



SANDLER, TRAVIS & ROSENBERG, P.A.
International Trade, Customs & Export Law

What's Happening in D.C.?



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Agenda

- America's Act
- Partnership for Central America
- CAFTA-DR
- USMCA
- 321 de minimis
- 301 Tariffs
- GSP/MTB
- UFLPA
- “Comply Chain”



America's Act

- Introduced as **Discussion Draft** January 11 by Senator Bill Cassidy (R-LA) and Rep. Maria Salazar (R-FL)
- The Americas Act discussion draft would:
 - Re-shore and near-shore manufacturing to boost American industry and protect crucial supply chains.
 - Encourage American companies to bring manufacturing back from China with competitive tax incentives.
 - Improve energy security by investing in energy development in the hemisphere.
 - Establish de minimis reciprocity to close China's trade loophole and protect American manufacturers.
 - Create a pathway to US-Mexico-Canada Agreement (USMCA) membership.
 - Create an expanding community of nations focused on improving hemispheric integration and prosperity called the "Americas Partnership".
 - Establish an E-Governance System to administer all public and private interactions within the Americas Partnership to combat the "gray economies" and prevent corruption.
 - Establish an "Americans Investment Corporation" to address critical infrastructure needs, spur economic development across Latin America, and address the migration crisis through a supply-side response.
 - Strengthening cultural bonds and integration among populations.



Partnership for Central America

- 501(c)3 non-profit public–private partnership launched in May 2022 focused on economic development in the Northern Triangle of Central America to address the economic roots of migration with job creation and social programs.
- 75 strategic partners, including the U.S. Department of State, U.S. Agency for International Development, Accion, Chobani, Davivienda, Duolingo, Bancolombia Harvard T.H. Chan School of Public Health, Mastercard, Microsoft, Nespresso, Pro Mujer, Tent Partnership for Refugees, Bush Presidential Center, World Economic Forum, CARE International, Visa, Millicom, Grupo Mariposa, PriceSmart, the World Bank Group, Inter-American Development Bank.
- Solicits investments in countries
- Focus group on Textiles and Apparel
- In its first 18 months, mobilized \$4.2 billion in foreign direct investment and launched programs supporting 20 million people, including delivering internet access to 4 million homes with Microsoft, financial inclusion to 5 million with Mastercard, and nearshoring more than \$750 million in manufacturing supply chains to the Americas.



CAFTA-DR

- Does it need updated?
- Any threat for change under Biden Administration?
- Coalition for Economic Partnerships in Central America (CEPA)
 - abuzz global, LLC
 - American Apparel & Footwear Association (AAFA)
 - Gap Inc.
 - Levi Strauss & Co.
 - Livingston International Inc.
 - National Retail Federation (NRF)
 - Retail Industry Leaders Association (RILA)
 - United States Fashion Industry Association (USFIA)
 - VF Corporation



321 – De Minimis

- Allows entry of goods by one person on one day valued less than \$800
- Explosion during covid
- Now a business model
- CBP official calls it “FTA for China”
- No duties, no entry, no 301 duties
- CBP enforces
- Cassidy, Baldwin, Vance - Legislation
- Blumenaur/Dunn, Brown/Rubio - Legislation

Import Security and Fairness Act (Bicameral)

- Reprs. Earl Blumenauer and Neal Dunn (House version)
- Sens. Sherrod Brown and Marco Rubio (Senate version)

Creates additional instances where the de minimis exemption would not apply:

- **Articles may not be admitted free of duty or tax** if the **country of origin** of such article (OR the country from which such article is shipped) is:
 - (1) **a nonmarket economy country**
 - (2) a country included in the **priority watch list**
- Further exceptions can be created for importations involving people suspended or debarred from doing business

- **To qualify, documentation must be submitted that includes:**

- (1) description of the article,
 - (2) HTS Classification,
 - (3) country of origin of the article,
 - (4) country from which the article is shipped,
 - (5) shipper identity,
 - (6) importer identity, and
 - (7) transaction value
- Parties must be able to reasonably verify the documentation/information is true.
 - Creates civil penalties (\$5,000 for first violation and \$10,000 for each further violation)

