

Hearing of the Senate Committee on Finance: Ending Trade that Cheats American Workers By Modernizing Trade Laws and Enforcement, Fighting Forced Labor, Eliminating Counterfeits, and Leveling the Playing Field

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Chairman Wyden, Ranking Member Crapo, and Members of the Committee,

Thank you for the opportunity to offer testimony today on the vital matter of government enforcement of laws designed to combat forced labor in the supply chains of brands and retailers selling goods in the United States. My name is Scott Nova, and I am Executive Director of the Worker Rights Consortium (WRC), a nonprofit organization committed to advancing labor rights in global manufacturing. The WRC conducts factory-level labor rights compliance assessments in more than two dozen countries; issues public reports of documented labor rights violations; and works with relevant actors to secure remedies, with a particular focus on the responsibilities of the brands and retailers that use the factories in question to make their goods. The WRC serves on the steering committee of the Coalition to End Forced Labour in the Uyghur Region.

I will address in my testimony both the enforcement of the Uyghur Forced Labor Prevention Act (UFLPA) and, more broadly, of Section 307 of the Tariff Act, including some policies and practices of Customs and Border Protection that bear on both. The removal of the consumptive demand loophole in 2016, which made Section 307 enforceable, and the enactment of the UFLPA, along with the inclusion of a robust labor rights mechanism in the US, Mexico, Canada Agreement (USMCA), are recent and rare elements of contemporary US trade policy that meaningfully limit the ability of corporations to make products under abusive working conditions in other countries and then sell them in the United States—often undercutting competitors that make goods either here in the US or under decent conditions overseas. The bipartisan support for these initiatives, exemplified by the Senate’s unanimous passage of the UFLPA, augurs well. It hopefully signals a trend away from trade policies that serve primarily to facilitate corporate access to easily exploitable workers overseas and toward policies that protect the rights and well-being of workers both at home and abroad. The effective enforcement of these statutes, including the UFLPA, is thus of enormous importance, both to vast numbers of individual workers and to the broader goals of combating forced labor, upholding the rule of law, and ensuring fair competition in the global economy.

By continuing to source from the Xinjiang Uyghur Autonomous Region (“Uyghur Region”) while the Chinese government radically expanded its regime of forced labor, leading global brands and retailers made themselves a party to abuses of the Uyghur and other Turkic peoples

that have been deemed crimes against humanity by leading human rights organizations.¹ State-sponsored forced labor in the Uyghur Region intersects with and reinforces other egregious human rights violations, including a vast campaign of arbitrary detention, forced family separation, and one of the most pervasive regimes of mass surveillance ever imposed.² In 2019,³ a point by which forced labor was rampant in cotton production, the Uyghur Region was the source of roughly 20% of the apparel industry's global cotton supply. In 2020,⁴ the region produced 45% of the world's solar-grade polysilicon. The Uyghur Region is also the source of more than 12% of the world's supply of primary aluminum and produces 10% of the world's polyvinyl chloride (PVC). Thus, the supply chains of a huge number of corporations that sell products in the US run through a region that is the global epicenter of forced labor, where the prevailing environment of repression and fear makes human rights due diligence a practical impossibility. At the time of the UFLPA's enactment, there were tens of thousands of shipping containers arriving at US ports *every day*, laden with sweatshirts, solar panels, and myriad other products, all made partly in the Uyghur Region, under conditions likely involving forced labor. In these circumstances, robust enforcement of the UFLPA⁵ is essential to end the complicity of US corporations in the horrors unfolding in the Uyghur Region.

In trying to assess UFLPA enforcement to date, as well as broader enforcement of Section 307, we are mindful that CBP's task is very broad in scope and that genuine enforcement against importers of forced labor-made products is still in its institutional infancy. Prior to Congress's decision to close the consumptive demand loophole, there was, in the forced labor realm, virtually nothing for CBP to enforce. (Indeed, there was not a single Withhold Release Order [WRO] issued between 2000 and 2016.) The enforcement infrastructure specific to forced labor was correspondingly minimal, and CBP had no institutional memory of robust forced labor enforcement. CBP has had only seven years to develop the infrastructure and methods to identify forced labor-made products, and growing pains are an inevitable part of such a process.

¹ U.S. State Department, et al., *Xinjiang Supply Chain Business Advisory*, July 13, 2021, <https://www.state.gov/wp-content/uploads/2021/07/Xinjiang-Business-Advisory-13July2021-1.pdf>; Human Rights Watch and Mills Legal Clinic Stanford Law School, *China: Crimes Against Humanity in Xinjiang*, April 19, 2021, <https://www.hrw.org/news/2021/04/19/china-crimes-against-humanity-xinjiang>.

² U.S. Department of Labor, Bureau of International Labor Affairs, "Against Their Will: The Situation in Xinjiang," accessed March 10, 2022, <https://www.dol.gov/agencies/ilab/against-their-will-the-situation-in-xinjiang>; Congressional-Executive Commission on China, *Global Supply Chains, Forced Labor, and the Xinjiang Uyghur Autonomous Region*, March 2020, <https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/CECC%20Staff%20Report%20March%202020%20-%20Global%20Supply%20Chains%2C%20Forced%20Labor%2C%20and%20the%20Xinjiang%20Uyghur%20Autonomous%20Region.pdf>.

³ Amy K. Lehr, *Addressing Forced Labor in the Xinjiang Uyghur Autonomous Region: Toward a Shared Agenda*, Center for Strategic & International Studies, July 30, 2020, <https://www.csis.org/analysis/addressing-forced-labor-xinjiang-uyghur-autonomous-region-toward-shared-agenda>.

⁴ Laura T. Murphy and Nyrola Elimä, *In Broad Daylight: Uyghur Forced Labour and Global Solar Supply Chains*, Sheffield Hallam University Helena Kennedy Centre for International Justice, May 2021, <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/in-broad-daylight>.

⁵ Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78, 135 Stat. 1525, December 23, 2021, <https://www.congress.gov/117/plaws/publ78/PLAW-117publ78.htm>.

It is also the case that despite the funds recently appropriated for UFLPA enforcement, there remains a large mismatch between the scope of the task and the extent of the resources available, both in terms of the UFLPA and broader Section 307 enforcement. Further expansion of CBP's resources targeted specifically to forced labor enforcement is necessary for a full-scale enforcement effort.

