

VIA CBP PORTAL

Mr. Mark A. Morgan
Acting Commissioner
U.S. Custom and Border Protection
U.S. Department of Homeland Security
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

Re: Petition to exclude cocoa produced in Cote D'Ivoire and imported to the U.S. by Nestle, Mars, Hershey, Barry Callebaut, World's Finest Chocolate, Inc., Blommer Chocolate Co., Cargill, Mondelēz, and Olam unless and until within 180 days any specific "importer establishes by satisfactory evidence that [its] merchandise was not ... manufactured in any part with" forced or trafficked child labor. 19 C.F.R. § 12.42 (g)(emphasis added).

Dear Commissioner Morgan,

International Rights Advocates (IRAdvocates) and Corporate Accountability Lab (CAL) hereby submit this Petition under section 307 of the Trade Act of 1930, 19 U.S.C. § 1307, regarding the importation of cocoa from Cote D'Ivoire (CDI) by Nestlé, S.A. and Nestlé, U.S.A. (together referred to as "Nestlé"), Cargill, Incorporated ("Cargill"), Barry Callebaut AG, Barry Callebaut USA LLC (together as "Barry Callebaut"), Mars, Incorporated and Mars Wrigley Confectionary (together as "Mars"), Olam International and Olam Americas, Inc. (together as "Olam"), the Hershey Company ("Hershey"), World's Finest Chocolate, Inc., and Blommer Chocolate Co.¹

I. Introduction and Summary of Position

IRAdvocates and CAL hereby jointly request that, based on 19 C.F.R., Chpt. 1, § 12.42 (b) (1997), U.S. Customs and Border Protection (CBP) initiate an enforcement action under section 307 of the Trade Act of 1930, 19 U.S.C. § 1307, regarding the importation of cocoa from CDI by the

1. The rationale for the selection of these specific Cocoa Importers is that the cocoa companies that signed the Harkin-Engel Protocol in 2001, discussed below, made a much-publicized commitment to end their use of child labor with respect to cocoa brought into the U.S. Those companies, Nestle, Mars, Hershey, Barry Callebaut, World's Finest Chocolate, Inc., and Blommer Chocolate Co., expressly admitted in 2001 that they were importing CDI cocoa into the U.S. and that there was "forced child labor" in their cocoa supply chains. Since then, they have repeatedly admitted that there is still such forced child labor in their supply chains. In addition, Cargill, Mondelēz, and Olam all import significant amounts of CDI cocoa to the U.S. and have joined the Protocol signers within the WCF in leading the efforts to delay any meaningful measures to stop utilizing child labor in cocoa harvesting and production. Petitioners also believe that these companies form an overwhelming critical mass of cocoa producers and importers operating in CDI such that requiring them to finally comply with their 2001 commitment to end child labor will force the entire industry to change.

Cocoa Importers. Our understanding is that CBP has an open investigation of the cocoa sector in CDI. This Petition provides additional information on the extent of forced and trafficked child labor harvesting cocoa in CDI and, we believe, constitutes overwhelming evidence that now requires a concrete enforcement action. Under the controlling regulations, “[a]ny person ... who has **reason to believe**” that imported products are made with prohibited forced or indentured child labor shall provide to the Commissioner of Customs “(1) a full statement of the reasons for the belief, (2) a detailed description or sample of the merchandise, and (3) all pertinent facts obtainable as to the production of the merchandise abroad.” 19 C.F.R. § 12.42 (b).

We submit that information we and others have already provided to CBP and that CBP itself has gathered constitutes an overwhelming basis for any person to have a “reason to believe”² that cocoa imported from CDI is produced “wholly or in part”³ with forced or trafficked child labor. The additional evidence provided herein compels the finding that there is a strong “reason [for CBP] to believe” that all cocoa imported to the U.S. that is produced in CDI is produced “wholly or in part” with forced or trafficked child labor.

Under normal procedures, following our *prima facie* showing that CDI cocoa is produced with illegal child labor, the Commissioner is required to conduct an investigation as per 19 C.F.R. § 12.42(d). However, as there is an ongoing investigation, we urge that there is now, with the additional information in this Petition, more than sufficient evidence for the Commissioner to take the next step required by 19 C.F.R. § 12.42 (e), which provides in pertinent part:

If the Commissioner of CBP finds **at any time** that information available **reasonably but not conclusively** indicates that merchandise within the purview of section 307 is being, or is likely to be, imported, he will promptly advise all port directors accordingly and the port directors shall thereupon withhold the release of any such merchandise...⁴

Once the Commissioner makes a finding as per 19 C.F.R. § 12.42 (f), then all merchandise in the class is an “importation prohibited by section 307 ... **unless the importer establishes by satisfactory evidence that the merchandise was not ... manufactured in any part with the use of a class of labor specified in the finding.**”⁵

We demonstrate below that the Cocoa Importers have been knowingly benefiting from the use of forced or trafficked child labor for **at least** 20 years, and during this time have repeatedly made empty and false promises to stop relying on child labor. Their failure to take real steps requires action to ban the importation of their cocoa from CDI. However, we caution that an abrupt and immediate exclusion of this scale would cause collateral harm to farmers, farmworkers, and the CDI economy. We do not want that. Thus, in the interests of avoiding economic upheaval in CDI, we urge that the regulations are sufficiently flexible on timing and would permit CBP to issue the following order under 19 C.F.R. § 12.42 (g):

Based on the overwhelming evidence of ongoing and pervasive forced and trafficked child labor in the production of cocoa in CDI, CBP hereby orders that Cocoa Importers from CDI

² 19 C.F.R. § 12.42 (b).

³ § 307 of the Tariff Act of 1930, 19 U.S.C. § 1307 (“Section 307”).

⁴ 19 C.F.R. § 12.42 (e)(emphasis added).

⁵ *Id.*

Nestle, Mars, Hershey, Barry Callebaut, World's Finest Chocolate, Inc., Blommer Chocolate Co., Cargill, Mondelēz, and Olam will have **180 days**⁶ from the date of this Order to produce **“satisfactory evidence that [any shipment of cocoa from CDI to the US] was not ... manufactured in any part with the use of a class of labor specified in the finding.”** 19 C.F.R. § 12.42 (g)(emphasis added). This evidence shall include a transparent map of companies' supply chains down to the farm level, public reports on how each company is utilizing an acceptable independent third-party monitoring and certification system to implement its own Code of Conduct banning illegal child labor and overseeing its Supplier Codes of Conduct related to the issue of child and forced labor, and an externally-run grievance mechanism related to the company's commitments on cocoa that is in line with the UN Guiding Principles on Business and Human Rights and is in place as of the date produced. Any shipment of cocoa from CDI that does not meet this standard will be subject to a Withhold Release Order (WRO) and held at the port of entry.

This is a reasonable and feasible starting point to identify and stop the use of forced and trafficked child labor by the Cocoa Importers. A transparent supply chain will enable independent and external audits, and will not allow companies to continue using child labor while claiming to be working to stop themselves from this abhorrent conduct.

A grievance mechanism should allow independent third parties to have access to the cocoa farms, provide a safe space for victims to report cases of forced labor, and provide a process to manage complaints related to the companies' adherence to their commitments on child and forced labor. This grievance mechanism must be created specifically for the cocoa sector, in collaboration with potential users. It must be easily accessible and safe for potential users and must meet, at the very minimum, the Effectiveness Criteria outlined in UNGP 31.⁷

180 days is a more than reasonable timeframe to implement these changes. Most major cocoa and chocolate companies have committed to investing millions of dollars this year to expand sustainability and traceability in CDI. There are ample resources for companies on how to conduct proper due diligence in supply chains,⁸ and many of these companies have taken steps towards this in other industries.⁹ There is a significant civil society presence with the knowledge and expertise to

⁶ Petitioners suggest 180 days as a reasonable time given that the companies concerned have been on notice for decades that they must stop their illegal use of child labor in their cocoa production. Given the long history of non-compliance with their various “voluntary” programs, the importers must be given a firm deadline to comply.

⁷ Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, United Nations Human Rights Office of the High Commissioner, 2011, https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

⁸ See, e.g., OECD, OECD Due Diligence Guidance for Responsible Business Conduct (2018); Working Group on Business and Human Rights, Companion note II to the Working Group's 2018 report to the General Assembly (A/73/163), <https://www.ohchr.org/Documents/Issues/Business/Session18/CompanionNote2DiligenceReport.pdf>; United Nations Human Rights Office of the High Commissioner, The Corporate Responsibility to Respect Human Rights: AN Interpretive Guide (2012), https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf; International Cocoa Initiative, *Human Rights Due Diligence in Supply Chains: A review of legislation and guidelines through the lens of the UN Guiding Principles on Business and Human Rights*, ICI REVIEW (October 2019), https://cocoainitiative.org/wp-content/uploads/2019/10/HRDD_report_ICI_Final_w_image.pdf.

⁹ See Cargill, Managing Grievances, <https://www.cargill.com/sustainability/palm-oil/managing-grievances>; Cargill, Grievance Process for Cargill's Policy on Sustainable Palm Oil (“Palm Grievance Process”), updated June 2019, <https://www.cargill.com/doc/1432135747848/cargill-palm-grievance-procedure.pdf>. See also Nestlé, Grievance mechanisms and Remediation, <https://www.nestle.com/csv/impact/respecting-human-rights/grievance-mechanisms>;

ensure that these programs are implemented properly.¹⁰ Cocoa Importers have the resources and the access to expertise. They simply need to have the will to actually take these steps.

II. Background of U.S. Cocoa Importers' Failure to Stop Benefitting from Child Labor in Harvesting Cocoa from CDI.

A. The Cocoa Industry in CDI

CDI is the world's top cocoa producer, producing approximately 32% of the world's cocoa.¹¹ Cocoa is vital to CDI's economy and accounts for roughly half of its export economy.¹² The industry generates annual exports worth approximately US \$5B, with cocoa beans (\$3.79B), and cocoa paste (\$1.04B) in the country's top three biggest export items.¹³ Globally, between five and six million farmers depend on cocoa farming. Two million of those farmers are located in Ghana and Côte d'Ivoire.

Although CDI is the largest global producer of cocoa, Ivorian cocoa farmers are the lowest paid. The average daily income for a cocoa farmer in CDI is less than what a consumer pays for a single chocolate bar. This creates labor-related risks to children, hired labor (especially migrant labor), and women. These many human rights risks endemic to the cocoa sector are driven in large part by the low price farmers receive for their cocoa, and the severe imbalances in the value chain. By far the most documented abuse in the cocoa industry is the use of child labor, both through local family and social networks and through national and international child trafficking. Recent research estimates that about 2.1 million children work in the cocoa fields of CDI and Ghana.¹⁴ According to a 2018 study, about 891,5000 children between the ages of 10 and 17 worked in the cocoa industry between October 2016 and November 2017.¹⁵

It has been estimated that at least 16,000 children in West Africa are being forced to work on cocoa farms by people who are not their parents,¹⁶ and that is probably a very low estimate.¹⁷ Many

Nestlé, Tackling labor rights issues: Our palm oil action plan, <https://www.nestle.com/stories/nestle-launched-action-plan-palm-oil>.

¹⁰ We would be happy to provide recommendations.

¹¹ Miklos Mattyasovsky, *Top 10 Cocoa Producing Countries*, WORLD ATLAS, Apr. 25, 2017, <https://www.worldatlas.com/articles/top-10-cocoa-producing-countries.html>.

¹² Alexander Simones, *Cote d'Ivoire*, THE OBSERVATORY OF ECONOMIC COMPLEXITY, Apr. 11, 2018, <https://atlas.media.mit.edu/en/profile/country/civ/>.

¹³ *Id.*

¹⁴ Antonie Fountain and Friedel Hütz-Adams, COCOA BAROMETER (2018), at 3, <https://www.voicenetwork.eu/wp-content/uploads/2019/07/2018-Cocoa-Barometer.pdf>.

¹⁵ BITTER SWEETS: PREVALENCE OF FORCED LABOUR & CHILD LABOUR IN THE COCOA SECTORS OF COTE D'IVOIRE & GHANA, Tulane University and the Walk Free Foundation, https://cocoainitiative.org/wp-content/uploads/2018/10/Cocoa-Report_181004_V15-FNL_digital.pdf.

¹⁶ Peter Whoriskey and Rachel Siegel, *Cocoa's child laborers*, WASH. POST, June 5, 2019, <https://www.washingtonpost.com/graphics/2019/business/hershey-nestle-mars-chocolate-child-labor-west-africa/>; BITTER SWEETS, *supra* note 15, at 28, https://cocoainitiative.org/wp-content/uploads/2018/10/Cocoa-Report_181004_V15-FNL_digital.pdf.

¹⁷ ASSESSMENT OF FORCED LABOR RISK IN THE COCOA SECTOR OF COTE D'IVOIRE, Verite, Feb. 2019, <https://www.verite.org/wp-content/uploads/2019/02/Verite-Report-Forced-Labor-in-Cocoa-in-CDI.pdf> ("Given the

of the children who are trafficked come from Mali and Burkina Faso. Children between the ages of 10 and 18 are often offered money or tangible goods to take the bus to work on cocoa farms in CDI.¹⁸ They may also have been promised education or were misled about the conditions of work they were heading to.¹⁹ Children are also internally trafficked within Cote d'Ivoire, including from the north of the country to the south.²⁰ These documented conditions in CDI are well within the International Labor Organization (“ILO”)’s indicators of “forced labor.”²¹

It can be difficult to learn if individual children have been trafficked. The issue of child labor in general is extremely sensitive in CDI, and people are hesitant to speak about it. They will often deny that child labor exists, or will claim that all of the children working on a farm are family. CAL heard this through multiple confidential conversations with various sources, and it was noted by the investigators, who stated that in every place visited, it appeared that people had prepared answers. This has been identified by many others as well.²² Children themselves may be scared to speak, or prohibited from doing so. A 2016 report by Ebode and Mondolez noted: “It was felt that children were well aware of the sensitivities around talking about working on cocoa farms. In one community, the focus group discussion was observed (and intervened upon) by a group of adults, potentially making it difficult for children to express themselves openly.”²³ The 2017 FLA audit report for Olam stated that, “monitors observed a foreign worker visibly below the minimum age of employment. He was forced by his employer (farmer) not to answer the monitor’s questions.”²⁴

And yet, the Cocoa Importers systematically avoid discussions of trafficking or forced labor in their superficial analysis of “root causes” and they rarely appear in the companies’ claimed due diligence efforts. The Mondolez report found “a general lack of prioritisation of and sufficient attention to these more egregious forms of child exploitation” in their stakeholder consultations.²⁵ Despite almost 20 years of commitments, Nestle admits as recently as 2019 that the low number of

hidden nature of much human trafficking and forced labor, it is also possible that levels may be significantly higher within isolated pockets in the sector.”)

¹⁸ Whoriskey & Siegel, *supra* note 16.

¹⁹ Abou Traoré, *Child labor on cocoa plantations: Trafficking*, CENOZO, January 8, 2019, <https://cenozo.org/en/articles/120-travail-des-enfants-dans-les-plantations-de-cacao-le-traffic-a-la-peau-dure>.

²⁰ On file with CAL.

²¹ The ILO has identified eleven indicators of forced labor: abuse of vulnerability, deception, restriction of movement, isolation, violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive living and working conditions, and excessive overtime. *ILO Indicators of Forced Labour*, Int’l. Labor Office (2012).

²² See, e.g., Aarti Kapoor, *Children at the Heart: Assessment of Child Labour and Child Slavery in Côte d’Ivoire’s Cocoa Sector and Recommendations to Mondelez International*, Embode, 2016, at 15 (“If community members felt there were community-wide negative consequences to reporting or sharing information about child labour, this inevitably pushes incidences further underground.”); Oliver Neiburg, *Fair Game: How Effective is Cocoa Certification?*, CONFECTIONARY NEWS, Dec. 20, 2017, <https://www.confectionerynews.com/Article/2017/12/20/Fair-trade-How-effective-is-cocoa-certification> (Nick Weatherill, Executive Director of the International Cocoa Initiative, highlighted that regarding sporadic audits of certified farms, “[i]t’s a model where, if child labor is found, then farmers risk to lose their certificates then of course that threat of punishment drives the issue underground.”); ASSESSMENT OF FORCED LABOR RISK IN THE COCOA SECTOR OF COTE D’IVOIRE, *supra* note 17, at 46 (“Producers and cooperative officials interviewed during field research were highly sensitized to the question of child labor and – likely in anticipated response to our perceived interest in the topic – were quick to note that children did not work on their farms and that they knew buyers did not want children involved.”)

²³ Kapoor, *Children at the Heart*, at 10.

²⁴ Fair Labor Association, Independent External Monitoring of Olam’s Cocoa Supply Chain in Cote d’Ivoire: 2017, at 5, https://www.fairlabor.org/sites/default/files/documents/reports/2017_olam_executive_summary_181203.pdf.

²⁵ Kapoor, *Children at the Heart*, at 16.

forced labor cases that it has identified “does not mean that forced labor does not exist - it may be that we are not good enough at identifying it.”²⁶

Despite the challenges, there has been clear documentation of trafficked and forced child labor in CDI’s cocoa sector for years. There are numerous, highly credible public reports documenting the pervasive and ongoing use of forced and trafficked child labor in harvesting and processing cocoa in CDI.²⁷ The U.S. Department of Labor and U.S. State Department have both clearly documented the trafficking of children and forced child labor in the CDI cocoa sector.²⁸ The Child Labor Cocoa Coordinating Group Annual Report also provides ample evidence of forced child labor in the cocoa industry.²⁹ Additionally, reports from the Fair Labor Association on Nestlé’s supply chain and reports on Olam’s supply chains also found evidence of forced child labor.³⁰ Lastly, civil society groups, academics,³¹ and news reports have also reported and documented such abuses for years.³²

The Cocoa Importers’ programs and ploys to avoid legal compliance is a master class in public relations. We outline below how despite being on notice for two decades of this risk and its continued prevalence, these companies refuse to take the necessary steps to address the forced labor and trafficking that continues in their supply chains. This history demonstrates that voluntary nature of past and current measures has given companies little incentive to take the necessary steps to address this issue.

²⁶ *Tackling Child Labor, 2019 Report*, Nestle Cocoa Plan, <https://www.nestle.com/sites/default/files/2019-12/nestle-tackling-child-labor-report-2019-en.pdf>.

²⁷ For a list of reports documenting the ongoing use of illegal child labor in the cocoa sector industry in CDI, see Exhibit 6.

²⁸ See, e.g., U.S. DEP’T OF LABOR, BUREAU OF INTERNATIONAL LABOR AFFAIRS, CHILD LABOR AND FORCED LABOR REPORTS: COTE D’IVOIRE, <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/cote-divoire> [hereinafter CHILD LABOR AND FORCED LABOR REPORTS]; U.S. DEP’T OF LABOR, FINDINGS ON THE WORST FORMS OF CHILD LABOR: CÔTE D’IVOIRE (2018), https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2018/Cote%20d%27Ivoire.pdf; U.S. EMBASSY IN COTE D’IVOIRE, COTE D’IVOIRE 2018 HUMAN RIGHTS REPORT (2018), <https://ci.usembassy.gov/wp-content/uploads/sites/29/Cote-dIvoire-HRR-2018-English.pdf>.

²⁹ See, e.g., U.S. DEP’T. LABOR, BUREAU OF INTERNATIONAL LABOR AFFAIRS, CHILD LABOR IN THE PRODUCTION OF COCOA, <https://www.dol.gov/agencies/ilab/our-work/child-forced-labor-trafficking/child-labor-cocoa>; U.S. DEP’T. LABOR, CHILD LABOR COCOA COORDINATING GROUP ANNUAL REPORT (2018), <https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/CLCCG2018AnnualReport.pdf>.

³⁰ See e.g., FAIR LABOR ASSOCIATION, INDEPENDENT EXTERNAL MONITORING OF NESTLE’S COCOA SUPPLY CHAIN IN IVORY COAST: 2016 (2017), https://www.fairlabor.org/sites/default/files/documents/reports/october_2017_nestle_executive_summary.pdf; FAIR LABOR ASSOCIATION, INDEPENDENT EXTERNAL MONITORING OF OLAM’S COCOA SUPPLY CHAIN IN IVORY COAST: 2016 (2016), https://www.fairlabor.org/sites/default/files/documents/reports/november_2017_olam_executive_summary.pdf [hereinafter INDEPENDENT EXTERNAL MONITORING OF OLAM’S COCOA SUPPLY CHAIN].

³¹ See, e.g., BITTER SWEETS, *supra* note 15; THE TRUE PRICE OF COCOA IVORY COAST, IDH & True Price (2016), <https://cocoainitiative.org/wp-content/uploads/2016/10/The-True-Price-of-Cocoa.pdf>; COCOA BAROMETER (2018), *supra* note 14.

³² See, e.g., Tim Adams, *From bean to bar in Ivory Coast, a country built on cocoa*, THE GUARDIAN, Feb. 24, 2019, <https://www.theguardian.com/global-development/2019/feb/24/ivory-coast-cocoa-farmers-fairtrade-fortnight-women-farmers-trade-justice>; Whoriskey & Siegel, *supra* note 16.

A. The First Measures Taken in the U.S. to Tackle the Issue: The Harkin-Engels Protocol

Child labor in West African cocoa production, particularly CDI, is a long-standing issue. Yet it was not until the late 1990s that NGOs and news media were able to gain access to cocoa farms and begin to educate the public on the systematic use of child labor in cocoa harvesting by the world's major cocoa producers. In 1999, various labor rights and consumer groups, most of them members of the Washington-based Child Labor Coalition, began a campaign in the U.S. to pressure the companies to stop using child labor and to pay adult workers a living wage. They worked with (then) Congressman Bernie Sanders and Rep. Elliot Engel to introduce legislation to ban the importation of cocoa (and other products) harvested by child labor. In 2001, that bill passed by a 291-115 vote in the House and went to the Senate, where Senator Tom Harkin sponsored it. However, the pending legislation, known as the Harkin-Engel bill, was halted before a Senate vote due to intense industry lobbying against a mandatory program with real consequences. Once the cocoa lobbyists were done with the bill, it had been transformed into the 2001 Harkin-Engel Protocol (the Protocol), a “voluntary” initiative that gave the participating companies until 2005 to “phase out” the use of child labor. The Protocol, executed on September 19, 2001, is attached hereto as Exhibit 1.

