

COMMENTS ON EO 13126

On behalf of the Global Issues Group, the National Confectioners Association, the Association of the Chocolate, Biscuit and Confectionery Industries of the EU, the European Cocoa Association, the World Cocoa Foundation, the Confectionery Manufacturers of Australasia and the International Confectionery Association, we are pleased to submit the following comments on the U.S. Department of Labor's Executive Order ("EO") 13126 list.

I. INTRODUCTION

The global chocolate and cocoa industry condemns the use of forced or indentured child labor in the cocoa supply chain or any supply chain. The effort to communicate in a clear and transparent manner where labor practices are not acceptable is a positive step that will help all those engaged in supply chain development to target improvements.

On September 11, 2009, the Department of Labor ("DOL" or "Department") published in the Federal Register an Initial Determination Updating the List of Products Requiring Federal Contractor Certification as to Forced/Indentured Child Labor Pursuant to Executive Order 13126, 74 Fed. Reg. 46,794. Representatives of the global chocolate and cocoa industry have reviewed the Executive Order list and commend the U.S. Department of Labor for gathering the information regarding forced or indentured child labor and assembling it in one place. This information can serve as a reference point for future efforts to eliminate these unacceptable labor practices.

While the industry sees the EO list (as well as the list created under the auspices of the Trafficking Victims Protection Reauthorization Act of 2005 ("TVPRA") list) as an important step in the effort to communicate where inappropriate labor practices are occurring, we believe that the current EO listing of the Cote d'Ivoire cocoa supply chain is in error. Accordingly, cocoa from the CDI should not be included on any final list published pursuant to EO 13126.

We also believe that the process of creating the list and especially the method of assessing and identifying where forced/indentured child labor is taking place can be significantly improved.

The Secretary of Labor has noted that one purpose of the list is to call for greater collaboration in addressing the issues raised by the EO list. As an industry we look forward to the opportunity to work with the Department in creating an improved process. The government of the CDI and others in the cocoa industry continue to make good-faith efforts to eliminate inappropriate child labor. Having reviewed the list in its entirety and noting that the initial list of products includes cocoa from the Cote d'Ivoire ("CDI"), we believe CDI should be excluded from the final list for the following reasons.

II. BACKGROUND

Over the last eight years, the governments of Cote d'Ivoire and Ghana, working with industry, NGOs and a host of organizations including the International Cocoa Initiative and the International Labor Organization, have made an unprecedented effort to eliminate the worst forms of child labor in the production of cocoa in West Africa. The

Harkin-Engel Protocol¹ has been the overarching structure to support this multi-faceted effort. In support of the families and communities in the West African cocoa sector, the global chocolate and cocoa industry has spent over \$75 million during this period. While the process has proven to be more complex than could have reasonably been anticipated, it is well-recognized as a model of public/private sector cooperation in a developing country agricultural setting.

With the signing of the Harkin-Engel Protocol in 2001, the government of Cote d'Ivoire made an extraordinary and public commitment to addressing the problem of child labor in the nation's cocoa sector. During this decade, the government of the Cote d'Ivoire has:

- enacted laws;
- adopted ILO conventions;
- amended its constitution;
- conducted comprehensive surveys (and published data from those surveys);
- allowed independent, third-party verification of data;
- appointed officials at the highest levels of government to address child labor;
- created a national plan;
- initiated a new pilot program to improve education and sensitize community members in 30 communities;
- actively support and international partners' remediation efforts; and

¹ Signed in September 2001, the Harkin-Engel Protocol is an international agreement aimed at ending child labor in the production of cocoa. The Protocol was a commitment by industry to develop and implement voluntary, industry-wide standards of public certification that cocoa beans and their derivative products have been grown and processed without the "worst forms of child labor," (defined according to the International Labor Organization's Convention 182).

- participated in an unprecedented joint working group with the government of Ghana and industry.

These diverse and productive activities have taken place despite a civil war and ongoing political uncertainty in CDI. During this period, the CDI government has focused a sustained effort on strengthening the national legal frameworks related to child labor, developing a national plan of action to address the issue, engaging with the international community for technical assistance, and mapping out as well as funding and initiating on-the-ground remediation and intervention programs. Cote d'Ivoire has ratified ILO Conventions 29 (ratified May 1961) and 105 on Forced Labor (ratified November 1960), Convention 182 on the Worst Forms of Child Labor (Decree No. 2002-55, ratified February 2003), and Convention 138 on the Minimum Age of Employment (Decree 2002-53, ratified February 2003). The government has also ratified the African Charter on the Rights and Welfare of the Child (Decree No. 2002-47 January 21, 2002) and initiated a multilateral Agreement on Cooperation Against Trafficking in Children in West Africa, which was signed by nine West African countries including Cote d'Ivoire in July 2005. In the Cote d'Ivoire Constitution, Law No. 95-51, 97-400, Article 3 prescribes an absolute prohibition against forced labor of any kind, and the CDI penal code makes the abduction, mistreatment, or abandonment of a minor a crime (Articles 370, 335, 336, 362, 363).

Demonstrating the high political importance Cote d'Ivoire places on this issue, in 2007, the government elevated the working group tasked with the national initiative on child labor, creating a steering committee composed of the heads of the ten ministries, with the new head of the task force reporting directly to the Prime Minister. From the beginning, it was recognized both by the government of Cote d'Ivoire as well as

international stakeholders that a clear and accurate picture of the nature, incidence and prevalence of labor conditions in the sector had to be obtained to drive and target remediation effectively. In 2005, the government of Cote d'Ivoire piloted an assessment system in the Oume district, which reported on demographic characteristics, educational access, the types of work in which children were engaged, and social prevention and protection efforts. In 2007-2008, the government sent teams into the field to do first a pilot and then a sector-wide survey of labor practices in cocoa communities, and publicly posted the results to help inform the efforts of international development partners. The survey data itself was sent to an international group of highly qualified verifiers (selected by an independent, multi-stakeholder board) to review methodology and outcomes to help inform data collection going forward.²

Supported by these data, Cote d'Ivoire has developed a National Action Plan Against Slavery and Child Labor (2007), which was informed by and is on file with the ILO. The national plan outlines legal and institutional steps to investigate, prevent, ameliorate and monitor the Worst Forms of Child Labor ("WFCL"), including forced child labor. Five major areas have been identified for government action: enhancement of the legal framework; public information and awareness building through data collection and surveys; prevention and remediation through support to schools, and the development of alternative education programs for children not enrolled in the traditional school structure or who lack access to it; and community capacity building. In May 2009, CDI officials participated in a technical conference looking at the refinement of

² The cost to the Cote d'Ivoire government to run these surveys was just over \$1 million; for the International Verification Board to assist in the public assessment of the results, an additional \$2 million.

their associated child labor monitoring system. The CDI is also preparing to implement a program called "Self Help Village" in 30 communities during this calendar year. Throughout 2010, a Joint Working Group on Labor in Cocoa Farming ("JWG") with officials from Ghana and CDI and representatives of industry will continue to meet to explore best practices in assessment, data collection, the development of common indicators to report impacts of efforts and remediation strategies.

When work under the Harkin-Engel Protocol commenced, there was a shared concern about child labor in West African cocoa production, but little understanding of the dimensions of the problem, or of how to address it in an agricultural setting involving millions of farmers with small plantings, in countries with under-developed infrastructure. The cocoa farmer who operates within the supply chain of Cote d'Ivoire most typically is cultivating a small, family farm – independent of affiliation with any cooperative or other associated group – without any contractual agreement or obligation to a larger party, including any contractual link to a chocolate manufacturer. Children in this situation are living on the farm and experiencing the challenges faced by the householder on a day-to-day basis. In addition, the farmer has little connectivity to the overall cocoa market – and especially to the market signals of the end user of the cocoa that is being produced on the farm. With this as background, the Protocol called for an initial survey, which was conducted by the International Institute of Tropical Agriculture in 2002.³ Although that initial survey was far from perfect, its preliminary findings were that most children working on cocoa fields in CDI were working on family farms; household members with no family ties under the age of 18 made up 0.03 percent of the population working in

³ International Institute of Tropical Agriculture, Child Labour in the Cocoa Sector of West Africa: A Synthesis of Findings in Cameroon, Côte d'Ivoire, Ghana, and Nigeria Ibadan, Nigeria, 2002.

cocoa. Id. While these children without family ties have a potentially greater risk of being forced to work against their will, the 2002 study did not identify any incidence of forced or indentured child labor; there were no follow-up questions in the survey designed to do so. As will be discussed below, subsequent surveys targeting the specific incidence of forced child labor by the government of the CDI, verified by independent third parties, have reached the conclusion that the incidence of forced child labor in the sector is extremely small, as has the Department of Labor's own assessor, Tulane University.

