



WRITTEN SUBMISSION OF THE NATIONAL FOREIGN TRADE COUNCIL

Comments Regarding a Trade Strategy to Combat Forced Labor

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INTRODUCTION

The National Foreign Trade Council (“NFTC”) appreciates the opportunity to provide input as the Office of the U.S. Trade Representative (“USTR”) works to develop a focused trade strategy to combat forced labor. NFTC is pleased that USTR is seeking to develop a coordinated, whole-of-government approach to combatting forced labor. While enforcement of U.S. laws to prevent products made with forced labor from entering the United States will remain an element of addressing forced labor, border measures and private sector efforts alone are not sufficient to fully address the root causes of forced labor and drive remediation.

NFTC believes USTR has a unique opportunity to spearhead domestic and international collaboration to address forced labor at its source. U.S. government intervention is particularly critical in the face of state-sponsored forced labor where traditional tools and approaches will not work. NFTC encourages USTR to work constructively with interagency stakeholders, the business community, and trade partners to develop a forced labor strategy that is transparent, builds on internationally-recognized best practices and effective tools, and includes a robust role for government-to-government engagement.

About NFTC

NFTC is the premier association for leadership, expertise, and influence 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 tackle 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, expertise, and influence, 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.

ELEMENTS OF A TRADE STRATEGY TO COMBAT FORCED LABOR

The current approach to addressing forced labor in the United States relies on legislation that bans imports of goods produced in whole or in part with forced labor.¹ NFTC members are working diligently to comply with these laws and support the goal of ensuring that their products are free of forced labor. However, private sector efforts alone are not sufficient. The aspects of forced labor that are visible to and within the control of the private sector are the tip of the iceberg. To effectively address a problem this complex requires a partnership between the private sector and the U.S. government, as well as robust government-to-government engagement to develop appropriate policy approaches and drive remediation. In formulating a trade policy to address forced labor, USTR may wish to consider the issues outlined below.

- 1. The U.S. Government should engage with like-minded trade partners and allies to combat forced labor as a human rights issue rather than as an unfair trade practice and advance greater government-government action to combat root causes of forced labor.**

USTR's federal register notice requesting input encouraged comments on how the U.S. government could work with trade partners and allies to address forced labor as an *unfair trade practice*. NFTC questions the characterization of forced labor as an unfair trade practice. Forced labor is at its core a human rights issue. International Labor Organization ("ILO") *Declaration on Fundamental Principles and Rights at Work* requires the elimination of all forms of forced or compulsory labor. The elimination of forced labor is also addressed under United Nations ("UN") Sustainable Development Goal 8 (Target 8.7). NFTC believes that addressing forced labor in the context of human rights and development is a better approach rather than treating it as an unfair trade practice where typical remedies involve the imposition of increased tariffs. Increasing tariffs is a blunt, punitive measure that is not constructive for improving the conditions and practices that give rise to forced labor or improving conditions for workers. Moreover, tariffs and import restrictions are imposed on the importer, who may not have sufficient visibility into the product supply chain to satisfy the U.S. government.

Nonetheless, the U.S. government, and USTR in particular, are uniquely positioned to work with our trade partners to advance trade agreements that include international standards and harmonization of labor rights principles that protect workers and promote human rights in global supply chains. USTR should increase interagency collaboration and enhance engagement in multilateral institutions to address the actual root causes of forced labor, rather than prioritizing enforcement of import restrictions that have limited effectiveness in addressing core issues that lead to forced labor.

Consistent with the UN Guiding Principles for Business and other due diligence frameworks, such as the Organization for Economic Cooperation and Development ("OECD")'s Due Diligence Guidance on Responsible Business Conduct ("OECD DDG"), USTR should work collaboratively with industry and government partners to lead multilateral efforts to combat forced labor globally. The most recent [State Department Trafficking in Persons Report](#) ("TIP

¹ See, Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) and the Uyghur Forced Labor Prevention Act of 2021 (Pub. L. 117-78, 135 Stat. 1525 (2021)).

Report”) identified several areas for greater collaboration, including monitoring labor recruitment programs to protect workers from exploitation, strengthening partnerships among law enforcement, government, employers, and NGOs; emphasizing effective policy implementation with stronger enforcement, better reporting, and government-endorsed business standards; training of companies and governments, and monitoring supply chains to address forced labor, including through government procurement policies.

