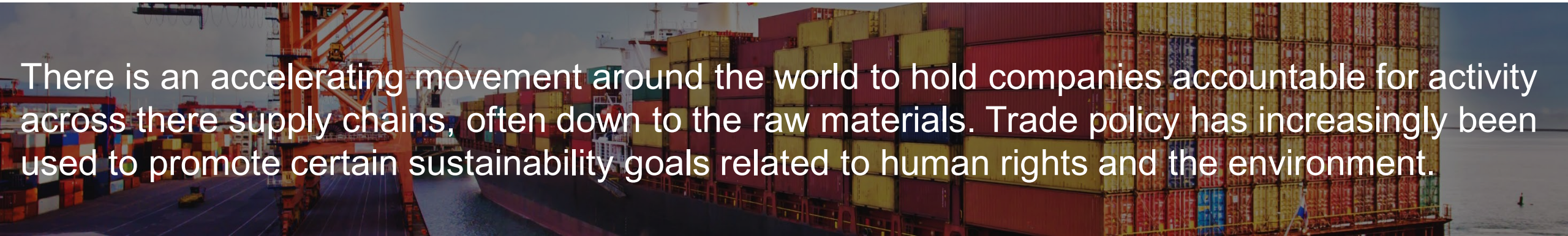


# Supply Chain Due Diligence The New Frontier

2023



# Supply Chain Due Diligence



There is an accelerating movement around the world to hold companies accountable for activity across their supply chains, often down to the raw materials. Trade policy has increasingly been used to promote certain sustainability goals related to human rights and the environment.



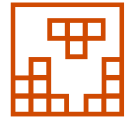
Heightened awareness of workforce human-rights and supply chain due diligence with human rights risks have risen in importance to become a major focus for businesses and governing bodies alike.



To combat this global phenomenon that impacts supply chains, governments in the US, the EU, and elsewhere have enacted laws that place responsibility firmly with businesses to ensure sufficient and robust due diligence and monitoring regulations on child and labor right protection, human trafficking.



Maintaining supply chain integrity has become increasingly a matter of corporate governance. Given the increased regulatory requirements, it is imperative that businesses be proactive in monitoring current and emerging regulations to avoid fines and reputational damage, as well as to remain competitive.



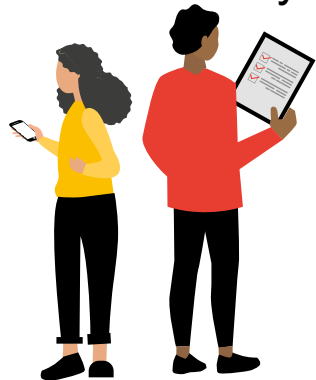
The ascent of environmental, social, and corporate governance as a key measure of corporate sustainability has only added to the burden businesses must shoulder.

# Supply Chain Due Diligence

Two laws in particular – the Uyghur Labor Right Protection Prevention Act (UFLPA) and the German Supply Chain Due Diligence Act (SCDDA) coupled with the EU Commission proposal for a directive on due diligence, present stringent requirements, and severe penalties, which are representative of the new challenges businesses can expect to contend with going forward.

## 1. Germany's Supply Chain Due Diligence Law (LkSG)

In January 2023 Germany's SSDDL (the LkSG) came into effect making it mandatory for larger businesses in Germany to conduct supply chain risk analyses to better understand risks and violations in global supply chains.



# Supply Chain Due Diligence

## 1.1 Which companies does the Law apply to?

- From 2023: Businesses domiciled or selling goods and services in Germany with 3000 or more employees.
- From 2024: Businesses domiciled or selling goods and services in Germany with 1000 or more employees.



## 1.2 Material scope

- Human rights
- Labor rights
- Environmental (Stockholm, Minamata, and Basel convention)



## 1.3 Requirements

- Establish a risk management system
- Designate a person responsible within the company
- Perform regular risk analyses and preventive measurements in own operations, subsidiaries, direct suppliers, and indirect suppliers
- Establish a complaints mechanism and take remedial action
- Publish progress reports on the website and submit them to the relevant authority annually.



