

**FIGHTING FORCED LABOR: CLOSING
LOOPHOLES AND IMPROVING CUSTOMS
ENFORCEMENT TO MANDATE CLEAN SUPPLY
CHAINS AND PROTECT WORKERS**

HEARING

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

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THURSDAY, MARCH 18, 2021

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10 a.m., via Webex, in the Dirksen Senate Office Building, Hon. Ron Wyden (chairman of the committee) presiding.

Present: Senators Menendez, Carper, Cardin, Brown, Bennet, Casey, Warner, Whitehouse, Cortez Masto, Warren, Crapo, Grassley, Cornyn, Thune, Cassidy, Lankford, Young, Sasse, and Barrasso.

Also present: Democratic staff: Sally Laing, Senior International Trade Counsel; Virginia Lenahan, International Trade Counsel; and Joshua Sheinkman, Staff Director. Republican staff: Gregg Richard, Staff Director; and Mayur Patel, Chief International Trade Counsel.

**OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR
FROM OREGON, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The Finance Committee will come to order. This is our third hearing of the week, and the attendance among members has been terrific on both sides of the aisle. And I see Senator Crapo here, and I appreciate all his efforts to get members on both sides involved.

This morning we are going to focus on the issue of forced labor. We understand in our country, we have a lot of economic and political muscle, and our country should use that muscle to fight for American jobs and our workers. It should also use that muscle, wherever possible, to improve the lives of powerless people around the world. It is not every day you have an opportunity to talk about accomplishing both of those goals at once.

Today is one of those days, with the Finance Committee meeting to discuss stamping out forced labor, which is modern-day slavery, around the globe. Now, it is going to take hard work, even in 2021, to live up to a moral standard that says the U.S. will not profit from slave labor. And yet it still goes on in many places around the world, including in places that are part of our global supply chain. The hard work to fight forced labor is absolutely essential.

A government ought to use every available tool to root out the practice of forced labor and address its causes. That includes diplomacy, efforts to alleviate poverty, sanctions, or any other means within the jurisdiction of the Finance Committee. The government has to use every tool in the trade toolbox to keep forced labor products out of our market.

The Federal ban on imports made with forced labor goes back to 1930. It is known in trade law as section 307. It gives Customs the authority to stop products made with forced labor. However, there was a loophole in that Federal ban that applied to products that are not made within the United States, and it persisted for decades.

Senator Brown, who has led on this issue for years, and I wrote an amendment that closed the forced labor loophole in 2016. Since then, enforcement action has increased, but so have glaring examples of the scourge of forced labor, especially in China.

Two U.S. administrations have now concluded that what the Chinese Government is doing to the Uyghur people in the Xinjiang region in western China constitutes genocide. The Chinese Government and Chinese companies are using forced labor from that region to produce a variety of products.

For example, the U.S. took action to block the import of cotton and tomatoes picked by slave labor in Xinjiang. The Finance Committee is going to hear today from Joseph Wrona, whose good-paying union job in the production of silicon metal was shut down, in part due to forced-labor competition from China.

Forced labor is a problem in other countries too, including in India, Burma, and Malaysia. As I indicated, Senator Brown and I have been pushing for U.S. trade enforcers to do work on a variety of fronts, including taking action against the import of mica, palm oil, and cocoa produced with forced labor.

The bottom line is, the continued existence of forced labor is morally repugnant, and when American workers have to compete with forced labor, everybody loses. We want to make sure that Customs and Border Protection has the tools and resources it needs to step up enforcement. And like so much of what we are doing, this is another crucial area for bipartisanship. Ending forced labor is morally just. Raising the bar for labor standards around the world will help protect high-skill, high-wage jobs here in the United States.

So this is an important hearing, and we look forward to our witnesses.

[The prepared statement of Chairman Wyden appears in the appendix.]

The CHAIRMAN. Senator Crapo?

**OPENING STATEMENT OF HON. MIKE CRAPO,
A U.S. SENATOR FROM IDAHO**

Senator CRAPO. Thank you, Mr. Chairman.

This is a very important hearing. The International Labor Organization estimates nearly 25 million people in the world are victims of forced labor. The criminals behind this tragedy reap nearly \$150 billion in profits every year. As horrifying as that is, nearly 30 percent of the victims are also victims of forced sexual exploitation and

generate \$99 billion, or two-thirds of those profits that I just referenced.

The fight against forced labor is not a Democrat issue or a Republican issue. It is an issue that unites all Americans. That is critical to remember. Americans, including consumers, workers, and businesses, are all committed to this fight and doing everything possible to combat this scourge.

The problem lies not with them, but with foreign autocrats and individuals who lack all sense of basic humanity. Our fight is with them. For example, as the chairman just mentioned, China's Government has pressed nearly 100,000 Uyghurs and other Muslim minorities into forced labor, while euphemistically calling it "poverty alleviation."

As the Newlines Institute for Strategy and Policy explained in a report last week, China's treatment of the Uyghurs meets every criteria of genocide under the United Nations Genocide Convention. That report's findings joined declarations by foreign legislatures, including Canada and the Netherlands, and track with a similar determination made by the State Department during the Trump administration.

Accordingly, Senators like Marco Rubio and Jeff Merkeley and many others are showing leadership on this issue through their proposed Uyghur Forced Labor Prevention Act. Their efforts should be matched by the current administration.

The U.S. Secretary of State and National Security Advisor are meeting today in Alaska with their Chinese counterparts. Forced labor is among the rights' issues they need to press with them.

Critically, this all reinforces that we need to broadly empower Americans and other good citizens of the world to be able to more effectively respond to this challenge. This includes effectively utilizing technology to identify where goods made with forced labor can enter the supply chain.

It means our laws and regulations must be transparent and provide informative and thoughtful guidance so Americans know how to avoid importing such goods. It means we need to know about the ongoing efforts of our businesses so that government can help leverage them in the fight against forced labor.

Many of them have developed best practices to stamp out forced labor from their supply chains. We need to leverage their experience and expertise.

Finally, it means we must partner with civil society to raise awareness on this important issue. The witnesses we have today can speak to each of these points. Their expertise and knowledge will help this committee address this important matter.

Mr. Chairman, I am glad this is an issue which we both care deeply about, and thank you for organizing this hearing. I look forward to hearing the testimony from our witnesses.

[The prepared statement of Senator Crapo appears in the appendix.]

The CHAIRMAN. Thank you very much, Senator Crapo. Let me now introduce our witnesses.

Mr. Joseph Wrona of Buffalo, NY is a United Steelworkers member. He is a former employee of Globe Specialty Metals. They produce a critical input for semiconductor chips and solar panels,

and they are based in Niagara Falls, NY. Globe Specialty Metals shuttered its factory in 2018 due to intense competition from underpriced Chinese products, as well as shifts in global demand driven in part by Chinese product that was produced with forced labor. He now works for another firm.

Ms. Martina Vandenberg of Washington, DC will be next, the founder and president of the Human Trafficking Legal Center, an important organization established in 2012. It is a nongovernmental organization dedicated to the eradication of forced labor.

Ms. Julia Hughes of Washington, DC is president of the United States Fashion Industry Association, which represents brands, retailers, importers, and wholesalers based in the United States that do business globally.

And Dr. Leonardo Bonanni of New York is the founder and CEO of Sourcemap, a supply chain transparency company. They track the supply chains for more than 50 raw materials.

We welcome all of them, and we will make your prepared remarks a part of the record. And let's begin with you, Mr. Wrona.

STATEMENT OF JOSEPH WRONA, LOCAL 135L MEMBER, UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL, AND SERVICE WORKERS INTERNATIONAL UNION (USW), BUFFALO, NY

Mr. WRONA. Chairman Wyden, Ranking Member Crapo, members of the committee, my name is Joe Wrona, and I am a member of the United Steelworkers and a maintenance mechanic at Sumitomo Tire Plant in Tonawanda, NY. Thank you for the opportunity to testify today on the important topic of how to fight forced labor and improve our supply chains.

Connecting my life in Buffalo to global supply chains and forced labor is, unfortunately and surprisingly, too straightforward. While I have worked at the tire plant for the last couple of years, my previous job was at Ferroglobe's Niagara Falls, NY, plant. I worked there for 10 years roughly, with 100 other union members and management.

The Ferroglobe facility, which I will call Globe, used to produce metal silicate by taking quartz, wood chips, and coal and cooking them in an electric arc furnace until the quartz was reduced into silicon metal. Metal silicate is a product that we made 24/7 at the plant. It is a product you interact with every day in a variety of ways, from strengthening aluminum, to the caulking that seals your home, or even cosmetics.

Silicon metal is everywhere. It is also a base component to the production of polysilicon, which is vital to solar panel production. Expecting that strong demand for solar power would boost metal silicate demand, in 2009 Globe planned a \$35-million upgrade to convert its metallurgical grade silicon into 4,000 tons of upgraded metallurgical grade silicon each year—enough to produce 500 megawatts of solar power.

Our company, in an investor report in 2016, highlighted the opportunity to see demand grow as SolarCity, a solar panel company connected to Elon Musk, was supposedly in the final stages of construction. However, that vision fell apart for the workers at Globe in 2018 when the plant was closed because of lack of demand.

Globe has been fighting illegal trade practices in metal silicate for decades now. The first trade enforcement case against dumped and subsidized metal silicate from China started 30 years ago in 1991. But, while tariffs on metal silicate helped to defend our jobs at Globe, they could not stop products further up the supply chain, like solar panels or those produced with forced labor.

The growth of China's industrial capacity is well documented. Chinese companies in polysilicon produced over 80 percent of global polysilicon in 2020. This has effectively locked the U.S. out of the growing solar demand, and over-capacity in China destroys nearly any ability of U.S. companies to compete.

But for my brothers and sisters who make good wages at Globe, between \$70,000 and \$100,000 a year, they were victims not only of unfair trade practices, but also forced labor in China. About 45 percent of the world's supply of solar grade polysilicon comes from Xinjiang. The news about human rights abuses there is unacceptable. According to economic experts, 10 million Muslim minorities in the region are under lockdown control, and over 1 million Uyghurs and others have allegedly disappeared into internment camps.

One study estimates that more than 80,000 Uyghurs were transferred out of Xinjiang to work in factories across China between 2017 and 2019. There should be no debate: eliminating forced labor from our country's supply chain should happen today. And companies that have benefited should be held accountable.

It was a good step when Customs and Border Protection issued a Withhold Release Order against cotton and tomato products produced by Uyghurs. We should act immediately to do the same for products like solar panels that contaminate the supply chain with forced labor.

We also need to act urgently to defend American workers and foster the domestic solar industry here. This means direct investment in metal silicate plants like my old facility in Niagara Falls or the plants in Alloy, WV, where my union brothers and sisters work.

Thank you for the opportunity to testify today, and I look forward to answering any questions you may have.

Finally, working with my union, I have included additional materials with my written testimony.

[The prepared statement of Mr. Wrona appears in the appendix.]

The CHAIRMAN. Thank you very much, Mr. Wrona.

We will next have Ms. Vandenberg.

**STATEMENT OF MARTINA E. VANDENBERG, J.D., PRESIDENT,
HUMAN TRAFFICKING LEGAL CENTER, WASHINGTON, DC**

Ms. VANDENBERG. Thank you so much, Chairman Wyden, Ranking Member Crapo, and distinguished members. It is an honor to appear before you today to address the issue of forced labor, global supply chains, and the Tariff Act. I lead the Human Trafficking Legal Center, a human rights organization dedicated to the eradication of forced labor.

In 2020, we joined a coalition of nongovernment organizations to petition Customs and Border Protection to block all imports of

Xinjiang cotton into the United States. CBP issued a region-wide Withhold Release Order in January 2021.

China has been much of the focus of CBP enforcement, but forced labor is a global issue. We once assumed we could prosecute our way out of forced labor, but we were wrong. Prosecutions are practically nonexistent. According to the State Department's 2020 Trafficking in Persons report, there were just 1,024 forced labor prosecutions in the entire world in 2019. And the United States is no exception.

According to the Department of Justice, Federal prosecutors indicted just 12 forced labor cases in the entire country in fiscal year 2019. And although extraterritorial jurisdiction has existed since 2008 to prosecute forced labor cases in global supply chains, Federal prosecutors have never brought even one forced labor supply chain case that invoked extraterritorial jurisdiction.

So what is the result of this enforcement vacuum? Impunity, complacency, and immense human suffering. We now live in a world where migrant workers must pay for their jobs. They must buy their jobs. They do not pay to play; workers pay to work. And because they cannot afford to pay the recruitment fees outright, workers must borrow.

Many find themselves trapped in forced labor and debt bondage. And until recently, these workers had few remedies. The closing of the U.S. Tariff Act's consumptive demand loophole in 2016 changed the game. That move catapulted section 307 from a statutory relic to a valuable tool to combat forced labor. We still have a long way to go.

We can analogize to the Foreign Corrupt Practices Act. In the 1970s, bribery was ubiquitous, just as forced labor is today. That all changed when the Department of Justice started prosecuting companies and individuals under the FCPA. Suddenly, bribery allegations went straight to the C Suite. So what had changed?

It was risk, the advent of risk. We are a long way from FCPA anti-bribery enforcement levels for forced labor, but Customs and Border Protection's section 307 enforcement under the Tariff Act is bringing us closer.

According to data recently released by CBP, in the first quarter of fiscal year 2021 the government detained 90 shipments of cargo covered under different WROs. The value of that cargo was \$20.8 million. In fiscal year 2020, CBP detained a total of 324 shipments valued at \$55 million. So it looks like CBP is poised to shatter the fiscal year 2020 detention record in fiscal year 2021, which is a welcome development.

So we applaud this progress, but there are gaps. Issuing a WRO is only the first step. Robust and swift enforcement must follow. CBP announced that, despite the region-wide WRO on all Xinjiang cotton, the agency would focus only on direct imports from the region. The agency termed this a "scalpel" approach to enforcement.

We believe that this is inadequate. The WRO should be enforced broadly. And we also see now a backlash against Tariff Act enforcement, with lawsuits filed by corporations against nongovernmental organizations and researchers.

These retaliatory legal actions have a chilling effect on NGOs, which we can only surmise is their intent. Sime Darby, a Malay-

sian palm oil producer subject to a WRO, filed a lawsuit in U.S. Federal Court against the director of Liberty Shared, seeking extensive discovery of confidential investigation materials. And Chinese corporations have filed a suit in China against Adrian Zenz, a U.S.-based human rights researcher, who has documented widespread forced labor in Xinjiang.

Facing universal outrage, Sime Darby dropped their lawsuit just a week after filing. But increasingly loud corporate voices seek to dismantle section 307's enforcement regime. Couched in the language of calls for "due process," these critics come to bury section 307, not to praise it.

My written testimony has extensive recommendations, but I will focus on just four.

Number one, include workers and unions in all remediation plans. CBP should ensure that affected workers and their unions have a role in enforcement and remediation.

Two, create emergency worker funds for workers harmed by WROs.

Three, punish companies that retaliate against workers or petitioners.

Four, disclose shipments detained under a WRO.

CBP should also release enforcement updates on each WRO each quarter. Forced labor is a feature, not a bug, in global supply chains. There should be no safe harbor for goods made with forced labor anywhere in the world.

I welcome your questions.

[The prepared statement of Ms. Vandenberg appears in the appendix.]

The CHAIRMAN. Thank you. Very good.

Next will be Ms. Hughes.

STATEMENT OF JULIA K. HUGHES, PRESIDENT, U.S. FASHION INDUSTRY ASSOCIATION, WASHINGTON, DC

Ms. HUGHES. Thank you, Chairman Wyden, Ranking Member Crapo, and members of the committee. I thank you for the invitation to appear today.

I am president of the U.S. Fashion Industry Association, and I appreciate the chance to talk about the industry and the fight against forced labor, and how to improve enforcement to reach our shared goal of the elimination of forced labor.

A little background about USFIA. We represent apparel brands, retailers, importers, and wholesalers based in the United States and doing business globally, including many of the iconic brands worn and loved by everyone participating in this hearing.

Global trade, and ethically sourced trade, is essential for American brands and retailers to be successful and reach consumers around the world. Because we are a global industry, we know that forced labor exists in many parts of the world.

For several decades, USFIA member companies have maintained codes of conduct and strict requirements for supply chain partners that ban the use of forced labor. Companies maintain an extensive network of contracts, audits, verifications, training, and direct engagements with suppliers. But we recognize that there remains more action needed to guarantee that forced labor is not in the sup-

ply chain for fashion products. So what are we doing to root out forced labor from the supply chain?

Even before the very public media reports about forced labor in the past year, our Industry Association's USFIA, working with our friends at the American Apparel and Footwear Association, National Retail Federation, and Retail Industry Leaders Association joined together to create an ad hoc forced labor working group to facilitate the sharing of information and the sharing of resources among the industry.

The task is not easy, to put it mildly. My personal belief is that to eliminate forced labor, we need to go beyond what companies can do on their own, and go beyond an emphasis on punitive measures, to use multi-stakeholder approaches, the combination of civil society, NGOs, companies, governments, and international institutions, to reach our goal.

In my written statement, I shared a few examples of how this has worked. I am especially pleased to mention the Cotton Campaign—which for more than a decade brands and retailers have been a part of—focused on eliminating the government-sanctioned use of forced labor in the cotton fields of Uzbekistan, and today moving forward with reasoned responsible sourcing agreements with cotton growers, cooperatives, and brands looking to the future.

Another approach that is just at the beginning is Yarn Ethically and Sustainably Sourced (YESS). This is an initiative to eliminate forced labor with a pilot program based on OECD due diligence guidance that has wide industry support.

There are also pilot programs recently funded by the Department of Labor that will focus on developing solutions to forced labor that bring together technology tracking in the supply chain and awards to Verité that will support a project based in India. ELEVATE Limited will be looking at supply chains for cotton in Pakistan and cobalt in the DRC.

But even with all these initiatives, we know we need more, and we need to work with the executive branch and with the Congress to eliminate forced labor.

In my remaining time, I want to just briefly focus on the executive branch aspect. We support a coordinated effort to engage with our trading partners to eradicate forced labor from the supply chain, working together with the State Department, U.S. Trade Representative's office, Labor, Commerce, NSC, and USDA, to make this a priority for a whole-of-government approach.

We especially want to talk about the important role of the U.S. Customs and Border Protection to implement this enforcement strategy. U.S. companies are partners with CBP on enforcement. The policy of informed compliance and the participation of companies in CBP's trusted trader programs means there already is a shared approach to enforcement. But we believe what will help even more is more transparency in the process, and more of a shared approach.

What does that mean in practice? Two recent GAO reports highlighted some of the issues, and it boils down to transparency and objective criteria being essential for success. We do not think success is measured by the number of detentions. Success will be

measured by the degree to which we all work together to effectively reduce and eliminate forced labor around the world.

Transparency is key for this. We hope to work with CBP and the committee, and I thank you again for the opportunity to speak today. Fashion brands and retailers have zero tolerance for forced labor. We believe working together to eradicate forced labor from global supply chains will be good for American workers, American consumers, and the world. And we stand ready to work with members of the committee and the Congress to achieve this goal.

[The prepared statement of Ms. Hughes appears in the appendix.]

The CHAIRMAN. Thank you very much, Ms. Hughes.
Dr. Bonanni?

**STATEMENT OF LEONARDO BONANNI, Ph.D., FOUNDER AND
CEO, SOURCEMAP, INC., NEW YORK, NY**

Dr. BONANNI. Chairman Wyden, Ranking Member Crapo, distinguished members of the committee, thank you for the opportunity to speak with you today.

I am the founder and CEO of Sourcemap, a leading provider of technology for supply chain transparency. As this committee has underscored in bipartisan fashion, forced labor is endemic to many supply chains. At the same time, no company can afford to audit every supplier every day. Business needs a scalable solution.

I founded Sourcemap at MIT with the goal of leveraging the reach of the Internet to monitor global supply chains to a degree that was never before possible. Let me describe how it works.

First, we set up a unique social network to help companies identify all of the actors in their supply chain, down to the names and addresses of every mine, every farm, every factory, and every warehouse.

Second, companies use this network to regularly collect data from all of the actors in the supply chain, which our software then analyzes to detect patterns that indicate the presence of forced labor. We can even collect data in remote supply chains where there is little to no Internet access, using a Smartphone app that works online and offline.

Third, and most importantly, we never take the information that has been provided at face value. Instead, we continuously analyze data from suppliers for errors and omissions, for patterns of fraud, waste, and abuse. To do this, we use the best available techniques, including satellite imagery, mobile device tracking, machine learning, and artificial intelligence.

The demand for this level of supply chain transparency is growing. Sourcemap is used today by some of the largest companies in the U.S., companies responsible for tens of billions of dollars in U.S. imports. Thousands of their suppliers log into Sourcemap from every corner of the globe to share extensive information on their supply chains. And that is because supply chain transparency is a very small price to pay for access to the U.S. market.

For the first time in the history of globalization, companies can have a map of their global supply chain that is verified and up-to-date. It is not transparency for transparency's sake. This map is the foundation for identifying and remediating forced labor in the

end-to-end supply chain, so that one day everything arriving in the U.S. can have a clean bill of health.

Is it a panacea? No. But it represents a step change in the degree of supply chain transparency businesses and governments can expect in support of their ongoing fight against forced labor.

Mr. Chairman, supply chain transparency is good for business in many other ways. It reduces risk. It saves money. It helps to secure hard-to-get materials. It helps to monitor for quality, counterfeiting, environmental conditions, health, and safety.

This committee has an important role to play. This hearing itself sends a message that you expect action from all stakeholders. Mr. Chairman, I know that you have been working with Senator Brown on the new tools to empower Customs and Border Protection. I encourage you to put supply chain transparency technology at the center of those efforts.

Supply chain transparency needs to become the norm. At a minimum, companies should disclose the names and addresses of their direct and indirect suppliers. This evidentiary standard will establish the U.S. as the leader in combating forced labor in supply chains, while saving companies and Customs Protection millions of dollars.

Setting a simple standard for supply chain transparency will help create a level playing field for all companies importing goods into the U.S. It is not just the right thing to do for our values; it is the smart thing to do for U.S. business and for U.S. workers.

Thank you for the opportunity to testify. I look forward to your questions.

[The prepared statement of Dr. Bonanni appears in the appendix.]

The CHAIRMAN. Thank you very much, Dr. Bonanni. I think you have a land speed record for impressive content delivered very quickly.

Now let me start with you, Mr. Wrona, because I want to ask the question that really frames this whole discussion. To what extent did imports produced by forced labor contribute to your plant closing and you and your co-workers losing your jobs?

Mr. WRONA. To what extent did it effect all of us?

The CHAIRMAN. Yes.

Mr. WRONA. Well, we lost our jobs. We lost our livelihood. You know, we have rent to pay, mortgage to pay, car payments, food, college, you know? And these jobs in western New York are not that easy to fill—or replace, I should say.

The CHAIRMAN. I asked it the way I did because I wanted to give you a chance to really lay out, as you did, just how serious the consequences were. I was looking at the record and I thought, well, maybe there would be other factors, but you basically said that imports produced by forced labor was the ball game. That is what took that livelihood away from you? Is that right?

Mr. WRONA. Yes, and we cannot, as American companies or employees, compete with that.

The CHAIRMAN. Right.

Let me go on to you, Ms. Vandenberg. You said that an increase in Customs and Border Protection forced labor investigations and enforcements since 2016 was helpful—that there was an increase,

and it took place when Congress closed the loophole in the forced labor ban.

While this is obviously progress, speak, if you would, to the scope of the problem that remains, and the difficulties in obtaining sufficient evidence for Customs and Border Protection to issue additional Withhold Release Orders.

Ms. VANDENBERG. So the scope of the problem is enormous. I want to thank you for your leadership, and Senator Brown for his leadership in closing the loophole. It has made an enormous difference.

As Senator Crapo pointed out in his opening remarks, the ILO estimates that there are more than 25 million people held in forced labor around the globe. So we are barely, barely touching the surface of the problem here.

In terms of evidence provided by CBP, this is an enormous problem, and we would like to see more self-initiated investigations by Customs and Border Protection. At this point, nongovernmental organizations send in petitions to Customs and Border Protection requesting Withhold Release Orders. It requires enormous, enormous effort by these nongovernmental organizations. It requires enormous risk as well, with witnesses on the ground providing testimony of forced labor—many of them in fear of retaliation.

So I do not think the system is perfect. We have a lot of work to do on this, but we are delighted to see additional enforcement.

The CHAIRMAN. Ms. Hughes, a question for you. The Customs statute charges importers to exercise reasonable care to comply with Customs requirements when importing goods. And I guess there is a kind of process, a risk management process, which your members take to make sure that they are exercising reasonable care.

Could you just briefly touch on that?

Ms. HUGHES. Sure. Thank you so much for the question, and absolutely. Brands and retailers—this, by the way, is not just since TFTEA and the change in section 307, but long before that—had an extensive process of audits, and investigations, and review of documents, because we know we are the ones on the ground. We are on the front lines to make sure that we can, if we see a problem, that companies will take the care that is needed and be able to show what they have done to remediate, if remediation is possible. And if remediation is not possible, then of course companies will take action to cut ties.

The CHAIRMAN. Okay. I just want to give a quick kind of summary of what this panel really has outlined to me.

Mr. Wrona was very, very blunt. He made it clear that imports produced by forced labor were the bad guy when it came to destroying the livelihood that he and his colleagues enjoyed. And Ms. Vandenberg said we had better up the enforcement efforts. And Ms. Hughes said the private sector wants to cooperate. And to me, what it tells me as we start this discussion, is protecting American jobs against imports made with forced labor, and still going to bat for workers exploited around the world, are not mutually exclusive. We can save the jobs of people like Mr. Wrona, and we can help address exploitation around the world.

We have a lot of colleagues interested in this issue, and we have a new administration, and it is time to step up our game and do the work you are talking about. And I thank our excellent panel.

We are now going to turn to Senator Crapo.

Senator CRAPO. Thank you very much, Mr. Chairman.

I will go first to you, Ms. Hughes. As I alluded in my opening statement, U.S. businesses are partners in combating forced labor. It seems imperative to me that Customs and Border Protection should develop an enforcement strategy that works with reliable American businesses to focus on unscrupulous actors.

What elements would you look for in such a strategy?

Ms. HUGHES. Thank you so much for that question. You know, I think that is at the heart of the discussion today.

First, we are looking for more transparency. We want to be partners with CBP, particularly those companies that are trusted traders and have already been fully vetted and provided extensive details about their supply chain to Customs and Border Protection.

We think that we can do more working together than working separately, and looking at enforcement actions—the real actions that will get to the perpetrators of the crime, which is not the U.S. companies that are good corporate citizens.

Senator CRAPO. Thank you. And continuing on that line, some of the businesses in your association have developed supplier codes of conduct.

Ms. HUGHES. Yes.

Senator CRAPO. They sort of rely on international instruments like the Universal Declaration of Human Rights, some of them, the International Labor Organization's conventions, and it is positive that American companies are striving for these high ethical standards.

My question is, what do you view as some of the minimum elements that an effective code of conduct should contain? And what can CBP do to help reinforce those efforts?

Ms. HUGHES. Thank you so much. You know, the basic thing is no forced labor in our supply chain, period. And there is no question that in the code of conduct for every company that is a basic.

But how can CBP work with us on this? Part of that is sharing of information so that when they have gathered information, as other speakers have mentioned, and we have gathered information, that we can share that information together to focus on eliminating the practices that already exist.

Senator CRAPO. Well, thank you.

And that leads to a question for you, Dr. Bonanni. It appears that we are actually under-utilizing the potential of technology in combating forced labor imports.

What can be done at CBP to expedite the adoption of the new technologies?

Dr. BONANNI. I think that is right, Ranking Member Crapo. We are fighting these bad actors with technology from the last century. And rather than use such blunt instruments as banning imports from an area, we need to move towards the real use of supply chain transparency technology, which many industry members are already using today. What I mean by that is, we need to grow the scale at which Customs can enforce these issues. Remember, it is

not just the areas that have been identified as being at high risk for forced labor, because as soon as an area has been identified that way, the bad actors will try to move the products to areas that are considered low-risk.

And so we need to have transparency on both those high-risk and low-risk sourcing areas to make sure that we can stamp out forced labor and any path that it might take to market.

I would also urge Customs to set a very simple standard for the kind of company data that should be collected, so that companies can confidently import goods into the country.

And then—I know I only have a little bit of time to explain what is a relatively complicated technology to address a very complex problem, but we are very open to, and in fact are already working with the government, including having been selected to provide traceability for the Department of Labor’s recent project to trace goods of child labor in India.

