



August 5, 2022

**Via Electronic Submission**

Assistant Secretary Joshua Kagan  
Assistant U.S. Trade Representative for Labor Affairs  
Office of the United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

**RE: Trade Strategy to Combat Forced Labor, Docket Number USTR-2022-0006**

Dear Assistant USTR Kagan:

The University of Maryland SAFE (Support, Advocacy, Freedom and Empowerment) Center for Human Trafficking Survivors welcomes this opportunity to provide comments on the development of the Office of the United States Trade Representative's (USTR) trade strategy to combat forced labor and appreciates USTR's elevation of the issue of forced labor on its trade agenda.

Forced labor<sup>1</sup> is an egregious violation of human rights that has significant economic repercussions. Forced labor involves extreme, brutal, degrading, and often violent human exploitation. Forced labor takes place on a staggering scale;<sup>2</sup> yet today, more than twenty years after the adoption of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol)<sup>3</sup> and the U.S. landmark legislation to combat human trafficking, the Trafficking Victims Protection Act

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<sup>1</sup> Forced labor and labor trafficking are used interchangeably in these comments.

<sup>2</sup> There is no current, precise data on global prevalence of forced labor. The best available and most current source of prevalence is from International Labour Organization (ILO), which states that "[A]t any given time in 2016 . . . 16 million people [were] exploited in the private sector such as domestic work, construction or agriculture . . . and 4 million persons in forced labour imposed by state authorities," ILO Report, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (2017), at 9-10, [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_575479.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf) (accessed Aug. 4, 2022). However, this estimate likely significantly understates the prevalence of forced labor for many reasons, including that labor trafficking is largely hidden from view and is under-reported and under-investigated.

<sup>3</sup> Protocol to Prevent, Punish and Suppress Trafficking in Persons Especially Women and Children (November 2000). The 178 parties to this binding international agreement have committed to criminalize human trafficking and take other steps to assist victims and to eradicate human trafficking.

(TVPA),<sup>4</sup> labor trafficking continues undiminished and remains grossly under-investigated and under-prosecuted in the U.S. and around the world.

Those who exploit and benefit from forced labor create unfair trade conditions, devastate workers, undercut legitimate business, and mislead customers about the true costs of goods. This leads to a race to the bottom. For all of these reasons, it is important to adapt and deploy existing trade mechanisms and develop new strategies and tools to combat forced labor on a more systemic basis.

The University of Maryland SAFE Center is a comprehensive direct services, research, and advocacy center focused on labor and sex trafficking. We provide legal, social services, behavioral health, economic empowerment, and crisis intervention services to survivors of sex and labor trafficking; and we engage in research and advocacy to better serve survivors and combat human trafficking at a systemic level. The SAFE Center is one of the largest providers of comprehensive services to survivors of labor trafficking in the Maryland/Washington, D.C. metropolitan region. Approximately 35 percent of our clients are survivors of labor trafficking. Ninety-three percent are foreign nationals from over 30 different countries who were labor trafficked in the U.S., in their home countries, or in a third country before eventually arriving in the United States. Forty percent of our clients who have been victimized by labor trafficking are from Central America and Mexico; 30 percent are from Southeast Asian countries; 25 percent are from African countries; and 5 percent are from South American countries. The top three countries of origin of our labor trafficking clients are the Philippines, Honduras, and El Salvador.

Our clients at the SAFE Center have been compelled to work against their will for little or no pay—under abusive and violent circumstances—in the agricultural sector, restaurants, daycare centers, home health care, the travel/hospitality industry, and in domestic servitude. Methods of coercion to compel forced labor have included debt bondage, threats to harm the client and/or their family members, withholding of passports and travel documents; physical, emotional, and sexual abuse; isolation, withholding of wages, threats of arrest or deportation, withholding of food and medical care, and other cruelties. Labor trafficking survivors have presented at the SAFE Center with PTSD, depression, anxiety disorders, and other complex trauma symptoms.

