intention to crack down on forced labor in the textile industry by expanding UFLPA enforcement actions, including increasing civil and possible criminal penalties, enhancing use of advanced scientific methods to detect goods from Xinjiang (e.g., isotopic and composition testing, etc.), targeting *de minimis* shipments, and expanding the UFLPA Entity List.
- Companies, especially those involved in textiles, apparel, and retail, should ensure that they are in compliance with the UFLPA. Appropriate compliance measures could include performing isotopic, composition, or DNA testing as practicable; conducting due diligence on Chinese suppliers that provide *de minimis* shipments of textiles; and developing a supply chain mitigation and response plan should a direct or indirect textile supplier be added to the UFLPA Entity List.



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