And so I welcome your questions, but also further questions from the committee on how we can help to set that data standard and really go big, so that all of the companies are pushing transparency to the same degree and tackling the problem together.

Senator CRAPO. Well, thank you.

And, Ms. Vandenberg, I have read that your research indicates that many countries lack the political will to criminally prosecute forced labor. That is deeply troubling. It is simply not enough to stop goods made with forced labor from entering the United States. Forced labor is a crime against humanity, and perpetrators must be punished.

What can we do to incentivize countries to bring such prosecutions?

Ms. VANDENBERG. That is an excellent question, but I think we need to start at home. I think it is highly troubling that the United States has not brought any cases whatsoever in their jurisdiction to prosecute global supply chain forced labor in the U.S. Federal courts.

And what we have seen instead are civil cases brought by plaintiffs and victims themselves in U.S. courts, using strategic litigation. I think that the Trafficking in Persons report issued by the State Department should focus very deeply on this area to prosecute forced labor around the world. It does now, but I think it should emphasize that even more.

Senator CRAPO. All right; thank you.

My time has expired. Thank you, Mr. Chairman.

The CHAIRMAN. I thank my colleague.

Senator Cantwell is next.

Senator CANTWELL. Thank you, Mr. Chairman. I appreciate the hearing.

The United States Department of Justice led an interagency Task Force on Human Trafficking in Fishing in International Waters and issued a report just this January. It made specific recommendations about combating forced labor in fishing on the high seas.

The U.S. Government promoted the industry effort to help due diligence in the global supply chain. And among other actions, the task force reported that they recommend strengthening the capac-

ity to collect, fuse, and analyze data from multiple sources to human trafficking in international waters. And it notes that more data from the fishing industry regarding this issue of human trafficking, or the risk of it, would be useful. And I fully agree with that.

I want to ask Dr. Bonanni if he thinks technology might help in the traceability of the seafood problem, or promote more transparency so that we could use that on a global scale? And I would also like to ask Ms. Vandenberg if she could comment on Customs and Border Protection and enforcing laws to prevent seafood and other products tainted by forced labor from entering the United States.

Dr. BONANNI. Thank you, Senator. You know, the problems you describe are tragic and occur in that industry on a huge scale. There is absolutely the need to install the same kind of tracking that we do for land-based industries: factories, warehouses, mines, farms. There is absolutely the need to install that technology on fishing vessels and to track them, because of the fact that they can in fact operate extra-jurisdictionally.

And so I would urge that the same traceability approaches that we have seen the leaders of industry implement today for land-based assets be deployed and be part of the required tracking of vessels, which is required for many other reasons.

And I would urge that we do it under the same auspices as one of the other programs that we support that Customs has in place, the Customs Trade Partnership Against Terrorism, the so-called CTPAT, which again, for the same reasons, uses that and mandates a level of tracking and tracing of goods for a different reason. But the same technology could be used in this way to ensure the abolition of forced labor on fishing vessels.

Senator CANTWELL. So Customs and Border Protection should take the lead on that?

Dr. BONANNI. I am not versed in policy well enough to tell you that.

Senator CANTWELL. Okay; all right.

Ms. Vandenberg?

Ms. VANDENBERG. Yes, Senator Cantwell; thank you for that question.

CBP has actively enforced WROs on individual fishing vessels, looking largely at long-line tuna fishing vessels flagged in Taiwan. Many of those petitions have been put in by Greenpeace. The problem that we have is that the Seafood Import Monitoring Program, SIMP, which tracks seafood coming into the United States, only covers 13 varieties of fish and seafood. That is only about 40 percent of the fish coming into the United States. I would have to admit, we are way behind the Europeans, because Europe, at this point, tracks 100 percent of seafood coming into their markets.

And so we would strongly suggest that Congress increase the scope of the Seafood Import Monitoring Program run by NOAA so that it covers all seafood coming into the United States. One of the great problems that we have as NGOs filing petitions with CBP is that we do not have to just file evidence of forced labor, we also have to show that it is coming into the U.S. markets, which, without seafood tracing at a 100-percent level, is extremely difficult.

Thank you.

Senator CANTWELL. And so how are the Europeans doing it? Are you saying they put the resources behind it?

Ms. VANDENBERG. I do think that this is a resources issues. And a number of NGOs that focused on fishing and illegal fishing have suggested that this program, the SIMP program, could be extended with just additional resources here in the United States.

Senator CANTWELL. Well, thank you.

Mr. Chairman, I really do believe—as we have said at other hearings related to USMCA and others—that capacity building and enforcement go hand in hand. So if we do not have the capacity—and so we will certainly work at this. We will take that charge back to NOAA.

Is there anything else they need to do with Customs and Border Protection in a resource way, or the Coast Guard, to make this work?

Ms. VANDENBERG. I do think that there is a problem with inter-agency communication, and interagency cooperation. And so we would push very hard for Customs and Border Protection to work more closely with the Department of Labor and with ILAB. They are already working with NOAA, so I think that is progress. The limitation is in the number of seafood varieties they track.

Senator CANTWELL. Okay. Well, let's get them all tracked. So, anyway, thank you so much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cantwell. It is important for the country, and it is especially important for the people who give us an election certificate in the Pacific Northwest, and I thank you for doing that.

Next will be Senator Grassley.

Senator GRASSLEY. Thank you, Mr. Chairman, for holding this hearing. We need fairness in our trade, and we need to level the playing field. And you are hitting that very hard with this hearing.

I want to lead into a question with Ms. Hughes this way: the Australian Strategic Policy Institute in January of last year said around 600 ethnic minority workers from Xinjiang were employed at a shoe manufacturer whose primary customer is Nike. These workers were mostly Uyghur women who at night were required to study Mandarin and sing the Chinese national anthem. New evidence from a Nankai report—a Chinese academic publication with information from public government sources—shows that the primary aim of what the Chinese call “labor transfers” are not economic but political and demographic. The report, which was made public in English by the Victims of Communism Memorial Foundation, details the state’s campaign of cultural and demographic genocide.

In your testimony, you said you want to look at the role of the U.S. CBP to implement enforcement so that no products with forced labor reach the United States. So my question: would you be supportive of holding companies accountable by having Customs and Border Protection issue Withhold Release Orders on products that were manufactured with forced labor?

Ms. HUGHES. Thank you very much for the question. Obviously, this is one of the most critical issues facing us today when we talk

about forced labor. And absolutely, speaking on behalf of the fashion industry and all of those products, there is no room for forced labor in our supply chains.

And we did not oppose the Withhold Release Order on products from XPCC, or products from the XUAR region that are made with forced labor. We recognize this is a critical issue. We have read the reports that have come out, and companies have responded strongly to eliminate any of those products from their supply chain to the best of their ability, where they have the transparency in the supply chain. And we continue to support those efforts.

That is why we want to work closer with CBP, if we can, to eliminate the forced labor.

Senator GRASSLEY. Could you speak to what American companies like Nike are doing to eliminate forced labor from their supply chains?

Ms. HUGHES. I wouldn't put myself forward to represent Nike, because I know they can speak well for themselves. But what I do know is that companies such as Nike, and many other of the global brands and retailers, have already taken action in their supply chain.

They have taken action, and we certainly can respond after the hearing with specifics, you know, from the company level. But I am very confident that they are not doing any business in the XUAR region, nor are the other brands and retailers that we represent.

Senator GRASSLEY. Okay.

To Dr. Bonanni, I am going to skip a lead-in to your question and get immediately to the question, because time is running out. With the technology that you have developed at Sourcemap, are you able to know how many factories in China use forced labor from Uyghur Muslims? And I was talking about Uyghur Muslims in my opening, which I skipped to use the time efficiently.

Dr. BONANNI. Of course. Thank you, Senator. And we all recognize how important this issue is. With our technology, we are able to provide to our customers, to leading brands in the U.S., importers, the data that they need to know whether they can confidently rely on a supplier, whether that supplier is direct or is a supplier of a supplier, or a supplier of a supplier of a supplier.

The main issue we have when we are collecting data from Xinjiang is the lack of willingness to share. And for a company like us—we are a transparency platform. So as soon as there is no more transparency, then the risk becomes absolute, and our customers will typically choose to vote with their feet and look elsewhere for sourcing.

Senator GRASSLEY. Okay. I have just 10 seconds left, so one other quick question. Are you able to track which goods were produced at factories using forced labor in China?

Dr. BONANNI. We are absolutely able to give our customers the confidence to know which factories have a very high chance of using forced labor.

Senator GRASSLEY. Okay. Thank you, Mr. Chairman.

The CHAIRMAN. Very good.

Our next panel member will be Senator Menendez, and Senator Crapo is going to chair because I have to run to the Senate floor

and speak briefly. And we thank Senator Crapo, and recognize Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman.

Ms. Vandenberg, in your testimony you referenced a recent GAO report that found that, as a result of a September 2019 order that blocked the importation of rubber gloves from Malaysian producers, many workers at the company were terminated, increasing their risks of further exploitation.

We should all be able to agree that our enforcement of the laws against forced labor should not have the perverse effect of making the victims of forced labor even more vulnerable. You suggest creating an emergency fund for workers to help mitigate these efforts.

How do you envision that fund working? And what would be the best way to pay for it?

Ms. VANDENBERG. Thank you, Senator Menendez. We have talked a lot today about Withhold Release Orders. We have not talked about fines and penalties. Because bringing goods made with forced labor into the United States is forbidden, the importers should pay fines. Those fines should then be used to fund an emergency fund.

There has been only one finding issued by Customs and Border Protection, and only one penalty so far that has been initiated against a company. It was a \$575,000 fine against PureCircle for bringing in shipments of stevia, the artificial sweetener that was subject to a Withhold Release Order.

So what we would like to see is that money for fines go not to the Treasury, and not to the General Fund, but see that money go to an emergency fund for workers. The ability to create this emergency fund is really predicated on greater enforcement by CBP and higher fines. So that is the idea, but we look forward to working with you to put flesh on the bones of the proposal.

Senator MENENDEZ. Well, I appreciate you offering a potential solution. As we work to reauthorize the Trafficking Victims Protection Act in the Senate Foreign Relations Committee, I look forward to working with you more on this idea and seeing if we can put it into action.

In my role as chairman of the Foreign Relations Committee, we have been particularly focused on goods and services source information sharing by U.S. companies, ranging from computer terminals and other high-tech goods, to cotton used in the manufacturing of textiles and apparel. Last year I wrote to then-Commerce Secretary Ross asking him to establish clear and transparent standards of procurement and requirements for additional labor and human rights vetting for any goods or services that are manufactured in Xinjiang.

My colleagues Senators Murphy and Rubio have introduced bipartisan legislation, the Uyghur Forced Labor Prevention Act, that would do this and more, including authorizing the use of sanctions on individuals knowingly facilitating forced labor. And I look forward to having a markup, in some form in the near future, of that type of approach.

So let me ask, Dr. Bonanni, in your experience, how widespread is the problem of forced labor in Xinjiang, and are there specific

companies, big or small, that you have seen knowingly disregard human rights for the sake of profit?

Dr. BONANNI. You know, Senator, I think—I think the extent of the problem is widely documented. In fact, companies come to us, to Sourcemap, because they are looking to make completely certain that they are not buying anything from Xinjiang. But let me back up a little bit.

There are 155 goods identified by the Department of Labor from 77 countries at risk of forced labor and child labor. So the problem extends far beyond Xinjiang. The neighboring region, or even China as a country, I think needs to be tackled on a global basis. And not the least of which, the problem is, as soon as one region becomes marked at high risk, those goods will find their way to markets through other regions.

And so we have to apply the data collection—the transparency as we call it—we have to apply it uniformly across supply chains, or else goods will find their way to market one way or another, and it will be nearly impossible.

I do want to underscore the complexity here. A multinational company has thousands of suppliers, maybe tens of thousands, and they have not, by and large, identified all of the actors in the supply chain yet. So by setting a clear standard for what Customs can do, it makes it very easy for companies to obtain that baseline level of visibility to know who the actors are—not just direct, but indirect; and not just in high-risk regions, but in low-risk regions as well where product is likely to be smuggled.

Senator MENENDEZ. The Finance Committee was debating Trade Promotion Authority legislation in 2015. It passed my amendment that barred fast-track procedures for any trade agreement with a country on Tier 3 of the State Department's Trafficking in Persons report, which essentially are the countries whose governments do not expend even a minimum effort to fight forced labor or sex trafficking.

Ms. Hughes and Ms. Vandenberg, how have these disciplines worked out so far? And how should we be looking to improve forced labor standards in future agreements?

Ms. HUGHES. Thank you so much. I will go first. We think it is essential that those provisions are included in our trade agreements. We need the support from, not just the U.S. Government that we have been really focused on during the hearing, but also our international trading partners, to eliminate forced labor in the supply chain.

So we very much support that approach and look forward to continuing to work to that end.

Ms. VANDENBERG. And I would completely agree. It is our view that all trade agreements that are negotiated need to have provisions that ban the importation of goods produced by forced labor.

And the reason is clear why we need this. It is because goods brought into the U.S. market that are blocked by a Withhold Release Order can simply be trans-shipped. And we have evidence that goods are being trans-shipped to Canada and to other markets.

And so all of the markets need to have this importation ban.

Senator MENENDEZ. Thank you, Mr. Chairman.

Senator CRAPO [presiding]. Thank you, Senator Menendez.

I do not see another Senator on camera right now. Senator Thune is next. Senator Thune, are you here?

[No response.]

Senator CRAPO. All right, I have—I do see Senator Whitehouse. Senator Whitehouse, would you like to proceed?

Senator WHITEHOUSE. I would be delighted to. Thank you very much. And I want to, first of all, thank you, Senator Crapo, and our chairman for this hearing. And I want to thank Chairman Cantwell for her remarks and focus on fisheries. And I want to follow up on her questioning there.

One of the things that we have been trying to do has been to get the U.S. military to share its information better with our efforts at enforcement against pirate fishing in the open oceans. Our first effort to get the Navy to do this was met with the response that we should go pound sand. It was not their job. So we came back, and in the following NDAA got the Coast Guard roped into it. And there is a lot of information that the Navy and the Coast Guard have access to about the travel of ships on the high seas.

So as we are dealing with NOAA, with the Department of Labor, and with Customs and Border Protection folks on this, there is also this overlay of military and security intelligence that we should have.

I want to thank the Pew Trusts, and Vulcan, and other groups that have been really active in this space. Vulcan describes what it calls a “devastating and corrupt criminal conspiracy at the heart of the seafood industry,” and it is not just a question of forced labor, it is a question of actual slavery.

And of course if you are shipping stuff illegally around the globe, it is just as easy to put arms, or human trafficking victims, or other contraband in with the fish as well. So cleaning up this abuse of the high seas, I think is a real priority. And I wanted to ask Ms. Vandenberg what you see happening with this, and how we can work better together to combine all of the different assets and eliminate, once and for all, this problem.

A lot of things, like vehicle monitoring systems, are useful for providing data, but that presupposes that the fishing vessel is legitimate enough to install a vessel monitoring system, and not corrupt enough to flip it off as soon as it gets out of the territorial waters of its home country.

And it is really pretty gross stuff. I mean, you have people living in cages. You have stories of people who, when they got sick, were thrown overboard because it was too much of a pain to go and get them treatment.

I am sure it is a pretty brutal criminal conspiracy out there, and I am glad that Chairman Cantwell brought attention to it, and I hope we will keep that as a focus of this. It combines all the worst elements of forced labor, slavery, piracy, and international crime.

Ms. Vandenberg, your reaction.

Ms. VANDENBERG. Senator Whitehouse, I could not agree with you more. If you look at the reporting, for example, that is done by Ian Urbina and the publication of his book, “The Outlaw Oceans,” we are talking about modern-day slavery on the high seas in a way that is outside the reach of law, unless countries choose

to prosecute. And so murders that are committed against workers and fishermen on these ships are unpunished and are treated with total impunity.

I would just add a footnote to your comment on the Coast Guard. Several years ago we learned that a fisherman had been handing notes to Coast Guard officers boarding vessels. Those notes said, "Please help me." We are not certain at this point what the Coast Guard's protocol is when a fisherman on a boat cries out and asks for help because they are being held in forced labor.

So I would ask that the Coast Guard's protocol be clear about what they do, and how the U.S. Government will intervene when it finds forced labor on a vessel.

Senator WHITEHOUSE. Well, under the new NDAA provisions that we got put in, they are going to have to do more reporting on this. And we will be sure to add that to the questions that we have in our scrutiny of all of this.

The only thing I would add, Mr. Chairman, is that while they are not an outright pirate fleet, the Chinese fishing fleet is behaving in extraordinarily aggressive ways, both as regards crewing, picking people off of other countries and taking their papers and putting them into effective servitude, and also in terms of violating other countries' sovereignty—and even in the case of one instance in Indonesia, sending a Chinese military vessel into Indonesian waters to forcibly take back from Indonesian coastal authorities a Chinese pirate fishing vessel that it had seized and was going to sink, having seized it.

So it was basically an act of war, but the Indonesians do not want to tangle with the Chinese on that level. But in my trips, particularly with Senator McCain across the Pacific region, country after country after country raised concerns and complaints about the improper pressure of the Chinese fishing fleet against their sovereignty.

So I think it is an area where we can make some real friends in the region, if we are seen as being active supporters. I flag that for my colleagues, and thank you for recognizing me.

Senator CRAPO. Thank you, Senator Whitehouse. And those are very appropriate observations.

Next will be Senator Cortez Masto. And I should also say to the other Senators that I know we have a lot of Senators who are trying to shuffle a lot of actions today, but we need you to start coming back for the hearing.

Senator Cortez Masto?

Senator CORTEZ MASTO. Thank you. Thank you, Ranking Member Crapo.

Ms. Vandenberg, I would like to start with you. And thank you for this conversation today. I so appreciate the work that you have been doing, providing legal representation to survivors of human trafficking. This is an area that I have worked in previously as the Attorney General of the State of Nevada.

As you mentioned in your testimony, Federal prosecutors in the United States indicted just 12 forced labor cases in the entire country in the year 2019. So what would you say are the biggest barriers that prevent traffickers from being prosecuted in the United States?

Ms. VANDENBERG. Focusing on the global supply chain piece, so on the international cases, I think that there has been a tremendous reluctance at the Department of Justice to use the extra-territorial jurisdiction tools that Congress delivered in 2008. I think that is partly a resources problem. I think that the U.S. Attorneys' offices are reluctant to spend the resources required to do international investigations.

I think we need international investigators who are competent and trained to do the sort of investigations that would be required to bring these cases into a U.S. Federal court.

Again, looking into the FCPA, as an example, many of those cases are brought because companies self-report. Companies go to DOJ with evidence and white papers of their own and inform DOJ of bribes that have been paid before they get caught.

We do not have that same tradition with forced labor. Forced labor is currently treated as just a corporate social responsibility issue, which is enormously problematic.

Senator CORTEZ MASTO. Yes, I cannot agree more with you. To me, any type of human trafficking we need to aggressively enforce, and make sure we are doing everything we can. And I just so appreciate you having this conversation.

Let me ask you—with respect to forced labor, can you talk a little bit about how well the different Federal departments and agencies have coordinated around this strategy and tactics to meet this common goal? What should we be doing in Congress to help facilitate, if that is not happening?

Ms. VANDENBERG. I think that it is improving. And certainly the GAO has recommended increased interagency cooperation across the board.

One of the issues that we have is that Customs and Border Protection investigations are criminal investigations, and so there are legitimate reasons why it is not possible to share all of the evidence.

The increased cooperation that we are seeing, and that we welcome, is increased cooperation between Customs and Border Protection, ICE, and the Department of Justice. Because the end game here has to be prosecution of forced labor in global supply chains. And so that criminal justice alliance is what will lead to those prosecutions.

Senator CORTEZ MASTO. And can you touch a little bit on why prosecutions are so important? Just in general for people to understand, why does this make a difference?

Ms. VANDENBERG. On the forced labor side of the house, it sends an incredibly strong message that forced labor is not tolerated. Again, I have dealt with agents on forced labor cases where the agents have essentially pooh-poohed the case and said, "Well, this is just a dispute between an employer and an employee. This is not worthy of the Federal attention."

The reality here is that we have people who are facing threats of deportation, threats of violence, physical violence, sexual violence, in order to compel them to work. These cases are worthy of Federal attention, and it will be a much greater deterrent if we can say to corporations and perpetrators, "If you commit these crimes, the U.S. Government will prosecute you."

Senator CORTEZ MASTO. Thank you very much.

Thank you, Mr. Ranking Member.

Senator CRAPO. Thank you.

And next we will have Senator Brown.

Senator BROWN. Well, thank you, Mr. Chairman; thank you, Senator Crapo. I thank Chairman Wyden for holding this hearing today. He and I have done a lot of work together to close the consumptive demand loophole to combat forced labor and child labor. I am excited. This is the first hearing that the Finance Committee is doing in the trade space this year.

I have two questions. According to a GAO report issued earlier this month, CBP has issued 29 Withhold Release Orders since February 2016. Five of them cover a type of good produced in a specific location or region, such as cotton in Xinjiang, China, which produces 80 percent of Chinese cotton for apparel production in China.

The Center for Global Policy issued a report that suggests more than a half-million Uyghurs and other Muslim minority people in Xinjiang have been forced into picking cotton.

Chairman Wyden and I wrote to the previous administration urging them to do more to enforce the law and stop importing products made by state-sanctioned forced labor. We clearly must do more.

Ms. Vandenberg, you have recommended we strengthen enforcement of the existing regional WRO on cotton and cotton products in Xinjiang. Can you elaborate on your recommendations, please?

Ms. VANDENBERG. Absolutely. I work with a coalition of non-governmental organizations, the Tariff Act Advisory Group (TAAG), and we have actually submitted concrete recommendations to CBP that I referenced in my written testimony, encouraging them to robustly enforce region-wide WROs, and particularly the region-wide WRO on cotton and tomatoes in Xinjiang.

So very specifically, just three points.

Number one, there needs to be greater transparency. We do not have any insight at this point into shipments detained under the region-wide WRO that banned Xinjiang cotton and tomatoes. So we need more insight to see what is coming into the country.

Secondly, this is a very narrow approach. Looking only at goods coming directly from Xinjiang ignores the fact that has been raised in this hearing that goods will be trans-shipped, not just to other countries, but also from other regions in China. Brenda Smith of Customs and Border Protection's trade office has said herself that China itself tracks cotton down to the bale level. And so we need to also be tracking goods down to that level.

The last point I would make is just to reference the testimony from Scott Nova from the Worker Rights Consortium before the House Ways and Means Committee. He pointed out, and I think it is true, that at this point, companies should simply not be in Xinjiang. There is no reason to be there anymore. And this rebuttable presumption that goods coming from the region are made with forced labor, I think must stand.

Senator BROWN. Thank you so much, Ms. Vandenberg. I thank you for devoting your professional life to such important work.

My other question is for Mr. Wrona. Thank you for your advocacy on behalf of organized labor and the steelworkers. I wear a pin I've

worn through most of my congressional career; it's a pin designed and stamped by United Steelworkers, so, thank you for that.

One of the big themes that seemed to come across today's testimony is a need for additional transparency and better coordination among the CBP, other government entities, and stakeholders.

GAO has recommended CBP strengthen its communication with stakeholders and make a description of its WRO revocation and modification process publicly available. Several people today have recommended that CBP expand its collaboration and communication with other agencies like USTR—and we are thrilled with the 98–0 vote for the new U.S. Trade Rep—ILAB, the State Department, as well as nongovernment organizations.

So, Mr. Wrona, my question for you: what additional transparency would help unions and other worker support organizations protect workers who find themselves at risk of, or impacted by forced labor? And as you answer that, I ask you to answer this question, too: how does greater transparency around CBP decisions of ongoing investigations help protect workers at risk, as well as U.S. workers who are impacted by this?

Mr. WRONA. Well, Senator Brown, to your first question, I'm a maintenance worker in a plant, and I don't have that much knowledge on the transparency issue. But I do know that if I am at work and I have a job to do, it gets checked, whether by quality, by management, by whoever.

So I think it should be our government's job such that everything that is coming into this country can be stopped if they are products from forced labor. And greater transparency will help stop illegal goods and keep corporations that are honest in our supply chains. Thank you.

Senator BROWN. Okay; thank you, Mr. Wrona.

Mr. Chairman, thank you for the time, and I appreciate it. Thanks for doing this.

Senator CRAPO. Thank you, Senator Brown.

Next is Senator Thune, and then Senator Warren.

Senator THUNE. Thank you, Mr. Chairman.

Ms. Hughes, in your written testimony you state that member companies of the Fashion Industry Association have made, and I quote, "extensive progress toward removing links with forced labor in their supply chains." While forced labor is deeply wrong wherever it occurs, there is increasing evidence of Uyghur Muslim forced work in cotton fields and factories in the Xinjiang region of China.

What actions have your member companies taken to help ensure the goods they are selling are not from forced labor in China? And what is the most important thing that the U.S. Government can do to help, in your mind?

Ms. HUGHES. Thank you so much. I want to be very clear to the members of the committee that brands and retailers have taken action to not have any links to trade from the XUAR region and the Uyghurs.

You know, even before the Withhold Release Order was issued, it was clear from the information that was publicly available that there were problems and concerns in the region, and particularly with the pandemic where there was no ability for anyone to actu-

ally visit a facility to look for themselves. I think it is clear that companies have cut off those ties with the region.

So what could we really use? You know, I think the big takeaway from the hearing today is that more resources are needed overall for dealing with this issue. And for our industry in particular, we continue to look for more transparency—you know, release of names of bad actors, when we know who they are, release of best practices. When we see those, what is working—which may be tracking, transparency, technology solutions—more resources are definitely part of what we are looking for. And we look forward to working more with you and the committee.

Senator THUNE. Let me, just as a follow-up, talk a little bit about those Withhold Release Orders against Chinese entities—

[Loss of audio].

Senator THUNE. In November, CBP issued a Withhold Release Order on cotton products from Xinjiang, and 43 shipments valued at more than \$2 million. CBP is doing excellent work. But in your estimation, how can the Withhold Release Order process be made more effective?

And perhaps on a related theme, what new technologies should CBP be considering to detect where supply chains are most susceptible to forced labor?

Ms. Hughes, do you want to start with that? And if others have comments, that would be great. Thanks.

Ms. HUGHES. Thank you so much. When we look at the data for what had been detained, what you see is that those were obviously small shipments, probably from smaller producers. So we go back to, CBP needs to work with trusted traders—that is, the companies that have already been vetted and provided that information on their supply chains—and be able to focus their energies more on the bad actors.

The folks who are not part of trusted trader programs and are probably not the large importers to the United States, I think that that is one way to kind of use the resources that we do have more effectively.

Senator THUNE. All right; anybody else quickly on that?

Ms. VANDENBERG. I would just like to add, very briefly, that we are very concerned about the process for modification and revocation of these WROs. It is not just their issuance, it is also how they are removed over time.

And it is very important that workers be at the table to actually articulate and determine whether the remediation that the company claims it has done has actually been achieved.

We are seeing reimbursement of recruitment fees being completed over a period of months, rather than in a lump sum, which basically means that workers are loaning corporations money, which is not acceptable. So workers really need to weigh in on the validity of remediation plans that are submitted.

Senator THUNE. Let me just quickly shift to the labor audits. There was a *Wall Street Journal* report in September that said at least five auditing firms say they will not offer supply chain inspections in China's Xinjiang region. There was a U.S. Government report last year that stated the supply chain auditors had reportedly

been detained, threatened, or stopped by Chinese authorities in the region.

As American companies look at their supply chains, are they finding it more difficult to find independent labor audit inspections in Xinjiang? And given the lack of access for independent auditors, how are companies adapting their supply chains from the area? And I only have about 20 seconds left.

Ms. HUGHES. If I can jump in, just briefly, that is why companies are not doing business in the region. If you cannot audit—and we follow the example of the Better Cotton Initiative or the Fair Labor Association—many of the organizations that our members work with were not doing business in the region for exactly that reason.

Senator THUNE. Okay. I see I am out of time. I would love to get others' comments on that, but maybe they could supply them for the record.

The CHAIRMAN. Very good.

Senator Warren?

Senator WARREN. Thank you, Mr. Chairman. I appreciate it. And thank you for having this hearing.

The use of forced and trafficked labor in China and too many other places around the world ranks as one of the worst abuses of basic human rights. We have a moral obligation to stamp out these despicable violations and to protect workers, regardless of where they are in the world. This is about our values, but it is also about consequences here at home.

