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Congress of the United States
House of Representatives

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548 Cannon House Office Building
Washington, D.C. 20515
(202) 225-6002

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January 19, 2024

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Mayorkas,

We are writing to urge you to take immediate action to strengthen enforcement of the Uyghur Forced Labor Prevention Act (UFLPA). This landmark law, which passed with overwhelming bipartisan support, clearly signaled Americans' refusal to allow products made by the Chinese Communist Party's (CCP) forced labor programs from entering the United States. While we appreciate steps the Department of Homeland Security (DHS) has taken to stem the flow of these goods into our market, we remain deeply concerned that products tied to the CCP's ongoing genocide against Uyghurs and other minorities in the Xinjiang Uyghur Autonomous Region (XUAR) continue to find their way into American households.

We believe that several factors seriously undermine the effective enforcement of the UFLPA. The first of these is that companies transfer forced laborers from the XUAR to other regions in the People's Republic of China (PRC), complicating DHS enforcement of the presumptive ban on forced labor products from the XUAR. Thus, there is an urgent need to expand the UFLPA Entity List to include numerous companies and entities located outside the XUAR because of the affiliation to companies and entities in the region, particularly those involved in the seafood, gold, and critical minerals industries.

The Committee is concerned about reports that PRC companies that have participated in government-sponsored labor transfer programs have not yet been added to the UFLPA Entity List. As explicitly stated in the UFLPA, the Forced Labor Enforcement Task Force's (FLETf) enforcement strategy should include a list of entities that work to "recruit, transport, transfer, harbor or receive forced labor." The intent of the law and the UFLPA Entity List is to ensure that the FLETf designates any company, entity, or industrial park that is engaged in, supports, or benefits from labor transfers, regardless of whether they are in the XUAR or another province.

For example, in a report by Outlaw Ocean Project, researchers exposed the extensive labor-transfer program the CCP is using to force Uyghurs to work in coastal seafood processing plants.¹ Since 2018, at least ten large seafood companies along the PRC's east coast have used more than a thousand Uyghur workers associated with labor-transfer programs to ship at least 47,000 metric tons of seafood to over 160 U.S. companies, including major grocery chains.² The U.S. government has also purchased more than \$200 million of tainted seafood goods from these suppliers for American public schools, military bases, and federal prisons over the last five years.

Uyghur forced labor also pervades the U.S. gold and critical minerals markets. According to a report by the Center for Advanced Defense Studies, 1,482 U.S. companies maintain supply chain relationships with at least 13 publicly listed PRC gold companies that have active mines located in the XUAR.³ These American companies sell products ranging from children's toys to automobiles and telecommunications.⁴ As the UFLPA states, all minerals mined in Xinjiang are presumed to have used forced labor and are therefore banned from importation into the U.S. Many of the PRC gold suppliers in these companies' supply chains further obfuscate their ties to Uyghur forced labor by locating their headquarters outside the XUAR.⁵

Extensive mining and processing of critical minerals in the XUAR likewise compromise U.S. supply chains, including for electric vehicle batteries and the defense industrial base. For example, Akto Kebang Manganese Manufacturing company, which has extensive ties to the global automobile industry, is closely involved with companies profiting from Uyghur forced labor in the XUAR.⁶ Reporting also indicates that companies in this sector seek to obfuscate their involvement with entities that process critical minerals potentially for illicit purposes such as evading regulatory scrutiny, avoiding accountability for potential forced labor, or manipulating public perception.⁷ Regarding the defense industrial base, the PRC has a "near monopoly" on many rare earth minerals that are critical for weapons systems, to include the U.S. Global Positioning System (GPS), precision-guided weapons, and radar systems.⁸ Many of these minerals are mined in Xinjiang by companies and entities that pose forced labor risk.⁹

¹ Ian Urbina, "The Uyghurs Forced to Process the World's Fish," *The New Yorker*, October 9, 2023, <https://www.newyorker.com/news/news-desk/the-uyghurs-forced-to-process-the-worlds-fish>.

² Urbina, "The Uyghurs Forced to Process the World's Fish."

³ Center for Advanced Defense Studies, "Fractured Veins: The World's Reliance on Minerals from the Uyghur Region," October 11, 2023, <https://c4ads.org/wp-content/uploads/2023/10/FRACTURED-VEINS-FINAL.pdf>.

⁴ Center for Advanced Defense Studies, "Fractured Veins."

⁵ Center for Advanced Defense Studies, "Fractured Veins."