III. THE EXECUTIVE ORDER STANDARDS

At the outset of a discussion of the criteria for listing a product under Executive Order 13126, it should be clear that the EO list is not premised on a "zero tolerance" standard. The Federal Register notice issued pursuant to the Executive Order, as well as the materials accompanying the September 11, 2009 notice, make it obvious that forced child labor can be found for many products in many countries, including the United States. Indeed, as will be discussed further, the EO notice explicitly discusses "weighing" various factors and avoiding listings of "isolated" occurrences of forced or coerced child labor. See 65 Fed. Reg. 54,109 (Sept. 6, 2000). Unfortunately, the standards or criteria to be applied – and how they are applied – are not clear.

In examining the criteria for listing a product under Executive Order 13126, it is useful to compare the Executive Order's standards and purposes to that of the list published contemporaneously pursuant to the Trafficking Victims Protection Reauthorization Act, see 74 Fed. Reg. 46,620 (Sept. 10, 2009). Section 105(b)(2) of

the TVPRA of 2005, 22 U.S.C. § 711(b)(2), requires the Secretary of Labor, to, among other things:

(C) Develop and make available to the public a list of goods from countries that the Bureau of International Labor Affairs 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.

As the DOL states in the website, “The primary purpose of the List is to raise public awareness about the incidence of child labor and forced labor in the production of goods in the countries listed, and, in turn to promote efforts to eliminate such practices.” United States Department of Labor website, “Frequently Asked Questions,” available at <http://www.dol.gov/ilab/faqs2.htm#tvpra12> (accessed on Nov. 12, 2009). The DOL website explains that, “An entry on the List merely indicates that there is a significant incidence of child labor or forced labor in the production of a good in the country.” Id. (emphasis added).

As the DOL’s September 11, 2009 Federal Register notice acknowledges, “The TVPRA list encompassed both goods made with forced labor and child labor, whereas the EO 13126 List only includes products made with forced or indentured child labor,” 74 Fed. Reg. 14,795. Another important difference between the TVPRA and EO lists are the consequences that flow from appearing on a list. While the TVPRA List is

designed to “raise public awareness” and “promote efforts to eliminate” the WFCL, the EO listing affects the ability of contractors to sell products on the list to agencies of the Federal government. EO 13126 requires Federal contractors who supply products that appear on the list to certify “that a responsible official of the company has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce or manufacture any products furnished under the contract, and on the basis of those efforts, the contractor is unaware of any such use of child labor,” 74 Fed. Reg. 46,795.

Despite the potential commercial consequences, the notice accompanying the EO listing does not provide a clear indication of the criteria that were used to decide whether a product should be on the list. To be sure, the Federal Register notice indicates that “several factors were weighed in determining whether or not a product should be placed on the updated list.” Id. The factors listed were:

- the nature of the information describing the use of forced or indentured child labor;
- the source of the information;
- the extent of the corroboration of the 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. Id.

While the Federal Register notice refers to bibliographies that purport to provide the basis for the listings, nothing in the notice explains how the factors enumerated in the notice were applied to the information in the bibliographies. No numbers are cited. No percentages are referenced. Half of the bibliography citations are five years old, and older. Indeed, one of the factors listed in the Federal Register notice is the *date* of the

information; how timely is it, and therefore how accurate as a current picture? For the cocoa bibliography (and in the Federal Register notice itself), however, documents dating to 2001 – eight years before the notice – and that relate to claims prior to 2001, are listed. The notice does not indicate what, if any, weight was given to these documents.

One of the factors listed is whether “the information involved more than an isolated incident.” It is unclear whether that is the same standard as a “significant incidence,” the phrase used in the DOL website to describe the level of the worst forms of child labor that would merit a listing under the TVPRA. Indeed, if a significant incidence of forced or indentured child labor, at minimum, is not required for a listing under EO 13126, it should. The consequences of being on an EO 13126 listing for the thousands of CDI cocoa farmers and their families are more serious than the TVPRA listing.

Many other questions arise about the criteria employed and applied by EO 13126. The Federal Register notice explicitly states that the factors are “weighed.” It is unclear how, if at all, were the extraordinary efforts of the CDI, the industry and NGOs taken into account when applying the factor about “recent and credible efforts made to address” the problem.

In sum, the criteria are unclear, and the extent they have been applied to the information in the cocoa bibliography is questionable. A specific review of the bibliography citations raises doubts about the use of the information they may contain in support of the listings.

IV. THE INFORMATION CITED IN THE BIBLIOGRAPHY DOES NOT SUPPORT THE LISTING OF COCOA FROM THE CDI

The bibliography referenced in the September 11, 2009 notice does not support listing cocoa from the CDI. Much of the early information is dated and represents individual narrative anecdotes, as opposed to quantitative, statistically valid, scientific sector-wide assessments. The more recent information from the Tulane University and CDI government surveys indicates that use of forced or indentured child labor is isolated; indeed such a small percentage that Tulane had difficulty quantifying it. Tulane University, Third Annual Report: Oversight of Public and Private Initiatives to Eliminate the Worst Forms of Child Labor in the Cocoa Sectors of Ghana and Cote d'Ivoire (Sept. 30, 2009), p. 83 ("Tulane Third Report").

Attached to these comments is a synopsis of each of the documents cited in the bibliography. A number of these reports cite individual narratives and anecdotes from 2005 and previously. While the experiences and viewpoints of individual actors in the fight against the WFCL can and should be honored, individual accounts and opinions from more than a decade ago are not representative of current conditions in an entire sector. Under that approach, the entire U.S. agricultural sector could be listed; indeed, very few manufacturing sectors in the world could claim to be exempt.⁴

A careful consideration of the entire bibliography indicates that there are two commonly cited numbers in these reports, which are repeated throughout the bibliography. A 2001 State Department report quotes a 1999 UNICEF report that estimated that 15,000 Malian children between the ages of 9 and 12 were working on

⁴ The DOL website on this topic acknowledges this in question #18 on its "Questions and Answers" page. See <http://www.dol.gov/ilab/faqs2.htm#tvpra12>.

coffee, cocoa and cotton plantations in the north of the country. No background is given as to how that figure was arrived at, and there is no breakdown on the proportional number of children who might be working in any of those three sectors more than a decade ago. In 2002, the IITA survey (in the bibliography) estimated 12,000 children were working in the cocoa sector in Cote d'Ivoire without family ties, but asked no additional follow-up questions from its baseline survey sample to ascertain the possible incidence of forced child labor. Yet, in subsequent reports in the activist community, the entire 12,000 is alleged to be working in "conditions of slavery," without any further survey or investigation. To be sure, working "without family ties" may put a child at risk, but that is not tantamount to a finding of forced or coerced labor.

The bibliography also raises the issue of trafficking in the sector with two studies citing individual instances of trafficked children, one in a report from Save the Children Canada ("SCC") from 2003, and one in a report commissioned by Gesellschaft fur Technische Zusammenarbeit ("GTZ") in 2005. The issue of trafficking in the sector with its associations with forced child work is one that is taken seriously by all stakeholders, and the Joint Working Group has the strengthening of the bilateral response to trafficking in both CDI and Ghana as a specific focus of its work. In the most recent JWG meeting on December 2-3, 2009 in Accra, Ghana, CDI government officials outlined their national response framework, including measures being taken to identify and prosecute traffickers, and participated in collaborative discussions on how to enhance efforts.