American consumers are unwittingly buying products made with forced labor at their local clothing stores. American workers are being placed in the impossible position of competing against forced labor and child labor. And big American corporations who have spent decades moving jobs overseas are taking advantage of forced labor to improve their profitability.

Mr. Wrona, are corporations doing enough themselves to scrutinize their own supply chains for forced labor?

Mr. WRONA. No. The answer is, absolutely they are not.

Senator WARREN. That pretty much answers it.

So let's talk about what corporations are doing. Apple, Nike, Coca-Cola, companies that are as American as apple pie, are just a few of the brands that are suspected of relying on suppliers that use forced labor. And they have spent huge amounts of money, and deployed armies of lawyers and lobbyists, trying to water down legislation that would make them take more responsibility for their supply chains.

So, Mr. Wrona, how do you reconcile these companies' actions with their strong public statements against forced labor? Do you—or let me ask it another way. Do you think they are likely to take meaningful steps to clean up their supply chains voluntarily?

Mr. WRONA. No, I don't think they will. That is why I believe the government has a role to protect our American workers from forced labor. Corporations making voluntary changes has been talked about for decades, of course, but this topic was—my father brought this topic up when I was a teenager. We talked and talked and talked about it, and not a lot gets done about it. It needs to stop now.

Senator WARREN. Yes. Well, I appreciate your point about how this has been going on for a long time, and it is just more talk. You know, there is a lot we need to do across government to end forced labor, and it starts with holding corporations that profit from forced labor accountable.

And that means corporations should not be allowed to hide behind cheap talk or opaque audit processes. They need to show us that their supply chains are clean, and to face meaningful consequences if they are not.

We also need to pass meaningful anti-corruption legislation to prevent corporate lobbyists from sabotaging efforts to put our core values ahead of corporate profits. Under no circumstances should our supply chain support the repression of workers' right overseas, or undercut workers' rights and workers economic security here at home.

It is long past time that corporations are held to account for their complicity in forced labor.

Thank you, Mr. Chairman. I yield back my time.

The CHAIRMAN. Thank you, Senator Warren. You and I both saw that Mr. Wrona set the all-time record for succinctness. And we have appreciated that.

Senator WARREN. And that is because there is no ambiguity on this point. As he said, we have been talking about that since we were all teenagers. We have understood this problem, and Mr. Wrona is ready to go on it.

The CHAIRMAN. Well stated.

Senator Carper?

[Pause.]

Senator CARPER. Can you see me?

The CHAIRMAN. Yes.

Senator CARPER. Can you hear me? Tommy, can you hear me? Tommy, can you see me? Apologies to The Who. [Laughter.]

Here we go. First I want to thank you for holding this hearing, Mr. Chairman, Ranking Member. I do appreciate the witnesses joining us as well.

I want to—and we are here to—discuss the challenges that we are facing when it comes to forced labor in our supply chain. It is a timely topic, and one that is important.

Throughout my time in public service as Treasurer, Congressman, Governor, and Senator, and Naval officer before that, I have tried to live by a few guiding principles. And some of them may sound familiar to all of you. One of them is The Golden Rule, the idea that we ought to treat other people the way we want to be treated.

And another one comes out of Bible study, later today. Barry Black, the Senate Chaplain, always reminds us to show up, and we have about seven, or eight, or nine of us who show up, for those who need the most help in the U.S. Senate, and he always reminds us of a verse of scripture, Matthew 25, about the least of these, that we need to care for the least of these among us.

And I want to live up to this. I think we have a moral obligation to those in need. We cannot turn a blind eye with respect to this obligation.

I have been heartened to see that the U.S. Customs and Border Protection has increased its forced labor enforcement actions, including, I am told, nearly 30 Withhold Release Orders in the past 5 years—30 Withhold Release Orders in the past, I guess it is the past 5 years.

I know there is still a good deal more we can do to ensure that our laws forbidding forced labor are not just words on a piece of paper, but that they really are enforceable. This means working with a number of entities, Federal agencies for one, private-sector businesses large and small, and nongovernmental organizations, consumers alike, to increase transparency in our supply chains.

The question, if I could, for Ms. Hughes and Ms. Vandenberg, is, could you share with us one or two recommendations for Customs and Border Protection and how that agency, that entity, can improve its communications with key stakeholders on forced labor, including industry and nongovernmental organizations? Please, Ms. Hughes, Ms. Vandenberg?

Ms. VANDENBERG. Thank you very much. As I know I have said multiple times today, this enforcement is the critical way that brands and retailers can guarantee that we are maintaining clean supply chains, and making sure that there is not forced labor in our supply chains.

So we specifically have been asking Customs and Border Protection—and we have been meeting with them regularly—for additional transparency on the findings that they do have, so that we are able to take action faster against the bad guys, and also to work with us to guarantee that there are other resources to—there is a lot of additional enforcement that we have talked about today, but we clearly need to beef up the resources that are available to CBP and to other agencies to deal with a globally difficult issue like forced labor.

Senator CARPER. All right. Ms. Hughes?

Ms. HUGHES. I would just add that communication has improved immensely, and CBP now meets with—

Senator CARPER. Over what period of time have you observed that?

Ms. VANDENBERG. In the last, I would say year, they have started meeting with the NGO community quarterly. And what we would like to see is much more informal back and forth. Some of that happens—I will give you a good example.

Greenpeace has done a great deal of work to get the Withhold Release Orders on vessel-level forced-labor fishing vessels. Those vessel-level Withhold Release Orders, we believe, should be expanded to fleet level, since that forced labor on one vessel would actually infect the entire fleet, because it is probably going on throughout the fleet.

So those kinds of communications with CBP, those informal communications, are extremely important. But it is also important for petitioners to know when CBP plans to take action on a petition. And it is also important for petitioners to know when CBP plans to revoke or modify a petition so that we can see whether the remediation on the ground is adequate.

Senator CARPER. And I have one follow-up question, if I could. This deals with improving the release order process—Ms. Vandenberg, if you would.

Recently, GAO, the Government Accountability Office, issued several reports that concluded that CBP faces challenges in implementing its Withhold Release Order process. At this time, CBP, as far as I know, has not shared its criteria process for revoking or modifying these Withhold Release Orders. And although the number of forced labor investigations has risen in recent years, CBP has struggled to collect sufficient data to set performance standards.

My question, Ms. Vandenberg, is, in your view, how can the WRO process be improved? And what additional might CBP need in order to bolster its enforcement authority?

Ms. VANDENBERG. So CBP has actually provided the revocation process documents and fact sheets on how the system works. But I do think that there is a need for additional resources to deal with the system-wide issues. Again, one of the things that we frequently say is that forced labor is a feature and not a bug. And so dealing with these issues as one-off attacks on individual bad guys is not going to work. CBP needs to work with unions and with workers' rights organizations in order to make sure that we are systemically eliminating forced labor.

Senator CARPER. Thank you, ma'am. I expect my time has expired. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Carper.

The next two in line are Senator Portman and Senator Casey.

Senator Portman, are you there? Or, if we do not hear from Senator Portman, we will go to Senator Casey and get Senator Portman later.

Senator Casey?

Senator CASEY. Mr. Chairman, thanks very much. And I want to thank you for this hearing.

I just have one question for Mr. Wrona regarding some of the material covered today, but also referencing a hearing we had earlier this week. We had a hearing on Tuesday about American competitiveness in the context of manufacturing.

And I know that your experience at Ferroglobe tells the other side of the story. That means illegal subsidies, forced labor, and over-capacity have been devastating for U.S. production and manufacturing. It is not simply a matter of providing better incentives. We have to have strong, iron-clad trade enforcement. Because if we do not, we will continue to lose foundational industrial capacity.

So we know in the United States we can make it here with good-paying jobs, family-wage jobs, \$70,000 and up, all the way up to \$100,000 or more. But we have heard a lot from this panel today, rightfully, on the impact of forced labor in foreign countries, but there are impacts here at home.

Forced labor anywhere—anywhere—harms workers everywhere. Illegal subsidies anywhere harm workers everywhere. So whether it is forced labor or illegal subsidies, can you talk about the impact that this has had on you and your family when you lost your job because of forced labor?

Mr. WRONA. When at Globe, and quite frankly, when American Axle closed, it impacted my family severely. I mean, I look at both of my children's student debt. If these manufacturing factories were still here, their debt would not be as substantial as it is, or at all.

Senator CASEY. Anything else you think we should know about what is the best policy here for us?

Mr. WRONA. I think American workers and American companies that manufacture here—it needs to be a fair playing field. There are certain things we just cannot compete with. Not only cheap labor, but slave labor is impossible for anybody to compete with.

Senator CASEY. A level playing field.

Well, I promised one question. Mr. Chairman, I will yield back more than 2 minutes. Thank you.

The CHAIRMAN. I thank my colleague. Members have pretty hectic schedules, so we are going to Senator Young, and then Senator Warner. And I hope others who would like to ask questions will let us know.

Senator Young?

Senator YOUNG. Thank you, Mr. Chairman. My home State of Indiana is the most manufacturing-intensive State in the country and employs over a half-million Hoosiers. Despite our excellence and success, we have not been immune to job losses because of offshoring, as companies seek cheap inputs from China.

A supply chain that is dependent on China is plagued with a number of issues. Intellectual property theft, disruptions, and forced data transfer are among them. And unsurprisingly, China is guilty of using forced labor to facilitate this dependence on their inputs in our supply chain.

Dr. Bonanni, in your testimony you explain how your technology can help businesses identify the use of forced labor in their supply chains. What are some barriers that might prevent a company from seeking your services?

Dr. BONANNI. Thank you for the question, Senator. The real problem here is that there is not a clear standard across the board. So we have companies that have already gone to the trouble of mapping their supply chains down to the raw materials, and have also extricated themselves from parts of the world where they felt the risk as simply too high to continue operating.

However, the standard is not evenly distributed. Transparency is not the norm. It is still the exception. And companies today need to be aware that identifying the actors in the supply chain, monitoring them continuously, and rooting out fraud, waste, and abuse are totally doable. These are things that are being done. They have been done now for years—that is, on the private-sector side, on the technology side.

On the Customs and Border Protection side, we just need a very clear standard for what kind of data companies need to collect regularly, and keep up to date and keep fraud-free, in order to be ensured that their shipments can enter the U.S. and be confident that those shipments do not touch forced labor.

And again, that standard needs to be applied across the board.

Senator YOUNG. Sure. So you have indicated that is an appropriate role, as you see it, for the Federal Government. Customs and

Border Patrol needs to come up with a coherent and consistent standard for the private sector.

Are there other roles that the Federal Government should fill in deterring the use of inputs or products at the hands of forced labor, to your mind?

Dr. BONANNI. I think that it is very clear that the diplomatic pressure that the government applies is extraordinarily useful and essential to rooting out forced labor. But in order to apply it effectively, we are going to have to look at not just those goods that are traced to the XUAR, we are going to have to look at all factors that could be used to pass through goods from the XUAR.

So the standard does need to be applied uniformly to effectively enact this diplomatic pressure. It also needs to look at other countries and other regions of China where these goods might be passing.

Senator YOUNG. Very good. Well, relatedly, I am working on a piece of legislation that, among other things, would require the disclosure of whether materials, goods, or services from areas such as Xinjiang were made utilizing forced labor. While I am skeptical that we can ever trust the information provided by Chinese companies, do you believe that such disclosure requirements would be helpful at the time of production and/or purchase of these goods?

Mr. BONANNI. Absolutely. Look, supply chain transparency is a new thing. Until just a few years ago, the technology did not exist to even implement that, how you communicate effectively with thousands of suppliers, tiers upon tiers upon tiers of supply.

Now that that technology exists, now that we can monitor that data for accuracy, we can cross-reference. We can look at satellites. We can look at third-party databases. We can audit the auditors. There is a tremendous wealth of technology available to companies that want to do this and do it the right way.

Senator YOUNG. And, yes or no, if possible, would I be correct to assume that you would agree that public companies that make profits off the back of those in forced labor camps should be forced to disclose their utilization of supply chains that run through Xinjiang?

Dr. BONANNI. I think the disclosure of all suppliers, direct and indirect, should be a norm that all U.S. companies, and all foreign companies doing business in the U.S., should be held to.

Senator YOUNG. Okay. Very good. I will be following up with some questions for the record to you, Doctor, about how blockchain technology can help tackle forced labor issues embedded within our global supply chain.

Dr. BONANNI. Happy to work with you.

The CHAIRMAN. Thank you, Senator Young. We are going to go to Senator Warner, and then Senator Cassidy. We are trying to go back and forth as much as possible.

Senator Warner?

Senator WARNER. Thank you, Mr. Chairman. Thank you for holding this hearing.

I want to build on so many of my colleagues' comments, but I do want to say one thing as we talk about China. I am very concerned about forced labor, and I am very concerned about the situation with the Uyghurs.

You and I serve on the Intelligence Committee, and we have raised concerns about China's technology and unfair competition in a series of areas. But I do think something I have tried to be sensitive to, literally over the last couple of years, is, when we talk about China, we constantly reference the fact that our beef is with the Communist Party of China. It is with the policies of Xi Jinping. It is not with the Chinese people. We stand with the Chinese people in Hong Kong who are trying to fight for freedom.

And too often, particularly accentuated by the former administration, this current blasting of China has translated into anti-Asian American hate activities. We see the tragedy that took place in Georgia yesterday. And I know from talking to my Asian American community, but particularly the Chinese American community in Virginia, that it is important that we make this distinction about our beef being with the Communist Party of China and Xi Jinping, which again has mistreated not only the Uyghurs, but I point to the people of Hong Kong.

Ms. Vandenberg, can you talk a little bit about which kind of product lines, and where we are seeing Uyghurs in forced labor in our supply chains? Because I think there is a general perception that it is chiefly low-end textiles and other things, but I think that it has proven not to be simply those lower-end things.

Ms. VANDENBERG. You are absolutely correct, Senator Warner. It is across the board. It is high-end goods that are electronic goods that we purchase. So it is high-end goods. It is also garments, clothing that is either produced in Xinjiang or in other parts of China, or in Vietnam and other countries where they export the cotton.

So I think that cotton and tomatoes are a good start for the WRO, but it is so much broader than just those two categories.

Senator WARNER. I would agree. As a matter of fact, there is a recent report by the Horizon Advisory Group that has shown that, in Xinjiang, a number of solar companies have actually moved in. We all want to move towards greater solar panel production, but when that production includes forced labor, it has to be of huge concern.

And I simply—in the effort to try also to cede back time, I just want to make one last comment, Mr. Chairman. That is, I echo some of the concerns that Senator Young has raised. I think we need more transparency on the global supply chain.

I think for a long time we have looked at the lowering of the prices that have come from the global supply chain, but with the opaqueness of that supply chain in this last year with COVID, we have seen the downside to that supply chain.

We have seen where we are dependent for the supply of our pharmaceuticals and raw materials coming disproportionately from China. We have seen single points of failure. We have seen—one of my concerns is that the Chinese Communist Party seeks an economic model whereby they allow competition in their domestic market, and some of that competition can be brought about by using forced labor. You always will then have a Chinese company win the Chinese domestic market—75 to 80 percent in the case of a Huawei. That translates into 20, 25 percent of the global market.

And then when China can bring enormous economic heft behind that Chinese champion, it puts any company, American or otherwise, at an economic disadvantage.

So I hope we can work on more transparency. I think Senator Young has some good ideas around that global supply chain. And I will close with this, simply, that we need to go after forced labor, but I think it really is important that we note that our beef is with the Community Party and their policies, not with the Chinese people.

And for the first time, Mr. Chairman, ever, I may be yielding back 41 seconds.

The CHAIRMAN. And I very much share your views, Senator Warner, with respect to who the real beef is with. It is not with the people who are working hard and trying to play by the rules; it is with that government. So I thank you for that.

We are now going with Senator Cassidy, followed by Senator Portman. We are trying to go back and forth with members, but it is kind of getting hard to keep track of everybody.

Senator Cassidy?

Senator CASSIDY. Dr. Bonanni, thank you for being here. I am very interested—Senator Young finished up by mentioning blockchain. It does seem like a distributed public ledger would help us follow many things.

Can you comment upon its potential usefulness in this situation?

Dr. BONANNI. Senator, thanks for the question. I absolutely think there are many places where a distributed ledger could be extremely effective and help to standardize exactly what I was talking about in my testimony, which is the disclosure of suppliers in the supply chain uniformly for high-risk and lower-risk regions alike. I will say that our company specializes in tracing supply chains from the retail all the way back to a small farm, or even an artisanal mine—operations that are completely off the grid, sometimes record-keeping is only done on paper, if at all. And we do need to look at a suite of technologies that does not leave out those parts of the supply chain where implementing a distributed ledger would right now represent a barrier to entry. We need a solution. And we have solutions that have been proven to work, and they work today for monitoring forced labor even in contexts where, until recently, all record-keeping was done on paper.

So while there is a place for blockchain, there is also a place for general use of the cloud and mobile technology, especially in emerging markets where smartphone adoption is taking off.

Senator CASSIDY. Got you. Now let me just explore that a little bit, because I was so pleased Senator Young spoke to that, because I have been thinking about it as well. Recognizing what you say, that from the factory door back down to the small farm, you need a different mechanism. But from the factory door all the way to the end retailer, it may be that a distributed ledger works.

And just for the context, we know that all the parties are able to look at the ledger, and they can monitor whether or not something has been done appropriately or not and if there is an alteration or attempt to forge a record to make it appear different than it really is, or at least as it was originally posted.

Is that a fair kind of a summary of the potential of the technology?

Dr. BONANNI. You know, the technology has that potential. I do want to caution. The ways that it is used are very subtle, and some of that data of course cannot be shared in a public blockchain because of antitrust concerns.

So there is a great deal of data that will have to be collected using existing techniques and technologies. I also want to add that once something is in the blockchain, it may not be changed. But fraudulent data can be written to a blockchain at any time.

And so we still need verifiable raw data to be collected at the source. And that means that the data has to exist in multiple places and be scrutinized by many pairs of eyes. And so we, for example, even when we have an auditor going through a factory, we track that the auditor is actually in the place where they are supposed to be. Before they had to use the smartphone to conduct the audit, we saw a lot of audits being completed from home or from the office.

And so we recognize that very high-tech solutions are beneficial, and especially for very sophisticated players in the supply chain. But we also need to make sure that we look for bad actors at every stage; that we do not just take data that has been declared by suppliers as being true.

Senator CASSIDY. Got it. With that, Mr. Chairman, I will yield the floor to whomever is next.

The CHAIRMAN. Thank you very much, Senator Cassidy.

Senator Portman?

Senator PORTMAN. Thank you, Mr. Chairman. And thank you for making this possible, with all of our schedules. I want to thank you for the hearing too, you and Ranking Member Crapo. This is a really important one.

Ms. Vandenberg, I appreciated your views this morning and your work more generally on this issue. You clarified that forced labor involves a lot of different sectors of our economy.

Ms. Hughes, I appreciate what you said in your testimony about how success should be measured by a reduction of forced labor. And we appreciate your company's work in that regard.

I have to tell you, I was surprised last year when I saw this investigation by *The New York Times* on what is happening during the pandemic in the Xinjiang region of China. This of course is where the Uyghurs are experiencing so many human rights abuses, and one of course is forced labor.

I learned that, with regard to personal protective equipment, PPE, there were only four companies prior to the pandemic that were producing PPE. Yet, by June that number had increased to 51 companies; 17 of those companies were known to utilize Uyghur forced labor.

While not all of these were for export—I acknowledge that—the principle still stands: instead of meeting the demand for PPE with products produced by forced labor in China, what we should be doing, obviously, is incentivizing the return of PPE production to the United States—just one more reason.

And one way we can do that is by issuing these long-term contracts. What we have found is, the companies in the United

States—and I spoke to some as recently as yesterday—they do want to produce more products here, textiles in general, but specifically PPE, but they need to know there is going to be a market for it. And specifically, it frustrates me that our Federal Government will not give them long-term contracts with some predictability and some certainty. And it seems to make sense, frankly, for the U.S. Government as well; otherwise, the reshoring is not going to occur.

So in our proposal called the Make PPE in America Act, we simply add a Berry Amendment requirement to strengthen these supply chains.

Mr. Wrona, I am going to turn to you because I have not seen you answer a question recently—I am sure you were busy earlier—but can you explain how doing this, diversifying the supply chains and reshoring manufacturing, can help reduce reliance on forced labor?

Mr. WRONA. Well, I think if the government would spend some money on our factories, and some investment—you know, Globe itself has spent millions and millions and millions of dollars fighting cheap Chinese products. If they were to spend that money on our factories, they would run more efficiently and maybe we would still be open.

We need some type of fair playing field to help us out. And if the country wants to go solar, wants to go green, but we are going to rely on 80 percent of our solar-grade silicon to come from China, so then we rely on China to go green? That does not make sense to me. I do not know how we can let that happen.

Senator PORTMAN. Yes. And it also helps with regard to the forced labor in China if we can have that PPE, as an example, be made here.

Mr. WRONA. Right.

Senator PORTMAN. So the general principle stands.

Another issue we talked about was this blockchain, the distributed ledger idea. And I found that a really interesting conversation with Senator Cassidy.

Dr. Bonanni, I think there is an opportunity here to use artificial intelligence better. I am chair of the caucus here in the Congress on this, and I led a letter with Senator Warner, actually last year, to Secretary Pompeo about the AI-enabled facial recognition technology the Chinese Party is using to surveil Uyghurs. And also other authoritarian regimes are increasingly using artificial intelligence. So it is certainly being used in a negative way.

But I also think that artificial intelligence can play a helpful role in combating forced labor. Researchers successfully used machine learning, as an example, to identify fishing vessels using forced labor by recognizing patterns that were unique to those vessels.

Your company uses technology in this regard. Are you interested in this? Are there forced labor signatures within supply chains? How can AI make it easier to identify those signatures which might not be readily apparent?

Dr. BONANNI. Absolutely. Look, I am an MIT guy at heart, so I think of this as a fight that we have against supply chain hackers. They are using modern technology to misrepresent the origins of goods to get them into the U.S., and we are still in many cases using last century's technology to monitor supply chains. And we

need to bring that level of technology that we use in enforcement much higher than the hackers. It is not that sophisticated what they are doing. We just need to detect fraud.

And what we do ranges from very simple things like making sure a farm produced the right amount to be expected for the area, to making sure that the audits are conducted blindly and with lots of supporting documentation. And all of that, you can think of it like a credit card company scanning your transactions to look for anomalies to put up red flags early, to help companies immediately detect a problem in their supply chain months before they even receive the goods.

So artificial intelligence, machine learning, those are absolutely essential to monitoring those supply chains once we have transparency.

Senator PORTMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cardin?

Senator CARDIN. Thank you, Mr. Chairman. And thank you very much for this hearing. It is incredibly important.

I want to ask Ms. Vandenberg and Dr. Bonanni a question in regards to what we can learn from our experiences in the trafficking world. In dealing with human trafficking, we have been able to get the global community to enact very strong laws. We talk about transparency and the need to deal with supply chains and forced labor, but we have strong laws dealing with trafficking. We have put resources behind those laws in order to get the facts. We do not have to just rely on transparency if we have capacity to know what countries are doing in regards to fighting human trafficking.

And then we have global recognition, through the Trafficking in Persons report, as to what every country is doing in dealing with this issue. And lastly, there are consequences if you do not meet certain standards. There are consequences in those regards.

And I can tell you that when I meet with representatives from other countries, they know about our Trafficking in Persons report. They know how they are rated. And that document has received widespread support, and of course it gets visibility every year when the report is released.

So my question to the two of you is, is there something we can take out of what we have been able to do with trafficking which also deals with forced labor and trafficking in labor? Are there lessons that we can learn in order to strengthen the transparency and global cooperation in rooting out the unfair human rights violations of forced labor?

Ms. VANDENBERG. So I would answer, briefly, with two points: one, end complicity; and two, be skeptical.

Number one, it is very difficult for the United States to complain about forced labor in supply chains when the end-importers of those forced-labor goods are U.S. companies and there is no enforcement against the U.S. companies and Customs and Border Protection enforcement is against suppliers on the ground in other countries.

So I think we need to make sure that we are holding American companies accountable for importing goods made with forced labor. One fine, one penalty is not enough.

The second point I would make is skepticism. The State Department learned over time that it needed to be very skeptical about self-reporting from those countries, about how many prosecutions and what enforcement they had done. They needed to be very skeptical that those countries were, for example, taking credit for work that was actually done on the ground by nongovernmental organizations, rather than with state funding or with state programs.

That skepticism from the Trafficking in Persons world should be focused like a laser beam on auditors. Because what we see with this audit industrial complex is exactly what Dr. Bonanni referenced: audits that are fake, audits that are bogus. I will just give you one example to close.

There was a factory that had a third-party auditor, and it was unannounced. So everything seemed utterly kosher. But when the unannounced auditor arrived at the door, the owner of the factory simply changed the music to a different song, which in the factory was the well-known sign to all the children to run out the back door.

So we have to be very skeptical of what is coming in about whether or not these supply chains are clean, because the auditors are not independent.

Dr. BONANNI. Let me just add two points on my end. The resounding lesson of the past year has been that Customs and Border Protection sent a signal that was heard around the world with WRO enforcement. It is leading, frankly, the world in this approach, and it has spurred a lot of companies to implement transparency, traceability, verification of their supply chain, in a way that they were not doing before Customs and Border Protection.

So I applaud CBP for doing this. And I think you should recognize just how powerful that signal has been to a variety of industries.

And the second is the same skepticism that I want to underscore, which is with that enforcement, with that will to enforce, there needs to be a commensurate collection, analysis, verification of data that can be used to definitively prove that a supply chain is up to par, but also to definitively exclude supply chains in which there is not sufficient transparency to have the confidence that there is not forced labor, and so that we can know and companies can know exactly who to do business with and who to avoid.

Senator CARDIN. I would just underscore that I agree with what was said, that in the trafficking review, we review all countries, including the United States, and destination countries have strong responsibilities in regards to stopping trafficking. And we rate countries on how well they do as destination countries, not just transit countries and countries of origin.

So your point is very well-taken. We need that transparency, and we need enforcement.

Thank you, Mr. Chairman. I appreciate this.

The CHAIRMAN. I thank my colleague very much.

I see our friend Senator Crapo is back. I believe there are no further members, Senator Crapo, and I thought I would deliver perhaps a 2-minute wrap-up of the week. Is there anything that you would like to say at this point?

Senator CRAPO. No; thank you, Mr. Chairman. I think this was a very needed hearing and a very helpful hearing, and I look forward to your wrap-up comments.

The CHAIRMAN. And I would only say that today these are exceptionally serious issues with respect to China's use of forced labor. It poses a threat to Chinese workers, American workers like Mr. Wrona, but it also is going to affect our ability to address the climate crisis in a meaningful and expeditious way. And to that end, I would like to introduce for the record two articles addressing concerns with the use of forced labor in polysilicon and solar panels.

Without objection, so ordered.

[The articles appear in the appendix beginning on p. 63.]

The CHAIRMAN. Let me, if I might—and I see Senator Crapo here—I have been struck this week. We have had three hearings in the Senate Finance Committee: boosting American manufacturing to get more high-skill, high-wage jobs for our people; improving nursing home care—urgent business after the national tragedy there of the last year; and now the question of ending forced labor so we can protect workers like Mr. Wrona, who spelled out exactly what happened when he lost a job as a result of forced labor.

And what runs through all of the work we did this week is the need for more good-paying jobs in America; health and safety—critical issues for our workers and our well-being; and transparency and fair treatment. And particularly when Senator Crapo is here, I want to note we have had exceptional participation by Democrats and Republicans all week long, when there were a lot of activities going on here.

I regard this as a good sign. I think there is a lot of what we discussed this week that can be tackled in a bipartisan way, with colleagues working together—starting with the semiconductor issue. Those memory chips drive everything as it relates to the way we live.

So this has been a great panel, and really a very important week. Questions for the record on today's hearing are due next Friday, March 26th, by close of business.

And I thank our guests. You gave us in this third session a lot of very constructive ideas about, again, what we need to do in this country to strengthen the ability of Americans to get high-skill, high-wage jobs, and we can do it in a bipartisan way.

With that, the Finance Committee is adjourned.

[Whereupon, at 12:01 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF LEONARDO BONANNI, PH.D.,
FOUNDER AND CEO, SOURCEMAP INC.

Chairman Wyden, Ranking Member Crapo, distinguished members of the committee, thank you for the opportunity to speak with you today.