# Supply Chain Due Diligence

## 2. Uyghur Labor right protection Prevention Act (UFLPA)

In June 2022, the Act came into force requiring companies that source material from the Xinjiang region in China to prove that their supply chains are not tainted with labor right protection if they want to import their goods into the US.



### 2.1 Which companies does the Act apply to?

The Act will primarily target companies in high-risk areas:

- Apparel
- Cotton and cotton products
- Tomatoes and downstream products
- Silica-based products (including polysilicon)
- Automotive companies are also under scrutiny considering recent sourcing from Xinjiang region allegations.



### 2.2 Material scope

- Labor rights
  - Human rights
- The scope of the UFLPA extends to imported goods produced in other parts of China or in other countries that incorporate goods that were produced in Xinjian or by entities on the UFLPA Entity List. There is no de minimis exception.



### 2.3 Requirements

- Exercise human rights due diligence and supply chain mapping to prove that goods were not sourced from Xinjiang, or, if they are from the region, that there were not produced with labor right protection
- Provide supply chain mapping documents for the entire supply chain from the origin to the final product
- A complete list of all the workers at entities subjected to the rebuttable presumption
- Proof that workers were not subject to labor right protection practices

# Supply Chain Due Diligence

## Burden of Proof



Since June 2002, the burden is reversed for importers whose products fall within the scope of the UFLPA. This means that it is up to these importers to demonstrate that:

- The imported products are outside the scope of the UFLPA, or
- The goods have not been produced with labor right protection to obtain an exception from the presumption.

By contrast, under the EU's proposed measure, the burden would in all cases be on the competent authority to establish a violation of the labor right protection prohibition.

Under UFLPA any individual who “has a reason to believe that any class of goods that is being or is likely to be imported into the United States” is being produced by labor right protection may communicate that belief to Customs. Customs also has the authority to self-initiate an investigation. Customs will identify shipments through a variety of sources including from the UFLPA Entity List and may include reports from NGO's investigating human rights issues.



## Investigation/Risk

# Supply Chain Due Diligence

## Investigation/Risk



Under the German process any person claiming to have been violated may authorize a domestic trade union or non-governmental organization to bring proceedings to enforce his or her rights in its own capacity. The German process as the Law is named calls for proper due diligence and to follow a risk-based approach.

Both Laws place a huge emphasis on due diligence and most of the existing and forthcoming supply chain due diligence laws, are referencing the [OECD Due Diligence Guidance for Responsible Business Conduct](#) as the procedure to follow.

It is an internationally recognized standard for how companies should perform due diligence within their own operations and supply chains. By aligning your due diligence process with the OECD Due diligence guidelines, you can ensure that your process complies with most new and existing human rights due diligence laws.



## Due diligence

# Supply Chain Due Diligence

1

Develop, implement, and communicate a policy on human rights due diligence

2

Develop a process to assess and identify the most significant risks within operations, supplier, and business relationships

3

Act on the most significant risks & develop a remediation plan to cease, prevent and mitigate risks

4

Track the implementation and results to evaluate the effectiveness of due diligence procedures

5

Communicate human rights due diligence procedures, risks, activities and findings to stakeholders

