

August 5, 2022

VIA ELECTRONIC SUBMISSION

Joshua Kagan
Assistant U.S. Trade Representative for Labor Affairs
Office of the United States Trade Representative
600 17th Street, NW
Washington, D.C. 20006

Docket No. USTR 2022-0006

Re: Comments of the Institute of Shortening and Edible Oils to the Office of the United States Trade Representative on its Trade Strategy to Combat Forced Labor

Dear Assistant USTR Kagan:

The Institute of Shortening and Edible Oils (ISEO) appreciates the opportunity to provide comments to the Office of the United States Trade Representative (USTR) as it seeks to coordinate with all relevant United States federal agencies to develop a focused trade strategy to combat forced labor. We applaud USTR for taking this important step and look forward to being a resource and partner to you as you move forward.

Introduction

ISEO submits these comments on behalf of U.S. refiners who produce 95 percent of domestic edible fats and oils from the following commodities: U.S. grown soybean, U.S. grown corn, U.S. grown cottonseed, U.S. grown canola, U.S. grown rice, U.S. grown sunflower, U.S. grown safflower, U.S. produced lard, tallow, and wheat germ, as well as imported commodities such as olive, palm, palm kernel, coconut, canola and sunflower used for baking, frying, cooking and also as ingredients in a wide variety of foods and personal care products from confections to cosmetics to renewable energy sources.

ISEO Members Condemn Forced Labor in the Strongest Terms

ISEO and its member companies condemn forced labor in the strongest terms and take any allegations of such practices seriously. We have worked hard – and will so continue – to eradicate forced labor practices around the globe to ensure our supply chains are forced labor free. ISEO members do not tolerate the use of such practices, and we demand those with whom we do business to adhere to the same standards. ISEO members are committed to working collaboratively with the U.S. Congress, U.S. federal agencies, foreign governments, NGOs, and the private sector to eradicate forced labor.

ISEO Supports Flexible, Incentive-Based Strategies to Combat Forced Labor

As USTR develops a trade strategy to combat forced labor, ISEO encourages the agency to incorporate a fundamental principle of flexibility in recognition of the underlying complexities and nuances inherent in addressing such practices. While exclusion of products made with forced labor is mandatory under U.S. law, efforts to address root causes (especially those within government control and not that of any company), and avoiding application of a rigid, one-size-fits-all approach to the evaluation of forced labor criteria will enable the U.S. government and its trading partner allies to respond effectively and appropriately to a variety of circumstances and fact patterns with carefully crafted and tailored measures.

Indeed, flexibility, as opposed to a more unyielding approach, should be compelled when dealing with complex supply chains. This is the case for many agricultural commodities – where production is non-stationary and can involve various degrees of in-country processors, middlemen brokers and small-holder farms operating in remote locations ranging in quantities from tens of thousands to millions, depending on the commodity and region.

This approach stands a better chance of eradicating the scourge of forced labor and can be achieved with consideration of a continuum of actions, leading with incentive-based measures, such as technical assistance, foreign diplomacy, and a whole-of-government approach that involves all stakeholders and provides an opportunity to address specific concerns before stringent penalizing actions are taken.

Punitive Measures and Import Bans Should Be Utilized as Last Resort

With regard to punitive measures, import prohibitions are important tools for combatting forced labor. There has been a growing interest in and utilization of such tools, including Congress's enactment of the Uyghur Forced Labor Prevention Act and the Administration's efforts to encourage trading partners to enact legislation similar to Section 307, the U.S. law prohibiting the importation of forced labor-made goods. ISEO is not opposed to import bans, but believes these tools should be used after meaningful engagement to understand the nature of the problem, whether an intergovernmental issue is involved, and the optimal methods to demonstrate that no forced labor is involved, taking into account the nature of the good and the way it is produced. ISEO also believes the current process by which the U.S. enforces its forced labor import ban is in need of reform to ensure greater clarity and transparency.

Import prohibitions are difficult to implement narrowly and often are overreaching in enforcement – this is particularly so when the subject product is a raw material or component used in numerous finished goods spanning multiple industries. Use of such tools as a first course of action, without a nuanced understanding of the issues, especially in isolation, can have disruptive results and unintended consequences. Import bans can result in the exclusion of compliant merchandise and encourage actors operating in good faith to “cut and run” rather than stay with suppliers and leverage that commercial relationship to ensure they make serious efforts to address problems. For these reasons, ISEO strongly believes import bans should be used against bad actors after deficiencies are identified and failure to demonstrate progress in good faith toward clearly defined objectives is established.

ISEO has experienced first-hand challenges with U.S. Customs and Border Protection's (CBP's) enforcement of the U.S. forced labor import ban through the application of withhold release orders (WROs) covering palm oil from Malaysia. Inconsistent and non-transparent enforcement of these WROs have resulted in the exclusion of compliant merchandise falling outside the scope of the WRO. CBP's failure to provide specificity of deficiencies to secure entry – even from suppliers not covered by a WRO – have led some importers to abandon the Malaysian market altogether. The loss of U.S. buyers, who drive demand for sustainably-produced and forced labor-free palm oil, is not inconsequential for Malaysian workers because buyers from other countries are willing to purchase palm oil without concern for or inquiry into the conditions under which it was produced. Used effectively and in harmony with the realities of production and transport along with the efforts of enlightened industry to address shortcomings, U.S. law could be an even greater force for positive change. Process and transparency reforms are needed to address these WRO enforcement shortcomings and facilitate the entry of compliant merchandise. ISEO urges USTR to support these changes as it considers the application and enforcement methodologies relating to import bans as part of its forced labor strategy.

USTR Should Distinguish Treatment of Cooperative Partners in Addressing Forced Labor

When engaging with like-minded trade partners to address forced labor as an unfair trade practice, ISEO urges USTR to develop a strategy that accounts for differences between trading partners that are cooperative and committed to eradicating forced labor in good faith on the one hand, and those that are uncooperative and complicit in such practices on the other. In the former case, USTR should implement a strategy that is no more restrictive than necessary to achieve the goals of protecting workers' rights against forced labor. Importantly, meaningful engagement with the country, supplier and industry to address specific concerns should be the first course of action, in order that facts are fully developed and well understood. In the latter case where there is a lack of co-operation, ISEO recognizes that diplomacy may not be feasible, if not impossible, but it is still worthwhile engaging with U.S. industry to understand how they have attempted to monitor and/or address forced labor concerns with suppliers. Under such circumstances of non-cooperation and where U.S. industry has not been able to gain traction in its own efforts, more stringent action would be warranted as engagement is unlikely to yield any measurable improvement for workers.

ISEO Urges Collaborative Engagement and Partnership with Private Sector Stakeholders

All too often companies are viewed as perpetrators, as opposed to partners; the truth is more complex and many responsible U.S. companies have ESG policies and procedures which mandate their own efforts to meaningfully address social issues. This oversimplified view has prevented the sharing of crucial information that could lead to the identification of bad actors and remediation of workers in forced labor situations. Industry is on the front lines in the battle against forced labor and has an important role to play when it comes to influencing suppliers and supporting workers' rights. The U.S. Government can make the development of a trade policy on forced labor a more inclusive process by collaborating with private sector stakeholders who are committed to eradicating forced labor from their supply chains.

Conclusion

Thank you for your consideration of these comments. ISEO stands ready to be a resource and a partner to USTR as it builds its federal trade strategy to combat forced labor.

Sincerely,

Kailee Tkacz Buller

Kailee Tkacz Buller, President, Institute of Shortening and Edible Oils