I am the founder and CEO of Sourcemap, a leading provider of technology for supply chain transparency.

As this committee has underscored in bipartisan fashion, forced labor is endemic to many supply chains. At the same time, no company can afford to audit every supplier, every day. Business needs a scalable solution.

I founded Sourcemap at MIT with the goal of leveraging the reach of the Internet to monitor global supply chains to a degree that was never before possible.

Let me describe how it works. First, we set up a unique social network to help companies identify all of the actors in their supply chain, down to the names and addresses of every mine, every farm, every factory and every warehouse.

Second, companies use this network to regularly collect data from *all* of the actors in the supply chain, which our software then analyzes to detect patterns that indicate the presence of forced labor. We can even collect data in remote supply chains where there is little to no Internet access using a smartphone app that works on- and offline.

Third and most importantly, we never take the information that has been provided at face value. Instead we continuously analyze data from suppliers for errors and omissions, and for patterns of fraud, waste, and abuse. To do this we use the best available techniques including satellite imagery, mobile device tracking, machine learning and artificial intelligence.

The demand for this level of supply chain transparency is growing. Sourcemap is used today by some of the largest companies in the United States, companies responsible for tens of billions of dollars in U.S. imports. Thousands of their suppliers log into Sourcemap from every corner of the globe to share extensive information on their supply chains. That's because supply chain transparency is a very small price to pay for access to the U.S. market.

For the first time in the history of globalization, companies can have a map of their global supply chain that's verified and up-to-date. It's not transparency for transparency's sake: this map is the foundation for identifying and remediating forced labor in the end-to-end supply chain, so that one day every container arriving in the U.S. can have a clean bill of health.

Is this a panacea? No. But it represents a step change in the degree of supply chain transparency businesses and governments can expect in support of their ongoing fight against forced labor.

Mr. Chairman, supply chain transparency is good for business in many other ways: it reduces risk, it saves money, it helps to secure hard-to-get materials, and it helps to monitor for quality, counterfeiting, environmental conditions, and health and safety.

This committee has an important role to play. This hearing itself sends a message that you expect action from all stakeholders. Mr. Chairman, I know that you have

been working with Senator Brown (D–OH) on new tools to empower CBP. I encourage you to put supply chain transparency technology at the center of those efforts.

Supply chain transparency needs to become the norm. At a minimum, companies should disclose the names and the addresses of their direct *and* indirect suppliers. This evidentiary standard will establish the United States as the leader in combating forced labor in supply chains, while saving companies and CBP millions of dollars.

Setting a simple standard for supply chain transparency will help create a level playing field for all companies importing goods into the United States.

It's not just the right thing to do for our values: it's the smart thing to do for U.S. business and for U.S. workers.

Thank you for the opportunity to testify, and I look forward to your questions.

QUESTIONS SUBMITTED FOR THE RECORD TO LEONARDO BONANNI, PH.D.

QUESTION SUBMITTED BY HON. MIKE CRAPO

Question. It appears that we are underutilizing the potential of technology in combating forced labor imports.

What can be done at CBP to expedite adoption of new technologies?

Answer. Let me underscore that my company welcomes the opportunity to sit down with CBP and talk about the difference that technology can make today. We work with the U.S. Department of Labor on supply chain tracing and engagement methodologies; we have found government actors to be highly motivated and mission-driven to succeed; and we bring expertise and best practices from our ongoing work with some of the largest companies in the United States.

I believe that supply chain transparency technology can be a game-changer for Customs and Border Protection in its day-to-day activities, and that it can benefit its relationships with U.S. importers. Supply chain transparency provides a clear evidentiary standard for the types of data needed to prove that a shipment or a supply chain is free of forced labor. The technology we have developed for supply chain transparency ensures that businesses can efficiently collect this data, verify it and share it with the authorities. CBP deserves access to the same technology that companies use so that together they can cast a wider net to identify risks and alternatives across global supply chains.

As the committee considers investing in and giving additional tools to aid CBP in its mission, we would emphasize the technology opportunity at hand—an opportunity that did not exist 10 years ago. Today we can take the most complex supply chains, map and verify them, and keep tabs on them using real-time intelligence to empower companies and governments to make informed and timely decisions. We want to make supply chain transparency technology available to more companies, more NGO's, and more governments, not just as a commercial opportunity, but because the more supply chain transparency is deployed in more parts of the world, the harder it is for bad actors to hide in the shadows. Neither government nor the private sector can do this alone, and the more companies act, the more entities make clear that supply chain transparency matters, the more pressure builds on other governments to act as boldly as the United States.

QUESTION SUBMITTED BY HON. TODD YOUNG

Question. For the average layman, blockchain is associated with Bitcoin and cryptocurrencies; however, there are several other applications that can use ledger technology—especially beyond the field of finance.

Today, humanitarian and tech leaders are actively exploring how blockchain could revolutionize humanitarian response.

Can you comment on how blockchain can help tackle forced labor issues embedded within our global supply chains?

Answer. Blockchain is often associated with Bitcoin and non-fungible tokens (NFTs), but its applications for supply chains are entirely different: blockchain allows each actor to keep their commercial data confidential while sharing enough to provide assurance on a product's chain of custody. It could be an effective way for

CBP to encourage data sharing from U.S. importers to ensure that imported goods are free of forced labor, without the risk of commercial data being shared or misused.

However, blockchain technology is ill-suited to the upstream or raw materials supply chain, where the risk of forced labor is most pronounced. Blockchain requires that advanced technology be adopted by all of the actors in the supply chain, yet raw materials often come from areas with limited Internet access and little or no computerized inventory management. Most importantly, blockchain does not prevent fraud: false data can be entered by anyone in the supply chain, and blockchain is too costly to collect the meta-data that could be used to verify a supply chain.

Instead, smartphone audit apps together with cloud data validation are a cost-effective, proven solution to establishing a clean chain of custody while continuously monitoring for fraud, waste and abuse. We deploy this technology in high-risk regions because it casts a much wider net than blockchain by collecting and corroborating supply chain data using other information, including business licenses, contracts, receipts, audit reports, and on-the-ground GPS, photo and video evidence.

QUESTIONS SUBMITTED BY HON. JOHN BARRASSO

CONGRESSIONAL PROPOSALS ON IMPORT BANS

Question. Since 2009, China has been included on the List of Goods Produced by Child Labor or Forced Labor. The Bureau of International Labor Affairs recently added five new categories of products from Xinjiang to the list. It included gloves, hair products, textiles, thread/yarn, and tomato products.

In January, the Trump administration issued a sweeping ban on imports of cotton and tomato products from China due to evidence of forced labor. There are several congressional proposals aimed at expanding the administration's authorities to more robustly address widespread and systematic forced labor in China.

What are your views on the proposal to implement a comprehensive import ban on all goods produced, wholly or in part in Xinjiang?

Answer. It's important for Congress, regulators, and policy-makers to make decisions on how best to clamp down on the use of forced labor worldwide, including by recognizing the heightened risk of sourcing from specific regions and industries. These decisions are critical not only for business, but as a reflection of American values and interests. And we believe it's in everyone's interest to make these decisions and processes transparent so that businesses, NGO's, and other actors can understand and adopt them as soon as possible.

But I would also highlight a lesson we've learned, sometimes the hard way: a blanket ban on imports from an industry or a region is a well-intentioned lever that governments can deploy, but it can lead to a global game of Whack-A-Mole where banned goods are smuggled through intermediaries in other regions or countries to make their way to the U.S. market. That's why deploying supply chain transparency standards and technology is so important: because it levels the playing field for all importers and makes it impossible for these abuses to hide "off the grid."

Question. What ways would you recommend the United States take to enhance import controls and enforcements on goods produced in China?

Answer. Import controls and enforcement are an important way to impact the supply side of the forced labor challenge; it's important that companies have the information they need to fight it from the demand side as well. We have seen companies make significant changes to their purchasing practices and their global supply chains through increased supply chain transparency. The same data and technology would benefit CBP as a way to uniformly and efficiently assess the risk of forced labor, and detect fraud, across industries and regions. I would humbly recommend that the committee keep supply chain transparency technology front and center in discussions about new controls and enforcement because it provides a common standard for which data can be collected, verified, and shared, and a proven solution for doing so at scale. Technology can empower governments to facilitate data sharing between all stakeholders, including NGO's and companies, to create a greater awareness of the scale of the challenge, and to empower U.S. companies to fight forced labor anywhere.

PREPARED STATEMENT OF HON. MIKE CRAPO,
A U.S. SENATOR FROM IDAHO

This is a very important hearing.

The International Labor Organization estimates nearly 25 million people in the world are victims of forced labor. The criminals behind this tragedy reap nearly \$150 billion in profits every year. As horrifying as that is, nearly 30 percent of the victims are also victims of forced sexual exploitation—and generate \$99 billion—two-thirds of the profits I just referenced.

The fight against forced labor is not a Democrat issue or a Republican issue; it is an issue that unites all Americans. That is critical to remember.

Americans, including consumers, workers, and businesses, are all committed to this fight—and doing everything possible to combat this scourge. The problem lies not with them, but with foreign autocrats, and individuals who lack all sense of basic humanity. Our fight is with them.

For example, China's government has pressed nearly 100,000 Uyghurs and other Muslim minorities into forced labor, while euphemistically calling it "poverty alleviation." As the Newlines Institute for Strategy and Policy explained in a report last week, China's treatment of the Uyghurs meets every criteria of genocide under the United Nations' Genocide Convention. That report's findings join declarations by foreign legislatures, including Canada and the Netherlands, and track with a similar determination made by the State Department during the Trump administration.

Accordingly, Senators like Marco Rubio and Jeff Merkely, and many others, are showing leadership on this issue through their proposed Uyghur Forced Labor Prevention Act. Their efforts should be matched by the current administration.

The U.S. Secretary of State and National Security Advisor are meeting today in Alaska with their Chinese counterparts. Forced labor is among the human rights issues they need to press with them.

Critically, this all reinforces the need to broadly empower Americans and other good citizens of the world to be able to more effectively respond to this challenge. This includes effectively utilizing technology to identify where goods made with forced labor can enter the supply chain. It means our laws and regulations must be transparent and provide informative and thoughtful guidance so Americans know how to avoid importing such goods.

It means we need to know the ongoing efforts of our businesses so that the government can help leverage them in the fight against forced labor. Many of them have developed best practices to stamp out forced labor from their supply chains. We need to leverage their experience and expertise.

Finally, it means we must partner with civil society to raise awareness on this important issue. The witnesses we have today can speak to each of these points. Their expertise and knowledge will help this committee address this important matter. Mr. Chairman, I am glad this is an issue we both care about deeply.

Thank you for organizing this hearing. I look forward to the testimony from our witnesses.

PREPARED STATEMENT OF JULIA K. HUGHES, PRESIDENT,
U.S. FASHION INDUSTRY ASSOCIATION

Chairman Wyden, Ranking Member Crapo, and members of the committee, thank you for the invitation to appear today. My name is Julie Hughes, and I am the president of the U.S. Fashion Industry Association. I appreciate the opportunity to testify on behalf of the industry about the fight against forced labor and how to improve enforcement to reach our shared goal of the elimination of forced labor.

A little background about the United States Fashion Industry Association (USFIA). USFIA represents apparel brands, retailers, importers, and wholesalers based in the United States and doing business globally, including many of the iconic brands worn and loved by everyone participating in this hearing. Our members are global, with production, operations, and sales in the United States and around the world. Our member companies manage supply chains that span the globe. Global trade, and ethically sourced trade, is essential for American brands and retailers to be successful and reach consumers around the world.

More than most types of manufactured goods, the fashion industry relies on global supply chains. A bale of cotton may be grown in Texas, shipped to Europe to be made into yarn, shipped to Korea to be made into fabric, shipped to Vietnam to be made into apparel, and shipped to the United States to be sold at retail in a store back in Texas. But even more exciting, those garments made using that supply chain also might be sold in Singapore, Japan, Dubai, or London.

Because we are a global industry, we know that forced labor exists in many parts of the world. For several decades USFIA member companies have maintained codes of conduct and strict requirements for supply chain partners that ban the use of forced labor. Companies maintain an extensive network of contracts, audits, verifications, training, and direct engagement with their suppliers.

But we recognize that there remains more action needed to guarantee that forced labor is not in the supply chain for fashion products. One example is the supply chain for cotton products. The growers who produce this cotton commonly sell to traders, or middlemen, who intermingle the crops of several farms and regions and send cotton to ginning facilities all over the world. Indeed, U.S. cotton comprises 38 percent of world exports and a substantial quantity of it is used in China. China alone imports more than \$800 million of U.S. cotton annually.

Ginning facilities, in turn, send their product to middlemen and traders, who, again, intermingle their purchases and sell to yarn spinners all over the globe. Yarn spinners will, at times, outsource the dyeing portion of their production, before selling their yarn to fabric producers all over the world. Fabric producers, too, may outsource their dyeing operations before supplying apparel-producing customers that are also spread all over the globe.

Retailers and apparel brands are at the end of this supply chain and, while retailers and brands can effectively ensure that the cut and sew operations with which they do business are free of forced labor, it is often a challenge for retailers and brands and their apparel-producing vendors to ensure that every bit of cotton, or yarn, or fabric incorporated into the final product is free of forced labor. The further down the supply chain you get, the more difficult, if not impossible, it gets to obtain visibility into the origin of the inputs and the conditions of their manufacture.

While it is difficult, and complicated, this is an important task for the industry. So, what are we doing to root out forced labor from the supply chain?

Even before the very public media reports about forced labor in the past year, fashion industry, apparel, footwear and retail associations joined together to create an ad hoc forced labor working group to facilitate the sharing of information and the sharing of resources among the industry. One of the first tasks was to create an online resource of initiatives and best practices available, and we continue those discussions.

As part of this process, the industry is pioneering and implementing new technologies and innovative approaches to decipher where supply chains are susceptible to forced labor. Our member companies have made extensive progress towards removing any associations with forced labor in their supply chains as they continue to strengthen measures to identify and eliminate forced labor.

USFIA members have long audited and inspected suppliers to ensure that their suppliers do not use forced labor (or engage in other abhorrent labor practices, for that matter). Our member companies regularly seek certifications that the vendors to their suppliers also do not utilize forced labor, an effort that was bolstered almost 10 years ago by California's Supply Chain Transparency Act, which requires apparel brands and retailers to undertake best efforts to audit the supply chain for forced labor and to inform the public of the results of the audit. We support adoption of a similar regulation on a national level to codify our members' efforts and expand to apply to not just U.S.-based companies, but all companies that sell in the U.S. above a certain sales threshold.

The task is not easy (to put it mildly). My personal belief is that to eliminate forced labor we need to go beyond what companies can do on their own, and go beyond an emphasis on punitive measures, to use multi-stakeholder approaches. The combination of civil society, NGOs, companies, governments and international institutions is needed to reach our shared goal to eliminate forced labor.

I would like to share a few examples. For more than a decade brands and retailers have been a part of an initiative called the Cotton Campaign. The Cotton Campaign was created to combat the government sanctioned use of forced labor in the cotton fields in Uzbekistan. From the beginning this initiative included NGOs and

civil society, as well as industry associations such as USFIA, and especially brands and retailers. While it has taken time, this campaign has had an impact.

Today the Uzbekistan Government no longer supports forced labor to harvest cotton—it is now against the law. And while the ILO monitors and civil society found that forced labor is not yet fully eliminated based on last year's harvest, the scale and breadth of forced labor is tremendously reduced and I think all agree the progress has been substantial. With the end of state support, the Cotton Campaign is now moving forward with an innovative concept to develop Responsible Sourcing Agreements with the cotton growers and the cotton cooperatives, and brands, to ensure that there is direct engagement and monitoring for the future. We support this initiative and hope it will be a successful approach that can be used in other areas.

One other approach that is just at the beginning is YESS™: Yarn Ethically and Sustainably Sourced (YESS). This is an initiative of RSN, an NGO that works to eliminate forced labor associated with raw material inputs and works to eliminate forced labor from the textile value chain by building capacity and managing an assessment of value chain actors' ability to identify, address, and prevent sourcing cotton produced with forced labor. YESS applies the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, which has wide industry and government support and is a proven method for companies to identify and address risks over time. With financial support from brands and retailers, and a program developed by leaders who have been active in the labor community for decades, the main goals of this project are to:

- Build capacity with and empower yarn spinners and textile mills to implement a due diligence system to identify and address forced labor involved in cotton production;
- Enable brands to make informed sourcing decisions and avoid sourcing cotton produced with forced labor;
- Promote harmonized engagement and assessments of spinners and textile mills; and
- Spearhead an industry-wide, risk-based due diligence approach to identify, prevent, and mitigate forced labor in cotton production.

There also are two pilot projects funded by the Department of Labor that will focus on developing solutions to forced labor that bring together technology, tracking and supply chain. ILAB partners with international organizations, non-governmental organizations, universities, research institutions, and others to advance workers' rights and livelihoods through technical assistance projects, research, and project evaluations. USFIA welcomes efforts to bolster ILAB's work. Such efforts leverage existing authorities and expertise at ILAB to develop and improve supply chain tracing technologies, and promotes collaboration and shared learnings between the U.S. Government and the private sector in identifying and deploying reliable, scalable, and affordable supply chain tracing tools.

Earlier this year the Labor Department funded two \$4-million awards for cooperative agreements to Verité Inc. and ELEVATE Limited to implement technical assistance projects to increase the downstream tracing of goods made by child labor or forced labor. The award to Verité will support a pilot for upstream tracing of raw cotton, thread/yarn and textiles in India. ELEVATE's award will support pilot tracing in supply chains for cotton in Pakistan and cobalt in the Democratic Republic of the Congo. These pilot projects have the capacity to enable enhanced supply chain tracing tools and methodologies across industry sectors that are traditionally complex and opaque, improving our members' ability to fully identify and eliminate forced labor in their supply chains.

Even with all these exciting initiatives, and a commitment from the industry, we are committed to do whatever we can to eliminate forced labor, and we very much want to work with Congress and the executive branch to eliminate this scourge.

Now, how can the Government help us tackle the challenge of forced labor in the supply chain?

First, with respect to stakeholders in the executive branch, I cannot stress strongly enough the need for a coordinating effort to engage our trading partners to eradicate forced labor from the supply chain. The State Department, USTR, the Department of Labor, the Commerce Department, the NSC, and USDA should make it a priority to execute a "whole of government" strategy to eliminate forced labor from supply chains. Similar to the testimony the committee heard earlier this week about supply chains, we know that the path to success will be faster and better if there is a unified approach. We also strongly support efforts by the administration and

the Congress to take a leadership role on this issue on the international stage. Forced labor is a global problem—a problem that often involves the active or tacit blessing of foreign governments—and so calls for a global solution whenever possible.

We also want to look at the role of U.S. Customs and Border Protection to implement an enforcement strategy to guarantee that no products with forced labor reach the United States. U.S. companies are partners with CBP on enforcement. The policy of informed compliance and the participation of companies in the CBP Trusted Trader programs means that there already is a shared approach to enforcement. What we believe would help improve enforcement is more transparency in the process and more of a shared approach.

USFIA supports the series of recommendations released this week by the Commercial Customs Operations Advisory Committee (COAC) Intelligent Enforcement Subcommittee Forced Labor Working Group, which include:

- (1) The recommendation that CBP take a collaborative, multi-agency approach utilizing the expert resources of all relevant U.S. Government agencies to develop a synchronized strategy, as well as engage more extensively in dialogue and priority setting with the trade. This includes working with the Departments of Homeland Security, Labor, Treasury and State, as well as Immigration and Customs Enforcement and the Office of the U.S. Trade Representative;
- (2) The recommendation that CBP expand its collaboration and communication with the trade sectors and industries, identifying and sharing best practices, including government to industry efforts to minimize forced labor in supply chains;
- (3) The recommendation that CBP develop an objective methodology to measure the “success” of the agency’s forced labor informed compliance, facilitation, enforcement, and risk mitigation that is not based on enforcement output. Rather, a best developed practice would be to measure success based on outcome metrics that ultimately focus on improvement of the communities most impacted by forced labor, as recommended by the GAO 2020 Forced Labor Imports Report; and
- (4) The recommendation that CBP apply the same principles, tools, guidance, and outreach to forced labor as is the case with the other Priority Trade Issues, that is, “world class expertise to design trade processes and policies that minimize cost and provide certainty, transparency, security, and predictability to members of the trade community.”

USFIA also agrees with the conclusion of two recent GAO reports, which evaluated Customs and Border Protection’s process for issuing and enforcing withhold release orders (WROs) in response to suspicions of forced labor. Last fall, the GAO recommended that CBP evaluate whether or not its forced labor division was staffed adequately and with the right expertise. Then, just a couple weeks ago, the GAO urged CBP to be more transparent about the criteria and evidence that it uses to modify and withdraw WROs. CBP apparently agreed with both of these recommendations.

Very importantly, in addition to the GAO’s recommendations, CBP should work to adopt objective criteria to measure success. Success should not be measured merely by the number of detentions. Rather, success should be measured by the degree to which CBP’s enforcement activity is effectively reducing forced labor. To this end, CBP should adopt a risk-based approach to enforcement, focusing on the worst actors first and providing as much predictability and certainty to impacted stakeholders, as possible, to enable them to amplify CBP’s enforcement efforts.

Another area where more transparency is needed is for CBP to share best practices, and other solutions, when they find them. CBP recently began a pilot program with a company that may have the capability to identify the origin of finished cotton products entering the borders of the United States. We welcome this effort. Any congressional action should require CBP to report back to Congress and the public on the learnings from this demonstration pilot, to include actual or potential shortfalls or gaps in the capability, and enter into pilots with other vendors to similarly assess alternative capabilities to trace the origins of finished cotton products and other commodities.

Finally, to build upon tools like the Department of Labor’s Sweat and Toil and Comply Chain mobile applications, and the Xinjiang Supply Chain Business Advisory issued by the executive branch this summer, Congress could endorse and fund

a “forced-labor free” supplier certification process, similar to the Democratic Republic of Congo Conflict-Free Smelter certification program developed by the Responsible Business Alliance. The certificates could serve as proof of due diligence and admissibility of the product into the U.S. The bill could charge Labor with developing and administering the program, in close coordination with CBP.

Thank you again for asking for USFIA’s input today. Fashion brands and retailers have zero tolerance for forced labor. We believe that working together to eradicate forced labor from global supply chains will be good for American workers and American consumers, and for world. USFIA and its member companies stand ready to work with the members of the committee and with the Congress to achieve this goal.

QUESTIONS SUBMITTED FOR THE RECORD TO JULIA K. HUGHES

QUESTIONS SUBMITTED BY HON. MIKE CRAPO

Question. U.S. businesses are partners in combating forced labor. It is imperative that CBP develop an enforcement strategy that works with reliable American businesses to focus on unscrupulous actors.

What elements would you look for in such a strategy?

Answer. USFIA agrees that an effective enforcement strategy is essential to combat forced labor in all its forms. The strategy must be built on partnership and collaboration between business and U.S. Customs and Border Protection. We all support the goal for an enforcement strategy that guarantees that no products with forced labor reach the United States. The framework already exists for a shared approach to enforcement—the policy of informed compliance and the participation of companies in the CBP Trusted Trader programs. The top priority to improve enforcement is more transparency with respect to CBP decisions to withhold release and/or subsequently release shipments and expanding the collaboration for enforcement by working with the companies that are on the frontlines.

As an overview, USFIA recommends the creation of a public CBP strategy that is transparent, evidence-based, and risk-based. Historically that approach to enforcement has been successful.

To achieve that goal, USFIA would like to highlight some of the recent recommendations from the Commercial Customs Operations Advisory Committee (COAC) Intelligent Enforcement Subcommittee Forced Labor Working Group, which include the following:

- (1) The recommendation that CBP take a collaborative, multi-agency approach utilizing the expert resources of all relevant U.S. Government agencies to develop a synchronized strategy, as well as engage more extensively in dialogue and priority setting with the trade. This includes working with the Departments of Homeland Security, Labor, Treasury and State, as well as Immigration and Customs Enforcement and the Office of the U.S. Trade Representative;
- (2) The recommendation that CBP expand its collaboration and communication with the trade sectors and industries, identifying and sharing best practices, including government to industry efforts to minimize forced labor in supply chains;
- (3) The recommendation that CBP develop an objective methodology to measure the “success” of the agency’s forced labor informed compliance, facilitation, enforcement, and risk mitigation that is not based on enforcement output. Rather, a best developed practice would be to measure success based on outcome metrics that ultimately focus on improvement of the communities most impacted by forced labor, as recommended by the GAO 2020 Forced Labor Imports Report; and
- (4) The recommendation that CBP apply the same principles, tools, guidance and outreach to forced labor as is the case with the other Priority Trade Issues, that is, “world class expertise to design trade processes and policies that minimize cost and provide certainty, transparency, security, and predictability to members of the trade community.”

To build on the COAC recommendations, USFIA would like to emphasize a few recommendations. First, a successful strategy requires CBP to adopt objective cri-

teria to measure success. Success should not be measured merely by the number of detentions. Rather, success should be measured by the degree to which CBP's enforcement activity is effectively reducing forced labor. To this end, CBP should adopt a risk-based approach to enforcement, focusing on the worst actors first and providing as much predictability and certainty to impacted stakeholders as possible, to enable them to amplify CBP's enforcement efforts. This builds on the recommendation that CBP work more closely on this issue and coordinate with Trusted Traders, whose supply chains are known to CBP.

A focused strategy also depends on CBP sharing best practices with industry. Whether there are insights gained from the review of supply chains, or insights gained from pilot programs using technology solutions, targeting and enforcement will be greatly improved if those learnings are shared with industry. USFIA also welcomes support from Congress to require CBP to report back to Congress and to the public on best practices.

USFIA also recommends that the strategy include specific plans to assess and take action to ensure that there is adequate staffing and resources to achieve the strategy. This includes staff with the appropriate expertise and training to ensure the enforcement team is fully engaged with complex supply chains.

Question. Some of the businesses in your association have developed supplier codes of conduct. Some of them rely on international instruments like the Universal Declaration of Human Rights and some of the International Labor Organization's (ILO) conventions. It is positive that American companies are striving for high ethical standards.

What are some of the minimum elements an effective Code of Conduct should contain, and what can CBP do to help reinforce those efforts?

Answer. Fashion brands and retailers do business globally—both sourcing around the world and selling to consumers around the world. For several decades, USFIA member companies have maintained codes of conduct and strict requirements for supply chain partners that ban the use of forced labor. Companies maintain an extensive network of contracts, audits, verifications, training, and direct engagement with their suppliers. Companies regularly update their Codes of Conducts to reflect new risks and best practices to address them. Industry best practices keep the welfare of workers at the center of remediation.

Some of the minimum elements that are part of an effective Code of Conduct are: clear descriptions of standards; clear descriptions of corrective actions and timelines for remediation if a violation is found; and clear descriptions of practices for which the purchaser has zero tolerance, practices that always include forced labor and that also commonly include such things as forced overtime and unsafe working conditions.

Question. One of the major challenges faced by U.S. businesses is the Chinese Government's lack of transparency and outright obstruction of efforts by U.S. businesses to stamp out forced labor from their supply chains. To put pressure on China, we need to work with allies—as the Biden administration has indicated it will try to do.

How do you think we can expand our relationship with foreign allies and foreign companies to push China to end the use of forced labor, and to stop further harassment of U.S. businesses?

Answer. The State Department, Office of the U.S. Trade Representative, the Department of Homeland Security, U.S. Customs and Border Protection, the Labor Department, the Commerce Department, the Agriculture Department and the National Security Council, should make it a priority to execute a whole-of-government strategy to eliminate forced labor wherever it is found. We know that the path to success will be faster and better if there is a unified approach with the U.S. Government as well as with key allies. Multilateral action and engagement by international institutions are needed, as well. We strongly support efforts by the administration and Congress to take a leadership role on this issue on the international stage. Forced labor is a global problem—a problem that often involves the active or tacit blessing of foreign governments—and so calls for a global solution whenever possible.

QUESTION SUBMITTED BY HON. TODD YOUNG

Question. For the average layman, blockchain is associated with Bitcoin and cryptocurrencies; however, there are several other applications that can use ledger technology—especially beyond the field of finance.

Today, humanitarian and tech leaders are actively exploring how blockchain could revolutionize humanitarian response.

Unfortunately, for the textile industry, “Made in China” products have a high probability that the cotton was harvested by forced labor. How is the fashion industry turning to technology—such as blockchain—to add transparency to the chain of custody in product production?