⁶ Laura Murphy, Kendyl Salcito, Yalkun Uluyol, and Mia Rabkin, "Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region," *Sheffield Hallam University*, December 2022.

⁷ Laura Murphy, Kendyl Salcito, Yalkun Uluyol, and Mia Rabkin, "Driving Force."

⁸ Matthew P. Funaiolo, Brian Hart, and Aidan Powers-Riggs, "De-risking Gallium Supply Chains: The National Security Case for Eroding China's Critical Mineral Dominance," *Center for Strategic & International Studies*, August 3, 2023.

⁹ Rodrigo Castillo and Caitlin Purdy, "China's Role in Supplying Critical Minerals for the Global Energy Transition," *Brookings Institution*, July 2022.

A second factor undermining enforcement of the UFLPA is Beijing's increased transshipment of forced labor products to the United States through third countries, including U.S. free trade agreement (FTA) partners. According to CBP's UFLPA Dashboard, other Asian countries now outpace the PRC for the most detained shipments by value. This trend is evident in the electronics sector, where goods detained from Malaysia, Vietnam, and Thailand since June 2022 were valued at \$1.16 billion, \$511.14 million, and \$157.79 million, respectively, far outpacing the PRC's \$5.24 million of detained goods.¹⁰

In the apparel, footwear, and textiles sector Vietnam also surpasses the PRC for products detained for UFLPA violations.¹¹ Vietnam, among many other countries, extensively sources cotton, yarn, and fabric from the PRC – where 90 percent of cotton originates in the XUAR¹² – to produce finished textile goods for export to the United States. According to the U.S. International Trade Commission, these third-country exporters are likely a significant channel through which Xinjiang-origin cotton enters the United States.¹³ Despite these concerns, between June 2022 and September 2023, CBP detained an anemic \$43 million in shipments of textiles, apparel, and footwear despite total U.S. imports of \$184 billion in this sector in 2022 and DHS identifying cotton as a UFLPA priority enforcement sector.¹⁴ Given the massive volume of imports in a sector flagged for priority enforcement, we would expect to see regular large-scale detentions of these products. Instead, CBP's average UFLPA reviews per month for textile and apparel goods actually dropped in 2023 compared to 2022.¹⁵ These numbers also exclude potential textile and other forced labor products shipped through the *de minimis* channel, a classification not recorded by CBP, and a serious concern highlighted in the Committee's "Fast Fashion and the Uyghur Genocide: Interim Findings" report.¹⁶

The United States' FTA partners in the Western Hemisphere are also transshipping Uyghur forced labor goods into the U.S. market. For example, despite a strong yarn-forward rule of origin provision granting duty-free benefits for apparel using yarn and fabric from member countries of the Dominican Republic-Central America-United States (CAFTA-DR) and U.S.-Mexico-Canada Agreement (USMCA) FTAs, CBP detained six shipments from Nicaragua for testing positive for Xinjiang cotton in July 2023.¹⁷ These detentions occurred months after Nicaragua signed an FTA with the PRC that included "raw materials for textiles," raising

¹⁰ U.S. Customs and Border Protection, "Uyghur Forced Labor Prevention Act Statistics," accessed January 8, 2024.

¹¹ U.S. Customs and Border Protection, "Uyghur Forced Labor Prevention Act Statistics."

¹² Eric Davis and Fred Gale, "Shift in Geography of China's Cotton Production Reshapes Global Market," *U.S. Department of Agriculture Economic Research Service*, December 5, 2022.

¹³ Laura T. Murphy, et al., "Laundering Cotton: How Xinjiang Cotton is Obscured in International Supply Chains," *Sheffield Hallam University*, November 2021.

¹⁴ Dylan Carlson and Marin Weaver, "Disentangling the Knot: Identifying U.S. and Global Exposure to Xinjiang Cotton," *U.S. International Trade Commission Office of Industries*, October 2022.

¹⁵ UFLPA Dashboard, accessed November 18, 2023.

¹⁶ Select Committee on the CCP, "Fast Fashion and the Uyghur Genocide: Interim Findings," June 22, 2023.

