

**Committee on Ways and Means**

**Subcommittee on Trade**

**Hearing:**

***Modernizing Customs Policies to Protect American Workers and Secure Supply Chains***

**Testimony of Martina E. Vandenberg**

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Trade Subcommittee Chairman Adrian Smith, Ranking Member Blumenauer, and distinguished members of the Ways and Means Subcommittee on Trade:

It is my honor to testify before you today on the important topic, *Modernizing Customs Policies to Protect American Workers and Secure Supply Chains*.

My name is Martina Vandenberg and I serve as the President of the Human Trafficking Legal Center, a non-profit organization that works to combat forced labor and human trafficking worldwide. The Human Trafficking Legal Center uses trade remedies, strategic litigation, research and advocacy to expose the system failures that allow forced labor to flourish. We pursue accountability – from traffickers, from governments, and from corporations.

Forced labor is not an aberration. It is a feature, not a bug, in global supply chains. The latest International Labor Organization (ILO) estimates indicate that 27.6 million people are held in forced labor around the world.<sup>1</sup> Weak Corporate Social Responsibility (CSR) schemes and voluntary corporate codes of conduct have failed to identify, prevent, or eradicate forced labor. According to the ILO, at least 17.3 million people are exploited in the private sector.<sup>2</sup> Corporations continue to reap profits on the backs of workers held in forced labor around the world, many of whom are trapped in cycles of debt bondage and abuse. And allowing goods made using forced labor to permeate American supply chains has undermined U.S. workers, who cannot compete.

As Nury Turkel, Chair of the U.S. Commission on International Religious Freedom, testified powerfully at the Ways & Means Committee hearing on Staten Island earlier this month on Uyghur forced labor in China, “the unfair business practices imposed [by] competing with a country engaged in forced labor

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<sup>1</sup> <https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>

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

create an environment in which competition is truly impossible” for American workers.<sup>3</sup> Trade remedies, properly deployed, benefit workers in the United States and abroad.

I will address four central points at this hearing:

- The need to encourage our allies and trading partners to adopt forced labor import bans;
- The need for robust U.S. enforcement of Section 307 of the Tariff Act and the Uyghur Forced Labor Prevention Act;
- The need for more, not less, customs data transparency; and
- The need to amend the law on de minimis shipments.

#### There Should be No Safe Harbor for Forced Labor: The Case for Global Forced Labor Import Bans

It is particularly appropriate for the subcommittee to hold this hearing during World Trade Week. As U.S. Trade Representative Ambassador Katherine Tai recently stated, trade can be a “force for good to improve the lives of workers in the United States and around the globe.”<sup>4</sup> But in order for that to be the case, the U.S. government must enforce prohibitions on forced labor. And, as Ambassador Tai has noted, the U.S. must continue to advance robust labor standards in all international trade negotiations. It is not enough for the United States to prohibit the importation of goods tainted by forced labor into our markets under Section 307 of the Tariff Act. It is not enough for the United States, alone, to enforce the Uyghur Forced Labor Prevention Act. Our trade partners must adopt – and enforce – similar prohibitions. Enforcement in only one country leads to predictable results: export of tainted goods to countries without forced labor prohibitions.

The Human Trafficking Legal Center serves as the secretariat of the Tariff Act Advisory Group (TAAG), a coalition of organizations advocating for the enforcement of forced labor import prohibitions. The Tariff Act Advisory Group members have joined forces with partner non-governmental organizations around the globe to press for the adoption of forced labor import bans worldwide. Forced labor import prohibitions are already required under the US-Mexico-Canada Agreement (USMCA). But Canada and Mexico are lagging on enforcement.

Enforcement in one country is not enough. There should be no safe harbor for goods made with forced labor.

