



## SEAFOOD WORKING GROUP

### Seafood Working Group (SWG) Submission to the United States Trade Representative on a Trade Strategy to Combat Forced Labor in Seafood Supply Chains

*Submission prepared by Global Labor Justice-International Labor Rights Forum (GLJ-ILRF) in collaboration with FishWise, Greenpeace, Serve the People Association (SPA), Solidarity Center, Sustainability Incubator, Taiwan Association for Human Rights (TAHR), and the Yilan Migrant Fishers Union (YMFU).*

**August 5, 2022**

**Docket Number USTR-2022-0006**

#### Introduction

This submission is made to the United States Trade Representative (USTR) by the Seafood Working Group (SWG) in response to its request for comments on a Trade Strategy to Combat Forced Labor. The SWG is a coalition of more than 30 environmental, human rights, and labor organizations from a dozen countries dedicated to the eradication of all forms of worker exploitation, including human trafficking and forced labor, in the seafood trade, with a particular focus on Thailand and Taiwan.<sup>1</sup> Our membership includes leading organizations with expertise in ridding supply chains of labor rights abuses and protecting the ocean's ecological resources by combating illegal, unreported and unregulated (IUU) fishing.

The International Labour Organization (ILO) ranks fishing and fish processing as the most dangerous of professions, and NGOs tracking labor violations in supply chains have asserted that human trafficking exists in almost all seafood supply chains.<sup>2</sup> Forced labor has been documented in the seafood sector in countries and markets as diverse as New Zealand, Thailand, Taiwan, Ghana, Ireland, and the United States.<sup>3</sup> These abuses occur aboard vessels in both domestic and international waters, as well as on land in seafood processing factories and on aquaculture farms. In addition, recent studies have found that the top seafood companies rank poorer than companies across other industries with respect to sustainability and human rights criteria, and few seafood companies have been found to conduct human rights due diligence in their supply chains or have remediation plans in place.<sup>4</sup> The particularly

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<sup>1</sup> GLJ-ILRF, Seafood Working Group, [https://laborrights.org/industries/seafood?qt-quicktabs\\_seafood=3#qt-quicktabs\\_seafood](https://laborrights.org/industries/seafood?qt-quicktabs_seafood=3#qt-quicktabs_seafood).

<sup>2</sup> ILO, "Fishing among the most dangerous of all professions, says ILO," [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_071324/lang-en/index.htm#:~:text=GENEVA%20\(ILO%20News\)%20%2D%20As.International%20Labour%20Office%20\(ILO\); see also Walk Free: Global Slavery Index, Fishing: https://www.globalslaveryindex.org/2018/findings/importing-risk/fishing/](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_071324/lang-en/index.htm#:~:text=GENEVA%20(ILO%20News)%20%2D%20As.International%20Labour%20Office%20(ILO); see also Walk Free: Global Slavery Index, Fishing: https://www.globalslaveryindex.org/2018/findings/importing-risk/fishing/).

<sup>3</sup> Center for American Progress, "Seafood Slavery," December 15, 2016, <https://www.americanprogress.org/article/seafood-slavery/>.

<sup>4</sup> See The Seafood Stewardship Index, which measures the world's 30 most influential companies in the seafood industry on their contribution to the UN Sustainable Development Goals, <https://www.worldbenchmarkingalliance.org/publication/seafood-stewardship-index/>; see also Business and Human



opaque and circuitous nature of seafood supply chains has allowed products tainted by forced labor to reach U.S. consumers.

In this context, we welcome the Biden administration's strong commitment to “promoting labor rights and human rights and fundamental freedoms through worker-centered trade policies and to working to eliminate abusive labor practices, in particular forced labor, in supply chains.”<sup>5</sup> We are encouraged by USTR’s development of a trade strategy to combat forced labor in global supply chains, which will be shaped by an inclusive process allowing for public participation with key stakeholders, such as labor organizations, civil society, survivors, and businesses.<sup>6</sup> The below comments focus on trade policy improvements that can be beneficial to seafood supply chains in particular.

**1. What actions could the U.S. Government pursue with like-minded trade partners and allies to combat forced labor as an unfair trade practice?**

- 1.1. We urge the USTR to promote the critical role that respect for workers’ fundamental rights to freedom of association, organizing, and collective bargaining play in preventing extreme forms of labor exploitation. Promoting respect for these enabling rights is one of the best ways to address potential indicators of forced labor in global supply chains.
- 1.2. The U.S. government should support efforts, via funding and technical expertise, in harvest, flag, and processing nations to create and enforce sustainable fisheries management and labor rights systems and to ensure that U.S. import requirements do not cascade to those least able to respond.<sup>7</sup>

**2. How can the U.S. Government bolster the forced labor components of trade agreements and trade preference programs to have greater effect?**

*Trade Agreements*

- 2.1. **U.S. trade agreements should set high standards for the protection of workers’ rights, including obligations for the U.S. and trade parties to respect fundamental labor rights** through ratification of ILO conventions and implementation and enforcement of labor laws. The labor protections in the U.S. - South Korea Trade Agreement are exemplary, committing the two countries to adopt and maintain in law and implementation the fundamental labor rights as stated in the 1988 ILO Declaration on Fundamental Principles and Rights at Work, and to submit to formal legal proceedings if either side fails to meet that

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Rights Resource Center, *All at sea: An evaluation of company efforts to address modern slavery in Pacific supply chains of canned tuna*, March 21, 2022, <https://www.business-humanrights.org/en/from-us/briefings/all-at-sea-an-evaluation-of-company-efforts-to-address-modern-slavery-in-pacific-supply-chains-of-canned-tuna/>.

