

Uyghur Forced Labor Prevention Act (UFLPA) and Forced Labor Laws, Regulations and Standards Tips for Compliance, Controls and Reporting



The Uyghur Forced Labor Prevention Act (UFLPA) has been described as “the most interesting law in the world.” “Interesting” covers a lot of ground. The provisions of UFLPA are poised to disrupt trade, supply chains, product assembly and sales. It may affect operations, compliance, financial and non-financial reporting, and strategies for companies in many sectors. If your company makes or imports apparel or linens that include cotton, this applies to you. If your company makes anything that includes silica (think chips), it applies to you. This white paper highlights key provisions and offers takeaways from UFLPA, as well as context and tips.

PREMISES

- UFLPA isn’t the first law regulating forced labor, including applicability in the supply chain. It is likely the most impactful. And it may not be the last.
- UFLPA and other laws, regulations and disclosures collectively are greater than the sum of their parts, in terms of relevance to operations, compliance, (financial and non-financial) reporting and organizational strategy.
- Few companies know what’s about to hit them. Or what already has.
- Companies can leverage the approaches, structures, resources and tools used for related efforts. For example, many companies have implemented programs for conflict minerals. Companies have launched ambitious, far-reaching initiatives to calculate and reduce their greenhouse gas (GHG) emissions.



This and additional content is available for in-house sessions.

See www.douglashileman.com and “Contact Us.”



UYGHUR FORCED LABOR PREVENTION ACT (UFLPA) (2021)

Public Law 117-78, revising Smoot-Hawley Tariff Act of 1930, was signed December 23, 2021. A prominent attorney in the field has called it “the most interesting law in the world” because of its groundbreaking nature, its brevity, its impact, and the infrastructure being created for its enforcement.



**U.S. Customs and
Border Protection**

The law establishes a rebuttable presumption that the Import Prohibition applies to goods mined, produced, or manufactured in XUAR or by Certain entities. Commissioner of US Customs and Border Protection shall apply a presumption ... is prohibited under Section 307 of the Tariff Act and are not entitled to entry at any of the ports of the US. Except if the Commissioner determines that the importer of record has:

- Fully complied w guidance described [herein] and
- [demonstrated] by clear and convincing evidence, that ... was not mined, produced, or manufactured wholly or in part by forced labor.

Commissioner shall submit to the appropriate Congressional committees and make available to the public, not later than 30 days after making a determination of an exception ... a report identifying the good and evidence considered. [10 Committees listed, 5 in House, 5 in Senate]

CBP lists three at-risk industries: tomatoes; cotton; and silicon. CPB Guidance lists types of information expected, including: due diligence system information; written supplier code of conduct with relevant provisions; monitoring of supplier compliance with code of conduct; independent verification; public reporting and engagement on due diligence.

Proposed budget for enforcement would increase CBP enforcement budget by over six times, compared to just a few years ago. CPB anticipates 300 new full-time employees.

Key takeaways from UFLPA include:

- The law has massive applicability.
- The basis of Rebuttal Presumption is new; “shall” is unambiguous.
- This didn’t start life as a “top line” human rights or sustainability law – like many others relevant for ESG (Environmental, Social and Governance).
- No standard, framework or due diligence protocol is prescribed.
- There will be public reporting – from the CBP directly to Congress.



CONTEXT: DIRECTLY RELATED

Several laws and regulations pertaining to forced labor and human rights are already in effect. These form a useful basis for comparison – of applicability, requirements, reporting obligations, and of risks. Companies’ experience with these laws may offer precedent for how they tackle UFPLA and its challenges.



Dodd-Frank Conflict Minerals (2012)

Section 1502 of the Dodd-Frank law required the Securities and Exchange Commission (SEC) to establish rules on conflict minerals: tin, tantalum, tungsten, and gold (“3TG”). The SEC Conflict Minerals Rule required due diligence, referencing an internationally-accepted standard. The Rule required annual filings to the SEC, with suggested/ prescribed content and flow. The Rule included provision for external assurance; this mandatory requirement for an Independent Private Sector Audit (IPSA) was challenged and has not been implemented. Industry and stakeholders collaborated to develop the Conflict Minerals Reporting Template as a mechanism to share data throughout the value chain.