But the reports cited do not provide a current credible assessment of the incidence, and cannot ultimately help the government address the problem in a

systematic manner. The SCC report repeats the same 1999 and 2002 studies as above, and describes the stories of individual children seen in their Mali transit center. The individual anecdotes described all date before 2002. The 238 total children cited as having passed through the center are never identified as working in the cocoa sector. The GTZ report describing an attempt to study trafficking routes from Burkina Faso acknowledges on page 13 that its findings cannot be assumed to be representative of the sector as a whole, and that it is only able to report on particular incidents based on individual interviews and estimates.

The most recent, “timely,” “corroborated” credible sources of information are the 2008-2009 surveys done by the government of Cote d'Ivoire and Tulane University, both of which indicate that forced or indentured child labor is, in fact, isolated. This most recent finding by Tulane University illustrates the point. “Cases of debts and the need to work to pay off debts are very rare. While some children report having been forced to perform work against their will in the previous year, the orders were generally given by a caregiver or relative. Less than 0.5% of children in agricultural households, as well as children working in cocoa, report having been forced to work by a non-relative.” Tulane University, Third Annual Report: Oversight of Public and Private Initiatives to Eliminate the Worst Forms of Child Labor in the Cocoa Sectors of Ghana and Cote d'Ivoire (Sept. 30, 2009), at 11, 93 (“Tulane Third Report”).

Nothing in the September 11, 2009 Federal Register notice indicates why this DOL-funded research – the most recent and comprehensive in the bibliography – is not considered the best evidence available upon which to base a conclusion. Indeed, this recent Tulane Report simply confirms the findings of the Tulane report from a year

earlier. Of the 1313 children questioned in the Government of CDI survey, fewer than two percent of children who worked in cocoa were not members of the household, and none were bound to their employer by debt.

While it cannot be said that there is no forced or coerced child labor in the production and harvesting of cocoa beans in the CDI, the best available evidence supports the conclusion that any such abusive practices are not widespread or systematic. Accordingly, there is no basis for including cocoa from the CDI on the EO list.

V. LISTING COCOA FROM THE CDI IS COUNTERPRODUCTIVE

However one reads the criteria or factors enumerated by the DOL, there can be no doubt that the decision to list a product is subjective and discretionary. Given that discretion and that the enumerated factors include “whether credible efforts are being made” to address the child labor issues, the DOL, Department of Homeland Security (“DHS”) and Department of State (“DOS”) should understand why listing CDI cocoa is counterproductive. As mentioned above, the extraordinary efforts by the CDI government to eliminate the worst forms of child labor have taken place in the context of political instability, including civil war, for much of the period since the CDI began work on the Harkin-Engel Protocol. These efforts heavily weigh against the listing of cocoa from the CDI under the Executive Order.

Including cocoa on the EO list, at best, fails to recognize the extraordinary efforts made by the CDI. At worst, a listing could cause CDI officials to wonder why their country is being publicly judged in a negative manner, despite those credible and consistent efforts. An EO listing for cocoa, to be sure, is disheartening and frustrating to

those officials in the CDI who have worked tirelessly on the child labor issue. Indeed, to the extent that a policy behind the EO list is to encourage better practices in a particular country, government officials in the CDI have to wonder why they have made the efforts they have; their efforts have landed them on the same list as all of the countries who have done little to address child labor issues, or worse, actively suppressed relevant data related to their supply chains. Moreover, all of the countries that have made minimal efforts regarding child labor may well question why they should undertake the same initiatives as the CDI if the result will be the same: inclusion on the EO list. If the “reward” for extraordinary effort is the same as the punishment for no effort, the incentives that motivate the list become reversed. Indeed, listing CDI cocoa raises the question, “what actions would be required to be excluded from the list?”⁵

An important conclusion reached in the early work under the Harkin-Engel Protocol is that given the remoteness of the family farms where the cocoa beans are grown and harvested, the sheer number of farms, the lack of centralized control or management of the farms, the complex distribution system and the lack of access to the farms by the companies that would ultimately process the beans into cocoa products, it was impossible to “certify” that particular commercial-sized parcels of cocoa beans were or were not made with the worst forms of child labor, as defined by ILO Convention 182. As the most recent Tulane report concluded, “[T]he ability to verify a 100% [WFCL] free environment is doubtful. More realistic objectives should be established by the

⁵ Because the activities of the CDI and Ghana governments are so similar, the question has been asked, “What are the differences that explain why one country’s cocoa is listed and the other is not?”

Countries with assistance from other stakeholders within the laudable goal of eliminating the WFCL.” (Tulane, 2009 at 13-14).

Indeed, because cocoa beans are grown and harvested in a remote agricultural setting, not in factories, even so-called product “certified” cocoa, which may be produced in cooperatives or by farmers operating within a more loosely organized group or association (e.g., Fair Trade, UTZ or Rainforest Alliance) against a certified code of conduct, cannot with certainty be guaranteed to have no single incident of cocoa beans having been produced using forced or indentured child labor. Accordingly, the “sector wide” certification system adopted under the Harkin-Engel Protocol is a system based on periodic sector-wide representative surveys of conditions on the farms, identification of problems, and remediation efforts to address the identified problems. Senator Harkin and Congressman Engel, along with responsible and knowledgeable NGOs, as well as Tulane, have recognized the value of this approach. See, e.g., Tulane Third Report at 21-22.

That understanding regarding different approaches to certification is important to the Executive Order listing. If it is impossible for companies to trace the cocoa beans they acquire to each of the individual farms that are the source of those beans, it is not clear what a government official would regard as a good faith effort to certify a product in this context. The industry believes that participation in a program such as the Harkin-Engel Protocol should be considered sufficient evidence of good faith for purposes of the Executive Order, and seeks confirmation of this approach.

Frankly, if contractors cannot in good faith make the required representation, they will not be able to sell their products to the Federal government. The

consequences, then, of applying the EO list in this context is tantamount to a ban. In turn, a ban will have adverse consequences for many people. Workers who produce chocolate could lose their jobs. So, too, dairy, nut and sugar producers who supply the chocolate industry could be adversely affected. Perhaps most important, the farmers and their families who rely on cocoa for their income will be hurt. Those 99.97 percent (according to the best statistics available) of farmers who have not been found to have engaged in forced or coercive labor practices will have their livelihoods threatened. This cannot be the result intended for application of EO 13126.

VI. COCOA IS THE WRONG PRODUCT TO LIST

As indicated, cocoa from the CDI should not be on the EO list. If the DOL, DHS and DOS do decide, however, to list a cocoa product, the proper description would be cocoa beans. In the DOL's December 27, 2007 Federal Register notice on Procedural Guidelines For the Department and Maintenance of the List of Goods Produced by Child or Forced Labor, DOL states:

In determining which goods and countries are to be placed on the List, the Office will, as appropriate, take into consideration the stages in the chain of good's production. Whether a good is placed on the List may depend on which stage of production used child labor or forced labor. For example, if child labor or forced labor was only used in the extraction, harvesting, assembly, or production of raw materials or component articles, and these materials or articles are subsequently used under non-violative conditions in the manufacture or processing of a final good, only the raw materials, component articles and the country/ies where they were extracted, harvested, assembled, or produced, as appropriate, may be placed on the List.

72 Fed. Reg. 73,374, 73,377 (Dec. 27, 2007).

In this case, the product that allegedly is being produced with inappropriate child labor is cocoa beans. Cocoa is a processed product that is made from cocoa beans after the beans have been transported from the farms. There are no allegations or data suggesting that cocoa is produced in the CDI using forced or coerced child labor.

VII. RECOMMENDATIONS FOR IMPROVEMENT

To be more effective as a tool for driving positive change in agricultural supply chains we believe the process of creating the EO lists – as well as the TVPRA list – should be modified in the following manner:

- The criteria for the listing of products should be more clearly defined prior to the publication of the final EO list. These criteria need to account for how data is collected.
 - They should also specifically note that the age of data collected should be limited to no more than 3 years, unless there is a specific explanation of why older information is still accurate.
 - The criteria need to account for the severity of the issue relative to the size of the supply chain in question. The size of supply chain must be taken into account to give a realistic indication of severity, especially because the listing covers the entire sector.
 - The criteria need to account for the difference between products produced in an agricultural environment as opposed to those produced in mines, fisheries or factories. These criteria should also account for differences in production that take place on small family farms versus organized plantation type agriculture.

