

August 4, 2022

The Honorable 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: Notice Seeking Public Comments on the United States Trade Representative's Trade Strategy to Combat Forced Labor (Docket No. USTR-2022-0006)

Dear Mr. Kagan:

The Footwear Distributors & Retailers of America (FDRA) writes to provide comments to the Office of the United States Trade Representative (USTR) in response to the July 6th Federal Register Notice (87 FR 40332) on a trade strategy to combat forced labor.

FDRA is the footwear industry's trade and business association, representing more than 500 footwear companies and brands across the U.S. This includes the majority of U.S. footwear manufacturers and over 95 percent of the industry. FDRA has served the footwear industry for more than 75 years, and our members include a broad and diverse cross section of the companies that make and sell shoes, from small family-owned businesses to global brands that reach consumers around the world.

FDRA and its members have zero tolerance for forced labor. Our member companies work diligently to select and build relationships with factory partners that are reliable and maintain high ethical standards. This includes vendor contracts with explicit anti-forced labor terms, frequent meetings with factory partners, and a strong system of regular audits, verification, and training for factories. Our members continue to explore and adopt new tools and technologies to better track and monitor global supply chains.

In addition, FDRA maintains an industry Code of Conduct, adopted by several leading U.S. brands, that implements strong criteria for factories and reiterates our unwavering commitment to zero tolerance for forced labor, slavery, human trafficking, and child labor. FDRA also serves as a member of the Forced Labor Working Group (FLWG), an inter-association committee that meets weekly to address best practices and other issues in this area.

Our comments will focus on two key areas: potential U.S. government action with trading partners and a more inclusive process for trade policy in this area.

What actions could the U.S. Government pursue with like-minded trade partners and allies to combat forced labor as an unfair trade practice?

Forced labor, in whatever form, significantly harms workers and their families, devalues human life, and constitutes an unfair trade practice by placing U.S. brands and workers at a competitive disadvantage. Eradicating forced labor globally requires both strong U.S. leadership and close coordination with like-minded trade partners in multilateral efforts.

This is particularly true for China's treatment of its minority Muslim population in the Xinjiang Uyghur Autonomous Region of China (XUAR). The U.S. government has implemented several actions in response to the situation in the XUAR. U.S. Customs and Border Protection (CBP) has vigorously enforced Withhold Release Orders (WROs) aimed at certain products, producers, and entities connected to this region of China. The Uyghur Forced Labor Prevention Act (UFLPA), which took effect in June 2022, establishes a rebuttable presumption that any good produced in the XUAR, wholly or in part, involves forced labor. While deterring forced labor is an important policy goal, these efforts have imposed a significant burden on companies and brands to track and monitor global supply chains. The situation is complicated by the fact that no single technology exists that can satisfy CBP that a supply chain is free of forced labor. Many U.S. brands cut ties with the XUAR long before the UFLPA went into effect, and FDRA members do not produce footwear in the XUAR.

The Government of China has taken steps to make compliance even more difficult for foreign companies. China recently enacted the Anti-Foreign Sanctions Law (AFSL), which could allow the Chinese government to take action against individuals and companies operating in China that are seeking to comply with the UFLPA, as well as foreign sanctions laws. Chinese companies are unable to cooperate in U.S. companies' forced labor-related due diligence efforts because of the AFSL and other statutes and regulations which restrict the export of data in the name of national security.

Shifting sourcing completely outside of China, however, is not a viable option for U.S. brands. Footwear production requires substantial capital investment and a large workforce dedicated to learning the intricate skill of shoemaking. It takes more than 100 individual steps to make a basic pair of leather dress shoes. Setting up a new factory involves years of planning; relationship building; integrating dozens of regional suppliers; and ensuring factories have the strongest labor, environmental, chemical safety, and product safety standards possible. A sourcing country must also have the factory base and infrastructure necessary to support footwear production and the efficient flow of goods across international borders.

In addition, leaving China is unlikely to improve conditions for workers in China, but it would increase inflation for U.S. consumers. Global supply chains allow companies to deliver goods to consumers at lower costs. China provides more than 70 percent of shoes by volume to the U.S. market each year. Even if it were possible to find alternative suppliers in other countries (which in many cases it is not), shifting production outside of China to higher-cost sourcing countries would result in significant price increases that would directly impact consumers at a time when the United States is witnessing soaring inflation.

FDRA and the larger FLWG have consistently called on the Administration to partner with our allies to pursue a global approach to stopping forced labor. In March 2020, FDRA joined the FLWG in issuing a joint statement on the situation in the XUAR, which can be found at the following link: <https://nrf.com/media-center/press-releases/joint-statement-nrf-aafa-fdra-rila-and-usfia-reports-forced-labor>. In March 2021, FDRA and the FLWG issued a public statement calling for a global approach to this issue: <https://nrf.com/media-center/press-releases/joint-statement-aafa-fdra-nrf-rila-usfia-support-global-approach>.

A meaningful solution to the situation in the XUAR, and to forced labor globally, requires U.S. government leadership, cooperation with our allies and partners, a workable UFLPA enforcement strategy, and a strong partnership between CBP and trusted importers. These same principles apply to the larger global issue of forced labor. The Administration should use its existing trade and enforcement tools to stop bad actors, while partnering with trusted importers and engaging directly with other countries on this critical issue.

How can the U.S. Government make the development of trade policy on forced labor a more inclusive process?

USTR serves as a member of the Forced Labor Enforcement Task Force (Task Force), which was recently tasked with putting together the Enforcement Strategy and Entity List for the UFLPA. As such, FDRA offers several recommendations for making the process more inclusive:

- **The public hearing process did not provide sufficient opportunity for industry stakeholders to weigh in.** The hearing was limited to a half day, panelists were allowed only three minutes to make a statement, and the Government asked no questions of the panelists. An act as far-reaching as the UFLPA – and an issue as serious as forced labor – deserves a robust and thorough hearing process to assist the government in receiving critical input from all stakeholders.
- **The Task Force should ensure a transparent and evidence-based process for adding and removing facilities/entities from any Enforcement List.** This should include notice and comment prior to any designation and an open-ended (*i.e.*, not time-limited) opportunity for parties to seek de-designation. A process for de-designation will help incentivize the elimination of forced labor, and it will provide listed parties with due process – recognizing inclusion on the list will result in disruption of important lawful commercial interests, deprivation of property rights, and reputational harm. For the current UFLPA Entity List, the Task Force should provide the public with clarity on the criteria for adding an entity to the list, the current process for de-listing, and the timing for expanding the list.
- **Enforcement action by the Task Force or CBP must be based on facts that all interested parties have had an opportunity to vet and challenge.** These enforcement actions should not be based on unproven allegations, ex parte/one-sided meetings, or speculation. The U.S. Government should respect all parties' due process and ensure that any enforcement actions are properly tailored to address genuine issues of forced labor, without imposing unwarranted restrictions on international trade.

Thank you again for the opportunity to provide input on USTR's trade strategy for combating forced labor. We stand ready to work with you on this critical issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Priest". The signature is fluid and cursive, with the first name "Matt" being more prominent than the last name "Priest".

Matt Priest
President & CEO
Footwear Distributors and Retailers of America