



Comment submission to the Forced Labor Enforcement Task Force, DHS Docket No. DHS-2022-001, on behalf of the International Corporate Accountability Roundtable (ICAR).

The International Corporate Accountability Roundtable (ICAR) is a coalition of 40+ member and partner organizations committed to ending corporate abuse of people and the planet. To support enforcement of Section 307 of the Tariff Act and the Uyghur Forced Labor Prevention Act (UFLPA), ICAR urges the U.S. Department of Homeland Security (DHS) and the Forced Labor Enforcement Task Force (FLETF) to require companies that import goods into the United States to accurately trace their supply chains for those goods and report comprehensive supply chain information to Customs and Border Protection (CBP) as a condition of entry.

ICAR comments to express that in order for CBP and other enforcement agencies to accurately identify goods entering the U.S. in violation of the Tariff Act, importers must be required to accurately trace, document, and report detailed supply chain data to CBP. While this requirement could initially apply to importers of high-risk products under the UFLPA, ultimately CBP should require comprehensive disclosure of supply chain information from *all* importers. A supply chain disclosure requirement like this would build on other traceability programs like the Seafood Import Monitoring Program (SIMP), which could serve as a model for establishing a system that can effectively pair traceability and enforcement. To further enable enforcement, key supply chain data should be made publicly available.

Requiring companies to trace and report supply chain data, starting with high-risk products under the UFLPA, will not be too burdensome on businesses. In sectors where the law already requires traceability and disclosure for human health and safety or to address other human rights concerns, including in industries where traceability may be more difficult, companies have consistently been capable of tracing their supply chains. Moreover, many companies are already voluntarily mapping and disclosing supply chain data.

Supply chain disclosure is particularly important in relation to enforcement of the UFLPA. It is impossible for an importer to provide clear and convincing evidence that a product with content from the Xinjiang Uyghur Autonomous Region (XUAR) was not made with forced labor. Given this reality, CBP's most important task with respect to enforcement of the law will be identifying products with content from the XUAR before they are allowed into the United States. CBP will not be able to do this without comprehensive disclosure of supply chain information.

Finally, when it comes to Tariff Act enforcement more broadly, given the well-documented failures of traditional social audits as a tool for identifying labor rights abuses, and forced labor in particular, CBP should not consider such audits sufficient evidence that goods were not made using forced labor.

- ***Supply Chain Transparency is Essential for Enforcement of the Tariff Act***

Supply chain transparency is key to ensuring goods made with forced labor do not enter the U.S. and is essential to promoting corporate accountability more broadly.¹ Opaque global supply chains allow businesses to obscure the location and the conditions of the farms, mills, factories, and other entities involved in producing the goods they sell, depriving concerned consumers, NGOs, and enforcement agencies of meaningful information about the origin and path of goods entering U.S. markets. Supply chains are often opaque by design²—corporations have the ability to access information about their supply chains, but shield themselves from liability by maintaining intentional opacity, despite recognizing that they may potentially be profiting off of exploited labor in their global supply chains. This opacity poses a significant barrier to enforcing the Tariff Act, as it deprives CBP and others of the information needed to identify shipments of goods potentially linked to forced labor.

In order to enforce the Tariff Act, CBP must be able to connect forced labor overseas to a specific shipment of goods and meet the necessary burdens of proof. However, current data gaps make it extremely difficult for CBP and other enforcement agencies to make the connections necessary for successful investigation and enforcement. (Even with the presumption created by the UFLPA, CBP will not be able to act if the agency does not have access to data linking incoming products to the XUAR). The barrier that lack of supply chain information poses to enforcement of the Tariff Act was highlighted in a Government Accountability Office (GAO) report on forced labor, which noted that:

“[CBP’s] Forced Labor Division officials and representatives from several private sector entities and NGOs said that difficulty in tracing supply chains presents a challenge for Section 307 [of the Tariff Act] investigations and compliance. Forced Labor Division officials noted that CBP often cannot trace goods produced with

¹ See, e.g., Int’l Lab. Rts. F. (ILRF), *Combatting Forced Labor and Enforcing Workers’ Rights Using the Tariff Act, Briefing Paper*, Feb. 2020; ILRF, *Follow the Thread: The Need for Supply Chain Transparency in the Garment and Footwear Industry* (Apr. 20, 2017).

