

**TESTIMONY OF THE UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS FOR WAYS & MEANS TRADE
SUBCOMMITTEE HEARING ON THE GLOBAL CHALLENGE OF FORCED LABOR IN SUPPLY CHAINS:
STRENGTHENING ENFORCEMENT AND PROTECTING WORKERS WEDNESDAY
JULY 21, 2021**

Chairman Blumenauer, Ranking Member Buchanan, and members of the Subcommittee, my name is Brian Lowry. I am the Senior Vice President, Innovation, Regulation, and Trade with the United States Council for international Business (USCIB). Thank you for holding this hearing, and for providing me the opportunity to speak before you today on this important topic for USCIB and its members.

USCIB promotes open markets, international trade and investment, competitiveness and innovation, sustainable development, and corporate responsibility, supported by international engagement and regulatory coherence. Our members include primarily U.S.-based multinational companies and professional services firms spanning every sector of the economy with global operations and supply chains touching every region of the world. Member companies generate \$5 trillion in annual revenues and employ over 11 million people worldwide. As the sole U.S. affiliate of the International Chamber of Commerce (ICC), the International Organization of Employers (IOE), and Business at OECD, USCIB provides business views to policymakers and regulatory authorities in the U.S. and worldwide.

Today, we propose operational changes to U.S. Customs and Border Protection's (CBP) current forced labor enforcement process that will further engage the business community, in partnership with the government, to eradicate forced labor from supply chains.

USCIB emphatically supports the objectives to prevent, identify, and eradicate forced labor globally. We applaud the bipartisan Congressional commitment to ensure effective implementation, and overall desire to achieve effective and efficient enforcement, of Section 307 by CBP. USCIB member companies are deeply committed to eradicating forced labor, in any form, from their supply chains and devote significant time and resources to ensure that forced labor and other violations of core, internationally recognized labor rights are not in their supply chains. Many USCIB member companies have worked for decades to establish, execute, and continuously improve corporate due diligence and other programs that target and eliminate forced labor, and many have been recognized for their innovative efforts. These efforts take time and significant investment and cannot be put in place overnight. In many cases, companies are expected to regulate suppliers' behaviors where their governments have not.

USCIB actively supports the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and the International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, which together articulate internationally agreed upon shared responsibilities for business conduct. USCIB strongly advocates for the development of effective laws, regulations, and policies to eliminate forced labor linked to supply chains. Importantly, as the recognized representative of U.S. employers to the ILO, USCIB and its members are at the table with governments, workers' representatives, and other global employers to negotiate legally binding international labor standards.

U.S. funding and support of the ILO, Department of Labor's International Labor Affairs Bureau, and Department of State's Bureau of Democracy Human Rights and Labor and Trafficking in Persons Office are significant and important to address the challenge of forced labor. Equally important is a transparent, predictable, and effective enforcement mechanism.

While the focus of today's hearing is strengthening enforcement and protecting workers, USCIB members are currently addressing the systemic challenges of forced labor in a variety of other ways, including through voluntary initiatives and innovative partnerships. With supply and value chains spanning the entire globe over a wide range of commodities, products, and sectors, our testimony reflects USCIB and our members' focus on the implementation of the forced labor import prohibition, contained in Section 307 of the Tariff Act of 1930, as amended (hereinafter, Section 307).

USCIB supports compliance consistent with Section 307, working cooperatively with CBP. Regrettably, CBP's current forced labor enforcement approach is opaque for U.S. companies. This opaque approach risks undermining active partnership between CBP and business stakeholders and may undermine the overall effort to eradicate forced labor. CBP is an enforcement agency. As such, CBP's current approach is that when they initiate an investigation, it is an enforcement action. As an enforcement action, CBP will not engage any entity that may be involved because it may need to take action later to detain their goods. CBP effectively creates a "black box" from which USCIB members are excluded. Importers are not provided an opportunity during the investigation to share their own due diligence and efforts to demonstrate the goods were not produced with forced labor nor to try to remove the offending practice from their supply chains.

Greater transparency by CBP upon initiation of an investigation and prior to the issuance of a Withhold Release Order (WRO) would enable the business trade community to partner with CBP to address forced labor and prevent the importation of goods actually made with such. Informing the trade community that forced labor is suspected in production of a good earlier in the investigative process would allow companies to take proactive steps that could prevent such goods being detained at the port of entry.

In the spirit of constructive contributions to help address the challenges posed by CBP's current approach, USCIB suggests that CBP:

- Develop a regulatory framework based on objective standards that are predictable, transparent, and workable when applied to 21st Century supply chains, to help eliminate forced labor and support U.S. foreign policy and global development goals and to discourage companies from adopting a cut and run approach to suppliers that are identified as using forced labor.
- Promote increased engagement and transparency with all impacted parties, including the business community, as part of any investigation into allegations of forced labor, to include appropriate U.S. government agencies (e.g., the Office of the U.S. Trade Representative, the Department of Labor, and the Department of State), foreign governments, and the broader trade community, through (1) direct confidential outreach to companies at the outset of an investigation, and (2) engagement with business associations to address and inform questions regarding industry practices, in general. Current regulations require CBP to seek input from importers or other interested persons when an investigation is warranted, but CBP's existing practice does not include solicitation of such input and, as such, no consideration of it.