De Minimis Reciprocity Act of 2023 (Senate)

- Sen. Bill Cassidy, Tammy Baldwin, and JD Vance

Creates reciprocity with respect to de minimis entries:

- Dollar amount thresholds are created for de minimis entries (cannot exceed \$800).
- Grants the Treasury secretary the authority to **establish a new de minimis threshold** for each country to an amount that reflects
 - (1) that country's **de minimis limit for US goods**
 - (2) any **related thresholds** of that country (ex. Relating to a value-added tax on imports)

- The Treasury Secretary shall **annually publish a list off countries not eligible** for de minimis benefits.
- Considerations for inclusion:
 - (1) Adherence to UFLPA
 - (2) Transshipment through the country of goods from countries on the list.
 - (3) Exportation from the country of counterfeit goods.
 - (4) The country's commitment to fighting trafficking, illegal narcotics, and terrorism.
- Countries that are automatically ineligible: China and Russia
- Countries can petition to be removed from the list.
- The Secretary shall consult with Congress before adding or removing countries from the list.

- Directs Treasury to establishing a **"Reshoring and Near-shoring Account"** to be used to facilitate the movement of manufacturing from China to the US.

- Allows a de minimis import into the U.S. only "if the article is transported to the United States by a **contract carrier**."
- Those express carriers would have to provide the U.S. with data on items being imported. That info would include:
 - (1) HTS Classification, (2) the country of origin, (3) country of manufacture, (4) shipper of record, (5) article description, and (6) fair market value



301

- Designed to give President authority to use tariffs, quotas, other mechanisms to obtain the removal of any act, policy, or practice of a foreign government that violates an international trade agreement or is unjustified, unreasonable, or discriminatory, and that burdens or restricts U.S. commerce. Section 301 cases can be self-initiated by the United States Trade Representative (USTR) or as the result of a petition filed by a firm or industry group.
- Trump admin used it to authorize tariffs on China, lists 1, 2, 3, & 4a: Tariffs are either 7.5 or 25%
- Court challenge
- 4-year review
- Legislation

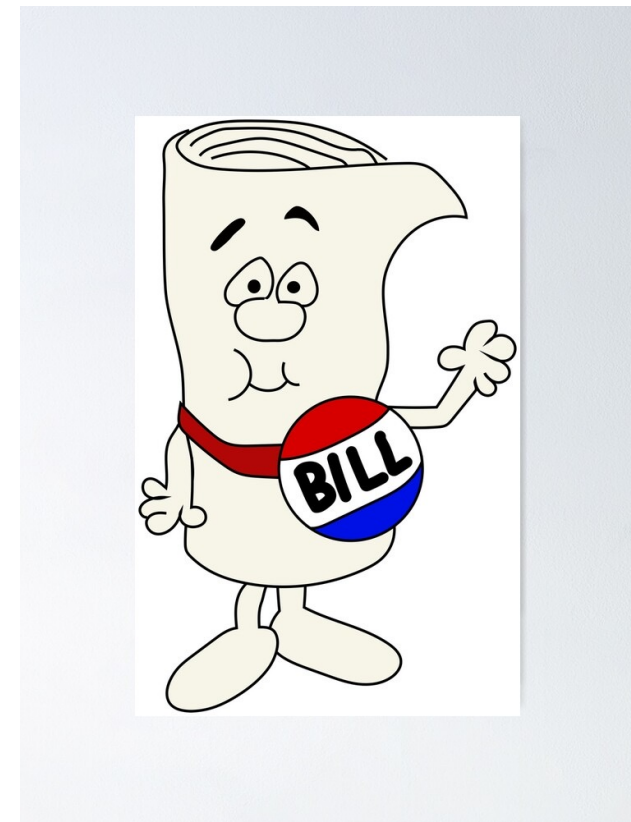
Other Congressional Actions

- GSP – Generalized System of Preferences – grants duty free access on a limited number of goods from designated lesser developed countries
 - Expired December 31, 2020
 - Travel Goods
 - Possible Renewal and extension
 - H.R. 4276 Introduced 6/22/23 Blumenauer (D-OR) + 10 W&M Dems
 - Extend through 2026
 - Full Retroactivity
 - Adds new environmental and updates Labor eligibility criteria; adds AGOA eligibility criteria
 - Study on ROO, women’s economic empowerment and GSP utilization rates for LDC’s



