



Submission No 30

**Inquiry into Slavery, Slavery-like conditions and People
Trafficking**

Organisations: Stop the Traffik
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28 September 2012

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Submission to Inquiry into Slavery, Slavery like conditions and People Trafficking

The submitting bodies (the Synod of Victoria and Tasmania, Uniting Church in Australia; Oaktree Foundation and STOP THE TRAFFIK Australia) welcome this opportunity to make a submission to the inquiry by the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade into slavery, slave like conditions and people trafficking. This submission is focused on the issue of goods being imported into Australia where slavery, slave like conditions or human trafficking have been involved in the production of the good. While the Australian Government has made commendable progress in addressing trafficking into Australia for the purposes of sexual exploitation and is starting to build further action to combat trafficking and slave like conditions in Australia in relation to work, there is almost no action to address goods entering Australia where slavery, slave like conditions or trafficking have been involved in the production of the goods.

1. Recommendations

The initial actions the Commonwealth Government should take, in line with action having been taken in other jurisdictions, particularly the US, are:

1. Commission research to identify goods coming into Australia where there is significant risk slavery, slave like conditions or people trafficking may have been involved in their production. This could be modeled on the research that is done and published by the US Department of Labor, Bureau of International Labor Affairs on goods entering the US where there is a risk forced labour or child labour were used in their production. In the Australian context, it may be more acceptable that the government funds such research through the Australian Institute of Criminology or through a university with expertise in this area.
2. Similar to the requirements of section 3205 of the US *Food and Energy Security Act* establish a consultative committee made up of relevant government departments, industry bodies, academics, experts on slavery and human trafficking and non-government organisations to work together towards eliminating slavery, forced labour and human trafficking from the production of goods imported into Australia.
3. Amend the *Financial Management and Accountability Act 1997* and the 'Commonwealth Procurement Guidelines' along the lines of US Executive Order 13126 on the 'Prohibition of

Acquisition of Products Produced by Forced and Indentured Child Labor'. In Australia's case, those supplying the Australian Government should be required to certify products to be sold to the Australian Government are free of slavery, forced labour, worst forms of child labour and trafficked labour where the product is on a list of goods identified as being at risk of having such abuses in its supply chain. Penalties for suppliers found to have made false declarations should include the possibility of having the contract cancelled or debarring the supplier from all government contracts for up to three years.

4. Introduce legislation, based on the California *Supply Chain Transparency Act (SB657)*, to require retailers and importers operating in Australia to have to publicly disclose what voluntary efforts they are making to curb the risk of slavery, forced labour and human trafficking in their supply chains. However, unlike the Californian law, that applies to all companies having annual worldwide gross receipts in excess of US\$100 million, the Australian law should apply to all retailers and importers with a much lower threshold of revenue, but only in specified sectors where the risks of these abuses being involved in the production of the goods is significant.
5. The Australian Government should follow the example of the Government of the Netherlands, and negotiate an agreement with cocoa importers and processors in Australia to ensure that 80% of cocoa imported to Australia is subject to third party certification as being free of forced labour, worst forms of child labour and human trafficking by 2018. This should include the importation of products containing processed cocoa as well. The submitting bodies note reports that the German and Belgian Governments are also in the process of negotiating similar agreements.

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2. Relevant Policies of Australian Political Parties

The submitting bodies note that the major political parties in Australia already have policies relevant to addressing slavery, human trafficking and forced labour in the production of goods imported into Australia.

The ALP has the most explicit policy on this issue. Section 91 of Chapter 2 of the Australian Labor Party National Platform of 2011 states:

Labor recognises that increased international trade brings with it the responsibility to promote higher labour and environmental standards for Australia and internationally. Labor will support greater cooperation between the secretariats of the WTO and the ILO on the issue of trade and enforceable labour standards. Labor supports and promotes the incorporation of core labour standards, as a minimum, in all international trade agreements. Labor will outlaw the importation into Australia of goods or services produced with forced labour and the worst forms of child labour or prison labour. Labor will work actively through the ILO, WTO, other international trade organisations and the implementing mechanisms of bilateral and regional free trade agreements to combat and overcome the scourges of forced, prison and child labour.

The Coalition's *Plan for Real Action on Foreign Affairs* stated:

The Coalition will pursue a principled and robust approach to human rights abuses, particularly in our region.

The Australian Greens policy on human rights states the Greens believe “universal human rights must be respected and protected in all countries” and they want “Australia to fully discharge its international human rights obligations, at home and abroad.”

3. Unshackling Laws Against Slavery

The Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia and the Oaktree Foundation, as members of the STOP THE TRAFFIK Australia coalition, conducted a two year study examining what jurisdictions around the world were doing to address the issue of goods being imported where there was a risk slavery, forced labour and human trafficking were involved in the production of the goods. This resulted in the production of the report, *Unshackling Laws Against Slavery*, which was launched in Parliament House on 23 November 2011. The report is attached as an Appendix to this submission.

There can be no doubt there are goods entering Australia that are produced using slavery or trafficked labour. While not specifically on slavery and trafficked labour, the US Department of Labor has identified a wide range of goods that involved the use of forced labour and exploited child labour that are imported into the US. The most common agricultural products identified were: cotton, sugarcane, tobacco, coffee, rice and cocoa.¹

Many of the same goods from the same countries are imported into Australia. For those goods where trade figures exist, over \$600 million of goods in categories where there is a risk forced

¹ US Department of Labor, Bureau of International Labor Affairs, Office of Child Labor, Forced Labor and Human Trafficking, 'The Department of Labor's List of Goods Produced by Child Labor or Forced Labor', 2009 and US Department of Labor's Bureau of International Labor Affairs, Office of Child Labor, Forced Labor and Human Trafficking, 'US Department of Labor's List of Goods Produced by Child Labor or Forced Labor', 2011.

labour or exploited child labour were used in the production were imported into Australia in the 2009 – 2010 financial year (Table 1). Goods imported into Australia where forced labour may have been used in the production of the goods include cocoa, bricks, pavers, cotton clothing and fabric, carpets, rice, palm oil, and embroidered textiles. Forced labour is a wider category than slavery and trafficked labour, but will include instances of both.

Table 1. List of goods produced with high risk of forced labour or child labour by country.²

Country	Good	Child Labour	Forced Labour	Value of imports to Australia 2009-2010 ³ (\$ millions)
Bangladesh	Footwear	X		0.12
	Textiles	X		17.4
Côte d'Ivoire	Cocoa	X	X	
Ghana	Cocoa	X		2.9
India	Bricks	X	X	22 for all construction materials
	Carpets	X	X	40
	Footwear	X		25.9
	Garments	X	X	92
	Gems	X		142 gems and pearls
	Rice	X	X	24
	Silk Fabric	X		45 in textile yarn and fabrics
Malaysia	Garments		X	67
	Palm Oil		X	66 for all animal and vegetable oils
Nepal	Bricks	X	X	
	Carpets	X	X	1.2
	Embroidered Textiles	X	X	0.13
Pakistan	Bricks	X	X	
	Carpets	X	X	5.4
	Cotton		X	9.9
Philippines	Rice	X		
	Rubber	X		14.6 in rubber tyres, treads and tubes
Thailand	Garments	X	X	66.8

² Ibid. 13-20 and US Department of Labor's Bureau of International Labor Affairs, Office of Child Labor, Forced Labor and Human Trafficking, 'US Department of Labor's List of Goods Produced by Child Labor or Forced Labor', (2011) 7-23.

³ Australian Department of Foreign Affairs and Trade, *Composition of Trade to Australia 2009-2010* (2010).

The countries and goods listed in Table 1 are far from exhaustive in terms of goods imported into Australia that are likely to involve slave labour, forced labour or trafficked labour in the production of the goods. For example, Uzbekistan is the fifth largest exporter of cotton globally. Forced child labour is used extensively in the harvesting of the cotton and this practice may meet the threshold of slave labour.⁴ Of the cotton exported from Uzbekistan to developing countries, 99.5% is exported to Asia, including 52% to China and 35% to Bangladesh.⁵ Most of these countries then mill the cotton and the fabric is converted into textiles and garments for export to countries like Australia.

3.1 Slavery, Human Trafficking, the Law and International Treaties

While the Australian Government has made it an offence for any Australian individual or company to engage in any financial transaction involving a slave, regardless of where it occurs in the world, no effort is currently made to identify Australian companies importing goods that slavery in their production. The result is that no Australian company has been prosecuted for being associated with slavery in the production of goods they have imported and sold.

Slavery is recognised internationally as a serious criminal offence, and human trafficking is achieving similar recognition. Other countries around the world, especially the US, are taking slavery and human trafficking in the supply chains of companies with growing seriousness and introducing measures to address the problem.