The CEO's of the major cocoa importers, Nestle, Mars, Hershey, Barry Callebaut, World's Finest Chocolate, Inc., Blommer Chocolate Co., and Archer Daniels Midland (ADM)³³ personally signed the Protocol and made a commitment to achieve its goals. Section 1 of the agreed Key Action Plan provided that

Industry has publicly acknowledged the problem of forced child labor in West Africa and will continue to commit significant resources to address it. West African nations also have acknowledged the problem and have taken steps under their own laws to stop the practice. More is needed because, while the scope of the problem is uncertain, the occurrence of the worst forms of child labor in the growing and processing of cocoa beans and their derivative products is simply unacceptable. Industry will reiterate its acknowledgement of the problem and in a highly-public way will commit itself to this protocol.³⁴

The major cocoa companies, knowing that child labor was rampant in their supply chains, acted to prevent effective measures to end their profiting from forced child labor and enacted a voluntary program that was under the complete control of the companies. However, in doing so, the companies expressly acknowledged that there was “forced child labor” and the “worst forms of child labor” in their supply chains.

This history of the cocoa companies' actual “commitments” to ending child labor on a voluntary basis is a shocking series of self-approved extensions coupled with repeated admissions that the companies continued to use forced child labor in their cocoa supply chains. In 2005, the Protocol's initial deadline, cocoa industry leaders admitted that the goals would not be “fully met” by the 2005 deadline, but assured Sen. Harkin and Rep. Engel they were “committed to achieving a certification

³³ ADM later sold its cocoa business to Cargill. See *Cargill buying ADM's chocolate unit in North American expansion*, REUTERS, Sept. 2, 2014, <https://www.reuters.com/article/us-archer-daniels-m-a-cargill/cargill-buying-adms-chocolate-unit-in-north-american-expansion-idUSKBN0GX22M20140902>.

³⁴ Protocol, Exhibit 1, at 2.

system...within three years.”³⁵ Then in 2008, cocoa industry leaders again unilaterally extended their self-imposed deadline by two years.³⁶ In 2010, the industry delayed the implementation date by a full decade to 2020, and this time the goal was changed to merely reducing by 70% the use of child labor in the cocoa industry. At the 8th Annual World Cocoa Foundation (WCF) Meeting in July 2018, the industry admitted it could not make its 2020, or even 2025, goal of eradicating child labor in the cocoa supply chain. Effectively abandoning any set date, the WCF admitted it was not likely to meet its “aspiration for 2020” or its other targets “for the eradication of child labor by 2025.”³⁷

The major cocoa importers, acting through WCF, have given themselves a free pass for **19 years** to continue using child labor, all the while falsely promising to comply with the Harkin-Engel Protocol and claiming to be “committed” and “concerned” about the welfare of children performing hazardous work on their cocoa farms. These companies knowingly benefit from child labor while **failing to stop themselves** from using child labor.

B. The Failures of the CocoaAction Plan

Around 2015, the major cocoa companies, all members of the WCF, implicitly admitted that the public was not likely to continue to believe that the companies would end child labor under the Harkin-Engel Protocol when they announced that they were implementing the WCF’s “CocoaAction Plan.”³⁸ However, this Plan has limited reach, no independent oversight, and does not address the issue of forced labor specifically. Like the Harkin-Engel Protocol, the CocoaAction Plan is more public relations than an effective program.

Among other things, the CocoaAction Plan purports to include a monitoring system to ensure that there are no children working on participating companies’ cocoa farms, the Child Labor Monitoring and Remediation System (CLMRS). In the fine print of the companies’ websites, they acknowledge that CLMRS “monitoring” and the CocoaAction Plan extend only to a small percentage of the companies’ supply chains, at most 20-30%. For example, Nestle claims only that “around one third of Nestlé’s total global cocoa supply” is covered by this system.³⁹ The Cocoa Importers appear to be intentionally vague as to the limited scope of these programs. To the extent there is information, it confirms that these are in essence pilot programs applicable to a small portion of their cocoa production.

³⁵ *Joint Statement from U.S. Senator Tom Harkin, Representative Eliot Engel and the Chocolate/Cocoa Industry on Efforts to Address the Worst Forms of Child Labor in Cocoa Growing*, July 2, 2005, <http://www.cacao.gouv.ci/commun/documents/jointstatementSenateurTomHarkin.pdf>.

³⁶ *Joint Statement from U.S. Senator Tom Harkin, Representative Eliot Engel and the Chocolate and Cocoa Industry on the Implementation of the Harkin-Engel Protocol*, June 16, 2008, http://www.csrwire.com/press_releases/14132-Joint-Statement-from-U-S-Senator-Tom-Harkin-Representative-Eliot-Engel-and-the-Chocolate-and-Cocoa-Industry-on-the-Implementation-of-the-Harkin-Engel-Protocol-#.

³⁷ *Remarks: Child Labor Cocoa Coordinating Group (CLCCG) Annual meeting Opening Ceremonies Sofitel Abidjan Hotel Ivoire*, Tuesday, July 17, 2018, <https://www.worldcocoaoundation.org/blog/2018-child-labor-cocoa-coordinating-group-8th-annual-meeting-remarks/>.

³⁸ World Cocoa Foundation, CocoaAction, <https://www.worldcocoaoundation.org/about-wcf/cocoaaction/>.

³⁹ Nestle Cocoa Plan, <https://www.nestlecocoaplanreport.com/>.

In March 2019 interviews with the WCF, the ICI, and the Fair Labor Association (FLA), IRAdvocates' Executive Director, Terry Collingsworth, confirmed with each of these organizations that, at most, 20-30% of any producer's cocoa production comes from farms that are in cooperatives and that are participants in the CocoaAction Plan. The remaining 70-80% comes from the "free zones" where there is no monitoring and a high incidence of child labor, including trafficked child labor.

In addition to applying to a limited number of the companies' supply chain farms, CLMRS does not have independent monitoring, a key aspect of any credible system of compliance. These systems largely rely on "self-reporting" by "trusted" communities of farmers. Given the long history of exploitation of children by farmers squeezed by the low payments by the cocoa companies, this is a situation that absolutely requires a "trust but verify" approach. Further, to the extent there are reported violations, the companies collect this information and may or may not disclose it to the public. More fundamentally, there are no consequences for a farmer using forced child laborers. Even if a child labor violation is reported to the company, the cocoa produced by child labor is simply processed with all the other cocoa and prepared for export. Finally, there is no transparent system of effective remediation for children found to be working as forced laborers – the companies are largely silent about what happens to this small percentage of children harvesting cocoa who are identified by the CocoaAction Plan. Helping these at-risk kids who have already been through the tremendous trauma of being trafficked and/or forced to perform hazardous work should be the highest priority of any system, not a hidden data point. Presumably, the companies are fully aware of the double-edged sword of reporting their own ongoing use of illegal child labor, thus showing their monitoring can produce results but also proving that they have failed to stop benefiting from child labor. At most, CLMRS identifies child labor on a small number of farms and allows the Cocoa Importers to purchase and export to the U.S. cocoa that included child labor.

As a clear example of the willful and ongoing use of child labor within the CocoaAction Plan, on September 2, 2015, the FLA released the results of its audit performed for Nestlé. The FLA explained that "[f]or Nestlé in Ivory Coast, the FLA has been monitoring since 2013 a growing portion of its cocoa supply served by the Nestlé Cocoa Plan (NCP). As of mid-2015, the NCP represented around 25 percent of Nestlé's total cocoa supply chain."⁴⁰ Nestlé had the FLA audit the subset of its supplying cocoa farms where it had engaged in the most efforts to eradicate child and forced labor. The FLA assessors visited a sample of 260 farms,⁴¹ less than 1% of the 30,000 that supply Nestlé in the Ivory Coast.

The 2015 FLA report found children under the age of 15 working on cocoa farms from which Nestle sourced.⁴² This came "more than a decade after the food company promised to end

⁴⁰ FAIR LABOR ASSOCIATION, 2014 ASSESSMENTS OF NESTLÉ COCOA SUPPLY CHAIN IN IVORY COAST, Sept. 2, 2015, <https://www.fairlabor.org/report/2014-assessments-nestlé-cocoa-supply-chain-ivory-coast>.

⁴¹ *Id.*

⁴² FAIR LABOR ASSOCIATION, INDEPENDENT EXTERNAL MONITORING OF NESTLÉ'S COCOA SUPPLY CHAIN IN IVORY COAST: 2015, at 5, https://www.fairlabor.org/sites/default/files/documents/reports/september_2016_nestle_executive_summary.pdf.

the use of child labour in its supply chain.”⁴³ These children “were involved in various farm activities ... Some of these tasks are considered as hazardous since they involve the use of machete and transportation of heavy loads.”⁴⁴ The Fair Labor Association also “found evidence of forced labour,”⁴⁵ including a young worker who had not received his salary for an entire year that he worked at a farm.⁴⁶ In its own report from 2019, Nestle admitted that 23% of the children it was monitoring were performing child labor, amounting to 18,283 of the 78,580 children in Nestle’s monitoring system.⁴⁷ (13)

In a 2017 FLA audit of cooperatives in Olam’s supply chain, “monitors identified a contract worker who was presented by his employer as 18 years old. However, based on his physical appearance, the monitors believe that his age might be 14 years.”⁴⁸ They also identified a young worker who was prohibited from speaking to them.⁴⁹ These cases were in addition to numerous other farms where the FLA found children engaged in labor, including hazardous work.

To further deceive the consumers and government regulators, the major U.S. cocoa importers that are members of the WCF hire and pay Fair Trade, UTZ, and Rainforest Alliance to label their cocoa as meeting their standards when these groups also know that at most only 20-30% of the companies’ cocoa production is even partially monitored. Further, these so-called “fair trade” initiatives mislead the public by creating the false impression that they are certifying cocoa as child-labor-free when they do not in fact assess the extent of child labor in their member companies’ production. In addition, they are forced to admit that in CDI they mix “certified” beans with uncertified beans to maintain supply. The *Washington Post* recently exposed the reality of these sham programs that do little more than mislead consumers into thinking that “fair trade” means child labor free.⁵⁰

Each time the WCF or another industry group makes a comment on the child labor issue they implicitly admit that the industry continues to use and benefit from child labor. For instance, a January 15, 2020 article in confectionery news reported that the Government of Cote D’Ivoire conducted raids on cocoa farms and freed 137 trafficked children and arrested 12 traffickers. In response the WCF could only offer the repeated empty refrain that they have “zero tolerance” for child labor.⁵¹ As

⁴³ Joe Sandler Clarke, *Child labour on Nestlé farms: chocolate giant’s problems continue*, THE GUARDIAN, Sept. 2, 2015, <https://www.theguardian.com/global-development-professionals-network/2015/sep/02/child-labour-on-nestle-farms-chocolate-giants-problems-continue>.

⁴⁴ FAIR LABOR ASSOCIATION, INDEPENDENT EXTERNAL MONITORING OF NESTLÉ’S COCOA SUPPLY CHAIN IN IVORY COAST: 2015, *supra* note 42, at 5.

⁴⁵ Clarke, *supra* note 43.

⁴⁶ FAIR LABOR ASSOCIATION, INDEPENDENT EXTERNAL MONITORING OF NESTLÉ’S COCOA SUPPLY CHAIN IN IVORY COAST: 2014–2015, at 3–4,

https://www.fairlabor.org/sites/default/files/documents/reports/september_2015_nestle_executive_summary.pdf.

⁴⁷ *Tackling Child Labor: 2019 Report*, Nestlé Cocoa Plan, at 13, <https://www.nestle.com/sites/default/files/2019-12/nestle-tackling-child-labor-report-2019-en.pdf>.

⁴⁸ INDEPENDENT EXTERNAL MONITORING OF OLAM’S COCOA SUPPLY CHAIN, *supra* note 30, at 6.

⁴⁹ *Id.* at 5.

⁵⁰ Peter Whoriskey, *Chocolate companies sell ‘certified cocoa.’ But some of those farms use child labor, harm forests*, WASH. POST, Oct. 23, 2019, <https://www.washingtonpost.com/business/2019/10/23/chocolate-companies-say-their-cocoa-is-certified-some-farms-use-child-labor-thousands-are-protected-forests/>.

⁵¹ Anthony Myers, *Ivorian police raid cocoa farms and villages in child trafficking crackdown*, CONFECTIONERYNEWS.COM, Jan. 15, 2020, <https://www.confectionerynews.com/Article/2020/01/15/Ivorian-police-raid-cocoa-farms-and-villages-in-child-trafficking-crackdown>.

support for this, the WCF referenced a recent report that found that 829,400 children in CDI were working in the cocoa sector and 768,800 were performing hazardous work.⁵² The report further found that 667,800 children were working in the cocoa sector in Ghana and 632,100 of those children were performing hazardous labor.⁵³ There is no question that the companies are admitting, once again, that they have failed to stop using child labor and thus are knowingly benefiting from the ongoing abuse of children on cocoa farms.

C. History of Efforts Seeking Accountability

With this long history of admissions by U.S. cocoa importers that there was and continues to be child labor in their supply chains, it is remarkable that they continue to import cocoa produced with illegal child labor undeterred. On May 30, 2002, the International Labor Rights Forum (ILRF) filed a section 307 Petition seeking a Withhold Release Order (WRO) on all cocoa imported to the U.S. from CDI, attached hereto as Exhibit 2. The ILRF Petition detailed the extensive evidence of forced and trafficked child labor in the harvesting and processing of CDI cocoa and documented that U.S. importers were knowingly importing cocoa produced by illegal child labor. There was little dispute about the facts. The cocoa importers, acting through the Chocolate Manufacturers Association (CMA), one of the entities that signed the Protocol and pledged in 2001 to end child labor in the cocoa supply chain, did not dispute that child labor was pervasive in their supply chains; rather, they argued that the “domestic consumptive demand” exemption allowed them to continue to import cocoa from CDI even though it was produced by child labor.⁵⁴ The domestic consumptive demand exemption was removed in 2015⁵⁵ and thus no longer provides immunity for the Cocoa Importers’ ongoing and admitted use of illegal child labor in their supply chains.

When the cocoa companies that signed the 2001 Protocol had still done little or nothing to implement the pledge to end child labor by 2005, IRAdvocates filed a federal lawsuit under the Alien Tort Statute, 28 U.S.C. 1350 against Nestle and Cargill on behalf of six individuals who, as children, had been trafficked from Mali to CDI and had been forced to work harvesting cocoa. The case, *John Doe I et al. v. Nestle et al.*, is still pending. The Second Amended Complaint, which includes detailed factual allegations that Nestle and Cargill knowingly aided and abetted ongoing forced child labor in CDI, is attached hereto as Exhibit 4. The case has been in the courts for 15 years. Nestle and Cargill, once again, do not and cannot deny that they are knowingly benefiting from child labor in their CDI supply chains. The companies continue to raise highly technical legal arguments in an attempt to avoid liability for their admitted use of child labor. The Ninth Circuit Court of Appeals has consistently credited the allegations of the former forced child laborers and has overruled the companies’ specious legal arguments.⁵⁶

⁵² BITTER SWEETS, *supra* note 15, at 24.

⁵³ *Id.*

⁵⁴ See ILRF *et al. v. United States and Chocolate Manufacturers’ Association*, Slip Op. 05-110 (U.S. CIT, 8-29-05), at 9-13, attached hereto as Exhibit 3.

⁵⁵ Trade Facilitation and Trade Enforcement Act of 2015, current version at 19 U.S.C. § 1307 (2012 & Supp III 2015).

⁵⁶ See *Doe I. v. Nestlé USA, Inc. (Doe I)*, 766 F.3d 1013 (9th Cir. 2014); *Doe v. Nestle, S.A.*, 929 F.3d 623 (9th Cir. 2018).

Reviewing the facts alleged by the six former forced child laborers trafficked from Mali to work on cocoa farms in CDI, the Ninth Circuit observed: “The defendants’ involvement in the cocoa market gives them economic leverage, and along with other large multinational companies, the defendants effectively control the production of Ivorian cocoa.”⁵⁷ The Ninth Circuit also found that the defendants in the case “are well aware of the child slavery problem in the Ivory Coast. They acquired this knowledge firsthand through their numerous visits to Ivorian farms. Additionally, the defendants knew of the child slave labor problems in the Ivorian cocoa sector due to the many reports issued by domestic and international organizations.”⁵⁸ The Ninth Circuit further stated:

Despite their knowledge of child slavery and their control over the cocoa market, the defendants operate in the Ivory Coast “with the unilateral goal of finding the cheapest sources of cocoa.” The defendants continue to supply money, equipment, and training to Ivorian farmers, knowing that these provisions will facilitate the use of forced child labor.⁵⁹

The Ninth Circuit further commented:

The defendants’ control over the Ivory Coast cocoa market further supports the allegation that the defendants acted with the purpose to facilitate slavery. . . . The defendants had the means to stop or limit the use of child slavery, and had they wanted the slave labor to end, they could have used their leverage in the cocoa market to stop it. Their alleged failure to do so, coupled with the cost-cutting benefit they allegedly receive from the use of child slaves, strongly supports the inference that the defendants acted with purpose.⁶⁰

Thus, the allegations suggest that a myopic focus on profit over human welfare drove the defendants to act with the purpose of obtaining the cheapest cocoa possible, even if it meant facilitating child slavery. These allegations are sufficient to satisfy the mens rea required of an aiding and abetting claim under either a knowledge or purpose standard.⁶¹

Nestle and Cargill are now seeking review in the U.S. Supreme Court arguing that corporations cannot be sued under international law.⁶² Once again, the companies are not denying that there is forced and trafficked child labor harvesting their cocoa. They are seeking immunity based on an arcane point of law.

Members of Congress who first sought to regulate imported products produced by child labor and settled for the Protocol are now expressing great frustration that after nearly 20 years of promises and pledges made by the companies, child labor remains a serious problem. There are several new

⁵⁷ *Doe I*, 766 F. 3d at 1017–19 (quotations to Plaintiffs’ First Amended Complaint).

⁵⁸ *Doe I*, 766 F. 3d at 1017–19 (quotations to Plaintiffs’ First Amended Complaint).

⁵⁹ *Doe I*, 766 F. 3d at 1017–19.

⁶⁰ *Id.* at 1024–25 (emphasis added).

⁶¹ *Id.* at 1026 (emphasis added).

⁶² Edvard Pettersson, *Child Slavery Claims Against Nestle, Cargill Get One More Chance*, BLOOMBERG, Jan. 8, 2017, <https://www.bloomberg.com/news/articles/2017-01-09/child-slavery-claims-against-nestle-cargill-get-one-more-chance>.

bills being developed to try to effectively stop the U.S. cocoa importers from continuing to benefit from illegal child labor. In the Senate, Senators Brown and Wyden sent a strong letter to CBP asking for enforcement action for cocoa under section 307 of the Trade Act 19 years after the importing companies promised Congress they would phase out child labor by 2005. A copy of the Brown-Wyden Letter is attached hereto as Exhibit 5.

III. Full Statement of the Reasons for the Belief that Cocoa Imported from CDI is Produced With Forced or Trafficked Child labor.

The repeated admissions by the U.S. cocoa companies, going back to the 2001 Harkin-Engel Protocol, that they are allowing illegal child labor to continue in their supply chains while they make empty promises to take effective action to phase out child labor, should be enough, in itself, to allow the Commissioner of Customs to find the “information available reasonably but not conclusively indicates that” cocoa harvested and processed with illegal child labor “is being, or is likely to be, imported”⁶³ and shift the burden of proof to the importers by issuing a WRO, effective 180 days from the time of the Order, “unless the importer establishes by satisfactory evidence that the merchandise was not ... manufactured in any part with the use of a class of labor specified in the finding.” 19 C.F.R. § 12.42 (g)(emphasis added). Evidence should include a transparent supply chain mapped to the farm level, a public report on how the importers are implementing their own Codes of Conduct and supervising their Supplier Codes, and a grievance mechanism in place that is in line with the UNGPs.

The cocoa companies are not hapless consumers of cocoa harvested by children in CDI. The companies are acting together in the WCF to knowingly perpetuate a system of forced and trafficked child labor that they will continue to benefit from until they are forced to stop. They have proven without question that they cannot be trusted to monitor themselves. This demonstrates, once again, the old adage that the fox cannot be trusted to guard the chicken coop.

To ensure a complete record that removes all doubt that the relief requested by Petitioners should be granted, Petitioners provide the following additional evidence of pervasive and ongoing use of forced or trafficked child labor by the U.S. importers.

A. Evidence of Forced and Trafficked Child Labor Gathered by CAL and IRAdvocates in Partnership with Local Organizations.

CAL and IRAdvocates, with local support, obtained evidence of child labor on cocoa farms throughout CDI in December 2019. Here we provide evidence of both trafficking of children and child labor throughout the cocoa industry. In order to protect the identities of investigators, witnesses, and victims, simultaneous to this petition, CAL and IRAdvocates are privately submitting evidence to CBP, including affidavits, photos, videos and audio recordings.

⁶³ 19 C.F.R. § 19.42 (e)(emphasis added).

Determining that any person, adult or child, is engaged in forced labor, is highly fact-intensive and often speculative. While we cannot determine with certainty whether any particular individual was engaged in forced labor at the time the evidence was gathered in December 2019, we tried to identify where particular indicia relevant to the analysis were present, including other forms of illegal labor (primarily hazardous child labor), evidence that the person was from a different country or region, language differences, and evidence that a child was not accompanied by members of the child's immediate family.