Answer. Technology is absolutely an essential element in how companies, and governments, can improve transparency in supply chains. There are a number of different technologies currently available, with intense interest in options that focus on tracking and traceability. At this point, there is no single technology that meets the need for enforcement. Critical for successful technologies are scalability (the ability to cover large volumes of trade and many different types of products) as well as affordability (the ability of small and medium sized enterprises to use the technology).

Fashion industry companies are using certain technologies today and there are a number of technologies that are in pilots. As we mentioned in our testimony, there are some promising pilots that were launched this year with funding from the Labor Department’s Bureau of International Labor Affairs (ILAB). These are multi-year pilots that we believe will be important in the long-term efforts to eliminate forced labor. We know there also have been several pilot projects conducted by CBP and have asked for updates about what those pilots revealed. In addition, some brands and retailers are funding their own pilot projects, such as the YESS pilot, to focus on solutions specifically developed for fashion products.

The industry also has been meeting with new company-entrants into this space in order to assess the efficacy of additional technology solutions that have recently become available. There are companies that use tracing technology, tracking technology, biome analysis as well as more traditional blockchain-like technologies that focus on the chain of custody. If members or staff are interested, USFIA would be pleased to provide a briefing about the variety of technologies and the opportunities for technology solutions.

 QUESTIONS SUBMITTED BY HON. JOHN BARRASSO

ACTIONS TAKEN BY BUSINESSES

Question. The U.S. Custom and Border Protection’s investigation revealed terrible working conditions in China. It found “debt bondage, restriction of movement, isolation, intimidation and threats, withholding of wages, and abusive living and working conditions.”

On July 1, 2020, four U.S. agencies jointly issued a warning of “reputational, economic, and legal risks” for businesses with supply chains in Xinjiang. Due to forced labor and human rights abuses taking place there, business were instructed to implement human rights-related due diligence policies and procedure.

What specific actions are businesses taking to ensure forced labor is not part of their supply chain?

Answer. Even before the very public media reports about forced labor, the fashion industry had taken this issue very seriously with regular member updates, analysis, and webinars focused on this issue in textile and apparel supply chains. With the initial reports from the XUAR region, fashion, apparel, footwear and retail associations joined together to create an ad hoc forced labor working group to facilitate the sharing of information and the sharing of resources among the industry. As part of this forced labor-focused initiative, industry particularly focused on what resources are available for companies to understand best practices and new initiatives to ensure that forced labor is not part of the supply chain.

USFIA member companies require suppliers to adhere to strict codes of conduct and vendor agreements that require suppliers to certify that they do not use forced labor and that they do not utilize subcontractors and input suppliers that utilize forced labor. USFIA member companies regularly audit and inspect their suppliers

in an effort to ensure that suppliers are living up to these commitments. In addition to the focus on forced labor, these supplier codes of conduct commonly extend far beyond a prohibition on the use of forced labor and focus on the full range of worker welfare issues. That includes prohibitions on other types of reprehensible labor practices, such as coercive overtime, restrictions on freedom of movement, and unsafe working conditions.

Question. What challenges are businesses experiencing in implementing the policies and procedures needed to end this practice?

Answer. While USFIA member companies do not source from the XUAR region of China and require all suppliers to warrant they do not utilize forced labor, USFIA cannot stress strongly enough the need for a coordinated effort to engage our trading partners to eradicate forced labor from the supply chain. The complete elimination of forced labor in all forms is the goal that we all want to achieve. U.S. companies are positioned at the end of complex, lengthy, and non-transparent supply chains. The State Department, USTR, the Department of Labor, the Commerce Department, the Department of Homeland Security, and the White House should make it a priority to execute a whole-of-government strategy to eliminate forced labor from supply chains. We know that the path to success and a world with no forced labor will be faster and better if there is a unified approach with our allies and with international organizations such as the International Labor Organization and the United Nations.

From a business perspective, of course, there are many challenges to gain visibility to every aspect of the supply chain. This is a collaborative effort with U.S. Customs and Border Protection and we ask for CBP to adopt a risk-based approach to enforcement, focusing on the worst actors first and providing as much predictability and certainty to impacted stakeholders as possible, to enable them to amplify CBP's enforcement efforts. This builds on the recommendation that CBP work more closely on this issue and coordinate with Trusted Traders, whose supply chains are known to CBP. USFIA also supports efforts to use technology and other initiatives to develop new best practices and procedures to support company efforts to validate there is no forced labor in supply chains.

Question. What are your views on congressional proposals creating due diligence and financial disclosure requirements for companies operating in Xinjiang?

Answer. USFIA understands that there are various congressional proposals that would require due diligence and impose financial disclosure requirements upon companies operating in the Xinjiang region of China. While USFIA member companies do not source from the Xinjiang region of China, USFIA stands ready to work with Congress to ensure that such requirements, should they be enacted by Congress and impact USFIA member companies, are both administrable and an effective part of our joint efforts to eliminate forced labor from the supply chain.

CONGRESSIONAL PROPOSALS ON IMPORT BANS

Question. Since 2009, China has been included on the List of Goods Produced by Child Labor or Forced Labor. The Bureau of International Labor Affairs recently added five new categories of products from Xinjiang to the list. It included gloves, hair products, textiles, thread/yarn, and tomato products.

In January, the Trump administration issued a sweeping ban on imports of cotton and tomato products from China due to evidence of forced labor. There are several congressional proposals aimed at expanding the administration's authorities to more robustly address widespread and systematic forced labor in China.

What are your views on the proposal to implement a comprehensive import ban on all goods produced, wholly or in part in Xinjiang?

Answer. USFIA members companies are committed to meet all legal requirements, including the comprehensive ban on any products with forced labor. We appreciate the Senate proposals that are currently under discussion to address systematic forced labor and support the effort to develop a comprehensive strategy and include the business community in the enforcement efforts.

Question. What ways would you recommend the United States take to enhance import controls and enforcements on goods produced in China?

Answer. There are several levels of action that the United States can take, and should take, to eliminate forced labor.

First, there needs to be a coordinated effort to engage our trading partners to eradicate forced labor from the supply chain. The complete elimination of forced labor in all forms is the goal that we all want to achieve. U.S. companies are positioned at the end of complex, lengthy, and non-transparent supply chains. The State Department, USTR, the Department of Labor, the Commerce Department, the Department of Homeland Security, and the White House should make it a priority to execute a whole-of-government strategy to eliminate forced labor from supply chains. We know that the path to success and a world with no forced labor will be faster and better if there is a unified approach with our allies and with international organizations such as the International Labor Organization and the United Nations.

From a business perspective, of course there are many challenges to gain visibility to every aspect of the supply chain. This is a collaborative efforts with U.S. Customs and Border Protection and we ask for CBP to adopt a risk-based approach to enforcement, focusing on the worst actors first and providing as much predictability and certainty to impacted stakeholders, as possible, to enable them to amplify CBP's enforcement efforts. This builds on the recommendation that CBP work more closely on this issue and coordinate with Trusted Traders, whose supply chains are known to CBP. Close collaboration with CBP, including greater transparency about who are the "bad guys" and what are the best practices that CBP sees in action will go a long way to eliminate forced labor in supply chains.

USFIA also supports efforts to use technology and other initiatives to develop new best practices and procedures to support companies to validate there is no forced labor in supply chains.

PREPARED STATEMENT OF MARTINA E. VANDENBERG, J.D.,
PRESIDENT, HUMAN TRAFFICKING LEGAL CENTER

Chairman Wyden, Ranking Member Crapo, and members of the committee, it is an honor to appear before you today to address the issue of forced labor in global supply chains. My name is Martina Vandenberg, and I serve as president of the Human Trafficking Legal Center, a human rights non-governmental organization dedicated to the eradication of forced labor.

That goal, the eradication of forced labor, is a heavy lift.

My colleagues and I frequently say that forced labor is a feature, not a bug, in global supply chains. The issue requires system-wide solutions, not just isolated prosecutions against individual bad actors. Criminal prosecutions have failed to curb forced labor around the globe, largely because there are almost no prosecutions. According to the State Department's June 2020 Trafficking in Persons (TIP) report, there were just 1,024 forced labor prosecutions in the entire world. Based on International Labor Organization (ILO) global estimates of forced labor, that is one prosecution for every 20,410 victims held in forced labor.

The United States is no outlier. According to Department of Justice data, Federal prosecutors indicted just 12 forced labor cases in the entire country in FY 2019. And although extraterritorial jurisdiction has existed since 2008 to prosecute global supply chain forced labor cases with a nexus to the United States, Federal prosecutors have never brought even one forced labor supply chain case that invoked extraterritorial jurisdiction.

The result of this enforcement vacuum? Impunity. Complacency. Immense human suffering.

A race to the bottom—to markets with the lowest wages—has cemented these abuses into global supply chains. Forced labor is not an aberration. It is a direct result of policy—and pricing—decisions made by corporations around the globe. The COVID-19 pandemic has only exacerbated the vulnerability of workers to conditions of forced labor. According to the ILO,¹ the disparate effects of the global health crisis will bear most heavily on children held in child labor, victims of forced labor, and victims of human trafficking, particularly women and girls.

¹ COVID-19 impact on child labor and forced labor: The response of the IPEC+ flagship programme, https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@ipec/documents/publication/wcms_745287.

PAY TO WORK IS THE NORM FOR MIGRANT WORKERS

We now live in a world in which migrant workers must buy their jobs. They do not pay to play. Workers pay to work. Because they cannot afford to pay the recruitment fees outright, workers must borrow. Those loans wrack up massive interest payments, compounding workers' debts. And despite corporate "employer pays" policies, workers continue to drown in recruitment fee debts. Many find themselves trapped in debt bondage.

TARIFF ACT—A GAME CHANGER SINCE 2016

Until recently, corporate actors importing goods made with forced labor had little to fear. Governments seemed unlikely to prosecute them. Civil cases brought under the Alien Tort Statute or the private right of action under the Trafficking Victims Protection Reauthorization Act (TVPRRA) took years to litigate. And the reputational harm of a forced labor allegation frequently dissipated after initial bursts of consumer outrage.

The closing of the U.S. Tariff Act of 1930's consumptive demand loophole in 2016 changed the game.

That amendment catapulted section 307² from a moribund statutory relic to a valuable tool to combat forced labor. Finally, the use of forced labor in global supply chains could trigger meaningful accountability. Enforcement of the Tariff Act through a Withhold Release Order (WRO) or a Finding can have significant financial consequences for a supplier, as well as for an importer. Finally, corporations are sitting up and taking notice. The Tariff Act has made forced labor more than a corporate social responsibility issue. Forced labor is now a serious enforcement issue for corporations. At last, there is risk.

A RECENT GAO REPORT CONFIRMS THE IMPACT OF SECTION 307 OF THE TARIFF ACT

The recent Government Accountability Office (GAO) report³ on the Tariff Act underscores these conclusions:

Officials from Federal agencies, NGOs, and private sector entities we spoke with generally described section 307 as an effective mechanism to help prevent the importation of goods produced with forced labor. According to CBP officials, importers typically stop trying to import goods subject to a WRO about a month after it is issued, which demonstrates WROs' deterrent effect. Additionally, at a meeting with various NGOs, representatives told us they agreed that section 307 was a helpful mechanism to eradicate forced labor. Further, according to State officials, section 307 enforcement is a powerful tool to advance the U.S. Government's mission to combat forced labor.

A private-sector representative said that section 307 is an effective signal that all companies involved in supply chains need to address forced labor violations. In addition, representatives from a private sector entity commented that section 307 is an important law, in part because it has intensified companies' focus on forced labor in their supply chains.

As we pause to review the success and challenges of section 307 of the Tariff Act, I am reminded of the Foreign Corrupt Practices Act's (FCPA) evolution. In the 1970s, bribery was ubiquitous across the globe, just as forced labor is today. In Germany, bribes were tax-deductible. That all changed when the Department of Justice began prosecuting companies and individuals under the FCPA. Suddenly, bribery allegations went straight to the C Suite. What changed? The advent of risk. Risk compelled corporations to implement robust, comprehensive, and expensive compliance plans. Bribes were not the stuff of corporate social responsibility (CSR) backwaters; bribes became the province of internal investigations, outside counsel, and compliance monitors.

² 19 U.S.C. §1307 states, "All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor and/or forced labor and/or indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited[.]"

³ Government Accountability Office, Forced Labor: CBP Should Improve Communication to Strengthen Trade Enforcement, March 1, 2021, GAO-21-259, available at <https://www.gao.gov/products/gao-21-259>.

CBP'S ENFORCEMENT SURGE

We are a long way from FCPA anti-bribery regime levels for forced labor. But Customs and Border Protection (CBP)'s section 307 enforcement is bringing us closer.

CBP issued 29 WROs between February 2016 and January 2021. In the prior 80-plus years, CBP had issued just 33 WROs. According to the GAO Report issued in March 2021:

- Twenty WROs covered merchandise from specific manufacturers, such as hair products produced by Hetian Haolin Hair Accessories Co., Ltd., in China.
- Five WROs covered a type of good produced in a specific location, country, or region, such as cotton from Xinjiang, China.
- Four WROs covered seafood imports from fishing vessels, such as seafood from the Taiwan-flagged Yu Long No. 2.
- More than half of the WROs (16 of 29) pertained to products from China.
- The remaining 13 WROs pertained to products from Brazil, the Democratic Republic of the Congo, Malawi, Malaysia, Turkmenistan, and Zimbabwe and from four fishing vessels.

In October 2020, CBP issued its first Finding for imports produced with forced labor in 24 years. The agency collected \$575,000 in penalties from PureCircle USA, Inc., for importing at least 20 shipments of stevia powder and its derivatives that were processed in China with prison labor.⁴ CBP had issued a WRO for these products in 2016.

And according to data recently released by CBP, in the first quarter of FY 2021, the government detained 90 shipments of cargo covered under different WROs. The value of that cargo was \$20.8 million. In FY 2020, CBP detained a total of 324 shipments valued at \$55 million. CBP appears poised to shatter the FY 2020 detention record, a welcome development.

ENFORCEMENT IS WELCOME, BUT SIGNIFICANT GAPS REMAIN

The Human Trafficking Legal Center and our NGO coalition partners have applauded CBP's increased enforcement. Indeed, non-governmental organizations are fundamental to this success.⁵ According to public records, NGOs have filed no fewer than ten petitions since 2016. Some of those petitions have resulted in Withhold Release Orders, such as the January 2021 region-wide WRO on Xinjiang cotton. That petition, filed in August 2020 by 10 non-governmental organizations,⁶ provides a telling example of the power—and lacunae—in section 307 enforcement.

Two issues relating to this petition raise concerns:

Communication and Transparency

Once the Xinjiang cotton petition was filed, it was unclear how the CBP investigation was progressing or whether the agency was satisfied with the information provided by the petitioners. There were rumors⁷ in September 2020 that CBP was ready to issue a regional block on all cotton from Xinjiang. However, it appears that the announcement was rolled back soon thereafter. The agency resorted to issuing a narrower order against cotton imports from one entity—the Xinjiang Production and Construction Corps (XPCC) in December 2020. The region-wide WRO against all Xinjiang cotton (and tomatoes) was eventually issued on January 13, 2021. Throughout this saga, the petitioning organizations were not informed of when the

⁴ CBP Collects \$575,000 from PureCircle U.S.A. for Stevia Imports Made With Forced Labor, <https://www.cbp.gov/newsroom/national-media-release/cbp-collects-575000-pure-circle-usa-stevia-imports-made-forced-labor>.

⁵ Human Trafficking Legal Center published a practice guide on how to file petitions to CBP in June 2020. That guide, *Importing Freedom: Using the U.S. Tariff Act to Combat Forced Labor in Global Supply Chains*, has been translated into multiple languages and distributed to partners across the globe. The guide was authored by Human Trafficking Legal Center Human Rights and Trade Policy Advisor Anasuya Syam, <https://www.htlegalcenter.org/wp-content/uploads/Importing-Freedom-Using-the-U.S.-Tariff-Act-to-Combat-Forced-Labor-in-Supply-Chains-FINAL.pdf>.

⁶ Human Rights Groups Call on U.S. for Regional Ban on Imports From China Made With Uyghur Forced Labor, <https://www.iccr.org/human-rights-groups-call-us-regional-ban-imports-china-made-uyghur-forced-labor>.

⁷ U.S. readies bans on cotton, tomato imports from China's Xinjiang, <https://www.reuters.com/article/us-usa-trade-china-xinjiang/u-s-to-block-cotton-tomato-product-imports-from-chinas-xinjiang-over-forced-labor-cbp-idUSKBN25Z29N>.

investigation would conclude and a WRO would issue. This is despite the fact that in a press conference announcing the XPCC WRO in December 2020, CBP Acting Commissioner Mark A. Morgan thanked the coalition of non-governmental organizations for their Xinjiang cotton petition and noted the critical role played by NGOs in Tariff Act enforcement.

Capacity to Enforce

As the GAO report pointed out:

Forced Labor Division officials and representatives from several private-sector entities and NGOs said that difficulty in tracing supply chains presents a challenge for section 307 investigations and compliance. Forced Labor Division officials noted that CBP often cannot trace goods produced with forced labor overseas and imported into the United States because of the complexity of the goods' supply chains.

Issuing the WRO is only the first step. Robust and swift enforcement of the order must follow. CBP announced that despite the prohibition on all Xinjiang cotton, the agency would focus only on direct imports from the region, reflecting what the agency terms a "scalpel approach" to enforcement.⁸ This is especially concerning considering that direct imports from Xinjiang represent only a fraction of all imports that contain Xinjiang cotton. Many goods containing the offending cotton are shipped via third countries. For the WRO to have the most impact, CBP should enforce the order broadly and without any limitations. It must cultivate internal capacity to trace these supply chains through training and use of cutting-edge tracing technology.

Annually, the United States imports billions of goods at risk of being produced by forced labor and child labor. However, as mentioned above, Tariff Act enforcement in the previous financial years have only netted a very small portion of this figure. It is critical that more shipments are detained at U.S. ports of entry. Non-governmental organizations are finding it difficult to assess the impact of WROs without knowing how CBP is enforcing the order and to what degree. CBP does not release enforcement data for each WRO. The agency recently began releasing data on total number of shipments detained each quarter (under all WROs), but that does not give us the full picture.

THE CORPORATE BACKLASH BEGINS

The backlash against Tariff Act enforcement has throttled up in recent days, with lawsuits filed by corporations against non-governmental organizations and researchers. These retaliatory legal actions have a chilling effect on NGOs, which we can only surmise is the intent. Sime Darby, a Malaysian palm oil producer subject to a WRO, filed a lawsuit in U.S. Federal court against Duncan Jepson, the director of Liberty Shared, seeking extensive discovery of the human rights organization's confidential investigation files.⁹ And Chinese corporations have filed a suit¹⁰ in China against Adrian Zenz, a U.S.-based human rights researcher who has documented widespread forced labor and crimes against humanity against the Uyghur population in Xinjiang.

Corporate response to WROs should include internal investigations, remediation, and corporate governance reform and internal controls to prevent forced labor in the future. Instead, some corporate actors have adopted a "shoot the messenger" strategy, seeking to embroil the petitioner in litigation. Facing universal outrage, Sime Darby dropped their lawsuit just a week after filing.¹¹

Similarly, subtle, but increasingly loud, corporate voices seek to dismantle section 307's enforcement regime. Couched in the language of calls for "due process," corporate advocates have suggested that CBP abandon the section 307 petition regime to move to a tribunal-based system, such as that used in section 337 enforcement.

⁸ CBP's Smith says initial focus for Xinjiang WRO is direct connections, not goods finished elsewhere, <https://internationaltradetoday.com/news/2021/01/28/cbps-smith-says-initial-focus-for-xinjiang-wro-is-direct-connections-not-goods-finished-elsewhere-2101280025>.

⁹ Civil miscellaneous case *In re Application of Sime Darby Plantation Berhad*, pursuant to 28 U.S.C. § 1782 to conduct discovery for use in foreign proceedings, Case No. 1:21-mc-00006 (EDVA March 9, 2021).

¹⁰ Chinese firms seek damages from foreign researcher over forced labor reports, <https://news.trust.org/item/20210309064206-l7inv/>.

¹¹ Sime Darby withdraws lawsuit against activist, <https://www.freemalaysiatoday.com/category/nation/2021/03/16/sime-darby-withdraws-lawsuit-against-activist/>.

Rhetorical condemnation of forced labor notwithstanding, these critics truly come to bury section 307, not to praise it.

RECOMMENDATIONS FOR ROBUST ENFORCEMENT OF SECTION 307

The NGO community asks that Congress resist calls for a “grand re-envisioning” of the Tariff Act. Instead, there are concrete recommendations that will increase CBP’s effectiveness in implementing and enforcing section 307. The Human Trafficking Legal Center serves as the secretariat to the Tariff Act Advisory Group (TAAG), a coalition of non-governmental organizations dedicated to enforcement under section 307 of the Tariff Act of 1930. Many of the recommendations that I suggest today are discussed in greater depth in a series of letters TAAG has provided to CBP and the Department of Homeland Security:

- Letter to Secretary of Homeland Security Mayorkas on Effective Enforcement of the Tariff Act: <https://www.htlegalcenter.org/wp-content/uploads/Letter-to-Secretary-Mayorkas-March-4-2021.pdf>.
- Letter to CBP on Reimbursement of Recruitment Fees: <https://www.htlegalcenter.org/wp-content/uploads/Letter-to-CBP-re-Reimbursement-September-21-2020.pdf>.
- Letter to CBP on Effective Enforcement of Section 307 of the Tariff Act: <https://www.htlegalcenter.org/wp-content/uploads/Letter-to-CBP-re-Effective-Enforcement-November-19-2020.pdf>.

Similarly, one of our partner organizations, Global Labor Justice/International Labor Rights Forum (GLJ/ILRF) has made important recommendations in a letter recently submitted to CBP on the enforcement of another palm oil WRO, this one against FGV. That letter may also be found online at: <https://laborrights.org/publications/march-9th-2021-letter-cbp-about-enforcement-fgv-wro>.

Recommendations for Enforcement:

Uphold freedom of association. Workers’ rights and ability to unionize are central to any effort to eliminate forced labor in supply chains. Freedom of association is a necessary factor in remediating forced labor. Workers and worker representatives must be included in the Tariff Act process. CBP should ensure that affected workers, their unions, workers’ rights organizations, and migrant workers’ rights groups have a role in enforcement. Workers’ agency to monitor and report on their working conditions must be respected and incorporated as part of an enforcement plan for each WRO.

Create an emergency fund for workers harmed by WROs. Workers can face dire consequences after the issuance of a WRO. As the March 2021 GAO report pointed out:

ILAB officials told us that, as an unintended consequence of the September 2019 WRO for disposable rubber gloves produced in Malaysia, many workers’ employment was terminated, which had a negative effect on workers facing exploitation. The officials said that it is important that the U.S. Government be prepared to support workers who are placed in a position of increased vulnerability as a result of enforcement actions to prevent forced labor.

The creation of an emergency fund for workers is essential to mitigate the harm to workers. There is the danger that U.S. companies will “cut-and-run,” abandoning foreign suppliers instead of working to remediate forced labor. This emergency fund should be financed by fines levied against importers, as in the stevia case, or by funds created by the corporations themselves.

Punish companies that retaliate against workers or petitioners. If a corporate actor retaliates against a petitioner or witnesses, all negotiations on revocation or modification of the WRO should cease. Attacks on petitioners should be considered when corporations seek relief from CBP. Retaliation does not signal good faith efforts to remediate or eliminate forced labor.

Increase transparency. We agree with the GAO’s recommendation that CBP better “communicate to stakeholders the types of information they could collect and submit to CBP to help it initiate and investigate forced labor cases. . . .” There is still little clarity on the standards CBP applies or the evidence required. At a recent meeting, CBP informed the NGO community that the agency would soon publish guidance on types of information needed in a section 307 allegation. CBP should work more closely with the Bureau of International Labor Affairs (ILAB) and the Bureau of Democracy, Human Rights, and Labor (DRL) to bring the definitions of forced labor,

child labor, and prison labor used by the agency in line with the International Labor Organization (ILO) core labor standard definitions.

Disclose shipments detained under a WRO. CBP's recent disclosures of the number and value of shipments detained in FY 2020 are encouraging, but these aggregated numbers are untethered to specific WROs. For example, we have no confirmation or data to indicate that CBP ever enforced the 2018 WRO against Turkmenistan cotton, although we do have credible information that imports containing cotton from Turkmenistan have entered the United States. CBP should release enforcement updates on each WRO each quarter.

Increase enforcement and penalties. Enforcement of the Tariff Act should be ramped up with the issuance—and robust enforcement—of more WROs. U.S. importers that continue to source goods in violation of the U.S. Tariff Act should face penalties. We hope to see more WROs, more findings, more monetary penalties (for higher amounts), and criminal prosecutions for forced labor. We also encourage CBP to press more aggressively for fines and penalties. Pure Circle, which paid a \$575,000 fine for the importation of stevia manufactured by prisoners in China, bragged in a press release that this was less than 7 percent of the fine that CBP had originally sought to enforce.¹²

Prosecute forced labor in global supply chains. The U.S. Government has never prosecuted a case of forced labor in a global supply chain, despite the existence of extraterritorial jurisdiction under 18 U.S.C. § 1596. Victims of forced labor in supply chains have brought civil suits in the Federal courts under 18 U.S.C. § 1595, but criminal prosecutions have not followed. We encourage DHS to ramp up investigations (and prosecutions) under chapter 77 of title 18, the Trafficking Victims Protection and Reauthorization Act (TVPPRA). We are also concerned that the U.S. Government has not prosecuted even one case alleging the importation of goods made with forced labor. We urge the agency to work with the Department of Justice (DOJ) to prosecute violators.

Strengthen enforcement of WRO on cotton and cotton products from Xinjiang. Effective enforcement of this regional WRO is a key tool to end China's widespread and systematic forced labor and other abuses against Uyghurs and Turkic Muslims. CBP's recent announcement that enforcement would be done with a "scalpel" raises significant concerns. The WRO should be enforced broadly.

Diversify Tariff Act enforcement. More than 72 percent of WROs issued in the Tariff Act's 90-year history have been against goods produced in China. The Chinese Government's systematic oppression of the Uyghur peoples and other ethnic minorities is reprehensible. But China should not be the sole target of Tariff Act enforcement under section 307. Forced labor continues in many countries in East Asia, South and Central Asia, Africa, the Americas, the Middle East, and Europe.

Increase transparency on modifications and revocations. Non-governmental organizations and unions are left in the dark on the process leading to a WRO revocation. Without information about remediation claims, petitioners cannot verify whether conditions of forced labor have in fact been remediated. NGO/union involvement at each stage of the Tariff Act process is critical to ensure that workers affected by a WRO do not remain trapped in forced labor and involuntary servitude.

Establish cooperation and communication channels with U.S. allies. Goods made with forced labor—and subject to WROs—are routinely re-routed from U.S. ports to neighboring countries or other regions. Our own research has identified transshipment to Canada of goods subject to WROs in the United States. Mexico, the United States, and Canada should establish an infrastructure to facilitate cooperation in combating forced labor, including identification and movement of goods produced using forced labor (Articles 23.12 (5)(c) and 23.6 of the United States-Mexico-Canada Agreement).

Incorporate section 307 provisions into all trade agreements. There should be no safe harbor for goods made with forced labor anywhere in the world.

¹²PureCircle and U.S. Customs and Border Protection Resolve 2014 Stevia Sourcing, <https://purecircle.com/news/purecircle-and-u-s-customs-and-border-protection-resolve-2014-stevia-sourcing/>.

CONCLUSION

Section 307 has enormous potential to disrupt forced labor in global supply chains. The community of non-governmental organizations stands ready to cooperate with CBP, and with Congress, to maximize the effectiveness of this tool.

QUESTIONS SUBMITTED FOR THE RECORD TO MARTINA E. VANDENBERG, J.D.

QUESTION SUBMITTED BY HON. MIKE CRAPO

Question. I have read that your research indicates that many countries lack the political will to criminally prosecute forced labor. That is deeply troubling. It is simply not enough to stop goods made with forced labor from entering the United States. Forced labor is a crime against humanity. Perpetrators must be punished.

What can be done to incentivize states to bring such prosecutions?

Answer. Forced labor must be prosecuted. More than 20 years after passage of the Trafficking Victims Protection Act, impunity remains the norm. I would make three recommendations to address this question.

