

RESPONSE TO FR Doc. E8-8709 Filed 4-22-2008

FROM:

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RE: Notice of Public Hearing to Collect Information to Assist in the Development of the List of Goods from Countries Produced by Child Labor or Forced Labor

Introduction

The International Labor Rights Forum (ILRF) submits these comments in response to the Department of Labor's (DOL) request for testimony for a public hearing to be held May 28, 2008 to collect information regarding the use of child labor and forced labor worldwide in the production of goods.

ILRF has also submitted more detailed written comments in response to FR Doc. E7-25036 filed 12-26-2007. Each of the industries highlighted in both the written comments and in this testimony demonstrates that the causes of child labor are numerous, but that in many instances, the causes of child labor can be traced directly to the economic decisions of investment, production and retail companies. Each of these economic actors is responsible for establishing terms of trade for the relevant product intended to maximize profits or revenue, which, at the same time, encourages, promotes and, in some instances mandates the use of child labor and forced labor.

ILRF has in the past argued that existing US laws may be interpreted to require individual importers, in industries where there is systematic use of forced and child labor, to affirmatively demonstrate that their imports are not produced by forced or child labor. ILRF has previously petitioned the US Customs Service regarding the importation of hand-knotted carpets from South Asia. That case raised the issue of individual importer responsibility to certify labor practices related to their goods. Building on this exchange, in a subsequent petition to US Customs ILRF provided data related to cocoa shipments from Ivory Coast, and through supply chain documentation showed that prohibited forms

of labor necessarily extend to all importers of cocoa from Ivory Coast because the tainted beans are mixed with all shipments. The petition also demonstrated that the nature of the in-country supply chain in Ivory Coast made it reasonably be possible to institute a system of spot inspections that would effectively verify compliance or non-compliance with US laws prohibiting trade in child or forced labor-made products.

Cocoa Produced in Ghana and Cote D'Ivoire

As the Department is aware, in 2001, chocolate manufacturers, the governments of Ivory Coast and Ghana, and two Congressional offices entered into an agreement to monitor and certify that cocoa beans and their derivative products have been grown and/or processed without any of the worst forms of child labor. In 2002, ILRF conducted field research in Ivory Coast to determine the extent to which cocoa supplied to the United States was tainted by trafficked or forced child labor. On the basis of this investigation, the ILRF submitted a petition to the US Customs Service to request enforcement action under the section 307 of the Tariff Act of 1930, 19 U.S.C. § 1307 (1997). Before the Court of International Trade in 2005, the Chocolate Manufacturers' Association, challenging this petition, did not dispute the basic claims of the petition regarding the failure to eradicate forced child labor in Ivoirian cocoa; rather they challenged the case on the basis that the plaintiffs did not have sufficient standing under US law. In her ruling on this case, the judge chastised the US Customs service for not living up to its commitment to adequately enforce such claims as brought forward by the ILRF petition.

To date, the chocolate industry and West African governments have begun to initiate a so-called "certification" program that will seek to assess with more depth the scope of the child labor problem in West Africa. In brief, data collection on the extent of child labor has only recently commenced, and the credibility of the methodology and findings have yet to be verified. Nor have any significant efforts been undertaken by industry to eradicate child labor, in particular in Ivory Coast. Recent investigative reports by credible independent journalists have verified recent ILRF field findings that no systematic programmatic efforts, or even relevant or scaleable pilot projects, have yet been undertaken in Ivory Coast that would have a significant impact on the problem in this industry.

The system currently being offered by the cocoa industry does not provide any guarantee of impact to eliminate the worst forms of child labor in the growing and processing of cocoa beans. Thus, actions to date cannot be interpreted as constituting sufficient, or indeed any, action toward "significantly reducing if not eliminating child labor and forced labor," and for that reason, ILRF urges the inclusion of West African cocoa on the list of goods from countries produced by child labor or forced labor.

