



Southern Shrimp Alliance

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Submitted via Regulations.gov

The Honorable Katherine Tai
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Docket No. USTR-2022-0006: Comments Regarding Trade Strategy to Combat Forced Labor

Dear Ambassador Tai,

On behalf of the Southern Shrimp Alliance, an organization comprised of small businesses operating within the U.S. warmwater shrimp commercial fishing industry, we hereby provide comments to assist the Office of the United States Trade Representative (USTR) as it develops a focused trade strategy to combat forced labor.¹ At the outset, the Southern Shrimp Alliance wishes to express our gratitude to the USTR for inviting comment on an issue that has come to be of great importance to the membership of our organization and to the U.S. commercial fishing industry generally. In response to the USTR's request, the Southern Shrimp Alliance submits these comments to emphasize the central, fundamental importance of border measures in countering forced labor in supply chains.

I. The Southern Shrimp Alliance's Historical Support for Border Measures to Combat Forced Labor in Supply Chains

Roughly fifteen years ago, the Southern Shrimp Alliance's membership began traveling to Washington D.C. to express the shrimp industry's concerns with the prevalence of forced labor in foreign shrimp supply chains. Over the course of several years, our members met with sympathetic federal officials who explained that a prohibition on the importation of goods

¹ See Request for Comments: Trade Strategy to Combat Forced Labor, 87 Fed. Reg. 40,332 (Office of the United States Trade Representative July 6, 2022).

produced through forced labor into the United States – a law (19 U.S.C. § 1307) that had been on the books since 1930 – could not be enforced with respect to any shrimp produced overseas through forced labor because our fishermen could not harvest enough shrimp, on their own, to satisfy all U.S. demand. We did not understand at the time (nor do we understand now) the moral, economic, or tactical justification for that approach. A policy that barred U.S. consumption of the fruits of slave labor abroad only so long as every bit of American demand for the same good could be met fully and completely by domestic production was, on its face, hypocritical and, as a practical matter, necessitated many U.S. industries to compete with imported merchandise produced through forced labor due to the sweep of the “consumptive demand” loophole.

Our members also met with activists from a slew of non-governmental organizations working to champion human and labor rights, all of whom found the “consumptive demand” exception to 19 U.S.C. § 1307’s prohibition on the importation of goods produced through forced labor to be equally bewildering and, further, embarrassing to the country. The Southern Shrimp Alliance thereafter prioritized obtaining a legislative amendment that would eliminate the “consumptive demand” loophole. We undertook this ultimately successful effort as part of a broad, politically- and ideologically-diverse coalition.

Through our work with this *ad hoc* coalition of organizations, our industry also began to understand the consequences of a weak enforcement infrastructure within the federal government that had substantially curtailed the utility of the prohibition on the importation of goods made through forced labor even where the “consumptive demand” loophole did not apply (*i.e.*, goods produced through prison labor). As we were to learn, there was little enforcement over the first eighty-six years of 19 U.S.C. 1307’s existence. A short paper from the Congressional Research Service ably summarizes this history as follows:

Following its enactment in 1930, Section 307 was rarely used to block imports. The International Trade Commission reported that between 1930 and the mid-1980s there were approximately 60 to 75 instances when either interested parties requested or Customs considered the application of Section 307. Of those instances, merchandise was denied entry into the United States at least 10 times (6 times from Mexico, and once each from Japan, the Dominican Republic, Canada, and the former Soviet Union). Use of Section 307 increased substantially in the early 1990s with an increase in Chinese exports to the United States. Between 1991 and 1995, CBP issued 27 [withhold release orders (“WROs”)] against manufacturers in China. Between 2000 and 2016, CBP did not issue any WROs²

Accordingly, the Southern Shrimp Alliance also prioritized the creation, development, and augmentation of structures within federal agencies, particularly within U.S. Customs and Border

² Christopher A. Casey & Cathleen D. Cimino-Isaacs, *Section 307 and Imports Produced by Forced Labor*, at 1-2, Congressional Research Service, IF 11360, Version 11 (July 26, 2022), <https://crsreports.congress.gov/product/pdf/IF/IF11360>. This report explains that U.S. law prohibited the importation of goods produced through convict labor before the adoption of 19 U.S.C. § 1307, “[b]eginning in 1890, the United States prohibited imports of goods manufactured with convict labor. *Id.* at 1.

