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Sent via electronic mail

Therese Randazzo
Director, Forced Labor Division
Trade Remedy Law Enforcement Directorate
Office of Trade
U.S. Customs and Border Protection
1400 L Street, NW
Washington, DC 20229

Re: Comments Regarding the March 2021 Recommendations of the Commercial Customs Operations Advisory Committee

Dear Director Randazzo:

On behalf of the Southern Shrimp Alliance, I write to express the U.S. shrimp industry's strong support for the publicly announced intention of U.S. Customs and Border Protection (CBP) to establish forced labor as a priority trade issue in addition to the seven current priority trade issues: (1) Agriculture/Quota; (2) Antidumping/Countervailing Duties; (3) Free Trade Agreements; (4) Import Safety; (5) Intellectual Property Rights; (6) Revenue; and (7) Textiles/Wearing Apparel. In our experience working with the agency over the last twenty years, the designation of antidumping and countervailing duties as a priority trade issue has proven enormously helpful in concentrating CBP's remarkable enforcement capabilities and capacity on effectively addressing unfair trade, including investigating and eliminating illicit efforts by foreign exporters and U.S. importers to evade trade relief. The Southern Shrimp Alliance believes that stopping goods produced abroad through forced labor from finding a market in the United States must be one of the highest trade enforcement priorities of the 21st Century and, as such, the designation of forced labor as a priority trade issue is of vital importance.

I also write, less happily, to express the shrimp industry's deep disappointment with the recommendations issued by the Commercial Customs Operations Advisory Committee (COAC), Intelligent Enforcement Subcommittee, Forced Labor Group, in a March 2021 paper submitted to

the agency.¹ In that paper, the Forced Labor Working Group presented four separate recommendations to the agency “if CBP continues to move forward with adding Forced Labor as a Priority Trade Issue.”² Each of these recommendations appears designed to complicate and further limit the agency’s ability to effectively enforce 19 U.S.C. § 1307.

The Forced Labor Working Group first encourages CBP to “engage more extensively in dialogue” with other federal agencies, international agencies, and the trade community in its enforcement efforts. But as the U.S. Government Accountability Office (GAO) recently explained in a report reviewing the enforcement of the statute’s outright prohibition on the importation of goods produced through forced labor, the agency already engages in an extensive “collaborative, multi-agency approach” to enforcement of Section 1307 and a formal mechanism has existed for organizing this collaboration since 2017, with the GAO observing:

CBP communicates with [the U.S. Department of State (“State”)], [the U.S. Department of Labor (“DOL”)], and other agencies through the Interagency Forced Labor Working Group’s monthly meetings, which the division chairs. In addition, CBP officials may communicate separately with other agencies’ officials about forced labor cases as necessary. . .

During the working group’s meetings, CBP invites the other participating agencies to share information about their forced labor–related efforts. For example, in meetings that we observed, DOL officials shared information about upcoming web-based seminars, plans to fund forced labor–related activities, and new items on DOL’s List of Goods Produced by Child Labor or Forced Labor. In addition, CBP informs the agencies about ongoing work related to forced labor, according to officials. CBP officials aim to provide 2 weeks’ written notice to other agencies in the working group before issuing a WRO, according to CBP procedures.

According to CBP officials, it is important for agencies to be aware of each other’s efforts to address forced labor prevention and remediation in addition to CBP’s enforcement actions. For this purpose, in March 2020, CBP began inviting representatives from other agencies in the working group to present information about relevant projects, according to CBP officials. In addition, during a May 2020 meeting of the group that we attended, CBP officials announced that the Forced Labor Division was seeking ways to leverage other agencies’ information about forced labor and would accept any information they could offer. State officials at

¹ See <https://www.cbp.gov/sites/default/files/assets/documents/2021-Mar/IE%20Forced%20Labor%20Recommendations%20PTI%20V8.pdf> (last visited March 19, 2021).

² Id.

the meeting noted that State officials at U.S. embassies can provide context to CBP in the initial phases of its investigations of forced labor allegations.³

Nevertheless, as the GAO also explains, Congress has vested sole responsibility for enforcing Section 1307 with CBP.⁴ The Forced Labor Working Group’s recommendation for even greater collaborative efforts leaves unaddressed how such steps would *improve* CBP’s ability to prevent the importation of goods produced through forced labor into the United States.

The Forced Labor Working Group’s disregard for the responsibility that Congress has mandated for CBP is most obvious in its third recommendation, where the Working Group “recommends” that the agency measure success in combatting forced labor in supply chains through “outcome metrics . . . rather than the number of withhold release orders and detentions issued.” Nothing in Section 1307 indicates that Congress tasked CBP with eradicating forced labor from foreign supply chains. Instead, Congress has *prohibited* the importation of “goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor and/or forced labor and/or indentured labor under penal sanctions . . .” Congress, accordingly, demonstrated an intent to address forced labor by precluding goods made through slave labor from entering this market. CBP’s implementation of this Congressional mandate can only be meaningfully measured through enforcement actions, such as the number of withhold release orders and detentions issued.