Goods produced with the involvement of slavery or trafficked labour meet the international definition for the proceeds of crime. Australia is a State Party to the *UN Convention against Transnational Organised Crime* (UNTOC) and the *UN Convention Against Corruption* (UNCAC). Article 2 of UNTOC and Article 2 of UNCAC defines "Proceeds of Crime" as "any property derived from or obtained, directly or indirectly, through the commission of an offence". By this definition, goods produced through the use of slavery, forced labour and trafficked labour and any revenue generated from the sale of such goods are proceeds of crime

International treaties that Australia has signed up to create an obligation for Australia to take reasonable steps to prevent companies from profiting from these crimes through the sale of goods that have involved slave labour or trafficked labour in their production. Furthermore, these treaties justify the Australian Government to require companies to take steps to ensure their products are free of slave and trafficked labour.

One of the reasons Australia needs to act is law and, especially, law enforcement is inadequate in combating slavery and human trafficking in a number of countries that Australia imports goods from. While many of these countries have made commendable efforts to combat slave and trafficked labour, support from the demand side of the equation by consumer countries like Australia would assist in eradicating these abuses.

One of the arguments against taking action in relation to the importation or sale of goods produced using slavery and human trafficking, is the fear of breaching World Trade Organisation (WTO) requirements. However, Article XX paragraph (a), (b) and/or (e) of the General Agreement on Tariffs and Trade (GATT) constitutes an exception to WTO rule. Decisions by the World Trade Organisation (WTO) panel and WTO Appellate Body (WTOAB) indicate that Article XX is a sufficiently broad exception to allow legislation to be adopted that restricts the importation of goods

⁴ International Labor Rights Forum, *Pick All the Cotton: Update on Uzbekistan's Use of Forced Child Labor in 2009 Harvest* (2009).

⁵ Correspondence from South and Central Asia Branch, Department of Foreign Affairs, 15 June 2010.

on the grounds of slavery and human trafficking. This applies even in circumstances that involve the labour practices outside a state's jurisdiction, provided the restrictions are applied in a non-discriminatory manner.

3.2 Government engagement with companies

The Federal Government should introducing legislation that requires it to engage with companies to work with them towards the elimination of slavery, forced labour and human trafficking within their supply chains. This would include assisting industries to establish mechanisms to achieve this end. This type of legislation exists in the US.

The *Trafficking Victims Protection Reauthorization Act* (2005) directs the U.S. Government to work with the industries involved in the production, importation and sale of products, identified by the International Labor Affairs Bureau (ILAB), to “create a standard set of practices that will reduce the likelihood that such persons [industry] will produce goods using forced or child labor”⁶. Further, it directs the U.S. Government to “consult with other departments and agencies of the US Government to reduce forced and child labor internationally and ensure that products made by forced and child labor in violation of international standards, are not imported into the US”.⁷

The International Labor Affairs Bureau (ILAB) contracted with the National Research Council to conduct a workshop on developing a framework to assess practices designed to reduce forced and child labour in supply chains that produced goods imported into the United States. The workshop was not intended to produce any comprehensive or final conclusions to the Department of Labor, rather was ultimately to assist the Department by bringing together “a broad range of experts from the field of child labor, forced labor, corporate social responsibility, and best practices theory”.⁸

In recognizing the need for a multi-stake holder approach to addressing the problems of forced labour and child labour in global agricultural production, section 3205 of the *Food and Energy Security Act of 2007* established the Consultative Group to Eliminate the Use of Child Labor in Imported Agriculture (‘the consultative group’).⁹ The consultative group is composed of 13 members, chaired by the US Department of Agriculture (USDA) including academics, non-profit organisations and experts in the area of international child labour, as well as Department of State, private agriculture and an independent labour standards certification organisation.¹⁰ The duties of the consultative group are to develop and make recommendations to the Secretary of Agriculture regarding guidelines to reduce products being imported into the United States produced with the use of forced or child labour.¹¹ In addition, the consultative group has the task of assisting industry in ensuring that the products they buy and sell are not produced with forced or child labour.¹² On 21 December 2010, the consultative group presented its recommendations to Secretary of Agriculture, Thomas Vilsack.¹³ The Secretary has elected to issue guidelines based on the Consultative Group's

⁶ *Trafficking Victims Protection Reauthorization Act of 2005*, Public L No 109 – 14, 119 Stat 3558, (2006).

⁷ Ibid Section 105(b)(2)(d) & (e)

⁸ John Sislin and Kara Murphy, *Approaches to Reducing the Use of Forced or Child Labour: Summary of a Workshop on Assessing Practice* (National Research Council, 2009) 15.

⁹ *Food and Energy Security Act of 2007*, 2302 USC § 3205 (2007).

¹⁰ See *Charter of the Consultative Group to Eliminate Child Labor and Forced Labor in Imported Agricultural Products*, 1043-50, Departmental Regulation of US Department of Agriculture, Foreign Agricultural Service, § 3 (25 March 2010) <<http://www.ocio.usda.gov/directives/doc/DR1043-050.htm>>.

¹¹ Ibid § 4.

¹² Ibid.

¹³ Foreign Agricultural Service, *Consultative Group To Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products* (12 April 2011) Federal Register: The Daily Journal of the United States

recommendations without change.¹⁴ On 12 April 2011, the US Department of Agriculture (USDA) invited public comment on the guidelines up until 29 April 2011 (oral submissions) and 11 July 2011 (written submissions).¹⁵

The following is included in the current Guidelines, as endorsed by the Secretary of Agriculture:¹⁶

- **Company Program Elements:** Company programs should be based upon management systems, capable of supporting and demonstrating consistent achievement of the elements outlined below ... These standards cover issues such as, impartiality and confidentiality, documentation and record control, management reviews, personnel qualification criteria, audit procedures, appeals, and complaints. ... Additionally, companies adopting the Guidelines are expected to engage with governments, international organizations, and/or local communities to promote the provision of social safety nets that prevent child and forced labor and provide services to victims and persons at risk. ...
- **Foundation Elements, Standards on Child Labor and Forced Labor:** Standards should meet or exceed ILO standards .. Where national laws on child labor are equal to or more stringent than ILO standards, company standards should meet or exceed national laws. ... Standards should be made available to the public. ...
- **Foundation Elements, Supply Chain Mapping and Risk Assessment:** Company should map its supply chain(s), beginning with the producer. ... (and) should identify areas of child/forced labor risk along chains ...
- **Communications:** Company should communicate child labor and forced labor standards, rights, expectations, monitoring and verification programs, remediation policies, and complaint process and process for redress to: i. Suppliers through training for managers, supervisors and other staff. ... ii. Workers (including unions where they exist) and producers. ... iii. Other levels of supply chain as appropriate (traders, middlemen, processors, exporters). ... iv. Civil society groups and other relevant stakeholders in the country/geographic locations of sourcing. ... The Company should (also) ensure that a safe and accessible channel is available to workers and other stakeholders to lodge complaints, including through independent monitors or verifiers.
- **Monitoring:** Company should develop monitoring tools based on its standards on child labor and forced labor ... Company may have internal staff of auditors and/or hire a credible organization to carry out monitoring activities. ... Auditors should be competent, should have knowledge of local contexts and languages, and should have the skills and knowledge appropriate for evaluating and responding to child and forced labor situations. ...
- **Continuous Improvement and Accountability, Remediation:** In consultation with relevant stakeholders, company should develop and put in place a remediation policy/plan that addresses remediation for individual victims as well as remediation of broader patterns of non-compliance caused by deficiencies in the company's and/or suppliers' systems and/or processes. ...
- **Internal Process Review:** Companies should periodically check their own progress against their program goals including determining the effectiveness of their programs to reduce the overall incidence of child labor or forced labor in their supply chains. ... Companies should make information available to the public on their monitoring programs and process to remediate/improve performance ...
- **Independent Third-Party Review:** Companies developing programs in accordance with the Guidelines should seek independent, third party review of their program implementation.

Government < <http://www.federalregister.gov/articles/2011/04/12/2011-8587/consultative-group-to-eliminate-the-use-of-child-labor-and-forced-labor-in-imported-agricultural>>.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid. Note: the Guidelines are available at the website listed above.

Independent review assures the company's customers that the company is meeting the standards on child labor and forced labor and relevant requirements outlined within its own program. ...

- **Independent Third Party Monitoring:** ... Independent monitoring should be conducted by an entity external to the company and should demonstrate independence and impartiality as a precondition for participating in the monitoring process ...
- **Independent Third Party Verification:** Verifiers should be accredited certification bodies ... Third Party verification should be conducted at least annually ...

The guidelines represent a positive step taken jointly by the US Federal Government and industry.

3.3 Government Procurement

The Australian Government can withdraw its support from companies that fail to demonstrate adequate action to address the possibility of slavery, forced labour or human trafficking in their supply chain through excluding such companies from government procurement. Although the Australian Government currently has ethical standards in place for procurement, no specific standard is in place which addresses trafficked, forced labour or slave labour in the production of goods.

