

S. HRG. 118-399

**ENDING TRADE THAT CHEATS AMERICAN
WORKERS BY MODERNIZING TRADE LAWS
AND ENFORCEMENT, FIGHTING FORCED
LABOR, ELIMINATING COUNTERFEITS,
AND LEVELING THE PLAYING FIELD**

HEARING
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
ONE HUNDRED EIGHTEENTH CONGRESS
FIRST SESSION

FEBRUARY 16, 2023



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(II)

C O N T E N T S

OPENING STATEMENTS

	<i>Page</i>
Wyden, Hon. Ron, a U.S. Senator from Oregon, chairman, Committee on Finance	1
Crapo, Hon. Mike, a U.S. Senator from Idaho	3

WITNESSES

Allen, Cindy, vice president, regulatory affairs and compliance, FedEx Logistics, Memphis, TN	5
Meserve, Andy, president of Local 9423, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union (USW), Owensboro, TN	7
Nova, Scott, executive director, Worker Rights Consortium, Washington, DC ..	9
Pickel, John, senior director, internal supply chain policy, National Foreign Trade Council, Washington, DC	11
Smith, Brenda B., global director, government outreach, Expeditors International of Washington, Inc., Glen Burnie, MD	12

ALPHABETICAL LISTING AND APPENDIX MATERIAL

Allen, Cindy:	
Testimony	5
Prepared statement	35
Responses to questions from committee members	38
Crapo, Hon. Mike:	
Opening statement	3
Prepared statement	43
Meserve, Andy:	
Testimony	7
Prepared statement	44
Responses to questions from committee members	49
Nova, Scott:	
Testimony	9
Prepared statement	50
Responses to questions from committee members	63
Pickel, John:	
Testimony	11
Prepared statement	65
Responses to questions from committee members	70
Smith, Brenda B.:	
Testimony	12
Prepared statement	76
Responses to questions from committee members	78
Wyden, Hon. Ron:	
Opening statement	1
Prepared statement	80

COMMUNICATIONS

Center for Fiscal Equity	83
E-Merchants Trade Council, Inc.	84
SafePackage LLC	93
Tlusty, Michael, Ph.D., and Andrew Rhyne, Ph.D.	95
Transnational Alliance to Combat Illicit Trade	96

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THURSDAY, FEBRUARY 16, 2023

**U.S. SENATE,
COMMITTEE ON FINANCE,
*Washington, DC.***

The hearing was convened, pursuant to notice, at 10:34 a.m., in Room SD-215, Dirksen Senate Office Building, Hon. Ron Wyden (chairman of the committee) presiding.

Present: Senators Wyden, Cantwell, Menendez, Carper, Whitehouse, Crapo, Cornyn, Thune, Young, Johnson, Tillis, and Blackburn.

Also present: Democratic staff: Sally Stewart Laing, Chief International Trade Counsel; and Tiffany Smith, Deputy Staff Director and Chief Counsel. Republican staff: Gregg Richard, Staff Director; Molly Newell, International Trade Counsel; Mayur Patel, Chief International Trade Counsel; and John O'Hara, Trade Policy Director and Counsel.

**OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR
FROM OREGON, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The Finance Committee will come to order.

Trade cheats in China and around the world are constantly looking for new ways to evade U.S. trade laws and rip off American jobs and American workers. They wish to sell illegal products in America—goods made with forced labor, illegally harvested timber, and products that steal our intellectual property.

Trade cheats are a grave threat to American workers, farmers, and businesses—in fact, all Americans who play by the rules. The most offensive example of trade cheating is the state-sponsored forced labor that's rampant in China's Uyghur region. The Chinese Government is arbitrarily detaining more than a million Uyghurs and other Muslim minorities.

These detainees find themselves thrown into reeducation camps where they're isolated from their families and forced to work under the worst conditions. The Chinese Communist Party's treatment of the Uyghur community is a moral abomination, and it threatens American jobs.

The math is pretty simple: you pay poverty wages, and you pollute as you please. Chinese companies have been able to flood U.S.

markets with cheap goods and undercut all the competition. We believe here on this committee that American workers are the best in the world, but it's awfully hard to compete with slave labor.

What's the effect here at home? Factories are shuttered, and American jobs are lost to China.

We're going to hear today from Andy Meserve. He's a USW local president whose aluminum factory was idled, in part, due to forced labor abroad. The problem is that when domestic aluminum factories like Andy's get shut down, China is the only game. So companies must commit to cleaning up forced labor in their supply chains.

In December this past year, I launched an investigation into allegations that the auto industry is still relying on supply chains that are tainted by forced labor. The allegation is that components for cars—from steel to batteries to tires—have a huge likelihood of being made with Uyghur forced labor. So our committee asked the eight major automakers about their supply chains and what they're doing to clean them up.

This, of course, is a flagship American industry, employing more than 90,000 Americans, contributing over \$700 billion annually to the U.S. economy. America can't allow those jobs to be ripped off and sent to an economy that strategically pays workers nothing. U.S. law already prohibits importing products made with forced labor. The challenge is identifying the products and stopping them.

Customs agents are on the front lines of this effort. The Customs folks have a twofold job. First, intercept shipments that violate U.S. law. Second, they've got to keep legal goods moving efficiently through American ports. A lot has changed since 2016, when the Finance Committee passed our last package of trade enforcement tools.

Senator Crapo remembers working on these issues. I see Senator Cornyn, Senator Thune. We've been working on these issues for a long time, the four of us, in a bipartisan way. The Trade Facilitation and Trade Enforcement Act has produced real results. It gave Customs the tools to swiftly crack down on duty evasion that hurts American workers and businesses. It's helped keep out counterfeits that threaten American innovation and public safety.

He's not here at this time, but Senator Brown deserves a great deal of credit for working with us to close an egregious loophole that was letting products made with forced labor come to our markets. Closing that loophole was enormously important, because products made with forced labor can't be allowed to enter our country, period.

Today, Customs has new challenges. COVID-19 changed the way people buy and sell goods. E-commerce has exploded. In this committee, we said years ago that the Internet is the shipping lane of the 21st century, and that has certainly been evident over the last couple of years. Shipments have surged. The CBP is processing millions more packages, small packages, every day.

Fentanyl and other illicit drugs continue to enter through our ports. Illegal seafood is entering the U.S. market and threatening the livelihoods of coastal communities. Counterfeitors rip off American products, posing an economic and health threat to American

citizens. Intellectual property theft is estimated to cost the U.S. economy up to \$600 billion every year, much of it from China.

Foreign companies continue to find new ways to work their way around our trade laws. Keeping out the trade cheats is something of a game of Whac-A-Mole. In my view, stepping up trade enforcement requires finding and stopping the cheats and crafting tools that are flexible enough to stop the next round of cheaters.

I'll close by saying it's going to take better coordination with Customs and Border Protection across the U.S. Government, from the Department of Labor to the fisheries experts in Commerce. We'll be working with CBP and others to improve our trade laws to make sure these agencies have the tools they need.

This morning's hearing is an important first step. We're going to hear from businesses that need inputs, and some logistics professionals who work with Customs to keep supply chains moving. We'll also hear from folks who work to get forced labor out of the supply chains, and an American worker.

And I know you've worked very closely with us, Mr. Meserve, to tell us how it's personally impacted you through this unfair competition. We want to hear how Customs can maximize enforcement while streamlining imports from Trusted Traders with clean supply chains. That's going to help U.S. producers get the inputs they need, reduce bottlenecks, and help our workers and consumers.

Senator Crapo, I look forward to your remarks.

[The prepared statement of Chairman Wyden appears in the appendix.]

**OPENING STATEMENT OF HON. MIKE CRAPO,
A U.S. SENATOR FROM IDAHO**

Senator CRAPO. Thank you, Mr. Chairman, and thank you for holding this hearing. It's a very critical issue. And I want to thank you, our witnesses, for appearing before us today.

As I begin, I want to mention two things particularly, since this is this committee's first trade hearing of this new Congress. First, I want to welcome Ms. Cindy Allen of FedEx Logistics. She traveled here today from Tennessee, the home of one of our new Finance Committee members, Senator Marsha Blackburn. We're very happy to have you both here.

And of course, I'm also glad to see Senators Tillis and Johnson here, who have also just joined the committee. But we're going to have to wait a little bit longer to get some of the fine folks from your States here before the committee.

Second, I want to thank Senator Cassidy for his leadership on the issue of Customs modernization. He spends a lot of time thinking about how to ensure our Customs laws are effectively enforced and how to better harness the data to that effect. We all look forward to hearing his insights as we consider these issues further.

Modernizing U.S. Customs laws is fast becoming of critical importance. The last comprehensive update to our Customs laws occurred exactly 30 years ago. A smart reform now will not only allow us to seize new opportunities, but also to confront the rise of opportunists. Some of those Senator Wyden has already mentioned.

Opportunity is out there right now waiting for the law to catch up with it. The drafters of the last modernization could not possibly foresee the technological tools available to us today, or the sheer number of small businesses that now take advantage of international trade, or the benefit to consumers of widespread access to e-commerce. But with any new opportunity, unfortunately, also comes the opportunists.

Modernization is imperative to counter both existing threats trying to make their way into this country and those on the horizon. At the El Paso port of entry, the brave men and women of the U.S. Customs and Border Protection, or CBP, seized, in just the month of January alone, over 327 pounds of methamphetamine, 139 pounds of cocaine, and 42 pounds of fentanyl. We've got to close the flow of these drugs over our southern border.

On January 29th, CBP officers at Chicago's O'Hara seized counterfeit jewelry and apparel that would have been worth over \$686,000 if it had been genuine. CBP is also actively enforcing a number of withhold release orders and the Uyghur Forced Labor Implementation Act to keep goods made with forced labor out of this country.

The good news about Customs modernization is that it's not an either/or proposition when it comes to trade facilitation and trade enforcement. By making smarter use of data collection, we can reduce burdens on both lawful commerce and CBP personnel so that we can better focus resources on enforcement challenges.

Let's take an example: something as simple as importing wet pet food. Importation currently requires the importer to submit data to assist three of CBP's partner agencies: USDA, FDA, and the National Oceanographic and Atmospheric Administration, or NOAA. These agencies cumulatively want 54 data elements, but 21 of these elements are redundant, and there are 16 inconsistent definitions for the same data. Under these circumstances, the importer faces the challenge of figuring out what exactly is required, and our law enforcement authorities may end with information of little utility.

We can and must do better, particularly given some of the supply chain bottlenecks we see at our ports. Fortunately, we are well situated to attack the modernization effort today because CBP and its advisory committee started thinking about many of these issues in 2018, when CBP launched its 21st Century Customs Framework Initiative to develop ideas about what a modernized Customs regime might look like.

Combining CBP's efforts with additional expertise, including that of our witnesses today, we can create an efficient and effective framework. New tools, including automation, can help us identify risks at an early stage. We need a system where contraband never enters the United States in the first place. By catching threats early, we can save CBP from engaging in lengthy investigations on U.S. soil to figure out whether something is a threat or not. A modern system will also expedite lawful commerce to get essential inputs faster to our manufacturers and goods to our consumers.

To sum up, smart Customs modernization will fight and deter crime, create jobs, move goods faster, and save Americans money all at the same time. This is precisely the type of work this com-

mittee was set up to do and does well. I look forward to working with my colleagues and the committee on taking up that challenge.

Now I look forward to hearing from our witnesses and their ideas about how to improve our Customs laws.

Thank you, Mr. Chairman.

[The prepared statement of Senator Crapo appears in the appendix.]

The CHAIRMAN. Thank you, Senator Crapo. And I think you're spot-on in terms of saying there's enormous bipartisan potential here. And for those who are following, in the last Congress when there was gridlock, and we went on and on and on, on the Senate floor, unable to move, Senator Crapo and I walked into the middle of the Senate chamber, literally in the middle of the two parties, and put together the amendment that got more than 90 votes and freed up what was really, ultimately, the CHIPS legislation. And I thank him and look forward to working with him as we did before on these trade issues.

Let me briefly introduce our guests. Ms. Allen, you got a little bit of a sendoff already. I note that you're doing good work over there at FedEx on regulatory affairs and compliance. You've been working in this space for 30 years.

We already gave Andy Meserve a little bit of a sendoff, president of the United Steel Workers, Local 9423, in Kentucky. We appreciate him.

Scott Nova, the executive director of the Worker Rights Consortium, is doing good work in terms of monitoring labor rights abuses around the globe.

John Pickel is with us, senior director of international supply chain policy at the National Foreign Trade Council. He's got expertise in a number of issues that are important to us—anti-counterfeiting, for example.

And Ms. Brenda Smith is with us as well, global director of government outreach at Expeditors International, which does global logistics in our part of the world in Seattle. So, we welcome her as well.

So, let's proceed with our witnesses, and we'll begin with you, Ms. Allen.

STATEMENT OF CINDY ALLEN, VICE PRESIDENT, REGULATORY AFFAIRS AND COMPLIANCE, FEDEX LOGISTICS, MEMPHIS, TN

Ms. ALLEN. Chairman Wyden, Ranking Member Crapo, and members of the committee, thank you for inviting me to testify today. My name is Cindy Allen, and I've been working in international trade for 35 years.

FedEx believes that a connected world is a better world, and at FedEx, trade is our business. Expanding global trade is essential to our customers, our team, and the economy. In modernized trade, Customs processes are key to that. In the United States, FedEx employs over 412,000 individuals, accounting for nearly 6 percent of the employees in the U.S. transportation services sector.

We play a crucial role in the U.S. supply chain that keeps the country, its people, and the economy moving. We are immensely proud of our global efforts to combat COVID-19 by delivering vac-

cines and critical PPE. And when the trade disruptions congested our ports, FedEx participated in the White House Supply Chain Disruptions Taskforce to get trade moving again.

American prosperity is linked to growing markets and greater opportunities for U.S. companies, especially small and medium businesses, which comprise more than 98 percent of U.S. exports. More than 40 million American jobs depend on trade. With 95 percent of the world's population and 80 percent of its purchasing power outside of our borders, global trade will continue to be of critical importance to U.S. economic growth.

It's not just exports that benefit the American economy, but imports as well. Nearly 60 percent of imports are raw materials, capital goods, and industrial products which are used by U.S. manufacturers and U.S. farmers to produce goods in the U.S.

If the U.S. hopes to strengthen its manufacturing base, it must have efficient and reliable access to components from around the world. We must recognize that there has been a sea change in the profile of global trade, however. The global supply chain is more complex and has many more participants, shifting from trade between large, multinational corporations to package-based trade between businesses and individual consumers.

This shift presents unprecedented opportunities to make global trade more inclusive by enabling small and medium-sized businesses to participate in the global economy. But it also presents challenges for the government as they grapple with the impact of increased low-value shipments and its impact on their core responsibilities.

Against this backdrop, FedEx supports the U.S. Government in its efforts to update its Customs rules and adapt to a changing trade environment. Given the increased number of trade participants, the government should focus on requiring the right data at the right time from the right party. Appropriate guard rails should be included to prevent unnecessary burdens on companies and supply chains in the name of data collection, especially elements that do not have demonstrated value for targeting or admissibility evaluation purposes.

Governments around the world look to the United States for leadership. When considering new requirements on U.S. imports, the U.S. should ask whether U.S. exporters, especially those SMEs, would support the same requirements being placed on their exports by other countries.

A truly successful Customs modernization needs to be a co-created approach to leverage best practices and to develop feasible joint solutions in a bidirectional manner.

In our written testimony, we outline seven concepts for consideration. For example, the original Customs Modernization Act established the International Trade Data System to act as a single window for all the agencies. The Automated Commercial Environment did deliver that single window, but it currently has 47 different panes, one for each of the agencies involved in international trade. And the glass is a little bit different in every pane.

To truly unify the trade processes, both for the government and for trade, a forum for government-wide policy should be established that looks at processes and procedures, and should be given the re-

sponsibility and the authority to make joint decisions for trade and enforcement purposes. And the trade must have an active role in this forum.

Additionally, shipments have a history when they arrive at the border. Government agencies have expressed interest in receiving critical data associated with these shipments and parties to the transactions to better inform their admissibility decisions. We propose an iterative or progressive filing be developed to allow the right party with the right data at the right time to provide data much earlier in the supply chain, which should be linked to Trusted Trader benefits.

Lastly, FedEx would like to highlight the importance of a current feature of the U.S. Customs laws that facilitate trade, the strong U.S. *de minimis* provision. *De minimis* is a longstanding feature of the United States import system.

Congress looked at this issue most recently in 2016 via the Trade Facilitation and Trade Enforcement Act, which explains that the higher *de minimis* value threshold provides significant economic benefits to businesses and customers in the U.S.—and the economy of the U.S. And it's important to note that CBP has the same, if not more, opportunity to review, screen, examine, and seize shipments in the *de minimis* environment as they do every other shipment into the United States.

Additionally, in the express environment, we have dedicated individuals who work side-by-side in partnership with CBP and other government agencies to identify and eliminate goods in violations of these laws. We'd love to invite the committee, the chairman, the ranking member, to visit the Memphis Airport and visit our world hub to see this in action.

Thank you for inviting me, and I look forward to our discussion today. Thank you.

[The prepared statement of Ms. Allen appears in the appendix.]

The CHAIRMAN. Ms. Allen, thank you.

Let's go next to Mr. Meserve.

STATEMENT OF ANDY MESERVE, PRESIDENT OF LOCAL 9423, UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL, AND SERVICE WORKERS INTERNATIONAL UNION (USW), OWENSBORO, TN

Mr. MESERVE. Hello. Thank you, Chairman Wyden and Ranking Member Crapo, for the invitation. Thank you, members. Thank you for the opportunity to testify today on modernizing our trade laws and improving our country's trade enforcement. My name is Andy Meserve, and I am union president of United Steel Workers Local 9423.

My local represents workers at Century Aluminum, Hawesville Kentucky Smelter, located on the Ohio River. Our plant is one of six remaining primary aluminum smelters in the United States, which when operating employs around 650 union and management workers, making up to 250,000 tons of primary aluminum a year.

I'm a maintenance mechanic by trade, meaning that I am responsible for ensuring everything from conveyor belts to cranes operates safely in a manufacturing process that turns raw materials into primary aluminum. My job is to not just fix the immediate prob-

lem, but to do preventive maintenance and find root causes to any breakdowns, making recommendations to management on how to solve the problems long-term.

In some ways, you all are managers of our country's economic well-being, so I hope that my testimony today will highlight the immediate problems facing our smelter, but also make long-term recommendations to ensure the U.S. has a competitive primary aluminum industry, which is critical to our national security.

If you Google Hawesville Kentucky Smelter, the first thing that comes up are articles that highlight high energy prices that temporarily idled my smelter, throwing over 600 workers into economic uncertainty. To me, that is like looking at a broken conveyor and not asking what caused that failure.

Yes, energy prices are a factor in our current plant idling, but we need to step back and see if we can set conditions for success in long-term operations. Aluminum is a globally traded commodity in an energy-intensive trade-exposed industry. The policies and decisions you make in trade will impact whether we have a domestic aluminum industry or not, just as much as regional power prices.

My immediate recommendations to you are that we update our trade enforcement laws and quickly respond to illegal trade practices, put in place trade rules that better account for worker abuses and environmental pollution, and ensure that we prioritize Customs and Border Patrol efforts to collect duties and stop illegal goods at the border.

Regarding trade enforcement, the USW has supported a bill which passed the House of Representatives last Congress and was lead in the Senate by Senator Brown and former Senator Portman, commonly known as the Leveling the Playing Field Act 2.0. The legislation would have provided a number of trade law updates that would give new tools to U.S. workers and manufacturers to fend off illegal dumping and subsidized goods. We urge the Finance Committee to take up that bill this Congress and pass it as soon as possible.

Another enforcement action we could take today is stopping Russian aluminum imports into the U.S. It's hard for me to sit here at this table and not be angry that we allow Russian aluminum imports to enter our country while 500 of my brothers and sisters and fellow Americans are out of work who could make the same product. The USW supports every effort to prohibit Russian aluminum products from entering our market. The union sees value in placing tariffs on Russian aluminum products, but it would be more effective to sanction or place a total ban on downstream products that have Russian smelted and cast primary aluminum in the supply chain.

Congress must also do everything you can to limit forced labor goods and goods made in countries that prohibit free and independent unions from entering our markets. My written testimony goes into detail on how forced labor practices in China affect the global aluminum supply chain. This must stop. We should be making primary aluminum here and not allowing traders to hide behind outdated contracting policies which allow forced labor goods into globally traded commodities.

My union has prepared a number of other recommendations to better account for dumping and subsidized goods. Significant work and my union's dollars have gone into that effort. I support those recommendations and ask that you act swiftly on them. I do this not just for my union brothers and sisters at my local, but also to ensure a better, more democratic global market.

I look forward to answering your questions and thank you for your time.

[The prepared statement of Mr. Meserve appears in the appendix.]

The CHAIRMAN. Thank you very much, Mr. Meserve, and we know this is a particularly challenging time for workers. I mean, you're trying to come out of the pandemic. You're dealing with supply chain issues, and then you're bumping up against these unfair trade practices like forced labor and the kinds of things you've outlined. And we want to come up with some policies that give workers more of a chance to get a fair shake, and we appreciate it.

Okay; Mr. Nova?

**STATEMENT OF SCOTT NOVA, EXECUTIVE DIRECTOR,
WORKER RIGHTS CONSORTIUM, WASHINGTON, DC**

Mr. NOVA. Chairman Wyden, Ranking Member Crapo, thank you for the opportunity to testify. My name is Scott Nova. I'm executive director of the Worker Rights Consortium, an organization that monitors working conditions in global manufacturing supply chains and promotes respect for worker rights. We're a member of the Coalition to End Forced Labor in the Uyghur Region.

I'll address the enforcement of the Uyghur Forced Labor Prevention Act in section 307 of the Tariff Act. The removal of the consumptive demand exception from section 307 and the enactment of the UFLPA are rare elements of U.S. trade policy that constrain the ability of corporations to produce goods under abusive and unlawful conditions overseas and sell them in the United States.

These laws are of immense importance to vast numbers of workers and a major step toward fair competition in the global economy. Strong enforcement is crucial. Most corporations will not of their own volition respond adequately to the risk of forced labor in their supply chains, even in circumstances as horrific as those we've witnessed in the Uyghur region. That is why the UFLPA was necessary.

In assessing UFLPA enforcement, we are mindful that the law is prodigious in scope and the task facing the enforcement agency is daunting. We recognize that the executive branch and Congress are committed to enforcement. Eight months since the law took effect, there are positive indicators.

Shipments are being detained in a growing list of industries, and importers know they face unprecedented scrutiny. Many, though by no means all, major apparel brands have exited or are exiting the Uyghur region. Demand for Xinjiang cotton is plummeting.

There are also reasons for concern. Customs and Border Protection is not reporting adequately on enforcement. For example, the data CBP publishes on its most important actions—stopping shipments with content from the Uyghur region—lumps all relevant data points into a single statistic: the number of shipments or en-

tries identified for further examination. The statistic is so broad as to be meaningless.

We do know, for example, what percentage of the shipments CBP examines are detained versus allowed into the U.S. Solar is a priority under the law, but CBP does not publish sufficient data for the public to know if its enforcement effort reflects that.

Not only is there no disaggregation of the data by industry, much less disclosure of which specific importers are trying to bring in banned goods, CBP does not report which countries targeted goods are coming from. We also do not know whether CBP is addressing industries more recently identified as high-risk, like auto, steel, and aluminum. As researchers at NomoGaia and Sheffield Hallam University have shown, if you bought a car in the last 5 years, there is a good chance it contains parts made with Uyghur forced labor. The UFLPA and its strong enforcement are the keys to ensuring that your 2024 Toyota or Ford does not. Your letter to auto executives, Chairman Wyden, was an important wake-up call for the industry.

Insufficient forced-labor reporting by CBP is not a new problem. It dates back to the section 307 enforcement push that began in 2016. Accountability depends on reasonable transparency. It is important to the enforcement of the UFLPA in section 307 that CBP provide more and more informative data. The UFLPA mandates that the government maintain a list of suppliers implicated in Uyghur forced labor so their products can't enter the U.S. The list contains only 20 companies and has not been expanded since June.

The decision to add a company must be made carefully and in a time frame that allows the list to serve its purpose. Independent researchers have identified hundreds of candidates. It is important that the Forced Labor Enforcement Taskforce, which manages the list, acts expeditiously to add companies that deserve to be included.

Statements by CBP also suggest too much emphasis on the tiny volume of goods exported directly from the Uyghur region to the U.S. CBP should not ignore this channel but should not allocate disproportionate resources to it. To put this in perspective, direct U.S. imports from the Uyghur region before UFLPA were \$300 million per year. The U.S. will import twice that volume of goods from all other sources just during the time it takes to complete this hearing. Addressing this set of issues, hopefully with expanded resources from Congress, will strengthen a UFLPA enforcement effort already having an unprecedented impact.

I'll conclude by offering two observations on broader enforcement of section 307. First, while Customs modernization is a worthy objective, it is vital to ensure that it strengthens and expedites forced labor enforcement. Among the modifications to avoid would be adding layers to the withhold release order process that would give importers violating the law new tools to delay enforcement.

Second, if we want corporations to exercise due diligence on forced labor, we need to enforce the law. The reason corporations fail at due diligence is not because they can't figure out how to do it, but because it costs money to do it right, including paying prices to suppliers commensurate with running a clean shop.

By contrast, importing goods made with forced labor in violation of the law hasn't cost most corporations anything. When the vigorous enforcement of section 307, including fines on importers, makes the cost of failing to prevent forced labor higher than the cost of succeeding, we will see due diligence from industry.

Thank you, and I welcome your questions.

[The prepared statement of Mr. Nova appears in the appendix.]
The CHAIRMAN. Very good.

Mr. Pickel?

STATEMENT OF JOHN PICKEL, SENIOR DIRECTOR, INTERNAL SUPPLY CHAIN POLICY, NATIONAL FOREIGN TRADE COUNCIL, WASHINGTON, DC

Mr. PICKEL. Good morning, Chairman Wyden, Ranking Member Crapo, and members of the committee. Thank you for the opportunity to discuss these important topics. I'm John Pickel, the senior director of international supply chain policy at the National Foreign Trade Council, or NFTC. The views expressed today are mine and on behalf of NFTC, not representing any previous employer or specific company.

Trade supports 40 million jobs and increases the purchasing power of households by \$18,000 annually. The U.S. Customs system has been tested by recent disruptions, but still provides a firm base for American companies to supply families and businesses with the products that they need.

Customs modernization proposals should encompass the following principles. One, balance trade facilitation enforcement. Effective compliance can be done in a way that facilitates legitimate trade. Well-defined challenges should be addressed through jointly developed solutions with clear outcomes that consider impact on trade flows and promote similar balance across government agencies.

Two, clarify the responsibilities of actors throughout the process. As trade models shift, government and industry need to set clear expectations and maintain flexibility, particularly to ensure that the correct information is being collected from the right party at the right point in the process.

Three, promote partnership between government and industry. Partnership constructs need to be updated to promote voluntary information sharing that addresses compliance actions earlier in the supply chain and improves efficiency of enforcement.

Four, embrace automation to simplify the processing of cargo. Automation improves efficiency but is reliant upon inputs from various actors, which can be onerous on small businesses. So, required information should be available and relevant in addressing critical visibility gaps.

Five, apply Trusted Trader principles to address emerging risk factors. Current Trusted Trader programs were developed in partnership with private industry and should adapt to meet emerging demands through the same spirit of collaboration and trust and provide meaningful benefits aligned with the cost of participation.

Improving the efficiency of the trade processes promotes product availability and increases purchasing powers for families and busi-

nesses. Third Way found that improved facilitation in the following areas could create almost 1 million American jobs.

First, simplifying border processes ensures predictability of rules, fees, and processes. Second, embracing digitization has saved the government \$1.75 billion, and many hours for industry. This system should ensure government-wide participation and a process with resources to improve functionality. Third, focus on speed and security through risk management prioritization with meaningful *de minimis* and informal entry policies to provide quick and compliant clearance.

Congress ensured that over 1 billion annual shipments to families and businesses would not be subject to taxes and administrative burden by increasing the *de minimis* threshold in 2016. These shipments are subject to trade laws and largely compliant. *De minimis* treatment of low-value goods reduces costs, but eroding this policy would be a regressive tax that disproportionately impacts low-income households and diverts resources from current enforcement priorities.

There is no place for forced labor in American supply chains, period. American companies continue to shift sourcing away from regions of concern and would like to work with CBP to further compliance efforts through testing supply chain tracing technologies and anticipating detention prioritizations under the Uyghur Forced Labor Prevention Act.

As we address visibility gaps in complex supply chains, the trade community craves predictability and clear due diligence standards to structure sincere compliance efforts. Engagement with partner governments should address the root causes of forced labor, including recruitment practices and governance around existing laws related to forced labor.

In closing, I'd like to emphasize that the world will be watching how the U.S. seizes the leadership opportunities discussed here today. Commitment to trade facilitation through open rules-based trading is a standard that we should be exporting to our trading partners.

Thank you for your attention to these important topics, and I look forward to your questions.

[The prepared statement of Mr. Pickel appears in the appendix.]

The CHAIRMAN. Thank you very much, Mr. Pickel.

Ms. Smith?

STATEMENT OF BRENDA B. SMITH, GLOBAL DIRECTOR, GOVERNMENT OUTREACH, EXPEDITORS INTERNATIONAL OF WASHINGTON, INC., GLEN BURNIE, MD

Ms. SMITH. Mr. Chairman, Senator Crapo, and members of the committee, thank you for the chance to testify before you today. My name is Brenda Smith, and I currently work as the global director of government outreach for Expeditors International of Washington, a global logistics, freight-forwarding, and information company.

Previously, I served for 7 years as the Executive Assistant Commissioner for Trade at U.S. Customs and Border Protection. The views I express this morning are my own and do not necessarily reflect the position of my current or past employer.

The pandemic laid bare the weaknesses in a global system that moves goods from farmers and manufacturers to consumers. In the 40 years that I have worked in this arena, the volume of global trade has multiplied 32 times what it was in the mid-1980s. This staggering growth has been accompanied by an overlay of trade agreements, expanded supply chain parties, and increased consumer expectations.

Customs administrations have also evolved over those same 40 years, mostly in response to border security challenges, leaving many trade modernization efforts unfinished. In my work on the U.S. single window, I learned the importance of developing a clear vision and then translating this vision into legal, operational, and technology frameworks.

