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Trafficking in Persons: International Dimensions and Foreign Policy Issues for Congress

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Summary

Trafficking in persons, or human trafficking, refers to the subjection of men, women, and children to exploitative conditions that can be tantamount to slavery. Reports suggest that human trafficking is a global phenomenon, victimizing millions of people each year and contributing to a multi-billion dollar criminal industry. It is a centuries-old problem that, despite international and U.S. efforts to eliminate it, continues to occur in virtually every country in the world. Human trafficking is also an international and cross-cutting policy problem that bears on a range of major national security, human rights, criminal justice, social, economic, migration, gender, public health, and labor issues.

The U.S. government and successive Congresses have long played a leading role in international efforts to combat human trafficking. Key U.S. foreign policy responses include the following:

- **Foreign Country Reporting** to describe annual progress made by foreign governments to combat human trafficking, child soldiers, and forced labor.
- **Foreign Product Blacklisting** to identify goods made with convict, forced, or indentured labor, including forced or indentured child labor.
- **Foreign Aid** to support foreign countries' efforts to combat human trafficking.
- **Foreign Aid Restrictions** to punish countries that are willfully noncompliant with anti-trafficking standards.
- **Conditions on Trade Preference Program Beneficiaries** to offer certain countries export privileges to the United States, provided that they adhere to international standards against forced labor and child trafficking.
- **Financial Prohibitions Against Specially Designated Individuals** to block assets of selected foreign individuals involved in the use of child soldiers.
- **Preventing U.S. Government Participation in Trafficking Overseas** to punish and deter trafficking-related violations among U.S. government personnel and contractors.

Although there is widespread support among policy makers for the continuation of U.S. anti-trafficking goals, ongoing reports of such trafficking worldwide raise questions regarding whether sufficient progress has been made to deter and ultimately eliminate the problem, the end goal of current U.S. anti-trafficking policies. This report explores current foreign policy issues confronting U.S. efforts to combat human trafficking, the interrelationship among existing polices, and the historical and current role of Congress in such efforts.

The TVPA and its reauthorizations remain the cornerstone legislative vehicle for current U.S. policy to combat human trafficking. Key issues for the 114th Congress have focused on whether there is a need for enhanced mechanisms for international funding and programming prioritization; the role of congressionally mandated reporting requirements in driving the anti-trafficking agenda; what prospects may exist to invigorate the monitoring and enforcement of anti-trafficking laws and policies, particularly as they relate to U.S. government contractors and subcontractors; and the relationship between trade policy and anti-trafficking goals.

Contents

Introduction 1
U.S. Foreign Policy Framework 3
Foreign Policy Issues 8
Foreign Country Reporting 9
Foreign Product Blacklisting 11
Foreign Aid and International Anti-Trafficking Projects 13
Foreign Aid Restrictions 17
Conditions on Country Beneficiary Status for Trade Preference Programs 21
Financial Sanctions Against Specially Designated Individuals 25
Preventing U.S. Government Participation in Trafficking Overseas 27
Conclusion 29

Figures

Figure 1. International Anti-Trafficking Obligations and Foreign Operations Budget 16

Tables

Table 1. International Treaties Addressing Trafficking in Persons to Which the United States Has Ratified or Acceded 6
Table 2. Summary of Foreign Country Reporting Requirements 10
Table 3. Foreign Product Blacklisting Terms Used in Comparison 12
Table 4. Assistance to Combat Trafficking in Persons in the State Department's Foreign Operations Budget 14
Table 5. Aid Restrictions and Waivers Pursuant to the TVPA, FY2004-FY2015 17
Table 6. Aid Restrictions and Waivers Pursuant to the CSPA of 2008, FY2011-FY2015 19

Contacts

Author Information 31
Acknowledgments 31

Introduction

Trafficking in persons, or human trafficking, refers to the subjection of men, women, and children to exploitative conditions that some equate with slavery. It is a centuries-old problem that, despite international and U.S. efforts to eliminate it, continues to occur in virtually every country in the world. In a survey of U.N. member countries published in November 2014, the U.N. Office on Drugs and Crime (UNODC) reported that between 2010 and 2012, 124 countries had identified trafficking victims representing 152 nationalities.[1] Common forms of human trafficking include trafficking for commercial sexual exploitation and trafficking through forced labor and debt bondage. Other forms of human trafficking also include trafficking for domestic servitude and the use of children in armed conflict (e.g., child soldiers).

The modern manifestation of the human trafficking problem is driven by the willingness of labor and service providers to violate anti-trafficking laws and regulations in the face of continued international demand for cheap labor and services and gaps in the enforcement of such rules. Ongoing demand is particularly concentrated among industries and economic sectors that are low-skill and labor-intensive. To address the complex dynamics at issue in human trafficking, policy responses are cross-cutting and international, bringing together diverse stakeholders in the fields of foreign policy, human rights, international security, criminal justice, migration, refugees, public health, child welfare, gender issues, urban planning, international trade, labor recruitment, and government contracting and procurement.

In the United States, Congress has enacted legislation to address aspects of the problem, including the Trafficking Victims Protection Act of 2000 (TVPA, Division A of P.L. 106-386, as amended); TVPA reauthorization acts (TVPRAs of 2003, 2005, 2008, and 2013); the Child Soldiers Prevention Act of 2008 (CSPA of 2008, Title IV of P.L. 110-457); Title XIII of the Violence Against Women Reauthorization Act of 2013 (P.L. 113-4); and the Tariff Act of 1930 (Title III, Chapter 497, as amended). Other trafficking-related provisions have also been enacted through the Trade Act of 1974 (Title V of P.L. 93-618, as amended), the Trade and Development Act of 2000 (TDA, P.L. 106-200, as amended), several additional trade preference programs authorized by Congress, the National Defense Authorization Act (NDAA), Fiscal Year 2013 (P.L. 112-239), and the Justice for Victims of Trafficking Act of 2015 (P.L. 114-26).

Further Reading

For additional information on human trafficking beyond selected foreign policy issues covered in this report, see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Liana W. Rosen and Alison Siskin. RL34317 provides an expanded overview of the human trafficking phenomenon, both as it exists in the United States and abroad. It also describes and analyzes both the domestic and international provisions in the TVPA and related issues for Congress, including immigration relief for trafficking victims discovered in the United States, aid available to victims in the United States, and domestic investigations of trafficking offenses.

Although the United States has long supported international efforts to eliminate various forms of human trafficking, a new wave of contemporary action against international human trafficking galvanized in the late 1990s as news stories drew attention to the discovery of trafficked women and children from the former Soviet Union forced to participate in the commercial sex industries in Western Europe and North America. Across the international community, the transnational nature of the phenomenon highlighted the need for improved international coordination and commitment to halting trafficking flows. To this end, the United Nations (U.N.) adopted in 2000 the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereinafter U.N. Trafficking Protocol), a supplement

[1] United Nations Office on Drugs and Crime (UNODC), *Global Report on Trafficking in Persons*, 2014.

to the U.N. Convention Against Transnational Organized Crime. The U.N. Trafficking Protocol is not the first or only multilateral mechanism to address human trafficking; it was, however, the first to define trafficking in persons and require States Parties to criminalize such activity.[2] Most recently in June 2014, the International Labor Organization (ILO) adopted a new protocol and recommendation to supplement the Forced Labour Convention of 1930 (Convention No. 29). The new Protocol of 2014 reaffirms state obligations to address forced labor in all its forms, including trafficking in persons.

Since the U.N. Trafficking Protocol entered into force in 2003, the international community has seen an uptick in the number of countries enacting laws that prohibit and criminally punish human trafficking. While observers note that continued vigilance is required to encourage the remaining U.N. members to become States Parties to the U.N. Trafficking Protocol, emphasis from the U.S. foreign policy perspective has also been placed on improving the implementation and enforcement of anti-trafficking laws.[3] According to a U.N. analysis, 146 countries and territories had criminalized trafficking by August 2014; yet, 15% of the countries covered had not recorded a single trafficking conviction between 2010 and 2012.[4]

Continued public attention and academic research suggest that human trafficking remains an international problem—a key rationale for the repeated reauthorization and enactment of further legislative enhancements to the TVPA. Data on the global scope and severity of human trafficking continue to be lacking, due in large part to uneven enforcement of anti-trafficking laws internationally and related challenges in identifying victims. The sources of victims have diversified over time, as have the industries in which such trafficking victims are found. Known flows involve victims originating not only from Eastern and Central Europe, but also from South and Southeast Asia, North and West Africa, and Latin America and the Caribbean. Observers, however, debate whether existing anti-trafficking efforts worldwide have resulted in appreciable and corresponding progress toward the global elimination of human trafficking.

According to the International Labor Organization (ILO), some 20.9 million individuals worldwide in 2012 were likely subjected to forced labor, including labor and sex trafficking as well as state-imposed forms of forced labor.[5] In 2014, the ILO followed up with an analysis of the financial value of forced labor and related trafficking for the international economy, estimating that it generated $150 billion in illegal profits annually.[6] According to the ILO, two-thirds of this total amount stems from commercial sexual exploitation, while the rest resulted from forced labor. Sectors involving forced labor include the construction, manufacturing, and utilities industries ($34 billion), followed by agriculture ($9 billion) and domestic work ($8 billion).