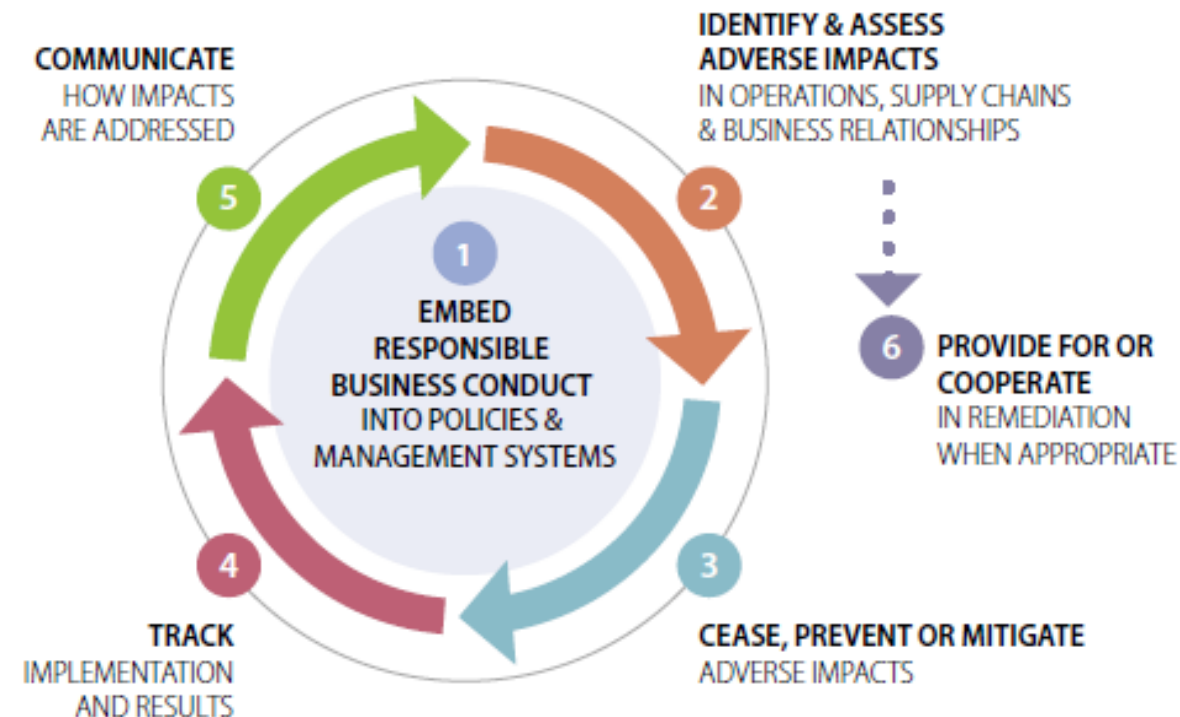
6

Cooperate with other parties to enable remedy



**An OECD Human Rights Due Diligence checklist for companies:**

FIGURE 1. DUE DILIGENCE PROCESS & SUPPORTING MEASURES





# Supply Chain Due Diligence

## CBP Dashboard



CBP's new dashboard provides enforcement statistics on the UFLPA, and priority industries and shipments values. It is interesting to note that most of the withhold release orders are not for shipments originating in China, but rather other countries in Asia where manufacture or processing has taken place with materials sourced from China with alleged labor right protection.

This highlights the improved risk assessment being conducted to goods made from raw material sourced from high-risk labor areas in China, it is not a simple matter of moving production to another country in Asia, CBP has ways to identify risky shipments and their scrutiny has moved on to more advanced manufactured goods, such as electronics which includes solar panels. Other high-risk industries are apparel, footwear, and textiles. Malaysia and Vietnam have seen the most enforcement actions under the UFLPA.

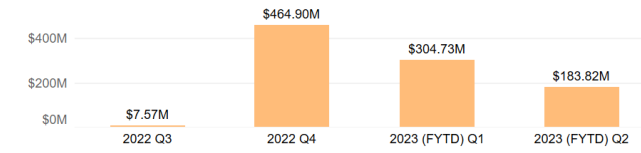


### U.S. Customs and Border Protection (CBP) Uyghur Forced Labor Prevention Act Enforcement Statistics

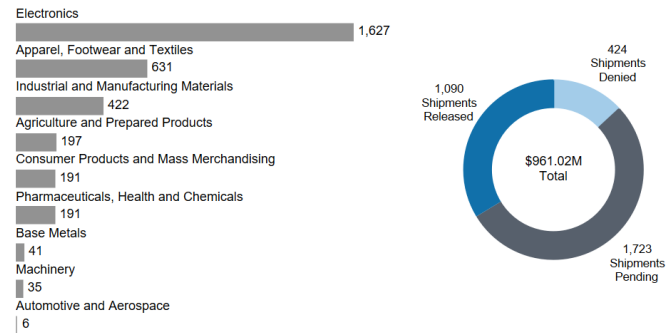
Total Shipments 3,237	Shipments Denied 424	Shipments Released 1,090	Shipment Value \$961M
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Fiscal Year: All | Industry: All | Exam Result: All | Country of Origin: All | [Reset Filters](#)

