

1. About CNI, BIC and BUSBC – Brazil Section

The Brazilian National Confederation of Industry (CNI) is the umbrella manufacturing sector organization in Brazil. Established in 1938, the Confederation is comprised of 27 Federations of Industries in all Brazilian states and the Federal District, and over 1,200 sectorial trade associations representing more than 700,000 companies.

CNI is actively engaged in the regular work of key international organizations whose policy discussions directly affect the Brazilian industry, including the International Labor Organization (ILO).

In addition, the Confederation hosts the Executive Secretariat of the Brazil Section of the Brazil-U.S. Business Council (BUSBC). The Council was founded in 1976 and is the leading business forum for dialogue between the two countries. CNI also has representation in Washington, D.C. through its membership of the Brazil Industries Coalition (BIC).

The Confederation appreciates the opportunity to participate in this process providing information and comment based on the 2014 edition of the List of Goods Produced by Child Labor or Forced Labor (TVPRA List), published on December 1, 2014, and the 2014 Findings on the Worst Forms of Child Labor Report (TDA Report), published on September 30, 2015.

2. Comments on the research methodology used to compile the TVPRA List

The abovementioned organizations would like to take this opportunity to make comments on the research methodology used to compile the TVPRA List, as follows:

2.1. Disproportionate representation of Brazil in the TVPRA List as a result of freedom of information and data transparency

Brazil is second in the ranking of countries with the highest number of sectors included in the TVPRA List according to its 2014 edition. In order to ensure a transparent process, the research methodology used to compile the List is solely based on sources and data available to the public. Therefore, this methodology would not be a problem if all countries covered by the TVPRA List followed similar standards of freedom of information and data transparency. However, the different approaches adopted by countries to gather and publish labor rights-related data, including as a consequence of freedom of press, result in unfair treatment and inaccurate findings in the TVPRA List. In other words, the more transparent a country is, the more unfavorable it is portrayed in the ranking simply because nontransparent countries do not have their sectors fully listed.

The 2014 edition of the TVPRA List recognized that some countries with relatively large numbers of goods on the List may not have the most serious problems of child labor or forced labor. It also recognized that these are countries that often more openly acknowledge their challenges, have better research and have allowed information on these issues to be disseminated in a transparent way. Brazil is mentioned as one of these countries. In fact, it has been improving its data collection procedures as well as better

sharing information with the public through both government initiatives and actions from the academic, non-governmental and business sectors. Because of its good practices, Brazil has paradoxically been on the top of the TVPRA List. This is an unfair and inaccurate portrait that negatively affects the country's image.

Moreover, in the case of Brazil, many of the sources used are press reports that lack information about the different cases' legal development and conclusion. It is critical that evidence collected to compile the TVPRA List is based on quality information that includes the different cases' final decisions. Brazil is one of the world's largest democracies and prides itself on the transparency and freedom of its press. However, press coverage does not take fully into account the context or the outcome of the cases it reports on and this can result in unfair treatment of the country during the evidence evaluation process. These cases are subject to prosecution and punishment in Brazil, and these findings have to be fully considered.

As the 2014 edition of the TVPRA List has formally recognized limitations of the research methodology, it is expected that the next report includes revised procedural guidelines that reflect the transparency and the freedom of information levels of the different countries. The procedural guidelines cannot continue to penalize countries that are committed to fight against child labor and forced labor, to secure freedom of press, and that provide transparent labor rights-related data.

2.2. Unreasonable generalizability of findings as a result of unwillingness to target noncompliant companies

The TVPRA List is comprised of goods and countries that the Bureau of International Labor Affairs (ILAB) found to have a significant incidence of child labor or forced labor. This generalizability of findings to the whole sector producing the good in the country is detrimental to all companies that do business in accordance to national and international labor standards.

The 2014 edition of the List registered that it would be immensely difficult for ILAB to attempt to track the identity of every company producing a good using child labor or forced labor. This is not the case of Brazil. When data is available it would be important to mention the specific companies involved rather than the whole sector. Therefore, it would be possible to better analyze the data and better judge the "significant incidence of child labor or forced labor" in a sector of a country.

The TVPRA List may influence U.S. buyers - consumers and companies that adopt private standards in their supply chain – thus creating a twisted image of Brazilian goods as well as of Brazil as a country that does not respect labor rights and uses child labor and forced labor. This does not correspond to the reality and may unfairly result in severe impact to the country's international trade.

