

## THE GLOBAL CHALLENGE OF FORCED LABOR IN SUPPLY CHAINS: STRENGTHENING ENFORCEMENT AND PROTECTING WORKERS

Before the House Committee on Ways and Means, Subcommittee on Trade on July 21, 2021

WRITTEN TESTIMONY

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The Coalition for a Prosperous America (CPA) thanks the Trade Subcommittee for holding this hearing exploring how to eliminate forced labor in multinational supply chains. CPA is a nonprofit, bipartisan organization representing the interests of domestic producers in manufacturing and agriculture across the country. of 4.1 million households engaged in domestic production through our agricultural, manufacturing and labor members.

**Trafficking in goods made with forced labor is already a crime. The best route to discourage forced labor in supply chains is vigorous law enforcement and punishment for violators.**

Congress has made it clear that the importation of goods made with forced labor unacceptably enables these practices. The Trafficking Victims Protection Act of 2000 targeted forced labor by supplementing existing criminal laws with new statutory offenses. Section 222(b)(3) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 further strengthened the law, making it a crime to profit from forced labor violations:

Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).

18 U.S. Code § 1589(b)

Additionally, in 2015, Congress removed the “consumptive demand” clause in Section 307 of the Tariff Act of 1930, ending any ambiguity about whether the United States would tolerate trafficking in goods produced with forced labor.

Multinational enterprises that have continued to turn a blind eye towards their suppliers are not deserving of leniency or more time to comply with long established law.

The time for vigorous enforcement and prosecution is now. Persons and businesses that violate section 307 of the Tariff Act of 1930 (“Section 307”) must be held accountable. Punishment, especially punishment for well-endowed multinational enterprises that violate the statute, will send the message to corporate boardrooms that they can no longer contract abroad freely without regard to the

conditions of production of their goods. Changing the cost calculus for those importers is the most direct route to ending the scourge of forced labor.

### **The demands of the import lobby and multinational enterprises to receive confidential warnings as a prerequisite to enforcement activity should be rejected**

Unfortunately, too many in the trade and customs policy area continue to prioritize frictionless borders above all else. Even above the market distortions and human rights violations of slave labor. The best funded, most active groups and industry associations in the trade policy space invariably prioritize ‘trade facilitation’ over ‘trade enforcement’. In the absence of enforcement of the law and upholding basic human rights, companies choose their bottom lines, cheap labor, and working in places where governments tolerate (or in some cases, facilitate) forced labor regimes to ease the costs of business, improve moneymaking, and the facilitation of commerce.

In its testimony before this Subcommittee, the United States Council for International Business (USCIB) wrote “Regrettably, CBP’s current forced labor enforcement approach is opaque for U.S. companies.”<sup>1</sup>

To clarify, there is no opaqueness regarding the elements that constitute forced labor. USCIB says they actively support the UN, OECD and ILO guidance on forced labor, which also informs CBP’s enforcement activity.

Rather, the opaqueness that USCIB complains about is that they are not given advance notice that their shipments are under investigation:

CBP’s current approach is that when they initiate an investigation, it is an enforcement action. As an enforcement action, CBP will not engage any entity that may be involved because it may need to take action later to detain their goods.<sup>2</sup>

USCIB requests that CBP extend “direct confidential outreach to companies at the outset of an investigation”<sup>3</sup>.

This request is a thinly veiled attempt to interfere with CBP investigations and exhaust investigative resources to prevent critical law enforcement activities that can reduce and end forced labor imports. US law does not provide suspects with the right to learn that an investigatory file has been opened by law enforcement personnel. A company or person importing goods produced with forced labor may very well be violating 18 U.S. Code § 1589(b).<sup>4</sup> Forced labor import investigations often result in prosecutions of multiple criminal statutes.<sup>5</sup>

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<sup>1</sup> United States Council for International Business testimony, page 2, (July 21, 2021), *available at* <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/Witness%205%20Brian%20Lowry%20Testimony.pdf>