The procurement process for Federal Government agencies and officials is undertaken within a framework of Commonwealth legislation, regulations and relevant government policy. This covers the wide variety of goods and services purchased by Government departments and agencies from the private sector, "(f)rom advertising and cleaning services to engineering and office equipment, and from training and project management to research and recruitment".¹⁷

The principle Act governing procurement at the Commonwealth level is the *Financial Management and Accountability Act 1997* (FMA Act). S 44(1) of the FMA Act requires Chief Executives of Federal agencies to promote "efficient, effective and ethical use" of Commonwealth resources 'that is not inconsistent with the policies of the Commonwealth' and for which the Chief Executive is responsible. S 44(2) states that in doing so Chief Executives must "comply with this Act, the regulations, Finance Minister's Orders, Special Instructions and any other law". In turn, "(t)his obligation is reinforced by the requirement" in Regulation 9 of the *Financial Management and Accountability Regulations 1997* "that Chief Executives and other approvers of public expenditure must be satisfied that the proposed expenditure is in accordance with the policies of the Government".¹⁸

There are two key documents which elaborate on the requirements under s 44 of the FMA; the 'Commonwealth Procurement Guidelines' (CPG) and the 'Financial Management Guidance on Complying with Policies of the Commonwealth in Procurement' (FMG).

Under Regulation 7(1) of the *Financial Management and Accountability Regulations 1997* the Minister for Finance and Deregulation has issued the CPG. Regulation 7(2) of the *Financial Management and Accountability Regulations 1997* states that "(a)n official performing duties in

¹⁷ Australian Government Department of Finance and Deregulation, *Selling to the Australian Government: A Guide for Business* (February 2009) < <http://www.finance.gov.au/publications/selling-to-the-australian-government/index.html> > vii.

¹⁸ Australian Government Department of Finance and Deregulation, *Commonwealth Procurement Guidelines* (1 December 2008) < <http://www.finance.gov.au/publications/fmg-series/procurement-guidelines/index.html> > 7.

relation to procurement must act in accordance with the (CPG)". There are more than 120 Government departments that are subject to the CPGs.¹⁹

The CPGs are said to 'establish the core procurement policy framework and articulate the Government's expectations for all departments and agencies subject to the (FMA) ... when performing duties in relation to procurement'.²⁰ Division 1, Section 6 of the CPG further elaborates on the requirement contained in Section 44 of the FMA that the agencies promote the "efficient, effective and ethical use of resources" with regards to procurement.²¹

Para 6.20 states that:

Agencies should include contract provisions requiring contractors to comply with materially relevant laws and should, as far as practicable, require suppliers to apply such a requirement to sub-contractors. Contractors must also be able to make available details of all sub-contractors engaged in respect of the procurement contract.

In addition, para 6.22 states that:

Agencies must not seek to benefit from supplier practices that may be dishonest, unethical or unsafe.

In addition to compliance with the CPG, the Financial Management Guidance on Complying with Policies of the Commonwealth in Procurement (FMG) publication is designed to "assist agencies subject to the FMA Act to comply with policies of the Commonwealth in procurement", as required by s44 of the FMA Act and Regulation 9 of the *Financial Management and Accountability Regulations 1997*.²² The FMG states that this:

*...guidance focuses on policies of the Commonwealth as they relate to procurement. It includes a core list of policies that interact with procurement which does not preclude officials applying other policies of the Commonwealth that are to be complied within a specific procurement process.*²³

The Interacting Policy Table "provides a core list of policies of the Commonwealth that interact with procurement through FMA Regulation". These cover policy areas such as employment and workplace relations, environment, international obligations (specifically Trade Sanctions) and social inclusion. In addition, links to model tender clauses and statutory declarations are included in the table for certain core policy areas. For instance, the Government has provided a model clause and statutory declaration in support of Fair Work Principles.²⁴ The statutory declaration requires the

¹⁹ Australian Government Department of Finance and Deregulation, *Selling to the Australian Government: A Guide for Business* (February 2009) < <http://www.finance.gov.au/publications/selling-to-the-australian-government/index.html>>, 2.

²⁰ Australian Government Department of Finance and Deregulation, *Commonwealth Procurement Guidelines* (1 December 2008) < <http://www.finance.gov.au/publications/fmg-series/procurement-guidelines/index.html>>, 2.

²¹ It should be noted that those obligations "which must be complied with, in all circumstances, are denoted by the use of the term must in these CPGs". Whereas, "(t)he use of the term should denotes matters of sound practice"; see Australian Government Department of Finance and Deregulation, *Commonwealth Procurement Guidelines*, 2. Note also that the Department of Finance and Deregulation has issued a guidance document on 'Ethics' to assist agencies to implement the Government's procurement policy.

²² Australian Government Department of Finance and Deregulation, [Guidance on Complying with Policies of the Commonwealth in Procurement](http://www.finance.gov.au/publications/fmg-series/10-complying-with-legislation.html) (July 2010) <<http://www.finance.gov.au/publications/fmg-series/10-complying-with-legislation.html>>.

²³ Ibid.

²⁴ Australian Government Department of Finance and Deregulation, *Model Clauses for Tender Documentation* (July 2010) <http://www.finance.gov.au/publications/fmg-series/tender_clauses.html#ewr>.

tenderer to declare their compliance with such principles; for instance, “where the tenderer is a Clothing and Footwear Manufacturer with a commercial presence in Australia, it is accredited with the Homeworkers’ Code of Practice, or is seeking such accreditation”.²⁵ No policy (or model term/statutory declaration) on slave labour, forced labour or trafficked labour in supply chains is currently covered by the FMG.

Arguably government agencies currently have the capacity to refuse to contract with a supplier where there is evidence that trafficked, forced or slave labour exist in their supply chain, or where the supplier is unable to confirm by statutory declaration that they have taken positive steps to ensure their supply chain is free of such violations of international law. This is because s 44 of the FMA requires agencies to promote the ethical use of Commonwealth resources, combined, in particular, with para 6.22 of the CPG which requires that “agencies must not seek to benefit from supplier practices that may be dishonest, unethical or unsafe”. Finally, the FMG states that the listed policies do not preclude government agencies applying other Government policies.

Nevertheless, by comparison, a report on Human Rights and the UK private sector, the UK Joint Committee on Human Rights concluded that “assertions that public authorities can take steps in their procurement processes to incorporate human rights standards are unlikely to lead to real change” and that “(g)uidance from central Government will be required to encourage a more proactive approach”.²⁶ The argument that Government must provide guidance and leadership can also be made in Australia; indeed the Federal Government itself appears to view central direction as important given it currently provides detailed guidance to agencies through the CPG and FMG on implementation of ethical requirements and government policy.

Governments have “immense power as a purchaser and should take responsibility for (labour) rights impacts in (their) supply chain”.²⁷ The submitting bodies believe the Federal Government should provide guidance and leadership in implementing policies designed to ensure that public resources do not support companies that have trafficked, forced or slave labour in their supply chains. The requirement should be for companies to demonstrate that they have taken reasonable steps to ensure their products are free of slavery, forced and trafficked labour, rather than requiring a government agency to have to gather evidence that the company has such human rights violations in its supply chain. The latter case is likely to be highly ineffective, as most government agencies will only have the resources to detect the most obvious cases of trafficking, forced labour or slavery in the supply chains of their suppliers.

The US provides a model that the Commonwealth Government could follow. Executive Order (EO) 13126 on the ‘Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor’ applies to purchases made by the US Federal Government, and is designed to ensure that “executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor”.²⁸

Pursuant to Section 2 of the EO, the US Department of Labor (in consultation and cooperation with the Department of the Treasury and the Department of State) publishes in “the Federal Register a

²⁵ Ibid.

²⁶ Joint Committee on Human Rights, United Kingdom House of Lords and House of Commons, Any of our business? Human rights and the UK private sector (2009) 69.

²⁷ Ibid., 68.

²⁸ Executive Order 13126 of June 12, 1999, § 1. In particular, the laws listed in Section 1 are the Tariff Act of 1930, 19 USC § 1307, the Fair Labor Standards Act, 29 USC § 201 et seq, and the Walsh-Healey Public Contracts Act, 41 USC § 35 et seq.

list of products ('EO List'), identified by their country of origin, that those Departments have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor".²⁹

In addition, Section 3 of the EO empowers the Federal Acquisition Regulatory Council (FARC) to issue rules relating to contractor certifications. Under these certifications, a contractor must certify that a product furnished under the procurement contract is free of forced/indentured labour where that product is included in the EO List. Section 3 also empowers the FARC to issue rules regarding investigations - where a product is suspected to be made from forced/indentured labour - and contractual remedies.