<sup>5</sup> White House, *Memorandum on Combating Illegal, Unreported, and Unregulated Fishing and Associated Labor Abuses*, June 27, 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/06/27/memorandum-on-combating-illegal-unreported-and-unregulated-fishing-and-associated-labor-abuses/>.

<sup>6</sup> White House, *FACT SHEET: President’s Interagency Task Force to Monitor and Combat Trafficking in Persons*, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/25/fact-sheet-presidents-interagency-task-force-to-monitor-and-combat-trafficking-in-persons/>.

<sup>7</sup> “IUU Fishing and Human Rights: Problems and Solutions” co-authored in April 2020 by WWF-US, International Labor Rights Forum, CSIS Stephenson’s Ocean Security Project, Natural Resources Defense Council, Conservation International, and Humanity United.



promise.<sup>8</sup> These fundamental rights include the freedom of association and collective bargaining; elimination of all forms of compulsory or forced labor; effective abolition of child labor and a prohibition on the worst forms of child labor; and elimination of employment and occupation discrimination based on gender, race, or other factors.<sup>9</sup> Since June 2022, fundamental labor rights include a fifth category: a safe and healthy working environment.<sup>10</sup> Accordingly, future trade agreements should be inclusive of this right.

- 2.2. For trade partners that are major seafood producing countries, such as Taiwan and South Korea, **the USTR should consider including adoption and implementation of ILO Work in Fishing Convention, 2007 (C188)** in a similar manner to the core labor standards. This is the ILO's principle convention to uphold the rights and protections for fishermen in the commercial fishing industry where the most significant abuses are documented. With less than 20 countries having already ratified the convention, this pivotal decision would establish binding requirements on decent working conditions, including wages, working hours, occupational safety and health, and social security, as well as prevent unacceptable forms of work, forced labor, trafficking, and other abuses.<sup>11</sup>
- 2.3. **The USTR could further enhance its commitment to social considerations in commercial fisheries by ratifying the Cape Town Agreement (CTA).** First adopted in 2012, the agreement has yet to come into force because not enough countries have ratified it.<sup>12</sup> The International Maritime Organization (IMO) has renewed the push for countries to ratify the CTA, which would establish binding standards and regulations designed to protect safety of crew and observers on commercial vessels. The CTA requires commercial fishing vessels to maintain standards comparable to other maritime vessels, which would reduce risk and improve working conditions on board.
- 2.4. **Entering into U.S. trade agreement negotiations should be contingent on ratification of ILO core labor standards and C188** in countries with significant seafood industries.
- 2.5. **U.S. trade agreements should require the U.S. and trading partners to establish a grievance mechanism** that allow members of the public to raise concerns directly with the governments if they believe labor obligations are being violated, as was instituted in the U.S.-South Korea agreement.<sup>13</sup> The USTR should ensure that labor unions and worker organizations are aware of this mechanism and have information on how to file complaints, including in local languages.

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<sup>8</sup> USTR, "Labor Protections in the U.S.-South Korea Trade Agreement," <https://ustr.gov/uskoreaFTA/labor>.

<sup>9</sup> ILO Declaration on Fundamental Principles and Rights at Work, 1998, <https://www.ilo.org/declaration/lang-en/index.htm>.

<sup>10</sup> Each of the fundamental principles is associated with the most relevant ILO Conventions. The new fundamental Conventions will be the Occupational Safety and Health Convention, 1981 (No.155), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

<sup>11</sup> ILO, C188 - Work in Fishing Convention, 2007 (No. 188), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C188](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188).

<sup>12</sup> The Maritime Executive, "IMO Urges Ratification of Cape Town Agreement on Fishing Vessel Safety," April 27, 2022, <https://maritime-executive.com/article/imo-urges-ratification-of-cape-town-agreement-on-fishing-vessel-safety>.

<sup>13</sup> USTR, "Labor Protections in the U.S.-South Korea Trade Agreement," <https://ustr.gov/uskoreaFTA/labor>.



