

VIA CBP PORTAL

February 14, 2022

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: **Request that you enforce the law to stop forced child labor in cocoa harvesting**

Dear Commissioner Magnus,

Congratulations on your appointment and best wishes in addressing the many challenges you face.

We, the undersigned, are writing to ask you to take long overdue action to address an urgent problem of ongoing forced child labor in cocoa harvesting in Côte d'Ivoire. Two years ago, on February 14, 2020, International Rights Advocates and Corporate Accountability Lab filed a petition under Section 307 of the Tariff Act of 1930 ("the Petition") asking that U.S. Custom and Border Protection (CBP) take action, as provided for in its legislation, to ban the importation of cocoa by nine specific companies¹ with clear records of harvesting cocoa with forced child labor in Côte d'Ivoire. The Petition referenced official, undisputed reports confirming massive numbers of child laborers in cocoa harvesting and supplemental evidence that many of these children are trafficked and forced to work on cocoa plantations. This past summer, on June 25, 2021, the Petitioners submitted a supplemental petition to CBP providing further evidence of trafficking and forced child labor in the Ivorian cocoa industry. This petition looked not just at specific instances of forced labor, but also documented new information about the manner in which child trafficking occurs, including through which border crossings, and identified specific actors involved in the trade. In our view, the inaction on the Petition is allowing horrific forced child labor to continue in cocoa harvesting and sharply conflicts with stated U.S. government policy.

We draw to your attention the following undisputable facts:

- Clear evidence has been submitted to CBP documenting widespread, ongoing use of forced and trafficked child labor in harvesting and processing cocoa in Côte d'Ivoire.
- 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 Côte d'Ivoire cocoa sector.
- The Child Labor Cocoa Coordinating Group's Annual Report provides ample evidence of forced child labor in the cocoa industry.
- Reports from the Fair Labor Association, civil society groups, academics, as well as news reports, have documented evidence of forced child labor in the cocoa industry for years.
- The Department of Labor has since 2008 published an annual list of products made with forced and child labor. Cocoa from Côte d'Ivoire has been on the list every year.

¹ Nestlé, Cargill, Barry Callebaut, Mars, Olam, Hershey, Mondelēz, World's Finest Chocolate, Inc., and Blommer Chocolate Co.

- ILO Convention 182 regarding the Worst Forms of Child Labor, ratified by the U.S. in 1999, prohibits forced child labor. Young children are incapable of consenting to carry out hazardous labor. Child labor that requires children to work at the expense of their health, schooling, or well-being must be considered forced. The documented conditions of the children working in the cocoa industry in Côte d'Ivoire are well within the ILO's indicators of "forced labor." Child workers are inherently vulnerable and carry out hazardous work, including using machetes, carrying heavy loads, and spraying pesticides.
- In 2020, the U.S. Department of Labor released a study it commissioned by the University of Chicago's NORC Institute finding that there are **1.56 million** children harvesting cocoa in Côte d'Ivoire and Ghana, and 95% of these children, **1.48 million**, are performing hazardous work that violates ILO Convention 182's definition of the Worst Forms of Child Labor and should also meet the ILO's indicators of forced labor.

Thus, the U.S. government has officially established and condemns that forced child labor is involved in harvesting cocoa in Côte d'Ivoire .

For over 20 years the chocolate industry has exerted its power and influence to prevent the U.S. government from taking action to end the industry's use of child labor. In 2001, to defeat a pending U.S. law to regulate the companies' supply chains, the chocolate industry signed the Harkin-Engel Protocol, a "voluntary" initiative that gave the participating companies until 2005 to "phase out" their use of child labor. Two decades later, the chocolate industry has failed to take the necessary action to achieve their "voluntary" target and has given itself endless, self-serving, unilateral extensions of time. The industry now claims that by 2025 it will merely "reduce by 70%" their reliance on child labor.

