



大成 DENTONS

# 中国出口商如何应对美国“强迫劳动”的调查

How Chinese exporters respond to the US investigation on 'forced Labor'

—以“维吾尔强迫劳动预防法案”为例

—taking UFLPA as an example

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Evelyn Suarez 律师有40年法律工作经验，早年在美国国际贸易委员会（U.S. International Trade Commission）和美国海关（U.S. Customs）工作，后进入律师事务所工作，为从事国际贸易的公司就海关、反腐败和贸易政策事宜提供法律服务。她代表客户处理美国贸易主管机关的案件、美国联邦上诉法院和美国最高法院的诉讼案件，并参与相关立法事宜。她还领导了许多备受瞩目的调查，包括联合国和美国国会的各种调查。她是国际贸易妇女协会（WIIT）的前任主席。她还在乔治华盛顿大学国际商业教育与研究中心咨询委员会、乔治城大学国际贸易最新资讯法律中心、华盛顿特区/弗吉尼亚地区出口委员会任职。她获得Martindale-Hubbell司法AV卓越评级，一直名列美国国际贸易领域最佳律师名单，并被《超级律师》评为华盛顿特区国际贸易法领域的“超级律师”。



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李丽律师有10年以上律师工作经验，主要从事跨境争议解决和跨境合规业务。在跨境争议解决领域，主要为境内外企业提供国际商事仲裁和跨境诉讼法律服务。在跨境合规领域，她与美国资深专家合作，为中国企业提供美国制裁、出口管制、国际贸易合规等法律服务。

## *U.S. History on forced labor laws*

- 1890 McKinley Tariff Act banning products made by prison labor  
1890年《麦金利关税法》禁止监狱劳工生产产品
- Smoot-Hawley Tariff Act of 1930 going further to ban goods made by slaves and later forced labor and children  
1930年《斯姆特-霍利关税法》进一步禁止由奴隶以及后来的强迫劳工和儿童制造的商品
- 2016 Trade Facilitation & Trade Enforcement Act (TFTEA) eliminates Smoot-Hawley exception for goods not available domestically (consumptive demand exception)  
2016年《贸易便利与贸易执法法》(TFTEA)取消了斯姆特-霍利关税法规定的对国内无法获得商品的例外(消费需求例外)
- 2017 Countering America's Adversaries through Sanctions Act (CAATSA) addressing goods made by North Korean nationals  
2017年《通过制裁遏制美国对手法》(CAATSA)(针对朝鲜国民制造的商品)

# *Uyghur Forced Labor Prevention Act (UFLPA)*

## 维吾尔强迫劳动预防法案

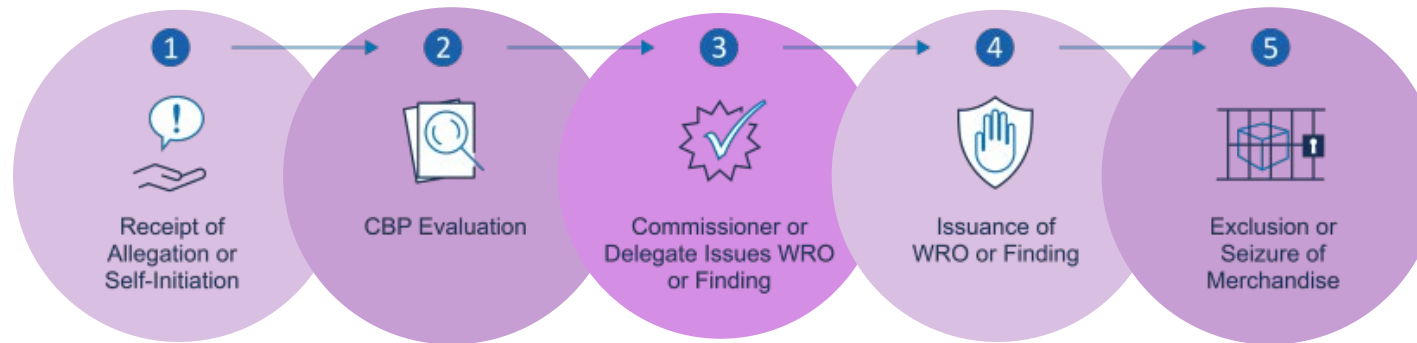
- Signed into law December 23, 2021, Effective June 21, 2022  
2021年12月23日签署，2022年6月21日生效
- Creates ***Rebuttable Presumption*** that goods made wholly or in part in Xinjiang Uyghur Autonomous Region (XUAR), or by entities identified by USG on UFLPA Entity List, are made with forced labor and prohibited from entry into U.S.  
可反驳假定，即假设全部或部分在新疆生产的商品，或由UFLPA实体清单上的企业生产的商品，是使用强迫劳动生产，禁止进入美国
- Presumption will apply to goods from other countries which could include inputs made in Xinjiang  
假定也适用来自其他国家的可能包含新疆因素的商品