While we do not know what motivated the Forced Labor Working Group to issue these embarrassing recommendations, they seem to be of a piece of a general overall attitude by U.S. importers to try and ride out the current widespread public outrage regarding the prevalence of slave, forced, and child labor in foreign supply chains without making any serious efforts to address the problem. The lack of concern is most evident when industry groups advocate for policies in forums where the issue of forced labor is not germane. Take, for example, the recent submission of the National Fisheries Institute to the U.S. Food and Drug Administration expressing the seafood importing industry’s opposition to increased traceability requirements.⁵ In its letter, the National Fisheries Institute described a supply chain for farmed shrimp that would preclude traceability of imported shrimp back to the pond from which it was harvested due to co-mingling within the production process. As shown in the National Fisheries Institute’s table, reproduced below, farmed shrimp may be co-mingled after it has been individually quick frozen by the packer and exporter whereupon it may be held “in Bulk as Work in Progress to fill specific orders later.” Further, the National Fisheries Institute asserted that farmed shrimp may be co-mingled even earlier in the production process, shortly after harvest from ponds, when such shrimp is transported to a “pre-processing site” for peeling prior to delivery to the packer/exporter:

³ U.S. Government Accountability Office, *Forced Labor: CBP Should Improve Communication to Strengthen Trade Enforcement*, GAO-21-259 (Mar. 2021) at 17-19, <https://www.gao.gov/assets/gao-21-259.pdf> (last visited March 19, 2021).

⁴ See *id.* at 6.

⁵ See National Fisheries Institute, *Requirements for Additional Traceability Records for Certain Foods*, Docket No. FDA-2014-N-0053 (Feb. 22, 2021) at 48.

Complex Aquaculture Scenario Product: Shrimp

A harvest aggregator will collect fish from 5-10 farms (farmed imports) and commingle after documenting the weight harvested

Step	CTE	Owns	Has Possession
Harvests shrimp from aquaculture pond	Harvest/Originator	Aquaculture Farmer	Farm Team Broker or Processor
Weigh and Some size grading may be done at harvest site	First Receiver?	Broker or Processor Farm Team	Farm Team
Transport to pre-processing site	Commingling from multiple farms may occur	Broker or Processor Farm Team	Farm Team
Pre Process - peeling	Receive /Transform/ Ship	Broker or Processor Farm Team	Broker or Processor Farm Team
Optional Step: Product sold via Auction by Buyer if not already owned by Processor	Receive/ Hold/Ship	If Broker owned may go through an Auction	Auction First receiver KDEs passed from broker via a movement document through auction house
Processor Receives pre - processed shrimp	Receive - better place to manage KDEs if destined for USA	Processor	Processor
Processor - deveins/freezes (IQF)	Transforms (note: not considered substantial transformation by US CBP	Processor	Processing Facility(s) Some steps may be May be outsourced
Processor sorts IQF Shrimp by size -	Commingles (grand lot). May hold IQF in Bulk as Work in Progress to fill specific orders later	Processor	Processor
Processor packages	Transforms	Processor	Processor
Sells to US Importer	Ships	Processor	In transit to port
Import	n/a	Importer	Container ship
US Importer sends to 3 rd Party Cold storage	n/a	Importer	Truck
Cold Storage	Receive/Hold	Importer	Cold Storage
US Importer sells directly to Food service customer	Ships	Importer	In transit
Distribution Center receives	Receiver/ Hold /Ship	Food service	Food Service
Delivers to Restaurant	Receive	Restaurant	Restaurant

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Through reference to this example, the National Fisheries Institute argued that any U.S. Food and Drug Administration requirement for a full trace of imported shrimp back to its original harvest source was not feasible because of the routine use of “pre-processing” facilities to peel shrimp that is exported to the U.S. market.

In the context of discussions about private industry commitment to eradicating forced labor in foreign supply chains, this line of argument to the U.S. Food and Drug Administration is stunning. The locus for the risk of forced labor in seafood processing industry are contract “pre-processing” operations that exist outside of formal regulatory structures. Indeed, in its exhaustive report following its investigation of *Seafood Obtained via Illegal, Unreported, and Unregulated Fishing: U.S. Imports and Economic Impact on U.S. Commercial Fisheries*, Inv. No. 332-575, USITC Pub. 5168 (Feb. 2021), the U.S. International Trade Commission explained that:

Processing sector labor violations, particularly child labor, are particularly prevalent in “tier 2” processing operations, such as shrimp peeling “sheds,” that are part of extended supply chains. Processing sector labor violations are likely more uncommon within “tier 1” processing operations (where seafood is packaged), a pattern that may be due to the need for more rigorous and formal processing practices related to food safety. Industry representative, interview by USITC staff, December 10, 2020.

Id. at 101 n.256. Accordingly, despite the fact that utilization of shrimp peeling sheds introduces significant risks of forced labor in supply chains, the seafood importing industry has argued to another federal agency that additional traceability regulations should not be imposed upon it precisely because these pre-processing operations are a central part of their supply chains.

For these reasons, the Southern Shrimp Alliance entirely agrees with the comments of the Coalition for a Prosperous America that call upon CBP to reject the recommendations made by the Forced Labor Working Group.⁶ The members of the Southern Shrimp Alliance, like most Americans, believes more and stronger enforcement of Section 1307 is imperative. As the agency has seen, only robust enforcement of our laws will provide sufficient incentives for importers to commit the time and resources to eradicating forced labor from their supply chains.

We thank you for your consideration of this correspondence. I am available to address any questions you might have regarding this letter.

Sincerely,



John Williams
Executive Director

⁶ See Coalition for a Prosperous America, *Docket No. USCBP-2021-0006 – Comment Regarding the Recommendations by the Commercial Customs Operations Advisory Committee* (Mar. 16, 2021).