The Department of Labor published an initial determination of the EO List on 18 January 2001. Since then, the list has been updated on a periodic basis, depending on the nature and extent of information received, pursuant to the Department of Labor's (DOL) procedural guidelines.³⁰ The process for updating the EO List is as follows:³¹

- Gathering information: the DOL relies "on a wide variety of materials originating from its own research, other US Government agencies, foreign governments, international organizations, civil society organizations, academic institutions, trade unions, the media, and others. DOS [the Department of State] and US embassies and consulates gathered data from key contacts, conducting site visits, and reviewing local media sources. Comprehensive desk reviews [are] carried out to gather all publicly available information on labor conditions in the production of thousands of products. Additional information [is] sought from the public through Federal Register notices and a public hearing".
- Assessment of information: in evaluating information for inclusion of a product on the EO List, DOL, in consultation with DHS and DOS, considered and weighed several factors including:
 - The nature of the information describing the use of forced or indentured child labor;
 - The source of the information;
 - The date of the information;
 - The extent of corroboration of the information by appropriate sources;
 - Whether the information involved more than an isolated incident; and
 - Whether recent and credible efforts are being made to address forced or indentured child labour in a particular country and industry.
- Initial and Final Determination: When the DOL wishes to update the EO List, it publishes an Initial Determination which "sets forth an updated list of products, by country of origin, which the (DOL) preliminarily believes might have been mined, produced, or manufactured by forced or indentured child labor".³² The DOL then "invites public comment on its initial determination as to products that appear on the updated list set forth in this notice" and "consider(s) all public comments prior to publishing a final determination updating the list of products, made in consultation and cooperation with the Department of State, and the Department of Homeland Security".

²⁹ Executive Order 13126 of June 12, 1999, § 2.

³⁰ United States Department of Labor, Office of the Secretary, Bureau of International Labor Affairs, Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Under 48 CFR Subpart 22.15 and E.O. 13126 of 18 January 2001, p 5351 (2001).

³¹ United States Department of Labor, Bureau of International Labor Affairs, Frequently Asked Questions < <http://www.dol.gov/ILAB/faqs.htm#eo>>.

³² Department of Labor, Office of the Secretary of Labor, Notice of Initial Determination Updating the List of Products Requiring Federal Contractor Certification as to Forced/Indentured Child Labor Pursuant to Executive Order 13126 of 11 September 2009, p 46794 (2009).

The DOL released a final determination in the Federal Register on 20 July 2010, updating the EO List.³³ The final determination contains a list of 21 countries and 29 products.

On 18 January 2001, the US Federal Acquisition Regulatory Council (FARC) published rules regarding the “application of labor laws to government acquisitions” on government acquisition, including, under part 22.1503, the “procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor”.³⁴ The following rules were promulgated in relation to contractor certification under part 22.1503:

- (a) When issuing a solicitation for supplies expected to exceed the micropurchase threshold, the contracting officer must check the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor (the List) (www.dol.gov/dol/ilab) (see 22.1505(a)). Appearance of a product on the List is not a bar to purchase of any such product mined, produced, or manufactured in the identified country, but rather is an alert that there is a reasonable basis to believe that such product may have been mined, produced, or manufactured by forced or indentured child labor.
- ...
- (c) Except as provided in paragraph (b) of this section,³⁵ before the contracting officer may make an award for an end product (regardless of country of origin) of a type identified by country of origin on the List the offeror must certify that—
 - (1) It will not supply any end product on the List that was mined, produced, or manufactured in a country identified on the List for that product, as specified in the solicitation by the contracting officer in the Certification Regarding Knowledge of Child Labor for Listed End Products; or
 - (2)(i) It has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any end product to be furnished under the contract that is on the List and was mined, produced, or manufactured in a country identified on the List for that product; and
 - (2)(ii) On the basis of those efforts, the offeror is unaware of any such use of child labor.
- (d) Absent any actual knowledge that the certification is false, the contracting officer must rely on the offerors’ certifications in making award decisions.

See Appendix 2 of the *Unshackling Laws Against Slavery* for the provisions required to be inserted into contracts where a product supplied by the contractor is included in the Federal Register List of Products.

In addition to rules regarding contractor certification, part 22.1503(e) provides the following rules on investigations to be carried out by an agency’s Inspector General:

³³ Department of Labor, Office of the Secretary of Labor, Notice of Final Determination Updating the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Pursuant to Executive Order 13126 of 20 July 2010, p 42164 (2010).

³⁴ Application of Labor Laws to Government Acquisitions 48 CFR § 22 (2001).

³⁵ Part 22.1503 (b) of the Application of Labor Laws to Government Acquisitions 48 CFR § 22 (2001) states:

- (b) The requirements of this subpart that result from the appearance of any end product on the List do not apply to a solicitation or contract if the identified country of origin on the List is—
 - (1) Canada, and the anticipated value of the acquisition is \$25,000 or more (see 25.405);
 - (2) Israel, and the anticipated value of the acquisition is \$50,000 or more (see 25.406);
 - (3) Mexico, and the anticipated value of the acquisition is \$54,372 or more (see 25.405); or
 - (4) Aruba, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Italy, Japan, Korea, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, or the United Kingdom and the anticipated value of the acquisition is \$177,000 or more (see 25.403(b)).

- (e) Whenever a contracting officer has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture an end product furnished pursuant to a contract awarded subject to the certification required in paragraph (c) of this section, the contracting officer must refer the matter for investigation by the agency's Inspector General, the Attorney General, or the Secretary of the Treasury, whichever is determined appropriate in accordance with agency procedures, except to the extent that the end product is from the country listed in paragraph (b) of this section, under a contract exceeding the applicable threshold.

The FARC rules on government acquisition also address Government agency's recourse to remedies against contractors. Part 22.1504(a) allows for Government agency's to impose remedies for the following violations:

- (1) The contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor.
- (2) The contractor has failed to cooperate as required in accordance with the clause at 52.222-19, Child Labor Cooperation with Authorities and Remedies, with an investigation of the use of forced or indentured child labor by an Inspector General, the Attorney General, or the Secretary of the Treasury.
- (3) The contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.
- (4) The contractor has furnished an end product or component mined, produced, or manufactured, wholly or in part, by forced or indentured child labor.

In response to the violations outlined above, part 22.1504(b) stipulates that:

- (1) The contracting officer may terminate the contract.
- (2) The suspending official may suspend the contractor in accordance with the procedures in subpart 9.4.
- (3) The debarring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in subpart 9.4.

It should be noted that part 22.1503(f) states that "proper certification will not prevent the head of an agency from imposing remedies in accordance with part 22.1504(a)(4) if it is later discovered that the contractor has furnished an end product or component that has in fact been mined, produced, or manufactured, wholly or in part, using forced or indentured child labor." In addition remedies in part 22.1504(b)(2) and (b)(3) are deemed inappropriate unless the contractor knew of the violation.

3.4 Supply Chain Transparency Legislation

There is a growing need for mandatory reporting by companies on their activities across jurisdictions. One step to help combat trafficking, forced labour and slavery in supply chains would be to require those industries where there is substantial risk of slavery or trafficking being in the supply chain, to mandatorily report on what steps they are taking to mitigate the risk of these human rights abuses. For mandatory reporting to have any impact on slavery and human trafficking, the system would require reporting on the whole supply chain, rather than just the corporation itself.

One model for such legislation is the California *Supply Chain Transparency Act (SB657)* which was signed into law on 30 September 2010. The Act requires retail sellers and manufacturers operating in California and having annual worldwide gross receipts that exceed US\$100 million in annual revenue to publicly report on voluntary efforts they are taking to eradicate slavery and human

trafficking from their direct supply chains for tangible goods offered for sale. The information must be made easily accessible on the company's website. The law took effect from 1 January 2012.

The required disclosure must include, at a minimum, to what extent the retail seller or manufacturer does each of the following:

1. Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosures shall specify if the verification was not conducted by a third party.
2. Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.
3. Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.
4. Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.
5. Provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chain of products.

The Act noted that the absence of publicly available disclosures means "consumers are at a disadvantage in being able to distinguish companies on the merits of their efforts to supply products free from the taint of slavery and trafficking. Consumers are at a disadvantage in being able to force the eradication of slavery and trafficking by way of their purchasing decisions."

In Australia, such a requirement could be introduced for businesses where there is evidence of a substantial risk that slavery, forced labour or human trafficking may be part of the supply chain. The submitting bodies believe that while an Australian Act should be limited to only industries where there is substantial risk of these abuses in the production of imports, the legislation should apply to a much lower revenue threshold such as \$5 million. For some industries where the risks of forced labour, slavery and human trafficking in the supply chain exists, such as seafood, many of the importers will be smaller companies and the legislation would have little impact if only limited to companies with revenues of \$100 million or more.

4. Case Studies of Engagement with Australian Companies on issues of Slavery, Slave like Conditions and People Trafficking

This final section provides case studies of where the submitting bodies have engaged with different industries in an attempt to address the risks of slavery, forced labour and human trafficking in their supply chains. These serve to demonstrate:

- The problem cannot be left to civil society organisations to deal with on their own, as they simply do not have the resources to engage with all the businesses where the risk of these serious human rights abuses exist in their supply chains. There is a role for government to fulfill the international treaty obligations it has committed to in addressing slavery, human trafficking and slavery; and
- Not all businesses can be relied upon to voluntarily take action against the risks of slavery, forced labour and human trafficking in their supply chains, even where their own codes state they have zero tolerance of such abuses. This further justifies the need for government intervention.