My own statement of principles underlying such a vision would include the following things. First, leveraging Trusted Trader investment to share risk information and truly streamline entry and compliance procedures by all regulatory agencies. Make the green lane a priority and a reality across all types of shipments and all trade processes. This approach should extend to expansion and full implementation of AEO mutual recognition agreements.

Second, truly digitizing agency requirements for supply chains, including a continued commitment to the U.S. single window and a full rationalization of data requirements to minimize redundancy and focus on collecting only the most important data at the right time from the right party. More data isn't always better. Quality is more important than quantity.

Third, planning and practicing a response to supply chain disruptions across all government agencies and their supply chain partners. Resiliency will be greater if potential regulatory and operational flexibilities are determined in advance and recognize the lower risks associated with Trusted Traders.

And fourth and finally, a single process across all government agencies with requirements for goods crossing borders, to include the alignment of their regulations, operational processes, Trusted Trader programs, and a commitment to using only the single window for the collection of data.

What will it take to implement this vision? There are many things that could be included, but I'd like to highlight two specific areas: first, an investment in Customs personnel and technology; and second, collaboration with stakeholders.

First, implementation will require ongoing investment in the softer parts of Customs infrastructure, specifically expertise and technology. Aside from significant investment in forced labor capabilities, the level of CBP's nonuniformed trade personnel has not materially increased since CBP was founded in 2003.

In addition to ensuring that there are enough specialists to handle the growth in trade complexity, these individuals need to be well trained in both modern business practices and traditional Customs competencies, with a dedicated trade and cargo academy and regularly updated curriculum. Today's emerging technologies can support greater supply chain visibility and a targeted risk management approach that facilitates trade and improves revenue collection, compliance, and security in ways not possible even 5 years ago.

The second requirement for modernization is collaboration with stakeholders. I worked extensively with the trade community and valued forums that allowed frank discussion and consensus building among trade stakeholders. Expanding private-sector engagement with the partner government agencies through the Border Interagency Executive Council and driving more active regulatory operational and technology coordination through forums like the COAC, the Trade Support Network, and the BIEC would result in better problem-solving and a trade environment that meets the needs of both government and the private sector.

I thank this committee for the opportunity to advocate for Customs modernization. Much work remains to be done, but I strongly believe that it is worth pursuing as we support opportunities for businesses and consumers as they engage in the global marketplace.

[The prepared statement of Ms. Smith appears in the appendix.]

The CHAIRMAN. Thank you very much. And all of you have been excellent.

I'll start with you, Mr. Meserve. I was reading your statement last night in the wee hours, and I thought you really hit it strongly how aluminum made with Uyghur forced labor gets into the global supply chains. And you describe how companies in China take advantage of slave labor and undercut their competitors on environmental laws. And then you were really specific about how multiple Uyghur-region producers make primary aluminum, and that's made at your facility in Kentucky. You know, that's the ball game. Uyghur-made aluminum goes into Chinese auto parts and ends up on the international metals trading platform.

So here's my question, because this gets pretty complicated and all the rest. It seems to me you've really given us a very eloquent statement, a very good statement, saying that all you want, all the workers want, is a more level playing field—that you can beat the pants off the competition as long as you get close to a level playing field. Is that a fair assessment of what you're trying to make sure we understand in the Senate?

Mr. MESERVE. Well, thank you for the question. Yes, we have 520 well-trained steel workers in Kentucky who can make primary aluminum. We can do it well. We can compete with anybody in the world as long as we're given the opportunity—and like I said, a level playing field with market power that's accessible, where people aren't flooding the market with goods, driving the prices down, or manipulating the LME.

The CHAIRMAN. Well, you tell the members of your union that we thought you were a little logical for Washington, DC, but you said it really well, and that's what we're committed to doing. Senator Crapo and I have been working on this for some time—to get you a more level playing field—because this is a private economy and markets, and we know you can win in those markets if we just get you a level playing field. I thank you.

Mr. MESERVE. Thank you.

The CHAIRMAN. Mr. Nova, our investigations team learned about these allegations of troubling practices in the auto sector, with the key auto inputs: steel, aluminum, copper. They are increasingly made in the Uyghur region, which has documented ties to forced

labor. We are reviewing the answers we've gotten from the companies. I'll have more to say as we get a chance to have a more thorough analysis.

My initial take is, they've got a lot more work to do, and we're going to be following up and looking at the entire automotive supply chain. And my question to you is—you've been working with these companies to eliminate forced labor, so what would be your counsel to the automobile companies? What should they be doing to ensure that we get this forced labor scourge and the products associated with it out of the supply chain?

Mr. NOVA. Well, in the broader sense, they need to take all the steps necessary to ensure that none of the inputs that end up in their vehicles are coming from the Uyghur region or from any producer elsewhere in China participating in the scheme whereby the Chinese Government forcibly transfers Uyghur laborers to other parts of the country to work under forced labor conditions.

More specifically, the first step is to know where the inputs are coming from. And I say that wanting to be clear that these corporations could have and already should have known where these inputs are coming from.

The CHAIRMAN. Let me make sure we understand that. They should have known already?

Mr. NOVA. Should have known already. Sometimes corporations, including auto companies, will act as if the origins of the inputs that go into their cars are some kind of unfathomable mystery. But the reality is, they have the ability and the power to know where every single element comes from. If they don't know, it's not because the information is unknowable, but because they've not prioritized gaining and maintaining that knowledge. So they need to start there. They need to know where the aluminum comes from. They need to know where the other raw materials come from. They need to know where every element comes from.

The CHAIRMAN. All right.

One last question, if I might, Mr. Pickel, for you, on this fentanyl issue. This is the single deadliest drug threat that our country has encountered. The deaths just keep going through the stratosphere, nearly 70,000 in 2021. It definitely has hit Oregon very, very hard.

Last month, Oregon Live reported a massive drug bust near Salem, uncovering 45,000 fentanyl pills. Worse yet, these were counterfeit pills: fentanyl masquerading as oxycodone, so no one knew that one pill—just one pill—could kill them. We're hearing constantly from families who've lost kids too early, and no community is safe. And we've been very concerned about Customs' role here and believe more needs to be done.

You worked on the STOP Act implementation at Customs, which provided Customs more advanced information on air shipments and better risk analysis and the like. I, again, think that there's a lot more that needs to be done. I mean, I just described to you that last month in my State—this is not somewhere else thousands of miles away, but in my State—they found 45,000 fentanyl pills. So what else do you think this committee ought to be doing to beef up the enforcement effort to deal with this scourge?

Mr. NOVA. Senator, thanks for the question. I think the availability of fentanyl is certainly an ongoing issue, and I think a small

silver lining may be that with passage of the STOP Act and enactment of the requirements that you referenced, there have been shifts in how fentanyl comes to the United States that have been well documented in the press.

I'm obviously not here representing CBP—and they may have additional thoughts on this—but what I would offer is that data sharing capabilities, particularly with foreign postal operators, provides very valuable insight to enable enforcement actions.

The CHAIRMAN. Do you think we ought to be pushing foreign postal operators to be working more closely with us?

Mr. NOVA. I think that this committee and the U.S. Government should work with those foreign postal operators to understand what information is important to target in on that particular risk. That may shift over time, so developing a dynamic framework for shifting what data is available would be very beneficial in an enforcement posture.

The CHAIRMAN. I'm way over my time.

Senator CRAPO?

Senator CRAPO. Well, thank you, Senator Wyden. And I'm going to follow up on that exactly. I have been meeting with the sheriffs in Idaho across my State because of the very same crisis that's happening in Idaho that Senator Wyden talked about in Oregon. In fact, one of my sheriffs said to me that every State is a border State in the context of fentanyl, because it's coming into every single State in massive amounts and in massive ways. So I believe this is one of the key issues we need to address as a specific risk that comes from our border protection.

You just indicated, Mr. Pickel, that the STOP Act and some of the other things that have already been done have shifted a little bit, or at least improved our understanding about how and where it's coming across the border. I know that at one point—and today still, there is still a lot of argument about that.

There are those who say that most of it comes through the ports or the ports of entry, and others say it's just coming across the border because of the virtual free flow of illegal entry across the border. Could you give any of your insight on that?

Mr. NOVA. Yes. Thank you, Senator. So, the movement of narcotics through ports is a much more controlled environment to be able to address enforcement actions and deploy technologies that can detect these substances more readily. So, pushing those movements into that environment do improve the enforcement efficiencies significantly.

I can't speak to the current flows. I'm not in the government anymore. But what I would say is that the sharing of information and identifying risk factors earlier in the context of supply chain movements will certainly impact the improvement of compliance in that area.

Senator CRAPO. All right. Thank you.

Do any of the other witnesses have knowledge or expertise you could share with us on this issue? [No response.] All right. Thank you. Then I'll move on.

Ms. Allen, you intrigued me. Your testimony intrigued me when you talked about how what we intended to be a single window actually has 47 different window panes, and they are of different

types of glass, so to speak. Could you elaborate on that a little bit? I think that it's probably something that most Americans can intuitively understand in terms of a description of bureaucracy, but would you please elaborate on that a little bit and tell us how maybe we could fix that?

Ms. ALLEN. Yes. Thank you. Thank you, Ranking Member Crapo. I was also glad to hear in your comments that you mentioned the multiple streams of data that have to be filed, the same data elements, and the different definitions and terms that are used in different agencies. I'd like to point to the definition of "agent."

In a review of all of the 47 different agencies that have both the authority to stop goods and have jurisdiction over imports and exports, the term "agent" is littered throughout, and there are 10-plus different definitions of agent. And you can imagine I, as a Trusted Trader with the U.S. Government, am trying to file that data, so I'm not sure how I'm acting at that particular moment. Am I an agent by the definition of FDA? Am I an agent of the USDA? Am I an agent of Customs and Border Protection?

So really looking at those common definitions in the regulations and streamlining those will help facilitate legal and lawful trade. Most companies want to be compliant with the law, but it's very complicated. That's why Ms. Smith and I have jobs to make sure that we're assisting that trade facilitation.

There are a couple of things beyond that that we can do. One is ensuring that the information that goes into single window actually goes through the window. Right now, we have agencies that have built systems outside of that single window that I, as a Customs broker, have to file data through to get release of the cargo. And then I have to repeat that process within the single window, so we'd like to have one true single window as it was intended in the Modernization Act as it was first passed.

The other thing is the policy, procedures, and processes. Every agency has their own jurisdiction. They're authorized by different congressional committees to carry out that work, and have their own sets of laws and regulations that they must comply with, and we understand that. However, as a participant in international trade, we would like one body, one forum to go to, to really understand what I need to do to be compliant. What do I need to do as a trader to meet all those different regulations and truly provide that single window experience so that we understand what is needed to facilitate the trade?

Senator CRAPO. Well, thank you very much. I appreciate the information you've provided us and the advice that you've given us on that issue. I think we do need to fix it.

Thank you.

The CHAIRMAN. I certainly share your view, Senator Crapo.

Our next two Senators will be Senator Carper and then Senator Cornyn.

Senator CARPER. Thanks, Mr. Chairman. Welcome everybody. Nice to see you. Thanks for your presence and your input today.

Last Congress I introduced legislation, along with Senator Cornyn, Senator Menendez, and Senator Tim Scott—all members of this committee—and it's called the Customs Trade Partnership Against Terrorism Pilot Program Act. It has an acronym, as you

know. I hate acronyms, and I'm inclined not to use one in this case, but it was approved—I think unanimously—by both the Homeland Security and Governmental Affairs Committee, on which I serve, and it was approved by the full Senate, as you may recall.

Our bill would expand a successful program within the Customs and Border Protection agency that I'd like to think of as kind of like a TSA pre-check, but for goods instead of for people.

A question, if I could, for Mr. Pickel. I love your name. I don't know if anybody's told you that today. Makes me smile when I say it. And, Ms. Smith, I love your name too, ma'am.

Ms. SMITH. Thank you.

Senator CARPER. In your experience, for both of you, how would expanding programs like the one that we're talking about here today—the Customs Trade Partnership Against Terrorism Pilot Program—improve the efficiency and security of our supply chains? And what other measures should we consider here in Congress in order to modernize the screening of goods on our borders? Mr. Pickel, do you want to go first? I just want to say your name again.

Mr. PICKEL. Thank you, sir. I would say any effort to expand the participation in the CTPAT—I'll use the acronym—partnership would be helpful so long as those participants do have full control of their supply chain. They would need to meet those requirements and understand the limitations of what exists within their business models.

I would say that an important part of reconsidering the role of CTPAT would be how can that cadre of willing experts in industry be used to tackle new and emerging risks in the Customs space; and also, how can we look at the value that businesses are getting within their business models, because it does require significant resources to participate in these programs.

Senator CARPER. All right. Thank you.

Ms. Smith, any thoughts?

Ms. SMITH. Thank you. My name isn't as quite as interesting as my colleague's.

Senator CARPER. You've got a boot on your right foot; are you okay?

Ms. SMITH. I am. Thank you, sir.

Senator CARPER. Good. I used to wear one of those.

Ms. SMITH. It's a terrible thing.

Senator CARPER. I broke my foot running a half marathon—on the first mile.

Ms. SMITH. I don't have as good a story.

Senator CARPER. All right. But it ended well.

Ms. SMITH. Thank you.

I think we have an opportunity to take a look at how we use Trusted Traders, whether it's the CTPAT program or the Authorized Economic Operator programs around the world, and really look at the process that we use to facilitate low-risk trade. By and large, the members of partnership programs are meeting a very high standard for security and for trade compliance. And I think we could take a look at the process, using a managing-by-account approach, provide more data up front, and let the individual transactions, the individual shipments which are relatively low-risk, flow through.

I think that that would set a standard, an international standard, and then we can use that for our businesses around the world through mutual recognition agreements.

Senator CARPER. All right. Thanks for that.

One last question, I think. Back to you, Mr. Pickel. There's been discussion about the pros and cons of the *de minimis* program, but I want to focus on one specific quirk of the program related to the foreign trade zones.

Every State in our country has at least one foreign trade zone, as you know, and Delaware is no exception to that. Currently, goods entering the U.S. from other countries are eligible to use the *de minimis* provision. However, goods imported through the U.S.-based foreign trades zones into the U.S. markets are not. I'm concerned that this disparate treatment may have unintended consequences, such as giving foreign distributors a cost advantage over distributors located in the U.S. foreign trade zones. And this may, in turn, incentivize e-commerce operations to be located offshore rather than in U.S.-based zones that employ American workers.

Quick question: in your experience, how do you think the U.S. companies would benefit if they could take advantage of *de minimis* when they import goods through foreign trade zones; just briefly?

Mr. PICKEL. U.S. companies would benefit from the use of *de minimis* thresholds being applied to entries through foreign trade zones. I would say that we would want to work closely with you to make sure that that's done in a precise way that doesn't have unintended consequences.

Senator CARPER. All right. Thank you. Thank you for your brevity and for your testimony.

The CHAIRMAN. Thank you, Senator Carper.

Senator Cornyn?

Senator CORNYN. Thank you, Mr. Chairman.

Ms. Smith, maybe I'll start with you. The Infrastructure Investments and Jobs Act contained about \$3.8 billion for CBP, including \$450 million directly appropriated to CBP, and another \$3 billion for the General Services Administration that can be used for port-of-entry modernization. Would you comment on the current state of those facilities—that infrastructure, that technology—and what additional investments or what additional things that the U.S. Government should do to facilitate the flow of legitimate trade and commerce across our border? The southern border is what I'm thinking about, obviously, coming from Texas.

Ms. SMITH. Yes, sir. Thank you for the question. I think we have a tremendous opportunity with a huge investment in our physical infrastructure. Two points I would make. One, many of the ports of entry are constrained by their physical footprint. They just don't have room to grow. I do believe, as I mentioned in my testimony, we have an opportunity to think about what a green lane looks like to facilitate low-risk trade.

Senator CORNYN. Green lane means you wave it on through, right?

Ms. SMITH. Wave it on through. We have good partners, compliant partners, low-risk trade. We have the technology. Let's apply it to build a process that supports a green lane.

The second thing I would note is that, as I mentioned in my testimony, physical infrastructure isn't the only thing we need for the process. The technology and the expertise of the Customs personnel are as critical, I believe, as physical infrastructure.

Senator CORNYN. Well, of course, I'm very familiar with the men and women in blue who work at our ports of entry along the southern border between Mexico and Texas. And frequently when we talk about Mexico, when we talk about our southern border, I will hear people say we should seal the border, which, if you come from Texas, strikes me as very odd. And I guess if you think about it, it's pretty odd because Mexico is our single largest trading partner, and U.S. companies amount to more than half of Mexico's foreign investment.

So, Ms. Allen, I imagine FedEx does a lot of business in Mexico; is that correct?

Ms. ALLEN. Yes; we do business in 220 countries around the world, so we definitely have a presence in Mexico, and have a robust business in Texas, actually operating foreign trade zones in Texas, which we support very heavily.

Senator CORNYN. Me too. Well, I know FedEx has a big portfolio, but just focusing now on Mexico, I remember when China became fashionable because of the low cost for manufacturing in China, and a lot of manufacturing moved from Mexico to China. Now we're seeing a reversal of that because of concerns about supply chains and because of the rising hostility of the Chinese Communist Party, and now we're looking for friend-shoring or other friendly places where we can secure those supply chains.

And Mexico, given the fact that they're already a major trading partner of the United States, would seem like a logical place for those manufacturing facilities to land as part of that friend-shoring. It also strikes me there are other benefits to the United States just because our economies and our countries are tied together by a common border. And anything we can do to help Mexico help itself and prosper and create jobs and economic opportunity would take a lot of pressure, I think, off of the border itself in terms of illegal migration, but also would benefit the United States through increased trading opportunities. Would you share some thoughts on that topic?

Ms. ALLEN. Firstly, I'll say we are very much in favor of trade across the southern border. Our FedEx jobs—we say all of our jobs are trade jobs. We have almost 600,000 individuals around the world. They are a part of trade, so we have a presence in Mexico. I share Ms. Smith's opinion that the infrastructure is a challenge on the southern border as well as staffing.

We support additional staffing at the ports. We've found, in our experience, that with additional staffing, those ports of entry have better outcomes and facilitate trade in a much more efficient manner. I also believe that that bidirectional education that happens between trade and CBP is a good thing. We do meet with our CBP colleagues and the Mexican Customs authorities to ensure that we have good working relationships to facilitate trade and share best practices and ideas across that border every chance we get.

Senator CORNYN. Thank you very much.

The CHAIRMAN. Thank you, Senator Cornyn.

Next is Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman. Mr. Chairman, when I came in, in 2015, I never did a maiden speech, but I thought that maybe for this hearing this will be kind of a replacement for it.

The CHAIRMAN. All right.

Senator TILLIS. For you all, I thank you for being here. Ms. Allen, FedEx was a client of mine back in the 1980s. I spent a lot of time in Memphis, and every time I was there, I spent a lot of time at Rendezvous too getting some good ribs.

Mr. Pickel, I know your name is not spelled exactly right, but when you get a chance, you ought to take a trip to Mt. Olive, the center of the pickle universe and Mt. Olive pickles.

And to the other witnesses, thank you all. My family has a proud tradition of labor membership. I have a brother-in-law who started Fruit Growers Express and retired from CSX, and another brother-in-law who just recently retired from CSX, and other families.

And, Mr. Pickel, I spent about 10 years of my career as a partner at Price Waterhouse in global supply chain management, strategic sourcing, offshoring when we had to, and I think we have a great opportunity ahead of us. I've heard a lot of great ideas from members here on this committee, and I do think the focus needs to be on China. There are other bad actors—actually, we have allies who are bad actors, but I hope that we can have a broader view.

I'll give you an idea of how I think we need to go against China and have them notice a whole-of-government, a whole-of-Congress approach across many committee jurisdictions. Last week I met with the DEA, and the transnational criminal organizations have completely changed the game on how they launder money. They don't go to semi-sophisticated people carrying cash around. They go to a global network of banking entities that are moving across this globe and laundering billions of dollars, known entities that the DEA knows. We need to be able to track them down, and we can do that in the Banking Committee and maybe here in Finance.

I have two companies headquartered in North Carolina—one is Nucor Steel, which is not a union shop, but a very well-regarded steel producer—that are being ripped off every single day of the year for the last decades. And I've seen some of our partners have bad behavior in dumping illegal steel here in this country.

Charlotte Pipe, Mr. Chairman, is a family-owned business in downtown Charlotte that has a very sophisticated business, but still maintains its old-time foundry image. You can go to a province in China, and they have like a Hollywood movie set. It looks just like Charlotte Pipe. It's called Charlotte Pipe. They print Charlotte Pipe on it, and they dump it in this country and other countries. They're one of the biggest producers of pipes in the United States. But I think we need to let China know we know what they're doing.

I have a friend, Enes Kanter Freedom. He was an NBA standout who basically got fired by the NBA because he stood up against the issue of human rights violations against the Uyghurs. We need to let them know that they are benefiting from literally slave labor and forced imprisonment. We need to let them know that we know that they are exploiting our financial system. We need to let them

know that they're making it unfair for union labor to actually compete on a level playing field.

Can we get all of the links in the supply chain back? Absolutely not. And even if we could, we may want to think strategically about countries that we do want to have strong trading partnerships with, especially in this hemisphere. We need to make sure that we have four or five green lanes coming across all land ports of entry in Mexico to increase commercial traffic there and to get them through here, but also know that China is sending precursors to Mexico and poisoning hundreds of thousands of people across the globe and killing about 100,000 people from opioids, fentanyl.

We need to let them know we know this, and the best way we can do that is to have a coordinated effort with the House and the Senate and the committees of jurisdiction to say, "We got you. We're going to match you on trade. We're going to compete fairly. And we're going to move supply chain links out of China to countries we can rely on."

And we can't forget how we saw those supply chains break down with COVID. So, I think that this is a great opportunity, and I believe that there's a huge bipartisan base of people here to vote on it. If we have the hearings and we have the markups, we can send a message to China that's going to benefit the free world, and it's going to benefit free markets. So you all can count me in. We'll make sure that we're in touch with you all. You can count me in on listening to your priorities, because everything I heard in your opening testimony was spot-on. Count me in to help.

Thank you, Mr. Chair.

The CHAIRMAN. That was some kind of maiden speech, I'm telling you. Well said, Senator Tillis. And for all our guests, you really heard just now a capsulized summary of what this is all about, and particularly the call for some bipartisanship.

I understand our friend from Indiana has voted. So what I'm going to do is turn this over to him, and then I'm going to try and get back as quickly as possible. We've got a list of colleagues who may be coming in and out. And I thank you, Senator, my friend. Thank you.

Senator YOUNG [presiding]. Thank you, Mr. Chairman. I appreciate your leadership. And I want to thank our witnesses for your willingness to appear here today, offer your words of wisdom, and share some knowledge about what can be a really complex issue.

Ms. Allen, thank you in particular. We are so grateful for the significant presence that FedEx has throughout the State of Indiana—in particular, your massive facility in the Indianapolis area. It is an amazing city within a city that lights up at night and is processing so many shipments, as FedEx generally does every day. To be exact, 16 million shipments are processed each day. It blows the mind. But a lot of Hoosier jobs depend and will depend, as we look into the future, on our trade system working effectively. Reducing friction where we can, optimizing the systems, all the boring stuff of government—that really, really matters to rank and file Hoosiers.

So they've delegated to me to try and sort some of this out and improve what we're doing, keep doing what doesn't need to be improved. Ms. Allen, can you explain how the international express

shipping process works at major facilities like FedEx's Indianapolis hub? And then I'll give you an opportunity momentarily to tell us about the policy changes that have been discussed here today and which ones matter most to you.

Ms. ALLEN. Thank you, Senator. And I have to say, I grew up in Indiana. I actually grew up in Plainfield, IN, which abuts the airport, and my high school boyfriend's farm is now the FedEx hub facility there—so, near and dear to my heart, and I love getting back there.

Senator YOUNG. Well, he'll be able to see you on YouTube now.

Ms. ALLEN. That's right.

Getting shipments in, we take information in from multiple sources. Anyone can ship anything anywhere now, and getting that information into the systems at the foreign port is really critical. They put in that raw information, and we share that information with the government. We want to make sure that the government, specifically CBP, has an opportunity to understand what's coming in to the country, from who, how it's transiting into the U.S.

And when it arrives here, then there's another transfer of information on the manifest. So there's a robust amount of information for every shipment, regardless of value, as it comes into the United States. We then file additional information with CBP once the goods are 24 hours out, requesting a release, and that means we're telling them this is a formal shipment—it's over \$2,500 or it's *de minimis*, it's under \$800—and file a few more data elements.

I think it's important to note that the data between a *de minimis* shipment that's under \$800 and a shipment that's over \$800 is just a few data elements for release purposes. So, CBP has the opportunity and the information available to make good targeting decisions. And in the case of FedEx, we have Customs on site in our facilities, and we work hand-in-glove with them to make sure that they have the information and access to the cargo that they need to, to make those seizures, to identify concerning or illicit products.

We work with them, work with other intelligence agencies as well. We welcome them into our facilities because, really, there is no place in our network for illegal or illicit substances, and we try to do everything we can to work with law enforcement to make sure that that is eradicated from our system. So, thank you.

Senator YOUNG. Well, you've gone exactly where I wanted you to go. You've painted a picture of a number of forms and processes and activities which are essential to your work in ensuring that we work together to catch those violations like drug trafficking or Chinese counterfeits. And we want to be careful, but we want to be bold as we implement policy changes. So, would some of the policy changes expressed here today improve the process you've laid out, and if so, how? And if they'll create challenges, if there are certain ones that you have great concerns about, if you could vocalize that to me, it would be appreciated.

Ms. ALLEN. I think we have a great opportunity before us with the Customs modernization. Our written testimony outlined seven high-level concepts that we think are great opportunities to marry enforcement activities with trade facilitation for legal and lawful importers.

The Trusted Trader system has mainly offered benefits in the security and physical areas. We'd like to see that expanded from a compliance perspective, and we think there's an opportunity to do so. CBP and other government agencies have outlined that they would like additional data earlier in that process. They want an ability to have access to the data that's there. They want to offer companies that want to have a Trusted Trader status file that information in an iterative manner as it's transmitting through that process that I just spoke about—and even before it even becomes a shipment, back to the source materials.

This has a couple of benefits for CBP from an enforcement perspective, but also for the trade. If I'm filing information all the way back to where that aluminum was actually produced, I can prove that I have no forced labor in the supply chain. And similarly for trade agreements, if I understand and can demonstrate through that filing the origins of those goods, it's an automatic qualification for free trade agreements, which is an onerous process today to actually qualify those goods. So I think there are opportunities for facilitation married with that enforcement activity by the delivery of Trusted Trader benefits.

Not everyone is going to be able to do that, specifically small and medium enterprises. We help our SMEs a lot, because this is not their business. They don't know the international laws, and they rely on companies like FedEx to help them navigate that process. So I think that you'll find that larger companies that do want to do the right thing will participate in that, and we'll help our SMEs participate in that trade process moving forward.

Senator YOUNG. Thank you, Ms. Allen. I'm over time, and I'm sure my colleagues will have some thoughtful follow-ups. And I continue to rediscover the importance of seniority in this institution. So, my senior and distinguished colleague from Idaho, take the con, as we say in the Navy.

Senator CRAPO [presiding]. Thank you very much, Senator Young, and we'll turn it right over to Senator Thune.

Senator THUNE. Thank you, Mr. Chairman, and thanks for having the hearing today on Customs modernization. I want to welcome all of the witnesses.

In 2015, I led a trade provision with my colleague, Senator Wyden, which was included in the Trade Facilitation and Trade Enforcement Act—which was the last major Customs bill—and that particular provision updated the *de minimis* threshold for imports from \$200 for products to \$800. The idea behind the update was to reduce trade barriers and allow more low-value items to be imported into the country duty-free and with fewer unnecessary administrative requirements.

Ms. Allen, in your written testimony, you state that the current *de minimis* provision streamlines trade and benefits American consumers, small and large businesses, e-commerce platforms, and transportation companies in many sectors of the economy. And I know you've touched a little bit on some of the issues surrounding that subject, but if you could elaborate on the importance of the *de minimis* provision and why it's so critical to American customers and business—and then there is a concern among businesses, I would say of all sizes, that that threshold could be reduced or even

eliminated, as some have proposed, and maybe talk about that impact.

Ms. ALLEN. Yes, thank you, Senator. *De minimis* is extremely important when you're talking about trade facilitation. Those small and medium businesses now have opportunities like they've never had before. And if you think about what happened during the pandemic, when large-scale shipments had an issue transiting through our ports, the e-commerce environment of sales was actually exploding and allowing goods to get to consumers who didn't have an ability to go out to the stores and procure those products.

So, the *de minimis* provision actually supports the e-commerce space to a great degree. We think that it does facilitate small and medium businesses and that they're able to transit the trade process, which I explained is very complex, in a much more streamlined manner.

I think one of the concerns that I've heard in the industry is also the amount of data and the ability of CBP to target that. CBP, as I mentioned, does have access to ACAS, which is the Air Cargo Advanced Screening data that's filed multiple times by air carriers to make sure that the CBP has the opportunity to target data, specifically the parties to the transaction, when it comes in.

And then we file a manifest that has more specific data and tells Customs where it's coming, where we landed, what's going to happen to those goods after the fact, and then we have some commercial data that's filed as well. So CBP does have the authority, the data, and the opportunity to have enforcement actions in the *de minimis* environment, and specifically in our hubs where they're actually located.

We have a number of seizures that result from that very robust targeting process, so I think it's important from a small to medium perspective. It's important to continue that process for opportunities for the American public.

Senator THUNE. And how about the proposal to change those limits?

Ms. ALLEN. The proposal to change the limits we would be concerned about. We think \$800 is a good amount, and I know our company worked with you on that provision in TFFTEA. The data that we see, the average value is much lower than \$800. And as we are moving that forward, looking at eliminating that—this allows companies to not pay a tax. Tariffs are a tax, and the *de minimis* provision has been around for a long time, basically to avoid an additional tax on goods coming into the United States for small imports, and many of those imports are legitimate.

Senator THUNE. I want to hit one other subject here quickly, and that has to do with market access, greater market access. Better trade facilitation obviously would be a welcomed development for U.S. producers and manufacturers as well, but I would argue that greater market access would provide some of the most durable and outsized results for American businesses and workers. So, could you just comment quickly on why it's important to expand market access opportunities for American exporters—which, according to your written statement, I believe, are more than 98 percent small and medium-sized businesses?

