

4 March 2021

The Honorable Alejandro Mayorkas  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
3801 Nebraska Avenue, NW  
Washington, DC 20016

Dear Secretary Mayorkas:

We, the undersigned coalition of workers' rights and human rights organizations, write to congratulate you on your confirmation as Secretary of Homeland Security and to urge the Department of Homeland Security (DHS) to vigorously enforce the prohibition on forced labor under 19 U.S.C. § 1307. To help achieve this, we offer a few recommendations below.

We applaud efforts by U.S. Customs and Border Protection (CBP) to combat forced labor in supply chains over recent years. Since the closing of the “consumptive demand loophole” during the Obama-Biden Administration in 2016, CBP has issued 29 detention orders or Withhold Release Orders (WROs) to block goods made, in whole or in part, with forced labor from reaching U.S. markets. In August 2020, CBP also issued its first ever monetary penalty for importing forced labor goods against a U.S. company.<sup>1</sup> We support robust enforcement of the Tariff Act of 1930 and related laws, including financial penalties for importers. We look forward to improved enforcement under your leadership.

The International Labor Organization (ILO) has stated<sup>2</sup> that “the harmful effects of this pandemic will not be distributed equally. They are expected to be most damaging in the poorest countries and in the poorest neighbourhoods, and for those in already disadvantaged or vulnerable situations, such as children in child labour and victims of forced labour and human trafficking.” Now more than ever there is an opportunity for the Department of Homeland Security (DHS) and CBP to send an even stronger message to those who would continue to send goods tainted by forced labor

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<sup>1</sup><https://www.cbp.gov/newsroom/national-media-release/cbp-collects-575000-pure-circle-usa-stevia-imports-made-forced-labor>

<sup>2</sup> [https://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@ipecc/documents/publication/wcms\\_745287.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@ipecc/documents/publication/wcms_745287.pdf)

and prison labor into the United States. Estimates by the ILO suggest that more than 25 million people<sup>3</sup> are trapped in conditions of forced labor around the world. Recent reports suggest that the United States imports as much as 400 billion dollars each year in goods made with forced labor.<sup>4</sup> So far, Tariff Act enforcement has touched a tiny fraction of these imports. In FY 2019, the value of goods detained was as low as 1.4 million USD<sup>5</sup>. In FY 2020, CBP reported that it detained a total of 324 shipments valued at around USD 50 million.<sup>6</sup> This marks an increase, but still nowhere near the level of enforcement required to deter forced labor in global supply chains. The U.S. Government can and should do more. Access to U.S. markets should be conditioned on the absence of forced labor in the production of goods, from raw material to finished product. The United States Government should enforce the law. CBP should not allow any product made, wholly or in part, with forced labor to enter our borders.

### **Recommendations**

We make the following recommendations:

#### **More enforcement, more penalties, and ramped up forced labor criminal prosecution:**

It is important to enforce Section 307 and related laws with even more fervor than in prior years. This should include more self-initiated cases by CBP. The Covid-19 pandemic has exposed the underbelly of global supply chains, including an over-reliance on cheap labor by leading multinational corporations. Enforcement of the Tariff Act should be ramped up with the issuance -- and robust enforcement -- of more WROs. The agency should signal that the United States will not serve as a safe harbor for goods made with forced labor from anywhere in the world. U.S. importers that continue to source goods in violation of the U.S. Tariff Act should be punished. We expect to see more findings, more monetary penalties (for higher amounts), and criminal prosecutions for forced labor. These goals can be achieved with political will and enhanced inter-agency collaboration.

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 USC §1596. Victims of forced labor in supply chains have brought civil suits in the federal courts under 18 USC §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 (TVPRA). We are also concerned that the U.S. Government has not prosecuted even one case alleging the importation of

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<sup>3</sup><https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>

<sup>4</sup><https://news.trust.org/item/20201028174046-4xlut>

<sup>5</sup><https://www.cbp.gov/sites/default/files/assets/documents/2021-Feb/CBP-FY2020-Trade-and-Travel-Report.pdf>

<sup>6</sup> *Id.*

goods made with forced labor. We urge the agency to work with the Department of Justice (DOJ) to prosecute violators.

