

DEPARTMENT OF LABOR**Office of the Secretary****Bureau of International Labor Affairs;
Notice of Preliminary List of Products
Requiring Federal Contractor
Certification as to Forced or
Indentured Child Labor Under
Executive Order No. 13126; Request
for Comments**

SUMMARY: As required by Executive Order No. 13126 ("Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor"), this notice sets forth a list of products, by country of origin, which the Department of Labor, the Department of State, and the Department of the Treasury preliminarily believe may have been mined, produced, or manufactured by forced or indentured child labor. Under a proposed rule by the Federal Acquisition Regulatory Council published in today's issue of the **Federal Register**, which also implements Executive Order No. 13126, federal contractors who supply products on the list would be 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 produce the item. The Department of Labor invites public comment on the preliminary list set forth in this notice. The Department will publish a final list of products on or before the date on which corresponding proposed changes in the Federal Acquisition Regulation (FAR) become final. The Department intends to update the final list of products periodically, through a public notice-and-comment process, which will be described when the final list is published.

DATES: Interested parties must submit written comments by November 6, 2000.

ADDRESSES: Written comments should be submitted to the International Child Labor Program, Bureau of International Labor Affairs, Room S-5303, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; fax: (202) 219-4923. All written comments submitted will be made part of the record of review and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ami Thakkar, International Child Labor Program, Bureau of International Labor Affairs, Room S-5303, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 208-4843; fax: (202) 219-4923.

SUPPLEMENTARY INFORMATION: Executive Order No. 13126, which was published in the **Federal Register** on June 16, 1999 (64 FR 32383-32385), requires the

Federal Acquisition Regulatory Council (the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council) to issue proposed rules to amend the Federal Acquisition Regulation (FAR), with respect to the procurement by federal agencies of products that may have been mined, produced, or manufactured with forced or indentured child labor. Certain procurement-related requirements are to apply to products that appear on a list to be published by the Department of Labor. The list is not intended to prohibit the importation of listed products into the United States or to prohibit federal agencies from acquiring such products, assuming that certain conditions are satisfied.

Section 2 of the Executive Order requires the Department of Labor, in consultation and cooperation with the Department of the Treasury and the Department of State, to "publish in the **Federal Register** a list of products, identified by their country of origin, that those Departments have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor."

Under Section 3 of the Executive Order, the Federal Acquisition Regulatory Council is required to issue proposed rules to implement the policy expressed in the Executive Order. The proposed rules are to require provisions for procurement contracts for products included on the list published by the Department of Labor. They include a provision requiring the contractor to certify that it 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 not aware of any such use of forced or indentured child labor. Full compliance with this certification requirement, and related certification requirements, would permit a contractor to supply a listed product to a federal agency. Elsewhere in this issue, the Civil Agency Acquisition Council and the Defense Acquisition Regulations Council issue the proposed rule required by the Executive Order and invited public comment.

The Executive Order authorized the Department of Labor to conduct hearings to assist in the identification of products to be included on the list required by the Executive Order. Following publication of a notice in the **Federal Register** on July 8, 1999 (64 FR 36922-36923), the Department of Labor held a public hearing on August 10, 1999. The following witnesses provided oral and written testimony at the

hearing: Gina Amatangelo (Amnesty International), Pharis Harvey (International Labor Rights Fund), Martin Dusel (American Coke and Coal Chemicals Institute), and Dorianne Beyer (National Child Labor Committee and Council on Economic Priorities Accreditation Agency). In addition, written submissions were received from: All Pakistan Federation of Trade Unions, American Apparel Manufacturers Association, American Coke and Coal Chemicals Institute, Amnesty International, Bangladesh Rural Advancement Committee (BRAC), Burlingtons, LTD (Bangladesh), Care & Fair—Carpet Trade Against Child Labor (Germany), Child Care Foundation (Pakistan), Council for Leather Exporters (India), Embassy of the People's Republic of Bangladesh, Embassy of Egypt, Embassy of India, Embassy of the Republic of Indonesia, Hard to Reach Children (Bangladesh), Human Rights Watch, Pakistan Carpet Manufacturers and Exporters Association, Republic of Yemen—General Federation of Workers Trade Unions, and Rugmark Foundation (India).

As explained below, the Department of Labor, in consultation and cooperation with the Department of State and the Department of the Treasury, has developed a preliminary list of products, in accordance with Section 2 of the Executive Order. The Department invites public comment on the preliminary list, the inclusion of certain products on the list, the exclusion of other products from the list, and any other issue related to the fair and effective implementation of this aspect of the Executive Order. A final list will be published on or before the date on which the Federal Acquisition Regulatory Council issues a final rule to implement Executive Order No. 13126.