First, the State Department's Office to Monitor and Combat Trafficking must increase the level of attention and scrutiny on forced labor around the globe. It was not until 2008 that the State Department's annual Trafficking in Persons report even broke out forced labor as a separate category in the report's global estimated prosecution figures. In that year, the State Department began providing forced labor prosecution numbers as a parenthetical, alongside the total trafficking prosecution numbers. Since then, the forced labor prosecution numbers have remained dismal, never even reaching 1,200 in any year.

The Biden administration has not yet nominated a new ambassador to lead the Trafficking in Persons Office at the Department of State. But once that individual is confirmed, the TIP Office should be tasked with allocating resources to promote forced labor prosecutions around the globe. Forced labor should be emphasized in meetings with foreign governments. In addition, the failure to prosecute forced labor should be weighed heavily in downgrading a country to Tier 2 Watch List or Tier 3 in the annual report. Embassy officers filing State Department annual TIP reporting cables should be required to investigate and report on the causes of the dearth of forced labor prosecutions in their jurisdiction.

Second, the United States must lead by example. The U.S. cannot condemn other countries for failing to prosecute forced labor when our own prosecution numbers are so abysmal. In the 21 years since passage of the Trafficking Victims Protection Act, Federal prosecutors have never brought more than 32 forced labor prosecutions in any given year. The U.S. forced labor prosecution record is grim, even compared to similar nations. For example, in FY 2019, Federal authorities prosecuted just 12 forced labor cases in the entire United States. In contrast, the European Union prosecuted 106 forced labor cases in 2019. The Department of Justice must focus not only on prosecution of U.S. forced labor cases committed on U.S. territory. Prosecutors should also use the extraterritorial jurisdiction provided by 18 U.S.C. § 1596 to bring Federal trafficking cases for crimes committed by U.S. persons abroad. When the United States sets this example, other countries will follow.

Third, states can be incentivized to bring forced labor prosecutions by prioritizing forced labor in U.S. aid and assistance programs. The U.S. Government offers multiple fellowship, visitor, and training programs around the globe. These programs should focus on forced labor experts, particularly on those with expertise on global supply chains. Additional resources should be made available to DOL-ILAB to pursue systemic approaches to eradicate forced labor and child labor. In addition, the U.S. government should use sanctions regimes, such as Global Magnitsky sanctions, to punish those using forced labor in global supply chains. Sanctions can be particularly effective in targeting the endemic corruption that allows forced labor to flourish unchecked. Sanctions should be used to punish government officials profiting from forced labor.

QUESTIONS SUBMITTED BY HON. JOHN BARRASSO

CHINA'S HUMAN RIGHTS ABUSES

Question. The Chinese Communist Party continues to commit terrible human rights abuses. The Uyghurs, a religious and ethnic minority in China, have experienced brutal repression at the hands of the Chinese Government. They continue to be subjected to torture, imprisonment, and forced labor. At least 1 million Uyghurs have been put in internment camps by the Chinese Communist Party. Around 100,000 Uyghurs and ethnic minority ex-detainees have reportedly been used as forced labor in textile and other industries in China.

How effective have U.S. actions been at addressing the human rights abuses and the use of forced labor?

Answer. The United States needs the support of allies to successfully combat forced labor. If the United States continues to be the only country blocking the importation of goods made with forced labor, transshipment to other ports will continue. This blunts the effectiveness of section 307 of the Tariff Act as a tool to combat forced labor. In addition to Tariff Act enforcement, the United States should ramp up use of Global Magnitsky sanctions and increase Federal criminal prosecutions to address forced labor in global supply chains.

Question. What more should the United States do on transparency and enforcement?

Answer. The United States should take the following steps to increase transparency and ramp up enforcement:

- Customs and Border Protection (CBP) should inform petitioners under section 307 of the Tariff Act about the status of their petitions for Withhold Release Orders.
- CBP should communicate with petitioners before revoking or modifying a WRO.
- CBP should involve workers' rights organizations and/or unions to confirm that remediation plans submitted to CBP by companies to support a request for modification or revocation of a WRO are legitimate. For example, CBP should corroborate claims that recruitment fee reimbursements and back wage repayments to workers have been carried out.
- CBP should provide quarterly data on shipments detained under each WRO.
- CBP should issue additional forced labor Findings.
- CBP should levy significant fines against importers that bring goods made with forced labor into the U.S. market.
- The U.S. Government should prosecute forced labor in global supply chains, relying on extraterritorial jurisdiction provided under the Federal trafficking statutes, codified at 18 U.S.C. § 1596.

WORKING WITH ALLIES

Question. In your testimony, you noted the need to create cooperation and communication channels with our allies to address forced labor. You explained that goods made with forced labor and subject to U.S. Withhold Release Orders are re-routed from U.S. ports to neighboring countries.

How aligned are the U.S. and our allies, such as Canada and the United Kingdom, on addressing the risk of forced labor-produced goods entering the global supply chains?

Answer. The United States and its close allies are becoming more aligned in the fight against forced labor in global supply chains. However, to date, only Canada has taken concrete steps to address the risk of forced labor-produced goods entering its supply chains.

In accordance with requirements under the USMCA, Canada enacted a prohibition on the importation of goods made using forced labor and prison labor. The publication of Customs Notice 20–23 marked a positive step forward. The Canadian government recently updated their website to provide information on how members of the public can submit allegations of forced labor to Canadian authorities.

On January 12, 2021 Canada and the U.K. announced coordinated trade restrictions against China over the issue of forced Uyghur labor.

Non-governmental organizations in the United Kingdom have pressed their government to implement a prohibition on the importation of goods made with forced

or prison labor similar to the Tariff Act. In 2020, a U.K.-based NGO, Global Legal Action Network (GLAN), and the World Uyghur Congress filed a petition to Her Majesty's Revenue and Customs Authority requesting the suspension of imports of cotton goods produced with prison labor in China. The petition, which relied upon the U.K.'s Foreign Prison-Made Goods Act of 1897, has not yet received a final decision.

Question. In what areas does the United States need to work with our allies to improve and coordinate efforts to address forced labor?

Answer. One fundamental problem facing successful Tariff Act enforcement is transshipment. Goods subject to a Withhold Release Order (WRO) can simply be moved to another market. The United States must press its key allies—the U.K., the EU, Australia, and New Zealand—to implement legislation similar to the U.S. Tariff Act. The allies should also share intelligence on forced labor investigations. Only this can halt transshipment. There should be no safe harbor for goods made using forced labor.

Canada has already made excellent progress in adopting a Tariff Act-like regime, as required under the USMCA. The United States should coordinate with Customs authorities in Canada and Mexico to identify and track the cross-border movement of goods produced using forced labor. Goods subject to a Withhold Release Order (WRO) should be refused entry into Canada and Mexico. The United States should also support Mexico in implementing its obligations under the USMCA to bar goods made with forced labor.

PUSH FOR GREEN ENERGY

Question. In your testimony, you noted: “Forced labor is not an aberration. It is a direct result of policy—and pricing—and decisions made by corporations around the globe.” I’d like to focus on the policy side of your statement for just a moment.

President Biden has made decarbonizing the American economy a policy cornerstone for his administration. To achieve this policy goal, America will have to significantly increase imports of equipment, critical minerals, and raw materials from China and other countries known to use forced labor and child labor—solar panels from Xinjiang, cobalt mined by children in the Congo.

Do you believe the rapid push for green energy deployment in the U.S. is the type of policy that will contribute to the problem of forced labor and child labor?

Answer. The problem of forced labor is ubiquitous. It is a systemic issue in global supply chains. It is not confined to one product, industry, or region. The problem is not the rapid push for green energy development. It is the lack of accountability for forced labor, resulting in complete impunity. The accountability problem is compounded by opaque supply chains, dearth of criminal prosecutions for forced labor, sheer ineffectiveness of corporate self-regulation, and inadequate implementation of existing labor laws. Increased enforcement under the U.S. Tariff Act will serve as a deterrent against forced labor in global supply chains. And, as noted at the hearing, increased enforcement will also protect U.S. workers. U.S. workers cannot compete with workers held in forced labor abroad; increased enforcement evens the playing field.

MINERAL EXTRACTION IN CHINA

Question. In 2020, China controlled about 60 percent of the natural graphite and rare earths produced globally.

To what extent is mineral production or processing in China associated with the human rights abuses—what the U.S. State Department has called “genocide”—against the Uyghurs?

Answer. All goods, including mineral and rare earths, from China should be suspect. Because the Chinese government has forcibly relocated Uyghurs throughout China to engage in forced labor, raw materials from all regions, not just Xinjiang, should be scrutinized for links to forced and prison labor.

Question. Would we be better served safely mining rare earths and critical minerals in places like Wyoming instead of relying imports from China or other bad actors?

Answer. The State Department has just confirmed again that the abuse against the Uyghur population in Xinjiang rises to the level of genocide. Obtaining minerals

from any other source other than Xinjiang is in the best interests of the United States.

CONGRESSIONAL PROPOSALS ON IMPORT BANS

Question. Since 2009, China has been included on the List of Goods Produced by Child Labor or Forced Labor. The Bureau of International Labor Affairs recently added five new categories of products from Xinjiang to the list. It included gloves, hair products, textiles, thread/yarn, and tomato products.

In January, the Trump administration issued a sweeping ban on imports of cotton and tomato products from China due to evidence of forced labor. There are several congressional proposals aimed at expanding the administration's authorities to more robustly address widespread and systematic forced labor in China.

What are your views on the proposal to implement a comprehensive import ban on all goods produced, wholly or in part in Xinjiang?

Answer. The Human Trafficking Legal Center supports the proposal to implement a comprehensive import ban on all goods produced, wholly or in part, in Xinjiang. There should be a rebuttable presumption that these goods are made with forced labor. There is absolutely no excuse for any U.S. corporation to be manufacturing goods or importing goods from Xinjiang.

Question. What ways would you recommend the United States take to enhance import controls and enforcements on goods produced in China?

Answer. China is currently able to transship goods through third countries to mask the goods' origin. Customs and Border Protection (CBP) should use available technology to trace Xinjiang cotton and other raw materials in finished goods. In addition, CBP should vigorously scrutinize imports from companies that have buckled to Chinese Communist Party pressure to source from Xinjiang. Many of these companies originally denounced forced labor in Xinjiang cotton production, but have since issued groveling statements indicating that they will continue to purchase cotton from the region. Companies issuing such statements on their Chinese-language social media feeds should be subjected to heightened scrutiny on all imports brought into the United States.

PREPARED STATEMENT OF JOSEPH WRONA, LOCAL 135L MEMBER, UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL, AND SERVICE WORKERS INTERNATIONAL UNION (USW)

Chairman Wyden, Ranking Member Crapo, members of the committee, my name is Joe Wrona, and I am a member of the United Steelworkers (USW) and a maintenance mechanic at the Sumitomo tire plant in Tonawanda, NY. Thank you for the opportunity to testify today on the important topic of how to fight forced labor and improve our supply chains.

Connecting my life in Buffalo to global supply chains and forced labor is unfortunately, and surprisingly, too straightforward. While I've worked at the tire plant for the last couple of years, my previous job was at Ferroglobe's Niagara Falls, NY plant. I worked there for 10 years, with roughly 100 other union members and management. The Ferroglobe facility, which I'll call Globe, used to produce metal silicate by taking quartz, woodchips, and coal and cooking them in an electric arc furnace until the quartz is reduced into silicon metal.

Metal silicate is a product that we made 24/7 at the plant. It is a product you interact with every day in a variety of ways. From strengthening aluminum, to the caulking that seals your home, or even cosmetics, silicon metal is everywhere. It is also a base component to the production of polysilicon, which is vital to solar panel production.

Expecting that strong demand for solar power would boost metal silicate demand, in 2009 Globe planned a \$35-million upgrade to convert its metallurgical grade silicon into 4,000 tons of upgraded metallurgical grade silicon each year—enough to produce 500 megawatts of solar power.¹ The company, in an investor report from 2016, highlighted the opportunity to see demand grow as SolarCity, a solar panel company connected to Elon Musk, was supposedly in the final stages of construction

¹https://www.labor.ny.gov/pressreleases/2009/November24_2009.htm.

on the site of a shuttered steel mill.² However, that vision fell apart for the workers at Globe in 2018 when the plant was closed because of a lack of demand.

Globe has been fighting illegal trade practices in metal silicate for decades now. The first trade enforcement case against dumped and subsidized metal silicate from China started 30 years ago in 1991.³ But while tariffs on metal silicate helped to defend our jobs at Globe, they could not stop products further up the supply chain, like solar panels or those produced with forced labor.

The growth of China's industrial capacity is well documented. Chinese companies in polysilicon produced over 80 percent of global polysilicon in 2020.⁴ The Chinese Government has used more than \$1.6 billion dollars in state subsidies to increase production of polysilicon from 45 kilotons to 410 kilotons per year. This has effectively locked the U.S. out of growing solar demand and the overcapacity in China destroys nearly any ability of U.S. companies to compete.

But for my brothers and sisters who made good wages at Globe between \$70,000 and \$100,000 dollars a year, they were victims not only of unfair trade practices, but also forced labor in China. About 45 percent of the world's supply of solar-grade polysilicon comes from Xinjiang.⁵ The news about human rights abuses there are unacceptable. According to academic experts, 10 million Muslim minorities in the region are under lockdown control, and over 1 million Uyghurs and others have allegedly disappeared into internment camps.⁶ The Australian Strategic Policy Institute estimates that more than 80,000 Uyghurs were transferred out of Xinjiang to work in factories across China between 2017 and 2019.⁷

There should be no debate. Eliminating forced labor from our country's supply chain should happen today, and companies who have benefited should be held accountable. It was a good step when Customs and Border Patrol issued a Withhold Release Order against cotton and tomato products produced by Uyghurs in Xinjiang. We should act immediately to do the same for products, like solar panels, that contaminate the supply chain with forced labor.

We also need to act urgently to defend American workers and foster a domestic solar industry here. This means direct investment in metal silicate plants like my old facility in Niagara Falls or the plant in Alloy, WV where my union brothers and sisters work.

Thank you for the opportunity to testify today, and I look forward to answering any questions you may have. Finally, working with my union, I've included additional materials with my written testimony.

Additional supporting materials related to "Fighting Forced Labor: Closing Loopholes and Improving Customs Enforcement to Mandate Clean Supply Chains and Protect Workers":

- AFL-CIO statements regarding Forced Labor in the Xinjiang Uyghurs Autonomous Region, China:

<https://aflcio.org/about/leadership/statements/ending-forced-labor-xinjiang-uyghur-autonomous-region-china>

<https://aflcio.org/press/releases/progress-long-awaited-ban-certain-products-uyghur-region-china>

<https://aflcio.org/press/releases/afl-cio-applauds-action-ban-goods-made-forced-labor-linked-xinjiang-production-and>

- Articles referencing the AFL-CIO letter to Biden administration urging the blocking of imports of solar products containing polysilicon from China's Xinjiang region:

<https://www.nytimes.com/live/2021/03/15/business/stock-market-today#the-afl-cio-urges-president-biden-to-ban-solar-products-from-xinjiang>

<https://www.reuters.com/article/us-usa-trade-china-idUSKBN2B806L>

² https://www.petrole.gov.mr/IMG/pptx/session_8_s2_jean_du_plessis_ferroglobe_2_pptx.

³ https://www.usitc.gov/publications/701_731/pub4783.pdf.

⁴ <https://www.nytimes.com/2021/01/08/business/economy/china-solar-companies-forced-labor-xinjiang.html>.

⁵ <https://www.bloomberg.com/news/articles/2021-02-10/why-it-s-so-hard-for-the-solar-industry-to-quit-xinjiang?sref=HEwoTbCT>.

⁶ <https://fsi.stanford.edu/news/human-rights-crisis-xinjiang-uyghur-autonomous-region>.

⁷ <https://www.aspi.org.au/report/uyghurs-sale>.

<https://www.bloomberg.com/news/articles/2021-03-15/afl-cio-s-trumka-demands-cut-off-of-solar-products-from-xinjiang>

- Center for Strategic and International Studies on Industrial Policy in Clean Energy, brief section on Chinese dominance in solar but not on forced labor:
<https://www.csis.org/analysis/industrial-policy-trade-and-clean-energy-supply-chains>
- Council on Foreign Relations article:
<https://www.cfr.org/backgrounder/chinas-repression-uyghurs-xinjiang>
- March 2021 report making comprehensive case that CCP is practicing systematic genocide in the Uyghur region, including forced labor:
<https://newlinesinstitute.org/wp-content/uploads/Chinas-Breaches-of-the-GC.pdf>
- On U.S. importers in solar sector and XUAR forced labor:
<https://pulitzercenter.org/stories/us-solar-companies-rely-materials-xinjiang-where-forced-labor-rampant>
<https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/firms-with-xinjiang-ties-lead-us-solar-imports-62204298>
- On allies and EU concerns about solar:
<https://www.politico.eu/article/xinjiang-china-polysilicon-solar-energy-europe/>
- On support for the Uyghur Forced Labor Protection Act passed in the House last September:
<https://aflcio.org/press/releases/afl-cio-supports-uyghur-forced-labor-prevention-act>
- Reintroduced bill in 2021 with special mention of the solar industry:
<https://enduyghurforcedlabour.org/news/us-house-bill-would-effectively-block-import-of-goods-produced-with-uyghur-forced-labor/>

QUESTIONS SUBMITTED FOR THE RECORD TO JOSEPH WRONA

QUESTIONS SUBMITTED BY HON. TODD YOUNG

Question. China's unfair actions—like bloated state subsidies—have had ripple effects throughout the global market, and specifically the Midwest.

As China's increased industrial capacity grows, we continue to see predatory trade actions that accompany that effort. As a case study, Mr. Wrona, you cited the example of solar panels. I would also raise that Chinese dumping of steel and aluminum is concerning to manufacturers in my State as well as other members of Congress.

In your testimony, you mentioned that 45 percent of the world's supply of polysilicon—a key component for solar panels—comes from Xinjiang. Realistically, how soon can American manufacturers divert that supply chain from the region given China's strategic control compared to other markets?

Answer. This should be a key element of the Build Back Better plan. The U.S. used to be a leader in polysilicon production, but a number of factors have impacted the industry. These range from insufficient Federal support for solar supply chain manufacturing to China's aggressive state support and market consolidation. The dramatic decline in domestic polysilicon production was a function of multiple factors but can be directly linked to China's rise in PV manufacturing using anti-competitive tactics, including—as referenced at the hearing—forced labor. Establishing new U.S. manufacturing plants for PV solar would require government support to push back against China's anti-competitive behavior. Domestic procurement requirements that include all manufacturing processes with stepped-up timelines could also help direct federal spending to create a base for a developing the domestic PV market.

Sources and references worth considering:

1. China's 12th 5-year plan on solar Photovoltaic industry—<https://policy.asiapacificenergy.org/sites/default/files/chinas-five-year-plan-for-solar-translation.pdf>.

2. 2015 CRS report on PV manufacturing—<https://fas.org/sgp/crs/misc/R42509.pdf>.

Question. What implications are most concerning if our domestic manufacturers are unable to move this supply chain out of the hands of forced labor?

Answer. As my testimony indicated, U.S. workers suffer when anti-competitive behavior and illegal forced labor is permitted by state actors in countries like China. Lost jobs, lost competitiveness, and declining global leadership are the results when our country's leaders do not stand against injustice.

International corporations which are not held accountable by our government for forced labor in their supply chains also unfairly impact domestic manufacturers. By choosing to allow forced labor to contaminate their products, corporations risk international sanctions, decline in consumer trust, potential boycotts by the public and identification of their brands with forced labor, which is the most common form of modern slavery.

QUESTIONS SUBMITTED BY HON. JOHN BARRASSO

CONGRESSIONAL PROPOSALS ON IMPORT BANS

Question. Since 2009, China has been included on the List of Goods Produced by Child Labor or Forced Labor. The Bureau of International Labor Affairs recently added five new categories of products from Xinjiang to the list. It included gloves, hair products, textiles, thread/yarn, and tomato products.

In January, the Trump administration issued a sweeping ban on imports of cotton and tomato products from China due to evidence of forced labor. There are several congressional proposals aimed at expanding the administration's authority to more robustly address widespread and systematic force labor in China.

What are your views on the proposal to implement a comprehensive import ban on all goods produced, wholly or in part in Xinjiang?

Answer. Simply put, this ban on imports from Xinjiang should be imposed tomorrow. However, there are now significant differences between the House version of legislation and the Senate version called the "Uyghur Forced Labor Prevention Act." The ability of multinational corporations to avoid responsibly or accountability or for the U.S. government to stop goods at the border which were produced by forced labor should not be debated or contain loopholes which DC policy experts say "you could drive a truck through." To discuss the details on the differences in the legislation in more detail please feel free to reach out to the USW legislative director Roy Houseman at (202) 778-4384.

Question. What ways would you recommend the United States take to enhance import controls and enforcements on good produced in China?

Answer. Prioritizing prevention of forced labor at U.S. Customs and Border Protection (CBP) is a start. This should be part of a broad approach that encompasses not just forced labor but all illegal trade practices. The USW has participated in over 100 AD/CVD cases, and we have seen the inability of CBP to collect duties or hold importers accountable for importing goods subject to duties. According to CBP, \$4.5 billion remained uncollected as of May 2019 in well-documented AD/CVD cases.

Testimony by Martina E. Vandenberg, J.D., president of the Human Trafficking Legal Center, also provides key recommendations on removing forced labor from the supply chain. It starts by taking a comprehensive approach. Quoting her testimony:

For the WRO to have the most impact, CBP should enforce the order broadly and without any limitations. It must cultivate internal capacity to trace these supply chains through training and use of cutting-edge tracing technology.

When manufacturers face risk or accountability they are able to locate deficiencies in their supply chains. The Takata airbag recall is instructive. When faced with significant backlash and penalty, the company traced its supply chain and located the offending subsidiary. Multinational corporations can and do monitor their supply chains if properly prompted, but it requires a Congress and an administration willing to demand 21-century solutions like blockchain tracing to solve a slavery problem that has existed at least since 3,500 BCE.

PREPARED STATEMENT OF HON. RON WYDEN,
A U.S. SENATOR FROM OREGON

The United States is a country with a lot of economic and political muscle. The country should use that muscle to fight for American jobs and workers. It should also use it, whenever possible, to improve the lives of powerless people around the world. It's not every day you have an opportunity to talk about accomplishing both of those goals at once. Today is one of those days, with the Finance Committee meeting to discuss stamping out forced labor—modern-day slavery—around the globe.

It takes hard work, even in 2021, to live up to a moral standard that says the U.S. will not profit from slave labor. It still goes on in many places around the world, including in places that are part of our global supply chains. But that hard work to fight forced labor is absolutely essential.

Our government needs to use every available tool to root out the practice of forced labor and address its causes, whether it's through diplomacy, by alleviating poverty, sanctions, or any other means. Within the jurisdiction of the Finance Committee, the government needs to use every tool in the trade policy tool kit to keep forced labor products out of our market.

The Federal ban on imports made with forced labor dates back to 1930. It's known in the trade policy world as section 307. It gives Customs the authority to stop products made with forced labor. However, a loophole in that Federal ban that applied to products that aren't made within the United States persisted for decades. Senator Brown and I wrote an amendment that closed that forced labor loophole in 2016. Since then, enforcement actions have increased, but so have glaring examples of the scourge of forced labor, most notably in China.

Two U.S. administrations have now concluded that what the Chinese Government is doing to the Uyghur people in the Xinjiang region in Western China constitutes genocide.

The Chinese Government and Chinese companies are using forced labor from that region to produce a variety of products. For example, the United States took action to block the import of cotton and tomatoes picked by slave labor in Xinjiang. The Finance Committee will hear today from Joseph Wrona, whose good-paying union job in the production of silicon metal was shut down in part due to forced labor competition from China.

Forced labor is a problem in other countries too, including in India, Burma, and Malaysia. Senator Brown and I have pushed for U.S. trade enforcers to look at taking action against the import of mica, palm oil, and cocoa produced with forced labor.

Bottom line, the continued existence of forced labor in 2021 is a morally repugnant scourge, and when American workers have to compete with forced labor, everybody loses. I'm interested in making sure CBP has the tools and resources it needs to step up enforcement. There is also bipartisan interest in creating effective new standards and new enforcement tools to support this effort.

Ending forced labor is morally just. Raising the bar for labor standards around the world also helps to protect high-skill, high-wage jobs here in the United States. So this is a vitally important hearing. I want to thank the witness panel for joining the committee today, and I am looking forward to our discussion.

S&P Global Market Intelligence

October 21, 2020

Human Rights Allegations in Xinjiang Could Jeopardize Solar Supply Chain

By Michael Copley

The solar industry's growing dependence on China's autonomous Xinjiang region for a critical raw material poses mounting risks to a wide range of companies as the U.S. Government moves to confront Beijing over alleged human rights abuses there.

In 2019, when solar ranked as the world's top source of new power generating capacity, about one-third of the polysilicon the industry used to make solar panels came from Xinjiang, according to Johannes Bernreuter of Bernreuter Research. China as a whole accounts for about 80% of global capacity. With polysilicon makers boosting production in Xinjiang, Richard Winegarner, a former industry analyst who retired in late 2019, said the region is poised to become "even more important" to the solar market in the coming years.

Those deepening ties come as Washington's scrutiny of labor conditions in the region intensifies. On the heels of a U.S. Government report that described rampant abuse of Uighurs and other Muslim minorities in Xinjiang, the U.S. House of Representatives passed a bill in September that would ban goods made "wholly or in part" in the region unless the producers were proven not to have used forced labor. The near-unanimous vote came a week after U.S. Customs and Border Protection ordered officers to seize certain imports from Xinjiang, including cotton and computer parts.

Senator Marco Rubio, a Republican member of the Committee on Foreign Relations who introduced a companion bill to the House legislation, said in September that the U.S. "must ensure that goods stained with forced labor stop entering our supply chains." Rubio's bill, which has 19 co-sponsors, including six Democrats, was referred to the Committee on Foreign Relations in March.

A spokesperson for Joe Biden said in August that the Democrat presidential nominee believed that the Chinese Government is committing "genocide" against Uighur Muslims in Xinjiang.

Beijing denies it is committing human rights abuses.

Red flags

In light of the allegations, human rights advocates are calling for blanket trade restrictions on Xinjiang like those pushed by Rubio and the House of Representatives.

"Within the context of labor, a red flag goes up for every single sector," said David Schilling, senior program director of human rights and resources at the Interfaith Center on Corporate Responsibility. "It's not just those [industries] that have been called out."

That echoes an assessment by staff for the Congressional-Executive Commission on China, a panel of U.S. lawmakers and administration officials that monitors human rights in that country. The report, released in March, found that forced labor in Xinjiang is "widespread," and independent audits are impossible to perform.

While human rights advocates have said they are not aware of public reports directly implicating polysilicon makers in labor abuses, without independent audits, American solar companies could find they are unable to meet U.S. requirements.

S&P Global Market Intelligence reached out to more than two dozen solar consumers, investors, ratings agencies, project developers, polysilicon producers and equipment manufacturers. Only a handful responded to requests for comment; none provided detailed information about their efforts to examine potential exposure to labor abuses in Xinjiang or to safeguard their supply chains in the region.

In response to questions from Market Intelligence, John Smirnow, vice president of market strategy at the Solar Energy Industries Association, the top U.S. trade group for the industry, said the association is "strongly encouraging companies to immediately move their supply chains out of the region." The association is also relaunching an initiative to raise "awareness and action within the industry on the importance of ensuring ethical supply chains."

"The reports of human rights violations out of the Xinjiang region are reprehensible, and we support efforts in the U.S. Congress to stamp out these abuses," Smirnow said in an emailed statement.

The threat of additional import bans on Xinjiang should worry solar investors, said Clayton Allen, senior vice president of trade, policy and geopolitical risk at research firm Height Capital Markets, "especially in an industry that doesn't have a lot of diversity in its supply chain already."

In addition to the political risks, just doing business with Xinjiang can have reputational costs, Allen said, noting the outcry that The Walt Disney Co. faced this year over its decision to film part of the movie "Mulan" in the region.

"I have not heard any accusation that Disney was utilizing forced labor or contributing to human rights violations, [but] just the relationship with the government

was enough to drive this big massive backlash,” Allen said. “And for investors, that’s almost as scary, because you don’t want to be doing business with a company that has that sort of a negative profile.”

The danger of costly disruptions to the solar supply chain are emerging at a time when many of America’s biggest companies are turning to the industry to help cut their greenhouse gas emissions.

