DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Notice of Final List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Under Executive Order No. 13126

SUMMARY: As required by Executive Order No. 13126 (''Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor''), this notice sets forth a final list of products, by country of origin, which the Department of Labor, the Department of State, and the Department of the Treasury believe may have been mined, produced, or manufactured by forced or indentured child labor. Under a final rule by the Federal Acquisition Regulatory Council, published in today's issue of the **Federal Register**, which also implements Executive Order No. 13126, federal contractors who supply products on the list are required to certify, among other things, that they have made a good faith effort to determine whether forced or indentured child labor was used to produce the item. The Department of Labor is also publishing, in today's issue of the **Federal Register**, procedural guidelines that describe how the list of products will be updated in the future, through a public notice-and-comment process.

FOR FURTHER INFORMATION CONTACT: Ami Thakkar, International Child Labor Program, Bureau of International Labor Affairs, Room S–5303, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 208–4843; fax: (202) 219–4923.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order No. 13126, which was published in the **Federal Register** on June 19, 1999 (64 FR 32383–32385), required the Federal Acquisition Regulatory Council (the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council) to issue proposed rules to amend the Federal Acquisition Regulation (FAR), with respect to the procurement by federal agencies of products that may have been mined, produced, or manufactured with forced or indentured child labor. A proposed rule was published in the **Federal Register** on September 6, 2000 (65 FR 54104–54107), and public comment was invited. A final rule is being published in today's **Federal Register**.

Under that final rule, certain procurement related requirements will apply to products that appear on a list published by the Department of Labor, pursuant to Section 2 of Executive Order No. 13126, which required the Department of Labor, in consultation and cooperation with the Department of the Treasury and the Department of State, to ''publish in the **Federal Register** a list of products, identified by their country of origin, that those Departments have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor.''

As authorized by the Executive Order, the Department of Labor held a public hearing on August 10, 1999, at which several witnesses presented oral and written testimony concerning the development of a list of products. On September 6, 2000, in consultation and cooperation with the Department of State and the Department of the Treasury, the Department of Labor published a preliminary list of products in the **Federal Register** (65 FR 54108–54112), explained how the preliminary list was developed, and invited public comment. The public comment period closed on November 6, 2000.

II. Summary and Discussion of Significant Comments

Twenty-four comments were received. In developing the final list of products, the three Departments have carefully reviewed and considered the public comments received. The following is a summary of the significant comments and the three Departments' response.

A. Comments on the definition of ''forced or indentured child labor''

Several comments raise issues related to the definition of ''forced or indentured child labor'' used in determining the proposed list of products that may be produced by forced or indentured child labor. Executive Order No. 13126 defines

> ''forced or indentured child labor'' as: all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

As explained in the Department of Labor's September 6, 2000 **Federal Register** notice, the ''two aspects of the definition represent alternatives which are not mutually exclusive.'' 65 FR 54109.

The definition of ''forced or indentured child labor'' in Executive Order No. 13126 is derived from, and generally consistent with, the Tariff Act of 1930, 19 U.S.C. 1307. That statute, enforced by the Customs Service of the Treasury Department, prohibits the importation into the United States of ''all goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions.''

The Tariff Act specifically defines ''forced labor'' as ''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.'' The first part of the Executive Order's definition of ''forced or indentured child labor'' incorporates this statutory language.

The Tariff Act does not specifically define ''indentured labor under penal sanctions'' (the term used in that statute). The second part of the Executive Order's definition of ''forced or indentured child labor'' is intended to incorporate the Tariff Act's concept of indentured labor, as it involves children. This part of the Executive Order definition is derived directly from the legislative history of the Tariff Act. See 71 Cong. Rec. 4488–4499 (daily ed. Oct. 14, 1929).

In comments on behalf of the organizations in the Child Labor Coalition, the International Labor Rights Fund questions the definition of ''forced or indentured child labor'' in the Executive Order and urges the development of a different, significantly broader definition. The Fund's comments identify various abusive working conditions that the Fund suggests ''should be encompassed explicitly in the definition of 'forced or indentured child labor.' '' The Fund's comments do not refer to any specific basis in U.S. or international law for such an expanded definition.

The Department of Labor's September 6, 2000 **Federal Register** notice explained how the Labor, State, and Treasury Departments have applied the definition in the Executive Order and have evaluated a wide range of working conditions for the possibility of coercion, the essential element of the first part of the definition. 65 FR 54109. The Department of Labor, in consultation and cooperation with the Departments of State and Treasury, is charged with implementing the Executive Order and its definition of ''forced or indentured child labor.'' That definition is appropriately derived from the Tariff Act, as explained above, since the Executive Order embodies a procurement policy intended to be consistent with the Tariff Act. As has

been previously noted, some child labor abuses may not meet the established definition of ''forced or indentured child labor.''