The Department's prior hearing notice explained that among the products and countries that the Department might examine for purposes of issuing the list of products required by Executive Order No. 13126 were those mentioned in the following Department of Labor reports on child labor: By the Sweat and Toil of Children (Volume 1): The Use of Child Labor in U.S. Manufactured and Mined Imports, and By the Sweat and Toil of Children (Volume 2): The Use of Child Labor in U.S. Agricultural Imports and Forced and Bonded Child Labor. The reports can be accessed on the Internet at <http://www.dol.gov/dol/ilab/public/media/reports/childnew.htm> or can be obtained from the International Child Labor Program.

The Department of Labor has considered the products and countries mentioned in its child labor reports. It

has also considered the testimony, written submissions, and other information presented to the Department in connection with its August 10, 1999 hearing. In addition, the Department has reviewed a number of studies and reports by organizations that have researched the use of child labor. (See Appendix A for a bibliography of documents with reference to the products on the preliminary list.) The Department has consulted and cooperated with the Department of State and the Department of the Treasury.

In developing the preliminary list of products, the review focused on available information concerning the use of forced or indentured child labor. The lack of available information does not, by itself, establish that, in any particular country, or for any particular product, forced or indentured child labor is not being used. Government resources for acquiring information are limited. In addition, information about actual working conditions in some countries is difficult or impossible to obtain, for a variety of reasons. For example, governments may be unable or unwilling to cooperate with international efforts, or the efforts of non-governmental organizations, to uncover and address abuses. Institutions or organizations that might uncover such information, such as free and independent news media, trade unions, and non-governmental organizations may not exist. In short, the list of products should not be taken as presenting a comprehensive picture of the use of forced or indentured child labor around the world.

In general, the three Departments considered and weighed several factors: the nature of the 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; and whether the information involved more than an isolated incident.

In addition, the Departments also took into account whether recent, credible efforts are being made to address forced or indentured child labor in a particular country and industry. For example, the Departments took into consideration specific commitments to implement new and/or on-going projects aimed at eliminating forced and indentured child labor. Key elements of such projects include: removing children from work and providing them and their younger siblings with educational opportunities; establishing an independent workplace monitoring system; providing families of the removed children with income

generating alternatives; raising public awareness; and developing an overall strategy for sustainability. The Department of Labor will assess the progress of such efforts during its periodic review of the list.

The Departments have applied, and will continue to apply, the definition of "forced or indentured child labor" contained in the Executive Order, which is consistent with the Tariff Act of 1930, 19 U.S.C. 1307. Section 6 (c) of the Executive Order defines "forced or indentured child labor" as:

... all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance 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."

The two aspects of the definition represent alternatives which are not mutually exclusive.

During the August 10, 1999 Labor Department hearing, one witness suggested that the definition of forced or indentured child labor in the Executive Order would encompass: (a) All work by children who are legally incapable of consenting to an employment agreement; (b) all full-time work that harms the health or well-being of children; and (c) all work in violation of a country's child labor laws. Although these abusive practices cannot be condoned, they do not necessarily meet the definition of "forced or indentured child labor." The essential elements of the definition are either the presence of coercion or the existence of a contract enforceable by penalties. Information suggests that these elements are satisfied with respect to the products preliminarily included on the list below.

In evaluating working conditions for the possibility of coercion, the three Departments have considered and weighed factors that, in some combination, suggest that a child may be working under threat and may not be employed voluntarily. Those factors are: that children are confined, that they receive little or no pay, that they are deprived of basic needs, that they work long or unusual hours, that they are engaged in hazardous work that puts them at risk of serious injury or death, that they are physically or sexually abused at work, and that they are not able to attend school because of work. Where all or many of these factors are present, it may be reasonable to infer that a child is working because he or she is being forced to do so, particularly where there is also information about

physical punishment or threats of punishment.

