

**FIELD HEARING ON TRADE IN AMERICA:
SECURING SUPPLY CHAINS AND PROTECTING
THE AMERICAN WORKER - STATEN ISLAND**

HEARING

**BEFORE THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES**

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

MAY 9, 2023

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United States House Committee on
Ways & Means
CHAIRMAN JASON SMITH

FOR IMMEDIATE RELEASE
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CONTACT: 202-225-3625

**Chairman Smith Announces Field Hearing on
Trade in America: Securing Supply Chains and Protecting the American
Worker - Staten Island**

House Committee on Ways and Means Chairman Jason Smith (MO-08) announced today that the Committee will hold a field hearing titled “Trade in America: Securing Supply Chains and Protecting the American Worker-Staten Island.” The hearing will take place at **10:00 AM on Tuesday, May 9, 2023, at Global Container Terminals New York** in Staten Island, New York.

Members of the public may view the hearing via live webcast available at <https://waysandmeans.house.gov>. The webcast will not be available until the hearing starts.

In view of the limited time available to hear the witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record can do so here: WMSubmission@mail.house.gov.

Please ATTACH your submission as a Microsoft Word document in compliance with the formatting requirements listed below, **by the close of business on Tuesday, May 23, 2023**. For questions, or if you encounter technical problems, please call (202) 225-3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission but reserves the right to format it according to guidelines. Any submission provided to the Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed but will be maintained in the Committee files for review and use by the Committee.

All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Please indicate the title of the hearing as the subject line in your submission. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

ACCOMMODATIONS:

The Committee seeks to make its facilities accessible to persons with disabilities. If you require accommodations, please call 202-225-3625 or request via email to WMSubmission@mail.house.gov in advance of the event (four business days' notice is requested). Questions regarding accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the Committee website at <http://www.waysandmeans.house.gov/>.

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HEARING ON TRADE IN AMERICA:
SECURING SUPPLY CHAINS AND PROTECTING
THE AMERICAN WORKER - STATEN ISLAND

Tuesday, May 9, 2023

House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The committee met, pursuant to call, at 10:02 a.m., at the Global Containers Terminal, 300 Western Avenue, Staten Island, New York, Hon. Jason Smith [chairman of the committee] presiding.

Chairman Smith. The committee will come to order.

Welcome to today's field hearing of the Ways and Means Committee about the future of America's trade policy.

I am told that this field hearing is the first outside full committee hearing in a hundred years in Congress. And to do that in Staten Island, we are blessed to be here with Ms. Nicole Malliotakis in her beautiful district.

As America's front door to the world, New York City and ports like the one here at Staten Island represent the front lines of America's global trade. Last year, the total value of U.S. goods traded was approximately \$5.3 trillion. That includes food from our farmers, the energy in our homes, the medical equipment in our hospitals, and everything in between.

There isn't a single worker, family, or business in our country that isn't impacted by trade, some positively and some negatively.

Unfortunately, bad trade policies in Washington have allowed foreign countries to take advantage of our workers and destroy American jobs. Last year, our trade deficit reached \$945 billion, the largest ever.

The American worker should be at the center of our trade policy. That is why the Ways and Means Committee is here today to listen to Americans on the front lines about how we can revitalize fair trade in America.

During the hearing, we will be passing around notebooks that you will see right over here. I would like to ask all of our audience members to please share your thoughts about how Congress can improve U.S. trade policies. We want to hear from you, and we want that submitted into the record.

One key step is to secure our supply chains. We must reduce our dependency on nations who do not share our values or have aligned interests.

To be clear, a country that cannot supply their own demand for food, energy, and medicine, but instead rely on other nations to fulfill those basic needs, they are no longer independent, but they are politically dependent. That means producing more of our own medicine and energy, and where we can't make it here, ensuring that we are sourcing from allies close to home.

For our food supply, it means making sure our farmers are viable and able to make a living off the land and sell American-grown products without facing nontariff barriers around the world.

We need to aggressively enforce the commitments our trading partners made to treat U.S. products fairly. We must build on the progress from USMCA by pushing more trading partners to open their markets so our farmers and small businesses can compete and win.

American families, they need results. We must use trade enforcement tools to chart a new path forward, to put American workers first and to hold accountable bad actors, including China.

To do that, Congress must reassert its constitutional role as the lead in U.S. trade policy. Right now, the administration is trying to work around Congress and create so-called frameworks that lack the force of law.

Congress needs to shine a light on China's human rights abuses and predatory trade practices. China is forging ahead with an aggressive trade agenda that cheats America, shapes the global playing field in its favor, and threatens key American supply chains and the livelihoods of American farmers and American workers.

What should be now clear to everyone here today is that what our country needs is a smart and strategic decoupling from China.

Workers and small businesses being harmed by China's unfair trade practices have

been overlooked and forgotten for way too long. They expect us to go further and to use the tools at our disposal to level the playing field for workers, farmers, and job creators. We are here to make sure the future of U.S. trade includes their voices.

I would like to introduce our witnesses for today's hearing. Dale Hemminger is a second-generation owner and operator of Hemdale Farms Dairy and Greenhouses in Ontario County. John Atkins, our host today, is the president of Global Containers Terminal USA. Nury Turkel is the first U.S.-educated Uyghur-American lawyer and human rights advocate who serves as the chair of the U.S. Commission on International Religious Freedom. John Romano, CEO of Tronox. And Thomas O'Shei, president of the United Steelworkers Local 135.

I want to thank our witnesses for taking time away from their families and their busy schedules to share your stories and ideas.

And I am pleased to recognize the gentleman from Massachusetts, the ranking member, Mr. Neal, for his opening statement.

Mr. Neal. Thank you, Mr. Chairman. I want to thank you for joining with our witnesses today and holding this hearing.

President Biden and congressional Democrats continue to push an economic and trade agenda that is focused not only on building the economy, but that benefits all members of the working families in America and across our great country. Democrats have charted the course for a worker-centric trade policy for well over a decade.

I want to thank those of you who were responsible for putting up the banners here today. We are indeed very grateful for the reminder that we want all to prosper because of American trade agreements.

House Democrats, with leadership of this committee, paved the way for the May 10 agreement which brought labor and environmental provisions to the core of the U.S. trade agreements and made them enforceable for the first time.

Democrats have continued to build on the successes of the May 10 agreement. Most recently, Ways and Means Democrats demanded the prior administration renegotiate, and we did with the USMCA to enforce these trade agreements.

We ultimately led to a successful agreement that updated NAFTA, the most pro-worker trade agreement ever based on the renegotiation, with new facility-specific labor enforcement mechanisms to address violations of worker rights in Mexico.

The Biden administration has used this new mechanism eight times to address labor issues that are in front of us.

I know something about that agreement. I was the lead negotiator on it. And I want to say that in the end, 195 Democrats voted for that trade agreement; 194 Republicans voted for it. Jimmy Hoffa endorsed it. Rich Trumka endorsed it. And the Republican Representative, Bob Lighthizer, did a great job on that trade agreement because he agreed with us on the enforcement of these agreements.

We understand that U.S. trade policies should not come at the expense of American jobs or the rights of workers at home and abroad. That is why committee Democrats have championed the Uyghur Enforcement Act to prohibit the import of products made with forced labor by the Uyghur people in Xinjiang, China. We believe that no supply chain should contain products made with forced labor.

We know trade, when coupled with the right domestic economic policies, can play an important role in creating new jobs and supporting a thriving economy.

The U.S. should open its market to fair trade. When countries can, we all benefit.

For this reason, committee Democrats have led the charge to reauthorize and reform the Trade Adjustment Assistance Act for workers, commonly known as TAA, because we don't think that we should leave American workers behind as a result of increased trade with other countries. We need to convince our colleagues on the other side that TAA is really important.

Committee Democrats are committed to delivering for the American worker by creating necessary policies that will be a benefit to them.

In this vein, House Democrats included TAA in the America COMPETES Act, the most expansive pro-worker legislation to combat China's unfair trade practices in years. This legislation, which we passed last year, would strengthen U.S. trade laws and invest in America's workers while boosting Americans' economic opportunities.

Our colleagues on the other side, they need to help us pursue these policies so that we don't do things to the detriment of American workers.

Let me be clear, the other side has proposed to slash the budgets of Federal agencies that administer and enforce these trade laws, in some cases by up to 22 percent. These budget cuts to U.S. Customs and Border Protection will not be helpful to the Department of Commerce and other agencies that promote small businesses. We want to

make sure that these cuts don't take place.

I urge all the members of this committee to ensure that American workers, farmers, and businesses have the tools they need to compete in a global economy. President Biden and congressional Democrats have delivered for the American people.

I was delighted this morning when Mr. Atkins mentioned the CHIPS issue. It is happening because of the legislation that we helped to pass.

As a result of the bipartisan infrastructure law, \$9.3 billion is going to go directly to New York to invest in roads, bridges, transit, ports and airports, and other opportunities for clean water across the region. These historic investments will reach communities across the entire country, including rural America and underserved populations.

Federal investments in tax credits championed by Democrats on this committee in the Inflation Reduction Act will also drive New York's clean energy transition and create jobs to take us on a path to net-zero emissions.

Thank you, Mr. Chairman, for offering us this opportunity and allowing our witnesses to share their expertise and experience with us.

Chairman Smith. Thank you, Mr. Neal.

I am pleased to recognize the gentlelady from New York, Ms. Malliotakis, for 5 minutes.

Ms. Malliotakis. Thank you, Chairman Smith, Ranking Member Neal, members of the committee, and welcome to Staten Island. We are the site of the 1776 Peace Conference during the Revolutionary War. Fort Wadsworth was used by the British as their prime defense location. It is where tennis was first introduced in the United States in 1874. And Sandy Ground is the Nation's oldest free settlement for African Americans.

You may have seen Staten Island on the big screen if you watched "Easy Money," "Working Girl," "The Godfather," "Saturday Night Fever." We are birthplace to Pete Davidson and "The Impractical Jokers." And we, of course, are home to the iconic Staten Island Ferry and what I would argue is the best cannoli in the United States of America, which we will have for you to try later this morning.

I would like to thank the chairman for choosing Staten Island as the setting for the first field hearing on trade in America. It is my hope that this experience gives members of the committee a new perspective on New York City and reveals the vital role that our ports fulfill when looking at American trade policy and practice.

We are standing in one of the largest harbors in the world. From 1892 to 1924, over 12 million immigrants passed through Ellis Island to become American citizens and strengthen this great Nation.

New York City is and always will be a hub for American trade, going back to 1613 when the Dutch established fur trading posts in both Manhattan and Staten Island. And trade will always be a cornerstone of our Nation's economy.

Today, these historic waters make up the largest container port on the East Coast and the second largest in the country. In the first 3 months of 2023, the Port of New York

and New Jersey was the Nation's second-busiest port, moving nearly 1.8 million containers, and last year it moved \$271 billion worth of goods.

Our community is excited that this container terminal is planning to increase its capacity by 65 percent through 2027 and double by 2030.

And it is because of both private investment and Federal funding for infrastructure and dredging by the Army Corps of Engineers that larger vessels and more service options for goods coming and going will be possible in the future. And I will work with everyone here to make sure our waters are ready for larger vessels and the positive impact that they will bring.

But in order for the local and national economy to truly reap the benefits of these investments, we must have a pro-growth tax and trade agenda, and that is exactly what our House Republicans are focused on.

While this terminal highlights positive recovery and avoidance of pandemic era headaches, consumer patterns have undoubtedly changed, and global supply chains continue to shift.

Though the Port of New York and New Jersey has received a slight increase in container processing, future freight orders seem to point to a freight slowdown in conjunction with an economic contraction and stalling economy under President Biden.

One area where we feel that we can lead as the Ways and Means Committee, and there is great potential to grow our GDP, is exports.

The U.S. became energy independent and a net exporter for the first time in modern history under the Trump administration, and the U.S.-Mexico-Canada Agreement passed with bipartisan support has increased our region's competitiveness in the global economy.

Now our committee is working to reduce our dependency on China by enacting pro-growth and trade policies, strengthening trade relationships with those who share our

values to bring critical supply chains for energy, pharmaceuticals, and technology home where we can and work with our allies, not our adversaries, where we can't.

To protect our economy and our national security, Americans cannot be at the mercy of a nation that can weaponize these life-sustaining resources against us, as we have seen Russia do to Europe with energy.

It is time to work to eliminate trade barriers, restore fair trade agreements with our closest allies, provide new markets for American products, create jobs for American workers, and fill this container terminal.

I look forward to hearing today's testimony and working with my colleagues from both sides of the aisle to accomplish these goals.

Thank you.

Chairman Smith. Thank you, Ms. Malliotakis.

I would like to introduce our witnesses.

Mr. John Atkins, our host today, is the president of Global Containers Terminal USA.

We have Mr. Dale Hemminger, who is a second-generation owner and operator of Hemdale Farms Dairy and Greenhouses in Ontario County.

We have Mr. Nury Turkel. He is the first U.S.-educated Uyghur-American lawyer and human rights advocate, who serves as the chair of the U.S. Commission on International Religious Freedom.

We have Mr. John Romano, who is the co-CEO of Tronox.

And then Mr. Thomas O'Shei is the president of United Steelworkers Local 135.

The committee has received your written statements, and they will all be made part of the formal hearing record.

I also want to let others in attendance know that they too may provide a written statement. Please find the clipboards that we will be passing out throughout the hearing available, and your statements will be added to the record when submitted.

Now for our guests. You each have 5 minutes to deliver your oral remarks.

Mr. Atkins, you may begin.

**STATEMENT OF JOHN ATKINS, PRESIDENT, GLOBAL CONTAINERS
TERMINAL**

Mr. Atkins. Thank you, Mr. Chairman. Good morning. And I want to thank the committee for coming to GCT New York for its meeting. We are all here today because trade is all our livelihood.

My name is John Atkins. I have worked in the marine cargo handling industry, which is reliant on the trading relationships of the United States, for 38 years, president of GCT USA, which operates two Green Marine-certified terminals, both here in Bayonne and also at our site here in New York.

I am also chairman of the Sustainable Terminal Services. It is a nonprofit corporation composed of the six container terminal operators in the Port of New York and New Jersey whose primary purpose is to promote environmentally sensitive, efficient, and secure marine terminal operations in the port.

While we are all competitors, we put the competitive spirit aside to focus on collective projects that have been implemented for the betterment of the port as a whole.

These projects focus on environmental issues, both physical and cybersecurity, and supply chain fluidity through information sharing. The containment terminal operators can only work together to pursue these port-wide goals through the authorities granted through a discussion agreement filed with and approved by the Federal Maritime Commission. This discussion agreement provides limited antitrust immunity for discussions of this nature among the marine terminal operators.

This arrangement is under attack, and we urge your support to preserve this tool that allows marine terminal operators to act together for the collective good.

The businesses and labor serving this port have always stepped up in performing the functions that are vital to the regional and national economy, as well as the well-being of all Americans.

I am particularly proud of the performance of management and longshore workers during the challenges of the COVID-19 pandemic. In uncertain times, they came to work every day and kept the cargo flowing.

This was not easy, but in cooperation with the ILA, the marine terminal operators in the port were able to implement reasonable work rules and sanitizing procedures that permitted work to go on in a responsible manner.

These workers are the unsung heroes of the pandemic. Because of these workers, the Nation was able to obtain PPE and supplies needed to permit people to go to stores and other places of business to get the economy moving.

Collectively, the marine terminal operators in the Port of New York and New Jersey have invested billions of dollars in facility improvements and equipment to efficiently handle current and enhanced cargo volumes.

In 2022, in the port, we efficiently handled cargo volumes, 9.5 million TEUs, that had not been anticipated to occur until 2030.

However, the story of our significant investment and dedication to the work are not what you have read about in the news. In general, media coverage has done our industry a great disservice, and our industry fears that this misrepresentation may be fueling hasty governmental regulation which, while considered with good intentions, may have unforeseen and harmful consequences.

The media reporting on the 2022 supply chain crisis often used venues like you see here today as visuals in their news accounts.

This reporting has been harmful to the industry because it gave legislators and the

public the mistaken impression that the crisis was caused by ocean carriers transporting goods and marine terminal operators, like the one here today, that offload the cargo from these vessels and transfer it to truck and rail to its final destination.

This mistaken impression also brought forth the ire of the White House, which resulted in hastily enacted legislation that will not prevent but may encourage the next supply chain crisis.

The Ocean Shipping Reform Act, or as we term OSRA, and the insuring regulations of the FMC, have sought to lay the blame for supply chain challenges on ocean carriers and MTOs. This regulatory activity places undue burdens on carriers and MTOs for the failure of shippers and other cargo interests to receive their cargo in a timely manner.

It is an undisputed fact that domestic marine terminals have limited space. The efficient operations of a marine terminal are based on principles of velocity and fluidity.

Impediments to fluidity are long container dwell times. During the 2022 supply chain crises, cargo interests allowed their containers to languish at our facilities causing logjams in the system. Our marine terminals were used as long-term storage alternatives to off-terminal container depots and warehouse facilities.

Now the regulators are placing the burden on MTOs to bear the cost for such long dwell containers. That is against the incentive principle that the FMC is supposed to espouse in ensuring that cargo moves efficiently through marine terminals. The longer container dwell on the terminal, the longer it takes to service the trucks that drop them off and pick them up.

However, pending FMC regulations do not enumerate procedures for the FMC to assess whether the cargo interest was, in fact, verifiably ready and able with a truck driver, a chassis, and a destination to bring the container before a container can be retrieved.

Instead, they place the sole burden on ocean carriers and marine terminal operators for the inefficiencies in the inland components of the supply chain.

Another issue of critical importance to the Port of New York and New Jersey is dredging, which includes having a reliable source of funding for critical dredging projects. The port is dependent on a consistent program of maintenance and deepening dredging projects.

The Port of New York and New Jersey, in dredging parlance, is referred to as a donor port to the Harbor Maintenance Trust Fund. That means the fees generated by cargo operations here significantly outweigh the moneys that are allocated to the port here in New York for vital dredging projects.

As this port has done since the beginning of our Nation, as Nicole has pointed out, it continues to be one of the largest contributors to this Nation's ability to maintain the waterways for the common good.

The Port of New York and New Jersey is having issues with obtaining the funds that were supposed to be authorized for its piles and fender dredging project under WRDA 2020. The port should have been slated to get \$56 million for this maintenance dredging with escalations up to \$70 million. However, the port was only authorized for \$6.1 million for this purpose because of differences between what was negotiated and what was appropriated under WRDA.

We need your help. If not corrected, the port will take a \$350 million hit on dredging funds that should be authorized for this port.

We understand that the problem is expanding the use for Harbor Maintenance Trust Fund to secondary sources like locks and levees and beach refurbishment. However, this is against the principle that harbor maintenance fees generated in ports should inure to the benefit of those ports.

Please help the port maintain its position as an economic engine for this region and the Nation and release money being held in the Harbor Maintenance Trust Fund.

As stated, the domestic marine cargo handling industry is dependent on this country's trade with other nations. We understand that this is a complex issue with certain nations acting in a belligerent manner towards the United States.

However, the foreign and trade policy of the United States must be mindful of the quandary that it places the domestic cargo handling industry, particularly as it pertains to issues related to sustainability.

This is another area that is of great significance to marine terminal operators, which is also directly related to the work of your committee. We all want to be good stewards of the environment and operate in a manner that has the least possible negative impact on the environment. However, obtaining new equipment from container gantry cranes, as you see behind you, to yard hostlers is a challenge for marine terminal operators.

While most of our container cranes are now electrified, operators are in the process of seeking to replace cargo-handling equipment, including rubber tire gantry cranes, top loaders, reach stackers, with low-emission or zero-emission equipment.

Chairman Smith. Mr. Atkins?

Mr. Atkins. Yes.

Chairman Smith. We are at 4 minutes over. So, can we submit the rest of your testimony into the record?

Mr. Atkins. Yes.

Chairman Smith. Because I want to make sure I am as fair to all of the folks.

Mr. Atkins. Okay.

Chairman Smith. But we appreciate you hosting us.

Mr. Atkins. Absolutely. Thank you.

[The statement of Mr. Atkins follows:]

***** COMMITTEE INSERT *****

Testimony of John Atkins
Before the
United States House Committee on Ways and Means
May 9, 2023
GCT New York, Staten Island, NY

1. Background of John Atkins

Good morning, and I want to thank the Committee for coming to GCT New York for its meeting. We are all here today because trade is our livelihood, which you will hear more about in my testimony. My name is John Atkins, I have worked in the marine cargo handling industry, which is reliant on the trading relationships of the United States, for thirty-eight years. I am the President of GCT USA, a subsidiary of GCT Global Container Terminals, Inc. GCT USA operates two Green Marine-certified marine terminals in the United States—GCT Bayonne and the marine terminal that is hosting today's hearing GCT New York located in Staten Island, New York. Prior to my employment with GCT USA, I worked at Maher Terminals, Inc. and Sea-Land Service, Inc., which were both located in Port Elizabeth, New Jersey. In addition, I have operations and equipment experience through work for ocean carriers CMA-CGM and NYK Line. I earned a B.S. in Management Sciences from Kean University in Union, New Jersey. My college education was funded in part through money I earned repairing and maintaining heavy equipment.

I serve on the Boards of the Shipping Association of New York and New Jersey and the Metropolitan Marine Maintenance Contractors' Association. These organizations are management collective bargaining associations that negotiate and administer the local collective bargaining agreements for GCT's ILA-represented longshore, checker, and maintenance craft workers. Along with the ILA, these associations do a great job in ensuring that we have a great working relationship with labor in the Port of New York and New Jersey with well-trained and efficient workers ready to do the job every day.

I am also the Chairman of Sustainable Terminal Services, Inc. (STS), a nonprofit corporation composed of the six (6) container terminal operators in the Port of New York and New Jersey whose primary purpose is to promote environmentally sensitive, efficient, and secure marine terminal operations in the Port. While we are all competitors, we put that competitive spirit aside to focus on collective projects that have been implemented for the betterment of the Port as a whole. These projects focus on environmental issues, security both physical and cyber, and supply chain fluidity through information sharing. The six (6) container terminal operators can only work together to pursue these port wide goals through the authorities granted through a discussion agreement filed with and approved by the Federal Maritime Commission. This discussion agreement provides limited antitrust immunity for discussions of this nature among the marine terminal operators. As will be discussed in this testimony, this arrangement is under attack, and we urge your support to preserve this tool that allows marine terminal operators to act together for the collective good.

Under the auspices of this FMC-filed discussion agreement (see FMC Agreement No. 201175) the six (6) container terminal operators in the Port, created a port wide security system to

address a gap in the layered approach to facility security envisioned by the Maritime Transportation Security Act of 2002 or MTSA. MTSA laid the foundation for what has become the TWIC program, which requires the positive identification of individuals seeking unescorted access to marine terminals. It also requires cargo security and access control procedures. What was missing in this regime was positive identification of the over-the-road trucks seeking access to terminals. To fill this void, the terminal operators implemented an RFID-based truck identification and tracking system. It was anticipated that captured information from this system could be used to provide early warning of suspicious activity as well as a forensic tool in criminal investigations. Moreover, the system was to have the functionality to enable STS member companies, at their own discretion, to restrict access to their facilities to those truckers with an appointment to pick-up or deliver cargo.

The Port Authority also saw this RFID-System as a potential means of enforcing compliance with its Clean Truck Program. Environmental concerns are of great importance to the terminal operators in the Port. Thereafter, the System was further leveraged to create a web-based terminal information portal that would provide greater transparency to cargo interests and the motor carrier community in seeking information about the availability of expected containers. This was a significant step forward in addressing cargo chain efficiency.

That portal, now known as TIPS, was established in September of 2015. TIPS was the first-of-its-kind information system designed to enhance terminal efficiencies by reducing uncertainty regarding container availability and unnecessary “trouble ticket” transactions. Often drayage providers dispatch truckers to marine terminals before containers are available for pick-up or without ensuring that outstanding charges have been paid and necessary releases issued. This causes delays in terminals. The Port Authority has reported that “seven of the top 10 causes of trouble tickets in the Port of New York and New Jersey can be avoided by checking TIPS in advance.”¹ In addition to general information about port wide matters and terminal-specific announcements regarding special conditions or changed operating hours, TIPS provides information about container availability and location, regulatory holds, any charges or demurrage as well as the status of free time. TIPS is noteworthy because it was implemented by marine terminal operators working with limited antitrust immunity under a discussion agreement monitored by the FMC. TIPS has been made available to the shipping public at no cost.

I am also a founding member of the Council on Port Performance or CPP, a which was formed by port industry stakeholders in the Port of New York and New Jersey to provide oversight on the implementation of programs and initiatives to improve efficiency and service reliability. The CPP was an outgrowth of the Port Performance Task Force or PPTF, which was created in 2013 in response to a convergence of factors that created obstacles to the smooth flow of cargo in the Port of New York and New Jersey. I am proud to say that the PPTF was conceived of and its implementation facilitated under the Port of NY/NJ Sustainable Services Agreement and the Port of NY/NJ—Port Authority/Marine Terminal Operators Agreement, which are FMC-filed

¹ Alan M. Field, *Port of New York and New Jersey Inaugurates the TIPS System* (September 2015) at 4 available at https://www.panynj.gov/port/pdf/JoC_WP-NYNJ0915-v3.pdf.

discussion agreements.² The CPP is a unique group that gives voice to a wide cross section of stakeholders in the Port, whose businesses are also dependent on trade.

2. The Port of New York and New Jersey—An Economic Engine for the Nation

GCT New York located in the Port of New York and New Jersey is a particularly relevant venue for the Ways and Means Committee that addresses matters related to taxation, trade, and tariffs. I will provide a short history lesson today because it is relevant to the issues this Committee is considering. This great Port began its ascendancy in becoming the leading port in the nation during the Dutch settlement of the area in the 1600's.³ By 1797, the Port surpassed both Boston and Philadelphia to assume its number one position.⁴ Port stakeholders doing business here take great pride in the fact that their harbor was the first great port of the United States. In the 19th century the Port was the primary port of entry for cargo destined for the United States and by 1828 customs duties collected in the bustling Port paid all federal expenses apart from interest on the federal debt.⁵ These customs duties facilitated the stability and growth of the new republic.⁶ Ultimately, the Port also became the symbol of our nation's freedom when in recognition of its position as the gateway to the United States it was chosen by Auguste Bartholdi in 1871 as the ideal spot to erect his gift to the people of the United States—the Statue of Liberty.⁷

Since the founding of our nation the Port has consistently been an economic engine supporting the regional and national economies.⁸ This Port has also been on the cutting edge of cargo-handling technology. A deceptively simple innovation incubated in the Port revolutionized how goods are shipped worldwide. This innovation that came to be known as containerization provided the platform for the transformation of the global economy.⁹ The box that changed the world was loaded on the *Ideal X*, a converted tanker ship in Newark, New Jersey on April 26, 1956.¹⁰ The fifty-eight containers that departed Newark, New Jersey for Houston, Texas that day set events in motion that inspired management and labor in the Port to establish work rules that permitted the proliferation of containerization in the Port and the world.¹¹

² See FMC Agreements Nos. 201175 and 201210.

³ See MARK KURLANSKY, *THE BIG OYSTER*, 74 (2007).

⁴ See *id.* at 98.

⁵ See EDWIN G. BURROWS & MIKE WALLACE, *GOETHAM A HISTORY OF NEW YORK CITY TO 1898*, 572 (1999). By 1849, over three thousand ships from more than 150 countries transited the Port, carrying half the nation's imports and almost one-third of its exports. See *id.* at 653.

⁶ See WILLARD STERNE RANDALL, *ALEXANDER HAMILTON/A LIFE*, 376-77 (2003).

⁷ See BURROWS & WALLACE at 1034.

⁸ See A. STRAUSS-WIEDER, *THE 2020 REPORT ON THE ECONOMIC IMPACT OF THE PORT OF NEW YORK AND NEW JERSEY* 5-7.

⁹ See MARC LEVINSON, *THE BOX/HOW THE SHIPPING CONTAINER MADE THE WORLD SMALLER AND THE WORLD ECONOMY BIGGER*, 1-2 (2006).

¹⁰ See *id.*

¹¹ See *NLRB v. Int'l Longshoremen's Ass'n*, 473 U.S. 61, 84 (1985) ("Under the Rules on Containers, the ILA has given up some 80% of all containerized cargo work and the technological 'container revolution' has secured its position in the industry. We have often noted that a basic premise of the labor laws is that 'collective discussions backed by the parties' economic weapons

3. The Port of New York and New Jersey Steps Up During the Pandemic

The businesses and labor serving this Port have always stepped up in performing their functions that are vital to the regional and national economy as well as the well-being of all Americans. As I previously noted, GCT New York's longshore labor is represented by various locals of the International Longshoremen's Association. Its Port Security Officers are represented by the Port Police and Guards Union. I am particularly proud of the performance of our management and longshore workers during the challenges of the COVID-19 pandemic. In uncertain times, they came to work every day and kept the cargo flowing. This was not easy but in cooperation with the ILA, the marine terminal operators in the Port were able to implement reasonable work rules and sanitizing procedures that permitted work to go on in a responsible manner. These workers are the unsung heroes of the pandemic. Because of these workers, the nation was able to obtain PPE and supplies needed to permit people to go to stores and other places of business to get the economy moving. However, it is important for this Committee to note that the PPE that was so vital to protect our workers and citizenry during the pandemic came to our shores through trade and more precisely that trade came from China.

4. The Marine Cargo Handling Industry is Being Harmed by Misconceptions

Generally, our industry prefers to be the strong silent type doing our job under the radar—without attention, but times have changed and now our industry is front page news. Collectively the marine terminal operators in the Port of New York and New Jersey have invested billions of dollars in facility improvements and equipment to efficiently handle current and enhanced cargo volumes. In 2022 in the Port of New York and New Jersey, efficiently handled cargo volumes (9.5 million TEUs) that had not been anticipated to occur until 2030. However, the story of our significant investment and dedication to the work are not what you read about in the news. In general, media coverage has done our industry a great disservice and our industry fears that this misrepresentation may be fueling hasty governmental regulation while considered with good intentions may have unforeseen and harmful consequences.

The media reporting on the 2022 supply chain crisis often used venues like GCT New York as visuals in their news accounts. This reporting has been harmful to the industry because it gave legislators and the public the mistaken impression that the crisis was caused by ocean carriers transporting goods into the United States and marine terminal operators like GCT New York that off load the cargo from these vessels and transfer it to trucks and rail cars for delivery to its final destination. This mistaken impression also brought forth the ire of the White House, which resulted in hastily enacted legislation that will not prevent but may encourage the next supply chain crisis.

The Ocean Shipping Reform Act of 2022 (OSRA 2022) and the ensuing regulations of the Federal Maritime Commission have sought to lay the blame for supply chain challenges on ocean carriers and marine terminal operators. This regulatory activity places undue burdens on carriers and marine terminal operators for the failure of shippers and other cargo interests to retrieve their

will result in decisions that are better for both management and labor and for society as a whole.' The Rules represent a negotiated compromise of a volatile problem bearing directly on the well-being of our national economy.").

cargo in a timely manner (or what is referred to as within “free time”). It is an undisputed fact that domestic marine terminals have limited space. The efficient operations of a marine terminal are based on principles of velocity and fluidity. Impediments to fluidity are long container dwell times. During the 2022 supply chain crises, cargo interests allowed their containers to languish at our facilities causing log jams in the system. Our marine terminals were used as long term container storage alternatives to off terminal container depots and warehouse facilities. Now the regulators are placing the burden on marine terminal operators to bear the costs for such long dwell containers. This is antithetical to the incentive principle that the FMC is supposed to espouse in ensuring that cargo moves efficiently through marine terminals. The longer container dwell on a terminal, the longer it takes to service the trucks that come to drop them off and pick them up. However, pending FMC regulations do not enumerate procedures for the FMC to assess whether the cargo interest was in fact verifiably ready and able with a truck driver, a chassis, and a destination to bring the container before a container can be retrieved. Instead, they place the sole burden on ocean carriers and marine terminal operators for the inefficiencies in the inland components of the supply chain.

Truck drivers have often indicated that they do not want to work on evenings and weekends and even if they did most receiving facilities are not open. Yet, the cost of terminal land does not go away on weekends or holidays. Therefore, the FMC must promulgate reasonable rules for detention and demurrage fees. In addition, limited antitrust immunity for ocean carriers and marine terminal operators provided under the Shipping Act must be maintained. In addition, this antitrust immunity should be under the purview of the Federal Maritime Commission and not the Department of Justice. The FMC has an expertise of over 100 years in regulating this industry and while we do not always agree with the FMC, it is the proper entity to monitor the commercial relationships of ocean carriers and marine terminal operators in the foreign commerce of the United States.

5. The Port of New York and New Jersey Needs its Fair Share of Dredging Funds

Another issue of critical importance to the Port of New York and New Jersey is dredging, which includes having a reliable source for funding critical dredging projects. This Port is dependent on a consistent program of maintenance and deepening dredging projects. The Port of New York and New Jersey in dredging parlance is referred to as a “Donor Port” to the Harbor Maintenance Trust Fund. That means the fees generated by cargo operations here significantly outweigh the moneys that are allocated to the Port for vital dredging projects. As this Port has done since the beginning of our Nation, it continues to be one of the largest contributors to this Nation’s ability to maintain the waterways for the common good. Notwithstanding the fact that the Harbor Maintenance Trust Fund needs to be spent down, the Port of New York and New Jersey is having issues with obtaining the funds that were supposed to be authorized for its piles and fender dredging project under WRDA 2020. The Port should have been slated to get \$56 million for this maintenance dredging with escalations up to \$70 million. However, the Port was only authorized for \$6.1 million for this purpose because of differences between what was negotiated and what was appropriated under WDRA 2020. We need your help. If not corrected, the Port will take a \$350 million hit on dredging funds that should be authorized for this Port. We understand that the problem is expanding the use for Harbor Maintenance Trust Fund to secondary sources like lock and levees and beach refurbishment. However, this is against the principle that Harbor

Maintenance Fees generated in Ports should inure to the benefit of those Ports. Please help the Port maintain its position as an economic engine for this region and the Nation and release money being held in the Harbor Maintenance Trust Fund.

6. Issues of Trade and the Need for Low Emissions Cargo Handling Equipment

As stated, the domestic marine cargo handling industry is dependent on this country's trade with other nations. We understand that this is a complex issue with certain nations acting in a belligerent manner towards the United States. However, the foreign and trade policy of the United States must be mindful of the quandary that places the domestic cargo handling industry particularly as it pertains to issues related to sustainability. This is another area that is of great significance to marine terminal operators, which is also directly related to the work of your Committee. We all want to be stewards of the environment and operate in a manner that has the least possible negative impact on the environment. However, obtaining new equipment from container gantry cranes to yard hustlers is a challenge for marine terminal operators. While most of our container cranes are now electrified, marine terminal operators are in the process of seeking to replace cargo handling equipment including rubber tire gantry cranes, top loaders, reach stackers, and straddle carriers with low emission or zero emissions equipment. This presents several challenges.

- Notwithstanding power grid issues, which would have to be addressed prior to the widescale deployment of such equipment, obtaining such equipment presents problems;
- The cost of such equipment is prohibitive without the assistance of government grants but most of this equipment is not manufactured in the United States, which disqualifies it from federal grant programs;
- Recently introduced legislation would prohibit marine terminal operators from obtaining foreign made container cranes and other terminal cargo handling equipment. However, the domestic suppliers of such equipment are limited or non-existent and if such equipment is available, it is cost prohibitive. You will notice that the container gantry cranes at GCT New York were manufactured by an Irish company. If a domestic source for such equipment was available, it would have been considered. However, there are simply no domestic manufacturers of similar container gantry cranes.
- If this Committee is considering legislation to prohibit or otherwise limit the use of such equipment, it must consider the lack of viable alternatives and the impact that will have on the trade of the United States. It must also consider that equipment such as a container gantry crane has a steel superstructure as well as electronic systems. Thus, any regulations prohibiting the purchase or use of foreign manufactured container gantry cranes should delineate between steel super structures and electronic systems.

7. Conclusion--The Congress of the United States Must Encourage and Protect Trade

We are living in difficult times. We appreciate the efforts of our Congressional leaders in seeking to protect American interests and security. The interest of America as it has been since the founding of our Nation lies in strong trade relationships with other nations. We respectfully request that this Committee act carefully in considering trade restrictions that will harm the ability of the domestic cargo handling industry to obtain new equipment particularly when that equipment is not manufactured in the United States. We also ask that this Committee seek to ensure that the Port of New York and New Jersey obtains its fair share of funds generated by its significant contributions to the Harbor Maintenance Trust Fund to ensure that critical Port dredging projects continue. We also urge this Committee to reject legislative efforts to repeal the limited antitrust immunity provided to ocean carriers and marine terminal operators under the Shipping Act that permits cooperation among competitors to act for the common good. We ask that members of this Committee reach out to the FMC to ensure that regulations for detention and demurrage billing practices will be reasonable and include the responsibilities of the inland participants in the supply chain in expeditiously retrieving cargo from a marine terminal. On a personal note, I thank the Committee for taking the time to have its meeting here at GCT New York given the pressing nature of the work of your Committee.

Chairman Smith. Mr. Hemminger, would you please proceed?

**STATEMENT OF DALE HEMMINGER, OWNER/OPERATOR, HEMDALE
FARMS DAIRY AND GREENHOUSES**

Mr. Hemminger. Hemdale Farms and Greenhouses produces milk for the Upstate Milk Cooperative. We are one of the owners and the only supplier of fresh milk for Wegmans Food Markets. They are very fussy. We also grow transplants to start vegetables for ourselves and 20 other farms.

And then we grow a lot of cabbage. We have cabbage year-round. We ship 50 loads a week with a neighboring farm July through November and then about 10 loads a week November through June to fussy buyers that want our dense, crisp cabbage out of storage.

Back home, my son and a great team of dedicated, hardworking employees are running a 1,500-cow high-tech dairy, as well as a greenhouse business that starts vegetables for transplants, 3,000 acres of crops, including fresh vegetables. I am proud to say that, besides myself, we have five of our key six managers that are partners, owners.

International trade is of critical importance to our business. For the dairy industry, nearly 1 in 5 gallons of milk gets exported as a dairy product. This value is \$10 billion a year. In the last 10 years, dairy exports have increased 52 percent by volume and 85 percent by dollars.

Thirty years ago, my farm was primarily a processing vegetable farm, and we had an outdated, older, 100-cow dairy that my father had planned to sell off. Instead, I went to the bank and borrowed the money to expand to 300 cows, and that barn is still an important part of our operation today.

At that time, the Canadian dairy market was scheduled to open under the original NAFTA agreement. It was actually a factor in my decision to expand my dairy.

Over the last 30 years, the Canadian dairy industry has masterly outsmarted numerous trade agreements keeping their markets mostly closed to U.S. products. I am just 90 miles from the bridge to get into Canada, and just a little bit past that is Toronto, big population.

Currently, I compete to sell large volumes of both vegetable transplants, and fresh vegetables with the same production grown in Canada. The primary supplier of fresh vegetable plants in the Northeast is Canadian greenhouses. I am one of the few larger-sized greenhouses that have tried to be as competitive with them because of all the opportunities they have.

Canadians' subsidies, including trucking for export subsidies, investments grants, and government-controlled, low-cost inputs like energy make them more competitive.

I respect my Canadian greenhouse competitors. We make each other better. Now Canada must let us send our dairy products and vegetables back to the same open borders.

On the input side of our business, last year was the craziest year of my 45-year career, led by fertilizer prices that were up 100 to 300 percent and fuel prices that were up 70 to 100 percent.

Today, fertilizer has settled back to an average of 70 to 80 percent higher than 2021. It hasn't settled back further, my supplier tells me, because Russia and China are internally restricting exports, keeping supplies tight worldwide, and, hence, prices historically high. Fuel prices are back to a more traditional range.

Almost all other costs are higher, including machinery, repair parts, and some supplies. Moving forward, our biggest challenge to remain competitive is labor.

Our first labor challenge is the Federal H-2A program that I have participated in since its inception 15 years ago. The current administration has led the U.S. Department of Labor to be out of control with regulations, fees, and base wage requirements.

Canada and Mexico are increasing production knowing they can produce many products cheaper than those of us in the United States trying to do that with these labor costs.

My second labor issue is New York's new labor laws and regulations that are making our costs much higher than neighboring States and Canada. In 2023, when I pay the New York State mandated overtime for agriculture that was new 2 years ago, the Federal H-2A hourly rate of \$16.95 an hour, when I pay overtime on those dollars, my labor costs will be double what Canada pays with no overtime mandated.

Last Friday, during a statewide meeting of Farm Bureau leaders reviewing the new labor regulations that were just enacted with the new New York State budget, an apple farmer that I have great respect for said he and his neighbors were organizing to entertainment solar project development on their farm acreage. This is on some of the best fruit acreage in the world. Picture the beautiful land that borders Lake Ontario in western New York being converted from apple trees to solar panels.

At Hemdale Farms we are focused on soil-based solutions. Thirty years ago, my primary focus was growing vegetables for processing for Birdseye Foods. A combination of the consolidation of the industry and the high cost of doing business in New York State forced Birdseye to sell all of its processing plants, and today they are importing a considerable amount of their products from countries with much lower costs.

I share this because at that time Birdseye asked me to transition some acreage to organic so they could do test marketing. The Birdseye markets didn't develop, but we established numerous markets for both vegetables and grain and were successful organic

growers for 15 years.

Eventually, my operations manager/partner, who is a self-trained soil health expert, and I decided to discontinue organic production because of ongoing challenges maintaining the land and controlling weeds and establishing seed growth with excess tillage.

We also wanted to be able to consider GMO use in all of our enterprises. My lifetime of experience has me convinced that GMOs are the most important scientific breakthrough in history for the future of feeding a hungry world of 8 billion people.

I will wrap this up saying that Hemdale Farms is up to the challenge of competing in global markets. We will continue to move forward with an entrepreneurial spirit finding our niches to succeed. However, we must have a level playing field with open markets and cost structure where we can be competitive with both our income and expenses.

If this is not the case, I owe it to my family and my community to change my focus and possibly my location. Money goes where money can be made.

Chairman Smith and committee members, I commend you for convening this hearing on behalf of agriculture and small business across the country.

Thank you.

[The statement of Mr. Hemminger follows:]

***** COMMITTEE INSERT *****

**Quality Vegetables**

Cabbage, Vegetable Plugs
Other Specialty Crops, Fresh Market
Processing, and Harvesting

Hemdale Farms, Inc.

Hemdale Greenhouses, LLC

P.O. Box 198, 2801 Orleans Rd.
Seneca Castle, NY 14547
Office: (585)526-5523
Fax: (585)526-5823
dale@hemdalefarms.com

Stewardship of the soil with integrity and pride.

**Dairy**

Hay, Straw,
Silage, Grain
and Bedding

Ways and Means Committee Hearing 5/9/23

My name is Dale Hemminger. I am the 2nd generation owner at Hemdale Farms and Greenhouses. Back home my son and my great TEAM of dedicated hard-working employees are running a 1500 cow high tech dairy, as well as a greenhouse business that starts vegetables for transplanting and are growing over 3000 acres of crops including fresh vegetables. I'm proud to share that besides my son and I, 5 of the 6 key managers have ownership in the business.