[2] Other key international treaties addressing human trafficking, to which the United States has ratified or acceded, include the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the 2000 U.N. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography; the 2000 U.N. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict; the 1957 International Labor Organization (ILO) Convention No. 105 on the Abolition of Forced Labour; and the 1999 ILO Convention No. 182 on the Worst Forms of Child Labour. See also the U.N. General Assembly's Global Plan of Action to Combat Trafficking in Persons of July 2010.

[3] As of January 9, 2013, there are 154 States Parties to the U.N. Trafficking Protocol, including the United States, which signed the Protocol in December 2000 and ratified it in November 2005.

[4] UNODC, *Global Report on Trafficking in Persons*, December 2014.

[5] ILO, *ILO Global Estimate of Forced Labour: Results and Methodology*, June 2012. ILO estimates the range of victims to be between 19.5 million and 22.3 million, with a 68% level of confidence.

[6] ILO, *Profits and Poverty: The Economics of Forced Labour*, 2014.

Prior Congresses have been active on international human trafficking issues, particularly with appropriations identified for anti-trafficking assistance purposes, proposed legislation related to the TVPA and other anti-trafficking initiatives, and an active record of committee hearings. Key issues for the 114th Congress have focused on whether there is a need for enhanced mechanisms for international funding and programming prioritization; the role of congressionally mandated reporting requirements in driving the anti-trafficking agenda; what prospects may exist to invigorate the monitoring and enforcement of anti-trafficking laws and policies, particularly as they relate to U.S. government contractors and subcontractors; and the relationship between trade policy and anti-trafficking goals.

U.S. Foreign Policy Framework

Current U.S. foreign policy approaches for addressing human trafficking are a modern off-shoot of anti-slavery policies that centered initially on reinforcing international prohibitions on forced labor during the first half of the 20th century. With time, U.S. and international perspectives on the global scope of human trafficking have expanded to cover a broader range of victims and prohibited activities, including sex trafficking and the exploitation of children in labor, armed conflict, and the commercial sex industry. The ultimate goal of current U.S. anti-trafficking policy is to eliminate the problem and support international efforts to abolish human trafficking worldwide.

The U.S. government has long played a leading role in international efforts to combat human trafficking, with Congress in particular driving contemporary U.S. foreign policy responses. Although the U.S. government actively participates in multilateral efforts to combat human trafficking, U.S. responses to human trafficking often extend beyond the scope of international commitments and are based on U.S. foreign policy legislation and executive branch guidance. Such U.S. guidance, which initially focused on combating forced labor practices and eventually expanded to cover broader concepts of human trafficking, has included the following (in chronological order):

- **Tariff Act of 1930.** Section 307 of the Tariff Act of 1930, as amended, prohibited the import of all foreign "goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part" by convict or forced or indentured labor.[7] The U.S. Department of Homeland Security (DHS) implements the provisions of Section 307 by maintaining a public list of such prohibited goods and barring entry of such products into the United States.[8]
- **Trade Preference Program Eligibility.** Select countries receive temporary, non-reciprocal, duty-free U.S. market access for certain exports on condition that they adhere to "internationally recognized worker rights," including prohibitions on forced labor, as well as eliminate the "worst forms of child labor," including child trafficking.[9] Such congressionally authorized preference programs include the

[7] Section 307 of Title III, Chapter 497 (46 Stat. 689); 19 U.S.C. 1307. Unless otherwise noted, all subsequent references to the Tariff Act of 1930 are assumed to refer to the Act, as amended.

[8] U.S. Department of Homeland Security (DHS), Customs and Border Protection (CBP), *Convict, Forced, or Indentured Labor Product Importations*, December 10, 2009, http://www.cbp.gov/xp/cgov/trade/trade_outreach/convict_importations.xml.

[9] The definition for "internationally recognized worker rights" was first incorporated into U.S. statute through Section 507, Title V (Trade Act of 1974), of the Trade Reform Act (P.L. 93-618), as added by Section 1952(a), Title I (GSP Renewal Act of 1996) of the Small Business Job Protection Act of 1996 (P.L. 104-188). The definition for "worst

Generalized System of Preferences (GSP);[10] Caribbean Basin Economic Recovery Act (CBERA), as amended and extended through the U.S. Caribbean Basin Trade Partnership Act (CBTPA);[11] Andean Trade Preference Act (ATPA), as amended and extended through the Andean Trade Promotion and Drug Eradication Act (ATPDEA);[12] and African Growth and Opportunity Act (AGOA).[13]

- **Executive Memorandum on Steps to Combat Violence Against Women and Trafficking in Women and Girls.** In March 1998, President William J. Clinton identified trafficking in women and girls as an international problem with domestic implications in the United States. In the memorandum, President Clinton established the goals of increasing human trafficking awareness, providing protection to victims, and enhancing the "capacity of law enforcement worldwide to prevent women and girls from being trafficked" to ensure that traffickers are punished.
- **Executive Order 13126.** On June 12, 1999, President William J. Clinton issued Executive Order 13126, the Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor (EO 13126). This executive order prohibited U.S. government contractors from using or procuring "goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor." The U.S. Department of Labor, with consultation from DHS and the State Department, implements the provisions of EO 13126 by maintaining a public list of offending products, as well as a list of the countries from which such products originate.[14]
- **Trafficking Victims Protection Act of 2000.** The cornerstone legislative vehicle for current U.S. policy on combating international human trafficking is the Trafficking Victims Protection Act of 2000 (TVPA), as amended and reauthorized (TVPRAs).[15] Among other provisions, the TVPA formalized the

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forms of child labor" was first incorporated into U.S. statutes through Section 412(b), Title IV of the Trade and Development Act of 2000 (TDA, P.L. 106-200). Both terms are codified at 19 U.S.C. 2467.

[10] Title V (Trade Act of 1974) of the Trade Reform Act (P.L. 93-618), as amended; 19 U.S.C. 2462-2467.

[11] CBERA was first enacted through the Title II of P.L. 98-67 ("An act to promote economic revitalization and facilitate expansion of economic opportunities in the Caribbean Basin region, to provide for backup withholding of tax from interest and dividends, and for other purposes"), and subsequently amended. CBTPA was first enacted through Title II of the TDA (P.L. 106-200), and subsequently amended. Both provisions are codified at 19 U.S.C. 2701-2707.

[12] ATPA was first enacted through Title II (Trade Preference for the Andean Region) of the Andean Trade Preference Act (P.L. 102-182) and subsequently amended. ATPDEA was first enacted through Division C, Title XXXI of the Trade Act of 2002 (P.L. 107-210), and subsequently amended. Both provisions are codified at 19 U.S.C. 3201-3206.

[13] Title I (Extension of Certain Trade Benefits to Sub-Saharan Africa) of the TDA (P.L. 106-200); 19 U.S.C. 3701-3706 and 19 U.S.C. 2466a-b.

[14] U.S. Department of Labor, International Labor Affairs Bureau (ILAB), *Executive Order 13126*, http://www.dol.gov/ILAB/regs/eo13126/main.htm.

[15] The TVPA has been amended and reauthorized through the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA of 2003), P.L. 109-162; the Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA of 2005), P.L. 109-164; the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008), P.L. 110-457; and Title XII of the Violence Against Women Reauthorization Act of 2013 (TVPRA of 2013), P.L. 113-4. Additional provisions, amending the TVPA are also located at Section 682 of Division A (Department of State Authorization Act, Fiscal Year 2003), Title VI, Subtitle G of the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228); Section 804 of Title VIII, Subtitle A of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162); and Title XVII, Ending Trafficking in Government Contracting (P.L. 112-239). The TVPA is codified at 22 U.S.C. 7101-7112. Unless otherwise noted, all subsequent references to the TVPA

overall U.S. approach to anti-trafficking through an emphasis on prevention of severe forms of human trafficking, prosecution of traffickers, and protection of victims (the three Ps) both domestically and internationally. It established minimum standards for the elimination of trafficking and specific criteria to assess whether such standards have been met. The TVPA also established several key elements in the U.S. foreign policy response to human trafficking, including the State Department Office to Combat and Monitor Trafficking in Persons; interagency entities to coordinate anti-trafficking policies across U.S. agencies, such as the Senior Policy Operating Group (SPOG) and President's Interagency Task Force (PITF); several reporting requirements to Congress; authorities to provide anti-trafficking foreign aid; and mechanisms to withhold U.S. aid to countries that fail to achieve progress in combating human trafficking.