Further, as described above, the extremely sensitive nature of this sector made it difficult to get access to farms and to have people speak freely. The investigators explained to us that it seemed like a system set up for hiding. People would stop working and children would walk away when a stranger such as the investigators approached. Many people who did speak sounded like they had prepared answers.

The investigators went to four different regions of the country and spoke with farmers and farmworkers, both adult and children, as well as cooperative managers and others living and working in the areas they visited. They documented children engaged in hazardous activities, some of whom had dropped out of school, and one youth who had been sent over from Mali to work with his uncle on a cocoa farm. Children as young as five were carrying or using machetes, children as young as ten were carrying extremely heavy loads of cocoa beans, and teenagers were selling agricultural chemicals. Many were hesitant to talk to the investigators, especially to share their ages, and near one farm, the investigators saw “[t]wo underage girls visibly emerging from the cocoa plantation, holding machetes. When they saw that they were being filmed, they fled.”⁶⁴

The investigators interviewed two teenagers who had been lured from the north of CDI and had made it part way to a cocoa farm further south before their families intervened and brought them back home. The teenagers described how they met their initial contact at night, and talked about the network of point people and various stops between the border town and Issia, where they would depart from to go to an undisclosed farm. They made it as far as Bouaké, a common transit town for migrant workers, when a family member brought them back to their town. They explained that by then, another group of youth, younger than them, had departed.

The investigators spoke with cooperatives, and saw posters stating that child labor is not allowed close to farms where they saw child labor happening. One cooperative manager openly admitted that the farms used child labor. This manager told the investigators that after children pile up the cocoa and break the pods up to put them in the sun, the cocoa is sent to “big industrial groups.” He explained that after the children brought the cocoa pods to the camp, they dry the pods on tarps and racks. Then the coops give the cocoa to “the financiers,” including Cargill. In response to a question from the investigator as to whether the coop has to meet quotas set by companies and therefore “take[s] children to supplement those who have to make the 2400 tonnes,” the manager responded “yes.”

⁶⁴ Source on file with CAL.

B. Evidence of Forced and Trafficked Child Labor Gathered by IRAdvocates' Research from 2017–19

IRAdvocates renewed its evidence-gathering on forced and trafficked child labor in CDI cocoa harvesting and production in 2017 in order to assess whether the companies had finally made significant improvements in their supply chains and had made measurable progress on phasing child labor out of their cocoa production. Unfortunately, the situation remains unchanged and child labor remains a major problem in CDI cocoa production. IRAdvocates is now finalizing a new legal complaint based on this newly-gathered evidence and will soon be filing a federal complaint against Nestlé, Cargill, Barry Callebaut, Mars, Olam, Hershey, Mondelez, and perhaps others, under the Trafficking Victims Protection Reauthorization Act (“TVPRA”), 18 U.S.C. § 1595 *et. seq.*

In 2018, the IRAdvocates team, including the undersigned Executive Director Terry Collingsworth, visited cocoa farms around CDI. In Duekoue, they observed and interviewed a group of about 7 male child workers harvesting cocoa. The following are photos taken by Terry Collingsworth or a member of the team:⁶⁵



The two children in the photos above were both about 14 years old. They were using machetes to clear brush around the cocoa trees and to cut cocoa pods from the trees and then open the pods and clean the cocoa beans. Both children said they were brought by a “man” from Burkina Faso, where they were from. They did not know the man’s name, but they were promised jobs working on a cocoa farm. When IRAdvocates met them, they both had been working on the farm for over a year and were on their second season. They had not yet been paid anything and were working for food. They slept in a lean-to made of sticks and covered with a tarp. The boy in the photo immediately above in the white shirt expressed that he was very hungry and asked for food. He was visibly afraid of the adult male who was the overseer of the farm.

The first 60 seconds of this video <https://vimeo.com/388589094> shows these same children and other children on this farm performing hazardous work. The video was filmed by Miki Mistrati’s

⁶⁵ The children in these photographs were observed by IRAdvocates working on farms that were easily accessible to the public. None of these children are participants in any legal action brought by IRAdvocates.

film crew as part of a new documentary they are making focused on Nestle and Cargill's ongoing use of child labor while these companies deny their responsibility for injuries to forced child laborers in the *Doe v. Nestle* case.



The adult male on the right in the photo (left) was the overseer of the farm. He informed the IRAdvocates team that the cocoa from that farm was sent to a processing and sorting center just down the road.

IRAdvocates went to the processing center and photographed the Cargill bags that were being filled with cocoa beans (below):



In March 2019, IRAdvocates returned to CDI and again visited several farms. In Daloa, IRAdvocates visited a farm that had about 8 boys working with machetes cutting down cocoa pods, opening the pods, and cleaning the beans. The following photos were taken by IRAdvocates' Executive Director Terry Collingsworth or a member of the team:





The children in these photos were vague about their ages but were clearly quite young. IRAdvocates estimates they were no more than 14 or 15 years old. The children were also from Burkina Faso. The young boy with the grey shirt in the first two photos first said that his father brought him to the CDI cocoa farm, but he said his father was back in Burkina Faso. He appeared to be visibly afraid when IRAdvocates questioned him about how he came to the farm and appeared to be an example of a child being told by those who trafficked him not to provide details about his situation. The final 52 seconds of this video shows these same children performing hazardous work:

<https://vimeo.com/388589094>

The video was filmed by Miki Mistrati’s film crew as part of a new documentary they are making focused on Nestle and

Cargill’s ongoing use of child labor while continuing to deny their responsibility for injuries to forced child laborers in the *Doe v. Nestle* case.

IRAdvocates left this farm and very close by was a large Cargill cooperative (below left):



The certification rules of Rainforest Alliance were posted on the wall of the processing center (above right).

IRAdvocates observed that cocoa beans were being brought in and dumped on the floor and mixed with other beans. The owner/manager of the cooperative admitted that the “certified” beans were mixed with non-certified beans as a routine matter. This is consistent with the results of the *Washington Post’s* investigation of the so-called certification schemes.⁶⁶

⁶⁶ Whoriskey, *supra* note 50.

During both the 2018 and 2019 IRAdvocates research trips, the team also visited Mali, where many of the children working on CDI cocoa farms are trafficked from. IRAdvocates met with and interviewed numerous former child laborers who were trafficked from Mali to work in CDI on cocoa farms. IRAdvocates selected eight former trafficked child laborers to serve as Plaintiffs in the TVPRA case IRAdvocates will soon file against Nestle, Cargill, Mars, Hershey, Barry Callebaut, Mondelēz, and Olam. The following paragraphs which will be part of the forthcoming TVPRA case provide the facts of how these eight children were trafficked from Mali and what conditions they faced in CDI working on cocoa farms:⁶⁷

C. Factual Allegations of Eight Plaintiffs From IRAdvocates' Forthcoming TVPRA Case

1. John Doe 20 is from Djoumatene in the Department of Kadilio, Mali. He thinks he was born late in 1996. In 2012, when he was 15 years old, he was working in a field near his home in Mali when a man approached and offered him a job. The man promised a good paying job in Côte d'Ivoire and offered to pay his transport there. They went together to the bus terminal in Sakasso. The man bought his ticket and also boarded the bus. They arrived in Daloa, Côte d'Ivoire, a major cocoa production area where all Defendants obtain cocoa. There they were met by another man who bought him a bus ticket to another village. He did not know exactly where. The second man went with him. From there they went to a plantation and he met the man who apparently owned or managed the plantation. He came to know the man's name was Lassina Coubaly. He also came to know that the plantation was called the Guezouba plantation. This was a small plantation of 8 hectares. He was the only worker there.

2. John Doe 20 was told that he would be fed and would be paid his wages at the end of the season when the cocoa was harvested. He worked long days, from around 6 am until 4 or 5 pm. He cleared brush with a machete and tended the plants. When the cocoa was ready to harvest, he picked the pods and opened them with a machete to remove the cocoa beans. He also applied pesticides and herbicides without any safety instruction or protective gear. He slept on the plantation under a ragged tarp. He was exposed to insects and snakes. At the end of the year he was not paid. He asked for money to leave and Lassina told him he had to stay and keep working. He had absolutely no money and did not know where he was. He kept working so that he could eat and not starve to death. He worked under these conditions for 5 years. At the end of the 5th season, in 2017, he was desperate and could not continue doing the difficult and hazardous work only to barely be fed enough to keep him alive. He confronted Lassina and said that he wanted to be paid all of the wages he was due and that he was going to leave. Lassina said he had no money, but finally gave him 20,000 CFA (about \$33.00) for transport, and he left. It took some time to get back to Mali because 20,000 CFA was not enough money to even cover transport home. He did some odd jobs in Pogo, the border town in Côte d'Ivoire, to earn enough money to get a bus back to Mali. He arrived home in early March 2017.

⁶⁷ These are the actual paragraphs from the TVPRA complaint. The eight Plaintiffs are identified with pseudonyms for security reasons. With proper precautions, IRAdvocates can arrange for these individuals to be interviewed.

3. John Doe 21 is also from Djoumatene in the Department of Kadilio, Mali. He thinks he was 16 when, completely destitute, he was in Komogho, Mali looking for work. There, when he was wandering around, a man named Seydou told him he had a brother in Côte d'Ivoire who could give him a good job on a cocoa plantation. John Doe 21 accepted the offer and Seydou bought him a bus ticket to Abidjan, and then on to Aboisso, Côte d'Ivoire. When he got there, Madou Kone, Seydou's brother, met him and took him in the night to a plantation John Doe 21 later found out was called Karou. Madou said he had to work to pay off bus fare. Sidiki worked for a year, to the end of the season, and asked to be paid. Madou said he had to keep working and that he would pay him 12,500 CFA (about \$21.00) per month going forward but would only pay at the end of the season when the cocoa was sold. He worked with 6 other children, and though he could not speak with them because they spoke some other dialect (Senoufo), he learned they were not being paid either.

4. John Doe 21 cleared brush with a machete and tended the plants. When the cocoa was ready to harvest, he picked the pods and opened them with a machete to remove the cocoa beans. He also applied pesticides and herbicides without any safety instruction or protective gear. At the end of the next year, Madou told him the same thing again. He worked one more season and was still not paid for almost 3 years of work. He complained and Madou beat him. Shortly thereafter, Madou gave him CFA 20,500 (\$34.00) and told him how to get a bus to Abidjan. He could not leave the plantation before he finally got a small amount of money from Madou because he did not have a single CFA in his pocket and did not even know where he was. He had no identification and no idea how to get help. When he got there, he did not have enough money to get a ticket home, so he found a job at a construction site for CFA 1,500 (\$2.50) per day. He worked about 15 days and then had enough to get his ticket home to Mali.

5. John Doe 22 is from Kouroussandougou, Mali. He was 11 years old and was approached near the bus station by a man named Brahim who promised him a job in Côte d'Ivoire. He went with Brahim, who bought him a bus ticket to the Mali/Côte d'Ivoire border town of Zegoa in Mali. There were 4 or 5 other children with him when he got on the bus. In Zegoa, they got off the bus and Brahim arranged for small motor bikes to take them across the border beyond the check point as they did not have identification papers. They crossed the border and went to Pogo, the Côte d'Ivoire border town. From there, they all went on a bus to Sinfra. There, Brahim handed him over to Madou Kone, who took him to a house to sleep. Then Madou's brother came and took him to a plantation called Yofla near Sinfra, which is a major cocoa-producing region in Côte d'Ivoire. He went alone, but 2 other small children came within a few days. He was promised CFA 25,000 per month and Friday (religious holiday) off, but he was then forced to work every day and was not paid.

6. John Doe 22 cleared brush with a machete and tended the plants. When the cocoa was ready to harvest, he picked the pods and opened them with a machete to remove the cocoa beans. He also applied pesticides and herbicides without any safety instruction or protective gear. He worked for a year this way and was told he would be paid after the next year. He was given breakfast in the morning and then worked all day without food. He was once bitten by a snake and got sick because they did not give him medical care. He could not leave on his own because he had no money, did not speak the language where he was working, and had no idea where he was. After 2 years, Madou took him to the bus station in Sinfra and bought him a bus ticket back to Mali. He gave him some extra money for food, but the guards at the border took it when he did not have any identification.

7. John Roe 1 was 14 years old in early 2009 when he was approached near Sikasso, Mali, by Omar Traore who told him he could get him work on a cocoa plantation in Côte d'Ivoire. Omar then introduced him to a lorry driver in Sikasso, Mali, and the driver took him to Divo, Côte d'Ivoire. When they got to Divo after a 12-plus hour drive, he met the owner of the plantation, Madou Kone. Divo is a major cocoa-producing area from which all Defendants obtain cocoa. He was taken by motorbike to the plantation. The owner promised him 90,000 CFA (about \$180) at the end of the harvest season. The owner showed him around and left him with the other workers, 3 kids and 1 older man, all from Mali. The owner lived in Divo and did not work the plantation himself. The 3 kids were from a different area of Mali and he could not understand their dialect. The older man was in charge and did not want him to speak with the other kids and kept everyone working separately. The kids were all afraid of him.

8. John Roe 1 slept in a small, open hut on the plantation. He ate bananas, pineapple, and cassava roots. He was always hungry. He did everything on the plantation. He cleared brush, cut down and opened cocoa pods, and applied pesticides. He has visible scars from cuts on his hands and arms from machete accidents. He was always bitten by bugs. The owner came once a week or so to check on things. At the end of the year, the owner was visiting and John Roe 1 asked for the 90,000 CFA he was promised. The owner said he did not have the money to pay anyone but would pay once he had it. John Roe 1 wanted to leave, but he had not one CFA in his pocket. He did not know where he was, but knew he was a very long distance from Mali, and there was no one he could ask for help. He was very afraid but saw no option other than continuing to work for food and hope he would get paid. He worked another year through the next harvest and was again told by the owner there was no money to pay the workers. The owner said he would get all his money soon. John Roe 1 worked another 3-4 months to avoid starvation, and then met Baba Bambara Dioula on the plantation, who was originally from Burkina Faso and owned a neighboring plantation. John Roe 1 told Baba his story and he took him to the lorry park and introduced him to a driver who was heading to Mali and the driver took him for no charge. He returned to Mali at the end of 2011.

9. Plaintiffs John Roe 2 and John Roe 3 were trafficked together from Mali to the cocoa plantations of Côte d'Ivoire. They were friends from childhood. John Roe 2 was born in 1998. John Roe 3 does not know his birthdate, but he does know he is one year younger than John Roe 2, so he was likely born in 1999. In 2013, when John Roe 2 was 14 and John Roe 3 was 13 they were approached by a labor broker known as Nou, who told them he could send them both to Cote D'Ivoire to get good jobs on a cocoa plantation. They said they had no money. Nou said that he would pay for everything and the plantation owner would pay him back out of their first pay. Nou then took them to a bus and he clearly knew the driver. He explained to the driver what was going on and paid the driver something. This first bus took them all the way to Yamoussoukro, which is the ancient capital of Cote D'Ivoire and about 150 km North of Abidjan. The trip took at least 12 hours. The bus driver fed them and also paid off the border guard at the Côte d'Ivoire/Mali border crossing. There, the bus driver took them over to a different bus and spoke to the driver. They got on the new bus and first stopped in San Pedro and then went on the Grabo, which is in the far Southwest of Côte d'Ivoire just a few miles from the border with Liberia. This area is known to the "wild west" of the cocoa production areas and there are lots of unregulated, free zone plantations in that area. All the Defendants purchase free zone cocoa for 70-80% of their cocoa, and much of it comes from this area.

10. The owner of the plantation they were destined for, Salif Djamoutene, met John Roes 2 and 3 in Grabo. Salif was on a bicycle and he rode beside them as they walked about 6-7 hours to the small village of Souroudouga. They were not given any food and they were able to drink water

out of a river. The plantation was just outside of the village. It was a big one, maybe 12 hectares. Salif explained the entire process of harvesting cocoa and caring for the trees. He offered them 100,000 CFA each (about \$200) to work for the year until the harvest, when they would be paid. He did say that he would pay for Nou and all the travel expenses out of the first pay, but did not say how much that would be. Salif came about once a week to check on them, and they were they only two workers. He yelled at them a lot and said they needed to do better if they wanted to be fed. He brought their food when he visited and they ate mainly yams, bananas, and cassava. They did everything on the plantation, including clearing brush, applying pesticides and fertilizer (without any protective gear), cutting down the pods, opening them, collecting the beans and drying them. Both have visible scars from machete accidents.

11. At the end of the season, John Roes 2 and 3 asked to be paid. They worked for about 7 months. They told Salif they wanted to be paid what they were owed and they wanted to go home. They were afraid of staying because the owner of a neighboring plantation had been killed due to a land conflict in the area and they wanted to get out of the area. Salif told them he had no money to pay them and that they owed a lot to Nou. They left Salif and decided to try to get home. They walked from the plantation back to Grabo. They remembered the way because they had walked it to get to the plantation. At the bus station they met a driver who agreed to take them to San Pedro. There they got another driver to take them to Abidjan because one of them had a relative there. In Abidjan, the relative who was from Mali took them to the bus station and introduced them to a driver also from Mali who was going to Sikasso. The bus driver took them and gave them food and paid to get them through the checkpoint at the Mali border.

12. Plaintiff John Roe 5 is still suffering from physical and mental trauma to this day attributable to his four years of working on a cocoa plantation in Côte d'Ivoire. He has never been to school. He was born in 1998. He went to work in 2012, when he was 14. He is from the village of Nionodjassa, Mali. A man came to his village and told John Roe 5 that he could get him a good job in Côte d'Ivoire. The man took John Roe 5 on a motorbike to the bus station in Sikasso. The guy paid for the bus and seemed to know the driver. The guy told John Roe 5 the costs would be taken out of his first pay. Like John Roes 2 and 3, he took the bus route to Grabo. When he got there, he met Sidibe the plantation owner who the guy who sent him arranged. They walked about two hours from the bus station to the plantation. Sidibe showed him how to do the work. He did everything on the plantation from clearing brush, trimming trees, harvesting and opening pods, and applying pesticides. He remembered a brand of pesticide called "72" that he used. He was not given any protective gear. He cut himself many times. Sidibe came once a week and brought food and gave him direction for the week. He worked alone. At the end of the first year Sidibe said he did not have any money but would eventually pay him.

13. John Roe 5 continued this arrangement for four years. He had no idea where he was or where he could go. He did not have any money and no identification. After 4 years, he got very sick and lost consciousness. He attributes this to exhaustion and hunger. He woke up in a local hospital. He thinks Sidibe brought him there. Somehow, he does not know, a relative Drissa Ballo was summoned to get him. Drissa took him by bus back to Mali and to a hospital there where he spent 1 night. The doctor said he was suffering from traumatic stress. He recalls that during the worst part of the trauma he endured while working on the plantation for 4 years without pay, he dreamed of getting a bicycle and a radio when he finally got paid.

14. Plaintiff John Roe 6 is a very observant Muslim and knows only the Koranic calendar. He went to work in 2006 when he was 13 and worked for 5 years. A man named Soumaila Kone

came to his village, Domogodjassa, and promised him 125,000 CFA (\$250) per year to work on a cocoa plantation in Côte d'Ivoire. Soumaila was originally from Burkina Faso. He said he did not know the man but really needed to earn money so he went to the bus station in Sikasso with him. Soumaila spoke to and paid the bus driver. JR 6 was taken by bus to Divo, Côte d'Ivoire, a major cocoa producing area that all Defendants obtain cocoa from. Divo is at least 12 hours by bus from Sikasso. At Divo John Roe 6 was met by the owner of the plantation, Sekou Traore. From the bus station they went by a cocoa truck to the plantation near the village of Niama. It was about 10-11 hectares. Sekou showed him how to do the work. He did all tasks on the plantation and has terrible scars on his arms from the machete. There was one other Malian boy there and another boy from Burkina Faso. The owner separated John Roe 6 from the Malian boy so they could not talk. They worked in different parts of the plantation.

15. John Roe 6 fell victim of the same basic scheme as the other Plaintiffs – each year the owner said he had no money, but told John Roe 6 to keep working if he wanted to be fed, and he would eventually be paid. John Roe 6 had no money, did not know how to get home or even where he was as it was long drive from Mali. After five years, he got angry and demanded that he be paid so he could leave. The owner did pay him 125,000 CFA, so he finally had enough money to get home. He walked to the bus station and went back to Mali.

IRAdvocates has detailed notes from these and other interviews that are now protected by the Attorney-Client and work product privileges, but would be happy to provide additional information as requested.

D. 2019 Report and Video by Investigative Journalist Group Cenozo

In January 2019, Abou Traoré from the investigative journalist group Cenozo published a report on Cenozo's website, after going undercover on a bus traveling from Burkina Faso to CDI to document the trafficking of children for work in the cocoa sector.⁶⁸ In February 2019, Cenozo uploaded a video discussing that investigation.⁶⁹

E. Two Documentary Films By Miki Mistrati

Filmmaker Miki Mistrati has produced two comprehensive documentary films documenting the horrors of forced child labor in cocoa production in CDI:

The Dark Side of Chocolate

<https://www.youtube.com/watch?v=7Vfbv6hNeng>

Shady Chocolate

⁶⁸ Abou Traoré, *Travail des enfants dans les plantations de cacao: Le trafic a la peau dure*, CENOZO, <https://cenozo.org/en/articles/120-travail-des-enfants-dans-les-plantations-de-cacao-le-traffic-a-la-peau-dure>.

⁶⁹ Cenozo, *Travail des enfants dans les plantations de cacao: Le trafic a la peau dure*, https://www.facebook.com/cenozo/videos/308465473203064/?q=abou%20traore%20cenozo&epa=SEARCH_BOX.