2.3. Biased data analysis due to the Brazilian legal definition of forced labor and the use of informal economy argument

The Trafficking Victims Protection Reauthorization Act of 2005 mandates the U.S Department of Labor to publish a list of goods that ILAB has “reason to believe” are produced using child or forced labor in violation of international standards. Therefore, it is necessary to determine whether situations of exploitative working conditions constitute “child labor” or “forced labor” under international standards.

The research study carried out by the University of São Paulo, funded by the Brazilian Trade and Investment Promotion Agency (Apex-Brasil), and presented to DOL representatives in Washington, D.C. on June 17, 2014, as part of efforts of the Brazilian Textile and Apparel Industry Association (Associação Brasileira da Indústria Têxtil e de Confecção - ABIT) to remove garments from the TVPRA List demonstrates that the Brazilian legislation on forced labor is more robust and comprehensive than the international standard.¹ As a consequence, the data collected on Brazil related to forced labor should be analyzed having this difference in mind. Not all the facts reported by the Brazilian press should be considered as forced labor in order to include a sector into the List. In other words, what is considered forced labor by the Brazilian press in accordance with the country’s legislation might not be considered so based on U.S. laws or ILO conventions.

Besides that, the 2014 edition of the TVPRA List mentioned the problem of unregistered businesses, stating that the Brazilian government should continue its efforts to formalize workers and identify forced laborers in all type of workplaces and enforce laws enacted to protect them.

In this context, it is important to consider the size of the informal economy in Brazil and its weight in favor of the inclusion or maintenance of a sector in the TVPRA List because of unavailable information on the informal sector. The Brazilian Institute on Ethics in Competition (ETCO) issues an Index of Informal Economy (IES)² elaborated by the Brazilian Institute of Economy of the Getúlio Vargas Foundation (IBRE-FGV)³ that may contribute to the evaluation of this problem.

Informal economy is defined as “the production of goods and services not reported to the government deliberately to: (1) evade taxes; (2) evade contributions to social security; (3) evade compliance with labor laws and regulations; and (4) avoid costs of complying with applicable standards in the activity.” The size of the informal economy is the average size of the informality calculated through two different ways: (1) the monetary

¹ The research study was part of the submission made by ABIT under the Procedural Guidelines for the development and maintenance of DOL’s List of Goods Produced by Child Labor or Forced Labor, and is listed in the bibliography used by the Department.

² ETCO. Índice da Economia Subterrânea. Available in: <http://www.etc.org.br/publicacoes/estudos-e-pesquisas/>

³ Information on FGV-IBRE available at: <http://portalibre.fgv.br/>

method; and (2) the informal work method, based on the National Household Sample Survey⁴ of the Brazilian government.

The IES related to 2014 was 16.2% demonstrating that the informal economy in Brazil has been reducing since 2003 (the first year of publication of the index) when it was 21.0%. A recently-launched government initiative will further contribute to this reduction as the Department of Labour Inspection of the Brazilian Ministry of Social Security, Labor and Employment adopted the National Plan to Combat Informality of Workers. Released on May 22, 2014, it listed a number of measures to be implemented in a coordinated manner to combat informality of employment in Brazil.⁵

The tables below show the historical series calculated by the monetary and the informal work methods:

Table 1. The Size of the Informal Economy – Monetary Method

Monetary Method	
2003	20,6%
2004	20,1%
2005	19,8%
2006	19,5%
2007	18,7%
2008	18,3%
2009	17,5%
2010	17,1%
2011	16,8%
2012	16,5%
2013	16,1%
2014	16,3%

Source: ETCO, FGV-IBRE

Table 2. The Size of the Informal Economy – Informal Work Method

Informal Work Method			
	Informal labor income	Percentage of informal workers	Average
2003	16,9%	25,8%	21,4%
2004	17,3%	25,9%	21,6%
2005	16,6%	25,4%	21,0%
2006	16,8%	24,9%	20,8%
2007	16,2%	23,9%	20,1%
2008	15,1%	22,9%	19,0%
2009	15,8%	22,9%	19,4%
2010	15,0%	21,5%	18,2%
2011	14,1%	20,0%	17,1%
2012	14,0%	19,5%	16,8%
2013	14,1%	18,8%	16,5%
2014	14,1%	18,2%	16,2%

Source: ETCO, FGV-IBRE

Over the years, Brazil has been gaining international recognition for its actions to protect and promote human rights, including labor rights, as well as for its practices related to sustainability and social inclusion. Brazilian labor laws and regulations and their application are a reference to the ILO and to the United States.

