TESTIMONY OF HON. DEAN A. PINKERT
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BEFORE THE
CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA
ON
USING U.S. TRADE LAW TO COMBAT FORCED LABOR IN THE CHINESE SEAFOOD INDUSTRY

Thank you for the opportunity to testify before this distinguished Commission on one of the most urgent tasks in U.S. trade enforcement—enhancing efforts to address systematic use of forced labor in China's seafood industry. My name is Dean Pinkert. I'm a former commissioner of the U.S. International Trade Commission, serving as a commissioner from 2007 to 2017, and as Vice-Chairman of that body from 2014 to 2016. I am currently Special Advisor to Corporate Accountability Lab (CAL), a human rights nonprofit organization in Chicago. CAL is active in petitioning U.S. Customs and Border Protection (CBP) for forced labor import bans under Section 307 of the Tariff Act of 1930. In addition, CAL participates in the Tariff Act Advocates Group, the Coalition Against Forced Labor in Trade, and the Illegal, Unreported, and Unregulated (IUU) Fishing & Labor Rights Coalition, and co-chairs the Uyghur Forced Labor Prevention Act (UFLPA) Implementation Working Group.

China is the world's largest seafood producer and exporter, supplying a substantial share of the fish and shellfish reaching American consumers. There is a documented state practice of using Uyghur and other minority-group workers, under coercive conditions, in Chinese seafood production. Goods produced under these conditions enter U.S. commerce at a price advantage underwritten by human suffering.

Congress has assembled a flexible toolkit of legislation that can be used to address this problem—including Section 307, the UFLPA, Section 1595a civil penalties, and Section 301 of the Trade Act of 1974. The issue is not

an absence of statutory authority; it is the failure to use these tools at scale, in combination, and with the creativity the circumstances demand.

Strengthening Traceability and Transshipment Enforcement Under Section 307 and the UFLPA

Section 307 prohibits the importation of goods produced in whole or in part by forced labor, and the UFLPA creates a rebuttable presumption that any goods mined, produced, or manufactured in the Xinjiang Uyghur Autonomous Region—or by entities on the UFLPA Entity List—are made with forced labor and are therefore inadmissible. These are powerful tools. But their effectiveness depends on the U.S. government's ability to trace goods from point of harvest through processing to the port of entry; the Forced Labor Enforcement Task Force's (FLETF's) ability to maintain a timely cadence of placing companies on the Entity List; and the willingness of CBP to move under Section 307 directly when the UFLPA itself does not satisfy enforcement objectives.

Chinese seafood supply chains are deliberately opaque. Fish caught in distant waters can be transshipped through intermediary ports, relabeled, co-mingled with locally sourced product, and re-exported to the United States. This can render conventional documentation-based compliance less than fully effective. CBP should therefore require positive traceability documentation—vessel-level catch certificates, processing facility records, and chain-of-custody attestations—for high-risk seafood species and sourcing regions. Importers who cannot provide this documentation should not be permitted U.S. customs entry of their merchandise.

An existing federal program provides infrastructure for the traceability regime the forced labor problem in this sector demands. The Seafood Import Monitoring Program (SIMP), administered by NOAA under 50 C.F.R. Part 300, Subpart Q, already requires collection and/or reporting of vessel-level harvest data, species identification, and chain-of-custody records for thirteen high-risk species. CBP

should treat SIMP documentation as a necessary—though not always sufficient—predicate for admissibility, and NOAA should expand SIMP's species coverage to close the gaps that bad actors currently exploit by routing tainted product through non-covered species and supply chains.[1] SIMP can also be improved by including additional data elements to address labor abuse risks, requiring pre-entry notification of SIMP data, enhancing data verification and enforcement activity, and formalizing interagency coordination and data sharing.

Congress should examine any reluctance on the part of CBP to use Section 307 to issue sector-wide Withhold Release Orders covering Chinese seafood processed in facilities that have received state-transferred labor, without requiring individualized proof of coercion at each facility. The need for this is highlighted by the fact that CBP appears to regard a Withhold Release Order as a necessary predicate for imposing civil penalties on U.S. imports of these products.

Expanding the UFLPA Entity List

The UFLPA Entity List should be expanded, and the FLETF should devote particular attention in this regard to Chinese seafood processors, cold-chain logistics firms, and fishing fleet operators.

Listing has asymmetric value, meaning its value greatly exceeds its cost, by shifting the burden of proof to importers, creating immediate commercial pressure on listed entities, and signaling to the broader industry that participation in supply chains tainted by Chinese-government-mandated forced labor carries legal and reputational consequence. The FLETF should set an explicit timetable for seafood-sector designations and report to Congress on the evidentiary gaps, if any, that they believe have delayed action.

[1] A recently published meta-analysis shows that seafood mislabeling is rampant in the U.S. market, with species substitution being the predominant issue, https://www.sciencedirect.com/science/article/pii/S0956713524008272.

Civil Penalties Under 19 U.S.C. § 1595a

Section 1595a authorizes civil penalties for importations made contrary to law.[2] Forced labor importations in violation of Section 307 fit precisely into this authorization. Yet penalties are rarely imposed in the forced labor context, and their deterrent potential has largely gone unrealized.

A robust Section 1595a enforcement program would provide two benefits that detentions alone cannot. First, penalties impose a financial cost on importers who have not self-policed their supply chains and thereby create a direct economic incentive for upstream due diligence. Second, penalty proceedings can generate evidence—through CBP's demand for importer documentation and the importer's response—revealing supply-chain structures otherwise hidden from regulators.

The ultimate efficacy of such a program will depend in large part on how well it is understood by the relevant actors. CBP should therefore publicize its enforcement actions and, if possible, provide industry and civil society with a penalty matrix that helps them to help the government in its efforts to combat forced labor.

Using Section 301 to Target Supply-Chain Bifurcation

Perhaps the most sophisticated challenge in this space is the practice of supply-chain bifurcation: companies maintaining nominally compliant product lines for export to the United States while continuing to use state-imposed forced labor in lines destined for other markets or sold domestically. Compliance, in other words, is purely performative, staged only for CBP's benefit.

Section 301 authorizes the U.S. Trade Representative (USTR) to investigate and respond to foreign acts, policies, or practices that are unreasonable or discriminatory and burden or restrict U.S. commerce. A foreign government policy that induces companies to

[2] 19 U.S.C. § 1595a(c).

simulate compliance while preserving state-imposed forced labor in non-U.S.-destined production is exactly the kind of state-implicated anticompetitive practice that Section 301 was designed to address; it enables the use of forced labor to achieve economies of scale that work to the disadvantage of U.S. producers. USTR must not turn a blind eye to the geographic sorting of tainted from untainted shipments.

The U.S. government's goal should be that companies disengage entirely from state-imposed forced labor rather than allowing it to tilt the commercial playing field against U.S. companies.

Conclusion

We have the legal tools to address forced labor in seafood supply chains, including where, as in China, it is an instrument of state policy. The myriad laws in this space are mutually reinforcing; when deployed with strategic coordination and resolve, they can impose meaningful costs on companies that seek to benefit from this egregious human rights violation.

Congress should (1) urge the Administration both to mandate that seafood traceability documentation be provided to CBP and to enhance SIMP to address forced labor risk in the seafood sector, (2) work with the FLETF to accelerate UFLPA Entity List designations in the sector, (3) provide oversight to press CBP in the direction of an active and effective Section 1595a civil penalty program, and (4) explore with USTR the possibility of a Section 301 investigation into supply-chain bifurcation. Each of these steps is plainly within existing legal authority.

I look forward to the Commission's questions.