<https://www.youtube.com/watch?v=Z5C7jmrycf0>

F. U.S. Department of Labor Reports

Since 2001, the U.S. Department of Labor (DOL) has published annual reports on countries in which children are subjected to the “Worst Forms of Child Labor.” The 2001 Report specifically found that “children are sometimes forced to work for owners of commercial farms harvesting cocoa . . .”⁷⁰ Every year since 2001, the DOL has found there is forced child labor, including trafficked children, and children performing the Worst Forms of Child Labor, in harvesting cocoa in CDI. The latest report, which covers 2018, also found forced child labor, trafficked child labor, and children performing the Worst Forms of Child Labor in cocoa production, among other areas.⁷¹ Not only are the DOL Reports highly credible, they should be conclusive. Petitioners urge that CBP should issue WROs in all cases in which DOL reports ongoing forced or trafficked child labor in the production of any specific product, like cocoa, coming from a specific country, like CDI.

V. A Detailed Description or Sample of the Merchandise Subject to the Petition.

CDI remains the undisputed world leader in cocoa production and produces almost 40% of world production.⁷² As detailed above, child labor, including forced or trafficked child labor, remains pervasive in CDI cocoa production. Much of this cocoa “is being, or is likely to be, imported,” by the U.S. Cocoa Importers. 19 C.F.R. § 12.42 (e).

The Cocoa Importers have had nearly two decades to make good on their promise that their cocoa from CDI imported to the U.S. would be certified as child labor free. Their cocoa continues to be imported into the U.S. without impediment even though they admit that this cocoa was likely harvested with forced or trafficked child labor. Petitioners’ evidence conclusively reinforces the companies admissions. There is no question that the evidence provided herein and the extensive public record “**reasonably but not conclusively** indicates that” cocoa harvested and processed by the cocoa importers in CDI⁷³ “is being, or is likely to be, imported”⁷⁴ to the U.S market and was made “wholly or in part”⁷⁵ with forced or trafficked child labor.

⁷⁰ DEPARTMENT OF LABOR, COTE D’IVOIRE: GOVERNMENT POLICIES AND PROGRAMS TO ELIMINATE THE WORST FORMS OF CHILD LABOR, at 104,

https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2001/cotedivoire.pdf.

⁷¹ CHILD LABOR AND FORCED LABOR REPORTS, *supra* note 28.

⁷² See, e.g., Esri, *Cocoa Industry in the Cote d’Ivoire*,

<https://www.arcgis.com/apps/Cascade/index.html?appid=dd19d4b6444e492da5b069d62d2c3ecb>.

⁷³ There are certainly other companies that import CDI cocoa to the U.S. and a total ban on CDI cocoa would be warranted. However, Petitioners choose to focus on the large companies that import massive amounts of CDI cocoa to the U.S. and have been leaders in the industry campaign of nearly 20 years that has continued to make false assurances to consumers and government regulators regarding their ineffective programs to end child labor in their supply chains. Petitioners believe that if these large companies are, at long last, required to end their use of child labor, this critical mass of companies in compliance will force industry-wide compliance.

⁷⁴ 19 C.F.R. § 19.42 (e)(emphasis added).

⁷⁵ 19 U.S.C. § 1307.

These actors have demonstrated that they do not have the will to make the necessary changes of their own free will. They do, however, have the resources to implement significant changes within 180 days if they are required to do so.

VI. Conclusion

Based on the ongoing investigation and the information provided herein, pursuant to C.F.R. § 12.42 (g), CBP should require the Cocoa Importers, within 180 days, to establish their cocoa imports from CDI were “Not ... Manufactured in any Part” with Forced or Trafficked Child Labor.” Petitioners request that their suggested WRO provided, at pages 2–3 above, be entered immediately.

Respectfully submitted,

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EXHIBIT

1



Chocolate Manufacturers Association

**PROTOCOL FOR THE GROWING AND PROCESSING OF
COCOA BEANS AND THEIR DERIVATIVE PRODUCTS
IN A MANNER THAT COMPLIES WITH ILO CONVENTION 182
CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE
ELIMINATION OF THE WORST FORMS OF CHILD LABOR**

Guiding Principles:

- * *OBJECTIVE* – Cocoa beans and their derivative products should be grown and processed in a manner that complies with International Labor Organization (ILO) Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor. ILO Convention 182 is attached hereto and incorporated herein by reference.
- * *RESPONSIBILITY* – Achieving this objective is possible only through partnership among the major stakeholders: governments, global industry (comprised of major manufacturers of cocoa and chocolate products as well as other, major cocoa users), cocoa producers, organized labor, non-governmental organizations, and consumers. Each partner has important responsibilities. This protocol evidences industry's commitment to carry out its responsibilities through continuation and expansion of ongoing programs in cocoa-producing countries and through the other steps described in this document.
- * *CREDIBLE, EFFECTIVE PROBLEM SOLVING* – In fashioning a long-term solution, the problem-solving process should involve the major stakeholders in order to maximize both the credibility and effectiveness of the problem-solving action plan that is mutually-agreed upon.
- * *SUSTAINABILITY* – A multi-sectoral infrastructure, including but independent of the industry, should be created to develop the action plan expeditiously.
- * *ILO EXPERTISE* – Consistent with its support for ILO Convention 182, industry recognizes the ILO's unique expertise and welcomes its involvement in addressing this serious problem. The ILO must have a "seat at the table" and an active role in assessing, monitoring, reporting on, and remedying the worst forms of child labor in the growing and processing of cocoa beans and their derivative products.

Key Action Plan and Steps to Eliminate the Worst Forms of Child Labor:

(1) Public Statement of Need for and Terms of an Action Plan – Industry has publicly acknowledged the problem of forced child labor in West Africa and will continue to commit significant resources to address it. West African nations also have acknowledged the problem and have taken steps under their own laws to stop the practice. More is needed because, while the scope of the problem is uncertain, the occurrence of the worst forms of child labor in the growing and processing of cocoa beans and their derivative products is simply unacceptable. Industry will reiterate its acknowledgment of the problem and in a highly-public way will commit itself to this protocol.

(2) Formation of Multi-Sectoral Advisory Groups – By October 1, 2001, an advisory group will be constituted with particular responsibility for the on-going investigation of labor practices in West Africa. By December 1, 2001, industry will constitute a broad consultative group with representatives of major stakeholders to advise in the formulation of appropriate remedies for the elimination of the worst forms of child labor in the growing and processing of cocoa beans and their derivative products.

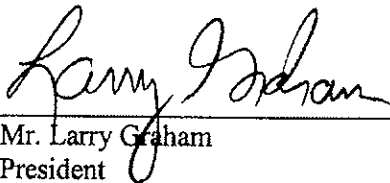
(3) Signed Joint Statement on Child Labor to Be Witnessed at the ILO – By December 1, 2001, a joint statement made by the major stakeholders will recognize, as a matter of urgency, the need to end the worst forms of child labor in connection with the growing and processing of West African cocoa beans and their derivative products and the need to identify positive developmental alternatives for the children removed from the worst forms of child labor in the growing and processing of cocoa beans and their derivative products.

(4) Memorandum of Cooperation – By May 1, 2002, there will be a binding memorandum of cooperation among the major stakeholders that establishes a joint action program of research, information exchange, and action to enforce the internationally-recognized and mutually-agreed upon standards to eliminate the worst forms of child labor in the growing and processing of cocoa beans and their derivative products and to establish independent means of monitoring and public reporting on compliance with those standards.

(5) Establishment of Joint Foundation – By July 1, 2002, industry will establish a joint international foundation to oversee and sustain efforts to eliminate the worst forms of child labor in the growing and processing of cocoa beans and their derivative products. This private, not-for-profit foundation will be governed by a Board comprised of industry and other, non-governmental stakeholders. Industry will provide initial and on-going, primary financial support for the foundation. The foundation's purposes will include field projects and a clearinghouse on best practices to eliminate the worst forms of child labor.

(6) *Building Toward Credible Standards* — In conjunction with governmental agencies and other parties, industry is currently conducting baseline-investigative surveys of child labor practices in West Africa to be completed by December 31, 2001. Taking into account those surveys and in accordance with the other deadlines prescribed in this action plan, by July 1, 2005, the industry in partnership with other major stakeholders will develop and implement credible, mutually-acceptable, voluntary, industry-wide standards of public certification, consistent with applicable federal law, that cocoa beans and their derivative products have been grown and/or processed without any of the worst forms of child labor.

We, the undersigned, as of September 19, 2001 and henceforth, commit the Chocolate Manufacturers Association, the World Cocoa Foundation, and all of our members wholeheartedly to work with the other major stakeholders, to fulfill the letter and spirit of this Protocol, and to do so in accordance with the deadlines prescribed herein.



Mr. Larry Graham
President
Chocolate Manufacturers Association



Mr. William Guyton
President
World Cocoa Foundation



Chocolate Manufacturers Association

WITNESSETH

We hereby witness the commitment of leaders of the cocoa and chocolate industry evidenced on September 19, 2001 and henceforth to fulfill the letter and spirit of this Protocol to eliminate the worst forms of child labor from this sector as a matter of urgency and in accordance with the terms and deadlines prescribed herein.

Senator Tom Harkin
US Senate – Iowa

Senator Herbert Kohl
US Senate – Wisconsin

Congressman Eliot Engel
US Congress – New York

Ambassador Youssoufou Bamba
Embassy of the Ivory Coast



Chocolate Manufacturers Association

WITNESSETH

I hereby witness the commitment of leaders of the cocoa and chocolate industry evidenced on September 19, 2001 and henceforth to fulfill the letter and spirit of this Protocol to eliminate the worst forms of child labor from this sector as a matter of urgency and in accordance with the terms and deadlines prescribed herein.

Mr. Frans Roselaers, Director
International Programme on the Elimination of Child Labour
(IPEC)
International Labor Organization



Chocolate Manufacturers Association

WITNESSETH

I hereby witness the commitment of leaders of the cocoa and chocolate industry evidenced on September 19, 2001 and henceforth to fulfill the letter and spirit of this Protocol to eliminate the worst forms of child labor from this sector as a matter of urgency and in accordance with the terms and deadlines prescribed herein.

Mr. Ron Orwald
General Secretary
International Union of Food, Agricultural, Hotel, Restaurant,
Catering, Tobacco and Allied Workers' Associations (IUF)



Chocolate Manufacturers Association

WITNESSETH

I hereby witness the commitment of leaders of the cocoa and chocolate industry evidenced on September 19, 2001 and henceforth to fulfill the letter and spirit of this Protocol to eliminate the worst forms of child labor from this sector as a matter of urgency and in accordance with the terms and deadlines prescribed herein.

Mr. Kevin Bales
Executive Director
Free The Slaves



Chocolate Manufacturers Association

WITNESSETH

I hereby witness the commitment of leaders of the cocoa and chocolate industry evidenced on September 19, 2001 and henceforth to fulfill the letter and spirit of this Protocol to eliminate the worst forms of child labor from this sector as a matter of urgency and in accordance with the terms and deadlines prescribed herein.

Ms. Linda Golodner
President
National Consumers League



Chocolate Manufacturers Association

WITNESSETH

I hereby witness the commitment of leaders of the cocoa and chocolate industry evidenced on September 19, 2001 and henceforth to fulfill the letter and spirit of this Protocol to eliminate the worst forms of child labor from this sector as a matter of urgency and in accordance with the terms and deadlines prescribed herein.

Ms. Darlene Adkins
National Coordinator
The Child Labor Coalition



Chocolate Manufacturers Association

**ATTACHMENT TO
PROTOCOL FOR THE GROWING AND PROCESSING OF
COCOA BEANS AND THEIR DERIVATIVE PRODUCTS
IN A MANNER THAT COMPLIES WITH ILO CONVENTION 182
CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE
ELIMINATION OF THE WORST FORMS OF CHILD LABOR**

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

Convention: C182

Place: Geneva

Session of the Conference: 87

Date of adoption: 17 June 1999

The General Conference of the International Labour Organization:

- Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999.
- Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour.
- Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families.
- Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996.
- Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education.
- Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989.
- Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998.
- Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956.

- Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session.
- Having determined that these proposals shall take the form of an international Convention adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention.

Article 1

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

Article 2

For the purposes of this Convention, the term *child* shall apply to all persons under the age of 18.

Article 3

For the purposes of this Convention, the term *the worst forms of child labour* comprises:

- (a) 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;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Article 4

1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.
2. The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.
3. The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

Article 5

Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

Article 6

1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.
2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

Article 7

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.
2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:
 - (a) prevent the engagement of children in the worst forms of child labour;
 - (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
 - (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
 - (d) identify and reach out to children at special risk; and
 - (e) take account of the special situation of girls.
3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

Article 8

Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

Article 9

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 10

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 11

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 12

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 14

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides --

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 16

The English and French versions of the text of this Convention are equally authoritative.



Chocolate Manufacturers Association

We personally support the protocol entered into by industry *Protocol for the Growing and Processing of Cocoa Beans and their Derivative products In a Manner that Complies with ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor* and look forward to its successful execution which we support wholeheartedly.

Gary Guittard
President
Guittard Chocolate Company

Paul Michaels
President
M&M / Mars, Inc.

Edmond Opler, Jr.
President
World's Finest Chocolate, Inc.

G. Allen Andreas
Chairman and Chief Executive
Archer Daniels Midland Company

Bradley Alford
President
Nestle Chocolate & Confections USA

Henry Blommer, Jr.
Chairman of the Board
Blommer Chocolate Company

Richard H. Lenny
President and CEO
Hershey Food Corporation

Andreas Schmid
Chairman & CEO
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Barry Callebaut AG

EXHIBIT

2

May 30, 2002

Hand-Delivered

Robert C. Bonner
Commissioner of Customs
US Customs Service
US Department of Treasury
1300 Pennsylvania Avenue, NW
Washington, D.C. 20229

Dear Mr. Bonner:

Based on 19 C.F.R., Chpt. 1, § 12.42 (b) (1997), we ask that the US Customs Service initiate immediately an investigation and enforcement action under section 307 of the Trade Act of 1930, 19 U.S.C. § 1307 (1997). With the clarification provided by the 1997 Sanders provision that section 307 applies to products made with “forced or indentured child labor,” there is with existing evidence an ample basis for barring the entry of all cocoa from Ivory Coast because of the pervasive use of prohibited forms of child labor in the harvesting of cocoa beans. Below we catalogue the substantial evidence gathered to date to demonstrate the pervasive use of forced child labor in cocoa harvesting in Ivory Coast. See 19 C.F.R. § 12.42 (f).

The International Labor Rights Fund (ILRF) has previously petitioned the US Customs Service regarding the importation of hand-knotted carpets from South Asia. That case raised the issue of individual importer responsibility to certify labor practices related to their goods. Building on this exchange, in the second part of this petition we document the specific evidence that prohibited forms of labor necessarily extend to all importers of cocoa from Ivory Coast because the tainted beans are mixed with all shipments. Further, we describe the in-country supply chain in order to illustrate that in fact it would reasonably be possible to institute a system of spot inspections that would effectively verify compliance or non-compliance with the law.

We note that the government of Ivory Coast has already taken some steps to combat the problem of bonded child labor. Moreover, we note that the major importers of cocoa into the United States, as represented by the Chocolate Manufacturers’ Association (CMA), have publicly proclaimed their intention to independently certify conditions related to cocoa production. US Customs Service actions to enforce US law would provide a much-needed dimension to existing efforts to deal with the problem of forced child labor in cocoa production in Ivory Coast.

(1) Full statement of the reasons for the belief.

The initial step in the section 307 enforcement process is that “[a]ny person ... who has reason to believe” that imported products are made with prohibited forced or indentured child labor shall provide to the Commissioner of Customs “(1) a full statement of the reasons for the belief, (2) a detailed description or sample of the merchandise, and (3) all pertinent facts obtainable as to the production of the merchandise abroad.”¹ 19 C.F.R. § 12.42 (b). The International Labor Rights Fund (ILRF) provides below the necessary information to demonstrate that cocoa from Ivory Coast is made with “forced or indentured child labor.”² Moreover, as per the original 1930 law, to the extent that some workers are not child laborers, but are nevertheless trafficked, there is ample evidence that many of the adult workers in this sector are also forced or indentured laborers, and therefore much of the product harvested by adult workers is also prohibited under this statute.

Reports from Unicef (1998) and the International Labor Organization (ILO) (2001) have indicated that children from the neighboring countries of Mali and Burkina Faso are being brought to Ivory Coast to harvest cocoa beans. Indeed the US Government itself has verified the existence of child trafficking into Ivory Coast for the purpose of providing indentured child labor. The US State Department estimates that there are approximately 15,000 children working on cocoa, coffee, and cotton farms in the Ivory Coast.³ In June 2001, the ILO also confirmed that child trafficking is widespread in West Africa.⁴ Shortly thereafter, various investigative pieces documented that children from the Ivory Coast’s neighboring countries were being brought to Ivory Coast to harvest cocoa beans, including children as young as nine years old.⁵

The background reports concur that these children are trafficked into Ivory Coast from neighboring countries, and have no independent means of escape from employment or return to their home countries. Based on the language of the Sanders Amendment, all of these situations present “forced or indentured child labor.”

¹ A fourth factor relating to a demonstration of alternative domestic production does not apply since there is no allegation that the prohibited forced or indentured child labor was “under penal sanctions.”

² The operative language of the original version of section 307, passed in 1930, was that products made with “convict labor or/and forced labor or/and indentured labor under penal sanctions” were barred from importation. The only term defined in the statute itself is “forced labor” which is “all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily.” The Sanders amendment clarifies that the law now applies to “forced or indentured child labor.” This is, in the context of the realities of child labor in places like Africa, a very broad definition. Child activists around the world agree that children, by definition, are incapable of providing legally binding consent to an employment agreement. Virtually all child labor that requires children to work full-time at the expense of their health and well being must be considered forced. Further, in the country of concern, child labor is illegal. Any contract or other arrangement requiring children to work in violation of law should be considered coerced and certainly not voluntary.

³ US Department of State. *Cote D’Ivoire: Country Reports on Human Rights Practices 2000*, February 23, 2001.

⁴ International Labor Organization. *A Day of the African Child: June 16, 2001: ILO Reports on Child Trafficking in West and Central Africa*, June 15, 2001.

⁵ Onishi, Norimitsu. *The Bondage of Poverty that Produces Chocolate*, The New York Times, July 29, 2001.
Blunt, Liz. *The Bitter Taste of Slavery*, BBC, September 28, 2000.

In May 2002, an independent investigator on contract to ILRF traveled to Ivory Coast to verify these reports. While in Ivory Coast, he held extensive meetings and interviews with the following:

- Government representatives at the federal level
- Local government representatives in the countryside
- Industry regulators
- Agricultural technicians from the Ministry of Agriculture
- The commercial director of the Autonomous Port Authority of Abidjan
- Managers of the Autonomous Port Authority of San Pedro
- Representatives of cocoa cooperatives and cocoa producing associations
- Individual cocoa planters
- Director of the biggest shipping company in Côte d'Ivoire
- Human rights lawyers/activists.

The investigator also visited dozens of cocoa farms/plantations in the largest cocoa-producing areas, namely in the Sasandra-Soubre-Gagnoa region in the southwest, where approximately 46% of the country's cocoa is produced. Through numerous interviews, he was able to verify the following:

- During the high season, the demand for labor on the cocoa farms is extremely high, always outstripping the labor resources of the typical farm owner and his immediate family.
- Children are provided to employers by job brokers on a seasonal basis, during the high season, to work on the cocoa farms.
- The agreements that bind children to work on the farms are generally made between the farm owner and an adult unrelated to the children, i.e. a labor broker.
- A child for whom a farm owner has paid money is not allowed to leave the farm until after the season.
- Farm owners who pay money for children do not know the nature of the relationship between the children and the adults to whom money is paid.
- The children who work on the farms are usually from neighboring Mali and Burkina Faso.

This investigator confirmed that cocoa planters themselves readily acknowledged all the above facts. The existence of child trafficking for the purpose of providing forced child labor is not in dispute. Indeed, the Government of Ivory Coast has publicly acknowledged the problem of trafficked child labor in the cocoa industry, and has stated that it is taking steps to address the problem. Our investigator was informed that in some cases, labor brokers had been arrested and imprisoned for their involvement in this illegal activity. However, despite these cases, the practice continues.

The facts are so little in dispute that the importers themselves, as represented through the CMA, have publicly acknowledged this problem and have voluntarily signed an industry Protocol on the use of bonded child labor. The Protocol states, "Industry has publicly acknowledged the problem of forced child labor in West Africa and will continue to commit

significant resources to address it.”⁶ The Protocol called for the signing of a Joint Statement by December 1, 2001, a Memorandum of Cooperation by May 1, 2002, and the establishment of a Joint Foundation by July 2002. The Memorandum of Cooperation has been signed.

However, despite these paper initiatives and statements, the ILRF investigator found that no concrete steps had been taken by even a single importer to communicate the offensiveness of these practices to their buyers or to the planters, or to verify that the practices had been eliminated.

(2) A detailed description or sample of the merchandise.

Cocoa is the Ivory Coast’s single most important source of export income. For the 2001 season, Ivory Coast exported more than 1.4 million tons of cocoa compared with 270,000 tons of coffee, the country’s second most important export crop. About half of the country’s 15 million people make a living directly from the cocoa industry. There are more than 450,000 cocoa plantations across the country, with heavy concentration in the southwest.

Ivory Coast is the undisputed leader in the international arena of cocoa production, accounting for 43% of world production. Its West African neighbor Ghana is the world’s second largest producer, but only matches a quarter of Ivory Coast’s cocoa output.

The major US importers are Nestle USA of Glendale, CA; Archer Daniels Midland of Decatur, IL; Barry Callebaut of Montreal (representative office in Swedesboro, NJ); Blommer Chocolate Co. of Chicago, IL and Cargill of Minneapolis, MN. The ILRF investigator was able to verify that all of these companies have representative offices in Ivory Coast, except Blommer. All companies except Blommer admit publicly to using cocoa from Ivory Coast. The two leading chocolate manufacturers in the United States, Hershey and M&M/Mars, also have admitted publicly to using cocoa from Ivory Coast.⁷

(3) All pertinent facts obtainable as to the production of the merchandise abroad.