Protection (CBP), to prevent the importation of goods produced through forced labor into the United States. As an organization, we have, for the most part, found federal officials enthusiastic about implementing this policy goal through an evidence-based approach that incentivizes U.S. importers to conduct meaningful due diligence of their supply networks. Recent efforts by CBP to enforce 19 U.S.C. § 1307,³ coupled with the recognition of other federal agencies that ridding supply chains, including seafood supply chains,⁴ of forced labor have led the Southern Shrimp Alliance to become increasingly optimistic about the prospect for significant progress on an issue that continues to be of incredible importance to the U.S. shrimp industry.

As explained below, American sourcing of imported peeled shrimp has shifted from supply chains in Thailand that depended upon contract peeling houses corrupted by forced labor to Indian suppliers. But these new Indian supply chains also depend upon contract peeling houses utilizing incredibly vulnerable populations. This dramatic change in sourcing took place with little scrutiny and without any public discussion as to how risks of forced labor practices have been mitigated.

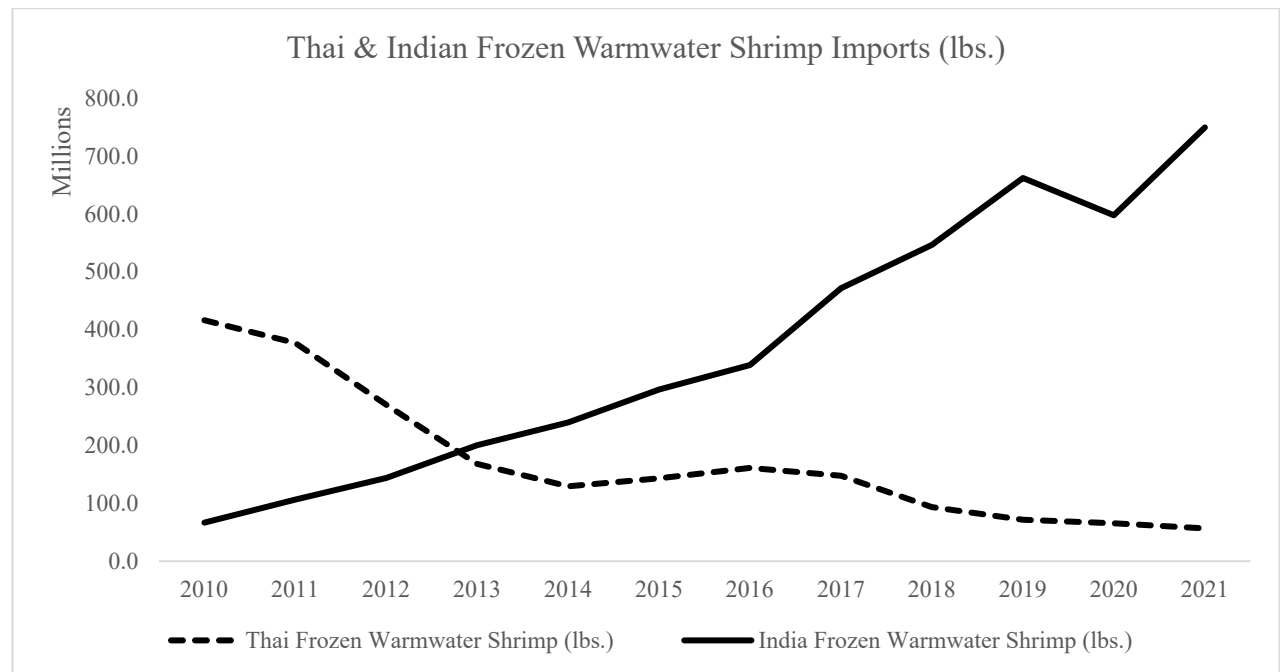
II. Changes in Peeled Shrimp Sourcing Demonstrate that Market Mechanisms, on Their Own, Will Not Meaningfully Address Forced Labor