Key takeaways from Dodd-Frank Conflict Minerals implementation include:

- There was difficulty in conveying the scope and impact, notably to companies that did not publicly trade in the U.S., and to private companies.
- The rule extends beyond traditional financial reporting boundaries of “control”; it extends into areas a company is expected to *influence*¹.
- The rule affected many functions unaccustomed to working together on compliance.
- There were difficulties in obtaining and transferring data and information through the value chain.
- As an SEC rule, conflict minerals called for more rigorous – and better-documented – processes, systems, and internal controls than for other external Environmental, Social and Governance (“ESG”) reporting.
- The impact was felt primarily in the tech sector, because of the express focus on four minerals – tangible substances - used to make *products*.

¹ See “3 Attributes of ESG Reporting that Differ from Financial Reporting” at www.douglashileman.com



California Transparency in Supply Chains Act (2010, Effective 2012)

This law (“CTSCA”) applies to retail sellers or manufacturers “doing business in California.” The threshold for “doing business in California” is low; one threshold is in-state sales of \$500,000 or more. The law requires disclosure, and specifies topics, including verification; audits; certifications; accountability; and training. The required disclosure must be accessible through a “conspicuous and easily understood link” on the company’s home page. Enforcement is at the discretion of the state Attorney General.



Key takeaways for CTSCA include:

- This different approach to scope and applicability, affecting many companies not previously regulated for concerns with forced labor.
- The criteria for certifications is not provided.
- CTSCA created a new web of audits in the supply chain, and audit fatigue in suppliers.
- No audit is required or suggested to evaluate a company’s conformance with the rule.

UK Modern Slavery Act (2015)

This law applies to entities with annual turnover > £36 million (~\$50 million). Companies must publish annual statement to confirm steps taken that slavery/ human trafficking are not taking place in business or supply chain; or declare that no steps have been taken. Suggested filing contents include: organization’s structure; policies; due diligence processes; description of risk assessment and mitigation; performance indicators; and training. There is no legally binding requirement to conduct due diligence on supply chains, nor are there criminal or financial penalties for non-compliance. There are no requirements for audits.



Key takeaways from UK Modern Slavery Act include:

- The scope and applicability illustrate – as did CTSCA and Dodd-Frank Conflict Minerals before it – how laws can ensnare companies that do not expect it.
- Due diligence on *work practices* differs from due diligence on a *substance* (mineral).
- The disclosure requirements are primarily narrative. This reflects another attribute of ESG reporting that differs from traditional financial.
- “Comply or explain” is on the rise. It is no longer possible to ignore requirements, omit content from external reporting, and hope nobody notices. The company must self-assess conformance and publicly disclose where they did not take the steps noted.
- Without enforcement, transparency and other pressures are the primary drivers for performance and improvements.



German Due Diligence (2021)

This law applies to companies based in Germany with more than a threshold number of employees; ~2,800 companies are expected to have applicability in 2024. The law sets forth lists of environmental and human rights risks. Environmental risks include use of persistent organic pollutants, and management of hazardous waste. Human rights risks include child and forced labor; occupational safety and health; adequate living wage; excessive water consumption; and unlawful eviction or taking of land, forest, or water.



The law requires a [Human Rights] Risk Management System. The components resemble those for many other management systems [environmental, quality, etc.]: documentation of top-level commitment; defined responsibilities; risk analysis; policy statement; preventive measures; affirmative efforts regarding indirect suppliers; remedial actions; and complaints procedures. It also requires reporting, with these reports publicly available for seven years.

Selected Takeaways

- Companies in the supply chain will be affected. This essentially makes the law globally applicable, as with other laws.
- Governance, strategy, risk management all included. This is all narrative. This is also consistent with requirements for Task Force on Climate Related Financial Disclosures (TCFD), a widely-adopted framework for disclosure to capital markets of climate-related risks and management's programs to address them.
- No standard framework or model for risk identification, assessment, procedures is referenced.
- This regulation has a tie-in with whistleblower requirements – another relatively new regulation on a topic considered within ESG.
- There are no specific audit requirements, either within the supply chain or of company conformance. Affected companies will need to develop, implement, and document these.
- Public reporting is required. These reports will be available for seven years, allowing investors, analysts, regulatory authorities, customers, NGOs, and other stakeholders to evaluate the data and information included for years to come.