With all that in mind, I would like to provide the following observations and recommendations in relation to the implementation and enforcement of the UFLPA to date.

Enforcement of the Uyghur Forced Labor Prevention Act

Since the law went into effect last June, we have seen some encouraging indicators of successful enforcement. Shipments across multiple sectors are being targeted and detained. Brands, in at least some sectors, are being asked to provide an unprecedented level of supply chain disclosure. CBP is availing itself, at least to some extent, of new technology that allows the geographic origin of the raw material comprising a product to be identified through physical testing of the product, either during the production process or off of the store shelf.

The WRC believes that CBP, and the other agencies that are part of the Forced Labor Enforcement Task Force (FLETF), are committed to meaningful enforcement of the UFLPA. And there are credible indications from industry sources that, at least in the apparel sector, many—though by no means all—major brands and retailers have exited or are exiting the Uyghur Region, in response to the advent and enforcement of the law. We have also seen recent evidence of a sharp decline in demand for Xinjiang cotton as a result of these developments.⁶

Every enforcement action taken by the US government—and every corporate decision, driven by those actions, to shift sourcing away from the Uyghur Region and away from suppliers implicated in Uyghur forced labor—strikes against the impunity both of the Chinese government and of global corporations that have heretofore been complicit in those abuses. The UFLPA is putting substantial political and economic pressure on the Chinese government. And it is forcing thousands of global corporations to go through the altogether healthy process of adjusting to an unprecedented level of legal and financial risk arising from labor practices in their supply chains.

Against this encouraging backdrop, there are also significant reasons for concern, including the paucity of public reporting from CBP and the FLETF on the nature and progress of the UFLPA enforcement effort and indications that progress in certain areas has been too slow.

Any assessment of the UFLPA enforcement to date is partial by necessity, not only because the law took effect less than eight months ago, but because CBP is, at present, sharing very little information about its work. It is important to note, as explained in more detail below, that this is not a problem specific to the UFLPA or to the current leadership of CBP; it is a lack of transparency that has characterized CBP's approach to public reporting with respect to all of its

⁶ Ji Siqu, "As China's cotton harvest begins, Xinjiang 'forced labour' law and global recession fears hobble demand," *South China Morning Post*, October 7, 2022, https://www.scmp.com/economy/china-economy/article/3195043/chinas-cotton-harvest-begins-us-xinjiang-forced-labour-law?module=hard_link&pgtype=article.

forced labor enforcement, dating to 2016. Public reporting by US government agencies on UFLPA enforcement activities is critical for numerous reasons, not least the ability of nongovernmental organizations to coordinate and collaborate with the enforcement agencies, a goal specified in Section 2(d)(7) and Section 4(b)(3)(A) of the UFLPA.

As shown in the table below, in September 2022, CBP first started releasing data on shipments it has targeted, beginning with the month of August 2022.⁷

Month	Number of entries identified by CBP for further examination based on the suspected use of forced labor, and which may be subject to a Withhold Release Order, Forced Labor Finding, or the Uyghur Forced Labor Prevention Act’s rebuttable presumption, and prohibited importation into the United States under 19 U.S.C. § 1307	Value of the entries identified by CBP for further examination
August 2022	838	More than \$266 million ⁸
September 2022	491	More than \$158 million ⁹
October 2022	398	More than \$129 million ¹⁰
November 2022	444	More than \$128 million ¹¹
December 2022	310	More than \$59 million ¹²
January 2023	282	More than \$69 million ¹³

The data actually tell us very little, because CBP does not disaggregate it in a manner that would give the public a clear picture of how the UFLPA is being enforced. CBP is now reporting the

⁷ On January 26, 2023, the WRC reviewed CBP’s Monthly Operational Updates for the 12-month period prior to the enactment of the UFLPA. None included information on entries identified by CBP for further examination. See: U.S. Customs and Border Protection, “CBP Releases July 2022 Monthly Operational Update,” August 15, 2022, <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-july-2022-monthly-operational-update> and U.S. Customs and Border Protection, “Media Releases,” <https://www.cbp.gov/newsroom/media-releases>.

⁸ U.S. Customs and Border Protection, “CBP Releases August 2022 Monthly Operational Update,” September 19, 2022, <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-august-2022-monthly-operational-update>.

⁹ U.S. Customs and Border Protection, “CBP Releases September 2022 Monthly Operational Update,” October 21, 2022, <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-september-2022-monthly-operational-update>.

¹⁰ U.S. Customs and Border Protection, “CBP Releases October 2022 Monthly Operational Update,” November 14, 2022, <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-october-2022-monthly-operational-update>.

¹¹ U.S. Customs and Border Protection, “CBP Releases November 2022 Monthly Operational Update,” December 23, 2022, <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-november-2022-monthly-operational-update>.

¹² U.S. Customs and Border Protection, “CBP Releases December 2022 Monthly Operational Update,” January 20, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-december-2022-monthly-operational-update>.

¹³ U.S. Customs and Border Protection, “CBP Releases January 2023 Monthly Operational Update,” February 10, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-january-2023-monthly-operational-update>.

number and dollar value of entries “identified for further examination”, but it does not report the number or value of the entries that are actually detained. We thus do not know what percentage of shipments targeted for “further examination” are ultimately allowed into the United States. CBP also does not indicate which of these entries are targeted under the auspices of the UFLPA; the data lumps together shipments targeted under the UFLPA and under every extant WRO. CBP also does not provide any breakdown of targeted shipments by industry, much less specific product category. Nor is there any breakdown by country of origin.

As a result, we cannot glean from the data CBP is publishing how many shipments have been detained—or even how many have been targeted for “further examination”—in any of the high priority sectors identified by the UFLPA (cotton, tomatoes, polysilicon) or in any other individual sector. We know that some solar panels have been detained, but we do not know how many, or from what country or countries they were shipped, or why they were detained. We also, of course, do not know what companies shipped the panels that were detained, nor which companies were attempting to import them. We do not know the answers to those questions with respect to any other industry or product. We also do not know to what extent CBP is focusing its the enforcement of the UFLPA on imports from countries other than the PRC—an important question since, in some industries, including apparel, the majority of goods containing inputs from the Uyghur Region are not finished in the PRC.