For years, the conventional wisdom that informed U.S. public policy responses to forced labor has been that the corruption of supply chains could be addressed by public campaigns to draw attention to the abuse of human rights and by advocating for consumer boycotts. Through this process, market mechanisms are employed by non-governmental organizations to convince importers to undertake voluntary measures to mitigate and remedy the abuses or, at a minimum, alter sourcing patterns. However, the weakness of any approach for countering forced labor in supply chains that depends exclusively upon market mechanisms without border measures is made clear through the example of peeled shrimp imports into the United States. The substantial shift in the sourcing of a labor-intensive product by U.S. importers from one country where large populations were vulnerable to forced labor abuse to another country where, again, large populations are vulnerable to forced labor abuse demonstrates that in the absence of effective and systematic enforcement of the prohibition on the importation of goods produced through forced labor, U.S. importers will not voluntarily take measures to address the risks of labor abuse in their supply chains.

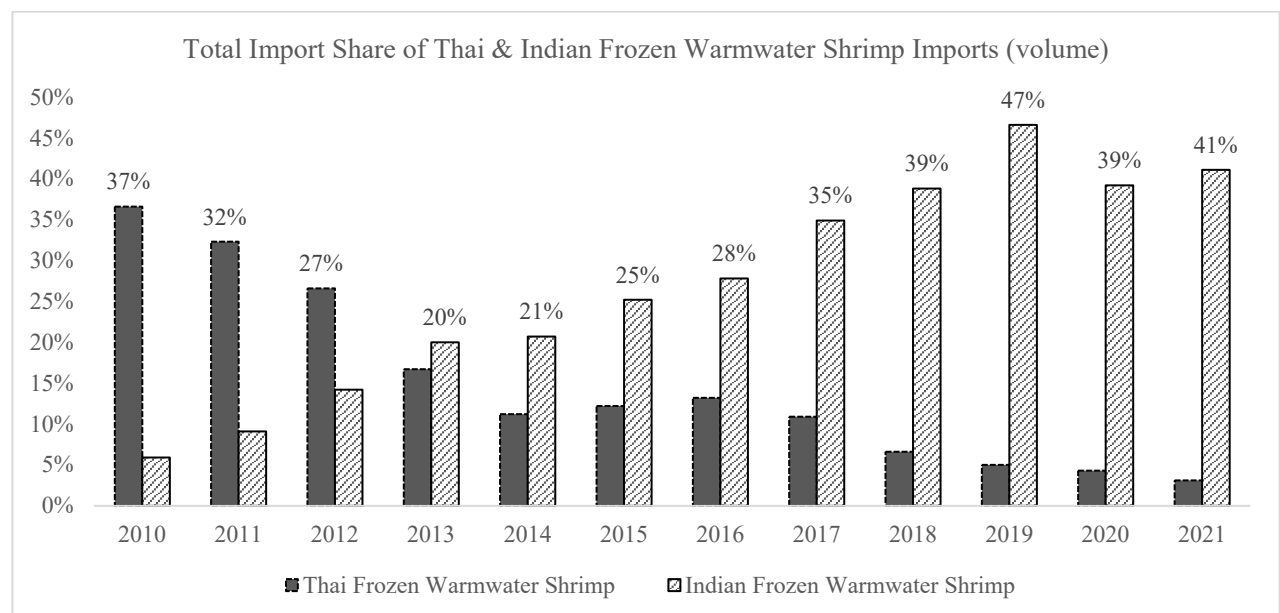
Over the last decade, the U.S. market has seen a massive decline in the presence of shrimp from Thailand, historically the single largest supplier of shrimp to the United States. In 2010, the United States imported over 416 million pounds of frozen (non-breaded) shrimp from Thailand. Last year (2021), Thailand exported less than 57 million pounds of frozen shrimp to the United States:

³ See, e.g., U.S. CUSTOMS AND BORDER PROTECTION, WITHHOLD RELEASE ORDERS AND FINDINGS LIST, <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>.