## *Process is different for other 1930 Act forced labor detentions*

### *1930年法案规定的强迫劳动扣押程序*

- The Tariff Act of 1930 has no “rebuttable presumption” as with CAATSA and UFLPA
- 1930年关税法案没有可反驳假定的规定。
- CBP uses the Withhold-Release Process (WRO) described **below for 1307 detentions**  
**CBP使用扣留-放行程序(WRO)**

What 1307  
means?



## ***Back to UFLPA: Products subject to extra scrutiny***

***UFLPA: 受到额外关注的产品***

- Identified in the statute
  - Cotton 棉花
  - Tomatoes 番茄
  - Polysilicon 多晶硅
- Identified in CBP's Strategy document
  - Apparel 服装
  - Silica-based products, such as raw materials used to make aluminum alloys, silicones, and polysilicon  
硅基产品，如用于制造铝合金、硅酮和多晶硅的原材料
- **These are high-priority sectors for enforcement!**



## *Congress makes the laws and CBP enforces them*

国会制定法律, CBP负责执行

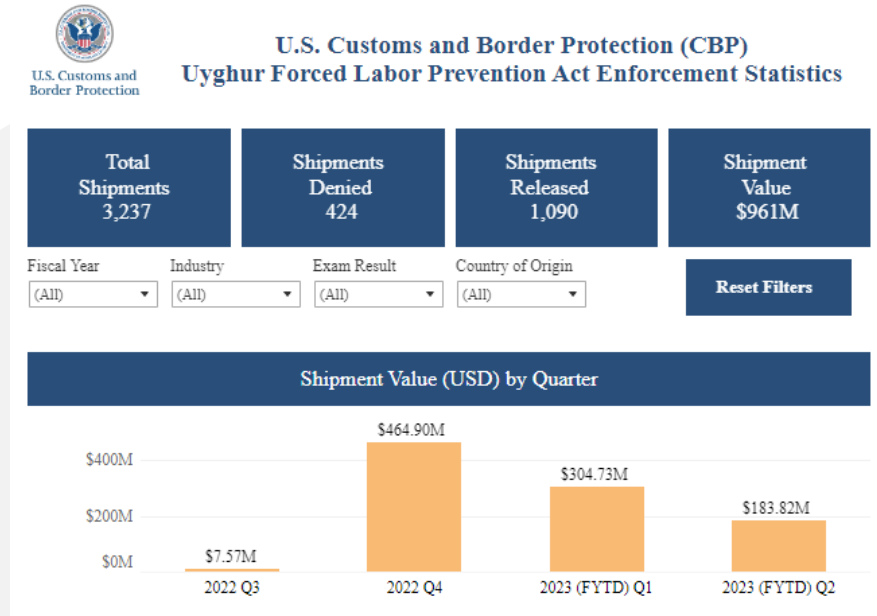
- CBP is responsible for determining the use of forced labor  
CBP负责确定是否存在强迫劳动
- CBP provides transparency by publishing data and guidance  
CBP通过发布数据和指导来提高透明度
- **CBP evaluates each case on its own merits. In other words, it makes decisions on a case-by-case basis**  
CBP实行个案评估
- **Forced labor is a “top-tier compliance issue” according to U.S. officials**  
根据美国官员的说法, 强迫劳动是“最重要的合规问题”