- **National Security Presidential Directive 22.** Highlighting the impact of human trafficking on U.S. national security, President George W. Bush in December 2002 issued National Security Presidential Directive 22 on Combating Trafficking in Persons (NSPD-22).[16] NSPD-22 was "based on an abolitionist approach to trafficking in persons" and established as a U.S. government-wide goal the eradication of international trafficking in persons, including a zero tolerance policy among U.S. government employees and contractors.[17] NSPD-22 also notably identified prostitution and several related activities as "contributing to the phenomenon of trafficking in persons"—and thus to be opposed as a matter of U.S. government policy.
- **Child Soldiers Prevention Act of 2008.** Addressing the specific issue of children in armed conflict, the Child Soldiers Prevention Act of 2008 (CSPA of 2008) mandated the U.S. Department of State to annually publish a list of countries in violation of international standards to condemn the conscription, recruitment, and use of children in armed conflict and punish such countries by prohibiting the provision of certain types of U.S. military assistance. Additionally, the U.S. Department of the Treasury may also block the property and property interests of specially designated foreign political or military leaders who have recruited or used children in armed conflict in the Democratic Republic of Congo (DRC) or Somalia.
- **Executive Order 13627 and Title XVII of the FY2013 NDAA.** In September 2012, President Barack Obama issued Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts. Soon afterward, Congress enacted P.L. 112-239, which included Title XVII on "Ending Trafficking in Government Contracting." Both the executive order and the legislative provision mandated that the civilian and defense acquisition councils revise existing contractor guidelines for preventing human trafficking. In January 2015, the acquisition councils announced the final rule, which outlined several additionally prohibited activities and enhanced contractor requirements to monitor and enforce anti-trafficking requirements.

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are assumed to refer to the TVPA, as amended.

[16] President George W. Bush, National Security Presidential Directive 22 (NSPD-22), *Combating Trafficking in Persons*, December 16, 2002, partially declassified for publication as "Appendix C" in U.S. Department of Defense (DOD), Office of the Inspector General (OIG), *Inspections and Evaluations: Evaluation of DOD Efforts to Combat Trafficking in Persons*, Report No. IE-2007-002, November 21, 2006.

[17] Ibid.

U.S. government entities involved in combating international trafficking in persons include the Department of State, Department of Labor, Agency for International Development (USAID), Department of Defense (DOD), and the Department of Homeland Security (DHS). These departments and agencies are among the participants in interagency coordination mechanisms to combat international human trafficking through the SPOG and the PITF and may also issue agency-specific guidelines against human trafficking that implement enacted laws, federal regulations, and presidential determinations, directives, and executive orders. For example, USAID issued in February 2012 the *USAID Counter-Trafficking in Persons Policy*.

The U.S. government also participates in multilateral and regional anti-trafficking efforts conducted by the international community, including through organizations such as the United Nations, the ILO, the International Organization for Migration (IOM), and the Organization for Security and Cooperation in Europe (OSCE), among many others. Such activities seek to bolster U.S. interests in the issue at the multilateral and regional levels. See **Table 1** for a list of multilateral treaties related to human trafficking in which the U.S. government participates.

Table 1. International Treaties Addressing Trafficking in Persons to Which the United States Has Ratified or Acceded

Date of U.S. Accession, Signing, or Ratification	Name of Convention or Protocol	Entry into Force
December 6, 1967 (accession)	1956 U.N. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	April 30, 1957
December 13, 2000 (signed) November 3, 2005 (ratified)	2000 U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention Against Transnational Organized Crime	December 25, 2003
July 5, 2000 (signed) December 23, 2002 (ratified)	2000 U.N. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	January 18, 2002
July 5, 2000 (signed) December 23, 2002 (ratified)	2000 U.N. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	February 12, 2002
September 25, 1991 (ratified)	1957 ILO Convention No. 105 on the Abolition of Force Labor	January 17, 1959
February 12, 1999 (ratified)	1999 ILO Convention No. 182 on the Worst Forms of Child Labor	November 19, 2000

Sources: CRS presentation of data contained in the U.N. Treaty Collection, *Status of Treaties*, http://treaties.un.org/Home.aspx?lang=en, and ILO *Database of International Labor Standards*, http://www.ilo.org/ilolex/english/newratframeE.htm.

Key Trafficking Terms in U.S. Foreign Policy Context

As various terms are defined and used in international treaties as well as domestic statutes, choice in the application of these terms may trigger different policy consequences. The following section identifies and compares several terms frequently used in the context of foreign policy discussions related to human trafficking.

Human Trafficking

"Human trafficking" is a generic term to describe what the U.N. Trafficking Protocol defines as "trafficking in persons" and the TVPA in U.S. statute defines as "severe forms of trafficking in persons." The U.N. and U.S. terms share similarities, but are applied in different policy contexts. They are both precedent-setting, as two of the earliest official definitions broadly conceived to describe human trafficking as a combination of prohibited acts (e.g., recruitment, harboring, or transportation of victims) and prohibited methods or means of procuring commercial sex and other labor or services (e.g., force, fraud, or coercion). Both afford enhanced protections for children against victimization in the commercial sex industry, as well as protections against their subjection to work under conditions of involuntary servitude, peonage, debt bondage, or slavery. Neither the U.S. nor the U.N. definition requires trafficking victims to be physically moved across international borders.

In general, the U.S. term defined in the TVPA is considered more restrictive than the U.N. definition, resulting in a less expansive basis for the concept of human trafficking and a more narrowly defined scope for U.S. foreign policy activities to combat human trafficking. The intended foreign policy purposes of the definitions also differ. The U.N. term was created to facilitate international cooperation for legal and technical assistance. The U.S. term is intended to be used to measure and rank foreign countries' progress in combating trafficking.[18] It can trigger unilateral U.S. government restrictions on foreign aid to countries with a record of poor performance to combat severe forms of human trafficking. Additionally, it can also affect federal contracting and procurement policies. Domestically, the U.S. term also has implications for the criminal justice system and immigration status categories.

Forced Labor

The U.N. Trafficking Protocol does not define forced labor. Instead, the primary international definition of forced labor can be found in ILO Convention No. 29, the Forced Labour Convention of 1930, which defines "forced or compulsory labour" as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." ILO's Protocol of 2014 to Convention No. 29 reaffirms the 1930 definition and requires Member states to prevent and eliminate forced or compulsory labor, including trafficking in persons.[19] The TVPRA of 2008 (P.L. 110-457) amends the *U.S. Criminal Code* and indirectly defines "forced labor" by describing the circumstances under which an individual could be punished for knowingly providing or obtaining the labor or services of a person.[20]

The ILO term for forced labor is broader than both the U.N. and U.S. definitions of human trafficking. The ILO term is relevant in the U.S. anti-trafficking policy context, as it is the governing definition for the U.S. import ban on foreign goods produced with convict, forced, or indentured labor (§307 of the Tariff Act of 1930). The ILO definition also applies to U.S. decisions to apply or revoke trade preference beneficiary status to select foreign countries (e.g., GSP, CBERA/CBTPA, ATPA/ATPDEA, and AGOA). The U.S. Department of Labor also applies the international definition in its preparation of two additional mandates: (1) a list of foreign goods produced with exploitative child labor that may not be used in federal contractor supply chains (EO 13126), and (2) a list of foreign goods produced by forced labor or child labor (TVPRA of 2005; P.L. 109-164).

Worst Forms of Child Labor

ILO Convention No. 182, the Worst Forms of Child Labor Convention of 1999, defines "the worst forms of child labour" to include child slavery and prostitution, as well as use of children in illicit activities, such as drug trafficking, and other work, which by its nature, is likely to harm the health, safety, or morals of children. This term is used in the U.S. foreign policy context in decisions to apply or revoke trade preference beneficiary status to foreign countries. It is also the governing definition used by the Labor Department for its annual report on

[18] According to the State Department's Office of Inspector General (OIG), the Secretary of State approved in 2011 an interpretation of the human trafficking term, to be used when drafting the annual *TIP Report*, which includes forced labor. See DOS and the Broadcasting Board of Governors (BBG), OIG, Office of Inspections, *Inspection of the Office to Monitor and Combat Trafficking in Persons*, report no. ISP-I-12-37, June 2012.

[19] The Protocol of 2014 to Convention No. 29 is a legally binding instrument that supplements Convention No. 29 and mandates that Member states take measures to prevent, protect against, and remedy forced labor practices. See also Recommendation 203 on "Supplementary Measures for the Effect Suppression of Forced Labour," which is a non-binding document that supplements the Protocol of 2014 and Convention No. 29 with practical guidance.

[20] 18 U.S.C. 1589.

Findings of the Worst Forms of Child Labor (hereinafter *Worst Forms of Child Labor Report*). However, not all of the ILO-specified worst forms of child labor necessarily constitute human trafficking, as defined by either the U.N. or the TVPA. This term is to be distinguished from other terms used in U.S. foreign policy contexts, including "forced and indentured child labor" (as is used by EO 13126) and "child labor" (as is used to develop a list of foreign goods produced by forced or child labor, pursuant to the TVPRA of 2005).

Foreign Policy Issues

Overall, U.S. foreign policy to address and eliminate international human trafficking includes several dimensions that are not mutually exclusive. They are summarized below, and key issues associated with each line of activity are discussed in the subsequent sections.

