american apparel &
footwear association

July 14, 2011

Tina McCarter
Office of Child Labor, Forced Labor, and Human Trafficking
Bureau of International Labor Affairs (ILAB)
U.S. Department of Labor
Room S-5317
200 Constitution Ave., NW
Washington, DC 20210
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RE: Docket No. DOL–2011–0002, Notice: Request for Information and Invitation to Comment, Child Labor, Forced Labor, and Forced or Indentured Child Labor in the Production of Goods in Foreign Countries and Efforts by Certain Countries to Eliminate the Worst Forms of Child Labor, The Bureau of International Labor Affairs (ILAB), U.S. Department of Labor, *Federal Register,* Volume 76, Number 79, Pages 22921-22922, April 25, 2011

To Whom It May Concern:

On behalf of the American Apparel & Footwear Association – the national trade association of the apparel and footwear industries, and their suppliers – thank you for your continued efforts to identify and combat child and forced labor around the world. We appreciate the opportunity to comment on one of the key tools you use in those efforts – the *List of Goods Produced by Child Labor or Forced Labor (TVPRA List)*. While we applaud the goals behind the creation of this list, we remain deeply concerned with the procedural guidelines promulgated by the Department for the development and maintenance of the list. We continue to believe that the current guidelines used to develop the list not only threaten the credibility of the Department on this important issue, but also, in many cases, unfairly impugn the reputations of certain industries in certain countries, and the U.S. companies that buy from those industries and countries.

For well over a decade, the apparel and footwear industries have been global leaders in the effort to eradicate the existence of child and forced labor in apparel and footwear factories worldwide. Through the industries' efforts, the apparel and footwear industries have succeeded in dramatically reducing the existence of child and forced labor in the apparel and footwear industries. We support the Department's continued efforts to fight child and forced labor.

We feel, however, that those efforts are undermined by the procedural guidelines used to create and maintain the *List of Goods Produced by Child Labor or Forced Labor (TVPRA List)*. Since the publication of the first list in September 2009, this list has become one of the central pillars in the Department's efforts on child and forced labor.

However, we believe that the credibility of this list could be much improved by certain revisions to the procedural guidelines. We believe the guidelines should:

1) Elaborate on Criteria of "Significant Incidences" and "Reason to Believe"

In its 2010 revisions, while the Department elaborates more on the process of how "significant incidences" are considered when determining child labor or forced labor within a country, there is still a lack of information of what the Department considers to be a valid submission. It is discussed that a single submission from one provider will not likely put the country's whole industry on the list. Instead, the incidence would have to apply to the general production of the good in the country to be put on the list. These guidelines are confusing as it also states the incidence does not necessarily have to represent the entire industry. Leading to ask, how significant does the incidence have to be within the country's industry to be put on the list? Does the case of child labor or forced labor need to be found in the majority (over 50%) of production in the industry? In this situation the number of incidences in relation to the size of the industry should be taken into account. The Department should define a certain proportion if the country has, for example, 30% of their industry with significant incidences of child or forced labor, the country's industry will be listed. The proportion is necessary as countries that have 20,000 factories in the apparel or footwear industry may have more actual incidences of child or forced labor, compared to a country that only has 200 factories in the apparel and footwear industry. The larger country could have 100 factories with incidences of child labor or forced labor, while the smaller country may only have 50 factories with incidences. However in the smaller country, that would mean 25% of the industry violates child or forced labor international standards, while in the larger country only 0.5% of the industry has violated these standards.

The Department uses "reason to believe" as their determinant of whether a country's industry violates international standards. However the definition of "reason to believe" is extremely vague. We request defining the standards of how the Department has determined to believe an industry is using child labor or forced labor. The use of government, industry, or third party evidence is discussed in the procedural guidelines. However the procedures do not provide any benchmarks as to what makes information from one of these parties credible enough to meet the "reason to believe standard." As currently structured, the Department provides no guidelines on determining the credibility of the provider of the information, particularly as it relates to 1) the issue of child and/or forced labor; 2) the provider's experience in the country in question; and 3) the provider's experience with the industry in question.