Ms. ALLEN. Yes, the U.S. is a leader. There's no question about that. When you go to the WTO, the WCO, those countries and those bodies look to the U.S. and say, "What is the U.S. doing?" So the U.S. has always had a leadership role in market expansion, and also Customs modernization activities. CTPAT was an idea born in the U.S. and then adopted as the AEO around the world, so we have a great opportunity to lead the world in market access. And we took a bold step in TFEA in doing that so that we could lead the world in market access and develop small and medium-sized businesses, not just here, but globally. And that could elevate the economies, not just here, but also globally, which is really important. And that *de minimis* provision and its equivalence around the world are critical to that.

Senator THUNE. Thank you. And I would add, in terms of the trade policy of the current administration, there is really zero that I can tell related to market access. There's a whole bunch of other things that are being contemplated and considered, but that, to me, is the fundamental issue when it comes to certainly the ag exporters that I represent.

Thank you.

Senator CRAPO. Thank you.

Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman.

I wanted to ask Mr. Pickel about the Coast Guard Authorization Act, which was part of the NDAA bill last year. It includes a number of provisions to improve identification and enforcement of illegal fishing and forced labor in the fishing industry.

As you know, many agencies have a role in combating this: NOAA, CBP, and the Coast Guard. One provision includes the aim to improve identification of forced labor at sea by training Federal officials so they can identify forced labor on the ground. When those officials ultimately identify the forced labor, where will that data go? How will we inform law enforcement about the flow of those goods?

Mr. PICKEL. Thank you, Senator. So, I'm not familiar, personally, as I'm not in that particular position anymore within the government. What I would point out to you specifically—*i.e.*, fishing concerns—is that there are responsibilities spread across several agencies and that there are tremendous opportunities to improve information sharing as well as joint training programs, particularly between DHS and the Department of Commerce and NOAA.

In that regard, I think that gets to your question in terms of making sure that the information is readily available to make sure that the identification of suspect shipments is specifically identified at the point that it hits U.S. ports.

Senator CANTWELL. You hit on it, and that's what I want—inter-agency coordination—because it's a joint effort, and they have to share the data and information so that we can grow our capacity here.

Mr. PICKEL. And I think one other item I would add to that, ma'am, is to identify opportunities for engagement with industry so that you're getting the full picture of what that industry looks like and how those commodities are coming into the U.S. market so that those agencies have the benefit of that insight.

Senator CANTWELL. Great. Thank you.

Ms. Smith, welcome. You have experience, both at CBP and in technology issues. Technology can increase Customs clearance efficiency in many ways, but you still have to have staffing and resources. Do you have a view on the general staffing and resources capacity at our Customs clearance at our seaports today? Do you have recommendations on what we should do to improve that?

Ms. SMITH. I do. And thank you for the question. CBP is known by its people in blue, the uniform. But what I would call out are the significant number of trade specialists, analysts, auditors, and attorneys that sit behind the uniformed force that have a lot of the Customs competencies that help ensure both trade enforcement and trade facilitation.

As I noted in my initial statement, the investment in CBP workforce writ large since the events of 9/11 has been tremendous, but the investment in the nonuniformed trade specialists has been relatively minimal, aside from the tremendous investment made this past year in the forced labor capability. I believe very strongly that the agency needs to have the bandwidth to be able to think through what a modernized Customs process looks like, to implement the regulations, the processes, and the technology. And to do that, you not only need to have sufficient numbers of personnel, but they need to be well trained in the legal frameworks, but also in how modern business works every day. And Cindy Allen mentioned the concept of bidirectional education. I think there are many companies, including my own, Expeditors of Washington, that are interested in working with the government to be sure that we understand what the government is looking for and that the government understands how business works on a day-to-day basis.

Senator CANTWELL. Do you think there's a number there? I long ago proposed increasing, at USTR, the number of lawyers, because I was like, well, the amount of deals that we're doing outside the United States, so if you don't have lawyers to go down to Chile or whatever and talk about illegal timber—and so we've literally fought for our businesses and consumers because we upped the legal capabilities at USTR. Is there some capacity bill that we need to do here now for CBP to understand the complexity and volume?

Ms. SMITH. Yes, 100 percent. The number that I often use is that, during my career in trade over the last 40 years, trade has multiplied 32 times. So I think it wouldn't be out of consideration to double the Customs workforce. The numbers I used when I was at CBP—there are about 3,000 nonuniform personnel who do trade on a full-time basis. Doubling that to 6,000 would make a tremendous difference in their ability to modernize, facilitate, and enforce.

Senator CANTWELL. And you're talking about distribution throughout the U.S., with the major ports and things of that nature, to help catch this illegal activity.

Ms. SMITH. That's right.

Senator CANTWELL. Thank you, Mr. Chairman.

Senator CRAPO. Thank you.

Senator Blackburn?

Senator BLACKBURN. Thank you, Mr. Chairman. And, Ms. Allen, thank you so much for being here today. Tennesseans are mighty proud of FedEx and what they have brought with innovation into

the logistics industry, and it is quite appropriate that we have you before us here today. So, thank you for being here.

And, Ms. Allen, I want to come to you. You've talked a little bit this morning about dealing with data sharing and its impacts. And as we look at modernization and really delving a little bit into how we avoid a supply chain crisis like we have been through, talk for just a minute about the importance of protecting that data share, verifying that data share, and making certain that rights and responsibilities for that transmission are there so that there's accuracy in that process.

I think any of us who've been to the FedEx sort at midnight—and if you have never been to the FedEx sort, you need to make a trip to Memphis and go through this and see. You appreciate the speed and accuracy. So I wanted to give you just a moment to drill down a little bit further on that, because you all have led that innovation.

Ms. ALLEN. Thank you, Senator. And I'm proud to be here from FedEx, and it is very nice to have you here.

We, in our statement, really believe that if you get the right data at the right time from the right party, it gives CBP and the government the ability to do the right thing and make the decisions that they need to make for admissibility.

Senator BLACKBURN. Okay, so let's stop right there. It's getting the right information in at the right time. So, no mistakes on the front end, and then that will speed it along. And then I'll come back to you on something else on that. Go ahead.

Ms. ALLEN. Well, I think that's it. The right data from the right party at the right time, and giving that to CBP ahead of time, and linking that to Trusted Trader benefits. If you file information ahead of time about your products, you should have an ability to understand if your goods are going to be stopped or if they're going to be released into the United States. And the more data that those companies are willing to file, the more benefits that they can get.

Senator BLACKBURN. Okay. Now, let me stop right there. How do you work with the SMEs and all of these smaller users and say, "This is what is going to get this flagged?" So how do you all work with them? And, Mr. Pickel, I'm going to come to you next on this, okay?

Ms. ALLEN. We work very collaboratively with our small and medium-sized enterprises. We have an education role, and we work with the Department of Commerce quite closely to get that information in the hands of the small and medium importers so that they can understand the complex processes and the information that they need to provide to make sure their goods are imported in an efficient and compliant manner. We're not necessarily educating them on what to do, but we're educating them on the law and how it applies to their products, because most people don't really understand that. They're in the process of manufacturing or in selling their goods. They are not experts in Customs law, and that's the opportunity that we have, along with our government partners, to help them understand that and to assist when they have issues with that.

Senator BLACKBURN. Okay.

Now, Mr. Pickel, I wanted to come to you. I've appreciated your comments today, and I know Senator Crapo touched on drugs very briefly. And I think we're all astounded with the amounts of drugs that were apprehended at our ports.

We do know there's a lot of bad actors out there. We do know that they seem to be emboldened right now. Talk a little bit, if you will, about first of all, how you segregate, how you say, "These are questionable shippers; these are people who are following the rules and are trying to get that education?" And what is that red flag for CBP?

Mr. PICKEL. That's a great question. And what I would say is that we need to acknowledge on the front end that the vast majority of parties importing to the United States are tremendously compliant, right? So, when you're looking at segmenting risks, in the cargo environment particularly, information is key—but the right information is key, to Ms. Allen's point.

And information provided to CBP provides a very good basis to be able to understand the nature of a shipment that's happening. There are companies that go above and beyond to really open their books up to the government and say, "Here are our processes." And the government will help CBP, through the CTPAT program, to help them to understand vulnerabilities.

That information needs to be shared early in the supply chain process so that those compliant parties can take their own actions to root out any causes of concern before we get to a port, right, before we get into an enforcement scenario.

Senator BLACKBURN. Excellent. My time's expired.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank my colleague.

Senator Whitehouse, and then Senator Menendez and others may come, but we had so many people waiting that I want to make sure that Senator Whitehouse and Senator Menendez could be next, okay?

Senator WHITEHOUSE. Great. Thank you, Mr. Chairman.

There was a famous thesis not long ago about the world being engaged in a clash of civilizations, and I tend to subscribe to that thesis, but I think its author got the boundary, the line of contact if you will, wrong. I think the clash of civilizations that we are in is between rule-of-law regimes and regimes that are criminal, kleptocratic, and autocratic. And one of the perils that we on the rule-of-law side of that clash of civilizations face is the support within rule-of-law jurisdictions for assets amassed by the kleptocrats, the autocrats, and the criminals, who know that if they leave it at home, some bigger kleptocrat, autocrat, or criminal is going to come and steal it. So they come and seek refuge behind rule of law and they seek that refuge in anonymity.

In order to get those assets where they want to hide them, money laundering is the best tool, and there are lots of ways we hunt down money laundering. And I want to thank Senator Crapo for his leadership in the beneficial ownership battle that we had, so that U.S. shell corporations are no longer such an obvious tool for money launderers and kleptocrats and criminals. But trade-based money laundering has now emerged as a means of accomplishing this foul purpose.

And trade-based money laundering is a little bit difficult to track, because the symbol of it may be a perfectly innocuous package of goods that is perfectly legal in every respect. And if you were to take that package apart and inspect every part of it, you would find no contraband and nothing wrong. But let's say it was a \$750,000 set of goods. If the bill for it that went to pay for it was for \$7,500,000 or if it was for \$750, the margin is probably a way of laundering money across borders.

And I'm very interested in that context, particularly, Ms. Smith, from you, with how we get—and I'm working with Senator Cassidy on this, and I want to signal his leadership on this issue first. But what are the things that we can do, and how can we continue to work with you to figure out the things we can do to solve this without creating a bureaucratic and reporting nightmare for people for whom it just is a \$750,000 package of perfectly innocent goods for which they paid \$750,000.

Ms. SMITH. A very interesting issue and very timely, Senator, but it is tough to find. The scope that trade-based money launderers work against is \$32 trillion worth of trade last year; so, a huge range of opportunity for them.

When we talk about trade-based money laundering, we're really talking about the evasion of Customs laws, and so expertise in those laws—

Senator WHITEHOUSE. Although, kind of in a strange way, because the delivered product itself might fall totally within the Customs laws—

Ms. SMITH. Absolutely.

Senator WHITEHOUSE [continuing]. Be completely legal and innocuous. It's only when the payment moves, and it isn't commensurate with the goods that then the problem comes.

Ms. SMITH. That's right. And there are a number of creative ways to evade Customs laws. And so, having individuals at CBP and other U.S. Government agencies that work with financial flows is really critical. So, I would talk about expertise. I would talk about having the capacity, the number of boots on the ground to actually investigate trade-based money laundering, both on the civil side and the criminal side—so at CBP and Homeland Security Investigations—and I think a free flow of information among U.S. Government agencies first, and then second, their international counterparts, because it's not a crime that's limited here to the U.S. These flows go all over the world.

Senator WHITEHOUSE. Well, I look forward to continuing to work with you on it. I would like to be a good ally to Senator Cassidy as we try to solve this problem, and I think getting it right will save people a lot of trouble, compared to setting up systems that don't catch what we want to catch. Thanks very much.

Thanks, Mr. Chairman.

The CHAIRMAN. Senator Menendez—and my schedule is pretty tight. We're going to have another vote. Unless there are other members who come very quickly after Senator Menendez, we're going to wrap up.

Senator Menendez?

Senator MENENDEZ. Thank you, Mr. Chairman.

One of CBP's most important jobs is to safeguard Americans from the importation of counterfeit products. These products cannot only cost hardworking Americans their jobs and money, they can be dangerous, as we saw during the pandemic with the huge influx of counterfeit COVID-19 items.

Mr. Meserve, Mr. Nova, can you talk about how failing to crack down on counterfeit goods harms U.S. workers?

Mr. MESERVE. I know of a case a few years ago where Chinese companies were sending in primary aluminum in the form of a pilot or in some type of shipping arrangement, and then it was getting sold and remelted and brought into the country that way. What we make at my plant is what we call a "sow." It is an internationally recognized good. It's got a shape, a size, a weight, and an LME-set price for that. And we have to work within that margin of price point to be profitable. And if somebody's bringing in a good that's in the wrong shape or wrongly marked or mislabeled, then yes, it definitely hurts.

Senator MENENDEZ. Mr. Nova, do you have any insight on that?

Mr. NOVA. I'd just say it is part, I think, of the broadest challenge we face, which is that we have a trading system that frequently allows goods produced illegally overseas to be imported and sold here. Whether that illegality is in the context of counterfeiting, or the use of forced labor, we need a much more aggressive approach policing that trade to ensure that people cannot benefit from abuse of unlawful conditions overseas by selling products in the U.S.

Senator MENENDEZ. This issue is only growing. According to the most recent report on intellectual property rights seizures, in Fiscal Year 2021 CBP seized more than \$3.3 billion worth of counterfeit goods, compared to \$1.3 billion in Fiscal Year 2020—so almost three times as much. The report indicates that China and Hong Kong account for more than half of the products seized.

Ms. Smith, how can we better combat the influx of counterfeit products from countries like China?

Ms. SMITH. Two things, Senator. I think, one, the continued partnership between the government and the private sector, particularly the rights holders. They know their business. They know their products, and they can help educate and collect intelligence on the ground, which is useful to the government as they target counterfeit shipments.

I think the second thing that we have to be sure of is that the U.S. Government has the ability to enforce its penalties on overseas actors. That can be a challenge. The enforcement process is lengthy, and it often does result in not being able to collect the penalty, collect the additional duties because they can't reach the individual that caused the importation in the first place.

Senator MENENDEZ. Well, we'll have to look at that. That has a little bit of a potential foreign relations aspect. We'll have to look at that.

The goal of tariffs is to pressure foreign governments to live up to their commitment to American workers and companies by forcing foreign producers to make price concessions or lose customers. However, too often when tariffs are imposed, they end up punishing U.S. importers with goods that are already in transit.

Ms. Allen, Mr. Pickel, is it fair or effective trade policy to impose tariffs on goods that are already in transit when the tariffs are announced?

Ms. ALLEN. Thank you, Senator, for the question. I will tell you, as someone who has to apply those tariffs at the time of entry, it's a very complex environment today. Some dates for tariffs or other trade actions happen at time of export, some at time of arrival, some at time of entry, which can be different dates, and it's complex. So we'd like to have an opportunity to streamline that, also have predictability for our customers to know that additional tariffs are going to be applied to their goods before they're shipped. That way they have better predictability to contain those costs and understand how it's going to impact their operations in the U.S.

Senator MENENDEZ. Mr. Pickel?

Mr. PICKEL. Senator, no, it's not fair to have those surprises that are impacting not only American businesses, but also American consumers as well. Those business decisions and purchasing decisions are made well in advance of the finalization of the tariff actions, and I believe the action you're suggesting would be appropriate.

Senator MENENDEZ. That's why Senator Cassidy and I introduced the Fair Tariff Act in the last Congress. It would exempt goods that are already in transit from additional tariffs and require a standardized 60 days notice before new tariffs take effect. That would ensure that the burden of tariffs falls on their intended targets and not on innocent imports.

And so I think, Mr. Chairman, a consistent standard that protects goods on the water from surprise tariffs benefits importers without compromising the effectiveness of our trade policy, and we look forward to working with Senator Cassidy and with you, hopefully, to move it forward.

Thank you.

The CHAIRMAN. Senator Menendez, your leadership with Senator Cassidy is much appreciated. This is an extraordinarily important issue, and I look forward to working with you. And Senator Crapo and I have been saying throughout this that it's going to be a bipartisan issue.

I want to say to our guests that it's a pretty hectic time right now; otherwise, I would make a profound closing address. This is an extraordinarily important issue. This is not an abstraction. In other words, you have these debates about trade policies and trade rules, and it sounds like a lot of alphabet soup and the like, but it's really about—as Mr. Meserve talked about—the hopes of all these working families that, if they can just get a level playing field, they're going to be in a position to out-compete anybody anywhere. And so, that's what it's about.

We've got a lot of work to do. You'll hear more about this soon as we evaluate the responses from the big automobile companies. There we're talking about thousands and thousands of workers, and we are not going to sit around and see forced labor undercut their hopes, as Mr. Meserve was talking about. And we'll have more to say shortly.

I'm going to close by saying that Senator Brown, of course, has been a critical leader in stopping forced labor and leveling the play-

ing field for U.S. workers. He couldn't be here. He's home in Ohio advocating for the people of East Palestine, who are facing an environmental disaster. He's got questions for witnesses that we'll submit for the record. And we look forward to your answers. It's also a process of the Senate Finance Committee that the questions for the record will be due in a week, on Thursday, February 23rd, I think.

I thank all of you. I thank my colleagues. We're going to tackle this in a bipartisan way.

And with that, the Finance Committee is adjourned.

[Whereupon, at 12:21 p.m., the hearing was concluded.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF CINDY ALLEN, VICE PRESIDENT, REGULATORY AFFAIRS AND COMPLIANCE, FEDEX LOGISTICS

Every day, in every corner of the world, FedEx is connecting communities, moving goods, and providing services that power the global economy. FedEx fuels innovation, creates and supports local jobs, and helps lift individuals and their communities. That's why FedEx believes a connected world is a better world. At FedEx, trade is our business. Trade is the lifeblood of the global economy, and FedEx plays a critical role in expanding global trade, helping to build nimble supply chains, and delivering local products and services to customers around the world. We believe everyone benefits when it is easier to bring new ideas and products to the global market. Expanding global trade is essential to our customers, our team members, and the economy. We see the value of trade every day: our more than 500,000 global employees (410,000 in the United States) move an average of 16 million shipments daily, serving more than 220 countries and territories.

In the United States, FedEx provides delivery services to every U.S. ZIP code and accounts for nearly 6 percent of employees in the U.S. transportation and postal and courier services sectors. In Fiscal Year 2022 (FY22), FedEx spent nearly \$45 billion with our U.S.-based supply chain partners, and in Tennessee alone, FedEx spent \$257.3 million with local suppliers in the first three quarters of FY22. FedEx plays a crucial role in the U.S. supply chain that keeps this country, our people, and economy moving. We are immensely proud of our global efforts to combat COVID-19, and in the United States alone we have delivered hundreds of millions of COVID-19 vaccine doses and boosters, as well as ancillary kits and other essential supplies. And when the trade disruptions stemming from COVID-19 congested ports in the U.S., FedEx participated in the White House Supply Chain Disruptions Task Force to help develop solutions to stabilize supply chain disruptions to get trade moving again.

American prosperity is linked to growing markets and greater opportunities for U.S. companies, especially small and medium businesses, which comprise more than 98 percent of U.S. exporters.¹ More than 40 million American jobs—roughly 1 in 5—depend on trade, and trade is critical to the success of many sectors of the U.S. economy.² With 95 percent of the world's population and 80 percent of its purchasing power outside our borders, global trade will continue to be of critical importance to U.S. economic growth.

It is not just exports that benefit the American economy, but imports as well. Imports bring lower prices and more choices for American families as household budgets are increasingly stretched. Access to imports boosts the purchasing power of the average American household by about \$18,000 annually.³ Imports also give Americans access to products that would not otherwise be available—for example, fresh fruit in the winter. It is not only consumers that benefit from imports, but also U.S. companies that depend on imports for raw materials and other inputs. In fact, nearly 60 percent of U.S. merchandise imports are raw materials, capital goods and in-

¹ <https://www.uschamber.com/international/trade-agreements/we-cant-stand-still-the-benefits-of-trade-agreements-in-america>.

² https://tradelink.org/wp-content/uploads/2020/10/Trade_and_American_Jobs_2020.pdf.

³ <https://www.piie.com/publications/policy-briefs/payoff-america-globalization-fresh-look-focus-costs-workers>.

dustrial products, which are used by U.S. manufacturers and farmers to produce goods in the United States.⁴ This lowers costs for manufacturers and other businesses and helps them be more competitive globally. If the U.S. hopes to strengthen its manufacturing base, it must have efficient and reliable access to imported components from around the world.

The rise of global e-commerce represents a sea change in the profile of global trade. The trade landscape is shifting from container-based trade between large multinational corporations to package-based trade between businesses and individual consumers. Put simply, the global supply chain is more complex and has many more participants. This shift presents unprecedented opportunities to make global trade more inclusive by enabling small and medium-sized businesses (SMEs) to participate in the global economy. But it also presents challenges for governments as they grapple with the impact of increased volumes of low-value shipments and their responsibilities for revenue collection and border safety and security.

Against this backdrop, FedEx supports the U.S. Government in its efforts to update its Customs rules and adapt to a changing trade environment. We welcomed the U.S. Customs and Border Protection's (CBP) initiative in its 21st Century Customs Framework (21CCF) to address modern trade challenges and opportunities and have been engaging in the 21CCF process since its inception.

Given the increased number of trade participants globally, the first goal of any Customs modernization proposal must be to properly define the roles and responsibilities of these new actors. As the U.S. government begins to assess what new information should be required for importation, it must remain focused on requiring the right data, at the right time, from the right party. Rules requiring additional data from new stakeholders must ensure that gaps in data availability or transmission do not lead to bottlenecks at U.S. ports. Responsibility for the accuracy of data should be appropriately assigned to the party most responsible for the creation and retention of that data. In addition, new legislation should not delegate unfettered authority to government agencies. Any new authorities should include appropriate guardrails to prevent unnecessary burdens on companies and supply chains in the name of data collection.

Governments around the world look to the United States for leadership and as a provider of global best practices. The United States must be mindful that new approaches to importing processes could be adopted by other countries. Therefore, the United States should, when considering new requirements on U.S. imports, ask whether U.S. exporters, especially SMEs, would support the same requirements being placed on their exports by third countries.

A truly successful Customs modernization needs a “co-creation” approach, where the public and private sectors identify the challenges, they are trying to address and leverage best practices to develop feasible joint solutions. While CBP deserves credit for its outreach efforts on 21CFF to date, more in-depth and widespread engagement of the private sector is needed as the agency fills in the details behind its goals. Moreover, most of the discussion has focused on increased trade controls and enforcement, and very little on trade facilitation. Any Customs modernization effort should balance grants of additional authority to border agencies with appropriate guardrails and trade facilitations to receive support from industry. Described more fully below are some of the trade facilitative measures that FedEx supports including in such an effort.

- **Achieving a Government-Wide Policy Approach to Accompany the Single Window:** The International Trade Data System (ITDS) as outlined in the original Customs Modernization Act, has been achieved with the delivery of the Automated Commercial Environment (ACE), establishing the technical side of intergovernmental operability with one single window for all agencies who have the authority to regulate the importation and exportation of goods. Unfortunately, this has become a 47-paneled window due to various policy, procedures, and processes established by each agency. Customs modernization should define a government-wide decision making, policy, and authority process that is centralized and coordinated with CBP. This policy and coordination approach could be achieved through a council such as the Border Interagency Executive Council (BIEC). Regardless of the mechanism, the authority to make and drive decisions must reside within this forum. Additionally,

⁴https://tradepartnership.com/wp-content/uploads/2020/10/Trade_and_American_Jobs_2020.pdf.

trade participation to assist in guiding in a manner that is achievable in current and future trade processes should be included.

- **Enabling Global Entry for Cargo:** Shipments have a history when they arrive at the border. Government agencies, specifically CBP, have expressed an interest in receiving the critical data associated with the shipment to assist with targeting purposes and allow better informed admissibility decisions. An iterative or progressive filing of data should be codified and developed to allow the best party, with access to the relevant data, to file it at the earliest available time, building the data for each shipment until the arrival at the border. This should be linked to Trusted Trader and Authorized Economic Operator (AEO) benefits, such as admissibility decisions that the trade can rely upon, qualifying of certain free trade agreement benefits, and ensuring a secure and compliant supply chain. This program would be in addition to the information already filed for security purposes, especially in the air environment.
- **Limiting Redelivery Authority:** Outdated language allows CBP to recall goods up to 60 days after admissibility decisions are made. This authority was vested in old statutes around quota and visa transshipment concerns that do not exist today. Today, with the speed of cargo delivery, especially when it is direct to the consumer, it is almost impossible to redeliver something to CBP custody outside of 24 hours. This redelivery authority should be removed except in cases that post safety and security concerns.
- **Establishing Timelines for Government Response:** In most circumstances, the trade is bound by defined timelines, yet there are few timelines CBP is bound by. This leads to uncertainty for U.S. businesses as they try to move forward with business planning and product launches and causes financial uncertainty. The Customs modernization effort should establish reasonable timelines for CBP to respond to trade actions and requests such as petitions, protests, advice, and Customs rulings. If a decision is not produced within the timeline, it should be considered an affirmative response for the trade. Holding agencies accountable to provide timely decisions should be a key part of this legislation.
- **Further Facilitating the Informal Entry Procedures:** The United States Congress should expand the United States' global leadership in facilitating trade by focusing on the informal entry process, those shipments currently between \$800–\$2,500. Congress should raise the \$2,500 ceiling to a more competitive baseline, while granting CBP the regulatory authority to raise it further. For informal entries, a "bucket" system for Harmonized Tariff Schedule (HTS) classification for eligible shipments, *e.g.*, a limited number of classifications instead of the 10,000+ tariff lines should be adopted. Excluded from "bucketing" would be shipments subject to "restricted" goods where 10-digit HTS codes are required. Further, for those highly integrated networks like express carriers, a simplified release by presentation of commercial invoices should be allowed. Since a bucket system for HTS codes would be utilized to further simplify the process, Congress should expand who can file these informal entries to include nominal consignees like carriers (as currently permitted for *de minimis* entries).
- **Codifying the Express Delivery Sector:** To recognize the express delivery process is a unique procedure for providing expedited clearance of shipments based on longstanding success and shared responsibility, including the investments the express industry has made to ensure it meets all Government requirements for data accuracy and completeness, the express delivery sector must be codified. The codification of the express delivery clearance process will allow for:
 - A single submission of information, a manifest, covering all goods contained in an express shipment;
 - Expedited release of these shipments based on the minimum documentation of a single submission of information; and
 - Consolidated entries.
- **Codifying the Express Carrier's Right to File *De Minimis* Entries and Establish a Waiver for the Express Carriers From More Burdensome Requirements When Filing *De Minimis* Entries:** Currently, the express industry's right to file *de minimis* shipments was created by regulation a long

time ago and, for the reasons discussed above, this process should be codified in statute. Further, the hundreds of millions of dollars of investment the express industry has made to segregate Partner Government Agency (PGA) regulated items from its manifest should be considered as a justification for waiving the requirement to provide an HTS code for *de minimis* shipments in any future CBP rulemaking.

Regardless of any legislative proposal, Congress should take into account competitive considerations. Any new requirements must apply equally to express and international mail shipments. We recognize to modernize the Customs process, CBP needs additional funding to support initiatives like the development of ACE 2.0 to meet the technological challenges of the future. Therefore, we support additional funding streams to dedicate more funding to CBP. Specific ideas include a higher percentage of Merchandise Processing Fee collections made directly available to CBP, a charge for each Entry Type 86 Pilot entry (with 100 percent of collected proceeds going to CBP for its costs incurred for processing those entries), and a revival of the Customs Forfeiture Fund, or alternatively creating a new fund of a similar nature, to be used exclusively for CBP enhancements of this variety.

Lastly, FedEx would like to highlight the importance of a current feature of the U.S. Customs laws that facilitates trade: the United States' strong *de minimis* provision. *De minimis* simplifies and streamlines documentation, expedites border processes, and eliminates duties and taxes, which is a significant trade facilitation measure that benefits U.S. consumers, large and small businesses, e-commerce platforms, transportation companies, and many other sectors of the U.S. economy. For example, e-commerce SME customers like Greentop Gifts, a Black woman-owned business based in Atlanta, GA, and AnaOno, a woman-owned, Philadelphia, PA-based business, rely on this simplified process in delivering their products.

Established by Congress decades ago, *de minimis* is a longstanding and key feature of the U.S. import system. Congress looked at the issue recently when it raised the level to \$800 in 2016 via the Trade Facilitation and Trade Enforcement Act (TFTEA). This was a deliberate policy choice Congress got right. As TFTEA explains, the higher *de minimis* value thresholds provide "significant economic benefits to businesses and consumers in the United States and the economy of the United States through costs savings and reductions in trade transaction costs."

Connecting people with goods, services, ideas, and technologies creates opportunities that fuel innovation, energize businesses, and lift communities to higher standards of living. At FedEx, we believe a connected world is a better world, and that belief guides everything we do. A modernized Customs process is key to this.

We would be honored to invite this committee and its staff to visit the largest Customs clearance port of entry in the United States, the Memphis International Airport, where our FedEx Express World Hub is located.

QUESTIONS SUBMITTED FOR THE RECORD TO CINDY ALLEN

QUESTIONS SUBMITTED BY HON. MIKE CRAPO

Question. Congress is grappling with the problem of supply chain delays. FedEx and others played a critical role during the pandemic to facilitate the movement of goods.

How would some of the proposals mentioned in your opening statement alleviate the hurdles the shipping industry now faces at our borders?

Answer. Thank you for your leadership on this issue. The World Customs Organization (WCO) measures the performance of the Customs processes across countries using time release studies. The WCO describes this methodology as "a strategic and internationally recognized tool to measure the actual time required for the release and/or clearance of goods, from the time of arrival until the physical release of cargo, with a view to finding bottlenecks in the trade flow process and taking necessary measures to improve the effectiveness and efficiency of border procedures."¹

¹<https://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/time-release-study.aspx>.

Trade facilitation lowers the time in which it takes to clear goods through the various border agencies. By giving CBP and other U.S. border agencies the tools to release and clear goods more efficiently, release times will decrease as the movement of goods is facilitated.

There is an opportunity to create a new program for cargo facilitation akin to CBP's Global Entry program for travelers. Government agencies, specifically CBP, have expressed an interest in receiving the critical data associated with shipments to assist with targeting purposes and allow better informed admissibility decisions. An iterative or progressive filing of data should be codified and developed to allow the best party, with access to the relevant data, to file it at the earliest available time, building the data for each shipment until the arrival at the border.

This should be linked to Trusted Trader and Authorized Economic Operator (AEO) benefits, such as admissibility decisions that the trade can rely upon, qualifying of certain free trade agreement benefits, and ensuring a secure and compliant supply chain. This program would be in addition to the information already filed for security purposes, especially in the air environment.