The United States Council for International Business, in a comment noting its strong support for international efforts to end forced and indentured child labor, asks for clarification concerning the second part of the definition of ''forced or indentured child labor'' in the Executive Order with respect to situations in which persons under age 18: (1) Work under a legally enforceable ''collective bargaining agreement freely negotiated by the employer and the union representing workers in the bargaining unit;'' or (2) work under individual employment contracts that contain a ''penalty clause that is triggered by early termination,'' but where ''excessive process or penalties'' (as opposed to ''customary cancellation penalties'') are not involved.

The information provided by the U.S. Council is not detailed, especially with respect to individual employment contracts and the so-called ''penalty clause.'' On the basis of the description provided by the U.S. Council, however, it appears possible, depending on the facts, that neither situation would come within the second part of the Executive Order's definition of ''forced or indentured child labor,'' as interpreted consistently with the Tariff Act of 1930. As a general matter, there is no indication that Congress was concerned about legitimate collective bargaining agreements or legitimate employment contracts, providing for ordinary legal remedies, when it enacted the Tariff Act. In any case, neither situation described by the U.S. Council clearly implicates the concept of indentured labor under penal sanctions. For example, a child apparently would not be subject to criminal penalties, to a judicial order requiring the child to continue working, or to a state-sanctioned monetary penalty, as a means of enforcing the agreement or contract. With respect to employment contracts, the U.S. Council does not appear to be describing truly punitive provisions, designed to deter young workers from quitting employment in circumstances of exploitation or duress. Because there is no suggestion that children are being coerced to enter into a contract or to work under it, the first part of the Executive Order definition also may not apply to the situations described by the U.S. Council. The application of the Executive Order, of course, will depend on the specific factual circumstances of particular cases. Circumstances that suggest coercion, including coercion related to making or enforcing employment contracts, will be carefully examined.

In his comment, Senator Tom Harkin raises concerns about the application of the definition of ''forced or indentured child labor'' in the development of the list of products. The Departments have attempted to apply the definition in a way that is both consistent with the Tariff Act and takes into account the actual circumstances in which children work. We will continue to do so, based on available information, as the list of products is updated.

B. Comment on Statutory Authority

One comment questions the statutory authority for action by the three Departments to implement Executive Order 13126, since matters of federal acquisition policy are involved. The list of products called for in the Executive Order serves to trigger requirements for federal contractors under revisions to the Federal Acquisition Regulation, to be adopted by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council. The authority for the Executive Order, and for the regulations that implement it, derives in part from the Federal Property and Administrative Services Act of 1949 (also known as the Procurement Act), 40 U.S.C. 471 *et seq.*, which among other things authorizes the President to prescribe federal acquisition policy and directives.

C. Comment on the Burden of Proof Once a Product Is Listed

Senator Harkin expresses concern that products might be removed from the list, if new information demonstrating the continued use of forced or indentured child labor were not regularly supplied by non-governmental sources. He suggests instead that products should remain on the list, unless new information showed that the prior use of forced or indentured child labor had been effectively addressed. In fact, the list will be updated in line with the principle supported by Senator Harkin. Once a product is placed on the list, it will remain there, unless and until the three Departments have adequate information to justify removing the product from the list. The public notice-and-comment process by which the list will be updated is described in a separate notice in today's **Federal Register**.

D. Comment on the ''Reasonable Basis to Believe'' Standard

The International Labor Rights Fund, on behalf of the other organizations in the Child Labor Coalition, requests clarification of the Executive Order's standard for placing a product on the list: That the three Departments have a ''reasonable basis to believe'' that forced or indentured child labor was used. The Fund is correct in pointing out that this threshold is relatively low. The standard is appropriate, given the nature of the list. The list does not reflect a determination that forced or indentured child labor actually was used to produce a particular product. Rather, it establishes the need for further inquiry by a federal contractor who wishes to supply the product, in order to make sure that forced or indentured child labor was not, in fact, used.

As the September 6, 2000 **Federal Register** notice explained, the three Departments have applied the ''reasonable basis to believe'' standard to develop the list. There, we identified several factors that were considered and weighed: ''the nature of the information describing the use of forced or indentured child labor; the source of the information; the date of the information; the extent of corroboration of the information by appropriate sources; and whether the information involved more than an isolated incident.'' 65 FR 54109. The three Departments have also taken into account ''whether recent, credible efforts are being made to address forced or indentured child labor in a particular country.'' 65 FR 54109.