⁴ See, e.g., *Implementation of Provisions of the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 and the Ensuring Access to Pacific Fisheries Act*, 87 Fed. Reg. 40,763, 40,765 (NOAA Fisheries July 8, 2022).

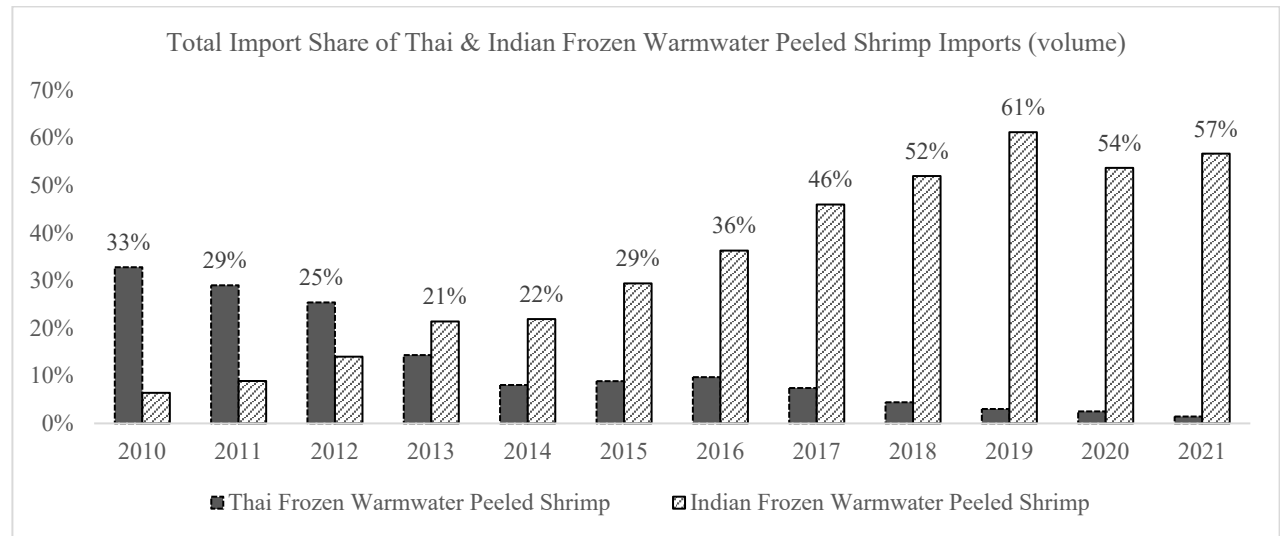


As Thailand has exited the market, the volume of Indian frozen (non-breaded) shrimp exported to the U.S. has exploded, increasing from under 67 million pounds in 2010 to nearly 750 million pounds in 2021. With this growth, India has surpassed the highwater marks reached by Thailand when that country was the predominant supplier of shrimp to the U.S. market:

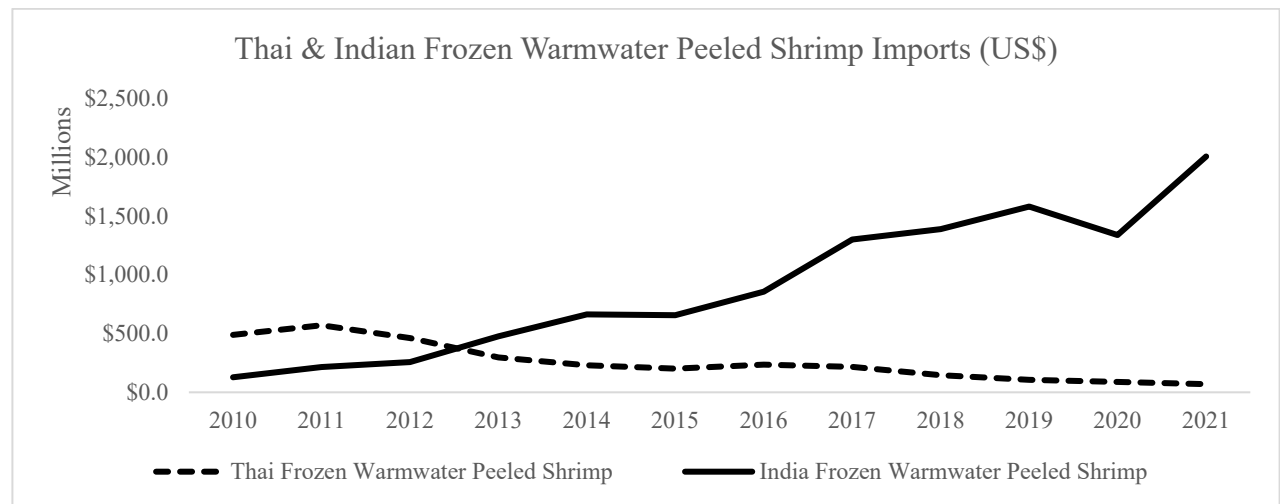


The market dominance of Indian shrimp is most pronounced with regard to one particular product form: peeled shrimp. Although shrimp is generally peeled by a machine in the United States, overseas, shrimp is peeled by hand. As such, this form of shrimp processing is incredibly labor intensive. Labor costs comprise a substantial portion of the total costs of production for shrimp processors, second only to the cost of shrimp.

Currently, India accounts for nearly three out of every five pounds of peeled shrimp imported into the United States, while Thailand – having historically accounted for one out of every three pounds of peeled shrimp imported into this country – now comprises less than two percent of the total volume of peeled shrimp imports:



The sheer amount of peeled shrimp sourced from India is mind boggling. Last year, the United States imported peeled shrimp from India worth over US\$2 billion. In contrast, Thailand has seen over US\$500 million in peeled shrimp exports disappear from the U.S. market between 2011 and 2021:⁵



⁵ Official U.S. import data was obtained from the U.S. International Trade Commission's *Dataweb*. Frozen warmwater shrimp import volume numbers are tabulated from Harmonized Tariff Schedule of the United States (HTSUS) numbers 0306.13; 0306.17; 0306.23; 0306.36; 1605.20.1010; 1605.20.1030; 1605.20.1050; 1605.21.1030; 1605.21.1050; 1605.29.1010; and 1605.29.1040. Frozen warmwater peeled shrimp import volume and value numbers are tabulated from HTSUS numbers 0306.13.0040; 0306.17.0040; 0306.17.0041; and 0306.17.0042.

The decline in Thailand's presence in the United States, and the ascendance of India, corresponds with high profile investigations into labor practices in the Thai shrimp industry, particularly following the inclusion of shrimp from Thailand in *The Department of Labor's List of Goods Produced by Child Labor or Forced Labor: Report Required by Trafficking Victims Protection Reauthorization Acts of 2005 and 2008* compiled and published by the U.S. Department of Labor's Bureau of International Labor Affairs (ILAB) in 2009.⁶ Certain practices adopted in the Thai shrimp supply chain, such as the use of peeling sheds that contracted out work to entities that exploited foreign (*i.e.*, Burmese and Cambodian) workers, led to broad public backlash against continued sourcing of peeled shrimp from Thailand. But the response from U.S. importers was not to seek the improvement of labor practices. Instead, shrimp importers shifted their sourcing to another country with a similar risk profile where the same degree of public scrutiny has not yet been applied.

As India has replaced, and surpassed, Thailand's position in the U.S. market, it has done so with a supply chain that is similarly dependent upon peeling sheds that contract out work to entities that exploit vulnerable populations. Despite the U.S. seafood importing industry's knowledge of what took place in Thailand, peeling sheds have proliferated and become an integral part of the Indian shrimp supply chain simultaneous to its ascendance in the U.S. market. For example, in the single Indian state of Kerala, the Department of Fisheries reports that there are 258 peeling sheds currently operating within the Coastal Regulation Zone.⁷ Nevertheless, there is scant evidence that India's peeling sheds have been the subject of any scrutiny by U.S. purchasers. Instead, this massive change in American sourcing has occurred largely in silence, without any public effort to justify importers' newfound singular reliance on contract labor in Indian peeling sheds.

