



AMERICAN UNIVERSITY
WASHINGTON, D.C.

CENTER FOR HUMAN RIGHTS AND
HUMANITARIAN LAW

July 11, 2011

Office of Agreements and Scientific Affairs
Foreign Agricultural Service
U.S. Department of Agriculture
Room 4133-S
1400 Independence Ave., SW
Washington, D.C. 20250

Dear Madam or Sir:

The Program on Human Trafficking and Forced Labor in the Center for Human Rights and Humanitarian Law at American University Washington College of Law (the Program) congratulates the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products (the Consultative Group) for advancing an issue of profound international concern, namely the elimination of the use of child labor and forced labor in agricultural products or commodities.

We join the esteemed members of the Consultative Group and the U.S. Department of Agriculture—as well as other concerned non-governmental and civil society organizations—in recognizing the vital importance of the role that corporations have in reducing the likelihood that agricultural products made with child labor and forced labor enter U.S. markets.

We commend the Consultative Group for creating broadly applicable Guidelines to suit the diverse needs of a wide variety of companies and recognize that the Guidelines are meant to set forth essential, rather than detailed, elements for use by individual companies. However, we encourage the Consultative Group to incorporate more specific language, where appropriate, in order to more effectively convey recommendations to target companies.

Therefore, we respectfully submit the following comments on the proposed Guidelines, with our proposed additional language in parentheses.

COMMENT 1: Publicly available standards

II.A.1.d. Standards should be made available to the public [ADD: on the company website and posted in a conspicuous location where workers can read them in a

language they understand at each of the company's locations and at every location of the subcontractors along the entire supply chain].

The Guidelines should ensure that workers and employers all along the supply chain are provided with notification of the standards. This additional provision would help increase corporate accountability and transparency and worker awareness of their rights.

COMMENT 3: Independent expert

II.A.2.b Company should [employ an independent expert to] identify areas of child/forced labor risk along chains; this may be done by:

- i. [ADD: The independent should employ a reliable, transparent and replicable methodology to collect] ~~Collecting~~ available information on child/forced labor prevalence in industry in areas where product is sourced.
- iii. [ADD: The independent expert should examine] ~~Examining~~ impact of company's own pricing and procurement policies on child/forced labor risks.

The proposed provision is problematic for two reasons: First, it fails to recommend the use of verifiable and replicable methodologies for identifying areas of child labor or forced labor risk along supply chains. Indeed, the provision provides no guidance as to how companies should carry out their investigations to collect pertinent data; it merely states that companies should collect this data. As a result, this overly broad provision leaves room for companies to utilize unreliable data collection methods. It also opens the door for companies and suppliers alike to misrepresent or even fabricate primary source information.

Second, the provision presumes that companies have the capacity or incentive to adequately identify most of, if not all, areas of child and forced labor risk along their supply chains. These shortcomings not only jeopardize the accuracy and quality of the collected baseline data, but they subsequently affect the success of the "Communications and Monitoring" goals outlined in Section II.B that rely on the collected baseline data.

COMMENT 4: Update risk assessment

II.A.2.d. Company should update its risk assessment periodically based on its experience operating its program [ADD: and the evaluations and recommendations of independent third-party reviewers (see sec. III).]

Companies should also agree to update their risk assessments according to the findings of the outside experts they hire to conduct monitoring and reviews.

COMMENT 5: Communications

II.B.1.a. Company should communicate child labor and forced labor standards, rights, expectations, monitoring and verification programs, remediation policies, and complaint process and process for redress to:

- i. Suppliers through training for managers, supervisors and other staff [ADD: and through company contracts with suppliers].
- ii. Workers (including unions where they exist) and producers [ADD: through meetings and notices posted conspicuously in a language the workers and producers understand].
- iii. Other levels of supply chain as appropriate (traders, middlemen, processors, exporters) [ADD: through subcontractor contracts, meetings and notices posted conspicuously in a language the workers understand].

In order to ensure that all workers and their employers all along the supply chain are aware of the company's child labor and forced labor standards, rights, expectations, monitoring and verification programs, remediation policies and complaint process and process for redress, ALL workers and employers must be provided with information. Therefore, this version unequivocally suggests that companies should properly and effectively disseminate this information, either directly or through its subcontractors and suppliers.

COMMENT 6: Complaints

Section II.B.1.b. Company should ensure that a safe and accessible channel is available to workers and other stakeholders to lodge complaints, including through independent monitors and verifiers. Company should [ADD: accept anonymous complaints and] also ensure that a transparent and accessible communications protocol is in place to notify victims and other affected stakeholders of complaints received and outcomes, with appropriate safeguards to protect victim's [ADD: and whistleblower's] privacy.