Based on recent, credible, and appropriately corroborated information from various sources, the Department of Labor, the Department of State, and the Department of the Treasury have preliminarily concluded that there is a reasonable basis to believe that the following products, identified by their country of origin, might have been mined, produced, or manufactured by forced or indentured child labor:

Bamboo	(Burma)
Beans (including yellow, soy, and green beans)	(Burma)
Bricks (hand-made) ..	(Burma, Pakistan)
Chilies	(Burma)
Corn	(Burma)
Pineapples	(Burma)
Rice	(Burma)
Rubber	(Burma)
Shrimp (aquaculture) ..	(Burma)
Sugarcane	(Burma)
Teak	(Burma)

The Department of Labor invites public comment on whether these products (and/or other products, regardless of whether they are mentioned in this Notice) should be included on the final list of products requiring federal contractor certification as to the use of forced or indentured child labor, which will be published on or before the Federal Acquisition Regulatory Council issues a final rule to implement Executive Order No. 13126. The Department is also interested in public comments relating to whether products on the preliminary list are designated with appropriate specificity and what, if any, alternative designations would better serve the purposes of the Executive Order.

The preliminary basis for including each product on the list is summarized below, by country of origin:

Burma

A July 1998 International Labor Organization (ILO) Commission of Inquiry Report found the use of forced labor (including forced child labor) by the military to be extensive in Burma. Forced labor was reportedly used to grow beans (including yellow, soy, and green beans), chilies, corn, pineapples, rice, and sugarcane; to produce hand-made bricks; to cultivate shrimp; and to log and cut bamboo and teak wood for commercial sale by the military. The ILO Report notes that adults and children are not paid for their work and the military perpetrates severe physical and sexual abuses on many forced laborers. These workers are often forced to relocate and are deprived of basic necessities, such as water, food, shelter,

rest, and access to medical care. According to the mentioned ILO Report, the Government of Burma is not making efforts to end this endemic abuse. The ILO Report was based on a year-long inquiry and cited a vast amount of documentary material, including oral testimony from many individuals and organizations.

Pakistan

Bricks (hand-made): Organizations including Anti-Slavery International (1991), Human Rights Watch/Asia (1995), the Human Rights Commission of Pakistan (1996, 1997), the ILO (1996), the All Pakistan Federation of Labour (1998), and researcher Kevin Bales (1999) have reported on the use of forced or indentured child labor in the brick industry of Pakistan. Children reportedly are bonded and sometimes taken hostage to force their families to stay in the brick kilns. Children work long hours under hazardous conditions and are not paid for their labor.

Additional discussion

While noting continuing allegations of forced and indentured child labor in the carpet industry in South Asia, the three Departments also recognize the impressive efforts taken by governments, industry, and international organizations to eliminate the practice from the carpet industry and provide ex-working children with an education. These efforts are among the earliest in this area and have the potential to significantly reduce the incidence of forced or indentured child labor. The United States Government strongly supports these programs.

The promising actions taken in the carpet industries in South Asia may provide a useful model for other countries and industries in the future. The Department of Labor invites comment on the measures taken in the region to eliminate forced and indentured child labor in the carpet sector, including labeling and monitoring initiatives which are currently in place. Specifically, the Department seeks public comment on the sufficiency of these existing initiatives and on whether a certification or label from a credible monitoring program could adequately serve the purposes of the Executive Order.

The three Departments considered numerous products where, based on the information currently available, and the applicable criteria, inclusion of these products on the preliminary list did not appear warranted. As noted above, the preliminary list of products may not present a comprehensive picture of the

products mined, produced or manufactured with forced or indentured child labor around the world. Certain products were considered but are not included in this Notice because of insufficient recent, credible, and appropriately corroborated information that links the use of forced or indentured child labor to specific products. For example, in some cases, the available information was dated, or more recent reports simply repeated and cited old reports without updated, corroborating information; in other cases, general allegations about the problem of forced or indentured child labor in a region or industry were difficult to link to specific products. Because in many instances insufficient information was available to justify the inclusion of a product on the preliminary list, despite some suggestion of the use of forced or indentured child labor, submission of relevant information with regard to any product and working conditions of children is invited. In particular, the Department of Labor urges that comments provide, to the extent possible, information that is recent, specific, and where possible corroborated.

The Department of Labor specifically asks for information about whether there is forced or indentured child labor in the production of cotton and sugarcane in Pakistan. Human Rights Watch/Asia (1994), Anti-Slavery International (1998), and the media have reported use of indentured labor in the Sindh province of Pakistan in agriculture including the use of indentured child labor. (Sources: International Child Labor Hearings, U.S. Department of Labor, Statement of Human Rights Watch/Asia, April 12, 1994, 54–56; “Child Bonded Labour in Pakistan,” Urgent Action Campaign, London: Anti-Slavery International, April 1998, 2; “Pakistan Slave Labor Cited,” The New York Times, January 8, 1999; “Serfs Cast off Chains in Pakistan,” The Los Angeles Times, August 20, 1999.) However, the information that tied such labor to the production of sugar cane and cotton was not sufficient. In order to make the appropriate findings, the Department of Labor specifically requests submission of recent, credible information concerning whether bonded or indentured child labor is employed in the production of these particular agricultural products or others.

