

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

September 19, 2018

The Honorable Gene L. Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street NW
Washington, D.C. 20548

Dear Comptroller General Dodaro,

I write to request a Government Accountability Office (GAO) review of the U.S. Customs and Border Protection's (CBP) enforcement of Section 307 of the Tariff Act of 1930 to combat illicit labor practices related to the seafood supply chain.

Illegal, unreported, and unregulated (IUU) fishing has been a major concern for the House Committee on Natural Resources. Though IUU fishing is generally associated with environmental harm, it also encompasses a number of other illicit practices, including the use of slave or forced labor. The International Labour Organization (ILO) has found that there is a link between illegal fishing and the use of forced labor.¹ The Presidential Task Force on Combating IUU Fishing and Seafood Fraud (Task Force), an interagency process initiated by the Obama administration in 2014, has similarly observed that "[o]perators of IUU fishing vessels also tend to deny to crew members fundamental rights concerning the terms and conditions of their labor."²

Recognizing this and pursuant to the recommendation of the Task Force, the U.S. government has initiated the Seafood Import Monitoring Program (SIMP) to increase transparency in imported seafood supply chains and to prevent IUU-caught and/or misrepresented seafood from entering U.S. commerce. SIMP requires covered importers to report detailed supply chain information, including the name of the fishing vessels, dates of first landing, transshipment, or delivery, as well as names of entities (processor, dealer, vessel) that landed the product or the recipient of the delivered product.³ Although the data currently collected under SIMP does not specifically cover labor practices, the supply chain information required by SIMP is crucial in the investigations of

¹ *Forced Labour and Human Trafficking in Fisheries*, INT'L LAB. ORG., <http://www.ilo.org/global/topics/forced-labour/policy-areas/fisheries/lang--en/index.htm> (last visited Aug. 20, 2018).

² Presidential Task Force on Combatting IUU Fishing and Seafood Fraud, Action Plan for Implementing the Task Force Recommendations 4-5 (2015), https://www.iuufishing.noaa.gov/Portals/33/noaa_taskforce_report_final.pdf.

³ 50 C.F.R. § 300.324(b).

or processed by entities known to have employed forced labor. As such, the implementing agency, the National Oceanic and Atmospheric Administration (NOAA), has committed to “provide information regarding entries of seafood product to aid in the investigation or prosecution of labor crimes by one of the U.S. government agencies that has the mandate and authority to do so.”⁴

Section 307 of the Tariff Act of 1930 is an important mechanism to stop the importation of goods, including seafood products, made with forced labor.⁵ The provision prohibits the importation of goods mined, produced, or manufactured, wholly or in part, in any foreign country by forced or convict labor. CBP has authority to issue withhold release orders (WROs) to detain certain shipments when information “reasonably but not conclusively indicates” they are produced with forced labor.⁶ If further investigations confirm the initial finding, CBP is mandated to exclude the products from the U.S. market.

By passing the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), Congress closed a decades-old loophole, known as the “consumptive demand” clause,⁷ which made it virtually impossible for CBP to enforce the provision with respect to seafood imports.

However, since the enactment of the law in February 2016, CBP’s level of enforcement of Section 307 does not match the prevalence of forced labor in global supply chains. The most recent ILO report estimated that there are 24.9 million people in forced labor around the world,⁸ 11 percent of whom are working in the agriculture and fishing sector.⁹ Since TFTEA’s enactment, CBP has only issued six WROs.¹⁰ None of the WROs covers seafood products. Five of the WROs are limited to specific Chinese product shipments to particular importers. The remaining WRO is the only one that addresses the industry-wide use of forced labor, although there is no public information on whether any shipments have in fact been detained pursuant to this WRO.¹¹

⁴ Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program, 81 Fed. Reg. 88,975, 88,978 (Dec. 9, 2016); *see also U.S. Seafood Import Monitoring Program*, National Ocean Council Committee on IUU Fishing and Seafood Fraud, <https://www.iuufishing.noaa.gov/RecommendationsandActions/RECOMMENDATION1415/FinalRuleTraceability.aspx> (last visited Aug. 20, 2018).

⁵ 19 U.S.C. § 1307.

⁶ 19 C.F.R. § 12.42(e).

⁷ Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. No. 114-125, 130 Stat. 121, 239. The “consumptive demand” clause exempted forced labor-produced goods from compliance with Section 307 if the goods were not produced “in such quantities in the United States as to meet the consumptive demands of the United States.”

⁸ Int’l Lab. Org., *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage – Frequently Asked Questions 5* (2017), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_575605.pdf.

⁹ *Id.* at 6.

¹⁰ *Detention Orders (Withhold Release Orders)*, U.S. Customs and Border Prot., <https://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations/detention-orders> (last visited Aug. 20, 2018).

¹¹ *Id.* The WRO applies to “[a]ll Turkmenistan Cotton or products produced in whole or in part with Turkmenistan cotton.”

I understand that, in an effort to increase enforcement of the provision, CBP has issued Form 28: Requests for Information seeking additional supply chain information from certain importers, including those in the seafood industry, whose goods originate from countries and sectors CBP deems to contain a high risk of forced labor. However, it is unclear how many importers have been asked to submit such information, how CBP assesses the accuracy and sufficiency of the information submitted, and to what extent, if at all, such information has informed CBP's enforcement of Section 307.

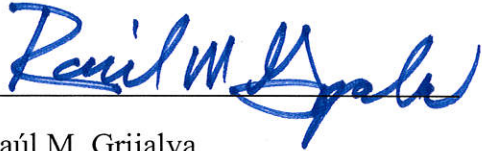
As required under TFTEA, GAO published a report in 2017 examining how CBP conducts trade enforcement in high-risk areas identified by the agency and the staffing needs for its efforts to be effective.¹² Although the report provides valuable insights into CBP's general operation in relation to trade enforcement, to gain a better understanding of the specific issues CBP may be facing in enforcing Section 307 of the Tariff Act, I request that GAO conduct a review of CBP's operations and enforcement efforts in implementing Section 307 for the seafood industry. I urge GAO to review the following questions:

- To what extent has CBP taken actions to enforce compliance with the provision for seafood, and what were the results/outcomes of any actions taken?
- How are resources allocated by CBP for enforcement of the provision for seafood, and how do those compare to other priority trade enforcement issues, such as those related to import safety or intellectual property rights?
- What is known about the level of resources required to effectively enforce and ensure compliance of the provision for seafood?
- What tools and information does CBP have available to enforce compliance with the provision for seafood? How has CBP used labor-specific information collected through Form 28s to identify risks of noncompliance? How does the agency assess and verify the accuracy and sufficiency of the information submitted?
- To what extent has information collected under SIMP been referred to CBP for identifying high-risk seafood shipments under section 307?
- How does CBP coordinate with NOAA to help identify potential noncompliance concerns and in taking enforcement actions? Are there additional opportunities for coordination between the two agencies related to information gathering, reporting, and enforcement authorities that could facilitate better identification of noncompliant products?

¹² U.S. Gov't Accountability Office, GAO-17-618, Customs and Border Protection: Improved Planning Needed to Strengthen Trade Enforcement (2017), <https://www.gao.gov/assets/690/685215.pdf>.

I look forward to working with you and your staff as you conduct this review. If you have any questions, please contact Lora Snyder (lora.snyder@mail.house.gov) on the House Natural Resources Committee staff.

Sincerely,



Raúl M. Grijalva
Ranking Member
House Natural Resources Committee