Another area to explore to alleviate release times is the Government-wide policy concerning the single window. The International Trade Data System (ITDS), as outlined in the original Customs Modernization Act, has been achieved with the delivery of the Automated Commercial Environment (ACE), establishing the technical side of intergovernmental operability with one single window for all agencies who have the authority to regulate the importation and exportation of goods.

Unfortunately, as I outlined in my testimony, this has become a 47-paned window due to various policy, procedures, and processes established by each agency. Customs modernization should define a government-wide decision-making, policy, and authority process that is centralized and coordinated with CBP. Strengthening the original Customs Modernization Act regarding ITDS to address the application of the single window may achieve this result. Regardless of the mechanism, the authority to make and drive decisions must reside within this forum. Additionally, trade participation to assist in guiding in a manner that is achievable in current and future trade processes should be included. Such improved coordination will alleviate the hurdles often faced when shipping goods regulated by those other (non-CBP) agencies.

Question. I share your concerns about undue delays and a lack of responsiveness from government agencies. As you outlined in your opening statement, nearly 60 percent of U.S. merchandise imports are raw materials used by American manufacturers. Businesses rely on the timely delivery of these inputs.

From a business perspective, what would be a reasonable timeline for CBP to respond to trade actions and requests?

Answer. In most circumstances, the trade is bound by defined timelines, yet there are few timelines CBP is bound by. This leads to uncertainty for U.S. businesses as they try to move forward with business planning and product launches and causes financial uncertainty. The Customs modernization effort should establish reasonable timelines for CBP to respond to trade actions and requests such as petitions, protests, advice, and advanced rulings. Holding agencies accountable to provide timely decisions should be a key part of this legislation.

The U.S.-Mexico-Canada Agreement (USMCA) put out the following standard for Customs authorities to issue advanced rulings: "as expeditiously as possible and in no case later than 120 days after it has obtained all necessary information from the person requesting an advance ruling[.]"²

CBP should set similar deadlines for other agency decisions such as those related to protests, petitions, applications for further review, and penalty determinations, coupled with a default rule under which, when CBP fails to respond by the deadline, the decision's outcome is then decided, by operation of law, in favor of the trader.

The lack of timeliness has real-world effects. For example, outdated statutory language currently allows CBP to recall goods up to 60 days after admissibility decisions are made. This so-called redelivery authority was created in statutes concerned with quota and visa transshipment concerns that do not exist today. Today, with the speed of cargo delivery, *e.g.*, the speed required by manufacturers when importing intermediary goods to incorporate into their manufacturing processes, it

²USMCA, Article 7.5.6(c).

is almost impossible to redeliver something to CBP custody outside of 24 hours. This authority should be removed for normal cases, with the timeline shortened in exceptional cases that pose safety or security concerns.

QUESTIONS SUBMITTED BY HON. CHUCK GRASSLEY

Question. The U.S. marketplace has been flooded with counterfeit merchandise, often originating from China.

Knockoffs not only violate intellectual property rights; they also threaten the economy and consumer safety. Unfortunately, as consumers rely more on online shopping, bad actors are finding new ways to exploit legitimate channels to box out businesses and dupe consumers with bogus products.

In 2019, as chairman of this committee, I led an effort to crack down on counterfeit goods entering the United States by modernizing the Trade Enforcement and Trade Facilitation Act and expanding U.S. Customs and Border Protection's (CBP) authority to share information with rights holders and other interested parties on suspected counterfeit merchandise.

After then-Ranking Member Wyden and I released a bipartisan committee report studying counterfeit goods sold online and their effect on businesses and consumers, we found that improved information sharing between CBP and its private-sector partners would aid efforts to identify and curtail the sale of counterfeit imports, some of which may pose significant health and safety threats to consumers. Namely, and most pressing of which, is fentanyl—which is coming from China and destroying our communities.

You note in your testimony that the rise of global e-commerce presents profound new challenges for the responsibility of governments to collect revenue and enforce safety and security.

What regulatory steps could Congress take to give logistics providers and entities such as FedEx the information and tools they need to ensure they aren't contributing to the destruction of our communities by trafficking deadly drugs like fentanyl?

Answer. Thank you for your questions on this very important topic. The safety of our team members, customers, and the communities we serve is our top priority at FedEx.

FedEx has extensive security measures in place to deter and detect the use of our networks for illegal purposes. We follow the laws and regulations everywhere we do business and have a history of close cooperation with authorities.

U.S. express delivery companies such as FedEx Express are pioneers in providing advanced electronic data to Customs authorities, beginning with our industry's groundbreaking work in the 1980's with the U.S. Customs Service. That work began a longstanding and productive relationship with CBP in addressing the agency's data needs. For example, immediately after 9/11, the express industry began to provide advanced cargo manifest information earlier than carriers in other modes. After the Yemen bomb plot in 2010, the express industry worked with CBP to co-create the Air Cargo Advanced Screening (ACAS) pilot program which, after running for several years without major hiccups, now forms the basis for CBP's ACAS regulations. More recently, the express companies have joined CBP's section 321 Data Pilot as the agency explores the need for new data elements in light of e-commerce's growth.

We welcome CBP's extension of the Pilot into 2025 because, based on our conversations with CBP, we believe there are outstanding issues in how future regulations would work. For the same reason, we support expanding the pilot to include more members to capture more e-commerce business models. Doing so will allow CBP to determine the right data it needs to enhance targeting, which party is best positioned to provide that data, and at what time that data is most useful.

Against this backdrop, we support the concept of advanced electronic data in a very real and hands-on way. We believe we can continue to play a constructive role in this space. Bidirectional and actionable information exchanged between the government and the trade could provide further insight into the opportunities to prevent the introduction of the goods that violate U.S. law.

To the extent CBP lacks data under the current framework, the focus should be on the international postal system. While the STOP Act aimed to close this gap in U.S. law, CBP still grants waivers to dozens of countries as far as we know, leaving the agency without data on postal shipments from the vast majority of origin countries.

Question. Do you have any other thoughts about ways to responsibly regulate the air cargo market and e-commerce in a way that cracks down on counterfeit goods?

Answer. We support a comprehensive approach that looks at entire supply chain. This includes enhanced information sharing, moving in both directions, between CBP and IP rights holders. For example, we support the concept of a government-issued “bad actors” of IPR violators. Such a government-issued list (populated with distinct and specific targets, identified based on name, address, city, and country, etc.) could be highly effective in improving the interdiction of non-compliant shipments.

This is another area where policymakers must continue to stress the importance of equal treatment between the various air cargo modes, ensuring that postal shipments are subjected to the same treatment as the others. Failing to do so creates competitive imbalances and gives illicit traders the ability to exploit regulatory differences to their advantage.

QUESTION SUBMITTED BY HON. BILL CASSIDY

Question. In testimony on February 16th, you indicated that *de minimis* was created to allow small businesses to avoid “tariffs” which, you stated, are taxes. However, the legal definition of *de minimis* is “too small to be meaningful or taken into consideration; immaterial.” The purpose of *de minimis* was to alleviate Customs and border protection of having to spend effort on small packages, mostly coming in with tourists returning with presents for example. However, since 2016 when the *de minimis* threshold was increased to \$800, packages coming into the U.S. under *de minimis* are approaching 1 billion a year. Though, because CBP has no information on contents, we will never know the value, *The Wall Street Journal* estimated the value to be at \$67 billion. Other estimates are higher, even up to \$150 billion. According to CBO, this “tax cheat” is at least \$10 billion a year.

Does FedEx consider 1 billion packages to be trade that is “too small to be meaningful or taken into consideration?”

Does FedEx consider a \$67- to \$150-billion trade envelope to be “immaterial”? Does FedEx believe that a \$150-billion industry should be able to avoid taxation? Do you think that the Federal Government has the responsibility to close tax loopholes identified by industry in public hearings?

Answer. Thank you for your continued interest in Customs modernization. *De minimis* is not a loophole, but a deliberate policy that Congress codified into law. Not only does the law save taxpayer money on administrative costs to collect nominal duties, but Congress rightly identified that the law provides “significant economic benefits to businesses and consumers in the United States and the economy of the United States through costs savings and reductions in trade transaction costs.”³ This remains true today.

The international trade community recognizes the importance of a *de minimis* provision, as it is included in the World Trade Organization’s Trade Facilitation Agreement, the World Customs Organization’s Immediate Release Guidelines, and numerous U.S. trade agreements as a best practice. In fact, a recent study demonstrates that global adoption of U.S. trade facilitative measures found in U.S. trade agreements, including *de minimis*, would save the U.S. \$88 billion in trade costs and lead to almost a million new jobs created across all 50 States.⁴ U.S. exporters recognize the value of these provisions in foreign markets, which is why Congress rightfully noted in Trade Facilitation and Trade Enforcement Act of 2015 (TFFEAA)

³ See Trade Facilitation and Trade Enforcement Act of 2015 (TFFEAA), sec. 901(a)(2), Pub. L. No. 114-125 (2016).

⁴ Third Way, Reducing the Red Tape around Supply Chains (July 25, 2022), available at <https://www.thirdway.org/report/reducing-the-red-tape-around-supply-chains>.

that the U.S. “should encourage other countries, through bilateral, regional, and multilateral fora, to establish commercially meaningful *de minimis* values[.]”⁵

Eliminating or reducing *de minimis* levels is the equivalent of raising taxes, as it will cause more shipments to be subject to tariffs. This would be a highly regressive tax, as it falls mainly on parties like small businesses and individual consumers for whom paying tariffs could be particularly burdensome.

Contrary to popular belief, CBP receives an abundance of advanced data for all shipments from express carriers, as well as *de minimis* shipments, including, but not limited to, the value for each shipment. This gives CBP the same opportunity to review, screen, target, and detain shipments in the *de minimis* environment as they do for other shipments regardless of value upon arrival.

As you correctly noted, in fiscal year 2020, CBP data showed that out of a total of \$2.42 trillion dollars in import values, *de minimis* shipments represented \$67 billion dollars, or only 2.77 percent of all trade value into the United States, which is a relatively small portion of total trade value.

QUESTIONS SUBMITTED BY HON. JOHN BARRASSO

Question. The COVID-19 pandemic laid bare many of the shortcomings in our supply chains. Supply chain challenges impacted nearly every industry, and those challenges were felt by businesses and consumers alike. As we look to strengthen and secure our supply chains, are there steps we can take to ensure U.S. Customs and Border Patrol (CPB) operations aren’t exacerbating existing supply chain challenges?

What changes or improvements to existing CPB authorities should we consider to keep goods and services flowing across our borders?

Answer. Thank you for identifying an important issue. Our experience during the pandemic demonstrated that CBP works as well as it can given the current statutes and regulations. There are several opportunities to provide streamlined processes as well as additional resources to provide an enhanced experience.

Congress should expand the United States’ global leadership in facilitating trade by focusing on the informal entry process, *i.e.*, the Customs procedures governing shipments valued between \$800–\$2,500. Congress should raise the \$2,500 ceiling to a more competitive baseline, while granting CBP the regulatory authority to raise it further. For informal entries, a “bucket” system for Harmonized Tariff Schedule (HTS) classification for eligible shipments, *e.g.*, a limited number of classifications instead of the 10,000+ tariff lines should be authorized by statute. Excluded from “bucketing” could be shipments subject to “restricted” goods where 10-digit HTS codes are required. Further, for those highly integrated networks like express carriers, a simplified release by presentation of commercial invoices should be authorized. Since a bucket system for HTS codes would be utilized to further simplify the process, Congress should expand who can file these informal entries to include a nominal consignee like carriers (as currently permitted for *de minimis* entries).

Along similar lines, Congress should codify longstanding and successful models that CBP has crafted via regulation over the last several decades. The express industry’s right to file *de minimis* shipments was created by regulation a long time ago and, for the reasons discussed above, this process should be codified in statute. Further, the hundreds of millions of dollars of investment the express industry has made to segregate PGA regulated items from its manifest should be considered as a justification for waiving the requirement to provide an HTS code for *de minimis* shipments in any future CBP rulemaking.

For the same reasons, Congress should codify the express delivery process more generally as a unique procedure for providing expedited clearance of shipments based on longstanding success and shared responsibility, including the investments the express industry has made to ensure it meets all government requirements for data accuracy and completeness. The codification of the express delivery clearance process will authorize:

- A single submission of information, a manifest, covering all goods contained in an express shipment;

⁵See TFTPTEA, sec. 901(b).

- Expedited release of these shipments based on the minimum documentation of a single submission of information; and
- Consolidated entries.

Lastly, we support additional funding for CBP officers at the ports of entry and to improve those CBP technologies that facilitate the movement of goods.

Question. You noted in your testimony the importance of establishing timelines for a response from CBP. I've heard from businesses in Wyoming who have had shipments held at U.S. ports for a variety of reasons. In some cases, CBP works quickly and the shipments move along to their final destination. In other instances, the imported goods can sit for weeks or months awaiting CBP action. This is unacceptable.

I agree that Customs modernization must establish reasonable timelines for CBP in order to keep goods moving and provide American businesses with certainty.

In your opinion, what is a reasonable amount of time for CBP to take action on protests, petitions, and other Customs matters?

Answer. In most circumstances, the trade is bound by defined timelines, yet there are few timelines under law that bind CBP in the same way. This causes uncertainty for U.S. businesses as they try to move forward with business planning and product launches and causes financial uncertainty.

The U.S.-Mexico-Canada Agreement (USMCA) outlines the following standard for Customs authorities when issuing advanced rulings: "as expeditiously as possible and in no case later than 120 days after it has obtained all necessary information from the person requesting an advance ruling[.]"⁶

CBP should be held to similar deadlines for other agency decisions such as those related to protests, petitions, applications for further review, and penalty determinations, coupled with a default rule under which, when CBP fails to respond by the deadline, the decision's outcome is then decided, by operation of law, in favor of the trader. Any Customs modernization legislation should explore this important topic of holding agencies accountable to provide timely decisions.

Expedited decisions on freight seized for various reasons should be reviewed as an opportunity for earlier resolution. A part of this process is updating the very manual processes on the CBP side with enhanced capabilities in automated systems, including a comprehensive interactive capability with the trade industry. Many seizures are resolved and the cargo is admitted into the U.S. for consumption; facilitating this process can add value and allow CBP to focus on bad actors and shipments.

The lack of timeliness has tangible effects on traders. For example, outdated statutory language currently allows CBP to recall goods up to 60 days after admissibility decisions are made. This so-called redelivery authority was created in statutes concerned with quota and visa transshipment concerns that do not exist today. Today, with the speed of cargo delivery, especially in the direct-to-consumer setting, it is almost impossible to redeliver something to CBP custody outside of 24 hours. This authority should be removed for normal cases, with the timeline shortened in exceptional cases that pose safety or security concerns.

PREPARED STATEMENT OF HON. MIKE CRAPO,
A U.S. SENATOR FROM IDAHO

Thank you, Mr. Chairman, and thank you to our witnesses for appearing before the committee today. Before we begin, I will mention two things—particularly since this is the committee's first trade hearing of the new Congress.

First, I welcome Ms. Cindy Allen of FedEx Logistics. She traveled here to testify today from Tennessee, the home State of one of our new Finance Committee members, Senator Marsha Blackburn. Very happy to have you both here. Of course, I am also glad to see Senators Tillis and Johnson here, who have also just joined the committee, but we will have to wait a little longer to get some fine folks from your States here to share their expertise.

Second, I must thank Senator Cassidy for his leadership on the issue of Customs modernization. He spends a lot of time thinking about how to ensure our Customs

⁶USMCA, Article 7.5.6(c).

laws are effectively enforced and how to better harness data to that effect. We all look forward to hearing his insights as we consider this issue further. Modernizing U.S. Customs laws is fast becoming of critical importance.

The last comprehensive update to our Customs laws occurred exactly 30 years ago. A smart reform now will not only allow us to seize new opportunities, but also to confront the rise of opportunists. Opportunity is out there, right now, waiting for the law to catch up with it.

The drafters of the last modernization could not possibly foresee the technological tools available to us today, or the sheer number of small businesses that now take advantage of international trade, or the benefit to consumers from widespread access to e-commerce. But with any new opportunity, unfortunately, also comes opportunists. Modernization is imperative to counter both existing threats trying to make their way into this country, and those on the horizon.

At the El Paso port of entry, the brave men and women of U.S. Customs and Border Protection, or CBP, seized—in just the month of January alone—over 327 pounds of methamphetamine, 139 pounds of cocaine, and 42 pounds of fentanyl. We have got to close the supply of those drugs coming across our southern border.

On January 29th, CBP officers at Chicago's O'Hare seized counterfeit jewelry and apparel that would have been worth over \$686,000, if genuine. CBP is also actively enforcing a number of "withhold release orders" and the Uyghur Forced Labor Implementation Act to keep goods made with forced labor out of this country. The good news about Customs modernization is that it is not an either/or proposition when it comes to trade facilitation and trade enforcement. By making smarter use of data collection, we can reduce burdens on both lawful commerce and CBP personnel so that we can better focus resources on enforcement challenges.

Let us take, as an example, something as simple as importing wet pet food. Importation currently requires the importer to submit data to assist three of CBP's partner agencies: USDA; FDA; and the National Oceanographic and Atmospheric Administration, or NOAA.

These agencies cumulatively want 54 data elements. But 21 of these elements are redundant, and there are 16 inconsistent definitions for the same data. Under these circumstances, the importer faces the challenge of figuring out what exactly is required, and our law enforcement authorities may end up with information of little utility.

We can and must do better—particularly given some of the supply chain bottlenecks we see at our ports. Fortunately, we are well situated to attack the modernization effort today, because CBP and its advisory committees started thinking about many of these issues starting in 2018, when CBP launched its 21st Century Customs Framework Initiative to develop ideas about what a modernized Customs regime might look like.

Combining CBP's efforts with additional expertise—including that of our witnesses today—we can create an efficient and effective framework. New tools, including automation, can help us identify risks at an early stage.

We need a system where contraband never enters the United States in the first place. By catching threats early, we can save CBP from engaging in lengthy investigations on U.S. soil to figure out whether something is a threat or not. A modern system will also expedite lawful commerce to get essential inputs faster to our manufacturers and goods to our consumers.

To sum up, smart Customs modernization will fight and deter crime, create jobs, move goods faster, and save Americans' money—all at the same time. This is precisely the type of work this committee was set up to do, and does well. I look forward to working with my colleagues on the committee to take on the challenge.

Now, I look forward to hearing from the witnesses on their ideas to improve our Customs laws.

PREPARED STATEMENT OF ANDY MESERVE, PRESIDENT OF LOCAL 9423, UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL, AND SERVICE WORKERS INTERNATIONAL UNION (USW)

Thank you, Chairman Wyden and Ranking Member Crapo, for the opportunity to testify today on modernizing our trade laws and improving our country's trade en-

forcement. My name is Andy Meserve, and I am the union president for United Steelworkers Local 9423. My local represents the workers at the Century Aluminum Hawesville Kentucky Smelter, which when operating, employs around 650 union and management workers who make up to 250,000 tons of primary aluminum a year.

Located on the Ohio River, our plant is one of six remaining primary aluminum smelters in the United States. Our smelter is, from my understanding, the last producer in the NATO region of high-purity aluminum used for defense and aerospace applications. These good-paying, union jobs are teetering on the knife's edge because of global politics; decades of decisions by government; and especially important to this hearing, international trade.

I am a maintenance mechanic at the smelter, meaning that I am responsible for ensuring that everything from conveyor belts to cranes operates safely in a manufacturing process, which turns raw materials into primary aluminum. My job is to not only fix the immediate problem, but to do preventative maintenance, and also make recommendations to management on how to solve any problem long term.

In some ways, you all are managers of our country's economic well-being. So I hope that my testimony today will highlight the immediate problems facing our smelter, but also make long-term recommendations to ensure that the U.S. has a competitive primary aluminum industry, which is critical to our national security, and also ensure that our shared democratic values flow through our economy.

If you Google Hawesville Kentucky Smelter, the first things that come up are articles highlighting how high energy prices have temporarily idled my smelter, throwing over 600 workers into economic uncertainty. To me, that is like looking at a broken conveyor belt and not asking what caused the failure. Yes, energy prices were a factor in our current plant idling, but we need to step back and see if we can set conditions for success and long-term operation. Aluminum is a globally traded commodity in an Emissions Intensive, Trade Exposed Industry (EITI). The policy decisions you all make in trade will impact whether we have a domestic aluminum industry or not, just as much as regional power prices.

My immediate recommendations to you under the topic of this hearing are that we update our trade enforcement laws to respond faster to illegal trade practices, put in place trade rules that better account for workers' abuses and environmental pollution, and prioritize Customs and Border Patrol's (CBP) efforts to collect duties and stop illegal goods at the border.

FASTER ENFORCEMENT

As our economies have become more connected globally, governments and multi-national companies are making economic decisions designed to target products like aluminum, in order to capture market share and press out competitors. Few other countries have been so aggressive in that effort than the People's Republic of China. Today, producers in China account for around 58 percent of global primary aluminum capacity.¹ In 2019, China's global aluminum exports rose by 20 percent.² Chinese aluminum producers have attributed this increase to their country's Belt and Road Initiative, which is a series of loans and subsidies to third-party countries that help them reduce unproductive capacity in aluminum.³ These actions have negatively impacted U.S. metals markets, something I've worked in for over 22 years. While direct primary aluminum imports from China into the U.S. are relatively low, aluminum is a globally traded commodity, meaning price fluctuations are directly impacted by government efforts to dominate commodity markets.

Our trade enforcement laws must respond to these sorts of global swings. It is common to see U.S. producers and workers file one antidumping and countervailing (AD/CVD) trade case and win, only to have to file a new "successive" trade case a few years later as imports from other countries, often on imports by similar compa-

¹ Reuters, "Column: Aluminum rattled by signs of 'green' disruption in China," March 19, 2021, <https://www.reuters.com/business/energy/aluminium-rattled-by-signs-green-disruption-china-andy-home-2021-03-19/>.

² Africa Center for Strategic Studies, "Implications for Africa from China's One Belt Road Strategy," March 22, 2019, <https://africacenter.org/spotlight/implications-for-africa-china-one-belt-one-road-strategy/>.

³ Shanghai Metals Market, "Chalco: 'One Belt and One Road Initiative' to Offer Opportunities for Aluminum Industry," May 26, 2017, <https://news.metal.com/newscontent/100738492/chalco-%E2%80%9Cone-belt-one-road-initiative%E2%80%9D-to-offer-opportunities-for-aluminum-industry%C2%A0/>.

nies, undermining the years of work it took to win the first case. For example, this is true for aluminum sheet.⁴ We need capable trade laws that can respond to repeat offenders and serial cheaters who move production to another country in an effort to go around existing AD/CVD orders.

We also need to better account for China's Belt and Road Initiative as well. Hundreds of billions of dollars are being spent by China's communist leadership to build facilities and export goods into third party countries. Our trade enforcement laws have a gaping hole in dealing with these sorts of cross border subsidies.

These issues are not new, USW supported a bill that passed the House of Representatives last Congress and was led in the Senate by Senator Brown and former Senator Portman. Commonly known as Leveling the Playing Field Act 2.0, the legislation would provide a number of trade law updates that will give new tools for U.S. workers and producers to fend off illegally dumped and subsidized goods. We urge the Finance Committee to take up the bill this Congress and pass it as soon as possible.

RUSSIAN ALUMINUM

Today, roughly 3 percent of our country's aluminum imports come directly from Russian sources. We need to be more comprehensive on how we push back against Russia's war in Ukraine. It is hard for me to sit at this table and not get angry that we allow Russian aluminum imports to enter our country while 500 of my brothers and sisters, fellow Americans, are out of work who can make this critical national security product. While I believe the efforts we've made to help the Ukrainian people are worth it, I can also be frustrated that we have spent \$50 billion in U.S. taxpayer dollars to help the people of Ukraine fend off Russia's invasion,⁵ yet we haven't stopped Russia's war machine from selling aluminum products into the U.S. market.

The USW supports every effort to eliminate Russian aluminum products and downstream third-party country imports from entering our market. The union sees value in efforts to place a tariff on Russian aluminum products,⁶ but it would be more effective to sanction or place a total ban of downstream products that have Russian smelted and cast primary aluminum in the supply chain.

FORCED LABOR IN ALUMINUM SUPPLY CHAIN

This committee is well familiar with the forced labor practices being used against the Muslim Uyghur population in the Xinjiang region of the People's Republic of China. This includes previous USW member testimony on the issue.⁷ I wish to provide additional detail related to my industry and ensure this committee is aware of recent work that highlights more must be done to eliminate forced labor practices in our supply chains. Late in 2022, a key report came out regarding the automotive sector and forced labor practices in the People's Republic of China Xinjiang region.⁸ A number of products were listed in the report, but I will focus on aluminum. The report "Driving Force Auto Supply Chains and Uyghur Forced Labor" highlights how this region of China would not be a cost-effective place to process bauxite into alumina, but the region's extremely cheap energy and relaxed environmental regulation have led to it becoming a prime location for smelting. Today, the Uyghur region's production capacity is roughly 8 million tons per year, representing roughly 12 percent of the world's capacity.⁹ For perspective, in 2021, the United States pro-

⁴The Aluminum Association, "Targeted Trade Enforcement in Action: Common Alloy Aluminum Sheet AD/CVD One Year Later," May 2022, <https://www.aluminum.org/sites/default/files/2022-05/CAAS%20WhitePaper%202022.pdf>.

⁵Council on Foreign Relations, "How Much Aid Has the U.S. Sent Ukraine? Here Are Six Charts," December 16, 2022, <https://www.cfr.org/article/how-much-aid-has-us-sent-ukraine-here-are-six-charts>.

⁶Bloomberg, "U.S. Plans 200% Tariff on Russia Aluminum as Soon as This Week," February 6, 2023, <https://www.bloomberg.com/news/articles/2023-02-06/us-plans-200-tariff-on-russian-aluminum-as-soon-as-this-week?srft=HEwoTbCT>.

⁷U.S. Senate Finance Committee, Testimony of Joe Wrona for hearing on "Fighting Forced Labor," March 18, 2021, [https://www.finance.senate.gov/imo/media/doc/Wrona,%20Joe%20\(USW\)%20-%20Testimony%20for%20SFC%20Forced%20Labor%20Hearing.pdf](https://www.finance.senate.gov/imo/media/doc/Wrona,%20Joe%20(USW)%20-%20Testimony%20for%20SFC%20Forced%20Labor%20Hearing.pdf).

⁸Sheffield Hallam University, "Driving Force: Automotive Supply Chains and Forced Labour in the Uyghur Region," December 2022, <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/driving-force>.

⁹*Ibid.*

duced 908,000 metric tons of primary aluminum, significantly below the peak domestic output of 5.1 million metric tons in 1980.¹⁰

Multiple Chinese producers are implicated in the report of producing primarily aluminum that is then spread throughout the aluminum auto supply chain. Aluminum without clear indications of the original source in trading platforms like the London Metals Exchange, through international trading firms, or through Chinese companies with unannounced trade links to the Uyghur region should not be permitted on American shores and we should hold these international trading firms accountable and liable for not purging metals made with forced labor from their systems.

We also need to better account for forced labor in aluminum extrusions. The USW, along with the Aluminum Extruders Association, filed a petition for a withhold release order against Dominican Republic aluminum extrusions. We joined on this petition because Customs on a CBP verification report from an Enforce and Protect Act (EAPA) Allegation into Kingtom Aluminio S.R.L. found multiple instances of forced labor tactics that were listed in their EAPA report.¹¹ The USW strongly encourages Congress to ensure that U.S. inspectors of products be required to report instances of observed illegal labor and environmental practices.

ENVIRONMENT

This past December, the USW testified at a House Ways and Means Committee Trade Subcommittee hearing regarding trade and the environment. The testimony highlighted a recent Department of Commerce International Trade Administration report on both the challenges and opportunities related to the global market for environmental technologies goods and services. The report highlights the nearly \$700 billion in export potential for environmental goods and technologies, but for the union, the report also highlighted a more ominous series of statistics:¹² The lack of basic clean air and water enforcement, and often regulation, that communities in some of our largest trading partners are experiencing.

For example, in Vietnam, industrial wastewater treatment has emerged as a critical need as approximately 75 percent of wastewater is being discharged into lakes and rivers without treatment. Congress needs to recognize that the third largest exporter into the U.S. is poisoning their citizen's air and water ways because corporations want to simply bring cheap goods into one of the largest consumer markets—the United States. The union also highlighted examples of air and water pollution in India and Indonesia.¹³

This pollution needs to be considered an illegal industrial subsidy, and U.S. workers and their employers should not have to compete against environmental degradation without properly accounting for its cost. To give perspective, since the passage of the U.S. Clean Water Act, government and industry have invested over \$1 trillion to abate water pollution, roughly \$100 per person per year. While challenges remain domestically, we have made marked improvements in our water quality.¹⁴

Any member of our union who works in an energy intensive, trade exposed industry will tell you that fair trade must include mechanisms that replicate and encourage our high domestic standards internationally. This cannot just be trade facilitation initiatives, but also methods to hold firms, importers, and countries accountable for this pollution outsourcing. We need to allow workers, both domestically and globally, to have access to remedies against industrial polluters. For example, recent trade mechanisms in the United States Mexico Canada Agreement (USMCA) could

¹⁰ Congressional Research Service, "U.S. Aluminum Manufacturing: Industry Trends and Sustainability", October 26, 2022, <https://crsreports.congress.gov/product/pdf/R/R47294#:~:text=Many%20defense%20related%20products%20must,defense%20ground%20and%20weapon%20systems>.

¹¹ Yahoo, "Aluminum Extruders Council Calls for Biden Administration to Hold Kingtom Aluminio Accountable for Evading Tariffs," June 16, 2022, <https://www.yahoo.com/news/aluminum-extruders-council-calls-biden-155900625.html?guccounter=1>.

¹² U.S. Department of Commerce, International Trade Administration, "2019 Top Markets Report Environmental Technologies: A Market Assessment Tool for U.S. Exporters," April 2020, <https://www.trade.gov/sites/default/files/2020-05/2019%20Environmental%20Technologies%20Top%20Markets%20Report.pdf>.

¹³ U.S. House Ways and Means Committee, hearing on "Promoting Sustainable Environmental Practices Through Trade Policy," December 14, 2022, <https://waysandmeans.house.gov/event/hearing-on-promoting-sustainable-environmental-practices-through-trade-policy/>.