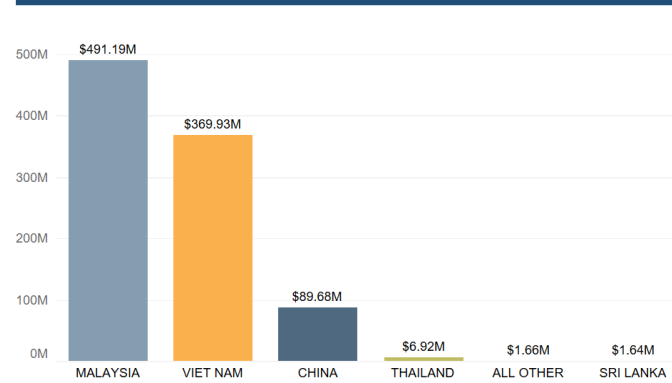
#### Shipment Value (USD) by Quarter



#### Shipment Count by Industry and Exam Result



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



**Disclaimer & Data Source:** Statistical information is subject to change due to corrections or additional information. Data is provided by the Forced Labor Division and is current as of 03/03/2023.

# Supply Chain Due Diligence



## Managing Supply Chains

Supply chain due diligence demands a different approach, many companies have already enacted policies and procedures that address human rights and environmental impacts; however, most companies do not have full visibility into their entire supply chains.

Companies must first determine whether and to which extent their business falls within the scope of the above Laws or other enacted or to be enacted Laws. A high-level gap assessment can be useful in identifying any work that will be required to comply with labor right protection requirements. Mapping the supply chain is a good first step in ensuring a compliant supply chain.

While all suppliers should be subject to some level of due diligence, companies need to do more than a simple tick the box exercise to ensure compliance. Companies should choose to conduct a more detailed due diligence process on certain suppliers, depending on the level of risk associated with different relationships and exposure to location-based risk.

You are also invited to refer to our previous flyer on the German LkSG.

## German LkSG

## US UFLPA

### Business impacted

Companies based in Germany with at least 3000 employees in Germany. From January 2024 the threshold will be reduced to 1000 employees.

All importers in the United States regardless of size.

### Due diligence

DD requirements including the obligation to:

- I. Regularly conduct a risk assessment,
- II. Implement preventive measures,
- III. Take remedial action,
- IV. Implement a complaints procedure, and
- V. Allocate responsibility for compliance within the company.

No clear requirement in the Law for DD, however all importers must take reasonable care when importing goods, therefore to ensure compliance importers should take comprehensive supply chain management measures including DD and maintain detailed documentation.

### Transparency/ reporting

Companies are obliged to internally document their compliance with the DD/risk management obligations.  
Documentation to be retained for seven years.  
Publish an annual report.

None.

# German LkSG

# US UFLPA

## Human Rights

- Human Rights Risks:
- Child labor
  - Labor right protection and all forms slavery
  - Occupational safety and work-related health hazards
  - Freedom of association and right to collective bargaining.
  - Unequal treatment/discrimination
  - Fair wages
  - Land rights
  - Inappropriate use of security forces.

Prohibition of labor right protection.

## Environmental

- Environmental risks:
- Minamata Convention on Mercury
  - Stockholm Convention on Persistent Organic Pollutants (POPs)
  - Basel Convention of the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

N/A

## Enforcement

Penalties for noncompliance may be up to EUR 100,000 or up to 2% of the average worldwide annual sales.

CBP has the power to detain, exclude, or seize goods related to UFLPA and to impose civil penalties equivalent to the value of the goods.

# Contact us

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