USTR’s trade strategy should focus on ensuring trading partners are developing worker engagement tools and promoting solutions to common problems such as ensuring wages are paid, tracing global recruitment corridors, implementing effective grievance mechanisms, and bringing visibility to otherwise opaque sections of global supply chains. Multilateral, regional, and bilateral frameworks led by USTR and its interagency partners should include commitments based on a risk-based approach and incorporate proven international standards and best practices that reflect input from states, businesses, and civil society in addressing human rights risks across supply chains.

International engagement must also recognize the geopolitical challenges companies face when states are implicated in forced labor, including transparency challenges for companies attempting to do the necessary due diligence to ensure the absence of forced labor in their supply chains. U.S. government-led dialogues should focus on policy approaches that increase pressure on states to improve transparency and audit processes while ensuring workers’ human rights are protected and companies are protected from state-sponsored retaliation.

There are concrete, positive examples where inter-governmental collaboration led to progress on forced labor, including the UN General Assembly’s 2018 principle setting process where five governments developed the [Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains](#). Also, countries in the Asia-Pacific region and the United States collaborated to advance the [Bali Process Government and Business Forum AAA Recommendations](#).

USTR can play a key role in facilitating dialogue between public and private actors, encouraging governments and businesses to work together to develop practical policies and legislation, addressing issues around enforcement and access to remedy. Moreover, the U.S. government should actively participate in forums hosted by the International Organization for Migration (e.g., the Colombo Process and the Global Policy Network in Ethical Recruitment) to work with technical experts to develop policy recommendations and advance best practices.

Ultimately, making progress on this complex issue will require enhanced and increased multi-stakeholder collaboration on all four Ps (Prevention, Protection, Prosecution, Partnership).

2. The U.S. Government should bolster and expand the forced labor components of trade agreements and trade preference programs to incentivize efforts to combat forced labor.

The current forced labor components of U.S. trade agreements require the parties to prohibit the importation of goods into their territories produced in whole or in part by forced or compulsory labor, but this approach is overly narrow. USTR should leverage the accompanying requirement

to establish cooperative actions to incentivize implementation of measures to combat forced labor.

Such cooperative actions could incorporate trade and development tools to provide (1) positive and accelerated market incentives and market access for countries making continuous improvements in tackling forced labor and (2) capacity building and foreign assistance packages to address problems in forced labor hot spots. The Indo-Pacific Economic Framework for Prosperity (“IPEF”) trade pillar presents an opportunity to collaborate with trade partners from several countries where forced labor has been a challenge.

Cooperation and implementation should be targeted at addressing the underlying root causes of forced labor and not just assisting customs authorities in implementing import bans comparable to those in the United States. Rather, USTR should seek to develop a strategic, timely, and coordinated approach that builds on the recently updated U.S. National Action Plan to Combat Human Trafficking and advances prevention, protection, prosecution, and partnerships, including through collaboration with stakeholders that can both address the immediate forced labor indicators and help build long-term solutions.

USTR should coordinate with interagency counterparts to develop programs that provide rewards for countries that are demonstrating continuous improvement in tackling forced labor (e.g., by moving up on the TIP Report). Incentives could include enhanced/accelerated trade preferences and foreign direct investment.

If USTR pursues new forced labor obligations in trade agreements or preference programs, those obligations should be based on international standards (e.g., UNGP, OECD, ILO), focus on establishing desired outcomes and objectives without including overly prescriptive obligations, and ensure that obligations are feasible, practical, and align with existing regulatory and supply chain disclosure requirements across a diverse range of sectors. Where measures create legal liability for companies, their focus should be on intentional non-compliance or intentional provision of false information.

In addition, the U.S. government should use trade agreements/frameworks to conduct state-to-state engagement with the host government where necessary to ensure effective enforcement of existing laws and address policy gaps. Where relevant, the U.S. Agency for International Development (“USAID”) and the Department of Labor’s Bureau of International Labor Affairs (“ILAB”) could provide FTA partners with technical assistance and foreign aid to enhance economic development and legitimate job creation, provide entrepreneurship training, gender, and girls’ education; develop awareness programs such as community-based efforts to inform workers about risks and opportunities in the labor market and ensure business owners to understand their duties and obligations to respect the rights of workers.