Officials at CBP and the Department of Homeland Security (DHS) occasionally disclose bits of more precise information via interviews with journalists. For example, in a September 2022 interview with *The Wall Street Journal*, Robert Silvers, the US Department of Homeland Security undersecretary who chairs the FLETF, stated that during the first three months after the UFLPA went fully into effect, 1,452 cargo entries valued at \$429 million were targeted under the law.¹⁴ But these occasional disclosures add only marginally to the overall picture.

CBP exhibited a similar lack of transparency with respect to the WRO issued on cotton from Turkmenistan in 2018 and with respect to other regional and company-specific WROs.

This lack of transparency precludes a reliable or comprehensive assessment of the quality and effectiveness of CBP’s UFLPA enforcement efforts. In meetings as recently as January 2023, CBP has indicated to nongovernmental organizations that it is planning to publish a “dashboard” with more detailed enforcement statistics; however, CBP has not provided a specific timeline for when the dashboard will be released or information on the level of detail that will be included.

CBP cites multiple reasons for its approach—capacity limitations, constraints ostensibly imposed by the Trade Secrets Act, and confidentiality obligations relating to CBP’s law enforcement role most prominent among them. However, it is difficult to see why any of these factors would preclude the sharing of information as basic, and as anonymous, as the volume of detentions specifically carried out under the UFLPA, or the percentage of detained shipments that originated in countries other than the PRC, or the total volume of apparel shipments detained, or whether any shipments have been targeted based on the involvement in their manufacturing with

¹⁴ Richard Vanderford, “Forced Labor a ‘Top-Tier’ Compliance Issue, Says U.S. Official,” *The Wall Street Journal*, September 27, 2022, <https://www.wsj.com/articles/forced-labor-a-top-tier-compliance-issue-says-u-s-official-11664271003>.

companies on the Entities Lists. Indeed, it is clear to us that CBP, in all of its forced labor enforcement work, dating back to 2016 when that work began in earnest, has consistently and by a large margin erred on the side of too little transparency.

This is a problem that can and should be rectified within the scope of existing law, which allows CBP far more latitude for public disclosure than it is utilizing. One of the most important steps that CBP and the other FLETF agencies can take to ensure effective implementation of the UFLPA is to greatly increase the volume and precision of its public reporting on the enforcement process, beginning with disclosure of data on the volume of both targeted and detained entries that is industry-specific, country-of-origin specific, and specific to UFLPA enforcement.

There are also a number of specific elements of the UFLPA enforcement process that are of concern.

The “clear and convincing” evidence standard and labor rights audits in the Uyghur Region

One of the strengths of the UFLPA is the evidentiary standard Congress has applied¹⁵ to any effort by an importer to prove that a product with content from the Uyghur Region (or a product partly made by a company on the UFLPA Entities List) was made without forced labor, thereby overcoming the “rebuttable presumption” that forced labor was used and gaining entry for the product. Importers must prove their case with “clear and convincing evidence”, a high standard appropriate to the circumstances, to the long history in the PRC of exporters faking labor rights compliance, and to the enormous incentives exporters have to hide their complicity in forced labor in the context of a review.¹⁶

An important question concerning CBP’s approach to enforcement is how it applies this evidentiary standard to potential efforts by importers to present, as evidence to overcome the rebuttable presumption, labor rights audits conducted within the Uyghur Region. CBP should give no evidentiary weight to such audits, because reliable audits cannot be performed in the region under prevailing conditions:

- Candid worker interviews are a necessary¹⁷—indeed, they are the central—element in any reliable labor rights inspection related to forced labor. A worker whose labor is coerced cannot provide an auditor with candid testimony about this coercion unless that worker has good reason to believe they can do so without incurring a significant risk of retaliation, from the employer and/or public authorities.

¹⁵ Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78, 135 Stat. 1525, Section 3(b)(2).

¹⁶ Finbarr Bermingham and Cissy Zhou, “Bribes, fake factories and forged documents: the buccaneering consultants pervading China’s factory audits,” *South China Morning Post*, January 22, 2021, <https://www.scmp.com/economy/china-economy/article/3118683/bribes-fake-factories-and-forged-documents-buccaneering>; Kevin Lin, Liana Foxvog, Olga Martin-Ortega, and Opi Outhwaite, *Time for a Reboot: Monitoring in China’s Electronics Industry*, International Labor Rights Forum and Business, Human Rights and Environment Research Group, September 2018, https://laborrights.org/sites/default/files/publications/Time_for_a_Reboot_0.pdf.

¹⁷ International Labour Organization, “Guidelines concerning the measurement of forced labour,” 20th International Conference of Labour Statisticians, Geneva, 2018, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms_648619.pdf.

- Given the political conditions in the region, every Uyghur worker has good reason to believe the opposite. The government has effectively criminalized any deviation by individuals from government-approved cultural practices, political views, and personal associations,¹⁸ and it brutally punishes those suspected of such deviations with extrajudicial internment, criminal prosecution without hope of a fair trial, physical torture,¹⁹ forced relocation, and other devastating forms of sanction.²⁰ The government also maintains a vast, multifaceted surveillance apparatus²¹ designed to ensure that deviations from approved thought and practice are detected. Under these conditions, workers from the Uyghur community, or from any other Turkic or Muslim community, who are victims of forced labor would have reason to assume that providing truthful testimony about their circumstances to a private auditor or inspector would not only incur a risk of retaliation but the virtual certainty of retaliation.
- Under these conditions, there is a very high likelihood that a victim of forced labor who is asked to submit to an auditor’s interview will provide testimony favorable to their employer and to the government, whether or not that testimony is true. This is why no audit conducted in the region can be relied upon as meaningful evidence: candid worker interviews are essential to effective audits and candid worker interviews are impossible in the Uyghur Region.
- This is why many reputable auditing firms²² ceased conducting labor rights audits in the region in 2020.

If CBP is treating such audits with appropriate skepticism, the “clear and convincing” standard will be very difficult to meet—as it should be—and we anticipate relatively few attempts to overcome the rebuttable presumption.

¹⁸ Sean R. Roberts, *The War on the Uyghurs: China’s Internal Campaign against a Muslim Minority*, Princeton, N.J.: Princeton University Press, 2020.

¹⁹ Rebecca Wright, Ivan Watson, Zahid Mahmood, and Tom Booth, “‘Some are just psychopaths’: Chinese detective in exile reveals extent of torture against Uyghurs,” CNN, October 5, 2021, <https://www.cnn.com/2021/10/04/china/xinjiang-detective-torture-intl-hnk-dst/index.html>.

