



**Comments of the
Motor & Equipment Manufacturers Association
to the
Department of Homeland Security
on the**

**Notice Seeking Public Comments on Methods to Prevent the Importation of
Goods Mined, Produced, or Manufactured with Forced Labor
in the People’s Republic of China, Especially in the
Xinjiang Uyghur Autonomous Region, into the United States**

Docket No. DHS–2022–0001

March 10, 2022

The Motor & Equipment Manufacturers Association (MEMA) submits these comments in response to the January 24, 2022, *Federal Register* Notice¹ issued by the U.S. Department of Homeland Security (DHS) and Forced Labor Enforcement Task Force (Task Force) requesting comments on the enforcement of the Uyghur Forced Labor Prevention Act (UFLPA).²

MEMA welcomes the opportunity to participate in the development of UFLPA implementation and enforcement strategies and encourages continued collaboration between the U.S. Government and industry throughout the implementation process.

I. BACKGROUND

A. Motor & Equipment Manufacturers Association Background

MEMA represents over 900 vehicle parts suppliers (also referenced herein as component manufacturers) that develop innovative technologies and manufacture original equipment (OE) and aftermarket components and systems for use in passenger cars and commercial trucks.³ Vehicle suppliers operate in all 50 states, directly employ over 907,000 American workers, and represent the largest sector of manufacturing jobs in the United States. Direct, indirect, and induced vehicle supplier employment accounts for over 4.8 million U.S. jobs and contributes 2.5 percent to U.S. GDP.⁴

¹ 87 Fed.Reg. at 3567.

² Pub.L. 117–78.

³ MEMA represents its member companies through its four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); MERA - The Association for Sustainable Manufacturing; and Original Equipment Suppliers Association (OESA).

⁴ [U.S. Labor and Economic Impact of Vehicle Supplier Industry](#), MEMA and IHS Markit. February 2021.

Across the entire range of new vehicle innovation – from automated driving systems to zero-emission vehicle technologies – vehicle suppliers are leading the way. Vehicle suppliers conceive, design, and manufacture the OE components and technologies that make up more than 77 percent of the value in new vehicles. Additionally, vehicle suppliers also manufacture aftermarket parts and materials for the service, maintenance, and repair of 282 million vehicles on U.S. roadways.

The industry's technology development allows the U.S. to be more innovative, globally competitive, and is leading the path of enhanced mobility for all citizens globally. Now more than ever, the vehicle industry is at an inflection point as it moves toward a net carbon neutral future and a goal of zero vehicle accident fatalities with new, cutting-edge powertrain and safety technologies.

B. MEMA Opposition to Forced Labor

MEMA and its members strongly condemn the use of forced labor and support reasonable and effective U.S. measures to prevent the importation of products that are produced with forced labor. Many of MEMA's member companies have well-established company policies and codes of conduct that prohibit the use of forced labor and due diligence programs to assess forced labor risks in supply chains. Member companies have been continuously working to identify and address risks of forced labor in supply chains and continue to do so in light of increased forced labor concerns in the Xinjiang Uyghur Autonomous Region (XUAR) region of the People's Republic of China (PRC).

C. Supply Chain and Trade Challenges

Motor vehicle component manufacturers are committed to conducting supply chain due diligence in order to comply with the UFLPA. We request that the Task Force consider the context of challenges that component manufacturers are currently facing within their U.S., North American, and global operations in devising a practical and feasible strategy to UFLPA implementation.

Perhaps the most compelling issue that raises concerns regarding the ability of parts suppliers to immediately comply with the strict letter of the UFLPA is the potential impact the law may have on the safety and emissions of motor vehicles. Vehicle manufacturers (OEMs) require their suppliers to conduct rigorous research, development, testing, and manufacturing of components so that OEMs can, in turn, self-certify compliance with hundreds of federal safety and emission regulation requirements. OEMs often require component manufacturers to use specific sub-suppliers either to address quality, safety, or availability standards. Certification is required for systems and components that impact the tens of thousands of parts in a single motor vehicle. This process can take several years. As a result, shifting supply chains and identifying new suppliers that can satisfy safety and emission regulatory requirements takes considerable time.

Furthermore, these additional due diligence requirements come at a critical time for motor component manufacturers that have been facing specific hardships since the onset of the COVID-19 crisis. Challenges include the continuing acute shortage of vehicle-grade semiconductors, international and domestic shipping delays, U.S. port backlogs, and at least three to four-fold increases in logistics expenses. Moreover, skyrocketing raw material and input costs as well as shortages of critical minerals, steel and other metals, as well as other materials are also adversely impacting the sector.

II. SUMMARY OF RECOMMENDATIONS

MEMA is deeply concerned about the reports of forced labor in XUAR and looks forward to collaborating with stakeholders, including the Task Force, in order to develop a strategy to combat forced labor and implement the UFLPA.⁵ To achieve these objectives, MEMA offers the comments below.