3. The U.S. Government should develop and utilize new and innovative trade tools to advance efforts to combat root causes of forced labor in traded goods and services.

The issue of forced labor in supply chains is complex, opaque, and often hidden upstream. The U.S. government can help to advance efforts to combat forced labor by creating new tools that

will help businesses identify and avoid forced labor and provide governments with incentives to address issues that are identified. The following new tools should be considered as part of USTR's forced labor strategy.

Research and data: More targeted research is needed to provide data on prevalence of vulnerabilities at different points in the supply chain. There needs to be country-specific insight into vulnerabilities and areas where there is a breakdown in the rule of law, social protections, and high-risk places where exploitation occurs. The U.S. government can play a key role in creating better research and data tools, particularly by continuing to fund work by the U.S. Department of Labor – such as the reporting on *Goods Made with Forced Labor*. USTR can use information and data to identify forced labor hot spots and build strategies to consult and problem solve with trade partners.

Collaborative Tools: The current reliance on withhold release orders (“WRO”) and the Uyghur Forced Labor Prevention Act’s (“UFLPA”) rebuttable presumption provide insufficient opportunity for importers to be made aware of and respond to allegation of forced labor before punitive action is taken. The ultimate goal of any forced labor tools should be the elimination of practices that result in forced labor and to ensure workers are protected from abuse and persecution. Tools that rely only on punitive actions once goods reach the U.S. border create a heavy incentive for businesses to simply drop suppliers if any forced labor compliance issues arise, leaving the supplier’s practices in place and workers at risk. A more effective approach would be to develop new tools that provide a longer, more collaborative process where potential forced labor issues are identified, recommendations are made to address issues of concern, time is allowed to implement recommendations, and positive tools/incentives for remediation are provided before imports are banned. For example, as a member of the Forced Labor Enforcement Task Force (“FLETTF”), USTR should ensure that U.S. Customs and Border Protection (“CBP”) provides clear standards on the types of documents needed to overcome WROs and the UFLPA’s rebuttable presumption. There is precedence for this type of approach, for example under the Special 301 process countries have multiple reviews and opportunities to improve their protection of intellectual property rights and Generalized System of Preferences (“GSP”) beneficiary countries are subject to an extensive formal review process prior to losing benefits for failing to meet eligibility criteria.

Voluntary Certifications: It is challenging for companies, especially small businesses, to identify and address forced labor that occurs upstream in supply chains. To assist businesses (in particular small businesses) in selecting suppliers who do not use forced labor, USTR’s forced labor strategy should consider identifying or creating a government-based certification/approval process for producers that indicates their facilities have undergone due diligence and have systems and protocols in place to ensure they are working towards being free from forced labor. This type of program could be created as a counterpart to the ILO tri-partite (government, industry, civil society) Better Work Program to address forced labor, perhaps as a pilot program in IPEF.

Tracing Technology: The U.S. government 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 UFLPA enforcement. Industry should be invited to review potential risk modeling and supply chain mapping technologies before they are deployed

by USG agencies. For example, in the case of market/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. In addition, tracing tools should allow for sharing data across industries so that companies do not have to repeat tracing work that has already been done. Companies should be allowed to pool their resources on tracing to minimize bureaucracy and costs.

Government Procurement: USTR's trade strategy should include measures to incentivize trade partners to adopt a risk assessment policy or risk-based approach in their procurement of goods. USTR should work with our trade partners under the Trade Agreements Act to enhance their government procurement processes and reward countries that are making policy, legislative, and implementation progress to combat forced labor. This type of government-government engagement also provides an opportunity to exchange best practices regarding government procurement. Procurement provisions in trade agreements also should provide rewards through the procurement process for companies that have invested the time and resources to ensure their supply chains are free of forced labor.

4. The development of trade policy on forced labor should be a more inclusive process.

USTR should take a more inclusive approach and strengthen engagement with the business community by proactively sharing information on forced labor risks and prevalence in specific countries and pursuing policy approaches that build on industry best practices for addressing the root causes of forced labor.

Combatting forced labor and ensuring that it has no place in global supply chains requires collaboration between business and government. The Administration should look to industry as a valued partner. The existing forced labor policy development process could become more inclusive by fully involving the business community in the development and implementation of policies on forced labor.