CONTEXT: OTHER RELATED

Other laws, regulations and standards are relevant to forced labor compliance, risk, reporting and disclosures. They may help companies achieve compliance with UFLPA. Or UFLPA could expose gaps and risks in these existing obligations.

Amendments to Regulation S-K (November 2020)

The SEC amended Regulation S-K, confirming that content should provide a narrative explanation of its financial statements that enable investors to see “through the eyes of management.” Disclosures are typically in the Management Discussion & Analysis (MD&A) section of the Form 10-K. U.S. registrants are required to discuss results of operations, and to disclose (1) any *known trends or uncertainties* that have had or are reasonably likely to have a material impact on revenues or income and (2) any *known events* that are “**reasonably likely to cause** a material change in the relationship between costs and revenues (such as **known or reasonably likely** future increases in costs. . .



Sustainability Accounting Standards Board/ International Sustainability Standards Board (November 2021)

SASB has merged into the ISSB, an entity of the International Financial Reporting Standards (IFRS) Foundation. SASB created industry-specific disclosure topics for material sustainability/ ESG issues. SASB used “material” as defined by the U.S. Supreme Court for common investors, and has always maintained that these disclosures were expected, if not required.



Accounting topics that apply to some sectors include those listed below.

- Description of the management of risks associated with the use of critical materials.
- Description of efforts to maintain traceability within the distribution chain, particularly with respect to wholesalers, re-packagers, and/or contract distributors.
- Discussion of any existing or projected risks or constraints with obtaining raw materials (or components) within the supply chain, including those related to restricted/limited availability, political situations, local labor conditions, natural disasters, climate change, or regulations.
- Percentage of Tier 1 supplier facilities audited in the Responsible Business Alliance (RBA) Validated Audit Process (VAP) or equivalent, by (a) all facilities and (b) high-risk facilities
- Tier 1 suppliers’ (1) non-conformance rate with the RBA Validated Audit Process (VAP) or equivalent, and (2) associated corrective action rate for (a) priority non-conformances and (b) other non-conformances. (both in %)



Federal Acquisition Regulations (FAR) (2014)

2012 – EO 13627 “Strengthening Protections Against Trafficking in Persons in Federal Contracts.” Effective March 2, 2014.

All federal contractors must: take concrete preventive steps to ensure employees do not engage in trafficking-related activities; make mandatory disclosure upon receipt of any credible information from any source that alleges a contractor employee, subcontractor or subcontractor employee has engaged in conduct that violates FAR provisions.

Businesses with government contracts valued >\$500K must also:

- Develop, maintain, and post on company website a detailed compliance plan
- Certify annually that, after due diligence inquiry, neither the company nor its employees engaged in trafficking-related activities – or, if a violation is identified, the contractor has taken appropriate remedial and referral actions.

“Certifying that your supply chain is free of coerced labor without conducting an appropriate due diligence review could land an employee of the contractor in jail if a violation is later found to exist.”

Key takeaways from related laws and regulations include:

- Many companies should have been disclosing relevant content in Form 10-K MD&A for years. Or should have been.
- There have been many developments in recent years on sustainability/ ESG reporting and disclosures to capital markets. Companies that fail to disclose on SASB topics incur some risk, such as impaired access to capital.
- Historical reporting and disclosures - SEC filings, FAR disclosures are public record. These could be viewed again through the lens of UFLPA. Or FAR. Or ESG screened funds.
- As with other ESG or sustainability reporting standards², SASB/ ISSB standards are “living documents.” New laws, regulations, risks, potential effects on financial performance drive revisions. As the impacts become more obvious – and financially material – SASB disclosure topics could include topics such as those set forth in the laws and frameworks noted above.



² Notably, the GRI [formerly Global Reporting Initiative]; website at www.globalreporting.org





RECAP AND SUGGESTIONS

Recap

There are many drivers, applicability, risks, and requirements. Many aspects interact with many others. Any / all can affect operations, compliance, (financial and non-financial) reporting, and business strategy. There is an urgent need for improved / new controls; many have not been developed.