4.1 Cotton

Uzbekistan is the world's sixth largest producer of cotton, and the fifth largest exporter. For decades it has used forced labour of schoolchildren, college and university students and adults to harvest cotton by hand. Each year over one million children as young as seven-years-old are sent out to work in the fields. This practice is organised and controlled by the central government.

Government control over cotton production and harvesting is estimated to earn the Uzbekistan Government over a billion dollars annually. It generates around 20% of the country's Gross Domestic product and in 2011 accounted for 11.3% of Uzbekistan's export earnings.

Early in each school year the government orders schools to close and children are sent out into the fields where they remain until the cotton harvest is brought in. Children and schools are assigned quotas to fill and the principals of schools that do not meet their quota are threatened with dismissal. Often it is mandated children pick up to 50 kg of cotton in a given day. Some children may be lucky to receive between \$1 to \$2 a day for picking that amount. However, they may then be charged for their food and lodging putting them into debt for carrying out the forced labour. The Uzbekistan Government can sell 50kg of cotton on the open market for approximately \$120.

Teachers have reported principals instructing them to "have no mercy" towards children who do not work hard enough.

"We're really afraid of getting expelled from school. Every September 2, the first day of school, the Director warns us that if we don't go out to pick cotton we might as well not come back to school. The school administration does everything to create the impression that the schoolchildren themselves are the ones who have decided to go out to the cotton fields. But just try to "voluntarily" not go out to the harvest! We're all forced to obey this unwritten law."

Boy, ninth grade (14 years old), Kashkadaria province³⁶

In 2008 the pressure to meet harvest quotas led to a 17-year old girl hanging herself from a tree on the edge of a cotton field.³⁷ In this same year "there were at least five reported deaths of children due to poor safety standards"³⁸ The 2010 cotton harvest saw school children forced to labour in the fields from the beginning of the harvest in September for up to three months. Once again, the harsh conditions led to the death of at least one child.³⁹ However, in 2011, there were reports the Government reduced the length of time children were forced to harvest cotton for, varying from 10 days to 65 days. The gap was filled by increased use of adult forced labour.

Children are largely responsible for providing their own food and water, drinking contaminated water from canals and ditches leading to viral hepatitis infections and other diseases. Injuries are also commonplace but no compensation is paid and those who complain are threatened with repercussions.

Government officials, police officers and even local prosecutors all pressure parents to make sure their children participate, threatening denial of pensions or social welfare payments; disconnection of electricity, gas and water; arrest; beatings; temporary detention and criminal prosecution. Faced with this pressure and threats to plough under their garden plots, (a critical means of subsistence for rural families) parents feel "we can't say anything".

³⁶ http://www.antislavery.org/english/campaigns/cottoncrimes/forced_labour_in_uzbekistan_background.aspx

³⁷ <http://www.laborrights.org/stop-child-forced-labor/cotton-campaign/uzbekistan/news/12420>

³⁸ http://www.antislavery.org/english/campaigns/cottoncrimes/forced_labour_in_uzbekistan_background.aspx

³⁹ Ibid.

"This year the chairman of the collective farm insisted that I, and my daughter-in-law and my remaining children, go out to pick cotton otherwise he would take our plot away [garden plot used to grow fruits and vegetables]. The chairman said that if we don't go out, I'll have to pay one hundred thousand sum (approximately US\$70- equivalent to more than three average monthly wages). When I said there was no way I could pay that kind of money, he started to threaten that in that case we wouldn't get the welfare payment. I don't know where to turn to complain."

Mother of six children, Boiavut district⁴⁰

In June 2012, UNICEF disclosed they had ceased to work with the Government of Uzbekistan on a specific National Plan to address child labour, as they believed the Government of Uzbekistan was not open to sufficiently changing at this time.

4.1.1. Cotton Production in Uzbekistan

Cotton in Uzbekistan is grown on government-controlled farms where farmers are under legal obligation to plant and harvest cotton. Raw cotton is then sold for around a third of its value to the state-owned cotton association. Farmers are subjected to physical and verbal abuse by government officials to force them to keep growing cotton. They are unable to hire sufficient adult workers to harvest the cotton. Farmers are forbidden from being able to switch from growing cotton to other crops and are unable to invest in new technology. Some sell rice and vegetables they grow to cover the losses they make in being forced to grow cotton.

Bangladesh and China are the main importers of Uzbek cotton, accounting for an estimated 70% of exports. The cotton is turned into other products, such as clothes and fabric, with much of it then exported to consumer countries like Australia.

A detailed examination of the use of forced labour in the production of Uzbekistan cotton and where cotton from Uzbekistan ends up is contained in the attached report by the Responsible Sourcing Network, "From the Field: Travels of Uzbek Cotton Through the Value Chain", 2012.

4.1.2 International campaign

In 2004 local Uzbekistan activists started to call for the world to boycott cotton harvested in Uzbekistan until the use of forced child labour was ended. Over 80 international brands and retailers including Tesco, Walmart, Levi Strauss, Gap, Limited Brands, NIKE and Marks and Spencer have agreed to ban Uzbek cotton from their supply chains

4.1.3 Australian Campaign

In Australia, through engagement with the Justice and International Mission Unit of the Uniting Church in Australia, Synod and Victoria and Tasmania, ACRATH and STOP THE TRAFFIK Australia, so far Kmart, The Just Group, Pacific Brands, Target and Cotton On have issued public statements saying they will not knowingly allow the use of cotton from Uzbekistan in their products and most are taking steps to ensure their suppliers know of that commitment. Target and Cotton On have both signed a global statement with over 80 international brands and retailers committing to not knowingly allowing Uzbekistan cotton in their supply chain until forced labour is no longer used in cotton production. The statement is attached to this submission.

The Justice and International Mission Unit of the Uniting Church has been involved in dialogue with Myer, urging them to make a similar commitment. It has also had an exchange of correspondence with David Jones. Both companies have stated they do not support forced and child labour, but both

⁴⁰ Ibid.

have refused to make any public commitment to not knowingly allow the use of cotton from Uzbekistan in their products.

Australian Baptist World Aid attempted to open dialogue with Rivers on the issue, but the company refused to do so. Rivers is now subject to a public consumer campaign asking that they take reasonable steps to ensure cotton from Uzbekistan is not in their supply chain.

On 3 August 2012 the Justice and International Mission Unit of the Uniting Church wrote to Sportsgirl seeking to open dialogue on the issue of Uzbekistan cotton. To date no response has been received.

4.2 Cocoa

Diabate and Traor had left their village in Mali to go to Ivory Coast looking for enough money to afford a bicycle, but they were sold to a man who had paid 50,000 West African Francs (about \$100) for the two boys and he wanted the money back-in labour. The boys from Sirkasso met about twenty others in the same predicament and learned that no one was ever paid. They slept in a rectangle-shaped mud hut that initially had windows but when some boys found they could escape during the night, the windows were sealed shut. Diabate and Traor remember eating mostly bananas, though they would gobble up the cocoa beans, as others did, whenever they got the chance. Many months passed, and the boys forgot what the purpose had once been for this adventure. Life became a struggle to exist, then hardened to despair. They gave up thinking of escape. They were under constant threat of beatings if they were caught trying to flee and they had seen several boys treated savagely they were actually spooked by a belief that they were under a spell.⁴¹

In the West African countries of Côte d'Ivoire and Ghana, the issue of child, trafficked and forced labour persist in their cocoa industries.

Côte d'Ivoire and Ghana are two of the largest producers and exporters of cocoa in the world. It is estimated 70 percent of the world's cocoa comes from West Africa. The most recent figures estimate that 1.8 million children in West Africa are involved in the industry.⁴²

A 2002 report by the U.S Department of State estimated that there were 109,000 child labourers working on cocoa farms. Some of these children are being forced to work against their will, but the majority are children working on family farms.⁴³ The work that is required of these children includes being exposed to dangerous pesticides and chemicals, using machetes, travelling great distances and working in the blistering heat for long hours for little or no pay. In most cases this work is considered to be some of the 'Worst Forms of Child Labour' as it has the potential to be extremely harmful.

A number of the children working in the Côte d'Ivoire cocoa fields have been trafficked in from surrounding impoverished countries such as Mali and Burkina Faso. Children who come from families living in poverty often have no other option than to start working from an early age in order to survive. Recruiters take advantage of this and paint a rosy picture about good wages and

⁴¹ Just Act, Chocolate to die for campaign, *Do you know where your chocolate comes from?*, 2012, <http://www.justact.org.au/action-33-chocolate-to-die-for/>

⁴² Humphrey Hawksley, *Ivory Coast cocoa farms child labour: Little change*, 2011, International Labor Rights Forum, <http://www.laborrights.org/stop-child-forced-labor/cocoa-campaign/news/ivory-coast-cocoa-farms-child-labour-little-change>

⁴³ Elliot J. Schrage and Anthony P. Ewing, *The Cocoa Industry and Child Labour*, JCC, 2005.

conditions on cocoa farms in Côte d'Ivoire, some recruiters will even offer to pay for the child's transportation to the farms.