Apple Inc., the top corporate purchaser of solar power in the U.S., said in response to an inquiry from Market Intelligence that it is investigating the materials used in its solar installations.

U.S. warnings

By 2021, five companies in China and Hong Kong will control two-thirds of the world’s polysilicon market, according to Dennis Ip, an analyst at Daiwa Capital Markets Hong Kong Ltd.

One of those is Xinjiang-headquartered Daqo New Energy Corp., the only company in the group with a U.S. stock listing.

Drawn to Xinjiang by cheap electricity from coal-fired power plants, Daqo started building polysilicon plants in Xinjiang in 2011 as a trade fight over solar equipment was heating up between Beijing and the Obama administration.

In recent annual reports to the U.S. SEC, Daqo said it “enjoys additional advantages in the costs of electricity” because the regional power grid is operated by a division of Xinjiang Production and Construction Corps, or XPCC, which the U.S. Government describes as a paramilitary organization.

The U.S. Treasury Department sanctioned the XPCC in July in connection with “serious rights abuses.” Before that, the XPCC was added to a U.S. Commerce Department “entity list” in 2019 after the government determined that the group was “acting contrary to the foreign policy interests of the United States.” The U.S. departments of State, Treasury, Commerce and Homeland Security warned businesses in July that engaging with companies on the Commerce Department’s entity list could trigger law enforcement action.

Analysts said the XPCC’s role in Xinjiang’s economy underscores the difficulty companies face trying to ensure their supply chains in the region are not in jeopardy. “Even if the company that is producing the semi-finished product that you’re using as an input for your production of solar panels” is not implicated in labor abuses, “you don’t know what’s upstream from them,” Allen said.

The U.S. Government has also provided companies with a list of “potential indicators of forced labor or labor abuses.” They include “any mention of internment terminology” such as education training centers “coupled with poverty alleviation efforts, ethnic minority graduates, or involvement in reskilling,” according to an advisory from the Departments of State, Treasury, Commerce and Homeland Security.

In an annual report published earlier this year, GCL-Poly Energy Holdings Ltd., another top polysilicon producer, said it began a “staff localization plan” in Xinjiang in 2019 in cooperation with vocational schools in the area. At the end of 2019, the company said it employed about 120 people from “ethnic minority groups.”

GCL-Poly told Market Intelligence that its Uighur employees are provided with special benefits, including holidays and access to a halal restaurant.

If the U.S. Government links a polysilicon company to labor abuses, Customs and Border Protection could seize shipments of solar cells and panels that contain the raw material from that producer, and under the Tariff Act of 1930, importers could be criminally investigated. Customs and Border Protection cited the law in September when it ordered the seizure of certain imports from Xinjiang and palm oil products and derivatives from a company in Malaysia.

To make a seizure, Customs and Border Protection only needs information that “reasonably” indicates the use of forced labor.

China watchers see such evidence throughout Xinjiang’s economy, and the U.S. Government has said that to comply with existing law, companies have few options but to cut Xinjiang out of their supply chains entirely.

Further complicating matters, the solar industry may not be able to address Washington’s concerns simply by sourcing polysilicon from other parts of China. Uighurs have been forcibly transferred from Xinjiang to work elsewhere in the country, according to the Australian Strategic Policy Institute, which is partially funded by the

U.S. Government. And within the solar industry, polysilicon buyers often mix material from multiple producers, said Winegarner, making it difficult to trace the polysilicon in an individual solar panel back to its source.

“If there is some risk of forced labor . . . it’s going to be very hard to identify, and so the question is, are these companies receiving goods that potentially could be seized?” said Amy Lehr, director and senior fellow of the Human Rights Initiative at the Center for Strategic and International Studies in Washington. “If they’re unable to confirm the labor conditions in factories they’re sourcing from, that puts them at significant risk.”

“I don’t think they’re giving it any attention”

Those risks reach beyond solar equipment manufacturers and power plant developers to some of America’s biggest consumer brands.

In 2018, for example, one of Daqo’s long-time customers, JinkoSolar Holding Co. Ltd., landed a blockbuster contract to sell solar panels to U.S. renewable energy giant NextEra Energy Inc. A year later, in early 2019, Alphabet Inc.’s Google LLC said it agreed to buy electricity from solar farms built by NextEra subsidiary NextEra Energy Resources LLC.

Google’s connection to Xinjiang’s polysilicon industry represents the sort of risk that is drawing more scrutiny in boardrooms and on Wall Street with the rise of environmental, social and governance investing.

“It’s not just the product that lands on the shelf” that needs to meet ESG standards, Audrey Choi, Morgan Stanley’s chief sustainability officer, said at a renewable energy conference in September. “It is that whole value chain that needs to be aligned.”

As of June 30th, Morgan Stanley was a shareholder in Daqo. When asked, the firm would not say what, if anything, it is doing to ensure the polysilicon maker’s supply chains are not at risk.

Daqo said there are no human rights issues in the part of Xinjiang where it operates. “The cities/region in question are in Southern Xinjiang,” the company said in a statement to Market Intelligence.

JinkoSolar COO Zhiqun Xu said in a statement that the company “condemns the use of forced labor and does not use it in any of its facilities.” One of the leading solar panel shippers to the U.S. during the third quarter, JinkoSolar operates a factory in Xinjiang and is on the board of the Solar Energy Industries Association, the U.S. lobbying group.

NextEra did not respond to a message seeking comment.

Google, Amazon.com Inc. and Target Corp., three of the country’s leading corporate purchasers of solar power, also did not respond to messages seeking comment. Walmart Inc., another top corporate buyer, said it buys electricity from solar farms rather than the panels themselves. “However, we have zero tolerance for forced labor and protecting the dignity of workers and addressing forced labor is a priority for Walmart,” a spokesperson said.

Without pressure from customers and investors, the solar market’s ties to Xinjiang have been overlooked or ignored by an industry that is laser-focused on cutting costs, said Dustin Mulvaney, a professor at San Jose State University who teaches courses on energy and sustainability.

“I think the climate conversation is just such a loud voice that no one’s really interested in playing this story out,” Mulvaney said. “I don’t think they’re giving it any attention.”

Years of tariffs

U.S. companies are trying to take back some of the polysilicon market from China, but that alone will not solve the problem America’s solar industry is facing. Even if the U.S. produced enough of the raw material to meet domestic demand, it does not have the factories it needs to turn polysilicon into the wafers and cells that ultimately get assembled into solar panels. Chinese companies dominate those steps of the supply chain as well.

It is an issue the U.S. has been trying to address, by degrees, for nearly a decade.

In 2018, the Trump administration imposed sweeping import tariffs to try to push cell- and panel-makers to set up shop in America. In the wake of those new taxes,

some companies opened U.S. factories to assemble panels, but they still rely on cells shipped in from abroad.

SunPower Corp. Chairman and CEO Tom Werner told the U.S. International Trade Commission in 2019 that the country lacks the kinds of incentives that attracted manufacturers to Asia.

“We definitely are looking into . . . a value chain outside of China,” Tore Torvund, CEO of polysilicon maker REC Silicon ASA, said on an earnings call in July. “But it will take time to make it.” The company is trying to develop a complete solar supply chain in Washington state.

With its U.S. operations hobbled by a yearslong trade fight between Washington and Beijing, REC Silicon said polysilicon, which is also used in semiconductors and batteries, should be viewed as a strategic material by the U.S. as the country tries to compete with China.

Bradford Ward, former Deputy General Counsel in the Office of the United States Trade Representative and the lawyer for a group of American polysilicon companies that is trying to reclaim market share from China, said he believes that the U.S. Government is “becoming aware of the scale of the polysilicon industry in Xinjiang and the relevance of Xinjiang polysilicon to the global solar value chain and U.S. solar installations.”

But so far, the solar industry and lawmakers in the U.S. have not found a way to stand up a supply chain to rival China’s.

Tariffs, the tool American policy-makers often turn to when they want to support domestic industries, are rarely effective, said Paula Mints, chief solar analyst at SPV Market Research. On October 10th, President Donald Trump said he was tightening trade restrictions on the U.S. solar industry, claiming that domestic manufacturers need more help almost 3 years after his administration imposed tariffs.

“Building up a complete solar value chain in the U.S. could be a lever” to guard against potential labor abuses in Xinjiang, Bernreuter said, “but I doubt that such an industry would be able to be price-competitive.”

From *The New York Times*, January 8, 2021

CHINESE SOLAR COMPANIES TIED TO USE OF FORCED LABOR

By Ana Swanson and Chris Buckley

A new report shows some of the world’s biggest solar companies work with the Chinese government to absorb workers from Xinjiang, programs that are often seen as a red flag for forced labor.

In a flat, arid expanse of China’s far west Xinjiang region, a solar technology company welcomed laborers from a rural area 650 miles away, preparing to put them to work at GCL-Poly, the world’s second-largest maker of polysilicon.

The workers, members of the region’s Uighur minority, attended a class in etiquette as they prepared for their new lives in the solar industry, which prides itself as a model of clean, responsible growth. GCL-Poly promoted the housing and training it offered its new recruits in photographs and statements to the local news media.

But researchers and human rights experts say those positive images may conceal a more troubling reality—the persecution of one of China’s most vulnerable ethnic groups. According to a report by the consultancy Horizon Advisory, Xinjiang’s rising solar energy technology sector is connected to a broad program of assigned labor in China, including methods that fit well-documented patterns of forced labor.

Major solar companies including GCL-Poly, East Hope Group, Daqo New Energy, Xinte Energy and Jinko Solar are named in the report as bearing signs of using some forced labor, according to Horizon Advisory, which specializes in Chinese-language research. Though many details remain unclear, those signs include accepting workers transferred with the help of the Chinese government from certain parts of Xinjiang, and having laborers undergo “military-style” training that may be aimed at instilling loyalty to China and the Communist Party.

The Chinese Government disputes the presence of any forced labor in its supply chains, arguing that employment is voluntary. The companies named in the report either did not respond to requests for comment or denied any role in forced labor.

In a statement, a representative for the Chinese Embassy in Washington called forced labor in Xinjiang “a rumor created by a few anti-China media and organizations,” adding that all workers in Xinjiang enter into contracts in accordance with Chinese labor law. “There is no such thing as ‘forced labor,’” the representative said.

The report adds to a growing list of companies that have been accused of relying on coerced labor from Uighurs and other ethnic minorities in China, either in their own factories or those of their suppliers.

The United States and other governments have become increasingly vocal about forced labor in Xinjiang, including naming and shaming major corporations that operate in the region. The Trump administration has imposed sanctions on dozens of companies and individuals for their role in Xinjiang, including banning some exports from the region, which is also a major producer of cotton. On December 2nd, it banned imports made with cotton produced by the Xinjiang Production and Construction Corps, a paramilitary group that American officials say uses forced labor.

Congress is also considering sweeping legislation that would ban all products with materials from Xinjiang unless companies certify that the goods are made without forced labor.

John Ulyot, the spokesman for the National Security Council, said that China’s campaign of repression in Xinjiang involved “state-sponsored forced labor” and that the United States would “not be complicit in modern day slavery.”

“The administration has taken unprecedented actions to prevent China from profiting off of its horrific human rights abuses,” he said.

Together, the solar companies named in the report supply more than a third of the world’s polysilicon, which is refined from rock and turned into the solar panels that end up on rooftops and utility energy projects, including those in the United States and Europe.

Government announcements and news reports indicate that solar companies often take in assigned workers in batches of dozens or fewer, suggesting that the transfers are a small part of their overall work force. Still, the assertions from Horizon Advisory imply that much of the global solar supply chain may be tainted by an association with forced labor. Such charges could hurt its progressive image and risk product bans from Washington.

GCL-Poly, Daqo New Energy, Xinte Energy and East Hope Group did not respond to multiple requests for comment.

Ian McCaleb, a spokesman for Jinko Solar, said the company “strongly condemns the use of forced labor, and does not engage in it in its hiring practices or workplace operations.” He said that it had reviewed the claims in the Horizon report and “found that they do not demonstrate forced labor in our facilities.”

China carries out a vast program of detention and surveillance of Uighurs, Kazakhs and other minorities in Xinjiang. Up to a million or more minorities may have been detained in indoctrination camps and other sites where they are forced to renounce religious bonds, and risk torture, assault and psychological trauma, Uighurs abroad and human rights groups say.

The Xinjiang government has promoted the labor transfer programs in parallel with the re-education camps, efforts that have ramped up drastically under the current leader, Xi Jinping. The government has uprooted many from farms to work in factories and cities, in the belief that steady, supervised work can pull minorities out of poverty and break down cultural barriers. Workers may have little choice but to obey local officials who oversee their move to distant towns and industrial zones to fulfill government-set quotas.

The growing scrutiny of the region has already prompted changes among some companies whose supply chains are entangled in these programs. Many textile and apparel companies that use cotton or yarn from Xinjiang have severed ties, including Patagonia, Marks and Spencer and H&M.

The solar sector could face similar pressure. The industry has deep ties to Xinjiang, which accounts for about 40 percent of global polysilicon production, said Jenny Chase, the head of solar analysis at BloombergNEF. Xinjiang’s polysilicon production increased rapidly over the past decade, mostly because of cheap electricity from local coal plants and other government support, Ms. Chase said.

That expansion has helped Chinese companies dominate foreign competitors, including in the United States. China produced 82 percent of global polysilicon in 2020, up from 26 percent in 2010, according to data from IHS Markit, while the U.S. share of production shrunk to 5 percent from 35 percent.

“I am concerned that forced labor may have been used in Xinjiang,” said Francine Sullivan, the vice president for business development at REC Silicon, a Norwegian polysilicon manufacturer with operations in the United States. The company shut a facility in Washington State, despite surging overall U.S. demand.

Xinjiang is known for low safety and environmental standards, Ms. Sullivan said, and forced labor “may be just part of the incentive package.”

Xiaoqing Sun, a senior research analyst at Wood Mackenzie, said solar companies were starting to investigate their exposure to Xinjiang and reconfigure their supply chains to avoid the region if possible.

In a note to investors in October, analysts at Roth Capital Partners said the solar sector faced a “heightened risk of disruption” because of its ties to Xinjiang.

“Investors are getting nervous,” Ms. Sun said.

The Solar Energy Industries Association, the largest industry association in the United States, has called human rights abuses in Xinjiang “reprehensible” and strongly encouraged companies “to immediately move their supply chains out of the region.”

Since unfettered on-the-ground access to Xinjiang for foreign journalists and researchers is virtually impossible, the Horizon Advisory researchers do not provide direct testimony of forced labor. Instead, they present signs of possible coercion from Chinese-language documents and news reports, such as programs that may use high-pressure recruitment techniques, indoctrinate workers with patriotic or military education, or restrict their movement.

The report documents GCL-Poly accepting “surplus labor” from a rural region of Xinjiang last year. In 2018, according to an article on China Energy Net, a local news site, one of GCL-Poly’s subsidiaries also accepted more than 60 such workers.

A local subsidiary of Jinko Solar, Xinjiang Jinko Energy Co., received state subsidies for employing local Xinjiang labor, including at least 40 “poor workers from southern Xinjiang” in May, according to a local government announcement from July 2020 cited by Horizon Advisory.

On its public WeChat account, East Hope Group said that it had “responded to the national Western Development Call and actively participated in the development and construction of Xinjiang,” including constructing a polysilicon project in Changji prefecture in 2016, the Horizon report said.

That same year, according to a Chinese news report cited by Horizon, Xinjiang’s Yarkand County signed a “labor export cooperation framework agreement” with a subsidiary named East Hope Group Xinjiang Aluminum Company.

Another subsidiary of East Hope, Xinjiang East Hope Nonferrous Metals Co., “accepted 235 ethnic minority employees from southern Xinjiang,” who were given training to make up for “low educational qualifications, weak national language skills and insufficient job skills,” according to a report on the company’s website.

According to Horizon Advisory, several solar companies also have ties to the Xinjiang Production and Construction Corps, which has been penalized by the Trump administration. In its 2018 financial report, Daqo New Energy said its Xinjiang facilities benefited from a lower cost of electricity because the regional grid is operated by a division of the Xinjiang Production and Construction Corps.

Amy Lehr, the director of the Human Rights Initiative at the Center for Strategic and International Studies, said that work programs that draw on Xinjiang minorities and offer companies subsidies for employing them are a “red flag” for forced labor. These programs may restrict workers from quitting, traveling or participating in religious services, pay less than minimum wage, and involve harsh or unsafe work conditions, as well as the threat of detention, according to Ms. Lehr’s research.

“The concern is that there is a potential for coercion, because of the level of surveillance and fearfulness,” Ms. Lehr said. Companies that source products from the region have “no way of knowing that you’re not being connected to forced labor,” she said.

Nathan Picarsic, a founder of Horizon Advisory, said what the firm had documented was likely “just the tip of the iceberg.” If Americans are buying solar panels made with materials from these Chinese companies, he said, “I would say you are complicit in perpetuating this Chinese industrial policy that suppresses and disenfranchises human beings.”

COMMUNICATIONS

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Statement of Michael G. Bindner

Chairman Wyden and the Ranking Member Crapo, thank you for the opportunity to submit these comments for the record.

Supply chains are global and many nations who have controlled the virus by shutting down the economy rather than tailored quarantines will quickly find that many with less robust immune systems will get very sick when their economies open. There will be a third and fourth waves in these nations, precisely because there are available vectors who have not yet gotten sick. The supply chain will be stressed, if not stopped, even if draconian openings and closings can be imposed in China.

Draconian measures may be efficient, but they may add a different kind of fever, one that the regime will likely underestimate. Revolution kills production lines once people have too much. China, Inc. may not be as efficient a partner in a post-revolutionary future. Workers with more freedom to bargain and vote will want more stuff, which means higher prices here. Higher prices mean higher wages will be required, but jobs will come back as the economy changes.

The other issue with China, as well as south Asia and the global south, is de facto slavery. Boycotting the products of slavery worked in fighting the Confederacy. The mass migration of slaves had more of an impact. A boycott of Xinjiang cotton and tomatoes is problematic during a pandemic, but generally it cannot succeed as a stand-alone action. Even though it may hurt in the short run, we should still do it.

To make a boycott work, we cannot do it alone. At minimum, Islamic nations must join in as well and start linking the cause of the Uygurs to the New Silk Road. The ethnic Turkmen range from modern Turkey to Xinjiang, so a little solidarity on their part could go a long way. If we do go this route, the whole effort to interfere in Iran must end. We cannot be with South Asian Muslims on some things and expect solidarity with them on others.

On the moral front, I am not sure we have room to talk. We hold migrants in stark conditions prior to deportation. If you doubt it, visit Lewisburg Federal Prison. Also stop in the Federal Prison Industries factory while you are there. Visit any food processing plant with large immigrant workforces (send people undercover) and see how many workers were trafficked and how local law enforcement reacts when they decide they want to leave. Examine the plight of sex workers in the United States and see how many of their pimps have arrangements with local police.

Our best weapon is our example. As long as slavery exists in the United States, our moral voice is compromised. Again, I am not saying to ignore this situation. I am saying to All In to really fight slavery. Also, call it slavery. On the same subject, examine the Chinese treatment of peasant workers at their factories. There is a two-level society, and American consumers benefit from this. Our commitment to abolishing slavery cannot live only in the fringes.

This is not to say that loopholes cannot be closed, although we must stop our own unfair trade practices as well. American food should not show up in countries just before harvest when doing so depresses the price of local agricultural products. Poverty begets slavery. Making others poor is an invitation to exploitation.

Poor farmers can either be individual or tenant farmers who are essentially peons. The drive for lower food prices for American consumers comes at a human cost. This is especially true when only one buyer dominates the market, as is sometimes the case for export to America (if not often).

Poor factory workers never have access to collective bargaining. This factor also drives down wages in American factories—often those with immigrant labor bearing the brunt of bad working conditions, poor wages and lax enforcement. The major difference is that being blacklisted in the United States for attempting to organize is rarely deadly, as it can sometimes be overseas.

Improved enforcement takes money and the willingness to accept higher food prices. More inspectors with more authority are needed at home and abroad. Government or third party inspection is vital to make sure work is safe, fairly compensated and able to organize. We cannot expect worker protection in China or Guatemala if we do not insist on it in North Carolina and Alabama.

Existing supply chains must be reexamined and should not privilege big named brands over smaller importers and suppliers. Citing bad behavior must be cited. There is no better education than a ticket.

As I commented on Tuesday, the long term solution to labor inequality is employee ownership at all points in the supply chain. A multi-national employee-owned firm would provide all workers an equal standard of living and ownership rights. I would hope this would start here. The one pebble that will move mountains is allowing market investors the same exception to capital gains taxes when shares are sold to a qualified broad-based ESOP (or COOP) that privately owned companies now receive. A bigger pebble is enacting an asset value added tax with an internationally agreed upon rate with the same loophole. Sometimes loopholes can be a good thing.

Thank you for the opportunity to address the committee. We are, of course, available for direct testimony or to answer questions by members and staff.

STATEMENT SUBMITTED BY SHERIDAN S. MCKINNEY, ADJUNCT PROFESSOR,
AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW

I hereby humbly submit the below comments for inclusion in the public record related to the hearing convened by the United States Senate Finance Committee on March 18, 2021 entitled “Fighting Forced Labor: Closing Loopholes and Improving Customs Enforcement to Mandate Clean Supply Chains and Protect Workers.” Comments have been limited to issues of enforcement under Section 307 of the Tariff Act of 1930 in the hope of providing a fresh perspective from a trade litigator and policy professional with experience with how both domestic producers and vulnerable communities may seek to avail themselves of the protections provided by these laws. The views expressed below are entirely my own and should not be attributed to any client or organization I am affiliated with.

I. Executive Summary

The Committee can make significant improvements in the efficacy of existing authorities to reduce the presence of the products of forced labor in the stream of U.S. commerce via a careful wielding of its existing oversight authority. Furthermore, even a small amount of legislation enabling U.S. workers, producers, and watchdog organizations to effectively augment efforts by regulators would fundamentally change the game by significantly reducing the resource limitations inherent to any strictly regulatory activity. Indeed, it is likely that amending Section 307 of the Tariff Act of 1930 to create a new labor-based trade remedy for use by domestic interested parties would all but ensure the eradication of the scourge of forced labor in U.S. supply chains.

II. Legal Authorities

Section 307 of the Tariff Act of 1930 establishes a clear, simple mandate:

All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited. . . . 19 U.S.C. § 1307.

However, in spite of this clear prohibition, the ensuing 85-some-odd years saw only 39 enforcement actions. Section 910(a)(1) of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) amended the legal authority, removing what had

proven to be an effective limitation on its use. The “consumptive demand” clause created a carve-out for goods not produced within the United States in sufficient quantities to supply the market. This limiting language (below) appeared to take on additional significance as trade integration blossomed and input goods were more frequently sourced abroad.

The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States. Section 307 of the Tariff Act of 1930 (as it appeared prior to the 2015 amendment).

Since taking effect on March 10, 2016, the repeal of the consumptive demand clause has opened the door for CBP to issue some twenty-nine new findings (and counting).

The statutory authority is implemented via a short list of regulations, 19 CFR §§ 12.42–12.44.¹ Of these, Section 12.42 sets forth the procedural requirements for a party to raise an issue under Section 307 and the substantive standards that CBP will apply in its investigation. In brief, in order to trigger an investigation a “communication” (as it is termed in the regulation) must include:

- (1) A full statement of the reasons for the belief;
- (2) A detailed description or sample of the merchandise; and
- (3) All pertinent facts obtainable as to the production of the merchandise abroad.²

Any communication failing to meet these standards will be returned to the party that submitted it with, “detailed written advice as to the respects in which it does not conform.” The avenue for this communication that is mentioned in the regulations is a port director, though we know from other CBP-published guidance that the e-Allegation web portal is the preferred filing method.³ Beyond conformity with vague concepts such as “full statement” and “all pertinent facts obtainable,” we are left with little criteria against which to evaluate evidence.

If accepted, a communication then enters a stage where it is evaluated. At this point, CBP, “will consider any representations offered by foreign interests, importers, domestic producers, or other interested persons.”⁴ As with other terms used in the regulations, we are left to imagine what might constitute “representations.” Furthermore, it is not clear whether parties will be capable of responding to specific averments from the other parties, or, indeed whether there even are other parties at all. As with other portions of the Section 307 regime, whether or not CBP has a policy or practice in place today is not the issue. The lack of transparency invites confusion, complacency, and gamesmanship by the parties—none of which has a place in a functional, enforceable program to eradicate forced labor in the United States’ supply chain.

The legal standard offered at Section 12.42(e) for evaluation of evidence in the first instance is if, “information available reasonably but not conclusively indicates.” This language could lend itself to a broad spectrum of interpretations. As discussed below, it is exactly one of the legal standards that could be developed through the publication of decisional output—even decisions that have been necessarily redacted to protect victims or sources. Such a practice, whether achieved by regulation, policy, or statute, would benefit any group interested in combating forced labor in the supply chain.

Section 12.42 goes on to discuss a next step that consists of an official determination, and the issuance of a finding. Unfortunately, as with many of the other standards referenced in the regulations, little can be gleaned about the operable standards used to make such a finding. The lack of transparency with respect to the evaluative process that CBP uses to make such decisions only further serves to obfuscate the matter.

CBP has further built upon these regulations with limited guidance in the form of process maps, presentations for traders, and a smattering of other procedural guidance. CBP Publication # 2133–0416 is an illustrative example of guidance intended

¹ April 1, 2020 Ed.

² 19 CFR § 12.42(b).

³ See, e.g., CBP’s Forced Labor Resource Page at <https://www.cbp.gov/trade/programs-administration/forced-labor> (last accessed April 1, 2021).

⁴ 19 CFR § 12.42(d).

to help make the Section 307 regime better serve its intended purpose. The content of this publication makes clear that CBP considers itself chiefly and investigator and fact finder in administering this regime. Petitions are filed by outside parties and then investigated by CBP officials—this appears to be the role CBP views itself as playing, though it does have the authority to self-initiate investigations under Section 12.42(a). With that in mind, the section below sets forth some ideas of ways to make the Section 307 regime more accessible and functional for private and public sector parties interested in either filing petitions against exploitative traders, or simply making certain that an enterprise understands what to look out for and avoid in working with suppliers.

III. Opportunities to Improve the Mechanism

a. Actions under existing oversight authority

i. Policy or practice revisions

1. **Publication of decisional output of investigations.** Simply stating the terms of a WRO/finding once issued, as is the practice today, is not enough. Like any other government decision, and particularly one with such a sweeping impact as a WRO/finding, the evidence and analysis should be published. Publication enables traders and those concerned with protecting laborers to understand the standards being applied. This base level of transparency is foundational to our judicial and administrative systems and there is no reason to make an exception for this process. Where evidence critical to the decision is deemed proprietary or otherwise sensitive, that information can be protected under Administrative Protective Order (APO), as discussed below.
2. **Establish clear formal petition procedures while maintaining the ability to file a complaint anonymously.** Currently, CBP can be alerted to the suspicion that a product is being produced by forced labor via its established mechanism, the e-Allegation portal. While this whistleblower-oriented anonymous process should be maintained, a more formal procedure should be put in place that makes clear for those wishing to be helpful, what must be alleged and the types of evidence that will be expected to open an investigation. At present, coupled with the lack of published analysis with decisions, parties must engage in an inefficient iterative process with CBP, with no clear guidelines as to where it may lead or whether CBP must be responsive and collaborative. As discussed above, the guidance on how to move CBP to start an investigation contained in 19 CFR § 12.42 is lacking critical details on how to formulate a successful petition.
3. **Make clear to CBP that under no circumstance is it authorized to weigh “consumptive demand” considerations.** CBP Publication # 2133–0416 “Repeal of Consumptive Demand Clause—FAQs” states in relevant part that the striking of the consumptive demand clause contained in the TFTA resulted in CBP no longer being “legally required to weigh consumptive demand considerations to process information concerning forced labor.” That publication goes so far as to indicate some ambiguity as to whether the repeal resulted in changes to the WRO finding process at all. The language referencing legal requirements seems to suggest that officials feel that they have the discretion, but not obligation, to weigh consumptive demand considerations when reviewing petitions. It bears review as to whether Congress intended to allow such discretion to remain after the repeal.⁵

ii. Update regulations

1. **Establish clear procedures, guidelines for engagement, and legal standards.** At present, the existing regulations establish little in the way of either procedure or substance. Documentation provided by CBP somewhat clarifies certain aspects of its internal process, but does not establish clear procedural steps, clarify how to engage with investigatory staff or decision makers, or set forth a clear legal standard. As an example, the statutory language of Section 307 does not establish a legal standard for the evaluation of evidence to establish a product or shipment is produced by use of forced labor. That is done via 19 CFR § 2.42(e), which states the standard as when “information available reasonably but not conclusively indicates” that a product is being produced by forced labor a WRO will be issued. However, CBP Publication # 0550–

⁵The Congressional Record appears silent on this question. See, e.g., H. Rept. 114–376 (December 9, 2015) and H. Rept. 114–18 (February 9, 2015).