International trade is of critical importance to our business. For the dairy industry nearly 1 gallon in 5 gets exported as a dairy product. In 2022 total US exports were just shy of \$10B. In the last 10 years dairy exports have increased 52% by volume and 85% in dollars.

30 years ago, my farm was primarily a crop farm with an outdated traditional 100 cow dairy that my father had planned to sell off. Instead, I went to the bank and borrowed the money to expand to 300 cows and that barn is still an important part of our operation today. At that time the Canadian dairy market was scheduled to open under the original NAFTA agreement, and I saw the Canadian and Toronto market as a benefit to the future of my dairy business. Over the last 30 years the Canadian dairy industry has masterly outsmarted numerous trade agreements keeping their market mostly closed to US products.

Currently I compete to sell large volumes of both vegetable transplants and fresh vegetables with the same products being imported from Canada. Their products undercut my cost of production because of Canadian subsidies, including a trucking for export subsidy, investment grants and government controlled low cost inputs like energy that makes them more competitive. (#1)

I respect my Canadian greenhouse competitors; we make each other better. Now Canada must let us send our dairy products and vegetables back with the same open borders.

On the input side of our business last year was the craziest year of my 45-year career led by fertilizer prices that were up 100-300% and fuel prices that were up 70-100% most of the year. Today fertilizer has settled back to an average of 70-80% higher than 2021. My supplier tells me that Russia and China are internally restricting exports keeping supply tight worldwide and hence prices historically high. Fuel prices are back in a more traditional range.

Almost all other costs are higher including machinery, repair parts and some supplies. Moving forward our biggest challenge to remain competitive is labor costs. Our first labor challenge is the Federal H2A program that I have participated in since its inception 15 years ago. The current administration has led the US Department of Labor to be out of control with regulations, fees,

and base wage requirements. Canada and Mexico are increasing production knowing they can produce many products much cheaper than the US.

My second labor issue is new NYS labor laws and regulations that are making our costs much higher than neighboring states and Canada. In 2023 when I pay the NYS mandated overtime on the Federal H2A hourly rate of \$16.95/hour my labor cost is double what my Canadian competitors are paying.

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The Birdseye markets didn't develop but we did establish numerous markets for both vegetables and grain and were successful organic growers for 15 years. Eventually my operations manager/partner who is a self-trained soil health expert and I decided to discontinue organic production because of ongoing soil challenges and the much higher carbon footprint it created from excess tillage and cultivating to control the weeds and establish seed growth. We also wanted to be able to consider GMO use in every enterprise. My lifetime of experience has me convinced that GMOs are the most important scientific breakthrough in history for the future of feeding a hungry world of 8 billion people.

I'll wrap up saying that Hemdale Farms is up to the challenge of competing in global markets, we will continue to move forward with an entrepreneurial spirit finding our niches to success. However, we must have a level playing field with open markets and cost structure where we can be competitive with both our income and expenses. If this is not the case, I owe it to my family and community to change my focus and possibly my location. Money goes to where money can be made.

Chairman Smith and committee members, I commend you for convening this hearing and for all your hard work on behalf of agriculture and small business across the country.

Attachment 1 Hunts Point Produce Market, Bronx, NYC market pricing report referencing Canadian imports last week (this product is out of storage or greenhouses this time of year, starting in July they deliver almost every item)

Attachment 2 Picture of Canadian greenhouse plants planted in my area 2 weeks ago

Articles referencing Canadian imports

<https://www.ers.usda.gov/amber-waves/2021/november/u-s-fresh-vegetable-imports-from-mexico-and-canada-continue-to-surge/>

<https://www.freshplaza.com/north-america/article/9505067/u-s-fresh-fruit-and-vegetable-imports-keep-growing/>

ATTACHMENT #1

HUNT'S POINT PRODUCE MARKET REPORT

CD Ontario or **CD** Quebec = Canadian Sourced

USDA New York Veg Terminal 04/07 11:21

NEW YORK Terminal Prices as of 07-APR-2023

Provided by: Specialty Crops Market News
 Federal - State Market News Service, USDA.

Phone: (718) 542-2225 Fax: (718) 378-0891

NX_FV020

Today at 7:00am: Mostly Cloudy 52

Yesterday: High: 77 Low: 45

***No reports will be issued Monday, April 10, 2023 in observance of
the Easter
holiday.

The Market News office is closed. The New York Terminal market is
closed for
business.

The next report will be issued Tuesday, April 11, 2023.

VEGETABLES

---ARTICHOKES: OFFERINGS VERY LIGHT. cartons CA Globe 34.00-36.00 36s
poor appear poor cond 5.00 thorned CA Globe 18s 32.00 24s 36.00-38.00
1/2 crates

CA Globe lge lse 55.00 carton sml lse 70.00 carton poor appear poor cond
5.00

---ASPARAGUS: OFFERINGS VERY LIGHT. pyramid cartons 28 lb bunched MX
Green

lge no offering std no offering 11 lb cartons bunched MX Green jbo no
offering

lge 32.00-34.00 std no offering PE White lge 40.00-42.00 std 38.00-
40.00

---BEANS: MARKET STEADY. bushel crates FL Round Green Type Handpicked
no

offering Machine Picked 14.00-16.00 occas lower Flat Green Type no
offering

bushel cartons FL Round Green Type Machine Picked 14.00-16.00 one lot
20.00 10

lb cartons FL Haricot Vert (French Type) 21.00 clipped GU Haricot Vert
(French

Type) 12.00-14.00 Clipped 2 5 - lb filmbags 10.00-11.00 2 5 - lb
filmbags 30 lb

cartons MX Fava no offering 30 lb reusable plastic containers (RPC) MX
Round

Green Type Machine Picked 14.00

---BEETS: OFFERINGS LIGHT. cartons bunched MX Gold Type 24s one lot
34.00-36.00 TX Red Type 24s fine appear 40.00-44.00 crates bunched MX
Chiodga

(Striped) 24s one lot 34.00 cartons/crates bunched FL Red Type 12s
20.00-23.00
25 lb sacks loose MX Chiogga (Striped) lge no offerings 25 lb film bags
CD Gold
Type lge 20.00-22.00 Quebec Red Type 26.00-28.00 exlarge one lot 20.00
- 24.00
MX Red Type 22.00-26.00 jumbo sml-med 20.00-21.00
---BROCCOLI: MARKET STEADY. cartons AZ/CA bchd 14s 24.00-28.00 one
lot 32.00
bchd 18s 24.00-26.00 one lot 35.00 Crown Cut holdovers 20.00-22.00
Short Trim
24.00-26.00 some 20.00 - 22.00 CA Baby Hybrid Type bchd 18s no offering
MX
Crown Cut Short Trim 24.00-26.00
---BRUSSELS SPROUTS: MARKET STEADY. 25 lb cartons CA lge 24.00-26.00
MX lge
24.00-26.00 one lot 16.00 - 18.00 med 22.00-23.00 occas lower sml
20.00-22.00
cartons 12 10-oz cups film wrapped Local Repack med 22.00-26.00 mostly
24.00
one lot 32.00
---CABBAGE: MARKET ABOUT STEADY. 1 3/4 bushel crates and 50 lb
cartons FL
Round Green Type lge 18.00-20.00 mostly 20.00 16-18s 16.00-18.00 Red
Type med
24.00-28.00 mostly 24.00-26.00 Danish Type med no offering Vidalia
District
Round Green Type lge 18.00-20.00 mostly 20.00 GA Round Green Type lge
18.00-20.00 mostly 20.00 Red Type med 22.00-24.00 TX Round Green Type
lge
fineappear 25.00-26.00 Red Type med 28.00-30.00 lge fineappear 32.00-
34.00 50
lb sacks CD Quebec White xlge 18.00-20.00 NY Western Section White xlge
16.00-18.00 1 3/4 bushel crates and 40 lb cartons FL Savoy Type lge
22.00-26.00
GA Savoy Type med 22.00-24.00 TX Savoy Type med 28.00-30.00 lge
fineappear
30.00-32.00
---CARROTS: MARKET STEADY. sacks 48 1-lb film bags CA Topped sml
28.00-30.00
GA Topped sml 25.00-26.00 IS BOAT Topped sml-med one lot 28.00 MX
Topped sml
26.00 sacks 24 2-lb film bags CA Topped sml 33.00-35.00 one lot 36.00
MX Topped
sml 25.00-26.00 sacks 10 5-lb film bags CA Topped sml one lot 36.00
33.00-35.00
IS BOAT Topped sml-med 27.00-28.00 MX Topped sml 24.00 50 lb sacks
loose CA
Topped med-lge 30.00-34.00 mostly 32.00 one lot 37.00 CD Quebec Topped
jbo
20.00-22.00 IS BOAT Topped jbo 21.00-24.00 MX Topped jbo 18.00-20.00
cartons
bunched CA Bunched 24s 26.00-30.00 mostly 28.00 cartons 30 1-lb film
bags CA
Baby Peeled 26.00-28.00 one lot 30.00
---CAULIFLOWER: MARKET ABOUT STEADY. flat cartons film wrapped CA
White 9s
flmwrp 32.00-35.00 12s flmwrp 36.00-40.00 16s flmwrp poorappear poor
cond
2.00-5.00 Green 12s flmwrp one lot 42.00 Orange 12s flmwrp one lot
45.00 Purple
12s flmwrp one lot 45.00 FL White 12s flmwrp no offering
---CELERY: MARKET STEADY. cartons AZ/CA 2 dz one label 28.00 18.00-
22.00

mostly 20.00-22.00 poorappear poor cond 5.00 filmbags 30s 20.00-24.00
mostly
22.00-24.00 one lot 26.00 - 27.00 fineappear 30.00-32.00 MX 2 dz 15.00-
19.00
mostly 16.00-18.00 2 1/2 dz 16.00-18.00 filmbags 24s holdovers 18.00-
20.00
cartons film bags CA Hearts filmbags 18s 30.00-32.00 fineappear few
45.00 MX
Hearts filmbags 18s 26.00-28.00
---CORN-SWEET: MARKET STEADY. wirebound crates FL Yellow 4 dz 14.00-
16.00
mostly 15.00-16.00 holdovers 13.00 cartons FL Yellow 4 dz 14.00 cartons
10
trays 4 ears film wrapped FL Yellow 4 dz 48.00 cartons 12 trays 4 ears
film
wrapped FL Bi-Color 4 dz 48.00
---CUCUMBERS: OFFERINGS PICKELS VERY LIGHT. MARKET ABOUT STEADY. 1 1/9
bushel
cartons FL fr qual no offering MX ord qual 14.00-16.00 med 22.00-24.00
fr qual
13.00-16.00 lge 16.00-20.00 mostly 16.00-18.00 1 1/9 bushel crates FL
Pickles
200-300s 42.00-45.00 1 1/9 bushel cartons FL Pickles 200-300s 36.00 40
lb
cartons MX Pickles 150-200s fr qual 32.00-40.00 200-300s 40.00-44.00
300-400s
no offering 40 lb plastic containers MX Pickles 200-300s 40.00-42.00
occas
higher GREENHOUSE cartons film wrapped CD Ontario Long Seedless lge 12s
fr qual
4.00-6.00 CDOne Long Seedless sml 8.00 med 12s 8.00-10.00 lge 12s 8.00-
10.00 MX
Long Seedless lge 12s 8.00-9.00 20 lb cartons CD Ontario Persian lge
14.00-16.00 DR Persian med 38.00 cartons 12 14-oz trays film wrapped CD
Ontario
Persian 11.00-14.00 cartons 12 1-lb trays film wrapped CD Ontario
Persian
11.00-14.00 DR Persian 22.00 cartons 12 6-count trays film wrapped CD
Ontario
Persian 12.00-14.00
---EGGPLANT: MARKET ABOUT STEADY. 1 1/9 bushel cartons FL Long
Striped med
fineappear no offering bushel cartons MX 16s no offering fr qual 16.00-
18.00
18s 22.00-28.00 mostly 22.00-24.00 fr qual 16.00-18.00 24s 22.00-24.00
5 kg/11
lb cartons SP AIR Long Striped 200-300 gm 26.00 5 kg/11 lb cartons tray
pack DR
AIR Long Striped 200-300 gm 24.00 1/2 bushel cartons Local Repack
Chinese
med-lge 22.00 10-lb carton 30 lb cartons HD Chinese med-lge 54.00-56.00
5 kg/11
lb cartons SP AIR Italian 200-300 gm 26.00 5 kg/11 lb cartons tray pack
NL AIR
Italian 175-225 gm no offering
---ENDIVE: MARKET STEADY. 1 1/9 bushel crates FL 16s 18.00-20.00
mostly 20.00
GREENHOUSE 3 kg cartons BL AIR Witloof 22.00-24.00 Red Type 24.00
---ESCAROLE: MARKET STEADY. 1 1/9 bushel crates FL 24s 18.00-20.00
---GARLIC: MARKET STEADY. 30 lb cartons AG White #6 60.00 #7 65.00 #8
75.00
netted 5s 60-65mm/6.0-6.5cm 50.00 Purple #6 60.00 netted 5s 60-
65mm/6.0-6.5cm
40.00 CA White lge one lot 110.00 med 85.00 CQ White 65-70mm/6.5-7.0cm

42.00-43.00 netted 5s 60-65mm/6.0-6.5cm 54.00-56.00 PE White netted 5s
 60-65mm/6.0-6.5cm 45.00 SP White 50-55mm/5.0-5.5cm 55.00 cartons 20 1-
 lb
 plastic jars CQ Peeled 56.00-58.00 occas higher SP Peeled 55.00 cartons
 4 5-lb
 plastic jars per jar CQ Peeled 12.00 MX Peeled 10.00-11.00 PE Peeled no
 offerings SP Peeled 11.00 cartons 4 5-lb film bags per film bag CA
 Peeled
 24.00-26.00
 ---GREENS: MARKET STEADY. crates bunched GA Turnip Tops 12s 18.00-
 20.00 TX
 Turnip Tops 12s 24.00-26.00 cartons bunched FL Swiss Chard green 12s
 18.00-22.00 mostly 20.00 red 12s 18.00-22.00 mostly 20.00 Dandelion 24s
 18.00-22.00 mostly 20.00 GA Collard 12s 16.00-18.00 Mustard 12s 22.00-
 24.00 one
 lot 18.00 TX Collard 12s 26.00-28.00 Kale 22.00-24.00 one lot 15's
 Mustard 24s
 no offerings 12s no offerings Swiss Chard green 12s 24.00-26.00 few
 22.00
 fineappear 34.00-36.00 red 24s 24.00-26.00 few 22.00 fineappear 35.00-
 36.00
 Turnip Tops 24s 22.00-24.00 Dandelion 24s fineappear 35.00-36.00
 Kohlrabi 12s
 26.00-28.00 cartons/crates bunched GA Kale 12s 18.00-20.00 Dandelion
 12s
 18.00-20.00
 ---LETTUCE-ICEBERG: MARKET ABOUT STEADY. cartons AZ/CA 24s flmwrpd
 25.00-30.00 mostly 28.00-30.00 one lot 32.00 - 34.00 holdovers 20.00-
 24.00 fr
 appear fr cond 14.00-16.00 30s flmwrpd no offering FL 24s flmwrpd 24.00
 MX 24s
 flmwrpd 24.00-26.00 fr appear fr cond 16.00-18.00
 ---LETTUCE-OTHER: MARKET STEADY. cartons AZ/CA Green Leaf 24s 18.00-
 20.00 one
 lot 22.00 - 24.00 poorappear poor cond 5.00 Red Leaf 24s 18.00-20.00
 one lot
 22.00 - 24.00 CA Boston 24s no offerings crates FL Boston 24s no
 offerings 2.5
 lb cartons AZ/CA Mesculin Mix 6.00-7.00 SP AIR Frisee 10s 38.00-40.00 3
 lb
 cartons AZ/CA Mesculin Mix 7.00-8.00 Local Repack Mesculin Mix 6.00-
 7.00
 GREENHOUSE cartons 12 4-oz containers with lid CD Quebec Boston 15.00-
 16.00
 ---LETTUCE-ROMAINE: MARKET STEADY. cartons AZ/CA 24s 20.00-24.00
 mostly
 20.00-22.00 cartons 12 24.2-oz (3 count) packages MX Hearts fineappear
 26.00
 cartons 12 3-count packages AZ Hearts 22.00-24.00 poorappear poor cond
 1.00-3.00 most to be dumped CA Hearts 22.00-24.00 occas higher FL
 Hearts
 19.00-22.00 cartons 7 6-count packages MX Hearts fineappear 28.00-30.00
 ---MUSHROOMS: MARKET STEADY. 10 lb cartons PA White lge 18.00-19.00 "
 Silver
 Dollar " 18.00-20.00 med 20.00-21.00 " Button " 16.00-18.00 " Washed "
 Sliced
 lge 18.00-18.50 " Natural " Portobella exlge 13.00 fineappear 24.00 "
 A "
 14.00 med-lge 11.00 5 lb cartons PA Oyster 26.00-28.00 " Purple - Green
 " 31.00
 " Blue " 28.00 " Red " lge 30.00-32.00 occas higher Cremini 10.00-
 12.00 mostly
 11.00 Portobella exlge 13.00-14.00 " A" fineappear 15.50 med 12.00
 9.50-10.50

" B " 3 lb cartons PA Shiitake exlge 18.00-20.00 fineappear 22.00-24.00
 lge
 16.00-18.00 "A" med-lge 13.00-15.00 "B" 1 lb cartons PA Porcini Dry
 None
 cartons 12 8-oz trays film wrapped PA White 17.00 med 11.00-12.50
 Cremini
 15.00-15.50 Sliced 15.00-15.50 Portobella Sliced med 16.00-17.00
 cartons 10
 10-oz trays film wrapped PA White 16.00 (stuffing) lge 15.00-17.00 med
 17.00
 Portobella 17.00-18.00 " Baby " cartons 8 14-oz trays film wrapped PA
 White lge
 18.50-19.00 med 18.50 cartons 6 6-oz trays film wrapped PA White Sliced
 lge
 12.00-13.50 Shiitake 13.00-14.50 Sliced 13.00-14.50 Portobella Sliced
 lge
 12.00-13.50 Brown 14.00 (caps) cartons 6 3.5-oz trays film wrapped PA
 Oyster
 11.00 cartons 10 8-oz trays film wrapped PA White 12.00-13.00 lge 14.00
 Sliced
 14.50-17.00
 ---OKRA: OFFERINGS LIGHT. 1/2 bushel cartons HD AIR lge 32.00-34.00
 16 lb
 crates MX lge fr appear 28.00 28 lb reusable plastic containers (RPC)
 MX lge fr
 qual 28.00-30.00 cartons 10 15-oz containers with lids MX 28.00-30.00
 ---ONIONS GREEN: OFFERINGS 12'S VERY LIGHT. MARKET 48'S ABOUT STEADY.
 cartons
 bunched MX 48s lge 14.00-16.00 mostly 14.00-15.00 one lot 12.00 one lot
 18.00 -
 20.00 ord appear ord cond 6.00-8.00 8.00-10.00 no ice 48s med ord
 appear ord
 cond 8.00-10.00 CA Leeks 12s lge no offering MX Leeks 12s lge no
 offering TX
 Leeks 12s lge fineappear 33.00-35.00 Repacked Local and Enroute Leeks
 12s lge
 36.00-38.00 cartons 2 film bags iceless MX 24 bunches per bag 13.00-
 16.00 Large
 ord appear ord cond 8.00-10.00 medium bundles bunched CD Quebec Leeks
 12s
 20.00-24.00 NL AIR Leeks 12s lge (5 kg mesh bag), no offering
 ---PARSLEY: MARKET STEADY. cartons bunched MX Root 12s fineappear
 38.00 TX
 Curly 60s 24.00-28.00 mostly 26.00 fineappear 42.00 Plain 60s 24.00-
 28.00
 mostly 24.00-26.00 fineappear 45.00 Root 12s 32.00-34.00 1 1/9 bushel
 cartons/crates bunched FL Curly 60s 24.00-28.00 mostly 26.00 Plain 60s
 24.00-28.00 mostly 26.00
 ---PARSNIPS: MARKET STEADY. 20 lb film bags loose MI lge 22.00-24.00
 fr
 appear 20.00-21.00
 ---PEAS GREEN: MARKET STEADY. 10 lb cartons GU AIR Snow Peas
 Decalaxed
 14.00-18.00 Sugar Snap Peas Decalaxed 22.00-24.00 few 20.00
 ---PEPPERS, BELL TYPE: MARKET ABOUT STEADY. 1 1/9 bushel cartons FL
 Green jbo
 20.00-22.00 exlge 18.00-19.00 med-lge fr qual 15.00-17.00 holdovers
 13.00 Red
 exlge-lge no offerings Turning Red exlge 14.00-16.00 fr qual 10.00-
 12.00 Yellow
 exlge-lge no offerings MX Red exlge fr qual 30.00 Yellow exlge-lge
 34.00-35.00
 fr qual 28.00-30.00 Orange exlge-lge fr qual 25.00-26.00 1 1/9 bushel
 cartons

place pack MX Green jbo no offerings 15 lb cartons MX Red exlge 20.00-22.00 lge
 16.00-18.00 GREENHOUSE 5 kg/11 lb cartons CD Ontario Red exlge 14.00-16.00 lge
 12.00-14.00 Yellow exlge 16.00-18.00 lge 14.00-15.00 Orange exlge 18.00-20.00
 lge 14.00 MX Red exlge 10.00-12.00 Yellow exlge 12.00-14.00 Orange exlge
 12.00-14.00 NL Red exlge 261- 301mm no offerings
 ---PEPPERS, OTHER: MARKET ABOUT STEADY. 1/2 bushel cartons FL Jalapeno green
 lge 18.00-20.00 Shishito med-lge 40.00-42.00 Repacked Enroute Jalapeno green
 lge 22.00-25.00 1 1/9 bushel cartons FL Cubanelles green exlge 26.00-30.00
 mostly 28.00 occas higher and lower Hungarian Wax med-lge no offerings Jalapeno
 green lge 32.00 occas lower Long Hot green exlge 20.00-24.00 mostly 22.00 lge
 16.00-18.00 Poblano green med-lge no offerings MX Jalapeno green exlge no
 offerings 1 1/9 bushel cartons/crates MX Poblano green med-lge 26.00 22 lb
 reusable plastic container Serrano green med-lge 36.00-40.00 mostly 38.00 36 lb
 reusable plastic container 8 lb cartons DR Ajies 22.00-24.00 Jamaican Hot IS
 Habanero orange med no offerings red med 42.00 10 lb cartons Local Repack
 Anaheim med-lge 26.00 Fresno med-lge no offerings Jalapeno lge 18.00 Poblano
 exlge 18.00 Serrano med-lge 22.00 Shishito med-lge no offerings 25 lb sacks DR
 Ajies 50.00-52.00 occas lower cartons 12 1-lb film bags FL Mixed Mini Sweet
 Types mixed red and green 26.00 MX Mixed Mini Sweet Types mixed red and green
 22.00-24.00 2 kg cartons NL AIR Habanero orange med no offerings 3 kg cartons
 NL AIR Finger Hot red sml-med no offerings
 ---RADISHES: MARKET STEADY. cartons topped 30 6-oz film bags FL Red 12.00-14.00
 occas lower 40 lb film bags topped FL Red 24.00-28.00 mostly 26.00
 25 lb film bags topped FL Red 22.00 crates bunched FL Red 24s 20.00-22.00 few
 18.00 TX Red 24s fineappear 22.00-24.00
 ---RHUBARB: OFFERINGS VERY LIGHT. 20 lb cartons WA WAOne no offerings 6 kg
 containers NL AIR 52.00
 ---RUTABAGAS: OFFERINGS LIGHT. 50 lb cartons CD Ontario CDOne 25.00-26.00
 ---SPINACH: MARKET STEADY. 1 2/5 bushel cartons bunched CA Flat bchd 24s
 25.00-27.00 MX Savoy bchd 24s 25.00-26.00 NJ Savoy bchd 24s 24.00 TX Savoy bchd
 24s 24.00-26.00 1 2/5 bushel crates bunched CA Flat bchd 24s 30.00-32.00 occas
 lower cartons 8 10-oz film bags Repacked Enroute Savoy 15.00-16.00 cartons 4
 2-1/2 lb film bags CA Flat 17.00-18.00 occas higher
 ---SQUASH: MARKET ABOUT STEADY. 1/2 bushel cartons FL Zucchini med 8.00-10.00
 Yellow Straightneck med 12.00-14.00 4/7 bushel cartons MX Zucchini sml-med

12.00-14.00 med 8.00-10.00 Yellow Straightneck sml-med 13.00-14.00 med
 10.00-12.00 Grey sml-med 12.00-14.00 med 8.00-10.00 bushel cartons HD
 Butternut
 med-lge 30.00-32.00 xlge 36.00-38.00 MX Acorn med 24.00-26.00 lge
 28.00-30.00
 Butternut xlge 38.00-40.00 few 44.00 Kabocha lge 65.00-67.00 xlge
 70.00-75.00
 mostly 72.00-74.00 Spaghetti med-lge 22.00-24.00 xlge 26.00-28.00
 fineappear
 30.00-32.00 occas higher NY Western Section Spaghetti med no offerings
 1 1/9
 bushel cartons MX Zucchini med no offerings Yellow Straightneck med no
 offerings NY Western Section Delicata med-lge no offerings 40 lb
 cartons MX
 Grey med-lge 42 lb reusable plastic container no offerings
 ---SWEET POTATOES: MARKET STEADY. 40 lb cartons CA U.S. No. 1
 Japanese Types
 50.00-52.00 occas higher No Grade Marks Japanese Types jbo 36.00-40.00
 occas
 lower NC U.S. No. 1 Orange Types 18.00-20.00 mostly 18.00 fineappear
 26.00 No
 Grade Marks Orange Types jbo 13.00-15.00 mostly 14.00 Japanese Types
 jbo
 28.00-30.00
 ---TOMATOES: MARKET ABOUT STEADY. 25 lb cartons loose FL Mature
 Greens red
 5x6 sz fr qual 8.00-9.00 85% U.S. One or Better Mature Greens light
 red-red 5x6
 sz 10.00-12.00 GREENHOUSE cartons 2 layer MX Vine Ripes light red-red
 4x4s
 12.00-14.00 few 15.00 4x5s 12.00 5x5s 12.00 5 kg/11 lb flats on the
 vine CD
 Quebec Vine Ripes light red-red med-lge fineappear 16.00 sml-med 12.00-
 14.00 IL
 Vine Ripes red med-lge 8.00-9.00 MX Vine Ripes red sml-med 8.00-10.00
 flats CD
 Quebec Vine Ripes light red-red 18s 10.00 22s 8.00-10.00 25s 9.00-10.00
 few
 12.00 MX Vine Ripes red 16s 10.00 18s 10.00 20s 8.00-10.00 22s 8.00-
 10.00 10 lb
 cartons CD Ontario Vine Ripe - Heirloom Varieties no offerings
 ---TOMATOES, CHERRY: OFFERINGS VERY LIGHT. flats 12 1-pt cups with
 lids FL
 light red-red lge no offerings GREENHOUSE flats 12 1-pt cups with lids
 DR light
 red-red lge 14.00-16.00
 ---TOMATOES, GRAPE TYPE: MARKET STEADY. flats 12 1-pt containers with
 lids FL
 red med-lge 8.00-10.00 GREENHOUSE flats 12 1-pt containers with lids DR
 light
 red-red med-lge no offerings MX light red-red med-lge 6.00-7.00
 fineappear
 8.00-9.00 few 10.00 flats 15 10-oz containers with lids MX red med-lge
 no
 offerings
 ---TOMATOES, PLUM TYPE: MARKET STEADY. 25 lb cartons loose FL Roma
 light
 red-red exlge 12.00-14.00 MX Roma light red-red 14.00-16.00 jumbo exlge
 13.00-14.00 red exlge fr appear holdovers 8.00-9.00
 ---TURNIPS: MARKET STEADY. 25 lb sacks CA Purple Top lge 26.00 sml-
 med 24.00
 GA Purple Top lge 18.00-22.00 mostly 20.00 occas higher MI Purple Top
 lge no
 offerings

---VEGETABLES OTHER: MARKET STEADY. cartons 12 4-oz packages Repacked
Enroute
Alfalfa Sprouts 14.00-16.00 10 lb cartons Repacked Local and Enroute
Jerusalem
Artichokes 36.00 1 layer containers GU AIR Radicchio 9s no offerings
Treviso
12s 28.00-30.00 Repacked Enroute Radicchio 9s 18.00-20.00

MISC SEASONAL

---ORNAMENTAL GOURDS:

ORGANIC

VEGETABLES

---GREENS: cartons bunched AZ/CA Broccoli Rabe (Rappini) 20s one lot
40.00

---TOMATOES, GRAPE TYPE: flats 12 1-pt containers with lids FL light
red-red
med-lge 24.00

ATTACHMENT #2

CANADIAN GROWN TRANSPLANTS IN HEMDALE FARMS TOWN



Chairman Smith. Thank you, sir.

Mr. Turkel, you are recognized.

**STATEMENT OF NURY TURKEL, CHAIR, UNITED STATES
INTERNATIONAL RELIGIOUS FREEDOM**

Mr. Turkel. Thank you very much, Chairman Smith, Ranking Member Neal, and honorable members of the committee. I am honored to be here with you today to testify on key red flags in our trade relationship with China.

In 2019, as leaked documents showed, the Xinjiang government supercharged its policy to put all Uyghurs in a mandatory work placement. To be clear, it is a state policy that all Uyghurs must be in forced labor. Acting on forced labor imports is a moral imperative as the Uyghur genocide has entered its seventh year.

American consumers are increasingly aware that our proclaimed national values are not aligning with U.S. corporate interests abroad. Ignoring modern day slavery is morally unacceptable. It compromises the soul of our Nation and sets a malign precedent globally.

I was born in a reeducation camp where my mother was sent to at the height of China's infamous Cultural Revolution. My father had been sent to a separate forced labor camp. I grew up witnessing Uyghur villagers forced to build irrigation systems and pick cotton. Uyghur forced labor is not a new problem.

The return of reeducation camps and forced labor to an industrial scale is a morally abhorrent practice that demands a response backed by political will.

The Chinese Government is using forced labor to break up Uyghur families and send them to work in factories thousands of miles away from home. These Uyghurs are

prisoners of the state, and their labor is being used to make products for domestic and international markets.

Uyghurs are suffering under the state plan targeting ethno-religious groups for industrial forced labor on a scale not seen since the Holocaust era. Forced labor is driving the near complete erasure of Uyghur people within a generation. This practice is at the profit-making center of atrocity crimes.

I am sure you can imagine the psychological impact on me, as a proud American, to know that my country is profiting from the Uyghur forced labor. Knowing that my own dollars might be spent on goods produced with the slavery of my own friends and people is a sick and cruel reality.

The problem is not going to disappear or even be minimized. As China becomes more hostile to foreign businesses and as the means of concealing the origin of goods continue to evolve, effective enforcement from the relevant authorities will be essential to protect our Nation's economic interests. Forced labor transfers within China and beyond will likewise necessitate closer scrutiny. And American workers are at a disadvantage when competing with countries that use forced labor.

Let's be clear, forced labor is the profit-making dimension of an ongoing genocide. Business complicity must be taken completely off the table.

Modern day state-imposed slave labor in China is America's number one source of imports. The existing laws must be fully enforced and even amended to ensure that the American people are not unwittingly complicit in powering a genocide with their dollars.

In closing, I would like to make the following recommendations.

First, this committee should conduct robust oversight hearings on the implementation of the UFLPA.

Second, Congress should continue to increase funding for UFLPA enforcement.

Third, this committee should examine the composition and role of the Commercial Customs Operations Advisory Committee, COAC, which heavily favors the importer community while excluding domestic producers and American workers.

Fourth, Congress should pass robust and enforceable country-of-origin labeling rules.

Fifth, Congress should pass new legislation modeled on the Foreign Corrupt Practices Act to address business complicity in state-imposed forced labor, human trafficking, war crimes, and other serious human rights atrocities.

Sixth, Congress should amend the Securities Exchange Act of 1934 to address the corrupt practices of foreign adversaries.

Seventh, Congress should pass legislation prohibiting access to U.S. capital markets by malign foreign adversary companies that are under U.S. sanctions for human rights or national security reasons.

Eighth, Congress should pass a TSP Fiduciary Security Act to update the fiduciary duty of the Federal Retirement Thrift Investment Board.

Finally, Congress should pass the Turn OFF THE TAP Act to create a central ban on Federal funds going to foreign firms explicitly identified through U.S. Government blacklists.

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

[The statement of Mr. Turkel follows:]

***** COMMITTEE INSERT *****



Testimony of Nury Turkel

**Chair, U.S. Commission on International Religious Freedom
(USCIRF)**

House Committee on Ways and Means

***“Trade in America: Securing Supply Chains and Protecting the
American Worker - Staten Island”***

May 9, 2023

Good morning, Chairman Smith, Ranking Member Neal, and honorable members of the committee. Thank you for the opportunity to testify at this crucial hearing on behalf of the U.S. Commission on International Religious Freedom (“USCIRF”). I am honored to be here with you today to testify on key red flags in our trade relationship with the People’s Republic of China.

USCIRF is statutorily mandated under the International Religious Freedom Act of 1998 to monitor religious freedom conditions in countries including China, Russia, Iran, India, Saudi Arabia, and Nigeria and make policy recommendations to the President, Secretary of State, and Congress. USCIRF has been monitoring and reporting on the Chinese government’s human rights abuses and religious persecution in the Uyghur region. Since 1999, as USCIRF recommended, secretaries of State have designated China as a Country of Particular Concern (“CPC”) based on the Chinese government’s egregious religious freedom violations against ethnoreligious groups, including Uyghur Muslims, Tibetan Buddhists, and Chinese Christians.

My testimony will touch on the following key themes and policy recommendations.

- China’s state-sponsored forced labor as a tool of genocide
- The moral imperative to act on forced labor imports
- Modern-day state-imposed slave labor in China, the United States’ #1 source of imports

- Ensuring that US capital does not flow to bad-actor Chinese companies
- The private sector response to the Uyghur Forced Labor Prevention Act (“UFLPA”)
- Delays in implementation of Congressional mandate for the “Entity List,” a key mechanism of the UFLPA
- Flawed “stakeholder engagement” mechanisms on US trade enforcement
- *De minimus* entries pose a serious threat to the enforcement of U.S. trade rules
- The FCPA should be a model for new legislation for business complicity in state-imposed forced labor, human trafficking, war crimes, and other serious human rights crimes

China’s state-sponsored forced labor as a tool of genocide

USCIRF has been closely monitoring the Uyghur situation in China, including the mass internment of Uyghur religious and social leaders in modern-day concentration camps and forced-labor facilities, pervasive digital surveillance, and transnational repression. We recommended for the US government take strong legislative and policy responses to stop the ongoing Uyghur genocide. We have held hearings on the issues involving Uyghurs, including forced labor practices. We supported and advocated for the passage of the UFLPA. Seven out of nine USCIRF commissioners have been sanctioned by China, which appears to be retaliation for our work monitoring, reporting, and advocating strong policy responses to the Uyghur genocide, in line with our Congressional mandate under the International Religious Freedom Act of 1998.

Religious persecution and modern-day slavery in China are closely linked. Human rights abuses can make people more vulnerable to slavery, which can then be used to suppress religious freedom. In China, the government is enslaving Uyghurs and other Turkic Muslims. This is part of a larger campaign of religious persecution and political repression.

In 2019, as shown in leaked government documents, the Xinjiang government actually supercharged its policy to put all Uyghurs in mandatory work placements. Instead of requiring that every household must have at least one member at a government-assigned place of work, the new policy was that **all** Uyghurs of working age must be in a government-assigned place of work.

To be clear: It’s state policy that all Uyghurs must be in forced labor. The government uses forced-labor placements to control the Uyghurs from birth to death.

The moral imperative to act on forced labor imports

DHS Under Secretary Rob Silvers has likened slave labor to cancer on our values, and I could not agree more. But in many ways, enforcing the law to cut out this cancer has not been undertaken with the urgency that such a malign presence should require.

The Uyghur genocide is entering its seventh year. And as this cancer continues to grow and even find justification from the business community, “Business as usual” has reached a turning point.

American consumers are becoming increasingly aware of the ways in which our proclaimed national values are not lining up with American corporate interests abroad. Thanks to the passage of the UFLPA, in spite of the heavy business lobbying activities, papering over forced labor in supply chains is no longer an option.

Ignoring modern-day slavery is morally unacceptable. It compromises the soul of our nation and sets a malign precedent globally. It is no longer pragmatic for companies to ignore the true character of the government systems in place in China that are utilizing such practices to profit. It is incumbent on our government to enforce the law, not as a box-checking exercise. While Nike references “Stop Asian Hate” in their Twitter biography, they have refused to address their company’s use of forced labor from people in China. The hypocrisy is sickening.

I was born in a re-education camp, where my mother was sent at the height of China’s infamous Cultural Revolution. My father had been sent to a separate forced labor camp. After Mao’s death and the release of millions from labor camps, I grew up witnessing Uyghur villagers forced to build irrigation systems and pick cotton. Uyghur forced labor is not a new problem. But as re-education camps and forced labor have returned to an industrialized, massive scale, the magnitude of this morally abhorrent practice mandates a response that is backed by political will.

The forced labor assignments are used to break up families and distribute Uyghurs thousands of miles away from home as prisoners of the state, to make products for domestic and international markets.

Uyghurs are suffering under a state plan targeting an ethnoreligious group for industrial forced labor on a scale not seen since the Holocaust. The forced-labor-placement policy is a core tool of the ongoing genocide – a tool for keeping people under surveillance, ripping families apart and separating parents from their children, and ensuring that people of marriageable age cannot form their own families. Forced labor is driving the near-complete erasure of the Uyghur people within a generation. This practice is at the profit-making center of atrocity crimes.

Non-governmental organizations and human rights groups have been sounding the alarm for years. The Uyghur Human Rights Project, alongside others, had done exemplary reporting and advocacy alongside outstanding trade-union and civil society partners in the Coalition to End Forced Labour in the Uyghur Region.

The UFLPA is a response to an extraordinary, horrific situation that should be unimaginable in the 21st Century.

The reputational risk for business is real. The regulatory enforcement requirements are high for a reason.

I am sure you can imagine the psychological impact that even I, as a proud American, have wrestled with on a daily basis when constantly confronted while shopping with top brands which claimed to have conducted numerous social audits on all its China suppliers while participating in the Chinese government's forced-labor scheme for Uyghurs. Knowing that my own dollars might be spent on goods produced with the slavery of my own friends and people is a sick, cruel reality.

This problem is not going to disappear or even be minimized. Effective enforcement from the relevant authorities will remain vital to our own nation's economic interests, particularly as the environment in China becomes more and more hostile to foreign businesses and as the ever-evolving means of concealing the origin of goods will no doubt be ongoing. Forced labor transfers within China and beyond will likewise necessitate closer scrutiny. And for the American worker, too, the unfair business practices imposed via competing with a country engaged in forced labor create an environment in which competition is truly impossible.

Let us be clear: **forced labor is the profit-making dimension of an ongoing genocide.** Business complicity must be taken completely off the table. The current laws must be fully enforced and even amended to ensure that the American people are not unwittingly complicit in powering a genocide with their dollars.

Modern-day state-imposed slave labor in China, the United States' #1 source of imports

Our government and Congress, in particular, have shown tremendous dedication and leadership by advancing ethical business practices through the passage of the UFLPA. Multiple Committees and Members are monitoring UFLPA implementation and planning oversight hearings in the next six weeks, at the one-year mark since the law came into effect on June 21, 2022.

I have a number of concerns and recommendations that I urge the Committee to consider in conjunction with those oversight hearings.

This Committee must keep front of mind that **China is America's top source of imports,¹ and it is China that is using forced labor as a tool of genocide.** At present, law firms are continuing to advertise their services for businesses seeking to understand and comply with the law. Companies are still seeking the services of supply-chain tracing services. Industry requests have consistently emphasized reducing the burden of compliance.² (See comments on COAC below). In short, many corporations have acted as though they have not been granted adequate time to comply. This genocide has been underway for nearly seven years. What more time is needed?

¹ United Nations COMTRADE database on international trade, US imports by country, 2022.

<https://tradingeconomics.com/united-states/imports-by-country>

² Commercial Customs Operations Advisory Committee (COAC), Intelligent Enforcement Subcommittee Forced Labor Recommendations, June 29, 2022, at https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/2022%2006%2029%2016%20term%20COAC%20June%2029%202022%20%20Recommendations%20Numbered%20537%20-581%20_%20for%20posting.pdf

A few CBP actions should show that much more enforcement is needed, not less. In the FY 2023 budget, Congress appropriated an additional \$70 million dedicated to UFLPA enforcement. A commensurate amount must be continued in FY2024 and future budgets. In addition, I urge Congress to appropriate adequate funding to ensure that slow decision-making by the Forced Labor Enforcement Task Force (FLETF), which must coordinate legal and enforcement decisions by seven separate agencies, does not impede robust enforcement of the law.

In 2020, U.S. Customs and Border Protection at the Port of Newark seized³ a 13-ton shipment of human hair products that were believed to have come from Uyghur prisoners and their forced labor. Uyghur, Uzbek, and Kazakh women who are camp survivors have testified that officials cut off their hair when they were taken into the Xinjiang concentration camps. The visceral imagery this should conjure in our minds is an accurate likening to historical atrocities. [Photo credit: CBP]



In late 2022, at the ports of Newark, Los Angeles, and Oakland, CBP detained⁴ shipments of red dates that were openly labeled as the product of the largest state-imposed forced-labor agency in China, the Xinjiang Production and Construction Corps (XPCC). This action was taken only after a Uyghur-American research nonprofit sent a report⁵ to CBP in August 2022, documenting that XPCC products were showing up on U.S. grocery shelves even after the UFLPA took effect in June. [Photo credit: CBP]



If UHRP, a small nonprofit I co-founded, can find evidence of such illegal imports, how many other products are yet to be uncovered?

³ ABC News, “After 13 tons of human hair products seized, US warns about importing from Xinjiang, China. Authorities in New York seized about \$800,000 worth imported goods from China,” July 4, 2022. <https://abcnews.go.com/International/us-issues-warning-companies-importing-xinjiang-china/story?id=71559507>

⁴ CBP, “Implementing the Uyghur Forced Labor Prevention Act: A Challenge Worth the Effort,” January 2023, <https://www.cbp.gov/frontline/implementing-uyghur-forced-labor-prevention-act>

⁵ Nuzigum Setwaldi, “[New UHRP Research Finds American Grocery Stores Selling Sanctioned Forced Labor Products](#),” August 28, 2022, Uyghur Human Rights Project.

Of equal concern is that at the time of the CBP detention, the Xinjiang Production and Construction Corps had already been under U.S. human rights sanctions for two years. Under Global Magnitsky sanctions imposed in July 2020, the XPCC was under a complete asset freeze.⁶ This asset freeze has not been in place for nearly three years, and it extends to any foreign person who has “materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to, or in support of”⁷ the XPCC as a Magnitsky-sanctioned entity. To my knowledge, the Department of the Treasury, which is responsible for enforcing Magnitsky sanctions in consultation with the Secretary of State, has taken no action to impose penalties for the US persons – that is, the importers who have aided and abetted the importation of XPCC goods in violation of the OFAC designation that should block all XPCC-related transactions on U.S. soil.