From 1980-2000 the price of cocoa began to decrease dramatically due to over-supply and market liberalisation in these countries that did not yet have safeguards in place to protect the income of producers. The use of child and forced labour began to increase, as some farmers could only make a living by paying little or no money for the labour needed to produce the cocoa.⁴⁴

There is a lack of information about the current prevalence of worst forms of child labour, including forced labour and trafficked labour, on the cocoa farms of West Africa. However, the work undertaken by children on these cocoa farms is often hazardous in nature and more often than not interferes with their education. Along with this, there have been reports of children being subjected to beatings and abuse by their employers.

The Harkin Engel Protocol which was originally signed in 2001 by the governments of Cote d'Ivoire and Ghana along with important stakeholders of the International Cocoa Industry. This is the major initiative working towards the eradication of forced and child labour in the cocoa industry. In late 2010 this protocol was amended and resigned by the parties, it is now referred to as the "Declaration of Joint Action to Support Implementation of the Harkin-Engel Protocol."

The updated protocol specifies the responsibilities of all the parties involved and sets out actions that should be taken by these parties to achieve the overarching goal of reducing the worst forms of child labour in the cocoa industries of the two countries by 70% by 2020.⁴⁵

The government of Côte d'Ivoire had made some effort to try and improve the situation with regards to trafficking and the worst forms of child labour in the cocoa industry. In 2010 the first specific law that punishes trafficking offences was passed, Law No.2010-272 Pertaining to the Prohibition of Child Trafficking and the Worst Forms of Child Labour.⁴⁶ The government of Ghana has also gradually been working towards improving the situation and in 2010 formulated the "National Plan of Action for the Elimination of the Worst Forms of Child Labour by 2015."⁴⁷

Under pressure from consumer campaigns, chocolate companies in globally and in Australia have started to take steps to address the abuses in the West African cocoa industry. These efforts are outlined below. Chocolate companies have also been funding projects in West Africa to improve farming practices and eliminate trafficking, forced labour and worst forms of child labour. However, so far these efforts have been well short of the scale needed to eliminate the problem.

Although steps in the right direction have been taken by the governments of Côte d'Ivoire and Ghana with the assistance of parts of the chocolate industry, UN agencies and non-government organisations, much more work is needed to reach the important goal of eliminating the worst forms of child labour and human trafficking from the cocoa industry. This will require much greater efforts by multinational chocolate companies to ensure that child, forced or trafficked labour is not used in their supply chains.

⁴⁴ Paul Robson, *Ending Child Trafficking in west Africa-Lessons from the Ivorian cocoa sector*, December 2010, Anti Slavery International.

⁴⁵ Tulane University, *Oversite of Public and Private initiatives to Eliminate the Worst Forms of Child Labour in the Cocoa sector in Cote d'Ivoire and Ghana*, March 2011.

⁴⁶ Tulane University, *Oversite of Public and Private initiatives to Eliminate the Worst Forms of Child Labour in the Cocoa sector in Cote d'Ivoire and Ghana*, March 2011.

⁴⁷ Tulane University, *Oversite of Public and Private initiatives to Eliminate the Worst Forms of Child Labour in the Cocoa sector in Cote d'Ivoire and Ghana*, March 2011.

The total global cocoa harvest in the 2010 – 2011 financial year was 4.3 million tonnes of which 3.2 million tonnes were produced in Africa.⁴⁸ A small, but growing proportion of this cocoa is being sourced subject to an independent third party certification standards that excludes forced, trafficked and exploited child labour, as outlined in Table 1 for five of the major chocolate companies that sell chocolate in Australia.

Table 1. Publicly available information about the amount of cocoa purchased by chocolate companies subject to an independent third party certification standard that excludes forced and exploited child labour.

	Total cocoa purchased in 2009 (tonnes) ⁴⁹	Amount of independently certified cocoa purchased (tonnes)			
		2009	2010	2011	2012
Kraft/Cadbury	440,000	22,000	30,000		
Nestle	360,000	4,000		6,100	20,000
Mars	350,000	5,000	15,000	30,000	90,000
Hershey	170,000	10			
Ferrero	120,000 ⁵⁰	0			

Mars and Nestlé have been consistently transparent with regards to the quantity of certified cocoa they purchase each year.

In the Kraft 2010 Corporate Social Responsibility report they state they purchased 19,000 tonnes of Fairtrade certified cocoa and 11,000 tonnes of Rainforest Alliance certified cocoa. They did not give any figures for the quantity of certified cocoa purchased in their 2011 Corporate Social Responsibility report. In a letter to Baptist World Aid Australia dated 30 April 2012 they say they are buying 20,000 tonnes of Fairtrade Certified cocoa a year, but do not disclose how much Rainforest Alliance certified cocoa will be purchased into the future.

Figure 1 shows the commitments from Mars, Ferrero and Nestlé on the proportion of their cocoa that will be purchased from independent third party certification schemes with standards that ban forced and child labour. These three companies are following a similar trajectory of growth in their use of certified cocoa. In addition Lindt has committed to having 100% of its cocoa audited to exclude forced and child labour from its production by 2020.

Kraft/ Cadbury and The Hershey Company have given no public commitments of future quantities or proportion of their total cocoa usage that will be purchased from independently certified sources with a standard forbidding forced and child labour.

Nestlé will have 100% use of UTZ Certified cocoa in chocolate products made in Australia and New Zealand by the end of 2012.

World Vision has engaged with Arnotts and gained a commitment that the cocoa used in Tim Tams would be subject to the Fair Trade certification standard.

⁴⁸ International Cocoa Organisation, *Quarterly Bulletin of Cocoa Statistics*, No. 2 - Volume XXXVIII, May 2012 and <http://www.lindt.com/swf/eng/company/social-responsibility/sustainably-sourced/traceability-a-pre-requisite-for-trust/>

⁴⁹ Tropical Commodity Coalition, 'TCC Cocoa Barometer 2010', 2010, p. 16.

⁵⁰ E-mail from Ferrero, 26 September 2012.

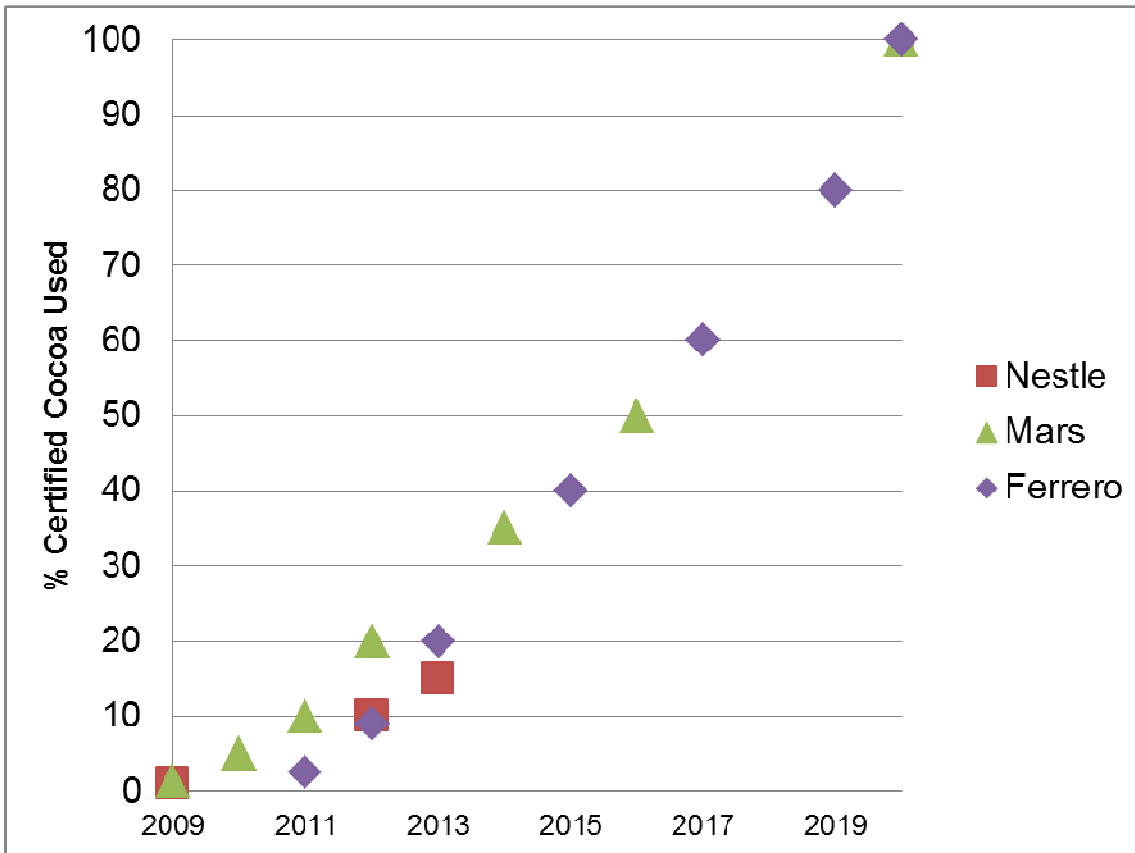


Figure 1. Public commitments of the percentage of cocoa to be purchased from independent third party certification schemes with standards banning forced labour and child labour.