The chocolate industry's "voluntary" plan and public relations statements that it will end its use of child labor have zero credibility. The industry puts out contradictory messages, admitting on the one hand its use of child labor and pledging to end it. On the other hand, it argues in a pending federal case that it has no more responsibility for ending forced child labor in cocoa harvesting than a kid buying a candy bar at a store, the claims of eight former child slave laborers against the chocolate companies should be dismissed, and the chocolate companies granted impunity.²

Under CBP regulations, 19 C.F.R. § 12.42, if a Petition establishes that there is "**reason to believe**" cocoa from Côte d'Ivoire was produced by forced child labor, this allows CBP to "**reasonably but not conclusively**" find that cocoa from Côte d'Ivoire is produced by forced child labor and issue a Withhold and Release Order (WRO) stopping the importation of cocoa by the named companies from Côte d'Ivoire. This threshold has been clearly established by the Petition. The issuance of a WRO would require any of the named importing companies to establish "by satisfactory evidence that [its] merchandise was not ... manufactured ***in any part*** with" forced child labor.

The chocolate companies would then at long last be required to demonstrate whether they are profiting from forced child labor and to take real action to end it. Many of the responsible

² See Defendants' Joint Motion to Dismiss, ECF No. 27-1 at p. 11, *Issouf Coubaly, et. al.v. Cargill Inc., et. al.*, Civil Action No. 21-0386 (D.DC 2021), available at <https://www.internationalrightsadvocates.org/cases/tevracoubaly>.

companies loudly proclaim there is no forced child labor in their cocoa supply chains. If they can't, after 20 years of promising, prove this essential fact, they should not be extended the privilege of access to the U.S. market. The Petition suggested a flexible approach as to the timing of the requested WRO, and we are confident that giving the companies notice that a WRO is coming on a specific date will be the push needed to shift the cocoa industry from vague and empty promises to concrete action that it promised in signing the Harkin-Engel Protocol more than 20 years ago.

However, CBP has for the past two years taken no enforcement action based on the strong evidence presented in the Petition. It has taken no action to enforce the clear prohibition in the legislation on importing cocoa harvested by forced child labor. It has taken no action to implement the clear, strong policy of the U.S. government to prevent this continuing abuse of children. If CBP continues to decline to take action, this would send a message that the U.S. Government is turning a blind eye to the known use of forced child labor by powerful chocolate companies.

We recognize that the chocolate industry has enormous economic and political power and that the children being exploited and trafficked as child laborers do not. However, the law and policy of the United States is to protect children forced to work, and this should be especially true when they are being exploited by large multinationals that made a written promise over 20 years ago to stop this horrific practice. We are merely asking for the very relief that the chocolate industry itself promised to deliver over 20 years ago.

We call on you to put the lives of millions of children in West Africa ahead of the business interests of the chocolate industry. We call on you to enforce the law you are sworn to uphold to free these children from forced labor. We call on you to demonstrate that the U.S. Government's policy that it will not tolerate forced child labor is genuine and serious.

We await your response with strong hope. Please direct your response to the Petitioners, Terrence Collingsworth (tc@iradvocates.org) and Charity Ryerson (charity@corpaccountabilitylab.org).

SIGNED:

CO-PETITIONERS

Terrence P. Collingsworth, Founder and Executive Director, International Rights Advocates

Charity Ryerson, Founder and Executive Director, Corporate Accountability Lab

Paul L. Hoffman, Co-Director, UC Irvine Civil Rights Litigation Clinic

ORGANIZATIONS

Cathy Feingold, International Director, AFL-CIO

Sharan Burrow, General Secretary, International Trade Union Confederation (ITUC)

Willie Adams, President, International Longshore Warehouse Union

Ed Ferris, Secretary Treasurer, International Longshore Warehouse Union

Bobby Olvera Jr., Vice President – Mainland, International Longshore Warehouse Union

Reid Maki, Coordinator, Child Labor Coalition

Sally Greenberg, Executive Director, National Consumers League

Duncan Jepson, Managing Director, Liberty Shared

Dana Geffner, Executive Director, Fair World Project

Nina Smith, Executive Director, Goodweave

Ayn Riggs, Executive Director, Slavefreechocolate

Martina Vandenberg, Founder and President, Human Trafficking Legal Center

Patti Lynn, Executive Director, Corporate Accountability, USA

Georges C. Benjamin, MD, Executive Director, American Public Health Association, USA

Shahieda Adams, Director, Centre for Environmental and Occupational Health Research, Faculty of Health Sciences, University of Cape Town, South Africa

Devra Davis, President, Environmental Health Trust, USA and Fellow, Collegium Ramazzini

Lauren Ornelas, President, Food Empowerment Project

Prof. John Packer, Director, Human Rights Research and Education Centre, University of Ottawa, ON, Canada.