- 2.6. **U.S. trade agreements should require parties to follow the *ILO Principles and Operational Guidelines on Fair Recruitment*** to effectively regulate recruitment agencies/labor contractors in order to end practices such as the retention of migrant workers' identity documents and the charging of recruitment fees. In addition, all parties should be required to adopt and implement an "employer pays principle" so that employers pay any fees charged by the contractor/recruiter and any visa or travel costs associated with relocating to work, in line with ILO guidelines. As in other supply chain models, employers should be held accountable for any fraudulent recruitment practices or other violations committed by their recruiters, labor contractors, or other third-party employers, regardless of the location in which such abuses occurred. Strict regulation of workplace and recruitment requirements for foreign or guest workers is critical to prevent indentured labor.
- 2.7. **U.S. trade agreements should recognize the particular vulnerability of migrant workers to labor rights abuses, including forced labor.** Future trade deals should strengthen the commitment made in Article 23.8 of the United States-Mexico-Canada Trade Agreement (USMCA)—which requires all parties to ensure that migrant workers are protected under their labor laws—by requiring all parties to ensure that migrant workers, regardless of immigration status, are not only covered by labor laws, but afforded the same protections as nationals. Importantly, migrant workers must have effective mechanisms to access justice and concrete protections when they take action to help enforce labor standards.

#### *Taiwan-U.S. Trade Agreement*

- 2.8. **The USTR should use the trade negotiations with Taiwan to uphold core labor standards and address forced labor in the fishing sector.** Taiwan is a key supplier of tuna and other seafood products to the U.S. and has been regularly implicated in allegations of human rights abuse and forced labor at sea, including by various U.S. government agencies.<sup>14</sup> In this context, there are important opportunities to address forced labor in fishing supply chains through the Taiwan-U.S. free trade agreement negotiations. In June, the United States and Taiwan announced the launch of the U.S.-Taiwan Initiative on 21st-Century Trade, which includes a commitment to promoting worker-centric trade: "The United States and Taiwan aim to work to develop more durable and inclusive trade policies that demonstrate that trade can be a force for good by creating more opportunities for people and promoting gender equity across the United States and Taiwan. The two sides also seek to support the protection of labor rights, including the elimination of forced labor in global supply chains."<sup>15</sup>

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<sup>14</sup> Taiwan has been implicated in at least four Withhold Release Orders (WROs) by Customs and Border Protection (CBP), <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings> and is listed for forced labor for fish products in the Department of Labor's List of Goods Produced with Child and Forced Labor, <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>. The State Department's Trafficking in Persons Report documents forced labor and human trafficking in the fishing industry, although the country is ranked at Tier 1, <https://www.ait.org.tw/2022-trafficking-in-persons-report-taiwan/>; this ranking has been criticized as undermining local efforts to improve labor rights in the country's fishing sector, <https://laborrights.org/releases/seafood-labor-activists-blast-us-thailand-taiwan-rankings-tip-report-give-pass-widespread>.

<sup>15</sup> USTR, "United States and Taiwan Announce the Launch of the U.S.-Taiwan Initiative on 21st-Century Trade," June 1, 2022, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/june/united-states-and-taiwan-announce-launch-us-taiwan-initiative-21st-century-trade>.



- 2.9. **The USTR should ensure the agreement with Taiwan includes robust labor rights protections with special provisions for migrant workers and fishers' rights protection.** Similar to the labor protections outlined in the U.S.-South Korea agreement, the U.S. and Taiwan should (1) commit to adopt and maintain, in law and implementation, the five fundamental labor rights—and to submit to formal legal proceedings if either side fails to meet that promise; (2) commitment to enact and enforce laws that uphold the five fundamental labor rights including freedom of association and collective bargaining; (3) include trade sanctions and fines for failure to meet labor commitments; and (4) establish procedures to allow for a labor grievance mechanism through which civil society and members of the public may raise concerns if they believe the labor obligations are being violated. Given the well-known abuses in Taiwan's fisheries sector, the USTR should include the commitment to domesticate and enforce the requirements in ILO C188 as part of the trade agreement. As in the USMCA, the trade deal should also require parties to ensure that migrant workers are protected under their labor laws. Rights protection for both fishers and migrants should be under the purview of the grievance mechanism.
- 2.10. As part of the trade negotiations, **the USTR should consider supporting specific recommendations made by civil society organizations in Taiwan** with regards to issues underpinning the ongoing forced labor and exploitation of migrant fishers.<sup>16</sup> These include the following:
- Abolish the overseas employment scheme for migrant fishers, apply the Labor Standards Act to all fishers, and ensure all migrant fishers are governed by the Ministry of Labor and thus afforded the same rights and protections as Taiwanese fishers;
  - Establish a clear timeline for swift and full domestication and implementation of C188;
  - Increase inspections on vessels of Taiwan-owned and flagged, as well as Taiwan-owned and foreign flagged vessels, and prosecute the owners and senior crew suspected of forced labor, especially among the distant water fishing vessels;
  - Deploy labor inspection personnel in foreign ports where Taiwan's distant water fishing vessels are authorized to port, and train all maritime-related inspection authorities on victim identification and law enforcement; and
  - Increase transparency in the fishery sector by requiring disclosure of vessel position (i.e. publishing Vessel Monitoring System or Automatic Identification System, and punishing vessels for turning either off), 100% observer coverage (independent human or effective electronic catch monitoring, such as camera and remote sensor), and ensuring the safety of all observers on all fishing vessels.

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<sup>16</sup> GLJ-ILRF on behalf of the Seafood Working Group, *Comments Concerning the Ranking of Taiwan by the United States Department of State in the 2022 Trafficking in Persons Report*, April 7, 2022, <https://laborrights.org/publications/comments-concerning-ranking-taiwan-united-states-department-state-2022-trafficking>.