Many chocolate companies are increasingly talking about their contribution to anti-poverty projects in West Africa. Many of these projects are run in collaboration with other chocolate companies, UN bodies, non-government organisations and government donors. While such collaboration is very welcome, it makes it impossible to know how much each chocolate company is contributing to the joint projects unless they disclose it themselves.

Figure 2 compares the publicly disclosed average annual spend on projects that, at least in part, are aimed at addressing the causes of forced and child labour in cocoa production from the three companies that have disclosed this information.

Kraft/ Cadbury - Cadbury made a 10 year commitment to fund projects in cocoa communities in 2008 of 45 million pounds sterling (\$72 million), covering communities in Ghana, India, Southeast Asia and the Caribbean.

Nestlé – In 2010 Nestlé committed CHF110 million (\$113 million) to ‘The Cocoa Plan’ over a ten year period, which will be spent in Côte d’Ivoire and Ecuador. It will be spent predominantly in plant science and sustainable production.⁵¹

The Hershey Company - \$10 million over five years towards sustainable cocoa sourcing in West Africa and reduce child labour.

⁵¹ Nestlé, ‘Nestlé and the United Nations Millennium Development Goals 2010’, June 2010, p. 12.

Mars – has stated that it is “investing tens of millions of dollars annually on development programs”⁵², but it is working on calculating the exact amount for public release at the time of writing.

Barry Callebaut - Has offered €26 million (\$32 million) in interest free loans to cocoa co-operatives in Côte d’Ivoire.⁵³ Annual sales in the 2009/2010 financial year were US\$4.9 billion.⁵⁴

Lindt – Has spent US\$5 million “over the last few years” to address the issue of exploited child labour in cocoa production.⁵⁵

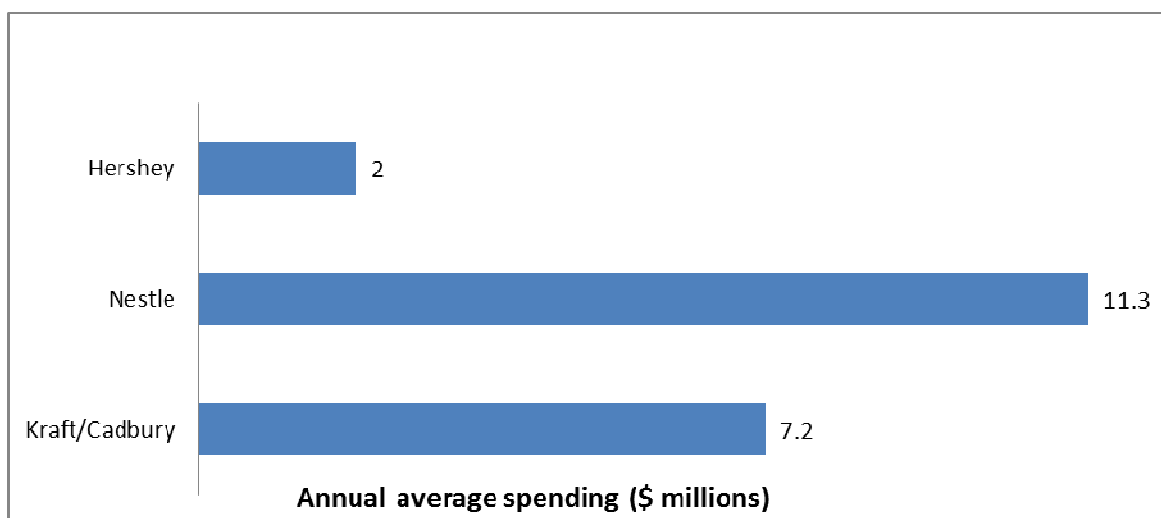


Figure 2. Publicly disclosed average annual spending of chocolate companies on projects aimed, at least in part, at addressing the causes of forced and child labour in cocoa production in West Africa

In addition to the contributions to community projects, community development premiums are paid by chocolate companies when they purchase cocoa under the Fairtrade, UTZ Certified and Source Trust schemes. This is a charge per tonne of cocoa purchased that is used for the benefit of producers or their communities.

Kraft/Cadbury With the purchase of 20,000 tonnes of Fairtrade certified cocoa, premium payments on cocoa purchases were an additional \$6 million for the benefit of producers and their communities.

Barry Callebaut Reported that it paid €350,000 in premiums to 23 Quality Partner cooperatives in the 2007/2008 financial year and €352,000 in premiums to 29 partner cooperatives in the 2009/2010 financial year.⁵⁶

⁵² E-mail from Mars 3 August 2012.

⁵³ Barry Callebaut, 'Corporate social responsibility and sustainability. An overview of our activities 2008-2010', June 2011, p. 12.

⁵⁴ Barry Callebaut, 'Corporate social responsibility and sustainability. An overview of our activities 2008-2010', June 2011, p. 2.

⁵⁵ <http://www.lindt.com/swf/eng/company/social-responsibility/lindt-strongly-condemns-child-labor/>

⁵⁶ Barry Callebaut, 'Corporate social responsibility and sustainability. An overview of our activities 2008-2010', June 2011, p. 16.

Lindt – Pays a premium of \$60 per ton on cocoa sourced from Ghana through Source Trust that finances infrastructure, education and health projects in its farmer villages in Ghana.⁵⁷ This currently amounts to US\$1.5 million a year being provided in premium payments.

Mars has stated it pays “several million dollars annually on certification premiums.”⁵⁸

While the focus of civil society effort on eliminating child, forced and trafficked labour from cocoa production has been on chocolate companies, much of the cocoa produced in West Africa is used for other purposes. In Australia, it is the understanding of the submitting bodies much of the cocoa imported into Australia is used by companies other than the major chocolate companies. There has been no meaningful engagement by civil society groups in Australia with importers of cocoa outside of the chocolate industry, due to a lack of resources available to non-government organisations to do so.

4.3 Seafood

Ever since we'd left Thailand my friend had been seasick, and he was not familiar with the work. The skipper didn't like him at all. My friend couldn't speak Thai, so he couldn't understand what the skipper told him. Water was running around the deck and a squid dropped out of the basket. The captain shouted for him to pick it up, but he didn't understand. Then, the squid was washed overboard.

The skipper just came down and hit him with a pipe. My friend raised his hand against the first blow and his hand broke. The second blow smashed his shoulder blade. Then he hit the back of his head. He fell to the deck. There were other Thai workers near him. The skipper dropped the pipe, washed his hands and went back up to the wheelhouse. He ordered his people to throw him into the water. He was still alive. When he went back to the wheelhouse, the skipper took the loudhailer and warned everyone: 'What are you looking at? Get back to work. If you want to end up like him, then behave like him!'

Account of a former trafficked crewman on a Thai fishing boat⁵⁹.

Human trafficking occurs in parts of the Thai seafood industry, both onto fishing boats and into seafood plants.

The trafficking of men onto Thai fishing boats gained momentum after the ravages of Typhoon Gay in 1989, which resulted in the sinking of over 200 fishing boats and caused at least 458 deaths. As a result of this horrendous incident fearful Thai crews abandoned the sector leaving the remaining boat owners in desperate need of labour. Thai fishing vessels operate in the territorial waters of dozens of nations, especially Burma (Myanmar), Cambodia, India, Indonesia, Malaysia and Vietnam. Due to the vast labour shortages, recruitment for workers in the fishing industry in Thailand remains largely based on informal recruiting processes which often leads to abuse and cultivates human trafficking from neighbouring countries.

The trafficking only occurs onto a small part of the Thai fishing fleet, but the abuses for those trafficked onto fishing boats are severe.

⁵⁷ <http://www.lindt.com/swf/eng/company/social-responsibility/lindt-strongly-condemns-child-labor/>

⁵⁸ E-mail from Mars 3 August 2012.

⁵⁹ David Browne, “Murder at sea”, ITF Seafarers’ Bulletin 2009, p.28

Three men tried to escape. They grabbed fishing net floats and jumped in the sea, but it was very rough and two drowned as they couldn't swim. The other was caught when he got to shore. They brought him back to the boat his face was swollen from being beaten and tortured. They called us on deck. The captain said this is what will happen if you try to escape. The man was tortured with electric shocks and was then shot in front of us all and thrown overboard.

Account by escaped trafficked fishing boat crewman⁶⁰

The report *Trafficking of Fishermen in Thailand*, by the International Organisation for Migration, found that men trafficked from Cambodia and Burma onto Thai fishing boats may be forced to work 18 to 20 hours a day, seven days a week and not be paid for years on end. On abusive boats, men who do not perform to the expectations of the captain can face severe beatings, maiming or even murder. Crew who are injured while working may be denied any medical attention.