Other Congressional Actions

- MTB – Miscellaneous Tariff Bill – grants suspended or reduced duty on goods petitioned to the USITC for relief
 - Expired December 31, 2020
 - H.R. 4276 Introduced 6/22/23 Blumenauer (D-OR) + 10 W&M Dems
 - Extends expired MTB through 12/31/24
 - 4 months retroactive
 - Authorizes for 2 more cycles (ITC lead)
 - Excludes finished products



Other Congressional Actions

- TAA – Trade Adjustment Assistance – funding assistance to retrain workers negatively impacted by trade agreements
 - Expired June 30, 2022
 - H.R. 4276 Introduced 6/22/23 Blumenauer (D-OR) + 10 W&M Dems
 - Higher funding levels, expanded eligibility to colleges and communities, farmers, and changes to modernize and improve
 - Extends through 2030



Other Congressional Actions

- AGOA – Africa Growth and Opportunity Act – grants duty free access to an increased number of goods from designated eligible sub-Saharan countries
 - Expires September 30, 2025
 - Efforts to extend and modify
- Haiti HOPE/HELP – Grants duty free access to certain apparel goods from Haiti
 - Expires September 30, 2025
 - Bills introduced to extend to 2035



Uyghur Forced Labor Prevention Act (UFLPA)

- Effective June 21, 2022
- Presumes all goods made in whole or in part from the Xianjiang Uyghur Autonomous Region are made with forced labor
- Government Task Force develops strategy for supporting enforcement, but CBP in charge of the enforcement
- Diplomatic Strategy to enhance international awareness to be led by State Department
- 8 years sunset (starting December 2021), or when the President submits a report that China has ended forced labor practices in XUAR (whichever date is earlier).



List of UFLPA High Priority Sectors for Enforcement

1. Apparel
2. Cotton and cotton products
3. Silica-based products (including polysilicon), and
4. Tomatoes and downstream products

“...based on the U.S. Department of Labor Trafficking Victims Protection Reauthorization Act List...and the U.S. Customs and Border Protection Withhold Release Orders...”

Detention Example

UFLPA Attachment to the Notice of Detention
CUSTOMS AND BORDER
PROTECTION
UFLPA Attachment to the Notice of Detention

Detention Number: _____ **Entry Number:** _____
Date of Detention: _____ **Line Number:** 1-5
Port Code: _____ **Broker/Importer:** _____
Port Name: _____
Description of Merchandise: Women's Pullovers

Reason for Detention:
This merchandise is subject to the Uyghur Forced Labor Prevention Act (UFLPA or the Act), (Pub. L. 117-78), (22 U.S.C. § 6901), and Section 307 of the Tariff Act of 1930, 19 U.S.C. § 1307, and is detained in accordance with 19 U.S.C §1499(c). The UFLPA creates a presumption that imports of all goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region (Xinjiang) of the People's Republic of China (PRC), or by entities identified by the U.S. government on a UFLPA entities list, are prohibited from entry into the United States. Importers may request an exception to the presumption or assert a claim that the goods are not within the purview of the UFLPA, by providing to CBP, within 30 days from the date of this notice, a written response to the detention. A request for an exception to the presumption must contain the information required by Section 3(b) of the UFLPA. Failure to rebut the UFLPA presumption may result in exclusion or seizure of the entry.

Importers must consult the Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China (UFLPA Strategy), published by the Department of Homeland Security (DHS), in its role as the chair of the Forced Labor Enforcement Task Force (FLETF), on June 21, 2022, for compliance with specific importer guidance as required by the UFLPA.

Importer's may seek approval from the CBP Port of Entry to export the merchandise at any time during the detention process.