In addition, as we have mentioned before in previous comments, the time period of 7 years for evidence to be accepted is far too long. Especially with increasing technology and global connections, manufacturers are able to access more information and capabilities to improve practices faster than ever before. Also, the increasing awareness of social responsibility within the apparel and footwear industry has instigated change throughout the supply chain. A manufacturer who may not have even had a code of conduct 7 years ago, has the potential to install and implement the changes in work practices in 7 years that address the issues of forced and child labor. Also, as we have mentioned before, it is also possible for factories to close or be taken over by new management. We recommend that the Department shorten this time period to 3 years, and also to take under consideration the changes made since the occurrence of the reported incidence(s). If a specific factory or set of factories with prior incidences has

demonstrated improvement and implementation of policies against forced and child labor, the Department should explain how they take these actions into consideration when determining if the country's industry will remain on the list.

Finally, despite the process in place regarding "significant incidences" and "reason to believe," it appears that the placement of many of the products and countries currently on the list are due to solely to press reports, in some cases only one or two dated reports. While the Department might have additional, credible evidence from sources that they can't publicly disclose, the fact remains that the only public justification (through the bibliography that accompanies the list) for placing certain industries/countries on the list are one or two dated press reports. We are concerned that 1) this could damage the legitimacy of the list and 2) could brand a whole industry in a country, in a case where the industry could have 5,000 plus factories, or more, as using forced labor based on a single press report.

2) Define "Product"

In order to ensure accuracy and transparency, we continue to believe the guidelines should define what a "product" means on the proposed list. Should the list utilize broad categories to define "product," such as "textiles" or provide as much specificity as possible? In this example, the Department could find legitimate concerns with child labor in factories producing bedding in a certain country. However, since the Department uses broad categories, like "textiles," the list would then imply that any textile or textile product – from yarn, fabric and clothes to furniture upholstery, sheets and towels – from that country likely utilizes child labor, even if no such evidence exists. Similarly, there could be evidence of child labor in a country for certain garments requiring intricate beading, but using the term "garments," as the Department currently uses in the list, again brands all apparel made in that country as using child labor even when no such evidence exists.

Therefore, we encourage the Department to provide as much specificity as possible. Because the list addresses U.S. imports, we urge the Department to utilize the *Harmonized Tariff Schedule* (HTS) out to the 10-digit level. The U.S. Department of Homeland Security's Bureau of Customs and Border Protection (Customs), one of the agencies which the Department consults in the development and use of the proposed list, uses 10-digit HTS numbers to classify all U.S. imports.

3) Giving Credit Where Credit is Due – Acknowledge industries/countries where improvemens have been made

Some public acknowledgement should be included in the list should be developed to recognize countries who are making efforts in improvement in the practices of the industry to address violations of child or forced labor. This list should feature countries who have are improving their practices, but still have a child and forced labor as a prominent violation in their industry. This list would address the backlash the countries may be receiving once they are put on the list as violators of child and forced labor and would show that there has been an acknowledgement of the problem and implementation of improvement in labor practices.

With reference to the current list, an example is the continued inclusion of the apparel industry in Jordan on the list for forced labor. While all parties concede that issues still exist, we believe that

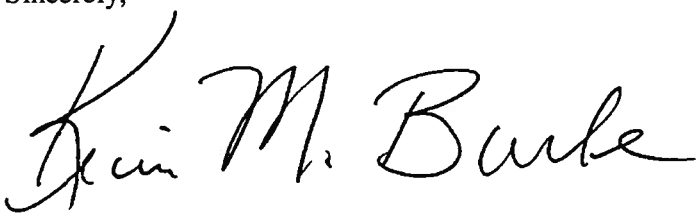
all parties also must concede that the Jordanian government has made significant progress in recognizing and addressing the problem since the issue first came to light in 2007. However, as the list is currently developed, it appears that Jordan has done nothing to address the issue and that the problem remains pervasive, if not endemic to the entire industry.