Most planters are small growers with no access to capital, heavy equipment or their own means for transporting the cocoa beans to the marketplace. Production is very labor-intensive, depending almost exclusively on human labor. During the high season, when activity is reported to be nonstop in the farms, the planters must contract with workers on a seasonal basis to provide the necessary labor power to harvest and prepare the cocoa beans for sale. Liquidity being a critical factor, planters typically sell their cocoa beans on a cash basis to “pisteurs,” or field representatives, who go to the farms with trucks ready to haul the product away. Anyone with access to land can be a planter. There are no legal requirements or barriers to becoming a planter/producer.

⁶ “Protocol for the Growing and Processing of Cocoa Beans and Their Derivative Products in a Manner that Complies with ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor,” Chocolate Manufacturers’ Association, Vienna VA, September 2001, signed by Larry Graham, President, Chocolate Manufacturers Association et.al. (add)

⁷ Chatterjee, Sumana. “What the Chocolate Industry Says,” Knight Ridder Newspapers, October 23, 2001.

The “pisteurs” are effectively the middlemen between the small-scale growers and the large conglomerates who ultimately export the product. The “pisteurs” are on direct contract to the buyers, with whose money they go directly to the farms and purchase the cocoa beans. There are no legal requirements or barriers to becoming a “pisteur”. Buyers work directly for exporters, who finance them. Not only do buyers obtain their financing from exporters, they must also be accredited by the exporters. A buyer typically has an exclusive relationship with an exporter. Legally, it is impossible to become a buyer without first obtaining accreditation from an exporter.

The major exporters of cocoa from Ivory Coast are all multinational corporations with offices in the port cities of Abidjan and/or San Pedro. All exporters must obtain a license from the Government of Ivory Coast. Normally, they obtain cocoa beans from their buyers and from accredited cooperatives. There are currently 47 cocoa exporters operating in Ivory Coast. However, the biggest 10 dominate the sector, accounting for 80% of cocoa exports.

Among the top ten companies are Archer Daniels Midland (ADM), Nestlé and Cargill, which, in addition to obtaining cocoa beans from buyers and cooperatives, also engage in the practice of buying directly from the planters. Ivory Coast laws forbid exporters from going directly to the farms to purchase cocoa beans. The law, however, makes an exception for companies that engage in processing cocoa beans prior to export. Such companies are allowed to go directly to the field, via their own “pisteurs”, and purchase cocoa beans from the planters. It should be noted that all of the three companies mentioned above (ADM, Cargill and Nestlé) have processing plants in Ivory Coast, thus allowing them to purchase cocoa beans directly from the planters. These three companies are reported to exercise some quality control on planters through these direct relationships. Moreover, all major exporters have ongoing contact with planters through their accredited buyers.

Insofar as the minimum shipment of cocoa for export is required by law to be no less than 50,000 tons, and as most of the small growers are incapable of producing such a large volume of the product, each individual shipment of cocoa is likely to be made up of harvest from several farms. It was verified by the ILRF researcher that the problem of trafficked, or forced, labor is so endemic to the industry in Ivory Coast that it is virtually certain that any given shipment contains product harvested under forced labor conditions. Thus at present all cocoa from Ivory Coast is suspect and should be barred under the statute.

Following the *prima facie* showing that this product is made with illegal child labor and are therefore subject to the import ban of section 307 of the Trade Act of 1930, the Commissioner is required to conduct an investigation as per 19 C.F.R. § 12.42(d). Some form of investigation should be conducted, and ILRF pledges to cooperate in gathering any additional information deemed necessary. However, ILRF believes that this submission is sufficient for the Commissioner to apply section 307. The controlling regulation, 19 C.F.R. § 12.42 (e), provides in pertinent part:

“If the Commissioner of Customs finds **at any time** that information available **reasonably but not conclusively** indicates that merchandise within the purview of section 307 is being, or is likely to be, imported, he will promptly advise all port directors

accordingly and the port directors shall thereupon withhold the release of any such merchandise ...⁸ Once the Commissioner makes a finding as per 19 C.F.R. § 12.42 (f), then all merchandise in the class is an “importation prohibited by section 307 ... **unless the importer establishes by satisfactory evidence that the merchandise was not ... manufactured in any part with the use of a class of labor specified in the finding.”**

This standard from the controlling regulation clearly shifts the burden of proof to the importer, making the most significant issue with respect to the enforcement process developing a reasonable standard by which to determine whether a particular importer of cocoa should be subject to the ban.

A recent paper by the US China Security Review Commission, focusing on the implementation of the Tariff Act provisions vis a vis prison labor-made goods from China, has recommended that “all importers of goods entering the US should be required to certify, based on good-faith efforts, that such goods were not made by prison labor.”⁹ This recommendation could indeed be reasonably instituted vis a vis Ivory Coast cocoa, insofar as the major importers of the product, as represented through the Chocolate Manufacturers’ Association, have publicly claimed that they intend to institute such certification. The major importers have some capacity to institute an inspection program through their accredited buyers. Given the evidence supporting the finding that forced child labor is used in the production of Ivory Coast cocoa, the limited number of major importers, and the public claims of major importers of this product that they intend to certify the elimination of child labor in its production, full application of US law in this matter should be a subject of little controversy.

We therefore urge immediate enforcement of section 307 of the Trade Act of 1930, 19 U.S.C. § 1307 (1997). Please contact me if we can be of any assistance in providing further information that would enable immediate and complete enforcement of this US law.

Sincerely,

/s/Terry Collingsworth
Executive Director

cc: Senator Edward Kennedy
Representative Bernie Sanders
Secretary of Treasury Paul O’Neill

⁸ 19 C.F.R. § 19.42 (e)(emphasis added).

⁹ “US China Security Review Commission Policy Paper on Prison Labor and Forced Labor in China.” Washington, DC: US China Security Review Commission, May 2002.

EXHIBIT

3

Slip Op. 05-110

UNITED STATES COURT OF INTERNATIONAL TRADE

	X	
International Labor Rights Fund,	:	
	:	
Global Exchange,	:	
	:	
and	:	
	:	
Fair Trade Federation,	:	
	:	Court No. 04-00543
Plaintiffs,	:	
	:	Before: Judith M. Barzilay, Judge
v.	:	
	:	
United States,	:	
	:	
Defendant,	:	
	:	
and	:	
	:	
Chocolate Manufacturers Association,	:	
	:	
Defendant-Intervenor.	:	
	X	

OPINION

[Defendant's Motion to Dismiss granted.]

Decided: August 29, 2005

Terrence Collingsworth, (Derek Joseph Baxter), for Plaintiffs.

Peter D. Keisler, Assistant Attorney General, David M. Cohen, Director, Jeanne E. Davidson, Deputy Director, (Stephen C. Tosini), Trial Attorney, U.S. Department of Justice, Commercial Litigation Branch, Civil Division, for Defendant.

Collier, Shannon, Scott, PLLC, (Paul C. Rosenthal), Jennifer E. McCadney, Michael R. Kershow, for Defendant-Intervenor.

BARZILAY, JUDGE:

Plaintiffs International Labor Rights Fund (“ILRF”), Global Exchange (“GX”), and Fair Trade Federation (“FTF”) (collectively “plaintiffs”), all non-governmental organizations working in the field of labor rights, filed suit under the Administrative Procedure Act (“APA”), 5 U.S.C. § 701, *et seq.* Plaintiffs are seeking declaratory and injunctive relief against George Bush, President of the United States, the Secretary of Homeland Security, the Commissioner of Customs and Border Protection (formerly the Commissioner of Customs), the Assistant Secretary of Homeland Security for the Bureau of Immigration and Customs Enforcement (BICE), and the United States Department of Homeland Security (DHS) (collectively, “defendants”) for their failure and refusal to 1) investigate, as required by 19 C.F.R. § 12.42, credible allegations that cocoa imported to the United States from Cote d’Ivoire¹ is produced by forced child labor; 2) require cocoa importers to show that their imports are not the product of forced child labor; and 3) prohibit the importation of merchandise that is shown to be the product of forced child labor as required by 19 U.S.C. § 1307 (1997), commonly known as section 307 of the Tariff Act of 1930.

Defendants responded with a motion to dismiss Plaintiffs’ complaint pursuant to USCIT R. 12(b)(1), claiming that all three lack standing to bring such claims before the court, that the complaint was untimely filed, and that the President cannot be a named defendant. The parties have agreed to dismiss the President from this action.

¹ Formerly known as the Ivory Coast. *See* CIA World Factbook, at <http://www.cia.gov/cia/publications/factbook/geos/iv.html>

Background

Section 307 of the Tariff Act² and its accompanying regulations prohibit the importation of goods derived from forced labor when certain domestic economic preconditions have been met. The regulations provide for “[a]ny person outside the Customs Service who has reason to believe that merchandise produced [by forced or indentured child labor] is being, or is likely to be, imported into the United States” to “communicate his belief to any port director or the Commissioner of Customs” and in doing so, to also provide “detailed information as to the production and consumption of the particular class of merchandise in the United States and the names and addresses of domestic producers likely to be interested in the matter.” 19 C.F.R. §12.42. Upon receipt of any such communication, the Commissioner of Customs is required to

² Section 307 states:

Convict made goods; importation prohibited

All goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.

“Forced labor”, as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. For purposes of this section, the term “forced labor or/and indentured labor” includes forced or indentured child labor. 19 U.S.C. § 1307 (2002).

undertake an investigation that is warranted by the circumstances of the particular case. *Id.* Pursuant to these regulations, plaintiffs submitted a petition regarding the use of child labor in the cocoa industry of Cote d'Ivoire. This original petition, submitted on May 30, 2002, requested that Customs investigate allegations of child labor pursuant to the implementing regulations, but did not include information regarding production of cocoa in the United States or the names and addresses of interested domestic producers – apparently because no significant domestic cocoa production industry exists in this country. If Customs' investigation were to reveal the use of forced labor on any of the cocoa plantations or farms in Cote d'Ivoire, plaintiffs argue, then defendants would be required to determine whether the cocoa and any products derived from the illegal cocoa were imported to the United States. *Id.* Plaintiffs took action under these statutory and regulatory directives because they claim conditions in Cote d'Ivoire warranted an investigation by Customs of forced child labor in the cocoa production industry.

Plaintiff ILRF is a Washington, D.C.-based advocacy organization dedicated to improving global labor standards. *Compl.* at ¶¶ 15, 19. ILRF achieves its goal of promoting the enforcement of labor rights internationally through public education and mobilization, litigation, legislation and other collaborative efforts with labor, government and other business entities. *Id.* at ¶ 15. Plaintiff GX is a San Francisco-based human rights advocacy organization with over twelve thousand dues-paying members and forty thousand associated members. *Compl.* at ¶ 19. GX is dedicated to “promoting environmental, political and social justice globally.” *Id.* at ¶ 19. In addition, GX operates four retail stores, as well as an internet-based sales operations, which sell “fair trade” cocoa, which is produced without the use of forced child labor. Plaintiff FTF is a

Washington, D.C.-based association of “fair trade” wholesalers, retailers, and producers, whose members are committed to providing living wages and better employment opportunities to disadvantaged farmers and artisans worldwide. *Id.* FTF further claims that its “purpose is to promote the production and consumption of fair trade goods . . . and to represent the interests of producers, wholesalers, retailers, and importers of . . . Fair Trade Certified cocoa.” *Id.* at ¶¶ 15, 19.

In a letter dated June 13, 2002, Customs accepted ILRF’s petition. Customs’ letter communicated that it was pleased with plaintiffs’ offer to provide further information, and invited plaintiffs and an independent investigator to meet with Customs officials to discuss the submitted evidence. This meeting apparently took place in July, 2002, although it is unclear what came of it. *See Def’s Reply Memo in Support of its Mot. to Dismiss (“Def’s Mot.”)*, at 3. On June 30, 2002, a group of organizations, including GX, sent then-Secretary of the Treasury Paul O’Neil a letter outlining the widespread use of child slavery in Cote d’Ivoire’s cocoa industry. This letter concluded by asking for “strict and immediate enforcement of the law as embodied under Section 307 of the Tariff Act of 1930.” In effect, the letter sent to Secretary O’Neil reintroduced plaintiffs’ ultimate goal of invoking section 307 to prohibit the importation of products made with forced child labor.

Almost a year passed without any further discussion. Having no indication that Customs in fact initiated an investigation or had taken any steps to do so, an ILRF researcher traveled to Cote d’Ivoire to update its factual record. Plaintiff ILRF states that it confirmed the continued existence of forced child labor in the Ivorian cocoa industry and sent another letter to the

Commissioner of Customs and Border Security on May 15, 2003, urging him to act on ILRF's original petition. Then, on June 30, 2003, with both GX and FTF participating in the petitioning process, plaintiffs sent a letter to Customs asking that the law and regulations be enforced with respect to this matter. Again receiving no response, Plaintiffs ILRF and GX filed suit in July 2003, in the District Court for the District of Columbia, seeking to compel Customs to enforce section 307 and the accompanying regulations. In August, 2003, the District Court dismissed the case on jurisdictional grounds. Plaintiffs then filed the present action in the Court of International Trade in October of 2004, seeking once again to compel Customs to undertake its ostensibly required investigation. Plaintiffs claimed they have confirmed the use of forced child labor in Cote d'Ivoire's cocoa industry, and request that the court issue an order, *inter alia*, directing Customs to (1) investigate allegations of forced child labor in Cote d'Ivoire, and (2) upon identifying forced child labor in any imports of cocoa from Cote d'Ivoire, issue an order prohibiting entry of such merchandise into the United States.

Discussion

Defendant moves to dismiss on two separate grounds: that plaintiffs' action is untimely and that plaintiffs lack standing. The court will discuss the dispositive issue of standing.

This court has jurisdiction pursuant to 28 U.S.C. § 1581(i)(3), (4), which grants the court exclusive jurisdiction to review matters arising out of laws providing for embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of health and safety, and provides for enforcement with respect to such matters.

I. Standing

Plaintiffs, as the parties invoking federal jurisdiction, have the burden of proof and persuasion as to the existence of standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990). The question of standing involves the determination of whether a particular litigant is entitled to invoke the jurisdiction of the federal court in order to decide the merits of a dispute or of particular issues. *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Where the standing of a litigant is placed in issue the court must undertake a two-step analysis, which involves both the constitutional limitations and the prudential limitations that circumscribe standing. *Id.* As a threshold matter, the court must insure that the litigant satisfies the case or controversy requirements of Article III of the Constitution. *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 39 (1976). Once the court determines that the litigant satisfies the constitutional aspects, it must consider whether any prudential limitations restrain the court from exercising its judicial power. *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979). In determining standing, the court must undertake a careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted. *Allen v. Wright*, 468 U.S. 737, 752 (1984).³

A. Constitutional Standing

The principal limitation imposed by Article III is that a litigant seeking to invoke the

³ As mentioned above, defendant brought its challenge pursuant to USCIT R. 12(b)(1). USCIT Rule 12 provides for dismissal on the basis of a lack of subject matter jurisdiction, and also on the closely analogous motion to dismiss for failure to state a claim upon which relief can be granted. USCIT R. 12(b)(5).

court's authority must show that he personally has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the defendant. *Gladstone*, 441 U.S. at 98. Article III also requires the litigants to establish that there is a causal connection between the litigant's injury and the defendant's conduct, and that this injury is likely to be redressed should the court grant the relief requested. *Allen*, 468 U.S. at 751.

In the instant case, plaintiffs allege injuries to their organizational and programmatic interests. These alleged injuries stem from the defendant's failure to investigate the presence of forced child labor in Cote d'Ivoire's cocoa industry. As part of their complaint, plaintiffs claim that their reporting and monitoring requirements, and their interests in proposing legislation and policy initiatives were adversely affected. In effect, plaintiffs seek informational standing, claiming that defendant's failure to conduct its required investigation left them without information vital to their organizational purposes. Despite defendant's inaction, however, plaintiffs fail to satisfy the Article III minima of redressable injury-in-fact necessary to establish constitutional standing.

Plaintiffs rely on the regulations promulgated pursuant to section 307 to support their claim of injury-in-fact. These requirements, found in Customs' own regulations, state the following:

Upon the receipt by the commissioner of Customs of any communication submitted pursuant to paragraph (a) or (b) of this section [alleging forced labor] and found to comply with the requirements of the pertinent paragraph, the Commissioner will cause such investigation to be made as appears to be warranted by the circumstances of the case and the Commissioner or his designated representative will consider any representations offered by foreign interests, importers, domestic producers, or other interested persons.

19 C.F.R. § 12.24 (2004). Thus, plaintiffs argue, because Customs failed to initiate an investigation into child slavery practices in Cote d'Ivoire, they themselves were forced to expend resources to obtain this information in order to fulfill their organizational objectives.

Where a statute explicitly denies relief on the undisputed facts presented in a case, however, a party's claim cannot lie under the regulations promulgated pursuant to the statute. *See Alexander v. Sandoval*, 532 U.S. 275, 285-286 (2001) (citing *Central Bank of Denver, N. A. v. First Interstate Bank of Denver, N. A.*, 511 U.S. 164, 173, (1994) (a "private plaintiff may not bring a [suit based on a regulation] against a defendant for acts not prohibited by the text of [the statute]")). Section 307 of the Tariff Act states that:

[a]ll goods, wares, articles and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor and/or forced labor and/or indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. . . . *but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.*

19 U.S.C. § 1307 (emphasis added). This domestic consumptive demand exception provided for in the latter half of the provision is crucial given the facts of this case. The parties agree that no domestic cocoa production industry exists in the United States sufficient to meet domestic consumptive demand.⁴ In such instances, the statute expressly prohibits application of *any* of the

⁴ At oral argument, counsel for defendant-intervenor Chocolate Manufacturers Association, clarified that there are "minuscule" amounts of cocoa grown in the United States, namely in Hawaii. Nevertheless, all parties agree that the United States' considerable demand for cocoa cannot be satisfied without imports.

provisions found within it. As a result, the regulations promulgated pursuant to the statute, which merely direct how Customs will implement the directives of the statute, can neither be invoked nor relied upon by plaintiffs in this case. Therefore, any injury relying on 19 C.F.R. § 12.24 cannot be redressed by this court where the consumptive demand exception applies. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (holding that where prayed-for recourse to interagency rule would not redress injury claimed by plaintiffs, burden of proof regarding standing could not be met). In other words, because of the undisputed facts regarding the lack of any significant domestic production of cocoa, section 307 essentially renders itself moot under these facts.

In the first and seminal case brought pursuant to section 307, *McKinney, et. al. v. United States Dep't of the Treasury, et. al.*, 799 F.2d 1544 (Fed. Cir. 1986), this Court and the Federal Circuit considered the constitutional and prudential standing of a group of plaintiffs which included human rights non-governmental organizations who were situated similarly to the plaintiffs in this case. In *McKinney*, plaintiffs sought to exclude from entry into the United States various products mined, produced or manufactured in the Soviet Union, allegedly by convict, forced, or indentured labor. While both this Court and the Federal Circuit ultimately held that the plaintiffs all lacked standing, the Federal Circuit stated in dicta that the case law appeared to support the argument that informational injury – similar to that alleged in the present case – was sufficient to satisfy the injury requirement of Article III. The Federal Circuit then went on to find that the *McKinney* plaintiffs were not within the zone of interest of section 307 – an issue this

court does not reach in the present case.⁵

Plaintiffs argue that two amendments to section 307, which were enacted after *McKinney* was decided by the Federal Circuit, lessen the effect of the domestic consumption exception. Plaintiffs refer to the Sanders and Harkin amendments, named for Representative Bernie Sanders and Senator Tom Harkin, respectively. *See* Pub. L. No. 105-61, § 634, 111 Stat. 1272, 1316 (Oct. 10, 1997); Pub. L. No. 106-200, § 411 (May 18, 2000). Plaintiffs cite extensively to the legislative history of these two amendments in support of the proposition that they represented a bipartisan effort directing Customs to protect children working in indentured and forced labor overseas.⁶ As defendant correctly argues, however, neither amendment as passed addressed, modified, or repealed the consumptive demand exception to section 307. The Sanders Amendment modified the Treasury, Postal Service and General Government Appropriations Act

⁵ In *McKinney*, there was ostensibly a domestic industry that could satisfy domestic consumption demands for the various goods at issue in that case. Because in the instant case, however, plaintiffs and defendants agree that there is no domestic cocoa production industry, there is no doubt as to the applicability of the domestic consumption exception. Thus, this court need not reach the prudential standing inquiry that was determinative in *McKinney*. 9 CIT 315, 614 F. Supp. 1226, 1239, 1240-41 (1985); 799 F.2d at 1557.

⁶ The court notes that the record in this case included ample evidence that Customs took this direction seriously. It issued several advisories to importers on the issue of forced child labor and spent considerable agency resources on educational efforts which included strong warnings against the importation of products produced by means of such forced labor. One such publication stated “[a]busive child labor is one of the most serious worker and human rights issues facing the world trading community.” U.S. Customs Service Advisory on International Child Labor Enforcement, at 5. Because of this record, the court attempted to broker a settlement between these parties reminding them of how much agreement there seemed to be on the core issue – the need to eliminate abusive child labor. Regrettably, the government defendants were unwilling to consider any suggestions toward settlement, representing to the court at the conference held in chambers on August 1, 2005 that agency priorities had changed after September, 11, 2001.

for Fiscal Year 1998, as well as subsequent appropriations bills, in order to ensure that government funds will not be used for the importation of forced or indentured child labor, as determined by section 307. Specifically, the Sanders Amendment provides the following.

None of the funds made available in this Act for the United States Customs Service may be used to allow the importation into the United States of any good, ware, article or merchandise mined, produced, or manufactured by forced or indentured child labor, as determined pursuant to Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307).