² See Hal Koss, *This Startup Is Mapping Where Our Stuff Comes From*, Built In (July 2, 2020), <https://builtin.com/operations/supply-chain-transparency-visibility-sourcemap>.

forced labor overseas and imported into the United States because of the complexity of the goods' supply chains.”³

Requiring importers to disclose comprehensive supply chain information - including the name and address of every entity and every facility involved in the production process, including in the harvesting, mining, and processing of raw materials - would fill this crucial data gap and allow CBP to identify goods being imported into the U.S. that are suspected of being produced with forced labor. Making this supply chain data publicly available would further enhance enforcement of the Tariff Act.

- *The Seafood Import Monitoring Program Provides a Model that Effectively Pairs Traceability and Enforcement*

Combining an enforcement tool like the Tariff Act with a robust traceability and disclosure program like SIMP would significantly enhance efforts to prevent goods made with forced labor from entering the United States. The Seafood Import Monitoring Program (SIMP) may provide a helpful model for developing a traceability system that can be used for Tariff Act enforcement by CBP. SIMP requires importers of 13 priority species groups to report supply chain data to the point of origin as a condition of entry.⁴ This data includes the name and flag state of the harvest vessel, the geographic area of harvest, and whether any transshipment occurred, along with other data.⁵ Although this data is shared with other enforcement agencies, it is currently not made available to the public. Importers are also required to maintain chain-of-custody documentation for the imported seafood so that the imported good's supply chain is traceable to the point of harvest. This documentation is then subject to audit by NOAA.⁶

CBP is already using the supply chain information it has access to through SIMP to support section 307 enforcement.⁷ Specifically, CBP uses SIMP data “to determine whether a vessel alleged by an outside source to have used forced labor has been the source of U.S. imports and whether a vessel subject to a WRO has been the source of a shipment attempting to enter the United States—demonstrating its value for forced labor enforcement.”⁸

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

⁴ Magnuson–Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program, codified at 50 C.F.R. § 300.324, 81 Fed. Reg. 88995, <https://www.federalregister.gov/documents/2016/12/09/2016-29324/magnuson-stevens-fishery-conservation-and-management-act-seafoodimport-monitoring-program>.

⁵ *Id.*

⁶ *Id.*

⁷ Marti Flacks, Jacqueline Lewis & David McKean, Ctr. Strat. & Int'l Stud., Reeling In Abuse How Conservation Tools Can Help Combat Forced Labor Imports in the Seafood Industry (Feb. 2022).

⁸ *Id.*

As this suggests, SIMP’s traceability system can provide a model for effective implementation of the Tariff Act. Specifically, when importing goods, **importers should be required to provide detailed, comprehensive disclosure of supply chain information, regardless of country of origin, including the name and address of every entity and every facility involved in the production process, including in the harvesting, mining, and processing of raw material.** If an importer fails to report this data or the data is false, the goods may be denied entry and the entity should be subject to penalty. Similarly, importers could be required to maintain chain-of-custody information and documentation, and this documentation could be subject to audit, which could lead to penalties to the entity for noncompliance or false or missing documentation. While initially these requirements could apply to high-risk products under the UFLPA, ultimately CBP should require comprehensive disclosure of supply chain information from *all* importers.

Importantly, when developing supply chain traceability and reporting requirements for purposes of enforcing the Tariff Act and the UFLPA, **CBP should improve upon the SIMP model by ensuring supply chain data is made publicly available.** Public disclosure of this data would facilitate the work of NGOs, journalists, and others who help identify instances of forced labor in U.S. supply chains. This is key to supporting enforcement because CBP “largely relies on data and allegations from outside entities, including non-governmental organizations (NGOs) and the media, to identify cases of suspected forced labor among U.S. imports,” and these outside groups present the majority of proposed Withhold Release Orders (WRO) to CBP.⁹ For a full discussion of additional ways the SIMP model could be improved, including the potential to expand recordkeeping requirements to include labor indicators, see ICAR’s recent report, *Reeling In Abuse: How Conservation Tools Can Help Combat Forced Labor Imports in the Seafood Industry*.¹⁰

- ***Business Compliance with Current Traceability Requirements and Voluntary Supply Chain Tracing and Disclosure by Companies Suggest Practicability***