E. Comments on Effect of Prior Executive Branch Reports Addressing Child Labor

The International Labor Rights Fund, on behalf of the Child Labor Coalition, questions whether the three Departments gave sufficient weight to prior reports addressing the use of child labor, published by the Department of Labor and the Department of State. In particular, the Fund states that the Department of Labor's series By the Sweat and Toil of Children ''should constitute prima facie evidence for purposes of identifying countries and products that should be identified pursuant to E.O. 13126.'' In fact, the three Departments did consider previously published reports and carefully reviewed information that was cited in those reports. The reports themselves, however, cannot serve as a substitute for the determination required by Executive Order. Moreover, in some instances, the reports completed in 1994 and 1995 relied upon information that may no longer be considered current, in a few cases the reports reflected information on isolated occurrences, and in others, there is information on more recent and credible

efforts to eliminate child labor in the product identified.

F. Comments on the Inclusion of Products From Burma

Several comments were received supporting the inclusion of products from Burma on the preliminary list. These comments include a letter from a number of members of Congress, specifically Representatives Kucinich, Kaptur, McHugh, Evans, Slaughter, Nadler, Sanders, Waxman, George Miller, Payne, Ackerman, DeFazio, Abercrombie, Delahunt, McDermott, Tierney, McKinney, McGovern, Lee, Moakley, Carson, Doggett, Stark, Sandlin, Baldwin, and Sherrod Brown.

G. Comments on the Exclusion of Certain Products and Countries

Various comments express a concern that the list included an insufficient number of products and countries. For example, many of the comments, including those from Representatives Tom Campbell and Tom Tancredo, object to the exclusion of several countries, on the basis that these countries have well known ''forced and indentured labor systems''. Some comments refer to Congressional testimony where specific products were named by region as examples of products ''flowing into America.'' One comment, discussed below, mentions a specific product and country.

As explained, in considering which products and countries would be placed on the preliminary list, the three Departments considered and weighed a number of factors including: The nature of the information describing the use of forced or indentured child labor; the source of the information; the date of the information; the extent of corroboration of information by appropriate sources; whether the information involved more than an isolated incident; and whether recent and credible efforts are being made to address forced or indentured child labor in a particular country or industry.

None of the comments described above provides additional information sufficient to support the inclusion of additional products and countries on the list. First, the Executive Order required the development of a list of products, by country of origin. Many of the comments named countries, but failed to identify specific products. In other cases, products were mentioned without reference to specific countries. Second, to satisfy the Executive Order standard, the Departments must have information on an individual product, in a particular country, which may be made with forced or indentured child labor. Such information was not provided in the comments received, with one exception. Third, the scope of the Executive Order is limited to forced and indentured child labor, that is labor by persons under the age of 18. The comments received refer to forced labor in a country and in some cases, sector. However, this alone does not provide sufficient information of forced or indentured child labor.

The Department of Labor welcomes future submissions providing information on specific products produced by forced or indentured child labor in specific countries. Submissions should follow the procedures outlined elsewhere in today's **Federal Register**.

As indicated, one comment did provide current and specific information: Professor Kevin Bales of Free the Slaves submitted new information concerning the use of forced or indentured child labor in the cocoa industry in the Ivory Coast. Since this product was not considered when creating the preliminary list, the International Child Labor Program of the Bureau of International Labor Affairs will consider the information as a submission for review pursuant to the newly-announced procedures for updating the current list.

H. Comments on Recent and Credible Efforts

Several comments question the factors which the three Departments took into consideration when determining which products and countries would be on the list. Senator Tom Harkin states that the presence of programs or the commitment to initiate programs aimed at eliminating child labor is not a justification to leave any product or country off the list.

The International Labor Rights Fund, on behalf of the Child Labor Coalition, makes a similar comment regarding carpets in South Asia, stating that efforts being undertaken in the industry to eliminate child labor did not justify their exclusion.

Again, in considering which products and countries would be placed on the preliminary list, the three Departments took into consideration a number of factors including the extent of recent and credible efforts undertaken in a particular country and industry aimed at addressing forced or indentured child labor. The Department of Labor will continue to assess the progress of these efforts and welcomes further information from the public on them.