Pub. L. No. 105-61, § 634, 111 Stat. 1272, 1316 (Oct. 10, 1997). The Harkin Amendment clarified that references to “forced labor” and “child labor” in section 307 include “forced or indentured child labor.” Unfortunately for plaintiffs, however, neither Amendment altered the fact that section 307 subordinates human rights concerns to the availability of the goods at issue by means of domestic production.⁷

Plaintiffs also argue that Customs has not uniformly applied the domestic consumption exception in other section 307 cases, and that imports from other countries which are not derived from forced labor should be considered as substitutes for domestic production in cases such as this. Plaintiffs first cite to Customs’ action regarding the detention of bidi cigarettes from India, which were found to be produced by indentured child labor, even though there was no domestic production of bidi cigarettes. *Pl’s Memo in Opp to Def’s Mot. to Dismiss*, at 31, n.29 (citing Sen. Rep. 106-500, 2000 WL 1517014 (June 2000)). As defendant correctly responds, however,

⁷ As defendant points out, efforts to excise the domestic production exception from the text of the statute have repeatedly proven unsuccessful. *See, e.g.*, S.1684, 145 Cong. Rec. S11879 (Oct. 4, 1999), *available at* 1999 WL 785710; Amendment No. 2371; 145 Cong. Rec. S13431, S13449 (Oct. 28, 1999), *available at* 1999 WL 979384; Amendment No. 2502; Cong. Rec. S13693, S13716 (Nov. 2, 1999), *available at* 1999 WL 992619.

Customs found a reasonable substitute produced domestically in sufficient quantities to satisfy domestic demand. *Def's Reply in Support of Mot. to Dismiss*, at 14 (citing *China Diesel Imports, Inc. v. United States*, 18 CIT 515, 870 F. Supp. at 351, n.8 (1994) (“merchandise need not be identical or even nearly so, but merely a substitute that would generally be acceptable to the purchaser”)). In the case at hand, no reasonable domestic substitute has been identified.

Lastly, plaintiffs argue that voluntary non-domestic production of cocoa is available, and should be counted towards the consumptive demand requirement. This argument is also unavailing. The statutory language is clear in that it requires goods which are “mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States” in order for the exception not to apply. 19 U.S.C. §1307. For the court to read the availability of imports into this clear language would be an impermissible expansion of the statutory text.

Because plaintiffs have not established a redressable injury-in-fact, they cannot satisfy the requirements of Article III standing. Thus, the court need discuss neither prudential standing nor the timeliness of the instant action. Accordingly, it is hereby

ORDERED that this action is dismissed for lack of standing.

August 29, 2005

New York, NY

/s/ Judith M. Barzilay

Judith M. Barzilay, Judge

UNITED STATES COURT OF INTERNATIONAL TRADE

	x	
International Labor Rights Fund,	:	
	:	
Global Exchange,	:	
and	:	
	:	
Fair Trade Federation,	:	
	:	Court No. 04-00543
Plaintiffs,	:	
	:	Before: Judith M. Barzilay, Judge
v.	:	
	:	
United States,	:	
	:	
Defendant,	:	
	:	
and	:	
	:	
Chocolate Manufacturers Association,	:	
	:	
Defendant-Intervenor.	:	
	x	

JUDGMENT ORDER

Upon reviewing Defendant's USCIT Rule 12(b)(1) Motion to Dismiss, Plaintiff's response thereto, the parties' supplemental briefs, and in consideration of other papers and proceedings herein, it is hereby

ORDERED that Defendant's Motion be and hereby is granted; and it is further

ORDERED that this action is dismissed.

August 29, 2005

/s/ Judith M. Barzilay

New York, NY

Judith M. Barzilay, Judge

NOTICE OF ENTRY AND SERVICE

This is a notice that an order or judgment was entered in the docket of this action, and was served upon the parties on the date shown below.

Service was made by depositing a copy of this order or judgment, together with any papers required by USCIT Rule 79(c), in a securely closed envelope, proper postage attached, in a United States mail receptacle at One Federal Plaza, New York, New York 10278 and addressed to the attorney of record for each party at the address on the official docket in this action, except that service upon the United States was made by personally delivering a copy to the Attorney-In-Charge, International Trade Field Office, Civil Division, United States Department of Justice, 26 Federal Plaza, New York, New York 10278 or to a clerical employee designated, by the Attorney-In-Charge in a writing filed with the clerk of the court.

Leo M. Gordon
Clerk of the Court

Date: _____

By: _____

Deputy Clerk

EXHIBIT

4

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18 *Attorneys for Plaintiffs*

19
20
21
22 **UNITED STATES DISTRICT COURT**
23 **CENTRAL DISTRICT OF CALIFORNIA**

24 JOHN DOE I, Individually and on)
25 behalf of Proposed Class Members;)
26 JOHN DOE II, Individually and on)
27 behalf of Proposed Class Members;)
28 JOHN DOE III, Individually and on)
behalf of Proposed Class Members;)
JOHN DOE IV, Individually and on)
behalf of Proposed Class Members;)
JOHN DOE V, Individually and on)
behalf of Proposed Class Members;)
and JOHN DOE VI, Individually)
and on behalf of Proposed Class)
Members,)

Plaintiffs,

v.

29 NESTLÉ, S.A., NESTLÉ U.S.A.,)
30 NESTLÉ Ivory Coast, ARCHER)
31 DANIELS MIDLAND CO.,)
32 CARGILL INCORPORATED)
33 COMPANY, CARGILL COCOA,)
34 CARGILL WEST AFRICA, S.A.)

Defendants.

Case No. CV 05-5133-SVW-MRW

**SECOND AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF AND DAMAGES**

1. **Forced labor (Alien Tort Statute, 28 U.S.C. § 1350)**
2. **Cruel, inhuman, or Degrading Treatment (Alien Tort Statute, 28 U.S.C. § 1350)**
3. **Torture (Alien Tort Statute, 28 U.S.C. § 1350)**

DEMAND FOR JURY TRIAL

1 **I. NATURE OF THE ACTION**

2 1. Plaintiffs John Doe I, John Doe II, John Doe III, John Doe IV, John
3 Doe V, and John Doe VI (referred to herein as the “Former Child Slave” Plaintiffs)
4 are all former child slaves of Malian origin who were trafficked and forced to work
5 harvesting and/or cultivating cocoa beans on farms in Côte d’Ivoire, which supply
6 cocoa beans to the Defendant companies named herein. The Former Child Slave
7 Plaintiffs bring this action on behalf of themselves and all other similarly situated
8 former child slaves of Malian origin against Defendants: Nestlé, S.A., Nestlé,
9 U.S.A., and Nestlé Côte d’Ivoire, S.A. (together as “Nestlé”); Cargill, Incorporated
10 (“Cargill, Inc.”), Cargill Cocoa, and Cargill West Africa, S.A. (together as
11 “Cargill”); and Archer Daniels Midland Company (“ADM”) (referred to
12 collectively as the “Chocolate Importers” or Defendants) for the forced labor and
13 torture they suffered as a result of the wrongful conduct either caused and/or aided
14 and abetted by these corporate entities. Specifically, the Former Child Slave
15 Plaintiffs assert claims for child slavery/forced labor, cruel, inhumane or degrading
16 treatment, and torture under the Alien Tort Statute (“ATS”), 28 U.S.C. § 1350.

17 2. The Former Child Slave Plaintiffs bring their ATS actions
18 in the United States because such claims cannot be maintained in their home
19 country of Mali as currently there is no law in Mali whereby such Plaintiffs can
20 seek civil damages for their injuries against the major exporters of cocoa operating
21 outside of Mali. Nor could claims be brought in Côte d’Ivoire as the judicial
22 system is notoriously corrupt and would likely be unresponsive to the claims of
23 foreign children against major cocoa corporations operating in and bringing
24 significant revenue to Côte d’Ivoire. It is also likely that both Plaintiffs and their
25 attorneys would be placed in danger following the civil unrest in Côte d’Ivoire and
26 the general hostility by cocoa producers in the region where Plaintiffs were forced
27 to work. Further, the Former Child Slave Plaintiffs bring their claims in the United

1 States as the United States has provided a forum for such human rights lawsuits
2 with the passage of the ATS.

3 3. The Former Child Slave Plaintiffs bring this action using pseudonyms
4 due to fear of retaliation against themselves and their families by those persons
5 who trafficked them into Côte d’Ivoire; the owners of farms on which they were
6 enslaved; and by the local buyers, who are employees and/or agents of the
7 Defendants. Plaintiffs’ case not only threatens to expose criminalized elements
8 within the cocoa sector but also to dismantle the source of its significant profits,
9 cheap labor procured through forced child trafficking. For this reason, Plaintiffs’
10 lives are in great danger as evidenced by the violence already wielded against other
11 critics and investigators of corruption and child labor within the cocoa sector. For
12 example, French-Canadian reporter Guy André Kieffer, who was investigating the
13 criminal elements within the cocoa sector, disappeared and is presumed dead.
14 Other journalists investigating cocoa and child labor have also received death
15 threats.

16
17 **II. JURISDICTION AND VENUE**

18 4. Pursuant to 28 U.S.C. § 1331, this Court has federal question
19 jurisdiction over this dispute pursuant to the ATS, 28 U.S.C. § 1350 for the alleged
20 violations of international human rights law. The ATS provides federal
21 jurisdiction for “any civil action by an alien for a tort only, committed in violation
22 of the law of nations or a treaty of the United States.”

23 5. Venue and Personal Jurisdiction over each Defendant is proper in
24 this judicial district, and in the United States as a whole for the foreign Defendants,
25 because, as more fully detailed below, Defendants either own, lease, export to, or
26 otherwise conduct business activities, including the sale of cocoa and cocoa
27 derivative products, to chocolate retailers in the United States and/or in California

1 such that they maintain a general course of business activity within the United
2 States, including California, either directly through their own activities or by virtue
3 of their parent entities acting as their alter ego and/or agent.

4
5 **III. PARTIES**

6 **A. Former Child Slave Plaintiffs**

7 6. Plaintiff John Doe I is an adult citizen of Mali currently residing near
8 the city of Sikasso. He brings this action on behalf of himself and all other former
9 child slaves trafficked into Côte d'Ivoire from Mali for purposes of working and
10 then forced to work on a farm and/or farmer cooperative that provided cocoa beans
11 to any one and/or more of the Defendants named herein.

12 7. Plaintiff John Doe II is an adult citizen of Mali currently residing near
13 the city of Sikasso. He brings this action on behalf of himself and all other former
14 child slaves of Malian origin trafficked into Côte d'Ivoire from Mali for purposes
15 of working and then forced to work on a farm and/or farmer cooperative that
16 provided cocoa beans to any one and/or more of the Defendants named herein.

17 8. Plaintiff John Doe III is an adult citizen of Mali currently residing
18 near the city of Sikasso. He brings this action on behalf of himself and all other
19 former child slaves of Malian origin trafficked into Côte d'Ivoire from Mali for
20 purposes of working and then forced to work on a farm and/or farmer cooperative
21 that provided cocoa beans to any one and/or more of the Defendants named herein.

22 9. Plaintiff John Doe IV is an adult citizen of Mali currently residing
23 near the city of Sikasso. He brings this action on behalf of himself and all other
24 former child slaves trafficked into Côte d'Ivoire from Mali for purposes of
25 working and then forced to work on a farm and/or farmer cooperative that provided
26 cocoa beans to any one and/or more of the Defendants named herein.

1 **C. Chocolate Importer Defendants**

2 19. Defendant Nestlé, SA, is the world's largest food and beverage
3 company involved primarily in the manufacture and sale of beverages, milk
4 products, chocolate, confectionery and biscuits. Based in Switzerland, it employs
5 around 253,000 people and has factories or operations in almost every country in
6 the world. Its stock is traded in the United States in the form of American
7 Depositary Receipts (ADR), which is a negotiable security representing ownership
8 of publicly traded shares in a non-US corporation. Nestlé's ADRs are held through
9 Citibank, N.A., a major U.S. banking institution, and together with its ADR
10 receipts and the sale of Nestlé brand products in the forum constitute significant
11 contacts with the United States, including the forum.

12 20. Nestlé, USA is a wholly-owned subsidiary of Nestlé, SA.
13 Headquartered in California, it is one of the largest food and beverage companies
14 in the U.S. with 21,000 employees nationwide, 42 manufacturing facilities, 6
15 distribution centers, and 58 sales offices across the country, including California. It
16 is one of the largest purchasers, manufacturers, and retail sellers of cocoa products
17 in North America.

18 21. Defendant Nestlé Côte d'Ivoire, SA (or Nestlé Ivory Coast) is a
19 subsidiary of Nestlé, SA. Its purpose within the Nestlé enterprise is to process
20 cocoa beans for export globally, including North America and California
21 specifically.

22 22. Defendant Archer-Daniels-Midland Company (ADM) is a publicly
23 held Delaware corporation with its principal place of business in Decatur, Illinois.
24 It is engaged in the business of procuring, transporting, storing, processing and
25 merchandising agricultural commodities and products. This includes specifically
26 the processing of cocoa beans from Côte d'Ivoire and the production of cocoa
27 liquor, cocoa butter, cocoa powder, chocolate and various cocoa compounds for
28

1 the food processing industry primarily in the United States market, including
2 California. In addition to providing cocoa products to California manufacturers
3 and processors, ADM owns and operates several processing plants in California
4 which process rice, bakery mix and specialty ingredients.

5 23. Defendant Cargill, Incorporated Company (“Cargill, Inc.”) is one of
6 the largest privately held corporate providers of food and agricultural products and
7 services worldwide with over 100,000 employees in 59 countries. Its activities
8 include cultivating and processing grain, oilseeds and other agricultural
9 commodities, including cocoa for distribution to food producers. Headquartered in
10 Minneapolis, it is a family business that is tightly controlled and centrally
11 managed. On information and belief, in 1992, the business was restructured to
12 ensure that managers making decisions about buying and selling commodities had
13 ties to Cargill Headquarters in Minneapolis and would receive instructions from
14 there.

15 24. Cargill Cocoa is a subsidiary of Cargill, Inc. incorporated in
16 Pennsylvania. It is a major cocoa bean originator and processor. It offers a wide
17 range of high-quality cocoa powder, butter and liquor products under the Gerkens
18 and Wilbur brands to leading manufacturers of food, chocolate and confectionery
19 products worldwide, including processors and manufacturers of cocoa and cocoa
20 products in California. Products are sold through an international network of
21 offices, agents and distributors. Its facilities include a production facility in Côte
22 d’Ivoire for the production of cocoa liquor, butter and powder and origination of
23 cocoa beans. Cargill Cocoa & Chocolate North America is responsible for
24 partnerships with farmers in the Ivory Coast, including a program to train farmers
25 in crop protection.¹

26 ¹ 85 out of 101 farmer cooperatives in Cote d’Ivoire are involved in their crop
27 protection initiative “Yiri”.

1 respect to labor practices on the farms and/or farmer cooperatives from which
2 cocoa products are sourced.

3 29. Plaintiffs are informed and believe that at all material times each of
4 the parent defendants and their relevant subsidiaries were the agent or otherwise
5 working in concert with each other and that each such subsidiary was acting within
6 the course and scope of such agency or concerted activity. To the extent that said
7 conduct was perpetrated by certain subsidiary defendants, the parent defendant
8 corporations confirmed and ratified the same.

9
10 **V. ALTER EGO**

11 30. Plaintiffs contend that each of the subsidiaries identified herein is and
12 was, at all relevant times, the alter-ego of the parent companies identified herein.
13 Specifically, the parent entities control every aspect of the subsidiaries' operations,
14 particularly with respect to the sourcing, purchasing, manufacturing, distribution,
15 and/or retailing of cocoa and cocoa derived products, and have used them merely
16 as conduits for the receipt or transfer of funds and/or products with respect to
17 cocoa products derived from the Côte d'Ivoire.

18 31. Upon information and belief, the subsidiary and parent corporations
19 named herein have common ownership, common board of directors, are
20 inadequately capitalized for the risks at hand, and have failed to observe corporate
21 formalities with respect to their operations. The inherent and pervasive failure to
22 maintain separate identities constitutes improper conduct and disrespects the
23 privilege of using the corporate form to conduct business.

24 **VI. AIDING AND ABETTING**

25 32. Côte d'Ivoire is a country struggling to recover from years of civil
26 conflict. Active hostilities ended in January 2003, leaving the country divided into
27 three zones of control: the government-controlled south, the rebel-held north and
28

1 the Zone of Confidence, which was formally patrolled by international troops.
2 Although several peace agreements have been signed, and the Zone of Confidence
3 dismantled, acts of violence continue. Côte d'Ivoire's cocoa-producing regions,
4 which lie mostly with the government controlled southern zone, are at the heart of
5 the Ivorian conflict. In this conflict, the cocoa hierarchy has been described by the
6 International Crisis Group as an "Enron-type structure" of front companies with
7 secret bank accounts used to transfer funds with multiple layers of insulation
8 between the criminal acts and their eventual beneficiaries.

9 33. It is in this often lawless and clandestine backdrop that Cote d'Ivoire
10 has emerged as the largest exporter of cocoa in the world, providing 70% of the
11 world's supply. A majority of this cocoa is imported to the US by the named
12 Defendants herein. Indeed, journalist Carol Off explains in her 2006 book "*Bitter*
13 *Chocolate: Investigating the Dark Side of the World's Most Seductive Sweet*" that
14 the "dirty work" of buying and selling cocoa beans in this conflict ridden country
15 has become the domains of large multinationals such as Defendants Nestlé, ADM,
16 and Cargill and that since the 1990s, Côte d'Ivoire cocoa production has been
17 controlled by these companies with the unilateral goal of finding the cheapest
18 sources of cocoa.

19 34. Defendants ADM and Cargill are headquartered in and have their
20 main management operations in the U.S., and every major operational decision by
21 both companies is made in or approved in the U.S. At all times relevant to the
22 injuries to the Plaintiffs, Defendants ADM and Cargill had complete control over
23 their cocoa production operations in Côte d'Ivoire, and they regularly had
24 employees from their U.S. headquarters inspecting their operations in Côte
25 d'Ivoire and reporting back to the U.S. headquarters so that the U.S.-based
26 decision-makers had accurate facts on the ground. Defendants ADM and Cargill
27

1 had the ability and control in the U.S. to take any necessary steps to eradicate the
2 practice of using child slaves to harvest their cocoa in Côte d’Ivoire.

3 35. Defendant Nestlé established a major operation in the U.S., which is a
4 key market for Nestlé cocoa products. To promote, expand and protect this market,
5 Nestlé established Nestlé, USA as a wholly-owned subsidiary of Nestlé, SA. This
6 subsidiary is now one of the largest food and beverage companies in the U.S. with
7 21,000 employees nationwide, 42 manufacturing facilities, 6 distribution centers,
8 and 58 sales offices across the country. It is one of the largest purchasers,
9 manufacturers, and retail sellers of cocoa products in North America. Every major
10 operational decision regarding Nestlé’s U.S. market is made in or approved in the
11 U.S. At all times relevant to the injuries to the Plaintiffs, Nestlé had complete
12 control over its cocoa production operations in Côte D’Ivoire, and had the ability
13 and control in the U.S. to take any necessary steps to eradicate the practice of using
14 child slaves to harvest its cocoa in Côte D’Ivoire. Nestlé regularly had employees
15 from their Swiss and U.S. headquarters inspecting their operations in Côte D’Ivoire
16 and reporting back to these offices so that the U.S.-based decision-makers had
17 accurate facts on the ground.

18 36. The history and methodology of the exploitation of child slaves in
19 Côte D’Ivoire by the Defendants and other multinationals is virtually undisputed.
20 Defendants were able to obtain an ongoing, cheap supply of cocoa by maintaining
21 exclusive supplier/buyer relationships with local farms and/or farmer cooperatives
22 in Côte d’Ivoire. Through these exclusive supplier/buyer relationships, maintained
23 in the form of memorandums of understanding, agreements, and/or contracts, both
24 written and oral, Defendants are able to dictate the terms by which such farms
25 produce and supply cocoa to them, including specifically the labor conditions
26 under which the beans are produced.

1 37. Defendants control such conditions by providing local farmers and/or
2 farmer cooperatives with *inter alia* ongoing financial support, including advance
3 payments and personal spending money to maintain the farmers' and/or the
4 cooperatives' loyalty as exclusive suppliers; farming supplies, including fertilizers,
5 tools and equipment; training and capacity building in particular growing and
6 fermentation techniques and general farm maintenance, including appropriate labor
7 practices, to grow the quality and quantity of cocoa beans they desire. The training
8 and quality control visits occur several times per year and require frequent and
9 ongoing visits to the farms either by Defendants directly or via their contracted
10 agents.

11 38. Among other countries, Defendant Nestlé was directly involved in the
12 purchasing and processing of cocoa beans from Côte d'Ivoire. Among its exclusive
13 supplier/buyer relationships were agreements with suppliers Keita Ganda and Keita
14 Baba from plantations in Daloa; Lassine Kone from plantations in Sitafa. Among
15 other areas, Defendant Nestlé processed the cocoa near Odienne in Côte d'Ivoire.

16 39. Defendant Cargill has a direct presence in Côte d'Ivoire cocoa farms.
17 Carol Off notes that Cargill is possibly the largest privately owned corporation in
18 the world and that its influence over the food we eat, in terms of where it comes
19 from and how it is produced, is staggering. Among its exclusive supplier/buyer
20 relationships are Dôté Colibaly, Soro Fonipoho, Sarl Seki, Lenikpo Yéo (alias "the
21 Big One") from which 19 Malian child slaves were rescued, Keita Ganda, and
22 Keita Hippie, who produce the bulk of the cocoa in the Bouaflé region.

23 40. Cargill's Côte d'Ivoire Country Webpage states that in 2000/01,
24 Cargill opened two up-country buying stations in Daloa and Gagnoa in the western
25 cocoa belt, and that Cargill's Micao cocoa processing plant has obtained ISO 9002
26 certification, which is a system of quality standards for food processing from
27

1 sourcing through processing that inherently requires detailed visits and monitoring
2 of farms.