While Thai peeling sheds preyed upon foreign workers, contractors operating Indian peeling sheds take advantage of internal migrants and marginalized, impoverished local populations to minimize labor costs. The risks of abuse of these vulnerable populations are widely known. For example, Table 3 of ILAB's 2020 *List of Goods Produced by Child Labor or Forced Labor* ("2020 List of Goods Report")⁸ explained that India had the third highest number of goods produced by forced labor, at eight (8), behind only Burma (Myanmar) at thirteen (13) and China at

⁶ See U.S. DEPARTMENT OF LABOR, BUREAU OF INTERNATIONAL LABOR AFFAIRS, OFFICE OF CHILD LABOR, FORCED LABOR, AND HUMAN TRAFFICKING, THE DEPARTMENT OF LABOR'S LIST OF GOODS PRODUCED BY CHILD LABOR OR FORCED LABOR, at 20, 26, 167 (2009), https://www.dol.gov/sites/dolgov/files/ILAB/reports/TVPRA%202009_WEB_.pdf.

⁷ See DEPARTMENT OF FISHERIES, GOVERNMENT OF KERALA, REPORT: INTEGRATED FISHERIES DEVELOPMENT PLAN FOR COASTAL ZONE MANAGEMENT PLAN 2019, KERALA, at 18 (July 2021), http://www.fisheries.kerala.gov.in/sites/default/files/inline-files/CZMP-Fisheries-min_1.pdf. The Report provides a full list of these peeling sheds, their locations, and the relevant local self-government institution at Annexure X.

⁸ See U.S. DEPARTMENT OF LABOR, 2020 LIST OF GOODS PRODUCED BY CHILD LABOR OR FORCED LABOR (Sept. 2020) ("2020 LIST OF GOODS REPORT"), https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/2020_TVPRA_List_Online_Final.pdf.

seventeen (17).⁹ Similarly, a review of Table 1 of the *2020 List of Goods Report* indicates that India has the third highest number of goods produced by child labor, at seventeen (17), behind only Brazil at eighteen (18) and Paraguay at twenty-three (23).¹⁰ Overall, India has the highest number of goods listed for child and forced labor of any country, at twenty-five (25), just ahead of both Brazil and Paraguay, for which twenty-four (24) products are listed.¹¹ Moreover, the Southern Shrimp Alliance's own investigation of Indian labor practices identified an additional five (5) goods produced in India where forced and/or child labor had been heavily documented.¹²

As we have reviewed the circumstances, the Southern Shrimp Alliance has concluded that U.S. seafood importers transitioned from Thailand to India as suppliers of peeled shrimp because of, rather than in spite of, the continuing prevalence of forced and child labor in the production of a wide variety of goods exported out of India. As such, we believe that a realistic prospect of the enforcement of border measures is necessary to effectively counter supply chains corrupted by forced labor. We further believe that such border measures should be broadly adopted to eliminate financial incentives to benefit from the enslavement of others.

III. A Focused Trade Strategy to Combat Forced Labor Must Include Encouraging the Adoption of Border Measures by Our Allies

Last year, the G7's Trade Ministers issued a joint statement explaining that they "recognise trade policy can be one of the important tools in a comprehensive approach to prevent, identify and eliminate forced labour in global supply chains."¹³ The Southern Shrimp Alliance agrees that trade policy is an important tool for countering forced labor in global supply chains and further believes that it is vital to address the continuing prevalence of forced labor around the world through a focused trade strategy that emphasizes the importance of border measures in preventing goods produced through forced labor from entering international commerce. Accordingly, the Southern Shrimp Alliance strongly supports the inclusion of Article 23.6 in the United States-Mexico-Canada Agreement (USMCA)¹⁴ and believes that this provision should be included in all future trade agreements. Specifically, Article 23.6 of the USMCA requires signatories to "prohibit

⁹ See 2020 LIST OF GOODS REPORT at 31.

¹⁰ See *id.* at 20-24.

¹¹ See *id.*

¹² The Southern Shrimp Alliance submitted the results of its investigation to ILAB with a request that these goods be included in the agency's *2022 List of Goods Produced by Child Labor or Forced Labor*. See Letter from the Southern Shrimp Alliance to ILAB, Docket No. DOL-2021-0003 (Jan. 14, 2022).