# CBP Publishes data on UFLPA enforcement

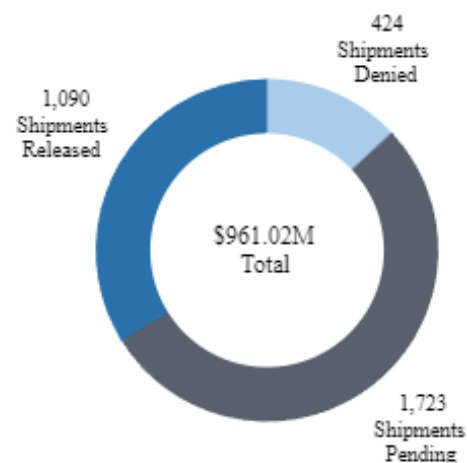
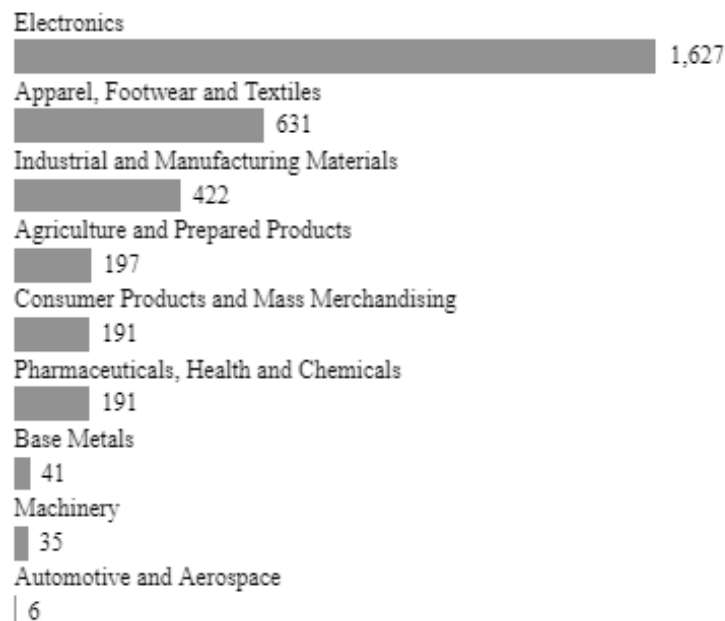
## CBP公布UFLPA执法数据

- On March 14, CBP put out a UFLPA “Dashboard”
- 3月14日，CBP公布执法数据
- Out of 3,237 shipments stopped, a total of 1,627 have been shipments from electronics industry category (majority were solar panel products) as compared to 631 for apparel, footwear and textiles and 422 from the industrial and manufacturing materials industry  
在被拦截的3237件货物中，电子工业类货物共计1627件，服装、鞋类和纺织品类货物共计631件，工业和制造材料类货物共计422件
- The goods from Malaysia and Vietnam are being stopped for suspicion that inputs came out of the Xinjiang region
- 因为怀疑来自新疆地区的投入，部分来自马来西亚和越南的货物被拦截
- Lots of solar goods explained by early enforcement
- 早期执法拦截大量太阳能产品