- **Foreign Country Reporting.** Congress requires the U.S. Departments of State and Labor to report annually on foreign country efforts against human trafficking, child soldiers, and the worst forms of child labor, as well as country efforts to support human rights, including prohibitions on forced and compulsory labor and child trafficking.
- **Foreign Product Blacklisting.** Congress mandates the U.S. Departments of Labor and Homeland Security to maintain, respectively, a list of foreign goods produced with child or forced labor and a list of foreign products made with convict, forced, or indentured labor to be barred entry at U.S. ports. Additionally, the President, through EO 13126, requires the Department of Labor to maintain a list of foreign goods made with forced or indentured child labor prohibited from use in federal procurement supply chains.
- **Foreign Assistance and Related Projects to Support Anti-Trafficking Efforts Abroad.** Congress authorizes and appropriates to the U.S. Department of State, USAID, and the U.S. Department of Labor funds to support foreign countries' efforts to combat human trafficking. Between FY2005 and FY2012, these departments and agencies obligated approximately $595 million for international anti-trafficking activities, including assistance to foreign governments, NGOs, and civil society organizations, as well as researchers. Some in the 114th Congress are considering alternative mechanisms to deliver anti-trafficking assistance (e.g., S. 553, the End Modern Slavery Initiative Act of 2015).
- **Restrictions on Foreign Assistance to Poor-Performing Countries.** Congress requires that non-humanitarian, nontrade-related foreign aid be denied to countries that are willfully noncompliant with anti-trafficking standards. Separately, Congress also requires that certain types of U.S. military assistance be denied to countries that harbor or recruit child soldiers.
- **Conditions on Foreign Country Trade Preference Beneficiary Status for Anti-Trafficking Purposes.** Through several legislative vehicles, Congress authorizes certain countries to export to the United States specified products duty-free. Eligibility for this privilege, however, is conditioned on whether such countries are committed to certain foreign policy goals, including internationally recognized worker rights, such as prohibiting forced labor, and the elimination of the worst forms of child labor, such as child trafficking. Recent congressional efforts to connect human trafficking and trade policy have emerged in the context of the Trans-Pacific Partnership (TPP) (e.g., P.L. 114-26, the Bipartisan Congressional Trade Priorities Act of 2015, and H.R. 644, the Trade Facilitation Enforcement Act of 2015).

- **Financial Prohibitions against Specially Designated Individuals.** The U.S. Department of the Treasury may also block the property and property interests of specially designated foreign political or military leaders who have recruited or used children in armed conflict in Central African Republic (CAR) (Executive Order 13667), the DRC (Executive Order 13413), Somalia (Executive Order 13620), and South Sudan (Executive Order 13664).
- **Prevention of Trafficking in U.S. Operations Overseas.** Congress and the White House have issued several policies and regulations emphasizing prohibitions on trafficking-related activities among U.S. military personnel, contractors, peacekeepers, and post-conflict and humanitarian aid workers. Anti-trafficking laws and regulations bar not only "severe forms of human trafficking," as defined by the TVPA, but also procurement of commercial sex (e.g., prostitution) while contracted with the U.S. government, the use of forced labor in the performance of the contract, and other acts that increase worker vulnerability to trafficking conditions.

These lines of activity reflect a long-standing and broad-based set of U.S. policy commitments to eliminate international human trafficking. The problem of human trafficking, however, continues to persist, challenging policy makers to modify and improve existing U.S. foreign policy responses to the problem. Persistent reports of human trafficking worldwide may also challenge policy makers to evaluate whether anti-trafficking programs can achieve current U.S. foreign policy goals within a realistic time frame.

Foreign Country Reporting

One line of U.S. foreign policy activity to combat human trafficking is through foreign country reporting. Congress has mandated that the Departments of State and Labor regularly report on foreign countries' policy responses to human trafficking and forced labor, identify countries that recruit and harbor child soldiers, and evaluate efforts made by foreign countries to eliminate the worst forms of child labor, including child trafficking.

The most targeted of these reports is the State Department's annual *Trafficking in Persons Report* (hereinafter *TIP Report*), which reviews the status of foreign countries in achieving the TVPA's minimum standards to eliminate severe forms of trafficking in persons.[21] In the *TIP Report*, countries ultimately receive one of four possible ranking designations: Tier 1 (best), Tier 2, Tier 2 Watch List, and Tier 3 (worst). Only Tier 1 countries are fully compliant with the TVPA's minimum standards, while the rest are non-compliant and vary in terms of the level of effort to improve. Other congressionally mandated foreign country reporting includes two reports, the *Findings of the Worst Forms of Child Labor* (hereinafter *Worst Forms of Child Labor Report*) and the *Country Reports on Human Rights Practices* (hereinafter *Human Rights Report*), as well as an additional list, published in conjunction with the *TIP Report*, of countries involved in recruiting and using child soldiers (see **Table 2** below). For two of these reporting requirements—the *TIP Report* and the list of countries involved in recruiting and using child soldiers—the worst-performing countries may, in turn, be subject to restrictions on certain types of U.S. foreign assistance (see section below on "Foreign Aid Restrictions").

[21] Section 108(a) of the TVPA, as amended; 22 U.S.C. 7106(a).

Table 2. Summary of Foreign Country Reporting Requirements

Reporting Requirement	Legislative Source	Description
TIP Report	Section 110(b) of the TVPA, as amended; 22 U.S.C. 7107(b)	Due each June and issued annually since 2001, the centerpiece of the *TIP Report* is a country-by-country analysis and ranking, based on progress countries have made in their efforts to prosecute, protect, and prevent human trafficking. The most recent report was released in July 2015 and covers 188 countries, including one unranked country (Somalia).
List of Countries Involved in Recruiting and Using Child Soldiers	Section 404(b) of the CSPA; 22 U.S.C. 2370c-1(b)	Beginning in 2010, the State Department annually publishes a list of countries that recruit or use child soldiers in their armed forces, or that harbor non-government armed forces that recruit or use child soldiers. Following these guidelines, the State Department identified eight such countries in 2015: Burma, the Democratic Republic of Congo (DRC), Nigeria, Somalia, South Sudan, Sudan, Syria, and Yemen.
Worst Forms of Child Labor Report	Section 412(d) of the TDA, as amended; 19 U.S.C. 2464	Since 2002, the Labor Department has issued an annual report on the progress made by certain specified countries to eliminate the worst forms of child labor. The most recent report, released in September 2014, covers 143 countries and territories designated as current or previous beneficiaries of trade preference programs.
Human Rights Report	Section 504 of the *Trade Act of 1974* (19 U.S.C. 2464) and Section 104 of the TVPA (22 U.S.C. 2151n)	Congress also requires the State Department to include in its annual *Human Rights Report* sections for each country on the status of the "prohibition of forced or compulsory labor" as well as on trafficking in persons. The 2014 edition, released in June 2015, cross-referenced the *TIP Report* for details on human trafficking and also stated that most countries faced challenges associated with implementing and enforcing prohibitions against forced or compulsory labor.

Sources: CRS presentation of data from the Legislative Information System (LIS); DOS, J/TIP, 2013 *TIP Report*; DOL, 2011 *Worst Forms of Child Labor Report*; and DOS, 2012 *Human Rights Report*.

These annually updated analyses provide regular reporting and country-level detail. As public documents, the information contained in them has created diplomatic opportunities for engagement with foreign counterparts, as well as for increased public awareness of human trafficking as an international problem. Some officials and outside observers value these reports as an effective means through which to praise countries that have implemented best practices, criticize those that have balked at reform, and offer support to those that could benefit from foreign donor assistance.

In contrast, the State Department's Office of Inspector General (OIG) has described several of these reports as resource-intensive, unnecessarily "encyclopedic in detail and length," largely redundant, and at times the cause of more diplomatic harm than good.[22] Although the actual number of pages devoted to each individual country narrative tends to be relatively few, OIG criticized the length of the State Department's *TIP Report* and the Department of Labor's *Worst Forms of Child Labor Report*. The State Department's OIG described the *TIP Report* as among the most cost-intensive in terms of personnel resources both at U.S. diplomatic posts abroad and at headquarters in Washington, DC.

[22] DOS and the BBG, OIG, *Inspection of Department-Required and Congressionally Mandated Reports: Assessment of Resource Implications*, report no. ISP-I-11-11, October 2010.

To illustrate such criticisms, the OIG highlighted the experience of U.S. Embassy Bridgetown, located in Barbados. In addition to Barbados, Embassy Bridgetown is responsible for diplomatic relations with six additional governments in the Eastern Caribbean, including Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines. All are covered by either the *TIP Report* or the *Worst Forms of Child Labor Report*, or both. Embassy Bridgetown reportedly estimated that approximately 200 person-hours were required to resolve questions and differences in its submission to Washington for the 2009 *TIP Report* and an additional 200 person-hours for "dealing with negative political, media, and public reactions."[23] Some, however, may consider such time and personnel resources committed to human trafficking issues appropriate, given the perceived magnitude and seriousness of the problem.

Other concerns have centered on the lack of consistent reporting quality across countries, as well as questions regarding discrepancies in data collection and the reliability of report findings. For example, the Labor Department's *Worst Forms of Child Labor Report* identifies a substantially larger number of countries in Africa and the Middle East associated with child soldiers, compared to the State Department's list. A rationale for this discrepancy may be that, in most cases, reports of child soldiers are often associated with unsanctioned rebel groups beyond the control of state policies. However, in the case of Afghanistan, the Department of Labor reports that children have joined its national military and police forces.

