



**Before the United States Trade Representative
Docket Number USTR-2022-0006**

“Trade Strategy to Combat Forced Labor”

**Written Comments from Rethink Trade
August 4, 2022**

Rethink Trade appreciates the opportunity to submit comments with regard to developing a focused trade strategy to combat forced labor. We commend the Office of the U.S. Trade Representative (USTR) for initiating this process and elevating the abuse of workers that is an unfortunately a common feature of our hyperglobalized world. While forced labor is a particularly grievous form of labor abuse, many of the mechanisms for monitoring and eliminating forced labor-produced goods and services from global supply chains are relevant to combatting other labor rights violations. The United States is uniquely positioned to make a difference in combatting forced labor through trade. The enormity of the U.S. market provides considerable unilateral leverage through setting terms for access, while U.S. international convening power and diplomatic reach offers special opportunities for progress on a regional and global basis. In considering government-wide approaches to combatting forced labor, the United States must partner with countries that are truly willing and able to work together to combat forced labor, while also ensuring it maintains the use of unilateral tools to leverage the unique U.S. market power that comes with a gigantic trade deficit to change the incentives for the many countries and companies eager to sell here.

Rethink Trade is a program of the American Economic Liberties Project (AELP). AELP, a non-profit research and advocacy organization, is a thought leader in the anti-monopoly movement and promotes policy changes to address today’s crisis of concentrated economic power. The Rethink Trade program of AELP was established to intensify analysis and advocacy regarding the myriad ways that today’s trade agreements and policies must be altered to undo decades of corporate capture and to deliver on broad national interests. This includes resilient supply chains and fair markets, creation and support of good jobs with workers empowered to earn decent wages, the public health and safety delivered by strong consumer and environmental protections, and the ability for those who will live with the results to decide the policies affecting their lives.

1. The enormity of the U.S. market provides considerable unilateral leverage through setting terms for access.

Perhaps the only upside to the massive U.S. goods trade deficit is how many countries are overly reliant on U.S. market access. This means that when the United States bans forced labor products and meaningfully enforces such a ban, it can dramatically alter the incentive structure: Companies that have used forced labor-products in their supply chains focus on eliminating such inputs and being able to document clean supply chains and governments that have previously ignored or even quietly condoned forced labor crack down on such practices to avoid economic damage.

Recent evidence of this effect comes in the context of firms operating in various Asian countries seeking to sell solar equipment to the United States working to rid their supply chains of goods produced by Uighur and other Muslim minorities' forced labor in China's Xinjiang concentration camps and via programs cynically dubbed "labor transfers" to counter poverty that in fact involve shipping Uighur workers to other parts of China to be employed as forced labor. Customs' use of Withhold Release Orders (WRO) to implement Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) has not only directly prevented importation of goods produced by forced labor or goods with parts made by forced labor but has had a signaling effect on other firms to get forced labor out of their supply chains or risk being next. Initial implementation of the Uighur Forced Labor Prevention Act (UFLPA) also has shown the effectiveness of policies that establish a rebuttal presumption of violation for products from regions or types of goods with patterns of forced labor abuse.

a. **An important first step in a government-wide strategy is to end *de minimis* treatment for goods from countries with significant forced labor abuses.**

Goods under the extremely high U.S. *de minimis* level of \$800 can gain access to U.S. consumer via "informal entry procedures," which is to say without any of the normal customs rules, tariffs, inspections or filings. A significant share of *de minimis* goods are related to online purchases and more than two million packages arrive daily.¹ Thus, it is highly likely that billions of dollars in goods that are banned under UFLPA and Section 307 are currently skirting U.S. law thanks to *de minimis* treatment. Customs has explicitly stated that there is no *de minimis* exception to UFLPA, yet it also has not acted to exclude Chinese imports in general or even imports from Xinjiang from being subject to *de minimis* treatment. The president could fix this problem by executive order today. Section 321 of the Tariff Act of 1930 states:

The Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected, **is authorized**, under such regulations as he shall prescribe, to admit articles free of duty and of any tax [if they are below the *de minimis* threshold]. (emphasis added)

The statute only authorizes Customs to exempt *de minimis* imports – it does not require that Customs exempt such imports. Thus, since an executive order would only modify the situations in which Customs would exempt *de minimis* imports from tariffs and formal entry requirements, it is fully consistent with the statute. Indeed, this discretion should be applied to exclude from *de minimis* treatment all categories of goods and goods from all countries and regions about which the Department of Labor or State Department have documented forced labor violations.

b. **A second important step is to fully use the authority that exists under Section 307 and UFLPA.**

The U.S. government must use its Section 307 authority. It must regularly issue WROs, which have to date been too few and far between. And, it must use Section 307 authority to target with

¹ U.S. Customs and Border Protection, "Trade Statistics." Available at: <https://www.cbp.gov/newsroom/stats/trade>.

a rebuttal presumption standard imports from countries listed by the U.S. State Department as Tier 3 Trafficking violators, focusing on sectors or products related to the Tier 3 determination, and do the same for specific goods associated with forced labor from countries identified by the Department of Labor and in the State Department's annual Country Reports. Congress gave additional funding to Customs and Border Patrol to ensure that UFLPA wasn't the only enforcement focus, yet enforcement against forced labor imports has been lacking.