²⁰ Human Rights Watch and Mills Legal Clinic at Stanford Law School, “*Break Their Lineage, Break Their Roots*”: *Chinese Government Crimes against Humanity Targeting Uyghurs and Other Turkic Muslims*, April 2021, https://www.hrw.org/sites/default/files/media_2021/04/china0421_web_2.pdf; U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *China 2020 Human Rights Report*, March 2021, <https://www.state.gov/wp-content/uploads/2021/10/CHINA-2020-HUMAN-RIGHTS-REPORT.pdf>.

²¹ Chris Buckley and Paul Mozur, “How China Uses High-Tech Surveillance to Subdue Minorities,” *The New York Times*, May 22, 2019, <https://www.nytimes.com/2019/05/22/world/asia/china-surveillance-xinjiang.html>; Human Rights Watch, “China: Big Data Fuels Crackdown in Minority Region,” February 26, 2018, <https://www.hrw.org/news/2018/02/26/china-big-data-fuels-crackdown-minority-region>.

²² Eva Xiao, “Auditors to Stop Inspecting Factories in China’s Xinjiang Despite Forced-Labor Concerns”, *The Wall Street Journal*, September 21, 2020, <https://www.wsj.com/articles/auditors-say-they-no-longer-will-inspect-labor-conditions-at-xinjiang-factories-11600697706>.

Admissibility reviews

As a result, the primary focus of CBP’s engagement with importers will likely not be the rebuttable presumption, but rather the process CBP calls “admissibility reviews”.²³ These occur in the context of the enforcement of WROs, and now of the UFLPA, when CBP targets a shipment because of indications that the products include content from a banned region or a banned supplier. Under this process, CBP grants the importer the opportunity to demonstrate by evidence that the product does not have such content or was not touched by the banned supplier. We understand from CBP’s statements at informational sessions for nongovernmental organizations²⁴ that such reviews are a common part of its WRO enforcement process and that a substantial number have been carried out under the UFLPA. This means that CBP’s enforcement work under the UFLPA has been, and is likely to be, much more about determining *where* a product’s inputs were sourced, and who touched the product along the supply chain, than about the labor conditions at any facility.

It is thus important that this work be done rigorously, to ensure importers cannot use these reviews to sneak banned products into the US. Such reviews are self-evidently appropriate: if a product does not have Uyghur Region content, and CBP mistakenly suspects it does, an importer should be given the opportunity to prove its case. What we do not yet know is how CBP goes about this work. We can glean from some CBP materials, or otherwise surmise, the kind of data it seeks from importers, but we do not know how CBP vets the veracity of documentary evidence or what evidentiary standard it uses. We also do not know how many such reviews are being conducted and what percentage of them have resulted in CBP deeming the shipment admissible. Unlike the process by which an importer seeks to overcome the rebuttable presumption, admissibility reviews are not subject to disclosure requirements as to decisions made and the evidence on which they are based. Given that a sizable number of reviews are likely taking place, it would be impractical for CBP to disclose specifics related to each. But CBP could and should disclose information about its methods and aggregate data on outcomes, which would go a long way toward reassuring observers that an importer is not using this process as a runaround to the rebuttable presumption.

Avoiding excessive emphasis on goods imported directly from the Uyghur Region

An important area where CBP can increase both the efficacy and efficiency of its enforcement is with improved geographic targeting, including less emphasis on products exported directly from the Uyghur Region and more on products arriving from third countries. Last year, the FLETF averred that “...the highest-risk goods include those imported directly from Xinjiang into the United States...”²⁵ Communications from CBP to nongovernmental organizations have underscored this category of shipments as a high priority. While such imports should obviously not be ignored, they are in practice both tiny in number and relatively easy to detect. Indeed, almost all of the products entering the United States that include Uyghur Region content arrive from someplace other than the Uyghur Region. This is because the primary contributions of the Uyghur Region to global supply chains are raw materials and other inputs that provide their

²³ U.S. Department of Homeland Security, *Strategy to Prevent*.

²⁴ Remarks by CBP representatives at the CBP-CSO Roundtable Meeting on November 17, 2022.

²⁵ U.S. Department of Homeland Security, *Strategy to Prevent*.

value added early in the production process:²⁶ cotton in the apparel supply chain, polysilicon in the production of solar panels, PVC used to make flooring, aluminum used to make cars. Very few of those finished products are manufactured in the Uyghur Region. Indeed, even before CBP's region-wide WRO and the subsequent enactment of the UFLPA, the Uyghur Region directly exported only \$300 million worth of goods to the United States per year.²⁷ To put this in perspective, the US will receive more than twice that amount, from other trading partners, during the time it takes to complete this hearing. In 2019, direct shipments from Uyghur Region sources represented less than one tenth of one percent of US imports from the People's Republic of China (PRC) and roughly 0.01% of all imports. Without minimizing the symbolic importance of shipments direct from the Uyghur Region, and the need to avoid them slipping through, CBP should not focus more than a very modest portion of its limited resources on this element of UFLPA enforcement, and it should apply any resources saved to shipments from third countries, including major exporters of apparel like Bangladesh and Indonesia, and major exporters of solar panels like Vietnam.

Expansion of the UFLPA entities list

Section 2(B) of the UFLPA requires the FLETF, in consultation with the Secretary of Commerce and the Director of National Intelligence, to develop and maintain four entity lists and one product list, as follows:

- (i) a list of entities in the Xinjiang Uyghur Autonomous Region that mine, produce, or manufacture wholly or in part any goods, wares, articles and merchandise with forced labor;
- (ii) a list of entities working with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region;
- (iii) a list of products mined, produced, or manufactured wholly or in part by entities on the list required by clause (i) or (ii);
- (iv) a list of entities that exported products described in clause (iii) from the People's Republic of China into the United States;
- (v) a list of facilities and entities, including the Xinjiang Production and Construction Corps, that source material from the Xinjiang Uyghur Autonomous Region or from persons working with the government of the Xinjiang Uyghur Autonomous Region or the Xinjiang Production and Construction Corps for purposes of the "poverty alleviation" program or the "pairing- assistance" program or any other government labor scheme that uses forced labor.