Foreign Product Blacklisting

A second line of foreign policy activity to combat human trafficking is through foreign product blacklisting. Through two acts (the Tariff Act of 1930 and the TVPRA of 2005) and an executive order (EO 13126), the Departments of Labor, State, and Homeland Security are required to maintain lists of foreign products that have been produced by forced labor, child labor, indentured labor, forced or indentured child labor, and convict labor.

- Pursuant to the **Tariff Act of 1930**[24] and implementing regulations, DHS may prohibit certain types of goods from import into the United States when it is determined that (1) the goods are produced, mined, or manufactured with the use of convict, forced, or indentured labor; and (2) such goods had been or are likely to be imported into the United States. According to DHS's Customs and Border Protection (CBP), current bans affect products from China, India, Japan, and Mexico.[25]
- Pursuant to **EO 13126**, issued by President Clinton on June 12, 1999, the Department of Labor, in consultation with the State Department and DHS, is required to jointly publish and maintain a list of countries and products that are likely to have been mined, produced, or manufactured by forced or indentured child labor. The appearance on the list triggers an additional requirement for U.S. federal contractors to certify that they have made good faith efforts to ensure that their products and services to the U.S. government do not involve forced or indentured child labor. The most recent version of the list identifies 54 products from 26 countries.[26]

[23] Ibid.

[24] Section 307 of the Tariff Act of 1930 (Title III, Chapter 497, as amended; 19 U.S.C. 1307).

[25] DHS, CBP, *Convict, Forced, or Indentured Labor Product Importations*, http://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations.

[26] U.S. Department of Labor, ILAB, Executive Order 13126, *Current Countries and Products*, http://www.dol.gov/ilab/

- The **TVPRA of 2005** mandates the Department of Labor to "develop and make available to the public a list of goods from countries that the Bureau of International Labor Affairs has reason to believe are produced by forced labor or child labor in violation of international standards."[27] Pursuant to this mandate, the Department of Labor initially published a list in 2009 and has subsequently updated the list annually through 2014. In the 2014 list, the Department of Labor identified 136 goods from 74 countries as likely produced by child labor or forced labor.[28]

Although not all of the blacklisted products pursuant to these provisions are necessarily indicative of human trafficking, they are often included today as a dimension of U.S. policy to combat international human trafficking and described in recent State Department *TIP Reports* as a component of the overall U.S. anti-trafficking policy regime.[29] The consequences of being identified as a blacklisted product vary, depending on which list a product is placed.

These lists can be viewed as innovative policy responses to prevent labor-related human trafficking, often considered an under-emphasized and under-prioritized dimension of the trafficking in persons problem. They may, however, be criticized by some as duplicative, while also not sufficiently tailored or utilized as a tool to combat human trafficking, given variations in the standards, definitions, and criteria used for each blacklist. The direct correlation between blacklisted products and human trafficking is therefore imprecise, as none of the three lists specify whether blacklisted products are indicative of human trafficking as defined by either the U.N. or the TVPA (see **Table 3** below).

Table 3. Foreign Product Blacklisting Terms Used in Comparison

		Factors that Trigger Inclusion on a Foreign Product Blacklist							
Legislative Source	**Implementing Agency**	**Convict Labor**	**Child Labor[a]**	**Forced Labor[b]**	**Forced Child Labor[c]**	**Indentured Labor**	**Indentured Child Labor[c]**	**Human Trafficking**	**Consequence of Blacklisting**
Tariff Act of 1930	DHS	X		X	X	X	X	N/A	Import Ban
EO 13126	DOL, in consultation with DOS and DHS				X		X	N/A	Procurement Ban
TVPRA of 2005	DOL		X	X	X			N/A	N/A

Sources: Section 307 of the Tariff Act of 1930 (Title III, Chapter 497, as amended; 19 U.S.C. 1307), EO 13126 (June 12, 1999), Section 105 of the TVPRA of 2005 (P.L. 109-164; 22 U.S.C. 7112), and U.S. Department of Labor, Bureau of International Labor Affairs (ILAB), *Frequently Asked Questions, Trafficking Victims Protection Reauthorization Act (TVPRA), "What Definitions of Child Labor and Forced Labor are Used in Developing the List?"* http://www.dol.gov/ilab/faqs2.htm#tvpra3. N/A=not applicable; DHS=Department of Homeland Security, DOS=Department of State, DOL=Department of Labor.

a. Child labor is undefined in the TVPRA of 2005, but the Department of Labor defines "child labor" as "all work performed by a person below the age of 15" and includes all work performed by a person below the

reports/child-labor/list-of-products/index-country.htm.

[27] Section 105(b)(2)(C) of the TVPRA of 2005 (P.L. 109-164; 22 U.S.C. 7112(b)(2)(C)). Section 110 of the TVPRA of 2008 (P.L. 110-457) reiterates this reporting requirement (no corresponding *U.S. Code* citation).

[28] U.S. Department of Labor, ILAB, *List of Goods Produced by Child Labor or Forced Labor*, September 2012.

[29] The original purpose of enacting these provisions was not necessarily designed to serve specifically as a policy response to trafficking in persons, but rather to condemn foreign labor practices in contravention to international labor standards.

age of 18 under circumstances that fit the ILO's definition of the "worst forms of child labor" (ILO Convention No. 182). ILO Convention No. 182 defines the "worst forms of child labor" as "(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children."

b. Section 307 of the Tariff Act of 1930 defines "forced labor" consistent with ILO Convention No. 29. ILO Convention No. 29 defines forced labor as "all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily."

c. EO 13126 defines "forced or indentured child labor" as all work or service (1) exacted from any person under the age of 18 involving forced labor as defined by ILO Convention No. 29; or (2) performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Foreign Aid and International Anti-Trafficking Projects

A third line of foreign policy activity to combat human trafficking is through provisions of aid to foreign countries. For more than a decade, Congress has authorized and appropriated foreign assistance and international grants to combat human trafficking. From FY2005 through FY2012, the U.S. government obligated approximately $595 million for international anti-trafficking projects outside the United States. New for 2015 is the first solicitation by J/TIP for grant proposals to implement the Child Protection Compact (CPC) Partnership, a congressionally mandated program established by Title XII of the Violence Against Women Reauthorization Act of 2013 (P.L. 113-4) with the goal of reducing child trafficking and improving child protection. On June 23, 2015, the United States and Ghana formally committed to the first CPC Partnership agreement, a five-year, up to $5 million initiative that will be guided by a jointly developed multi-year plan.

Given the transnational nature of human trafficking, these anti-trafficking programs are viewed by proponents as crucial tools to build the capacity and capability of other countries to prevent trafficking, protect victims, and prosecute traffickers (commonly referred to as the three Ps). Improved foreign efforts to eliminate trafficking could, in turn, translate into fewer legal, political, and physical safe havens for international traffickers to exploit.

Such international projects, however, are also challenged by limitations in measuring effectiveness and developing meaningful measures of progress. Given the general absence of data to formulate a baseline estimate for the scope of the human trafficking problem, it is often difficult to specify how anti-trafficking aid programs have improved the situation. For example, the U.N. Office on Drugs and Crime (UNODC) stated in a 2009 report that "without a sense of the magnitude of the problem, it is impossible to prioritize human trafficking as an issue relative to other local or transnational threats, and it is difficult to assess whether any particular intervention is having effect."[30] In lieu of specifics, anti-trafficking assistance programs are often described as providing diffuse capacity-building benefits for governance, civil society, and general public awareness. Such factors, however, are difficult to measure and, even if they were to be measured, may claim only tenuous links to any specific anti-trafficking program. In the past, the U.S. Government Accountability Office (GAO) has reported on problems with coordinating,

[30] U.N. Global Initiative to Fight Human Trafficking (UNGIFT) and UNODC, *Global Report on Trafficking in Persons*, February 2009.

evaluating, and monitoring the effectiveness of U.S. foreign aid projects to combat human trafficking.[31]

Accounting for the annual amount of U.S. funding for international projects to combat human trafficking can also present difficulties. Executive branch agencies receive anti-trafficking funding through several appropriations accounts that are not necessarily linked to TVPA authorities. State Department aid for anti-trafficking is broken down on a country and regional basis, rather than allocated according to the TVPA's specified authorities. For each fiscal year from FY2008 through FY2011, the TVPRA of 2008 authorized a total of $63.8 million in foreign assistance to the State Department and to the President for combating trafficking in persons.[32] The TVPRA of 2013, authorized a total of $46 million in such assistance for each fiscal year from FY2014-FY2017.[33]

Differing sources, however, provide varied portraits of how much the U.S. government has spent on anti-trafficking aid projects, depending on how human trafficking projects are defined and in part due to lags in the budget cycle. The State Department, for example, reported that it budgeted a total of $39.9 million in anti-trafficking foreign aid for FY2012 (see **Table 4**). Separately, the State Department also reported that, in FY2012, the U.S. government obligated $46.6 million for international anti-trafficking projects (see **Figure 1**). The latter figure for obligated funds in FY2012 includes funding for projects that are allocated to agencies and for purposes beyond those referenced in the TVPA, such as Department of Labor funds for combating the worst forms of child labor, which, at least in part, may address human trafficking.

