

**U.S. Department of Labor
Bureau of International Labor Affairs
Office of Child Labor, Forced Labor and Human Trafficking**

FREQUENTLY ASKED QUESTIONS:

***Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA of 2005)
List of Goods Produced by Child Labor or Forced Labor***

September 26, 2012

1. What is the Trafficking Victims Protection Reauthorization Act of 2005? Why is it relevant for the Department of Labor (DOL)?

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005, Public Law 109-164 (2006), mandates among other things that ILAB “carry out additional activities to monitor and combat forced labor and child labor in foreign countries.” See 22 U.S.C. § 7112. These additional activities are:

- (A) Monitor the use of forced labor and child labor in violation of international standards;
- (B) Provide information regarding trafficking in persons for the purpose of forced labor to the Office to Monitor and Combat Trafficking of the Department of State for inclusion in [the] trafficking in persons report required by section 110(b) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(b));
- (C) Develop and make available to the public a list of goods from countries that ILAB has reason to believe are produced by forced labor or child labor in violation of international standards;
- (D) Work with persons who are involved in the production of goods on the list described in subparagraph (C) to create a standard set of practices that will reduce the likelihood that such persons will produce goods using the labor described in such subparagraph; and
- (E) Consult with other departments and agencies of the United States government to reduce forced and child labor internationally and ensure that products made by forced labor and child labor in violation of international standards are not imported into the United States.

2. How have these mandates been carried out?

Responses are provided below to each of the five TVPRA requirements.

- (A) Monitor the use of forced labor and child labor in violation of international standards;

ILAB staff conducts research on child labor and forced labor utilizing a wide variety of publicly-available primary and secondary sources. ILAB periodically publishes public requests for information on forced labor and child labor in the production of goods internationally, as well as information on government, industry or third-party efforts to combat these problems. ILAB also receives and reviews public submissions of information on an ongoing basis. ILAB's research activities include funding contracts and grants to gather qualitative and quantitative data on child labor and forced labor in the production of goods internationally.

(B) Provide information regarding trafficking in persons for the purpose of forced labor to the Office to Monitor and Combat Trafficking in Persons of the Department of State;

ILAB shares information and coordinates activities to combat forced labor and human trafficking with the Department of State, the Department of Homeland Security, United States Trade Representative and other U.S. government partners.

(C) Develop and make available to the public a list of goods from countries that ILAB has reason to believe are produced by forced labor or child labor in violation of international standards;

ILAB published its initial *List of Goods Produced by Child Labor or Forced Labor* (List) in 2009, and has published new editions of the List annually since that time. The List published on September 26, 2012 contains 134 goods from 74 countries produced by child labor, forced labor or both. The 2012 update adds 4 goods (baked goods, beef, fish, and thread/yarn) and 3 new countries (South Sudan, Suriname, and Vietnam).

In order to compile a credible List that is as comprehensive as possible, ILAB developed a draft research methodology and published it in the *Federal Register* on October 1, 2007, with a request for public comment. Public comments were integrated, as appropriate, into ILAB's final *Procedural Guidelines for the Development and Maintenance of the List of Goods From Countries Produced by Child Labor*, which can be found at: <http://edocket.access.gpo.gov/2007/pdf/E7-25036.pdf>. For the 2012 edition of the List, ILAB reviewed information on child labor and forced labor in the production of goods in 152 countries and territories.

(D) Work with persons who are involved in the production of goods on the List described in subparagraph (C) to create a standard set of practices;

ILAB has consulted with U.S. government partners, foreign governments, industry representatives, employers and other interested stakeholders to develop a new Web-based publication, "*Reducing Child Labor and Forced Labor: A Toolkit for Responsible Businesses*." This toolkit will be published before the end of 2012.

(E) Consult with other departments and agencies of the United States government to

reduce forced and child labor internationally and ensure that products made by forced labor and child labor in violation of international standards are not imported into the United States.

Prior to publishing each edition of the List, ILAB consults extensively with relevant U.S. government agencies.

3. What definitions of child labor and forced labor are used in developing the List?

The definitions below are excerpted from ILAB's procedural guidelines, where the full definitions can be found.