It is also important to remember that Brazil and the United States signed in March 19, 2011, a Memorandum of Understanding for the Implementation of Technical Cooperation Activities in Third Countries in the Field of Decent Work to promote activities

⁴ Instituto Brasileiro de Geografia e Estatística (IBGE). Pesquisa Nacional por Amostra de Domicílios. Available in: http://www.ibge.gov.br/home/estatistica/pesquisas/pesquisa_resultados.php?id_pesquisa=40

⁵ Ministério do Trabalho e Emprego (MTE). Combate à informalidade. Available at: <http://www.mte.gov.br/index.php/fiscalizacao-combate-informalidade>

related to the Decent Work Agenda of the ILO with a view to facilitating the dissemination of good practices and initiatives in several areas, *inter alia*, the “promotion of fundamental principles and rights at work, including freedom of association and the effective recognition of the right to collective bargaining, as well as programs to address exploitative child labor, forced labor, and discrimination in the workplace.”

At the invitation of President Barack Obama, Brazilian President Dilma Rousseff made an official working visit to the United States on June 2015 to review the main topics of the bilateral, regional and multilateral agendas. In the Joint Communiqué, the presidents expressed their intention to expand trilateral cooperation initiatives for development in order to benefit countries in Latin America, the Caribbean and Africa, including in the field of decent work.

The business, academic and non-governmental sectors have also played an important role in social issues in Brazil, contributing to good practices in labor rights.

The lack of information on the Brazilian informal economy in a specific sector and on unregistered laborers cannot be the reason for automatic inclusion of a sector of a country in the TVPRA List. There are no reasonable grounds for keeping a specific sector of Brazil in the List after evaluating all the reported advances of the Brazilian situation based on the lack of information on the informal economy.

2.4. Lack of a previous notification phase to the national sectorial entity during the evidence collection process

The Federal Register Notice of Procedural Guidelines for the Development and Maintenance of the List of Goods From Countries Produced by Child Labor or Forced Labor [vol. 72, n° 247, Thursday, December 27, 2007], established the process for public submission of information, and the evaluation and reporting process to be used by DOL in maintaining and updating the TVPRA List.

The public comments opportunity is important to collect information from government, businesses, non-governmental organizations and other stakeholders on actions and initiatives that are effective in significantly reducing child labor and forced labor. However, the process for collection of relevant and probative evidence should include notification of representatives of the sectors mentioned in the data collected by DOL to present information and comments on specific data related to their sector in a previous phase. This measure would include the private sector in the process of evidence gathering and data collection thus allowing the national sectorial associations to prepare their counterarguments and information to remove or prevent inclusion of specific sectors of a country in the List.

The current procedural guidelines do not allow a comprehensive defense of the sectors included or maintained in the List. The decision of including or maintaining a sector in the List should be justified by the DOL, referencing its supporting evidence and data.

3. General comments on Findings on the Worst Forms of Child Labor Report (TDA Report)

Child labor and forced labor are issues of great concern to the Brazilian private sector. This preoccupation is also shared by the Brazilian government and Brazilian civil society. As a matter of fact, Brazil has one of the strictest regulatory frameworks on labor rights in force. This is why Brazil is considered a benchmark in the view of the ILO.

According to ILO's statistics, Brazil is the country where the largest reduction in child labor cases was observed. Between 2001 and 2013, those cases decreased 58% while the world's reduction average was 36% for the same period.⁶ Brazil is also considered by the United States as a partner in cooperation in third countries on issues related to decent work that includes child and forced labor. In fact, DOL recognized "significant advancement" in Brazil's performance to fight the worst forms of child labor. Therefore, it is incoherent to keep listing Brazil in the TDA Report.

⁶ Further information on Brazil and ILO data Available at: http://www.ilo.org/gateway/faces/home/ctryHome?locale=EN&countryCode=BRA&_adf.ctrl-state=ogjmkzock_19