I. Comments on Products From India

Senator Harkin and several other submitters specifically object to the failure to include any products from India on the list. The three Departments based their decision on the fact that the Government of India is now making extensive efforts, in collaboration with the International Labor Organization's International Program on the Elimination of Child Labor to prevent and eliminate child labor in the following sectors: hand-rolled beedi cigarettes, brassware, hand-made bricks, fireworks, footwear, hand-blown glass bangles, hand-made locks, hand-dipped matches, hand-broken quarried stones and hand-spun/hand-loomed silk. The Department of Labor will monitor the effectiveness of these efforts, and will welcome public comments on the credibility and progress of such efforts.

J. Other Comments

One comment states that the description of the products listed on the preliminary list were ''vague'' and that products should be identified by the standard category codes that are used by the Customs Service and Census Bureau. The three Departments believe that the descriptions are sufficiently specific. The Executive Order does not require the use of standard category codes in the products list. At this time, the Departments do not have reason to believe that the addition of standard category codes to the list would result in more efficient implementation of the Executive Order.

Another comment suggests that the inputs of the Department of State and Treasury into the Executive Order consultation process be described and that the joint determination process for compiling the list be disclosed. The Departments of Labor, State and Treasury consulted extensively before compiling the list, as mandated by the Executive Order. As a result, the preliminary list underwent a thorough interagency process.

Another similar comment suggests that the responsibility of implementing the Executive Order should rest with an acquisition policy agency, with advisory and support roles by the Departments of Labor, State and Treasury. In fact, as already described, the appropriate acquisition organizations are responsible for implementing the Executive Order, through revisions to the Federal Acquisition Regulation. Furthermore, the Executive Order mandates the Department of Labor, in coordination with the Departments of State and Treasury to publish a list of products.

Several comments suggest a broader scope for the Executive Order, rather than its current mandate to prohibit the acquisition of goods made with forced

or indentured child labor by the federal government. These comments are beyond the scope of the present initiative, which is intended to implement the Executive Order, not to modify it. Development of a products list, and accompanying procurement regulations, based on standards broader than those in the Executive Order would require additional public notice-and-comment procedures, as well as significant additional research and investigation by the three Departments. These steps would unnecessarily delay the implementation of the Executive Order. Without ruling out the possibility of future steps, should they be determined to be appropriate, the three Departments have chosen to proceed to finalize the product list contemplated by the Executive Order.

K. Request for Information on Carpets

In the preliminary notice, the three Departments invited comment on the measures taken in South Asia to eliminate forced and indentured labor in the carpet sector, including labeling and monitoring initiatives that are currently in place. Specifically, the Department sought public comment on the sufficiency of these initiatives and whether or not a certification or label from a credible monitoring program could adequately serve the purposes of the Executive Order. The Departments received a comment from the International Labor Rights Fund, on behalf of the Child Labor Coalition, stating that there are impressive programs dealing with child labor in the carpet sector, particularly Rugmark. The submitter also said in order to avoid giving ''a free pass'' to producers who are not participating in the innovative programs, carpets should be included on the list. Although carpets are not being included in this final list, the Departments are considering how best to address the issue raised by the International Labor Rights Fund, while continuing to encourage innovative labeling and monitoring initiatives in the carpet sector. The Department of Labor requests additional public comment on the issue raised by the International Labor Rights Fund.

L. Request for Information on Cotton and Sugarcane

The Departments requested information on whether there was forced or indentured child labor in the production of cotton and sugarcane in Pakistan. No comments were received and existing information is insufficient; therefore, the Departments have not included these products on the final list.

III. Final List of Products

The three Departments have determined that it would be appropriate to publish a final list of products that comprises the products on the preliminary list. No comments objected to the inclusion of these products. The basis for including those products on the list is set forth in detail in the Department of Labor's September 6, 2000 notice in the **Federal Register** (65 FR 54108–54112). The final list of products appears below. In addition, in today's issue of the **Federal Register**, the Department of Labor is publishing procedural guidelines for updating the final list in the future.

Based on recent, credible, and appropriately corroborated information from various sources, the Department of Labor, the Department of State, and the Department of the Treasury have concluded that there is a reasonable basis to believe that the following products, identified by their country of origin, might have been mined, produced, or manufactured by forced or indentured child labor:

Bamboo(Burma)
Beans (including yellow, soya, and green beans) (Burma)
Bricks (hand-made) (Burma, Pakistan)
Chilies (Burma)
Corn (Burma)
Pineapples (Burma)
Rice (Burma)
Rubber (Burma)
Shrimp (aquaculture)(Burma)
Sugarcane (Burma)
Teak (Burma)

Signed at Washington, D.C., this 5th day of January, 2001.

Andrew J. Samet,

Deputy Under Secretary for International Affairs.

[FR Doc. 01–953 Filed 1–17–01; 8:45 am]

BILLING CODE 4510–28–P