"Child labor" under international standards means all work performed by a person below the age of 15. It also includes all work performed by a person below the age of 18 in the following practices: (A) All forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt bondage and serfdom, or forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; (B) the use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic purposes; (C) the use, procuring, or offering of a child for illicit activities in particular for the production and trafficking of drugs; and (D) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.

"Forced labor" under international standards means all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily, and includes indentured labor. "Forced labor" includes work provided or obtained by force, fraud, or coercion, including: (1) By threats of serious harm to, or physical restraint against any person; (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened abuse of law or the legal process.

4. How are the December 27, 2007 procedural guidelines used to identify goods to be placed on the List?

The procedural guidelines list the following five principal criteria for evaluating information:

- Nature of the information;
- Date of the information;
- Source of the information;
- Extent of corroboration from various sources; and
- Whether the information indicates a significant incidence of child labor, forced labor, or forced child labor in the production of the good.

In the December 27, 2007, Federal Register notice, these five criteria are discussed in greater detail. See 72 Fed. Reg. 73374 (Dec. 27, 2007). These criteria are used in evaluating all

information relevant to goods produced by child labor and forced labor in violation of international standards, to formulate the List.

5. What sources of information does ILAB use to place goods on the List?

To ensure a transparent process, ILAB does not use any information in developing the List that is not available to the public, including government-classified information. ILAB uses a wide variety of publicly-available primary and secondary sources to conduct the research. Primary sources include original quantitative and qualitative research studies and other data or evidence gathered first-hand, while secondary sources are those that cite, comment on or build upon primary sources. ILAB's primary sources include surveys carried out by foreign governments in conjunction with the ILO; site visits and data gathered by ILAB staff and other U.S. Government personnel; and quantitative and qualitative studies carried out by a variety of governmental and nongovernmental entities, including academic institutions. Where available, ILAB relies on statistically representative studies in which participants are chosen through random sampling. This type of research produces reliable estimates of the number of individuals in child labor or forced labor working in particular activities in a given sector or geographic area. Because these studies provide empirical, quantitative evidence about both the nature and prevalence of the problem, ILAB sometimes bases a determination to add a good to the List on a single, representative survey when it is confident in the rigor of its methodology and execution.

ILAB's secondary sources include information reported by U.S. Government agencies, foreign governments and civil society organizations, including reporting from U.S. Government-funded technical assistance projects. The Department of State and U.S. embassies and consulates abroad provide important information by gathering data from local contacts, conducting site visits and reviewing local media sources. On February 16, 2012 ILAB issued a notice in the *Federal Register* requesting information from the public on child labor and forced labor in the production of goods globally and reached out to the embassies of all countries researched (see Appendix A) requesting this information, as well. ILAB monitors reports from international institutions, non-governmental organizations, and academic journals and media sources on an ongoing basis.

For each good that appears on the List, DOL makes available a bibliography of the sources (articles, reports, publications, communications, etc.) that were relied upon in reaching the determination. These bibliographies can be found on the ILAB Web site at <http://www.dol.gov/ILAB/programs/ocft/tvpra.htm>. Many of the sources contain URLs so that they can easily be found on the Internet. When URLs are not provided, the public should request copies of sources from the author or organization that published it. Sources that must be obtained directly from ILAB (such as ILAB-funded research reports) may be requested from ILAB, and many are available on ILAB's Web site.

6. Why are specific company names not included on the List?

The TVPRA mandated a List of goods and countries, not company or industry names. It would be difficult for ILAB to attempt to track the identity of every company and industry

using a good produced with child labor or forced labor. In addition, it is the Department's experience that child labor and forced labor frequently occur in small local enterprises, for which company names, if they are available, have little relevance. Consequently, ILAB has concluded that seeking to track and name individual companies would be highly resource-intensive and of limited practical value. Moreover, holding individual violators accountable would exceed ILAB's mandate under the TVPRA of 2005.

7. In identifying goods to be placed on the List, what are the criteria regarding the date of source information?

Under its procedural guidelines, ILAB may consider information up to seven years old at the time of receipt. However, since 2011 ILAB has chosen to use information no more than 5 years old. More current information has been generally given priority. ILAB's experience is that the use of child labor and forced labor in a country or in the production of a particular good typically persists for many years, particularly when no meaningful action is taken to combat it. Information about such exploitive activities is often actively concealed. Information that is several years old therefore can still provide useful context for more current information.