#### Strengthened enforcement of WRO on cotton and cotton products from Xinjiang

We welcomed the WRO on cotton and tomato products from the Uyghur Region. Many signatories to this letter filed a petition in August 2020 seeking a complete block on all cotton and cotton goods made using forced Uyghur labor. We were pleased to see that CBP responded to our request by issuing two WROs on Chinese cotton - one against the Xinjiang Production and Construction Corps (XPCC) in December 2020 and the second against all cotton (and tomatoes) from Xinjiang ('Uyghur Region') issued in January 2021. We urge CBP to enforce these WROs without any limitations. And we urge CBP to develop the supply chain mapping capabilities to enforce these WROs broadly, including against products relying on Xinjiang cotton manufactured in other countries.

We view effective enforcement of this regional WRO as a key tool to end China's widespread and systematic forced labor and other abuses against Uyghurs and Turkic Muslims. The State Department has recognized these abuses as crimes against humanity and genocide. Robust enforcement must follow.

The recent announcement that enforcement would be done with a "scalpel" does raise concerns. We urge you to enforce the WRO broadly, not limiting enforcement actions to imports directly from the Uyghur Region. Similarly, enforcement should not be limited only to high-volume imports. China is the world's largest producer and exporter of cotton yarn, textiles, and apparel. Given the complexity of cotton garment and textile supply chains, there is a high likelihood that cotton goods imported to the U.S. are tainted with Uyghur forced labor, even if they are not imported from or manufactured in the Uyghur Region. Companies must have full mapping and traceability of their supply chains to the raw material level; they should be able to demonstrate that their products do not violate the WRO. CBP should require brands and retailers importing goods containing cotton products from China to demonstrate full supply chain transparency. CBP should report publicly on any actions taken to stop imports to demonstrate its commitment to effective enforcement. This will also show importers that compliance with the WRO is not optional.

#### Geographically diverse Tariff Act enforcement:

More than 72% 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. Indeed, there are many cases of forced labor in other countries. For example:

### *Palm Oil in Malaysia*

We applaud the WROs issued on palm oil and palm oil products made by FGV Holdings Berhad<sup>7</sup> and by Sime Darby Plantation Berhad<sup>8</sup> (and their affiliates) in Malaysia. These WROs cited multiple forced labor indicators, including abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual abuses, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime. As with all WROs, we hope to see robust and transparent enforcement. We believe that CBP should target goods that contain the tainted palm oil arriving from other sources, as well as products shipped directly by the two Malaysian palm oil companies. CBP should refuse calls to revoke the palm oil WROs until full and just remediation of all of the ILO forced labor indicators is complete.

### *Taiwanese-related Fishing Vessels*

We also commend CBP's increased attention to forced labor in the fisheries sector and the four WROs CBP has issued on Taiwanese-related vessels in the last two years. However, the issue goes beyond any single vessel. We urge CBP to respond to the troubling lack of industry and buyer action regarding forced labor by adopting a fleet, trader, and processor-level approach to enforcement. This would more effectively address widespread and systemic forced labor in distant water fisheries.

### *Tobacco in Malawi*

We were encouraged to see the WRO issued against all tobacco from Malawi in 2019 over forced labor and forced child labor concerns. We are aware that senior leadership from CBP visited Malawi shortly after the WRO was issued. We appreciate CBP efforts to commence a dialogue with the Malawian government to improve the situation for tobacco workers in the country. The modification to this WRO in relation to one company appears to be based on a due diligence plan the company submitted. Here, as with all WRO modifications, greater transparency of the WRO modification process is needed. This will ensure that all stakeholders understand the common standards applied by CBP.

### *Other regions require WROs*

We recommend that CBP issue WROs and pursue enforcement against other countries and products at high risk for forced labor. Forced labor continues in many countries in East Asia, South and Central Asia, Africa, the Americas, the Middle East, and Europe. We hope to see more

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<sup>7</sup><https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-order-palm-oil-produced-forced-labor-malaysia>

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geographically diverse enforcement of the Tariff Act. We look forward to working with the agency to increase geographical diversity in Tariff Act enforcement.