Having a default of product being altogether banned unless and until commercial interests can show a clean supply chain is an extremely effective enforcement tool that should be widely adopted as the prospect of U.S. market access being altogether cut off overcomes whatever cost savings can be derived from labor abuses. However, such a standard is only effective if it is strongly and comprehensively enforced. That is why it is vital that UFLPA enforcement be strengthened in key ways, including by greatly expanding the Entity List of firms connected to forced labor relative to the meager list released with the administration's initial enforcement plan. This is a matter of both political will and expanded funding. Custom's UFPLA action in late June to detain a large shipment of quartzite (the raw material for making polysilicon) from a Tier 1 solar supplier sent an important signal that enforcement would not be limited to Entity List firms. However, it is critical that the Entity List itself be expanded and more non-listed firms' imports from the covered region or with inputs from the covered region are detained to signal to shippers the liability of not demonstrating a clean supply chain.

Finally, with respect to actions that the United States can take unilaterally, it is critical that forced labor be treated as a countervailable subsidy in U.S. trade law. There is an expansive body of literature on "social dumping," which demonstrates foreign producers' "externalization" of environmental costs by dumping toxins and not scrubbing smokestack effluents and artificially low labor costs based on the denial of core international labor rights. Recently, a petition was filed in the Crystalline Silicon Photovoltaic Cells CVD administrative review that makes this case well. In a brief filed by Wiley in June, a new subsidy was claimed on the basis of the "provision of labor for less than adequate remuneration through forced labor."²

2. U.S. international convening power and diplomatic reach offers special opportunities for progress on a regional and global basis.

Without requiring innovation of creative thought, there are at least three obvious actions that the U.S. government could take on the international front that would combat forced labor. In addition to these specific policies, the United States should work with willing international partners to develop enforceable labor action plans and provide technical support and funding for countries committed to combatting forced labor domestically and collaborating on tracing and enforcement actions with countries working to engage internationally.

² DOC Case No. C-570-980, Administrative Review for the POR: 01/01/2020 – 12/31/2020

- a. **The U.S. government should not include countries with forced labor problems in negotiations for a possible Indo-Pacific Economic Framework (IPEF) or an Americas Partnership for Economic Prosperity (APEP).**

Both to be consistent with the Biden administration’s worker-centered trade policy and to avoid giving the “Good Housekeeping Seal of Approval” to countries with forced labor problems, it is critical that U.S. international commercial negotiations condition participation on a country’s commitment to and effectiveness in eliminating forced labor. To date, countries are being welcomed to choose any or all of the four IPEF pillars in which to participate despite serious forced labor problems being documented year after year by U.S. government agencies. Last year, prospective IPEF member nation Malaysia was downgraded to Tier 3, the worst classification in the State Department’s Trafficking in Persons Report, which documents forced labor, debt bondage and other forms of trafficking. The U.S. State Department has also reported that other countries being similarly welcomed — Brunei, Fiji, India, Indonesia, Japan, New Zealand, Thailand, and Vietnam — “do not fully meet the minimum standards for the elimination of trafficking,” although these countries are making some effort to do so.

Certainly countries that are explicitly identified as having serious forced labor problems should not be allowed to participate in any pillar of any U.S. trade initiative unless such issues are remedied. The United States could model such an effort on the European Union’s “Readiness Criteria” that were used in the development of the original EU bloc. Labor and other standards were set forth along with action plans that were implemented with technical support and funding. A similar model should be adopted so that countries would only be invited into a U.S. commercial agreement after making significant progress towards the elimination of human trafficking and forced labor – as well as meeting other labor, human rights and democracy criteria and environmental standards. That IPEF and APEP will not include tariff cuts does not mean that the U.S. government has no basis for making such demands. In a low tariff world, increasingly trade agreements will be about rule-setting that facilitates trade and economic cooperation. Creating labor and other criteria for such a close economic relationship is not only reasonable, but necessary.

- b. **The U.S. government should prioritize working with other countries to develop forced labor import bans based on UFLPA and a rebuttable presumption.**

Absent other countries adopting domestic policies similar to the UFLPA, companies that have taken action to remove forced labor-goods from their supply chain for U.S. sales will simply shift such inputs into products intended for sale in other countries. The U.S. government should work with the European Union³ and Canada, for instance, to enact policies like the UFLPA, so that major producers operating in Asia that sell enormous amounts of solar and other goods cannot bifurcate their supply chains and thus maintain steady demand for forced labor-tainted inputs.

³ In June 2022, the European Parliament called for a new EU instrument allowing import bans on products related to severe human rights violations such as forced labor or child labor. This shows that there is room for trans-Atlantic cooperation in this matter. See: European Parliament, “A new trade instrument to ban products made by forced labour.” Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0245_EN.html.

- c. **The U.S. government must push Mexico and Canada to uphold their commitment to prohibiting forced labor imports under the United States-Mexico-Canada Agreement (USMCA).**

To date, both USMCA partners have fallen woefully short to their commitments. One way that the U.S. government could incentivize our USMCA partners to prioritize combatting forced labor would be to elevate their awareness that U.S. law prohibits re-export of detained goods to these countries, a fact that might increase the pressure on Mexico and Canada to focus on their commitments with respect to combatting forced labor.