It is important to ensure that anonymous complaints will be accepted and investigated as workers in many countries are often afraid of coming forward openly and so consequently suffer in silence out of fear of retaliation.

We also recommend that the identity of whistleblowers, in addition to victims, is protected. This amendment is particularly important because whistleblowers might be in a position to speak up when workers are too afraid to report a violation.

Ultimately, these modifications enhance the effectiveness of the original provision by ensuring that companies implement mechanisms that provide maximum protection to victims and whistleblowers.

COMMENT 7: Monitoring

II.B.2.a. Company should [ADD: hire an outside expert to assist in the development of] ~~develop~~ monitoring tools based on its standards on child labor and forced labor.

II.B.2.d. First round of monitoring should be used to establish baseline data on incidence of child/forced labor throughout the company's supply chain [ADD: (see II.A.2.b.)]

It cannot be assumed that all companies will have the expertise necessary to develop a comprehensive set of monitoring tools and, therefore, they should either hire a consultant or an in-house expert.

Section II.B.2.d overlaps with section II.A.2.b. The baseline data should be collected by an independent expert as we recommend for section II.A.2.b above.

COMMENT 8: Victim remedies

II.B.C.1.c. Remediation for individual victims:

- ii. Should also include [ADD: victim compensation for physical and/or psychological harm, pain and suffering], resources for victim services such as rehabilitation, education and training, employment, appropriate housing, counseling, restitution for lost wages and other material assistance.

The proposed provision fails to compensate for the myriad of harms suffered by victims. For example, victims might lose a limb or develop a condition that limits their ability to function normally. They may also have suffered from beatings, rapes, psychological harassment or other harm. While they may be able to recover lost wages and access services, this will not compensate for the harm suffered or for the negative consequences that can continue into the future.

For this reason, we propose adding compensation for any harm, pain or suffering victims may have experienced as a result of deficiencies in the company's and/or suppliers' systems and/or processes.

COMMENT 9: Dissemination and implementation of the Guidelines

The State Department's Bureau of Democracy, Human Rights and Labor (DRL) with support from the Department of Labor should house a continued initiative to promote and implement the Guidelines developed by the Consultative Group. A key function in the future should be to educate key stakeholders, from the business community, civil society and government about the Guidelines and how the Guidelines should be applied in supply chains.

COMMENT 10: Providing Oversight on Implementation of the Guidelines

In addition to educating stakeholders and disseminating information publicly about the Guidelines, the State Department Bureau of Democracy, Human Rights and Labor (DRL) should also provide oversight on the appropriate implementation of the Guidelines. With the successful promotion of the Guidelines, we anticipate additional demand for third-party, independent monitoring and verification programs. With scores of companies and third party initiatives claiming to address issues of forced and child labor, DRL should assess the work of these initiatives and provide a publicly accessible list of those programs that appropriately fulfill the criteria in the Guidelines. This compilation of acceptable programs should continue to be assessed and updated over time and we encourage DRL to work with each initiative to identify new ways to strengthen their programs.

COMMENT 11: Ombudsman

A key component in any initiative seeking to protect labor rights is an accessible system for workers, civil society organizations and concerned parties to lodge complaints and for those complaints to be settled appropriately. In order for company child labor policies to be comprehensive, company verification programs should require third-party monitoring and verification programs that are able to demonstrate experience, competence, independence, impartiality, and access to a confidential complaint mechanism for whistleblowers when companies and their third-party initiatives fail to meet the criteria in practice.

If third-party initiatives do not meet the criteria, third party initiatives may contribute to the negative impact of business policies on workers and local communities by providing misleading information to the consumer. Therefore, DRL should provide a forum that can (1) accept complaints concerning the policy or practice of a third-party initiative and the company, (2) conduct investigations and (3) offer dispute resolution and adjudication for complainants. If the initiatives continue to fail to meet the requirements of the Guidelines, they should not be eligible for the list of approved third-party initiatives.

COMMENT 12: Future of the Consultative Group

There is a need for ongoing multi-stakeholder engagement to promote and improve the Guidelines. For the remainder of its mandate, the Consultative Group should design a proposal for its next iteration and structure. There should also be additional efforts to secure broader stakeholder participation before the end of the Group's mandate to ensure continued transparency and opportunities for a full range of opinions and advice to guide this process.

In closing, we would like to reiterate our support for the excellent leadership of the Department of Agriculture and the Consultative Group in developing these Guidelines. We are confident that the Guidelines will have a significant impact upon the elimination of child labor and forced labor made agricultural products and commodities in the United States.

Very truly,



Ann Jordan, Director
Program on Human Trafficking and Forced Labor
Center for Human Rights and Humanitarian Law