

Best Practices For Responding To CBP's Solar Questionnaire

By **Carl Valenstein and Katelyn Hilferty** (June 5, 2024, 5:41 PM EDT)

U.S. Customs and Border Protection recently began issuing a detailed questionnaire to solar companies, seeking extensive disclosures about the sourcing of modules, panels and other products.

This marks an expansion of scrutiny on the supply chain for the solar industry, as importers previously only had to provide such information if shipments were detained for inspection.

The survey that is being sent to importers includes requests on randomly selected entries, for which the same level of supply chain tracing information is required as in a detention case. In addition, the questionnaire requires information on the importer's corporate structure and overall supply chain within a specified time frame.

CBP is also asking for detailed explanations of how companies audit their supply chains to ensure compliance with their obligations under the Uyghur Forced Labor Prevention Act, or UFLPA.

Due to the extensive nature of the questionnaire, many importers have requested multiple extensions beyond their initial deadlines in order to provide responses that address the level of detail required by CBP.

Scope of the Questionnaire

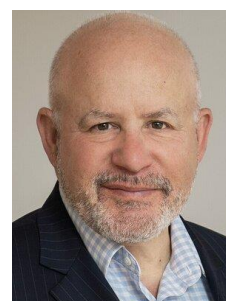
The questionnaire asks about both raw materials and the finished product, and it requires separate responses for all affiliates and entities. The following outlines the scope of each section.

Corporate Structure

In addition to standard information, the questionnaire requests a complete narrative history of the company and comprehensive information on controlling interests. The "Corporate Structure" section also includes 12 questions on measures to ensure imported goods are not produced wholly or in part with convict labor, forced labor or indentured labor, including forced or indentured child labor.

Overall Supply Chain

This section requests a detailed description of the full supply chain, including roles, relationships and



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affidavits to verify the roles. Further, it inquires about on-site visits to facilities to verify production, compliance policies and procedures, and a comprehensive list of all solar imports.

Walk-Through Entries

This section refers specifically to the shipments that prompted the questionnaire and requests comprehensive importation documentation for each entry and sales documentation for U.S. customers.

Accounting and Financial Practices

This section requests a description of accounting and financial practices, including a series of financial statements and bank account details. It specifically requests disclosure of accounting practices for possible raw materials procurement for foreign affiliates and includes a dedicated section for startups under three years old.

Production

This section of the questionnaire requests a detailed description of the production process and all documents "generated/used/relied upon in the normal course of business for each stage/workshop of the production process of the finished goods."

The section asks for a list of all raw materials and an explanation of how importers ensure there is no forced labor involved. There is a separate section on labor practices.

CBP also requests a listing of final products, and comprehensive documentation on those identified in the "Walk-Through Entries" section.

Sales

This section requests sales documentation, marketing materials, a product list, a method for obtaining a certificate of origin and details regarding the export process.

Sales and Production Reconciliations

This section requests a chart of sales to domestic and other countries, a reconciliation of sales to financial statements, and a list of customers.

In February, CBP also posted guidance on preparing an UFLPA applicability review submission, which includes a sample table of contents for all suppliers and an expanded table of contents for solar companies.[1]

Although the guidance relates to UFLPA applicability review submissions specifically, the information in this guidance document can also be helpful for preparing tracing documentation in response to the questionnaire.

For example, the table of contents for solar includes a section listing the types of documents the agency is seeking from specific types of suppliers, such as module, cell, ingot, wafer, polysilicon, metallurgical grade silicon and quartzite suppliers.

The Potential Impact of the Questionnaire

The CBP's new questionnaire for solar companies has the potential to significantly affect the industry in several ways.

Increased Compliance Costs

The extensive nature of the questionnaire may require companies to dedicate substantial resources toward compiling the requested information. This includes gathering data from various departments, conducting internal audits and potentially hiring external consultants specializing in supply chain compliance.

Smaller companies with limited resources may find compliance particularly challenging.

Supply Chain Disruptions

The need for detailed documentation on every step of the supply chain can expose weaknesses in existing traceability systems. Companies may need to reevaluate their sourcing strategies and potentially switch suppliers if they cannot guarantee ethical labor practices throughout their chain. This process could lead to temporary disruptions in solar panel production and availability.

Market Consolidation

The additional compliance burden could have a disproportionate impact on smaller players. Larger companies with established compliance programs and global reach may be better positioned to navigate CBP's requirements.

This could lead to consolidation in the solar industry, with smaller companies struggling to compete.

Shift Toward Transparency

In the long run, CBP's initiative could push the solar industry toward greater transparency and ethical sourcing practices. Companies will be incentivized to develop robust traceability systems and partner with suppliers that can demonstrate compliance with labor regulations.

Best Practices for Compliance

Solar energy companies and related entities can take several steps that will assist in navigating the CBP questionnaire requirements and help ensure compliance with the UFLPA, including:

- ***Developing a Compliance Program:*** Establish a comprehensive compliance program that outlines company policies on forced labor, risk-assessment procedures, and supplier engagement strategies. This program should be regularly reviewed and updated to reflect evolving regulations.
- ***Mapping the Supply Chain:*** Develop a detailed map of your entire supply chain, including all tiers of suppliers, manufacturers, and subcontractors. This will facilitate the gathering of information requested by the CBP questionnaire.

- **Conducting Due Diligence:** Perform thorough due diligence on all suppliers, including through on-site visits and audits of labor practices. This due diligence should be documented and readily available for CBP inspection.
- **Maintaining Detailed Records:** Implement a system for maintaining comprehensive records on all aspects of your supply chain, including sourcing documents, production data and labor certifications.
- **Seeking Expert Advice:** Consider seeking advice from professionals specializing in import compliance and forced labor regulations. This can help companies interpret the CBP questionnaire accurately and ensure their responses meet all requirements.
- **Engaging with Industry Associations:** Stay informed about updates and developments related to the UFLPA by actively participating in industry associations and relevant forums.

By adopting these best practices, solar and related companies can proactively address CBP scrutiny, and ensure their continued participation in the U.S. solar market.

The additional effort and expense required for compliance can be viewed as an investment in building a more ethical and sustainable — and therefore profitable — solar industry.

Beyond Solar

While the focus here is on solar the solar industry, based on CPB's commodity-specific guidance, we know that it is looking across imports — including aluminum, batteries, cotton, polysilicon, polyvinyl chloride, steel, tires for automobiles and trucks, and tomatoes.

Continued pressure by the U.S. Congress on forced labor in the global supply chain suggests continued enforcement pressure on importers.

Conclusion

CBP's solar supply chain questionnaire presents a challenge for the solar industry, but also creates an opportunity. By proactively addressing compliance and implementing best practices, solar companies can both navigate CBP's requirements and emerge as leaders in ethical sourcing and supply chain transparency.

This will ultimately benefit the industry as a whole, fostering consumer confidence and paving the way for a more sustainable future powered by solar energy.

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[1] Guidance on Executive Summaries and Sample Tables of Contents: Preparing a UFLPA Applicability

Review Submission, https://www.cbp.gov/sites/default/files/assets/documents/2024-Feb/Forced_Labor_Guidance_on_Executive_Summaries_and_Sample_Tables_of_Contents_0.pdf.