



August 3, 2022

Joshua Kagan  
Assistant U.S. Trade Representative for Labor Affairs  
Office of the U.S. Trade Representative  
600 17th Street NW  
Washington, DC 20006

**Re: Request for Comments, Office of the U.S. Trade Representative  
Docket Number USTR-2022-0006  
Trade Strategy to Combat Forced Labor  
(87 Fed. Reg. 40,332 – 40,333, July 6, 2022)**

Dear Mr. Kagan:

The U.S. Chamber of Commerce (“the Chamber”) is pleased to present the following comments — prepared with input from our member companies — on USTR’s development of a focused trade strategy to combat forced labor (“the Strategy”). We hope they prove helpful as USTR works to establish an action plan for utilizing existing and new trade tools to combat forced labor in traded goods and services.

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The Chamber condemns the use of forced labor in supply chains around the world and fully supports the Administration’s efforts to end this abhorrent practice. As USTR develops its Strategy, we urge officials to engage in continuous and substantive engagement with the private sector and the broader trade community. Many companies have made and will continue to make significant investments in comprehensive supply chain mapping and due diligence tools, which the U.S. government should encourage, not disincentivize. In this respect, collaboration with industry will be of paramount importance to the success of the Strategy.

Additionally, cooperation with like-minded countries and allies should be a priority as the Strategy is shaped. We urge the Administration to adopt a multilateral approach in implementing such a policy by coordinating on similar initiatives with key partners around the world. These frameworks should seek to optimize the possible alignment of actions taken by other countries with the U.S. approach to address the fundamental causes of forced labor.

## RECOMMENDATIONS

### i. **What actions could the U.S. Government pursue with like-minded trade partners and allies to combat forced labor as an unfair trade practice?**

- *Develop multilateral rules and common approaches:* The U.S. should lead the development of multilateral rules and common approaches to eliminate forced labor in supply chains. This includes the alignment of standards — including due diligence standards — to promote harmonized compliance and reporting regimes that will help allocate resources towards addressing the problem of forced labor practices without adding unnecessarily to compliance burdens. Consensus among our partners and allies is crucial to the efficacy of policies to combat forced labor and helps to ensure fairness in competition and trade.
- *Advance international standards:* The United States is uniquely positioned to advance international standards and harmonization of forced labor principles that protect workers and promote human rights in global supply chains. In this respect, we support the United Nations Guiding Principles on Business and Human Rights (“UNGPs”), 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 responsibilities for business conduct.
- *Address fundamental causes of forced labor:* The Administration should increase interagency collaboration and enhance engagement in multilateral institutions to address the actual fundamental causes of forced labor, rather than prioritizing enforcement of import restrictions that may have limited effectiveness in addressing core issues that lead to forced labor.
- *Prioritize risk-based approaches:* Multilateral frameworks spearheaded by the Administration should take a risk-based approach and build on proven international standards that reflect input from states, business, and civil society in addressing human rights risks across supply chains.
- *Acknowledge geopolitical challenges:* International engagement must also recognize the geopolitical challenges companies face when states are implicated in forced labor, including transparency challenges for companies attempting to complete the requisite due diligence to ensure the absence of forced labor in their supply chains. Accordingly, U.S.-led multilateral dialogues should focus on frameworks that increase pressure on those

states to improve transparency and audit processes, while ensuring workers' rights are protected and companies are protected from state-sponsored retaliation.

- *Coordinate with relevant government agencies:* The eradication of forced labor is a responsibility shared across multiple U.S. government agencies. Impactful partnership on forced labor issues is led by U.S. Customs and Border Protection (CBP) and should receive input from other responsible government agencies, including USTR's work at the intersection of trade and forced labor. Relevant government agencies should prioritize diplomatic tools and collaboration with industry and partner governments to ensure the absence of forced labor in supply chains. Import restrictions, whether via a USTR-led trade agreement or CBP enforcement actions, should be a last resort, not the primary tool.
- *Focus on worker engagement tools and supply chain solutions:* USTR should work collaboratively with industry and government partners to lead multilateral efforts toward combatting forced labor globally. These efforts should focus on increasing the availability of worker engagement tools and promoting solutions to common supply chain problems, including ensuring wages are paid, tracing global recruitment corridors, and bringing visibility to otherwise opaque sections of global supply chains.

**ii. How can the U.S. Government bolster the forced labor components of trade agreements and trade preference programs to have greater effect?**

- *Reference ILO standards:* Prospective trade agreements and economic frameworks should reference ILO norms and require parties to effectively enforce their labor laws. U.S. trade agreements have used the 1998 ILO Declaration on Fundamental Principles and Rights at Work as a convenient reference point because the United States is a party to only two of the eight ILO core conventions, and a third has long been pending in the Senate. Further, this is unlikely to change: "Under a tripartite agreement between the U.S. Government, the AFL-CIO and USCIB [the U.S. Council for International Business, the organization representing U.S. employers before the ILO], no ILO convention will be forwarded to the U.S. Senate for ratification if such ratification would require any change in U.S. federal and state laws.... the remaining five conventions have been found to directly conflict with U.S. law and practice and thus have not been considered for ratification since

ratification would require extensive revisions to U.S. state and federal laws.”<sup>1</sup> Consequently, it is difficult to see how the United States could make more ambitious commitments relating to labor rights in trade agreements. Many members of Congress and representatives of the business community would view including the ILO core conventions in future trade agreements as an inappropriate effort to rewrite U.S. labor law through an international agreement. Indeed, the United States-Mexico-Canada Agreement (USMCA), which was endorsed by the AFL-CIO and other labor unions, did not require its parties to ratify the ILO core conventions.