The private sector response to the UFLPA

I commend those private-sector businesses who have taken steps to comply with the UFLPA and who attended, for example, the first-ever CBP Technical Expo on Forced Labor⁸ on March 14 and 15, 2023, where I was privileged to deliver a keynote address.

However, I remain concerned that some importers and some corporations are acting as though they need to be granted adequate time to comply. Hearings on the UFLPA began three years ago, in March 2020.⁹ The first “Xinjiang Business Supply Chain Advisory” was issued by four cabinet departments in July 2020,¹⁰ and re-issued in July 2021¹¹ by six cabinet departments, in updated form, at the urging of human rights groups.

I am certain that my own anger over the industry associations and retailers’ response is beyond justified. Forced labor is a sterile-sounding term. Let me be clear: this is modern-day slavery, carried out as part of an ongoing genocide.

Delays in several key implementation provisions, and the high risk of corporate misuse of the *de minimis* imports clause, represent ongoing attempts by companies to whitewash the reality: that one of America’s largest trading partners is targeting an ethno-religious group for permanent control through the instrument of forced labor.

⁶ “Treasury Sanctions Chinese Entity and Officials Pursuant to Global Magnitsky Human Rights Executive Order,” July 31, 2020. See also <https://uhrp.org/sanctions/>

⁷ Executive Order 13818, December 20, 2017. [Federal Register :: Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption](https://www.federalregister.gov/documents/2017/12/20/2017-26346/blocking-the-property-of-persons-involved-in-serious-human-rights-abuse-or-corruption)

⁸ See <https://www.dvidshub.net/tags/video/cbp-forced-labor-technical-expo/page/1> and <https://www.cbp.gov/trade/forced-labor-technical-expo-2023/bios>

⁹ Congressional-Executive Commission on China (CECC), March 11, 2020.

<https://www.cecc.gov/events/roundtables/global-supply-chains-forced-labor-and-the-xinjiang-uyghur-autonomous-region>

¹⁰ Departments of the Treasury, Commerce, Homeland Security and State, “Risks and Considerations for Businesses with Supply Chain Exposure to Entities Engaged in Forced Labor and other Human Rights Abuses in Xinjiang,” July 1, 2020. <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jul/Xinjiang-Supply-Chain-Business-Advisory.pdf>

¹¹ Departments of State, Treasury, Commerce, Homeland Security, Labor, and USTR, “Xinjiang Supply Chain Business Advisory,” July 13, 2021, at <https://www.dhs.gov/publication/xinjiang-supply-chain-business-advisory>

Delays in implementation of Congressional mandate for the “Entity List,” a key mechanism of the UFLPA

As we speak, the UFLPA’s “Entity List” of Chinese companies implementing the Chinese government’s state-imposed forced labor atrocities still stands at 20 unique entities,¹² untouched since the law came into effect nearly a year ago. All the named companies were already on other US human-rights sanctions lists from 2019 through 2021. Extensive solid research has been published since then. So, it is deeply disappointing that the USG government – with the research capacities of the seven different agencies that are part of the FLETF Task Force – has not been able to come up with even a single new entity to add to the list.

I associate myself with the Congressional testimony of Dr. Laura Murphy last month when she stated: **“It is hard to comprehend why still not even a single addition has been made to these lists, especially in light of the evidence provided by civil society organizations to FLETF that warrants the addition of potentially thousands more entities.”** As her testimony states, her own research team has provided a list of 55,000 companies operating in the Uyghur Region – that is, a region where the government used forced-labor placement as a direct tool of genocide.

Further, Dr. Murphy testified that her own published investigations alone have identified “at least 150 specific companies in the Uyghur Region and elsewhere in China,” for which there is “significant evidence of participation in state-sponsored labor transfer programs that are tantamount to forced labor.”¹³

In addition, FLETF has been slow to announce additional “priority sectors” – representing a high risk of violations of the UFLPA and Section 307 of the Tariff Act. It is encouraging that CBP is already scrutinizing additional industries beyond those originally identified in the Enforcement Strategy, such as aluminum.¹⁴ However, additional sectors are clearly at risk, and more such sectors should be announced. In July 2021, the USG government identified¹⁵ 20 “high-risk” sectors for Uyghur forced labor imports to the US:

¹² See: [Table of UFLPA Entity List unique vs total as posted 21 June 2022](#), provided by the Uyghur Human Rights Project.

¹³ Testimony of Professor Laura T. Murphy, Sheffield Hallam University Helena Kennedy Centre for International Justice, Hearing on “Implementation of the Uyghur Forced Labor Prevention Act and the Impact on Global Supply Chains,” Congressional-Executive Committee on China, April 18, 2023. <https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/Murphy%20--%20CECC%20UFLPA%20hearing%20FINAL%20--%20For%20Posting.pdf>

¹⁴ Miller & Chevalier, “Trade Compliance Flash: Prepare for CBP’s UFLPA Enforcement Against Aluminum Products,” January 13, 2023, at <https://www.millerchevalier.com/publication/trade-compliance-flash-prepare-cbps-uflpa-enforcement-against-aluminum-products>

¹⁵ See Annex 2, Departments of State, Treasury, Commerce, Homeland Security, Labor, and USTR, “Xinjiang Supply Chain Business Advisory,” July 13, 2021, at <https://www.dhs.gov/publication/xinjiang-supply-chain-business-advisory>

<u>Industry</u>
Agriculture (including such products as raw cotton, hami melons, korla pears, tomato products, and garlic)
Cell Phones
Cleaning Supplies
Construction
Cotton, Cotton Yarn, Cotton Fabric, Ginning, Spinning Mills, and Cotton Products
Electronics Assembly
Extractives (including coal, copper, hydrocarbons, oil, uranium, and zinc)
Fake hair and human hair wigs, hair accessories
Food processing factories
Footwear
Gloves
Hospitality Services
Metallurgical grade silicon
Noodles
Printing Products
Renewable Energy (polysilicon, ingots, wafers, crystalline silicon solar cells, crystalline silicon solar photovoltaic modules)
Stevia
Sugar
Textiles (including such products as apparel, bedding, carpets, wool, viscose)
Toys

Flawed “stakeholder engagement” mechanisms on US trade enforcement

The Ways & Means Committee should examine the operations of the Commercial Customs Operations Advisory Committee (COAC).¹⁶ The membership consists of 100% private-sector representatives.¹⁷ It has no trade union or other worker representation and no members of nonprofits or other groups with expertise in Section 307 and other provisions of the US trade framework that protect worker rights, both of American workers and victims of human trafficking and forced labor around the world. I submit that the COAC committee is heavily weighted toward importers’ interests and not the national interest. I urge the Ways and Means Committee to disband this Advisory Committee if it is not reformed to remedy this fatal flaw.

I must commend the FLETF for holding all the UFLPA-related civil society engagement meetings required to date, as mandated under the law. The meetings have featured high-level participation of USG officials, from Under Secretary Silvers and CBP Executive Director for Trade Choy, to officials at the Department of Labor and the Department of State. In addition, I and my Uyghur Human Rights Project colleagues,

¹⁶ CBP, “Stakeholder Engagement: Commercial Customs Operations Advisory Committee (COAC),” at <https://www.cbp.gov/trade/stakeholder-engagement/coac>

¹⁷ CBP, Members of the 16th Term of the Commercial Customs Operations Advisory Committee (COAC), CBP, at <https://www.cbp.gov/trade/stakeholder-engagement/coac/members-16th-term-commercial-customs-operations-advisory-committee-coac>

along with other trade-union and NGO members of the Coalition to End Forced Labour in the Uyghur Region,¹⁸ have found FLETF officials to be courteous and welcoming of research and implementation feedback via the public feedback contact information provided on the DHS UFLPA website.¹⁹

Nevertheless, it remains a problem that our trade agencies have cordoned off stakeholder “engagement” to include only commercial interests and not workers’ interests. Engagement on UFLPA is further segregated under “forced labor,” as if enforcement of Section 307 of the Tariff Act is not really part of American trade enforcement. **I note again that China is America’s top source of imports,²⁰ and it is China that is using forced labor as a tool of genocide.** It is past time that Congress questions CBP as to whether American workers need a seat at the table in advising the government on “intelligent enforcement” of our trade laws.

***De minimis* entries pose a serious threat to the enforcement of U.S. trade rules**

CBP officials’ remarks at the Trade Facilitation and Cargo Security Summit on April 16 revealed serious problems with CBP’s capacity to police “*de minimis*” entries valued at \$800 or less.²¹ CBP data show that in 2022, less than half of *de minimis* shipments included data either through “Type 86 entry” or the “Section 321 data pilot program.”

Sal Ingrassia, former port director at the JFK Airport, which sees about one-third of the *de minimis* entries to the U.S., said that while the agency is glad brokers are providing Harmonized Tariff Schedule codes in the Type 86 test, “we still have a lot of concerns,” because CBP is finding the data is often not correct. According to an article in International Trade Today, CBP found “some type of violation” in 25% of shipments examined:

Ingrassia said ports identified *de minimis* shipments to examine and reported to the *de minimis* working group what they learned. “One-quarter of what we looked at had some type of violation,” he said. “It was alarming to see we had so many violations.” He said a large number of the violations were either an HTS misclassification “or unmanifested merchandise in the shipment, meaning that we had an e-commerce package or shipment with three items in it. Only one item was declared. That’s a real problem for us when we’re talking about entry Type

¹⁸ Coalition to End Forced Labour in the Uyghur Region, Steering Committee and Member organizations, at <https://enduyghurforcedlabour.org/>. See also Elizabeth Paton and Austin Ramzy, “Coalition Brings Pressure to End Forced Uighur Labor, More than 190 organizations have come together to demand an end to garments made by forced labor in China,” New York Times, July 23, 2020.

¹⁹ <https://www.nytimes.com/2020/07/23/fashion/uyghur-forced-labor-cotton-fashion.html>
FLETF.PUBLIC.COMMENTS@hq.dhs.gov. See “Contact Us” at <https://www.dhs.gov/uflpa>.

²⁰ United Nations COMTRADE database on international trade, US imports by country, 2022.

<https://tradingeconomics.com/united-states/imports-by-country>

[United States Imports By Country \(tradingeconomics.com\)](https://tradingeconomics.com/united-states/imports-by-country)

²¹ Mara Lee, [Type 86 Test Revealing Compliance Weaknesses in Small Packages \(internationaltradedetoday.com\)](https://internationaltradedetoday.com), April 17, 2023

86.”... Ingrassia asked rhetorically: “How can we run a system like entry Type 86 without having correct information?”

A second shocking revelation was that in 25% of cases, CBP was simply unable to locate packages identified for inspection. These are the cases where CBP had asked companies to hold packages for inspection and then discovered that packages had already been released before CBP could inspect them.

A third disturbing issue was the statement by Brandon Lord, executive director of CBP's Trade Policy and Programs Directorate, that when CBP will require fewer data in the future, not more, saying that CBP will “mandate way less” than the combined data elements used in the Type 86 test and the Section 321 data pilot, according to *International Trade Today*.

The fourth question that should be examined by Congress is how CBP handles transshipment coming from a third country and not the country of origin – such as Canadian warehouses. The importing business community apparently favors the creation of a new arrangement, such as “Free Trade Zones” in third countries, to warehouse goods that could later be sold to consumers under the *de minimis* threshold. I urge the Ways and Means Committee to ensure that any successful arrangements do not compound the problems of serious gaps in CBP enforcement of forced-labor and other trade laws in relation to *de minimis* shipments.

The Los Angeles Field Office reportedly handles about a third of the national volume of *de minimis* packages. At the April Summit, the director of this office discussed a test operation that flagged “quite a few shipments” as non-compliant and pointed to the need for “advanced data” to flag shipments for enforcement, including health and safety risks, infringements on intellectual property or are of interest to other Partner Government Agencies, including narcotics and other contraband, and of course forced-labor goodies.

Finally, I urge this Committee to consider the implications of breakneck market growth of direct-to-consumer shipping of cheap goods from China by Shein, Temu, and similar companies. According to the US-China Security and Economic Review Commission, Shein has a “dominant” place in the “fast fashion sector, surging past Tiktok, Instagram, and Twitter to briefly become the most downloaded app in the United States in May 2022. This model depends on tariff-free access to American markets and, I argue, nearly a free pass on *de minimis* shipments to avoid compliance with other US trade laws. The April 2023 US-China Security and Economic Review Commission report²² cites heightened risks of “exploitation of trade loopholes; concerns about production processes, sourcing relationships, product safety, and use of forced labor; and violations of intellectual property rights.” The brief raises the alarm about the race by other

²² Nicholas Kaufman, “Shein, Temu, and Chinese e-Commerce: Data Risks, Sourcing Violations, and Trade Loopholes,” U.S.-China Economic and Security Review Commission, April 14, 2023, at https://www.uscc.gov/sites/default/files/2023-04/Issue_Brief-Shein_Temu_and_Chinese_E-Commerce.pdf

Chinese e-commerce platforms to copy this model, highlighting the “risks and challenges to U.S. regulations, laws, and principles of market access.”

In sum, I urge Ways & Means Committee to consider the dangers involved in the approximately 2 million *de minimis* packages per day brought into the United States. Of these, in 2022:

- One-half were shipped with zero digital data provided to US customs authorities.
- One-quarter of those flagged for inspection were never inspected because the importer failed to comply with the order to hold the items for inspection, and
- one-quarter of those inspected at JFK airport had “some type of violation.”

It is hard to believe that Congress intended for the “*de minimus*” provision, which has the singular intent of waiving tariffs on small shipments, to result in spotty or non-existent policing of Congress’s black-letter prohibitions on the importation of fake, dangerous, and forced-labor goods. It is past time for Congress to re-examine the assumption behind raising the threshold from \$200 to \$800 in the Trade Facilitation and Trade Enforcement Act of 2015. The loophole for egregious corporate and consumer complicity in China’s genocidal forced labor, and other evasions of US trade law (apart from tariffs), is simply too great.

The FCPA should be a model for new legislation for business complicity in state-imposed forced labor, human trafficking, war crimes, and other serious human rights crimes

Using the U.S. antibribery regime under the Foreign Corrupt Practices Act of 1977 (FCPA) as a model, the United States should pass legislation to criminalize actions taken by business entities that are aiding, abating, facilitating, or incentivizing the violation of widely recognized human rights crimes such as genocide, forced labor, human trafficking, torture, and war crimes wherever in the world they occur. A new law modeled after the FCPA-based regime would clearly define the prohibited conduct by reference to existing U.S. statutes that criminalize grave human rights violations. Such legislation should

- address jurisdictional issues for both domestic and foreign companies gaining access to U.S. securities markets
- place the enforcement decisions in the hands of prosecutors instead of government entities such as the US Customs and Border Protection or private parties.
- compel companies to conduct internal investigations, report unethical business practices to the authorities, enhance compliance programs, create business and human rights due diligence programs, and ultimately enforce a corporate culture adhering to ethical business practices and respect for human rights.

Ensuring that US capital does not flow to bad-actor Chinese companies

Congress should pass legislation to prohibit access to US capital markets by malign foreign adversary companies that are under US sanctions for human rights or national

security reasons. As I argued in Foreign Affairs in 2021, in an article co-authored with Beth Van Schaak,²³ who is now U.S. Ambassador-at-Large for International Criminal Justice, Congress should ensure that no American is profiting from the construction of the open-air digital prison engulfing Xinjiang. Numerous publicly traded Chinese tech companies are included in emerging-market indexes held by public pension funds, university endowments, individual retirement plans, and investment portfolios. It is time to exclude these companies from U.S. capital markets.

Of the 64 PRC companies currently under U.S. sanctions for human rights crimes against Uyghurs, only 11 are banned from access to U.S. capital under President Biden's Executive Order 14038.²⁴ The American Financial Markets Integrity and Security Act of 2023, for example, would create an automatic investment ban on all affiliates and subsidiaries of the companies currently on the Commerce Department BIS export ban list for Uyghur atrocities, and those under other US national interest and national security sanctions.

Summary of Recommendations

- The Ways and Means Committee should conduct robust oversight hearings on the implementation of the UFLPA on or around June 21, 2023.
- In the FY 2023 federal budget, Congress appropriated an additional \$70 million dedicated to UFLPA enforcement. A commensurate amount must be continued in the FY2024 and future budgets.
- The Ways & Means Committee should examine the composition and role of the Commercial Customs Operations Advisory Committee (COAC), especially its heavy weighting toward the importer community to the exclusion of domestic producers and American workers.
- Congress should pass robust and enforceable country-of-origin labeling rules.
- Congress should pass new legislation modeled on the Foreign Corrupt Practice Act (FCPA) to address business complicity in state-imposed forced labor, human trafficking, war crimes, and other serious human rights crimes
- Congress should pass legislation amending the Securities Exchange Act of 1934 to address the corrupt practices of foreign adversaries. Such legislation should define “corrupt intent” to include actions that excuse the genocide in the Uyghur Region (Xinjiang), advance the Chinese Communist Party's (CCP) propaganda efforts, or “invest” in the core activities of the CCP or other foreign adversaries. Reference: The Countering Corporate Corruption in China Act of 2023.

²³ Nury Turkel and Beth Van Schaak, “What America Owes the Uyghurs: A Plan for Stopping China's Genocide,” Foreign Affairs, July 16, 2021, at <https://www.foreignaffairs.com/articles/china/2021-07-16/what-america-owes-uyghurs>

²⁴ Uyghur Human Rights Project, “64 Chinese companies under US sanctions for atrocity crimes against the Uyghur people,” at <https://uhrp.org/sanctions>

– Congress should pass legislation to prohibit access to US capital markets by malign foreign adversary companies that are under US sanctions for human rights or national security reasons. This bill would create an automatic investment ban on all affiliates and subsidiaries of the companies currently on the Commerce Department BIS export ban list for Uyghur atrocities, for example. Reference: American Financial Markets Integrity and Security Act of 2023. See also the list of 60+ Chinese companies currently under US human-rights sanctions compiled by the Uyghur Human Rights Project.²⁵

– Congress should pass a TSP Fiduciary Security Act to update the fiduciary duty of the Federal Retirement Thrift Investment Board (FRTIB), which is tasked with managing the retirement savings of federal civil servants and military service members, through the nearly \$800 billion Thrift Savings Plan (TSP), to include national security considerations. Uyghur human rights groups have repeatedly raised the absurdity of Uyghur American service members' and federal employees' own retirement savings potentially financing the “genocide tech” and forced labor companies currently helping to implement the genocide in the Uyghur homeland.²⁶ References: TSP Fiduciary Security Act of 2023, TSP Act of 2022, Prohibiting TSP Investment in China Act of 2022.

– Congress should pass the Turn OFF THE TAP Act, to create a central ban on federal funds going to foreign firms explicitly identified through U.S. government blacklists, including dangerous Chinese companies.

²⁵ Uyghur Human Rights Project, “64 Chinese companies under US sanctions for atrocity crimes against the Uyghur people,” at <https://uhrp.org/sanctions>

²⁶ Uyghur Human Rights Project, “Federal Retirement Savings Must Not Be Invested in Chinese Corporate Human Rights Abusers,” May 19, 2022, at <https://uhrp.org/statement/federal-retirement-savings-must-not-be-invested-in-chinese-corporate-human-rights-abusers/> and Uyghur American Association

Chairman Smith. Thank you, sir.

Mr. Romano.

STATEMENT OF JOHN ROMANO, CEO, TRONOX

Mr. Romano. Good morning, Chairman, Ranking Member, and members.

Today, I would like to discuss the negative impact of trade practices on the titanium dioxide industry.

I serve as the co-CEO of Tronox Holdings, the world's leading vertically integrated producer of titanium dioxide, also known as TiO₂.

Our product is a base pigment that can be found in virtually all paints and coatings applications, such as architectural, industrial, automotive, aerospace, and military applications.

It is also a key pigment that adds whiteness and opacity to many plastics products and is critical to nearly everything that is manufactured in this country.

We operate the world's fifth-largest production facility of TiO₂ in Hamilton, Mississippi, and in Oklahoma City we operate a world-class R&D center.

As a vertically integrated producer, we mine titanium-bearing ores at our five mines in South Africa and Australia, and we upgrade that ore to high-grade feedstock and ship it to our nine TiO₂ facilities around the world.

Our mines also produce valuable co-products, including the types of rare earth minerals that have been identified as critical minerals under Executive Order 13817 and 14017.

Tronox is now considering using its existing mineral resources in South Africa and Australia as a feedstock for rare earth processing at a plant in Hamilton, Mississippi, to

supply U.S.-based customers and potentially the U.S. Government.

The threat from China is clear, both to our core TiO₂ business as well as any plans as we may have to move into the rare earth mineral space. While China accounted for 36 percent of the global TiO₂ production a decade ago, today it accounts for 52 percent. And China's attempts to dominate the global supply of TiO₂ are continuing to evolve.

Based on our analysis of announced new plants, China's production could account for 70 percent of the global demand by 2030, with growth in Chinese production far exceeding growth in global demand.

At a recent conference, one of the largest Chinese producers of TiO₂ predicted that its company's growth would result in the removal of Western capacity suppliers. In other words, we are seeing the classic Chinese playbook of creating enormous overcapacity to harm foreign competitors.

The Chinese have also sought to appropriate U.S. TiO₂ technologies through criminal means. In 2014, a Federal jury in San Francisco found two individuals and one state-owned entity guilty of economic espionage and theft of TiO₂ trade secrets.

Many Chinese producers are either part or are wholly state owned, and there is discriminatory application of bankruptcy laws, which keeps failing firms propped up, preventing them from shutting down the unprofitable producers.

In our African mining activities, we see a sharp contrast between Tronox and how the Chinese mine titanium-bearing ores. In South Africa, we employ approximately 2,200 individuals where we mine ore and we operate sophisticated mineral separation and smelting operations which produce high-quality titanium feedstock and pig iron, much of which is shipped to the United States.

Our mine closure plans are world class, requiring the restoration of the local area's natural flora and fauna. China's exploitation of Africa's titanium mineral resources is far

different.

As China exhausts its own titanium resources, it has turned increasingly to Mozambique, where it exports huge quantities of unprocessed ore to China for mineral separation and upgrading.

Not only are its mining practices far less sustainable than ours, but it lacks the in-country processing, which deprives local communities of employment and development opportunities.

One of the primary reasons the United States TiO₂ industry remains strong is attributable to decisive action taken by USTR under Section 301.

Since the initiation of Section 301, U.S. TiO₂ production has decreased by less than 10 percent and imports of Chinese material have halved, if you compare that in contrast to the European Union where capacity has been reduced by 22 percent and exports of Chinese material into the EU have increased 82 percent.

USTR's Section 301 action has enabled U.S. producers like Tronox to remain viable. This in turn has generated enormous benefits for the local communities where we operate, enabling Tronox to consider investments in adjacent industries like rare earth minerals.

Tronox continues to invest heavily to remain competitive, but we are concerned that with a significant increase of Chinese TiO₂ capacity current Section 301 tariffs may not be enough to prevent uneven playing fields in the U.S. markets.

In closing, I would ask that as part of the 4-year review of actions under Section 301, USTR consider whether current tariff levels are sufficient to avoid injury to our industry.

Thank you for your time.

[The statement of Mr. Romano follows:]

***** COMMITTEE INSERT *****

WRITTEN TESTIMONY OF JOHN D. ROMANO

BEFORE

THE U.S. HOUSE OF REPRESENTATIVES WAYS AND MEANS COMMITTEE

**“THE NEGATIVE IMPACT OF CHINA’S UNFAIR TRADE PRACTICES ON THE U.S.
TITANIUM DIOXIDE INDUSTRY”**

MAY 9, 2023

Good morning Chairman, Ranking Member, and Members. I am very grateful for the opportunity to testify today before the Committee on this important issue. Today, I would like to discuss the negative impact of unfair Chinese trade practices on the titanium dioxide industry and how that relates to the overall resiliency of the United States' industrial supply chain.

I serve as the co-CEO of Tronox Holdings, the world's leading *vertically integrated* producer of titanium dioxide more commonly referred to as TiO₂. Our product is the base pigment that can be found in virtually all paints and coatings regardless of whether used for architectural, industrial, automotive, aerospace or military applications. It is also the key pigment that adds whiteness and opacity to many plastic products and is even a key component in US currency. TiO₂ is critical to nearly everything that is built or manufactured in this country. In Hamilton, Mississippi, Tronox operates the world's 5th largest TiO₂ production facility and in Oklahoma City, Oklahoma, we operate a world class R&D facility. But, we operate on a truly global scale. As a vertically integrated producer, we mine titanium-bearing ores in 5 mines located in South Africa and Australia, which after upgrading, are shipped as titanium feedstock to our 9 processing facilities around the world to be made into TiO₂.

Our mines not only produce titanium ore but also valuable co-products, including the types of rare-earth minerals that have been identified as "critical minerals" under Executive Orders 13817 and 14017. Rare earth minerals are essential for both military and civilian uses. Tronox has historically sold its rare earth-containing tailings to Chinese processors where they ended up as "made in China" permanent magnets. For many years, China was the sole customer for rare earth minerals given its dominance of the rare earth supply chain. But thanks to the U.S.'s renewed commitment to strengthening its industrial base, Tronox is now considering building a rare earth processing plant in Hamilton, Mississippi aimed at supplying U.S.-based customers. It is our hope that the U.S. government will offer partial funding support for this initiative. Building a rare earth processing facility in Hamilton would enable Tronox to leverage its existing mineral resources in South Africa and Australia, as well as its human capital resources and technological expertise to strengthen U.S. national security as well as support good-paying manufacturing jobs here in the United States.

The Committee may also be interested to understand the relationship of the TiO₂ production process to titanium metal production, a second potential weak link in the U.S. military industrial base that our industry can help address. An intermediary product of TiO₂ production is titanium tetrachloride which is the necessary precursor for producing titanium metal. Though in the United States Tronox does not produce this intermediary product for merchant sales to metal producers, our plants in France and Saudi Arabia have this capability and we possess specialized technology for making metal grade titanium tetrachloride. Were the United States interested in reinvigorating its titanium metal industry, companies like Tronox would be essential for this effort to succeed.

The threat from China is a clear and present danger not only to our core TiO₂ business but to our plans to expand and grow our rare earth business in the United States. While China accounted for 36% of global TiO₂ production a decade ago, today China accounts for 52%. And China's

attempts to dominate the global supply of TiO₂ are just beginning. Based on our analysis of announced new plants, Chinese production could account for up to 70% of global demand by 2030 with growth in Chinese production far exceeding growth in global demand. In other words, we are seeing the classic Chinese playbook of creating enormous overcapacity to harm foreign competitors. In fact, when presenting at a recent industry conference, a senior executive of the largest Chinese producer of TiO₂ predicted that his company's growth would result in "the removal of capacity by western suppliers." Their plan couldn't be more clear.

The story relative to rare earth minerals is even more dire. Today, an estimated 92% of processed rare earth minerals and permanent magnets are produced in China, including the type of processing facility we would like to bring to Hamilton, Mississippi. China did not achieve this level of market dominance by accident. Though rich in mineral reserves, China has consistently sought to disrupt the normal functioning of the free market to serve its geopolitical ends. Global pricing for rare earth minerals has historically been driven by Chinese geopolitical goals and domestic policies, not supply and demand. For example, in 2010 China suddenly reduced export quotas by 40% on rare earth mineral exports and in doing so pushed global rare-earth prices sharply higher—in some cases tenfold. This type of market manipulation and price volatility is why U.S. companies seeking to enter the rare earth industry need U.S. support.

The unfair tactics and advantages deployed by Chinese producers in our industry is no different to what countless other U.S. manufacturing industries have experienced. For example, Chinese TiO₂ producers have endeavored to appropriate U.S. technology through criminal means to accelerate their capture of U.S. market share. In 2014 a federal jury in San Francisco found two individuals and one state-owned company guilty of economic espionage and theft of trade secrets for their roles in a long-running effort to obtain U.S. trade secrets related to the production of TiO₂.¹ Many Chinese producers are either in part or wholly state-owned² and China's November 2016 5-year economic plan identified TiO₂ as a key industry,³ which means producers can receive special treatment from government at the both the national and local level.⁴ Discriminatory application or inadequate enforcement of bankruptcy laws mean that failing firms end up with restructuring plans that can be a form of *de facto* governmental support and prevents the shutdown of uneconomic producers as is allowed to occur in western economies. Moreover, Chinese producers benefit from lax Chinese environmental regulations compared to standards of the United States or indeed most western countries. With regard to solid waste, China has traditionally allowed large quantities of solid waste from TiO₂ production to be simply dumped

¹ See <https://www.justice.gov/opa/pr/two-individuals-and-company-found-guilty-conspiracy-sell-trade-secrets-chinese-companies>.

² These companies include, Pangang Group Vanadium Titanium & Resources, The China National Nuclear Corporation (CNNC), Shandong Lubei Enterprise Group Corporation, China National BlueStar Co., to name a few.

³ Circular of the State Council on Issuing the National 13th Five Year Plan for the Development of Strategic Emerging Industries, 29 November 2016, p. 18.

⁴ For example see cooperative agreement with local government to develop titanium resources by China's largest TiO₂ producer. see <https://www.lomonbillions.global/lomon-billions-signs-strategic-framework-agreement-with-panzhihua-government-and-plans-to-invest-14-billion-rmb-usd-2-billion-in-mining-operations-in-panzhihua-city/>

in un-lined landfills and other solid waste containment facilities. In contrast, at our Hamilton, Mississippi facility, we expend substantial resources to comply with much tougher solid waste handling rules.

One aspect of China's trade practices relative to TiO_2 that may be of particular interest to this Committee and stands in sharp contrast to Tronox is how titanium bearing ores are mined in Africa. As I noted, Tronox mines a considerable amount of titanium and rare earth bearing ore in the Republic of South Africa. Indeed, we employ approximately 2,200 individuals there not to mention the countless contractors and suppliers who depend on us. Not only do we mine ore, but we also operate sophisticated mineral separation and smelting operations which produce high quality titanium feedstock and pig iron, much of which is exported to the United States. Our mine closure plans are world-class, requiring the restoration of the local area's natural flora and fauna. And, we invest heavily in the communities where we operate. China's exploitation of Africa's titanium mineral resources is far different. As China exhausts its own titanium resources, it has turned increasingly to Mozambique where it exports huge quantities of unprocessed ore to China for mineral separation and upgrading. Not only are its mining practices far less environmentally friendly than ours, with minimal if any formal mine closure plans, but its lack of in-country processing deprives the local communities of employment and development opportunities.

One of the primary reasons that the United States TiO_2 Industry remains strong is attributable to decisive action taken by the Office of the U.S. Trade Representative ("USTR") under Section 301 of the Trade Act of 1974. Domestic production statistics in the United States compared to the European Union tell the story. In 2022, U.S. industry produced 1,176,000 tonnes of TiO_2 , which is a decrease of 9.5% versus 2017. Contrast that with the European Union. In 2017 the EU produced 976,000 tonnes of TiO_2 whereby by 2022, this amount had fallen to 763,000 tonnes, a 22% decline in only 5 years. In that same period, imports from China increased 82%. The impact on our immediate neighbor to the north, Canada, is even more dramatic. In 2017, Chinese imports supplied 15% of demand in Canada, whereas in 2022, Chinese imports supplied 38% of demand. The volume of exports from China into Canada nearly tripled in 5 years.

Moreover, USTR's Section 301 action covering TiO_2 has enabled Tronox to maintain an extraordinarily high degree of capital investment in the United States. We have increased capital investments in our Hamilton facility each year since the tariffs were imposed in 2018. We estimate that capital investment in the Hamilton facility has increased by 16.5% since tariffs were implemented. But for the Section 301 tariffs, we could not even consider building a rare earth mineral processing plant in Hamilton, Mississippi. Regulatory relief has also enabled us to increase Hamilton's aggregate employee payroll significantly as well as annual expenditures on service-related contractors. The lion's share of this expenditure goes to locally owned and operated small businesses which are the life-blood of the rural community where we operate. Finally, I wish to emphasize that during the five years the Section 301 relief there has been no negative impact to consumers. U.S. TiO_2 prices have increased at roughly the same rate as global TiO_2 prices and at a much lower rate than paint and coatings prices.

Despite China's efforts --- both legal and illegal --- to obtain U.S. TiO₂ intellectual property and its enormous investment in production capacity, USTR's Section 301 action has enabled U.S. producers like Tronox to remain viable. This, in turn, has generated enormous benefits for the local community where we operate and overall U.S. industrial resiliency. And if market conditions remain favorable and we are successful in obtaining government support, Tronox is well-positioned to consider building a rare earth processing facility in Hamilton, Mississippi that supports U.S. military supply chains and the defense industrial base. While Tronox is investing heavily to remain competitive both in the United States and globally, we are concerned that with the likely significant increase in Chinese TiO₂ production capacity that I described earlier, current Section 301 tariffs may not be high enough to prevent an uneven playing field in U.S. markets. In closing, I would ask that as part of its Four-Year Review of Actions under Section 301, USTR consider whether current tariff levels may be insufficient to prevent injury to our industry, particularly in light of China's track record of unfair trade practices, the strategic importance of our industry to U.S. supply chain resilience and excessive Chinese TiO₂ production capacity on the horizon. I ask for your support for this industry and others as we do our best to compete against Chinese unfair trading practices. Thank you for your time.

Chairman Smith. Thank you, sir.

Mr. O'Shei.

STATEMENT OF THOMAS O'SHEI, PRESIDENT STEELWORKERS LOCAL

135

Mr. O'Shei. Chairman Smith and Ranking Member Neal and all members of the committee, thank you for the opportunity to testify today.

My name is Tom O'Shei, and I am the president of United Steelworkers Local 135L, which represents workers at the Sumitomo tire plant in Buffalo, New York.

Our plant employs over 1,400 people, including 1,100 members of the United Steelworkers. I have worked at the plant for 33 years now, mostly building tires.

We build a wide range of tires, from motorcycle to passenger vehicle tires. We also export to Europe. We are looking to add tire capacity that will allow our location to build up to 17,500 tires per day.

I can sit before you today talking about expansion and tell you that I recently posted on my Facebook page about job openings at the plant that start at \$25.33 an hour with excellent benefits, not just because of our union contract, but also because the United Steelworkers fought against illegally dumped and subsidized imports.

For the last 14 years, the union has used every tool in the toolbox to defend a domestic industry which has manufacturing facilities in 19 States and employs nearly 100,000 workers.

Since the United Steelworkers has significant density in the tire industry, we are able to file trade cases without employers. Since many tire manufacturers in the U.S. are global manufacturers, there is a hesitancy in filing trade cases because of potential

retaliation. But for the union, this is about our jobs and a level playing field.

The union filed the only successful 421 petition against China in 2009, that lasted until 2012, on passenger vehicle and light truck tires.

Then, in 2014, the union filed an anti-dumping and countervailing duty case because when the 421-relief expired, Chinese producers flooded the U.S. market with imports going from about 24 million units to more than 50 million.

The reason for the gap between 2012 and our trade case filing in 2014 is because our trade laws require showing 3 years of harm before we can win at the ITC.

We won that PVLT tire case in 2015, which continues today. The union later won a trade case on bus and truck tires from China in 2017 and joined Titan Tire in winning trade cases for Off-the-Road tires as well. Finally, in 2021, the union won a follow-on case against four countries on PVLT tires.

All told, there have been 12 cases that have led to duties on six different countries.

Millions of dollars and thousands of hours have been spent defending American workers because we believe in fair trade. However, Congress could do more to ensure a level playing field.

First, after 12 trade cases won against six countries, what more evidence does Congress need to see that tire products are an import-sensitive commodity? Congress should add tires to the GSP import sensitive list. We should not unilaterally drop tariffs on tires when, for example, a Chinese tire company invested nearly a billion dollars into a GSP country which could come here tariff free.

We need to make it easier to address third country subsidies, like China's Belt and Road Initiative. We need to recognize that global companies can quickly shift dumping from one country to another, undermining U.S. manufacturing jobs. Congress could help this by passing bills like the Level the Playing Field Act 2.0 introduced last Congress by

Representatives Terri Sewell and Bill Johnson.

Second, workers negatively impacted by trade should have access to training programs like Trade Adjustment Assistance.

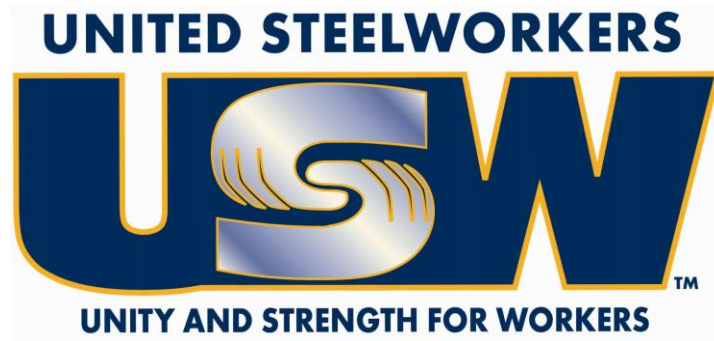
Finally, we should not impose budget cuts on the agencies that enforce our trade laws. Unfortunately, recent House-passed legislation would decrease the budgets of agencies which enforce our trade laws by over \$60 million. Millions of workers rely on our government to accurately review trade cases, and Federal budget cuts will lead to lost manufacturing jobs.

My written testimony includes more examples of policy tools that could make American jobs more competitive in a global marketplace.

Thank you for your time today, and I look forward to answering any questions you may have.

[The statement of Mr. O'Shei follows:]

***** COMMITTEE INSERT *****



Testimony

of

Thomas O'Shei

President of Local 135L

**The United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial and Service
Workers International Union (USW)**

for the

Committee on Ways and Means

Field Hearing on

**"Trade in America: Securing Supply Chains and Protecting
the American Worker – Staten Island"**

May 9, 2023

Chairman Smith and Ranking Member Neal, thank you for the opportunity to testify today and United Steelworkers' International President, Thomas Conway, sends his regards. My name is Tom O'Shei and I am the President of United Steelworkers Local 135L, which represents workers at the Sumitomo tire plant in Buffalo, New York.

Our plant employs over 1,400 workers, including 1,100 members of the USW. I was hired at the plant in 1990, and for most of the last 33 years, I have been building tires. My facility builds for the replacement and OEM market a wide range of tires from passenger vehicle, light truck (PVLTV) tires to motorcycle, truck, and bus tires. We also export tires to Europe. Since 2021 our facility has been in the process of updating and upgrading. We are looking to add tire capacity that will allow our location to build up to 17,500 tires per day.¹

I can sit before you today talking about plant expansion, and tell you that I recently posted on my Facebook page about job openings at the plant that start at \$25.33 an hour with benefits, not just because of our union's collective bargaining agreement, but also because the USW fought against illegally dumped and subsidized imports from a host of countries.

For the last 14 years, the union has used every tool available to defend a domestic industry, which has manufacturing facilities in 19 states and employs nearly 100,000 workers.² Since the USW has significant density in the tire industry we are able to file multiple trade cases without employers. Since many tire manufacturers in the U.S. are global manufacturers, there has been hesitancy in filing trade cases because of potential retaliation. But for the union, this is about our jobs and attaining a level playing field.

The union filed the only successful 421 petition against China in 2009 that lasted until 2012 on PVLTV tires. Then in 2014, the union filed an anti-dumping and countervailing duty case because when the 421-relief expired, Chinese producers flooded the U.S. market with imports going from about 24 million units to more than 50 million.³ The reason for the gap between 2012 and our trade case filing in 2014 is because our trade laws require a showing of 3 years of harm before we can win at the U.S. International Trade Commission (ITC).

We won that PVLTV tire case in 2015, which continues today. In 2017, the union won duties against bus and truck tires from China. My union brothers and sisters joined Titan tire in winning a trade case against imports of Off the Road (OTR) tires that started all the way back in 2008. The union, in 2021, also won what we call a

¹ [Powder and Bulk Solids](#), "Sumitomo Rubber Commits \$122M to Upgrade US Plant", April 2, 2021.

² [Coalition for Future Mobility](#), "U.S. Tire Manufacturers", Accessed May 6, 2023.

³ [United Steelworkers](#), "14 06 25 Testimony – Trade Enforcement Challenges and Opportunities", June 25, 2014.

“follow on case” against 4 countries on PVLT tires. All told, there are now 12 cases that have led to duties on six different countries.

Millions of dollars and thousands of hours have been spent defending American workers because we believe in fair trade. However, Congress could do more to ensure a level playing field.

First, after 12 trade cases won against six countries, what more evidence does Congress need to see that tire products are an import sensitive commodity? Congress should add tires to the Generalized System of Preferences (GSP) import sensitive list. We should not unilaterally drop tariffs on tires when, for example, a Chinese tire company invested nearly a billion dollars into a GSP country, which could then come in tariff free.⁴

We need to make it easier to address third country subsidies, like China’s Belt and Road Initiative, and we need to recognize that global companies can quickly shift dumping from one country to another, undermining U.S. manufacturing jobs. Congress should take up and pass bills like the Level the Playing Field Act 2.0 introduced last Congress by Representatives Terri Sewell and Bill Johnson.

Second, workers negatively impacted by trade should have access to training programs like Trade Adjustment Assistance (TAA), which provides up to two years of job retraining benefits. The last Congress appropriated nearly half a billion dollars in job training benefits for the program, and this Committee should quickly reauthorize the program to show workers that they are willing to help them retrain when trade negatively impacts American jobs.

Additionally, the following items would aid domestic workers in competing in a globally connected world and ensure fair and responsible trade:

De Minimis: The U.S. has one of the highest de minimis thresholds on the globe. Set at \$800, this allows for significant volumes of direct to consumer imports to enter the U.S. market from international locations. The lack of reciprocity means that U.S. businesses and workers do not have the ability to compete. In addition, such a high de minimis threshold means that significant manufactured goods, like tires, could go straight to consumers without properly accounting for duties. Legislation like the Import Security and Fairness Act, introduced in the 117th Congress by Ways and Means Trade Subcommittee Ranking Member Earl Blumenauer, would close this loophole.

Increased Evasion Enforcement: Duty evasion by importers is a constant threat to U.S. jobs. For example, in 2020 there were indictments of individuals for evading duties on both OTR and PVLT tires from China by allegedly falsifying documents. These importers were declaring that tires were from companies with lower

⁴ [Tire Technology International](#), “Linglong selects Serbia for US \$994 tire factory”, September 7, 2018.

tariff rates when they were not.⁵ The criminal case has been delayed until September of this year, and the civil case at the Court of International Trade (CIT) is still pending the final outcome of the criminal case.