## Generalized System of Preferences Program (GSP): Thailand

- 2.11. **The GSP program is an important trade preference program for upholding freedom of association and collective bargaining rights in trade partner countries** because a “GSP beneficiary must have taken or is taking steps to afford internationally recognized worker rights.”<sup>17</sup> In the case of Thailand, after six years of engagement, the USTR revoked one-third (\$1.3 billion) of Thailand’s GSP trade based on its “failure to adequately provide internationally-recognized worker rights... such as protections for freedom of association and collective bargaining”.<sup>18</sup> In October 2019, the USTR gave Thailand six months to make improvements; however, no reforms were made, and the trade privileges were removed in April 2020. At the same time, the USTR revoked GSP eligibility for all seafood products made from Thailand “due to long standing worker rights issues in the seafood and shipping industries”.<sup>19</sup> This decision put an important spotlight on the exploitation of migrant workers in the seafood industry and the severe restrictions on union rights across the Thai economy.
- 2.12. **The USTR should leverage the removal of Thailand’s remaining GSP trade benefits to drive important labor rights reforms.** Despite various commitments, Thailand has yet to ratify the ILO core labor conventions on Freedom of Association and Protection of the Right to Organize Convention (C87) and the Right to Organize and Bargain Collectively (C98). In addition, Thailand’s labor relations laws prohibit the rights of non-Thai nationals to form and lead trade unions.<sup>20</sup> This has prevented the formation of any registered labor unions in the seafood processing and fishing sectors, which are staffed almost entirely by Southeast Asian migrant workers. This denial of fundamental rights has created a captive workforce at high risk of forced labor.<sup>21</sup> The USTR should consider removing the remaining trade preferences if Thailand does not ratify C87 and C98 and reform discriminatory provisions in its labor laws that put migrant workers at risk.
- 2.13. **The USTR should coordinate with other agencies to ensure the GSP program covers goods associated with forced labor, when in line with the GSP program’s requirements.** In the case of Thailand, prior to the partial removal of trade benefits in 2019, the GSP program did not cover tuna and shrimp, the two products most associated with forced labor. Following the USTR decision, major seafood exporters Thai Union and Charoen Pokphan announced that the trade preferences change had no material impact on their business

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<sup>17</sup> These include “1) the right of association, 2) the right to organize and bargain collectively, 3) a prohibition on the use of any form of forced or compulsory labor, 4) a minimum age for the employment of children, and a prohibition on the worst forms of child labor, and 5) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health”; see USTR’s GSP Guidebook, [https://ustr.gov/sites/default/files/gsp/GSPGuidebook\\_0.pdf](https://ustr.gov/sites/default/files/gsp/GSPGuidebook_0.pdf).

<sup>18</sup> USTR, “USTR Announces GSP Enforcement Actions and Successes for Seven Countries,” April 25, 2019, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/october/ustr-announces-gsp-enforcement>.

<sup>19</sup> USTR, “USTR Announces GSP Enforcement Actions and Successes for Seven Countries,” April 25, 2019, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/october/ustr-announces-gsp-enforcement>.

<sup>20</sup> Thailand, Labor Relations Act (1975).

<sup>21</sup> Kimberly Rogovin, *Time for a Sea Change: Why union rights for migrant workers are needed to prevent forced labor in Thailand’s seafood industry*, GLJ-ILRF, March 2020, [https://laborrights.org/sites/default/files/publications/ILRF\\_TimeforaSeaChange.pdf](https://laborrights.org/sites/default/files/publications/ILRF_TimeforaSeaChange.pdf).



operations.<sup>22</sup> Had the GSP covered products such as tuna and shrimp, it would have been possible to put pressure on the exporters to make labor rights improvements and address violations of core labor standards in seafood processing factories. To identify the specific products linked with forced labor risk, the USTR could rely on data from the Department of Labor, the U.S. Department of State's Office to Monitor and Combat Trafficking in Persons (TIP Office), the National Oceanic and Atmospheric Administration (NOAA), or other agencies, in addition to consulting labor organizations in the target countries.

2.14. **The USTR should consider supporting the recommendations made by the Seafood Working Group to the Thai government in the context of the GSP trade benefits removal:**<sup>23</sup>

- Reform the Labor Relations Act and the State Enterprise Labor Relations Act to allow all workers, *without distinction*, the right to form and lead unions, to collectively bargain, and to strike. The law should afford legal protection for those rights so that workers can exercise them without fear or retribution.
- Decriminalize defamation under both the Penal Code and Computer Crime Act and enact anti-Strategic Litigation Against Public Participation (SLAPP) legislation to ensure that that workers and labor rights defenders are not subjected to criminal or civil liability for exercising rights to freedom of expression and speaking out about labor rights abuse.
- Work together with independent and representative unions and worker organizations to address legal loopholes contributing to worker exploitation and reform laws as needed to adequately protect internationally recognized worker rights and prevent labor exploitation.
- Resolve all cases of labor rights violations documented by reports from the ILO Committee on Freedom of Association and GSP petitions to the USTR from the AFL-CIO.<sup>24</sup>
- Ratify ILO Conventions 87 (Freedom of Association) and 98 (Right to Organize and Collectively Bargain).