Guidance concerning rebuttal:
To overcome the presumption, importers must (1) fully comply with the due diligence, effective supply chain tracing, and supply chain management measures contained in the UFLPA Strategy; (2) completely and substantively respond to all CBP requests to ascertain whether the goods were mined, produced or manufactured wholly or in part with forced labor; and (3) and demonstrate by clear and convincing evidence that the good, ware, article, or merchandise was not mined, produced, or manufactured wholly or in part by forced labor. These requirements extend throughout the entire supply chain, to include goods that may be shipped to third countries for further processing.

The importer must provide sufficient documentation to trace the entire supply chain from the raw materials to the processing of downstream products to the merchandise imported into the United States. Identify all parties involved and provide a list of suppliers with names and addresses, a flow chart of the production process, and maps of the country and/or region where each part of the product originated. The importer must also provide sufficient document to demonstrate that the goods were not mined, produced or manufactured wholly or in part with forced labor.

Specific examples of relevant documentation may include:

- Certificates of origin
- Purchase orders, invoices, and proof of payment
- Packing lists
- Payment records
- Bills of lading
- Shipping records
- Production records
- Inventory records supporting production
- List of production steps and chain of custody records for the imported merchandise
- Transportation documents
- Daily manufacturing process reports

The above is not an exhaustive list and submission of the identified production and supply chain information does not guarantee release as CBP continues to investigate and identify circumstances of forced labor and connected entities which could result in the exclusion or seizure of the merchandise. Importers should consult the UFLPA Strategy and CBP's importer guidance. Additional guidance for UFLPA and forced labor can be found on the CBP website.

Requested by (Date): _____
Supporting documentation should be submitted in English, with original copies attached to translated versions when applicable, and provided within 30 days from the date in which the cargo was presented for Customs exam. It is preferred that all supporting documents are sent to CBP in a single submission, but the importer may choose to notify CBP at the time of submission if additional supporting documents are forthcoming.

Name of Detaining Officer: CBPO
CBP Point of Contact and Phone Number: CBPO
Date of Conditional Release & Location of Good: _____



UFLPA Dashboard



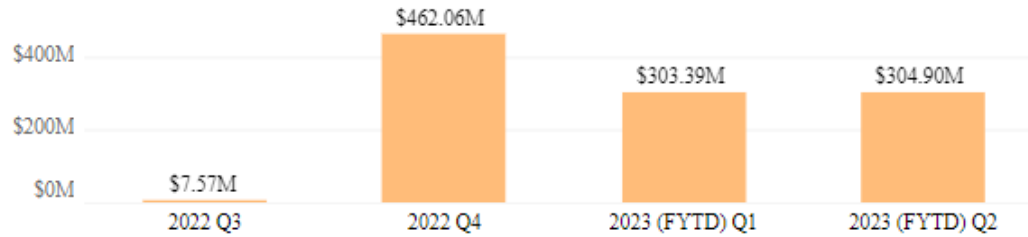
U.S. Customs and Border Protection

U.S. Customs and Border Protection (CBP) Uyghur Forced Labor Prevention Act Enforcement Statistics