The USW has endorsed legislation called the Fighting Trade Cheats Act of 2023 introduced by Representatives Sewell and Mike Bost, which would increase financial penalties for violating customs' laws, allow action against individuals committing customs fraud, and exclude individuals who have committed fraud from participating in the importer of record program.⁶

Imports Must Account for Foreign Manufacturers' Air and Water Pollution: U.S. manufacturers and workers protect our country's water and air as required by law. For example, since the passage of the U.S. Clean Water Act, government and industry have invested over \$1 trillion to abate water pollution, roughly \$100 per person per year. While challenges remain domestically, the country has made marked improvements in water quality. This is reflected at the Sumitomo Buffalo plant. For example, in 2021, the facility submitted a site management plan which highlights the work done to ensure that historical waste disposal areas are monitored and maintained to standards to protect regional water quality.⁷

Meanwhile, laws and regulations in foreign countries are not monitored or enforced. This lack of enforcement means pollution impacts workers and communities and creates significant economic advantage for foreign producers. The union has received reports regarding an Indonesian tire producer that highlights living conditions near the plant where witnesses comment the river water is black, smelly, and doesn't flow. Workers nearby described the smell that comes out of the river as much more pungent during the dry season. When Indonesia has some of the lowest waste water treatment rates internationally, imports from the country are exploiting a low regulatory enforcement process that can impact U.S. manufacturing competitiveness. It is estimated that Indonesian discharge of industrial wastewater is responsible for 7.24 percent of the pollution of surface water bodies in the country.⁸ Products imported from locations with low environmental enforcement should not be considered "like" products by global trading standards, and penalties should be ascribed to ensure that U.S. companies and workers are not negatively impacted.

Improved Labor Rights Enforcement: Similar to environmental pollution, the ability of workers to freely bargain with their employers and to uphold their rights at work should also be improved in U.S. trade law. Future trade discussions should

⁵ [U.S. Department of Justice](#), "15 Named in \$26 Million International Trade Fraud Scheme", December 15, 2020.

⁶ [U.S. Congress](#), "H.R. 2667 – Fighting Trade Cheats Act of 2023", Accessed May 6, 2023.

⁷ [NY Department of Environmental Conservation](#), "Revised Periodic Review Report and Institutional Controls Certification - Site No. 915018", August 20, 2021.

⁸ [Ken Research](#), "Indonesia Industrial Waste Water Treatment Mark Research Report 2027F: Ken Research", October 19, 2022.

incorporate United States, Mexico, Canada Agreement (USMCA) trade provisions like the Rapid Response Mechanism (RRM), which allows workers to file facility specific allegations regarding labor rights violations. In addition, artificially suppressed wages from country-controlled unions should also be accounted for in trade enforcement regimes. Existing U.S. policy regarding Non-Market Economy (NME) status should be factored into other trade initiatives. For example, 19 USC § 1677(18)(A) and (B) contains the definition “the extent to which wage rates in the foreign country are determined by free bargaining between labor and management”. In a globally connected world, our workers’ wages should not be the advantage in “comparative advantage”.

Strong Rules of Origin: Trade discussions must strengthen rule of origin (ROO) standards to ensure that non-partner countries do not gain duty-free market access. The current rule of origin provisions in the GSP preference program is set at 35 percent – meaning 65 percent of an article could come from non-GSP beneficiary countries, like China.⁹ If we are trying to foster economic development in lower income countries through lower tariffs, then we should encourage higher GSP ROO standards that are 60 percent or greater.

Similarly, trade agreements must have stronger ROO provisions. One of the many reasons the USW opposed the Trans-Pacific Partnership (TPP) is because of the terrible ROO standards in the agreement. This committee produced a 2016 report highlighting that only 35 percent of a vehicle would have to originate in the TPP zone, meaning up to 65 percent of a vehicle’s components could come from outside the party countries and from non-partner countries, like China. The TPP, and its successor the CPTPP, show how weak that trade agreement is at countering China as the country now looks to dock on to the agreement.¹⁰

Conclusion

The union appreciates the opportunity to provide additional written comments for today’s field hearing on Trade in America: Securing Supply Chains and Protecting the American Worker. USW also encourages the committee to reference previous written testimony submitted to this committee and the Senate Finance Committee regarding the Indo Pacific Economic Framework (IPEF), the Uyghur Forced Labor Prevention Act¹¹, the Global Arrangement on Steel and Aluminum, Critical Mineral Agreements, and other trade initiatives.¹² We welcome the opportunity to provide

⁹ [Office of the U.S. Trade Representative](#), “U.S. Generalized System of Preferences (GSP) Guidebook”, November 2012.

¹⁰ [Bloomberg](#), “Don’t Give China a Pass on Pacific Trade Pact”, April 12, 2023.

¹¹ [U.S. Senate Finance Committee](#), “Testimony of Joe Wrona for Committee on Finance Hearing on ‘Fighting Forced Labor: Closing Loopholes and Improving Customs Enforcement to Mandate Clean Supply Chains and Protect Workers’”, March 18, 2021.

¹² [U.S. House Ways and Means Committee](#), “Testimony of Roy Houseman Jr. for Subcommittee on Trade Hearing on ‘Countering China’s Trade and Investment Agenda: Opportunities for American Leadership’”, April 18, 2023.

additional written comments on trade initiatives like those previously mentioned, and stand ready to aid American workers compete globally.

Chairman Smith. I want to thank you all for your excellent testimony, and we will now proceed to the question-and-answer session, and I will begin first.

Mr. Turkel, America has led the world by banning the import of products made with forced labor. I was proud to vote in 2015 to update our forced labor import ban and again in 2021 to pass the Uyghur Forced Labor Prevention Act to address the unprecedented scale of the Chinese Communist Party's systematic use of forced labor. And, yet, there are credible reports of products made with forced labor still entering the United States.

What more can we do through our trade policies to shine a light on China's human rights abuses and crack down on products manufactured from forced labor entering the U.S.?

Mr. Turkel. Mr. Chairman, thank you very much for the question.

We can do a number of things to address that concern.

First of all, we have to look into the country-of-origin concern. The law, the UFLPA, specifically focuses on the Uyghur region that is formally known as Xinjiang.

But we do also know that there have been instances that the Chinese Government supported entities making the product without labeling and taking to the inland and then exporting to go another country and making it into the United States. That includes Mexico and Canada.

So, we need to close the loophole, starting with addressing the country-of-origin concern, making a new rule.

And then, two, we have to work with our partners and allies to encourage them to put in place a similar type of legislative mandate.

And Europe is about to become a dumping ground for forced labor-purchased products. Italy, during the period of 2019 through 2020, increased its import volume

from Xinjiang almost by 200 percent.

So, Europe needs to catch up. So do our Asian allies Japan, Australia.

And then, finally, we have to continue to increase the enforcement mechanism in the United States with additional resources and tools. I know that Congress approved \$70 million for enforcement. We have to continue to add funding so that our CBP colleagues can do their job.

And, finally, I would look into the possibility of amending the UFLPA to make it applicable to the entire country of China. That one geographical area has been focused, but we may end up seeing human trafficking, internal migration.

Chairman Smith. Thank you.

Mr. Romano, as you know, President Trump imposed tariffs on China because of its unfair trade practices under Section 301 of the 1974 Trade Act. And President Biden has kept these tariffs in place so far, although his administration is currently conducting a 4-year review of the tariffs and may make changes as a result of that review.

As a company that has had to deal directly with China's unfair trade practices, can you speak to the relationship between these tariffs and the protection of American production and jobs?

Mr. Romano. Thank you, Chairman.

Yes. So, I have been with the company that I am working for now for 35 years, and we have historically seen plants close due to Chinese imports.

So, we had a plant in Savannah, Georgia, that closed in 2004, and the other half of that plant closed in 2007, and it was directly related to Chinese imports for, I would say, a lower grade of TiO₂ that was sold into the paper industry.

We are not the only company that closed production. There was another facility in Delaware that closed for that.

So how have the import of those 301 tariffs impacted us since then? There hasn't been any capacity actually eliminated since the trade barriers were put in place, the tariffs on TiO₂, and it has actually allowed us to expand our facility in Hamilton, Mississippi.

We have spent \$135 million, a 15 percent increase in capital spend since those tariffs were put into place. We have a \$15.5 million payroll at that facility with 450 employees, about 120 to 150 contractors working at that facility every day as well.

So, it is not only helping us maintain our production globally, but it is also helping us maintain jobs. Many of our employees have been with the company for many years. It is generations.

I said I have been with this company for 35 years. There has been somebody in my family that has worked for this company for 72 years.

So, the U.S. is a big part of what we do. That Hamilton facility that we have in Mississippi is our crown jewel. And we are looking at opportunities now to try to see how we might be able to expand that business in the rare earth space and take some of the resources we have out of South Africa and Australia and bring them to the United States for upgrading.

Chairman Smith. Thank you, sir.

Mr. Hemminger, trade enforcement is about making sure that our partners provide the access to markets that they were promised. Today, Canada is not meeting its obligations under USMCA as it relates to American dairy exports.

If the U.S. fails to enforce obligations under our trade agreements on dairy products or any other, what does that mean for farmers such as yours or other businesses?

Mr. Hemminger. We just simply aren't going to be able to continue to compete when it is a one-way street. We need a level playing field. And the American public and people need to realize that, generally speaking, we are either going to be importing all

our fruits or vegetables or we are going to stand up for labor and equal opportunities for American farmers.

Right today, like I said, we can't ship our milk to Canada. I expanded my dairy 30 years ago thinking that market would open up. Yet, at Hunts Point right here in New York City, in the Bronx, there is New York cabbage out of storage.

My first attachment is the Hunts Point report from Friday, and on it, it shows a few products out of storage in Canada. You look at this again, July through November, every single product here will have a Canadian entry on it. At the same time, my milk can't go to Canada. It is just common sense.

Chairman Smith. Thank you, sir.

Mr. O'Shei, one quick question.

In your opening statement you made a comment about the Chinese investing in a company in a GSP nation. What is that country that you were referring to?

Mr. O'Shei. They are very clever in circumventing our trade laws. So, a question like that I have to think. And at this point Serbia is the GSP country.

Chairman Smith. Okay. Thank you very much.

I recognize the ranking member, Mr. Neal, for questions.

Mr. Neal. Thank you for your informative testimony. The common theme is pretty clear: enforcement. I mean, everybody is nodding their heads in the affirmative as we say that.

Mr. O'Shei, in your testimony you demonstrate the importance of enforcement of U.S. trade laws to protect domestic workers and manufacturers against many of these unfair practices of other countries; namely, China. We know that without effective enforcement, trade liberalization measures can have a detrimental effect on America's workers and industries.

Could you talk briefly about how trade enforcement benefits workers like those that you represent at the tire manufacturing plant in Tonawanda, New York? And wouldn't the proposed budget cuts that you referenced be of great harm to trade enforcement?

Mr. O'Shei. Ranking Member Neal, thank you for the question.

I believe they would. We could see before the 421 cases in 2009 that there were tire plants closing every year in the United States. We could not compete with all the tires that were being illegally dumped in the United States. In 2013, when those expired, we started to feel it again.

But once that second trade case went through and was properly enforced, rather than seeing tire plants shutting down across the United States, you see them being built again in the United States, employment going up, and offending countries actually building plants in the United States, employing American workers.

So that is a big impact for us. But we also have seen where they would shift production to countries like Vietnam to avoid tariffs or export tires to other countries and try and send them to the United States tariff free.

So, it is a constant shell game they are playing. And without the money for representatives to enforce our trade laws, they will start getting away with that again.

Mr. Neal. Thank you.

And a follow-up, Mr. O'Shei. The Trade Adjustment Assistance Act for workers has provided workers adversely affected by trade with opportunities to gain new skills and credentials and the support needed to rebuild skills in future jobs.

This is an ideal opportunity for community colleges across the country to address those who because of trade economics involved for dislocations an opportunity to get back into the workforce with upgraded skills.

The program expired last year. We have been pushing very hard on this side for

the Department of Labor to begin the process of putting together legislation that would come to the assistance of those who have been unfairly impacted.

So, in the COMPETES Act, we were all in. We need to get our other side here to enjoy the same enthusiasm we do as it relates to trade adjustment assistance.

Can you reference how that has worked in your area?

Mr. O'Shei. At our plant in 2010, we had a big layoff. Truck and bus tires were under a lot of duress from Chinese imports. We had a big layoff. The intent was to eventually shut the plant down because we were under so much pressure from those imports, and we didn't see a recovery coming.

We filed. Our members received TAA. Eventually, through luck and hard work, we did return those workers to work after over a year of layoff. But during that year, they had received enhanced unemployment benefits, so they did not run out of unemployment, which gave them the opportunity.

Many of our members had gone for welding certificates. We had some members who had their first year of a nursing degree. And you could see if we had not come back up without luck and hard work, people were on their way to being able to at least get decent employment after the plant would have closed.

Mr. Neal. Mr. Chairman, the trade component to American economic life once enjoyed great support. It is now severely diminished. And much of it is because of the dislocated workers, workforce across the country and some of the trade practices that international competitors offer.

It is a really important part of our economic agenda. But you can see the constituency for it in America has considerably shrunk over the years, and I think that this is something through enforcement that we can hope to change.

Chairman Smith. Thank you, Ranking Member.

I recognize the gentlelady, Ms. Malliotakis.

Ms. Malliotakis. Thank you very much. Thank you all for your testimony.

This hearing is critically important because we need to implement commonsense progrowth tax and trade policies that will boost our economy, the businesses, like those here today, and the American worker. I want to thank the International Longshoremen's Association for being present here and the work that they do at this port; the Steelworkers Worker's Union, thank you and your members, what they do; and, of course, our Port Authority Police, who are here to keep our ports safe.

Let me start with Mr. Atkins, while many industries were eventually able to return to former habits post-pandemic, the seaports continued to grapple with altered consumer patterns and a shifting global supply crisis. How do seaports continue to adapt to these supply chain patterns that have emerged post-pandemic?

Mr. Atkins. As everyone has noticed then on the way down to the site here that we are pretty wide open at our facility here. Our volume, year over year, is down about 42 percent at this facility. If you look at what our volume is now over 2019, we are down about 15 percent. So, what we are grappling with here is the consumer reaction post-pandemic. Once the pandemic hit and people were working from home, online purchasing went up dramatically. The shippers and the folks that owned the cargo that everybody goes online and buys flooded the shores with material that we saw here. That added to the congestion that we saw going through all the ports and all the facilities. Now that things have returned back to whatever this new normal is, a lot of the cargo owners that had rushed to ramping up their supplies are now working down that inventory. So, we see the decrease in numbers for, A, the inventory work-down that you see. And, right now, the interest rates on mortgages and that you see on any kind of consumer credit is impacting one of the biggest purchasing areas, and that is home goods. Furniture, by

commodity, is the number one mover into the country. And, with interest rates as high as they are for 30-year mortgages, people are not looking to trade in their 2 or 3 percent mortgage into looking larger houses or build new houses. So, if you look at the furniture and home goods sector, that is down dramatically.

Ms. Malliotakis. You mentioned some of the causes of this, say, freight recession.

Mr. Atkins. Right.

Ms. Malliotakis. What are some of the policies that you would like to see implemented that would help get this economy back on track, maybe pausing the interest rates and better trade policies to export more to build our GDP? What would you say are some of the things that can help.

Mr. Atkins. Well, any of the beneficial moves that can be made to incentivize the export market will help not just the American worker but will help the ports that we see here today. And, overall, just the more -- we are tied so tightly to consumerism, that a healthier economy is what brings that through. So, anything we can do to get more people employed through the trade policies or whether it is enforcement, anything that gets people to work, gets money into the economy system.

Ms. Malliotakis. Great. How can we help streamline the process and ensure that American businesses and workers have a reliable system to prevent delays at the ports that hurt both exporters and the port's bottom line?

Mr. Atkins. Yeah. Well, actually, there are many stakeholders in the supply chain that have to help with that. It was the inland distribution that caused a lot of what we saw during the pandemic in the supply chain crisis: Warehouses were full. Distribution networks were full. So, we saw that cargo back up into the ports. So, anything -- when you look at these large warehouse complexes, there just was not enough of them. And, talking to our friends in the warehouse industry, there are a lot of regions

that it does take quite a bit of, I won't say legislation, but maneuvering through the local ordinances and county ordinances just to get more warehouses built to be able to get more cargo and velocity moving.

Ms. Malliotakis. Well, thank you very much. The House Republicans with have put forward some great ideas on how we can reignite our economy and get people back to work. Work requirements for some public benefits. If they are able-bodied, they can help stimulate the economy, work, produce. And I think that would help resolve some of your problems if we also do that in conjunction with smart pro-growth tax and trade policy, which we hope to work in a bipartisan manner. Thank you very much.

Mr. Atkins. Yes.

Chairman Smith. Thank you.

Mr. Buchanan is recognized.

Mr. Buchanan. Thank you, Mr. Chairman. I want to thank all of our witnesses. I just know -- I grew up as a blue-collar kid. I have been in business 30 years before I got here. We have got to come together. The time is now. And what I mean by now, I mean business and unions -- my parents were union workers all their life -- we have good-paying benefits here. I mean, we are talking about we were sharing 150,000 in terms of all in. That is great benefits. And we can have the governance come in and make a difference. So, I just want to say that I know we can. I have been to 80 countries in the world. I have done business abroad. We have got the best and most able people, but we need a shared vision. We need a shared plan, and we need to work together to make it happen and leave nobody behind. So, I just want to get that out of the way because I feel very strong about it.

International trade, obviously, is critical. I will just say, I have got a seaport in Florida, Tampa Bay area. It is actually in Manatee County. We are up 35 percent. I

am not saying because of one reason or another, but I was looking at the numbers, and we are up 35 percent.

Ports in Florida, we have 15, and 1 in 5 jobs is trade-related in terms of Florida. 107 -- you know what this number means better than I do -- but 107 million tons of cargo was moved last year in Florida. And so that has come up, and I know some people get tired of hearing about Florida. I am from Detroit originally. But my point is, is that they are moving in the right direction. We are going to have a delegation meeting, Greg, and myself, and others, to meet with all our ports in the very near future. We are going to talk about, what more can we do? What more can we do to help? Because these are good-paying jobs, and it is very important.

The other thing I just want to say in terms of FTAs, the free trade agreements, we need to find a way we can work together. USMCA, I felt was a good blueprint that we came together on. We had 380 votes. So, we have got to make sure that we are doing that. I think in terms of U.K., the EU, if you want to deal -- it is just my opinion; I am not an expert -- but if you want to deal with China, you have got to work find a way to work with the EU. That seems like we have a lot of shared values. They get good benefits, get the month of August off from work. So, they have got some really good positive things. We have got to find a way. If can come together, I think that will make a big difference in terms of having an ally.

Let me share this with you, is that a lot of people -- you know it, but maybe you haven't thought about it -- but I was on a trip this week, and someone brought up, we have got 8 billion people on the planet now. So, let's say the United States is 350 million, but 8 billion, that is a lot of opportunity. And we have got to make sure we get our fair share. But we do, as someone mentioned, you know -- a lot of them don't play the game right. We will talk about that in a minute -- but USTA, Bob Lighthizer, and Richie knows, we

worked together, and we got that. We got 380 votes out of there. We need to go to work and make some differences.

The other thing I will just tell you -- someone said about free trade -- I am a free trader, but it needs to be fair. And I personally feel like we have been played. And I am a Republican. So let me just tell you that. I just feel strongly about that. Obviously, with China, we have been played for a lot of years. And I will say we got other good friends, even the Japanese -- and I do business with the Japanese over the years -- but we have been played there as well. At the end of the day, it needs to be somewhat fair. However you want to look at that. So that is just my strong feelings about that.

I just got off yesterday, the plane at 4 o'clock on a code, and we met with Korea, Indonesia, Jakarta, Poland, and north -- one of the countries north -- Moldova -- so, anyway, we met with four or five different countries. And the bottom line is, is that all of them are very enthused about us. We need to be engaged. We need to be working together, and a lot of them were business groups that we met with -- not all of them, but usually the receptions at night were business groups. And we had a lot of good dialogue, and they realized that they are -- that our embassies were there. American businesspeople were there, and they are making some progress, but they need more help because what they do better, in a sense that way, it also helps us out as well.

John, I wanted to mention, Mr. Atkins, a little bit, you said your business is down 42 percent. What is creating that because I really do want to better understand that? Is that the market? I don't think it is all the market. There are probably other factors, but I think we need to know what those other factors are so we could be helpful.

Mr. Atkins. It is partially driven by the trade lanes that you service at your individual terminal. The ones that we have here with Far East trade, with China being so far off with reduction in consumer purchasing here. It probably took or did take a more

drastic hit than some of the other facilities that have more diversified services. Let's say Transatlantic or South America trade lanes. They tend to be more resilient because out of South America, you are bringing fruits, vegetables, food stuff, those type commodities. So, this facility that we are in today suffered more than probably the other ones in the harbor based on the services that it has.

Mr. Buchanan. Well, as you have been asked, let's figure out how we can be helpful.

Mr. Atkins. Yes.

Mr. Buchanan. Mr. Turkel, let me ask you, as it relates to intellectual properties, IP, 30 years ago, I was in Beijing with a group of businesspeople, and that was biggest issue back then. And I don't think it has got a lot better today with the Chinese in terms of intellectual properties. What are your thoughts about, how can we turn that around and get that where it makes more sense, or can we?

Mr. Turkel. Congressman, thank you for the question. I think we have to acknowledge something important, and our policymakers not being straightforward with American people that what we are dealing is a regime --

Mr. Buchanan. Can you speak into the mike a little bit more.

Mr. Turkel. What we are dealing here is a regime that enslaves its own population; subsidizes key industries, making it impossible for American companies to compete fairly; and also steal our technology. This is one of their methods; been ongoing for a long, long time.

So, I know it is a very complicated question, but this is something that I have been advocating that the United States Government that needs to go hard, tough in its dealing with the Chinese regime.

Mr. Buchanan. Okay.

Mr. Romano, let me ask you. You talked about minerals. I was just in Jakarta, Indonesia. I met with the President, myself, Members of Congress. They have got a lot of minerals, things that we need. People are very active and engaged there. Of course, the Chinese are at the front of the line, but we have got to find a way. They don't want to -- they have got to do some business, like all those countries do, with the Chinese, but they don't trust them, don't want to work with them if they don't have to. But they have made it very clear, we need to be here. And, of course, when we go down looking down the road in terms of EV vehicles and everything else, they have a lot of those minerals there.

What is your thought on what we need to be doing?

Mr. Romano. Yeah, so we are a large miner. We have five mines in Australia and South Africa. So those minerals also contain rare earths. And historically what we have done with those rare earth minerals is ship them as tailings to China, and they have updated those into rare earth oxides and ultimately into magnets. So, we are now looking at exporting that material to the U.S., to our facility in Hamilton, Mississippi, so that we can actually --

Chairman Smith. We are going to have -- you are way over time.

Mr. Buchanan. I didn't see the light there.

Chairman Smith. Thank you.

Mr. Blumenauer.

Mr. Blumenauer. Thank you, Mr. Chairman, and for your patience and bringing us together. There is one area that I think this committee ought to be able to get their arms around -- and I appreciate Mr. Turkel and Mr. O'Shei, talking specifically about the de minimis loophole.

Mr. Turkel, you talk about how this is used to allow goods used by forced labor to

come to the country -- you have excellent testimony. You didn't have a chance to speak to it in just your 5 minutes. But I would commend the committee to look at Mr. Turkel's page 10 and 11 about abuses here and the impact by allowing over 2 million packages a day -- un-inspected, un-tariffed -- to flow into the United States.

Mr. Turkel, do you want to talk about what you might have added if you had time for your testimony?

Mr. Turkel. Yes, I would like to point out that this is a serious problem. For example, one-half were shipped with zero digital data provided to U.S. Customs authorities.

Mr. Blumenauer. Could you speak a little bit closer into the microphone. It is hard to hear you.

Mr. Turkel. Yes. One quarter of those flagged for inspection were never inspected because the importer failed to comply with the order to hold items for inspection. And then one quarter of those inspected -- I am talking about de minimis, those 2 million packages coming through to the United States -- one quarter of those inspected at JFK airport had some type of violations. So, we need to look at why we have this loophole continued.

One company that had been in the question is the Shein. That is fastest -- that, what, the most successful Chinese company, even though their headquarter is in Singapore. The download of this app has surpassed already TikTok, Instagram, Twitter. So, this shows that this is one of the most effective tools that the Chinese entities is using by taking advantage of the de minimis rule.

We need to consider looking at the possibility of changing the dollar amount. You mentioned -- I mentioned 2 million, but yesterday I was looking at other records. One of the world's foremost experts on this issue, Dr. Laura Murphy testified in Congress.

She said 3 million. So that is the daily package coming in into the United States. That is a big loophole that we need to close.

Mr. Blumenauer. I appreciate that very much. I do hope that there is an opportunity for the committee to look at this huge volume of un-inspected. I mean, we are here in New York, the home of exploding electric bike batteries. There are \$800 -- or excuse me, \$799 E-bikes coming through under this loophole. And I just think it is a simple fix. It would be broadly supported on a bipartisan basis, and it is not just clothing.

Mr. O'Shei, you mentioned the potential use of the de minimis loophole in your testimony about tires, the possibility perhaps of a company shipping tires direct to consumers four at a time?

Mr. O'Shei. Yeah, it only makes sense. They found every loophole they could to get around our trade laws and trade cases. And you could get a set of four tires shipped here less than \$800 and put them on the road, and they wouldn't be following our Department of Transportation rules either. It is another way of cheating our trade laws, and it is dangerous.

Mr. Blumenauer. Mr. Chairman, I will try and help you get back on schedule here. I am not going to deal with your patience. But I think this is something that the committee needs to look at. We see companies use what is called creative invoicing, that: If what the product you are getting actually costs \$800 or more, let us work with you, and we will find a way to get that invoice under \$800 for the un-inspected and un-tariffed. These are dangerous. It undercuts American business. There are actions of forced labor that come through using this loophole. And I just urge the committee to look at the testimony from our two witnesses that zero in on the de minimis because I do think this is, you know -- the legislation that I am going to reintroduce would only exclude a nonmarket economy that is on the watch list. And that is -- let's see that is China. And I think they

should actually be excluded. It is a small signal that we are not going to be overrun. But this loophole is swallowing the exception in ways that are really detrimental to American business and the safety of American consumers. Thank you for your patience, Mr. Chairman.

Chairman Smith. Thank you, Mr. Blumenauer. It appears that that loophole is almost a \$800 free trade agreement for China for any products underneath that. That is what it looks like to me.

Mr. Smith is recognized.

Mr. Smith of Nebraska. Thank you, Mr. Chairman.

Thank you to all of our witnesses, certainly, for unique perspectives, but also expressing common concerns. And, as we sit here, it is a very relevant place that we would be here at a port as a Representative from Nebraska, the number one agriculture district in the U.S. House, trade is important. Getting products out of our country to other markets is important and to do so reliably. And the reverse of that too. We know it is important, whether it is fertilizer or other products, be it for agriculture specifically or our economy in general. So, we saw such difficulties during COVID that further complicated what was already a problem.

Mr. Atkins, can you outline for us what you believe were the specific chokepoints here at GCT in moving goods during COVID and how you overcame them and then if you have any insight into ways that we might be able to alleviate them in the future.

Mr. Atkins. Sure. Thank you, Representative Smith. Where we saw the chokepoints were the long dwell times of the imports that were coming off the ship. There were a few reasons that that was created. Number one was some warehouses just did not have enough space to bring the containers out and put the cargo into the warehouse because they were full. Their parking lots were full with other imported containers. So,

they tended to sit here and dwell at any of these facilities for longer than average period of time.

There was also an issue with lack of chassis. Those are the sets of wheels that detach from the container and actually move. Where were all the chassis? They were tied up in the parking lots of all the shippers with loads on them that they could not unload them and get the empties back in time to return the empty and pick up the next one.

So, it was a chassis issue. It was a space constraint issue. And it really just backed up the pipeline into the ports and went beyond that to the point that, for most of 2022, the Port of New York had on average about 15 to 17 ships at Anchorage waiting to come in, and they could not come in and discharge the goods because there were no room at the facilities.

So now you see driving down here today time has somewhat resolved that issue. You see not enough cargo coming in. There is plenty of space now. There is plenty of chassis that are available. So, it was working down inventories that has helped that. And also, the purchasing volume has just gone down over the pandemic time period.

Mr. Smith of Nebraska. Thank you.

Mr. Romano, you have spoken about the vertical integration at Tronox and the importance of raw materials in Africa and Australia. Can you tell us about what you have seen regarding -- further tell us what you have seen regarding the Chinese attempts to aggressively secure the raw material resources globally so that they can control and exploit those?

Mr. Romano. Thank you for the question. So, yes, historically you would have -- so Australia -- I mentioned we are a big miner in Australia. And you get a lot of junior miners in Australia that have historically not only mined but they have upgraded that raw material. What you are seeing now is a lot of these junior miners are getting

interest from the Chinese. So, they buy into these companies, get board seats, and, in many instances, they are getting a hundred percent right -- offtake rights to material.

So, I mentioned Mozambique is another good example where they are running out of titanium in China in the minerals that they mine. So, in Mozambique, they go in there; they buy the mining rights. They are taking the raw material in a form of what is called heavy mineral concentrate. It is not upgraded. Then they ship everything back to China to be upgraded and processed.

For us as a miner, we have very strict rules on how we actually have to take the mining work that we do and then put the property that we mine on back to its normal -- the way it came, the natural flora and fauna. You know, that is a significant disadvantage that we have; an advantage they have because of the unfair practice that they are using by going and exploiting other countries to get raw materials to send back to China.

Mr. Smith of Nebraska. Okay. Mr. Hemminger, just briefly in the interest of time, can you perhaps reflect on the need for enforceable trade agreements and maybe touching upon USMCA in addressing Canada's dairy tariff rate quota system?

Mr. Hemminger. It seems like "close the loophole" seems to be the common theme here today. That is certainly the case there, I think. In my attachment no. 3 with my testimony, the CEO of our milk co-op, Upstate Niagara Co-op, articulately explains the issues here. It is really confounding that, for 30 years, this has gone on. I have thought numerous times this was going to be enforced the next 2 or 3 years, but somehow, they cleverly keep figuring out a way to not live up to their side of the agreement.

Mr. Smith of Nebraska. Well said. Thank you.

I yield back.

Chairman Smith. Mr. Steube is recognized.

Mr. Steube. Thank you, Mr. Chairman.

Mr. Hemminger, we will stay with you. Thank you for your testimony today. And I agree with you that the American farmers are losing a competitive edge in the global marketplace. It seems like there are two parts to this problem. First, other countries are stacking the deck against American imports, whether that is Mexico banning certain GMO crops or Canadian subsidies to undercut American farmers. Or perhaps, more importantly, our government isn't doing enough to help American businesses, farmers in particular. We are imposing ridiculous regulatory burdens on labor, environmental standards, a laundry list of other areas. We have created a policy towards farmers that is definitely not America first.

In your testimony, you said money goes where money can be made. With that in mind, do you have any further examples or predictions going forward of how States like New York or America in general are losing agriculture production and resources to competitors because of bad policy.

Mr. Hemminger. Well, thank you for the question, and I am very concerned. We are just stacking the deck against the American farmer, particularly those that have more intense labor needs with the fruits and vegetables and dairy. I believe that, in New York State, where we are a little more traditional with family farms that would have a handful of employees or maybe even 10 or 15, that the regulations they are looking at, that they are going to get pushed out of business. I am scared for them. I have a little more mechanized, but as I have learned in the process of the vegetable business when I was a major shipper for Birds Eye Foods, being the last guy standing doesn't make you very smart; everybody else moved on first. And, fortunately, I stayed in the dairy business, and that is my primary business today, along with the cabbage.

But we have to do something to stay competitive. I mean, there is talk about E-verify system in Washington right now. Folks, 70 or 80 percent of the employees on

dairy farms in the United States will struggle with an E-verify system; the hospitality business and food businesses in a lot of our big cities. This didn't happen overnight. It has evolved over the last 30 years. And we need to listen to small business and hear them and understand that we need a comprehensive immigration bill that addresses this. Some of the finest families in my community or my employees with me for 20 years that I am not sure that they can live up to an E-verify system. And it is a very, very big concern.

As far as GMO and whatnot, I mean, it is just a playing card by Mexico right now. There is absolutely no validity at all in any of their concerns about GMO. Sound science is how we are put together doing our cropping whatnot with as minimal a carbon footprint as possible with a lot of cover crops is what we are about. And, with that, we need modern farming practices.

Mr. Steube. Yeah, I have seen that in my own district in Florida. We have seen it after NAFTA was passed. We have lost tomato growers because they can obviously produce it a lot cheaper without the labor standards, without the environmental standards in Mexico than they can here in the United States.

In general, American farmers and businesses follow the rules. If something is prohibited, they don't do it. But, in Mexico or in China, rules and bans are more of suggestions. When something is banned in Mexico or China, it often just means someone needs to be bribed; businesses don't really play by the rules. This is also true for environmental and human rights regulations as well.

Mr. Romano and Mr. Hemminger, if you want to touch on it too. Can you speak to the unlevel playing field created when countries like Mexico and China implement rules that are followed by American businesses but aren't actually enforced or followed by their own businesses.

Mr. Romano.

Mr. Romano. Yeah, so I think it is a great question when you think about how we are producing in the United States. Specifically, we actually have a plant in China as well. So, when we think about how we bought that plant back in 2019 in part of another acquisition, and that is a small facility that we struggle to compete with because, when we -- using our technology and our resources the way we need to invest in the U.S., we use those same principles in China. And we find that we are very uncompetitive because of the things that we are doing as we manage our production to ensure that we are treating the environment the appropriate way.

Mr. Steube. Well, and you spoke about the need to consider increased tariffs on China in regards to the titanium dioxide. Can you speak further as to why, and when dealing with unscrupulous trading partners such as China, a simple free market approach doesn't always work and economic tools such as tariffs are necessary?

Mr. Romano. Yes, so I mentioned that, as the tariffs have been put in place, exports into the U.S. have halved. I will give you another example of another country where we supply a lot of material into is India. So, in that same timeframe, India has a market that consumes about 400,000 tons a year. Imports in 2017 were 89,000 tons. They are now 210,000 tons.

So, the import duties that have been put in place, along with the 301, have helped us manage our business, and we struggle to do that in Europe as well. So, Europe is another country that we have got three production facilities in, and the Chinese imports in that area have gone up to 82 percent since 2017.

Mr. Steube. Thank you. My time has expired.

Chairman Smith. Thank you. Mr. Pascrell.

Mr. Pascrell. Thank you, Mr. Chairman.

Mr. O'Shei, I want to start off with a couple of quick questions, if you will.

Should Congress make it easier for unions to file trade petitions by lowering minimum percentage thresholds for a union to show interest in anti-dumping and countervailing duty cases?

Mr. O'Shei. I agree with that statement. Thank you for the question, Mr. Pascrell. For the most part, especially in our industry, most of the major tire manufacturers in the United States have plants in China. And they don't want to get anywhere near a trade case that we bring to the International Trade Commission because they all fear repercussion. And, you know, talking to our legislative representatives, they are not inexpensive cases to bring. When we go before the ITC, China has the best lawyers money can buy. They are very hard to prove. They don't give up the information easy.

I believe our most expensive case might have been Truck and Bus. It was \$3 million to bring. They don't get that type of dues money from all the union rubber workers in the U.S. combined in a year.

Mr. Pascrell, my second question is trade cases cost a lot of time, a lot of money. If you want to file, that is what you have to look forward to. How should the Federal Government support easing this complicated process for smaller companies and unions? Just quickly give me an idea of what you see ahead -- you would like to see ahead.

Mr. O'Shei. What we would like to see is, number one, a way where you don't have to show 3 years of injury before you bring a case because usually, by that time, you may be so damaged you never recover. Also, you know, it would be nice to see maybe even if the government could bring cases for us, or representatives, or, you know, smaller companies not having the money to bring a case have some sort of advocacy there for them. But, you know, we actually had one case where a major tire company testified against us because they made -- tire overseas.

Mr. Pascrell. Thank you for your brief response. We need to talk a lot more about that. Because I think something can be done in this area for everybody's health.

And welcome to everybody.

The witnesses were excellent, Mr. Chairman. If you look back at their records, and they have done about everything.

And I don't know how long you lasted in this business, Mr. Atkins, 30 years, but it is not bad. Congratulations.

Mr. Atkins. Thank you.

Mr. Pascrell. Working with both business and labor is not an easy task, but one worthwhile for the economy, I believe. And nearly 40 percent of the Nation's population live in the tri-state area. So welcome.

Having a field hearing here at the busy port in New York and New Jersey is definitely welcome. We are just a golf shot from the Garden State. I am right happy to show the committee more real folks living in Patterson, New Jersey, my hometown.

The operations at Global Container Terminals underscore the vital role the Federal Government plays in a vibrant economy. The Federal Government worked with the Port Authority on a \$1.8 billion dredging project here. This project ensured the terminals would welcome big ships with speed and efficiency. That was the promise. Strong Federal partnership with the Army Corps dredged our region's harbor 50 feet. Correct me if I am wrong. It helped us maintain our leading global shipping destination, but the Army Corps was a valuable agency to what you were trying to do with this port. But, considering their budget plan, the other side I respect deeply, but it doesn't make sense. Because we have to agree, in order to do what we promised, which we did not do.

Just 13 days ago, we passed a terrible plan that hacks Federal spending by at least 22 percent. This would be the biggest cut to nondefense programs in our history.

Republicans are following the footsteps of their disgraced and indicted leader. Mr. Trump tried to chop 16 percent, a billion dollars, from the Army Corps' budget. Those are the facts.

So, the budget would gut the Department of Homeland Security. It could devastate our economic future and trade enforcement. So, it is one thing to talk about it; it is another thing to put the money where your mouth is and do it, if it is meaningful.

Rolling back funding would slash Customs' frontline enforcement by 2,400 agents. It sounds like the IRS 10 years ago. These cuts would cripple our forced labor enforcement.

Talk is cheap. I don't have to tell you, Mr. Atkins. So, it is going to undo our work if we pass this budget.

I am a long-time champion of strong trade enforcement, but it is not free. I have longed pushed for more funding for Customs' trade office. Cuts of the magnitude my colleagues have proposed are devastating and reckless. Let's be very honest about these cuts, especially since we see the importance of Federal investments right here today in Staten Island, USA.

Thank you all for being here. The testimony was excellent. I am going back to Washington in a few minutes to fight the fight.

Thank you, Mr. Chairman.

Chairman Smith. Thank you, sir.

Mrs. Fischbach is recognized.

Mrs. Fischbach. There we go. I had to figure out the technology.

But, first of all, I want to thank you all for being here because I think the field hearings are one of my favorite things because we get to hear from folks across the country; you know, Georgia and Oklahoma and West Virginia. And so, I appreciate it

that we get out of D.C. for a variety of reasons. But one of them in particular is being able to talk to folks that what we do in D.C. actually affects.

And, Mr. Hemminger, I just wanted to talk a little bit about -- I am from Minnesota, heavy ag district. I have about 100 miles of Canadian border on the northern part of my district. And I know that Mr. Smith had mentioned USMCA. Very concerned about -- excuse me, the dairy enforcement now. We have got the issue with the GMO corn from Mexico. So very concerned that we actually do the enforcement that we are supposed to on that. And then Mr. Steube had mentioned about the competition.

I was wondering if you could talk maybe a little bit about the workforce issues. You mentioned and I think briefly in your opening statements, you mentioned the H-2A; I think you mentioned E-verify, you know, in responding to one of the questions.

Workforce is a huge issue and particularly for the ag industry. So, I am wondering if you have any ideas, what can we do? Is there an answer through visas, immigration policy? What can we do that would make sense to open up that workforce shortage.

Mr. Hemminger. Thank you. An excellent question. First of all, we need a comprehensive immigration program that we have kicked down the road for over 15 years. And, with that, we have to have a system that at least gives a green card to these people that are here and have been working hard. We had a reasonable bill in front of the Congress here 6 months ago or so, and it failed again. That is a where we need to start.

The H-2A program, I have participated for 15 years. Unbelievably bureaucratic. We got it a little bit simplified and some things coming along to make it a little more workable. And then, in the last 2 years, it has gone just the opposite way.

Their formula to figure out the wages is absolutely bizarre. We are priced now so that, when I pay overtime on a \$16.95 an hour in my greenhouses and cabbage operation, I

am double my competitors' in Canada salary. Double. They don't have to pay overtime. And their foreign visa program is more in the \$11 to \$12 program.

And keep in mind, on top of that, we pay -- we have brand new housing for the people when they are here. We supply them with all their transportation, including to and from the store. And then part of the program is we pay all their transportation to and from Mexico.

In Mexico, what they make in an hour here is a day's wage there. And these people are wonderful. I have a few guys -- I was only getting a handful 15 years ago -- I have a number of them that are still with me. I have more than half my crew that have been with me around 10 years. And they are family to us now. And they come, and our farm runs well.

We need to embrace that program. It needs to be allowed to be more than just seasonal. Right now, it is seasonal only. The dairies need an opportunity to be a part of that program to bring people here for multiple years. The training and technology on our farms today takes people that need to be trained, and it could take 6 months to train them. We are literally crippling our industry and making our industry have to seek these undocumented workers. It is just so frustrating.

And enforce the trade agreements. And I have a very, very soft heart for the people that are being misused in other parts of the country. I am glad that we heard that testimony today. And I believe with trade we could help fix that as well.

We need to support the American farmer, or we are only going to be growing corn, soybeans, and wheat here. And nothing against my friend from Kansas, but if we want crops that take labor, we have got to fix this. Otherwise, we are going to slowly just watch labor-dependent agriculture dwindle here in the United States. And it would be foolish for us to continue to spend money on these enterprises if we are going to be axing

them.

Mrs. Fischbach. And thank you very much, and I appreciate that. It was very well said. And we will continue to pursue what we can to make sure we get that workforce shortage dealt with.

And I just want to say, I apologize; I have to leave early. I have to get back to D.C. for another committee hearing. But thank you again, all, for being here.

And, with that, I yield back 2 seconds.

Chairman Smith. Thank you.

Mr. Estes is recognized.

Ms. Estes. Thank you, Mr. Chairman.

And thank you to all our witnesses today for being here. I appreciate having field hearings outside of the D.C. Beltway to hear firsthand, really, how our policies that are made in Washington affect families and businesses. And I think today is really useful as we talk about trade here, particularly in the hub of global commerce.

There is strong bipartisan support for some of the trade themes we have talked about today: expanding markets for our manufacturers and producers, continuing the good work we started with USMCA, enforcing our existing agreements, and holding China accountable.

I briefly want to touch on a nonpartisan commonsense bill that I believe will help us in a competitive -- on the global stage and enhance our ability here at home to innovate and expand trade opportunities. The bill restores the immediate R&D expensing for American innovators and entrepreneurs, the American Innovation and R&D Competitiveness Act. I was joined with my Ways and Means colleague on the other side of the aisle, Congressman John Larson, and many others on this committee.

According to the R&D Coalition, the U.S. share of global R&D investments in

2019 was 30 percent, which is down from 33 percent in 2009 and 40 percent in 1999. On the other hand, China, heard their global shares of R&D expense has gone up. It was 24 percent in 2019, a big jump from 5 percent in 2000. And 15 percent in 2009. That means that China's R&D expenses have grown by 400 percent in just two decades.

By disincentivizing R&D here at home, American tax policies encourage manufacturers and production to move abroad. And we know where R&D occurs is critical for job manufacturing, job growth, and having jobs period that then allow us to export American-made products.

