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DEPARTMENT OF LABOR

Office of the Secretary

Notice of Final Determination Revising the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Pursuant to Executive Order 13126

AGENCY: Bureau of International Labor Affairs

ACTION: Notice of Final Determination

SUMMARY: This final determination revises the list required by Executive Order 13126 (“Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor”), in accordance with the “Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Under 48 CFR Subpart 22.15 and E.O. 13126.” This notice revises the list by adding three products, Bricks from Afghanistan and Cassiterite and Coltan from the Democratic Republic of the Congo, that the Departments of Labor, State and Homeland Security believe might have been mined, produced, or manufactured by forced or indentured child labor. Under a final rule of the Federal Acquisition Regulatory Councils, published January 18, 2001 (at 48 CFR Subpart 22.15), which also implements Executive

Order 13126, federal contractors who supply products which appear on this list are required to certify, among other things, that they have made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture the item.

DATES: This document is effective immediately upon publication of this notice.

SUPPLEMENTARY INFORMATION:

I. Revised List of Products

On October 4, 2011, the Department of Labor (DOL), in consultation and cooperation with the Department of State (DOS) and the Department of Homeland Security (DHS), published a Notice of Initial Determination in the **Federal Register** proposing to revise the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor (“the EO List”) (76 FR 61384). The notice invited public comment through December 3, 2011. The initial determination can be accessed on the Internet at <http://www.dol.gov/ILAB/regs/eo13126/main.htm> or can be obtained from: Office of Child Labor, Forced Labor, and Human Trafficking (OCFT), Bureau of International Labor Affairs, Room S-5317, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693-4843; fax (202) 693-4830.

Of the public comments that were received, only one discussed the revisions to the EO List proposed in the initial determination. The comment expressed support for all three proposed revisions to the EO List. No new information was provided through public comments to negate the basis for the proposed revisions in the initial determination.

Accordingly, based on recent, credible, and appropriately corroborated information from various sources, DOL, DOS, and DHS have concluded that there is a reasonable basis to believe that the following products, identified by their countries of origin, might have been mined, produced, or manufactured by forced or indentured child labor:

| PRODUCT | COUNTRY |
|----------------|----------------------------------|
| Bricks | Afghanistan |
| Cassiterite | Democratic Republic of the Congo |
| Coltan | Democratic Republic of the Congo |

The bibliographies providing the basis for the three agencies' decisions on each product are available on the Internet at <http://www.dol.gov/ILAB/regs/eo13126/main.htm>.

II. Background

EO 13126, which was published in the **Federal Register** on June 16, 1999 (64 FR 32383), declared that it was “the policy of the United States Government ... that the executive agencies shall take appropriate actions to enforce the laws prohibiting the

manufacture or importation of good, wares, articles, and merchandise mined, produced or manufactured wholly or in part by forced or indentured child labor.” Pursuant to EO 13126, and following public notice and comment, DOL published in the January 18, 2001 **Federal Register** a list of products, identified by their country of origin, that DOL, in consultation and cooperation with DOS and the Department of the Treasury [relevant responsibilities now within DHS] had a reasonable basis to believe might have been mined, produced or manufactured by forced or indentured child labor (66 FR 5353).

Pursuant to Section 3 of EO 13126, the Federal Acquisition Regulatory Councils published a final rule in the **Federal Register** on January 18, 2001 providing, amongst other requirements, that federal contractors who supply products that appear on the EO List published by DOL must certify to the contracting officer that the contractor, 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 to mine, produce, or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. *See* 48 CFR Subpart 22.15.

DOL also published on January 18, 2001 “Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor” (“Procedural Guidelines”), which provide for maintaining, reviewing, and, as appropriate, revising the EO List (66 FR 5351). The Procedural Guidelines provide that the List may be revised either through consideration of submissions by individuals or

on DOL's own initiative. In either event, when proposing to revise the EO List, DOL must publish in the **Federal Register** a notice of initial determination, which includes any proposed alteration to the List. DOL will consider all public comments prior to the publication of a final determination of a revised list, which is made in consultation and cooperation with DOS and DHS.

On September 11, 2009, DOL published an initial determination in the **Federal Register** proposing to revise the List to include 29 products from 21 countries. (74 FR 46794). The Notice requested public comments for a period of 90 days. Public comments were received and reviewed by all relevant agencies, and a final determination was issued on July 20, 2010 that included all products proposed in the initial determination except for carpets from India. (75 FR 42164).