#### Enforcement Matters: Enforcement Recommendations and the Need for Resources

We are encouraged by U.S. Customs and Border Protection’s efforts to combat forced labor in U.S. supply chains. CBP’s robust enforcement efforts have transformed forced labor from a corporate public relations matter to a corporate compliance matter: forced labor risks have become a C-Suite issue. As DHS Under Secretary Robert Silvers noted recently in an interview with the *Wall Street Journal*, forced labor is now a top-tier compliance issue, now ranked in the same category as bribery and corruption

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<sup>3</sup> <http://waysandmeans.house.gov/wp-content/uploads/2023/05/Nury-Turkel-Written-Testimony.pdf>

<sup>4</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/may/statement-ambassador-katherine-tai-commemorating-world-trade-week>

allegations. According to Undersecretary Silvers, “[F]orced labor belongs in the same breath as Foreign Corrupt Practices Act (FCPA).”<sup>5</sup>

CBP’s most recent data releases provide insight into current enforcement.<sup>6</sup> In FY2022, the United States “targeted” more than 3,605 shipments valued at \$816.5 million under its forced labor enforcement mandate. The majority of this enforcement – nearly \$500 million USD – was under the Uyghur Forced Labor Prevention Act (UFLPA) alone. CBP’s latest UFLPA data dashboard provides a snapshot of the agency’s FY2023 enforcement thus far: nearly \$608 million USD worth of shipments “targeted” over Uyghur forced labor concerns.

Unfortunately, these numbers do not reveal the full picture. Only a few hundred shipments were actually denied entry at U.S. ports. Section 307 Tariff Act and UFLPA enforcement has netted only a fraction of the billions of dollars worth of forced labor-tainted shipments entering U.S. markets each year. Many more shipments are dumped in other countries with no market restrictions on forced labor. Moreover, we have seen a troubling decline in the number of Withhold Release Orders (WROs) issued under Section 307 of the Tariff Act. In FY2020, CBP issued 13 Withhold Release Orders against entities around the world for violating Section 307’s general prohibition against the U.S. importation of goods mined, produced, or manufactured wholly or in part by forced labor. In FY2021, CBP issued only 7 WROs. And in FY2022, that number dropped to just 6 WROs.

These dwindling WRO numbers are troubling, especially since we know that multiple forced labor petitions have been pending with CBP for years. Civil society petitions are critical to Section 307 enforcement. Those petitions take an enormous investment of resources. Non-governmental organizations collect first-hand evidence of forced labor across the globe and link that evidence to U.S. supply chains. Much of this work is done by understaffed and under-resourced workers’ rights organizations, often at great personal and organizational risk.

In a recent CBP-Civil Society Organization roundtable meeting, CBP officials reported that the agency is currently investigating more than 40 allegations received under Section 307. We urge members of this Committee to ensure that CBP receives adequate funds earmarked for Section 307 enforcement, including resources to expand CBP’s forced labor division to tackle the existing case load. It is vital that CBP act on pending forced labor allegations and issue more WROs against forced labor.

But issuing WROs is only the first step. CBP should also scale up its 307 enforcement efforts at port to block more forced labor tainted shipments from entering U.S. markets. We also urge the agency to disclose its Section 307 enforcement results, disaggregated by multiple data points, including the WRO invoked, the products involved, the type of CBP enforcement action (detention, pending review, release), corresponding dollar value, country of origin of forced labor tainted goods, and country of re-exportation (where applicable). CBP should also clarify the ultimate disposition of the goods subject to enforcement actions. The agency is already collecting and analyzing much of this data as part of the UFLPA enforcement statistics dashboard. We hope that CBP will expand its enforcement transparency under Section 307 in the near future.

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<sup>5</sup> <https://www.wsj.com/articles/forced-labor-a-top-tier-compliance-issue-says-u-s-official-11664271003>

<sup>6</sup> <https://www.cbp.gov/newsroom/national-media-release/cbp-highlights-top-2022-accomplishments>

We also recommend that CBP streamline its Section 307 intake process by instituting a single point for receiving allegations and all supporting evidence (in multiple formats). We commend the agency for recent publications clarifying the types of documents needed to support a Section 307 petition.<sup>7</sup> This guidance is useful to civil society organizations as we continue to submit 307 allegations. That said, CBP must resist efforts – often advanced by corporate lobbyists – to dilute Section 307. The low barrier to entry for petitioners to submit forced labor allegations is essential and must be preserved.

*CBP should Issue more “Findings” and monetary penalties for forced labor:*

Under 19 CFR § 12.42(f), if the CBP Commissioner determines that goods tainted with forced labor are being, or are likely to be, imported into the United States, the Commissioner can issue a “Finding.” Once a Finding is issued, under 19 CFR § 12.44(b), CBP can seize and forfeit the goods, rather than just detaining shipments under a WRO. To date, CBP has only issued 9 Findings. The human rights and labor rights community would like to see the agency issue more Findings and seize forced labor tainted goods at port. Seizure is the best method to prevent re-export to other countries.