Mr. Romano, the National Taxpayers Union called this bill a no-brainer and thinks that, given its broad bipartisan support and real-world application, it should pass with ease. Do you agree with this is a no-brainer? And what would you say to my colleagues to help encourage them to support legislation like this?

Mr. Romano. I would absolutely say that I would agree with that. From the standpoint of research and development, you think about what we do. We are a miner. And we upgrade the products that ultimately we sell as finished goods to people like you. Our product is a quality-of-life product. And the only way we are going to stay ahead of the Chinese is through investment and technology; technology for the products that we make, the way we make them, and obviously reinvesting in technology and supporting growth with our own employees so that they have the technology and the skills that are required to -- as we upgrade our facilities, they have got the capability to run those facilities with new techniques.

Mr. Estes. Well, thank you. And, you know, I mentioned, talked a little bit about China and their R&D investments. We also know that China has been involved in predatory trade practices and participates in atrocious human rights abuses. At the same time, they have used their Belt and Road Initiative to deepen ties with other countries

while United States has taken a backseat to some of these practices, including expanding trade. This is deeply disturbing and has a detrimental impact to U.S. workers and small businesses.

From a human rights and economic standpoint, Mr. Turkel, what is your assessment of China's aggressive approach to trade, and what should the U.S. be doing to counter the Chinese Communist Party and these practices?

Mr. Turkel. Thank you very much for the question. The BRI that you mentioned also has something to do with the ongoing genocide and the enslavement of the Uyghur people. When you look at the -- at least in the last 10 years of Chinese economic growth, it has been slowed because they claim that they got millions of people out of poverty, but at the same time, they created a vacuum, a labor shortage, which still is the case. And they tried to resolve that issue by using the Uyghurs as a modern-day slave. That is one.

And the other is a political reason. As I alluded earlier, it is about total control.

So, one of the things that we have to do in order to address this is to look at the ways in which that we cannot only enforce, fully enforce, the existing laws but also looking at new laws. One of the new laws that I think would be very helpful is the modeling the FCPA, Foreign Corrupt Practices Act, to make human rights abuses, enslavement of the Uyghurs, atrocity crimes, a law enforcement matter, attaching it to the existing law that we are discussing today.

The other thing is that we need to implement Uyghur Human Rights Policy Act that specifically mandates the administration to continue to sanction Chinese entities. And the UFLPA also requires Entity List designations. Since last June, there were only 20 companies that have been designated. We need to expand that. There are 55,000 entities doing business in the Uyghur region. We don't have to designate all of them at

the entity list, but the vast majority of them, including this one here that I am showing this amazing report produced by my colleagues at the Uyghur Human Rights Project, reporting the dates, the red dates coming to the United States that are produced, exported by Xinjiang Production Construction Corps, which is recognized by the United States Government as a paramilitary and also sanctioned under the Global Magnitsky Act. I would like to ask chairman for your permission to include this in the record.

Chairman Smith. Without objection.

[The information follows:]

***** COMMITTEE INSERT *****

新疆红枣 Xinjiang Red Dates



Fruits of Uyghur Forced Labor

Sanctioned Products on American Grocery Store Shelves



UYGHUR HUMAN RIGHTS PROJECT

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About the Uyghur Human Rights Project

The Uyghur Human Rights Project (UHRP) promotes the rights of the Uyghur people through research-based advocacy. We publish reports and analysis in English and Chinese to defend Uyghurs' civil, political, social, cultural, and economic rights according to international human rights standards.

About the Author

Fruits of Uyghur Forced Labor was researched and written by Nuzigum Setiwaldi.

Nuzigum Setiwaldi is a campaign associate with the Coalition to End Uyghur Forced Labour and a content manager with USAHello. She holds a degree in sociology and is interested in human rights research and immigrant rights.

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I. Key Takeaways

- UHRP finds that 20 percent of red dates in the global supply chain are likely tainted by Uyghur forced labor.
- The Xinjiang Construction and Production Corps (XPCC) or “Bingtuan” holds a majority stake in at least 13 red date producing companies, which account for more than 25 percent of red date production in China. The XPCC, a major paramilitary and corporate organization, is responsible for carrying out mass internment, surveillance, and forced labor in East Turkistan.
- Between February and August 2022, local and online grocery stores in the Washington, DC metropolitan area stocked over 70 brands of red dates grown or processed in East Turkistan, including at least three with “Bingtuan” on their labels. Other products sourced from the Uyghur homeland, including raisins and walnuts, are also sold in U.S. grocery stores.
- Cotton is frequently intercropped with fruit, including red dates. In 2019, red dates accounted for 80% of fruit intercropped with cotton. Because cotton production is well documented as being at high risk of forced labor practices, fruit and fruit products, including red dates, should be considered at the same risk for forced labor as cotton.
- Since July 2020, all financial transactions with the XPCC have been prohibited for U.S. persons under Global Magnitsky Sanctions, and since January 2021, imports of XPCC cotton and tomato products to the U.S. have been a priority for enforcement of the U.S. ban on forced-labor imports. However, investigations have revealed that cotton and tomato products from the Region have continued to enter the U.S. market.
- As of June 21, 2022, all products from East have been targeted for priority enforcement of the U.S. ban on

forced-labor imports, under the Uyghur Forced Labor Prevention Act (UFLPA). U.S. Customs and Border Protection (CBP) is mandated to detain all products sourced from the Uyghur Region on the presumption that they are the products of forced labor, unless the importer can demonstrate that the product supply chain is free of forced labor.

- UHRP's research shows that U.S. food retailers and consumers risk complicity in forced labor and other atrocities, including genocide and crimes against humanity.

II. Investigation

Between February and August 2022, we investigated a dozen international grocery stores in the Washington, D.C. metropolitan area and identified red date products sourced from East Turkistan at seven stores. We also examined online international grocery stores that ship red date products from the Uyghur Region to the D.C. area. Using global and U.S. trade data from multiple sources, including UN ComTrade, Import Yeti, and C4ADS Seamless Horizons Data Lake, we traced red date products in global supply chains back to the Uyghur Region. We reviewed Chinese government reports, including the National Bureau of Statistics, China Statistical Yearbook, Xinjiang Statistical Yearbook, and XPCC Statistical Yearbook, in addition to records on Weixin (WeChat). We also reviewed U.S. government sanctions, including the UFLPA Entity List, to identify companies whose products are prohibited from importation into the U.S.

We contacted the grocery stores, distributors, and brands listed in this briefing with publicly available contact information. Several of the emails bounced back. Only a handful confirmed receipt of our correspondence but did not respond directly to our findings.

Twenty percent of the world's red dates come from the Uyghur Region and are likely the products of forced labor.



Top-left and bottom: Farmers drying and picking red dates at an orchard in Kargilik. Top-right: Workers processing red dates at a factory in Hotan.

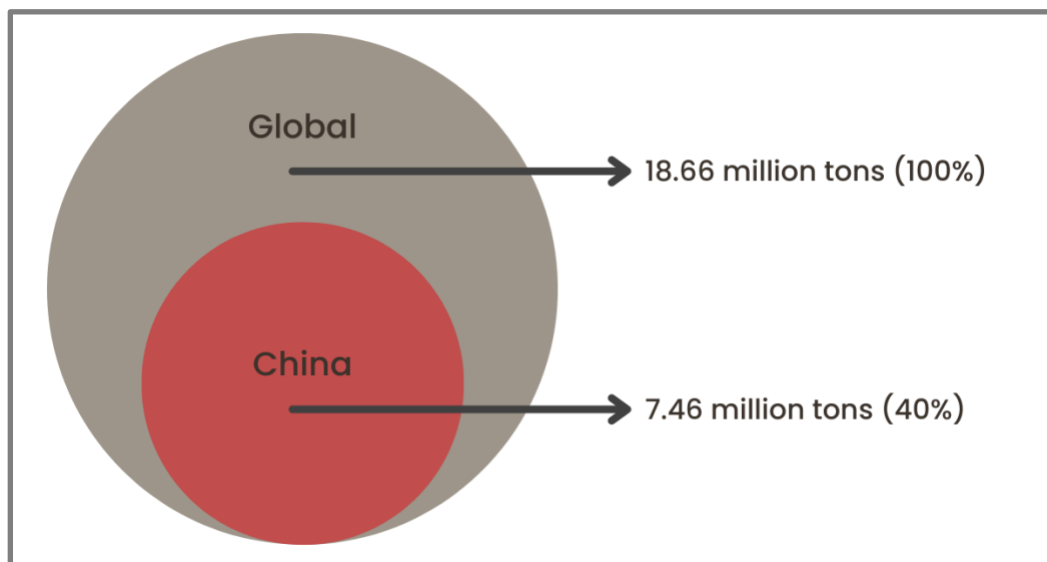
III. Findings

Red Date Industry in the Uyghur Region

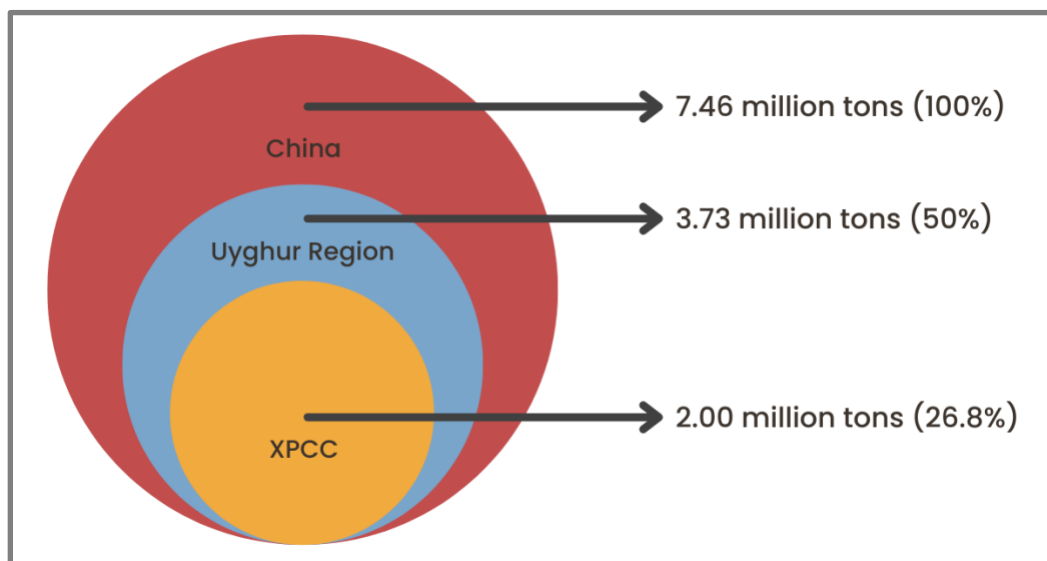
China is the world's top producer and exporter of red date products, producing 40 percent of the world's output.¹ The Uyghur Region's output accounted for exactly half of all China's production, or 3.73 million tons of the national 7.46 million-ton

¹ Shahrajabian, Mohamad Hesam, Wenli Sun, and Qi Cheng. "Chinese Jujube (*Ziziphus Jujuba* Mill.) – a Promising Fruit from Traditional Chinese Medicine". *Annales Universitatis Paedagogicae Cracoviensis Studia Naturae* 5 (November 2020): 194–219, accessed August 5, 2022, <https://doi.org/10.24917/25438832.5.13>.

total in 2019.² Overall, 20 percent of the world's red dates come from the Uyghur Region and are likely the products of forced labor.



Global production of red dates (2019)



Proportion of production of red dates in China (2019)

² Liu, M., Wang, J., Wang, L. *et al.* "The historical and current research progress on jujube—a superfruit for the future," *Hortic Res* 7, 119 (2020), accessed on August 5, 2022, <https://doi.org/10.1038/s41438-020-00346-5>.

Red dates, also known as jujubes, are a small sweet fruit popular throughout Asia and beyond.³ They are eaten fresh or dried and can also be processed into numerous forms including jams, teas, and paste. Red dates are promoted as a health food and are commonly used in traditional medicine in many Asian cultures.

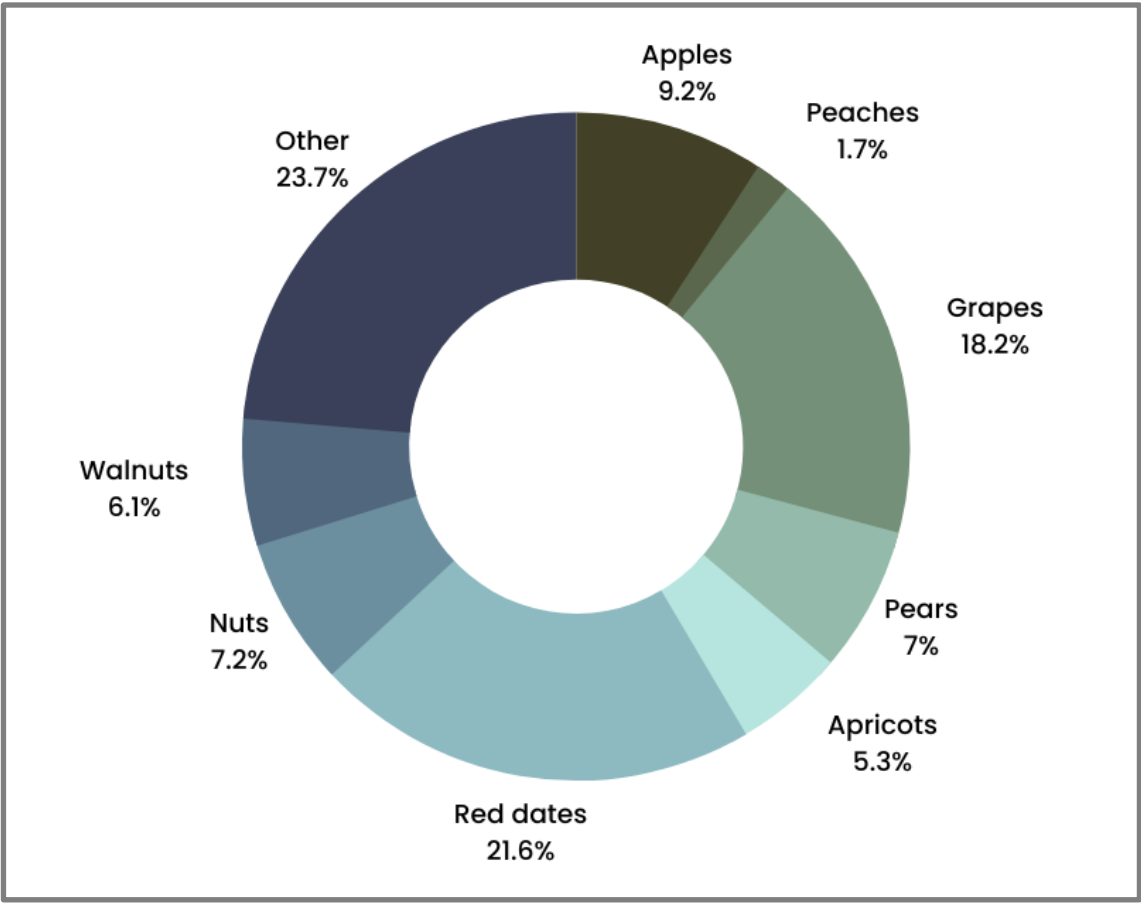
Red dates account for more than 20 percent of all fruits and nuts produced in East Turkistan, and are grown mainly in the south in places such as Kashgar, Aksu, Hotan, Qumul, and Turpan.⁴ Red dates accounted for nearly half of all fruit produced by the XPCC in 2018 (followed by grapes, apples, pears, and walnuts).⁵ Of the 3.73 million tons of red dates grown in the Uyghur Region in 2019, the XPCC produced 2 million tons (a quarter of the national total), with the remaining 1.73 million tons grown by various forms of smaller-scale producers.⁶ Ten percent of the world's red dates are directly tied to the XPCC and forced labor practices.

³ Shahrajabian, Mohamad Hesam, Wenli Sun, and Qi Cheng. "Chinese Jujube (*Ziziphus Jujuba* Mill.) – a Promising Fruit from Traditional Chinese Medicine". *Annales Universitatis Paedagogicae Cracoviensis Studia Naturae* 5 (November 2020):194-219, accessed August 5, 2022, <https://doi.org/10.24917/25438832.5.13>; Liu, M., Wang, J., Wang, L. *et al.* "The historical and current research progress on jujube—a superfruit for the future," *Hortic Res* 7, 119 (2020), accessed on August 5, 2022, <https://doi.org/10.1038/s41438-020-00346-5>.

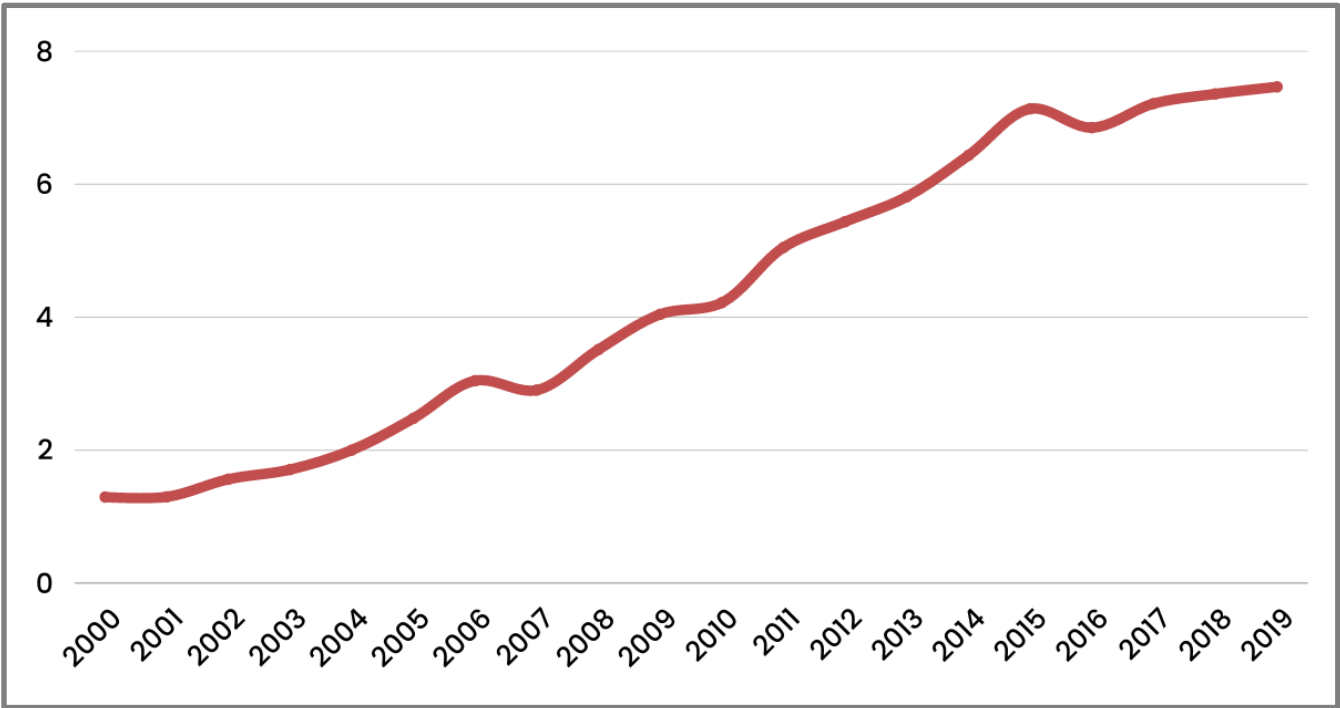
⁴ Bai Xiao, Na Kong, and Zhang Rong. "Research on the Transformation and Upgrading of Xinjiang Jujube Industry in the Context of 'Silk Road Economic Belt'," E3S Web Conf. Volume 235, 2021, 2020 International Conference on New Energy Technology and Industrial Development (NETID 2020) (2021), accessed on August 5, 2022, <https://doi.org/10.1051/e3sconf/202123502027>.

⁵ "2020 Xinjiang Statistical Yearbook," p. 385, China Statistics Press, 2019, <https://www.shahit.biz/yearbooks/2019%20Bingtuan%20Statistical%20Yearbook.pdf>; 2019 XPCC Statistical Yearbook, p. 244–245, China Statistics Press, 2018, <https://www.shahit.biz/yearbooks/2019%20Bingtuan%20Statistical%20Yearbook.pdf>.

⁶ "2020 Xinjiang Statistical Yearbook," Tables 12-28, China Statistics Press, 2019, <https://www.shahit.biz/yearbooks/2019%20Bingtuan%20Statistical%20Yearbook.pdf>.



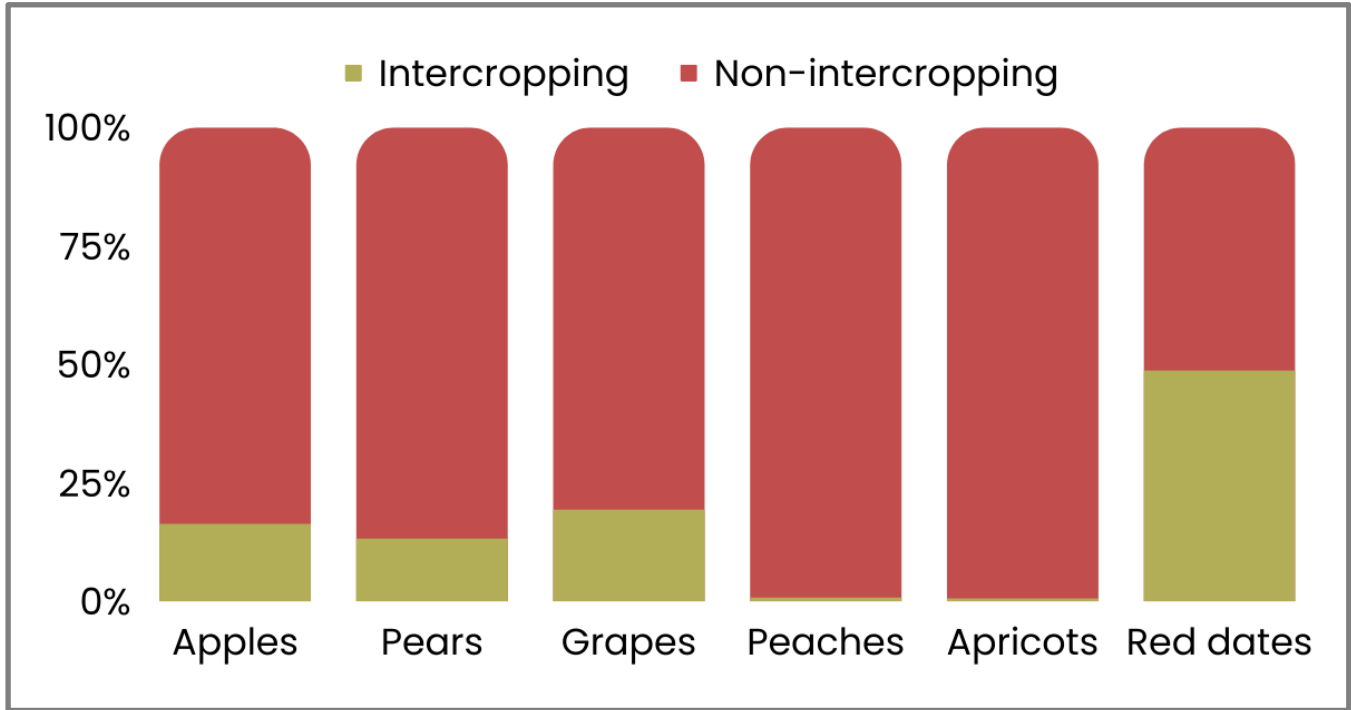
Total production of fruits and nuts in the Uyghur Region (2019)



Total production of red dates in China over time (millions of tons)

Red Dates Tied to Cotton Production

More than 80 percent of cotton produced in China, which constitutes 20 percent of the world's cotton supply, comes from the Uyghur Region.⁷ One in five cotton apparel products and one in five red dates in the global supply chain could therefore be tainted with Uyghur forced labor.⁸



XPCC production yield of fruit through intercropping with cotton (2019)

The red date industry in East Turkistan is directly linked to cotton production through the practice of intercropping, a method of agricultural production where two crops are grown simultaneously in the same field. Studies indicate that fruit-cotton intercropping is a common and efficient practice in the

⁷ Laura T. Murphy, *et al.* "Laundering Cotton: How Xinjiang Cotton is Obscured in International Supply Chains," Helena Kennedy Center for International Justice, Sheffield Hallam University, November 2021, accessed on August 5, 2022, <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/laundered-cotton>.

⁸ Laura T. Murphy, *et al.* "Laundering Cotton: How Xinjiang Cotton is Obscured in International Supply Chains," Helena Kennedy Center for International Justice, Sheffield Hallam University, November 2021, accessed on August 5, 2022, <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/laundered-cotton>.

Uyghur Region.⁹ Planting red dates with cotton requires less water, improves crop quality, and yields a higher amount of both red dates and cotton, according to one study conducted in the region.¹⁰ According to XPCC data for 2018, red date-cotton intercropping is the primary form of fruit-cotton intercropping with nearly 80 percent (1.6 million tons) of red dates produced on cotton farms in 2019.¹¹

The direct link between red date and cotton production increases the likelihood that red date production is being tainted by Uyghur forced labor. Evidence clearly shows that cotton is produced using forced labor in East Turkistan with Uyghur detainees conscripted to pick raw cotton and to work in factories producing cotton-based yarn and fabric to manufacture apparel for international brands.¹²

State Forced Labor Policies

In 2018, the Chinese government invested 420 million yuan (US \$63 million) in so-called “poverty alleviation” programs in East Turkistan, 80 percent of which went to XPCC concerns in southern East Turkistan.¹³ A key facet of “poverty alleviation” programs is transferring internees from detention camps, and forcing rural residents to work in state-managed and state-sponsored agricultural and industrial production.¹⁴

The direct link between red date and cotton production increases the likelihood that red date production is being tainted by Uyghur forced labor.

⁹ XY Wang, T. Yang, and L. Shen, *et al.* “Formation of Factors Influencing Cotton Yield in Jujube-Cotton Intercropping Systems in Xinjiang, China,” *Agroforest Syst* 95, 177–189 (2021), accessed August 5, 2022, <https://doi.org/10.1007/s10457-020-00571-w>.

¹⁰ XY Wang, T. Yang, and L. Shen, *et al.*, “Formation of Factors Influencing Cotton Yield in Jujube-Cotton Intercropping Systems in Xinjiang, China,” *Agroforest Syst* 95, 177–189 (2021), accessed August 5, 2022, <https://doi.org/10.1007/s10457-020-00571-w>.

¹¹ “2019 Xinjiang Production and Construction Corps Statistical Yearbook,” p. 264, China Statistics Press, 2018.

¹² “Against Their Will: The Situation in Xinjiang,” Bureau of International Labor Affairs, U.S. Department of Labor, 2020, <https://www.dol.gov/agencies/ilab/against-their-will-the-situation-in-xinjiang>.

¹³ “2019 Xinjiang Production and Construction Corps Statistical Yearbook,” p. 50, China Statistics Press, 2018, <https://www.shahit.biz/yearbooks/2019%20Bingtuan%20Statistical%20Yearbook.pdf>.

¹⁴ Vicky Xiuzhong Xu, Danielle Cave, Dr James Leibold, Kelsey Munro, and Nathan Ruser. “Uyghurs for sale: ‘Re-education’, forced labor and surveillance beyond Xinjiang,” Australian

[R]esearchers and human rights monitors report China's economic development and poverty alleviation programs are directly linked to XPCC mass detention and surveillance campaigns.

Between 2017 and 2019, the Chinese government transferred an estimated 80,000 Uyghurs from detention camps to work in factories in mainland China as part of those poverty alleviation programs.¹⁵ Under the government “rural surplus labor” transfer program, 2.87 million people were transferred within the region and to mainland China each year between 2016 to 2020 and 3.2 million were transferred in 2021.¹⁶

Chinese state media promotes red dates, walnuts, and raisins as “poverty relief products,”¹⁷ and the XPCC claims red date production has significantly increased farmers’ incomes and reduced poverty in the south.¹⁸ However, researchers and human rights monitors report China’s economic development and poverty alleviation programs are directly linked to XPCC mass detention and surveillance campaigns.¹⁹

Furthermore, XPCC farms and factories are directly tied to state-sponsored land expropriation in East Turkistan. Originally formed as a branch of the Chinese military in 1954, the XPCC was tasked with establishing farms, ranches, and factories across the

Strategic Policy Institute and the International Cyber Policy Center, 2020, p. 3, accessed on August 5, 2022, <https://www.aspi.org.au/report/uyghurs-sale>.

¹⁵ Vicky Xiuzhong Xu, Danielle Cave, Dr James Leibold, Kelsey Munro, and Nathan Ruser. “Uyghurs for sale: ‘Re-education’, forced labor and surveillance beyond Xinjiang,” Australian Strategic Policy Institute and the International Cyber Policy Center, 2020, p. 3, accessed on August 5, 2022, <https://www.aspi.org.au/report/uyghurs-sale>.

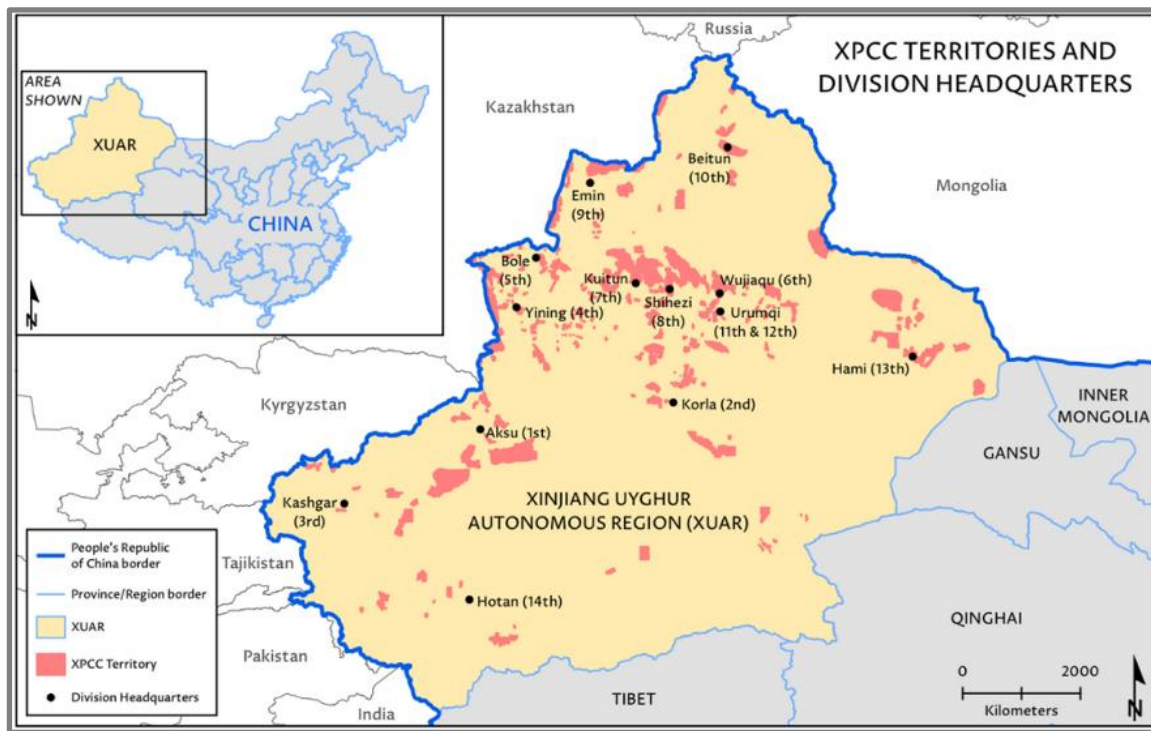
¹⁶ Adrian Zenz. “Unemployment Monitoring and Early Warning: New Trends in Xinjiang’s Coercive Labor Placement Systems,” Victims of Communism Memorial Foundations, June 5, 2022, accessed August 5, 2022, <https://victimsofcommunism.org/publication/unemployment-monitoring-and-early-warning>.

¹⁷ Fighting Poverty in Xinjiang: E-commerce development boosts farm produce sales,” China Global Television Network (CGTN), May 6, 2020, <https://news.cgtn.com/news/30637a4d79514464776c6d636a4e6e62684a4856/index.html>.

¹⁸ “Power of the youth helps Xinjiang alleviate poverty,” CGTN, April 30, 2020, <https://news.cgtn.com/news/2020-04-29/Power-of-the-youth-helps-Xinjiang-alleviate-poverty-Q3Cb7M1kxq/index.html>; “Red jujubes bring wealthy lives to farmers in China’s Xinjiang,” New Xinhua TV, December 2, 2019, <https://www.youtube.com/watch?v=M4ZJuMEJh-k>.

¹⁹ Vicky Xiuzhong Xu, Danielle Cave, Dr James Leibold, Kelsey Munro, and Nathan Ruser. “Uyghurs for sale: ‘Re-education’, forced labour and surveillance beyond Xinjiang,” Australian Strategic Policy Institute and the International Cyber Policy Centre, 2020, accessed on August 5, 2022, <https://www.aspi.org.au/report/uyghurs-sale>; Laura Murphy, Nyrola Elima, and David Tobin. “Until Nothing is Left: China’s Settler Corporation and its Human Rights Violations in the Uyghur Region,” Helena Kenned Centre for International Justice, Hallam University, July 2022, accessed on August 5, 2022, <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/until-nothing-is-left>.

Uyghur Region.²⁰ Land reclamation projects have displaced Uyghurs who were forced to give up their land for XPCC operations.²¹ XPCC settlements have significantly expanded, particularly in the south, as Han Chinese migrants have taken advantage of government incentives to relocate and work on agriculture and infrastructure projects founded on land that had been held by Uyghur communities for generations, while XPCC projects have redirected sources of water away from local Uyghur farmers.²² These practices have placed Uyghur farmers, including traditional red date farmers, at a high risk of employment discrimination and forced labor.²³



Map of XPCC territories. Credit: Brian Edward Balsley, GISP.

²⁰ "The History and Development of the Xinjiang Production and Construction Corps (full text)," State Council of the People's Republic of China, October 5, 2014, http://english.www.gov.cn/archive/white_paper/2014/10/05/content_281474992384669.htm.

²¹ "Farmers Vow to Pressure Beijing," Radio Free Asia, November 9, 2010, <https://www.rfa.org/english/news/uyghur/farmers-11092010152433.html>.

²² Gao Feng, "China tightens grip on activists, dissidents ahead of Tiananmen massacre anniversary," Radio Free Asia, May 31, 2022, <https://www.rfa.org/english/news/china/tiananmen-anniversary-05312022124339.html>.

²³ Gao Feng, "China tightens grip on activists, dissidents ahead of Tiananmen massacre anniversary," Radio Free Asia, May 31, 2022, <https://www.rfa.org/english/news/china/tiananmen-anniversary-05312022124339.html>.

Ties to Global Supply Chains

The XPCC has partial or full ownership of 862,000 companies globally. It owns more than 50 percent of nearly 3,000 of those companies, including at least 13 red date producing companies.²⁴ XPCC data for 2018 shows 1.3 million tons of fruits were produced on XPCC farms, including 570,000 tons of red dates at so-called “needy and border farms” in the southern part of the Uyghur Region.²⁵ Over 543,000 tons of fruits, including 223,000 tons of red dates, were produced at so-called “minority farms.” The XPCC publishes production numbers for various types of farms, including center farms, small town farms, cotton-planting farms, border farms, needy farms, and minority farms.²⁶ At least one in five red dates in the global market are produced either by the XPCC or in the Uyghur Region where gross human rights violations against minoritized citizens, including forced labor, are pervasive.

At least one in five red dates in the global market are produced either by the XPCC or in the Uyghur Region where gross human rights violations against minoritized citizens, including forced labor, are pervasive.

Red Dates in U.S. Markets

Today, at least 20 percent of red dates in the world are directly or indirectly linked to the XPCC’s and forced labor practices. Red dates sourced from other producers in the Uyghur Region are also at high risk of being tainted by forced labor, and those produced in mainland China may also be linked to forced labor by labor transfer programs out of the Uyghur Region.

According to U.S. trade data, Chinese companies made 164 shipments of red date products from the Uyghur Region and mainland China to the U.S. from 2017 to 2022.²⁷ Of those shipments, 100 were made prior to the July 2020 sanctions on the

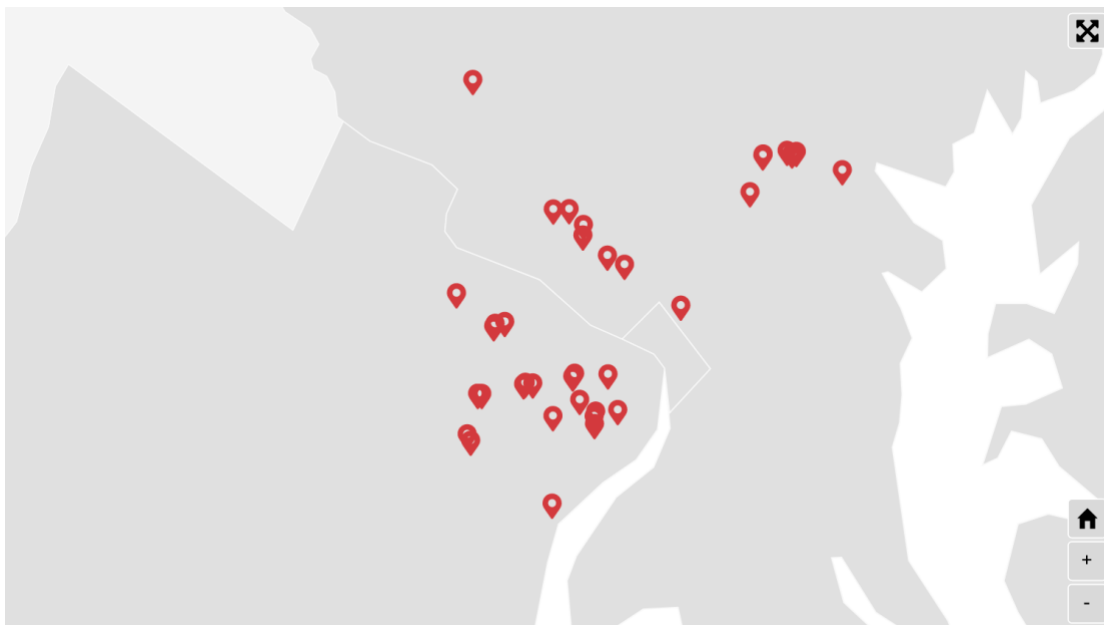
²⁴ Irina Bukharin, “Long Shadows: How the Global Economy Supports Oppression in Xinjiang,” C4ADS, August 2021, <https://c4ads.org/long-shadows>.

²⁵ 2019 Xinjiang Production and Construction Corps Statistical Yearbook,” p. 264, China Statistics Press, 2020, <https://www.shahit.biz/yearbooks/2019%20Bingtuan%20Statistical%20Yearbook.pdf>.

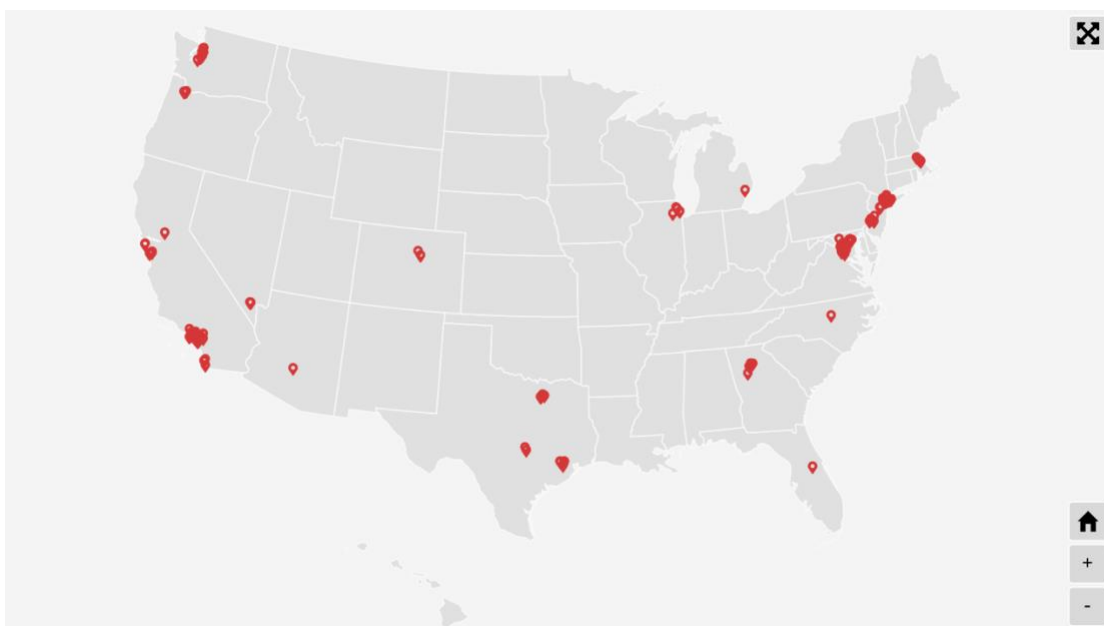
²⁶ “2019 Xinjiang Production and Construction Corps Statistical Yearbook,” tables 9-39, p. 264, China Statistics Press, 2020, <https://www.shahit.biz/yearbooks/2019%20Bingtuan%20Statistical%20Yearbook.pdf>.

²⁷ C4ADS, (HS codes 2006.00, 081090, 081340, and 080590).

XPCC and 64 shipments were made after. Many of these red date products referenced “Xinjiang” or Uyghur cities in the goods descriptions. The continued shipments suggest multiple sanctions against the XPCC are not stopping red dates produced in East Turkistan from reaching grocery shelves in the U.S., even despite the fact that at least three brands, Bingtuan Mingzhu and Bingtuan Hong, and Red Corps actually have the word “Bingtuan” on their packaging.