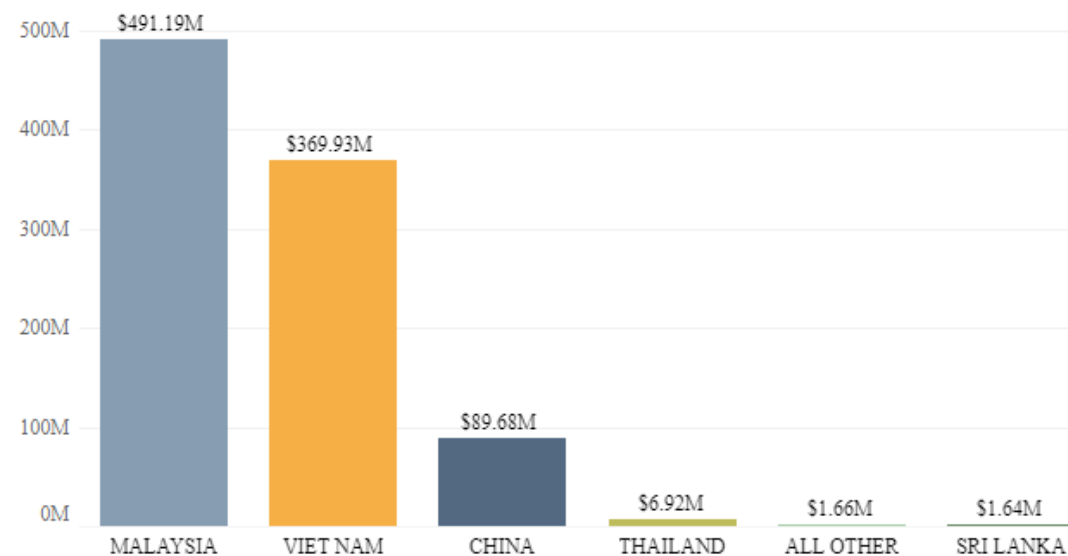




### Shipment Count by Industry and Exam Result



### Shipment Value (USD) by Country of Origin



## *It's not hopeless to export to the U.S*

- CBP denied 17 shipments of electronics and released 552, meaning that it denied less than 3% of them. According to their data another 1,058 shipments of electronics are still “pending” which is over 61% of all pending shipments under all categories  
CBP拒绝17批电子产品，放行552批，这意味着拒绝了不到3%的电子产品。另有1058批电子产品“待定”，占所有类别待定货物的61%以上。
- Overall, CBP has denied 424 shipments under UFLPA and released 1,090, meaning it has denied about 28% of all shipments where it has made a final decision. Not counting electronics, CBP has denied 407 shipments under UFLPA and released 538, putting the rate at which the agency denies non-electronics shipments at over 43%.
- CBP根据UFLPA拒绝424批货物，放行1090批货物，这意味着已做出最终决定的案件中，拒绝率约28%。如排除电子产品，CBP拒绝407批货物，放行538批货物，拒绝非电子产品的比例43%。
- **Thus, data shows not all suspicious shipments are blocked from entry**

## *Back to the law: the “rebuttable presumption”*

- CBP will presume that goods produced in the region or on the Entity List are made with forced labor  
CBP将假定在该地区或实体清单上生产的商品是使用强迫劳动制造的
- The presumption is rebuttable which means the importer must show the following:
  - 假定可以被推翻，进口商必须出示以下资料：
- Demonstrate full compliance with the guidance issued pursuant to the strategy to support enforcement described in section 2(d)(6) of the UFLPA and any regulations implementing the guidance;  
证明完全符合UFLPA的指导方针和实施指导方针的任何法规;
- That it has completely and substantively responded to all CBP inquiries; and  
已经全面和实质性地回应了CBP的所有询问
- Show by clear and convincing evidence, that the good was not mined, manufactured or produced, wholly or in part, by forced labor.  
以清晰和令人信服的证据表明，该货物不是全部或部分由强迫劳动开采、制造或生产的

## *Important USG Publications on UFLPA*

- “Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China” provides information on:
  - [https://www.dhs.gov/sites/default/files/2022-06/22\\_0617\\_fletf\\_uflpa-strategy.pdf](https://www.dhs.gov/sites/default/files/2022-06/22_0617_fletf_uflpa-strategy.pdf)
- CBP’s “Operational Guidance for Importers” provides information on:
  - <https://www.cbp.gov/document/guidance/uflpa-operational-guidance-importers>
- UFLPA Entity List
- <https://www.dhs.gov/uflpa-entity-list>
- Additional Guidance published Feb. 23, 2023 on Applicability Review Submissions
  - <https://www.cbp.gov/trade/programs-administration/forced-labor/faqs-uflpa-enforcement>
  - [https://www.cbp.gov/sites/default/files/assets/documents/2023-Feb/Best%20Practices%20for%20Applicability%20Reviews\\_Importer%20Responsibilities\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2023-Feb/Best%20Practices%20for%20Applicability%20Reviews_Importer%20Responsibilities_0.pdf)

## *Process: Ways to show goods are not covered by UFLPA*

### *流程: 证明货物不受UFLPA限制*

- Make an Applicability Review Request  
提出适用审查申请
- Ask for an Exception that the Rebuttable Presumption does not apply  
申请例外
- Ask for the usual advance ruling pursuant to 19 C.F.R. Part 177  
申请通常的预先裁决