¹⁴ Oxford Academic, "Consequences of the Clean Water Act and the Demand for Water Quality," *The Quarterly Journal of Economics*, Volume 134, Issue 1, February 2019, pages 349–396, <https://academic.oup.com/qje/article/134/1/349/5092609>.

be extended to address bad actors and ensure that foreign governments and multi-national corporations treat communities with the same care we expect for our citizens.

OTHER CUSTOMS AND TRADE ITEMS

There are a host of trade issues facing the country and my testimony has highlighted several large issues facing this committee regarding trade enforcement and better accounting for environmental pollution in trade. There are also several other significant items this committee should take up to improve trade enforcement and ensure U.S. workers and firms have every tool available to them to fairly compete. USW supports or encourages actions on items such as:

- Increasing the penalties for fraudulent actors and repeat offenders of our Nation's trade laws. This should also target the ability of individuals to get permission to import goods into our country. If an individual or company is fraudulently importing goods, their import licenses should be at risk.
- Supporting the U.S. and EU effort to build a global arrangement framework on steel and aluminum. Following the announcement suspending the steel and aluminum 232 duties on the EU and tariff retaliation against the U.S., the global arrangement has the potential to limit carbon intensive and non-market economy steel and aluminum products from entering the two markets with the most amount of import reliance globally. Congress should do everything it can to foster this effort including supporting legislative action if necessary under a successful framework.
- Company's and workers harmed by a U.S. importer's fraudulent or grossly negligent violation of the U.S. Customs laws should be able to pursue a remedy directly against the violator in any venue in which the interested party has suffered damage.
- Congress should take up and pass the National Critical Capabilities Defense Act. This legislation led by Senators Casey and Cornyn would create a whole-of-government process to screen outbound investments and the offshoring of critical capacities and supply chains to foreign adversaries, like China and Russia, to ensure the resiliency of critical supply chains.
- Repealing the Customs Operations Advisory Committee (COAC). Created in the 2015 Trade Facilitation and Trade Enforcement Act, this committee appears to be captured by large importers of record and obstructs CBP's trade enforcement agenda outside the public eye. COAC has made recommendations which would make it harder for U.S. workers and firms to track imports that are being dumped and subsidized into the U.S. market, and should not predominate over the interests of domestic industry, labor organizations, human rights organizations, and any other groups with interests in trade enforcement.¹⁵

DOMESTIC RESOURCES

We should make every effort to deploy resources passed under the Infrastructure, Investment, and Jobs Act (IIJA) and the Inflation Reduction Act (IRA) to ensure existing energy intensive, trade exposed manufacturing facilities are able to upgrade and compete globally. The fact that my plant sits less than one hundred miles from the Tennessee Valley Authority's (TVA) lower cost power grid should not go unnoticed by lawmakers. TVA supplies safe, reliable, clean low-cost public power to 153 local power companies and about 60 large industrial customers and Federal facilities.¹⁶ We should make every effort to expand the footprint of this federally owned electric utility corporation and increase domestic energy production, including renewables. When around 17,000 kilowatts of electricity are required to produce 1 ton of aluminum, improving our energy grid and increasing access for diverse affordable energy should be a priority of Congress.

CONCLUSION

Congress must act swiftly and effectively to ensure globally traded goods, like aluminum, are traded fairly and with an eye toward the democratic values that win

¹⁵ U.S. News, "U.S. Businesses Propose Hiding Trade Data Used to Trace Abuse," October 17, 2022, <https://www.usnews.com/news/business/articles/2022-10-17/us-businesses-propose-hiding-trade-data-used-to-trace-abuse#:~:text=Home,US%20Businesses%20Propose%20Hiding%20Trade%20Data%20Used%20to%20Trace%20Abuse,buy%20to%20labor%20abuse%20overseas>.

¹⁶ Tennessee Valley Authority, "TVA at a Glance," accessed February 14, 2023, <https://www.tva.com/about-tva/tva-at-a-glance>.

the future. When the Organisation for Economic Co-operation and Development (OECD) found that the global aluminum industry received up to \$70 billion in government support between 2013 and 2017, with the large majority of support concentrated in China and countries of the Gulf Cooperation Council—we must put up more of a fight to defend our values. Most Americans would be appalled at learning that the primary aluminum used in our fighter jets could come from China, Russia, or countries that outlaw independent trade unions like the United Arab Emirates.¹⁷ We can do better and we must do better to ensure that U.S. industry and workers are not starting on their back foot in the economic competition.

I am just a maintenance mechanic hoping to restart the smelter where I've worked at for over 20 years. My job helped me raise a family and allowed me to call Kentucky home. With proper trade enforcement and improved energy security, I believe we can restart and make aluminum in Hawesville for decades to come. Thank you.

QUESTIONS SUBMITTED FOR THE RECORD TO ANDY MESERVE

QUESTIONS SUBMITTED BY HON. SHERROD BROWN

Question. One of the biggest threats to Ohio workers today is when countries, like China, find new and novel ways to circumvent our trade laws. Current U.S. law doesn't provide enough tools to challenge the unfair trade practices of the Chinese Communist Party.

Last year, I joined with Senator Portman to introduce legislation—a bill we called Leveling the Playing Field 2.0—to address China's anti-competitive trade practices and provide 21st-century solutions to address this subsidy shell game.

Senator Young and I plan to reintroduce this legislation in the next few weeks to help U.S. workers and producers prosecute repeat offenders and serial cheaters who simply move production to another country to get around existing antidumping or countervailing duty orders.

Can you talk about how our legislation updating U.S. trade laws would benefit U.S. companies suffering from these new forms of unfair trade? Do you agree that these provisions would be useful to address the whack-a-mole game of unfair trade practices by the Chinese Government?

Answer. As the largest manufacturing union in North America, representing workers in a variety of industries, we need our trade enforcement laws that reflect 21st-century challenges.

The bipartisan Leveling the Playing Field Act 2.0 would aid the union and our member companies who have to use the trade laws in the following ways.

- Makes it easier for U.S. workers/companies to stop repeat offenders and speeds the process so manufacturers, agriculture workers, and miners can focus on American made goods.
- Targets Belt and Road Initiative subsidies—right now China is spending billions out of the country to build factories that will dump into the U.S. and other markets. The bipartisan American COMPETES act will give the U.S. government authority to call out those subsidies.
- Improves enforcement—importers constantly pull tricks to try and lower or evade duties. The Leveling the Playing Field Act will clarify processes and timelines making government more efficient in stopping dumped and illegally subsidized goods.

Technology changes all the time; our trade laws must adjust just as quickly. Passing the Leveling the Playing Field Act 2.0 is a must for workers and employers to maintain and improve U.S. competition.

United Steelworkers urges Congress to pass the bipartisan Leveling the Playing Field Act 2.0 as it would aid in stopping this Whac-A-Mole issue where multi-national employers guilty of dumping goods from one country quickly ramp up imports from other countries—undercutting the effectiveness of trade measures.

¹⁷ U.S. Department of State, “2021 Country Reports on Human Rights Practices: United Arab Emirates,” accessed February 14, 2023, <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/united-arab-emirates/>.

Question. Several years ago, Congress gave Customs and Border Protection (CBP) the authority to investigate whether a company has evaded antidumping and countervailing (AD/CVD) duties. While CBP has made dozens of determinations since that time, Customs fraud continues to undermine the value of the United States' antidumping and unlawful subsidy trade laws, meaning hundreds of millions of dollars of antidumping and countervailing duty fees don't get collected.

Can you speak to how American manufacturing workers are hurt by transshipment and other forms of evasion?

Answer. Workers and employers who have been negatively impacted by illegally dumped and subsidized goods often see several negative impacts that range from lost hours at the job, layoffs, concessionary bargaining, and/or when plants close—communities see a reduced tax base which then trickles through the local economy.

Employers and unions who chose to use our trade laws to fight back often spend millions of dollars proving their case and having to show 3 years of data—often 3 years of economic harm to receive relief. To then have that relief undercut by multinational employers and/or unscrupulous importers who try to evade or transship goods.

As I mentioned at the hearing, there has been a history of primary aluminum transshipment. *The Wall Street Journal* in 2016 highlighted how close to \$2 billion of primary aluminum was transshipped into Mexico (<https://www.wsj.com/articles/chinese-billionaire-linked-to-giant-aluminum-stockpile-in-mexican-desert-1473356054>). These sorts of anticompetitive practices reduce domestic sales and hurt communities like my own.

PREPARED STATEMENT OF SCOTT NOVA, EXECUTIVE DIRECTOR,
WORKER RIGHTS CONSORTIUM

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 U.S.-Mexico-Canada Agreement (USMCA), are recent and rare elements of contemporary U.S. 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 U.S. 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 percent of the apparel industry's global cotton supply. In 2020,⁴ the region produced 45 percent of the world's solar-grade polysilicon. The Uyghur region is also the source of more than 12 percent of the world's supply of primary aluminum and produces 10 percent of the world's polyvinyl chloride (PVC). Thus, the supply chains of a huge number of corporations that sell products in the U.S. 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 U.S. 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 U.S. 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 7 years to develop the infrastructure and methods to identify forced labor-made products, and growing pains are an inevitable part of such a process.

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 com-

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 and 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>.

prising 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 U.S. 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 8 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 forced labor enforcement, dating to 2016. Public reporting by U.S. Government agencies on UFLPA enforcement activities is critical for numerous reasons, not least the ability of non-governmental 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. § 1A1307	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

⁶Ji Siqi, "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.

⁷On 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>.

⁸U.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>.

⁹U.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>.

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. § 1A1307	Value of the entries identified by CBP for further examination
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 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 U.S. Department of Homeland Security Under Secretary who chairs the FLETF, stated that during the first 3 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.

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>.

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>.

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 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.
- 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, po-

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%20for%20a%20Reboot%20.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.

itical 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, multi-faceted 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.

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 U.S. 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

¹⁸ Sean R. Roberts, *The War on the Uyghurs: China’s Internal Campaign against a Muslim Minority*, Princeton, NJ: 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>.

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.

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 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 U.S. 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 1 percent of U.S. imports from the People’s Republic of China (PRC) and roughly 0.01 percent 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.

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

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 and 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 7 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 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 U.S. 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 U.S. agencies.³⁵ CBP’s “Operational Guidance for Importers” likewise identifies

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 and 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>.

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*.

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*, Under Secretary Silvers noted in general terms that FLETF is “looking closely at any other product category where forced labor may come into 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 Uygur 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 U.S. 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 U.S. 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.

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, and 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, “U.S. 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>.

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/---ipec/documents/publication/wcms_854733.pdf.

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, 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 multilevel 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.”

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

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/>.

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 U.S. 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

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>.

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 is 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 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 percent of U.S. imports, meaning there is no publicly available import data for about 60 percent 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.

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.”

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

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 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.

⁵⁰ Joshua Goodman, “U.S. 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>.

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, “U.S. 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.”

QUESTIONS SUBMITTED FOR THE RECORD TO SCOTT NOVA

QUESTION SUBMITTED BY HON. RON WYDEN

Question. Following a recent report on the alleged presence of Uyghur forced labor in automotive supply chains, I launched an investigation seeking information from eight major car makers cited in that report. I have asked them for detailed information on their efforts to eliminate forced labor from their supply chains. I am reviewing their responses and plan to follow up with them and others in the automotive supply chain.

But automakers are not the only companies that have work to do to clean up supply chains. Many other sectors with complex and varied inputs will need to take steps to ensure compliance with the Uyghur Forced Labor Prevention Act and section 307.

What steps should companies—including the automakers—be taking to ensure there are no products made with forced labor in their supply chains?

Answer. In order to ensure that its products are not made with Uyghur forced labor, a corporation must do the following:

- Identify every input in each product's supply chain, from raw material to finished good, flagging any inputs originating in the Uyghur region;
- Work with suppliers to identify alternate, non-Uyghur region sources and replace those inputs;
- Contractually bind suppliers at every level of the supply chain to exclude Uyghur region inputs from the corporation's products;
- Require suppliers, from one end of the chain to the other, to provide documentation that shows the source of inputs and vet this documentation carefully for discrepancies;
- Spot-check compliance through unannounced inspections at the workplace level to ensure that the inputs that a facility claims to use are the ones it actually has in stock and is using;
- Where applicable, use independent isotopic testing to verify that finished and semi-finished products do not have Uyghur region content; and
- Terminate the business relationship with any supplier that provides false information about the origin of inputs; move business to suppliers that have demonstrated reliability in this regard.

Corporations have the ability to know where their inputs originate. When a corporation lacks this information, it is not because the information is unknowable; it is because the corporation has not made it a priority to gain and maintain the information. Any corporation that says it is impossible to determine where every input comes from is stating, in effect, that it does not know whether it is in compliance, on any given day, with U.S. law—including the UFLPA and section 307 of the Tariff Act.

QUESTIONS SUBMITTED BY HON. SHERROD BROWN

Question. Importers continue to use section 321 *de minimis* tariff waivers to import millions of individual shipments daily into the U.S. duty-free, much of which comes from China and is likely skirting enforcement actions like the Uyghur Forced Labor Prevention Act and section 301 penalty tariffs.

The *de minimis* loophole provides a pathway for counterfeit, unsafe, and forced labor products to enter U.S. commerce under the radar. The result is that there are: pharmaceutical products coming into the U.S. not meeting basic safety standards, bike helmets that won't protect children because they are not compliant with basic safety standards, and textiles that may violate forced labor protections. And last but not least, there is fentanyl which poisons our communities and comes into our communities straight from China via this loophole. There are billions of dollars of these shipments coming to the U.S. every year virtually with no protocols to vet where these products are made, who is making them, or if they will keep us safe.

Representative Blumenauer has legislative efforts on this front, and I have worked with Senator Cassidy on the issue.

Does the *de minimis* trade provision facilitate unsafe and forced labor imports to American consumers?

Answer. Yes.

The central problem, from the standpoint of forced labor prevention, is not the tariff treatment of these products, but the fact that these products do not go through the normal Customs clearance process, enjoying instead a less formal, and far less rigorous, procedure. The resulting lack of scrutiny has the effect of turning a waiver of tariff into a potential waiver of labor rights compliance (and compliance with other relevant requirements).

Regardless of whether the tariff waiver is maintained at the current level, or reduced, or otherwise modified, it is crucial to apply sufficient oversight to these shipments. Representative Blumenauer's Import Security and Fairness Act includes provisions that address this urgent need.

Question. Would you support closing this loophole by removing *de minimis* treatment for products tied to forced labor, and other products where there's a potential consumer safety issue or—in the case of fentanyl—no public benefit?

Answer. If the Customs clearance process for shipments coming in under the *de minimis* exception is not modified to ensure full and proper scrutiny of these shipments, then the exception should not be afforded to any product with a high risk of being tainted with forced labor (or a high risk of otherwise violating standards that protect human rights and public health).

QUESTION SUBMITTED BY HON. ROBERT P. CASEY, JR.

Question. The Uyghur Forced Labor Prevention Act (UFLPA) was a landmark advancement in our fight against forced labor on a global scale. It has helped United States trade agencies curb the amount of product made with forced labor entering U.S. markets. Yet, the UFLPA alone cannot solve the problem of forced labor in American supply chains. Corporations that import goods to sell in U.S. markets are still sourcing inputs and goods from the Xinjiang region of China, where forced labor is known to be happening in abundance. Companies must be doing their due diligence to find and root out forced labor in their supply chains.

To what extent have existing regulations gone unenforced and failed to hold corporations accountable for their complicity in forced labor? How can we hold private corporations accountable for their lack of due diligence and, in many cases, complicity in the presence of forced labor in their supply chains? Furthermore, how do we root out remaining forced labor in American supply chains in addition to strong enforcement of section 307 and the UFLPA?

Answer. Section 307 went almost entirely unenforced until 2016; corporations could, and did, import forced labor-made goods with impunity. Progress has been made in section 307 enforcement over the last 7 years; however, the level of resources being applied to this enforcement is far below what is required, given the magnitude of the task.

The UFLPA greatly enhances the enforcement process with respect to Uyghur forced labor, and Congress has added resources to support this enhanced enforcement—a major step in the right direction. Right now, however, we do not know how effective enforcement has been since the law took full effect last June. This is because Customs and Border Protection has provided very little reporting as to the nature and extent of its UFLPA enforcement work. CBP made more detailed data publicly available for the first time this week, and analysis is required to gauge the extent to which these data provide a reasonably clear picture.

It is clear, though, that the percentage of shipments arriving at U.S. ports subject to review under the UFLPA is quite small: 0.1 percent of shipments, according to CBP. We also see that the Entities List of companies implicated in forced labor, the creation of which was mandated by the UFLPA, remains a very short list.

While substantial enforcement effort is clearly being made, with significant impact on the practices of major brands and retailers, these low numbers are a cause for some concern. Given the vast scope of the UFLPA—potentially affecting hundreds of billions of dollars in imports—we would expect to see a higher percentage of shipments scrutinized and many more corporations that have been implicated in forced labor added to the Entities List.

Accountability is crucial. The level of effort corporations make to remove forced labor from their supply chains is in direct proportion to (1) the likelihood that the presence of forced-labor-made goods in their imports will be detected, and (2) the penalties and costs they will incur as a result. If corporations believe that the

chances of getting caught are low and/or that the penalties for getting caught will be minor, they have very little incentive to incur the substantial cost of achieving broad compliance. The way to hold corporations accountable is to ensure that when they import goods tainted by forced labor they usually get caught and to impose penalties involving not just the denial of entry to tainted goods but the imposition of civil penalties on the importer—and additional measures achievable under existing law, such as publishing the names of corporations that are repeat offenders. This will result in far less forced labor in the supply chains of corporations selling goods in the United States.

QUESTION SUBMITTED BY HON. JOHN BARRASSO

Question. The Chinese Communist Party continues to commit terrible human rights abuses. The Uyghurs, a religious and ethnic minority in China, have experienced brutal repression at the hands of the Chinese Government. They continue to be subjected to torture, imprisonment, and forced labor.

At least 1 million Uyghurs have been put in internment camps by the Chinese Communist Party. Around 100,000 Uyghurs and ethnic minority ex-detainees have reportedly been used as forced labor in textile and other industries in China.

How effective have U.S. actions been at addressing the human rights abuses and the use of forced labor?

What more should the United States do on transparency and enforcement?

Answer. The enactment of the UFLPA and the use of WROs against products with content from the Uyghur region have had a sizable economic impact, making the Chinese Government's ongoing destruction of the Uyghur people an increasingly expensive enterprise. It is not possible to measure the human rights impact with any precision and, where a piece of progress can be discerned, it is impossible to know what role economic pressure may have played in that particular development. What we do know is that the Chinese Government, like every other government, makes policy choices based on their perceived costs and benefits. When costs rise, they re-evaluate. Action to date has raised the costs of the Chinese Government's brutal policies in the Uyghur region, and that is a good thing for the Uyghurs. The higher the costs, the greater the prospect of change, which is why the strongest possible enforcement of the UFLPA against corporations complicit in the abuses taking place in the Uyghur region is the best way forward.

PREPARED STATEMENT OF JOHN PICKEL, SENIOR DIRECTOR,
INTERNAL SUPPLY CHAIN POLICY, NATIONAL FOREIGN TRADE COUNCIL

INTRODUCTION

Good morning, Chairman Wyden, Ranking Member Crapo, and members of the committee. Thank you for the opportunity to appear before you today and discuss the importance of these topics.

I am John Pickel, the senior director of international supply chain policy at the National Foreign Trade Council (NFTC). The NFTC is the premier business association advancing trade and tax policies that support access to the global marketplace. Founded in 1914, NFTC promotes an open, rules-based global economy on behalf of a diverse membership of U.S.-based businesses.

As Chairman Wyden has noted, I have served in several roles at the Department of Homeland Security and U.S. Customs and Border Protection (CBP) that promoted the development and implementation of trade facilitation and enforcement policies. The views expressed in my statement and subsequent conversation are my own and given on behalf of the NFTC. I am not representing any agencies where I was previously employed or any specific company.

The efficient and effective implementation of U.S. trade laws is a critical aspect of our economic competitiveness. The American Customs framework, which dates back to the earliest days of our country, continues to be a brilliant example for the international community. Any discussion around issues of Customs modernization should begin by acknowledging that this system has provided a strong foundation for the growth and diversification of trade models that meet the needs of American

consumers and supplies American made manufacturing products to markets around the world.

In recent years, the trade community has worked within this system to accommodate the dramatic expansion in the volume of e-commerce shipments, overcome challenges associated with the COVID-19 pandemic, and respond to historic supply chain disruptions.

Trade is a critical driver of every aspect of the American economy. Forty million American jobs depend on trade.¹ Access to imports increases the purchasing power of the average American household by about \$18,000 annually.² Manufacturers rely on imports of intermediate goods and raw materials, which represent more than 60 percent of all U.S. goods imported, to provide high quality products at competitive prices.³

Government and the business community share the objective of promoting efficient, stable, and compliant supply chains. Trust and collaboration will be key in that joint pursuit as business models and global economic conditions change rapidly. A close working relationship between the private sector and U.S. Government agencies, especially CBP, has led to innovations that promote both facilitation practices and compliance with U.S. trade laws. For example, the trade community has provided technical capacity in developing a single window that provides trade data to government agencies, shifted port-level processing of individual shipments to industry-based Centers of Excellence and Expertise, established Trusted Trader programs that provide earned benefits for certain validated parties, and many other accomplishments. The basis for this relationship is confidence in realizing that the vast majority of parties involved in trade transactions are trustworthy, compliant with the law, and eager to advance American economic security through their role in a resilient supply chain.

This committee has a well-documented history of supporting Customs policies that balance the importance of facilitating legitimate trade and promoting compliance with U.S. trade laws through principles like informed compliance, co-creation between government and the private sector, and risk-based enforcement. This was most recently codified throughout the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA).

CUSTOMS MODERNIZATION

Since 2019, CBP has engaged the trade community to develop a 21st Century Customs Framework. NFTC has participated constructively in this process directly and in coordination with member companies.

Modernization of Customs authorities should be very intentional and precise, addressing specific gaps or challenges in a way that supports well-defined outcomes. As the committee prepares to consider proposed statutory changes, I would like to offer several key areas of consideration when evaluating legislative efforts to address specific needs while preserving the foundations that have served U.S. Government agencies and the trade community well for many years.

Balance the Benefits of Trade Facilitation and the Updating of Enforcement Authorities

The efficient entry of legitimate merchandise into the U.S. improves economic conditions; reduces burdens on government agencies, businesses, and customers; and provides a high level of overall compliance.

As the committee considers statutory changes to existing authorities, please consider three questions:

- What specific non-compliance is being addressed and what information about volume and means of penetrating supply chains is available to inform the most effective response?
- How does the proposal impact the flow of commerce into and out of the U.S.?

¹ Trade Partnership Worldwide LLC (2020). *Trade and American Jobs: The Impact of Trade on U.S. and State-Level Employment: 2020 Update*, <https://tradepartnership.com/wp-content/uploads/2020/10/Trade-and-American-Jobs-2020.pdf>.

² Hufbauer, Gary C., and Lü, Zhiyao (Lucy) (2017). *The Payoff to America from Globalization: A Fresh Look with Focus on Costs to Workers*. Peterson Institute For International Economics, <https://www.piie.com/publications/policy-briefs/payoff-america-globalization-fresh-look-focus-costs-workers>.

³ See, <https://www.uschamber.com/international/trade-agreements/the-benefits-of-international-trade> (accessed February 14, 2023).

- Can an updated authority be structured in a way that reduces red tape in the entry process? (For example, collection of unnecessary data could be difficult for small and medium businesses to comply with and overwhelming for government agencies to ingest and effectively utilize.)

Clearly Articulate the Roles and Responsibilities of Actors Throughout the Import Process

Clearly and specifically identifying roles and responsibilities, with an emphasis on the value of information throughout the import process, will promote effective partnership between the government and the private sector. For example, information requirements should be targeted to address specific risks and be developed in partnership with the trade community to ensure the right information is being collected from the right party and at the right point in the process. Information is likely to come from multiple parties throughout the process, so avoiding assumptions about the level of information available to each actor and ensuring the ability to consolidate information from disparate entities is crucial.

This process will continue to set an example for the world, with interest from our trade partners and strategic competitors alike. Promoting a rules-based system that supports a nimble and effective Customs framework to serve as this example will be an effective way to promote similar practices among our international trading partners. In practical terms, we can expect other countries to adopt some of the same practices, so American exporters will be expected to comply with the evolving U.S. standards as they are adopted by other countries.

Promote Partnership Between Government Agencies and the Private Sector, With a Particular Emphasis on Sharing Information

Both government regulators and private-industry interests are served by effective collaboration. Government and the private sector have a shared goal of fostering efficient, resilient, and compliant supply chains. Reimagining the exchange of information between government agencies and the private sector by reconsidering current statutory restrictions will allow the private sector to remove risk from its supply chains and make government enforcement more efficient. For example, jointly identifying meaningful information that can be provided on a voluntary basis, will improve effectiveness for all parties.

Embrace Automation to Simplify the Processing of Cargo and Promote Transparency

This committee has consistently supported the automation of the entry process and should continue to prioritize the ability to automate proposed changes to trade laws. Automation makes the government more effective and allows the private sector to provide better service to American consumers. The effective adoption of automation and other forms of technology is a tool—a means to an end. In other words, please keep in mind that systems still rely upon information generated and entered by multiple parties throughout trade transactions. Rather than a “more is always better” approach, please know that sometimes “more is just more.” Information and data requirements can be onerous on all parties involved and may not have a clear benefit to specific objectives.

Apply Trusted Trader Principles to Address Emerging Risk Factors

This committee codified, as the first substantive section of TFTEA, the importance of embracing partnership programs that advance the trade enforcement and trade facilitation missions of CBP. Existing programs have served their national security objectives well and should be constantly reevaluated to address the equally important goals of promoting trade facilitation and jointly vetting supply chains to ensure compliance with U.S. trade laws—particularly as government and industry confront new challenges in an ever-changing global trading environment. Current Trusted Trader programs were developed in partnership with private industry stakeholders and need to be adapted to meet emerging demands through the same spirit of collaboration and trust. Participants in these programs dedicate significant resources to attain membership and complete recurring evaluations. Another critical aspect of examining Trusted Trader programs, which promote sustainability, is understanding the value of benefits provided to participants. These parties have demonstrated a willingness to open their processes to government evaluation and should be seen as a cadre of constructive experts that have worked alongside the government to address past challenges and will continue to do so in the future.

Whether in the context of a comprehensive Authorized Economic Operator program or more targeted approaches, the “trust” aspect of Trusted Trader programs should be fully embraced in order to share information, develop best practices, and

foster a constant dialogue between the private sector and the government to truly support our joint objective of securing resilient supply chains.

Again, this is an area where the world is watching. Trusted Trader programs are used by many of our trading partners to facilitate low-risk shipments and many of those programs have Mutual Recognition Arrangements with the United States that provide reciprocal benefits for program participants. Continuing to set an evolving global standard for Trusted Trader programs around the world to address emerging needs and promote viability of membership will support the adoption of compliance standards with our trading partners and facilitate transactions for American importers and exporters.

IMPORTANCE OF TRADE FACILITATION

The reduction of administrative and financial challenges encountered when importing into the United States promotes product availability, purchasing power, and lowers transaction costs for businesses and consumers. Conversely, increasing red tape in the importation process is a regressive tax on the American middle class that increases the cost of products they purchase for personal and business use. This committee has a strong history of promoting trade facilitation and encouraging government partnership with the private sector to address supply chain challenges. However, as we learned during the COVID-19 pandemic, facilitating the importation of critical supplies like medical products continues to be a challenge and will be a determining factor in the success of U.S. supply chain resiliency programs and emergency response.

Trade facilitation measures create jobs and promote innovation through the availability of product inputs. A recent report by the Third Way found that **reducing administrative burdens throughout our supply chain has the potential to save the United States \$88 billion in export costs and create just under 1 million jobs nationwide—benefitting every state in the country.**⁴ This report outlines clear guidance in three areas of trade facilitation that increase compliance and resiliency, while reducing costs.

Simplify Border Processes

The foundation of trade facilitation is ensuring clarity and predictability of rules, fees, and processes that incorporate the expertise of the trade community before being finalized. Penalties for not following the rules should be clear and enforcement regimes should provide a process for traders to review and appeal determinations. Incorporating international standards and commitments in trade agreements, such as the trade facilitation provisions of the U.S.-Mexico-Canada Agreement, is also important.

Embrace Digitization

Promoting the use of single window systems creates a unified method of providing information to the government. The U.S. single window has saved the government \$1.75 billion and saved the trading community 775,000 hours.⁵ As you evaluate single-window functionality in the U.S., and how to promote this best practice among our trading partners, please consider several important elements. First, ensure that this is a government-wide system built to provide all agencies with information imports and exports, and enable release via that system. Second, ensure clarity of downtime procedures in the case of system failure or a cybersecurity event. Third, the lack of acceptance of digital payments is still a significant barrier. Domestically, digital payments save the government and the trade community a significant amount of processing costs and staff time. Internationally, digital payments reduce the risk of corruption and remove the burdens of exchanging money for local currency. Finally, single windows should have transparent governance structures that allow for existing functionality to be improved and new capabilities to be added, with a clear source of funding.

Focus on Speed and Security

Promoting simplified processes that provide the quick processing of compliant shipments is both a key ingredient and result of effective trade facilitation. Employing effective risk management programs to assess threat levels allows government agencies to release low-risk shipments and focus enforcement resources more quickly on goods that are more likely to be noncompliant. The adoption of *de minimis*

⁴ Horowitz, Gabe (2022). *Reducing the Red Tape Around Supply Chains*. Third Way, <http://thirdway.imgix.net/pdfs/reducing-the-red-tape-around-supply-chains.pdf>.

⁵ *Ibid* 6.

and “informal entry” treatment of certain entries helps to facilitate lower-value shipments that do not pose a risk to revenue collection.

Notably, TFTEA took the important step of increasing *de minimis*—the threshold for items to enter the U.S. free of taxes—from \$200 to \$800 and suggested that the U.S. Trade Representative encourage trading partners to adopt similar policies.⁶ In doing so, Congress found that “higher thresholds for the value of articles that may be entered informally and free of duty provide significant economic benefits to businesses and consumers in the United States and the economy of the United States through costs savings and reductions in trade transaction costs.”⁷ This *de minimis* policy, also a longstanding U.S. trade agreement negotiating objective, has been instrumental in supporting the dramatic expansion of online shopping and the e-commerce models used by American businesses and consumers every day.