²⁶ See, for example: Laura T. Murphy, et al., *Laundering Cotton: How Xinjiang Cotton is Obscured in International Supply Chains*, Sheffield Hallam University Helena Kennedy Centre for International Justice, November 2021, <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/laundered-cotton>; Laura Murphy and Nyrola Elimä, *In Broad Daylight*; Laura T. Murphy, Kendyl Salcito, and Nyrola Elimä, *Financing & Genocide: Development Finance and the Crisis in the Uyghur Region*, Atlantic Council Digital Forensic Research Lab, Sheffield Hallam University Helena Kennedy Centre for International Justice and NomoGaia, February 2020, <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/financing-and-genocide>.

²⁷ U.S. Department of Homeland Security, *Strategy to Prevent*.

The current version of the UFLPA Entity List does not have any additions since the original version that was published on June 21, 2022.²⁸ The “list of entities that exported products described in clause (iii) from the PRC into the United States,” per Section 2(d)(2)(B)(iv), remains blank. Across the available lists, there are a total of only 20 entities, several of which have additional subsidiaries or affiliated entities that may or may not be covered by their inclusion.²⁹ All of the entities on the list are derived from WROs or Commerce Department actions dating from June 2021 or earlier.³⁰ In other words, despite submissions by researchers³¹ directly to enforcing agencies and a series of publicly available academic reports since before the law went into effect,³² as well as more recently, that identified relevant entities and products meriting inclusion on these lists, the FLETF has not expanded these lists from those that were in effect before the law was enacted.

An August 4, 2022, federal register notice by the Homeland Security Department specifies a process for additions to the UFLPA Entity List:

The FLETF will consider future additions to the UFLPA Entity List based on the criteria described in clauses (i), (ii), (iv), or (v) of Section 2(d)(2)(B) of the UFLPA. Any FLETF member agency may submit a recommendation to the FLETF Chair to add an entity to the UFLPA Entity List. Following review of the recommendation by the FLETF member agencies, the decision to add an entity to the UFLPA Entity List will be made by majority vote of the FLETF member agencies.³³

It is currently unclear to us whether any FLETF member agency has submitted a recommendation to the FLETF chair to add an entity to the UFLPA Entity List. What is clear, however, is that there have been no additions to the UFLPA Entity List since its original publication seven months ago.

We recognize that multiple agencies within the FLETF have affirmed that it is a high priority to them to work on expansion of the UFLPA Entity List. And we recognize the challenges involved

²⁸ The current version of the UFLPA Entity List is available at U.S. Department of Homeland Security, “UFLPA Entity List,” accessed January 19, 2023, <https://www.dhs.gov/uflpa-entity-list>. The original version of the UFLPA Entity List is available at U.S. Department of Homeland Security, *Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China*, July 17, 2022, https://www.dhs.gov/sites/default/files/2022-06/22_0617_fletf_uflpa-strategy.pdf. A product list as required by Section 2(d)(2)(B)(iii) of the UFLPA is included within the *Strategy to Prevent* report but is not available on DHS’s UFLPA Entity List page.

²⁹ U.S. Department of Homeland Security, “UFLPA Entity List.”

³⁰ U.S. Customs and Border Protection, “Withhold Release Orders and Findings List,” accessed January 19, 2023, <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>.

³¹ Spreadsheets that “include names and addresses (in English and Chinese) of thousands of companies operating in or sourcing from the Uyghur Region” were provided by Laura T. Murphy to enforcing agencies separate from her publicly available submission to the Department of Homeland Security at <https://www.regulations.gov/comment/DHS-2022-0001-0148>.

³² See, for example: Laura T. Murphy, et al., *Laundering Cotton*; Laura Murphy and Nyrola Elimä, *In Broad Daylight*; Laura T. Murphy, Kendyl Salcito, and Nyrola Elimä, *Financing & Genocide*.

³³ Department of Homeland Security, “Notice on the Addition of Entities to the Uyghur Forced Labor Prevention Act Entity List,” *Federal Register* 87, no. 149, (August 4, 2022): 47777–47779, <https://www.federalregister.gov/documents/2022/08/04/2022-16754/notice-on-the-addition-of-entities-to-the-uyghur-forced-labor-prevention-act-entity-list>.

in gathering evidence and making final determinations. However, the lists are integral to the UFLPA, and it will be crucial for CBP and the FLETF to achieve progress in identifying more of the companies that fit the criteria and adding them to the lists, so that goods produced by those companies can be prevented from entering the United States.

Expanding the list of priority sectors

Section 2(d)(2)(B)(viii) of the UFLPA specifies that high-priority sectors for enforcement shall include cotton, tomatoes, and polysilicon.³⁴ Accordingly, the US Department of Homeland Security's (DHS) June 17, 2022, report to Congress, "Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China" (UFLPA Strategy), indicates apparel, cotton and cotton products, silica-based products (including polysilicon), and tomatoes and downstream products as high-priority sectors for enforcement actions by US agencies.³⁵ CBP's "Operational Guidance for Importers" likewise identifies cotton, polysilicon, and tomatoes as commodities with a high risk of forced labor, indicating "the types of documents CBP may require to be submitted on or after June 21, 2022."³⁶

In addition to these sectors, new academic research on supply chains published after President Biden signed the UFLPA into law indicates the need for expansion. This includes the important work on the automobile and PVC (polyvinyl chloride or vinyl) industries by Dr. Laura Murphy at Sheffield Hallam University and her colleagues, demonstrating how some of the world's largest steel and aluminum producers have shifted into the Uyghur Region³⁷ how these commodities and other inputs from the Uyghur Region flow into the automobile supply chain, and how PVC used in building materials is manufactured through state-sponsored labor transfers in the Uyghur Region.³⁸ The UFLPA did not establish a specific process for adding additional priority sectors to those specified in the law, nor does the UFLPA Strategy shine a light on the criteria and timeline for expanding the priority sector list. In a September 2022 conversation with a journalist from *The Wall Street Journal*, Undersecretary Silvers noted in general terms that FLETF is "looking closely at any other product category where forced labor may come into

³⁴ Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78, 135 Stat. 1529, § 2(d)(2)(B)(viii).

³⁵ U.S. Department of Homeland Security, *Strategy to Prevent*.

³⁶ U.S. Customs and Border Protection, "Operational Guidance for Importers," June 13, 2022, https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/CBP_Guidance_for_Importers_for_UFLPA_13_June_2022.pdf.

³⁷ Laura Murphy, Kendyl Salcito, Yalkun Uluyol, Mia Rabkin, et al., *Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region*, Sheffield Hallam University Helena Kennedy Centre for International Justice and NomoGaia, December 2022, <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/driving-force>.

