



INTERNATIONAL LABOR RIGHTS FORUM

**UNITED STATES DEPARTMENT OF LABOR,
BUREAU OF INTERNATIONAL LABOR AFFAIRS**

February 15, 2011

FROM:

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TO:

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BUREAU OF INTERNATIONAL LABOR AFFAIRS
DEPARTMENT OF LABOR
200 CONSTITUTION AVENUE, ROOM S-5317
WASHINGTON DC 20210

DOCKET NO. DOL-2010-0005

RE: Notice of Determination Updating the List of Products Requiring Federal Contractor Certification as to Forced/Indentured Child Labor Pursuant to Executive Order 13126.

Introduction

The International Labor Rights Forum (ILRF) submits these comments in response to the Department of Labor's (DOL) request for submissions pursuant 75 Federal Register 241 (16 December 2010), pp: 78755-78758 in regards to the DOL determinations on products requiring contractor certification for the use of forced child labor in violation of US law and international standards.

Executive Order 13126 is vital government tool in the fight to eradicate forced child labor. It seeks to harness the power of the world's largest consumer to effect change through daily purchasing decision, and to drive demand toward responsible producers. It also recognizes that where forced child labor is a serious problem, corporations have an obligation improve transparency to ensure that they are not exacerbating the problem through their business practices or purchasing decisions. Those companies who wish to do business with the US Government simply have to demonstrate that it has taken special steps to identify whether forced child labor is present in their supply chains. By requiring

companies to take special measures, the US Government will effectively undermine the incentives corporations have to look the other way and remain willfully blind to labor conditions in their own supply chains in order to ensure a steady supply for a cheap price. We believe EO 13126 list of goods, which reflects an unbiased, real world view of the child labor problem, will greatly promote measures for identifying forced child labor at the within corporate supply chains and help drive workable solutions to the address the problem.

DOL has established an appropriate benchmark for when a product should be removed from the EO13126 List.

When removing Brazilian charcoal from the EO13126 list this year, the DOL has established an appropriate set of baseline benchmarks for determining when to remove a product from the list, which is based on demonstrated quantitative and qualitative evidence of virtual elimination of forced child labor in the industry. In particular, we note the vital role that third party, independent monitoring and verification played in the eradication efforts, along with improved government enforcement and public education.

We are concerned, however, about the recent exclusion of hand-knotted carpets made in India from the list of products. There remains substantial evidence of a long history of bonded child labor in the Indian carpet industry that persists today. Excluding Indian carpets establishes bad precedent by effectively lowering the bar for excluding goods from the list, which should be based on demonstrated successful eradication such as in Brazilian coal. We have not seen similar robust efforts at eliminating forced child labor industry-wide in hand-knotted carpet industry, though there are reputable, effective efforts underway in the industry, such as the Goodweave certification program.

For EO 13126 to be effective, US government suppliers must implement robust third party, independent monitoring.

To ensure the mandate of EO13126 is met, the Federal Acquisition Regulatory Council issued a final rule requiring federal contractors who supply products that appear on the EO 13126 List to self-certify that their contractors, or, in the case of an incorporated contractor, a responsible official of the contractor, has made a good faith effort to determine whether forced or indentured child labor was used in the production of the good and whether, on the basis of those efforts, the contractor is aware of any such use of forced child labor.

The US Government is not barred from purchasing any of the new products listed under EO 13126. Rather, as the Federal Acquisition Regulations make clear, the list “is an alert that there is a reasonable basis to believe that such product may have been mined, produced, manufactured by forced or indentured child labor.”¹ This “alert” then triggers the USG to take some additional, necessary precautions to ensure that it is not exacerbating forced child labor through its purchasing decisions. If a company is able to meet those enhanced requirements, which includes “certifying” that it will either refuse to

¹ 48 CFR §22.15, §22.1503(c))

supply an end product on the List or alternatively that it has undertaken “a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any end product”, then it can continue to supply goods the USG.² To date, the US Government has simply accepted “self-certification”, or the word of the importer alone, as a sufficient to meet the requirements of the regulation, and has not required an objective process to verify and ensure compliance with the mandate.

For EO13126 to be more effective, the US Government should learn from the experience of the Brazilian efforts to eradicate forced child labor in charcoal and require for compliance with the Federal Acquisition Regulations independent, third party monitoring and verification of labor conditions throughout the contractor’s supply chain.

We note also that the consensus recommendations of the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products (Consultative Group) highlights the vital role of independent third-party review plays in detecting and eliminating forced child labor, which includes both independent monitoring and verification of supply chains including supply chain mapping and risk assessment as well as remediation when violations are found. (See http://www.fas.usda.gov/info/Child_labor/Childlabor.asp). The Consultative Group was convened by the US Department of Agriculture in order to establish the “Recommendations for a standard set of practices for independent, third party monitoring and verification for the production, processing, and distribution of agricultural products or commodities” in order to reduce the likelihood that goods imported into the US, and possibly procured by the US Government, are produced with forced child labor.

We support the Consultative Group’s conclusions and also believe that for EO13126 to be truly effective tool in the fight against forced child labor, the US Government should incorporate these recommendations into its own purchasing practices by implementing a vigorous contractor compliance program which includes establishing a vendor prequalification process and a vigorous monitoring and enforcement mechanism.

US Government contractor monitoring program should require at a minimum inspections into labor conditions at a company and its subcontractors after a bid submission but prior to the awarding of the contract and at any time after a contract has been awarded. Investigations and monitoring of working conditions should be conducted by an independent third party operating on the principles of independence, professionalism, and transparency. Monitoring should include unannounced factory visits; full access to factories or processing facilities; cooperation with local organizations that enjoy the trust of workers to conduct worker interviews and other aspects of the investigation; confidential and thorough worker interviews in the local language without managers and supervisors present and in settings that allow free dialogue (i.e., away from production premises).

Furthermore, any person should be able to complain that the forced child labor procurement rule has been or is being violated, and the US Government should ensure

² 48 CFR §22.15, §22.1503(c))

that the merits of each complaint are investigated and may use the services of an approved third party independent monitor for this purpose. The US Government or its designated monitor should also undertake routine inspections of the factories of contractors providing covered goods.

We welcome the commitment made in the Consultative Group report by both the Departments of Labor and State dedicate resources to establish a process to help companies implement the recommendations. We urge all US government agencies to begin by working with companies that supply the US government with goods either listed on the EO13126 list, or goods manufactured with products on the list, to ensure that they can demonstrate compliance with EO13126 and the Federal Acquisition Regulations through implementing a robust third party, independent monitoring and verification program.

Respectfully submitted this 15th day of February 2011.

A handwritten signature in black ink, appearing to read "Brian Campbell". The signature is stylized and cursive.

Brian Campbell
Director of Policy and Legal Programs
International Labor Rights Forum