¹⁷ Testimony of Kim Glas, Hearing on Exploitation and Enforcement: Evaluating the Department of Homeland Security's Efforts to Counter Uyghur Forced Labor, House Committee on Homeland Security Subcommittee on Oversight, Investigations, and Accountability, October 19, 2023.

concerns that CAFTA-DR exports of textiles and apparel to the United States may violate both the UFLPA and CAFTA-DR's yarn-forward rule of origin.¹⁸

To address these concerns, we urge DHS to aggressively step up enforcement of potential UFLPA violations by goods shipped from the PRC and indirectly through third countries. These measures should include adding companies outside the PRC that profit from the use of Uyghur forced labor to the UFLPA Entity List; exponentially increasing testing of goods at ports of entry for UFLPA violations, including by expanding the use of isotopic and other testing; and better publicizing CBP's enforcement activities to deter would-be violators. CBP should also increase its on-site inspections of production sites in CAFTA-DR and USMCA countries to conduct rule of origin verification investigations, which have plummeted in recent years despite a massive influx of yarns and fabrics from the PRC into the region.¹⁹

In addition, DHS should significantly enhance its collaboration with federal agencies that have a level of responsibility and additional resources that could be helpful in your enforcement activities. For example, the Department of Commerce and the Office of the U.S. Trade Representative could assist in identifying suspicious global trade patterns involving the PRC to help target countries that are potentially serving as transshipment points and to identify specific products potentially made with forced labor. DHS should also urgently expand its collaboration with the Department of Justice's (DOJ) "Trade Fraud Task Force," which is responsible for prosecuting and assessing penalties against violators of U.S. trade statutes, including UFLPA. We are concerned that DOJ has limited the authority of and woefully under-resourced this task force, which is responsible for prosecuting cases across the estimated \$163-\$327 billion a year that international trade crime (i.e. lack of rule of origin compliance, illegal importation of banned good, etc.) costs the United States.

Substantially expanded national-level collaboration between DHS, DOJ, and other interagency partners in prosecuting international trade crimes will be essential for effectively enforcing the UFLPA. Without the deterrent effect of substantially increased levels of legal actions against trade crime perpetrators, companies will continue violating the UFLPA at will. The lack of prosecutions to date could explain why the United States imported \$3.27 trillion in goods in 2022, but CBP only collected \$19.3 million in penalties that year. We applaud the recent establishment of DHS's Center for Countering Human Trafficking to help combat the importation of goods produced with forced labor. Nevertheless, we view this as only a first step and urge DHS to use this center to significantly enhance cooperation with DOJ's Trade Fraud Task Force and other interagency partners to increase criminal prosecutions against persons profiting off the use of Uyghur forced labor, including in all UFLPA priority sectors as well as in the critical minerals and seafood industries.

¹⁸ U.S. Customs and Border Protection, "Uyghur Forced Labor Prevention Act Statistics."

¹⁹ Testimony of Kim Glas, Hearing on Exploitation and Enforcement.

Finally, given the complexity and urgency of these needed actions, we urge DHS to appoint a top-level political official with the mandate to lead and coordinate its UFLPA enforcement efforts.

A final factor undermining enforcement of the UFLPA is the *de minimis* provision in U.S. trade law which presents serious challenges to DHS and CBP's effective enforcement of the UFLPA. Since the *de minimis* threshold was raised from \$200 to \$800 by the Trade Facilitation and Trade Enforcement Act of 2015 and with the rise of new online-only retailers, the scale of *de minimis* imports arriving in the United States has surged from 150 million packages in 2016 to 720 million in 2021, of which more than half—440 million packages—were from the PRC. This exponential growth continued in 2023, with *de minimis* shipments topping one billion. As outlined in the Select Committee's June 2023 report on PRC fast fashion companies, Shein and Temu alone account for nearly 30% of all packages shipped to the United States daily under the *de minimis* provision, and likely nearly half of all *de minimis* shipments to the United States originate from the PRC. The investigation further found that PRC companies rely on the *de minimis* provision to avoid bearing responsibility for compliance with the UFLPA and other prohibitions on forced labor while relying on tens of thousands of PRC suppliers to ship goods direct to U.S. consumers.