As an initial matter, MEMA strongly believes that a workable timeline should be adopted to foster the effective enforcement of the UFLPA. As explained more fully in these comments, the Task Force should implement a phased-in approach to the UFLPA, beginning two years after June 21, 2022 (the date the rebuttable presumption goes into effect)⁶ and additional time as necessary for small and medium sized companies.⁷

In addition, MEMA has the following recommendations, which are also explained in further detail in the subsequent sections.

- The need for a multi-lateral approach. Most MEMA members are global companies and want to put plans in place that address efforts in other countries to eradicate forced labor.
- The development of tools by the Task Force to provide clear guidance to importers, including the creation of an “approved supplier” list and a “prohibited or suspected entity/product” list.
- The adoption of due diligence best practices and the establishment of a forced labor trusted trader program, as well as a multi-lateral and/or third-party audit certification systems.
- The creation of transparent and workable procedures for importers to respond to detention orders relating to alleged violations of the UFLPA and the use of forced labor in the production of imported goods.
- The support for funding and development of supply chain tracing technologies that may be incorporated into the automotive parts suppliers automated management systems.

III. FORCED LABOR ENFORCEMENT CONTEXT AND NEED FOR MULTI-LATERAL APPROACH

19 U.S.C. § 1307 (hereinafter “Section 307”) prohibits the importation of merchandise manufactured wholly or in part in any foreign country by convict labor, forced labor, and/or indentured labor. To date, the U.S. Government approach to combating forced labor under Section 307 has been conducted through the issuance of Withhold Release Orders (WRO) that authorize U.S. Customs and Border Protection (CBP) to detain covered merchandise unless the importer can provide evidence that merchandise was not produced with forced labor.

⁵ Uyghur Forced Labor Prevention Act, Public Law No: 117-78, 117 Cong. (2021).

⁶ Alternatively, the Task Force should not begin enforcement for six months after a supplier is added to the prohibited list so that companies have time to conduct necessary supply chain due diligence.

⁷ Small and medium sized businesses should be afforded more time to implement the required due diligence procedures before the rebuttable presumption goes into effect.

Importers are not clear on the information that is sufficient to secure release or the due diligence that can be performed to prevent a detention because CBP has not published guidance and the documentation required to secure release has been inconsistent. In order to ameliorate the historically unclear enforcement of forced labor prohibitions, the Task Force must provide clear and transparent guidelines when devising their enforcement strategy to the UFLPA. The Task Force and industry should develop a collaborative working relationship to develop the UFLPA enforcement strategy.

Specifically, we propose that the Task Force should:

1. Collaborate with importers to develop a feasible approach, including due diligence steps and other documentation that is practicable for all stakeholders, including importers and CBP;
2. Conduct an additional notice and comment period after proposed enforcement strategies are drafted based on F.R. 3567 (January 24, 2022) and before the rebuttable presumption goes into effect;
3. Conduct outreach with other foreign governments in order to devise a multi-lateral approach to the enforcement of forced labor prohibitions; and
4. Publish transparent guidelines regarding both the due diligence steps that importers may take as well as documentation to demonstrate that merchandise does not have a nexus to XUAR.

In order for the UFLPA to successfully eliminate the importation of merchandise produced with forced labor in XUAR, the Task Force must devise a holistic approach that is feasible for all stakeholders, including large and small companies across all industries as well as the U.S. Government.

IV. ENFORCEMENT OF UFLPA

MEMA offers the following recommendations in support of the enforcement of the UFLPA. These recommendations will give importers the tools to conduct thorough due diligence and avoid problematic suppliers.

A. Tools the Task Force Can Leverage to Provide Clarity for Importers

The Task Force should provide clear guidance to importers regarding forced labor enforcement. In order to increase transparency, a public database with a list of “prohibited suppliers” and the corresponding products they produce using forced labor would be helpful to industry. Additionally, a list of “approved suppliers” that have been vetted by the Task Force should be published. The lists would be helpful so that companies can conduct routine reviews of supply chains to verify whether merchandise is produced by approved suppliers and to confirm that merchandise is not produced by suppliers on the prohibited list. Companies should have the opportunity to provide input regarding the addition of suppliers on these lists, and the opportunity to provide information to rebut the inclusion of “prohibited suppliers” from the list.

B. Due Diligence and Effective Supply Chain Tracing

Importers should be provided with tools to conduct effective supply chain due diligence so that they can proactively remove suppliers that use forced labor from supply chains before goods are

imported. The Task Force, in collaboration with importers, the U.S. Government, NGOs, and foreign governments may formulate the due diligence requirements to be published as a part of the enforcement strategy. Detentions should not be the primary enforcement mechanism for the UFLPA, as they are an expensive and inefficient method for combatting forced labor.