3 41. Defendant ADM was also directly involved in the purchasing and
4 processing of cocoa beans from Côte d'Ivoire. Among its exclusive suppliers is a
5 farmer cooperative known as SIFCA. In a 2001 article found in *Biscuit World*,
6 ADM explains that its acquisition of SIFCA in Côte d'Ivoire "gives ADM Cocoa
7 an unprecedented degree of control over its raw material supply, quality and
8 handling." In the same article, an ADM executive states that "ADM Cocoa can
9 deliver consistent top quality products by control of its raw materials," and that
10 "ADM is focused on having direct contact with farmers in order to advise and
11 support them to produce higher quality beans for which they will receive a
12 premium."

13 42. ADM's 2004 Cocoa Webpage openly states that ADM Cocoa has a
14 "strong presence in origin regions," and in a section entitled "Farmers as Partners,"
15 ADM further states that "[t]he success of the thousands of small, family-owned
16 farms on which cocoa is typically grown is vital to the cocoa industry. That is why
17 ADM is working hard to help provide certain farmer organizations with the
18 knowledge, tools, and support they need to grow quality cocoa responsibly and in a
19 sustainable manner . . . ADM is providing much needed assistance to organizations
20 representing thousands of farmers and farming communities. These efforts are
21 making an impact at the farm level."

22 43. The ADM Cocoa Brochure, states that "[t]hrough its support of the
23 World Cocoa Foundation, the European Cocoa Association, the US Chocolate
24 Manufacturers Association and other programs, ADM is actively involved in long-
25 term efforts to ensure that cocoa is grown responsibly and sustainably. Such efforts
26 include research into environmentally sound crop management practices, plant
27 breeding work to develop disease-resistant varieties and farmer field schools to
28

1 transfer the latest know-how into the hands of millions of cocoa farmers around the
2 world. Starting from the cocoa growers through to the world's top food and
3 beverage manufacturers, ADM Cocoa is committed to delivering the best in
4 product quality and service at every stage.”

5 44. As part of their ongoing and continued presence on the cocoa farms in
6 Côte d’Ivoire for purposes of quality control, pesticide eradication, cultivation
7 assistance, harvesting, and packing and shipping, among other activities and
8 assistance to the farmers, Defendants, through U.S.-based employees, had first-
9 hand knowledge of the widespread use of child labor harvesting cocoa on the farms
10 they were working with and purchasing from.

11 45. In its 10-K securities filings, ADM explicitly stated that research on
12 the cocoa industry and on development was based in Milwaukee, Wisconsin.

13 46. ADM processed the cocoa in facilities in Massachusetts, New Jersey,
14 and Wisconsin.

15 47. Defendants also had knowledge of the widespread use of child labor
16 harvesting cocoa on the farms they were working with and purchasing from based
17 on the numerous, well-documented reports of child labor by both international and
18 U.S. organizations.

19 48. The U.S. State Department, the International Labor Organization
20 (ILO), and UNICEF, among others, have confirmed since the late 1990s the
21 existence of child slavery with documented reports and statistics. Notable non-
22 governmental organizations have also independently confirmed that many, if not
23 most, of the children working on Ivorian cocoa plantations are being forced to
24 work as slaves without any remuneration.

25 49. In 1997, UNICEF reported that children from the neighboring
26 countries of Mali and Burkina Faso are being trafficked to Côte d’Ivoire to harvest
27 cocoa beans. *See Carol Bellamy, The State of the World's Children 1997: Focus*

1 *on Child Labour*, Oxford University Press for UNICEF (1996). The ILO estimates
2 there are 378,000 children working in Côte d'Ivoire in various sectors of the
3 economy. International Programme on the Elimination of Child Labour, ILO,
4 *Combating Trafficking in Children for Labour Exploitation in West and Central*
5 *Africa* (2001). The U.S. State Department has also estimated that there were at
6 least 15,000 child laborers working on cocoa, coffee, and cotton farms in 2004.
7 Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Country*
8 *Reports on Human Rights Practices, 2004: Cote d'Ivoire* (2004).

9 50. Despite the well-documented use of child labor on cocoa farms in
10 Côte d'Ivoire, Defendants not only purchased cocoa from farms and/or farmer
11 cooperatives which they knew or should have known relied on forced child labor in
12 the cultivating and harvesting of cocoa beans, but Defendants provided such farms
13 with money, supplies, and training to do so with little or no restrictions from the
14 government of Côte d'Ivoire. Upon information and belief, several of the cocoa
15 farms in Côte d'Ivoire from which Defendants source are owned by government
16 officials, whether directly or indirectly, or are otherwise protected by government
17 officials either through the provision of direct security services or through
18 payments made to such officials that allow farms and/or farmer cooperatives to
19 continue the use of child labor.

20 51. Defendants, because of their economic leverage in the region and
21 exclusive supplier/buyer agreements, each had the ability to control and/or limit
22 the use of forced child labor by the supplier farms and/or farmer cooperatives from
23 which they purchased their cocoa beans. The Defendants, based in the U.S., and
24 focused on protecting their U.S. market share following increased negative
25 campaigning in the U.S. against their use of child labor in harvesting cocoa in
26 West Africa, decided in the U.S. to do little or nothing to stop the exploitation and
27 abuse of child workers and instead merely issue promises and policy statements in
28

1 the U.S. to falsely assure the U.S. consumers that they were committed to putting
2 an end to child slavery in their cocoa production. The three Defendants each made
3 specific and false assertions in the U.S. to U.S. consumers to deny that they were
4 aiding and abetting child slavery, which allowed each of them to continue aiding
5 and abetting child slavery with no measurable loss of U.S. market share.

6 52. Defendant Nestlé published in the U.S. in English and targeting the
7 U.S. market its “Standards of Business Conduct,” which state that “Nestlé is
8 against all forms of exploitation of children. Nestlé does not provide employment
9 to children before they have reached the age to have completed their compulsory
10 education . . . and expects its suppliers to apply the same standards. Nestlé abides
11 by national laws in all countries in which it has operations and complies with the
12 International Labour Organisation (ILO) Convention 138 on Minimum Age for
13 Employment and the ILO Convention 182 on the Worst Forms of Child Labour.”
14 Nestlé also informed U.S. consumers in the U.S. that it requires all of its
15 subcontractors and Outsourcing Contractors to adhere to Nestlé’s Corporate
16 Business Principles, and chooses its Suppliers based on, *inter alia*, their “minimum
17 corporate social responsibility standards.”

18 53. Nestlé’s 2006 “Principles of Purchasing,” published in the U.S. in
19 English and targeting the U.S. market, states “purchasing should, wherever
20 possible, be part of the Supply Chain . . . and that Strategic Buyers perform
21 strategic activities such as market research or analysis [and] supplier profiling and
22 selection.” Under the section “Raw Materials,” Nestlé states it “provides
23 assistance in crop production.” Under the section, “Traceability,” Nestlé states
24 “[t]raceability includes tracking inside our company supply chain, i.e. from the
25 reception of raw and packaging materials, production of finished products to
26 delivery to customers.” Indeed, Nestlé states that “[t]raceability of incoming
27 materials is of the utmost importance to Nestlé. In dealing with suppliers,

1 Purchasing must insist on knowing the origin of incoming materials and require
2 suppliers to communicate the origin of their materials.” Nestlé’s Principles of
3 Purchasing also states that it “actively participate[s] as the first link in an integrated
4 supply chain;” that it “develop[s] supplier relationships;” and that it “continually
5 monitor[s] the performance, reliability and viability of suppliers.”

6 54. Nestlé’s 2005 Webpage on Suppliers Management also discusses the
7 importance of the Nestlé Supply Chain for production operations. “The Nestlé
8 Quality System covers all steps in the food supply chain, from the farm to the
9 consumer of the final products. Quality assurance activities are not confined to
10 production centers and head offices. They include working together with producers
11 and suppliers of raw . . . materials.”

12 55. Nestlé’s Commitment to Africa Brochure, published in the U.S. in
13 English and targeting the U.S. market, further states that “[w]hile we do not own
14 any farmland, we use our influence to help suppliers meet better standards in
15 agriculture. . . . Working directly in our supply chain, we provide technical
16 assistance to farmers.” Nestlé goes on to state that the “[s]upport provided to
17 farmers ranges from technical assistance on income generation to new strategies to
18 deal with crop infestation, to specific interventions designed to address issues of
19 child labour.” “Specific programmes directed at farmers in West Africa include
20 field schools to help farmers with supply chain issues, as well as a grassroots
21 ‘training of trainers’ programme to help eliminate the worst forms of child labour.”

22 56. Defendant Nestlé published in the U.S. in English and targeting the
23 U.S. market “*The Nestlé Commitment on Child Labour In Agricultural Supply*
24 *Chains*”

25 ([http://www.nestle.com/assetlibrary/documents/library/documents/corporate_social](http://www.nestle.com/assetlibrary/documents/library/documents/corporate_social_responsibility/nestle-commitment-child-labour.pdf)
26 [_responsibility/nestle-commitment-child-labour.pdf](http://www.nestle.com/assetlibrary/documents/library/documents/corporate_social_responsibility/nestle-commitment-child-labour.pdf)) stating:

- 1 • “Nestlé is against all forms of exploitation of children, and is firmly
2 committed to actions to eradicate child labour from its agricultural supply
3 chains, in line with our commitments in the Nestlé Corporate Business
4 Principles.”
- 5 • “Nestlé is committed to work with all relevant stakeholders . . . to address
6 child labour.”
- 7 • “Nestlé sources agricultural crops from over 5 million farmers, and is
8 exposed to the potential for child labour and the worst forms of child labour
9 across a range of commodities and countries.”
- 10 • “The Commitment has . . . been prepared by Nestlé to specifically guide and
11 align its efforts to tackle child labour in its agricultural supply chains.”

12 57. Defendant Nestlé published in the U.S. in English and targeting the
13 U.S. market “*The Nestlé Supplier Code*,” which states:

- 14 • The Nestlé Supplier Code “defines the **non-negotiable minimum**
15 **standards** that we ask our suppliers and their sub-tier suppliers to respect
16 and adhere to when conducting business with Nestlé.”
- 17 • The supplier code “helps the continued implementation of our commitment
18 to international standards such as the OECD Guidelines for Multinational
19 Enterprises, the UN Guiding Principles on Business and Human Rights, the
20 Core Conventions of the International Labour Organization (ILO) and the 10
21 Principles of the United Nations Global Compact”
- 22 • “The Standards of the Code set forth expectations for the Supplier for whom
23 Nestlé does business, including their parent, subsidiary, or affiliate entities,
24 as well as all others with whom they do business including all employees
25 (including permanent, temporary, contract agency and migrant workers),
26 upstream suppliers and third parties.”

- 1 • The first “pillar” of the Nestlé Supplier Code is Human Rights. Included in
2 this is a prohibition against child labor.

3 58. Defendant Nestlé, by publishing in the U.S. in English and targeting
4 the U.S. market the various statements discussed above, intended to demonstrate to
5 the U.S. market that it had made a decision to prevent child labor harvested cocoa
6 from reaching the U.S. market by using its control over its cocoa suppliers to
7 prevent child slaves from harvesting Nestlé’s cocoa. While Nestlé admitted its
8 control and ability to achieve this, it failed to take the promised action so that it
9 could protect its U.S. market while also continuing to benefit from the cost savings
10 of aiding and abetting child slavery.

11 59. Defendant Cargill's Position Paper on cocoa industry labor, published
12 in the U.S. in English and targeting the U.S. market, explicitly states that
13 “[a]busive treatment towards children in agriculture or in any other industry is not
14 acceptable.” Cargill’s International Code of Conduct, also published in the U.S. in
15 English and targeting the U.S. market, states that Cargill will “comply with the
16 letter and spirit of all applicable . . . laws designed to accomplish equal and fair
17 opportunities in employment.” *Cargill Cocoa Promise*, available at
18 [http://www.cargillcocoachocolate.com/wcm/groups/public/@ccc/@all/documen](http://www.cargillcocoachocolate.com/wcm/groups/public/@ccc/@all/documents/document/na31657361.pdf)
19 [ts/document/na31657361.pdf](http://www.cargillcocoachocolate.com/wcm/groups/public/@ccc/@all/documents/document/na31657361.pdf)). The International Code of Conduct also promises:

- 20 • “We form close, supportive relationships with farmers and farmer
21 organization, providing them with solutions that they can own, and giving
22 them the skills and knowledge to implement programs that will make a
23 positive and meaningful change.” (p. 2)
- 24 • “Cocoa has always been a crop that offered economic opportunity. But now,
25 with many farms at the end of their productive lifecycle, cocoa productivity
26 is under pressure. The majority of smallholder cocoa farms, particularly in
27 West Africa, were established 20–30 years ago. Cocoa is a tree crop and the

1 trees have aged and become less productive; soil nutrient levels have
2 decreased and pests and diseases affect both cocoa pod and overall tree
3 health. **How can we solve this together?**² **By working with farmers to**
4 **dramatically improve knowledge and adoption of good agricultural**
5 **practices – whether that is with the appropriate use of weeding and**
6 **pruning techniques or the development of safer harvesting practices. By**
7 **improving farmers’ incomes and providing better services for farmers,**
8 **their families and their communities. And by providing farmers with**
9 **the planting materials and other inputs they need to invest in their**
10 **farms and prepare for a successful future. It’s all part of the Cargill**
11 **Cocoa Promise, which we are rolling out in six origin countries**
12 **according to local needs.**

- 13 • “We are all too aware of the unique challenges faced in each region, and
14 although West Africa – and **in particular, Côte d’Ivoire . . .**” (p. 5)
- 15 • “Increasingly, reporting needs to incorporate clear proof of tangible change.
16 **That is why we are building on the measurement systems we have**
17 **already established, developing comprehensive indicators to assess the**
18 **impact of our actions and demonstrate the improvement generated by**
19 **programs on the ground. This allows us to track both inputs** (such
20 as the number of farmers trained and volumes certified) **and outputs** (such
21 as improved knowledge of pest and disease control management and solid
22 entrepreneurial skills). **The next step is to consistently measure the impact**
23 **of all of our activities on a broader scale, using impact assessment**
24 **frameworks and the skills of our existing in-house research and**
25 **consultancy team.** When combined with anecdotal material, this is the kind
26

27 ² Emphasis added.

1 of information that cocoa and chocolate manufacturers can use to engage
2 and activate consumer demand in a credible way. **It means consumers can**
3 **understand the current situation in origin countries, as well as the**
4 **difference that they can make by buying sustainable products** – creating
5 a much more compelling proposition.” (p. 10)

- 6 • Cargill claims they are “working to protect the rights of children.” (graphic
7 on p. 11)
- 8 • “Working to Promote and protect the rights of children:
 - 9 ○ . . . [W]e need to raise awareness of child labor issues and
10 **children’s rights in farming communities. The most effective way**
11 **for us to do this is through farmer training.** That is why we have
12 worked in partnership with the International Cocoa Initiative (ICI), a
13 leading organization addressing child labor issues in West African
14 cocoa-growing communities, to develop a specific training module.”
 - 15 ○ “In Côte d’Ivoire, 425 extension agents received four days of
16 intensive training from ICI on the issue of child labor and
17 sensitization, equipping them with the skills to effectively train
18 farmers. The project will reach more than 70,000 cocoa producers
19 before 2016.”
 - 20 ○ In partnership with the International Cocoa Initiative (ICI), 8,720
21 farmers were trained in 2013 to protect and improve the rights of
22 children as an integrated part of our farmer training approach. In total
23 70,000 will be trained.
 - 24 ○ According to Nick Weatherill, Executive Director, International
25 Cocoa Initiative (ICI): “Working with Cargill and ANADER³, we’ve
26

27 ³ Agence nationale d'appui au développement rural, (<http://www.anader.ci/#close>).

1 been able to ensure that thousands of farmers get specialist training on
2 child labor issues to thousands of farmers. Cargill’s Farmer Field
3 Schools gives us, and the ANADER agents we train, unrivalled access
4 to farmers in an established learning environment.”

- 5 • “Supplying smallholders farmers with the knowledge, inputs, and finance
6 they need to make good decisions and run a successful farm over the long
7 term.”
 - 8 ○ With the right investment, cocoa productivity can increase
9 significantly. Already, in Côte d’Ivoire, we have seen that yields of
10 over 800–1,000 kilograms per hectare are achievable in a smallholder
11 context. In many cases, this is a 100% increase of current yields. The
12 appropriate use of inputs such as fertilizers and crop protection help
13 farmers to maximize current cocoa yields without compromising the
14 future of their farms or local environments. **We help them to gain
15 access to the inputs, as well as the financing, for fertilizers and
16 crop protection, to invest in their farms and plan for the future.
17 Cargill’s extensive on-the-ground networks include not just
18 partnerships with farmer organizations, but also buying stations
19 in all the major cocoa- growing regions.** Together, these form an
20 efficient delivery model to store and distribute and provide access to
21 fertilizer, crop protection and planting materials to farmers. (p. 22)

22 Cargill has numerous other releases that contain similar representations that it
23 has complete control of its supply chain and boasts that it has been recognized
24 in this area. All of these policies, as well as the actual decisions that resulted in
25 Cargill continuing to obtain cocoa harvested by child laborers, were made in the
26 U.S. In addition, Cargill’s recent announcement to close a plant in Lititz
27 Pennsylvania stated that “the company’s vast administrative, research and

1 development and marketing resources” are located in Minneapolis, where it
2 maintains its corporate headquarters.

3 60. Defendant ADM’s Business Code of Conduct and Ethics, known as
4 “The ADM Way,” states with respect to Child Labor that “ADM will not condone
5 the employment or exploitation of legally underage workers or forced labor and
6 will not knowingly use suppliers who employ such workers or labor.” ADM
7 further states that its Code, including its Child Labor provision, is “a statement of
8 the values to be recognized in the conduct of ADM’s business by its employees,
9 officers, directors and other agents . . . It is [also] the responsibility of all . . . its
10 subsidiaries worldwide to comply with this Business Code of Conduct and Ethics .
11 . . [and that] the values explained in this [Code] are to be consistently applied
12 throughout the world in ADM’s business, not only when it’s convenient or
13 consistent with other business objectives, but in all situations.” ADM also asserts
14 that it “will deal fairly with its customers, suppliers and business partners [and
15 that] no ADM representative should take unfair advantage of anyone through . . .
16 misrepresentation of material facts or any other unfair dealing practice.”

17 61. Defendants’ assertions, published in the U.S. in English and targeting
18 the U.S. market, make clear that Defendants were able to make decisions in the
19 U.S. that would eradicate child labor and help the child laborers obtain education.
20 However, they failed to implement these decisions after assuring the U.S. market
21 that they would, allowing them to continue to benefit from child slavery without
22 any measurable impact on their bottom line.

23 62. Despite Defendants’ admitted knowledge of the widespread use of
24 forced child labor on the cocoa farms from which they source and their specific
25 policies prohibiting child labor, Defendants not only continued to provide cocoa
26 farms money, supplies, and training to grow cocoa beans for their exclusive use
27 knowing that their assistance would necessarily facilitate child labor, but they

1 actively lobbied against all legal enforcement mechanisms that would have curbed
2 forced child labor.

3 63. In 2001, following news reports that child slavery was a key
4 ingredient of American chocolate, U.S. Congressman Eliot Engel introduced a bill
5 that would have forced U.S. chocolate importers and manufacturers to adhere to a
6 certification and labeling system that their chocolate was “slave free.” The bill
7 passed the House of Representatives with a vote of 291 to 115 in favor of the
8 measure.

9 64. The U.S. chocolate industry, including Defendants, immediately
10 moved to eradicate the bill (rather than child slavery) urging the legislatures,
11 concerned non-governmental organizations, and the public at large that there was
12 no need for concrete, enforceable legislation against child slavery because they
13 would instead implement a private, voluntary mechanism to ensure child labor free
14 chocolate.

15 65. The U.S. chocolate industry, including Defendants, launched a multi-
16 million dollar lobbying effort, which paid off by resulting in the Harkin-Engel
17 Protocol, an entirely voluntary agreement whereby the chocolate industry would
18 essentially police itself and in effect guarantee the continued use of the cheapest
19 labor available to produce its product -- that of child slaves.

20 66. By providing the logistical and financial assistance described herein
21 across a period of years, Defendants knew that the farmers they were assisting
22 were using and continued to use forced child labor, but nevertheless continued to
23 provide such assistance. But for Defendants’ knowing and substantial assistance
24 and their efforts to derail enforceable legal mechanisms via the Harkin-Engel
25 Protocol, the farmers would not have been able to operate their cocoa plantations
26 using forced child labor.

1 67. The Defendants made decisions in the U.S. to respond to the Harkin-
2 Engel Protocol passed by the U.S. Congress by adopting so-called monitoring
3 systems that Defendants knew would serve as a tool to further mislead the U.S.
4 market but that would not actually provide rigorous or accurate marketing.
5 Defendants fought efforts in the U.S. to require enforceable standards that would
6 effectively require Defendants to stop profiting from child slavery.⁴

7 68. The three individual Plaintiffs, and the members of the class, all were
8 forced to work as child slaves during the time that Defendants had decided in the
9 U.S. not to address child slavery, but to instead misrepresent to the U.S. market
10 that they were implementing effective programs to help stop the practice and
11 rehabilitate the former slaves.

