

April 7, 2022

Hon. Alejandro Mayorkas
Secretary U.S. Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

Dear Secretary Mayorkas:

The undersigned associations condemn the use forced labor in supply chains and fully support the Administration's efforts to end this scourge across the world. We collectively represent thousands of U.S. companies and millions of American workers, who share these views. As the Department of Homeland Security (DHS) and the Forced Labor Enforcement Task Force (FLETF) consider written comments from stakeholders, we offer these joint recommendations to ensure successful implementation of the Uyghur Forced Labor Prevention Act (UFLPA).

First, for implementation to succeed, the Administration should proceed with a phased-in implementation of enforcement when the rebuttable presumption takes effect on June 21, after it submits its enforcement strategy to the Congress, and after it provides due diligence guidance to importers on the same day. Manufacturers and importers are continuing to strengthen their due diligence practices and working with their supply chain partners to ensure that documentation is available to serve as 'clear and convincing evidence'. They will also need time after June 21 to adjust their procedures and documentation to comply with U.S. Customs and Border Protection's (CBP) enforcement strategy and due diligence guidance.

Ideally, this phased-in approach would be at least one year, giving industry sufficient time to review and understand expectations and guidance and fully implement CBP's guidance, particularly in light of the fact that product development and sourcing can take more than 12 months. Throughout this period, we urge the Administration to increase its dialogue with industry as well as its efforts to educate all stakeholders on enforcement and compliance requirements. These steps are consistent with the informed compliance principles through which CBP has long operated with the trade community and will create confidence among manufacturers, importers, and other supply chain stakeholders that the Administration views them as vital partners in combating forced labor.

Second, for industry to fully comply in a timely manner, the Administration should issue its due diligence guidance to importers as soon as possible. Ideally this would happen in advance of the June 21 deadline. The guidance must provide clarity on high-priority products and specify due diligence practices that qualify as "clear and convincing evidence." Companies need to know where to focus their efforts to maximize the impact of their compliance resources and activities while minimizing disruptions on their American workers and consumers and what CBP expects in terms of procedures and documentation. Clear, detailed guidance that creates a level of certainty and consistency is necessary for companies when making supply chain business

decisions and allows CBP to create a more efficient detection system. We encourage DHS and CBP to issue this guidance through a transparent and fair notice and comment process that gives stakeholders at least 45 days to provide input.

Third, for the guidance to be effective, the Administration should outline how importers can establish by "clear and convincing evidence" that goods are not made with forced labor. The FLETF should publish clear guidance on the documents that CBP will require from companies and importers to rebut the presumption that detained products have been produced using forced labor. The guidance should include a positive list of documents and substantive list of information generally included in such documents that are acceptable to rebut the presumption. In the absence of such clarity, importers will not know what sort of information to begin collecting and retaining from suppliers or to provide to CBP if an entry is stopped under the UFLPA. As a result, they will likely err on the side of being over-inclusive in the information they provide, potentially overwhelming CBP with extraneous documentation. CBP has been frustrated with these 'document dumps', which have often delayed or negatively impacted decisions regarding release. Such an inefficient and unclear process further slows already delayed international supply chains.

Fourth, for industry and government to have greater success in eradicating forced labor in supply chains, the Administration should create tools that serve as roadmaps for implementation. For example, the "list of entities working with the government of the Xinjiang Uyghur Administrative Region (XUAR) to recruit, transport or harbor forced labor or members of persecuted groups", which the UFLPA requires the FLETF to develop, should be a serious and effective tool, not just a reference. The FLETF should develop and receive feedback on this and other entity lists the UFLPA requires through a transparent process. Moreover, inclusion on these lists should be subject to an evidentiary standard that demonstrates that firmly corroborated evidence confirms the forced labor allegations. This standard should differentiate between 'indicators' of forced labor vs. proven or actual forced labor. The FLETF should use a "clear and convincing evidence" threshold to determine which entities are included.

Fifth, for CBP to maximize its scarce enforcement resources, it should work with industry on the basis of existing initiatives or widely accepted frameworks. These initiatives could include CBP's Trusted Trade designation; the ILO Special Action Programme to Combat Forced Labour; the ILO Global Business Network on Forced Labor; the United Nations' Guiding Principles on Business and Human Rights; the Ten Principles of the UN Global Compact, and the OECD Guidelines for Multinational Enterprises, including relevant sectoral Due Diligence Guidance for Agriculture, Minerals, and Textile and Garment supply chains. These frameworks also have the benefit of being endorsed by several U.S. administrations as well as numerous other governments. If the Administration undertakes the development of a new program, it should do so in collaboration and dialogue with industry, so that both government and industry have confidence that the program will work, provide mutual benefits, build on existing efforts, and avoid duplication and wasted resources.

Lastly, we urge the Administration to multilateralize its implementation of the UFLPA by using existing or new commercial and trade initiatives with allies and key partners around the world. These initiatives should seek the greatest possible alignment of actions by other governments with U.S. government actions to combat forced labor and should include industry as a critical stakeholder. Possible fora include the US-EU Trade and Technology Council, the Indo-Pacific Economic Framework, existing U.S. trade agreements and trade and investment framework agreements, regional and multilateral venues, and other bilateral or regional supply chain initiatives.

We believe these recommendations would further our shared goals of ensuring the successful implementation of the UFLPA and eliminating forced labor from global supply chains. The undersigned associations commit to serving as a resource for the Administration as it implements the UFLPA. We look forward to working with DHS and the FLETF throughout implementation and to being vital partners in ending forced labor in the XUAR and around the world.

Sincerely,

American Apparel & Footwear Association (AAFA)

American Association of Exporters and Importers (AAEI)

Autos Drive America

Business Alliance for Customs Modernization (BACM)

Consumer Technology Association (CTA)

Footwear Distributors & Retailers of America (FDRA)

Motor & Equipment Manufacturers Association (MEMA)

National Association of Chemical Distributors (NACD)

National Retail Federation (NRF)

Retail Industry Leaders Association (RILA)

SEMI

Semiconductor Industry Association (SIA)

US-China Business Council

United States Fashion Industry Association (USFIA)