Location of stores in the United States carrying red dates from the Uyghur Region

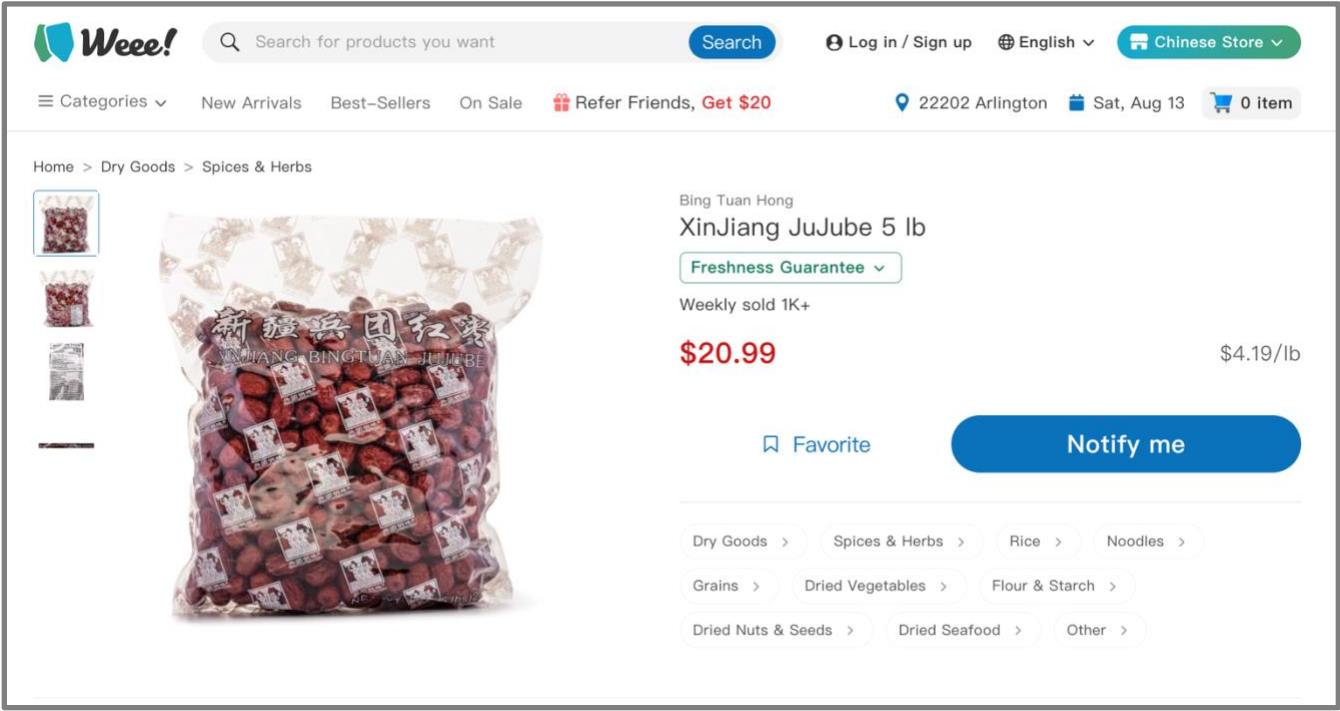


Location of stores carrying XPCC red dates in the DC, Maryland, and Virginia area

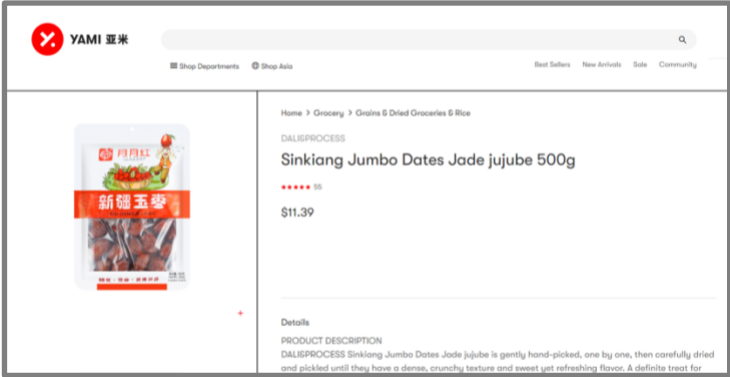
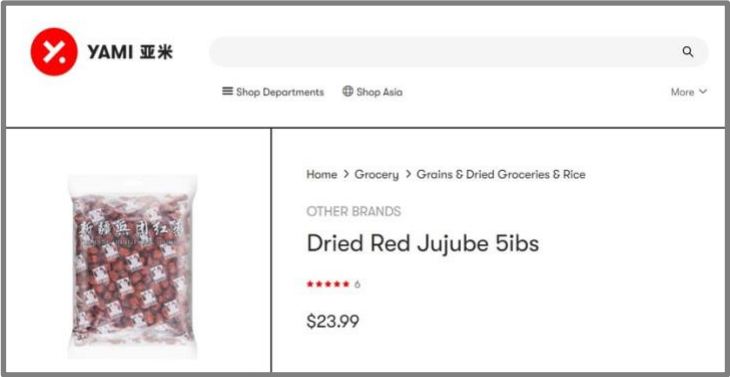
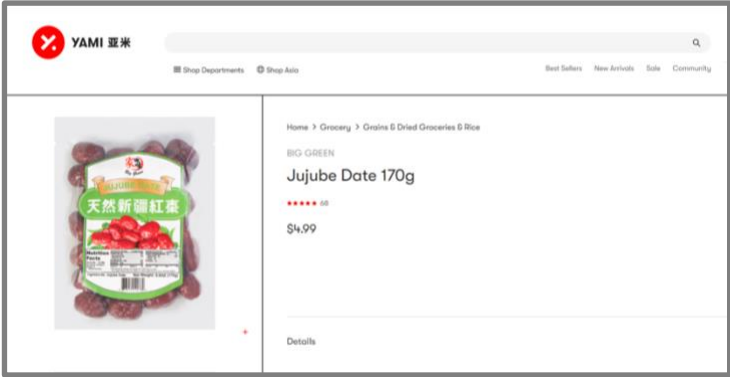
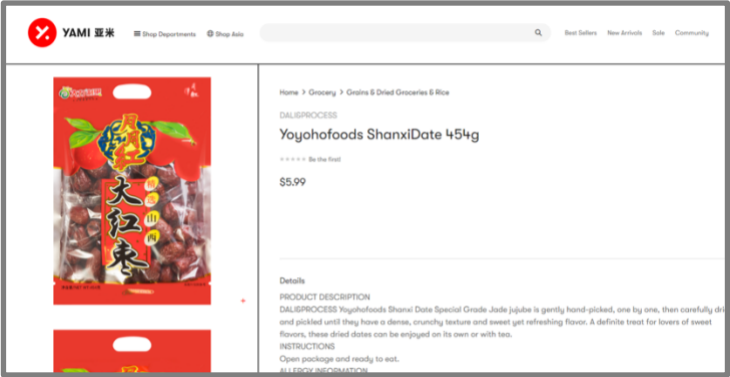
Local grocery stores in the Washington, D.C. area and online retailers that ship to D.C. stock over 70 different brands of red date products from China, including Bingtuan Mingzhu, Bingtuan Hong, Farmer Brand, Gather Red, Growland, Sihong, and Zhishein. At least seven Asian and international grocery stores in the D.C. area – Fresh World, Great Wall Supermarket, Good Fortune Supermarket, H Mart, Lotte Plaza Market, LA Mart, and 99 Ranch Market – collectively stock more than 50 types of red date products produced in East Turkistan. A number of online retailers including Yami, Sayweee!, Unami Cart, Just Asian Food, and Fresh Go Go, also ship red date products from the Uyghur Region to the U.S. in addition to their retail activities.



XPCC red dates found in Asian supermarkets in the DC, Maryland, and Virginia area (top left: Good Fortune Supermarket, top right: 99 Ranch Market, bottom: Great Wall Supermarket)



Bingtuan Hong red dates sold online on Weee!



Dali & Process, Big Green, and Bingtuan Hong red date products for sale on Yami.



Supermarkets in the United States selling red dates from the Uyghur Region

U.S. online marketplaces including Amazon, Ebay, and Walmart, sell red dates from the Uyghur Region. A number of brands and wholesalers, including Growland, Big Green USA, EAPC, and Nest Lady, also list red date products from the Uyghur Region on their websites.²⁸ At least 15 U.S. companies import red date products for wholesale distribution to retailers, including Bloomington Import, Growland Inc., H&C Food Inc., OCM Globe Inc., and Tristar Food Wholesale Co., Inc.



Online retailers selling red dates from the Uyghur Region

²⁸ See, for example: Growland Shop, <https://growland.shop>; Big Green USA, <https://biggreenusainc.com/>; EAPC, <https://eapcusa.com>; Nest Lady, <https://nestlady.com>.

The majority of red date product labels list China as the country of origin. Uyghur Region red date products that have been transshipped or processed in other countries were not included in UHRP's investigation due to traceability limitations. Many of the red date products from China sold online reference "Xinjiang" either on the label or in the product description, or both. Labels specifying the type of red dates often refer to cities in the Uyghur Region including Hotan, Kargilik, Aqsu, and Qumul.

A number of red date brands market their products by appropriating Uyghur cultural symbols or stereotypical images linked to the Uyghur homeland. All Growland red date products feature drawings of Uyghur musicians and dancers from Ghazi Ahmet's famous painting "Meshrep" next to an outline of a mosque and mountains. Farmer Brand products also include drawings of a Uyghur dancer and drummer alongside a caravan of camels in the Taklamakan Desert. Dali & Process Xinjiang Jade Jujube packaging depicts a boy in Uyghur traditional clothes carrying a giant red date.



Growland and Farmer Brand red date packages with Uyghur cultural symbols. Red Corps red dates product with the word "Bingtuan" written on it.



Xinjiang Te Chan red date product



Zhishein red date product



Xinjiang Farm red date product



Zhong Hua Jun Zao red date product from Hotan



Qili red date product



Bingtuan Hong red date product

IV. Implications

At least one in five red date products in the global market are made in East Turkistan and may be tainted by forced labor.

The XPCC, the leading producer of red dates in East Turkistan, implements forced labor on a broad scale and is directly linked to mass detentions and surveillance in the region. These and other human rights violations are so egregious that the U.S. government has imposed Global Magnitsky sanctions prohibiting all financial transactions with the XPCC and, since June 2022, import restrictions on all products sourced from the Uyghur Region. Despite these sanctions and enforcement measures, red dates and other fruit products are still available on grocery store shelves.

U.S. retailers and consumers who continue to buy red dates produced in China risk being complicit in forced labor in a region where the Chinese government is committing genocide against Uyghurs.

Now that the UFLPA is in force, U.S. companies that distribute and sell red date products from East Turkistan may face legal consequences if they cannot demonstrate that their supply chain is free of Uyghur forced labor. As urged since July 2020 by the Coalition to End Forced Labor in the Uyghur Region, U.S. companies must map their supply chain at every stage of production, from raw to finished product, if they are to ensure that their products are not sourced from the Uyghur.²⁹ In light of limited supply chain traceability and the ongoing genocide in the region, all U.S. brands and retailers should source fruit and other products from suppliers without any links to the Uyghur Region.

Enforcement agencies need to effectively implement the UFLPA and the sanctions against the XPCC to stop banned goods

²⁹ Call to Action: Call to action on human rights abuses in the Xinjiang Uyghur Autonomous Region, Coalition to End Forced Labour in the Uyghur Region, <https://enduyghurforcedlabour.org/call-to-action>.

from being imported from a region where massive human rights violations are occurring.

V. Recommendations

To the U.S. government:

- Add brands selling red dates sourced from the Uyghur Region to the UFLPA forced labor Entity List;
- Add fruit and fruit products to the high-risk category of the UFLPA Enforcement Strategy; and
- Impose civil and criminal penalties for violations of Global Magnitsky sanctions currently in place, prohibiting all financial transactions with the XPCC and its subsidiaries.

To companies:

- Trace supply chains to comply with the UFLPA and end complicity in China's state-imposed forced labor program.

To consumers:

- Check product labels. If the packaging mentions XPCC, "Bingtuan," or "Xinjiang," alert the retailer that these products are subject to U.S. sanctions and should not be on store shelves. Contact companies, including distributors, brands, and grocery stores, asking them how they are addressing the risks of Uyghur forced labor.
- Submit CBP trade violation reports for red date products you suspect are sourced from the Uyghur Region at eallegations.cbp.gov/s
- Share details about products sourced from the Uyghur Region with our team by emailing info@uhrp.org

How to Identify Uyghur Red Date Products:

- Check the label and product description for keywords: Uyghur, Xinjiang, XPCC, Bingtuan, Kashgar, Aksu, Hotan, Qumul, and Turpan in English, Uyghur, and Chinese. Find a translated list of place names [here](#).
- Check packaging for appropriated cultural symbols: people wearing headscarves or doppas, dancers and musicians, mosques, mountains, and camels.

VI. Background

UHRP's investigation has found that certain dried fruits and many of the red date products found on shelves in Asian and international groceries in the U.S. are linked both directly and indirectly to forced labor in East Turkistan. The Chinese government's state-imposed program of forced labor for Uyghurs implicates many industries in China, including cotton and apparel, technology, car production, solar panels, construction supplies, and agriculture.³⁰ In 2020, more than 82 global brands with supply chains in East Turkistan were implicated in state-sponsored forced labor, including Apple, Nike, and Volkswagen.³¹ Today, over 800 companies' supply

³⁰ Vicky Xiuzhong Xu, Danielle Cave, Dr James Leibold, Kelsey Munro, and Nathan Ruser. "Uyghurs for sale: 'Re-education', forced labor and surveillance beyond Xinjiang," Australian Strategic Policy Institute and the International Cyber Policy Center, 2020, accessed on August 5, 2022, <https://www.aspi.org.au/report/uyghurs-sale>; "Against Their Will: The Situation in Xinjiang," Bureau of International Labor Affairs, U.S. Department of Labor, 2020, <https://www.dol.gov/agencies/ilab/against-their-will-the-situation-in-xinjiang>. Laura T. Murphy, Jim Vallette, Nyrola Elimä, "Built on Repression: PVC Building Materials' Reliance on Labor and Environmental Abuses in the Uyghur Region," Helena Kennedy Center for International Justice, Sheffield Hallem University, 2022, accessed on August 5, 2022, <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/built-on-repression>.

³¹ Vicky Xiuzhong Xu, Danielle Cave, Dr James Leibold, Kelsey Munro, and Nathan Ruser. "Uyghurs for sale: 'Re-education', forced labor and surveillance beyond Xinjiang," Australian Strategic Policy Institute and the International Cyber Policy Center, 2020, p. 3, accessed on August 5, 2022, <https://www.aspi.org.au/report/uyghurs-sale>.

chains have been linked to Uyghur forced labor.³² Food products, including tomatoes, peppers, and walnuts, are no exception.³³

This briefing reveals that red dates sourced from East Turkistan are at high risk of being tainted by Uyghur forced labor. It analyzes how the XPCC, listed under four different U.S. human rights sanctions, is tied to China's red date exports.³⁴ This briefing identifies brands, distributors, and suppliers that are sourcing red dates from East Turkistan and urges U.S. suppliers and government agencies to stop the import of red dates that are at high risk of being tainted by Uyghur forced labor.

State-Sponsored Forced Labor

The Chinese government has subjected millions of Uyghurs, Kazakhs, and Kyrgyz to forced labor in the Uyghur Region.³⁵ Analysis of government documents shows that the scope and scale of coercive labor transfers for Uyghurs increased in 2021, with an estimated 2 to 2.5 million people currently at risk of forced labor. In its Five Year Plan for 2021–2025, the Chinese government expanded “vocational training” and labor transfer goals with plans to assign everyone who is able to work into work placements.³⁶ The government offers financial subsidies for companies from across China to open factories in East Turkistan

³² “Uyghur Forced Labor Database,” Jewish World Watch, accessed on August 5, 2022, <https://jww.org/site/uyghur-china-forced-labor-database/>.

³³ Irina Bukharin, “Long Shadows: How the Global Economy Supports Oppression in Xinjiang,” C4ADS, August 2021, p. 4, <https://c4ads.org/long-shadows>.

³⁴ “U.S. Sanctions List,” Uyghur Human Rights Project, updated March 2022, accessed August 5, 2022, <https://uhrp.org/sanctions>.

³⁵ Vicky Xiuzhong Xu, Danielle Cave, Dr James Leibold, Kelsey Munro, and Nathan Ruser. “Uyghurs for sale: ‘Re-education’, forced labor and surveillance beyond Xinjiang,” Australian Strategic Policy Institute and the International Cyber Policy Center, 2020, p. 3, accessed on August 5, 2022, <https://www.aspi.org.au/report/uyghurs-sale>; Adrian Zenz. “Unemployment Monitoring and Early Warning: New Trends in Xinjiang’s Coercive Labor Placement Systems,” Victims of Communism Memorial Foundations, June 5, 2022, accessed August 5, 2022, <https://victimsofcommunism.org/publication/unemployment-monitoring-and-early-warning>.

³⁶ Adrian Zenz. “Unemployment Monitoring and Early Warning: New Trends in Xinjiang’s Coercive Labor Placement Systems,” Victims of Communism Memorial Foundations, June 5, 2022, accessed August 5, 2022, <https://victimsofcommunism.org/publication/unemployment-monitoring-and-early-warning>.

and employ Uyghur detainees and rural “surplus laborers” both in the Uyghur Region and in cities across China.³⁷

The supply chains of many foreign companies may be directly or indirectly tied to Uyghur forced labor. Over 800,000 companies in 147 countries, 2,114 of them based in the U.S., have been directly linked to the XPCC.³⁸ The XPCC is a major perpetrator of human rights abuses, including mass internment, surveillance, population transfers, and forced labor in East Turkistan, operating farms, ranches, and holding companies.³⁹ According to the Center for Advanced Defense Studies (C4ADS), the XPCC owns more than 50 percent of at least 13 red date companies in China.⁴⁰ Therefore, there is a high risk that the red dates in U.S. and international markets are tainted by Uyghur forced labor.

U.S. Government Policy

The Uyghur Forced Labor Prevention Act (UFLPA), which went into effect on June 21, 2022, requires the U.S. to detain, exclude, or seize any imports that originate, in whole or in part, in the Uyghur Region, or are made using the forced labor of Uyghurs and other Turkic peoples anywhere in China. Companies are responsible for conducting due diligence and demonstrating by

³⁷ Vicky Xiuzhong Xu, Danielle Cave, Dr James Leibold, Kelsey Munro, and Nathan Ruser. “Uyghurs for sale: ‘Re-education’, forced labor and surveillance beyond Xinjiang,” Australian Strategic Policy Institute and the International Cyber Policy Center, 2020, p. 15, accessed on August 5, 2022, <https://www.aspi.org.au/report/uyghurs-sale>.

³⁸ Irina Bukharin, “Long Shadows: How the Global Economy Supports Oppression in Xinjiang,” C4ADS, August 2021, <https://c4ads.org/long-shadows>; Sayari, “U.S.-Sanctioned Xinjiang Paramilitary,” August 4, 2020.

³⁹ “The Bingtuan: China’s Paramilitary Colonizing Force in East Turkestan,” Uyghur Human Rights Projects, April 2018, <https://uhrp.org/report/uhrp-releases-new-report-bingtuan-chinas-paramilitary-colonizing-force-east>; Irina Bukharin, “Long Shadows: How the Global Economy Supports Oppression in Xinjiang,” C4ADS, August 2021, <https://c4ads.org/long-shadows>; “2019 Xinjiang Production and Construction Corps Statistical Yearbook,” Table 9-1, p. 217, China Statistics Press, 2018, <https://www.shahit.biz/yearbooks/2019%20Bingtuan%20Statistica!%20Yearbook.pdf>.

⁴⁰ Irina Bukharin, “Long Shadows: How the Global Economy Supports Oppression in Xinjiang,” C4ADS, August 2021, <https://c4ads.org/long-shadows>.

“clear and convincing evidence” that their goods were not made with forced labor.⁴¹

Since July 31, 2020, the XPCC has been under **Global Magnitsky Sanctions**, prohibiting U.S. persons from conducting any transactions involving the XPCC, including any provision of funds, goods, or services.⁴² The sanctions were imposed for the XPCC’s connection to comprehensive surveillance, detention, mass arbitrary detention and severe physical abuse, among other serious abuses targeting Uyghurs. Despite the imposition of Global Magnitsky sanctions on the XPCC, products with the XPCC label continue to reach grocery store shelves in the U.S.

Case Studies

Blooming Import and Growland are the largest distributors of red date products sold in grocery stores in the Washington, D.C. metropolitan area.



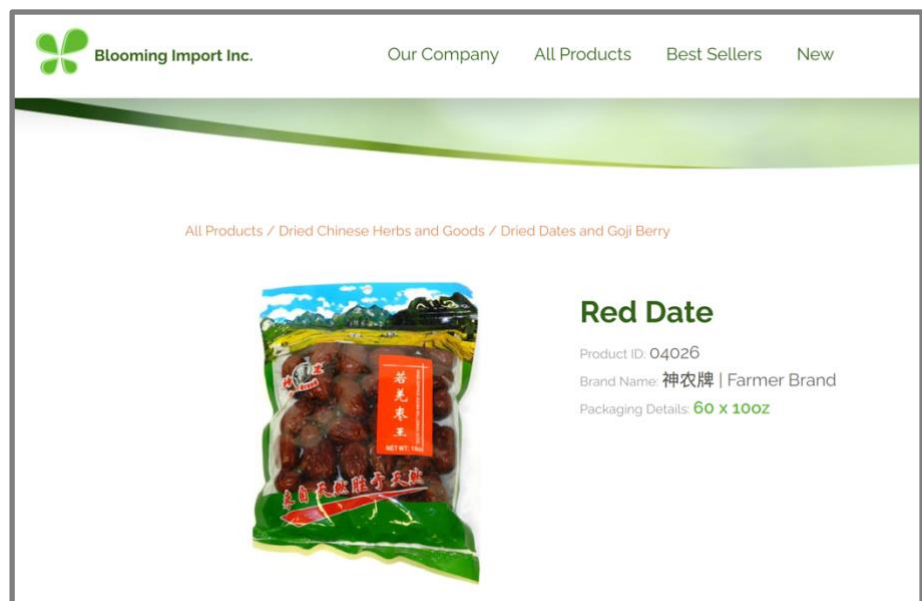
Blooming Import is a U.S. wholesaler based in Brooklyn, NY that sells Chinese food and snacks.⁴³ It sells Farmer Brand and Golden Lion red date products. A number of D.C. grocery stores carry its products, including 99 Ranch Market, Lotte Plaza Market, Fresh World, H Mart, LA Mart, Great Wall Supermarket, and Good

⁴¹ “Operational Guidance for Importers,” U.S. Customs and Border Protection, June 13, 2022, <https://www.cbp.gov/document/guidance/uflpa-operational-guidance-importers>; See also: “Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China,” June 17, 2022, <https://www.dhs.gov/uflpa-strategy>; “Xinjiang Uyghur Autonomous Region WRO Frequently Asked Questions,” U.S. Customs and Border Protection, undated, https://www.cbp.gov/trade/programs-administration/forced-labor/xinjiang-uyghur-autonomous-region-wro-frequently-asked-questions?language_content_entity=en.

⁴² U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), “Treasury Sanctions Chinese Entity and Officials Pursuant to Global Magnitsky Human Rights Executive Order,” July 31, 2020, accessed Aug 5, 2022, <https://home.treasury.gov/news/press-releases/sm1073>.

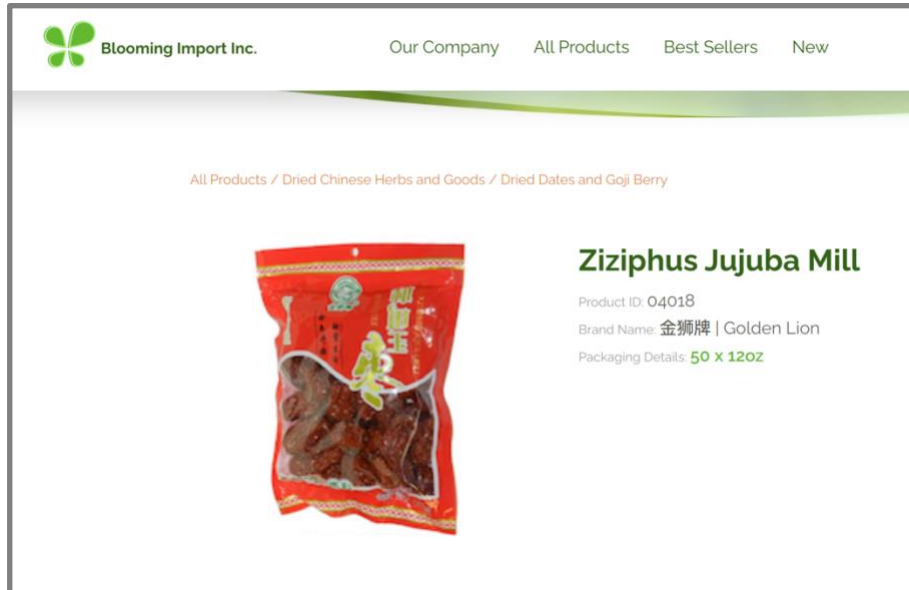
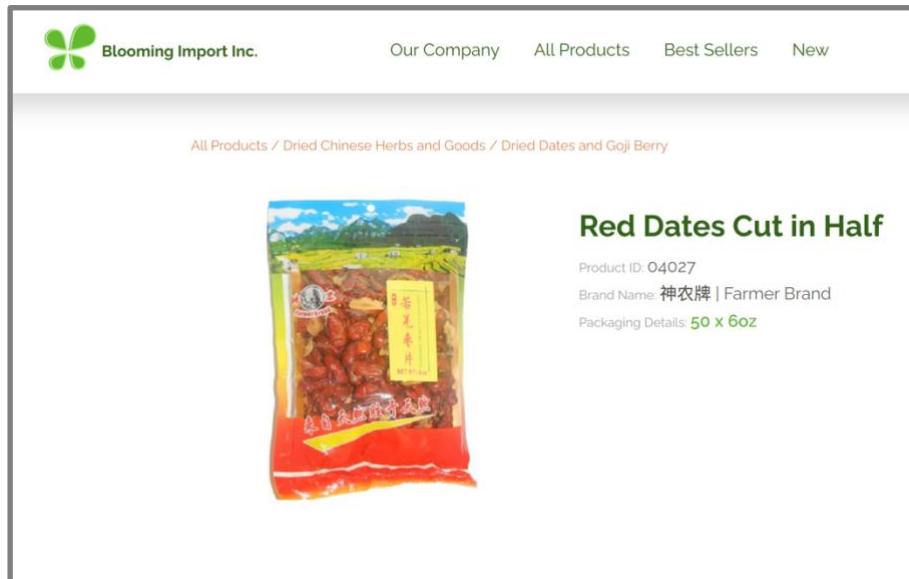
⁴³ See: Import Yeti, “Blooming Import,” <https://www.importyeti.com/company/blooming-import>.

Fortune Supermarket. Online grocery stores including sayweee.com and justasianfood.com also sell products from Bloomington Import. Blooming Import purchases red date products from Taishan City Daxin Food Co., Ltd. in Guangdong Province in China. Trade data shows Taishan City Daxin Food Co., Ltd. sent over 200 shipments of red date products to Blooming Import from 2015 to 2022, including 39 shipments in 2020, 40 shipments in 2021, and 25 in 2022.⁴⁴ Most recently, Bloomington Import received a shipment of over 17,000 kg of dried dates from Taishan City Daxin Food Co., Ltd. in June 2022.⁴⁵



⁴⁴ See: Import Yeti, "Blooming Import," <https://www.importyeti.com/company/blooming-import/>; C4ADS.

⁴⁵ See: Import Yeti, "Blooming Import," <https://www.importyeti.com/company/blooming-import/>.



Blooming Import Inc. sells Farmer Brand and Golden Lion red date products to international grocery stores in the U.S.

Growland is a U.S. distributor and brand based in Chino, CA that sells red date, goji berry, and mushroom products from China.⁴⁶ Growland has an online outlet (growland.shop) that currently ships eight red date products from East Turkistan (Aqsu, Ruoqiang [Kargilik], Khotan [(Hotan], Hami [Qumul], and Xinjiang) and one raisin product from Turpan under the category of "Chinese Health Center."⁴⁷ Growland brand products are



⁴⁶ See: Import Yeti, "Growland," <https://www.importyeti.com/company/growland>.

⁴⁷ See: Growland, <https://growland.shop/>.

found on the shelves of 99 Ranch Market and online at sayweee.com.

Trade data shows Growland purchased red date products from Gansu Growland Agriculture Development and from Yanchuan Senhai Agricultural Production.⁴⁸ Growland received at least ten shipments of red date products from Yanchuan Senhai Agricultural Production in Shaanxi Province from 2017 to 2018.⁴⁹ Growland received 14 shipments of red date products from Gansu Growland Agriculture Development in Gansu Province from 2018 to 2022.⁵⁰ Gansu Growland most recently shipped over 39,000 kg of red date products to Growland in July 2022.

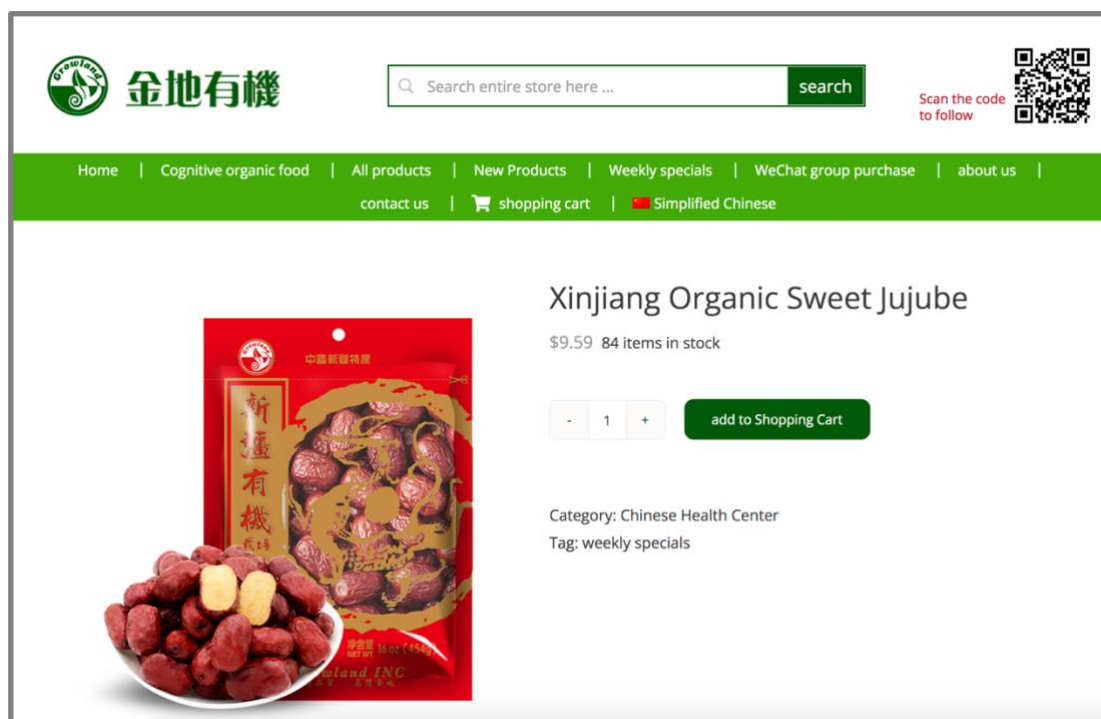


Growland promotes red date products as Chinese health foods.

⁴⁸ See: Import Yeti, "Growland," <https://www.importyeti.com/company/growland>.

⁴⁹ See: Import Yeti, "Growland," <https://www.importyeti.com/company/growland>; C4ADS.

⁵⁰ See: Import Yeti, "Growland," <https://www.importyeti.com/company/growland>.



Red date product sold on Growland's online shop.



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1602 L Street NW | Washington, DC 20036
+1.202.478.1920 | www.uhrp.org | info@uhrp.org

Mr. Estes. Thank you. There are so many issues to talk about. I would love to talk about some agriculture issues from Kansas with New York, but, unfortunately, I am out of time.

Mr. Chairman, I yield back.

Chairman Smith. Thank you. I would like to recognize the gentlelady from West Virginia, Mrs. Miller.

Mrs. Miller. Thank you, Mr. Chairman, and Ranking Member Neal.

And I want to thank all of you who are here today. What a gorgeous day. I, along with my chairman, probably wish that I was wearing the Panama hat that I received in Ecuador when we were down on a trade trip with many of our neighbors and allies talking trade.

I want to thank each one of you personally: Mr. Atkins, Mr. Hemminger -- I am a fellow farm girl member -- Mr. Turkel, all of you -- Mr. Romano, Mr. O'Shei, which we would say O'Shay in West Virginia, so I am sure you get that a lot.

I am from a beautiful State full of incredible natural resources and in particular water and these rivers that all flow down to the Ohio River. And Huntington, where I live, is either the first or second largest inland water way port. It depends on what Cincinnati has to say about that. But we move different things than you move right here in these ports.

Mr. Romano, I understand that your company is considering building a rare earth plant in Mississippi. And my home State of West Virginia, of course, has received similar interest in developing these capabilities and bringing in an essential part of the supply chain to the United States.

I am greatly concerned about China's dominance -- we keep hearing this through this entire discussion today -- and their dominance in the critical mineral market because

the United States absolutely has the capabilities to promote our own domestic industry. And for too long the Federal Government has gotten in the way. So, we are working to be able to change that.

Can you discuss what challenges your company has faced when deciding whether to develop critical mineral processing plants right here in the United States? And do you have any suggestions for Congress to ensure that the U.S. processing plants can be competitive in the current market?

Mr. Romano. Thank you for your question. So, as I mentioned in my testimony -- or maybe I did it in a question -- we have -- Monazite is a product that we mine at the same time that we mine titanium in South Africa and Australia. So historically what we have done with that, it was a waste stream that was being processed and sold to China. So, over the course of the last several years, we have turned that into a revenue stream. But now we are looking at how we can step down the value chain and actually build a facility in Hamilton and upgrade that product similar to the way we upgrade titanium dioxide.

So, there is a lot of money when you think involved in that. It is a capital expense. So, I use a different raw material, cobalt. You think about there is a company not long ago that just tried to build a mine there without any trade barriers. The mine came up and running, and what did China do? They dropped the price for cobalt. So, they have the same capability to do that in rare earth applications. And that is why China owns dominantly over 90 percent of that.

So, I think we have got to -- we are uniquely positioned as a miner and also an upgrader of raw materials to look at Hamilton as a facility. We believe that is a great location for us to expand our footprint, support the local employment of that area, and also be able to develop products that will be used here in America, and possibly even by the

U.S. Government. Monazite is the product that we would be selling into that -- for rare earth oxides, and it is used in military applications for F-15s. You think about -- every electronic device inside one of those F-15s has a motor in it. Those motors have rare earths in them. So, it is also wind turbines and electric vehicles. So, we are looking to see how we can partner with companies in the U.S. to make sure that we have not only a viable plan but one that is economical for us long term.

Mrs. Miller. One of the things I thought in office is that I wish I had a degree in chemistry, particularly because of the natural resources. And I think about all the byproducts left over from coal throughout the years. But I will switch direction with you a little bit to talk about how President Trump's section 301 tariffs against China could have helped your company remain as a viable competitor. I believe it is essential that we deliberate with our tariffs in a strategic, as well as providing potential relief for nonstrategic goods that are important to U.S. businesses. Can you talk about conditions for U.S. titanium dioxide producers before tariffs were imposed?

Mr. Romano. Yeah. So, again, I have been with this company for many years, and I have seen many plants close over time. So, we had production in Savannah, Georgia, where we made a titanium product that was specific to the paper industry. And I can remember having meetings with customers at that time telling them that we didn't choose to be competitive because the Chinese were bringing that material in at half our costs. Ultimately, that plant ended up closing. So, when we think about, okay, now fast forward to 2017 when the tariffs were put in place; there has been no plant closures.

Capacity has idled a bit, slowed down a bit just due to supply and demand. But capacity as nameplate has not changed. You think about the imports of TiO₂ into the U.S. versus our -- the consumption of TiO₂ in the U.S. versus production, we consume as a country about a million tons a year of titanium dioxide, and we have a capacity utilization

of 1.5 million. So, there is really no need to have that much material coming in. Those tariffs have been extremely helpful for us.

Mrs. Miller. That is great.

Mr. Atkins, thank you for hosting us here today. I have traveled extensively since becoming a Member of Congress, and I was thrilled to go to the Port of Singapore last year. As the operator of the second largest port in America, I would be very interested in hearing how you think U.S. ports compare to others globally and what role Congress plays in maintaining your competitiveness?

Mr. Atkins. Yes, ma'am. Thank you for the question. The U.S. side, it is a good blend of the equipment that we utilize and how we work with the workforce. Over in Singapore and a lot of the other ports around the world, they tend to be transshipment hubs, highly mechanized, highly automated. Automation doesn't necessarily mean that it is going to be faster. It just means that it is consistent.

We have an operation over in Bayonne that does have a degree of remote operation. We kept people in particular jobs in equipment that actually performs faster than some of these automated operations. So there needs to be continued investment across the board, as we talked about, on dredging, on the equipment that we have. I know there is a Buy America piece when it comes to these large gantry cranes that we talk about. There are just no manufacturers when it comes to any of these large cranes that you see. And these cranes on average are \$15- to \$18 million apiece. So, it is heavy, heavy investment. It is not responsible for any type of Federal grants or subsidies. So those are the type things that we can look to stay competitive with other ports around the world. But it is a good blend of the investment that you have on your infrastructure and the labor that you have on your facility.

Mrs. Miller. You answered my next question very well.

Thank you so much, and I yield back.

Chairman Smith. Thank you. Representative Kustoff.

Mr. Kustoff. Thank you, Mr. Chairman. Nice hat.

Thank you to the witnesses for appearing today.

Thank you, Atkins, for hosting us.

I want to go to you, and you talked about this in your testimony and in response to the questions, but maybe if I can go a little bit deeper. The volume here today is less and maybe substantially less than it was a year ago. Is that a fair statement?

Mr. Atkins. Yes.

Mr. Kustoff. And I think you gave these numbers, but can you give the numbers of today versus a year ago and maybe at the start of the pandemic?

Mr. Atkins. So, our numbers today, year over year, going back exactly 12 months, were approximately 42 percent down now as from where we were last year.

Mr. Kustoff. Give that number again, I am sorry.

Mr. Atkins. 42 percent. If you took our numbers that we have today and go back to 2019, as we classify as pre-pandemic, we are down about 15 percent year over year.

Mr. Kustoff. And how would you characterize the supply chain issues today as compared to a year ago?

Mr. Atkins. I think, as I phrased it earlier, the time kind of dissipated the supply chain issues. What we were experiencing last year was a large glut of cargo that all was getting pushed out at once where everything -- there was no place to put it.

Now that trade has slowed down and, you know, the inventory levels that we saw during the pandemic have come down, that has greatly eased, if not eliminated, the supply chain issues that we saw a year ago.

Mr. Kustoff. To be fair about it, it is more of a demand issue than it is a supply chain issue.

Mr. Atkins. Correct.

Mr. Kustoff. You have been in this business 30 years, you have seen up and down cycles. How would you characterize this cycle where we are now? Or are we in a cycle.

Mr. O'Shei. This is a very cyclical business. When interest rates are up, consumer purchasing goes down. When in 2008 and 2009, during the financial crisis, trade came pretty much to a grinding halt. So, we appear to be in self-correction period, I think you could call it, where we are -- you know, the shippers and cargo owners that you see across the board are working down their inventory levels. Once they get to a certain point, you will start to see a replenishment, and you should see volumes then coming back.

Mr. Kustoff. Okay. Where we are today, not a true definition, but would you characterize this as a -- is it softening, or are we in a recession now?

Mr. Atkins. Oh, math and economics was never my strong suit in college. But, from where we sit, you still see buying going on. We do employ outside economists to help us try to read the tea leaves. And you still see purchasing go on. It is just working the inventory levels down. So, I wouldn't call it necessarily a recession.

Mr. Kustoff. When you forecast out, say, 90 days, how does this seaport look then compared to now?

Mr. Atkins. From the larger shippers that we talk to, and cargo owners, they are saying third quarter you should start to see a bounce back.

But, historically, you start in June, inventory or volumes start to pick up, getting ready for back-to-school goods, starting to replenish warehouses for Christmas shopping, so forth and so on.

So, a combination of the usual annual cycle that you see, on top of inventories

starting to need to be replenished, should be around third quarter.

Mr. Kustoff. I think one example you gave was furniture and lack of demand.

Mr. Atkins. Yes.

Mr. Kustoff. And I think you characterized the rising interest rates. So, if you expand that out, if interest rates stay elevated compared to where they were, the demand for furniture may not be what it was a couple years ago.

Would that be a fair statement?

Mr. Atkins. That is a very fair statement.

Mr. Kustoff. If I can just in my remaining time, in your opening statement and in your written statement you talked about the media reporting in 2002 on the supply chain, blaming it on carriers, and that that was misplaced.

Mr. Atkins. Yes.

Mr. Kustoff. What were the reasons?

Mr. Atkins. The reasons were an oversupply of the material that was coming in, that there was no place left to go.

I mean, an ocean carrier does not make money with their vessel while it is sitting anchored for 2 weeks waiting to get into harbor. So, they have a vested interest to get in, get the ship discharged and out.

But marine terminals, whether it is East Coast or West Coast, both coasts, there was just no room left on the marine terminals to discharge vessels.

Mr. Kustoff. Thank you, Mr. Atkins.

Mr. Turkel, just briefly, since I am out of time.

We all know about -- following up on the supply chain -- what COVID demonstrated to all of us is we need certain manufacturing -- like to have all manufacturing -- but PPE and pharmaceuticals especially closer to home. And to your

point, I think you outlined it really well about the forced labor.

My question to you is, government can do what government can do. Doesn't private industry itself, though, have some responsibility as it relates to the forced labor?

Mr. Turkel. Absolutely.

The private sector has been doing two things.

One, during the process of passing this bill they were opposed to it, as you may recall.

And then after the bill, this legislation, became a law, they are trying to slow down the process of implementation.

And then the third thing that they are doing is not publicly talking about the things that they have done. When you ask them, "Why can't you just go out and tell them that you terminated your relationship with a questionable supplier?" they said, "Oh, there would be retaliation."

There is a company called OFILM that makes the iPhone screens. Apple let them go. But to this day Apple never talks about publicly why they let this company go.

So, the private sector has a huge responsibility. And now they should have found out that this country that they have been telling the American people is an ideal place for doing business is becoming increasingly hostile.

Ms. Malliotakis. [Presiding.] Thank you very much. Thank you very much.

The chair recognizes Ms. Tenney of New York for 5 minutes.

Ms. Tenney. Thank you very much.

Thank you to the chairman for bringing us here.

And thank you, Ranking Member Neal.

And also thank you to my colleague, Nicole Malliotakis, for hosting us here.

Nicole was part of our special Farm Bureau event when we were in the New York State

Legislature, adopt a New York City Legislator, where we brought her up to upstate New York to visit a farm, to see what it is like to grow up on a farm.

And so that is why I am just so excited and glad to be in Staten Island for my first time. Sad to say I haven't been here sooner. What a beautiful spot.

And thank you to Mr. Atkins also.

And I just want to say especially thank you to Mr. Hemminger for your great testimony today. You are a very popular person on the panel today.

And we appreciate your leadership in New York as an agricultural leader, as someone who started with just a small dairy farm and turned it into a large enterprise with real automation. We watched your cows. I got to visit the farm and watched them waiting in line to get into the self-milking machine. That was pretty incredible to see. And then to expand into the crops that you do.

We are grateful that your family is still part of this business. I think that is so important, to highlight your family is part of all of this, and they are still involved.

You are devoted to New York State. You face the obstacles, and you are continuing to go forward. Not everyone in agriculture has been able to do that.

But, yet, New York State is one of the most important agricultural leaders. And, in fact, New York 24, which I represent, is the number one agricultural district in the Northeast and the number one dairy producer in the Northeast.

People find that incredible to believe, but I know Ms. Malliotakis knows all about that because she has now been to upstate New York and toured around, and just to see how beautiful it is and how wonderful our soil is, something you talked about, the importance of soil, water, the great resources we have. And yet we have a government that makes it difficult sometimes for us to operate.