In terms of trafficking into seafood processing plants, the UN Inter-Agency Project on Human Trafficking published a study in January 2011 entitled *'Estimating Labor Trafficking. A study of Burmese Migrant Workers in Samut Sakhon, Thailand'*. The report found that there were an estimated 120,000 Burmese migrants in the province and that they were systematically exploited, often through debt bondage and labour subcontracting without institutional accountability. The study estimated that for roughly 20 - 30% of Burmese migrant workers, the coercive and deceptive means by which they are recruited into, and then retained, in exploitative working conditions constitute trafficking into forced labour. They surveyed 396 migrant workers in the seafood processing industry in Samut Sakhon. In all 57% stated they had been subject to at least one of the elements of forced labour as defined by the International Labour Organisation (ILO). 20% reported being sexually harassed or assaulted by their supervisor. Further, 34% of those interviewed were identified as having been trafficked into the seafood processing industry.

Prosecutions for trafficking and murders in the Thai seafood industry have been rare.

In November 2009 Thailand recorded its first human trafficking convictions relating to seafood when two Thai citizens received five and eight year sentences respectively for their involvement in the forced labour of Burmese workers in a Samut Sakhon shrimp processing factory. However, prosecutions of this kind are rare. As of early 2010 there had been no arrests relating to a July 2006 case of 39 deaths from malnutrition on fishing vessels.⁶¹

The Justice and International Mission Unit of the Synod of Victoria and Tasmania, Uniting Church in Australia, has been working with the Seafood Importers Association of Australia to encourage action by the Thai Government and the Thai seafood industry to eliminate these abuses. However, the Seafood Importers Association of Australia represent perhaps 70 per cent of Australian seafood importers. The Unit has also been in dialogue with Simplot and Coles about addressing the risk of these abuses in their supply chains. STOP THE TRAFFIK Australia wrote to Woolworths seeking to discuss the issues of forced and trafficked labour in the Thai seafood industry in March 2012, but no reply was received.

Australian NGOs currently lack the resources to engage with all Australian seafood importers who import seafood from Thailand where the risks of human trafficking, forced labour and slave like conditions in the supply chain exist.

⁶⁰ Alastair Leithead, Burmese 'slavery' fishermen are trafficked and abused, available at <http://www.bbc.co.uk/news/world-asia-pacific-12881982>

⁶¹ U.S. Department of State 'Trafficking in Person Report' (2009) 246.

The ILO International Programme for the Elimination of Child Labour are carrying out a programme “Promoting Better Working Conditions in the Thai Shrimp and Seafood Industry” that aims to strengthen the policy and implementation of frameworks to protect the rights of Thai and migrant workers. It also aims to create a shrimp and seafood processing industry that is free of child labour and offers decent working conditions and opportunities to all workers, including migrant workers.⁶²

It would appear that both domestic and international attention to trafficking and forced labour in the Thai seafood industry has led to a reduction in abuses in seafood processing plants that produce for export. International concern regarding the abuses has been important, as without it parts of the Thai seafood industry would have felt no pressure to implement reforms. However, organisations on the ground in Thailand suggest that there is no sign of improvement in the severe abuses on a minority of Thai fishing boats.

While the Global Aquaculture Alliance offers a standard for third party inspections of seafood processing plants⁶³, there is currently no independent body that offers a third party inspection system to ensure that fishing boats are not using forced or trafficked labour.

4.4 Fruit and Vegetable Products from Thailand

There are allegations of trafficked and slave like labour at the Vita Food Factory in Thailand, which produces canned vegetables and fruit and fruit juice for international export. There are three factories belonging to Vita in Santo Sub-district, Thamaka District, Kanchanaburi province in Thailand. Approximately 500 Thai workers and 7,000 migrant workers from Myanmar work in these factories. Almost all Myanmar migrant workers at Vita are hired through the use of Myanmar brokers and approximately 12 Thai sub-contracting agencies.⁶⁴

The State Enterprise Workers’ Relations Confederation of Thailand and the Thai Labour Solidarity Committee allege the majority of Myanmar migrant workers at the Vita Food factories have been trafficked into Thailand. Each worker has been required to pay between 15,000 and 20,000 baht (around \$500 - \$600) as a transportation fee. Migrant workers are paid their salaries through the labour broker, who pay them between 200 and 400 baht per month (\$6 - \$13). If the migrant workers want to change their employment or move to another section of the Vita Food factories, it is alleged they need to seek permission from the labour broker and must pay between 2,000 and 5,000 baht (\$65 - \$165). There is no paid sick leave.⁶⁵

The migrant workers allege violence has been used by brokers against migrant workers who attempt to flee the factory or who have argued with the brokers about their situation.

Vita Foods Factory Ltd has denied the allegations made against them.

Walmart in the US is reported to have stopped “using Vita Foods in 2011 after Vita failed to correct labour issues found in their factories” according to Walmart International corporate affairs manager

⁶² International Labour Organisation Media Release, “12 June – World Day against Child Labour – Launch of the Thai Frozen Food Association’s Policy against child labour and forced labour, Samut Sakhon, Thailand”, 12 June 2012.

⁶³ <http://www.gaalliance.org/bap/standards.php>

⁶⁴ State Enterprise Workers’ Relations Confederation of Thailand and the Thai Labour Solidarity Committee, “Stop Rights Violations against Myanmar Migrant workers at Vita Food Factory (1989) Ltd. In Thailand”, 9 August 2012.

⁶⁵ State Enterprise Workers’ Relations Confederation of Thailand and the Thai Labour Solidarity Committee, “Stop Rights Violations against Myanmar Migrant workers at Vita Food Factory (1989) Ltd. In Thailand”, 9 August 2012.

Megan Murphy. However, export data shows Vita Foods has still been exporting product to Walmart in 2012.⁶⁶

The Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia has been investigating if there continues to be import of products from the Vita Food Factory in Thailand into Australia. Australian Customs Service documents from 2001 confirm at that time product was being imported into Australia from the factory.⁶⁷ The Unit has been unable to establish if importation from the factory has been on-going. Such information would be available to the Australian Government, allowing it to take follow up action if necessary. This case highlights the barriers and difficulties faced by NGOs trying to piece together if products produced through alleged slavery, forced labour or trafficked labour are being imported into Australia and where they are being sold if they are imported. Such information is available to the Australian Government, by virtue of customs and quarantine authorities authorizing imports.

4.5 Pavers and Bricks

The ILO have reported bonded labour in brick kiln operations⁶⁸ and in stone and slate quarries.⁶⁹

The UK Ethical Trading Initiative, a collaboration of businesses and unions, has a project to improve the working conditions for those in the sandstone industry in India.⁷⁰

By contrast, Australian importers of stone and pavers from India appear to show no interest in discussing how they ensure there is no forced or bonded labour in the supply chain of the products they import. In October 2010 STOP THE TRAFFIK Australia wrote to

- Pavers Plus,
- Better Exteriors,
- Eco Outdoor ,
- Yarrabee Stone Solutions; and
- Stone and Slate Discounts.

The letters requested a meeting to discuss working together ensure the stone and paver products they are importing from India are free of forced and bonded labour. None of the companies replied to the request.

In preparation for this submission, the Justice and International Mission Unit, Synod of Victoria and Tasmania,



⁶⁶ "Lip service alone won't end migrant labour misery, say activists", *The Bangkok Post*, 1 July 2012, <http://www.bangkokpost.com/news/investigation/300448/lip-service-alone-won-t-end-migrant-labour-misery-say-activists>

⁶⁷ Australian Customs Service, "Statement of Essential Facts No. 41. Pineapple Juice Concentrate from Thailand and Pineapple Fruit from Indonesia and Thailand", 17 August 2011; and Australian Customs Service, "Final Finding Report No. 41. Pineapple Juice Concentrate from Thailand and Pineapple Fruit from Indonesia and Thailand", 1 October 2001.

⁶⁸ http://www.ilo.org/wcmsp5/groups/public/---ed_mas/---eval/documents/publication/wcms_187197.pdf

⁶⁹ Ravi S. Srivastava, "Bonded Labour in India: Its Incidence and Pattern", ILO Working Paper Declaration/WP/43/2005, 2005, pp. 5, 7, 17, 22-25, 28.

⁷⁰ <http://www.ethicaltrade.org/in-action/programmes/sandstone-rajasthan-india>

Uniting Church in Australia, visited the Melbourne outlets of each of these companies. In each case the companies are selling product imported from India. Eco Outside, Stone and Slate Discounts (product from India pictured above), Yarrabee Stone Solutions and Better Exteriors each had sandstone from India. Yarrabee Stone Solutions imported from three different companies in India. Eco Outside has a quarry in India. Pavers Plus confirmed they imported pavers from India.

The Justice and International Mission Unit plans to follow up with these companies again, but a lack of resources available has delayed this work.

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