We note that for a small segment of the industry both in Ivory Coast and in Ghana, credible systems exist which would exempt cocoa produced in these segments from any adverse effects resulting from the identification of West African cocoa broadly as a product using child labor or forced labor. Key elements of credible existing certification systems, absent from the existing system developed under the Protocol, include:

- An independent, third-party verification system
- Independence of the certifier and the standards setting body, with certification by ISO 65
- Experience and practical application
- Multi-stakeholder standards-setting and monitoring
- Membership in an ethical voluntary standards-setting organization such as the ISEAL Alliance

While we await the full implementation of the agreed upon activities by the chocolate industry and the Governments of Ghana and Ivory Coast, there is no basis at this time, to determine that the “government, industry, and third-party actions and initiatives” have been “effective in significantly reducing if not eliminating child labor and forced labor.” A finding to the contrary would run counter to the clear statutory directive of the TVPRA that the DOL “develop and make available to the public a list of goods from countries” where there is “reason to believe” the goods are produced by forced or child labor.

Uzbek Cotton Production

Every year hundreds of thousands of Uzbek schoolchildren, some as young as seven, are forced by the Government of Uzbekistan to work in the national cotton harvest for up to three months. It is difficult to quantify the number of children involved. One estimate has been provided by UNICEF, and suggests that 22.6 percent of children ages 5 to 14 years in Uzbekistan were working in 2000. Estimates prepared by Uzbek human rights defenders working regionally suggest that around 200,000 children may be involved in cotton harvesting in the Ferghana region, and 60,000 in Jizzakh provinces. Habib Mamatov, an official responsible for the cotton harvest of Kashkadarya region, in a public interview with Tribune-Uz stated that 39,656 university and college students as well as 44,385 high school and middle school students were involved in the 2004 cotton harvest campaign. Extrapolating from this figure, a rough estimate for the whole country suggests that over one million children, a third of them under 15 years of age, are recruited to pick cotton each year.

For their arduous work children are paid very little or nothing. Some children working in the Ferghana region stated that they worked from 7 a.m. until 5 p.m. in return for 8 to 16 US cents. Others in the same region said they were paid around 3.5 US cents per kilo. Moreover, although these figures represent the official wages, in reality many youths receive no cash at all. Students are assessed the cost of their meals which in practice may leave the students in debt by the end of the harvest season. As one Uzbek human rights activist explained, the small amount of money that children earn through cotton harvesting is taken by the government to compensate for food, transport and accommodation provided, which is charged as debt to the children throughout the period of the harvest. As a result some child workers are in fact placed in debt bondage by the state.

Under pressure to meet centralized cotton production quotas, local administrators shut down rural schools. Head-teachers are issued with cotton harvesting quotas, which are subdivided among teachers and then among the schoolchildren in each class. Children failing to meet their cotton harvesting quotas are threatened with expulsion from schools and their families are subject to pressure and intimidation. Although local authorities say that children are picking cotton voluntarily out of patriotic feelings, university authorities and school principals force students to join farmers in the fields in the beginning of the harvesting season. Failing to show up at the cotton field will result in expulsion from school or a severe financial penalty.

Children's health and safety is also placed in jeopardy by the practices of the Uzbek government in compelling labor for cotton harvests. Children are often housed in temporary barracks, apart from their families. Buildings are often semi-dilapidated, without electricity, and sleeping quarters are commonly overcrowded; in some cases children are reportedly forced to sleep out in the open.

Access to water is also a problem. An investigation conducted by the Karshi city branch of the Uzbekistan Human Rights Society found an almost complete lack of clean drinking water provided to children in the Nishan region. A Jizzakh-based human rights worker explained that in some cases Uzbekistan's child laborers resort to drinking from irrigation ditches. These claims were corroborated by observers from international NGOs.

After weeks of hard labor in the cotton fields, often without access to clean drinking water, adequate nutrition or accommodation, many Uzbek children suffer from illness and malnutrition. Some reportedly acquire chronic diseases such as intestinal and respiratory infections, meningitis and hepatitis. Inadequate clothing renders others susceptible to rheumatism and other problems associated with exposure to damp and cold conditions. According to UNDP's 2006 Human Development Index (HDI) report, indicators of life expectancy, access to improved sanitation and water along with education have been constantly decreasing in Uzbekistan.