12 69. More recent sources confirm the ongoing use of child slaves to
13 harvest cocoa in Côte D'Ivoire by large multinationals, including Nestlé, ADM,
14 and Cargill. *The Dark Side of Chocolate*, a film that focuses on the role of the
15 multinational companies in perpetuating the use of child slaves, provides shocking
16 details about the extent and the horrors of slavery on cocoa plantations in Côte
17 D'Ivoire (<https://www.youtube.com/watch?v=7Vfbv6hNeng>). Further, the U.S.
18 Department of Labor funded researchers at Tulane University, who published a
19 2015 study, *Survey Results on Child Labor in West African Cocoa Growing Areas*,
20 which provides detailed and current facts of the large numbers of children still
21 performing hazardous work in harvesting cocoa in Côte D'Ivoire. Defendants have
22 continued to operate in the U.S. market based on their decision made in the U.S. to

23 _____
24 ⁴ Reports in the past have shown the way that Nestlé profited through keeping labor
25 costs low through these illegal practices. Cocoa farmers receive only 3.2% of the
26 retail price while the mark-up is 43%. Oxfam, *Equality for women starts with
27 chocolate: Mars, Mondelez and Nestle and the fight for Women's Rights* (2013),
available at [https://www.oxfam.org/sites/www.oxfam.org/files/equality-for-](https://www.oxfam.org/sites/www.oxfam.org/files/equality-for-women-starts-with-chocolate-mb-260213.pdf)

1 continue to aid and abet child slavery while implementing a public relations
2 campaign in the U.S. to mislead the U.S. market about the ongoing use of child
3 slavery.

4
5 **VII. HARM TO THE INDIVIDUAL PLAINTIFFS**

6 **A. Former Child Slave Plaintiffs**

7 70. Plaintiff John Doe I was trafficked into Côte d’Ivoire at age fourteen
8 (14) to work on a large cocoa plantation located in Abobogou, near the town of
9 Bouafle in Côte d’Ivoire. He was forced to work on the plantation until the age of
10 nineteen (19), between the period of 1994 and 2000, when he finally escaped.
11 During the four year period, he was forced to work harvesting and cultivating
12 cocoa beans for up to twelve (12) hours a day and sometimes as many as fourteen
13 (14) hours, six days a week. This work included cutting, gathering, and drying the
14 cocoa beans for processing. Upon information and belief, the cocoa cultivated on
15 this plantation is supplied to any one and/or more of the Defendants herein. He was
16 not paid for his work and only given scraps of food to sustain him. He, along with
17 the other children on the plantation, was heavily guarded at all times and at night
18 kept in a locked room to prevent escape. When the guards felt he was not working
19 quickly enough, he was often beaten with tree branches. He was beaten so hard
20 that he suffered cuts on his hands and legs. Plaintiff John Doe I brings this action
21 on behalf of himself and all other similarly situated former child slaves in Mali.

22 71. Plaintiff John Doe II was trafficked into Côte d’Ivoire and forced to
23 work as a child slave on a cocoa plantation for approximately 2 ½ years between
24 the period of 1998-2000. During this time, he was between the age of 12-14 years
25 old, below the legal working age in Côte d’Ivoire. The plantation was located in
26 the Region de Man, Côte d’Ivoire. During the 2 ½ years, he was forced to work
27 harvesting and cultivating cocoa beans for up to twelve (12) hours a day and
28

1 sometimes as many as fourteen (14) hours, six days a week. This work included
2 cutting, gathering, and drying the cocoa beans for processing. Upon information
3 and belief, the cocoa cultivated on this plantation is supplied to any one and/or
4 more of the Defendants herein. Once on the plantation, his movements were
5 strictly controlled and he was not permitted to leave under the threat that he would
6 be severely beaten and his feet cut open, as he had witnessed with the other
7 children who attempted escape. At night, he, along with the other children working
8 on the farm, were forced to sleep on the floor of a locked room until morning when
9 they were again gathered for work. Plaintiff John Doe II was not paid, provided
10 with only the bare minimum of food, and beaten with a whip when the guards felt
11 he was not performing adequately. Plaintiff John Doe II brings this action on
12 behalf of himself and all other similarly situated former child slaves in Mali.

13 72. Plaintiff John Doe III was was trafficked into Côte d'Ivoire and forced
14 into slavery at age 14 on a cocoa plantation located in the Bengalo Region de Man,
15 Côte d'Ivoire. He was forced to work on the plantation for approximately four (4)
16 years until he was 18 years old from 1996-2000. During this time, he worked
17 between twelve (12) and fourteen (14) hours, six days a week cutting, gathering,
18 and drying cocoa beans and was not paid for his work. Upon information and
19 belief, the cocoa cultivated on this plantation is supplied to any one and/or more of
20 the Defendants herein. John Doe III could not leave the plantation under fear that
21 he would be severely beaten and forced to drink urine, as had been done with other
22 the children who attempted escape. He was watched at gun point at all times and at
23 night was forced to sleep in a small locked room with no windows and several
24 other children on the floor. When he did not perform adequately, he was often
25 whipped by the overseer. Plaintiff John Doe III brings this action on behalf of
26 himself and all other similarly situated former child slaves in Mali.

1 73. Plaintiff John Doe IV was trafficked into Côte d’Ivoire when he was
2 around the age of twelve (12) to work on a cocoa plantation in Côte d’Ivoire. He
3 was recruited by a “locateur” who sold him into slavery. The plantation he was
4 sold to was located in Kassangoro. He was forced to work on the plantation for
5 approximately a year between 1998 and 1999, when he finally escaped. During
6 this time, he was forced to work harvesting and cultivating cocoa beans for twelve
7 (12) hours to fourteen (14) hours a day. This work included cutting, gathering, and
8 drying the cocoa beans for processing. Upon information and belief, the cocoa
9 cultivated on this plantation is supplied to one or more of the Defendants herein.
10 He was not paid for his work and only poor food to sustain him. He, along with the
11 other children on the plantation, was heavily guarded at all times and at night kept
12 in a locked room to prevent escape. He tried to escape several times before he
13 succeeded. Once time when he was caught the guards cut his feet at the bottoms
14 and rubbed pepper in the wounds. Another time, he was tied to a papaya tree and
15 was severely beaten. This damaged his left arm and left it permanently damaged.
16 He finally escaped with a few other children by digging a hole under the wall of
17 the hut where they slept with a dirt floor. He escaped to Baoule. The Malian Envoy
18 helped him and other children to get home to their homes and then went back to
19 rescue other Malian children working on the plantation. Plaintiff John Doe IV
20 brings this action on behalf of himself and all other similarly situated former child
21 slaves in Mali.

22 74. Plaintiff John Doe V was sold into slavery and trafficked into Côte
23 d’Ivoire when he was eleven years old by a “locator.” He was forced to work as a
24 child slave on a cocoa plantation for less than a year in approximately 1998. The
25 plantation was located in Kassangoro. He was forced to work harvesting and
26 cultivating cocoa beans for long hours. This was all he did. The work included
27 cutting, gathering, and drying the cocoa beans for processing. Upon information
28

1 and belief, the cocoa cultivated on this plantation is supplied to any one and/or
2 more of the Defendants herein. He was guarded by men with guns. One of the
3 guards was called “nyejugu” (sour face). He ran away once but was captured and
4 severely beaten. He was rescued by the Malian Envoy because another child had
5 escaped and told his family where he was. Plaintiff John Doe V brings this action
6 on behalf of himself and all other similarly situated former child slaves in Mali.

7 75. Plaintiff John Doe VI was trafficked into Côte d’Ivoire at age ten (10)
8 to work on a large cocoa plantation located in Koussou in Côte d’Ivoire. A man
9 took him from Mali to Côte d’Ivoire and sold him to a plantation for 20,000 CFA.
10 He was forced to work on the plantation for three (3) years between 1997 and
11 2001, when he finally escaped. During the three-year period, he was forced to
12 work harvesting and cultivating cocoa beans for very long days, sometimes as
13 many as fourteen (14) hours, six days a week. This work included cutting,
14 gathering, and drying the cocoa beans for processing. Upon information and
15 belief, the cocoa cultivated on this plantation is supplied to one or more of the
16 Defendants herein. He was not paid for his work and only given scraps of food to
17 sustain him. He, along with the other children on the plantation, was heavily
18 guarded at all times and at night kept in a locked room to prevent escape. John
19 Doe VI could not leave the plantation under fear that he would be severely
20 punished. He was with around 75 other Malian children. He saw that children who
21 tried to flee were caught and the bottom of their feet were cut and rubbed with salt.
22 He was beaten for working too slow when he was sick. He has many scars from
23 beatings and from cutting himself with a machete while working. He saw other
24 children who died on the plantation. Plaintiff John Doe VI brings this action on
25 behalf of himself and all other similarly situated former child slaves in Mali.

26 76. The members of the class have been forced to harvest cocoa in the
27 major cocoa regions of Côte d’Ivoire, including but not limited to the geographical
28

1 regions of Bouake, Bouaflé, Man, Daloa, Odienne, Oume, Gagna, Soubre,
2 Duekoue and San Pédro. All Defendants have sourcing relationships within one or
3 more of those areas, and each Defendant has utilized substantial amounts of cocoa
4 harvested with child laborers, including members of the class.

5
6 **VIII. DEFENDANTS' VIOLATIONS OF LAW**

7 77. The causes of action maintained herein arise under and violate the
8 following laws, agreements, conventions, resolutions and treaties:

9 (a) Alien Tort Statute (ATS), 28 U.S.C. § 1350;

10 (b) Protocol Amending the Slavery Convention, done Dec. 7, 1953, 7
11 U.S.T. 479 (entered into force Dec. 7, 1953);

12 (c) Slavery Convention, concluded Sept. 1926, 46 Stat. 2183, T.S. No. 788. 60
13 I.N.T.S 253 (entered into force Mar. 9, 1927);

14 (d) Supplementary Convention on the Abolition of Slavery, the Slave
15 Trade, and Institutions and Practices Similar to Slavery;

16 (e) International Labour Organisation Convention No. 29 Concerning
17 Forced or Compulsory Labor (1930), 39 U.N.T.S. 55 (entered into force May 1,
18 1932);

19 (f) International Labour Organisation Convention No. 105 Concerning the
20 Abolition of Forced Labour Convention;

21 (g) International Labour Organisation (ILO) Convention 138 on Minimum
22 Age for Employment (1973) 1015 U.N.T.S. 297 (entered into force June 19, 1976);

23 (h) ILO Convention 182 on the Worst Forms of Child Labour (1999) 38
24 I.L.M. 1207(entered into force November 19, 2000);

25 (i) United Nations Charter, 59 Stat. 1031, 3 Bevans 1153 (1945);

26 (j) Universal Decl. of Human Rights, G.A. Res. 217A(iii), U.N. Doc.
27 A/810 (1948);

1 (k) International Covenant on Civil and Political Rights, G.A. Res.
2 2220A(xxi), 21 U.N. Doc., GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966);

3 (l) Convention Against Torture and Other Cruel, Inhuman or Degrading
4 Treatment or Punishment, G.A. res. 39/46, 39 U.N. Doc., GAOR Supp. (No. 51) at
5 197, U.N. Doc. A/39/51 (1984);

6 (m) Declaration on the Protection of All Persons From Being Subjected to
7 Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
8 G.A. Res. 3452, 30 U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034
9 (1976);

10 (n) Customary international law;

11 (o) Federal Common and Statutory Law.

12
13 **IX. CLAIMS FOR RELIEF**

14 **COUNT I**

15 **FORCED LABOR BY ALL FORMER CHILD SLAVE PLAINTIFFS**
16 **AGAINST ALL DEFENDANTS**
17 **THE ALIEN TORT STATUTE, 28 U.S.C. § 1350**

18 78. The Former Child Slave Plaintiffs incorporate by reference paragraphs
19 1-77 of this Complaint as if fully set forth herein.

20 79. The Former Child Slave Plaintiffs were placed in fear for their lives,
21 were deprived of their freedom, separated from their families and forced to suffer
22 severe physical and mental abuse.

23 80. Defendants' use of forced labor under these conditions of torture
24 violate the law of nations, customary international law, and worldwide industry
25 standards and practices, including, but not limited to those identified in paragraph

26 81. To the extent necessary, Defendants' actions occurred under color of
27

1 law and/or in conspiracy or on behalf of those acting under color of official
2 authority, such that the injuries inflicted on these Plaintiffs as a result of the forced
3 labor were inflicted deliberately and intentionally through the acts and/or omission
4 of responsible state officials and/or their agents to act in preventing and/or limiting
5 the trafficking or otherwise the use of child slaves. Upon information and belief,
6 there are also several farms which are owned by government officials, whether
7 directly or indirectly, or are otherwise protected by government officials either
8 through the provision of security services or through payments made to such
9 officials that allow farms and/or farmer cooperatives to continue the use of child
10 labor.

11 82. Defendants' conduct in violation of customary international law either
12 directly caused these injuries, or Defendants are liable for these injuries because
13 they provided knowing, substantial assistance to the direct perpetrators, or because
14 the direct perpetrators were agents, and/or employees of Defendants or of
15 companies that are the alter egos of Defendants.

16 83. The conduct of Defendants was malicious, fraudulent and/or
17 oppressive and done with a willful and conscious disregard for the Former Child
18 Slave Plaintiffs' rights and for the deleterious consequences of Defendants' actions.
19 As a result, the Former Child Slave Plaintiffs have sustained significant injuries
20 and these Plaintiffs will continue to experience pain and suffering and extreme and
21 severe mental anguish and emotional distress. The Former Child Slave Plaintiffs
22 are thereby entitled to compensatory and punitive damages in amounts to be
23 proven at trial.

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1 liable because they directly caused these injuries or they provided knowing,
2 substantial assistance to the direct perpetrators, or because the direct perpetrators
3 were agents, and/or employees of Defendants or of companies that are the alter
4 egos of Defendants.

5 89. Former Child Slave Plaintiffs are thereby entitled to compensatory
6 and punitive damages in amounts to be proven at trial.

7
8 **COUNT III**
9 **TORTURE BY ALL FORMER CHILD SLAVE PLAINTIFFS**
10 **AGAINST ALL DEFENDANTS**
11 **THE ALIEN TORT STATUTE, 28 U.S.C. § 1350**

12 90. The Former Child Slave Plaintiffs incorporate by reference paragraphs
13 1-89 of this Complaint as if fully set forth herein.

14 91. Defendants' actions were undertaken under the color of foreign
15 authority. Specifically, Defendants acted under color of law, and/or in conspiracy
16 or on behalf of those acting under color of official authority, by acting with the
17 implicit sanction of the state and/or through the intentional omission of responsible
18 state officials and/or their agents to act in preventing and/or limiting the trafficking
19 or otherwise the use of child slaves into Côte d'Ivoire. Upon information and
20 belief, there are also several farms which are owned by government officials,
21 whether directly or indirectly, or are otherwise protected by government officials,
22 either through the provision of security services or through payments made to such
23 officials that allow farms and/or farmer cooperatives to continue the use of child
24 labor.

25 92. Defendants' conduct either directly caused Plaintiffs' injuries, or they
26 are liable for Plaintiffs' injuries because they provided knowing, substantial
27 assistance to the direct perpetrators, or because the direct perpetrators were agents,
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1 and/or employees of Defendants or of companies that are the alter egos of
2 Defendants.

3 93. The acts described herein were inflicted deliberately and intentionally
4 for purposes which included, among others, punishing the victim or intimidating
5 the victim or third persons, and constitute torture in violation of the law of nations
6 under the ATS.

7 94. Defendants' tortious acts described herein placed all members of the
8 Former Child Slave Plaintiffs in great fear for their lives and caused them to suffer
9 severe physical and mental pain and suffering. The Former Child Slave Plaintiffs
10 are thereby entitled to compensatory and punitive damages in amounts to be
11 proven at trial.

12
13 **X. LIABILITY**

14 95. The Plaintiffs incorporate by reference paragraphs 1-94 of this
15 Complaint as if set forth herein.

16 96. Defendants are directly liable for any actions that they aided and
17 abetted by knowingly providing financial support, supplies, training, and/or other
18 substantial assistance that contributed to the ability of their agents, employees
19 and/or partners to use and/or facilitate the use of child slave labor, including but
20 not limited to any farm and/or farmer cooperative that held any agreement,
21 contract, and/or memorandum of understanding, written or oral, to supply cocoa
22 beans.

23 97. To the extent that Defendants can be said to have acted indirectly,
24 Defendants are vicariously liable for the actions of their agents, employees, co-
25 venturers and/or partners, including specifically any farm and/or farmer
26 cooperative which held any agreement, contract, and/or memorandum of
27 understanding, written or oral, to supply cocoa beans to such Defendants.

1 98. To the extent that any such agent, employee, co-venturers and/or
2 partner used and/or facilitated the use of child slave labor and/or made material
3 misrepresentations and omissions, such entity was acting within the course and
4 scope of such agency, enterprise, or venture and Defendants confirmed and ratified
5 such conduct.

6 99. Defendants are further liable for the acts of any and all corporations
7 and/or entities found to be their alter ego. Defendants' control over these entities'
8 operations, particularly with respect to the sourcing, purchasing, manufacturing,
9 distribution, and/or retailing of cocoa and cocoa derived products, renders them
10 mere conduits for the receipt or transfer of funds and/or products with respect to
11 cocoa products derived from the Côte d'Ivoire. Such inherent and pervasive failure
12 to maintain separate identities constitutes improper conduct and disrespects the
13 privilege of using the corporate form to conduct business.

14
15 **XI. DEMAND FOR JURY TRIAL**

16 100. Plaintiffs demand a trial by jury on all issues so triable.

17
18 **XII. PRAYER FOR RELIEF**

19 101. WHEREFORE, Plaintiffs respectfully request the Court to:

20 (a) enter judgment in favor of the Plaintiffs on all counts of the Complaint;

21 (b) award the Plaintiffs compensatory and punitive damages;

22 (c) grant the Plaintiffs equitable relief including, but not limited to, an
23 injunction prohibiting further damage to their persons, remedying past damage,
24 and protecting their rights under customary international law;

25 (d) award Plaintiffs the costs of suit including reasonable attorneys' fees;

26 and
27

1 (e) award Plaintiffs such other and further relief as the Court deems just
2 under the circumstances.

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4
5 Dated: July 14, 2016



6 Terry Collingsworth (DC Bar# 471830)

7 *Attorney for Plaintiffs*
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EXHIBIT

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United States Senate

WASHINGTON, DC 20510

July 12, 2019

The Honorable Kevin McAleenan
Acting Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave. SE
Washington, D.C. 20528

Dear Acting Secretary McAleenan:

We write to express our ongoing concern that imports of cocoa made with forced labor, including forced child labor, continue to enter the United States, and we urge you to take all necessary action to ensure the U.S. is not complicit in indentured child labor in the cocoa sector. Specifically, we urge you to instruct Customs and Border Protection (CBP) to use its authority under 19 USC 1307 to investigate and block cocoa imports made with forced labor from entering the U.S. market and, where appropriate, pursue criminal investigations related to the use of forced labor to produce goods being imported into the United States.

In the global cocoa industry, children perform the back-breaking work of wielding machetes, carrying heavy loads, and other onerous tasks. The prevalence of exploitative child labor has been a defining characteristic of the sector for decades. More than 20 years ago, the Department of Labor (DOL) and Congress worked with large chocolate companies to develop a framework to eradicate child labor from their supply chains in West Africa, which sources the vast majority of cocoa worldwide. These companies committed to eradicating child labor from cocoa production in West African countries, including the Ivory Coast, by 2005. Unfortunately, they missed that deadline and several subsequent ones, and the widespread use of child labor in the sector persists. According to DOL, more than two million children continue to perform the hazardous work of harvesting cocoa in West Africa.

The global cocoa trade is significant, and the U.S. is a large importer of cocoa products. In 2018 alone, the U.S. imported \$608 million of cocoa beans from the Ivory Coast, in addition to \$100 million of cocoa paste. Given the prevalence of forced child labor in the Ivory Coast's cocoa sector, it is clear at least some, if not a significant portion of those imports, were produced with forced child labor. It is time the U.S. took more aggressive action to combat forced child labor in the cocoa sector and to fully enforce Section 1307 as Congress intended.

Section 1307 prohibits the importation of merchandise mined, produced or manufactured wholly or in part in any foreign country by convict, forced or indentured labor, including forced child labor. As stated on CBP's website, when information that reasonably indicates that merchandise covered by Section 1307 is being imported, the CBP Commissioner can issue a withhold release order (WRO) to prevent those goods from entering the U.S. market. *The Washington Post*

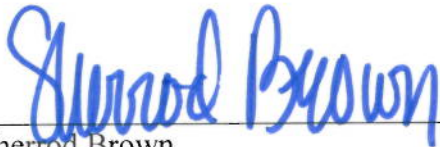
investigative report, “Cocoa’s child laborers” published June 5, 2019¹ appears to verify with firsthand accounts and photographic proof that the Western Africa cocoa supply chain is reliant on indentured child labor.

In light of this overwhelming evidence – which more than meets the evidentiary standard outlined in regulations at 19 CFR 12.42(e) – we urge you to work with CBP to quickly issue a WRO against cocoa products from the Ivory Coast that are not demonstrated to be from sources free of child labor. Forced child labor is too ingrained in that country’s industry to attempt to single out specific cocoa farms or producers as bad actors. In addition, we ask you to coordinate these enforcement efforts with the Immigration and Customs Enforcement (ICE) to determine whether a criminal investigation is warranted.

Congress amended Section 1307 in 2015 to eliminate any exceptions to the ban on forced labor imports, and you have since committed to adopting a zero tolerance policy on its enforcement. We urge you to use the strengthened authority under Section 1307 to take immediate steps to stop the flow of cocoa produced with forced child labor into our country. The last 20 years demonstrate that the travesty of forced child labor in the global cocoa supply chain cannot be solved by chocolate companies’ self-regulation. Nor can it be addressed with lax or nonexistent enforcement. It is time to pursue a comprehensive, aggressive enforcement agenda to eradicate forced child labor in the cocoa sector. The welfare of two million children depend on it.

We look forward to working with you to fully enforce Section 1307 and to ensure the U.S. plays no role in the continuation or tolerance of forced child labor in the world’s cocoa sector.

Sincerely,



Sherrod Brown
United States Senator



Ron Wyden
United States Senator

¹ Whoriskey, P. and Siegel, R. (2019, June 5). Cocoa’s child laborers. *The Washington Post*. Retrieved from https://www.washingtonpost.com/graphics/2019/business/hershey-nestle-mars-chocolate-child-labor-west-africa/?utm_term=.80b4e53f43ce.

EXHIBIT

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