8. Why are some entries on the List whole product categories, while others are components or raw materials?

When ILAB finds evidence of child labor or forced labor in the production of a good, ILAB carefully considers the stage of production at which child labor or forced labor was used. For example, if child labor or forced labor was only used in the extraction of a raw material, and this raw material was subsequently used under non-violative conditions in the manufacture of a final good, only the raw material and the country where it was extracted would be placed on the List. If child labor or forced labor was used in both the extraction of a raw material and the manufacture of a final good, then both the raw material and the final good, and the country/ies in which such labor was used, would be placed on the List. This is to ensure a direct correspondence between the goods and countries which appear on the List and the use of child labor or forced labor.

9. In placing goods on the List, does ILAB take into account efforts that are being made to address forced labor and child labor?

Information on government, industry or third-party actions and initiatives to combat child labor or forced labor is taken into consideration, although it is not necessarily sufficient in and of itself to prevent a good and country from being listed. Only efforts that have been effective in significantly reducing or eliminating forced labor and/or child labor from the production of a good in a country would prevent the listing of that good and country.

10. How often will the List be updated with new and removed items?

The List will be updated on a periodic basis, depending on the nature and extent of information received through the “maintenance” process described in the procedural guidelines and the additional information available.

11. What are the anticipated uses of the List?

The List’s primary purposes are to raise public awareness about forced labor and child labor and to promote efforts to address them. The List is not intended to be punitive, but rather as a starting point for individual and collective action. Publication of the List has provided ILAB new opportunities to engage in technical cooperation with foreign governments to combat child labor and forced labor and has also been a valuable resource to many companies in carrying out risk assessment and due diligence on labor rights in their supply chains.

12. If the List indicates that there is both “child labor” and “forced labor” in the production of a certain good in a country, does this mean that there are children working in forced labor conditions in the production of the good?

Not necessarily. For each good and country, the List specifies whether there is evidence of child labor, forced labor or both. If the List indicates forced labor is used in the production of a particular good, this could indicate forced labor of adults, forced labor of children or both. If the List indicates child labor is used in the production of a good, this could indicate child labor but not *forced* child labor, even where forced *adult* labor is used in the production of that good. The TVPRA did not require the inclusion of information on forced child labor in the List. However, ILAB has a separate mandate under Executive Order 13126 to publish a list of goods produced by forced or indentured child labor (EO 13126 List). Further information on the EO 13126 List can be found at <http://www.dol.gov/ILAB/regs/eo13126/main.htm>.

13. If the List indicates that there is child labor or forced labor in the production of a good in a country, does this mean that all such goods produced in that country are made by forced labor or child labor?

No. Within any industry in any given country, there are companies that operate within the law, and those that willfully employ exploitative and illegal labor practices such as forced labor and child labor. An entry on the List merely indicates that there is a significant incidence of child labor or forced labor in the production of the good in the country.

14. The five criteria listed in the procedural guidelines include “extent of corroboration from various sources,” but for some goods, only one source is listed. How was the evidence corroborated?

“Extent of corroboration” was one of several criteria used to judge goods and countries. In a few cases, a single source was considered sufficient because it was exceptionally strong and

credible, clearly established the nature of the forced or child labor situation, and clearly established the significance of the problem.

15. Why does the List include goods produced in the informal or “artisan” sector of production?

Research covered all economic activity for adults and children in the production of goods, including formal and informal sector production and goods produced for personal and family consumption. Examples of informal sector activity include day labor hired without contract; small-scale farming and fishing; artisanal mining and quarrying; and manufacturing work performed in home-based workshops. Some illicit goods are also included in the List; this is not intended to condone or legitimize the production or consumption of these goods.

16. Why does the List include goods that are not exported to the United States?

The TVPRA mandate directs ILAB to monitor and combat child labor and forced labor “in foreign countries” and to develop a List of “goods from countries.” It does not restrict the List to goods that are exported to the United States. In most cases, ILAB does not have information about whether the goods on the List are consumed domestically or exported.