The efficacy of existing supply chain traceability programs suggests that requiring importers to trace and disclose the supply chains of imported goods, starting with high-risk goods under the UFLPA, would not be overly burdensome. Over the years, the federal government has imposed a number of supply chain traceability requirements with which companies have had the capacity to comply. For instance, although limited, the Food and Drug Administration (FDA) regulations under the Bioterrorism Act¹¹ require much of the food industry to maintain records that document the food’s source “one step forward and one step back,” or in other words, where the

⁹ *Id.*

¹⁰ *Id.*

¹¹ Agricultural Bioterrorism Protection Act of 2002, 7 U.S.C. § 8401.

food is going and the last place that it has been.¹² Other regulations also already require certain sourcing disclosures for human rights-related purposes as well. For instance, Section 1502 of the Dodd-Frank Act requires certain companies to disclose whether their products contain conflict minerals (gold, tin, tungsten, or tantalum) sourced from the Democratic Republic of the Congo or neighboring countries.¹³

Even the seafood industry, which has a notoriously complex supply chain, has traceability requirements through the Seafood Import Monitoring Program (SIMP), which compels importers to report certain harvest data to the National Oceanic and Atmospheric Administration (NOAA) such as the geographic location of harvest and the vessel used.¹⁴ SIMP also requires importers to maintain chain of custody documentation from the place of harvest to port. Notably, fishing vessels on the open ocean which can be renamed and reflagged are, by nature, much more difficult to track than physical factories that remain in one geographic location.¹⁵

If companies are able to trace their supply chains where the law already requires, even in industries where production is complex and geographically mobile, companies have little excuse to allege that it would be too difficult to map and identify the supply chains of high-risk products and inputs imported into the United States. The fact that companies can, and do, trace their supply chains when the law requires suggests that corporate supply chains are opaque by design, and that, contrary to what some claim, companies have the capacity to trace and report supply chain data and will do so when they are incentivized through effective enforcement.¹⁶

Beyond that which the law requires, companies are increasingly mapping and publicly disclosing supply chain information voluntarily. For example, transparency about supply chains is a rapidly growing trend in the garment and footwear industry. Since 2017, there has been a significant increase in the number of apparel companies that publish details about their manufacturing facilities in alignment with the Transparency Pledge standard.¹⁷ Moreover, many garment and

¹² 21 C.F.R. § 1.337; 21 C.F.R. § 1.345. The Food Safety Modernization Act establishes additional requirements which compels certain facilities to establish a food safety system that includes preventive controls and a recall plan. 80 Fed. Reg. § 55907.

¹³ 16 U.S.C. § 78(P).

¹⁴ Magnuson–Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program, codified at 50 CFR §300.324, 81 Fed. Reg. 88995, <https://www.federalregister.gov/documents/2016/12/09/2016-29324/magnuson-stevens-fishery-conservation-and-management-act-seafoodimport-monitoring-program>.

¹⁵ Austin Brush, C4ADS, *Strings Attached: Exploring the Onshore Networks Behind Illegal, Unreported and Unregulated Fishing* (Aug. 2019), <https://static1.squarespace.com/static/566ef8b4d8af107232d5358a/t/5d7022301845f300016ee532/1567629912450/Strings+Attached.pdf>; Emily Benson and Catherine Puga, *Flagging the Issues: Maritime Governance, Forced Labor, and Illegal Fishing*, Ctr. for Strat. & Int'l Stud. (Aug. 9, 2021), <https://www.csis.org/analysis/flagging-issues-maritime-governance-forced-labor-and-illegal-fishing>.

¹⁶ “[S]upply chain mapping is not an easy, quick, or straightforward task...But it’s certainly achievable, where there is a will by brands to do so. It requires brands to choose to invest time and resources into the process.” Sarah Ditty, *Out of Sight: A call for transparency from field to fabric*, Fashion Revolution (Oct. 9, 2020), https://issuu.com/fashionrevolution/docs/fr_tna_out_of_sight_report_2020.

