

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 Simoes, *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.voicenetwerk.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.worldcocoafoundation.org/blog/2018-child-labor-cocoa-coordinating-group-8th-annual-meeting-remarks/>.

³⁸ World Cocoa Foundation, *CocoaAction*, <https://www.worldcocoafoundation.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 Nestlé 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_nestlé_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, Mondelēz, 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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