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March 16, 2021

Ms. Florence Constant-Gibson,
Office of Trade Relations,
U.S. Customs and Border Protection,
1300 Pennsylvania Avenue NW,
Room 3.5A,
Washington, DC 20229

**Re: Docket No. USCBP-2021-0006 – Comment Regarding the Recommendations
by the Commercial Customs Operations Advisory Committee**

Dear Ms. Constant-Gibson,

The Coalition for a Prosperous America (CPA) is submitting this comment to express our concerns and reservations regarding the four recommendations submitted by the Commercial Customs Operations Advisory Committee (COAC) Forced Labor Working Group (FLWG).¹

At the outset, it must be noted that the trade members in the Forced Labor Working Group in COAC's fifteenth term are led by representatives of Fiat Chrysler Automobiles (FCA) and Cargill.² Both of these enterprises are dependent on the good graces of the Chinese Communist Party. Cargill's Robert Aspell told China Daily that "China has become the voice of global trade

¹ These recommendations were reported on Monday March 15, 2021, *see* Hannah Monicken, "CBP advisory group proposes collaboration, 'objective' measures on forced labor", INSIDE TRADE, *available at* <https://insidetrade.com/daily-news/cbp-advisory-group-proposes-collaboration-%E2%80%98objective%E2%80%99-measures-forced-labor>

² *See* COAC Intelligent Enforcement Subcommittee, <https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-subcommittees>

– a leader in this field.”³ FCA is a joint venture partner with Guangzhou Automobile Group Co., Ltd.⁴, a Chinese state-owned enterprise.

COAC Recommendation #1

The COAC’s first recommendation is for “CBP [to] take a collaborative, multi-agency approach as forced labor laws”. Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) does not contemplate a multi-agency approach. Advocating for a multi-agency approach is advocacy aimed at limiting enforcement actions against prohibited goods. No one would suggest that the Department of Justice nor any of its agencies or bureaus take a collaborative approach with the Office of U.S. Trade Representative before taking an enforcement action involving a foreign enterprise. Recommendation #1 should be rejected.

COAC Recommendation #2

This recommendation calls for increased “government to industry efforts to minimize forced labor in supply chains”. This has it completely backwards, and shifts responsibility away from culpable parties. Rather than increased “government to industry efforts”, Americans would be best served by increased efforts by industry to make transparent their supply chains. Recommendation #2 should be rejected.

COAC Recommendation #3

The third COAC recommendation is morally reprehensible. It calls on CBP to “measure ‘success’ of CBP’s forced labor” enforcement actions in a manner “that is not based on enforcement output (e.g. number of WROs and detentions issued)” but rather on “whether enforcement actions actually result in a reduction of or the elimination of forced labor, at the locations of alleged violators”. The fact that the COAC uses scare quotes around ‘success’ is a tell: they do not see any inherent virtue in keeping products made with forced labor off of American store shelves.

Every time a product made in part with forced labor is denied entry into the commerce of the United States, that is a success. By the COAC recommendations’ logic, there would be no point in smaller nations taking any action against products made with forced labor, because those actions would be most unlikely to have any effect on the origin. This recommendation would be wrong in the historical context of boycotting apartheid South Africa and is wrong now. It should be rejected.

COAC Recommendation #4

³ China Daily, “Leading the Way in Global Trade”, Oct. 11, 2017, *available at* “https://usa.chinadaily.com.cn/business/2017-10/11/content_33102765.htm”

⁴ See “FCA and GAC Strengthen China Joint Venture with Organizational and Leadership Moves”, April 30, 2019, *available at* <https://www.prnewswire.com/news-releases/fca-and-gac-strengthen-china-joint-venture-with-organizational-and-leadership-moves-300840775.html>

COAC recommends that CBP “design trade processes and policies that minimize cost” when fulfilling its mandate to prohibit the importation of products made in part with forced labor. Minimizing cost is a self-serving issue and not an appropriate consideration for a law enforcement exercise of this nature. Recommendation #4 should be rejected.

In conclusion, these recommendations reflect a troubling and continued COAC prioritization of trade facilitation and cheap importation of goods over trade enforcement at every opportunity. CBP’s duty is to enforce the law and to not impede President Biden’s Build Back Better program which, among other things, abhors immoral economic results. Further, the Supreme Court of the United States has made clear that industry has no “right to import”:

As a result of the complete power of Congress over foreign commerce, it necessarily follows that no individual has a vested right to trade with foreign nations, which is so broad in character as to limit and restrict the power of Congress to determine what articles of merchandise may be imported into this country and the terms upon which a right to import may be exercised.

Buttfield v. Stranahan, 192 U.S. 470, 493 (1904)

Sincerely,

A handwritten signature in black ink, appearing to read 'ZMottl', with a stylized flourish at the end.

Zach Mottl, Chairman,
Coalition for a Prosperous America

A handwritten signature in blue ink, reading 'Michael C. Stumo', with a long, sweeping flourish extending to the right.

Michael Stumo, CEO
Coalition for a Prosperous America