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> The statute sets a “knowingly” or “reckless disregard” *mens rea* element. *See also*, Department of Justice, “Involuntary Servitude, Forced Labor, and Sex Trafficking Statutes Enforced”, *available at* <https://www.justice.gov/crt/involuntary-servitude-forced-labor-and-sex-trafficking-statutes-enforced>

<sup>5</sup> GAO, “Forced Labor Imports: DHS Increased Resources and Enforcement Efforts, but Needs to Improve Workforce Planning and Monitoring” (October 2020), page 41, *available at* <https://www.gao.gov/assets/gao-21-106.pdf>

Put simply, if CBP is provided credible evidence that imported merchandise was made with forced labor, then the priority must be on enforcement of Section 307, not warning letters to the importers.

In seeking a “at least a 60-day comment period without repercussions to the importer”<sup>6</sup>, USCIB seeks to obstruct law enforcement activity by transforming it into a procedural morass akin to a rule-making exercise. This suggestion should be rejected. It is no different from businesses asking that the Department of Justice provide private warnings to company executives when undertaking a Foreign Corrupt Practices Act investigation. Importers have the responsibility to know the law, know their goods and comply with the customs rules.

### **The Trade Subcommittee should object to broader efforts to prevent Section 307 effectiveness in preventing forced labor imports**

Earlier this year, the Commercial Customs Operations Advisory Committee (COAC)’s Forced Labor Working Group submitted recommendations to U.S. Customs & Border Protection (CBP).<sup>7</sup> All of these recommendations would hobble, rather than bolster, CBP forced labor investigations. *See CPA response to COAC Forced Labor recommendations.*<sup>8</sup>

Unfortunately, parts of these recommendations made it into Sec. 71001 of the U.S. Senate’s United States Innovation and Competition Act of 2021 (S. 1260). Rather than closer cooperation with fellow law enforcement agencies, namely U.S. Immigration and Customs and Enforcement and the Department of Justice, the statute directs CBP to prioritize investigations in consultation with the State Department and the Department of Labor. The goal here is to discourage forced labor investigations into U.S. supply chains, tie law enforcement hands in red tape, and frustrate the ability of CBP staff to carry out their duty to prevent the importation of forced labor goods.

This is in direct conflict with Congress goals to excise forced labor goods from our market. The FBI and Department of Justice are not required to enter into interminable interagency consultations to investigate and prosecute lawbreakers and neither should CBP.

According to the GAO<sup>9</sup>, CBP has increased its activity in terms WRO’s and the work of the Forced Labor Division but remains under-staffed. While DOJ is the lead criminal prosecutor for forced labor, CBP is the lead for enforcing civil penalties. In order to do its work effectively, DHS and CBP must be strengthened; not have their authority watered-down.

### **Forced Labor Goes Beyond Trade and Customs Enforcement: Investment in companies that profit from forced labor should be illegal**

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<sup>6</sup> United States Council for International Business testimony, page 3

<sup>7</sup> COAC Quarterly Meeting, March 17, 2021, *Intelligent Enforcement*, Forced Labor WG Government Recommendations, *available at* <https://www.cbp.gov/sites/default/files/assets/documents/2021-Mar/IE%20Forced%20Labor%20Recommendations%20PTI%20V8.pdf>

<sup>8</sup> *See* comment submitted by Coalition for a Prosperous America in response to COAC working group recommendations (March 17, 2021), *available at* <https://www.regulations.gov/comment/USCBP-2021-0006-0002>

<sup>9</sup> GAO Report, Forced Labor Imports: DHS Increased Resources and Enforcement Efforts, but Needs to Improve Workforce Planning and Monitoring <https://www.gao.gov/products/gao-21-106>

Intentionally or unintentionally, millions of Americans are investing in companies that are benefiting from illegal modern-day slavery. Many foreign companies raise billions in capital in U.S. and European capital markets, and many large U.S. firms are investing abroad in places they assess as new frontiers for business. These companies take individuals' retirement accounts and harness them for their business operations, getting American pension funds, investment portfolios, and other retirement accounts entangled in supporting the very suppliers of these goods made with forced labor.