The NGO community has also long advocated for more monetary penalties (and for larger amounts) against companies that benefit from forced labor. These fines have the power to deter companies from importing goods made with forced or prison labor. Under 19 U.S.C. § 1595a (aiding unlawful importation)<sup>8</sup>, CBP has the authority to impose monetary penalties against U.S. importers that source forced labor tainted goods in violation of U.S. law. In August 2020, CBP issued a monetary penalty for importing stevia – an artificial sweetener – made using prison labor against a U.S. importer. CBP fined the importer, a U.S. company, \$575,000 for this violation of the Tariff Act.<sup>9</sup> We have not seen a single forced labor penalty since.

We urge CBP to leverage all available authorities to impose monetary penalties against companies that violate Section 307. U.S. buyers should be held accountable for their role in enabling forced labor to thrive overseas.

*Congress should continue to increase – not slash – CBP funding for forced labor enforcement*

Enforcement requires significant resources. We are extremely concerned about threats to cut the CBP’s forced labor budget – and all federal agency budgets – to 2022 levels. Such cuts would eviscerate the enforcement of these important laws. There is bi-partisan support for Section 307 and UFLPA: this is not the time to obliterate CBP forced labor budget increases that have made this enforcement strategy possible.

As one of the world’s largest economies, the United States must scale up its efforts to enforce existing laws on forced labor. Robust enforcement of Section 307 of the U.S. Tariff Act and the Uyghur Forced

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<sup>7</sup> <https://www.cbp.gov/document/publications/forced-labor-allegation-submission-checklist>

<sup>8</sup> <https://www.govinfo.gov/content/pkg/USCODE-2021-title19/pdf/USCODE-2021-title19-chap4-subtitleIII-partV-sec1595a.pdf>

<sup>9</sup> <https://www.cbp.gov/newsroom/national-media-release/cbp-collects-575000-pure-circle-usa-stevia-imports-made-forced-labor>

Labor Prevention Act (UFLPA) can serve as a powerful tool to disrupt the use of forced labor in global supply chains. But enforcement requires resources.

### Data Transparency is Essential to the Fight Against Forced Labor

If we are to eradicate forced labor in global supply chains, we need more, not less, customs data transparency. At present, only shipping vessel manifests are publicly available. And even that data may be under threat. In October 2022, the *Associated Press* reported on a leaked proposal from a group of U.S. business giants that serve as members of the Commercial Customs Operations Advisory Committee (COAC), an advisory body to U.S. Customs and Border Protection.<sup>10</sup> Couched in calls for customs “modernization,” the companies proposed legislative changes to hide trade data from the public. Specifically, the proposal sought to shield ocean freight manifests from public disclosure.

Thirty-eight human rights and labor rights organizations, including the AFL-CIO, signed on to an open letter condemning the proposal.<sup>11</sup> As we wrote in the open letter:

Public disclosure of import/export data is critical to tracing and monitoring forced labor risks in supply chains. Transparency of trade data is already far too limited. Currently, U.S. federal law (19 U.S.C § 1431) provides for public access only to ocean freight data. Data on air and land cargo is still not accessible to the public. Moreover, U.S. law already grants both importers and shippers the right to request confidentiality of their data on a case-by-case basis (19 C.F.R. § 103.31).

The trajectory should be for more transparency, not less. We advocate for disclosure of air, road, and rail manifests, in addition to maritime vessel manifests, while the COAC proposal seeks to shroud all import data behind a thick veil of secrecy. We urge CBP to reject calls for more “confidentiality” and instead disclose all types of customs data – air, rail, maritime and road – to the public. In addition, we urge CBP not to fall prey to proposals that will drive up the procedural complexity of the forced labor enforcement process, placing burdens both on CBP and civil society that are intended to operate as barriers to the enforcement of existing law.