- Currently, the DOL indicates that one of the factors considered is whether credible efforts are being undertaken to address the problem. This factor should be further refined and articulated so that future notices describe the stages of activities that are being taken to address the problem for each identified sector.

Minimally, the considerations should include the following:

- Have efforts been initiated to address the problem?
- Are monitoring programs in place within the supply chain?
- Are monitoring reports being transparently and broadly shared?
- Are remediation programs in place?
- Are there measures of addressing Forced or Indentured Child Labor that indicate progress having been made?

Affirmative answers to these questions should mitigate against listing and in fact could create a roadmap of a successful approach to addressing the issue of forced or indentured child labor in any particular supply chain.

- There should be incentives developed for countries to reach the various stages of addressing the issue. The lists that have been issued have been few and far between. It is imperative that there be a clear articulation of the criteria for removal from a list so that countries clearly understand what they need to achieve in order to be removed. Perhaps even more important, it would be useful to provide encouragement – carrots instead of sticks – for countries to take some of the steps outlined above.

VIII. CONCLUSION

The global chocolate and cocoa industry recognizes that the task of compiling the information on labor practices from countries around the world spanning every conceivable kind of workplace is daunting. Moreover, as the EO list has not been updated in over eight years and there has been little development of practices in this area, it is understandable that the current process has some weaknesses. We hope that the DOL, as well as the other agencies that are part of the decisionmaking process, will take these concerns and criticisms as constructive, and will refine the criteria and the analysis of the facts to those criteria both with respect to the final list issued pursuant to the September 11, 2009 notice and for future EO listings. The chocolate/cocoa industry stands willing to work with the agencies to improve the process. When the final list is published pursuant to the September 11, 2009 notice, however, we respectfully urge that cocoa (and cocoa beans) from the CDI be excluded.

Respectfully submitted,

Global Issues Group

National Confectioners Association

Association of the Chocolate, Biscuit and Confectionery Industries of the EU

European Cocoa Association

World Cocoa Foundation

Confectionery Manufacturers of Australasia

International Confectionery Association

APPENDIX

1. Agbadou, Jocelyne, et al. *La Traite et les Pires Formes de Travail des Enfants dans les Plantations de Cafe-Cacao en Côte d'Ivoire: La Situation dans les Départements Abengourou, Oume, et Soubre: Etude Réalisée pour le Projet LTTE*. German Development Agency, 2005

The 2005 report summarizes a 2005 survey on the worst forms of child labor and child trafficking in Cote d'Ivoire. The survey includes individual quotes and anecdotes from a variety of sources. These quotes and anecdotes do not address the magnitude of child trafficking or whether trafficking is increasing or decreasing, and rely exclusively on personal observation, rather than quantitative data. The substance of the quotes and anecdotes discussing the prevalence of the phenomenon vary. For example, the report contains quotes from police officials in Abengourou saying that young people are "simply sold,"¹ from the head of the Consulate of Burkina Soubre saying that trafficking in Burkina Faso is encouraged;² and from officials in Abengourou and Niable discussing the permeability of the borders and corruption of the police.³ These quotes do not identify the sources of their assessments, other than individual observations; the dates that the allegations pertain to, other than before 2005; or the credibility of these individual sources. In some cases, the report acknowledges that they have no way to verify the claims.⁴

The 2005 report also is filled with narrative anecdotes relayed by various speakers. Like the quoted allegations, the anecdotes are often not attributed to anyone, making verification difficult. The report contains anecdotes alleging that children are not being paid⁵ or not being able to return home for 3 years or more.⁶ In addition to the fact that the anecdotes are contained in a document produced more than four years ago, they are often told about events occurring even further in the past, from individuals who are

¹ Agbadou, Jocelyne, et al. *La Traite et les Pires Formes de Travail des Enfants dans les Plantations de Cafe-Cacao en Côte d'Ivoire: La Situation dans les Départements Abengourou, Oume, et Soubre: Etude Réalisée pour le Projet LTTE*. German Development Agency, 2005, p. 20.

² Id. at 73.

³ Id. at 43-46.

⁴ Id. at 43.

⁵ Id. at 34.

⁶ Id. at 29-30.

recounting experiences as long as 25 years ago⁷ or from other sources describing trafficking “before the conflict,”⁸ which began in 2002.

The report notes some of the difficulties of substantiating any of the claims about trafficking, quoting an official of the Gendarmerie of the three departments surveyed (Abengourou, Oume, and Soubre) who stated that it’s unclear whether the children surveyed are trafficked because the planters always say the children are their own.⁹ In other parts, the report refers to “children who are trafficked,” but never identifies how they determined those children to be “trafficked.”

The report has little quantitative data, and does not provide the background to substantiate the estimates it provides. It appears that narrative information was often collected from individual actors, and then used to formulate estimates.¹⁰ For example, based on anecdotes, the report estimates that 400 children per week came into Soubre, Cote d’Ivoire “before the crisis.”¹¹ It extrapolates that to 4,800 children per year and then assumes that because that many children can’t be coming for “holiday,” they must be victims of trafficking. Id. Similarly, the report estimates that 600 children are trafficked into Abengourou annually.¹² The report admits to having not enough information to estimate the amount of children coming to Oume.¹³ Both estimates are based on individual observations made before 2002.

The report also uses anecdotes to discuss the incentives and consequences of trafficking, implying that because the incentives are great and the consequences insignificant, trafficking must occur. It cites anecdotes about a trafficker being sentenced to 10 days in prison,¹⁴ and, in contrast, a quote by a trafficker claiming to make 3000-5000 CFA francs per child to traffic them through rural roads.¹⁵ Both of these anecdotes were told before 2005, but no further evidence or background exists in the report disclosing when or where they were observed.

Finally, the report discusses the effect of the “crisis” on trafficking. It asserts that traditional players in trafficking are “less active since the crisis.”¹⁶ As proof, the report

⁷ Id. at 23.

⁸ Id. at 31-32.

⁹ Id. at 17.

¹⁰ Id. at 30-31.

¹¹ Id. at 33.

¹² Id. at 29.

¹³ Id. at 33.

¹⁴ Id. at 38-39.

¹⁵ Id. at 55.

¹⁶ Id. at 65-66.

asserts that the children denied entry into some prefectures have declined since the crisis.¹⁷ However, the report contains two unverified quotes speculating that trafficking is now rising again.¹⁸ As proof, the report offers anecdotes about cars full of children continuing to enter Cote d'Ivoire and a 2004 interception of two buses coming into Cote d'Ivoire, one carrying 17 youth and another carrying mostly children.¹⁹ These events occurred five years ago, and are not identified in association with the cocoa sector. The report cannot contain any data regarding the state of trafficking in the last four years other than speculation.

2. Anti-Slavery International. *The Cocoa Industry in West Africa, a History of Exploitation*. 2004

This 2004 article is an in-depth analysis of how cocoa is produced, how child and slave labor may enter its chain of production, the events following the “discovery” of slavery in cocoa farming, and what actions have been and are being taken to remove “slavery.”²⁰ The article is not based on any original research, instead relying on several repeatedly-referenced sources from before 2002. Though written in 2004, the article does not cite to any research conducted after 2002.

Many of the sources on which the article bases its conclusions are the same sources from the beginning of the decade seen throughout the bibliographical materials. The article cites a 2000 True Vision film showing men working in conditions of slavery (not children).²¹ It also cites a 2002 International Labor Organization (ILO) “recent” study suggesting that 1/3 of cocoa farmers use non-family laborers, some of which are paid and some of which are abused and enslaved;²² a 2002 report from both a British Broadcasting Company (BBC) journalist and a researcher from the International Labor Rights Fund (ILRF) describing children working on cocoa plantations and claiming that “young men employed in this fashion are under the control of the labor contractor and have often been trafficked from neighboring countries;”²³ and a January 2001 Biscuit,

¹⁷ Id. at 64, fn. 29.

¹⁸ Id. at 65-66 (“Compared to the current extent of trafficking in children, even if we do not have enough quantitative data allowing us to comment on it, it seems that, according to information gathered in the study area, the trafficking of children, towards our area, remains relatively large, and may experience strong growth since the normalization of the socio-political situation in Cote d'Ivoire” and “The crisis has brought down migration of children to dept(?) Soubre. But since 2004-2005, it's increased. “Trafficking has certainly decreased, but recovery is already observed”).