On December 16, 2010, DOL, in consultation and cooperation with DOS and DHS, published an initial determination in the **Federal Register** proposing to revise the EO List (75 FR 78755). The notice explained how the initial determination was made and invited public comment through February 15, 2011. Public comments were received and reviewed by all relevant agencies, and a final determination was issued on May 31, 2011 that incorporated all revisions proposed in the initial determination. (76 FR 31365).

III. Summary and Discussion of Significant Comments

The Bureau of International Labor Affairs (ILAB) received 4,151 public comments. Of these, 4,141 were identical comments from members of the public sent as part of an e-

mail campaign. Three of the remaining comments were from the Apparel Export Promotion Council of India (AEPC); the Child Labor Coalition (CLC); and a group of organizations including the American Federation of Labor-Congress of International Organizations (AFL-CIO), the American Federation of Teachers, Cal Poly Chocolates, the CLC, the Center for Reflection, Education and Action, Ethix Ventures, Equal Exchange, the Fair Trade Federation, the Fair Trade Resource Network, the Fair World Project, Global Exchange, Green America, the International Labor Rights Forum (ILRF), the Labor-Religion Coalition of New York State, Media Fair Trade/Untours, the Organic Consumers Association, Presbyterian Church (USA), the Office of Public Witness, Project Hope and Fairness, Stop the Traffik, SweatFree Communities, Sweet Earth Organic Chocolates, the Unitarian Universalist Service Committee, the United Methodist Board of Church and Society, and United Students for Fair Trade. The remaining seven comments had been mistakenly sent to ILAB and were actually intended to respond to an unrelated DOL Notice of Proposed Rulemaking; ILAB forwarded these comments to the appropriate DOL agency.

All submissions, including a sample of the identical e-mails, are available for public viewing at www.regulations.gov (reference Docket ID No. DOL-2011-0006). After the closure of the public comment period, ILAB met with the AEPC at its request, and a record of that meeting is also available for public viewing under the same docket.

All comments have been carefully reviewed and considered, as discussed below.

A. *Comments on Forced Child Labor in the Production of Cotton in Uzbekistan and Cocoa in Cote d'Ivoire*

One commenter provided recent documentation on forced child labor in the production of cotton in Uzbekistan and cocoa in Cote d'Ivoire, both of which are currently included in the EO List. DOL appreciates receiving this documentation.

B. *Comments on Alleged Forced Child Labor in the Harvesting and Processing of Cottonseed from Uzbekistan*

One commenter stated that forced child labor is occurring in the harvesting and processing of cottonseed from Uzbekistan. DOL would appreciate receiving documentation that may provide further information about this issue.

C. *Comments on Alleged Forced Child Labor in the Production of Carpets in India*

One commenter noted that carpets from India had “disappeared” from the EO List, and recommended that they be added to the List. DOL wishes to clarify that although carpets from India were included in an Initial Determination released to the public on September 11, 2009 (74 FR 46794), this product and country of origin were not included on the EO List in the Final Determination published on July 20, 2010 (75 FR 42164). At that time, available information about forced child labor in carpets was determined to be

insufficient to place the product on the List. However, DOL appreciates the additional information provided by this commenter. DOL is considering this information and conducting additional relevant research.

D. Request that Garments and Embroidered Textiles (Zari) from India be Removed from the EO List

One commenter requested the deletion of Embroidered Textiles (*Zari*) and Garments from India from the EO List. DOL is carefully reviewing this request and conducting additional research. DOL has received substantial additional information on the production of these goods and continues to analyze all available information against the criteria established in its Procedural Guidelines. DOL will consider all available information for the purpose of future revisions to the list.

E. Comments Related to the Trafficking Victims Protection Reauthorization Act List of Goods Made with Child Labor or Forced Labor (TVPRA List)

One commenter included information that addressed goods named on the list of products DOL maintains under the Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA), codified at 22 U.S.C. § 7112(b)(2)(C). DOL would like to clarify that the EO List and the TVPRA List are produced under separate mandates and the public comment period identified for submissions relevant to the EO List initial determination did not apply to the TVPRA List. EO 13126 limitations on Federal procurement apply only to

the products on the EO List, not to those on the TVPRA List. DOL considered all information received during the EO List public comment period addressing goods named on the TVPRA List as an official TVPRA List submission and will consider that information in the ongoing process of updating the TVPRA List. Additional information on the TVPRA List can be found at <http://www.dol.gov/ILAB/programs/ocft/tvpra.htm>.