17. Why do the goods on the TVPRA and EO Lists vary in their level of specificity - e.g. “Fish” from Thailand vs. “Tilapia” from Ghana?

The TVPRA procedural guidelines define a ‘good’ as “goods, wares, articles, materials, items, supplies, and merchandise.” ILAB determines the type of good included on the List based on the level of specificity in the sources used to corroborate the use of child labor or forced labor in the production of a good. ILAB welcomes additional information from interested parties that provides greater detail on the goods listed.

18. Why does the List leave some countries out? Did ILAB conduct research on those countries and find no child labor or forced labor?

A country’s absence from the List does not necessarily indicate that child labor and/or forced labor are not occurring in the production of goods in that country. Data can be unavailable for various reasons, including both research and policy considerations. Research survey methodologies on hard-to-reach populations, especially for individuals in forced labor, are still in developmental stages and continue to be piloted and refined in order to capture the appropriate constructs. While research on child labor is more advanced, and has gone beyond population estimates, data on the specific types of work in which children are involved beyond aggregated industry data is still not collected in a universal manner. In addition, policy decisions that affect the availability of data on child labor or forced labor include government failure to allocate sufficient financial resources or hesitancy to collect and make publicly available data on such sensitive issues.

Among the 152 countries and territories researched for this edition of the List, there were several for which ILAB could not find adequate information to determine that any goods should be placed on the List because very little recent research has been done.

19. Why is the United States not included on the List?

Coverage of domestically-produced goods is beyond the TVPRA mandate, thus, ILAB did not conduct research on the United States. However, DOL recognizes that both child labor and forced labor occur in the United States.

DOL is the sole federal agency that monitors child labor and enforces child labor laws. The most sweeping federal law that restricts the employment of child workers is the Fair Labor Standards Act (FLSA), enforced by DOL's Wage and Hour Division (WHD). In addition, the Occupational Safety and Health Act and related regulations, enforced by DOL's Occupational Safety and Health Administration (OSHA), apply to all employees regardless of age. WHD and OSHA have an active referral process in place for cases involving children under age 18, and the enforcement staffs of the respective agencies have worked collaboratively on a number of investigations.

WHD's YouthRules! Web site at <http://www.youthrules.dol.gov> provides information about child labor, including the jobs minors may perform and the hours they may work. A WHD toll-free helpline is also available (866-4US-WAGE or 487-9243) to provide information about child labor laws.

More information can be found on the Web site of the Wage and Hour Division: <http://www.dol.gov/whd/>.

20. Should consumers stop buying these goods?

Two important aims of this research are to raise public awareness about forced labor and child labor and to promote efforts to address them. The report is not intended to be punitive, but rather as a starting point for individual and collective action. Elimination of child labor or forced labor from an industry or a country requires intensive, sustained commitment by governments, companies and industry groups, workers and labor unions and civil society organizations. In some cases, consumers and investors have played a role by advocating for products that are free of forced labor.

The way to significantly reduce or eliminate child labor or forced labor varies from good to good and from country to country. Solutions must be designed to fit each context, and must account for a variety of factors such as the legal, regulatory and enforcement regimes in place; the number of producers in the country; the structure of supply chains; geography; infrastructure; levels of community activism and many others. Few human rights problems with the complexity of child and forced labor can be solved through unilateral action alone. Solutions often must be cross-sectoral and collaborative, leveraging the unique strengths, resources and positions of multiple stakeholders.

21. How can the public provide information to support adding goods to or removing goods from the List?

ILAB seeks studies, reports, statistics, news articles, electronic media, or other sources that establish the presence or absence of a significant incidence of child labor or forced labor in the production of a particular good in a country. ILAB also welcomes information on government, industry, or third-party efforts that have been effective in combating these problems. Where applicable, information submissions should indicate their source or sources, and copies of the source material should be provided. If primary sources are utilized, such as research studies, interviews, direct observations, or other sources of quantitative or qualitative data, details on the research or data-gathering methodology should be provided. Classified information will not be accepted. Please refer to the “Procedures for the Maintenance of the List” section of the procedural guidelines for further details and submission instructions. Information can also be sent at any time to ilab-tvpra@ILAB.gov.