Low-value shipments coming into the country are subject to enforcement. Significant volumes of *de minimis* shipments entering the U.S. come through express carriers that provide significant information for government agencies to use when targeting inspection and enforcement resources—a practice that dates to the 1980s, and have CBP officers co-located within their facilities.

In addition, this committee played a critical role in the passage of the Synthetic Trafficking and Opioid Prevention (STOP) Act. Through STOP Act mandates, shipments that arrive in the U.S. through foreign postal operators are supposed to be subject to comparable information sharing requirements.⁸ However, work remains to be done to achieve full implementation of the STOP Act.

As one aspect of trade facilitation, *de minimis* treatment of low-value entries promotes sourcing choices for American consumers and producers. Eliminating or reducing the threshold for *de minimis* treatment of low-value goods could make over a billion shipments every year subject to tariffs, a tax that disproportionately impacts low-income households,⁹ and African American and Hispanic families.¹⁰ Furthermore, increasing costs for small businesses to source products would negatively impact inflation reduction efforts and stifle innovation among our economy’s most dynamic entrepreneurs.

In considering changes to trade facilitation and enforcement authorities, I encourage the committee to prioritize consistency between enforcement efforts and our trade agreements. This is another area where the world is watching, and the U.S. should take the opportunity to lead. Promoting adherence and commitment to a rules-based international system of trade will promote the adoption of those standards by our trading partners abroad and give predictability to American companies doing business around the world.

The advancement of the trade facilitation elements described above should also be embraced during ongoing trade negotiations such as the Indo-Pacific Economic Framework for Prosperity (IPEF) and the Americas Partnership for Economic Prosperity (APEP), and as part of regular U.S. government engagement at international trade organizations including the World Trade Organization and the Asia-Pacific Economic Cooperation forum, especially during the 2023 U.S. host year.

FORCED LABOR

There is no place for forced labor in American supply chains. In recent years, this committee has advanced significant changes in prohibitions on the importation of goods made using forced labor. Specifically, removal of the “consumptive demand exception”¹¹ and enactment of the Uyghur Forced Labor Prevention Act (UFLPA) have mandated the use of border measures to prevent the importation of these goods. The global trade community has responded quickly to shift supply chains from areas where forced labor is a high risk. We have seen this happen when CBP issues with-

⁶The Trade Facilitation and Trade Enforcement Act of 2015, 19 U.S.C. § 1321(a) (C) *et seq.* (2016), <https://www.govinfo.gov/content/pkg/USCODE-2021-title19/pdf/USCODE-2021-title19-chap4-subtitleII-partI-sec1321.pdf>.

⁷The Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. 114–125 § 901(a) (2016).

⁸SUPPORT for Patients and Communities Act, Pub. L. 115–271 § 8003 (2018).

⁹Russ, Katherine N.; Shambaugh, Jay; and Furman, Jason. *US tariffs are an arbitrary and regressive tax* (2017). Centre for Economic Policy Research, <https://cepr.org/voxeu/columns/us-tariffs-are-arbitrary-and-regressive-tax#:~:text=Tariffs%20E2%80%93%20taxes%20on%20imported%20goods,or%20some%20key%20consumer%20goods>.

¹⁰Gresser, Ed. *Trade Policy, Equity, and the Working Poor* (2022). Progressive Policy Institute, <https://www.progressivepolicy.org/publication/trade-policy-equity-and-the-working-poor/>.

¹¹The Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. 114–125 § 910 (2016).

hold release orders and during implementation of the UFLPA. It is clear that there is a sincere commitment by responsible U.S. companies to minimize the risk of forced labor from infiltrating supply chains.

The noble objectives of current U.S. trade laws related to forced labor are clear, and responsible American importers want to utilize those constructs in a way that addresses global supply chain risk. Those companies want to work with the committee to identify ways that partnership programs and information sharing authorities, for example, can be used in new and creative ways that promote compliance before goods arrive in the U.S.—making it clear that forced labor is not only inhumane, but also bad for business. As we work together toward that shared goal, the trade community craves transparency and predictability in understanding what is a feasible level of due diligence in minimizing risks within supply chains that, for example, can include complicated machines containing thousands of components, some of which cross borders many times before being incorporated into a finished product. Recognizing that government has many of the same gaps in visibility when it comes to nuanced supply chains, the seamless sharing of meaningful information, and confidence that we are jointly moving in the direction of mitigating the presence of forced labor in U.S. supply chains is the best approach to joint success.

Further, as forced labor efforts relate to countries that are willing to partner with the U.S., bilateral and multilateral efforts should be used to address the root causes of forced labor and systemic factors that contribute to these terrible practices. For example, the U.S. Government has an opportunity to work with foreign governments to implement best practices related to labor recruitment and basic governance that support existing labor laws. Additionally, working with foreign partners to promote congruent standards for addressing forced labor concerns in supply chains would further the global interest in enforcing forced labor prohibitions and promote predictability for U.S. businesses exporting to other countries.

CONCLUSION

Thank you for the committee's attention to these important topics. Continued partnership between government and the private sector will be critical to supporting a comprehensive, predictable Customs framework that provides for compliance with U.S. trade laws and supply chain resiliency. This partnership will continue to promote our shared objectives of fostering efficient and compliant supply chains that support American economic security. NFTC and our member companies look forward to working with the committee going forward, and I welcome your questions.

QUESTIONS SUBMITTED FOR THE RECORD TO JOHN PICKEL

QUESTIONS SUBMITTED BY HON. MIKE CRAPO

Question. In your opening statement, you stated that Customs modernization efforts should address the principle of simplifying processes. You also mentioned, in your statement, that increases of red tape in the importation process is effectively a tax on the middle class by virtue of increasing the cost of goods.

What are some actionable Customs reforms that would cut red tape?

Are there certain reforms that would be particularly beneficial for small and medium enterprises?

Answer. Red tape is synonymous with duplicative paperwork. Third Way found that increased efficiency in this area could create 987,000 jobs total, increasing job growth in each State across the U.S. As the committee considers changes to Customs authorities, ensuring ongoing updates to automation capabilities will greatly promote efficiency in facilitating legitimate trade. The current automation framework is not entirely paperless and there are many examples of duplicative data elements required by various agencies. Businesses of all sizes would benefit from the adoption of automation by foreign trading partners, such as full information sharing and interoperability between the Automated Commercial Environment and ASEAN single window. Small and medium enterprises would benefit most from clarity of responsibilities, clear due diligence standards, and clear government commitment to ongoing trade policies that lower transaction costs. This committee should continue to promote the competitiveness of small and medium enterprises through a continued commitment to a meaningful *de minimis* level and consider raising the current upper limit for informal entries, ensuring increased purchasing power and lower transaction costs for low-value shipments that supply small businesses with narrow

profit margins. These low-value shipments are subject to trade law enforcement based on information provided by shippers, have a similar compliance rate when compared to other types of shipments, and provide meaningful economic benefits to underserved communities. Automating changes to Customs procedures, along with ensuring harmonization and de-duplication between the data requirements of CBP and the 49 partner government agencies that also regulate trade will also be key.

Question. In your opening statement, you emphasized the importance of partnership programs, such as Trusted Traders.

How may strengthening partnership programs, whether with companies in the United States or with U.S. trading partners, facilitate more lawful trade?

Answer. Updating existing partnership programs to focus on the benefits of participating entities in accomplishing the regulatory responsibilities of government agencies, identifying new applications of Trusted Trader principles would improve effectiveness of U.S. trade law enforcement, and reducing costs from inspections and administrative burdens imposed on low-risk shipments—ultimately benefiting American businesses and consumers. Trusted Traders should be provided detailed information about risks identified through their supply chain, with confidence that such information will be used to address any vulnerabilities earlier in the supply chain. Mitigating risk earlier in the supply chain is a more effective approach to achieve compliance, especially in areas like forced labor enforcement and anti-counterfeit efforts, than trying to resolve potential compliance issues upon arrival at ports in the U.S. Furthermore, specific confidential information-sharing and convening authority should be granted to DHS that allows bidirectional exchanges of information between government agencies and among participating companies throughout the import process to further promote compliance in a manner that removes concerns about potential liability. In other words, information should be shared on a voluntary basis, removing the risk of penalty or other liability imposed by the government, and should be held in confidence among the government and industry participants.

QUESTION SUBMITTED BY HON. SHERROD BROWN

Question. Several years ago, Congress gave Customs and Border Protection (CBP) the authority to investigate whether a company has evaded antidumping and countervailing (AD/CVD) duties. While CBP has made dozens of determinations since that time, Customs fraud continues to undermine the value of the United States' antidumping and unlawful subsidy trade laws, meaning hundreds of millions of dollars of antidumping and countervailing duty fees don't get collected.

Senator Tillis and I are working on legislation that supports CBP's efforts and will empower American companies to pursue private rights of action against bad actors. We hope to introduce our bill within the next couple of weeks.

You worked at CBP, and likely saw how some importers never pay the duties they owe. Would you support strengthening CBP's ability to collect on tariffs and pursue certain resident importers who support foreign rule-breaking?

Answer. The evasion of revenue owed to the government is illegal and should be pursued vigorously. I look forward to fully reviewing your proposed legislation and offer whatever assistance NFTC may provide you and Senator Tillis to fully consider the benefits and implications of the bill. Generally speaking, the current retrospective system of assessing and collecting AD/CVD revenue has an inherent risk of evasion and under-collection from bond coverage, which has likely factored into the decision by so many countries around the world to adopt a prospective AD/CVD system. The vast majority of importers are responsible, compliant, and regularly resolve their financial obligations to the government. Accordingly, amendments to the current statutory framework in this space should ensure due process is provided to protect good actors from being harmed.

QUESTION SUBMITTED BY HON. ROBERT P. CASEY, JR.

Question. Workers in Pennsylvania and across this Nation can out-compete anyone in the world if the playing field is level. Yet, decades of trade cheating like IP theft, state subsidization, and the use of forced labor have distorted fair market prices and cost American jobs. Pennsylvania's steel industry has especially borne the brunt of these unfair trade practices. Anti-dumping and countervailing duties—

which the CBP plays a critical part in supporting—have been a key part of providing a level playing field for American workers and industry. Yet, nonmarket economies ceaseless efforts to circumvent U.S. trade law continue to permeate our defenses. In your written testimony, you've made a set of recommendations to improve CBP's ability to facilitate trade and enforce trade remedies.

How do you propose we focus these recommendations on protecting American workers, not just American industry?

Answer. Compliance with U.S. trade laws is an objective shared by the U.S. Government and responsible members of the private sector. If crafted effectively, trade facilitation can be achieved in a way that promotes compliance to the benefit of American companies and workers. For example, the effective utilization of Trusted Trader programs to share information between government and businesses would mitigate illicit behavior like illegal transshipment that undermines enforcement of AD/CVD orders at the time of entry. The effective use of automation provides U.S. regulatory agencies with more information in less time than a paper-based process, giving the opportunity to identify high-risk shipments requiring further scrutiny. American-based companies that import into the U.S. are overwhelmingly compliant. “Shrinking the haystack” by removing low-risk shipments from consideration for resource-intensive actions at ports allows government agencies to allocate precious hours and equipment to more effectively act where there is a higher risk of illicit trade, like forced labor and counterfeits. More broadly, given that more than 40 million workers depend on international trade for their jobs, it is critical for the United States to aggressively pursue new trade agreements with key economic and strategic allies to increase market access for American goods and services and to write high-standard rules that protect intellectual property, facilitate innovation and create more resilient supply chains.

QUESTIONS SUBMITTED BY HON. CHUCK GRASSLEY

Question. In your testimony, you say that the world is watching how the U.S. is for setting standards on trade facilitation and enforcement.

What are some areas the U.S. could take more of a leadership role in for setting those international standards?

Answer. The United States should continue its commitment to facilitating legitimate trade, and encouraging our foreign trading partners to adopt reciprocal policies that benefit American exporters. Easing the flow of trade globally ensures that responsible trading partners can meet customer demands and innovate in a dynamic global trading environment. This is particularly true when it comes to promoting *de minimis* and informal entry treatment for low-value shipments and automating standards (including the ability to process electronic payments) that improve efficiency in addressing entry requirements in the U.S. and around the world.

Along similar lines, the United States should build on its global leadership in trade facilitation by improving and expanding the informal entry process for those shipments currently valued between \$800–\$2,500. While the *de minimis* threshold for duty- and tax-free shipments is a critical component to building a strong SME sector in international trade, the key for governments is to establish efficient and streamlined collection mechanisms for low-value shipments where tax and duty are applicable. Congress should raise the \$2,500 ceiling to a more competitive baseline, while granting CBP the regulatory authority to raise it further.

In addition, Congress should require CBP, in coordination with other agencies, to design and implement a “bucket” system for Harmonized Tariff Schedule (HTS) classification for eligible shipments, *e.g.*, a limited number of classifications instead of the 10,000+ tariff lines currently found in the HTS. We recommend excluding from this “bucketing” system Partner Government Agencies (“PGA”) shipments and other “restricted” goods where 10-digit HTS codes are required. For those informal entries where HTS codes are required, however, an expansion of Entry Type 86 clearance processes could also apply. This model could then be held up to the world as a best practice and continue the U.S. leadership role in setting the gold standard for facilitative trade.

Question. I understand some of your work has focused on advancing policies related to anticounterfeiting. Do you have any recommendations for this committee on how the U.S. can help lead the way in anticounterfeiting measures?

Answer. Fighting counterfeits has been a hallmark of American trade policy with foreign trading partners. Combating trade in counterfeits requires a coordinated partnership between the U.S. Government and the trade community. Domestically, rightsholders spend significant resources protecting their intellectual property and information available during the entry process would be helpful in that endeavor. First, information shared by U.S. Customs and Border Protection with rightsholders to assist in determining whether a shipment is counterfeit is restricted to the product and retail packaging. CBP's sharing images of other items in or on the shipping box (like address labels, invoices, packing lists, promotional materials, etc.) would also be helpful to share with rightsholders. Additionally, there is a significant gap between the initial sharing of information and post-seizure data being provided to the rightsholder. Permitting CBP to share information throughout the detention, pre-seizure, and seizure phases would give rightsholders insight into practices used to steal their intellectual property. Finally, working with the Department of Justice to prioritize prosecution of counterfeiters would send a strong message to illicit actors. In each of these areas, it will be important to promote due process standards to appropriately enforce trade laws against bad actors, but also ensure that good actors are not arbitrarily implicated or harmed.

Question. I would also like to know your thoughts about how you think the government and the private sector can work together more effectively to advance policy solutions that achieve a balance between trade facilitation and enforcement?

Answer. There are a variety of ways that collaboration between government and the private sector can promote compliance in a way that facilitates legitimate trade. First, evaluating current Trusted Trader programs to identify how ongoing and emerging challenges are being addressed. Calibrating requirements to align with security and trade compliance in a way that provides commercially significant benefits will provide a meaningful, mutually beneficial framework for government and the private sector. Second, effective automation saves the government and industry precious resources. Collaborating to address current gaps in automation capability and ensuring the effective automation of new requirements into the future—including sustainable funding structures—will amplify those benefits. Third, which may require statutory authority, government and industry should be able to share information on a voluntary, confidential basis free from concern that such information sharing could violate current law (*i.e.*, Trade Secrets Act, Privacy Act, etc.).

QUESTION SUBMITTED BY HON. BILL CASSIDY

Question. Does CBP have the ability to police imports without HTS numbers?

Answer. The purpose of the classification of products under the Harmonized Tariff Schedule of the U.S. (HTS) is to determine the duty liability of an importation, not for policing. CBP does not need an HTS code to police shipments, and it is unclear how useful HTS numbers are to CBP for purposes of targeting. An HTS code is based off a description of the goods, which are required for all shipments, including *de minimis* shipments. In many ways a description of a product is better for targeting purposes than an HTS code because one HTS code can cover numerous different products, whereas a description often adds more detail. The dozens of additional data elements already required for each shipment are more useful than an HTS, especially considering the costs associated with providing one. Requiring an HTS code would increase costs on traders significantly because, by statute, the provision of an HTS code is considered “Customs business,” which necessitates the hiring of a licensed Customs broker. This costly burden would fall disproportionately on small and medium-sized enterprises.

QUESTIONS SUBMITTED BY HON. TODD YOUNG

Question. Naturally, increasing trade leads to more economic activity, higher wages, and new job opportunities across various sectors. For underdeveloped countries, expanding trade can elevate standards and provide economic stability.

Do you believe there are better benefits associated with a free trade agreement versus voluntary frameworks with soft regulations?

Answer. Binding and enforceable free trade agreements are critical tools for unlocking new market opportunities for American businesses and workers as well as for enshrining best practices and nondiscriminatory rules. While voluntary frameworks can be helpful in advancing shared goals, formal agreements, which in-

clude market access, can provide more robust benefits and durable rules to improve the playing field for American businesses and workers and break down barriers to enable more resilient supply chains. The U.S. Government has an important role to play in aggressively pursuing robust free trade agreements, including with key trading partners like the United Kingdom.

Question. As efforts build to promote friend-shoring and re-shoring, Customs processing should function as a tool instead of a barrier as businesses find new sources for inputs. Creating clear guidelines and efficient procedures at ports of entry can help alleviate some of the stressors created by establishing a new supply chain for a given product. In other words, there must be stronger collaboration between the government and the private sector to minimize hurdles in the process.

How can efforts to modernize the Customs process help our domestic enterprises to friend-shore and re-shore?

How can partnerships between the government and private sector be better leveraged to address our supply chain challenges?

Answer. Supply chains continue to shift in response to disruptions, with a clear trend toward redundancy and expanding closer and more secure sourcing options. Resilient supply chains are diverse, agile, and reflect ever-changing models driven by customer demands. Government policies aimed at reorienting supply chains should be mandated only when consistent with U.S. international trade obligations. In keeping with those obligations, modernized U.S. Customs processes should be applied, to the greatest extent possible, on a most-favored nation basis. That said, effective enforcement of U.S. trade laws comes down to identifying and segmenting risk. More effectively sharing information between trusted partners, to root out risk earlier in the supply chain, and adopting technology that provides greater visibility into shipments will be key. That more surgical approach is better for traders of all sizes than more drastic actions targeting entire countries and sectors.

Question. The ability for U.S. companies to become self-sufficient in terms of supply chain resiliency varies somewhat from product to product. Some materials simply are not obtainable domestically, so supply chains will require sourcing from geographically diverse locations. However, among the lessons of the pandemic is that the U.S.-based companies must do more to secure inputs for strategic goods.

What tools or resources do U.S. companies need from the Federal Government to help remove their supply chains from non-market economies that likely use coercion or protectionist policies that distort market values?

Answer. This is a great point, Senator. There is a significant trend in U.S. companies diversifying their supply chains to build in agility and align with suppliers that are geographically closer and more secure to the next stage of manufacturing or end users. The Federal Government's sharing of specific information about suspected or verified risks in supply chains, particularly with trusted parties, is the best way to promote resilient sourcing decisions. The trade community wants to be compliant, and they want to create sustainable supply chain—which means minimizing risk. To the extent there can be a trust-based exchange of information and ideas between government and responsible companies, better decisions will be made toward the end of compliance and resilience in supply chains that are the cornerstone of American economic security.

Question. As companies are working to comply with the Uyghur Forced Labor Prevention Act and eradicate forced labor from supply chains, they have expressed several challenges, including the lack of available information from suppliers in China.

What actions can the administration take to ensure companies have the information they need to comply with the law despite the China's attempt to set up barriers?

What actions should this committee consider to support companies and their efforts to effectively spot and prevent forced labor in their supply chains?

Answer. There is no place for forced labor in American supply chains. Private industry continues to dedicate significant resources to compliance programs and social responsibility initiatives that implement the letter and spirit of current statutory requirements related to forced labor. But the private sector cannot address forced labor—particularly state-sponsored forced labor—alone. The administration should provide a unified approach to address the root causes of forced labor, sharing information about risk assessments with private industry to inform specific sourcing decisions. Working with foreign trade partner countries to address the root causes of

forced labor, such as promoting best practices in recruitment and governance that supports existing forced labor laws, would be far more effective in ending forced labor than addressing information gaps when cargo arrives at U.S. ports. Establishing a jointly developed understanding of due diligence standards would promote compliance earlier in supply chains and streamline admissibility determinations at already congested ports.

QUESTIONS SUBMITTED BY HON. JOHN BARRASSO

Question. The expiration of the Generalized System of Preferences (GSP) and the Miscellaneous Tariff Bill (MTB) is hurting our manufacturers, businesses, and families across the country. American businesses have already paid more than \$2 billion in extra taxes due to the expiration of GSP. The National Association of Manufacturers estimates U.S. manufacturers are paying \$1.3 million per day in extra taxes due to the expiration of the MTB.

Can you explain how the expiration of these programs impacts businesses, consumers, and U.S. Customs operations?

Answer. The lapse of these trade preference programs has short- and long-term implications for businesses and their consumers. More obviously, businesses are paying money to the government that could be used for investment in their market competitiveness. Even if GSP refunds are provided retroactively, as they have in the past, the loss of capital access during this lapse has already impacted business decisions, potentially limiting the ability of companies to hire employees, offer new products, and innovate. The GSP program is intended to promote trade with developing countries, while the MTB is meant to ease financial burdens for businesses when importing products that can't be procured domestically. Allowing these programs to lapse sends an unfortunate, if unintended, message that businesses cannot rely on consistent, long-term government commitment to these initiatives. The benefits of these programs are undercut by perceived lack of commitment because business cannot rely on them to make long-term sourcing decisions.

Question. The COVID-19 pandemic laid bare many of the shortcomings in our supply chains. Supply chain challenges impacted nearly every industry and those challenges were felt by businesses and consumers alike. As we look to strengthen and secure our supply chains, are there steps we can take to ensure U.S. Customs and Border Protection (CPB) operations aren't exacerbating existing supply chain challenges? What changes or improvements to existing CPB authorities should we consider to keep goods and services flowing across our borders?

Answer. This is a great point about the importance of resilient and compliant supply chains. I would first point out that the spirit behind specific authorities is to promote partnership and efficiency in the joint objective of promoting resilience and compliance. There should be a principle, across trade law enforcement, that improves information sharing between industry and government to address compliance concerns earlier in the supply chain. Conversely, addressing admissibility issues at ports of entry taxes government resources, increases costs for American consumers, and negatively impacts business operations. There are specific authorities that would promote the facilitation of legitimate cargo coming into the U.S., like ensuring long-term approaches to automation to better address current and emerging needs facing both government and industry. In addition to the other authorities mentioned in my statement, I would encourage a fresh look at the current authority to require redelivery of cargo that has been cleared by CBP. If the government clears cargo which is, in many cases, immediately delivered to customers or put on shelves for retail sale, requests to redeliver back to the government places an unrealistic burden on the trade community and conflicts with modern demands to provide timely delivery of products being imported.

Question. The Chinese Communist Party continues to commit terrible human rights abuses. The Uyghurs, a religious and ethnic minority in China, have experienced brutal repression at the hands of the Chinese Government. They continue to be subjected to torture, imprisonment, and forced labor.

At least 1 million Uyghurs have been put in internment camps by the Chinese Communist Party. Around 100,000 Uyghurs and ethnic minority ex-detainees have reportedly been used as forced labor in textile and other industries in China.

How effective have U.S. actions been at addressing the human rights abuses and the use of forced labor?

What more should the United States do on transparency and enforcement?

Answer. Assessing the impact of the Uyghur Forced Labor Prevention Act in addressing the atrocities facing Uyghurs and other ethnic groups is critical. As I mentioned in my statement, there is no place for forced labor in American supply chains. Where supply chain vulnerabilities are identified, American companies have shifted their sourcing to comply with legal requirements and our shared goal of removing risk of forced labor entering supply chains. The efficacy of UFLPA will align with advancements in promoting supply chain visibility in the government and private sector, and information sharing that promotes compliance at earlier points of the supply chain. Furthermore, ensuring consistent collaboration with foreign trading partners to address root causes of forced labor, like promoting recruitment best practices and improving governance in other countries to enforce existing laws, will drive more sustainable change related to forced labor. Finally, it would be helpful to include specific private-sector representatives as part of the Forced Labor Enforcement Task Force, subject to eligibility criteria and confidentiality, to provide industry context as part of the FLETTF deliberations.

PREPARED STATEMENT OF BRENDA B. SMITH, GLOBAL DIRECTOR,
GOVERNMENT OUTREACH, EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.

Mr. Chairman, Senator Crapo, and members of the committee, thank you for the chance to testify before you today. My name is Brenda Smith, and I currently work as the global director of government outreach for Expeditors International of Washington, Inc., a global logistics, freight forwarding, and information company. Previously, I served for 7 years as the Executive Assistant Commissioner for Trade at U.S. Customs and Border Protection, during my 35-year career with the Federal Government. The views that I express today are my own and do not necessarily reflect the official policy or position of my current or past employers.

I would like to highlight four areas of opportunity for Customs modernization, that will support both better trade facilitation and stronger trade enforcement:

- Leveraging Trusted Traders to manage risk;
- Digitization and single windows;
- Supply chain resilience; and
- Coordination of government agencies operating at the border.

CONTEXT

The global pandemic laid bare the weaknesses and gaps in the complex, global system that transports goods from farmers and manufacturers to consumers. In the 40 years that I have worked with trade issues, the volume of global imports and exports has grown from \$854 billion in 1984 to a record-breaking \$32 trillion last year. This staggering growth has been accompanied by an overlay of new trade agreements, expanded parties in the supply chain, and increased consumer expectations.

CHALLENGE

Customs administrations have evolved significantly over those same 40 years, but mostly in response to significant border security challenges. This security-driven evolution has often left trade modernization efforts at the 75-percent completion stage, thereby missing the chance to deliver critical benefits for both private and public sectors. Incomplete modernization efforts have resulted in:

- Paper or PDF documents remaining part of government processes;
- Multiple systems needed for document/data submission, even where single windows exist;
- Few purpose-built processes or bespoke physical infrastructures that allow for frictionless, low-risk trade;
- Little recognition of Authorized Economic Operator status outside a “home” country; and
- Poor regulatory and operational coordination between Customs and other government agencies.

ACTION

In my work on the U.S. single window, I learned the importance of having a clear vision for the effort and then translating this vision into the relevant legal, oper-

ational, and technology frameworks. My own “statement of principles” underlying a vision for Customs modernization would include these provisions:

First, *leveraging Trusted Trader investment to share risk information and truly streamline entry and compliance procedures* by all government agencies. Make a “green lane” a reality across all types of shipments and all trade processes. This approach should extend to expansion and full implementation of AEO Mutual Recognition Agreements.

Second, *digitizing all government agency requirements for supply chains*, to include a continued commitment to the U.S. single window and a full review and rationalization of data requirements to minimize redundancy and focus on collecting only the most important data at the right time from the right party. More data isn’t always better; quality is more important than quantity.

Third, *planning and practicing a response to supply chain disruptions* across all government agencies and their supply chain partners. Further, resiliency will be greater if potential regulatory and operational flexibilities are determined in advance and recognize the lower risk associated with Trusted Traders.

Fourth, and finally, *a single process across all agencies* with requirements for goods crossing borders, to include alignment of regulatory requirements, operational processes, Trusted Trader programs, and commitment to using the single window for the collection of all data or documents.

Most of these concepts are not new, and this committee gave guidance in these areas during the passage of the Trade Facilitation and Trade Enforcement Act. However, meaningful change takes time and investment and requires that all stakeholders involved prove the value, get feedback, and then iterate. If we capitalize on the opportunities that still exist in these areas, U.S. businesses would be more competitive, U.S. consumers would benefit, and U.S. Government agencies would be more successful in enforcement of laws that protect U.S. consumers and businesses.

What will it take to implement this vision? There are many things that should be included, but I would like to highlight two specific areas: (1) investment in Customs personnel and technology; and (2) collaboration with stakeholders.

First, implementation will require ongoing investment in “softer” parts of Customs infrastructure, specifically expertise and technology. Customs needs sufficient trade personnel to enforce trade rules, but also needs the bandwidth to create and implement new approaches for facilitation and enforcement. Aside from tremendous investment in forced labor capabilities, the level of CBP’s *non-uniformed trade personnel has not materially increased since CBP was established in 2003*. In addition to ensuring that there is enough personnel to handle the growth in trade and complexity, these personnel need to be well trained and expert in both modern business practices and in traditional competencies such as classification, valuation, and Customs enforcement, with a dedicated Trade and Cargo Academy and regularly updated curriculum.

Investment in technology is also an integral part of developing a common Customs process and makes it possible to support the data collection, transmission, and analysis around compliance with common rules. Technology investment must prioritize the continued modernization of the Automated Commercial Environment. Today’s emerging technologies can help supply chain visibility and a targeted risk management approach that facilitates trade, improved revenue collection, compliance, and security in ways not possible even 5 years ago.

The second key requirement for modernization is collaboration with stakeholders. During my tenure at CBP, I worked extensively with the trade community in the Commercial Operations Advisory Committee, the Trade Support Network (TSN), trade associations, and with individual companies. I valued interagency forums like the Border Interagency Executive Council (BIEC), which allowed frank discussion and consensus-building between agencies. Expanding private-sector engagement with the partner government agencies through the BIEC and driving more active regulatory, operational, and technology coordination through forums like COAC, the TSN, and the BIEC would result in better problem solving and a trade environment that meets the needs of both government and the private sector.

RESULTS

Multinational traders face the challenge of meeting compliance and service obligations while managing the cost required to deliver value to the market. Global security concerns, economic uncertainty, and varying Customs and other government

agency processes represent real business challenges. Trade can be a tremendous engine of economic growth—more so if the pieces and parts of the trade process are aligned. These processes and the expertise, technology and collaboration that underpins them must keep up with the pace of change happening in the global economy. When private and public participants work together, the outcome should lead to predictability and consistency, improved compliance and security, better revenue collection, reduced supply chain costs, and improved performance overall.

CONCLUSION

Modernization efforts should begin with a shared vision which should include four key elements:

- Leveraging Trusted Traders to manage risk;
- Digitization and single windows;
- Supply chain resilience; and
- Coordination of government agencies operating at the border.

We should then use a staged approach, developed through private- and public-sector collaboration, to develop and implement the legal framework, operational approach, and automation. This will enable the trade community and government alike to take full advantage of the opportunities of modernization and to validate over time that the government's trade processes have been simplified and that inefficiencies or variables that were previously manual and subjective are not exacerbated through automation. We must review and test the policy, regulations, process, and technology at each stage in a controlled manner across regions and government agencies to assess whether the new technology is an improvement.

I thank this committee for the opportunity to advocate for Customs modernization. Much work remains to be done, but I strongly believe that it is work worth pursuing, as we support opportunities for businesses and consumers as they engage in the global marketplace.