¹⁹ Id. at 66.

²⁰ Anti-Slavery International, *The Cocoa Industry in West Africa, a History of Exploitation*, 2004 at 1.

²¹ Id. at 2.

²² Id. at 50.

²³ Id. at 53.

Cake, Chocolate, Confectionary Alliance (BCCCA) desk research report said that “slave labor is used in agriculture.”²⁴ The report also cites to the 2001/2002 International Institute of Tropical Agriculture (IITA) survey, which estimated that, in 2002, 12,000 children in Cote d’Ivoire worked on farms which weren’t family-owned.²⁵ Finally, the report offers as proof of trafficking, the story of 270 children being returned to Mali in August of 2000. The report gives no indication whether the children were forced to enter into Cote d’Ivoire or forced to remain there, or whether they had been working in the cocoa sector.²⁶ The report cites to no data gathered after 2002, nor does it cite any statistic explaining whether the statistics gathered in 2002 had increased or decreased since 2002.

Later, the report acknowledges the difficulty involved with obtaining accurate numbers of children trafficked, citing to a 2002 research study of the migration patterns from Mali and exhibiting how easy it is to simply categorize all migration as trafficking.²⁷

3. Côte d’Ivoire Prime Minister’s Cabinet, Steering Committee for the Child Labour Monitoring System within the Framework of Certification of the Cocoa Production Process. *Enquête Initiale de Diagnostic Nationale (Dans 18 Départements Représentatifs de Toute la Zone de Cacao): Rapport Définitif. 2008*

This 2008 report summarizes a 2007 survey examining child labor within the framework of the cocoa production certification process. The resulting data comes solely from this survey and not other sources.

Generally, the 2007 survey addresses forced labor or child trafficking, or “indicators” of the possibility of forced labor or child trafficking. Among the indicators that the survey explored is the debt of the worker, how an adult or child became involved in cocoa farming, any violence that a child experienced in the field, and children working on farms not associated with their family. The survey reached the following conclusions.

Of the 1313 children surveyed, none said they were bound by debt.²⁸ Less than 2% of children working in cocoa fields are not household members. Id. The survey later

²⁴ Id. at 54.

²⁵ Id. at 58.

²⁶ Id. at 62.

²⁷ Id. at 50.

²⁸ Côte d’Ivoire Prime Minister’s Cabinet, Steering Committee for the Child Labour Monitoring System within the Framework of Certification of the Cocoa Production Process, Enquête Initiale de Diagnostic Nationale (Dans 18 Départements Représentatifs de Toute la Zone de Cacao): Rapport Définitif, 2008 at 7.

concludes that the working conditions for children of the household are virtually the same as that of non-household members.²⁹

The report concludes that children who are not members of the household and who did not agree with the decision to work in cocoa production made on their behalf may be being used as slaves, albeit a small number.³⁰ The survey additionally identified some potential evidence of forced movement of workers. Id.

4. Côte d'Ivoire Prime Minister's Cabinet, Steering Committee for the Child Labour Monitoring System within the Framework of Certification of the Cocoa Production Process. *Initial Diagnostic Survey in Agnibilekrou, Tiassale and Soubre: Final Report. November, 2007*

This 2007 report summarizes a 2007 pilot survey that was designed to test the methodology and tools for future surveys. This survey was done as a precursor to the survey mentioned above. It contains original data gathered in visits to 3 villages in Cote d'Ivoire. Because of the objectives of the survey and the limited geographical area that the survey covered, the results "cannot be extrapolated" and "pertain only to the surveyed areas."³¹

The pilot survey explored factors that may indicate the presence of forced labor or child trafficking. Among these factors are children lacking a relation to members of the household, children being forced to work when ill or hurt, children experiencing violence at work, and workers believing their freedoms were restricted. The results relevant to the possible existence of child trafficking and forced labor that were gleaned from the survey follow.

Of the children surveyed, only 3% were not related to any person within the household.³² The story of 1 child in the 184 surveyed, however raised the suspicion of trafficking, according to the report. This 14 year-old stated he was obliged to work, was the victim of violence, did not feel safe, and had no clear relationship with the head of the household.³³ The report then stated that follow-up checks could not conclude that this was a case of trafficking.

²⁹ Id. at 67.

³⁰ Id. at 68.

³¹ Côte d'Ivoire Prime Minister's Cabinet, Steering Committee for the Child Labour Monitoring System within the Framework of Certification of the Cocoa Production Process, Initial Diagnostic Survey in Agnibilekrou, Tiassale and Soubre: Final Report, November, 2007.

³² Id. at 48.

³³ Id. at 10.

The results of survey indicated that 3% of children felt like they had to work even if they were ill or tired,³⁴ but it did not indicate who or what compelled them to do so. The results of the survey indicated that 6% of children indicated that they have already been a victim of violence at work,³⁵ though the source of that violence is not specified. Most of the 19% of children surveyed indicating that they did not feel safe at work did not elaborate as to why they felt that way. Id. However, 6% said it was for fear of being shouted at, 3% for fear of not being sufficiently nourished, 3% for fear of being punished, and 3% because they felt that the families were deceiving. Id. The responses were enough for the survey takers to conclude that the insecurity is not closely related to poor living conditions. Id.

The report concluded that that survey showed that Cote d'Ivoire has once again demonstrated a long term commitment to combat child labor.³⁶

5. Government of Côte d'Ivoire, Unite Centrale de Coordination. *Projet Pilote Systeme de Suivi du Travail des Enfants dans la Cacaoculture en Cote d'Ivoire*. 2005

This 2005 report of a survey done by the government of Cote d'Ivoire summarizes the Project Driver Monitoring System of Child Labor in Cocoa (PPSSTE)³⁷ and examines children working in hazardous conditions, with a few references to forced labor or child trafficking.

The report also indicates that the pilot survey of 1103 children³⁸ found that 96% of children are related in some way to the farmer, concluding that children work almost exclusively for their families.³⁹ The report also asserts that more than 200 traffickers and over 700 trafficked children were intercepted and seized in Cote d'Ivoire according to data from the Directorate of Surveillance Territoire (DST), pointing to the efficacy of Cote d'Ivoire's enforcement efforts.⁴⁰

6. Hawksley, H. "Mali's children in chocolate slavery." *BBC News*, April 12, 2001

This 2001 news article discusses alleged trafficking and forced labor associated with Malian youth. It was written eight and a half years ago, before the civil war and before

³⁴ Id. at 9.

³⁵ Id. at 60.

³⁶ Id. at 69.

³⁷ Id. at 6.

³⁸ Id. at 20.

³⁹ Id. at 26.

⁴⁰ Id. at 11.

many of the efforts that Cote d'Ivoire has implemented to combat forced labor or child trafficking took effect. It is written using only outside sources and offers no original research.

The article alleges that children "have been kidnapped and sold into slavery," for about "US \$30" but offers no concrete proof of the allegation.⁴¹ It offers the statistic that at least 15,000 children "are thought to be over" in the CDI producing cocoa, but gives no source for that statistic. Id. It asserts that children are "imprisoned on farms and beaten if they try to escape" but again offers no basis for that assertion. Id. It quotes a single former cocoa worker who contended that there are other children "over there" but neglecting to discuss how the children got "there" or whether they are free to leave.⁴² Finally, the article offers one man's reply to a question about the slave trade as proof of the existence of slave labor. After being chosen randomly at the market, the man replied to a question regarding what he knew about slave labor that, "After one year you don't get money. If you ask for your money, you don't get money and you are beaten." Id. The article does not reveal the date of this quote, nor does it identify anything about the man other than his identity as "a field worker."

7. International Institute of Tropical Agriculture. *Child Labour in the Cocoa Sector of West Africa: A Synthesis of Findings in Cameroon, Côte d'Ivoire, Ghana, and Nigeria.* Ibadan, Nigeria, 2002

The 2002 report synthesized "recent" investigative studies of child labor in Cote d'Ivoire, Cameroon, and Nigeria.⁴³ The IITA report summarizes the results of 3 interrelated surveys completed in 2002: the Baseline Producers survey (BPS), the Producers/Workers Survey (PWS), and the Community Surveys (CS).⁴⁴ These surveys were designed to address both child labor and child trafficking. The data revealed by these surveys was collected in early 2002, over 7 years ago.