In sum, U.S. companies cannot publicly claim to oppose forced labor, while lobbying the U.S. Government to shield their supply chains from scrutiny. The effort to hide trade data is aimed at hindering enforcement of provisions banning imports of goods tainted by forced labor, and serves no legitimate public purpose.<sup>12</sup>

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<sup>10</sup> Joshua Goodman, *US businesses propose hiding trade data used to trace abuse*, Associated Press, Oct. 17, 2022, <https://apnews.com/article/business-global-trade-regulation-us-customs-and-border-protection-c878caa703150f417342c9777504b9a1>

<sup>11</sup> Open Letter to CBP on Trade Data Transparency, <https://uhrp.org/statement/open-letter-to-cbp-on-trade-data-transparency/>

<sup>12</sup> *Id.*

In response to the open letter, CBP announced in a meeting with civil society organizations that the agency would not endorse these corporate proposals. Now is the time to enact more transparency: disclosure of air, rail, and road manifests.

### Closing the *de minimis* Shipment Loophole

Under current U.S. law, goods shipped directly to consumers and valued at less than \$800 can enter the U.S. without CBP inspection. This loophole has allowed Chinese companies to bring goods made with forced labor to the U.S. market. As Senator Marco Rubio recently wrote in an op ed published in *Newsweek*:

We must put an end to this practice, for the sake of basic human rights and our nation's sacred values. We also must put an end to it for the sake of our national interest, because American companies lose out when forced to compete with slave labor, and American consumers lose out when they inadvertently buy shoddy, counterfeit, or even harmful goods, all of which may be brought into the U.S. under the \$800 limit.<sup>13</sup>

The import numbers are not small. As my colleague, Anasuya Syam, the Human Rights and Trade Policy Director at the Human Trafficking Legal Center, testified in April before the Congressional Executive Commission on China (CECC), on average, the United States receives three million uninspected *de minimis* packages per day. In FY2022, the United States imported an estimated \$685 million in *de minimis* shipments. Ms. Syam testified:

The U.S. *de minimis* threshold is one of the highest in the world. There are many other companies [in addition to Shein and Temu]<sup>14</sup> with similar direct-to-consumer business models that may be implicated in Xinjiang forced labor. We urge the agency to conduct “spot checks” on *de minimis* packages from companies like Shein at all U.S. ports of entry and begin detaining such packages for potentially violating the UFLPA. This will send a strong message to direct-to-consumer platforms that the *de minimis* provision is not a carte blanche for companies to send goods made using forced labor into U.S. markets. There is an urgent need to monitor the *de minimis* shipping environment and ensure that it is not exploited as a backchannel entry for goods made using forced Uyghur labor.<sup>15</sup>

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<sup>13</sup> Senator Marco Rubio, *A Loophole Is Allowing Slave-Made Goods Into the U.S. We Must Close It*, *Newsweek*, May 9, 2023, <https://www.newsweek.com/loophole-allowing-slave-made-goods-us-we-must-close-it-opinion-1799024>.

<sup>14</sup> Kenneth Rapoza, *Nike, Adidas, Shein, Temu Sent Letter From House China Committee About Forced Labor*, *Forbes*, May 2, 2023, <https://www.forbes.com/sites/kenrapoza/2023/05/02/nike-adidas-shein-temu-sent-letter-from-house-china-committee-about-forced-labor/?sh=5234e94d2f2a>

<sup>15</sup> Testimony of Anasuya Syam, CECC Hearing, Implementation of the Uyghur Forced Labor Prevention Act and the Impact on Global Supply Chains, April 18, 2023, <https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/Syam%20Written%20Testimony%20FINAL.pdf>

## Conclusion

We need strong laws and policies that make forced labor unprofitable. A dual-pronged approach will strip away forced labor's profits: first, the U.S. Government must impose significant financial and legal penalties on those who use or benefit from forced labor. And second, the U.S. should invest in labor rights across the globe – freedom of association, the right to collective bargaining, and worker-driven social responsibility. Workers have a right to organize and unionize; exercising those rights can prevent forced labor.

It is time for a paradigm shift: the perpetrators of forced labor must understand that they face real risk – risk of criminal prosecution, risk of financial harm, and risk of inability to import goods into the U.S. market. Making access to markets contingent on the eradication of forced labor is a powerful tool in global supply chains. Import bans against forced labor have an immediate effect on the corporate bottom line. Together, we can dismantle the oppressive economic systems that provide fertile ground for forced labor to flourish.