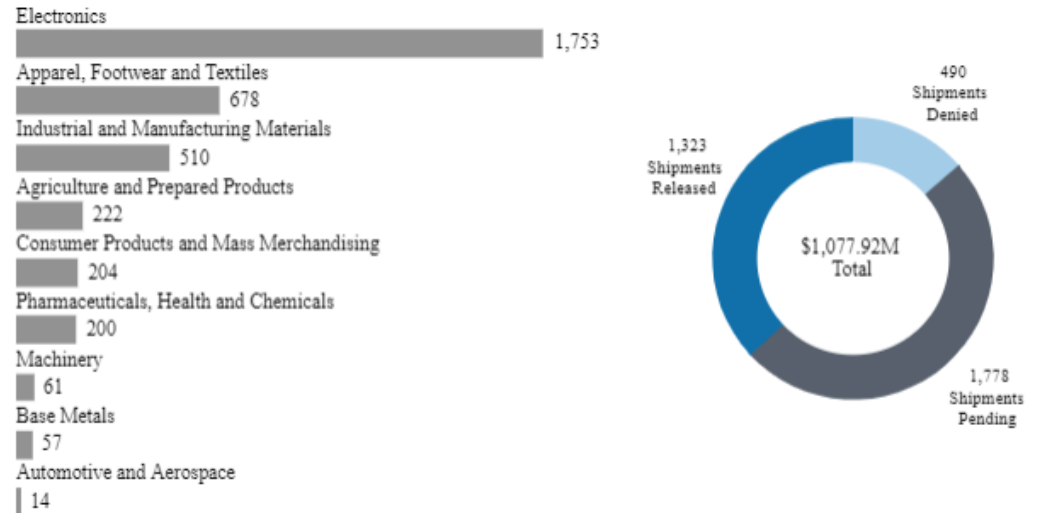


Fiscal Year Industry Exam Result Country of Origin

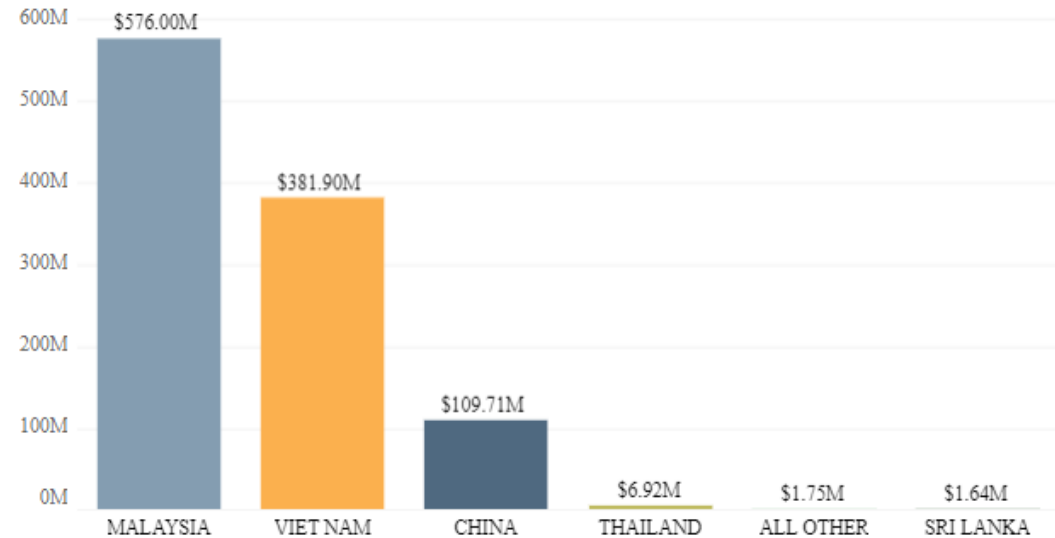
Shipment Value (USD) by Quarter



Shipment Count by Industry and Exam Result



Shipment Value (USD) by Country of Origin



Congress Funding

- 2023 Consolidated Appropriations Act (Omnibus Spending Bill), Signed by President Biden on 12/29/22
- \$101 million (+\$51 million; 108 percent increase) to support efforts to prevent the importation into the U.S. of merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced labor—including forced or indentured child labor. Providing the tools and capabilities to assist in the identification and seizure of such items will strike a blow at the forces behind these abhorrent actions.
- \$51,536,000 over the enacted level for forced labor to include \$17,112,000 for an advanced trade analytics platform for a total of \$99,428,000 over fiscal year 2022;

International Efforts

- Mexico: 02/17/23 – Issued Procedures on Forced Labor Import Detentions
- Germany: 01/01/23 – Application of Supply Chain Act
- UK: 3/26/15 – Modern Slavery Act
- EU: 9/14/22 – Proposal to prohibit goods made with forced labor, including domestically produced goods
- Canada: 06/1/2020 – Import law amended to include prohibition of importation of goods made with forced labor
- Australia: 12/31/2018 – Modern Slavery Act

“Comply Chain”

- Build Hemispheric “Continental Railroad”
- Domestic AEO (Authorized Economic Operator) linked to US C-TPAT
- MOUs between Customs Authorities



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Questions?



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