The SAFE Center has provided services to clients who were taken advantage of by unethical and unscrupulous foreign labor traffickers. These recruiters lured them into fraudulent contracts by promising lucrative job opportunities, for which they were encouraged by the recruiter to take on debt at high interest rates to pay recruitment fees, visa fees, travel, and other fees. Once the victims arrived at their destinations, there were no jobs, or a “bait and switch” with extremely low paying jobs, such that the victims were trapped in a cycle of debt from which they could not emerge. A number of our clients who are trafficked for forced labor arrive in the U.S. on temporary visas, such as the H-2B visa that binds a foreign worker to their employer and are easily exploited by labor traffickers.

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<sup>4</sup> 18 U.S.C. §§1589 et seq.

### **Establishing a Compact Against Forced Labor/Working with Allies and Like-Minded Partners**

We support a binding international trade agreement against forced labor. To build support and momentum for a global agreement, the United States should work with like-minded trade partners to develop specific commitments. Pursuing these actions through the G7 and the U.S.-EU Trade and Technology Council (TTC) would give meaning to and build on the strong statements the U.S. and G7 countries have made against forced labor in G7 statements and in the TTC.

Elements of the international compact against forced labor would include country commitments to:

- Ban imports and exports of goods and services found to be made from forced labor.
- Prohibit government procurement of goods and services made from forced labor.
- Revise services commitments in the General Agreement on Trade in Services (GATS) and other trade agreements to incorporate the principles of the international compact, including updating GATS commitments to confirm that existing commitments do not preclude the member country from taking unilateral action to address forced labor in services.
- Develop, promote, and enforce fair and safe labor recruitment policies.
- Substantially strengthen the importance of a country's actions to combat forced labor/the prevalence of forced labor in determinations whether to extend or deny trade preferences.
- Develop trade remedies to remediate the harm suffered by victims of forced labor as well as assistance programs for affected workers

The United States-Mexico-Canada Agreement (USCMA) would also be an important mechanism for building on existing commitments against forced labor. The cooperative mechanism in the Labor Chapter of the USMCA in particular could provide an important venue for understanding and addressing drivers of forced labor into Canada, Mexico, and the United States (such as abuse of H-2B visas), which we have seen contribute to trafficking of our clients.

### **Treating Forced Labor as An Actionable Subsidy under the WTO Agreement on Subsidies and Countervailing Measures**

Government sponsored forced labor under certain factual circumstances could be pursued as an unfair trade practice under existing laws and World Trade Organization (WTO) rules: specifically, as an actionable subsidy under existing disciplines in the WTO Agreement on Subsidies and Countervailing Duty Measures (ASCM). Such subsidies could be challenged through two potential trade remedies: under existing U.S and WTO member country national laws as a countervailable subsidy and/or through WTO dispute settlement pursuant to commitments under the ASCM made by all 164-member

states of the WTO. The U.S. Government could encourage like-minded partners to pursue or consider such subsidy actions in tandem with the U.S., depending on the facts, evidence, and other conditions.

To be an actionable subsidy, it must be established that the action (1) constitutes a financial contribution made by or at the direction of a government that confers a benefit (ASCM 1.1, 14 (d)), i.e., that the government has provided services at less than adequate remuneration; and (2) is specific to an industry, group of industries, or region (ASCM 2.1). Proof of injury or adverse effects of the subsidy must also be established depending on the type of subsidy challenge undertaken. At least some state sponsored or directed trafficking/forced labor would meet these standards.

Invocation of these subsidy mechanisms does not require new legislation or negotiation of new agreements. Rather, as noted above, they are available under existing laws and WTO rules committed to by all 164 members of the WTO.

The remedy in a countervailing duty case is the imposition of a duty to offset the amount of the subsidy. In the case of a successful WTO subsidy challenge, the offending country may be directed to stop the forced labor; this route would be more effective and powerful when the WTO Appellate Body is revived. Such a subsidy challenge could also reach a country's abuse of its workers through forced labor in its home market as well as in third countries.

### **Bolstering the Forced Labor Components of Trade Agreements and Trade Preference Programs**

Trade Agreements: The U.S. should seek to incorporate the elements of the proposed international agreement against forced labor, as outlined above, in future trade agreements and frameworks; first by reaching consensus with like-minded partners through the G7 and the TTC, and then by broadening support through the Indo-Pacific Economic Framework for Prosperity (IPEF) and ultimately the WTO. These commitments not only relate to global supply chains related to goods but to services and agriculture as well.