As explained, following receipt and consideration of comments on the preliminary list set out above, the Department of Labor, in consultation and cooperation with the Department of

State and the Department of the Treasury, will issue a final list of products. The Department of Labor intends to revise the list periodically, to add and/or delete products, as justified by new information. Such new information could include concrete steps, including planned programs and/or on-going projects, that a country has taken toward eliminating forced and indentured child labor. The Department expects to follow a public notice and comment process to revise the list. That process will be described when a final list is published.

Signed at Washington, D.C., this 31st day of August, 2000.

Andrew J. Samet,

Deputy Under Secretary for International Labor Affairs.

Appendix A—Bibliography for Products Mentioned in this Notice

Bamboo (Burma):

Forced labour in Myanmar (Burma), *Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labor Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Part III, “Allegations by the parties and historical background of the case,” and Part IV, “Work on agriculture, logging, and other production projects,” Geneva, July 2, 1998.

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Report of the Special Rapporteur on the Situation of human rights in Myanmar, U.N. Economic and Social Council, E/CN.4/1999/35, January 22, 1999.

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Beans—including yellow, soya, and green beans (Burma):

Forced labour in Myanmar (Burma), *Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labor Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Part III, “Allegations by the parties and historical background of the case,” and Part IV, “Work on agriculture, logging, and other production projects,” Geneva, July 2, 1998.

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Bricks—hand-made (Burma):

Forced labour in Myanmar (Burma), *Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labor Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Part III, "Allegations by the parties and historical background of the case," and Part IV, "Work on agriculture, logging, and other production projects," Geneva, July 2, 1998.

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Bricks—hand-made (Pakistan)

Children in Bondage: Slaves of the Subcontinent (London: Anti-slavery International, 1991) 19.

Z. Mahmood, S. Riaz, M.A. Nazeer and M.E. Haq, *Child Labour in Brick Kiln Industries (Lahore: University of Punjab, 1991) cited in A.R. Kemal, Child Labour in Pakistan (Islamabad: Pakistan Institute of Development Economics, 1994) 10.*

Contemporary Forms of Slavery in Pakistan (New York: Human Rights Watch/Asia, 1995) 30.

State of Human Rights in Pakistan in 1996 (Lahore: Human Rights Commission of Pakistan, 1996) 159.

Survey on Child Bondage (Geneva: ILO-IPEC, 1996) 24, 27.

State of Human Rights in 1997 (Lahore: Human Rights Commission of Pakistan, 1997) 22–23, 212–214.

Bonded Brick Kiln Workers—1989 Supreme Court Judgement and After (Rawalpindi: All Pakistan Federation of Labour, February 1998).

Kevin Bales, *Disposable People: New Slavery in the Global Economy* (Berkeley: University of California Press, 1999) 149–194.

Chilies (Burma)

Forced labour in Myanmar (Burma), *Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labor Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Part III, "Allegations by the parties and historical background of the case," and Part IV, "Work on agriculture, logging, and other production projects," Geneva, July 2, 1998.

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Corn (Burma)

Forced labour in Myanmar (Burma), *Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labor Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Part III, "Allegations by the parties and historical background of the case," and Part IV, "Work on agriculture, logging, and other production projects," Geneva, July 2, 1998.

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Pineapples (Burma)

Forced labour in Myanmar (Burma), *Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labor Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Part III, "Allegations by the parties and historical background of the case," and Part IV, "Work on agriculture, logging, and other production projects," Geneva, July 2, 1998.

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Rice (Burma)

Forced labour in Myanmar (Burma), *Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labor Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Part III, "Allegations by the parties and historical background of the case," and Part IV, "Work on agriculture, logging, and other production projects," Geneva, July 2, 1998. Electronic correspondence from Kevin Heppner, Karen Human Rights Group to U.S. Department of Labor official, September 25, 1999.

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Rubber (Burma)

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Shrimp—aquaculture (Burma)

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Sugarcane (Burma)

Forced labour in Myanmar (Burma), *Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labor Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Part III, "Allegations by the parties and historical background of the case," and Part IV, "Work on agriculture, logging, and other production projects," Geneva, July 2, 1998.

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Teak (Burma)

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