In extreme cases children die during the harvest. According to an investigation by the Institute for War and Peace Reporting (IWPR), some local authorities are so desperate to meet regional cotton production targets that they are reluctant to send sick children to the hospital because they need their labor to complete the harvest. In 2005, Komil Ashurov, a human rights defender from Samarkand, published a report of eight deaths among children and students during the previous two years of the government's cotton picking campaign. The same year Ezgulik, a human rights organization in Uzbekistan, released information that Ayubov Bakhodir, a sixteen year old vocational college student from Namangan, died due to severe hot water burns that he received in the field, as well as inadequate follow up medical treatment.

The most disturbing health hazard associated with child labor in the cotton industry is exposure to toxic pesticides. In the summer of 2004, Uzbek human rights monitors and observers from the international NGO community documented cases of children in Ferghana who were set to work applying cotton pesticides. Provided with no protective

clothing of any kind, the children were issued with plastic water bottles containing liquid chemicals and made to douse the crop. The children had reportedly been excused from their end-of-year exams and told that if they refused to apply the chemicals, they would be kept back a year at school. Journalists who interviewed the children recorded one as saying that the chemicals burned his skin upon contact.

A report issued by EJP and the Pesticide Action Network UK (PAN-UK) in February 2007 documented the extensive use of toxic chemicals in cotton production in Uzbekistan. Chronic use of these substances over decades have resulted in extensive contamination of groundwater in cotton growing regions, further exacerbating the problem of lack of access to drinking water. Current toxic chemicals used on the crop include butifos, which affects the central nervous system, heart, liver and kidneys; phosalone, a substance banned by legislation but acknowledged by the Uzbek Ministry of Agriculture to be in use. The government fails to provide safety training or protective equipment to those who apply the pesticides.

Forced child labor also has a substantial negative impact upon the education of the country's rural schoolchildren. From the age of seven, children living in rural areas can expect to lose up to three months of their education every year as they are sent to the fields. This represents a loss of up to one third of the time available for study each year. Rural children are said to lag behind their urban peers in schooling, due to participation in the cotton harvest.

Raw cotton lint is one of Uzbekistan's principal exports, generating more than USD 1 billion per year and constituting approximately 60 percent of the hard currency earnings of the country. A recent report by the US Department of Agriculture's Foreign Agricultural Service listed the biggest buyers of Uzbek cotton as trading companies based in China, Bangladesh, South Korea, Russia, Singapore and the United Arab Emirates. Consumption data for cotton worldwide suggest that the largest importing countries are China, India, Pakistan and Russia. In turn textile and garment exports from China, India and Pakistan to the United States have been increasing since 2005, suggesting that the US market consumes an increasing share of textiles produced with Uzbek cotton.

Rubber from Liberia

ILRF identified systematic use of forced labor in rubber production in Liberia in 2005. Since that time ILRF partners have continued to report on widespread and systematic practices that compel Liberian rubber tappers to bring their children to work alongside them, to meet unrealistic quotas imposed by Bridgestone Firestone corporation, which owns and operates the world's largest rubber plantation in Harbel, Liberia.

Although management of Firestone, LAC and Cavalla (the predominant rubber producing companies in the region) plantations all have stated that child labor is prohibited within their concession areas, human rights organizations based in Liberia frequently visit the plantations and over the past three years have on several occasions spoken directly with a number of children working on each plantation, aged between 10 and 14 years. Both

Firestone and LAC management have admitted that neither they nor the Liberian government are effectively monitoring corporate policies or legal restrictions prohibiting child labor. Concession and management agreements do not specifically mention the prohibition on child labor, although they oblige corporations and management companies to abide by national labor laws. On the other hand, agreements with workers have been admitted by Firestone corporation to be so unrealistic that a single adult male worker, working alone, could not possibly meet these quotas.

According to Liberian human rights organizations, there are several contributing factors to the occurrence of child labor on Liberia's rubber plantations. First, the workload of tappers has increased over the years due to the diminishing productivity of rubber trees, thus obliging all members of the family to assist in meeting the tapper's designated workload. Second, the location of schools is too far for many children to reach on foot and thus parents bring children to work, rather than leaving them unsupervised in company-provided housing. Third, tappers and their dependents do not receive social benefits from the corporations or management companies and therefore cannot afford to pay school fees. Fourth, the financial incentive for tapping more rubber trees drives children to assist their family members in the plantation rather than go to school. Forms of child labor that endanger the health and development of children are recurrent.