3. **What new and innovative trade tools can the U.S. Government develop and utilize to advance efforts to combat forced labor in traded goods and services?**

- 3.1. **The Seafood Import Monitoring Program (SIMP) should include clear data reporting requirements for labor issues to capture forced labor indicators and have the requirements apply to all seafood imports.** Made public under the Magnuson-Stevens Act (MSA) and the Tariff Act, SIMP is an important tool in regulating the entry of illegal, unregulated, and unreported-caught and/or

<sup>22</sup> CBF, "CPF unaffected by United States' GSP suspension," October 28, 2019, <https://www.cpfworldwide.com/en/media-center/1191>; see also Thai Union, "Thai Union: No Business Impact from U.S. Government Decision to Rescind Thailand's Benefits Under the Generalized System of Preferences," October 27, 2019,

<https://www.thaiunion.com/en/newsroom/press-release/1104/thai-union-no-business-impact-from-us-government-decision-to-rescind-thailands-benefits-under-the-generalized-system-of-preferences>.

<sup>23</sup> Seafood Working Group, *Statement on U.S. Government Decision to Suspend Thailand's Trade Preferences Due to Worker Rights Issues*, GLJ-ILRF, December 10, 2019, <https://laborrights.org/publications/statement-us-government-decision-suspend-thailand%E2%80%99s-trade-preferences-due-worker-rights>.

<sup>24</sup> ILO Committee on Freedom of Association cases database: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:20030:0::NO:::>; see also AFL-CIO submission to the USTR, 2018, <https://www.regulations.gov/document/USTR-2015-0018-0025>.

misrepresented seafood into the United States. SIMP allows seafood to be traced back to its point of harvest or production and verify whether it was legally caught. However, SIMP has significant limitations in its current implementation, including inadequate species coverage (40%) and implementation gaps. The broad language of the MSA underpinning SIMP offers an opportunity for the inclusion of forced labor information. Data points and traceability information relevant to labor conditions could be required through SIMP. Given that the infrastructure for this type of data collection already exists with SIMP, **the SWG recommends that this be expanded to include collection of data on forced labor at sea and other parts of the seafood supply chain, and apply to all seafood imports. At a minimum, these data reporting requirements should include the ILO core labor standards as well as C188 for supply chains inclusive of commercial fisheries.**

- 3.2. The High Seas Driftnet Fishing Moratorium Protection Act (HSDFMPPA) allows the pursuit of sanctions against nations responsible for IUU fishing. **The expansion of the HSDFMPPA to include forced labor could maximize existing statutory discretion.**
- 3.3. The Creating Helpful Incentives to Produce Semiconductors for America Act (CHIPS)—put forward by the Senate on July 22, 2022 as a compromise version blending the House version of H.R.4521, the America COMPETES Act of 2022, and the Senate’s version, U.S. Innovation and Competition Act (USICA)—discards the IUU fishing and forced labor provisions that were contained in COMPETES. COMPETES had passed in the House in February 2022 and incorporated H.R.3075, the Illegal Fishing and Forced Labor Prevention Act, under Title I. In light of this development, **the SWG recommends legislation that specifically addresses illegal fishing and associated forced labor issues.**
- 3.4. **Similar to the EU’s highly effective *Third Country Carding Process* for IUU fishing,<sup>25</sup> the U.S. could consider instituting a mechanism for increased surveillance of imports from countries identified as having inadequate measures in place to prevent and deter forced labor in seafood supply chains.** This mechanism could rely on the *List of Goods Produced with Child and Forced Labor* issued by the U.S. Department of Labor (DOL) Bureau of International Labor Affairs (ILAB). The List of Goods currently lists dozens of countries for forced or child labor in the production of fish, dried fish, Nile perch (fish), shellfish, tilapia (fish), and shrimp.<sup>26</sup> The List of Goods is a valuable resource for researchers, advocacy organizations and companies and does not include penalties for countries listed. However, the data could be utilized in a punitive mechanism that could be more effective in preventing imports of goods made with child or forced labor.

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<sup>25</sup> Under the IUU Regulation, non-EU countries identified as having inadequate measures in place to prevent and deter this activity may be issued with a formal warning (yellow card) to improve. If they fail to do so, they face having their fish banned from the EU market (red card) among other measures. See [http://www.iuuwatch.eu/wp-content/uploads/2015/06/3rdCountryCardingGuidelinesReport\\_FINAL.LOW .pdf](http://www.iuuwatch.eu/wp-content/uploads/2015/06/3rdCountryCardingGuidelinesReport_FINAL.LOW.pdf).

<sup>26</sup> ILAB, “List of Goods Produced by Child Labor or Forced Labor,” <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>.

