

## **Comments on USDA's Proposed Guidelines on Child Labor for Imported Agricultural Commodities**

On behalf of the Global Issues Group ("GIG"), a global working group to address labor practices in cocoa farming,<sup>1</sup> we are pleased to submit the following comments to the U.S. Department of Agriculture (USDA) on proposed guidelines for a voluntary initiative to enable entities to reduce the likelihood that agricultural products or commodities imported into the United States are produced by forced labor or child labor. These comments respond to USDA's Federal Register notice published on April 12, 2011 (Volume 76, Number 70).

The global chocolate and cocoa industry has and continues to unequivocally condemn the Worst Forms of Child Labor ("WFCL") as defined by ILO Convention 182 and the use of forced or indentured labor in the cocoa supply chain, or in any supply chain. As we have previously shared with the Consultative Group, our commitment to eliminate the WFCL and forced labor in the cocoa sector was made early, and our experience as a coalition has been as both as leaders and innovators in developing sector wide approaches to the problem of child labor in a small holder agricultural context. In September 2001, global chocolate and cocoa industry representatives, in partnership with United States Senator Tom Harkin and Representative Eliot Engel, signed a public and historic agreement to work towards the elimination of the worst

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<sup>1</sup> The Global Issues Group (GIG) is an ad-hoc group convened in September 2001 by the major chocolate and cocoa industry companies and affiliated trade associations specifically to address the labor challenges in the cocoa sectors of West Africa as articulated in the Harkin-Engel Protocol. Its members are ADM, Barry Callebaut, Cargill, Ferrero, Kraft Foods, Mars Incorporated, Nestlé, and The Hershey Company, with affiliated organizations including the National Confectioners Association of the U.S. (NCA); Association of the Chocolate, Biscuit and Confectionery Industries of Europe (CAOBISCO); International Confectionery Association (ICA); European Cocoa Association (ECA); and the World Cocoa Foundation (WCF).

forms of child labor in the growing of cocoa beans and their derivative products from West Africa. The agreement, known as the "Harkin-Engel Protocol," laid out a series of date-specific actions to achieve that goal, including the development of a public "certification" system for cocoa farming. We have discussed these initiatives at length in our previous comments (see April 30, 2010 submission).

Over the last ten years, the industry, in conjunction with the governments of Ghana and Cote d'Ivoire and international civil society partners, has worked towards the implementation of this public certification system. At the same time, many of the companies in our global working group have begun pilot participation in third party private product based certification efforts. We have commented previously on the role of public and private certification processes as effective and complementary tools to drive positive change in labor practices, but with genuine limitations regarding their ability to guarantee compliance on particular labor standards. We believe that the learnings from these efforts can serve as a baseline to realistically assess what can be achieved, and what is most effective in driving lasting and sustainable change.

Our comments focus on four general points on the proposed guidelines: the role of origin governments in monitoring, auditing, verification, and certification efforts; the relationship between these suggested guidelines and current private product certification efforts; our coalition's transition towards community based monitoring, data collection and remediation as a way to drive sustainable change; and our views on the role of the U.S. government in supporting efforts to reduce the worst forms of child labor in international agricultural supply chains.

**I. Role of the origin governments in monitoring, auditing, verification, and certification efforts undefined in these guidelines, but critical in practical application.**

While these guidelines were developed to aid private companies in their efforts to address the worst forms of child labor in an agricultural supply chain context, and the Consultative Group's December report discusses the role of origin governments in developing national plans which address labor concerns in their agricultural sectors, as well as their responsibility to provide social and educational services for their citizens, the partnership with origin governments required for a company or an industry to implement any of the monitoring, auditing, or verification activity suggested by the Consultative Group is obscured in these proposed guidelines, and may present an unrealistic picture about the level of effort required to implement any of these provisions.