QUESTIONS SUBMITTED FOR THE RECORD TO BRENDA B. SMITH

QUESTIONS SUBMITTED BY HON. MIKE CRAPO

Question. You most recently served as the Executive Assistant Commissioner in CBP's Office of Trade, overseeing both enforcement and facilitation matters.

As Congress considers modernizing Customs laws, can you speak to the importance of balancing these priorities?

Answer. The facilitation of legitimate trade and the enforcement of U.S. trade laws are both critical to the U.S. economy, its businesses, and consumers. Investing in measures that facilitate low-risk trade, particularly that of trusted partners, can reduce the cost, time, and unpredictability associated with the traditional movement of goods. At the same time, the enforcement of U.S. trade laws helps to provide a level playing field and the opportunity to compete in the global marketplace for compliant businesses. U.S. Customs and Border Protection (CBP) is called on to balance these imperatives.

From an operational perspective, these two requirements reinforce each other. Trade enforcement (the identification of noncompliant trade) is often referred to as “finding a needle in a haystack.” By enabling legitimate, low-risk trade to move across U.S. borders without stopping or conducting nonproductive inspections with few results, CBP is reducing the size of the haystack, enabling CBP to spend more time and resources focused on finding entities or individuals looking to evade U.S. laws.

Question. In your opening statement, you highlighted the need for better operational coordination between Customs and other agencies.

Where do the most glaring breakdowns in communication between CBP and other Federal agencies occur?

Answer. The greatest opportunity for better operational coordination resides with the overall vision for how the U.S. moves goods across its borders. In the United States, we have several policy goals—including border security, trade facilitation, public health, consumer product safety, and agricultural security, to name just a few—that, by statute or tradition, are operationally executed at the border.

Developing a framework for the streamlined execution of these priorities by the government and efficient compliance by the private sector is critical to resolving the lack of strategic coordination on trade operations. This framework needs to leverage a single approach across the government to automation and digitization, admissibility, information requirements, targeting and Trusted Trader programs. The lack of uniformity in approach by the 50 agencies with equities at the border causes breakdowns in communication, resource planning, programming of systems, training, and operational execution. Further, the resulting inconsistencies and duplication cost the private sector time and money, which reduces the benefits of trade to the U.S. economy, U.S. manufacturers and U.S. consumers.

QUESTION SUBMITTED BY HON. ROBERT P. CASEY, JR.

Question. Workers in Pennsylvania and across this Nation can out-compete anyone in the world if the playing field is level. Yet, decades of trade cheating like IP theft, state subsidization, and the use of forced labor have distorted fair market prices and cost American jobs. Pennsylvania's steel industry has especially borne the brunt of these unfair trade practices. Antidumping and countervailing duties—which the CBP plays a critical part in supporting—have been a key part of providing a level playing field for American workers and industry. Yet nonmarket economies ceaseless efforts to circumvent U.S. trade law continue to permeate our defenses. In your written testimony, you've made a set of recommendations to improve CBP's ability to facilitate trade and enforce trade remedies.

How do you propose we focus these recommendations on protecting American workers, not just American industry?

Answer. Three specific areas come to mind when thinking about how to support the American worker through our Customs laws. First, protection of intellectual property, as these enforcement actions go to the core of American workers' ability to innovate and stay ahead of the global economy. Second, the enforcement of antidumping and countervailing duty orders. Too many American jobs have been lost when the businesses they support get priced out of the market. Protecting CBP's enforcement authority against violative entities and individuals supports domestic economic activity and keeps jobs in U.S. communities. Third, the targeting of unfair labor conditions spotlights illegal competition from workers in substandard working environments and supports fair working conditions for American workers.

QUESTION SUBMITTED BY HON. BILL CASSIDY

Question. The Consumer Products Safety Commission still regularly finds lead in imported children's toys. Under formal entry, they can detain a shipment that typically consists of at least an entire shipping container, and do a lab test to determine whether that entire shipment should be entered.

But when a toy is shipped by itself directly to a child's house, is it still viable to expect the Commission to pay to test that specific toy? If they did, and the results tested positive for lead, would CBP be able to intercept other *de minimis* shipments of that same toy?

Answer. Under current Customs laws, goods in small packages must meet the same compliance expectations and exhibit the same level of "reasonable care" as goods in 40-foot containers. In practice, this is not always the case. We want people to be able to trust the goods that arrive quickly and with relatively low cost on their doorsteps. The government's challenge is to determine where best to collect information and compel compliance responsibility to keep goods flowing, while allowing CBP and other government agencies the opportunity to assess risk and stop noncompliant goods.

CBP and its other agency partners have heavily invested time and resources to modernize their processing and oversight of the movement of small packages and have learned a great deal, but work remains to be done.

Further streamlining compliance expectations is not the answer. Engaging non-traditional actors to collect the right information at the right time and extending compliance responsibility to those same actors, while mandating the government has sufficient resources to enforce those responsibilities, would help to safeguard the health and well-being of consumers and promote economic fairness and growth.

QUESTIONS SUBMITTED BY HON. JOHN BARRASSO

Question. The expiration of the Generalized System of Preferences (GSP) and the Miscellaneous Tariff Bill (MTB) is hurting our manufacturers, businesses, and families across the country. American businesses have already paid more than \$2 billion in extra taxes due to the expiration of GSP. The National Association of Manufacturers estimates U.S. manufacturers are paying \$1.3 million per day in extra taxes due to the expiration of the MTB.

Can you explain how the expiration of these programs impacts businesses, consumers, and U.S. Customs operations?

Answer. Other than the duty impact and increased expense to consumers resulting from the expiration of these programs, the two main costs to both government and industry stem from the unpredictability and the rework required to file for and process the revised Customs entries if the programs are reauthorized.

The value of these programs in driving investment overseas and building resilient supply chains is significantly diminished when U.S. businesses are unable to rely on these programs as part of their sourcing strategy. Further, when these programs are allowed to expire and then are reauthorized with retroactive applicability, both the government and the trade must manage the administrative and duty changes in a large volume of Customs entries, taking resources away from other priorities like innovation and compliance. Reauthorizing these programs in advance would streamline administrative processes for both business and government and increase the overall value of these programs.

Question. The COVID-19 pandemic laid bare many of the shortcomings in our supply chains. Supply chain challenges impacted nearly every industry, and those challenges were felt by businesses and consumers alike. As we look to strengthen and secure our supply chains, are there steps we can take to ensure U.S. Customs and Border Protection (CBP) operations aren't exacerbating existing supply chain challenges?

What changes or improvements to existing CPB authorities should we consider to keep goods and services flowing across our borders.

Answer. CBP does tremendous, good work in managing the day-to-day border operations for a very complex network of global supply chains. Opportunities exist to modify the strategic framework around the management of the supply chains that cross U.S. borders. Congress could provide CBP the legal authority and mandate to test additional ideas resulting from stakeholder consultation and government expertise, prioritizing more streamlined, digitized, and economically competitive trade processes.

This strategic framework should prioritize more streamlined processes for Trusted Traders, a consistent approach to risk management among government agencies and CBP enforcement authorities and means to effectively pursue those entities and individuals who seek to evade our laws—whether they are a U.S.-based business or are located outside the United States.

PREPARED STATEMENT OF HON. RON WYDEN,
A U.S. SENATOR FROM OREGON

Trade cheats in China and around the world are constantly looking for new ways to evade U.S. trade laws and rip off American jobs. They want to sell illegal products in America—goods made with forced labor, illegally harvested timber, and products that steal American IP. Trade cheats are a grave threat to the American workers, farmers, and businesses who play by the rules.

The most egregious example of this trade cheating is the state-sponsored forced labor that's rampant in China's Uyghur region. The Chinese Government has arbitrarily detained more than a million Uyghurs and other Muslim minorities. These detainees are thrown into "reeducation" camps, where they're isolated from their families and forced to work under the worst conditions.

The Chinese Communist Party's treatment of the Uyghur community is a moral abomination. It also threatens American jobs. The math is simple. By paying poverty wages and polluting as they please, Chinese companies have been able to flood U.S. markets with cheap goods and undercut all the competition. American workers are the best in the world—but no one can compete with slave labor.

What's the effect here at home? Factories are shuttered, and American jobs are lost to China. We'll hear today from Andy Meserve, a USW local president whose aluminum factory was idled, in part due to forced labor abroad. The problem is, when domestic aluminum factories like Andy's shut down, China becomes the only game in town.

So companies must commit to cleaning up forced labor in their supply chains. In December, I launched an investigation into allegations that the auto industry is still relying on supply chains tainted by forced labor. The allegation is that components of cars—from steel to batteries to tires—have a high likelihood of being made with Uyghur forced labor.

I asked eight major automakers about their supply chains, and how they're cleaning them up. This is a flagship American industry that employs more than 90,000 Americans and contributes over \$700 billion annually to the U.S. economy. America can't allow those jobs to be ripped off and sent to an economy that strategically pays workers nothing.

U.S. law already prohibits importing products made with forced labor. The challenge is identifying those products and stopping them. Customs agents are on the front lines of these efforts.

Customs' job is twofold: first, they have to intercept shipments that violate U.S. law. Second, they have to keep legal goods moving efficiently through the ports.

A lot has changed since 2016, when the Finance Committee passed our last package of trade enforcement tools. That legislation—the Trade Facilitation and Trade Enforcement Act—produced real results. It gave Customs new tools to swiftly crack down on duty evasion that hurts American workers and businesses. It helped keep out counterfeits that threaten American innovation and public safety.

Senator Brown and I worked to close an egregious loophole that was letting products made with forced labor come through our borders. Products made with forced labor cannot be allowed to enter the United States, period.

Today Customs has a whole new set of challenges:

- COVID-19 changed the way people buy and sell goods. E-commerce has exploded, shipments have surged, and CBP is processing millions more small packages per day.
- Fentanyl and other illicit drugs continue to enter through our ports.
- Illegally fished seafood is entering the U.S. markets and threatening the livelihoods of coastal communities.
- And counterfeits rip off American products, posing an economic and health threat to American citizens. Intellectual Property theft is estimated to cost the U.S. economy up to \$600 billion each year, much of it from China.

Foreign companies continue to find new ways to circumvent our trade laws. Keeping out the trade cheats has become a game of Whac-A-Mole.

In my view, stepping up enforcement requires finding and stopping today's trade cheats, and crafting tools that are flexible enough to stop the next round of trade cheaters too. It's going to take better coordination with CBP across the U.S. Government, from the Department of Labor to the fisheries experts at Commerce.

This year, the Finance Committee will be working with CBP and others on how Congress can improve our trade laws and give CBP the tools it needs to meet this moment. The hearing this morning is an important first step in that process. We'll hear from American businesses that need inputs and logistics professionals who work with Customs to keep supply chains moving. We'll also hear from folks who work to get forced labor out of supply chains, and an American worker personally impacted by this unfair competition.

I also want to hear how Customs can maximize enforcement while streamlining imports from Trusted Traders with clean supply chains. This will help U.S. producers get the inputs they need; reduce bottlenecks, delays, and price increases for consumers; and help Customs focus their resources on enforcement to keep out illegal goods.

COMMUNICATIONS

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Statement of Michael G. Bindner

Chairman Wyden and the Ranking Member Crapo, thank you for the opportunity to submit these comments for the record to the Finance Committee, which repeat the same points made to the Committee on Ways and Means Subcommittee on Trade in July 2021. These repeat our comments from March of that year. I have removed pandemic related content and addressed the question of who should be stealing from whom in the technology sector.

I am less worried about China stealing our intellectual property. Their students have come here, gotten advanced degrees and largely returned home. This may plant the seeds of future revolution in China. It also means that in many areas of technology, particularly artificial intelligence, they are ahead of the game. Perhaps we need to steal more from them. Making it easier for Chinese students to stay would be a good first step.

A huge issue with China, as well as south Asia and the global south, is de facto slavery. Boycotting the products of slavery worked in fighting the Confederacy. The mass migration of slaves had more of an impact. A boycott of Xinjiang cotton and tomatoes is problematic during a pandemic, but generally it cannot succeed as a stand-alone action. Even though it may hurt in the short run, we should still do it.

To make a boycott work, we cannot do it alone. At minimum, Islamic nations must join in as well and start linking the cause of the Uyghurs to the New Silk Road. The ethnic Turkmen range from modern Turkey to Xinjiang, so a little solidarity on their part could go a long way. If we do go this route, the whole effort to interfere in Iran must end. We cannot be with South Asian Muslims on some things and expect solidarity with them on others.

On the moral front, I am not sure we have room to talk. We hold migrants in stark conditions prior to deportation. If you doubt it, visit Lewisburg Federal Prison. Also stop in the Federal Prison Industries factory while you are there. Visit any food processing plant with large immigrant workforces (send people undercover) and see how many workers were trafficked and how local law enforcement reacts when they decide they want to leave. Examine the plight of sex workers in the United States and see how many of their pimps have arrangements with local police.

Our best weapon is our example. As long as slavery exists in the United States, our moral voice is compromised. Again, I am not saying to ignore this situation. I am saying to All In to really fight slavery. Also, call it slavery. On the same subject, examine the Chinese treatment of peasant workers at their factories. There is a two-level society, and American consumers benefit from this. Our commitment to abolishing slavery cannot live only in the fringes.

This is not to say that loopholes cannot be closed, although we must stop our own unfair trade practices as well. American food should not show up in countries just before harvest when doing so depresses the price of local agricultural products. Poverty begets slavery. Making others poor is an invitation to exploitation.

Poor farmers can either be individual or tenant farmers who are essentially peons. The drive for lower food prices for American consumers comes at a human cost. This

is especially true when only one buyer dominates the market, as is sometimes the case for export to America (if not often).

Poor factory workers never have access to collective bargaining. This factor also drives down wages in American factories—often those with immigrant labor bearing the brunt of bad working conditions, poor wages and lax enforcement. The major difference is that being blacklisted in the United States for attempting to organize is rarely deadly, as it can sometimes be overseas.

Improved enforcement takes money and the willingness to accept higher food prices. More inspectors with more authority are needed at home and abroad. Government or third-party inspection is vital to make sure work is safe, fairly compensated and able to organize. We cannot expect worker protection in China or Guatemala if we do not insist on it in North Carolina and Alabama.

Existing supply chains must be reexamined and should not privilege big named brands over smaller importers and suppliers. Citing bad behavior must be cited. There is no better education than a ticket.

The long-term solution to labor inequality is employee ownership at all points in the supply chain. A multi-national employee owned firm would provide all workers an equal standard of living and ownership rights. I would hope this would start here. The one pebble that will move mountains is allowing market investors the same exception to capital gains taxes when shares are sold to a qualified broad-based ESOP (or COOP) that privately owned companies now receive. A bigger pebble is enacting an asset value-added tax with an internationally agreed upon rate with the same loophole. Sometimes loopholes can be a good thing.

Thank you for the opportunity to address the committee. We are, of course, available for direct testimony or to answer questions by members and staff.

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On behalf of the E-Merchants Trade Council, Inc. (EMTC), I am Marianne Rowden, CEO of EMTC and respectfully submit this statement for the record. EMTC appreciates the opportunity to comment concerning the topics covered in the hearing on “Ending Trade That Cheats American Workers By Modernizing Trade Laws and Enforcement, Fighting Forced Labor, Eliminating Counterfeits, and Leveling the Playing Field” held on February 16, 2023.

EMTC was formed in July 2021 to represent the interests of the e-commerce industry by creating a global community of micro, small and medium-size enterprise (MSMEs) e-sellers, marketplace platforms, and service providers to resolve trade, tax and transportation challenges. EMTC’s advocacy mission is to support national and international policies that simplify cross-border transactions of physical and digital goods. EMTC facilitates dialogue among the E-Merchant worldwide community and global regulators.

EMTC applauds the Committee for holding this hearing on “Ending Trade That Cheats American Workers By Modernizing Trade Laws and Enforcement, Fighting Forced Labor, Eliminating Counterfeits, and Leveling the Playing Field.” We recommend that the Committee hold more hearings to receive testimony, comments and input from as many stakeholders as possible since the United States’ trade policy affects every segment of American society. EMTC’s comments expand three (3) areas discussed by the witnesses during the hearing.

1. Policy: E-commerce Is the 21st-Century Trading System

E-commerce is the trading system of the 21st Century—90% of shipments entering the U.S. are low-value shipments (685 million as *de minimis* in FY22) and a significant percentage of shipments exported from the U.S. comprise of e-commerce shipments.¹ In 2021, the Digital Economy represented 10.3% of the U.S. Gross Domestic

¹See EMTC Interview with CBP Executive Assistant Commissioner AnnMarie Highsmith on December 14, 2022 at: <https://vimeo.com/791769636/748d1c0f3> and New and Revised Statistics of the U.S. Digital Economy, 2005–2021, Bureau of Economic Analysis at: <https://www.bea.gov/system/files/2022-11/new-and-revised-statistics-of-the-us-digital-economy-2005-2021.pdf>. We note that e-commerce is not the same as *de minimis* and vice versa—that is, not

Product and created 8 million jobs. E-commerce activity generated \$942 million representing 25.4% of the 3.70 trillion Digital Economy Gross Output (2021).² According to Digital Commerce 360, e-commerce sales in 2022 topped \$1 trillion for the first time, despite lower year-over-year growth, based on U.S. Department of Commerce figures.³

E-commerce is the trading system that has democratized global trade and enabled small businesses and entrepreneurs to participate in global market opportunities as both exporters and importers. Since e-commerce represents a growing sharing of the U.S. economy and global trade, U.S. trade laws should be modernized to facilitate and regulate e-commerce commensurate with the risk that such shipments pose to the revenue, security and safety of the United States.

- **Systems-Based Governance as a New Form of Risk Management**

Currently, the U.S. Customs statute is a “transaction-based” regime in which every Customs entry declaring the applicable tariff classification, value, origin, and quantity of the goods is treated as a separate and discrete transaction. This means that every entry is a declaration to U.S. Customs and Border Protection (CBP) and serves as a basis for assessing a penalty under 19 U.S.C. § 1592 if any information in the entry is incorrect. “Transaction-based” risk management is a problem for both CBP and the importer as a single error repeated over a large number of entries elevates non-compliance to systemic level (*i.e.*, gross negligence) without the intent to routinely violate the Customs laws under the reasonable care standard adopted in the Customs Modernization Act.⁴ The scale of e-commerce entries number in the hundreds of millions and make “transaction-based” risk management impractical.

When transactions-based audits became too time-consuming and unwieldy, CBP adopted an “account-based” approach to risk management by evaluating an importer’s internal control policies to determine whether the company has procedures in place to exercise reasonable care. “Account-based” risk management works well for large multinational corporations that import and export routinely, invest corporate resources in trade compliance programs, and join trusted trader (Authorized Economic Operator) programs. CBP has moved to “account-based” management system for the largest traders (*e.g.*, the top 1,000 importers) through its Centers for Excellence and Expertise (CEEs) organized by industry, but the percentage of imports entered by the top 1,000 importers has decreased from 70% to 58% while the number of Importers of Record has increased from over 300,000 to 442,897.⁵

The challenge that e-commerce presents to CBP is how to manage risk that is diffuse (*i.e.*, a large number of foreign sellers with no risk profile outside its jurisdiction) posed by low-value shipments that are irregular in frequency and destination (*i.e.*, to different consumers). All imports need to be validated through five (5) regulatory checkpoints:

- *Security*: to ensure that the goods do not pose a threat to the U.S. (*e.g.*, physical threat of a bomb in a package or economic threat through a pest infestation) at the port of export;
- *Admissibility*: to ensure that the goods meet regulatory requirements of other government agencies;
- *Payment*: transmission of duties to CBP or confirm duty-free entry of the goods;
- *Liquidation*: opportunity for reconciliation of any errors or updated entry data; and
- *Finality*: the point at which the entry becomes binding on both the importer and CBP so that the only recourse is litigation for non-compliance or refund.

EMTC believes that e-commerce presents an opportunity to adopt a new type of risk management regime—“systems-based governance.” See Risk Management chart in

all e-commerce shipments are entered as low-value shipments under 19 U.S.C. § 1321 and not all *de minimis* shipments were ordered online.

² New and Revised Statistics of the U.S. Digital Economy, 2005–2021, Bureau of Economic Analysis at 2.

³ See “US ecommerce in 2022 tops \$1 trillion for first time; Q4 sales hit record high” at: https://www.digitalcommerce360.com/article/quarterly-online-sales/?hs_mi=246591683&hsenc=p2ANqtz-9UEOD-k56gIJaxHyIX6iSpKlajANIyE-FA33MBXmp1Aq_D7IMkxeGAG_Dlw3lDfuKQuhM0k4XU7JD-rAS2DLnuFDqvQ and U.S. Census Bureau’s Quarterly Retail E-Commerce Sales released on February 17, 2023 at: <https://www.census.gov/retail/ecommerce.html>.

⁴ The Customs Modernization Act was enacted as Title IV of the North American Free Trade Agreement (NAFTA), Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993).

⁵ See EMTC Interview with CBP Executive Assistant Commissioner AnnMarie Highsmith on December 14, 2022 at: <https://vimeo.com/791769636/748d1c0ff3>.

Attachment 1. E-commerce has two unique attributes: (1) major investments in computing power by marketplaces and compliance platforms; and (2) economies of scale over a large number of shipments. The reason why e-commerce has become such a success is because it flipped international trade on its head: instead of sellers figuring out if it is profitable to scour the globe for buyers of its goods taking into account logistics and regulatory costs, computer engineers built electronic marketplace platforms that are inherently global to enable buyers to find sellers of products they want and facilitating that sale to reduce “friction” to a minimum (e.g., one-click shopping).

Based on the computing power and economies of scale of the e-commerce industry, EMTC proposes a “systems-based governance” that deploys multiple layers of technology (e.g., Artificial Intelligence, Machine Learning, blockchain) in a holistic system to reduce trade compliance risks. E-commerce companies (marketplace platforms, e-sellers) and their facilitators (trade compliance platforms, logistics companies, brokers, and agents) expend tremendous resources on evolving technology and regulatory costs which need to be integrated into the price of goods and services for small companies and consumers. EMTC has drafted a proposed a statutory change adding 19 U.S.C. § 1484(a)(2)(D):

- (D) When an importer of record or an agent authorized to make entry files information pursuant to an electronic data interchange system using a risk-based methodology to assess the admissibility, tariff classification, value and origin of merchandise required under paragraph (a)(1), it shall not be subject to penalty under section 1592. A risk-based methodology shall mean an electronic system interpreting the Customs laws and regulations by deploying methods such as natural language processing, knowledge representation, image-based analysis, algorithmic decision-making, and machine learning. The Secretary shall accept a risk-based methodology adopted by an importer of record or an agent provided it received a ruling from U.S. Customs and Border Protection or an opinion letter from a Customs expert that the methodology produces consistently correct results.

See EMTC Proposal for 21st-Century Customs Framework (November 2022).⁶

2. Regulation: “Global Trusted 2 Trade” Program

At the regulatory level, CBP’s risk management for e-commerce needs to conform to the business reality and velocity of the supply chain without favoring or disfavoring different business models and technologies. CBP needs data that is real-time, verifiable and auditable.

Nearly every small business has a role in the global supply chain. Whether traditional trade or e-commerce, a supply chain must deliver the right product to the right place at the right time for the right price. E-commerce by its nature requires significant reduction in the order to cash processing time. This can only be achieved through a supply chain account composed of certified products, processes and people that are granted a simple single release.

Efficient and effective trade can only be achieved by developing a new set of laws structured around the certification of people, process and products. New regulatory regimes must reflect systems-based governance by risk level of the end-to-end process through the use of Artificial Intelligence and Machine Learning to capture the right data, not an excessive quantity of data.

A “Global Trusted 2 Trade” (T2T) Program must recognize that the use of digital technology is woven into all aspects of twenty-first century trade, including traditional trade transactions. It acknowledges that all e-commerce is composed of three distinct, but related pillars—people, product and process across all participants in the value chain that are either upstream or downstream of the cross-border transaction.

Each pillar must understand and work in concert with the other two to reduce risk and simplify exports and imports to enable sustained and continued growth of e-commerce.

Risk management of twenty-first century trade is more effective through the certification of product, process, and people. A “Trusted 2 Trade” program must address the need for collaboration, education and certification of all members of the value chain to reduce risk through creation of a Trusted Trader-type management account

⁶EMTC 21CCF Proposal posted on its website at: [https://emtc.org/resources/EMTC%20Proposal%20for%2021st%20Century%20Customs%20Framework%20\(11-28-22\).pdf](https://emtc.org/resources/EMTC%20Proposal%20for%2021st%20Century%20Customs%20Framework%20(11-28-22).pdf).

at the supply chain level, rather than for each individual participant. Each supply chain has an identifiable trade “passport” covering its certified members and products. See Managing Risk Systems-Based Governance chart in Attachment 2.

• **Process**

In an international e-commerce supply chain, the right product must be verified with regard to its origin and its value at the earliest point in the supply chain when the best information is available. With high interest rates and limited storage space for most small businesses, inventories are kept low. The right place means that verified products are granted expedited clearances to meet demand for consumption or further processing. To attain the right and timely delivery, goods must be validated as they pass through the supply chain milestones beginning with the point of export production. Finally, goods must be available at the right price to meet market demands. The price factor encompasses not only the cost of production of the good but the additional supply costs to enable the delivery to the final market. This requires access to *de minimis* benefits for package-based trade into U.S. markets and increased *de minimis* privileges globally. The U.S. must set the example for this model and leverage its negotiation acumen to support the increase with our trading partners.

The e-commerce global supply chain contains more and diverse players. In traditional trade a multi-national had an office, factory or representative in the exporting country. U.S. Customs and Border Protection reported that there were 685.1 million *de minimis* (low-value) shipments in FY22.⁷ Small businesses transactions are with unrelated parties who offer goods or materials needed for U.S. production of a finished product or a market offering. Through e-commerce small and mid-sized businesses have access to expand their sales using platforms with a global market reach. However, the increased numbers of participants in any single supply chain also increases the complexity of the regulatory regime.

E-commerce global trade is not well suited to a transaction-based system. Traditional transaction-based processing of such shipments will break the e-commerce supply chain both upstream and downstream of the point of importation as well as adding significant cost. The use of technology to manage the movement of goods through each milestone and develop a validated import or export will alleviate the impact on the supply chain. Milestones may include but are not limited to preparation for export, classification, origin and value. E-Merchants Trade Council recommends that a specific supply chain be certified for its people, process and product. A certified supply chain with the appropriate credentials is eligible to use the simple release process.

• **Product**

The seller of the goods is in the best position to know or have access to the manufacturing details necessary to determine the first sale value, origin and classification of the product. The seller, however, may not have the trade expertise to apply such information to trade laws. In some cases, trade law in the seller's country may differ from U.S. law for determination of origin or classification. Artificial Intelligence must be applied to capture pertinent data points and verify products. Artificial intelligence can evaluate the data and determine the appropriate origin and classification by applying the U.S. law to the item in question. Accurate commercial data can be used to determine the regulatory status of a product. A verified product is one component of a certified supply chain for purposes of U.S. import or export.

• **People**

During the verification process for the product, the seller will also submit information about the actual manufacturer as well as his company if he is a distributor or re-seller of the goods. Through use of Artificial Intelligence, the veracity of the seller can be validated. Intermediaries in the supply chain such as freight forwarders, express carriers and marketplaces may already have an Authorized Economic Operator status. Such programs can be a foundation for an e-commerce “Trusted 2 Trade” program that is supplemented by an E-commerce Framework of Standards. The sellers require basic training of the information elements necessary for the determination processes. Such sellers can take foundational courses in business language sufficient to certify their understanding of the data necessary to be provided for regulatory purposes.

⁷See CBP Trade Statistics at: <https://www.cbp.gov/newsroom/stats/trade>.

3. Implementation: A New Approach “Validate As You Go”

Customs modernization that addresses the exponential growth of e-commerce requires a new set of regulatory requirements that accommodates the expanded ecosystem created by more and new participants in the process. This system must be separately codified to interweave the needs of business and all regulators into one seamless tome of agreed upon standards for admissibility as an import or an export.

- **Global Single Window**

Since other countries look to the U.S. for best practices, EMTC proposes that the U.S. work towards a single global window based upon a risk management system. It should set the standards for global cross-border transactions using the certified supply chain account model. It must apply Artificial Intelligence capable of accumulating critical quality data as the good passes through multiple countries with simplified processing. Such data should be held by private industry certification agents and made available to regulators evaluating entry into any territory. In such a case, the verified supply chain is in fact a “global entry passport” for selling and re-selling goods with confidence of a high level of accuracy across the globe. This would create a single global window to trade rather than a single country-centric release.

- **Addressing Low-Value Goods Efficiently**

Low-value goods, those defined as under US\$800 should be processed with the lowest cost for the lowest risk imports or exports. Goods in these supply chains should be certified for both people and product groups at a six-digit level of the Harmonized Tariff Schedule. Classification using artificial intelligence can determine and validate the accuracy of the classification for regulatory purposes. *De minimis* should be available for such goods. A simplified process will deliver the right products to the right place at the right time for the right price. Benefits such as export information gleaned through our system-based governance should be offered to partners who meet or exceed the U.S. *de minimis* standard. Such data will enable our trading partners to also efficiently process the movement of package-based trade to their consumers.

- **Duties, Fees and Penalties**

As a part of the streamlining of processes, the certified supply chain should also be viewed as a single account payer. Duties, fees, taxes or other costs should be paid on an account basis and reconciled quarterly for any discrepancies discovered. Supply chains that are certified as low risk using system-based governance models should receive credit in the form of discounted penalties. A sliding scale model can be used for moderate risk supply chains to reward efforts to reduce risk. It would serve as an incentive to invest in verification of its people, products and processes. Multiple or egregious penalties could result in being moved to a higher risk level.