Because some products appear on both the TVPRA List and the EO List, one commenter suggested that the separate standards for inclusion on these Lists are being improperly applied. This commenter also argued that the standard for inclusion on the EO List is impermissibly vague and may “lead to chaos.” The EO List includes products that DOL, in consultation with DOS and DHS, has “a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor.” Sec. 2. DOL, DOS, and DHS (formerly the Department of the Treasury) have administered the EO List for more than a decade. In this time period, there has been no indication that the EO definitions have caused confusion in discerning appropriate country and products. Products are placed on the EO List only after careful consideration of the factors set forth in the Procedural Guidelines, namely “the nature of information describing the use of forced or indentured child labor; the source of the information; the date of the information; the extent of 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 industry.” (66 FR 5351).

The TVPRA List includes goods that ILAB “has reason to believe are produced by forced labor or child labor in violation of international standards.” 22 U.S.C. § 7112(b)(2)(C).

As there is a reasonableness standard for inclusion on both the EO and TVPRA Lists, and DOL considers similar published factors in determining which goods appear on the Lists, it is not surprising that a number of products appear on both Lists. (66 FR 5351; 72 FR 73374).

F. Comment Questioning Whether the List is in Accord with International Law

One commenter expressed concerns about whether the EO is consistent with international law, including the General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194 (“GATT”).

This comment raised concerns that (1) the EO List improperly acts as a “non-tariff barrier” to trade and (2) the EO should not exclude from its provisions the products of a party to the North American Free Trade Agreement or the Agreement on Government Procurement without excluding all parties to the GATT. This comment appears to misunderstand the EO List, which does not act to restrict the importation of goods. The listing of products, and their respective countries of origin, and the requirement for procurement purposes of a good faith certification that products appearing on the EO List were not mined, produced or manufactured with forced or indentured child labor, does not constitute a barrier to trade. The commenter’s argument that the exclusions referenced are inconsistent with the non-discrimination obligations in the GATT is

directed at the EO itself, rather than its implementation, and thus may not be responsive to the Department's request for comments. However, the exclusions referenced by the commenter are not inconsistent with these obligations.

This commenter also suggested that it is improper to define "child" under the EO as any person under the age of 18. *See* EO 13126, Sec. 6(c). This definition is in accordance with international law, and particularly International Labour Organization Convention 182, Worst Forms of Child Labour. Convention 182 defines "child" as "all persons under the age of 18." Art. 2. The Convention goes on to define the worst forms of child labor to include "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict." Art. 3(a). Accordingly, the worst forms of child labor under Convention 182 necessarily encompass the EO definition of forced or indentured child labor, which includes "all work or service: (1) extracted from any person under the age of 18 under the menace of any penalty for its non-performance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties." EO 13126, Sec. 6(c). Therefore, the commenter's suggestion is based on an incorrect understanding of the definition under international law.

G. Comments Related to the Stage of Production at Which Forced or Indentured Child Labor Might Have Been Used

Comments were received suggesting that the EO List be expanded to include “end products” if there is a reasonable basis to believe the component parts of those products might have been mined, produced, or manufactured by forced or indentured child labor, regardless of the stage in the supply chain at which there is reason to believe such child labor might have been used. DOL is considering these comments and will consult and coordinate as appropriate with DOS, DHS and other Federal agencies.

H. Comments Related to the Procurement of Products Named on the List

Comments were received requesting that federal contracting officers use the U.S. Department of Agriculture (USDA) Guidelines for Eliminating Child and Forced Labor in Agricultural Supply Chains (“USDA Guidelines”), set forth at 76 FR 20305, to evaluate whether a contractor has made a good faith effort to verify that forced or indentured child labor was not used to mine, produce, or manufacture any item on the EO List. The USDA Guidelines were published on April 12, 2011 under the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651 (2008), and Section 105 of the TVPRA as 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.” (76 FR 20305). These guidelines, however, are not intended to be used by the government for enforcement purposes. Further, the current General Services Administration (GSA) regulations applicable to procurements affected by the EO do not permit good faith to be evaluated in the manner suggested. The GSA

regulations state that “[a]bsent any actual knowledge that the [good faith] certification is false, the contracting officer must rely on the offerors’ certifications in making award decisions.” 48 CFR § 22.1503(d).

Signed at Washington, D.C., this 29th day of March, 2012.

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