Table 4. Assistance to Combat Trafficking in Persons in the State Department's Foreign Operations Budget

(in current U.S. $ thousands)

	FY2010 Actual	FY2011 Actual	FY2012 Actual	FY2013 Actual	FY2014 Actual	FY2015 Request	FY2016 Request
Africa	435	750	1,500	1,598	1,100	2,800	1,290
East Asia and Pacific	2,818	4,180	5,450	5,360	5,110	6,057	5,735
Europe and Eurasia	2,136	4,556	6,093	4,615	3,509	3,384	2,427

[31] U.S. Government Accountability Office (GAO), *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Anti-Trafficking Efforts Abroad*, GAO-06-825, July 18, 2006. In 2007, GAO followed up with a second report with similar conclusions, but indicated that progress in addressing GAO's recommendations, though mixed, was generally positive. According to GAO, the executive branch continues to remain in the process of responding to several of its recommendations to improve anti-trafficking program monitoring, effectiveness, and coordination. GAO, *Human Trafficking: A Strategic Framework Could Help Enhance the Interagency Collaboration Needed to Effectively Combat Trafficking Crimes*, GAO-07-915, July 26, 2007.

[32] P.L. 110-457; not included in this total are additional funds authorized to the President for research ($2 million, pursuant to Section 113(e)(3) of the TVPA) and to the State Department for the interagency task force, additional personnel, and official reception and representation expenses (approximately $7 million, pursuant to Section 113(a) of the TVPA).

[33] Title XII of P.L. 113-4; not included in this total is $2 million to the State Department for the interagency task force. The TVPRA of 2013 reduced the level of authorized appropriations to the State Department for Interagency Task Force coordination activities (from $7 million to $2 million) and to the President for foreign victim assistance and assistance to foreign countries to meet the TVPA's minimum standards to combat human trafficking (from $30 million to $15 million). In recent years, State Department appropriations for anti-trafficking programming have not reached authorized levels. As a result, the cuts in the authorization of appropriations may not have a noticeable impact, unless appropriations are also reduced.

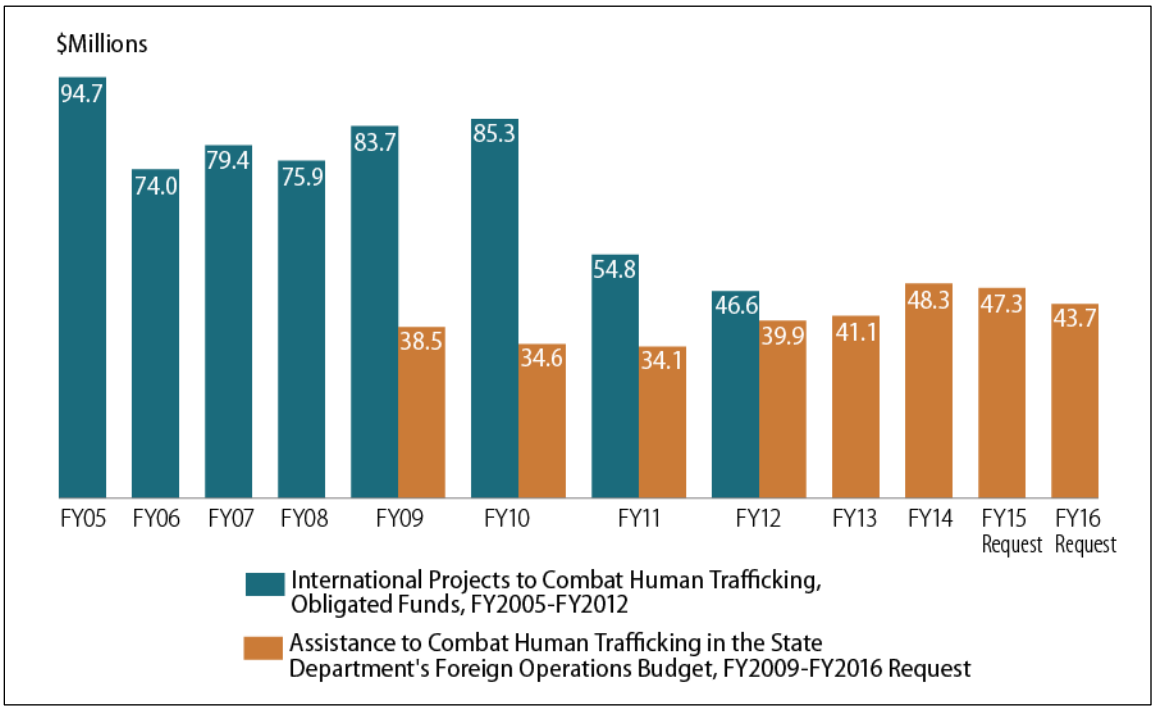
	FY2010 Actual	FY2011 Actual	FY2012 Actual	FY2013 Actual	FY2014 Actual	FY2015 Request	FY2016 Request
Near East	0	0	0	0	1,425	600	150
South and Central Asia	4,930	5,404	5,338	6,407	10,350	9,266	9,096
Western Hemisphere	1,150	1,396	1,030	500	750	2,500	2,350
DOS/J-TIP	21,262	16,233	18,720	20,723	24,041	20,723	20,723
DOS/INL	0	0	0	425	465	465	465
USAID/DCHA	0	1,600	1,800	1,433	1,500	1,500	1,500
USAID/EGAT	900	0	0	0	0	0	0
TOTAL	**34,631**	**34,119**	**39,931**	**41,061**	**48,250**	**47,295**	**43,736**

Sources: DOS, responses to CRS request, December 21, 2011, April 4, 2012, February 26, 2013, and October 14, 2014; DOS, CBJ, *Volume 2: Foreign Operations, Fiscal Year 2012-2016*.

Notes: DOS=U.S. Department of State; USAID=U.S. Agency for International Development; J-TIP=DOS Office to Monitor and Combat Trafficking in Persons; INL=DOS Bureau for International Narcotics and Law Enforcement Affairs; OST=USAID Office of Science and Technology; DCHA=USAID Bureau for Democracy, Conflict, and Humanitarian Assistance; EGAT=USAID Bureau for Economic Growth, Agriculture and Trade. Estimates are rounded up to the nearest thousand. Foreign assistance spigots included in this chart encompass Assistance for Europe, Eurasia, and Central Asia (AEECA), Development Assistance (DA), Economic Support Fund (ESF), and International Narcotics Control and Law Enforcement (INCLE) funds. U.S. Department of Labor and DOS Educational and Cultural Exchange (ECE) assistance funds are listed separately. The State Department has in the past reported that some non-quantified amount of Migration and Refugee Assistance (MRA) is obligated in support of projects related to anti-trafficking, but the anti-trafficking component of such projects could not be disaggregated.

Figure 1. International Anti-Trafficking Obligations and Foreign Operations Budget

(in current U.S. $ millions)



Source: CRS presentation of data from DOS, J/TIP, and DOS, F.

Note: Numbers are rounded to the nearest 0.1 million.

Further, it is difficult to determine from annual budget request documents which countries will be selected for aid projects and what role the *TIP Report's* country rankings play in such selections, due primarily to lags in the budget process. For FY2016, for example, the State Department requested in its annual congressional budget justification (CBJ) to Congress, released in February 2015, funds for anti-trafficking projects associated with 28 countries—including two Tier 1 countries (Armenia and Macedonia).[34] Some portion of the requested FY2016 funds are intended to support additional anti-trafficking projects overseas, including through an international grants program administered by the State Department's Office to Monitor and Combat Trafficking (J/TIP). J/TIP's list of priority countries for FY2016 have yet to be announced[35] Also suffering from a delay in reporting is the U.S. government's summary of obligated funds for anti-trafficking projects administered by federal departments and agencies; the most recent report, issued in July 2014, summarizes obligated anti-trafficking funds available through FY2012.

[34] Tier 2 countries in the 2015 TIP Report for which the State Department requested anti-trafficking aid in FY2016 were: Afghanistan, Azerbaijan, Bangladesh, Barbados, Bosnia & Herzegovina, Colombia, Georgia, Guatemala, Indonesia, Kazakhstan, Moldova, Kyrgyz Republic, Montenegro, Nepal, Philippines, and Tajikistan. Tier 2 Watch List countries in the 2015 TIP Report for which the State Department requested anti-trafficking aid in FY2016 were: Burma, Cambodia, DRC, Lebanon, Mali, Turkmenistan, Ukraine, and Uzbekistan. Tier 3 countries in the 2015 TIP Report for which the State Department requested anti-trafficking aid in FY2016 were: Belarus and Thailand.

[35] For FY2015, J/TIP's list of priority countries for the anti-trafficking grants program included Bangladesh, Bolivia, Burma, Egypt, Haiti, India, Laos, Lebanon, Madagascar, Mexico, the Philippines, Tanzania, Thailand, as well as projects that are global in scope.