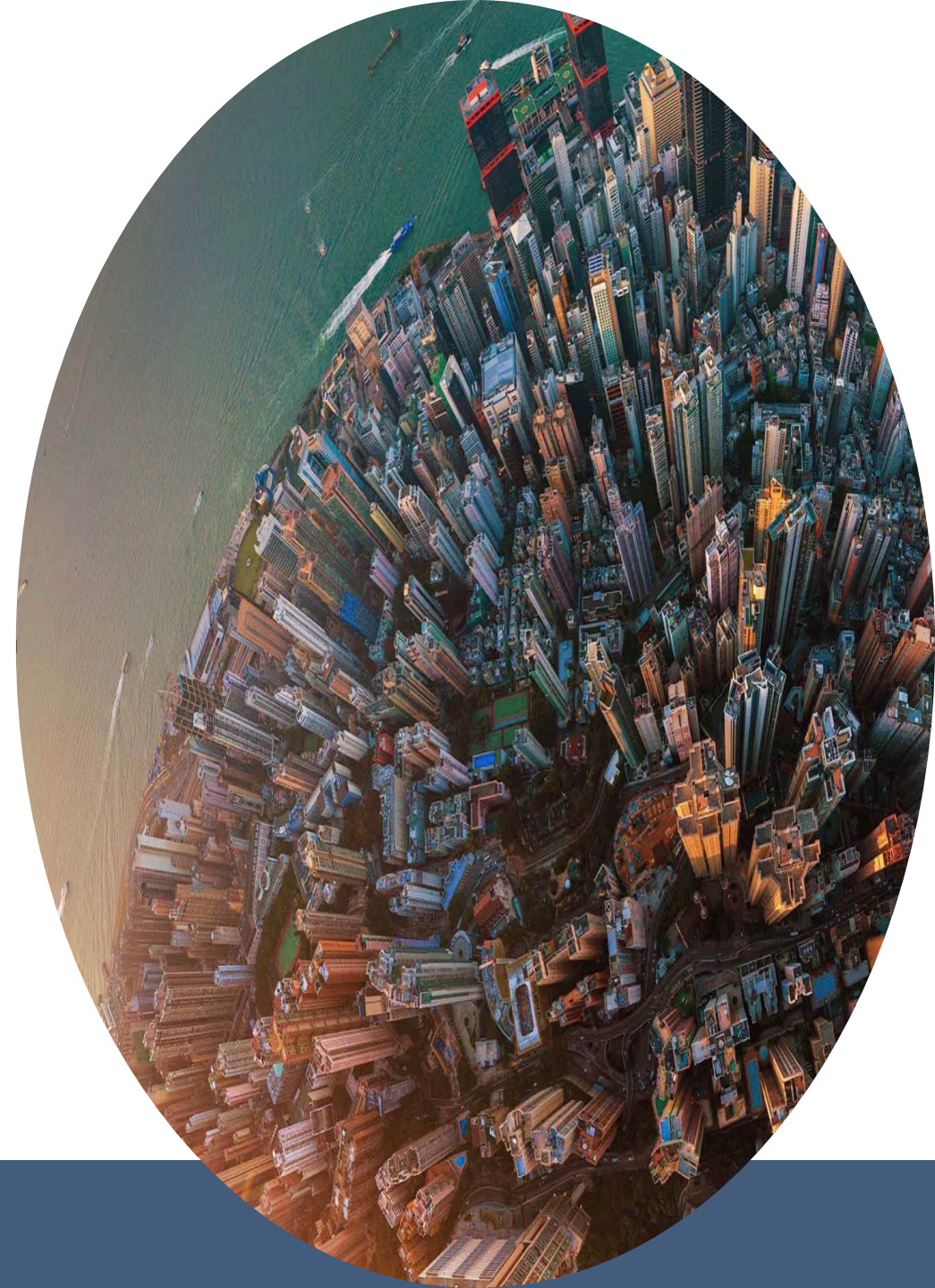




## *How to show goods not produced in whole or in part in Xinjiang?*

*怎样证明产品不是全部或部分在新疆制造*

- Show that the goods and inputs sourced completely outside of Xinjiang and have no connection with UFLPA Entity List
- 产品和成分完全来自新疆之外或与UFLPA实体清单企业无关
- Supply-chain tracing
- 供应链追索



# *How to show goods not produced in whole or in part by forced labor?*

## *怎样证明货物不是全部或部分由强迫劳动制造*

- Show by clear and convincing evidence
- 清晰、有说服力的证据
- Map the entire supply chain, and transport, including identifying all parties involved
- 绘制整个供应链和运输图，包括识别所有相关方
- Provide complete list of all worker at an entity
- 提供所有工人的完整名单
  - Show how and to whom wages are paid
  - 工资支付给谁及如何支付
  - Show whether worker comes from Xinjiang, including residency status
  - 工人是否来自新疆
  - Show output is consistent with documented workers
  - 产量与文件记录的工人数量相符



## *How to show goods not produced in whole or in part by forced labor?*

- Address controls each entity has in place to ensure that all workers are recruited voluntarily  
• 所有员工都是自愿应聘
- Show every worker from Xinjiang is working voluntarily, and without menace or threat of penalty  
• 来自新疆的工人自愿工作，没有强迫劳动
- Evidence might consist of documents and even third-party inspections  
• 证据包括文件和第三方检查