So, at your business, though, I saw a lot of great workers who are grateful to you,

grateful to your leadership, a lot of very happy cows. It seemed they enjoyed a good atmosphere, good weather conditions, good nutrition, and that is the secret to producing.

I also wanted to say, your leadership is not just your family but everyone -- and I wanted to just say, you have this expression which I actually wrote -- I took a picture of it when I was at your firm, and I could see it in your employees, your family, your happy cows.

And Hemdale Farms has this thing called COW TAILS. And the C stands for can-do attitude. The O for ownership, and everyone has an ownership in the business, including your great employees, that are foreign workers in some cases. Winners, having fun, and everybody was obviously having fun, especially the cows.

Teamwork. Accepting change, which you have been through in order to survive in New York; it is a tough place to be. Integrity, which is really important, and a lot of people don't understand how important our agriculture businesses are.

Land and environmental stewardship, something that our farmers are doing every day, and preserving our communities and our land, our great land. And you mentioned something about that in your -- and I want to ask you about the solar panels. Instead of growing apples, we are growing solar panels as a specialty crop. And I say that as a joke.

And service to community and family.

And I just want to say this is a great motto that you keep, and that is why, I think, a secret to your success.

Pretty much everyone has asked you about all the different issues, whether it is dealing with the USMCA, the unfair trade with Canada, your 30-year struggle to get your products into Canada and around the world.

And then you also talked a lot about labor and our farm worker labor bill that we have tried to get through in many ways and having people understand that, the challenges

with E-Verify.

But I wanted to ask you a little bit about what I mentioned just now, which is the specialty crop known as solar panels, and a little bit about what is going on with energy in New York State.

So, the Democrats, who control everything in New York State on the government level in terms of the State, just passed a \$229 billion tax-and-spend package, the largest budget in New York State history, even beyond what we thought after the American Rescue funds of \$12 billion were inserted into it. This makes the budget the first ever to ban hookups to natural gas coming down the road.

How is energy impacted in your district, your operation, as a multifaceted agricultural industry? And what is the future with this? And is this sustainable considering the cost of -- whether we are talking about the cost of fertilizer, maintaining your dairy operation, maintaining all of your operations, to get them to market?

Mr. Hemminger. Well, thank you for the compliments, Congresswoman Tenney.

We are very concerned about this energy piece. To me, it is way too much too fast. You would be interested to know my greenhouse operation had the land already to expand to a couple more greenhouses waiting for the farm labor bill to get resolved. And because of that, and where we are today, we have not built those greenhouses. We are turning business away.

Those greenhouses are heated by propane. No one has figured out how to heat a greenhouse efficiently with electric yet. And we dry the corn. We have to feed the cows in the winter for grain. That portion of their diet we dry with propane. And, of course, the robotic milkers are run with electric. And then the tractors run with fuel, the trucks with diesel, and whatnot.

I am very concerned. I am actually confused. I don't believe that this is going to

work.

And I will just say again, as I said earlier, we are looking more and more at just becoming a grain-only farm and having a fraction of the employees we have and buying a big combine right now with a little bit of grain. I have a neighbor with a great combine who is a great operator run it. And just changing our focus and having a lot less employees and a lot less balls in the air because we don't believe we are going to be able to survive.

My friends in the fruit business, apple harvest in particular is their number one cost. Labor is over half their expense at an apple farm. And they are seriously going to bulldoze their trees out and put in solar panels.

In western New York near Batavia, there is a 400- or 500-acre area of beautiful vegetable ground, farmland that is being developed into solar right now.

I am all pro-solar, but I believe my children or my grandchildren's generations will say, "What were they thinking, letting some of the best farmland in the world have all these solar panels on it?"

Ms. Malliotakis. Thank you.

Mr. Hemminger. I am all pro-solar.

Ms. Malliotakis. Thank you, Mr. Hemminger.

Ms. Tenney. Thank you so much.

I yield back.

Ms. Malliotakis. I would like to recognize Mr. Moore of Utah for 5 minutes.

Mr. Moore of Utah. Thank you. Great job hosting. Wonderful venue.

Thanks for setting this all up for us today.

Mr. Romano, your line of questioning with my colleague from West Virginia actually hit on one of the things I wanted to talk about. So, instead, I am going to pivot

and actually ask you and Mr. Turkel to just reiterate for the group today just the salient point in both of your areas.

Mr. Romano, you are talking a lot about competitiveness with China and some of the unfair practices that they are doing with respect to international trade.

Mr. Turkel, we are talking forced labor camps in Xinjiang Province with the Uyghur population, something I am proud that the U.S. is working on. We are not there yet, but we are taking action on this.

Just clearly communicate to us one more time, what do we and the rest of the world or those partners of ours across international coalitions need to continue to do or do more of to combat both of your areas of influence and expertise?

Mr. Romano. So, as I mentioned, I gave a couple of statistics around what is happening in other areas of the world where things like Section 301 are not being utilized.

It is very public what some of the Chinese companies are doing. Actually, I have got a document here that shows what the largest company did. I made reference to it in my presentation, where they are publicly saying they are at 50 percent, they are adding more capacity, and their goal is to see the removal of Western suppliers.

So, it is not just in the U.S. We operate on six different continents. The U.S., we have our largest TiO₂ facility, but we also operate on every continent. We sell into 120 different countries. We have a plant in Brazil where exports into Brazil have gone from 60,000 tons to 90,000 tons. The way they are continuing to penetrate, using stolen technology in many instances, and then expanding that.

There is a book called "Tiger Trap," which is a great read, and it talks about how over time, decades, the Chinese accumulate technology and then eventually start to put that in place, and that is what you are seeing now. We have had experience with plant closures in Georgia, as I have mentioned. We closed a plant in Antwerp. There are at

least two companies today in Spain and Germany that are looking at closing down.

So, it is not just the U.S. The U.S. has done a great job of managing that and, again, protecting U.S. business, and particularly our businesses. But it is continuing to reinforce what has been happening and continuing to reevaluate, are those tariffs high enough?

Today the Chinese -- you can use an average price of our product today is around \$3,000 a ton. In many instances, we are being undercut by more than a thousand dollars a ton, and we know these companies are not making money.

Mr. Moore of Utah. Thank you.

Mr. Turkel?

Mr. Turkel. Thank you.

For starters, we have to acknowledge, recognize our own problem, which is our complicity in the ongoing atrocity crimes. American consumers need to know that more than 80 global brands that we consume on a daily basis -- agricultural products, cleaning supplies, solar panels, EV batteries -- literally everything is made with slave labor. I just mentioned 55,000 entities doing business in the Uyghur homeland, Uyghur region. That explains.

And then, two, we need to close the loophole. The de minimus is one of the areas that we need to target.

I commend the 24 Members of Congress who recently wrote asking the SEC to demand the Shein Company to go through mandatory independent auditing. That is one way to look at it.

And then also naming and shaming, it is so important. When you deal with the issues at this magnitude, we should not let any perpetrators, any bad actors, to stay anonymous.

We have about 50,000 companies that have been responsible for internal labor transfer. We should go after them if 55,000 is too much to deal with.

And also, finally, we need to stop investing in our own self-destruction. The American people are still investing in Chinese high tech. There are 64 companies that have been sanctioned because of the human rights abuses. Only 11 of them are listed or identified as the companies that the American people should not invest, make an investment.

Mr. Moore of Utah. Thank you so much.

Mr. Hemminger, in the few seconds left, just to thank you for your work with respect to USMCA. My northern part of Utah, where my district is, strong dairy producers. And so, the work you are doing can create competitiveness, and making sure we are all playing by the same rules is very important.

And thank you for your comments as well on immigration and comprehensive immigration reform. We have to think about every step of this, and it is great to hear your perspective.

So, thank you.

And I yield the time that I don't have back.

Ms. Malliotakis. Thank you very much.

The chair recognizes Mrs. Steel from California for 5 minutes.

Mrs. Steel. Thank you so much.

Thank you to all the witnesses coming for this important hearing and raising awareness about the issues at our ports.

Even though the Los Angeles and Long Beach ports are the biggest ports in the United States, companies are leaving Long Beach and L.A. Ports in California have been in chaos and now have turned into ghost towns. West Coast ports have major backlog

caused in part by ships idling off the coast of southern California.

And to make matters worse, California regulations like AB5 and new environmental regulations cause independent truckers to leave California and they cannot come back in.

There has also been a yearslong headache around the longshoremen's contract, which is still being negotiated. It is almost a year now.

In 2023, the output at Long Beach and L.A. ports are down 30 percent. You said here 42 percent, but 30 percent compared to the first quarter of last year.

The fiscal year 2023 NDAA included my Supply Chain Task Force Act to ensure the government works with our ports to improve effectiveness.

So, Mr. Atkins, our ports need to allow automation, you just talked a little bit about it, and modernization to compete with our major port. We need to ensure that our ports are always modernizing so that we can expand trade and move goods.

Do you think we can enhance ports with the new technologies and automation that will help protect our workers and allow us to compete with other ports around the world?

Mr. Atkins. Well, that is a fantastic question, and it is one that is equal on the East Coast and West Coast.

I don't think we should confuse automation with modernization. Modernization of ports means bigger cranes to service the larger ships.

When we talked about dredging in New York, in 1997, the industry thought 5,600 TEUs, twenty-foot equivalents, was going to be the biggest ship this harbor would ever see. We are now handling 16,000 TEU-sized vessels, and they are scrapping vessels smaller than 8,000 TEUs.

So, modernization really is keeping up with the size of the vessels, looking at sustainability with hybrid equipment, all-electric equipment, and also using data to be able

to streamline and pass off cargo from one part of the supply chain to the other.

So there needs to be a consistent investment in the harbors and the ports to be able to handle the larger ships. And larger ships are beneficial to the U.S. consumer because the economy of scales of a container load of shoes coming on a 16,000-TEU vessel means it is much cheaper transportation costs than on the smaller vessel.

So, it is incumbent upon government and private industry to keep investing in the infrastructure and modernizing these facilities, and everyone benefits from that.

Mrs. Steel. Thank you for that answer.

I have a question to Mr. Romano.

I just read a Korean newspaper -- I speak Korean as my first and Japanese as my second, so I read all these newspapers. And CCP -- actually, Korea doesn't have those kind of, like, battery-building materials.

So, what happened was yesterday they just announced that they are going to invest over a trillion dollars to Korea, and they are building these batteries, and then they want to sell it that it was made in Korea and coming into the United States.

How are we going to stop these kind of loopholes?

Mr. Romano. Yeah, that is a great question.

Korea is a big market for us. It is probably the third-largest market we sell into behind India.

I made reference to that even in Africa with regards to the minerals that are being mined in that area by Chinese producers who historically don't own assets there. I was not aware of the article you just referenced in Korea.

But it is one of the biggest struggles that we have. And I think the best thing we can do in the U.S. is support development of that technology in the U.S., and other countries like Korea should do the same.

Korea is a huge trading partner with China. A lot of our business in Korea over the course of -- through the pandemic has been significantly impacted because China slowed down their production; therefore, Korea slowed down theirs.

So, I think what we are talking about here in the U.S., trying to reinforce how we can make in the U.S. and sell in the U.S., other countries need to do the same thing.

Mrs. Steel. Thank you.

I yield back.

Chairman Smith. [Presiding.] Thank you.

Ms. Van Duyne.

Ms. Van Duyne. Thank you very much, Mr. Chairman.

China has been aggressively signing trade and economic agreements across the Indo-Pacific, Latin America, and in Africa, as we all know. The result is that these countries and these regions are growing more dependent on Chinese technology companies and supply chains, opening the door for China's authoritarian digital practices to take root and putting U.S. technology companies at a significant competitive disadvantage. And this all serves China's broader strategic interests.

Furthermore, China's lack of transparency and disregard for human rights has led to a growing concern among many nations.

I recently traveled to Cambodia and Singapore to discuss trade issues, and the resounding message that we heard was the Biden administration continues to leave a void that China is more than eager to fill, and as a nation, we must reclaim our leadership on the global stage and hold China accountable when it comes to its trade and global influence.

Trade enforcement must be targeted to cut off unfair trade while facilitating swift movement of fairly traded products. Small businesses facing historically high inflation and a protracted supply chain crisis cannot afford all of this unnecessary red tape.

The United States must hold China accountable for its human rights abuses and predatory trade practices that devastate American jobs. And I am glad to join my colleagues on this committee and work to improve our supply chain and advance a trade agenda that protects American workers.

Mr. Turkel, you had mentioned in one of your answers just recently, you were talking about how the U.S. needs to stop fighting against itself. Can you expand on that?

Mr. Turkel. You mean the -- can you repeat that question again?

Ms. Van Duyne. You had mentioned earlier, in one of your last answers, that the U.S. needs to stop fighting itself.

Mr. Turkel. Well, yeah, I mentioned that for two reasons.

One, the American consumers continue to purchase those tainted products that have been shipped out of China through the global supply chain.

And then, two, American investors' pension funds are fueling this genocide and contributing to the Chinese political economy.

And, finally, the Chinese tech -- it is going both ways actually -- has been so effective, and it is Chinese developed, tested, utilized, and now exporting all around the world. And some of our Silicon Valley companies that are silent on this issue have been helping the Chinese high tech. That is what I meant when I said we need to stop.

Ms. Van Duyne. I would also argue that the U.S. Government is doing the same thing. Last year, I had introduced an amendment when I was on the Transportation Committee, and the amendment would prevent the U.S. from importing materials that were mined with forced labor or child labor. I couldn't get a single Democrat to support that amendment.

Do you believe that that is happening today? Are we importing minerals that have been mined by child or forced labor?

Mr. Turkel. It is highly likely. I am not a solar panel expert, but I have consulted with people who know the industry, for example.

The type of dirty work, using coal to make solar panels, specifically Uyghur youth being subject to, is something that the Chinese population, the majority Han population, will not be involved in and engaging in.

So based on that, and also the internal migration that has been in practice for years, even while I was living in China in the 1990s, points to the direction that the Uyghur youth have also been subject to forced labor practices.

Ms. Van Duyne. Thank you very much for that answer.

Mr. Romano, your company is using a supply chain, and it is trying to create a rare earth mineral plant in Mississippi.

Recently the Biden administration signed critical mineral agreements with Japan and are currently negotiating with the EU. These agreements lack safeguards of where they are sourced, where they source their critical minerals, and make us again more reliant on China.

Can you tell me a little bit about what Tronox is doing to build up the rare earth domestic industry? And what policies can the U.S. purpose to ensure that critical minerals are produced here at home?

Mr. Romano. Yeah. Thank you for the question.

So, as I mentioned earlier, we have for many years been mining rare earth materials in the form of monazite and have been processing that up until recently and been selling it to China.

So that is where the market is. We talk about how does China get to the point where it is today? It is because they control the market. They have more than 90 percent of the production capacity.

So, what we are looking at doing now is building a facility in Hamilton, Mississippi, where we would take the products that we would have historically shipped to China and bring them into the U.S. and upgrade those into products that can be used in the magnets that I referred to earlier.

I think there has got to be some sort of -- 301 is another good example of how we have managed our core business, which is TiO₂, but making sure that China can't do what they have historically done, and that is drop the price very quickly where it makes it uneconomical for people like us to look at investigating expanding what would be a natural transition from us for mining those products and selling them to mining them and upgrading them and selling them into the U.S.

We are looking at getting some funding from the U.S., and we are making good progress in that area. But I think USTR 301 trade tariffs have had a huge impact on our business. Those kinds of things will help us make sure China doesn't do that to us in this particular space around minerals, around rare earths.

Ms. Van Duyne. Excellent. Thank you.

I yield back.

Chairman Smith. Thank you.

Mr. Feenstra is recognized.

Mr. Feenstra. Thank you, Chairman Smith.

And thank you, Congresswoman Malliotakis, for allowing us to be in your district. It is pretty awesome.

Iowa is one of the largest agricultural producers in the world, and my district is at the heart of that. We rank number one in virtually all ag categories, including pork, eggs, grain, soy, livestock, and so forth. Actually, one out of every five jobs in Iowa depends on trade and foreign markets.

Here is the problem. More than two-thirds of all ag exports are traded with six partners: China, Mexico, Canada, Japan, EU, and South Korea. They all have the same thing in common: They allow, for the most part, free trade agreements. And China, obviously, makes up, dangerously, the largest proportion of all of these countries combined.

It is clear that we need to establish more free trade agreements. Opening new export markets will help American businesses and farmers at the same time to reduce the intense dependency on China.

So, Mr. Hemminger, my question is this. Having more customers buying your products with new export markets is essential. How important is diversification of export markets to your business?

Mr. Hemminger. Well, it is very important. And like I said, we wish we could send back to Canada the things that we are producing because they are a big competitor of mine with the greenhouse business and the vegetable business. So, the diversified opportunities are very important.

We have consciously made a decision not to be just a grain farmer. That is just how we are put together. We always grew a bunch of vegetables for Birdseye, and now we have transitioned to what we are doing now.

So, to answer your question, I believe that we as a country, and also to keep ourselves diversified, diversified crops in many, many different markets is critical.

Mr. Feenstra. Yeah. And I wholly agree with you. I mean, you think about what is happening right now, when we have such a narrow market group of six, a few more here and there. It is really worrisome, especially in our commodity markets right now, of how that changes price when you have one company saying, "Hey, I am going to buy X and not buy."

You talked about Canada. Now you need to think about China, Phase 1 and Phase 2 trade deals and stuff like that. Phase 1 went through; Phase 2 very little.

Can you just talk a little bit more about that, of when you see trade markets failing or that just never happens, for instance, like China? How does that affect your business?

Mr. Hemminger. Well, it is real simple: Without markets we don't survive. Okay? And that is what happened with Birdseye. I started to see my neighbors and competitors and actually some cousins leave the business and thought, "Well, I will be one of the survivors." Well, in the end it didn't matter. They sold every plant, and they are buying stuff overseas.

But back to your comments about China. I just read this week one in six bushels of soybeans produced in the world is used by China. You talk about a centralized market. And soybeans have become critical to the future, to American ag. Certainly, you know more about this than I could ever imagine.

Mr. Feenstra. Well, no, and you hit it on that. Seventy-one percent of our soybeans go to China. That is a killer. So, if they don't buy it, obviously, we are going to get crushed.

And I thank you for your comments on that. I mean, this is so critical to the American farmer. I just don't hear it from the administration, how important agriculture is and how important our exports are. And we have Katherine Tai that is just sitting on her hands, not doing anything for the ag community.

One other barrier to new export markets is the lack of cold chain storage in many of our developing markets. The lack of cold chain is one of the major barriers in expanding and diversifying markets in new countries. Each year we lose billions and billions of perishable food products due to poor cold chain system conditions.

Mr. Hemminger, could you talk about this? Obviously, you have dairy. I have a

lot of dairy in my district. I also have a lot of livestock that is perishable, needs to be refrigerated. How does this affect you also when the cold chain storage is very weak in a lot of developing countries and how we can expand on that?

Mr. Hemminger. Well, it is just common sense. We have to have cold chain to maintain all the way to the consumer at the other end. And without that, food spoils. So, your point is well taken and very important.

Mr. Feenstra. Yeah. Thanks.

Again, we have talked about expanding markets. We need free trade, but we also need developing countries to look at how we can handle cold storage. I mean, that, again, helps dairy, helps livestock, helps all our producers. And, again, this is all tied in.

And then, finally, I think I have got -- if I can see the clock -- I have got a little bit of time left.

Mr. Hemminger, you said this in your testimony: GMOs are the most important scientific breakthrough in history for the future of feeding a hungry world of 8 billion people.

We know GMOs are so essential, and yet there are a lot of countries, like Mexico and others, that are sort of stepping back and concerned about this. What would you say to those countries?

Mr. Hemminger. There is no scientific base to stand on that says that GMOs have any concern at all. You can actually find natural GMOs in our foods that have evolved on their own.

And there is not a question in my mind that as we continue to go from 8 billion people that we hit last fall in the world, and they are talking about it being at 9 billion people here in a bit, that we need science-based technology to feed this world. And I just hope we have an infrastructure to get the food around the world to the people that need it.

Mr. Feenstra. Well, thank you.

I want to thank each one of you for each of your testimonies. It is so critical that we expand our export market and do things, even in the Ag Committee when we have the next farm bill coming up, with MAP and other areas, that we can grow to expand our export markets. And it has got to be the number one thing for me in Agriculture to get done here in the next farm bill and through our Ways and Means. It is so essential for this country.

Thank you, and I yield back.

Chairman Smith. Thank you.

I want to thank every member of our committee. I want to thank Ranking Member Neal for being here, Republicans and Democrats, part of a historical hearing where it is, like I said, they say it is the first outside full committee hearing in a hundred years, and it is right here in Staten Island.

I also want to thank the Global Containers Terminals here in New York for hosting it, and also the Port Police and Guards Union and the International Longshoremen's Association for all of your support.

And, of course, Representative Malliotakis for hosting it. We appreciate your hospitality.

Please be advised that members have 2 weeks to submit written questions to be answered later in writing. Those questions and your answers will be made part of the formal hearing record.

I want to thank each and every one of you again as well for taking time out of your busy schedule and for being here and sharing some good information.

With that, the committee stands adjourned.

[Whereupon, at 12:34 p.m., the committee was adjourned.]

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Committee on Ways and Means

Future of Trade: Supporting American Workers & Countering China-Staten Island, NY

We want to hear your story. Below please provide any personal experiences or general comments about the state of the American economy that you wish to be included in the official hearing record.

- MARITIME PROFESSIONAL
 - MATCH OTHER COUNTRY'S POLICY TO PROTECT MARITIME RESOURCES BY REQUIRING INTERNATIONAL TRADE MINIMUM PERCENTAGES TO MOVE ON US SHIPS WITH US CREWS. BALANCE THAT WITH A SIMILAR PERCENTAGE OPENING OF JONES ACT CARGO TO ENABLE EXPANSION OF MARITIME ACTIVITY THAT IS CLEANER AND LESS EXPENSIVE
- START UP EXPERIENCE
 - MORE SUPPORT FOR SMALL INNOVATIVE BUSINESS. WE GET THINGS DONE, BUT MAY NOT BE ABLE TO CONTRIBUTE DOLLARS TO ~~THEIR~~ INFLUENCE POLICIES.

Date	May 9, 2023
Name (Print)	LEITH CAMPANELLA
Company	

WRITTEN SUBMISSION TO BE INCLUDED IN OFFICIAL HEARING RECORD

Committee on Ways and Means

Future of Trade: Supporting American Workers & Countering China-Staten Island, NY

We want to hear your story. Below please provide any personal experiences or general comments about the state of the American economy that you wish to be included in the official hearing record.

WHY DO WE CONTINUE TO PROMOTE
ELECTRIC VEHICLES WHEN MANY OF
THE COMPONENTS COME FROM FOREIGN
COUNTRIES. (SPECIFICALLY CHINA).

Date	May 9, 2023
Name (Print)	Michael Autbelli
Company	

WRITTEN SUBMISSION TO BE INCLUDED IN OFFICIAL HEARING RECORD

Committee on Ways and Means

Future of Trade: Supporting American Workers & Countering China-Staten Island, NY

We want to hear your story. Below please provide any personal experiences or general comments about the state of the American economy that you wish to be included in the official hearing record.

Being Reliant on Medicine and Energy From Other Countries,
Make us weaker in the world.

Date	May 9, 2023
Name (Print)	CARA BUONINCONTI, ESQ.
Company	

WRITTEN SUBMISSION TO BE INCLUDED IN OFFICIAL HEARING RECORD

Committee on Ways and Means

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We want to hear your story. Below please provide any personal experiences or general comments about the state of the American economy that you wish to be included in the official hearing record.

I want to Thank The Committee in their efforts to curtail China's dominance in trade.

American workers need our continued support. Our once robust economy will improve with this support and commitment.

As a child of a WWII veteran who gave his all for this country, my prayers are with you in this endeavor,

PUBLIC SUBMISSIONS FOR THE RECORD

Congress of the United States
House of Representatives
Washington, DC 20515-3221

Statement for the Record

House Committee on Ways and Means
Field Hearing on “Trade in America: Securing Supply Chains and Protecting the
American Worker – Staten Island”

April 23, 2023

I am pleased to provide the following statement to the House Committee on Ways and Means for the field hearing “Trade in America: Securing Supply Chains and Protecting the American Worker – Staten Island.”

A critical component of securing American supply chains and empowering American workers who are the backbone of those supply chains is ensuring American ports of entry are adequately resourced to be able to execute their crucial role in the American supply chain. Currently, the ability of two border airports to fully participate in activities to secure our supply chains are inhibited by the failure of U.S. Customs and Border Protection (CBP) to designate or combine two primary commercial service airports along the U.S. border as local designated Ports of Entry (POE). The two airports most severely impacted by this are Valley International Airport (HRL) in Harlingen, Texas, and Plattsburgh International Airport (PBG), in Plattsburgh, New York.

PBG is currently the only primary commercial service airport in the Northeast region designated as a user-fee airport, instead of a POE. This situation creates a significant disadvantage for PBG in its ability to fully participate in its role in securing supply chains, as it costs the airport in excess of \$500,000.00 annually. Per Treasury Decision (T.D.), *Customs Criteria for Establishing Ports of Entry and Stations*,¹ the actual or potential customs workload in an area and the combination of vehicles at land border ports and international air arrivals are criteria that should be considered when establishing customs ports of entry and stations.

CBP has terminated the user-fee status of airports in the past by implementing the aforementioned methodology to change the designation of the New River Valley Airport in Dublin, Virginia. CBP explicitly stated in its final rulemaking that the potential customs volume in the region supported CBP’s final rule establishing a POE at New River Valley, Virginia.

¹ Treasury Decision 82-37 (Revision of Customer Criteria for Establishing Ports of Entry and Stations).

Unfortunately, even considering the authority provided in T.D. 83-37 and CBP's precedent terminating the user-fee status of other airports by the same methodology, CBP has repeatedly refused to consider this same action for HRL and PBG. Because of this, a legislative solution is required.

My legislation, the *Border Airport Enhancement Act*, would address this by designating PBG and HRL as ports of entry. This legislation will allow these airports to compete and fully participate in their roles securing American supply chains along with other ports of entry. I thank Chairman Smith for holding this important Field Hearing and look forward to working with the Committee to continue to secure American supply chains and protect the American worker.



**STATEMENT OF ANTHONY M. REARDON
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION**

**FIELD HEARING ON TRADE IN AMERICA: SECURING SUPPLY CHAINS
AND PROTECTING THE AMERICAN WORKER – STATEN ISLAND**

**BEFORE THE COMMITTEE ON
WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES**

May 23, 2023

Chairman Smith, Ranking Member Neal, distinguished members of the Committee, thank you for the opportunity to provide this testimony. As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents 29,000 Customs and Border Protection (CBP) Officers, Agriculture Specialists and trade enforcement and compliance specialists who are stationed at 328 air, sea, and land ports of entry across the United States.

Customs and Border Protection Entry Specialists, Import Specialists, Paralegal Specialists that determine and assess fines, penalties and forfeitures, Customs Auditors and Attorneys and other trade compliance personnel are the frontline of defense against illegal imports and contraband. These employees enforce over 400 U.S. trade and tariff laws and regulations to ensure a fair and competitive trade environment pursuant to existing international agreements and treaties, as well as stem the flow of illegal imports, such as illicit opioids, pirated intellectual property and counterfeit goods, and contraband such as child pornography, illegal arms, weapons of mass destruction and laundered money. These **CBP employees also collect revenue—processing more than \$3.35 trillion in total import value of goods and collecting more than \$111.8 billion in total revenue in Fiscal Year (FY) 2022.**

Along with facilitating legitimate trade and enforcing trade and security laws, CBP trade personnel are responsible for stopping illegal transshipments; goods with falsified country of origin; goods that are misclassified; and collecting antidumping and countervailing duties.

Trade Enforcement and Compliance Staffing

When CBP was created in 2003, it was given a dual mission of not only safeguarding our nation's borders and ports from terrorist attacks, but also the mission of regulating and facilitating international trade. CBP is responsible for collecting import duties and ensuring importers fully comply with all applicable laws, regulations, quotas, Free Trade Agreement (FTA) requirements, and intellectual property provisions.

Customs revenues are the second largest source of federal revenues collected by the U.S. Government after tax revenues, and that revenue funds other federal priority programs. NTEU is deeply concerned with the lack of resources, both in dollars and workforce, being devoted to CBP's trade functions. Lack of sufficient focus and resources not only costs the U.S. Treasury in terms of customs duties and revenue loss, but also costs American companies in terms of lost business to unlawful imports.

CBP needs sufficient trade personnel to ensure compliance with and enforce trade laws. In addition to ensuring that there are enough personnel to manage the growth in trade and complexity, CBP non-uniformed trade personnel need to be trained and expert in both modern business practices and in traditional competencies such as classification, valuation, compliance, and enforcement.

According to CBP most recent Resource Optimization Model (ROM) for Trade issued in 2021, there are 2,349 CBP revenue occupations personnel onboard, 154 positions short of the CBP revenue staff authorized by Congress. These occupations include Import (937), Entry (395), Fines, Penalties and Forfeiture (84) National Import (89) and International Trade Specialists (197); Customs Auditors (321), Attorneys (111) and Chemists (106).

By law, CBP must submit to Congress its Trade ROM every two years. It is our understanding that CBP has not yet provided its FY 23 Trade ROM to Congress and NTEU urges the Committee to request CBP to provide FY 23 Trade ROM expeditiously.

Continuing staffing shortages, inequitable compensation, and lack of mission focus are the main reason experienced CBP commercial operations professionals at all levels, who long have made the system work, are leaving, or have left the agency. Further, more than twenty-five percent of CBP Import Specialists will retire or be eligible to retire within the next few years.

When Congress created the Department of Homeland Security (DHS), the House Ways and Means and Senate Finance Committees included Section 412(b) in the Homeland Security Act (HSA) of 2002 (P.L. 107-296). This section mandates that "the Secretary [of Homeland Security] may not consolidate, discontinue, or diminish those functions...performed by the United States Customs Service...on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions."

In October 2006, Congress enacted the Security and Accountability For Every (SAFE) Port Act (P.L. 109-347.) Section 401(b)(4) of the SAFE Port Act directed the DHS Secretary to

ensure that requirements of section 412(b) of the HSA (6 U.S.C. 212(b)) are fully satisfied. CBP satisfied this statutory requirement by freezing the number of “maintenance of revenue function” positions at the level in effect on the date of creation of the agency in March 2003. As you know, CBP was created by the merger of the former U.S. Customs Service, the Immigration and Naturalization Service, and the Animal, Plant, Health Inspection Service. In March 2003, the number of commercial operations employees at the former U.S. Customs Service was significantly less than prior to 9/11.

In March of 2003 when CBP stood up, there were only 984 Import Specialists on board. That is 265 Import Specialist positions less than the 1998 base total, and 505 less than the FY 2002 Import Specialists optimal staffing level. A significant reduction in the number of “maintenance of revenue function” positions had occurred at the U.S. Customs Service between 9/11 and March 2003 when CBP was established. Section 412(b) of the HSA reflected Congress’ concern regarding this diminishment in the number of customs revenue function positions versus customs security function positions at the U.S. Customs Service and fears that erosion in revenue functions would continue and be exacerbated in the future by its merger into CBP.

Even though CBP complied with the letter of Section 401 (b)(4) of the SAFE Port Act, it appears to NTEU that CBP views the “March FY 2003 Staff On-Board” numbers “maintenance of revenue function” positions, including vital trade facilitation and enforcement positions as Entry and Import Specialists, **as a staffing ceiling rather than a floor.** CBP did not even achieve that threshold number of Import Specialists positions in FY 2021. As stated in the FY 2021 ROM, the HSA threshold for import specialists is 984 positions; in FY 2021, there were only 937 positions onboard.

Despite the significant investment in forced labor trade intervention, prevention and enforcement, **the number of CBP’s non-uniformed trade personnel has not materially increased since CBP was established in 2003 even though inbound trade volume multiplied 32 times between FY 2003 and FY 2023.**

Centers of Excellence and Expertise

In 2011, CBP established the Centers of Excellence and Expertise (CEEs)—10 industry-specific Centers that require significant changes to CBP trade operations employees’ workload and work practices. In 2014, four of the CEEs began operating at an accelerated level of processing and became fully operational. On March 24, 2016, the remaining six CEEs came on board. The 10 Centers are:

Pharmaceuticals, Health and Chemicals - New York, NY
Agriculture and Prepared Products - Miami, FL
Automotive and Aerospace - Detroit, MI
Apparel, Footwear and Textiles - San Francisco, CA
Base Metals - Chicago, IL
Petroleum, Natural Gas and Minerals - Houston, TX
Electronics - Los Angeles, CA

Consumer Products and Mass Merchandising - Atlanta, GA
Industrial and Manufacturing Materials - Buffalo, NY
Machinery - Laredo, TX

According to CBP, CEEs are managed virtually with geographically dispersed teams. However, many operational and logistical challenges remain with the reorganization of commodity teams at the ports of entry. These challenges include issues associated with remote supervision; the inability of Automated Commercial Environment (ACE) to support the CEE initiative resulting in wasteful inefficient work-around practices; a lack of uniformity between the CEEs in terms of workload and work practices; catering to the trade at the expense of revenue recovery; lack of clear guidance as to what is CEE work and what is port work; and insufficient training for both employees and supervisors.

Trade Act of 2002 and CBP Synthetic Opioid Interdiction

CBP plays a leading role in addressing the nation's opioid epidemic--a crisis that is getting worse, as the deadly chemical fentanyl is being manufactured in China and is either funneled through Mexico or sent by mail and express consignment operators directly to addresses in the U.S. International mail facility (IMF) and express consignment carrier environments account for approximately 19 percent of the illicit drug seizures at POEs in FY 2022.

Under Section 343 of the **Trade Act of 2002** (P.L. 107-210) as amended, and under the SAFE Port Act, CBP has the legal authority to collect Electronic Advance Data (EAD) provided by air, sea, and land commercial transport companies, including Express Consignment Carriers and importers. In the postal environment, bilateral agreements regarding EAD between the U.S. Postal Service (USPS) and foreign postal operators have increased CBP's ability to target high-risk shipments. Additionally, the Synthetics Trafficking and Overdose Prevention (STOP) Act requires that DHS prescribe regulations requiring the USPS to transmit advance electronic information for international mail to CBP consistent with the statute. Currently, USPS provides EAD from more than 129 foreign postal services, and CBP utilizes EAD to actively target international mail shipments at seven IMFs.

For cargo arriving by aircraft, express consignment operators are required to provide EAD to CBP prior to the scheduled arrival of express cargo in the U.S. Express consignment operators accept items for delivery to the U.S. at points of sale in foreign countries and maintain control of items until they are delivered to the addressees.

Analysis of EAD is one of the tools that helps CBP identify threats in inbound international express cargo items and includes the sender's name and address, recipient's/consignee's name and address, contents' description, number of pieces, and total weight. Express consignment operators found in violation of these requirements are subject to a penalty. EAD requirements were to be implemented by CBP in three phases.

Phase 1 required electronic manifests to CBP for international travel four hours prior to arrival and for Canada, Mexico, the Caribbean, parts of Central and South America at "wheels

up.” However, every day these manifests are inaccurate with countless “overages.” An overage is a shipment that is not included on the manifest. In other words, an overage is an unmanifested, unknown shipment which is in violation of the law. A manifested shipment may have 1 or 500 overages, but the highest penalty for “overages” is \$5,000, and this penalty is routinely mitigated to \$50 for a first violation and \$100 for subsequent violations.

Phase 2 required express consignment operators to provide quality shipper/consignee data. These addresses should show that the packages are received from legitimate businesses/addresses and are delivered to legitimate businesses/addresses. If not, the express consignment operator is subject to a penalty.

In 2007, CBP drafted the Phase 3 implementation plan, but to date has not implemented it. Phase 3 would allow CBP Officers to impose a monetary penalty for incorrect manifest descriptions and false value declarations. Without implementation of Phase 3, CBP Officers cannot penalize carriers for bringing in items manifested as one thing that turn out to be another. Many of these shipments are not concealed well and are often simply mislabeled. For example, narcotic chemicals may be labeled “car parts” or “supplement powder,” and CBP cannot impose a penalty for this type of mislabeling.

GAO reports that express consignment operators have reported that “they are able to individually scan each item upon arrival, providing an opportunity to identify and set aside express cargo targeted for CBP inspection based on EAD.” (GAO-17-606, page 29) However, CBP Officers tell NTEU that this is not the case for “overages” that arrive unmanifested or for mislabeled packages. These CBPOs report that express consignment operators rely on Phase 1 electronic manifests to be accurate when they frequently are not. Also, when first rolled out, Trade Act violations were required to be reported to HQ. That is no longer the case.

Also, according to GAO, “although CBP has been using EAD to target express cargo for inspection since approximately 2004, it has not evaluated whether this method results in benefits relative to other methods of choosing express cargo...for inspection” (GAO-17-606, page 28.)

For these reasons, **NTEU recommends that Congress direct CBP to provide a report on an annual basis on the individuals and companies that violate the Trade Act to the Senate Committee on Ways and Means and Finance.** This report should include the violator’s name; the violation committed; the port of entry/location through which the items entered; an inventory of the items seized including description of the item and quantity; place of origination including address of the violator; the amount in penalties assessed by CBP for each violation by violator name and port of entry/location; the amount of penalties that CBP could have levied for each violation by violator name and port of entry/location and the rationale for negotiating down the penalty for each violation by violator name and port of entry/location.

Congress, by requiring CBP to report this useful information on violators and violator penalty assessments, would enhance CBP’s interdiction of prohibited items from entering the U.S. through express consignment operators.

Lastly, even though accurate and reliable advance information is critical to CBP's targeting efforts to ascertain legitimate shipment transactions from those involved in illegal and illicit business transactions utilizing the U.S. Postal Service and private carriers, as important is the ability to assess penalties for violations of Section 343 of the Trade Act. Penalties are routinely mitigated to a fraction of the full penalty and are just considered the cost of doing business.

For example, at one express consignment port of entry where penalties had previously been mitigated to 1% of the maximum penalty, they have recently been mitigated to 10%. In 2023 to date, **97 penalties were assessed at that port for a total of \$1,821,098. Of these 97 penalties, 42 were Trade Act violations.** But many ports do not have as robust a penalty effort as this express consignment hub because of staffing limitations. It is unclear to what extent the original Trade Act penalties were mitigated from the original penalty amount and how much could have been collected in penalty if not mitigated. **A penalty is not an effective deterrent if it is mitigated to a token amount that is considered as just the cost of doing business.**

FY 2024 CBP Budget Request

The President included in its FY 2024 budget requests \$22.1 million to hire 150 CBP Officers to serve at Southwest Border ports of entry, but no funding for CBP trade operations personnel. While NTEU appreciates Congress providing funding for 125 CBP Officer new hires for FY 2023 and the President's FY 2024 request for funding for 150 CBP Officers, based on CBP's most recent workload staffing models, CBP needs to hire at least 1,750 CBP Officers, 250 Agriculture Specialists and 154 non-uniformed Trade Specialists to address current staffing needs at the ports of entry.

In addition to CBP Office of Field Operations (OFO) role as an economic driver and in raising of nearly \$112 billion in annual revenue, CBP OFO personnel also are on the frontline of illegal narcotics interdiction. Most illicit drugs, including fentanyl, enter the United States through our Southwest Border POEs. In fact, last fiscal year, nearly 66 percent of illicit drugs seized by CBP at the Southwest Border were seized at ports of entry. In FY 2022, CBP seized 15,000 pounds of fentanyl nationwide, with the majority – 12,500 pounds – seized at POEs and in FY 2023 to date, CBP seizures at POEs already exceed more than 12,000 pounds of fentanyl. The drugs are concealed in privately owned vehicles, commercial vehicles, and in the pedestrian environments.

Fentanyl and other synthetic opioids are also encountered in international mail facility and express consignment carrier environments, accounting for approximately 19 percent of the illicit drug seizures at POEs in FY 2022. CBP seizures of fentanyl have been escalating for several years. At our POEs alone, fentanyl seizures increased more than 200 percent in the last two fiscal years and, with the more than 10,000 pounds of fentanyl already seized to date in FY 2023, CBP OFO is on track to surpass last fiscal year's total seizures by the end of April. These seizures permanently removed these drugs from the illicit supply chain, kept them out of our communities, and denied drug trafficking organizations profits and critical operating capital.

In FY 2021 and 2022, there were approximately 7,800 CBP Officers assigned to the Southwest Border (SWB) ports. According to CBP, the same number of officers who processed

approximately 6,300 migrant encounters per month in FY 2021 processed nearly 14,400 per month in FY 2022. And despite greater workloads, CBP Officer staffing levels have remained the same, with CBP OFO using details and overtime to fill staffing gaps. The details and overtime have had negative impacts on the health and morale of CBP OFO personnel.

Due to the ongoing CBP Officer staffing shortage at the ports, CBP again has found it necessary to solicit CBP Officers for temporary duty assignment (TDY) to SWB land ports of entry beginning in April 2022. In the past year, OFO detailed approximately 3,200 CBP Officers to SWB ports for various operations with over 400 CBP Officers deployed to ports of entry within the San Diego, Tucson, El Paso, and Laredo Field Offices in Wave 7 of this TDY that commenced on April 16, 2023.

These TDYs are filled by CBP Officers currently assigned to air and seaport locations, exacerbating staffing shortages at those ports and deployed officers have expressed operational concerns about short staffing their own permanent duty port during their detail to SWB ports. The cost of these details is also of concern. In a May 2, 2023, Inspector General (IG) report (OIG-23-24) the DHS IG estimates that these details cost approximately \$5,100 for each detailee's travel and per diem.

In addition to TDYs, CBP uses overtime to fill staffing gaps and to reduce wait times at ports of entry. OFO relies on overtime to compensate for the understaffing to maintain operations. Prior to these TDYs, CBP Officers at the SWB ports were forced to work two to three double shifts every 2 weeks due to lack of staff. The IG reports that from "October 1, 2018, through April 30, 2022, CBP Officers at SWB ports worked roughly 5.1 million hours of overtime, resulting in \$403 million in gross overtime pay. In the first 7 months of FY 2022, CBP Officers worked approximately 881,000 overtime hours, an average of 114 hours—or 14 additional workdays a year."

"Overtime is also used to reduce wait times at ports of entry. From FY 2019 through FY 2021, 13 of the 34 Southwest border ports were consistently below recommended staffing levels. One, the San Ysidro port of entry in California, which according to CBP is the world's busiest land border crossing, was below its recommended staffing levels by an average of 217 officers each year. This port also had the most overtime use compared to other ports along the Southwest border, with 811,057 overtime hours worked from October 1, 2018, through April 30, 2022."

And once CBP Officers reach their statutory limit on overtime, overtime waivers are needed – "meaning more ordering to work overtime and double shifts." (See page 19, OIG-23-24.)

The President's request to fund the hiring 150 CBP Officers to serve at Southwest Border ports of entry does not begin to meet the staffing needs at the ports of entry nationwide either to process legal international trade and travel vital to the U.S. economy or to stop deadly fentanyl and other contraband from crossing through U.S. ports of entry. Appropriated dollars fund approximately 18,000 CBP Officer positions and Customs user fees fund approximately 7,600 CBP Officers' salaries and expenses are funded by Customs User Fees.