Diana Bohn, Co-coordinator, Nicaragua Center for Community Action

Perry Gottesfeld, Executive Director, Occupational Knowledge International

Peggy Mason, President, Rideau Institute on International Affairs, Ottawa, Canada.

Grahame Russell, Director, Rights Action. USA & Canada.

Tientcheu Kameni Maurice, Terre et Développement, France.

Gopal Krishna, LL.M., PhD, Director, ToxicsWatch Alliance, New Delhi, India.

Ayda Zugay, Principal and Co-Founder, Advancing Agency

Len Morris, Executive Director, Media Voices for Children

Dorianne Beyer, Esq., General Counsel, National Child Labor Committee

Andrew Dudley, President & CEO, Earth PBC

Fernando Morales-de la Cruz, Executive Director, Cacao for Change

Elana Berger, Executive Director, Bank Information Center

Ellen J. Kennedy, Ph.D., Executive Director, World Without Genocide at Mitchell Hamline School of Law

Catherine Sweetser, Director, UCLA Human Rights Litigation Clinic

Kate Mackintosh, Executive Director, Promise Institute for Human Rights at UCLA School of Law

Bahati Nepa, President and CEO, Africa Beyond Wars

Dr. Ruth Rosenbaum, CREA: Center for Reflection, Education and Action

SUSTAINABLE CHOCOLATE COMPANIES

Shawn Askinosie, Founder/CEO, Askinosie Chocolate

Dahlia Graham, Co-Founder / CEO, Fruition Chocolate Works

Danny Sundell, Co-Owner, Dark Forest Chocolate

Ben Rasmussen, Owner, Chocolate Maker, Potomac Chocolate

Ariel Wolansky, Owner, Choquiero Chocolate

Paul Picton, President, Maverick Chocolate Co.

Aaron Cotler, Chief Operations Officer, Fine & Raw Chocolate

Kazemaru Yukawa, Owner, Aloha Feels

Shelley Wallace, President, Truffle Pig Chocolate

Mara Tcheunou, Co-founder, Bibamba Artisan Chocolate

Malena Lopez-Maggi, Owner, The Xocolate Bar

Jonas Ketterle, President, Ora Cacao

Chris McKellar, Owner, Love's Ice Cream & Chocolate

Barbara Wilson, Owner, Mindo Chocolate

Elaine Read, Owner, Xocolatl Small Batch Chocolate.

Art Pollard, President, Amano Artisan Chocolate

INDIVIDUALS

NOTE: Institutions named for identification purposes only

Kathleen Ruff, Partner, International Rights Advocates, Honorary Fellow, Collegium Ramazzini, Recipient, Medal of the Quebec National Assembly, former Director, British Columbia Human Rights Commission, BC, Canada

David Michaels, PhD, MPH, Professor, Department of Environmental and Occupational Health, Milken Institute School of Public Health, The George Washington University, Washington, DC; former Assistant Secretary, US Occupational Safety and Health Administration (2009 – 2017), USA

Dr Peter F. Infante, D.D.S., Dr.P.H., Department of Environmental and Occupational Health, School of Public Health and Health Services, George Washington University, Washington; former Director of Standards Review, U.S. Occupational Safety and Health Administration

Prof. Mohamed F Jeebhay, MBChB, DOH MPhil (Epi), MPH (Occ Med), PhD FCPHM (Occ Med), Head of Occupational Medicine Division, School of Public Health and Family Medicine, Faculty of Health Sciences, University of Cape Town, South Africa

Penelope Simons, PhD (Cantab.), Associate Professor, Gordon F. Henderson Chair in Human Rights, Vice Dean Research, University of Ottawa, Faculty of Law, Ottawa, ON, Canada

Linda S. Birnbaum, Ph.D., D.A.B.T., A.T.S., Scientist Emeritus and Former Director, National Institute of Environmental Health Sciences and National Toxicology Program; Scholar in Residence,

Nicholas School of the Environment, Duke University, Durham, NC, USA

Sheldon W. Samuels , Director of Health Safety and Environment [Retired]
Industrial Union Department, AFL-CIO, USA

Carl F. Cranor, Distinguished Professor of Philosophy, Faculty Member, Environmental Toxicology, University of California, Riverside, CA, USA