The proposed guidelines suggest a series of monitoring, auditing, and verification activities for an individual company's commodity suppliers, to the farm level where feasible. In the cases of the two sectors in which the industry has primarily worked, the cocoa sectors of Ghana and Cote d'Ivoire, cocoa farms are not owned by the companies that make chocolate products or process cocoa beans, and the industry itself does not engage in contractual arrangements with individual farmers. In Cote d'Ivoire, for example, more than one million smallholder farmers work on farms averaging 3 to 5 hectares in size; and cocoa exporters are prohibited by the Cote d'Ivoire government from dealing directly with those farmers. Cocoa beans are purchased through intermediaries, and may pass through many hands before they get to the port and the ultimate end user.

It is unclear how a company would arrange for farm level monitoring and auditing including the announced and unannounced site visits which the guidelines suggest in a market where the government prohibits direct contact with the farmers. Even absent such a provision, it is unclear how origin governments would respond to the small army of independent third party monitors necessary to accurately and realistically audit even a portion of the millions of small holder family farms that make up a national cocoa sector.

Private product certifiers have begun to tackle this problem by organizing a limited number of small cooperatives for farmers, but these efforts have required, and will continue to require, intensive dialogue with the origin governments. In the industry's experience as well as in Tulane University's experience working with the governments of Ghana and Cote d'Ivoire on baseline assessment and data collection, the sensitivity of the issue of child labor and its international political profile have made any attempts to visit farms, interview farmers, map child labor incidence, and publicly report it a multiple year negotiation with discussions at the highest levels of the U.S. and origin governments.

Neither individual companies or private product certifiers are simply able to "plug in" monitoring, auditing, and verification activity in a particular production system or country's regulatory environment. Our experience suggests that questions are still outstanding from the origin governments about how public and private product certification efforts fit in their national production and marketing organizations and strategies. It would be helpful for the guidelines themselves to identify and recognize this challenge in the context of a holistic strategy to address WFCL in a particular sector.

## **II. Relationship of these guidelines to current private certification models; complete guidelines more prescriptive than current private certification efforts.**

As a synthesis document of best practices, the guidelines provide an outline of activities in which many of our companies have engaged: the mapping of supply chains, establishment of company codes of conduct, and the implementation of remediation and development programs.

Yet text in the guidelines seems to position this set of recommendations as a comprehensive system, as opposed to a set of individual provisions from which companies can draw. For example, in the foundational overview, the guidelines state

that “company programs should include the elements below” (Sections II A-C, for a total of 29 provisions) and in the independent third party review section “companies may choose whichever model is most appropriate for their circumstances; however, a comprehensive program should include a combination of the two models” (Section III). The complete set of recommendations is far in excess of what current product certification models including Fair Trade purport to do, with traceability to the farm level, independent monitoring separate and in addition to a company or organization’s internal monitoring and remediation activity, and external verification of a company or organization’s complete child labor program. It is not clear that the cost for a company or an organization of trying to implement these recommendations across one sector is feasible, much less the multiple commodity supply chains the average manufacturer sources from. The monitoring and auditing provisions particularly seem more adapted to a manufacturing or factory context than to a small-holder agricultural context.

Because of some of these precise challenges in implementation, private agricultural certification programs are currently a niche effort; for example, according to best public estimates, third party certified product by organizations such as Utz Certified, Rainforest Alliance, and Fair Trade makes up less than five percent of the total cocoa volume produced by the sectors of Ghana and Cote d’Ivoire. Private product certification programs are also in an early stage of evolution, and to our knowledge, feedback from these certifiers on these recommendations and their practicability has not been sought. Companies that engage with product certifiers and the certifiers themselves do not share the details of their relationship or report on the initiatives and projects with the public; it is a commercial activity, so it is not clear how the reporting and disclosure recommendations in these proposed guidelines would mesh with private certification models in practice. The guidelines need to clarify that these are a set of recommendations from which both companies and private certifiers can draw to inform

current efforts, or are a comprehensive system, to be evaluated accordingly.