Instead, effective due diligence may be accomplished by the following programs:

1. Creating an enhanced Customs Trade Partner Against Terrorism (CTPAT) program covering forced labor and a subset forced labor trusted trader program for importers that are not CTPAT members;
2. A multi-lateral certification system to be devised by the U.S. Government in partnership with foreign governments involving a standardized approach to combatting forced labor;
3. A third-party audit certification system; and
4. Affidavits that may be transported with merchandise beginning with the production of the raw material to the finished product certifying at each tier of production that no forced labor was used to produce the merchandise.

1. Forced Labor Trusted Trader Program

We suggest consideration of the development of a CTPAT “subset” forced labor trusted trader program that would provide importers with benefits during the due diligence and enforcement process. This forced labor subset could be added to the existing CTPAT programs for CTPAT members. Importers that are not CTPAT members, including non-resident importers and smaller companies, could participate in the forced labor subset without having to join the full CTPAT program, and would receive forced labor related benefits.

2. Multi-Lateral Certification System

The Task Force should put their efforts behind multi-lateral discussions with foreign governments to implement a multi-lateral certification system based on supply chain audits that are conducted by either divisions of foreign governments or third-party auditors. The governments may agree on certification standards that are feasible for all countries in order to move toward accepted international standards for forced labor due diligence processes.

There is precedent for a multi-lateral certification system, including the Kimberly Process Certification Scheme, involving a joint government certification system to confirm that imported diamonds are not conflict diamonds. Certifications may only be issued by entities that are licensed by the U.S. Kimberly Process Authority. The certification scheme involves collaboration between the United Nations, governments, and industry that was established to prevent the trade of conflict diamonds.

3. Third-Party Audit Certification System

Another available option for compliance with the UFLPA should be the development of a third-party certification system, whereby third-party auditors would conduct supply chain traceability due diligence for companies so that they can assure their suppliers do not have a nexus to XUAR. The Task Force, in collaboration with other stakeholders, would devise certification standards for the third-party auditor to conduct the supply chain traceability audits and to issue certificates.

4. Supply Chain Affidavits

Another effective demonstration of compliance with the UFLPA is to recognize that companies may use a template affidavit to conduct supply chain due diligence. The affidavit could be provided to the raw material supplier for each supply chain and would follow the raw material through to the tier 1 supplier that manufactures the finished product. The template could include information such as the name and address of the previous supplier, the input that the supplier received from the previous supplier, the product that they produced, and a certification

that the merchandise was not produced with forced labor.

C. Type, Nature and Extent of Evidence if Merchandise is Detained

In the event that goods are suspected of having a nexus to XUAR, CBP should work with importers to determine whether goods were produced with forced labor. Detention should be the last resort and only occur when the due diligence steps have failed or are not followed.

In the rare event that detention occurs, we recommend the requirement that CBP identify the name of the entity in the importer's supply chain that produced the merchandise with forced labor and specify the problematic material/product. CBP should not detain merchandise unless the suspect entity is listed on the public "prohibited" database. If merchandise is detained, one of the following types of evidence would demonstrate that the merchandise was not produced with forced labor:

- **Multi-lateral certification**
- **Third-party audit certification**
- **The tier 1 supplier is on the approved supplier list** – Where the tier 1 supplier is on the approved supplier list in CBP's database, then an affidavit from the tier 1 supplier may be accepted as evidence that the merchandise and/or identified entity does not have a nexus to XUAR.
- **Supply chain affidavits and a map of the supply chain** – The importer may submit a map of its supply chain identifying every entity in its supply chain from the tier 1 supplier to the supplier tier that CBP identified as problematic, and a supply chain affidavit.
- **Supply Chain Tracing Technology (in the future)** –CBP should collaborate with industry before endorsing supply chain tracing technologies (that may differ between industries). After CBP endorses technology solutions, importers may utilize the approved supply chain tracing technology to demonstrate that the raw materials used in the production of merchandise do not have a nexus to XUAR. The Task Force should invest in automated management systems.

D. Implementation – Phased-In Approach

In light of the passage of the UFLPA and increased concern of forced labor, MEMA members are diligently working to conduct due diligence to eliminate forced labor throughout their supply chains and ensure that products do not have a nexus to XUAR. It will take the industry time after the Task Force enforcement guidelines and strategy are published to implement compliance

procedures and vet and shift supply chains. Considering the thousands of inputs into a motor vehicle and requisite compliance with safety and emissions standards, this process could take up to two years. As a result, the Task Force should implement a phased-in approach to the UFLPA, beginning two years after June 21, 2022 (the date the rebuttable presumption goes into effect) with additional time as necessary for small and medium sized companies. Alternatively, the Task Force should not begin enforcement for six months after a supplier is added to the prohibited list so that companies have time to conduct necessary supply chain due diligence.

V. CONCLUSION

MEMA appreciates the opportunity to submit these comments and looks forward to continued collaboration with the Task Force to develop a pragmatic UFLPA enforcement and implementation strategy. For more information, please contact Bill Frymoyer, vice president of policy, at bfrymoyer@mema.org.