¹³ G7 Trade Ministers' Statement on Forced Labour (Oct. 22, 2021), <https://www.meti.go.jp/press/2021/10/20211022008/20211022008-2.pdf>. See also Statement from Ambassador Katherine Tai on the G7 Trade Ministers Meeting (Oct. 22, 2021), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/october/statement-ambassador-katherine-tai-g7-trade-ministers-meeting>.

¹⁴ See Agreement Between the United States of America, the United Mexican States, and Canada, U.S.-Mex.-Can., Nov. 30, 2018, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.

the importation of goods into its territory from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor.” This concrete requirement of denying access to global markets for goods produced through slave labor is far more preferable than prior aspirational approaches, such as Article 19.6 of the proposed Trans-Pacific Partnership, that merely requested signatories “discourage, through initiatives it considers appropriate, the importation of goods from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor.”¹⁵

Article 23.6 of the USMCA’s call for the adoption of measures prohibiting the importation of goods produced through forced labor is, moreover, in line with the development of similar approaches by our allies. The Southern Shrimp Alliance notes, for example, the European Union’s current consideration of an adoption of a ban on the importation of products made through forced labor.¹⁶ In advocating for the implementation of such a prohibition, Members of the European Parliament (MEPs) have pointed to the leadership of the United States, with a briefing paper prepared for MEP Anna Cavazzini observing “[e]xperience from the US shows that such bans can be extremely effective and lead quickly to remedy for workers.”¹⁷

The Southern Shrimp Alliance has additionally been encouraged by the U.S. government’s expression of support for the efforts of our allies to adopt prohibitions on the importation of goods produced through forced labor from entering their markets. For example, in its February 5, 2021 comments to the Australian Parliament, the U.S. Department of State stated that it “welcome[s] your partnership in addressing the human and labor rights abuses the People’s Republic of China (PRC) is committing in Xinjiang” and expressed “support [for] the goals of the draft bill.”¹⁸ The State Department’s letter observed:

The United States has issued similar measures to Section 307 of the U.S. Tariff Act of 1930, which prohibits the importation of merchandise mined, manufactured, or produced, wholly or in part, by convict labor, forced labor, and/or indentured labor, including forced or indentured child labor. U.S. Customs and Border Protection (CBP), the agency responsible for enforcing the law, issues “Withhold Release Orders” (WRO) and Findings to prevent such merchandise from entering U.S. commercial channels. CBP has issued 16 WROs and one Finding against goods

¹⁵ See <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text>

¹⁶ See, e.g., *MEPs Set to Call for Import Ban on Products Made with Forced Labour* (June 2, 2022), <https://www.europarl.europa.eu/news/en/agenda/briefing/2022-06-06/13/meps-set-to-call-for-import-ban-on-products-made-with-forced-labour>.

¹⁷ *Towards an EU Import Ban on Forced Labour and Modern Slavery*, Discussion Paper Commissioned by the Greens/EFA Group in the European Parliament, Prepared by Ben Vanpeperstraete for MEP Anna Cavazzini (Feb. 2021) at p. 2.

¹⁸ Letter from Sung Kim, Acting Assistant Secretary of State, Bureau of East Asian and Pacific Affairs to Senator Eric Abetz, Chair, Senate Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia (Feb. 5, 2021).

from China since 2016, with the most recent WRO requiring the detention of all cotton and tomato products originating from Xinjiang as an input.¹⁹

As the USTR develops a focused trade strategy to combat forced labor, the Southern Shrimp Alliance believes that the goals of Article 23.6 of the USMCA represent a baseline, foundational objective that would substantially promote the improvement of labor standards and enforce workers' rights through worker-centered commitments. Goods produced through forced labor should not be part of international commerce, and border measures are the only effective means through which such goods can be excluded from the global marketplace.

The Southern Shrimp Alliance respectfully requests that the USTR consider these concerns as it moves forward with the development of a trade strategy to combat forced labor. Thank you for any consideration you may give to these comments. I am available to address any questions you might have regarding this correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "John Williams", written in a cursive style.

John Williams
Executive Director

¹⁹

Id.