- **Codify the Process**

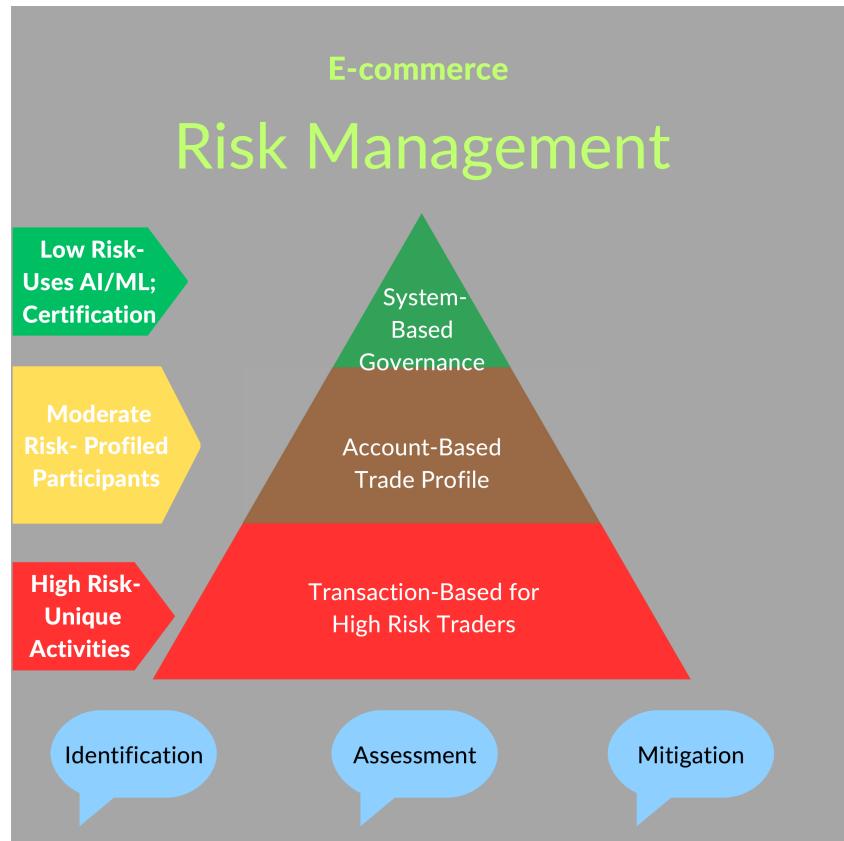
To ensure that the risk management process is available to all e-commerce participants, the standards as described here must be codified into a new statute for all digital trade. Such standards must apply to sellers, marketplaces, forwarders and all types of transportation including international mail and express carriers.

As shown in Attachment 3, digital trade represents 10% of GDP. The facilitation and management of this expanding and fast-paced sector must be addressed with a regulatory regime that is tailored to the needs of this trade community. Such a regime would interweave the appropriate requirements from various agencies to eliminate competing and different definitions of a single term. Standards must be commonly agreed upon for levels of risk. A cross-agency Center of Excellence dedicated to e-commerce should be developed to facilitate trade. The center agents should be trained in business vernacular to effectively communicate with industry members, particularly small businesses, and certified in e-commerce processes.

4. Conclusion

In summary, EMTC believes that the Committee should carefully consider creating a framework setting out the policy goals and enabling language to leverage technology and using new risk management techniques for processing e-commerce shipments while not creating regulatory burdens on MSME e-sellers.

EMTC appreciates the opportunity to comment on the testimony presented at the hearing, and we are happy to discuss the ideas expressed above in more detail.



MANAGING RISK THROUGH SYSTEM-BASED GOVERNANCE

01**PROCESS**

Risk management starts with the importers trade compliance process, which will include assessment of trade compliance systems.

02**PRODUCT**

Ensuring that the foreign seller provides the manufacturing detail is key for admissibility and entry of the product.

03**PEOPLE**

Verification of the parties (seller, carrier, broker and agents) provide a chain of custody in the commercial transaction and supply chain.

04**CERTIFICATION**

EMTC's "Trusted 2 Trade" program would certify product, process and people to show CBP that parties involved in transactions should be treated as Trusted Traders.

05**TECHNOLOGY**

Entities involved in e-commerce will use multiple technologies in a system to manage risk.





SAFEPACKAGE LLC
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March 1, 2023

The Honorable Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Wyden:

SafePackage LLC would like to submit comments in response to the hearing "Ending Trade That Cheats American Workers By Modernizing Trade Laws and Enforcement, Fighting Forced Labor, Eliminating Counterfeits, and Leveling the Playing Field" held by the Finance Committee held on February 16, 2023. We strongly concur with the Chairman's remarks. We also would like to thank you for calling attention to these matters.

Counterfeits, products made with forced labor, and other violative goods continue to be available to U.S. consumers via e-commerce. Customs and Border Protection (CBP) is under considerable pressure from many different entities as its mission of protecting the border cuts across many domains. CBP operates on a model based upon advanced information, applying intelligence-based or law enforcement-based targeting rules against this information, and identifying suspect shipments across the priority mission set (national security, narcotics, commercial trade violations). For the most part, CBP applies a *traditional* enforcement approach, acting to address those concerns *at the border* to prevent the introduction of violative goods into the commerce of the United States that may threaten the health and safety of the U.S. consumer. CBP's resources, including staff and funding, are inadequate to inspect, interdict, and administratively deal with the seizure of the flood of violative goods coming from China.

We do, however, wish to bring to your attention an alternative approach that is consistent with existing CBP practices, and does not require new legislation or funding. This approach relies on leveraging CBP's industry partnership program framework. It also incentivizes companies to perform greater "reasonable care" responsibilities prior to shipping in a cost effective and efficient manner. Companies could also agree to reject (prevent shipping) any packages found to be violative against publicly known information (*i.e.*, the patent and trademark database and known Partner Government Agency requirements).

We have developed an innovative prescreening technology called SafePackage. When applied by parties in the supply chain, it could have dramatic results by preventing the shipping/importation of high-volume, low-value violative goods into the United States by stopping their shipment at the point of origin. This could significantly help CBP as these items of low value would not have to undergo the costly seizure/forfeiture/disposition process, but yet they would be prevented from entering the commerce of the U.S.

We feel that preventing the shipment of illegal goods *at the point of origin* is the most cost-effective approach for the government. Imagine the impact an approach that requires stopping violative goods at the point of origin could have on combating the increasing flood of *de minimis* goods violating IPR, forced labor, health and safety laws. CBP is rightly focused on high value commercial violations, hard narcotics (fentanyl, heroin, cocaine, methamphetamine, etc.), and other priority trade-related violations (forced labor, revenue loss, other government agency requirements).

As pressure mounts on CBP to do more in the e-commerce environment, the procedures designed for targeting and supply chain security in the traditional commercial environment may not pose the best answer. Foreign manufacturers and shippers are relatively small, unknown entities. They do not have the same auditable or documented business practices. They may also number in the millions and can easily change company identifiers.

Violations in e-commerce are easy for CBP to identify, but to take sustained action against the high volume of low-value (both in terms of cost and potential harm) shipments is not cost-effective. The traditional approach of the right data from the right party at the right time may support better targeting for priority and lesser frequent violations in e-commerce but does not address low-value/high-frequency violations due to the cost-prohibitive nature of the seizure process.

CBP can address e-commerce challenges by leveraging industry partnerships to incentivize stakeholders to prescreen and reject violative packages prior to shipping. This is consistent with the approach in other CBP mission areas such as: CSI (Container Security Initiative), ACAS (Air Cargo Advance Screening), and in the immigration environment IAP (Immigration Advisory Program), RCLG (Regional Carrier Liaison Groups), and Preclearance.

Certain entities in the supply chain already have access to the platform/marketplace level data as part of their business transactions—namely pictures and item descriptions directly from the e-commerce websites. These entities, like logistics and shipping providers, can apply an algorithm such as SafePackage, identify violations, and stop a transaction before it gets shipped to the US. Data on rejected shipments can be shared with CBP.

SafePackage is a patented technology that uses AI and machine learning to prescreen products and automatically identify goods that would be prohibited from importation into the U.S. SafePackage has been used on a large scale in the Chinese e-commerce environment, which accounts for over 80% of all packages imported into the U.S.

SafePackage has proven to be more than 99% effective in preventing the shipment of goods by screening e-commerce merchandise for compliance with laws and regulations pertaining to USPS false labeling, IPR infringements, FDA, USDA, DOL (forced labor), FWS, CPSC, and more.

SafePackage believes that prescreening technology could be most effective when coupled with CBP's Customs Trade Partnership Against Terrorism (CTPAT) program, specifically a special program aimed at partnering with the industry engaged in e-commerce shipments. CBP's trusted trader program could develop a Minimum Security Criteria for participants that ship, import or otherwise play a role in the importation and entry of *de minimis* goods which would incorporate a validated pre-screening criterion.

By requiring the use of prescreening technology for CTPAT e-commerce participants, CBP and U.S. consumers could see the following benefits:

- Reducing the volume of e-commerce shipments CBP would need to inspect and allow CBP to focus on higher priorities;
- Reducing the volume and costs associated with the seizure, forfeiture, and destruction of violative goods (since any violative goods would be stopped at the point of origin);
- The foundation for a partnership role by the trade community in preventing the entry of e-commerce goods in violation of U.S. laws;
- An expanded trade partnership in line with past Customs efforts dating back almost 40 years to improve security and compliance with U.S. laws (e.g., CIP, Land Border CIP, etc.);
- Support for a proof of concept vision beyond the border itself; and
- A viable response to Congress and other critics regarding CBP's enforcement efforts.

To this end, SafePackage has conducted two technology demonstrations for CBP on the effectiveness of applying the SafePackage algorithm to shipments prior to foreign departure and rejecting violative merchandise. The two examples are a demonstration at the land border at Otay Mesa, and a demonstration on air cargo shipments at Los Angeles Airport.

The Otay Mesa land border demonstration consisted of running the SafePackage algorithm against shipments prior to departing Mexico. A third party logistics company consolidates, and ships Chinese made goods to U.S. consumers from Mexico. A total of 106,510 packages have been run through SafePackage since May 16, 2022, and 3 violations have been identified. This provides a way to identify a compliant shipment of assorted, *de minimis* packages on a single truck crossing the border and complement CBP's risk management approach to inspections.

The Los Angeles air cargo demonstration consisted of running the SafePackage algorithm against shipments prior to departing China. The freight forwarding and logistics companies consolidate Chinese made goods sold to U.S. consumers from several Chinese based e-commerce platforms/websites. A total of 932 packages (1,014 distinct products) were screened by SafePackage, and 142 violations were identified and rejected.

In sum, SafePackage is recommending that the Finance Committee take into consideration the greater role that evolving technology can play in preventing the intro-

duction of products in violation of U.S. laws by prescreening products and stopping their transport at the point of origin. We would be happy to provide additional information or address any questions you may have.

Respectfully,
 John Farley
 Chief Executive Officer

LETTER SUBMITTED BY

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

As experts in the international trade of aquatic wildlife and seafood, we strongly support the goals of the Finance Hearing “Ending Trade That Cheats American Workers By Modernizing Trade Laws and Enforcement, Fighting Forced Labor, Eliminating Counterfeits, and Leveling the Playing Field.” We believe that collecting accurate trade data is essential to achieving these goals.

The trade in live animals is extremely biodiverse, encompassing thousands of species. Some of these species can be poisonous to humans, such as lionfish imported from Indonesia. Some can carry diseases such as salamanders or frogs. Some are extremely high value species being intentionally hidden as other products to avoid taxes, while some are so rare and endangered that they are listed by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), but the traders list them as common species. In our analysis of the trade in aquatic wildlife,¹ we have observed all of these cases. We have also created an automated system that can collect all relevant information from an invoice, compare that to a declaration to ensure it is all properly accounted for and assigned the correct harmonized code, and provide Customs inspectors with a report on any detected anomalies within the shipment. All this automated processing can be done in a minute or two and not impinge upon the speed of the trade.

In the comments during the hearing by Cindy Allen, Vice President, Regulatory Affairs and Compliance, FedEx Logistics, we agree with her that there should be a “favored trader status.” A risk assessment can assign a low risk to those companies that present correct declarations and associated paperwork, and ensure their products are the first priority for release. This will be a benefit to those who do not try to hide illegal or counterfeit goods in their shipments.

However, it is also for these reasons that we disagree with her statement about harmonized codes that there should be a “limited number of classifications instead of the 10,000+ tariff lines.” Instead, we argue the opposite. We should be automatically collecting detailed information from each invoice, and ensuring that it matches the information presented on the declaration. The volume of goods, and the extent to which they are packaged presents an arena that is ripe for goods to be smuggled, or exchanged in avoidance of taxes. The push to have only a “limited number” of tariff lines will greatly impede the goals of this committee, to “End Trade That Cheats American Workers, Fights Forced Labor, Eliminates Counterfeits,” and it most certainly will not “Level the Playing Field.” Instead, fewer tariff codes will increase the opportunity for each one of these nefarious acts to increase, and will uneven the playing field where Americans as a whole will be on the losing side.

¹ Rhyne, A.L., Thusty, M.F., Szczebak, J.T., and Holmberg, R.J., 2017. Expanding our understanding of the trade in marine aquarium animals. *PeerJ*, 5, p.e2949.

In our work to automate trade streams, we have current tests occurring in Canada² where we see tax and health evasion by misnaming seafood, regulatory malfeasance by not declaring CITES species, and a significant lack of correct data being entered through their one stop window system.

There are data tools that have been developed to address these trade data issues. Our system was the Grand Prize winner of the USAID sponsored Wildlife Crime Tech Challenge.³ There are other solutions emanating from the study of the wildlife trade, including X-Ray technology⁴ and DNA analysis that can be quickly expanded for broader trade categories. Our system was designed for aquatic wildlife, but being an automated optical character recognition-based system, can quickly be trained to detect invoices containing any wildlife products, including but not limited to timber and wood, and leather goods, to other non perishable goods such as hardware, computer parts, and other commonly traded commercial goods.

There are a multitude of excellent and advanced solutions that can rapidly be implemented. We cannot continue a business as usual scenario and continue to turn a blind eye to the identity of goods being imported into our country. We need to have a full and accurate accounting of everything that crosses our borders. This will not hinder our ability to do business, rather it will protect our companies and the environment, and make business stronger and more competitive.

We are happy to discuss our work with the committee or staff.

Michael and Andy

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I'm Jeffrey Hardy, Director-General of the Transnational Alliance to Combat Illicit Trade (TRACIT), and I respectfully submit this written statement for your hearing record.

I commend you, Chairman Wyden and Ranking Member Crapo, and the Senate Finance Committee for holding today's hearing focused on "Ending Trade That Cheats American Workers By Modernizing Trade Laws and Enforcement, Fighting Forced Labor, Eliminating Counterfeits, and Leveling the Playing Field." Many of you have been staunch advocates for strengthening protections against counterfeits and the illicit economy.

TRACIT is a United States-based, independent, private-sector initiative to drive change to mitigate the economic and social damages of illicit trade by strengthening government enforcement mechanisms and mobilizing businesses across industry sectors most impacted by illicit trade. Our members are multinational companies.

The Problem:

Illicit trade is a major and growing policy challenge in the United States (U.S.) and across the world. From smuggling, counterfeiting and tax evasion, to the illegal sale or possession of goods, services, and wildlife, governments are losing billions in tax revenues, legitimate businesses are undermined, and consumers are exposed to poorly made and unregulated products. These crimes also are tied to human rights and labor rights violations, money laundering, illicit financial and arms flow, child labor, and environmental degradation.

Given that illicit trade is estimated to account for 5–8% of total international trade, its utilization of cargo containers, parcel packages, ship and airline capacity, and port capacity clogs the world's trade infrastructure. According to the United Nations Conference on Trade and Development (UNCTAD), there already are not enough ports worldwide nor enough labor to process the goods being traded across borders, and poor infrastructure creates congestion at ports. Delays in shipping causes supply chain disruptions and increased costs for all involved.

²Gerson, H. and Remmal, Y. (2021). Report on use of the Nature Intelligence System: Automated Screening of Commercial Import Documentation—Simulation. Canada Border Services Agency unpublished, 36 pgs.

³<https://www.wildlifecrimetech.org/grandprizewinners>.

⁴<https://www.microsoft.com/en-us/industry/blog/government/gov-ai/2022/01/31/project-seeker-using-artificial-intelligence-for-good/>.

With estimates of various illicit activities running upward of \$3 trillion, these figures rival the GDP of some G20 countries. These costs multiply exponentially when accounting for drains on tax revenue, the use of forced labor, obstruction of sustainable development, organized crime, terrorism and the plundering of natural resources. Moreover, trade in counterfeit and illicit goods has an extensive destabilizing impact on American and global security due to its central role in facilitating transnational organized crime and illegal flows of money, people and products across borders. It undermines the formal authority of rule of law, which can disrupt business and discourage investment.

More recently, the COVID-19 pandemic has escalated an unremitting illicit economy to expand and take root, spawning new markets for illicit trade, like falsified vaccines, pharmaceuticals and medical devices, and deepened age-old illicit trade in alcoholic beverages, tobacco and counterfeits.

The pandemic drove Americans online to purchase products that could be delivered directly to their homes. This facilitated the growth of the sale of counterfeit and illicit goods primarily because nefarious third-party sellers exploit e-commerce platforms, which heretofore do not sufficiently vet their sellers, quickly take down known counterfeits nor ban bad sellers, exposing consumers to unregulated products. What types of products are we talking about? We have a saying, "If you make it, they can fake it." This means products across every industry, including counterfeit automobile parts like brakes, seatbelts, air bags, tires; appliances and parts such as water filters for refrigerators; toys and other children's products; beauty and personal care products; human and pet food; beverages; pesticides; jewelry and apparel; cleaning products and on and on. Attached to my statement is a comprehensive list.

Additionally, fraudulent advertising on social media platforms, *e.g.*, Facebook Marketplace and Instagram, is a devious form of online fraud intended to route social media users to rogue websites set up for the sole purpose to sell counterfeits, cultivate bait and switch scams, steal personal financial information or otherwise put at risk the Internet's growing population of social media users. These may be American-based platforms, but they serve over 1.4 billion users worldwide, equivalent to over three times the entire population of the U.S.

In an effort to warn consumers, educate policymakers and encourage online platforms to improve system weaknesses, TRACIT and the American Apparel and Footwear Association (AAFA) published in July 2020 the first public report documenting the emergence of fraudulent advertising on popular online social networking platforms: *Fraudulent Advertising Online—Emerging Risks and Consumer Fraud* (TRACIT Report: Fraudulent Advertising Online—Emerging Risks and Consumer Fraud—Transnational Alliance to Combat Illicit Trade, <https://www.tracit.org/featured-report-fraudulent-advertising-online.html>).

The 2020 Fraudulent Ad Report showed that fraudulent advertisements on Instagram and Facebook targeted more than 70 major international brands, some of which received up to a quarter of a million views before they were detected. The lack of adequate policies and procedures to verify an advertiser/user's true identity and to conduct the necessary vetting and due diligence during the onboarding process is a system weakness across multiple Internet-based platforms for social networking. This enables infiltration of social media accounts by fraudulent advertisers and exploitation of social media users. There is also little protection from repeat offenders.

What Congress Can Do

Congress should move quickly to solve this exponentially growing problem, with far-reaching negative impacts on American security, innovation, economic growth and consumer safety. Below are some specific actions:

Enhance Consumer Protection Laws

TRACIT joined many companies encouraging Congressional passage of legislation to establish better, more uniform rules for secure and safe conduct of e-commerce in the U.S., including legislation intending to hold online marketplaces and social media platforms accountable for keeping bad actors and fraudulent products off their marketplaces. It is past time for depending on voluntary efforts by the e-commerce platforms to remedy the situation, especially when their bottom lines benefit from passive enforcement and looking the other way as criminals easily manipulate the limited security measures currently in place.

We worked with the last Congress to achieve passage of the Integrity, Notification and Fairness in Online Retail Marketplaces for Consumers Act (INFORM Consumers Act), which is the first step in improving consumer protections by requiring e-commerce platforms to conduct more due diligence in vetting sellers and requiring sellers to disclose more information to platforms and consumers. In December 2022, President Biden signed the new law which requires third-party sellers to provide government issued IDs and disclose to consumers from where the product is being shipped along with a contact link for customers. The INFORM Act will help law enforcement, manufacturers, retailers and online marketplaces of all sizes work together to protect consumers from bad actors selling counterfeit and stolen goods.

But this first step is far from the necessary controls needed to mitigate fraud and consumer risk associated with online shopping. TRACIT urges Congress to reintroduce and pass the bipartisan bill, The Stopping Online Harmful Offers on Platforms by Screening Against Fakes (SHOP Safe Act), to enhance consumer protection for e-commerce purchases. This law introduces the well-established principle of liability, specifically holding e-commerce and social media platforms responsible and liable for selling counterfeit and illicit products that harm consumers. Only once they have demonstrated responsible due diligence, by adhering to a set of prescribed best practices, including increased third-party seller vetting and disclosure, expeditious notice and take down of counterfeit products, and barring bad actors from their platforms, would they be unencumbered from such liabilities.

Modernize Customs Laws

Congress should modernize the law governing U.S. Customs, which was established 30 years ago, aiming to create a better balance between streamlining the flow of trade with the ever-more critical need to better protect U.S. consumers from the flood of counterfeit and illicit goods entering the Customs process. We applaud Senator Cassidy's leadership in working with government and the private sector to develop a draft bill to enhance protections, facilitate trade, increase information sharing and engagement with the private sector, and strengthen enforcement and penalties. In 2021, the U.S. Customs and Border Patrol (CBP) established The 21st Century Customs Modernization Framework Task Force consisting of government and private sector stakeholders to facilitate discussion and provide recommendations to modernize the legal and operational framework for trade. TRACIT has actively participated and contributed to this initiative. We believe a strong legal framework embedded in legislation will go a long way to preventing illicit and counterfeit goods from crossing into the U.S.

TRACIT strongly recommends the establishment of a mechanism to create an e-merchant ID that would be required for sellers wishing to sell into the U.S. via e-commerce platforms. The integrity of such a system could be maintained through a program similar to the U.S. Food and Drug Administration's (FDA) Foreign Supplier Verification Program (FSVP), established by the U.S. Food Safety Modernization Act (FSMA). Such a system would enable e-commerce platforms, brands, law enforcement agencies and consumers to block bad actors that are not registered. This could be similar to a TSA pre-check for sellers of goods. Registered importers would be able to step into the green lane for Trusted Traders.

It is also time to revisit the level of *de minimis* exceptions in Sect. 321 of the Tariff Act for low-value shipments. The current \$800 level is already outdated and ineffective in addressing the rapid, recent increase in e-commerce sales directly to consumers via small parcels traveling through the U.S. Postal Service and express carriers. The average value of goods shipped is \$100 and very few are valued above \$200.

Focus on Stopping the Use of Forced Labor

TRACIT commends the U.S. Trade Representative (USTR) for its recognition in its Notorious Markets for Counterfeiting and Piracy Reviews for 2021 and 2022 of the serious dangers to workers who are exploited and forced to create, manufacture and distribute counterfeit and illicit products. As noted in the USTR's 2021 Report, TRACIT conducted a study and produced a report in December 2021: *The Human Cost of Illicit Trade: Exposing Demand for Forced Labor in the Dark Corners of the Economy* (Featured Report: The Human Cost of Illicit Trade: Transnational Alliance to Combat Illicit Trade (<https://www.tracit.org/featured-report-fraudulent-advertising-online.html>)). TRACIT outlined how criminal organizations utilize forced labor to manufacture and distribute counterfeit and illicit products outside the purview of labor regulations and government oversight.

The 2021 USTR Report devotes six pages to this human rights crisis and calls for more investigation and data on the adverse impact of the use of forced labor and child labor in the global production of counterfeits. Fully ending these human rights abuses will only be possible by eradicating counterfeiting and other forms of illicit trade.

Since data is limited, and governments have not yet been successful in closing this gap, additional data collected in the field is needed to improve the understanding of how illicit supply networks operate, and how they recruit, use and abuse their labor force. We endorse the USTR's view that governments must actively gather more and better data on the incidence of forced labor in illicit operations to improve the evidence base for national and international policy-making and standard setting. Governments must also strengthen investigative techniques to address human rights abuses in illicit trade and dismantle the organized criminal networks behind illicit trade.

TRACIT is prepared to collaborate on advanced data collection and is willing to contribute information already collected from private intelligence and investigations, raids, seizures and other measures along illicit supply chains.

Enhance Free Trade Agreements (FTAs) and Other International Agreements

The U.S. Government should continue to work with its trading partners to enhance worker protection provisions to explicitly guard against the use of exploited labor in the manufacture and distribution of goods and services across borders.

The U.S. also should strengthen its leadership in multilateral organizations and work collaboratively to create a stronger global structure to combat the manufacture and sale of illicit and counterfeit goods. The U.S. should work to prioritize illicit trade work programs in existing multilateral organizations, *e.g.*, World Customs Organization (WCO), World Trade Organization (WTO), the United Nations (UN), the Organisation for Economic Co-operation (OECD).

TRACIT is working globally to urge governments—including the U.S.—to establish a “whole of government” approach, appointing officials from throughout each government including from Finance, Commerce, Homeland Security, Labor, Trade, Customs, and Postal systems to establish an action plan for detecting and blocking illicit goods, filling governance and regulatory gaps, and training law enforcement and Customs officers. We urge countries to establish a reporting mechanism for consumers and businesses to alert law enforcement to suspected illicit trade. Working with the private sector, governments should raise consumer awareness to the dangers of counterfeit and illicit trade.

Conclusion

TRACIT stands ready to work with Congress to better protect consumers, workers, businesses, the U.S. economy and national security by stopping the flow of counterfeit and illicit products into our country. We thank the Senate Finance Committee for its leadership on this critical imperative.

RESOURCES

OECD, Risks of Illicit Trade in Counterfeits to Small and Medium-Sized Firms.

TRACIT, The Human Cost of Illicit Trade: Exposing Demand for Forced Labor in the Dark Corners of the Economy (<https://www.tracit.org/human-cost-of-illicit-trade.html>).

TRACIT, The Link Between Illicit Trade and Sovereign Credit Ratings.

TRACIT, Fraudulent Advertising Online: Emerging Risks and Consumer Fraud (<https://www.tracit.org/featured-report-fraudulent-advertising-online.html>).

TRACIT, Mapping the Impact of Illicit Trade on the Sustainable Development Goals (<https://www.tracit.org/featured-report-illicit-trade-and-the-unsdgs.html>).

COUNTERFEIT PRODUCTS WITH HEALTH AND SAFETY IMPLICATIONS

You make it and they can fake it

All counterfeits present an absolute product safety risk. They are manufactured outside legal frameworks, are unregulated and do not comply with safety standards that are prescribed either internationally or locally within a country. If a counterfeit product is ingested, applied to the body or used as a safety device, the risks become even greater. But the list of products presenting exposure to health and safety risks is endless, starting with the products listed here:

Product Categories	Examples of Product Types	Associated Risks
Beauty Products	Shampoo, conditioner, cosmetics, hair styling products, soaps, lotions, moisturizers, deodorants, perfume, razors (manual and electric)	Bacterial contamination; inadequate or missing preservative systems; toxic/hazardous ingredients (chemical and biological hazards, heavy metals); non-disclosed or high levels of allergens; presence of banned ingredients; presence of mold; absence or decreased levels of drug and/or sanitizing/disinfectant active ingredients; electrical and/or burn hazards
Disinfecting/sanitizing Products	Liquid hand sanitizers, wipes, surface sprays, etc.	
Feminine Care Products	Tampons, menstrual cups, sanitary pads, adult incontinence products	
Food and Beverages	Groceries, fresh products (cheese, eggs, etc.), hard liquor	
Medicines	Prescription and over-the-counter drugs, supplements, vaccines, products containing sunscreens	
Oral Care Products	Toothpaste, teeth whitening, mouth rinse, denture adhesives and/or cleaners, dental floss, toothbrushes (manual and electric)	
Pet Products	Food, toys, medications, grooming items, etc.	
Children's Products	Diapers, car seats, strollers, mattresses, toys, bedding, cribs, bottles, rattles, etc.	Noncompliance with safety standards; toxic/hazardous/flammable ingredients
Cleaning/Laundry products	Detergents (laundry, dish), hard surface cleaners, etc.	Toxic/hazardous/banned ingredients
Construction Products	Power tools, building supplies (supports, engineered joists, flooring, plumbing, etc.)	Fire/electrical hazards; critical engineering failures

COUNTERFEIT PRODUCTS WITH HEALTH AND SAFETY IMPLICATIONS—Continued

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Product Categories	Examples of Product Types	Associated Risks
Digital/Communication Products, Replacement Parts/Equipment or Networks	Laptops, cell phones, digital device chargers, batteries (rechargeable, alkaline, lithium, etc.), routers, modems, cabling (HDMI, VGA, LAN, indoor/outdoor), software	Fire/electrical hazards; non-compliance with manufacturing/safety standards; failure at critical moments
Electrical appliances/equipment and replacement parts	Refrigerators, water filters, ovens, dishwashers, microwaves, water heaters, washing machines, dryers, clothing irons, fire detectors, home safety/security equipment, etc.	Noncompliance with manufacturing/safety standards; fire/electrical hazards; toxic/hazardous chemicals
Furniture	Tables, chairs, mattresses, sofas, shelving, etc.	Noncompliance with manufacturing/safety standards; toxic/hazardous/flammable ingredients
Jewelry, Luxury Goods, Textiles	Clothing, belts, accessories, purses, jewelry, etc.	Allergic reactions; treated with chemicals that can be hazardous, flammable, toxic
Office supplies	Printer ink/toner cartridges	Toxic/hazardous chemicals; equipment damage
Personal Health Care Equipment, Medical Devices	Wheelchairs, hospital beds, thermometers, blood pressure monitors, in-vitro diagnostic kits, bandages, etc. Pacemakers, artificial joints, stents, breast implants, laser hair removal equipment, syringes, surgical utensils, etc.	Noncompliance with safety standards; fail at critical moments; long-term health effects due to toxic/hazardous/flammable ingredients (chemical, biological, bacterial, heavy metals)
Personal Protective Equipment (PPE)	Face masks, eye protection, gloves, gowns, ear plugs, respirators, etc.	
Product Packaging	Tubes, jars, cans, buckets, cartons, tubs, bottles, etc.	
Pesticides	Bug sprays (crop maintenance, home usage)	Toxic/hazardous chemicals; environmental impact
Sports equipment	Footwear, protective gear (helmets, safety pads/guards, life jackets, etc.), camping gear, golf clubs, sports balls (baseball, basketball, softball, golf, etc.), hiking gear, etc.	Noncompliance with safety standards; fail at critical moments; toxic/hazardous ingredients

COUNTERFEIT PRODUCTS WITH HEALTH AND SAFETY IMPLICATIONS—Continued

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Product Categories	Examples of Product Types	Associated Risks
Transportation and replacement parts	Automobiles, planes, trains, hoverboards, pedestrian powered modes of transportation (bikes, scooters, skates, skateboards, etc.)	Fire hazards, system severely impacted; compromised data transmission of confidential/critical, personal identifiable, healthcare related, educational, military information