The report found that, in 2002, 29% of the child workers surveyed reported that they were not free to leave their place of employment. Eighteen percent of the 29% indicated that they would need permission from their parents or the intermediary representing their parents and 11% of the 29% indicated that a lack of money for personal transportation kept them from leaving.⁴⁵ The report also attempted to identify some of the conditions under which the children worked to clarify if there were indications of forced labor. The results of the survey indicated, however, that only 6% of

⁴¹ Hawksley, H. "Mali's children in chocolate slavery," BBC News, April 12, 2001, at 1.

⁴² Id. at 2.

⁴³ International Institute of Tropical Agriculture, Child Labour in the Cocoa Sector of West Africa: A Synthesis of Findings in Cameroon, Côte d'Ivoire, Ghana, and Nigeria Ibadan, Nigeria, 2002 at 4.

⁴⁴ Id. at 6.

⁴⁵ Id. at 13.

child workers were not satisfied with their work, a heavy workload being the most predominant reason for dissatisfaction. Id. And, while children worked the same hours as adults, they were paid slightly less.⁴⁶

As for trafficking, the surveys found that farmers and traditional leaders claimed that trafficking was less prevalent in 2002 than before then.⁴⁷ It found that the recruitment and employment of children and adults from outside the family (an indicator of potential trafficking) as permanent salaried workers was very uncommon. Id. The survey estimated that, in 2002, 12,000 children were assisting on cocoa farms where the children were not related to the landowner.⁴⁸ In all, 96.7% of the working children in Cote d'Ivoire had a kinship relation to the farmer.⁴⁹

The report also summarized the surveys' findings regarding how children began working on cocoa farms, to see if trafficking possibly played a role in recruiting workers. The surveys revealed that many of the workers originated outside of the cocoa-producing zone and even outside the country, but the report does not say that this migrant work is the result of trafficking.⁵⁰ It found that an intermediary played a role in recruiting 41% of the 5120 child workers in Cote d'Ivoire.⁵¹ While 29% of the child workers knew the farmer with whom they were employed and had sought work of their own initiative, 12% said that the intermediary negotiated with their parents (none indicated that their parents were paid before their departure). Id. None of the children reported being forced to go, and 94% of the Cote d'Ivoire's child workers knew their intermediary personally. Id.

8. International Labor Rights Forum, *Class Action Complaint for Injunctive Relief and Damages*, Washington, DC, ca. 2004.

This 2004 class action complaint filed by the ILRF asked the court to investigate allegations that cocoa produced in part by forced labor was imported from the Cote d'Ivoire, require cocoa importers to show that their imports are not the products of forced child labor, and prohibit the importation of merchandise that is show to be the product of forced child labor.⁵² The complaint uses for proof the same statistics found in other sources in the bibliography, alleging that the U.S. State Department, the ILO,

⁴⁶ Id. at 14.

⁴⁷ Id. at 12.

⁴⁸ Id. at 14

⁴⁹ Id. at 16.

⁵⁰ Id. at 12.

⁵¹ Id. at 13.

⁵² International Labor Rights Forum, *Class Action Complaint for Injunctive Relief and Damages*, Washington, DC, ca. 2004, at p. 1.

UNICEF and the ILRF have confirmed the existence of child slavery with “documented reports and statistics.”⁵³

The complaint repeats UNICEF’s 1997 allegation that children are being trafficked to the Ivory Coast’s coca farms from Mali and Burkina Faso and both ILO and U.S. State Department estimates of child workers, regardless of whether they are forced child workers.⁵⁴ It repeats the ILRF investigator’s 2003 findings based on interviews that children are “bought” from “labor brokers” and not allowed to leave without citing any statistics to support that claim. Id. It also cites the Government of Cote d’Ivoire’s acknowledgement of the presence of trafficked child labor and efforts to eradicate it. Id. None of the statistics or surveys found in the class action complaint are novel to the rest of the bibliography.

Finally, the suit alleges that despite this “evidence,” the U.S. Government is not prohibiting the importation of cocoa from Cote d’Ivoire.

9. International Labor Rights Fund, *Letter to Robert C. Bonner, Commissioner of Customs, May 30, 2002.*

This 2002 letter from the ILRF to the Commissioner of Customs, Robert C. Bonner, requests that the Customs initiate an investigation and enforcement action against importing any cocoa from Cote D’Ivoire. The letter readily acknowledges the fact that the Government of Cote d’Ivoire has taken steps to combat child labor, as well as the fact that major importers of cocoa have proclaimed their intention to independently certify conditions related to cocoa production. Still, the letter, argues that forced child labor in Cote d’Ivoire continues to occur.⁵⁵

The ILRF letter cites no independent statistics that support its claim. Instead, it merely echoes statistics found in the other sources contained in the bibliography. The letter cites to the 1998 UNICEF report and the 2001 ILO reports indicating that some trafficking into Cote d’Ivoire occurs without mentioning any specific statistic indicating the prevalence of this trafficking.⁵⁶ The letter also cites U.S. State Department estimates of 15,000 children working on cocoa, coffee, and cotton farms and the 2001 ILO report that trafficking was “widespread” in West Africa. Id. Additionally, the letter cites the same “investigative pieces” that document child trafficking as the other pieces in the bibliography.⁵⁷ Finally, the letter cites a May 2002 report filed by an investigator

⁵³ Id. at 5.

⁵⁴ Id. at 6.

⁵⁵ International Labor Rights Fund, “Letter to Robert C. Bonner, Commissioner of Customs,” (May 30, 2002), at p. 1.

⁵⁶ Id. at 2.

⁵⁷ Id. at 2-3.

documenting his “meetings and interviews” with various relevant parties.⁵⁸ The investigator formulated opinions based on these discussions that forced child labor and child trafficking was occurring, but does not actually cite individual sources of proof. Id. The investigator also noted the many steps that the Government of Cote d’Ivoire was taking to combat any forced labor or child trafficking. Id.

10. Martineau, Pierre, *Spotlight on Ignace Bla*, International Confederation of Free Trade Unions, Brussels, ca. 2003

This 2003 interview contains assertions of child trafficking and forced labor by the leader of a free trade union. His opinions are unsubstantiated by and the reporting of any concrete incident, and contain no quantitative data regarding the extent or prevalence of trafficking. He asserts that both trafficking of children and forced labor exist,⁵⁹ but does not discuss the prevalence of it. He asserts that children can be “bought” for forced labor, id., but doesn’t talk about how he comes to this conclusion, and even admits that some children get a bonus at the end of the year.⁶⁰ He admits, “It is hard to estimate the number of children who are victims of this trafficking or to be sure about the identity or nationality of the sellers.” Id. He also does not show how people are “forced” to stay, asserting that the act of “buying” children is a form of “forced” labor.⁶¹ The interview does briefly refer to the 2003 ILO study saying that there are 5,000 children who may or may not be being paid working in the country’s cocoa plantations. Id.

11. Parenti, C. "Chocolate's Bittersweet Economy." *Fortune*, February 17, 2008

This 2008 article focuses on child labor alone and says nothing about forced labor or child trafficking. In fact, one of the anecdotes used to show the prevalence of child labor quotes a child saying, “I want to help my father.”⁶² The article’s author supports this idea saying, “Typically it is poverty that compels child labor, not greedy overseers.” Id. In another anecdote, a child complains of not getting a “just price” for his work, because they are paid in reciprocal labor that their father will receive. Id. Nowhere in the anecdote, however, does it indicate the children have been forced to work.

⁵⁸ Id. at 3.

⁵⁹ Martineau, Pierre, Spotlight on Ignace Bla, International Confederation of Free Trade Unions. Brussels, ca. 2003 at 1.

⁶⁰ Id. at 2.

⁶¹ Id. at 1.

⁶² Parenti, C., "Chocolate's Bittersweet Economy," Fortune, February 17, 2008 at 2.