In May 2004, the Ministry of Labour established a National Commission on Child Labour. Government representatives, including the Minister of Labour, plantation management and workers were members of the Commission, which was to be assisted by child advocacy groups. However, due to the lack of an adequate operational budget and the absence of political will among certain government officials, the Commission has been unable to fulfill its mandate.

Recommendations for US Government Agencies Related to Implementation of US Law Prohibiting the Importation of Forced and Child Labor Made Goods

Pursuant to the TVPRA, which passed with near unanimous support in the Congress, the United States Government is directed "to develop and make available to the public a list of goods from countries that the Bureau of International Labor Affairs (ILAB) has reason to believe are produced by forced labor or child labor in violation of international standards." Once the list of child labor-made products is issued, the TVPRA directs the US Government to work with industries involved in the production, importation and sale of those products identified by ILAB to develop a "standard set of practices" that will "reduce the likelihood" that their products are produced with forced labor or child labor with the ultimate goal of ending the importation of goods into the US that are produced with forced labor or child labor. (22 U.S.C §7112(b)(2)(D) & (E))

Noting that approximately 70 percent of the world's working children are laboring in agriculture, ILRF has focused particular attention on research and on advocacy to remediate child labor in global commercial agriculture. Recent efforts to address part of the supply-side and demand-side for child labor in the production of agricultural commodities have focused almost entirely on building general awareness among the

producers of the long-term effects of child labor, as well as developing the capacity of national and local governments to address the problems of child labor through education and enforcement of local laws in the countries where the goods are produced. These efforts are important in ending child labor and must continue. However, they fail to address a key component necessary to successfully ending child labor globally: ending the consumer demand for agricultural products produced by child labor in importing countries.

Currently, business and consumers do not have access to the necessary information that will allow them to avoid purchasing child labor-made goods. However, over the past several years certification programs and voluntary multi-stakeholder monitoring programs have been developed that begin to address this problem. One such program is the Rugmark program for certification of hand-knotted carpets from South Asia. Such programs make it possible for businesses and consumers to have the information necessary for them to make educated purchasing decisions that will allow them to avoid child labor-made goods.

In the area of global commercial agriculture, ILRF has supported an approach that draws from the successful National Organics Program and proposes the involvement of the US Department of Agriculture, in consultation with the US Department of Labor and other relevant US government agencies, with the aim of creating guidelines for producers and establishing a voluntary “child labor-free” certification system. To be effective, we believe such a program must provide for monitoring to the farmgate level, and must contain the following elements: 1) require product traceability and inspection at all stages of the supply chain; 2) allow for multi-stakeholder participation in the certification process; 3) provide for annual on-site inspections by a certifying agent, who shall be certified by ISO 65, of each farm and handling operation; 4) incorporate a comprehensive conflict of interest policy for certifiers, and 5) provide an anonymous grievance procedure open to third parties to allow for identification of new and/or continuing violations and that provides protections for whistle-blowers. Some existing systems of certification do meet these criteria, and a proposed new labor standard and certification process that contains all these elements, and that is designed to apply to global commercial agriculture, is currently under a vetting process by the American National Standards Institute.

A child labor-free certification program would provide willing consumers and businesses, as well as the US government, with an effective tool to drive down demand for child labor-made goods by providing full information to the market about which products, and companies, take efforts to avoid using and profiting from child labor.

The elimination of child labor cannot rest solely on the carrot of market incentives, though. Rather, the use of child labor anywhere in the world is a violation of US and international law that carries with it the stick of criminal and civil liabilities. Currently, under the Tariff Act of 1930 (18 U.S.C. §1307) and the TVPRA (22 U.S.C. §7112(b)(2)(E)), the U.S. government has an obligation to bar the importation of goods produced by child labor. A robust set of standards and certification process, however,

will protect participating companies by providing documentation that shows their product was not produced by child labor and will thus facilitate the ability of the US Customs service to effectively enforce this law.

Respectfully submitted this 7th day of May 2008.

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