



March 10, 2022

VIA ELECTRONIC SUBMISSION

Hon. Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security

Cynthia Echeverria, Acting Director of Trade Policy, U.S. Department of Homeland Security

Docket No. DHS-2022-0001

Forced Labor Enforcement Task Force

Re: Comments of the Institute of Shortening and Edible Oils to the Department of Homeland Security on behalf of the Forced Labor Enforcement Task Force on its Notice Seeking Public Comments on Methods To Prevent the Importation of Goods Mined, Produced, or Manufactured With Forced Labor in the People's Republic of China, Especially in the Xinjiang Uyghur Autonomous Region, Into the United States, 87 FR 3567 (January 24, 2022)

Dear Secretary Mayorkas and Acting Director Echeverria:

The Institute of Shortening and Edible Oils (ISEO) appreciates the opportunity to provide comments through the Department of Homeland Security (DHS) to the Forced Labor Enforcement Task Force (FLETF) regarding enforcement of the Uyghur Forced Labor Prevention Act (Pub. L. 117-78).

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 sunflower, U.S. grown safflower, U.S. produced lard, tallow, and wheat germ, as well as imported commodities such: 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.

While ISEO member companies are not directly impacted by the Uyghur Forced Labor Prevention Act, as we do not import edible oils from China or Xinjiang Uyghur Autonomous Region, the association is using this opportunity to formally submit comments to DHS and the FLETF regarding the urgent need for clarity and transparency improvements in the overall regulatory framework under which U.S. Customs and Border Protection (CBP) enforces Section 307 of the Tariff Act of 1930, including the issuance of Withhold Release Orders (WROs).

ISEO Members Condemn Forced Labor in the Strongest Terms

First, 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.

Withhold Release Orders and Findings

U.S. CBP issued WROs covering Malaysian palm oil and palm oil products produced by [Sime Darby Plantation Berhad](#) on December 30, 2020, and [FGV Holdings Berhad](#) on September 30, 2020. The labor



practices identified in these WROs are recognized by the International Labor Organization (ILO) as “indicators” of forced labor, and include, among others, unethical recruitment schemes and improper payments exacted from migrant workers. ISEO has and will continue to work with suppliers and Malaysian officials to address and end these intolerable practices. ISEO member companies have pressed Sime Darby and FGV for remediation and have ensured these companies are not present in U.S. supply chains. Despite this, shipments have continued to be stopped by CBP and ultimately have been reexported – not because the shipment contains products produced with forced labor, but because these products are perishable and have limited shelf life and CBP has not clearly stated what documentation is required to clear the merchandise, or specifically identified where such documentation is deficient. The overly complicated and vague WRO detention process has proven long, confusing, and costly, further underscoring the need for CBP WRO process improvements. ISEO members seek clear guidance and instructions for the facilitation of legitimate merchandise in order to secure entry to the U.S. market rather than reexporting, however, the current WRO process does not incentivize this outcome.

CBP to date has not laid out how the process should work between an importer and CBP and what information and documentation is needed to prove that the goods are legitimate, or outside the scope of a given WRO or finding when a shipment has been detained. ISEO requests that when CBP stops a shipment the agency provide an importer with the specific evidence CBP has regarding the shipment and also provide specific information required to secure release. It is very difficult for an importer to refute an allegation without the benefit of knowing or understanding the claim. CBP’s sharing of information with importers, including the specific evidence relied upon for detention of an entry and the specific ILO forced labor indicators alleged, would allow for a more targeted and transparent approach.

While we are in full support of addressing the underlying practices raised in the palm WROs, ISEO has found CBP’s enforcement efforts to be non-transparent and overly broad. We have observed instances which lack of clear direction for compliant imports, inconsistent treatment across U.S. ports, seemingly arbitrary detention of non-violating merchandise, and the lack of a defined process, including what paperwork is needed to clear shipments that do not contain product produced by Sime Darby or FGV, and where such documentation has been provided and rejected, failure to identify the specific deficiencies. Specifically, we have experienced the following:

- 1.) Detention at the port of entry under the authority of an existing Malaysian palm WRO of non-Malaysian origin edible oils that are neither palm oil nor a palm oil product.
- 2.) Failure to notify importers of the specific WRO under which merchandise is being detained.
- 3.) Failure to release detained merchandise when paperwork and documentation clearly indicates a product was not produced by one of the WRO-covered entities without identification of deficiencies.

ISEO strongly supports multi-stakeholder engagement to address the underlying labor issues and was encouraged by steps taken by the Government of Malaysia, including the issuance of a [*National Action Plan on Forced Labor*](#) and commitment to eliminate forced labor by 2030. We are also aware that the U.S. Department of Labor awarded a \$5 million grant to combat forced labor in Malaysia’s palm oil industry. The extent to which these actions will be taken under consideration for their impact on the underlying issues raised in the palm oil WROs remains to be seen. It is our hope that the FLETF and CBP will view these developments as positive, and also provide clear objectives and outcomes for resolution of the specific palm oil WROs and finding so that industry and the government can coordinate remedial efforts.



As we still await clarity on the aforementioned topics, most recently on January 28, 2022 CBP issued a [Notice of Finding That Certain Palm Oil and Derivative Products Made Wholly or In Part With Palm Oil Produced by the Malaysian Company Sime Darby Plantation Berhad Its Subsidiaries, and Joint Ventures, With the Use of Convict, Forced or Indentured Labor Are Being, or Are Likely To Be, Imported Into the United States in Violation of 19 U.S.C. 1307](#) which further complicates and adds confusion to an already vague and non-transparent process. The situation for U.S. importers of Malaysian palm oil seeking clarity for the entry of compliant merchandise is even more urgent, because failure to clear merchandise under a finding subjects the entry to seizure and the importer is no longer able to re-export. Without clear direction or additional certainty of the circumstances under which imports will be approved for entry, the prospect of risk will be too high and palm oil shippers will avoid the U.S. market. At scale, such an outcome would be disadvantageous because U.S. consumers are driving the demand for certified, sustainable and forced labor-free sourced palm oil.

ISEO Supports United States Council for International Business Principles

Additionally, ISEO supports reform principles set forth by the United States Council for International Business (USCIB), which calls for government, civil society stakeholders, and the business community to work together to prohibit the importation of goods made with forced labor, while simultaneously increasing transparency and reforming the WRO process.

Specifically, ISEO supports USCIB's recommendations for the following actions to be taken by CBP:

- Develop a regulatory framework based on objective standards that are predictable, transparent, and workable when applied to 21st Century supply chains, to help eliminate forced labor.
- Support U.S. foreign policy and global development goals discouraging companies from adopting a "cut and run" approach to suppliers that are identified as using forced labor, and simultaneously encouraging effective remediation with clear objectives and outcomes required for resolution.
- Promote increased engagement and transparency with all affected parties, including the business community.
- Create a multi-stepped WRO process that allows for an announcement of investigation to all parties involved with a potential WRO, a comment period to respond to allegations, and a determination period before a final WRO is issued.

Conclusion

Thank you for your consideration of these comments regarding the need for WRO reform. ISEO stands ready to be a resource to you and hopes to begin an open dialogue on the challenges the industry has faced since late 2020 on the matters outlined herein. We remain dedicated to working with DHS, CBP and the FLETF in partnership to solve the complex challenges that will enable us to eradicate forced labor from U.S. supply chains.

Sincerely,

Kailee Tkacz Buller

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