Foreign Aid Restrictions

Restrictions on foreign assistance are also used in the effort to combat human trafficking. Congress has enacted two provisions through which certain types of foreign aid are denied to countries that are not advancing U.S. and international community anti-trafficking goals. One of these provisions, pursuant to the TVPA, seeks to restrict non-humanitarian, nontrade-related foreign aid from certain governments that do not show progress in eliminating human trafficking.[36] Under this provision, countries that receive a Tier 3 ranking in the *TIP Report* are ineligible to receive non-humanitarian, nontrade-related aid in the following fiscal year. The second provision, which first went into effect in 2010 pursuant to the CSPA of 2008, seeks to restrict certain U.S. military assistance from countries known to recruit or use child soldiers in their armed forces, or that host non-government armed forces that recruit or use child soldiers.[37] For both provisions, the President may reserve the option of waiving aid sanctions in cases where the continuation of aid would promote U.S. national interests that supersede anti-trafficking policy goals.

The goal of these aid restriction mechanisms is to induce foreign governments to enhance their commitments to combat human trafficking. Withholding or denying U.S. aid, it is argued, can be an effective point of leverage for countries that would like to continue receiving such aid. Some, however, perceive aid sanctions as a potentially blunt policy tool that can interfere with or undermine other U.S. interests in such countries. With the discretion to partially or fully waive sanctioned countries from experiencing the full effect of the aid restrictions, Presidents have sought to balance the impact of the aid restrictions with consideration of other U.S. foreign policy interests that may be at play (see **Table 5** and **Table 6**). An issue for debate is the extent to which the waiver option should be exercised and whether extensive use of the waiver option can have a negative effect on international commitments against human trafficking.

Table 5. Aid Restrictions and Waivers Pursuant to the TVPA, FY2004-FY2015

	Non-Humanitarian, Non-Trade Aid Restricted in Full	In the Absence of Aid to Restrict, Exchange Programs Restricted	Full National Interest Waivers	Partial National Interest Waivers	Waivers Due to Subsequent Compliance
FY2004	none	Burma, Cuba, North Korea	none	Liberia, Sudan	Belize, Bosnia and Herzegovina, Dominican Republic, Georgia, Greece, Haiti, Kazakhstan, Suriname, Turkey, Uzbekistan

[36] Section 110(a) of the TVPA, as amended, 22 U.S.C. 7107(a).

[37] Title IV of the TVPRA of 2008 (P.L. 110-457); 22 U.S.C. 2151 note, and 2370c through 2370c-2. Prohibited aid, pursuant to the CSPA of 2008 include international military education and training (IMET); foreign military financing (FMF); excess defense articles; other DOD-funded aid, including aid provided pursuant to Section 1206 of the National Defense Authorization Act of FY2006 (P.L. 109-163), as amended and extended; and the issuance of direct commercial sales of military equipment.

	Non-Humanitarian, Non-Trade Aid Restricted in Full	In the Absence of Aid to Restrict, Exchange Programs Restricted	Full National Interest Waivers	Partial National Interest Waivers	Waivers Due to Subsequent Compliance
FY2005	none	Burma, Cuba, North Korea	none	Equatorial Guinea, Sudan, Venezuela	Bangladesh, Ecuador, Guyana, Sierra Leone
FY2006	none	Burma, Cuba, North Korea	Ecuador, Kuwait, Saudi Arabia	Cambodia, Venezuela	Bolivia, Jamaica, Qatar, Sudan, Togo, UAE
FY2007	Burma	Cuba, North Korea	Saudi Arabia, Sudan, Uzbekistan	Iran, Syria, Venezuela, Zimbabwe	Belize, Laos
FY2008	Burma	Cuba	Algeria, Bahrain, Malaysia, Oman, Qatar, Saudi Arabia, Sudan, Uzbekistan	Iran, North Korea, Syria, Venezuela	Equatorial Guinea, Kuwait
FY2009	Burma, Syria	Cuba	Algeria, Fiji, Kuwait, Papua New Guinea, Qatar, Saudi Arabia, Sudan	Iran, North Korea	Moldova, Oman
FY2010	North Korea	Cuba	Chad, Kuwait, Malaysia, Mauritania, Niger, Papua New Guinea, Saudi Arabia, Sudan	Burma, Eritrea, Fiji, Iran, Syria, Zimbabwe	Swaziland
FY2011	none	North Korea, Eritrea	DRC, Dominican Republic, Kuwait, Mauritania, Papua New Guinea, Saudi Arabia, Sudan	Burma, Cuba, Iran, Zimbabwe	none
FY2012	none	North Korea, Eritrea, Madagascar	Algeria, CAR, Guinea-Bissau, Kuwait, Lebanon, Libya, Mauritania, Micronesia, Papua New Guinea, Saudi Arabia, Sudan, Turkmenistan, Yemen	Burma, Cuba, DRC, Equatorial Guinea, Iran, Venezuela, Zimbabwe	none
FY2013	none	Cuba, North Korea, Eritrea, Madagascar	Algeria, CAR, Kuwait, Libya, Papua New Guinea, Saudi Arabia, Yemen	DRC, Equatorial Guinea, Iran, Sudan, Syria, Zimbabwe	none

	Non-Humanitarian, Non-Trade Aid Restricted in Full	In the Absence of Aid to Restrict, Exchange Programs Restricted	Full National Interest Waivers	Partial National Interest Waivers	Waivers Due to Subsequent Compliance
FY2014	North Korea, Iran	Cuba	Algeria, CAR, China, Guinea-Bissau, Kuwait, Libya, Mauritania, Papua New Guinea, Russia, Saudi Arabia, Uzbekistan, Yemen	DRC, Sudan, Eritrea, Syria, Equatorial Guinea, Zimbabwe	none
FY2015	North Korea, Iran, Russia	none	Algeria, CAR, the Gambia, Guinea-Bissau, Kuwait, Libya, Malaysia, Mauritania, Papua New Guinea, Saudi Arabia, Thailand, Uzbekistan, Yemen	DRC, Venezuela, Cuba, Eritrea, Syria, Equatorial Guinea, Zimbabwe	none
FY2016	*TBD. The following 23 countries are at risk of possible aid restrictions due to their inclusion on Tier 3 of the 2015 TIP Report: Algeria, Belarus, Belize, Burundi, CAR, Comoros, Equatorial Guinea, Eritrea, The Gambia, Guinea-Bissau, Iran, North Korea, Kuwait, Libya, Marshall Islands, Mauritania, Russia, South Sudan, Syria, Thailand, Yemen, Venezuela, and Zimbabwe.*				

Sources: *Presidential Determination (PD) with Respect to Foreign Governments' Efforts Regarding Trafficking in Persons*, PD nos. 2003-35, 2004-46, 2005-37, 2006-25, 2008-4, 2009-5, 2009-29, 2010-15, 2011-18, 2012-16, 2013-16, 2014-16.

Notes: Secretary of State Hillary Clinton revised PD 2011-18 on February 6, 2012, to waive prohibitions on U.S. support for assistance to Burma through international financial institutions. See President Obama, "Memorandum of February 3, 2012: Delegation of Authority Pursuant to Sections 110(d)(4) and 110(f) of the Trafficking Victims Protection Act of 2000, as Amended," *Federal Register*, Vol. 77, No. 37 (February 24, 2012), p. 11375; U.S. Department of State, "Determination With Respect to Foreign Governments' Efforts Regarding Trafficking in Persons—Burma," public notice 7799 dated February 6, 2012, *Federal Register*, Vol. 77, No. 32 (February 16, 2012), pp. 9295-9296.

Table 6. Aid Restrictions and Waivers Pursuant to the CSPA of 2008, FY2011-FY2015

	Aid Restricted	Partial National Interest Waivers	Full National Interest Waivers	Waivers Due to Subsequent Compliance
FY2011	Burma and Somalia	none	Chad, DRC, Sudan, and Yemen	none
FY2012	Burma, Somalia, and Sudan	DRC	Yemen	Chad
FY2013	Burma and Sudan	DRC and Somalia[a]	Libya, South Sudan, Yemen	none
FY2014	Burma, CAR, Rwanda, Sudan, Syria	DRC, Somalia	Chad, South Sudan, Yemen	none
FY2015	Burma, Sudan, Syria	CAR, DRC, South Sudan	Rwanda, Somalia, Yemen	none

	Aid Restricted	Partial National Interest Waivers	Full National Interest Waivers	Waivers Due to Subsequent Compliance
FY2016	*TBD. The following eight countries are at risk of possible aid restrictions according to the 2015TIP Report: Burma, the Democratic DRC, Nigeria, Somalia, South Sudan, Sudan, Syria, and Yemen.*			

Source: Presidential Determination (PD) with Respect to the Child Soldiers Prevention Act of 2008, PD 2011-4, PD 2012-01, PD 2012-18, PD 2013-17, PD 2014-18.

a. Although President Obama did not provide a waiver to Somalia in PD 2012-18, the President delegated on August 2, 2013, authority to Secretary of State John Kerry to determine whether CSPA aid restrictions may be waived for Somalia in FY2013. On August 14, 2013, Secretary Kerry issued a partial waiver to Somalia to allow for assistance under the Peacekeeping Operations authority for logistical support and troop stipends in FY2013

Observers have questioned whether the aid restrictions are effective in prompting countries to improve their efforts to combat human trafficking. It may be too soon to assess the impact of the child soldiers-related aid restriction, in force since 2010. With regard to the aid sanctions program pursuant to the TVPA, however, few countries have improved from Tier 3, the worst-performing category, to Tier 1, the highest-performing category, since the aid restriction program first went into effect almost a decade ago. Many more countries have either maintained the same tier ranking over the years, or are middling in their performance ratings without clear trends toward significant improvement. To this end, some commentators have questioned whether the existing aid restrictions are sufficient. See **text box** below on "*TIP Report* Ranking Trends: Measurable Signs of Improvement?"