Customs User Fees

In any discussion of CBP's budget, the House Ways and Means Committee must recognize the role that user fees play for passenger processing, trade enforcement, and facilitation inspection services provided by CBP to international traders and travelers. **NTEU strongly supports increasing and indexing to inflation all user fees collected by CBP and depositing these indexed fees into designated user fee accounts to fund the hiring of additional CBP Officers as identified by CBP's Workforce Staffing Model.**

For years, NTEU has maintained that delays at the ports result in real losses to the U.S. economy. According to the U.S. Department of the Treasury, more than 50 million Americans work for companies that engage in international trade and, according to a University of Southern California (USC) study, "The Impact on the Economy of Changes in Wait Times at the Ports of Entry", from 2013, for every 1,000 CBP Officers added, the U.S. can increase its gross domestic product by \$2 billion, which equates to 33 new private sector jobs per CBP Officer added. This analysis was supplemented by USC in its update entitled "Analysis of Primary Inspection Wait Times at U.S. ports of Entry" published on March 9, 2014. This study found that by adding 14 CBP Officers at 14 inspection sites at 4 international airports, the potential total net impact would increase annual Gross Domestic Product (GDP) by as much as \$11.8 million.

CBP collects Customs User Fees (CUFs) which include CUFs authorized by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to recover certain costs incurred for processing, among other things, air and sea passengers, and various private and commercial land, sea, air, and rail carriers and shipments. The source of these user fees are commercial vessels, commercial vehicles, rail cars, private aircraft, private vessels, air passengers, sea passengers, cruise vessel passengers, dutiable mail, customs brokers, and barge/bulk carriers.

COBRA fees are deposited into the Customs User Fee Account and are designated by statute to pay for services provided to the user, such as 100% of inspectional overtime for passenger and commercial vehicle inspection during overtime shift hours. **Of the 25,590 CBP Officers currently onboard, COBRA fees fund 3,446 CBP Officer positions.**

In past years, the Administration proposed in its budget requests an increase of \$2 in CUFs. According to 2017 budget projections (the last time this user fee increase was proposed), if enacted, **a \$2 increase in CUFs would support the hiring of 840 new CBP Officers.** According to NTEU's calculations based on the FY 2017 budget request, **indexing CUFs to inflation and depositing that increase into the Customs User Fee Account would support the hiring of approximately 600 new CBP Officers.**

Immigration User Fees

CBP collects immigration inspection user fees (IUFs) from air and sea passengers traveling to the U.S. Increasing and indexing the IUF will allow CBP to better align air passenger inspection fee revenue with the costs of providing immigration inspection services. **Of the 25,590 CBP Officers currently onboard, IUFs fund 4,179 CBP Officer positions.**

IUF rates were last increased from \$6 to \$7 in November 2001. According to 2017 budget projections (the last time this user fee increase was proposed), if enacted, **a \$2 fee increase would support the hiring of over 1,230 new CBP Officers.**

Diversion of Customs User Fees

Any increases to the Customs User Fee Account should be properly used for much-needed CBP staffing and not diverted to unrelated projects. **Indexing COBRA user fees to inflation would raise \$1.4 billion over ten years—a potential \$140 million per year funding stream to help pay for the hiring of additional CBP Officers to perform CBP’s law enforcement, trade, and travel facilitation missions.**

In 2016, Congress approved a highway bill that indexed CUFs to inflation but diverted this funding from the Customs User Fees Account to the General Fund to pay for unrelated highway and infrastructure projects. Again, indexing CUFs to inflation and directing the additional funding to the Customs User Fee Account would support the hiring of new CBP Officers to address the current 2,107 CBP Officer staffing shortage. As enacted, CUF payers now pay \$140 million a year in additional COBRA fees, but CBP does not receive one additional dime to fund much needed new CBP Officer personnel.

If Congress is serious about job creation, wait times, international tourism, trade enforcement and facilitation, and illicit narcotics interdiction, Congress should reverse this decision and redirect the funds raised by indexing the COBRA portion of CUFs to inflation and use these increased fees to fund CBP Officer new hires.

RECOMMENDATIONS

Funding for additional CBP OFO frontline employees must be increased to ensure security, interdict illicit narcotics, drive job creation, raise revenue and mitigate prolonged wait times for both trade and travel at our nation’s ports of entry. The use of TDYS and excessive overtime as a substitute for funding CBP OFO new hires is unsustainable.

Therefore, NTEU urges the Committee to:

- **request CBP to provide FY 23 Trade ROM without delay;**
- **support legislation to authorize increased funding through appropriations for much needed non-uniformed CBP trade operations personnel;**
- **enact increases in Custom user fees indexed to inflation to fund needed CBP Officers new hires;**
- **reject the efforts to divert Customs user fee funding from CBP staffing and overtime to unrelated projects;**
- **direct CBP to provide a report on an annual basis on the individuals and companies that violate the Trade Act to the House Committee on Ways and Means and Senate Committee on Finance; and**
- **end the mitigation of Trade Act penalties.**

The more than 29,000 CBP employees represented by NTEU are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade, while ensuring that legal trade and travelers move expeditiously through our air, sea, and land ports. These men and women are deserving of more resources to perform their jobs better and more efficiently.

Thank you for the opportunity to submit this Statement for the Record to the Committee on their behalf.



**STATEMENT OF ANTHONY M. REARDON
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION**

**FIELD HEARING ON TRADE IN AMERICA: SECURING SUPPLY CHAINS
AND PROTECTING THE AMERICAN WORKER – STATEN ISLAND**

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By law, CBP must submit to Congress its Trade ROM every two years. It is our understanding that CBP has not yet provided its FY 23 Trade ROM to Congress and NTEU urges the Committee to request CBP to provide FY 23 Trade ROM expeditiously.

Continuing staffing shortages, inequitable compensation, and lack of mission focus are the main reason experienced CBP commercial operations professionals at all levels, who long have made the system work, are leaving, or have left the agency. Further, more than twenty-five percent of CBP Import Specialists will retire or be eligible to retire within the next few years.

When Congress created the Department of Homeland Security (DHS), the House Ways and Means and Senate Finance Committees included Section 412(b) in the Homeland Security Act (HSA) of 2002 (P.L. 107-296). This section mandates that "the Secretary [of Homeland Security] may not consolidate, discontinue, or diminish those functions...performed by the United States Customs Service...on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions."

In October 2006, Congress enacted the Security and Accountability For Every (SAFE) Port Act (P.L. 109-347.) Section 401(b)(4) of the SAFE Port Act directed the DHS Secretary to

ensure that requirements of section 412(b) of the HSA (6 U.S.C. 212(b)) are fully satisfied. CBP satisfied this statutory requirement by freezing the number of “maintenance of revenue function” positions at the level in effect on the date of creation of the agency in March 2003. As you know, CBP was created by the merger of the former U.S. Customs Service, the Immigration and Naturalization Service, and the Animal, Plant, Health Inspection Service. In March 2003, the number of commercial operations employees at the former U.S. Customs Service was significantly less than prior to 9/11.

In March of 2003 when CBP stood up, there were only 984 Import Specialists on board. That is 265 Import Specialist positions less than the 1998 base total, and 505 less than the FY 2002 Import Specialists optimal staffing level. A significant reduction in the number of “maintenance of revenue function” positions had occurred at the U.S. Customs Service between 9/11 and March 2003 when CBP was established. Section 412(b) of the HSA reflected Congress’ concern regarding this diminishment in the number of customs revenue function positions versus customs security function positions at the U.S. Customs Service and fears that erosion in revenue functions would continue and be exacerbated in the future by its merger into CBP.

Even though CBP complied with the letter of Section 401 (b)(4) of the SAFE Port Act, it appears to NTEU that CBP views the “March FY 2003 Staff On-Board” numbers “maintenance of revenue function” positions, including vital trade facilitation and enforcement positions as Entry and Import Specialists, **as a staffing ceiling rather than a floor.** CBP did not even achieve that threshold number of Import Specialists positions in FY 2021. As stated in the FY 2021 ROM, the HSA threshold for import specialists is 984 positions; in FY 2021, there were only 937 positions onboard.

Despite the significant investment in forced labor trade intervention, prevention and enforcement, **the number of CBP’s non-uniformed trade personnel has not materially increased since CBP was established in 2003 even though inbound trade volume multiplied 32 times between FY 2003 and FY 2023.**

Centers of Excellence and Expertise

In 2011, CBP established the Centers of Excellence and Expertise (CEEs)—10 industry-specific Centers that require significant changes to CBP trade operations employees’ workload and work practices. In 2014, four of the CEEs began operating at an accelerated level of processing and became fully operational. On March 24, 2016, the remaining six CEEs came on board. The 10 Centers are:

Pharmaceuticals, Health and Chemicals - New York, NY
Agriculture and Prepared Products - Miami, FL
Automotive and Aerospace - Detroit, MI
Apparel, Footwear and Textiles - San Francisco, CA
Base Metals - Chicago, IL
Petroleum, Natural Gas and Minerals - Houston, TX
Electronics - Los Angeles, CA

Consumer Products and Mass Merchandising - Atlanta, GA
Industrial and Manufacturing Materials - Buffalo, NY
Machinery - Laredo, TX

According to CBP, CEEs are managed virtually with geographically dispersed teams. However, many operational and logistical challenges remain with the reorganization of commodity teams at the ports of entry. These challenges include issues associated with remote supervision; the inability of Automated Commercial Environment (ACE) to support the CEE initiative resulting in wasteful inefficient work-around practices; a lack of uniformity between the CEEs in terms of workload and work practices; catering to the trade at the expense of revenue recovery; lack of clear guidance as to what is CEE work and what is port work; and insufficient training for both employees and supervisors.

Trade Act of 2002 and CBP Synthetic Opioid Interdiction

CBP plays a leading role in addressing the nation's opioid epidemic--a crisis that is getting worse, as the deadly chemical fentanyl is being manufactured in China and is either funneled through Mexico or sent by mail and express consignment operators directly to addresses in the U.S. International mail facility (IMF) and express consignment carrier environments account for approximately 19 percent of the illicit drug seizures at POEs in FY 2022.

Under Section 343 of the **Trade Act of 2002** (P.L. 107-210) as amended, and under the SAFE Port Act, CBP has the legal authority to collect Electronic Advance Data (EAD) provided by air, sea, and land commercial transport companies, including Express Consignment Carriers and importers. In the postal environment, bilateral agreements regarding EAD between the U.S. Postal Service (USPS) and foreign postal operators have increased CBP's ability to target high-risk shipments. Additionally, the Synthetics Trafficking and Overdose Prevention (STOP) Act requires that DHS prescribe regulations requiring the USPS to transmit advance electronic information for international mail to CBP consistent with the statute. Currently, USPS provides EAD from more than 129 foreign postal services, and CBP utilizes EAD to actively target international mail shipments at seven IMFs.

For cargo arriving by aircraft, express consignment operators are required to provide EAD to CBP prior to the scheduled arrival of express cargo in the U.S. Express consignment operators accept items for delivery to the U.S. at points of sale in foreign countries and maintain control of items until they are delivered to the addressees.

Analysis of EAD is one of the tools that helps CBP identify threats in inbound international express cargo items and includes the sender's name and address, recipient's/consignee's name and address, contents' description, number of pieces, and total weight. Express consignment operators found in violation of these requirements are subject to a penalty. EAD requirements were to be implemented by CBP in three phases.

Phase 1 required electronic manifests to CBP for international travel four hours prior to arrival and for Canada, Mexico, the Caribbean, parts of Central and South America at "wheels

up.” However, every day these manifests are inaccurate with countless “overages.” An overage is a shipment that is not included on the manifest. In other words, an overage is an unmanifested, unknown shipment which is in violation of the law. A manifested shipment may have 1 or 500 overages, but the highest penalty for “overages” is \$5,000, and this penalty is routinely mitigated to \$50 for a first violation and \$100 for subsequent violations.

Phase 2 required express consignment operators to provide quality shipper/consignee data. These addresses should show that the packages are received from legitimate businesses/addresses and are delivered to legitimate businesses/addresses. If not, the express consignment operator is subject to a penalty.

In 2007, CBP drafted the Phase 3 implementation plan, but to date has not implemented it. Phase 3 would allow CBP Officers to impose a monetary penalty for incorrect manifest descriptions and false value declarations. Without implementation of Phase 3, CBP Officers cannot penalize carriers for bringing in items manifested as one thing that turn out to be another. Many of these shipments are not concealed well and are often simply mislabeled. For example, narcotic chemicals may be labeled “car parts” or “supplement powder,” and CBP cannot impose a penalty for this type of mislabeling.

GAO reports that express consignment operators have reported that “they are able to individually scan each item upon arrival, providing an opportunity to identify and set aside express cargo targeted for CBP inspection based on EAD.” (GAO-17-606, page 29) However, CBP Officers tell NTEU that this is not the case for “overages” that arrive unmanifested or for mislabeled packages. These CBPOs report that express consignment operators rely on Phase 1 electronic manifests to be accurate when they frequently are not. Also, when first rolled out, Trade Act violations were required to be reported to HQ. That is no longer the case.

Also, according to GAO, “although CBP has been using EAD to target express cargo for inspection since approximately 2004, it has not evaluated whether this method results in benefits relative to other methods of choosing express cargo...for inspection” (GAO-17-606, page 28.)

For these reasons, **NTEU recommends that Congress direct CBP to provide a report on an annual basis on the individuals and companies that violate the Trade Act to the House Committee on Ways and Means and Senate Committee on Finance.** This report should include the violator’s name; the violation committed; the port of entry/location through which the items entered; an inventory of the items seized including description of the item and quantity; place of origination including address of the violator; the amount in penalties assessed by CBP for each violation by violator name and port of entry/location; the amount of penalties that CBP could have levied for each violation by violator name and port of entry/location and the rationale for negotiating down the penalty for each violation by violator name and port of entry/location.

Congress, by requiring CBP to report this useful information on violators and violator penalty assessments, would enhance CBP’s interdiction of prohibited items from entering the U.S. through express consignment operators.

Lastly, even though accurate and reliable advance information is critical to CBP's targeting efforts to ascertain legitimate shipment transactions from those involved in illegal and illicit business transactions utilizing the U.S. Postal Service and private carriers, as important is the ability to assess penalties for violations of Section 343 of the Trade Act. Penalties are routinely mitigated to a fraction of the full penalty and are just considered the cost of doing business.

For example, at one express consignment port of entry where penalties had previously been mitigated to 1% of the maximum penalty, they have recently been mitigated to 10%. In 2023 to date, **97 penalties were assessed at that port for a total of \$1,821,098. Of these 97 penalties, 42 were Trade Act violations.** But many ports do not have as robust a penalty effort as this express consignment hub because of staffing limitations. It is unclear to what extent the original Trade Act penalties were mitigated from the original penalty amount and how much could have been collected in penalty if not mitigated. **A penalty is not an effective deterrent if it is mitigated to a token amount that is considered as just the cost of doing business.**

FY 2024 CBP Budget Request

The President included in its FY 2024 budget requests \$22.1 million to hire 150 CBP Officers to serve at Southwest Border ports of entry, but no funding for CBP trade operations personnel. While NTEU appreciates Congress providing funding for 125 CBP Officer new hires for FY 2023 and the President's FY 2024 request for funding for 150 CBP Officers, based on CBP's most recent workload staffing models, CBP needs to hire at least 1,750 CBP Officers, 250 Agriculture Specialists and 154 non-uniformed Trade Specialists to address current staffing needs at the ports of entry.

In addition to CBP Office of Field Operations (OFO) role as an economic driver and in raising of nearly \$112 billion in annual revenue, CBP OFO personnel also are on the frontline of illegal narcotics interdiction. Most illicit drugs, including fentanyl, enter the United States through our Southwest Border POEs. In fact, last fiscal year, nearly 66 percent of illicit drugs seized by CBP at the Southwest Border were seized at ports of entry. In FY 2022, CBP seized 15,000 pounds of fentanyl nationwide, with the majority – 12,500 pounds – seized at POEs and in FY 2023 to date, CBP seizures at POEs already exceed more than 12,000 pounds of fentanyl. The drugs are concealed in privately owned vehicles, commercial vehicles, and in the pedestrian environments.

Fentanyl and other synthetic opioids are also encountered in international mail facility and express consignment carrier environments, accounting for approximately 19 percent of the illicit drug seizures at POEs in FY 2022. CBP seizures of fentanyl have been escalating for several years. At our POEs alone, fentanyl seizures increased more than 200 percent in the last two fiscal years and, with the more than 10,000 pounds of fentanyl already seized to date in FY 2023, CBP OFO is on track to surpass last fiscal year's total seizures by the end of April. These seizures permanently removed these drugs from the illicit supply chain, kept them out of our communities, and denied drug trafficking organizations profits and critical operating capital.

In FY 2021 and 2022, there were approximately 7,800 CBP Officers assigned to the Southwest Border (SWB) ports. According to CBP, the same number of officers who processed

approximately 6,300 migrant encounters per month in FY 2021 processed nearly 14,400 per month in FY 2022. And despite greater workloads, CBP Officer staffing levels have remained the same, with CBP OFO using details and overtime to fill staffing gaps. The details and overtime have had negative impacts on the health and morale of CBP OFO personnel.

Due to the ongoing CBP Officer staffing shortage at the ports, CBP again has found it necessary to solicit CBP Officers for temporary duty assignment (TDY) to SWB land ports of entry beginning in April 2022. In the past year, OFO detailed approximately 3,200 CBP Officers to SWB ports for various operations with over 400 CBP Officers deployed to ports of entry within the San Diego, Tucson, El Paso, and Laredo Field Offices in Wave 7 of this TDY that commenced on April 16, 2023.

These TDYs are filled by CBP Officers currently assigned to air and seaport locations, exacerbating staffing shortages at those ports and deployed officers have expressed operational concerns about short staffing their own permanent duty port during their detail to SWB ports. The cost of these details is also of concern. In a May 2, 2023, Inspector General (IG) report (OIG-23-24) the DHS IG estimates that these details cost approximately \$5,100 for each detailee's travel and per diem.

In addition to TDYs, CBP uses overtime to fill staffing gaps and to reduce wait times at ports of entry. OFO relies on overtime to compensate for the understaffing to maintain operations. Prior to these TDYs, CBP Officers at the SWB ports were forced to work two to three double shifts every 2 weeks due to lack of staff. The IG reports that from "October 1, 2018, through April 30, 2022, CBP Officers at SWB ports worked roughly 5.1 million hours of overtime, resulting in \$403 million in gross overtime pay. In the first 7 months of FY 2022, CBP Officers worked approximately 881,000 overtime hours, an average of 114 hours—or 14 additional workdays a year."

"Overtime is also used to reduce wait times at ports of entry. From FY 2019 through FY 2021, 13 of the 34 Southwest border ports were consistently below recommended staffing levels. One, the San Ysidro port of entry in California, which according to CBP is the world's busiest land border crossing, was below its recommended staffing levels by an average of 217 officers each year. This port also had the most overtime use compared to other ports along the Southwest border, with 811,057 overtime hours worked from October 1, 2018, through April 30, 2022."

And once CBP Officers reach their statutory limit on overtime, overtime waivers are needed – "meaning more ordering to work overtime and double shifts." (See page 19, OIG-23-24.)

The President's request to fund the hiring 150 CBP Officers to serve at Southwest Border ports of entry does not begin to meet the staffing needs at the ports of entry nationwide either to process legal international trade and travel vital to the U.S. economy or to stop deadly fentanyl and other contraband from crossing through U.S. ports of entry. Appropriated dollars fund approximately 18,000 CBP Officer positions and Customs user fees fund approximately 7,600 CBP Officers' salaries and expenses are funded by Customs User Fees.

Customs User Fees

In any discussion of CBP's budget, the House Ways and Means Committee must recognize the role that user fees play for passenger processing, trade enforcement, and facilitation inspection services provided by CBP to international traders and travelers. **NTEU strongly supports increasing and indexing to inflation all user fees collected by CBP and depositing these indexed fees into designated user fee accounts to fund the hiring of additional CBP Officers as identified by CBP's Workforce Staffing Model.**

For years, NTEU has maintained that delays at the ports result in real losses to the U.S. economy. According to the U.S. Department of the Treasury, more than 50 million Americans work for companies that engage in international trade and, according to a University of Southern California (USC) study, "The Impact on the Economy of Changes in Wait Times at the Ports of Entry", from 2013, for every 1,000 CBP Officers added, the U.S. can increase its gross domestic product by \$2 billion, which equates to 33 new private sector jobs per CBP Officer added. This analysis was supplemented by USC in its update entitled "Analysis of Primary Inspection Wait Times at U.S. ports of Entry" published on March 9, 2014. This study found that by adding 14 CBP Officers at 14 inspection sites at 4 international airports, the potential total net impact would increase annual Gross Domestic Product (GDP) by as much as \$11.8 million.

CBP collects Customs User Fees (CUFs) which include CUFs authorized by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to recover certain costs incurred for processing, among other things, air and sea passengers, and various private and commercial land, sea, air, and rail carriers and shipments. The source of these user fees are commercial vessels, commercial vehicles, rail cars, private aircraft, private vessels, air passengers, sea passengers, cruise vessel passengers, dutiable mail, customs brokers, and barge/bulk carriers.

COBRA fees are deposited into the Customs User Fee Account and are designated by statute to pay for services provided to the user, such as 100% of inspectional overtime for passenger and commercial vehicle inspection during overtime shift hours. **Of the 25,590 CBP Officers currently onboard, COBRA fees fund 3,446 CBP Officer positions.**

In past years, the Administration proposed in its budget requests an increase of \$2 in CUFs. According to 2017 budget projections (the last time this user fee increase was proposed), if enacted, **a \$2 increase in CUFs would support the hiring of 840 new CBP Officers.** According to NTEU's calculations based on the FY 2017 budget request, **indexing CUFs to inflation and depositing that increase into the Customs User Fee Account would support the hiring of approximately 600 new CBP Officers.**

Immigration User Fees

CBP collects immigration inspection user fees (IUFs) from air and sea passengers traveling to the U.S. Increasing and indexing the IUF will allow CBP to better align air passenger inspection fee revenue with the costs of providing immigration inspection services. **Of the 25,590 CBP Officers currently onboard, IUFs fund 4,179 CBP Officer positions.**

IUF rates were last increased from \$6 to \$7 in November 2001. According to 2017 budget projections (the last time this user fee increase was proposed), if enacted, **a \$2 fee increase would support the hiring of over 1,230 new CBP Officers.**

Diversion of Customs User Fees

Any increases to the Customs User Fee Account should be properly used for much-needed CBP staffing and not diverted to unrelated projects. **Indexing COBRA user fees to inflation would raise \$1.4 billion over ten years—a potential \$140 million per year funding stream to help pay for the hiring of additional CBP Officers to perform CBP’s law enforcement, trade, and travel facilitation missions.**

In 2016, Congress approved a highway bill that indexed CUFs to inflation but diverted this funding from the Customs User Fees Account to the General Fund to pay for unrelated highway and infrastructure projects. Again, indexing CUFs to inflation and directing the additional funding to the Customs User Fee Account would support the hiring of new CBP Officers to address the current 2,107 CBP Officer staffing shortage. As enacted, CUF payers now pay \$140 million a year in additional COBRA fees, but CBP does not receive one additional dime to fund much needed new CBP Officer personnel.

If Congress is serious about job creation, wait times, international tourism, trade enforcement and facilitation, and illicit narcotics interdiction, Congress should reverse this decision and redirect the funds raised by indexing the COBRA portion of CUFs to inflation and use these increased fees to fund CBP Officer new hires.

RECOMMENDATIONS

Funding for additional CBP OFO frontline employees must be increased to ensure security, interdict illicit narcotics, drive job creation, raise revenue and mitigate prolonged wait times for both trade and travel at our nation’s ports of entry. The use of TDYS and excessive overtime as a substitute for funding CBP OFO new hires is unsustainable.

Therefore, NTEU urges the Committee to:

- **request CBP to provide FY 23 Trade ROM without delay;**
- **support legislation to authorize increased funding through appropriations for much needed non-uniformed CBP trade operations personnel;**
- **enact increases in Custom user fees indexed to inflation to fund needed CBP Officers new hires;**
- **reject the efforts to divert Customs user fee funding from CBP staffing and overtime to unrelated projects;**
- **direct CBP to provide a report on an annual basis on the individuals and companies that violate the Trade Act to the House Committee on Ways and Means and Senate Committee on Finance; and**
- **end the mitigation of Trade Act penalties.**

The more than 29,000 CBP employees represented by NTEU are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade, while ensuring that legal trade and travelers move expeditiously through our air, sea, and land ports. These men and women are deserving of more resources to perform their jobs better and more efficiently.

Thank you for the opportunity to submit this Statement for the Record to the Committee on their behalf.

Clinton County Legislature



Clinton County Government Center
137 Margaret Street, Suite 208
Plattsburgh, New York 12901
(518) 5654600 - Phone
(518) 5654616 - Fax

May 23, 2023

Mark R. Henry
Chairperson
Legislative Area 3

Committee on Ways and Means
United States House of Representatives
1139 Longworth House Office Building
Washington, DC 20515

Robert E. Hall
Deputy Chairperson
Legislative Area 10

Dear Chairman Smith:

Francis J. Peryea
Republican Leader
Legislative Area 2

As we discussed with Congresswoman Stefanik in my recent visit to her office, on October of 2019, the Plattsburgh International Airport (PBG) began providing Aircraft Customs Services under the U.S. Customs and Border Protection (CBP) User Fee Airport (UFA) Program. As part of the CBP UFA Program, Clinton County, owners and operators of PBG, are responsible for 100 percent of the operating costs, to include salaries of CBP operations at PBG.

Patty A. Waldron
Democratic Leader
Legislative Area 6

In July 2020, in the midst of the COVID-19 Pandemic which devastated the aviation industry, CBP notified Clinton County of a cost increase for CBP Officers assigned at PBG. The County was given the options to pay the increased costs, pause CBP operations for a predetermined timeframe, or exit the UFA Program. Clinton County elected to pause the Program for several months, resuming operations in October 2020, incurring a significant increase in cost to maintain a service important to the future growth of the Airport. Since opening in 2019, international aircraft and passenger arrivals have increased from nearly zero in FY2019, to 352 aircraft and 1,418 passengers in FY2022. We continue to meet with commercial air carriers regarding service from PBG to a variety of international destinations.

Calvin T. Castine
Legislative Area 1

David G. Bezio
Legislative Area 4

Richard S. Potiker
Legislative Area 5

Rob B. Timmons
Legislative Area 7

Under 19GFR Part 122, Air Commerce Regulations, several other airports along the Northern New York-Canadian border enjoy pre-existing Port of Entry (POE) status simply by virtue of being "grandfathered" as designated POE's under the regulation. These airports retain POE designation and receive all CBP services free of charge, enjoying an economic benefit. At the same time, PBG, the largest commercial service airport in Northern New York is relegated to UFA status, paying for all costs associated with a service others receive free of charge, creating an unfair and discriminatory economic environment and a cost burden to the Airport. With state-of-the-art commercial aviation and General Aviation Customs Facilities built to the latest CBP standards, a 29-mile, 30-minute travel time to Champlain, New York POE via a four-lane highway and newly reconstructed 12,000 foot-long all-weather runway, PBG is a logical choice for POE designation.

Wendell K. Hughes
Legislative Area 8

Joshua A. Kretser
Legislative Area 9

Staff

Michael E. Zurlo
County Administrator

Kim M. Kinblom
Deputy County Administrator

Jacqueline M. Kelleher
County Attorney

Gary L. Favre
Assistant County Attorney

Since relocating to the former Plattsburgh Air Force Base in 2007, the Plattsburgh International Airport has experienced significant growth. As the Airport looks to rebound coming out of the Pandemic and extended border restrictions, we request your support in designating the Airport as an international Port of entry as designated by the Secretary of the Treasury under 19 CFR Part 122, affording us the same benefits received by other such designated airports in Northern New York.

Sincerely,

Mark R. Henry
Chairperson, Clinton County Legislator

cc: Robert E. Hall, Chairperson, Plattsburgh International Airport Committee
Christopher D. Kreig, Director, Plattsburgh International Airport



U.S. Customs and Border Protection
U.S. Department of Homeland Security

STATEMENT FOR THE RECORD

U.S. House of Representatives
Committee on Ways and Means
Subcommittee on Trade

HEARING ON

“Modernizing Customs Policies to Protect American Workers and Secure Supply Chains”

May 25, 2023
Washington, DC

U.S. Customs and Border Protection (CBP) submits this statement for the record regarding CBP's Air and Marine Operations (AMO) law enforcement authorities in the maritime domain.

AMO is a critical component of CBP's border security mission and the Department of Homeland Security's (DHS) comprehensive and multi-layered approach to homeland security. Established in 2006 after the September 11, 2001, terrorist attacks against the United States, AMO uses specialized training, advanced technological assets, and sophisticated domain awareness capabilities to protect America's security and prosperity interests beyond the nation's border in source and transit zones, between ports of entry, in our coastal waters, and within the nation's interior.

Although AMO was created to provide unique cross-domain law enforcement capabilities to counter present-day threats in a dynamic threat environment, with few exceptions,¹ AMO's maritime law enforcement authority² is still limited to areas within the historical "customs waters"³ – or 12 nautical miles from the coastline - of the United States. This geographic constraint limits AMO's ability to effectively respond to current threats and situations, essentially curtailing its ability to decide how and where to conduct engagement with suspect vessels, often preventing AMO's interdiction of vessels in time to prevent their escape, placing our law enforcement capability at a significant disadvantage.

CBP supports H.R. 529, *Extending Limits of U.S. Customs Waters Act*, and S.71, the Senate companion bill, which would update a number of existing laws, by formally adopting Presidential Proclamations 7219 (1999) and 5928 (1988). This legislation would extend and align Title 19 customs law enforcement authorities in establishing the Territorial Sea at 12 nautical miles and extend the customs waters from 12 nautical miles to 24 nautical miles. By expanding law enforcement jurisdiction into the near shore waters, AMO, U.S. Coast Guard and other federal authorities could better enforce U.S. customs, fiscal, immigration, and sanitary laws at sea. For AMO specifically, removal of the 12-nautical-mile limitation would enable it to fully leverage its cross-domain authorities, enhance its response to the modern and sophisticated capabilities of transnational criminal organizations (TCOs), better support its law enforcement partners, and increase detection, interdiction, and ultimately, prosecution of those conducting illegal smuggling, unsafe entry, or other violations of U.S. law.

Current State of the Maritime Border

TCOs pose a significant threat to our nation's maritime border security. The maritime domain is generally less restricted than the air and land environments, and it is an expansive pathway, without barriers, that connects to more than 95,000 miles of U.S. shoreline.

AMO encounters a wide range of vessels and tactics used by TCOs to smuggle migrants and illicit drugs in the maritime approaches to the United States, typically by small vessels either attempting to conceal their activities by mimicking legitimate recreational traffic or by eluding detection altogether.

¹ In certain circumstances, AMO is authorized to operate on the high seas, for instance when enforcing laws on U.S. registered vessels (19 CFR § 162.3), governing hovering vessels (19 U.S.C. § 1401(k)), and vessels subject to hot pursuit (19 U.S.C. § 1581). Additionally, beyond the customs waters, AMO may enforce the Maritime Drug Law Enforcement Act (46 U.S.C. § 70501-70502), where appropriate.

² 19 U.S.C. § 1589a.

³ 19 U.S.C. §§ 1401(j), 1709(c).

Increased engagements with drug smuggling vessels have coincided with increased violence in the maritime environment. For example, during an incident this past November near Cabo Rojo, Puerto Rico, an AMO marine interdiction agent was shot and killed and two others gravely injured during an interdiction of a suspicious vessel. However, AMO continues to effectively intercept tons of dangerous illicit drugs, keeping them from reaching our shores and communities. In Fiscal Year (FY) 2022, AMO enforcement efforts led to the seizure of 382,916 pounds of drugs,⁴ with approximately 82 percent of these seizures occurring in the maritime environment.

AMO is also experiencing increasing maritime encounters with migrants who put their lives in the hands of TCOs and human smuggling networks, often making the journey in improvised, rustic vessels. In FY 2022, AMO enforcement efforts led to the interdictions of 9,392 migrants in the maritime environment, an increase of 242 percent from FY 2021 and 334 percent from FY 2020. AMO encounters with these vessels very often become rescue missions, situations that are extremely dangerous for migrants as well as our marine agents.

AMO Maritime Capabilities and Operations

Although AMO routinely makes seizures through maritime border patrols, most enforcement actions are the result of actionable information or detection by aircraft and other domain awareness and detection capabilities.⁵ Often, there is little time to interdict inbound suspect vessels, and AMO has honed its maritime border security response capability around rapid and effective interception, pursuit, and interdiction of these crafts.

In their capacity as CBP law enforcement agents, AMO agents may board a vessel for the purpose of enforcing customs law.⁶ AMO agents have the same broad immigration authority⁷ as the U.S. Border Patrol; however, they are also in the unique position to enforce this authority in the maritime environment in addition to land and air jurisdictions, providing a critical layer of continuity in enforcement and investigative efforts.

AMO's highly trained agents, together with our unique authorities, specialized assets, and tactical expertise, comprise a well-rounded, professional, and established law enforcement organization that is fully engaged in safeguarding the United States' maritime borders and protecting its interests from threats at the border and beyond.

A critical component of CBP's border security operations, AMO will continue to adapt to changing conditions and emerging security threats and looks forward to working with Congress to maximize the intended operational potential of AMO's specialized capabilities in the pursuit of protecting U.S. national security interests – including drug enforcement efforts and rescue operations – in the maritime domain.

⁴ <https://www.cbp.gov/border-security/air-sea>. FY 2022 AMO enforcement actions in the maritime domain led to the seizure of 234,349 pounds of cocaine, 75,918 pounds of marijuana, 1,432 pounds of methamphetamine, and 146 pounds of fentanyl.

⁵ These capabilities include, but are not limited to Unmanned Aircraft Systems, P-3 Long Range Tracker and Airborne Early Warning aircraft, Multi-Role Enforcement aircraft, and Tethered Aerostat Radar Systems.

⁶ 19 U.S.C. § 1581(a).

⁷ See Title 8, Aliens and Nationality



STATEMENT FOR THE RECORD

BY THE NATIONAL FOREIGN TRADE COUNCIL

RELATED TO A HEARING ENTITLED “Field Hearing on Trade in America: Securing Supply Chains and Protecting the American Worker – Staten Island”

BEFORE THE U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON WAYS AND MEANS

Introduction

Thank you for the opportunity to provide comments for the record following this hearing. We appreciate the opportunity to provide a broad industry perspective as the committee considers testimony provided during this field hearing.

About The National Foreign Trade Council

NFTC is the premier association for leadership and expertise on international tax and trade policy issues. We believe trade and tax policies should foster fair access to the opportunities of the global economy and advance global commerce for good. NFTC serves as a nimble and effective forum for businesses to engage critical and complex issues together and to foster trust with governments to improve policy outcomes in the United States and around the world. Leveraging its broad membership and expertise, the NFTC contributes to a greater understanding of the critical role an open, rules-based international economy plays in the success of American businesses, entrepreneurs and workers and shared global prosperity.

Important Role of Industry in Promoting Compliance with U.S. Trade Laws

Responsible companies that bring merchandise to the United States bolster our economic security, addressed critical needs during the COVID-19 pandemic, and support American jobs. Accordingly, the trade community has been an ally to government agencies in areas ranging from the implications of negotiations around trade preference programs to operational conditions at U.S. ports that promote effective enforcement and the facilitation of legitimate shipments that power the American economy. These responsible companies are force multipliers for the federal government and will continue to leverage their experiences, to provide important perspectives

that help America achieve our shared goals of promoting resilient, compliant, and efficient supply chains.

Enforcement of Laws Intended to Keep Items Made Using Forced Labor out of Supply Chains

There is no place for items made using forced labor in American supply chains. Existing forced labor statutes could be implemented in a manner that more effectively addresses the root causes of forced labor.

Implementation of the Uygur Forced Labor Prevention Act has increased calls for supply chain visibility farther back in many supply chains. However, there are several aspects of implementing this statute that have been under-utilized.

First, the UFLPA entity list should provide the public with broad awareness of parties that have been determined by Forced Labor Enforcement Task Force members and observers to present a high risk of producing illicit merchandise, as the UFLPA envisions.

Second, the UFLPA-required Diplomatic Strategy and seemingly related Forced Labor Strategy under development by the U.S. Office of Trade Representative (USTR) lack transparency and inter-agency coordination. The Department of State has not released the Diplomatic Strategy and USTR received public comments almost a year ago to inform their forced labor strategy, but have yet to release the document. Together, these agencies should prioritize diplomatic engagement and whole of government approaches to identify and address the root causes of forced labor. It is also unclear how these agencies are engaging international organizations to promote effective and consistent standards that seek to mitigate the risk of forced labor in supply chains more broadly. Increased visibility for industry into the risk associated with certain manufacturing sectors in specific countries would inform sourcing decisions, rather than addressing concerns through UFLPA detentions when goods arrive at ports – after the forced labor has potentially occurred.

The government is missing opportunities to partner with responsible companies, especially those participating in established trusted trader programs, to help identify and address the root causes of forced labor. Sharing more information about identified risks in specific shipments, in addition to administration of the UFLPA entity lists, would better inform sourcing decisions and improve the overall efficiency of enforcement resource allocation.

Importance of De Minimis Treatment for Low-Value Goods Entering the United States

De Minimis treatment of low-value goods allows shipment(s) of up to \$800 in value per person, per day, to enter the U.S. without paying duty. It is a long-standing fixture of U.S. customs law that has been reaffirmed by Congress on a bipartisan basis – not a “loophole”. These shipments are subject to U.S. trade laws, are subject to scrutiny by U.S. Customs and Border Protection along with 49 other federal agencies that regulate cargo coming into the U.S., and are accompanied by information that support the government’s ability to assess risk. There has been

no statistically significant compliance data released that indicates de minimis shipments are a greater risk than containerized shipments arriving at U.S. maritime ports or truck entries coming across the northern and southern border. The Treasury Department and CBP currently have the authority to regulate this space and continue to improve their capabilities through increased data visibility provided in CBP's 321 Data Pilot and Entry Type 86 Test collaborations with industry. CBP has suggested publicly that these programs have increased their ability to identify risk and it will make these programs permanent through a formal rulemaking process in the coming months.

De minimis treatment of low-value shipments is a tax cut that significantly benefits under-served populations, promotes purchasing power for U.S. small businesses, and helps U.S. manufacturers by streamlining the importation of intermediary goods. Conversely, any degradation of current de minimis treatment would be a regressive tax increase.¹

Conclusion

Trade with other countries supports the American economy. Responsible companies should be seen as partners in pursuing compliant, resilient, and efficient supply chains that advance American economic security. This can be accomplished through policies that promote information sharing to understand challenges, apply efficient enforcement where illicit activity is present, and facilitate the flow of legitimate goods that supply the U.S. economy.

¹ Russ, Katherine N.; Shambaugh, Jay; and Furman, Jason. US Tariffs are an Arbitrary and Regressive Tax (2017) Centre for Economic Policy Research <https://cepr.org/voxeu/columns/us-tariffs-are-arbitrary-and-regressivetax#:~:text=Tariffs%20%E2%80%93%20taxes%20on%20imported%20goods,on%20some%20key%20consumer%20goods.>



Uyghur Human Rights Project
Submission of a Statement for the Record
Field Hearing on Trade in America: Securing Supply Chains and Protecting the American
Worker - Staten Island, Tuesday, May 9, 2023

The Importance of Continued and Increased Transparency of U.S. Import Data
Submitted May 16, 2023

Please find below a joint open letter from 38 civil society and watchdog groups, including the Uyghur Human Rights Project, to the Commissioner of U.S. Customs and Border Protection (CBP). The letter calls on CBP to demonstrate its continued commitment to combating forced labor in global supply chains by:

- 1) *Rejecting a proposal by the Commercial Customs Operations Advisory Committee (COAC) to shield ocean freight manifests from public disclosure, and*
- 2) *Instituting disclosure of air, road, and rail manifests, in addition to maritime vessel manifests*

October 20, 2022

The Honorable Chris Magnus
Commissioner of U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229

Re: Open Letter on Trade Data Transparency

Dear Commissioner Magnus,

The undersigned organizations and advocates write to express our collective outrage at a recent proposal driven by industry groups as part of the Commercial Customs Operations Advisory Committee (COAC) to shield ocean freight manifests from disclosure. If adopted, the proposal would eviscerate the already limited access to customs data that is currently available to civil society. Public disclosure of vessel manifest data is essential to civil society, investigative journalists, and workers' rights organizations, especially as we work to support effective enforcement of the U.S. Tariff Act and the Uyghur Forced Labor Prevention Act (UFLPA).

The COAC proposal advocates additional problematic legislative amendments, which if accepted, would further derail forced labor investigations and enforcement under Section 307 of the U.S. Tariff Act, 1930, as well as under the UFLPA. An article published by the Associated Press (AP) on October 18, 2022 revealed these proposals. The amendments in question would profoundly hobble the agency's ability to enforce forced labor laws, as well as the ability of civil society to share evidence of forced labor in U.S. supply chains. As the agency charged with the enforcement of these laws, CBP's perspective is given a great deal of weight, both within the Administration and on Capitol Hill, and it is absolutely critical that CBP reject these proposed changes outright.

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 can not 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. This is a shameful example of corporate overreach to protect profits by disabling efforts to hold perpetrators accountable.

We call on CBP to demonstrate its continued commitment to combating forced labor in global supply chains by rejecting this cynical call for confidentiality of vessel manifest data along with any other associated proposals. For years, U.S. advocates fought to remove loopholes that had crippled enforcement of Section 307 of the U.S. Tariff Act, culminating in the passage of the Trade Facilitation and Enforcement Act (TFTEA) of 2015. Now is not the time for the U.S. Government to move in precisely the opposite direction.

We therefore respectfully request that CBP publicly oppose, and summarily reject, the call for additional import data confidentiality.

Sincerely,

Advocating Opportunity
Alliance to End Slavery and Trafficking (ATEST)
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
Anti-Slavery International
Campaign for Uyghurs
Coalition to Abolish Slavery and Trafficking
Corporate Accountability Lab
FishWise
Free the Slaves
Freedom Network USA
Freedom United
Global Labor Justice-International Labor Rights Forum (GLJ-ILRF)
Greenpeace USA
HEAL Trafficking
Human Rights Watch
Humanity United Action
International Campaign for the Rohingya
International Corporate Accountability Roundtable (ICAR)
Jewish Movement for Uyghur Freedom
No Business with Genocide
Oceana
Oxfam America
Polaris
Safe Horizon, Inc
Solidarity Center
The Freedom Fund
The Human Trafficking Legal Center
Transparentem
Uyghur American Association
Uyghur Freedom Forum
Uyghur Human Rights Project
Uyghur Rights Advocacy Project
Verité
Worker Rights Consortium
World Uyghur Congress
Victims of Communism Memorial Foundation
Ambassador (ret.) Luis C.deBaca, Professor from Practice, University of Michigan Law School
Sabra Boyd, LLC