



INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE

July 12, 2017

The Honorable Orrin G. Hatch

Chairman
Committee on Finance
U.S. Senate
Washington, D.C. 20510

The Honorable Ron Wyden

Ranking Member
Committee on Finance
U.S. Senate
Washington, D.C.

Senate Committee on Finance

219 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Hatch, Ranking Member Wyden, and Members of the Committee on Finance,

We write to you regarding the nomination of Kevin K. McAleenan to the position of Commissioner of United States Customs and Border Protection (CBP), Department of Homeland Security. During his confirmation hearing on July 13, 2017, we urge you to **clarify Mr. McAleenan's position on and strategy for enforcing Section 307 of the Tariff Act (the forced labor provision)** and confirm his commitment to protecting American workers and consumers from imported goods produced by forced labor.

International trade is an important component of the U.S. economy, but U.S. trade policy has not always ensured an equitable distribution of the benefits of international trade to all Americans. President Trump vowed to reform America's trade policy to protect American jobs and workers. A number of existing laws enable the President to do so while, at the same time, promoting human rights and higher labor standards abroad. One such provision is Section 307 of the Tariff Act, which prohibits importation of products produced, in whole or in part, by forced labor or convict labor.¹ This provision encourages companies to take proactive efforts to ensure that imported goods are not produced by forced labor. Furthermore, it also ensures that American workers are not forced to unfairly compete with, and are often "priced out" by, foreign workers who are deprived of basic labor and human rights.

Congress has acknowledged the importance of this provision in protecting American workers and showing U.S. leadership in promoting human rights and labor rights at home and abroad. In early 2016, Congress closed a decades-long legal loophole that made it challenging to implement this ban.² President Trump has also identified the enforcement of the forced labor provision as a key priority in his 2017 Trade Policy Agenda.³

¹ 19 U.S.C. § 1307 (2016).

² Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. No. 114-125, § 910, 130 Stat. 239 (2016).

³ United States Trade Representative, *The President's Trade Policy Agenda*, 2 (2017), <https://ustr.gov/sites/default/files/files/reports/2017/AnnualReport/Chapter%20I%20-%20The%20President%27s%20Trade%20Policy%20Agenda.pdf> at 2.

As the lead agency implementing the forced labor provision, CBP has authority to issue withhold release orders to detain certain shipments when information “reasonably but not conclusively indicates” they are produced with forced labor.⁴ If further investigations confirm the initial finding, CBP is required to exclude the products from the American market. Nevertheless, CBP’s enforcement effort thus far has not kept pace with the prevalence of forced labor allegations in global supply chains. To date, the agency has only issued four withhold release orders since the legal loophole was closed.⁵

The next CBP Commissioner will play a critical role in developing strategies to ensure that the Tariff Act’s forced labor provision is effectively enforced. This will protect both American workers and their counterparts overseas. As such, we urge you to use the confirmation process to clarify Mr. McAleenan’s views and commitments to this issue by asking the following questions:

- CBP’s authority to facilitate trade enforcement by measures such as issuing import withhold release orders, conducting inspections, and ordering importer audits is unique and critical in ensuring that U.S. trade laws are properly complied with. Will you commit to using such authority to increase the enforcement of the Tariff Act’s forced labor provision?
- If so, what is your strategy and timeline for integrating regulations related to the forced labor provision into the agency’s existing trade enforcement efforts?
- The lack of clarity on CBP’s interpretation of the evidentiary standard required to issue a withhold release order to detain a shipment under the forced labor provision has been an impediment to the public to engage and provide information on potential violators. Will you commit to increasing transparency on CBP’s process and standards in this regard, including through clarifying the evidentiary threshold for the issuance of a withhold release order?
- What type of support does the CBP need from Congress to ensure that the forced labor provision is effectively and rigorously enforced?
- What role, if any, can civil society play in supporting CBP’s enforcement of the forced labor provision?

We are thankful for your consideration, and look to you to ensure that the forced labor provision is adequately enforced to protect American workers and raise labor standards abroad.

Sincerely,



Amol Mehra
Executive Director
International Corporate Accountability Roundtable (ICAR)

⁴ U.S. Customs and Border Protection: Commercial Enforcement Division, *Fact Sheet: Forced Labor Enforcement, Withhold Release Orders, Findings, and Detention Procedures*, <https://www.cbp.gov/sites/default/files/assets/documents/2016-Aug/Fact%20Sheet%20-%20Forced%20Labor%20Procedures.pdf> (last visited July 12, 2017).

⁵ U.S. Customs and Border Protection, *Forced Labor*, <https://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations> (last visited July 11, 2017).