Trade Preferences: U.S. preference programs should be amended to strengthen the importance of a country's actions to combat forced labor in determining eligibility of countries and sectors for trade preferences, including the following:

- On a country basis, the presence of systemic forced labor, whether sponsored by the government or carried out by private actors, within a country's economy or a Tier 3 ranking in the State Department Trafficking in Persons Report would be grounds for ineligibility for preferences.
- On an individual sector basis, the presence of forced labor in the sector seeking to benefit from preferential access to the U.S. market would be grounds for ineligibility for that sector.

- Trade preferences that have been limited or suspended on forced labor grounds shall remain so unless USTR makes a finding that (1) the beneficiary country has prepared and fully implemented a work plan significantly enhancing its efforts to combat forced labor or (2) the forced labor on which preferences were denied has been eliminated or addressed.
- In making the above eligibility determinations, USTR would consult with and work in conjunction with DOL-ILAB, DOS-TIP, and CBP.
- Coordinate with the G7 or EU to encourage other preference granting nations to develop common approaches to trade preferences.

### **Expanding on USCMA Commitments and Better Addressing Forced Labor in the USMCA Region**

Invocation of Article 23.12: We recognize the major advancement of the USMCA in addressing forced labor by requiring that the three countries prohibit the importation of goods produced by forced labor and requiring cooperation on the identification of goods produced by forced labor. USMCA Art. 23.6. Also important are the parties' recognition of the vulnerability of migrant workers and commitment to protecting migrant workers under their laws, whether they are nationals or non-nationals (Art. 23.8), as well as the USMCA's robust cooperative mechanisms (USMCA Art. 23.12).

At the SAFE Center, we have served clients who have been trafficked in or into all three USMCA countries. We believe that the Article 23.12 cooperative mechanism should be utilized to promote the governments' understanding of the drivers of labor trafficking between the countries and thus to determine cooperative actions, policies, practices, laws, regulations, and/or commitments that should be adopted to reduce such labor trafficking. Such cooperation is contemplated under the subsections of Article 23.12, including 5(c)-(e) and (l)(ii) and furthers the parties' agreement on the importance of focusing on workers and in including those previously underrepresented or not included in the trade agenda. These cooperative mechanisms can also be used for sharing of information on forced labor in supply chains in goods and services.

Expand the Use of the Rapid Response Mechanism (RRM) to Allegations of Forced Labor: Currently, the RRM mechanism applies to Denial of Rights covering only freedom of association and collective bargaining. We urge USTR to advocate as part of the upcoming review of the USMCA, to amend the RRM provision to cover forced labor in cover facilities. Inclusion of forced labor is warranted, as it constitutes such an egregious denial of rights, which deprives the worker of dignity and liberty, and has economic/trade effects as well.

### **Enhancing Inclusiveness of the Trade Policy Process**

Labor trafficking survivors should be centered in trade policy development, especially relating to the development of meaningful and fair remediation and support for those harmed by forced labor (including from dislocation or vulnerability resulting from enforcement against their employer perpetrators). A separate Trade and Forced Labor Advisory Committee should be established that includes forced labor survivors, anti-trafficking, worker and migrant rights advocates and organizations.

As noted above, the substantial majority of the labor trafficking survivors the SAFE Center has served are Black, Latinx, and Asian from African, Latin American, and Asian nations, as well as from the United States. Our experience is consistent with other U.S. organizations providing services to trafficking survivors. Traffickers exploit those who are vulnerable due to migration, systemic racism and sexism, LGBTQ+ status, and disability. Therefore, it is important that the advisory group reflect the diversity of labor trafficking survivors, as well as the diversity of forced labor experiences. Enhancing the inclusiveness of the trade policy process will increase its effectiveness and help ensure that no survivor community is left behind.

We appreciate USTR's increased attention to forced labor and interest in expanding the use of trade tools to combat forced labor. USTR will need additional budget to fund the personnel and resources necessary to be effective in amplifying the trade tools to meaningfully address forced labor.

Respectfully submitted,

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*University of Maryland SAFE Center for  
Human Trafficking Survivors*