Specifically, USCIB proposes amending the current process by which CBP issues WROs to create a multi-stepped approach:

1. Announce to all involved parties, including importers, when a review based on allegations is deemed to merit investigation. When allegations are against a company or set of companies, or if a company may be importing from a region, a country, or an industry product subject to the allegations, both the U.S. importer (while maintaining confidentiality) and the foreign government should be notified. CBP should provide companies

with at least 60 days to either respond to the allegation, provide information that may be critical or useful to the investigation, or, in appropriate circumstances, remediate the allegation.

2. Issue a preliminary determination within no less than 60 days after initiating an investigation and provide at least a 60-day comment period without repercussions to the importer other than inadmissibility of the goods, and/or a remediation period for the trade community.
3. Make a final determination not earlier than 120 days after initiating the investigation, if CBP has determined after investigation and consultation with the Task Force that such WRO is merited. Involved parties should have at least 60 days to submit a remedy.
4. Issue final notification of a WRO.

A graphic depicting the proposed process is attached.

CBP currently accepts allegations regarding forced labor from a wide range of stakeholders through various means of transmission, but it does not accept, pre-WRO, any information from foreign governments or importers on the subject merchandise. Though CBP is required to consider information from a wide range of stakeholders under existing regulations [19 C.F.R. 12.42 (d)], in practice it excludes any potentially involved entities from the process. CBP has a successful track record of collaborating with the trade community on, for example, the prevention of drug trafficking, securing our borders following the events of September 11th, and countering counterfeit materials. CBP's current practice is contrary to this long-standing practice of strong trade collaboration. As a result, it hinders the establishment of a transparent and predictable process to determine if there is a risk of forced labor and to engage the business community to use their leverage, resources, and position where possible to remove the offending behavior by the manufacturer, thus positively contributing to the eradication of forced labor.

USCIB wants to partner with Congress and CBP on this process to: (1) combat forced labor in the global supply chain; (2) prevent unfair pricing and practices negatively affecting U.S. workers; and (3) ensure a values-based trading system. In reality, the current process does not fully serve these goals and is damaging to forced laborers subjected to these abhorrent practices and to the U.S. economy, due to opacity and lack of collaboration. We can and must do better.

We believe that improving the current process could address direct and indirect impacts to the U.S. economy, domestic manufacturing, and U.S. jobs. Current CBP enforcement practice creates uncertainty with sourcing risks and/or commitments, even when a supply chain is later proven "clean," which could result in increased costs, scarcity, increased volatility in sourcing due to unpredictability, and in some cases could hamper efforts to source inputs important to the U.S. economy. The current enforcement approach may discourage R&D activities and could lead to delays in global product launches.

USCIB's process recommendations would help address mistaken detentions by CBP for commodities not associated with enforcement actions (i.e., the affected shipment is not linked to the country and/or commodity targeted by the WRO). Improperly detaining a shipment for 5-6 days in a bulk commodity storage facility could impose seven-figure costs with concomitant negative impacts on consumers. USCIB has examples of importers who have had substantial portions of their inbound inventory incorrectly detained for months. Such delays can threaten the existence of small to medium sized businesses and lead to full or partial shutdown of manufacturing operations, distribution centers, logistics providers, transportation companies, and vendors of all sizes impacting U.S. jobs.

We strongly believe that CBP must modernize, update and align its regulations, policies and procedures to address the evolving threat of forced labor in supply chains in **partnership** with the business community. In our view, the process outlined above will create a reasonable, transparent and – most importantly – effective system for combatting forced labor in supply chains. Further, the proposed process will advance the effective implementation of the law and foster greater collaborative engagement with the business community as well as other government agencies in combatting forced labor in complex international supply chains.

USCIB believes that cooperation between the government, stakeholders, and the business trade community is the most effective path to block the imports of goods made with forced labor. USCIB would like to be a resource in the process to design an updated path forward for CBP to implement the import prohibition for goods made with forced labor while encouraging responsible business practices and avoiding unnecessary disruption of trade and complex supply chains.

I appreciate the opportunity to provide USCIB views on how to improve the WRO process via a more collaborative approach between CBP and the trade community and, more importantly how to advance the effective enforcement of Section 307 by CBP. I welcome any questions or comments.

List of Annexes:

1. Chart – Proposed Multi-step process for implementation under Section 307 of the 1930 Tariff Act

ANNEX 1

Proposed Multi-Step Process for Implementation of Section 307 of the Tariff Act of 1930