12. Renault, A. *Chocolate has a Bitter Taste for Child Slaves*. International Confederation of Free Trade Unions, May 13, 2002

This 2002 news article mostly cites statistics having to do with child labor in general. Using these statistics, the author makes a leap in logic and concludes that “forced child labour [sic] is particularly widespread within the cocoa industry.”⁶³ The author of the article later admits that “there are no reliable statistics concerning their [children’s] work.” The article also quotes Sandra Vermuyten, an International Confederation of Free Trade Unions (ICFTU) representative at a conference, who dismisses other, traditional possibilities that could explain the existence of child labor, like “confiage” and as a way of learning a future profession, saying that the reality is that “children are sold like cattle and work like slaves, without any wages or social protection.” Id. The article does not explain Ms. Vermuyten’s basis for her statement.

The article only cites to two pieces of relevant data: an uncited statistic from 2002, that 64% of children in the north of Cote d’Ivoire are forced to work due to lack of family income and a February 2000 report describing how children were “tied to their employers by annual contracts” after the employers paid middlemen \$50 to supply them with children, again uncited. Id.

13. Save the Children Canada. *Children Still in the Chocolate Trade: The Buying, Selling and Toiling of West African Child Workers in the Multi-Billion Dollar Industry*. April 7, 2003

This 2003 working paper examines the Harkin-Engel Protocol progress as of 2003 and the situation “on the ground” in Cote d’Ivoire. The document reports on much of the research already performed. It does not add any original quantitative research. It does, however, add several anecdotes told by both former alleged “slaves” and by workers sent to Cote d’Ivoire to observe.

The narrative cites four individual stories told by former child workers who have passed through Save the Children Canada’s transit center. These second hand accounts include stories of children younger than 14 having worked for 3-5 years already working for 10 to 12 hours per day without receiving a wage; of workers being beaten and denied food because their work output didn’t meet the farmer’s expectations; of having to carry heavy loads on their backs which caused open wounds; of others trying to escape and being beaten or killed if they were caught; of farmers locking away clothing so workers cannot leave; of having to work while ill; and of having to pay the intermediary that brought them to the cocoa farm rather than getting paid themselves.⁶⁴ These anecdotes are all based on second hand accounts and attributed only to workers by title. One notable anecdote concerned the son of a Malian government official being

⁶³ Renault, A., *Chocolate has a Bitter Taste for Child Slaves*, International Confederation of Free Trade Unions, May 13, 2002 at 1.

⁶⁴ Id. at 19-20.

duped by a man who said he would help him get to Cote d'Ivoire and then locked away on a bus and put to work on the cocoa fields. He was beaten for not being able to do his job and finally escaped. Id. None of the anecdotes reveal the dates of any of the occurrences, though they could not have occurred after the 2003 publishing of the article.

As for tangible data, the only studies that the document cites were conducted in 2002 or earlier. The document cites the 2002 ILO report estimating that 8.3 million children in the world are subject to the worst forms of child labor, including, among others, slavery, forced labor and trafficking of children.⁶⁵ This statistic is not confined to Cote d'Ivoire. The paper also cites to a 2002 World Bank study undertaken in Burkina Faso indicating that 66,000 Burkinabe children between 9 and 17 years old were found to live outside of their parents and/or relatives proximity in Cote d'Ivoire.⁶⁶ The governments dispute the actual numbers but acknowledge that there are thousands of migrant children from surrounding poorer countries working in Cote d'Ivoire. Id. How many of those working in cocoa, specifically in conditions of forced labor, is not identified.

Later, the paper discusses the creation of the Harkin-Engel Protocol.⁶⁷ It cites a 2001 State Department release saying that 700,000 people are trafficked worldwide annually and that Cote d'Ivoire does not do enough to combat the trafficking.⁶⁸ During this time, the ILRF results were released saying both that cocoa farmers relied heavily on child workers who were provided to them by job brokers on a seasonal basis for a fee and that these child workers were not allowed to leave until after the cocoa season. Id. Later, the Executive Director of the ILRF contended that cocoa planters confirmed these findings to the ILRF's investigators. Id. The paper also cites the ILO's 2002 report alleging widespread trafficking in West Africa and a Cote d'Ivoire Government announcement regarding the 22 traffickers that were arrested and 3000 children that were repatriated as a result of a nation wide campaign against trafficking.⁶⁹ Later, the report cites to the IITA's survey and discusses its results—604,500 working children have family ties while 12,000 have none; 29% of the 5120 children surveyed said they were not free to leave; and much of the child labor came from neighboring countries⁷⁰—and the perceived problems with those results—timing of the survey, lack of interaction with child workers who were not related to the landowner, etc.⁷¹ Finally, the report cites the report of two Canadian International Development Agency consultants'

⁶⁵ Save the Children Canada, Children Still in the Chocolate Trade: The Buying, Selling and Toiling of West African Child Workers in the Multi-Billion Dollar Industry, April 7, 2003 at 1.

⁶⁶ Id. at 22.

⁶⁷ Id. at 34-35.

⁶⁸ Id. at 35.

⁶⁹ Id. at 36.

⁷⁰ Id. at 41.

⁷¹ Id. at 45-46.

investigations indicating that even though a further investigation was necessary, they believed that child trafficking was decreasing.⁷²

The paper claims that the Government of Mali became aware of trafficking of children from Mali to Cote d'Ivoire for the first time in 1991 and issued a statement in 1995 regarding the trafficking.⁷³ It quotes a 2002 article claiming Malian children are being "deceived and moved across borders like goods for export."⁷⁴ The quote does not cite any source for that allegation.

The paper also asserts that between 2001 and February 2003, 238 children passed through the Save the Children Canada's transit house, 69 of which were repatriated after already being trafficked and 169 of which were prevented before being trafficked.⁷⁵ The children, according to the paper, describe two forms of recruitment for traffickers: deceiving children by promising legitimate and well-remunerated employment and deceiving children by half-truths by admitting where they will be employed, but misrepresenting the conditions.⁷⁶ These individual cases are not specifically linked to the cocoa sector.

In its section describing Cote d'Ivoire's responses to any evidence of child trafficking and forced labor, the paper cites both a decade-old U.S. State Department report estimating that 15,000 children between 9 and 12 have been sold into forced labor on cocoa, cotton and coffee farms in Cote d'Ivoire and an even older 1998 UNICEF report stating that Cote d'Ivoire farmers used enslaved children.⁷⁷ It also notes the oft-cited 2000 True Vision documentary capturing video of enslaved and trafficked workers⁷⁸ and recalls a 2001 story of the MV Etireno, a ship that went missing and was later found carrying 43 children from Benin, Togo, Mali, Senegal and Guinea who authorities suspected were destined for work in Cote d'Ivoire. Id. In the end, only a few of these children were actually found to be unaccompanied. Id.

14. Tulane University. Second Annual Report: Oversight of Public and Private Initiatives to Eliminate the Worst Forms of Child Labor in the Cocoa Sector in Côte d'Ivoire and Ghana. New Orleans, September 30, 2008.

The 2008 survey and accompanying second annual report collected its own data, rather than relying on the same surveys that most of the bibliographical sources do. The

⁷² Id. at 42-43.

⁷³ Id. at 25.

⁷⁴ Id. at 26.

⁷⁵ Id. at 26.

⁷⁶ Id. at 27.

⁷⁷ Id. at 30.

⁷⁸ Id. at 32.

report was designed to summarize the findings of the survey examining the current status of child labor in the cocoa sector of Cote d'Ivoire and Ghana. It examined some of the same factors as previous surveys to determine if those factors imply that child trafficking or forced labor were currently occurring.

The survey found that 6% of children between 5-17 years of age who worked in cocoa had moved to a different place of residence without a biological parent.⁷⁹ Most commonly, these children cited leaving to stay with relatives, school/training, looking for a job and following a job as reasons for this phenomenon.⁸⁰

Later, the survey found that while farmers paid 6% of children, aged 5-17 years, directly for their work, they paid 1% of the children through their parents or a third person. None of the children were paid by using wages to pay a children's debt and only 0.3% of children had their income used to satisfy their family's debt.⁸¹

The survey found that 9.5% of children, aged 5-17 years, reported being forced to do any work against their will.⁸² Additionally, 7.4% reported having to specifically do agricultural work against their will. Id. Of these, however, only 0.4% reported being forced by someone who is not a family member. Id.