0816 states that “[f]indings require conclusive evidence, *i.e.*, probable cause that the imported goods are made with forced labor,”—a statement that appears to create inconsistencies between the legal standard operative in the regulations on one hand, and that applied in practice on the other. Such ambiguity in the legal standard it is applying may well exist only in the minds of those not working in the investigation units of CBP. However, it serves neither the interests of traders, nor the interests of exploited workers to prevent interpretive guidance, or, indeed, jurisprudential interpretation, from developing around these important standards. As with the legal standards, practice guidelines that outline what sorts of input and collaboration CBP welcomes, from whom, and at what stages of the process should be developed and made public.

2. **Establish Administrative Protective Order (APO) procedures to protect confidential data.** Any concerns with respect to proprietary or sensitive information leaking during a transparent process can be addressed via the issuance of an APO. A starting point that could serve as a model for a Section 307 confidential data regime can be those used by the U.S. International Trade Commission and U.S. Department of Commerce in trade remedies cases. Currently, the entire process—from accusation to decision—is completely opaque. Care should also be given to considering what can be protected under the APO. For example, parties should remain motivated to affirmatively seek their public exoneration by proving that they are not engaged in exploitative trade. On the other hand, where parties vulnerable to retaliation have provided information in an investigation, that information should enjoy a reasonable degree of protection.

b. Actions likely to require legislation

1. **Provide for interested parties to proactively participate in the proceeding.** Attempting to resolve an issue strictly based on what resources the government/CBP can marshal at a given time leaves entirely too much up to chance. Parties with an interest in a given proceeding should be able to enter an appearance and act as a resource, making submissions in the deliberative/adjudicative process, where appropriate. Today, the regulations merely provide for CBP to consider “representations” of parties, with no commitment to how iterative or transparent that process must be. Allowing for complaining parties to be robustly involved in a deliberative and adjudicative administrative proceeding creates an incentive for those competing with violating imports to bring additional resources to bear beyond what portion of its budget CBP intends to commit to investigations.
2. **Provide for the protection of certain types of confidential information used in the proceeding.** A truly confidence-inspiring approach to protecting confidential data so as to facilitate transparency would likely require legislation. There should be two levels of protected data: (1) that information that can be accessed under APO by parties meeting the standard of outside counsel to an interested party; and (2) highly sensitive information that only investigating authorities have access to. As discussed above, there may be certain types of information that is sensitive to the personal safety of human beings, whether victims or whistleblowers. Lawmakers and administrators should be empowered to weigh the equities as to when such information shall remain inaccessible by interested parties. Engaging in such protection of information in a proceeding is something the United States federal government knows well how to do and all potential parties to a WRO proceeding—whether a complaining party filing a petition or an importer whose shipments are called into question—have much to gain from the transparency that such a provision would facilitate.
3. **There should be tight procedural timelines.** As is, it is merely guesswork to come up with an idea of how much time an investigation leading to a WRO, finding, or exoneration may take. These could be dealt with via either regulation or placed in statute. The timelines should contain a reasonable degree of administrative flexibility, as a practical matter. However, the interests of both the exploited workers and the entities under investigation are likely best served by statutorily mandated procedural timelines. As with other proposed reforms discussed above, the Committee need look no further than the trade remedies laws for an example of how such a limitation might work in practice.
4. **Make the outcome of investigations appealable to the U.S. Court of International Trade (USCIT).** Currently CBP can seek judicial forfeiture procedures as a final step, after making formal findings and seizing goods.

However, creating a legal right to relief in federal courts for aggrieved parties will act as a permanent buffer against inconsistent interpretations, or a variance in the prevailing degree of interest in enforcement (*i.e.*, either over- or under-enforcement), consistent with our legal traditions. Furthermore, creating a body of jurisprudential interpretations of Section 307 and its enforcement could only serve to make forced labor in supply chains an ever more rare occurrence.

IV. Conclusion

In conclusion, the forced labor enforcement regime is, in many ways, somewhat a work in progress. Although it is a critical law enforcement tool, there are many opportunities to improve upon the workings of the Section 307 regime in a way that empowers CBP to play the role it is most suited for: investigator, fact finder, and frontline enforcer of our trade laws. As the committee of jurisdiction, the Senate Finance Committee is well-situated to wield existing oversight authority to reshape this underutilized regime into a powerful, robust deterrent to the trafficking of goods whose human costs are high. I humbly submit the ideas expressed above in the hopes that committee members and staff may find herein a helpful idea or observation to assist them in this important work.

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April 1, 2021

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510-6200

Re: **March 18, 2021 Hearing on “Fighting Forced Labor: Closing Loopholes and Improving Customs Enforcement to Mandate Clean Supply Chains and Protect Workers”**

The National Association of Foreign-Trade Zones (NAFTZ) is pleased to submit these comments for the record for the March 18, 2021 hearing of the Senate Committee on Finance on “Fighting Forced Labor: Closing Loopholes and Improving Customs Enforcement to Mandate Clean Supply Chains and Protect Workers.”

The NAFTZ and its members in the foreign-trade zone (FTZ) community strongly support efforts to end forced labor and other forms of illicit trade. Preventing products made with forced labor from entering the U.S. market is a significant challenge for policy makers looking for effective enforcement mechanisms and companies importing into the United States looking for viable and manageable options to help meet their compliance obligations.

The U.S. Foreign-Trade Zones Program is one existing system managed and regulated by U.S. Customs and Border Protection (CBP) that can help support better and more effective enforcement and compliance in this effort. NAFTZ has been working with CBP on a proposal to allow targeted merchandise subject to a withhold release order (WRO) to be stored securely in a U.S. foreign-trade zone (FTZ) under Customs supervision during the pendency of a decision whether the goods may be allowed into U.S. commerce. While in an FTZ, WRO merchandise would be physically separated, specifically identifiable, and part of a sufficient record trail to allow an audit by CBP.

For CBP this proposal would: (1) provide the agency better assurances that targeted merchandise can be held securely and separately under its supervision and control; (2) lower the risk that such merchandise subject to a WRO could enter the U.S. market before a determination on its forced-labor status has been rendered; and (3) allow for proper disposition of violative products under FTZ procedures and CBP supervision.

This proposal will also assist companies in meeting their compliance obligations by providing them a wider array of cost-effective options if they choose to contest a WRO on one of their products by presenting evidence to CBP that the product was, in fact, not produced with forced labor. Instead of having to rely on a limited selection of high-cost and privately operated bonded warehouses, companies would have

the more widely available alternative of storing the goods securely and safely in their or another company's FTZ facility. Finally, because the U.S. FTZ program imposes more stringent enforcement and compliance requirements on companies that use the program, CBP views it as a highly compliant program and an effective model and tool to help reduce the risk of trade in illicit and forced labor goods.

We urge Members of the Committee to support this sensible, effective, and straightforward proposal, which could be added to the "Uyghur Forced Labor Prevention Act," a key piece of bi-partisan legislation currently before Congress in the fight against illicit trade. We look forward to working with the Members of the Committee and the Senate on this important issue.

Background

The National Association of Foreign-Trade Zones is a trade association of over 650 members and serves as the collective voice of the U.S. Foreign-Trade Zones program and the community of public and private stakeholders in the United States who use and rely on the program. The FTZ program was established by Congress in 1934 during the Great Depression to encourage the location of manufacturing and distribution operations in the United States; create and support American jobs; and promote U.S. exports and competitiveness in the domestic and foreign markets. FTZs now account for a significant portion of total U.S. trade. Over 3,300 companies operate within the FTZ program, employing over 460,000 American workers in all fifty states and Puerto Rico.

Sincerely,

Erik O. Autor
President

TONY'S CHOCOLONELY
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INTRODUCTION

Tony's Chocolonely is pleased to submit this statement to the Senate Finance Committee as part of the record pursuant to its March 18, 2021 hearing on "Fighting Forced Labor: Closing Loopholes and Improving Customs Enforcement to Mandate Clean Supply Chains and Protect Workers."

We thank the Committee for arranging and holding the hearing. It is timely as in the chocolate industry child labor and modern slavery continue to be a huge problem in cocoa and chocolate products sourced from Ghana and the Ivory Coast. These two nations account for 60 percent of the cocoa produced in the world and recent reports from non-governmental organizations document the fact that there are today more than 1.56 million children are involved in cocoa-related child labor.¹ Furthermore, an estimated additional 30,000 people are victims of modern slavery in the two countries.²

We understand that much of the Committee's focus centers on policies created and implemented by the People's Republic of China against its Uighur Muslim minority. But forced labor and modern slavery is a worldwide problem. The International Labor Organization (ILO) estimates that there are more than 152 million child laborers globally with almost half, 73 million, working under hazardous conditions.³ The Global Slavery Index says there are almost 25 million adults working in modern slavery regimes.⁴ A great percentage of these come from Asia, but this societal ill is found on all the continents. We at Tony's therefore believe there must exist a global solution to the issue involving all participants in every supply chain. To us, that means creating an effective human rights due diligence system applicable to all actions in the supply chain; those who purchase, process, transship cocoa as well as those who ultimately sell chocolate to the consumer.

¹ <https://www.norc.org/Research/Projects/Pages/assessing-progress-in-reducing-child-labor-in-cocoa-growing-areas-of-c%3%B4te-d%E2%80%99ivoire-and-ghana.aspx>.

² https://cdn.minderoo.org/content/uploads/2019/03/06111232/Cocoa-Report_181016_V15-NL_digital.pdf.

³ https://www.ilo.org/ipecc/Informationresources/WCMS_653987/lang-en/index.htm.

⁴ <https://www.globallslaveryindex.org/2018/findings/importing-risk/cocoa/>.

ABOUT TONY'S CHOCOLONELY

Tony's Choclonely, a Netherlands-based international chocolate company, is a global firm operating in 22 countries around the world including the United States. We source our cocoa, the key ingredient in chocolate, from the same West African nations of Ghana and the Ivory Coast as do the larger and better-known international chocolate companies such as Mars, Nestle, Hershey, Mondelez and others.

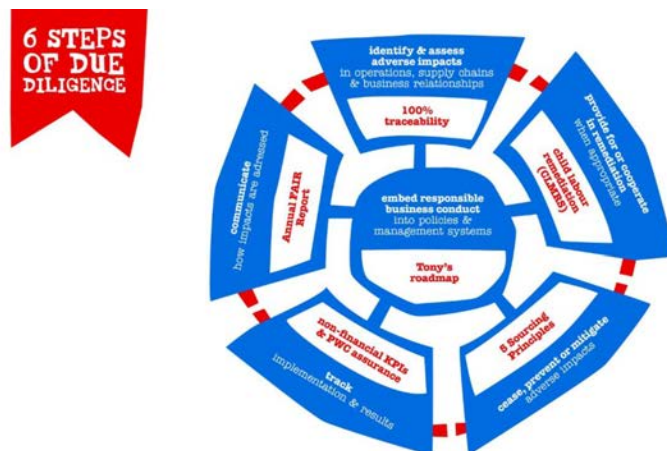
We were founded in 2005 by a Dutch investigative journalist who was horrified by the depth and breadth of child labor and modern slavery in the chocolate supply chain. He vowed to create a chocolate product free of this evil and to work closely with local farmers and local cooperatives in Ghana and the Ivory Coast on poverty reduction programs that would enable a living income in order to eliminate the pressure to use child and forced labor.

This founding impetus means we operate far differently than those with whom we compete. First, we are an impact company that makes chocolate, not the other way around. We were founded as referenced above to eradicate child labor and modern slavery in the cocoa industry. We believe the way to do that is by selling a profitable product and serving as an example for others in the chocolate industry.

Second, we have never accepted the argument that the eradication of child labor and modern slavery in the cocoa industry is anything less than the full and direct responsibility of the companies that invest in and profit from the products of these nations. We have raised and continue to raise global awareness of the inequities caused by current industry practices, we have created a system to address and overcome these inequities thereby leading by example, and we use our methods, tools and results to inspire others to act. It is the roadmap to our success, and it is a roadmap that others can use.

Third, we accept the international rules and guidances for the economic, social and ethical activities of transnational corporations in the 2003 United Nations document "Norms on the responsibilities of transnational corporations and other business enterprises with regards to human rights"⁵ as well as the Organization for Economic Cooperation and Development's Guidelines for Multinational Enterprises⁶ and have adopted them into our business model. These are apparent in and directly applicable to our way of doing business. We believe that companies have a responsibility for their supply chains and should comprehensively act to mitigate, find and remediate human rights violations.

The way we have adapted these overarching principles into our own business model can be illustrated by the chart below:



⁵ <https://old.business-humanrights.org/en/united-nations-sub-commission-norms-on-business-human-rights-explanatory-materials>.

⁶ 2011 edition, <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

Fourth, we believe that using these guidelines, as well as the guidelines embodied in the several foreign corrupt practices acts in the United States and in Europe, provide an appropriate framework for corporate responsibility and liability and hold the power to spur action from industry stakeholders.

TONY'S APPROACH TO ENDING CHILD AND FORCED LABOR IN THE COCOA INDUSTRY

The current cocoa trade system turns a blind eye to the origins of cocoa. "We do not know" is all too common an excuse for labor abuses at the start of the cocoa supply chain in Ghana or the Ivory Coast. A modest investment in time, technology and direct payments to growers can overcome both the ignorance that hides exploitive labor systems and those systems themselves.

Tony's has created just such a system including five requisite principles for sourcing cocoa beans. These sourcing principles are:

- Traceable cocoa beans. All our beans are made traceable by knowing our suppliers and trading directly with farmers and cocoa cooperatives.⁷
- Strengthen farmers by working with them to professionalize their farming organizations.
- Create long-term relationships by signing 5 year contracts for the supply of cocoa.
- Improve agricultural quality and productivity through training and support.
- Pay a higher price so farmers can earn a living income.

All five principles need to be used together to fully address the issues that plague the cocoa supply chain, but the last point is perhaps the most neglected in the general state of affairs. The core cause of child labor and modern slavery is the inhumanly low price paid to farmers. Current efforts to pay farmers a premium such as that created by Fairtrade are a good starting point, but do not close the living income gap. Tony's pays a premium above existing premiums to help farmers earn a living wage.

The Tony's premium is determined by creating a set "Living Income Reference Price," a model we created in conjunction with Fairtrade and integrating best practices and thorough research findings.⁸

This financial investment is backed up by technology and by constant monitoring. Tony's uses GPS technology to map farms in order to denote boundaries and to help prevent deforestation or encroachment onto national parkland. We use outside certification sources, and an independent assurance from PwC, to let us know how we are meeting our non-financial key performance indicators, to identify abuses and, when found, to then take remedial action.

We firmly believe that poverty is the root cause of child labor and modern slavery in the cocoa sector. We certainly believe that is true in other industries and in other regions.

Our system is unique, but not exclusive. It can be accessed by other companies and we share it through our Open Chain collaborative initiative. It is scalable to meet all sourcing needs from a portion of a producing area, country wide production zone or the entire cocoa producing region.

PAST EFFORTS TO SOLVE THIS ISSUE HAVE HAD LIMITED SUCCESS AT BEST

As a corporation engaged in the cocoa trade and in the manufacture of chocolate, we have followed with interest the various attempts to rid the sector of child labor, forced labor and modern slavery.

Interested parties have taken any one of three approaches to solve our common problem. The three are:

- Voluntary agreements to address the issue;
- Court cases relying on existing statutes; and
- Trade investigations.

Efforts related to voluntary agreements date back more than twenty years when the Harkin-Engel Protocol was created in a joint effort by your former colleague, Senator Tom Harkin and his House of Representatives counterpart, Representative Eliot Engel. Enthusiastically embraced by global chocolate companies as an alter-

⁷ <https://tonyschocolonely.com/nl/en/tonys-beantracker>.

⁸ <https://tonyschocolonely.com/us/en/living-income-model>.

native to direct government oversight, the results have largely failed. Millions of dollars have been spent with some benefits in terms of better schooling for children or increased cocoa productivity. Nevertheless, despite great fanfare, the corporations involved failed to meet the original target date for eradication of child labor and failed to meet any subsequent reduced targets even as they extended the deadline for success. The Harkin-Engel protocol is no longer in force. Even the corporations involved recognize that voluntary codes of conduct do not work and in December 2019 most of the leading international chocolate corporations called for direct regulation of their supply chains by the European Union and by the U.S. government.⁹

Interested parties have also filed lawsuits under several U.S. statutes including the Alien Claims Statute and the Trafficking Victims Protection Act. One of the suits is now before the Supreme Court of the United States for a decision.

Sadly, these cases take years to adjudicate. In the instance of the case before the Supreme Court it was first filed in 2005 and has yet to be decided. During those fifteen years, millions of children continue to labor in hazardous, forced conditions.

The use of trade law, specifically Section 307 of the Tariff Act of 1930, does allow the government of the United States to prevent importation of products made with forced labor and while the U.S. market is one of the largest consuming markets in the world, application of Section 307 does not affect the ability of a company to shift imports elsewhere allowing the underlying problem to continue to exist.

To our mind, each of these solutions fail because they do not focus on the responsibility of corporations to maintain a due diligence over their supply chains. The legal cases hit only the corporations named, not the industry as a whole. Section 307 actions, although a key tool to address forced labor concerns, do not yet demonstrate the ability to force underlying systemic change.

CORPORATE RESPONSIBILITY THROUGH CORPORATE DUE DILIGENCE IS KEY

We believe the locus of a solution to the child labor and modern slavery issue needs to be shifted from that of the farmer, the small producer or middleman to that of the end purchaser without absolving governments of their responsibilities. To do that, we suggest entering into law a comprehensive system of human rights due diligence that requires corporations to review their supply chains for abuses and to actively and transparently work to eliminate or remediate them within a short period of time. Such a system should entail penalties for failure otherwise it would essentially become nothing more than a reporting system.

Tony's is not alone in suggesting this approach. Globally, there is an emerging consensus in favor of supply chain due diligence; a few nations such as France, the United Kingdom and the Netherlands have already acted. Additionally, the European Union is gearing up to propose legislation this year with the European Parliament recently issuing a report to the European Council to enact legislation as soon as practicable.¹⁰

Focusing on corporate responsibility in the area of human rights due diligence is neither a new nor a radical departure from existing norms and laws. In both Europe and the United States there exists a framework governing corporate responsibility for international business dealings embodied in the several foreign corrupt practices acts. Further, both the United States and Europe have laws governing corporate due diligence over ethical and safe workplace conditions as embodied in occupational health and safety acts. The Organization for Economic Cooperation and Development has likewise addressed both issues.

The foreign corrupt practices acts were created because bribery is considered a deviation from globally accepted business norms that confers an advantage upon the entity doing the bribing. Failing to provide a safe place to work and the means to protect workers from harm is considered a deviation from globally accepted business practices that likewise confers a cost advantage to the entity failing to act to ensure the health and safety of its workers. Global corporations accept these norms and accept being held accountable to them.

⁹ <https://www.washingtonpost.com/business/2019/12/31/chocolate-companies-ask-taste-government-regulation/>.

¹⁰ <https://www.europarl.europa.eu/news/en/headlines/society/20210303STO99111/companies-should-be-held-accountable-for-their-actions-say-meps>.

It is exactly the same in the area of human rights due diligence in the supply chain. Utilization of child and forced labor provide cost advantages to the end user and in doing so, they violate globally accepted human rights norms and standards.

ENSURING A LEGALLY CREATED HUMAN RIGHTS DUE DILIGENCE SYSTEM WILL CREATE AMERICAN JOBS

We believe creating a system to implement human rights due diligence is the right thing to do. Companies should be a force for good and not a force that perpetuates old and harmful ways of doing business. That is why we do what we do; it is engrained in our nature and it is part of our mission. But we are not the only company undertaking such efforts. In the United States there are literally hundreds of chocolate companies seeking to source cocoa and other chocolate inputs in a sustainable and ethical manner. They are small businesses, and like small businesses everywhere, they are community oriented and create jobs and income for their towns and cities.

It does cost money to undertake supply chain due diligence and those corporations that do not have due diligence processes in place enjoy a cost advantage over those who do. Thus, creating such a global system will help level the economic playing field for these small companies allowing them more opportunities to grow and to create jobs across the 50 states.

CONCLUSION

Today, the West African cocoa trade relies on child labor and modern slavery. The biggest chocolate companies have profited from this model for decades and continue to do so. What is true in our industry is also true in so many other industries. Just as no chocolate bar is sweet enough to cover or dismiss the bitter truth of modern day child labor, forced labor and slavery, no product offered to the consumer deriving from such a system can be worth its purchase price.

For these reasons, we deeply hope that not only does the Committee move to improve enforcement by the U.S. Customs and Border Protection but it also closes supply chain loopholes by instituting an effective, comprehensive human rights due diligence system that requires corporate action and penalizes those entities that fail to act.

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March 24, 2021

Dear Chairman Wyden and Ranking Member Crapo,

USCIB proposes amending the regulations that implement Section 307 to include a framework that is workable and effective at identifying and eliminating forced labor in supply chains. With supply chains spanning the globe over a wide range of commodities, products and sectors, these comments from the United States Council for International Business (USCIB) and its members focus on implementation of the forced labor import prohibition, contained in Section 307 of the Tariff Act of 1930, as amended. We applaud the bipartisan commitment within the Congress to ensure effective implementation, and the overall desire to achieve effective and efficient enforcement of Section 307 by U.S. Customs and Border Protection (CBP). However, we believe that greater transparency by CBP upon initiation of an investigation will result in the trade community becoming a partner with CBP to address forced labor, prevent the importation of goods made with such, and more immediately address workers' needs. This is an outcome that can be achieved through updated regulations in this area.

USCIB and its members share the objectives to prevent, identify and eradicate forced labor globally. USCIB joins the U.S. Government in recognizing the UN Guiding Principles on Business and Human Rights (UNGPs) as the globally agreed

framework for advancing human rights as they relate to business. The UNGPs recognize the value and importance of company efforts to support remediation.

USCIB promotes open markets, international trade and investment, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and regulatory coherence. Our members include primarily U.S.-based multinational companies and professional services firms spanning every sector of the economy with global operations touching every region of the world. Member companies generate \$5 trillion in annual revenues and employ over 11 million people worldwide. As the sole U.S. affiliate of the International Chamber of Commerce (ICC), the International Organization of Employers (IOE) and Business at OECD, USCIB provides business views to policy makers and regulatory authorities in the U.S. and worldwide.

USCIB member companies are deeply committed to eradicating forced labor, in any form, from their supply chains and devote significant resources to ensuring forced labor and other violations of core, internationally recognized labor rights are not present in their supply chains. Many USCIB member companies have been working for decades to establish and execute operational due diligence and other corporate programs targeting and eliminating the use of forced labor, and many have been recognized for their innovative efforts. USCIB and its members actively support the development of effective laws, regulations and policies to eliminate forced labor linked to supply chains. As the recognized representative of U.S. employers to the International Labor Organization, USCIB and its members are at the table with governments, workers' representatives, and other global employers to negotiate legally binding international labor standards.

Eradicating Forced Labor in Partnership with CBP by Advancing Clear, Predictable, Effective Enforcement

It is with this background and in this context that we believe USCIB has a unique perspective, experience and capacity to inform and support U.S. policy makers on matters related to customs, trade and forced labor.

USCIB and its members support compliance consistent with the import prohibition of Section 307, working cooperatively with CBP. Regrettably, the current position of CBP is that as soon as they initiate an investigation, it becomes an enforcement action and therefore, they will not notify any entities that may be involved because CBP "may" take action to detain imported goods. CBP effectively creates a "black box" from which all companies are excluded. We want to partner with Congress and CBP on this process to use Section 307 as a mechanism to: (1) combat forced labor in the global supply chain; (2) prevent unfair pricing affecting U.S. workers; and (3) ensure a values-based trading system. The way the process is currently set up does not fully serve these goals and is damaging to the U.S. economy and to impacted forced laborers.

USCIB's proposal speaks to the following:

- Section 307 regulations were created in 1963 and they are not adequate for 21st-century supply chains. A regulatory framework based on objective standards that will be predictable, transparent and workable is needed. This proposal will help eliminate forced labor and support U.S. foreign policy and global development goals, rather than resulting in companies adopting a cut and run approach to suppliers that are identified as using forced labor as currently frequently happens.
- Increased engagement and transparency by CBP with all impacted parties, including the business community, as part of any investigation into allegations of forced labor, to include appropriate U.S. government agencies (*e.g.*, the Office of the U.S. Trade Representative, the Department of Labor and the Department of State), foreign governments and the broader trade community, through (1) direct confidential outreach to companies at the outset of an investigation, and (2) engagement with business associations able to speak for businesses, in general, regarding investigations. Input from importers or other interested persons are currently required to be considered by CBP when an investigation is warranted, but the existing process does not include such input. Customs is currently assuming that when it initiates an investigation, that the result is possible violative imports that will result in enforcement action, therefore, they are not involving either the concerned exporting entity, country or importer as required under regulation.

Specifically, USCIB proposes amending the current process by which CBP issues Withhold Release Orders (WROs) as a multi-stepped approach:

1. Announce the initiation of a review based on allegations deemed to merit investigation to the importers that may be impacted according to objective and transparent standards. When allegations are against a company or set of companies, or if a company may be importing from a region, a country or an industry product subject to the allegations, CBP or the appropriate member of the interagency Task Force should alert both the U.S. importer (while maintaining confidentiality) and the foreign government. CBP should provide companies with at least 60 days to refute, provide information that may be critical or useful to the investigation or, in appropriate circumstances, remediate the allegation.
2. Issue a preliminary determination within no less than 60 days of initiating an investigation, and provide at least a 60-day comment period, without repercussions to the importer other than inadmissibility of the goods, and/or for a remediation period by the trading community.
3. Make a final determination not earlier than 120 days after initiating the investigation, if CBP has determined after investigation and consultation with the Task Force that such WRO is merited. Involved parties should have at least 60 days to submit a remedy.
4. Issue final notification of a WRO.

CBP currently accepts allegations from a wide range of stakeholders through various means of transmission regarding forced labor, but it does not request, pre-WRO, any information from foreign governments, or importers on the subject merchandise. Though CBP is required to consider such information under existing regulations [19 CFR 12.42 (d)], in practice, it excludes any potentially involved entities. CBP prioritizes collaboration with the trade community as required under the Customs Modernization Act, but in the case of WRO enforcement has fallen short of this goal. This omission of input hinders establishing a transparent and predictable process to determine if in fact there is potential forced labor and if so, engaging the trade community to remove the offending behavior by the manufacturer and eradicate possible forced labor. This lack of coordination between CBP and the trade community could also have a direct impact on workers' well-being because importers are not made aware and thus cannot help resolve CBP's concerns with their suppliers until a WRO is issued, often many months or years from the time the concerns were first raised.

We believe that improving the current process could address direct and indirect impacts to the U.S. economy. A WRO is not definite proof of forced labor, yet results in increased, lengthy, and even unrelated detentions in some instances.

Improperly detaining a shipment for just 5–6 days in a bulk commodity storage facility could cost the importer \$1M or more. USCIB has examples of importers who have had substantial portions of their total inventory incorrectly detained for weeks. Such delays can threaten the existence of small to medium sized businesses, and delayed shipments to facilities in the U.S. could lead to full or partial shutdown of manufacturing, potentially impacting both U.S. and foreign jobs. We look forward to providing additional content in future dialogues.

We strongly agree that CBP must modernize, update and align its regulations, policies and procedures to address the evolving threat of forced labor in supply chains in partnership with the trade community. In our view, the process outlined above will create a reasonable, transparent and—most importantly—effective process for assisting in effective implementation of the law while fostering greater collaborative engagement with the trade community in combatting forced labor in international supply chains.

USCIB believes that cooperation between the government, stakeholders, and the trade community is the most effective path to block imports of goods made with forced labor. USCIB would like to be a resource in the process to design an updated path forward for CBP to implement the import prohibition for goods made with forced labor while encouraging responsible business practices and avoiding unnecessary disruption of trade and supply chains.

For further information, contact Norine Kennedy, United States Council for International Business, at nkennedy@uscib.org. We look forward to working with the Committee on this important matter.

Respectively submitted,

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