Many key internal groups are likely not aware of UFLPA, or the multiple requirements and risks arising from forced labor: Management; CFO; General Counsel; Internal Audit; Procurement; Compliance.

Many key external groups are likely not aware – notably, suppliers. Many key external groups **ARE** aware: US Customs and Border Patrol, financial analysts, NGOs, and customers. Legacy reports and disclosures may be subject to re-evaluation, with potential for enforcement, shareholder action, customer inquiry, or business disruption.

Suggestions

Companies faced with challenges of UFLPA – and/ or related laws, regulations, legal requirements, or company commitments dealing with forced labor – should begin with the same three questions that launch every project (see box).

The Universal Questions for Every Project (according to Doug):

- 1) Where are you?
- 2) Where do you want to go?
- 3) How do you get there?

The questions are easy. The answers are hard.

Short-term, tactical steps to begin this journey include:

- Read the law for yourself – it's short. Read CBP guidance.
- Provide or arrange for a briefing with senior management, key department heads.
- Reactivate, repurpose, or expand cross-functional teams.
- Do a gap assessment. While you're at it, check for gaps, inaccuracies, poor documentation, or unsupported statements in previous reporting or disclosures.
- Leverage your experience from other efforts to comply with laws with similar attributes.
- Design, implement, test internal controls



REFERENCES

Public Law 117-78; Uyghur Forced Labor Prevention Act; at [PUBL078.PS \(congress.gov\)](https://www.congress.gov/bills/117/78)

Uyghur Forced Labor Prevention Act, U.S. Customs & Border Protection, Operational Guidance for Importers; June 13, 2022; found at https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP_Guidance_for_Importers_for_UFLPA_13_June_2022.pdf

Home page for California Transparency in Supply Chains Act at <https://oag.ca.gov/SB657>

Statements for UK Modern Slavery Act at <https://modern-slavery-statement-registry.service.gov.uk/>

For German Due Diligence Act; summary at <https://www.circularise.com/blog/german-supply-chain-act-due-diligence-obligations-explained>

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SEC final rule at <https://www.sec.gov/rules/final/2020/33-10890.pdf>

Deloitte analysis at <https://dart.deloitte.com/USDART/home/publications/deloitte/heads-up/2020/sec-rule-mda-disclosure>

SASB Standards found at <https://www.sasb.org/>; website for International Sustainability Standards Board at <https://www.ifrs.org/groups/international-sustainability-standards-board/>

3 Attributes of ESG Reporting that Differ from Financial Reporting; found at [White Papers – Douglas Hileman Consulting.](#)



About Douglas Hileman Consulting LLC

Douglas Hileman Consulting LLC (DHC) supports Clients in environmental, social and governance (ESG, or “Sustainability”), audits/ risk/ compliance, and non-financial reporting (aka “Sustainability reporting”). Mr. Hileman has been in the forefront of emerging issues for over forty years. He has worked in operations and corporate compliance; environmental, health and safety compliance and auditing; Internal Audit; and external assurance for financial audits and conflict minerals submittals to the SEC. He was the senior technical specialist in environmental management and environmental auditing on the Volkswagen Monitor team, created for the company to fulfill obligations to the US Department of Justice.



Mr. Hileman has reviewed frameworks for non-financial reporting (SASB, GRI, etc.), submitting comments on many proposed revisions. As an ESG specialist/ Sustainability specialist, he has helped clients design and implement programs and controls, provide executive briefings, deliver training, prepare for external audits. He supports special project initiated by Executive, Compliance, Risk, Internal Audit, and Investigation functions.

Prior to launching his firm in 2008, Mr. Hileman worked at a Big 4 accounting firm for six years, supporting financial audits, enterprise risk management, internal audit and the Sustainable Business Solutions practice. Mr. Hileman holds the credential in Fundamentals in Sustainability Accounting (administered by the Sustainability Accounting Standards Board). He is also a Certified Risk Management Assurance (CRMA) professional, granted by The Institute of Internal Auditors), and a Certified Professional EHS Auditor.

See also www.douglashileman.com.