¹⁷ See, e.g., Aligned, *Transparency Pledge*, <https://transparencypledge.org/aligned> (last visited Mar. 1, 2022).

footwear companies have already moved beyond the manufacturing stage and are mapping and publishing information about other parts of their supply chains, such as spinning or textile mills, tanneries, and farms.¹⁸ When it comes to raw materials, according to the 2021 Fashion Transparency Index, the majority (57%) of the 250 apparel brands evaluated “are now disclosing evidence of tracing the supply chain of at least one specific raw material, such as cotton or leather,” and companies like Patagonia, Gildan, and Calvin Klein, and others have already publicly disclosed some of their raw materials suppliers.¹⁹

- ***Verification that Workplaces Within the XUAR are Free of Forced Labor is Not Possible, Making Supply Chain Disclosure Particularly Important for Enforcement***

There are no valid means for companies to verify that any workplace in the XUAR is free of forced labor, or to prevent the use of forced labor in these workplaces, in line with human rights due diligence. When it comes to goods mined, produced, or manufactured wholly or in part within the XUAR, there is no credible way for companies to demonstrate that no forced labor was used. It has become clear that operating in the XUAR “in accordance with the UN Guiding Principles on Business and Human Rights has become a practical impossibility.”²⁰ As stated by the Coalition to End Uyghur Forced Labor, in light of the situation in the XUAR, “[t]here are no valid means for companies to verify that any workplace in [the XUAR] is free of forced labor,” nor are there any valid means for companies “to prevent the use of forced labor in these workplaces in line with human rights due diligence.”²¹ This reality is also acknowledged by the Fair Labor Association (FLA)²² and the Ethical Trading Initiative (ETI),²³ and, tellingly, “[n]umerous audit firms have pulled out of the Uyghur Region due to the impossibility to conduct audits.”²⁴

As such, importers of high-risk products should only be able to import those products if they provide full supply chain traceability, and can prove by clear and convincing evidence that

¹⁸ Hum. Rts. Watch, Fashion’s Next Trend, Accelerating Supply Chain Transparency in the Apparel and Footwear Industry (Dec. 18, 2019, <https://www.hrw.org/report/2019/12/18/fashions-next-trend/accelerating-supply-chain-transparency-apparel-and-footwear>).

¹⁹ Fashion Transparency Index 2021, Fashion Revolution, 60–63, (2021), https://issuu.com/fashionrevolution/docs/fashiontransparencyindex_2021; *Factories, Farms, and Mills*, Patagonia.com, <https://www.patagonia.com/factories-farms-mills/> (last visited Feb. 25, 2022).

²⁰ End Uyghur Forced Labor, *Call to action on human rights abuses in the Xinjiang Uyghur Autonomous Region*, Oct. 2021, <https://enduyghurforcedlabour.org/wp-content/uploads/sites/44/Call-to-Action-PDF-October-21.pdf>.

²¹ *Id.*

²² *FLA Statement on Sourcing from China*, Fair Lab. Ass’n (Dec. 23, 2020), <https://www.fairlabor.org/blog/entry/fla-statement-sourcing-china>.

²³ *Uyghur workers in global supply chains: ETI position statement*, Ethical Trade Initiative (July 8, 2021), <https://www.ethicaltrade.org/blog/uyghur-workers-global-supply-chains-eti-position-statement>.

²⁴ See End Uyghur Forced Labor, *Call to action on human rights abuses in the Xinjiang Uyghur Autonomous Region*, Oct. 2021, <https://enduyghurforcedlabour.org/wp-content/uploads/sites/44/Call-to-Action-PDF-October-21.pdf>; *China: Five audit firms to stop labour-audits in Xinjiang amidst concerns on restricted access*, Bus. & Hum. Rts. Res. Ctr. (Sept. 21, 2020), <https://www.business-humanrights.org/fr/derni%C3%A8res-actualit%C3%A9s/china-five-audit-firms-to-stop-labour-audits-in-xinjiang-amidst-concerns-on-restricted-access/>.

the supply chain is free from Uyghur forced labor. CBP’s most important task with respect to enforcement of the UFLPA will be identifying products with content from the XUAR before they are allowed into the United States. Given that many such products undergo final assembly in countries other than China, and given the lack of transparency of global supply chains, especially at the level of raw materials, CBP can only achieve this goal by requesting comprehensive disclosure of supply chain information from all importers of high risk products, regardless of country of origin, including the name and address of every entity and every facility involved in the production process, including in the harvesting, mining, and processing of raw material.