Finally the survey asked children about the consequences for refusing to do work. 6.5% of children report being insulted; 3.6% reported being beaten; 1.6% report "being punished;" 1.3% report being refused food; 0.3% report being refused money to go to school and 0.8% report some other form of consequence.⁸³

15. U.S. Embassy- Abidjan. reporting. June 3, 2008

This document has nothing to do with forced labor or child trafficking. It has one entry regarding the World Bank's relationship with Cote d'Ivoire. This is the only entry that might be relevant.

⁷⁹ Tulane University, Second Annual Report: Oversight of Public and Private Initiatives to Eliminate the Worst Forms of Child Labor in the Cocoa Sector in Côte d'Ivoire and Ghana, New Orleans, September 30, 2008 at 72.

⁸⁰ Id. at 73.

⁸¹ Id. at 74.

⁸² Id. at 75.

⁸³ Id. at 76.

16. U.S. Department of Labor, Bureau of International Labor Affairs. *Public Hearing to Collect Information to Assist in the Development of the List of Goods from Countries Produced by Child Labor or Forced Labor*. May 28, 2008

This Federal Register Notice offers no proof of forced labor or child trafficking. It merely notifies the public of a hearing to collect information to assist in the development of a list of goods from countries produced by child labor or forced labor.

**Material That References Cocoa from the
CDI Coffee Bibliography**

The Executive Order 13126 bibliography for Coffee from Cote d'Ivoire included several references focused on cocoa.

1. D. Toler and M. Schweisguth. *While Chocolate Lovers Smile, Child Cocoa Workers Cry: Abusive Child Labor in the Cocoa Industry: How Corporations and International Financial Institutions Are Causing It, and How Fair Trade Can Solve It*, Global Exchange, n.d. [cited January 4, 2008]

This article, cited in 2008, relies solely on research from 2003 and the years preceding 2003. No data from between 2003 and 2008 was used to formulate any conclusions. The following summarizes the research that it cites.

The article cites a 2000 State Department report that merely estimates that 15,000 children have been sold into forced labor in the north of the Ivory Coast; the 2001 ILO report saying that child trafficking is widespread and substantiates this claim with some form of confirmation by "subsequent investigations"; the True Vision video detailing former "slaves" working conditions; and the Knight Ridder stories detailing the video.⁸⁴

The article uses the 2001/2002 IITA study as the basis for most of its data. The IITA study, according to the article, indicates that less than 1% of Ivorian farmers employed children as salaried workers and less than 2% employ children without any family ties to the farm.⁸⁵ The article indicates that this group of children may have been trafficked, but notes that the IITA study did not interview any of these children, so it is uncertain. Id. According to the article, the results of the IITA study indicate that 1/3 of child workers did not feel that they were free to leave, but indicated that family poverty was the predominant reason that they had to work. Id.

⁸⁴ D. Toler and M. Schweisguth, *While Chocolate Lovers Smile, Child Cocoa Workers Cry: Abusive Child Labor in the Cocoa Industry: How Corporations and International Financial Institutions Are Causing It, and How Fair Trade Can Solve It*, Global Exchange, n.d. [cited January 4, 2008] at 1.

⁸⁵ Id. at 4.

The article cites the IITA's findings indicating that the majority of child workers originate from Burkina Faso and other regions of the Ivory Coast, outside of the cocoa-producing zone. Id. The IITA also found that 41% of child workers in the Ivory Coast were recruited by an intermediary. Id. Of those, 94% knew the intermediary personally; 29% knew the cocoa farmer personally and sought employment of their own initiative; 100% knew in advance that they were going to work on cocoa farms; none of the children reported that their parents had been paid; none of the children were forced to leave against their own will; and most of the children left seeking "a better life." Id.

The article cited the IITA findings that 29% of the child workers did not feel free to leave their place of employment, but only 6% reported being unsatisfied with their current situation (citing difficult work as the primary reason). Id.

Finally, the article cites to the May 2002 and March 2003 ILRF investigator reports. These reports, each based on a single person's observation, assert that cocoa planters "readily acknowledge" a common awareness of the use of child trafficking and forced labor.⁸⁶ The reports claim that child laborers are brought in from Mali and Burkina Faso by intermediaries and labor brokers, and that most children, as opposed to the 29% figure in the IITA survey, do not feel free to leave the farms.⁸⁷ The reports do not explain how either of those conclusions was formed. Because no exporters or planters have been subject to any investigations of their practices, the ILRF investigators concluded that the child labor problem has not improved since the chocolate industry promised to rectify it. Id.

The article does not indicate whether any progress has been made in the five years since the last of these surveys and reports were produced.

2. Francavilla, F. and S. Lyon. *Children's Work in Côte d'Ivoire: An Overview* Published March 2002

The 2002 working paper provides a brief overview of the various dimensions of the child work phenomenon in Cote d'Ivoire. The data used in the paper is severely dated. While the paper was published in 2002, it relies primarily on a 1995 survey of living standards, as well as a 1988 living standards survey and a 2000 multiple indicator cluster survey.⁸⁸ The paper focuses primarily on aspects of child labor and only addresses forced labor or child trafficking twice. First, to illustrate how the 1995 survey may not capture all of the working children, the paper cites a 1999 UNICEF study estimating that 15,000 Malian children were being brought into Cote d'Ivoire as slaves

⁸⁶ Id. at 5.

⁸⁷ Id. at 5-6.

⁸⁸ Francavilla, F. and S. Lyon, Children's Work in Côte d'Ivoire: An Overview, Published March 2002 at 2.

on cocoa, cotton, and coffee plantations.⁸⁹ Second, the paper cites anecdotes from a 2001 Knight Ridder article detailing the treatment of children forced to work as slaves.⁹⁰

3. Chatterjee, S. and S. Raghavan. "Nearly Hidden, Slavery on Ivory Coast Cocoa Farms is Easy to Miss." Knight Ridder News Service June 25, 2001

This 2001 news article discusses the difficulty associated with identifying children slaves. It discusses the difficulty determining if the children are indeed enslaved or members of the landholder's family. In addition to the fact that the article was written over eight years ago, the article adds no concrete evidence to the argument that either child trafficking or forced labor exists in Cote d'Ivoire. The article relies solely on anecdotes.

The two most prevalent anecdotes discuss two farmers not being able to pay their workers because of expenses, but intending to do so eventually.⁹¹

Notably, the article also discusses how counterproductive a boycott would be for those in the cocoa industry that the boycotter is trying to help. Boycotting chocolate could "make things worse for the boys working on the cocoa farms."⁹²

4. International Labor Rights Fund. *Child Labor in Agriculture: Focus on Child Labor on Cocoa Farms in West Africa and the Chocolate Industry's Initiative to Date.* 2005

The 2005 report primarily concerns child labor, and not forced labor or child trafficking in the cocoa sector. The article adds no original research substantiating claims of forced labor or child trafficking. The article refers to these phenomena in only three instances. First, it refers to the 2001 media reports showing child slaves harvesting cocoa beans in Cote d'Ivoire.⁹³ Second, the article cites the 2001 State Department's Human Rights Report on Cote d'Ivoire estimating that there were 15,000 child laborers forced to work on coffee, cotton, and cocoa plantations.⁹⁴ Third, it refers to the 2002 investigative study finding that 11,994 of the 284,000 child laborers in West Africa were working on cocoa farms where they had no family ties and 2,100 of the 284,000 were recruited by intermediaries. Id. These three sources have been discussed elsewhere.

⁸⁹ Id. at 6.

⁹⁰ Id. at 9.

⁹¹ Chatterjee, S. and S. Raghavan. "Nearly Hidden, Slavery on Ivory Coast Cocoa Farms is Easy to Miss." Knight Ridder News Service June 25, 2001, at 1.

⁹² Id. at 4.

⁹³ Id. at 1.

⁹⁴ Id. at 2.

Though it also refers to the 1997 UNICEF report that enslaved children were working on agricultural farms in Cote d'Ivoire, it does not refer to cocoa farms explicitly. Id.