Assessing UFLPA compliance for *de minimis* shipments is challenging since packages shipped via this provision include limited data and do not require a customs broker. According to the Commercial Customs Operations Advisory Committee, transmitted data for *de minimis* shipments “often does not adequately identify the entity causing the shipment to cross the border, the final recipient, or the contents of the package.”²⁰ CBP itself has attested to the challenges of monitoring *de minimis* shipments for UFLPA compliance. As it stated in 2022, “[t]he overwhelming volume of small packages and lack of actionable data limits CBP's ability to identify and interdict high-risk shipments that may contain narcotics, merchandise that poses a risk to public safety, counterfeits, or other contraband”—presumably including goods made with forced labor.²¹ CBP concluded that the massive volume of packages shipped via *de minimis* amounts to “1 billion shipments with insufficient data to properly determine risk. That is an unacceptable risk to the American people.”²²

In short, the *de minimis* provision has created a major avenue for goods made by forced labor—as well as fentanyl, counterfeit products, and other unsafe goods—to enter the U.S. market. Moreover, we do not believe CBP pilot programs to collect additional data on *de minimis* shipments will adequately stem the flow of these goods into the United States. Under existing statute, the Secretary of the Treasury is authorized to “prescribe exceptions” to *de*

²⁰ Commercial Customs Operations Advisory Committee, “Government Issue Paper: Next Generation Facilitation Subcommittee E-Commerce Task Force,” *U.S. Customs and Border Protection*, June 2023.

²¹ Commercial Customs Operations Advisory Committee, “Government Issue Paper: E-Commerce,” *U.S. Customs and Border Protection*, June 2022.

²² Commercial Customs Operations Advisory Committee, “E-Commerce.”

minimis exemptions if deemed “necessary for any reason to . . . prevent unlawful importations.” We therefore request DHS’s written assessment of the potential effect on UFLPA enforcement efforts of altering *de minimis* eligibility for textile and apparel and other high-risk items, including determining whether exceptions to *de minimis* treatment are warranted for certain high-risk items to prevent unlawful importations.

In addition to the requests contained in this letter, we respectfully request that you provide written responses to the following questions no later than March 1, 2024:

1. Whether any of the following 29 entities have been involved in using Uyghur forced labor and meet the criteria for being placed on the UFLPA Entity List. In the event you determine any of the below entities do not meet the criteria for designation, please elaborate on your reasoning for each case:
 - a. Chishan Group Co., Ltd.
 - b. Qingdao Lian Yang Aquatic Product Co., Ltd.
 - c. Qingdao Tianyuan Aquatic Foodstuff Co., Ltd.
 - d. Rizhao Jiayuan Foodstuff Co., Ltd.
 - e. Rizhao Meijia Aquatic Foodstuff Co., Ltd.
 - f. Rizhao Meijia Keyuan Foods Co., Ltd.
 - g. Rizhao Rirong Aquatic Products Food Co., Ltd.
 - h. Rizhao Rongxing Food Co., Ltd.
 - i. Rongcheng Haibo Seafood Co., Ltd.
 - j. Rongcheng City Xinhui Aquatic Co., Ltd.
 - k. Shandong Haidu Ocean Product Co., Ltd.
 - l. Yantai Longwin Foods Co., Ltd.
 - m. Yantai Sanko Fisheries Co., Ltd.
 - n. Baiyin Nonferrous Group Co., Ltd.
 - o. China Baowu Iron and Steel Group Co., Ltd.
 - p. China Daye Nonferrous Metals Mining Co., Ltd.
 - q. China Molybdenum Co., Ltd.
 - r. Jiuquan Iron and Steel Group Co., Ltd.
 - s. Lingbao Gold Group Co., Ltd.
 - t. Shandong Gold Group Co., Ltd.
 - u. Western Mining Co., Ltd.
 - v. Xinjiang Baodi Mining Co., Ltd.
 - w. Xinjiang Nonferrous Metal Industry Group Co., Ltd.
 - x. Xinjiang TBEA Group Co., Ltd.
 - y. Zhaojin Mining Industry Co., Ltd.
 - z. Zijin Mining Group Co., Ltd.
 - aa. TBEA Co. Ltd.
 - bb. Western Region Gold Co., Ltd.
 - cc. Akto Kebang Manganese Manufacturing Co., Ltd.