- 3.5. **NOAA should also include labor and human rights violations when implementing the Moratorium Protection Act** to identify countries whose vessels are engaged in IUU fishing, and should ensure that NOAA's definition of IUU fishing encompasses the UN Food and Agriculture Organization (FAO) definition within the International Plan of Action to Combat IUU Fishing.
- 3.6. **The U.S. should explore Mandatory Human Rights and Environmental (mHREDD) legislation for U.S.-based companies importing seafood and all other types of products from global supply chains.** In line with the United Nations Guiding Principles on Business and Human Rights, the legislation should require companies to assess their actual and potential human rights and environmental impacts throughout their operations and down their supply chain and take action to prevent, mitigate, and remedy identified human rights and environmental harms. Alongside the emerging EU mHREDD legislation,<sup>27</sup> similar U.S. legislation could drive corporate accountability throughout global supply chains and effectively end forced labor. These plans could be issued under the Tariff Act or required through SIMP/MSA. Data sharing could be conducted via the International Trade Data System/Automated Commercial Environment in order for agencies to coordinate existing data at the nexus of overfishing and human rights abuses.
- 3.7. **The USTR should assist Customs and Border Protection (CBP) and other partner agencies to deter illegal goods by collecting the below listed information from importers.** This information is largely available from DOL and the Departments of State, Commerce, and Justice. The DOL ILAB List of Goods data could be streamed into a common database. As an initial phase of rolling out these requirements, CBP could introduce restrictions for a failure to provide this information in a timely matter for companies participating in the Customs Trade Partnership Against Terrorism (CTPAT) Program.
- Human rights due diligence protocols and particularly risk identification and mitigation actions
  - Protocols for recruitment and repatriation of foreign or guest workers
  - Contracting protocol
  - Method for preventing debt bondage in their operations
  - Protocol for handling identification documents
  - Wages and hours
  - For onsite workers, provisions for living and working conditions
  - Audits and labor inspections
  - Engagement with worker groups or representatives
  - Operational-level procedures for responding to and remedying grievances
- 3.8. **Tracking certain data elements from exporting countries could also help detect causal elements of forced labor.** In 2012, the ILO released guidance on developing operational indicators to assess presence of forced labor. Involuntariness and menace of penalty could be detected under three

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<sup>27</sup> European Commission, *Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains*, February 22, 2022, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1145](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145).



dimensions—(1) unfree recruitment, (2) work and life under duress and (3) impossibility of leaving the employer.<sup>28</sup> **The relevant import monitoring authorities could maintain a common database of the following indicators from exporters:**

- Applicable labor regulations in the supply chain
- Laws to guarantee rights to freedom of association and collective bargaining
- Laws to prohibit and prevent forced and child labor
- Laws that create a safe and healthy working environment
- Minimum requirements for hazardous work and hazardous child work
- Laws that prohibit discrimination in occupation and employment
- National minimum age requirements

3.9. **The USTR should require exporting countries to provide a shortlist of the mandatory documents that they require of all domestic companies producing and exporting goods to the U.S.** At a minimum, a shortlist could include the documents required of companies to prohibit and prevent forced and child labor in their workplaces and supply chain for all goods/countries listed as high risk for significant forced or child labor. Importers of goods from these countries could file mandatory statements acknowledging the business duty to respect and remedy labor and human rights in accordance with the UN Guidelines on Business and Human Rights. The statement should also include a list of all responsible employers in the supply chain (company names and workplace addresses), as well as an estimated worker population and compliance details.

#### 4. **How can the U.S. Government make the development of trade policy on forced labor a more inclusive process?**

4.1. **The USTR should meaningfully consult and involve labor organizations in the development of trade agreements and trade preference programs.** The U.S. government has showcased both successful and unsuccessful attempts of meaningfully engaging key stakeholders. For example, during the six years leading up to Thailand's loss of GSP privileges in October 2019,<sup>29</sup> the USTR visited Thailand annually to meet with unions, workers, and the Thai government, and the government was invited to testify. In contrast, the USTR has been ineffective in engaging with unions or civil society in Taiwan prior to initiating trade talks with the Taiwanese government in June 2022.<sup>30</sup> Yet, trade negotiations present an important opportunity to ensure the Taiwanese government puts stronger labor protections in place for migrant workers to prevent exploitation and forced labor in the fishing sector. Setting up a feedback mechanism and holding regular consultations with labor organizations and NGOs

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<sup>28</sup> ILO, *Hard to see, harder to count - Survey guidelines to estimate forced labour of adults and children*, June 2012, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182096.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182096.pdf).

<sup>29</sup> GLJ-ILRF, *Statement on U.S. Government Decision to Suspend Thailand's Trade Preferences Due to Worker Rights Issues*, October 25, 2019, <https://laborrights.org/publications/statement-us-government-decision-suspend-thailand%E2%80%99s-trade-preferences-due-worker-rights>.

<sup>30</sup> USTR, "United States and Taiwan Announce the Launch of the U.S.-Taiwan Initiative on 21st-Century Trade," June 1, 2022, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/june/united-states-and-taiwan-announce-launch-us-taiwan-initiative-21st-century-trade>.



in Taiwan as part of the roadmap to trade negotiations would be critical to promoting worker rights through the trade agreement process.