More transparency in the Tariff Act process:

One of the biggest challenges for non-governmental organizations and unions is the lack of transparency in the Tariff Act process. CBP relies on NGOs/unions to submit forced labor allegations and petitions. But there is little clarity on the standards CBP applies or the evidence required. This issue is further compounded by a lack of clarity on the agency's definitions of forced labor, child labor, and prison labor. Petitioners seldom receive updates on ongoing investigations (including timelines for when the investigation will be concluded and a WRO issued). 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.

*Shipments detained under a WRO should be disclosed*

Even after CBP issues a WRO, it is unclear how many shipments are detained. It is also unclear which importers have brought those goods into the United States. CBP's recent disclosures of the number and value of shipments detained in FY 2020 are encouraging. We urge CBP to disclose this information for all 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. Making information on enforcement actions public would put importers on notice that they must take steps to prevent goods tainted by forced labor from entering their supply chains. We request that CBP release enforcement updates on each WRO each quarter.

*CBP should increase engagement with civil society*

We appreciate CBP's efforts to conduct quarterly roundtable meetings with civil society on Tariff Act enforcement. However, we think it would be useful to also have regular inter-agency check-ins with civil society organizations to ensure a more coordinated approach to Tariff Act enforcement. We would recommend restarting the CBP/CSO Technical Working Group that was formed in the Obama-Biden Administration. The working group ceased operations but could easily be reconstituted.

*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. This communication is also needed to ensure that

workers have access to necessary remedies. The Government Accountability Office (GAO) released a report<sup>9</sup> on 1 March, 2021. This report, one in a series of reports,<sup>10</sup> analyzed gaps in transparency that undermine Tariff Act enforcement. In the latest report, GAO recommended that CBP publish a description of its WRO revocation and modification process. We agree with this recommendation and hope to see this process description soon.

We have also consistently advocated for inclusion of workers and worker representatives in the Tariff Act process. CBP should ensure that affected workers, their unions, workers' rights organizations, migrant workers' rights groups, and other relevant stakeholders 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.

Establish cooperation and communication channels with U.S. allies:

Robust and vigorous Tariff Act enforcement will demonstrate that the United States does not tolerate forced labor in global supply chains. The U.S. should cooperate with key U.S. allies to combat forced labor. Goods made with forced labor -- and subject to WROs -- are routinely rerouted from U.S. ports to neighboring countries or other regions. Goods made with forced labor should not find safe harbor in any port.

DHS should cooperate with counterparts in Canada and Mexico to ensure that goods tainted with forced labor are not transshipped from one country to another. The three countries 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). The U.S. government should also engage with counterparts beyond the continent, including key allies like the United Kingdom, Australia, Japan, and the European Union to combat forced labor in global supply chains. We recommend that the United States work with these allies to enact and enforce legislation similar to the Tariff Act. We also recommend that the United States incorporate Section 307 provisions into all trade agreements.

Conclusion:

The U.S. Tariff Act has enormous potential to disrupt forced labor in global supply chains. The U.S. government is poised to lead the way. We urge the Department of Homeland Security, under your leadership, to prioritize enforcement under Section 307 of the U.S. Tariff Act. We look forward to robust and transparent enforcement of the Tariff Act under the Biden-Harris Administration.

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<sup>9</sup> <https://www.gao.gov/assets/720/712672.pdf>

<sup>10</sup> <https://www.gao.gov/products/GAO-20-441>

We, the undersigned coalition of workers' rights and human rights organizations, stand ready to assist you on matters related to Tariff Act enforcement. We look forward to cooperating with you and your colleagues at DHS to prevent goods made with forced labor from entering U.S. markets.

Sincerely,

**CORPORATE  
ACCOUNTABILITY  
LAB**



**LIBERTY SHARED**  
CREATING AN ENVIRONMENT  
SAFE FROM TRAFFICKING



**VERITÉ**  
Fair Labor. **Worldwide.**