Again, we fully support the Department's goal of eradicating child and forced labor worldwide. We believe that the adoption and implementation of these recommendations will help the Department achieve this goal by significantly improving one of the main weapons in the Department's arsenal.

Thank you for the opportunity to submit comments. Please contact Nate Herman of my staff at 703.797.9062 or nherman@apparelandfootwear.org if you have any questions or would like additional information.

Please accept my best regards,

Sincerely,



Kevin M. Burke
President & CEO

Vitas, Bogdan - ILAB

From: Wolkomir, Elizabeth D - ILAB
Sent: Wednesday, July 20, 2011 12:14 PM
To: Wolkomir, Elizabeth D - ILAB
Subject: FW: AAFA Comments for Revised List of Products made with Child Labor
Attachments: childforcedlaborlistcomments1106.pdf

From: Nate Herman [mailto:nherman@apparelandfootwear.org]
Sent: Thursday, July 14, 2011 10:54 PM
To: McCarter, Tina - ILAB; Tiffany Rogers
Cc: Rigby, Rachel - ILAB; Steve Lamar; Scott Elmore
Subject: RE: AAFA Comments for Revised List of Products made with Child Labor

Tina:

Please find attached our very belated comments on the procedures regarding the development of the TVPRA child/forced list.

Thanks again for the opportunity to submit comments late. I apologize for the long delay.

Please contact me if you have any questions or would like additional information.

Nate Herman
Vice President of International Trade
American Apparel & Footwear Association (AAFA)
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From: McCarter, Tina - ILAB [mailto:McCarter.Tina@dol.gov]
Sent: Saturday, June 18, 2011 9:03 PM
To: Tiffany Rogers
Cc: Nate Herman; Rigby, Rachel - ILAB
Subject: RE: Comments for Revised List of Products made with Child Labor

Hi Tiffany

Please excuse the delay in my response.

We are happy to take comments from the public at any time. However, it is expected that we will publish updates to our two lists of goods, the TVPRA list of goods made with child labor and/or forced labor and the EO list of goods made with forced child labor, in September. If you wish to have your comments considered prior to publication of those lists, it would be advisable to submit your comments by July 15 latest.

Many thanks,
Tina

From: Tiffany Rogers [mailto:trogers@apparelandfootwear.org]
Sent: Wed 6/8/2011 11:32 AM
To: McCarter, Tina - ILAB
Cc: Nate Herman
Subject: RE: Comments for Revised List of Products made with Child Labor

Hi Tina,

We are still working on our comments. When is the absolute cut off date to submit our comments?

Thanks,

Tiffany

From: McCarter, Tina - ILAB [mailto:McCarter.Tina@dol.gov]
Sent: Wednesday, June 01, 2011 11:01 AM
To: Tiffany Rogers
Cc: Nate Herman
Subject: RE: Comments for Revised List of Products made with Child Labor

Dear Tiffany

Yes we are still accepting submissions. Please feel free to send to me with a copy to Rachel Rigby at rigby.rachel@dol.gov

Thank you,

Tina McCarter
International Relations Officer
Office of Child Labor, Forced Labor and Human Trafficking
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From: Tiffany Rogers [mailto:trogers@apparelandfootwear.org]
Sent: Tuesday, May 31, 2011 2:30 PM
To: McCarter, Tina - ILAB
Cc: Nate Herman
Subject: Comments for Revised List of Products made with Child Labor

Hi Tina,

I'm writing on the behalf of Nate Herman from the AAFA, in regards to issuing comments on the U.S. Department of Labor's revised list of products made with child labor. While the list has already been published, I am inquiring if it is still possible for the AAFA to still issue comments. If so, please let us know!

Thanks for your time,

Tiffany

Tiffany S. Rogers
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Department of Govnernment

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