2. The UFLPA Entity List is meant to deter entities from using forced labor. There are multiple groups advocating for more companies to be added to the list, yet there are only 41 entities currently on the list. Why is CBP not more robustly using this enforcement tool, and what reforms might be necessary to improve the tool's effectiveness?
3. Despite nearly two billion dollars' worth of shipments from third countries being detained for UFLPA violations, why has DHS not listed a single company outside the PRC on the UFLPA Entity List? What additional tools or resources does CBP need to expand its capacity to monitor shipments from third countries?
4. DHS has never provided a list of entities that meet the threshold for inclusion on the UFLPA Entity List as described in UFLPA Section 2(d)(2)(B)(iv). According to the DHS website, DHS has "not identified additional exporters" that meet the threshold for inclusion on the risk. Meanwhile, civil society and the private sector have identified multiple companies that meet this threshold. Why has DHS not created "a list of entities that exported products" from Xinjiang as mandated in the UFLPA?
5. What is DHS's plan to designate additional companies, entities, and industrial parks that have either participated in or benefited from state-sponsored labor transfers? According to information reviewed by the Committee, dozens of industrial parks and companies that have taken part in labor transfer programs have not yet been designated.
6. How does CBP prioritize different sectors for UFLPA enforcement and how are those determinations made? What level of attention have targeted sectors received in terms of enforcement, respectively?
7. Given textile and apparel's identification as a UFLPA priority enforcement sector, why is CBP enforcement for this sector astonishingly low relative to its volume of imports and declining?
8. Why is isotopic testing not being aggressively expanded, and what impact would CBP expect an expansive isotopic testing program to have on finding and stopping UFLPA imports of textiles and apparel? Why is CBP only utilizing one isotopic testing company, and has CBP sought competitive bids for isotopic testing to ensure it is receiving good value?
9. What forms of testing is CBP using to ensure UFLPA compliance outside of isotopic testing? Are there other forms of testing that might be more effective for enforcement?
10. In addition to testing at ports upon arrival, is DHS using isotopic testing for garments at U.S. retail to determine origin? If not, what barriers exist for DHS to conduct isotopic testing on products at retail?
11. How many companies has DHS investigated to date for profiting from Uyghur forced labor under the UFLPA or U.S. Trafficking Victims Protection Reauthorization Act? What is DHS's plan to expand prosecution under these laws?
12. Since the PRC joined the World Trade Organization in 2001, how many people have been sentenced to prison for committing international trade crimes involving companies or entities located in the PRC like AD/CVD, country of origin, undervaluation, and misclassification, and how much money was recovered?

13. Due to the complexity of trade crimes that are often both national and international in nature, does DHS believe its Center for Countering Human Trafficking is adequately resourced to serve as the full-time, national-level dedicated unit of expert agents needed to fully investigate and prosecute trade-related crimes across jurisdictions? If it doesn't, why not?
14. What if any collaboration exists between DHS and DOJ's Trade Fraud Task Force regarding UFLPA enforcement? What are the barriers to expanded collaboration and enforcement actions between these two agencies?
15. Since by the time cases are prosecuted, many manufacturing industries go out of business, what are concrete actions HSI and DOJ could take today to expedite legal proceedings to stem job loss in U.S. manufacturing industries?
16. What if any collaboration exists between DHS and/or CBP and the U.S. Intelligence Community on issues related to the UFLPA, particularly on issues relating to tracking rare earth and critical minerals mined and processed in-whole or in-part in Xinjiang? Does the FLETF maintain access to secure facilities to access and action relevant intelligence reporting? How many CBP and FLETF employees maintain security clearances? Would additional Intelligence Community resources and expertise help CBP and DHS efforts to expand UFLPA enforcement?
17. How is CBP enforcing UFLPA for *de minimis* shipments and how many *de minimis* shipments have been detained for violating UFLPA since June 2022? What percentage of UFLPA non-compliant goods shipped via *de minimis* does CBP believe it is detaining?
18. Can CBP calculate how much fentanyl is entering the United States via *de minimis*?
19. What new tools, funding, or authorities does CBP require to improve enforcement of the UFLPA?
20. Congress has been alerted that FLETF does not maintain its own funding line. As the FLETF Chair, what resources does DHS need to fully implement a robust and efficient UFLPA Entity List process? How many additional FTEs does DHS need to support the UFLPA Entity List process?
21. What additional financial resources do other FLETF members need to fully implement statutory requirements for the expansion of the UFLPA Entity List?

The House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party has broad authority to “investigate and submit policy recommendations on the status of the Chinese Communist Party’s economic, technological, and security progress and its competition with the United States” under H. Res. 11.

To make arrangements to deliver a response, please contact Select Committee staff at (202) 226-9678.

Thank you for your attention to this important matter and for your prompt reply.

Sincerely,

A handwritten signature in blue ink, appearing to be 'MG', followed by a long horizontal line.

Mike Gallagher
Chairman
House Select Committee on the CCP

A handwritten signature in blue ink, appearing to be 'Raja Krishnamoorthi', followed by a long horizontal line.

Raja Krishnamoorthi
Ranking Member
House Select Committee on the CCP

CC: The Honorable Merrick Garland, Attorney General, U.S. Department of Justice