### **III. A new community based model of data collection and remediation processes to drive sustainable change.**

The global coalition working on labor conditions in the cocoa sectors of Ghana and Cote d'Ivoire has engaged in a four-part process of data collection, reporting, remediation, and verification as part of the public certification system which was developed under the Harkin-Engel Protocol. The system has seen a number of important successes, including the publication of national surveys by the governments of Ghana and Cote d'Ivoire detailing the incidence of child labor and forced labor practices in their respective cocoa sectors; these reports were independently verified and in turn served as catalysts for the governments to develop and implement their own National Plans of Action on child labor, bringing together international partners' forums to focus international attention, effort, and resources to support cocoa families and children.

Our focus for the future builds on the learnings from that model, but places the primary focus of activity – monitoring, data collection, remediation, and tracking – within the community context, where it has the greatest impact. In conjunction with the International Labor Organisation's International Programme on the Elimination of Child Labor ("ILO-IPEC"), the coalition is piloting community based child labor monitoring systems that allow monitoring and data collection to be a community owned activity, with real time data generated and a system of referral and tracking in place to ensure that vulnerable children get the services they need immediately. Rather than focusing program activity on an external auditing model that accounts for annual check-ins at best, we are supporting community-based interventions that focus on community sensitization and development and real time referral. The model proposed in the guidelines seems impractical and somewhat outdated, but also externally driven. It does not build the government or community capacity needed to drive sustainable change. In

our view, auditing and verification activity are useful tools, but must be secondary in focus to remediation and community development. While product certification programs have an important role to play in educating farmers, they will not drive national change any time in the near future. The greater “bang for the buck” is in international development and technical assistance, with a focus on development in community.

**IV. The role of the U.S. government should not be in government sponsored certification activity, but in diplomatic outreach and aid for development.**

In the request for comment, the Consultative Group asked, what additional steps by the U.S. government would be helpful to aid entities in adopting and implementing the guidelines? We are concerned that while the intent behind the guidelines is helpful and constructive, they serve to distract U.S. government agencies and their staff from the opportunities for engagement that can make a real difference. It is unclear what further government sponsorship of these guidelines would look like, or how such sponsorship would be interpreted. Product certification is an important tool, but certainly not a panacea, and not the most important tool that governments and private sector entities can consider to reduce the incidence of child labor in international agricultural sectors. U.S. government resource and attention should focus on aid and technical assistance packages for origin governments ready to move forward and commit to work on labor issues, and on government to government diplomatic outreach that both encourages countries to step up, and holds them accountable when political will and resource allocation waver. As it stands, this initiative is one of several undertaken by the U.S. government that origin governments struggle to understand and contextualize. The relationship of this activity to the Executive Order 13126 and the Trafficking Victims Protection Act lists is unclear. The consuming public may interpret the Consultative

Group's work product as non-elective, further confusing the relationship of these recommendations with private certification efforts.

The global cocoa industry working group has seen that sustainable, effective intervention activity must come as the result of a partnership between the U.S. government, the origin governments, international development organizations, and the industry on behalf of farming families and their children. Thoughtful and appropriate support from origin governments, in a well-coordinated approach, must be developed to build the remediation strategies and detailed National Action Plans needed for broad scale intervention. The U.S. Department of Labor, members of the U.S. Congress, the governments of Cote d'Ivoire and Ghana and the industry are currently participating in a multi-stakeholder forum under a new Framework of Action, signed on September 13th, 2010, that is bringing a new and coordinated focus towards effective remediation and development in cocoa communities. The U.S. government, the industry, and the governments of Cote d'Ivoire and Ghana have each pledged new funds in support of this holistic approach to the sectors, with the ILO-IPEC serving both as a technical advisor and key implementer. Once the Framework's coordinating platform and mechanisms have been developed, other international development partners and implementers in both sectors will be invited to join the process, to leverage and coordinate intervention efforts and share best practices, ultimately scaling up those which are most effective. This is the type of activity the U.S. government can sponsor to drive sustainable change that is national in scope.

We appreciate the Consultative Group's consideration of our views.

Sincerely,

Ronald P. Graf

Chair, Global Issues Group