This is a global concern but is a very common occurrence for Chinese firms under the thumb of the Chinese Communist Party (CCP) that easily woo American investors. And evidence indicates that the Chinese government is complicit in a campaign of forced labor across China, using various ethnic groups as laborers for businesses and suppliers under the guise of "training" or "education" programs, as documented by many human rights groups<sup>10</sup>, governments<sup>11</sup>, journalists<sup>12</sup>, and think tank analysts<sup>13</sup>. These companies end up in emerging-market indexes or variable interest entities (VIE's) commonly held by retirement managers among others.

In December 2020, the State Department issued a fact sheet listing sanctioned companies whose shares are traded on U.S. exchanges or through ETFs and indices: [U.S. Investors Are Funding Malign PRC Companies on Major Indices](#). This fact sheet is beneficial, but it needs to be updated and annualized as a regular report to Congress. It also must be linked to sanctions that prohibit investment in those companies that are corporate human rights abusers, profiting off of slave labor. Similar to the already-sanctioned Chinese military and military industrial complex companies subject to EO 14032<sup>14</sup> Executive Order on Addressing the Threat from Securities Investments that Finance Certain Companies of the People's Republic of China, those companies using forced labor must also be sanctioned.

Additional lists exist that name and shame bad actor companies for various practices, including forced labor. These name-and-shame lists include some of those produced by the Department of Labor<sup>15</sup>, Department of Defense<sup>16</sup>, Department of Commerce<sup>17</sup>, and Department of the Treasury<sup>18</sup>. However, only some<sup>19</sup> of these lists bring to bear punitive action or certain sanctions, and we all are witness to the fact that these lists are feckless without consequences. Bad actors continue bad behavior and devise

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<sup>10</sup> Human Rights Watch, February 2020: <https://www.hrw.org/news/2020/02/20/more-evidence-chinas-horrific-abuses-xinjiang#>

<sup>11</sup> AP News, April 2021: <https://apnews.com/article/beijing-netherlands-justin-trudeau-crime-china-2d970dc0b565c62c98886b843f05e441>

<sup>12</sup> The Guardian, January 2021: <https://www.theguardian.com/world/2021/jan/12/uighur-xinjiang-re-education-camp-china-gulbahar-haitiwaji>

<sup>13</sup> Australian Strategic Policy Institute (ASPI): <https://xjdp.aspi.org.au/>

<sup>14</sup> Federal Register, June 3, 2021: <https://www.federalregister.gov/documents/2021/06/07/2021-12019/addressing-the-threat-from-securities-investments-that-finance-certain-companies-of-the-peoples>

<sup>15</sup> Department of Labor's List of Goods Produced with Forced or Child Labor:

<https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>

<sup>16</sup> Department of Defense's Chinese Military Companies List as of June 2021:

<https://www.defense.gov/Newsroom/Releases/Release/Article/2645126/dod-releases-list-of-chinese-military-companies-in-accordance-with-section-1260/>

<sup>17</sup> Commerce Department's Entity List: <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/entity-list>

<sup>18</sup> Treasury Department's Specially Designated Nationals (SDN) List:

<https://www.treasury.gov/ofac/downloads/sdnlist.pdf>

<sup>19</sup> Treasury Department's Office of Foreign Assets Control NS-CMIC List:

<https://www.treasury.gov/ofac/downloads/ccmc/nscmiclist.pdf>

new methods of flying under the public shaming radar. Withholding goods produced with forced labor is good, and we applaud increased executive branch activity in this area, but more action must be taken.

Next steps include prohibitions and limitations on investment in companies who are known offenders, harnessing forced labor for their own political or financial benefit. Any sanctioned company known to be a user of forced labor or a creator of technology used to enforce or monitor a regime of involuntary labor must not be invested in by Americans. This includes investments by federal and state pension fund managers, individuals, corporations, or other U.S. persons. Why do we want to let America profit off slavery?