The current approach suffers from a lack of transparency. Once CBP has a reasonable suspicion that specific goods were made with forced labor and issues a WRO or notice of enforcement action, there is little information provided to importers about the fact pattern(s) related to the good(s) or inputs that formed the basis of the action or the type of remediation that is required to address the problem.

5. Additional recommendations for monitoring, tracing, or eliminating forced labor in traded goods and services in supply chains.

Weak governance and rule of law can contribute to creating conditions where forced labor is found in global supply chains. In addition to partnering with industry on due diligence requirements, USTR's trade strategy on forced labor should encourage partner governments to strengthen domestic protections for workers, particularly in areas where risk is high, such as worker recruitment and engagement.

Responsible Recruitment: USTR’s forced labor trade strategy could incorporate elements from the [Leadership Group for Responsible Recruitment](#) (“LGRR”) approach to responsible recruitment in areas such as assisting trade partners in developing effective regulation and oversight of policies impacting ethical recruitment. USTR also should ensure that the U.S. government participates in global efforts to enforce laws and fill policy gaps in migration corridors, such as the International Organization for Migration’s Global Policy Network on Recruitment. Increased collaboration with trade partners, including greater cooperation on cross-border law enforcement and promotion of technical assistance, can advance responsible recruitment practices to better protect vulnerable migrant workers along key migration corridors.

Responsible recruitment is a fundamental way for governments and the trade community to tackle trafficking in persons, especially labor trafficking. The objective of responsible recruitment is to build employment procedures across supply chains that have been carried out in an ethical manner and respect human rights. This work also entails stemming fraud and exploitation in the recruitment process. USTR should prioritize making progress on responsible recruitment an integral part of its trade policy strategy. Such an approach could include advancing multilateral frameworks through intergovernmental organizations that can help ensure workers are not forced to pay recruitment fees or other costs associated with employment, have knowledge of terms and conditions before they enter employment, are able to maintain access to their identification documents, and leave work and terminate employment at their discretion.

The LGRR has developed a three-part approach to eliminate unfair recruitment that consists of (1) driving demand for responsible recruitment by raising awareness about the positive benefits of ethical recruiting practices and developing tools to implement the Employer Pays Principle; (2) increasing supply of ethically sourced labor through policy and legal environments that support ethical recruiting and create ethical and professional recruitment agencies; and (3) improving protection for migrant workers through effective regulation and government oversight, simplified and transparent recruiting processes, creation of safe corridors for migrant workers, and dialogue between business, government, and civil society.

Capacity Building Partnership Grants: Addressing the conditions and root causes of forced labor requires securing the political will of policy makers and regulatory authorities within and across developing countries. At times, root causes and/or conditions can manifest themselves through multiple layers of complex supply chains in goods that are fragmented, informal, and non-transparent. Other times, the issues can relate to labor migration flows (with remittances) while in other circumstances the issues can be indigenous without international trade connections.

To address forced labor issues, developing country stakeholder alignment – public and private – is critical. A U.S. diplomatic and development initiative resourced with capacity-building assistance and implemented by the U.S. Department of State and USAID would complement to any USTR trade policy strategy. Where and when there is a political commitment to address weak governance and/or weak enforcement of laws and regulations against forced labor, the U.S. government should position official development assistance (“ODA”) in the form of capacity-building partnership grants. Such grants could help incentivize policy development and improved regulatory enforcement frameworks drawing in private sector and civil society support

in developed and developing countries alike. Where appropriate, when dealing with migrant labor challenges across borders, U.S. capacity-building assistance could seek to enlist and align stakeholders in the countries both exporting and receiving the services of migrant laborers.

CONCLUSION

NFTC appreciates the opportunity to share these views on USTR's trade strategy to combat forced labor. This is a complex and multifaceted issue that requires a strategic, coordinated approach based on a cooperative effort between industry and. Import bans implemented at the border are insufficient to address the root causes of forced labor. A forced labor trade strategy that takes a coordinated inter-agency approach, promotes collaboration with the business community, and includes robust state-to-state engagement based on international human rights standards would add important new areas of focus to the U.S. approach to combat forced labor.

NFTC stands ready to engage with USTR further in this effort and would be happy to discuss any of the issues raised in this submission.