Prof. Laetitia Rispel, South African Research Chair on the Health Workforce; Professor of Public Health, University of the Witwatersrand School of Public Health, Johannesburg, South Africa

Paul Landsbergis, PhD, MPH, Associate Professor, SUNY-Downstate School of Public Health, Brooklyn, NY, USA

Joseph LaDou, MD, Emeritus Clinical Professor, Division of Occupational and Environmental Medicine, University of California School of Medicine, San Francisco, CA, USA

Thomas M. Horiagon, MD MoccH, ABPM Occupational Medicine, CDC/NIOSH Epidemic Intelligence Service veteran, Mountain West Workers' Free Clinic, Denver, Colorado, USA

William Black, Professor Emeritus, Allard School of Law, University of British Columbia; former director of the Human Rights Research and Education Centre, University of Ottawa, Canada

Steven Markowitz MD, DrPH, Director and Professor, Barry Commoner Center for Health & the Environment, City University of New York, USA

Amanda Hawes, Occupational safety and health Attorney, Safe Jobs Healthy Families project founder, USA

Michael Quinlan B.Ec(hons), PhD, Emeritus Professor of Industrial Relations, University of New South Wales, Sydney, Australia

Lundy Braun, Departments of Africana Studies and Pathology and Laboratory Medicine and Science and Technology Program, Brown University, Providence, RI, USA

Roberto Calisti, Director of the Unit of Occupational Epidemiology, ASUR MARCHE - Civitanova Marche, Italy

Bruce Lanphear, MPH, MD, Professor, Faculty of Health Sciences, Simon Fraser University, Burnaby, BC, Canada. Member, National Children's Study Steering Committee

Prof. Saloshni Naidoo, Head of Discipline: Public Health Medicine, College of Health Sciences, School of Nursing & Public Health, University of KwaZulu-Natal, Durban, South Africa

Dr. John Calvert, Adjunct Professor, Faculty of Health Sciences, Simon Fraser University, Burnaby, B.C., Canada

Iman Nuwayhid, MD, DrPH, Professor and former Dean, Faculty of Health Sciences, American University of Beirut, Lebanon

Prof. Andrew Watterson, PhD, CFIOSH, Public Health Researcher, University of Stirling, Scotland

Domyung Paek, MD, MSc, ScD, Professor Emeritus, Seoul National University; Senior Scientist, Wonjin Institute for Occupational and Environmental Health, Green Hospital, Seoul, Korea

Arthur L.Frank, MD, PhD, Fellow, Collegium Ramazzini, Philadelphia, Pennsylvania, USA

Barry Castleman, ScD., Environmental Consultant & author, Maryland, USA

Professor Phil Taylor, University of Strathclyde, Glasgow

Karen B. Mulloy, DO, MSCH, Occupational Medicine Physician, Past Chair Occupational Health and Safety Section, APHA, USA

Peter Eglin, PhD, Professor Emeritus of Sociology, Wilfrid Laurier University, Canada

Kathleen Fagan, MD, MPH, FACOEM, Cleveland, OH, USA

Rosemary K. Sokas, MD, MOH, Professor of Human Science and of Family Medicine, Georgetown University School of Nursing and Health Studies, Washington DC, USA

James Brophy, Occupational and environmental health researcher; Adjunct Professor, University of Windsor, Canada

Wolf E. Mehling, MD, Professor of Clinical Family and Community Medicine, University Of California, San Francisco, CA, USA

Jordan Rinker MD, MPH, Medical Consultant, Senior Medical Director, Premise Health, Clinical Professor of Medicine, Division of Occupational & Environmental Medicine, University of California San Francisco, USA

Margaret Keith, Occupational and environmental health researcher; Adjunct Professor, University of Windsor, Canada

Prof. Dr. Antonio Granda Ibarra, Former Director, Cuban Institute of Occupational Health, Cuban School of Public Health, Cuba

Peggy Mason, Former Canadian Ambassador for Disarmament to the UN, Ottawa, ON, Canada

Dr. Jeong-ok Kong, M.D., M.P.H., Occupational and environmental medicine specialist, Workers' Health Center in East Gyeonggi, South Korea

Seth Klein, adjunct professor, Simon Fraser University Urban Studies Program, Burnaby, BC, Canada

Thomas Oatis Sandborn, journalist & life-long social justice activist, Vancouver, BC, Canada