³⁸ Laura T. Murphy, Jim Vallette, and Nyrola Elimä, *Built on Repression: PVC Building Materials' Reliance on Labor and Environmental Abuses in the Uyghur Region*, Sheffield Hallam University Helena Kennedy Centre for International Justice and Material Research L3C, June 2022, <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/built-on-repression>; Sandler, Travis & Rosenberg, P.A., "Forced Labor Enforcement Efforts Expanded to PVC Products", February 9, 2023, <https://www.strtrade.com/trade-news-resources/str-trade-report/trade-report/february/forced-labor-enforcement-efforts-expanded-to-pvc-products>; and Joe Deaux, "US Detains Chinese Aluminum, a Suspected Product of Forced Labor", *Bloomberg*, February 1, 2023, <https://www.bloomberg.com/news/articles/2023-02-01/us-detains-chinese-aluminum-suspected-of-using-forced-labor>.

play.”³⁹ In this regard, Chairman Wyden, we applaud your recent letter to major automobile manufacturers, asking essential questions about their supply chains, and their approach to due diligence, in the context of forced labor in the Uyghur Region.

We encourage the FLETF to consult with nongovernmental organizations in developing a process for expanding the list of priority sectors and urge that the public be updated on the plan expeditiously. Given the findings of recent investigative reports, we would anticipate that both the automotive industry and building materials imports will be given serious consideration for inclusion on the priority sector list.

Broader Issues of Forced Labor Enforcement

While the forced labor crisis in the Uyghur Region is unique in scope and brutality, forced labor is a global scourge affecting vast numbers of people in dozens of countries. The International Labour Organization, in its 2022 report on forced labor and forced marriage around the world,⁴⁰ estimates that more than 27 million people are currently subjected to conditions of work that constitute forced labor. Many of them work within global manufacturing supply chains, making clothing, toys, processed foods, electronic gadgets, medical supplies, and automobiles for the US and other consumer markets.

Combined with the UFLPA, Section 307 of the Tariff Act is by far the most significant mechanism the United States possesses for keeping the massive volume of forced-labor made goods that are flowing through global supply chains out of the United States—and for using the enormous power inherent in control over access to the US market to hold accountable those corporations that practice forced labor and benefit from it.

The following are observations and recommendations related to enforcement of Section 307.

The importance of remedy, the limitations of auditing, and the role of unions and other civil society organizations in achieving and verifying remediation

Achieving proper remedies for workers subjected to forced labor—fully compensating workers for stolen wages and other harms and establishing viable mechanisms to prevent the recurrence of abuses—should be a high priority for CBP in its consideration, issuance, and modification of WROs. Delivering remedy to workers directly affected by forced labor is not feasible in all circumstances; it is, for obvious reasons, a practical impossibility to safely transmit compensation to victims of forced labor in a Uyghur Region internment camp. However, in CBP’s Section 307 enforcement work around the world, especially in the case of company-specific WROs, remedy is often readily achievable. Remedies in a given case must, at a minimum, include making workers whole for any financial loss, including reimbursement of recruitment fees, compensation for unpaid or underpaid wages, and reimbursement for illegal wage deductions, among other forms of wage theft. If enforcement action results in job loss,

³⁹ Richard Vanderford, “Forced Labor a ‘Top-Tier’ Compliance Issue.”

⁴⁰ International Labour Organization, Walk Free, and International Organization for Migration, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, 2022, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_854733.pdf.

workers can and should be compensated for lost wages. Providing back pay, reimbursing workers for illegal fees and deductions, and providing replacement income for job loss should be a basic requirement for any employer seeking modification of a WRO. CBP should also consider requiring additional compensation for non-monetary physical and psychological harm.

Equally important, effective remediation requires that mechanisms be put in place to ensure that employer pledges not to transgress in the future are verifiable and, to the greatest extent possible, legally enforceable. Employers subject to a WRO have every incentive to make promises of reform; unless there is equivalent incentive to *keep* those promises over time, there is little reason to expect improvements to be maintained. Employers must, at a minimum, understand that scrutiny will be ongoing and that import bans will be reimposed if abuses recur. And, where unions are seeking binding labor rights commitments from an employer, whether in the form of a collective bargaining agreement or an ad hoc pact on remedies, CBP should do everything within its power to support this process. CBP should also lend strong support to efforts by unions and allied civil society organizations to couple labor-management agreements with binding commitments from importers to use their economic leverage to ensure that employers comply. These multi-level agreements—which advocates refer to as “Worker-Driven Social Responsibility Programs” or “Enforceable Brand Agreements”—are, by leaps and bounds, the most effective way to lock in any labor rights progress achieved through a company specific WRO.⁴¹

CBP has demonstrated recognition of the importance of effective remedy for workers and, in particular, the value of binding agreements. This view is reflected, for example, in the statement⁴² the agency issued in conjunction with its decision to modify the WRO against Natchi Apparel in India last year—an action CBP undertook partly in recognition of binding agreements achieved between worker representatives, the employer’s parent corporation Eastman Exports, and important customers of Eastman, including H&M.⁴³

In order to achieve effective remedy, it is essential for CBP also to look with skepticism not only on the claims employers make on their own behalf, but also on the reports of third-party auditors hired by employers. In its “Guidance on WRO Modification and Revocation Process”,⁴⁴ CBP cites, as an example of the information it considers beneficial in assessing a request for the modification of a WRO, “evidence of implementation and subsequent verification by an unannounced and independent third-party auditor.”

⁴¹ See: Worker-Driven Social Responsibility Network, <https://wsr-network.org/>.

⁴² U.S. Customs and Border Protection, “CBP Modifies Withhold Release Order on Natchi Apparel (P) Ltd.,” September 7, 2022, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-natchi-apparel-p-ltd>.

⁴³ Global Labor Justice - International Labor Rights Forum, “Landmark Dindigul Agreement to Eliminate Gender-Based Violence and Harassment at Eastman Exports Natchi Apparels with the Support of Global Allies,” April 1, 2022, <https://laborrights.org/releases/landmark-dindigul-agreement-eliminate-gender-based-violence-and-harassment-eastman-exports>.