- 4.2. **The USTR should ensure anti-retaliation measures for organizations, workers and activists who utilize U.S. trade policy mechanisms.** Retaliation is a serious global supply chain risk, impacting the ability of workers to assert their rights and, by extension, the ability of governments to enforce import prohibitions on forced labor goods. To create and implement trade policy in a truly inclusive and effective manner, the U.S. must anticipate retaliation and respond to it quickly and decisively. We recommend specific protocols for a swift response when workers face retaliation for utilizing or participating in a U.S. trade mechanism, including related to the Tariff Act, GSP Program, List of Goods or other program. In the context of the Tariff Act, this should include additional penalties for the corporate entity subject to the WRO. We also recommend training for CBP staff on workplace retaliation, conducted by agency and NGO colleagues with experience in workplace reprisals.

5. **Do you have additional recommendations for monitoring, tracing, or eliminating forced labor in traded goods and services in supply chains?**

- 5.1. Since 2016, CBP has demonstrated its increasing commitment to utilizing U.S. trade leverage to combat forced labor in global supply chains. The SWG welcomes, in particular, CBP's increased attention to addressing abuses in the fishing industry, with Withhold Release Orders (WROs) issued against individual fishing vessels and even an entire fleet of vessels. Still, key improvements to CBP's enforcement of Section 307 remain to be seen. **The current system of implementation of Section 307 of the Tariff Act through Withhold Release Orders issued by CBP should be improved in the following ways:**
- **First, there is an urgent need to develop clarity on the evidentiary standards required in petitions.** Lack of evidentiary standards and transparency leads to inefficient and ineffective processes of petitioning, leading to lengthy delays in CBP's issuance of WROs. Such lack of clarity may also discourage the filing of petitions, which expends the time and resources of petitioners.
  - **Second, CBP should directly communicate with petitioners, unions, and worker organizations** that represent the workers who are potentially in forced labor situations during the investigation process, including responding to petitions within a designated timeline, providing updates on the status of cases, and offering justifications for their final decision to issue or not issue an enforcement order.
  - **Third, the customary practice of targeting individual fishing vessels should be broadened in favor of company-wide, industry-wide, or even country-wide enforcement actions.** For example, a few WROs have implicated entire product lines: tobacco from Malawi, artisanal gold from the Democratic Republic of Congo (DRC), and cotton from Turkmenistan. Given the pervasive nature of forced labor in global seafood supply chains, and the geographic concentration of these abuses in certain regions, taking a fishing vessel-by-vessel approach towards enforcement actions is highly inefficient and inadequate for closing U.S. markets to seafood produced with forced labor. For instance, since 2018,



numerous reports have documented the widespread nature of forced labor and human rights abuses in Taiwan's distant water fishing fleet.<sup>31</sup> Many of these abuses have been linked to suppliers of the Taiwanese trading company, FCF, which is one of the largest tuna-trading companies in the world.<sup>32</sup> Despite these reports, since 2019, CBP has only issued WROs against four Taiwanese fishing vessels.<sup>33</sup> Given the scale of the problem, it is clear that this response is inadequate and there is an urgent need to broaden the scope of WROs to effectively address the widespread nature of forced labor in the seafood industry. For instance, CBP could block all imports from FCF, as has been recommended by several organizations.<sup>34</sup>

- **Fourth, Section 307 should include a remedy requirement.** After issuing a WRO, CBP should require importers to showcase clear evidence of the provision of remedy to workers prior to deciding to lift or amend an import prohibition. We recommend the establishment of a remediation fund, which could be partially or fully funded through penalties and would ensure workers are protected. This would augment and not replace the remediation required of global supply chain actors for forced labor. In cases where it is relevant, the effective provision of remedy as monitored and assessed by workers or their credible representatives should be a requirement to lift an import prohibition.
- **Fifth, CBP should sign a Memorandum of Understanding with ILAB** to establish protocols to ensure that WROs do not undermine the freedom of association and right to collective bargaining.
- **Sixth, the U.S. government should work in tandem with other countries to ensure that blocked goods are not simply re-exported to another country.** Currently, Section 307 gives importers two options: (1) to petition CBP for the release of the goods by providing satisfactory evidence that the contested goods were not produced with forced labor or (2) to re-export the goods to a third country. As a result, according to the Department of Homeland Security (DHS) Secretary Mayorkas in a joint press briefing between DHS and CBP held on June 24, 2021, since October 2020, CBP detained nearly \$275 million worth of goods in 674 shipments that applied for entry, while turning away more than 526 shipments, which totaled to approximately \$125 million. This high prevalence of re-exportation to third countries reduces the efficacy of WROs on ending forced labor globally. In recognition of this problem, the United States, Canada and Mexico have committed to prohibit the import of goods made with forced labor and establish cooperation for the

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<sup>31</sup> Mina Chiang and Kimberly Rogovin, *Labor Abuse in Taiwan's Seafood Industry and Local Efforts for Reform*, GLJ-ILRF, December 14, 2020, <https://laborrights.org/publications/labor-abuse-taiwan%E2%80%99s-seafood-industry-local-advocacy-reform>.