- *Include flexible due diligence and reporting requirements:* Due diligence and reporting requirements must be flexible and practicable, outlining objectives without overly prescriptive obligations. Trade agreements should incorporate improved mechanisms for collaboration with industry and align with existing regulatory and supply chain disclosure requirements. Any due diligence-related rules should align with international standards (UNGP, OECD, ILO).

**iii. What new and innovative trade tools can the U.S. Government develop and utilize to advance efforts to combat forced labor in traded goods and services?**

- *Prioritize industry collaboration on supply chain tracing tools:* The Administration should prioritize transparency and collaboration with industry on supply chain tracing technologies, including tools used by CBP and the Department of Homeland Security (DHS) on *Uyghur Forced Labor Prevention Act* (UFLPA) enforcement. (The Chamber and partners have issued reports on human trafficking that examine some of these technologies, [here](#) and [here](#), in ways that may be relevant.) Industry should be invited to review potential risk modeling and supply chain mapping technologies before they are deployed by government agencies.
  - For example, in the case of import restrictions, which are not preferable or effective in preventing the underlying conditions of forced labor, it is important that industry have visibility into the “sources” that are going to be used for targeting imports. USTR should ensure that CBP/DHS prioritize transparency and early engagement with importers on evidence that can be used by importers to clear shipments.

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<sup>1</sup> Adam Greene, U.S. Council for International Business, “Issue Analysis: U.S. Ratification of ILO Core Labor Standards,” April 2007.

- *Facilitate development of supply chain tracing tools:* The Administration should support the development of such tools — through grants or partnerships with multilateral organizations — that will benefit both small and medium-sized enterprises and governments looking to manage and trace supply chain complexities.
- *Welcome a “whole-of-government” approach to enforcement, possible tools:* We encourage USTR to work with other agencies and take a comprehensive approach to the issue, including through the use of diplomacy, aid, and other incentives — not just trade barriers. Accordingly, we hope the Administration utilizes trade-restrictive tools and withhold release orders (WROs) only when other tools prove ineffective.

**iv. How can the U.S. Government make the development of trade policy on forced labor a more inclusive process?**

- *Robust stakeholder engagement is essential:* We encourage USTR to work with multiple stakeholders — including industry representatives from an array of sectors as well as allied countries — while developing and implementing its Strategy.
- *Clear guidance is essential:* The business community and the Administration must work together early and often in order to effectively advance efforts to eradicate forced labor in global supply chains. Members of the trade community will benefit from clear regulations and guidance, prior to any enforcement, to assist in setting up effective compliance programs, which should focus on international standards that accelerate effective enforcement of national labor laws.
- *Embrace partnership with industry and have patience:* Efforts to eliminate forced labor take significant time and investment and cannot be put in place overnight. In many cases, companies are expected to regulate suppliers’ behaviors where governments have failed to do so effectively. This poses major challenges as companies cannot address state-sponsored forced labor on their own. However, they can effectively influence private entities. Therefore, we reiterate that combatting forced labor and ensuring that it has no place in global supply chains requires regular and meaningful collaboration between business and government.

**v. Do you have additional recommendations for monitoring, tracing, or eliminating forced labor in traded goods and services in supply chains?**

- *Address weak governance and rule of law:* Weak governance and rule of law can contribute to forced labor in global supply chains. In addition to partnering with industry on due diligence requirements, the Administration should encourage partner governments to strengthen domestic measures protecting workers from harmful recruitment and employment practices.
- *Encourage information-sharing:* We encourage greater transparency from CBP and other enforcement agencies, including sharing information about foreign entities with connections to forced labor. Given the UFLPA's stated expectations for supply chain traceability, sharing information with stakeholders would help the trade community prioritize identification of high-risk suppliers.
- *Consider use of cutting-edge technologies to enhance supply chain monitoring:* USTR should consider pilot projects for the use of cutting-edge technologies, including artificial intelligence and blockchain technologies, to help monitor, trace, and eliminate forced labor in supply chains. However, these efforts should be tested carefully in consultation with industry partners before implementation.
- *Prioritize use of verifiable data:* To ensure the appropriate deployment of the Administration's resources and to help avoid unintended consequences of actions related to insufficient evidence, the Administration should only consider allegations that are supplied with:
  - a) information that is verifiable, credible, and indicative of firsthand awareness of the alleged violations;
  - b) on-the-ground data collection from a statistically reasonable sampling of affected workers conducted by established labor rights experts;
  - c) to the greatest extent possible, data should include the location of the alleged violation, the affected population, the parties responsible, the precise nature of the alleged violation, the date range of the alleged violation (including evidence that the alleged violation is ongoing), and evidence that it is a systemic and not isolated incident; and

d) evidence that the goods at issue are destined for the United States.

Thank you for considering our views. We welcome the opportunity to provide further input on these issues and coordinate in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "John Murphy". The signature is fluid and cursive, with a long horizontal stroke at the end.

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