⁴⁴ Eunkyung Kim Shin, “U.S. Customs and Border Protection Issues Guidance on WRO Modification and Revocation Process,” *Global Supply Chain Compliance*, March 16, 2021, <https://supplychaincompliance.bakermckenzie.com/2021/03/16/u-s-customs-and-border-patrol-issues-guidance-on-wro-modification-and-revocation-process/>.

While the idea of an “independent auditor” sounds good on its face, in industry parlance—for example, in the apparel and electronics sectors—an “independent” auditor is almost always a firm retained and paid by the employer being audited, or by one of the employer’s buyers (the “independence” of the audit residing only in the fact that the people conducting the audit are not direct employees of the company). The auditor is thus accountable to corporations with a vested interest in a positive audit outcome, a built-in conflict of interest that defines most of the labor rights verification work that takes place today in global supply chains. Among the many weaknesses of audits carried out in global supply chains under industry auspices, interviews with workers are usually arranged with the involvement of factory management and conducted inside the workplace or at another locale, such as a company-run dormitory, where workers are unlikely to feel comfortable speaking candidly, particularly if they have information to share that would displease the employer. Depending on the circumstances and exact methods used, a company-funded audit may offer some useful evidence of compliance; however, unless the results are corroborated by candid worker interviews and/or by information from truly independent sources, CBP should not consider the results of industry audits, alone, to be adequate proof of compliance.

The conflicts of interest inherent in most industry audits make it imperative that CBP, at every stage of the WRO process, work with a union that represents workers at the workplace in question, or, where there are no representative unions, with local civil society groups that have a track record of fighting for workers’ interests. These organizations are in the best position to articulate workers’ priorities for remediation—in a far better position than the corporations involved or consulting firms acting on their behalf. Unions and other civil society organizations with a track record of defending workers’ interests are also best positioned to evaluate the veracity of claims that wrongs have been remedied, that the building-blocks for longer term change are in place, and that the employer is honoring its commitments over time. Exporters and their customers in the US have a powerful incentive to overstate progress, and it is far easier for them to do so successfully when they and their paid agents are the primary sources of information.

Remedy for workers who have been subjected to forced labor is a vitally important end in itself; but it is also essential for a functioning enforcement regime. If workers and worker organizations do not see complaints and petitions, and the WROs to which they lead, resulting in concrete benefits for workers—if instead they see a stream of cases where the only result workers experience is the loss of their jobs—then they will, quite rationally, choose not to support the process. If we want workers, unions, and allied organizations to play their vital role in the enforcement process—as whistleblowers, as providers of evidence and testimony, as designers of remediation plans and verifiers of their implementation—then we must demonstrate that doing so is in workers’ interests. If genuine remedies are achieved, that will build faith, and participation, in the process.

Corporate due diligence

The fact that so many corporations were (and surely, in many cases, still are) sourcing from the Uyghur Region underscores the need for corporations to conduct effective due diligence within their own supply chains. Indeed, the question of due diligence, and how to get corporations to do

it, is a focal point of much of the present discourse around labor rights and corporate accountability.⁴⁵

The answer to this question is simpler than it may seem. The best way—indeed, the only practical way—to get global corporations to perform meaningful labor rights due diligence in their supply chains is to make the cost of failing to perform due diligence higher than the cost of performing it. Real due diligence carries a price tag, and not just for more sophisticated audit methods. Real due diligence will reveal that serious labor rights abuses, including in some instances forced labor, are present in a brand’s supply chains—and will further make obvious the ways in which the brand’s own sourcing practices, including the price pressure it places on suppliers, do not just allow but *incentivize* abuses. Addressing the problems that meaningful due diligences surfaces will mean substantial investments in eliminating abuses and compensating affected workers at specific facilities (see, for example, the hundreds of millions of dollars in factory renovations required under the Accord on Fire and Building Safety in Bangladesh to turn 1,600 apparel factories with life-threatening safety deficiencies into safer structures,⁴⁶ with a substantial portion of the cost born, in various ways, by the apparel brands that were signatories to the agreement).

This will also require changes in sourcing practices: ensuring prices paid to suppliers are commensurate with the cost of producing under decent conditions and in conformance with applicable law; skipping less frequently from supplier to supplier, and country to country, in search of cheaper labor costs and instead maintaining longer term relationships with suppliers that demonstrate the willingness and ability to run a clean shop; and cutting ties with suppliers that commit egregious abuses and refuse to remedy them, even when doing so means ending lucrative partnerships. These changes involve costs that, while manageable, are substantial. Corporations will never voluntarily incur them. They will do so only if their failure to root out grievous labor rights violations will cost them even more. Historically, even in the case of forced labor, it has cost them nothing.

This is why strong enforcement of Section 307 and the UFLPA are vital. If the law is enforced, importers with forced labor in their supply chains are caught, and painful consequences are imposed, corporations will recognize it as being in their interest to start performing their own due diligence to prevent forced labor. If we want to see corporate due diligence, we need to enforce the law.

There are specific measures a brand should use when it wants to perform genuine due diligence. In the context of UFLPA compliance, an important step toward due diligence, in industries where the technologies apply, is taking advantage of the emergence of isotopic testing and other forensic technologies that provide corporations a means, independent of their suppliers, to determine whether the products they are sourcing have content from the Uyghur Region. In all

⁴⁵ European Center for Constitutional and Human Rights, OECD Watch, Swedwatch, European Coalition for Corporate Justice, and Center for Research on Multinational Corporations (SOMO), “Downstream due diligence: Setting the record straight,” 2022, <https://www.ecchr.eu/en/publication/downstream-due-diligence-setting-the-record-straight/> https://www.ecchr.eu/fileadmin/user_upload/Downstream_due_diligence.pdf.

⁴⁶ RMG Sustainability Council, “Safety Remediation Progress,” May 31, 2022, <https://www.rsc-bd.org/en/post/safety-remediation-progress>.

contexts, a due diligence measure brands should use is to understand the political context in which they are operating—recognizing for example why a labor rights inspection inside the Uyghur Region cannot yield meaningful information or why the decisions of governmental labor arbitration bodies, operating under authoritarian regimes in Burma and Cambodia, should be treated with skepticism.⁴⁷ Another example is simply not swallowing uncritically whatever claim a supplier puts forward to put a veneer of legality on actions workers are calling out as unlawful. Numerous leading apparel brands and retailers, and their auditing firms, swallowed just such empty claims from suppliers in India in 2020 and 2021,⁴⁸ the suppliers to deny a legally mandated minimum wage increase to hundreds of thousands of workers, eventually racking up more than \$50 million in arrears.