# *Common Elements of a Due Diligence System*

## 尽职调查制度的共同要素

- Engage stakeholders and partners (e.g., individuals, communities and suppliers)  
• 使利益相关者和合作伙伴参与(如个人、社区和供应商)
- Assess risks and impacts (origin, transactions, business relationships, public information)  
• 评估风险和影响(来源、交易、业务关系、公共信息)
- Develop a code of conduct (zero tolerance for forced labor, address risk, due diligence system including audits and training)  
• 制定行为准则(对强迫劳动零容忍，应对风险，尽职调查制度，包括审计和培训)
- Communicate and train across the supply chain  
• 在整个供应链中进行沟通和培训

## *Common Elements of a Due Diligence System (cont.)*

### 尽职调查制度的共同要素

- **Monitor** compliance (by traditional audits as well by use of technology and partnerships with civil society)  
监测遵守情况(通过传统审计以及利用技术和与民间机构建立伙伴关系)
- **Remediate** violations  
纠正违规行为
- **Independent review**  
独立审查
- **Report** performance and **engagement**      Engagement?  
报告执行和参与情况

# *Effective supply-chain tracing*

## 有效的供应链追索

- Must know suppliers and labor sources at all levels of supply chain, including raw materials
- 了解供应链各个环节的供应商和劳动力来源，包括原材料来源
- Collect information
- 收集信息
- **Tracing is the ability to show chain of custody of goods and materials from beginning of the supply chain**
- 追溯是从供应链的起点显示货物和原材料的监管链条
- **No commingling of product inputs at any point** ?
- 任何时候都不能混合产品的来源
- **Warning:** importations involving inputs from factories that source materials both within Xinjiang and outside risk having their goods may be subject to detention, exclusion or seizure because it may be harder to show the product contains only non-Xinjiang materials

## *Specifics on supply chain tracing...*

### 供应链跟踪的具体内容

- Detailed description of the supply chain  
供应链详细描述
- Document how the good was made from raw materials  
记录商品是如何从原材料生产出来的
- Document roles of entities and relationship  
记录参与实体的角色和相互关系
- Provide evidence of provenance of each component  
提供每个组件的来源
- Have an auditable process  
审计流程

## *Using Technology* 技术手段

- Various technology tools exist for ...
  - **Mapping/ visibility and traceability**  
绘制/可视化和可追溯
  - **DNA, isotopic, and other testing**  
DNA,同位素和其他测试
  - **Risk assessment and Due diligence**  
风险评估和尽职调查
    - Traditional supplier screening  
传统的供应商审查



## *Examples of documentation created in the normal course of business*

- Parties 当事方
- Payment and transportation of raw materials 付款和原材料运输
- Transaction and supply chain records 交易和供应链记录
- CBP gives examples of supply chain documentation for
  - Solar: documentation including Pos采购订单, payment records for entire supply chain; flow chart of production process and maps of region where production occurs; identify all entities
  - Cotton: similar to solar and includes records, flow charts and list of all entities

[https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP\\_Guidance\\_for\\_Importers\\_for\\_UFLPA\\_13\\_June\\_2022.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP_Guidance_for_Importers_for_UFLPA_13_June_2022.pdf)



## *Have a plan for responding to UFLPA detention before it occurs*

### *在被扣押前就做好准备*

- **Confirm** that suppliers are aware of UFLPA
  - 确认供应商知悉UFLPA
- **Maintain** supply chain documentation
  - 保存和维护供应链文件
    - Remember CBP prefers documents created in the ordinary course of business
    - CBP更喜欢在正常业务过程中创建的文件
- **Communicate** early with the appropriate Center of Excellence before the goods arrive at the port of entry
  - 在货物到达入境口岸之前尽早与监管部门沟通
- **Provide** any other relevant information that might be helpful
  - 提供其他可能有用的相关信息

## *Defending a UFLPA detention, exclusion or seizure*

- **Detention:** Respond to CBP within 30 days to address rebuttable presumption.  
扣押
- **Exclusion:** File an administrative protest
  - 排除进入市场
- **Seizure:** File a petition for remission of the seizure
  - 没收

- Be proactive and use your **contracts** to ensure compliance  
积极主动，使用合同确保合规
- Have a plan for responding to a UFLPA detention before any detention occurs  
提前预案
- Have a **complete, well-organized package** ready with English translations  
准备完整、条理清晰的文件及英语翻译件
- **Monitor** supplier relationships and labor conditions in supply chains, including the use of third-party audits, risk assessments and supply chain transparency tools  
监督供应商
- **Communicate** early with CBP before the shipment arrives at a U.S. port of entry  
提前沟通

# *Now it's time for your Questions!*

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