- ***Traditional Social Audits Cannot Accurately Demonstrate Compliance with the Tariff Act Regardless of Where Goods are Produced***

CBP should not accept traditional social audits as evidence demonstrating that goods were not made with forced labor for purposes of CBP enforcement of the Tariff Act more broadly. There is substantial literature that details the conflicts of interest and problematic incentives inherent to the social auditing industry and that demonstrates the overall failure of social audits when it comes to identifying labor abuses as well as severe safety and environmental risks.

The failure of social audits is in part due to the lack of regulation in the auditing industry and that auditors have not incorporated human rights best practices into their own evaluation policies. For instance, some social auditors continue to interview workers on site where managers know who is being interviewed, or fail to root out conflicts of interest and corruption.²⁵ Moreover, numerous human rights and environmental organizations have expressed concern about the “check-box approach” adopted by social auditors.²⁶ At best, social audits only provide a snapshot of working conditions from one moment in time, making them ineffective when it comes to accurately identifying ongoing violations.²⁷ Even some social auditors themselves acknowledge that audits are not designed to identify sensitive human rights abuses like forced labor or harassment.²⁸

Due to the auditing industry’s limitations, audits frequently result in inaccurate certifications of compliance and failures to identify even egregious human rights abuses such as forced labor. These major gaps in the system effectively shield companies from liability despite that they are intended

²⁵ See, e.g., Clean Clothes Campaign, Fig Leaf for Fashion (2019), <https://labourbehindthelabel.org/new-report-shows-factory-auditing-worsens-garment-workers-rights/>; Hannah Shaikh, *Is the Auditing and Certification Industry Fit for Human Rights Due Diligence*, Bus. & Hum. Rts. Res. Ctr., (Aug. 25, 2021), <https://www.business-humanrights.org/en/blog/is-the-auditing-and-certification-industry-fit-for-human-rights-due-diligence/>.

²⁶ See, e.g., Shift Project, *From Audit to Innovation: Advancing Human Rights in Global Supply Chains*, Aug. 2013, <https://shiftproject.org/resource/from-audit-to-innovation-advancing-human-rights-in-global-supply-chains/>.

²⁷ See, e.g., OECD complaint against TÜV Rheinland, European Center for Constitutional and Human Rights, Report, Aug. 2018, https://www.ecchr.eu/fileadmin/Fallbeschreibungen/Case_Report_RanaPlaza_TueVRheinland_OECD.pdf.

²⁸ OECD complaint against TÜV Rheinland, European Center for Constitutional and Human Rights, Report, Aug. 2018, https://www.ecchr.eu/fileadmin/Fallbeschreibungen/Case_Report_RanaPlaza_TueVRheinland_OECD.pdf.

to identify instances of noncompliance. We have also already seen some of the consequences of relying on social audits. For instance, social audit firms have repeatedly failed to report forced labor occurring at rubber factories in Malaysia.²⁹ Additionally, multiple social audit firms failed to report structural defects in the Rana Plaza building which collapsed in 2013, killing over 1,000 people.³⁰ Allowing companies to rely on social audits as evidence that no forced labor was present at a given factory, farm, or other facility would significantly weaken enforcement of the Tariff Act and allow businesses to capitalize on this major loophole.

In sum, although supply chain transparency is not a silver bullet, requiring importers to provide detailed information about the supply chains of imported goods as a condition of entry would close key data gaps and enable CBP and other enforcement agencies to ensure that goods made with forced labor do not enter the United States. Making this information publicly available is imperative given the important role that NGOs, journalists, and other outside actors play in supporting enforcement of the Tariff Act. Access to comprehensive supply chain information for imports of high-risk goods is particularly important for enforcement of the UFLPA, but ultimately these reporting requirements should apply to all goods imported into the United States.

Thank you for your consideration of this comment. Should you or your colleagues have any questions, please do not hesitate to contact me at david@icar.ngo.

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²⁹ See, e.g., A. Ananthakshmi, Liz Lee and Mei Mei Chu, 'Slavery' found at a Malaysian glove factory. *Why didn't the auditor see it?*, Reuters (May 19, 2021), <https://www.reuters.com/world/asia-pacific/an-audit-gave-all-clear-others-alleged-slavery-2021-05-19/>.

³⁰ Dave Jamieson and Emran Hossain, *Bangladesh Collapse Shows Safety Audit Shortcomings*, Huffington Post (May 4, 2013), https://www.huffpost.com/entry/bangladesh-collapse-safety-audit_n_3211091.