<sup>32</sup> Jodie Yi Chiao Lee, Stephanie Croft and Tim McKinnel, *Misery at Sea*, Greenpeace, May 2018, [https://www.greenpeace.org/static/planet4-aotearoa-stateless/2018/05/9fdf62aa-greenpeace\\_misery\\_at\\_sea-report-lowres.pdf](https://www.greenpeace.org/static/planet4-aotearoa-stateless/2018/05/9fdf62aa-greenpeace_misery_at_sea-report-lowres.pdf).

<sup>33</sup> CBP, Withhold Release Orders and Findings List, <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>.

<sup>34</sup> Greenpeace, *Organizations urge U.S. to block imports from Taiwanese seafood giant over forced labor concerns*, September 9, 2021, <https://www.greenpeace.org/international/press-release/49382/us-block-imports-taiwanese-seafood-forced-labor-bumblebee/>.

identification of forced labor goods under Article 23.6 of the USMCA.<sup>35</sup> The European Commission is also working to design a ban on products made by forced labor.<sup>36</sup>

- 5.2. Although the World Trade Organization (WTO) ultimately did not adopt the USTR’s proposal for its fisheries subsidies negotiations agreement, reached on June 17, 2022, the SWG commends the USTR’s proposal including recognition of the use of forced labor on fishing vessels, rules on subsidies for fishing activities associated with the use of forced labor, and requirements to report any vessels and operators suspected forced labor.<sup>37</sup> **The SWG encourages the USTR to continue negotiations on transparency requirements and other issues relating to forced labor on fishing vessels and to take bigger steps to help expedite the process.**
- 5.3. **CBP should test imports for minimum work safety and labor requirements in the supply chain.** The CBP ACE program could draw automatically from a database containing the following data elements for all countries:
- Hazardous Child Labor age and restrictions, where applicable
  - Mandatory employment agreements, terms and wage rates, including full employment, contracted, and informal labor conditions
  - Mandatory workplace requirements for occupational safety and health
- 5.4. Freedom of association — the right of workers to join together to take collective action — is the most effective bulwark against forced labor. Freedom of association cannot be exercised without freedom of speech and assembly or in contexts where workers fear reprisals or experience racial, caste, and gender-based discrimination at work. **The U.S. should use its influence and resources to expand space for civil society and freedom of association for labor activists.** This could include recommending that high-level officials meet with independent labor activists; recommending that governments streamline and increase registration of anti-trafficking NGOs; or urging governments to refrain from interference with the formation or operation of labor unions. **This also includes collecting and evaluating data in the Department of State’s Trafficking in Persons rankings related to access to freedom of association and collective bargaining for all workers including migrants,** timely CSO and union registration, and other related indices.

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<sup>35</sup> “Article 23.6: Forced or Compulsory Labor 1. The Parties recognize the goal of eliminating all forms of forced or compulsory labor, including forced or compulsory child labor. Accordingly, each Party shall prohibit the importation of goods into its territory from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor. 2. To assist in the implementation of paragraph 1, the Parties shall establish cooperation for the identification and movement of goods produced by forced labor as provided for under Article 23.12.5(c) (Cooperation)”; see Chapter 23 on Labor in the USMCA, <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23-Labor.pdf>

<sup>36</sup> *Due diligence: EU’s next steps on corporate accountability*, Business & Human Rights Resource Centre, August 4, 2022, <https://www.business-humanrights.org/en/latest-news/due-diligence-eus-next-steps-on-corporate-accountability/>.

<sup>37</sup> USTR, United States Urges WTO Members to Address Forced Labor on Fishing Vessels in Ongoing Fisheries Subsidies Negotiations, March 26, 2021, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/may/united-states-urges-wto-members-address-forced-labor-fishing-vessels-ongoing-fisheries-subsidies>.



**5.5. The DOL and USAID should continue to build capacity abroad for labor and document inspection in export supply chains.**

The Seafood Working Group (SWG) is a global coalition of human rights, labor and environmental organizations that work together to develop and advocate for effective government policies and industry actions to end the related problems of forced labor, illegal fishing and overfishing in the international seafood trade.

GLJ-ILRF is a non-profit public-interest organization dedicated to achieving dignity and justice for workers worldwide. GLJ-ILRF focuses on enforcing labor rights and promoting decent work conditions consistent with best practices and ILO standards in the low-wage sections of global supply chains such as commercial fishing. GLJ-ILRF engages in research, policy work, advocacy, and education of the public and consumers.

For more information, please contact Kimberly Rogovin, Senior Seafood Campaign Coordinator, GLJ-ILRF, at [kimberly@ilrf.org](mailto:kimberly@ilrf.org)

Read more about the Seafood Working Group's initiative to end forced labor in the seafood industry at <https://laborrights.org/industries/seafood>

A list of all Seafood Working Group members is available at [https://laborrights.org/industries/seafood?qt-quicktabs\\_seafood=3#qt-quicktabs\\_seafood](https://laborrights.org/industries/seafood?qt-quicktabs_seafood=3#qt-quicktabs_seafood)