It is important to note that none of these measures are obscure or difficult to put into practice for any sizable corporation. The reason corporations fail to perform due diligence in their supply chains is not because they do not know how to do it, but because they are not convinced it is worth their while. The good news is that enforcement of the UFLPA is starting to change that calculation for many corporations that are, or were, sourcing from the Uyghur Region.

Protecting and expanding transparency of import data

Public disclosure of import data is critical to tracing and monitoring forced labor risk in supply chains, and it is an essential tool in enabling journalists and civil society organizations to conduct supply chain investigations to support the robust implementation of both Section 307 and the UFLPA.

Currently, public access to ocean freight data is provided under federal law (19 U.S.C § 1431). There is, however, no public access to data on shipments arriving by air, truck, or rail. CBP noted in December 2022 that trade via ocean freight accounted for roughly 40% of US imports, meaning there is no publicly available import data for about 60% of the goods we import.⁴⁹ There is no rationale for greater secrecy for shipments arriving by air freight as opposed to those arriving by sea. There is a compelling rationale for making data from all categories of shipments accessible.

Industry is pushing in the opposite direction: 30 civil society organizations recently wrote to CBP in response to public reports of a proposal from US businesses on the Customs Operations Advisory Committee (COAC)⁵⁰ to end public access to data on maritime shipments:

⁴⁷ Human Rights Watch, Only “Instant Noodle” Unions Survive Union Busting in Cambodia’s Garment and Tourism Sectors, November 21, 2022, <https://www.hrw.org/report/2022/11/21/only-instant-noodle-unions-survive/union-busting-cambodias-garment-and-tourism>.

⁴⁸ Annie Kelly, “Worst fashion wage theft’: workers go hungry as Indian suppliers to top UK brands refuse to pay minimum wage,” *The Guardian*, December 16, 2021, <https://www.theguardian.com/global-development/2021/dec/16/worst-fashion-wage-theft-workers-go-hungry-as-indian-suppliers-to-top-uk-brands-refuse-to-pay-minimum-wage>.

⁴⁹ U.S. Customs and Border Protection, “CBP Releases December 2022 Monthly Operational Update.”

⁵⁰ Joshua Goodman, “US businesses propose hiding trade data used to trace abuse,” *Associated Press*, October 17, 2022, <https://apnews.com/article/business-global-trade-regulation-us-customs-and-border-protection-c878caa703150f417342c9777504b9a1>.

The trajectory should be for more transparency, not less. We advocate for disclosure of air, road, and rail manifests, in addition to maritime vessel manifests, while the COAC proposal seeks to shroud all import data behind a thick veil of secrecy. We urge CBP to reject calls for more “confidentiality” and instead disclose all types of customs data—air, rail, maritime and road—to the public...⁵¹

In order to support robust forced labor enforcement, Congress should protect the transparency of data for ocean-going shipments and expand that transparency to shipments arriving by air, road, and rail.

Forced labor enforcement in the context of the “de minimis” exception

Another area of concern is the impact on forced labor enforcement of the “de minimis” exception under Section 321 of the Tariff Act, which provides duty- and tax-free treatment to shipments “imported by one person on one day” with a retail value below \$800.⁵² There has been significant recent attention to the growing volume of imports benefiting from de minimis treatment⁵³—most prominently the explosive rise of the PRC-based cut-price apparel retailer Shein, many of whose direct-to-consumer shipments are imported under the exception—and the relationship between this growth and the decision by Congress in 2015 to raise the de minimis threshold from \$200 per shipment to its current level of \$800. The primary issue of concern, however, is not the \$800 threshold, as sources indicate that the average value of shipments benefiting from de minimis treatment is around \$100⁵⁴ and relatively few exceed \$200.

The concern, from the standpoint of the Section 307 and UFLPA enforcement, is that the limited information disclosure required for such shipments, and the streamlined clearance procedures utilized by CBP, may have the effect of shielding de minimis shipments not only from duty and tax, but also from forced labor scrutiny. Xinjiang cotton, for example, has recently been detected in imports from Shein, via stable isotope analysis.⁵⁵ Yet there are no indications that any products from Shein, which produces exclusively in the PRC, have been targeted by CBP in its UFLPA enforcement efforts. That specific problem can be rectified quickly, and, indeed, CBP should be applying intensive scrutiny to Shein’s imports, but the broader question is how to ensure that the de minimis exception does not also become a forced labor exception. CBP is operating two pilot programs⁵⁶ reportedly designed to elicit data on de minimis shipments that is more detailed and that is provided earlier in the clearance process. It is unclear whether these

⁵¹ See full letter: Advocating Opportunity, et al., “Open Letter to CBP on Trade Data Transparency,” October 20, 2022, <https://htlegalcenter.org/wp-content/uploads/Open-Letter-on-Trade-Data-Transparency-FINAL.pdf>.

⁵² U.S. Customs and Border Protection, “Section 321 Programs,” accessed February 10, 2023, <https://www.cbp.gov/trade/trade-enforcement/tftea/section-321-programs>.

⁵³ Sheridan Prasso and Olivia Poh, “US Senators Ask Shein About Forced Labor Concerns for Its Cotton”, *Bloomberg*, February 9, 2023, <https://www.bnnbloomberg.ca/us-senators-ask-shein-about-forced-labor-concerns-for-its-cotton-1.1881406>.

⁵⁴ Jeff Ferry, “The Trade Deficit is Worse Than We Thought: De Minimis Hides \$128 Billion of U.S. Imports”, Coalition for a Prosperous America, January 26, 2022, <https://prosperousamerica.org/the-trade-deficit-is-worse-than-we-thought-de-minimis-hides-128-billion-of-u-s-imports/>.

⁵⁵ Sheridan Prasso, “Shein’s Cotton Tied to Chinese Region Accused of Forced Labor,” *Bloomberg*, November 20, 2022, <https://www.bloomberg.com/news/features/2022-11-21/shein-s-cotton-clothes-tied-to-xinjiang-china-region-accused-of-forced-labor>.

⁵⁶ U.S. Customs and Border Protection, “Section 321 Programs.”

pilots, which have been running for several years, represent a solution; however, whether through the mechanisms being piloted or alternative means, it is essential that CBP now move swiftly to ensure that de minimis shipments are properly scrutinized for potential Uyghur Region and forced labor content.