TIP Report Ranking Trends: Measurable Signs of Improvement?

Since 2001, the State Department's *TIP Report* has been ranking countries on the basis of their efforts to combat human trafficking. In the 2015 report, a total of 187 countries were ranked (plus one unranked "special case"). Tier 1 countries are considered compliant with achieving the TVPA's minimum standards for eliminating trafficking. The rest, totaling approximately 83% of all countries ranked in the 2015 *TIP Report*, are listed as non-compliant—variously receiving designations as Tier 2, Tier 2 Watch List, or Tier 3, depending on their level of effort in achieving the minimum standards. Following are trends in country rankings over the course of the *TIP Report's* existence:

- Consistent top performers, having always received a Tier 1 designation in annual *TIP Reports*, include **Australia, Austria, Belgium, Denmark, France, Germany, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Spain, the United Kingdom,** and the **United States of America** (first ranked in 2010).[38]
- Most improved countries, having previously been ranked as a Tier 3 countries and eventually attaining Tier 1 status in 2015, include **South Korea** (from Tier 3 in 2001 to Tier 1 since 2002),**Israel** (from Tier 3 in 2001 to Tier 1 in 2012), and **Armenia** (from Tier 3 in 2001 to Tier 1 in 2013).
- Middling countries, having always received a Tier 2 designation, include **Aruba** (first ranked in 2011)**, Bhutan** (first ranked in 2013), **Cape Verde** (first ranked in 2012), **El Salvador, Kosovo** (first ranked in 2009)**, Mongolia** (first ranked in 2005)**, Palau** (first ranked in 2009)**, St. Maarten** (first ranked in 2013), **Tonga** (first ranked in 2011)**,** and **Uganda**.
- Consistent worst performers, having always received a Tier 3 designation, include **Eritrea** and **North Korea.**
- Countries that have backslid, having previously attained Tier 2 status but are now listed in the current 2015 *TIP Report* as a Tier 3 countries, include **Algeria, Belarus, Belize, Burundi, Equatorial Guinea, The Gambia, Guinea-Bissau, Iran, Kuwait, Libya, Marshall Islands, Mauritania, Russia, Syria, Thailand, Yemen,** and **Zimbabwe**.

Congress sought to increase the consequences associated with consistent poor performance in the *TIP Report* through the TVPRA of 2008, which included a new provision to downgrade to Tier 3 those countries that have stayed on the "Tier 2 Watch List" for two consecutive years. This provision allows the President, who in turn delegated this authority to the Secretary of State, to waive the Tier 3 downgrade for up to two additional years.[39] FY2012 was the first year in which this provision resulted in downgrades to Tier 3, posing, in turn, a subsequent risk of aid denial. Although State Department officials claim that this provision has resulted in new opportunities for international engagement on human trafficking issues, some observers continue to question whether automatically downgraded countries will ultimately face Tier 3-related aid cuts or whether the President will choose to waive the restrictions.

Conditions on Country Beneficiary Status for Trade Preference Programs

A further line of foreign policy activity to combat human trafficking is the designation of foreign countries as U.S. trade preference program beneficiaries, provided they adhere to international anti-trafficking commitments. For decades, the U.S. government has implemented a variety of unilateral trade preference programs designed to promote exports among selected developing

[38] The TVPA does not require the *TIP Report* to include and rank the United States in its country-by-country evaluations. The State Department, however, has voluntarily chosen to do so. Separately, the TVPA requires the Attorney General to submit a report each year to Congress on specified actions by the U.S. government to combat human trafficking, pursuant to Section 105(d)(7) of the TVPA, as amended (22 U.S.C. 7103(d)(7)).

[39] Section 107 of the TVPRA of 2008 (P.L. 110-457); 22 U.S.C. 7105a.

countries.[40] Through such trade preference programs, designated beneficiary countries are provided duty-free entry for specified products into the United States. The first such program, in existence since 1976, is the Generalized System of Preferences (GSP).[41]

Beneficiary countries may be designated (or removed) based on eligibility criteria specified in the relevant authorizing legislation. Such eligibility criteria include commitments to "internationally recognized worker rights," such as prohibiting the "use of any form of forced or compulsory labor," as well as commitments to eliminate the "worst forms of child labor," such as child trafficking.[42] Internationally recognized labor principles are also incorporated in some free trade agreements. Pursuant to the 2007 Bipartisan Trade Deal, "sustained or recurring" violations of such labor principles, which affect trade or investment between the parties, can be enforced through dispute settlement procedures and result in remedies such as fines and trade sanctions.[43]

In theory, conditioning preferential trade status on foreign policy goals, including prohibiting forced labor and the worst forms of child labor, may serve to encourage country compliance with international efforts to combat human trafficking. According to GAO, government officials as well as representatives from non-governmental organizations and the private sector consider the process of conditioning beneficiary status for trade preference programs valuable in raising awareness about problems in foreign countries related to workers' rights.[44] Some, however, question whether U.S. trade policies may nevertheless at times work at cross-purposes with U.S. anti-trafficking policies, offering trade benefits to countries that have not effectively enforced national policies to combat forced labor and the worst forms of child labor, including child trafficking. The U.S. Trade Representative is not a member of interagency coordination mechanisms on human trafficking, such as the SPOG and the PITF.

In the past, GAO has criticized the review processes involved with a country's eligibility for trade preference programs as disconnected from U.S. anti-trafficking policy.[45] Further, the criteria used to determine whether countries have committed to prohibiting forced labor and eliminating the worst forms of child labor appear to be set at a different threshold or standard than the ranking process established by either the State Department's annual *TIP Report* to measure country performance in combating severe forms of trafficking in persons or the Department of Labor's annual report listing countries and goods associated with child or forced labor. According to a GAO report, U.S. Trade Representative officials stated that "there is not a specific link" between eligibility criteria for trade preference programs and the State Department's *TIP Report*.[46] The GAO report further states that "while following statutory requirements, agencies' approaches to

[40] For an overview of trade preference programs, see CRS Report R41429, *Trade Preferences: Economic Issues and Policy Options*, coordinated by Vivian C. Jones.

[41] Title V (Trade Act of 1974) of the Trade Reform Act (P.L. 93-618), as amended; 19 U.S.C. 2462-2467.

[42] Countries may be removed from beneficiary status on the basis of periodic administrative reviews for each trade preference program, either initiated by the executive branch or as a result of external petitions from outside, non-governmental organizations. In the past, countries have been petitioned by such groups for removal and ultimately removed from beneficiary status due to worker rights issues, although it is unclear how many of such removals were specifically due to poor government commitments to combat forced labor or the worst forms of child labor.

[43] Office of the United States Trade Representative, *Bipartisan Agreement on Trade Policy*, May 2007.

[44] GAO, *International Trade: U.S. Trade Preference Programs Provide Important Benefits, but a More Integrated Approach Would Better Ensure Programs Meet Shared Goals*, GAO-08-443, March 2008. Hereinafter cited as GAO-08-443.

[45] Based on a review of trade preference programs from 2001 through 2007. GAO, *International Trade: U.S. Trade Preference Programs: An Overview of Use of U.S. Trade Preference Programs by Beneficiaries and U.S. Administrative Reviews*, GAO-07-1209, September 27, 2007.

[46] GAO-08-443.

monitoring compliance with program criteria nevertheless result in disconnected review processes that are separate from ongoing U.S. efforts to [among other purposes] ... combat trafficking in persons."[47]

Among those countries designated as beneficiaries of trade preference programs in 2015, 15 were designated by the State Department's 2015 *TIP Report* as Tier 3, the worst-performing category of countries, described as not having achieved the minimum standards for eliminating severe forms of human trafficking and not making significant efforts to do so.[48] Similar discrepancies continue to appear between the trade preference program beneficiary countries and those listed by the Department of Labor as producing goods with either child labor, forced labor, or both. The majority of countries reported by the Department of Labor in 2014 as producing goods with both forced and child labor, for example, are receiving beneficial trade preferences in 2015. Such contrasts may raise questions regarding both the credibility and impact of the State Department's *TIP Report* ranking process and the Department of Labor's annual list of goods produced by child or forced labor, as well as the effectiveness of the administrative reviews for beneficiary status for trade preference programs.

A recent legislative effort to connect human trafficking and trade policy has emerged in the context of the Trans-Pacific Partnership (TPP). The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (Title I of P.L. 114-26) excludes countries ranked Tier 3 in the most recent TIP Report from presidential trade promotion authority procedures for any free trade agreement (FTA) implementing bill (see **text box** below). Since enactment of P.L. 114-26, the House passed a version of the Trade Facilitation and Enforcement Act of 2015 (H.R. 644) that includes an amendment to P.L. 114-26, which would provide the President with a waiver for Tier 3 countries that have "taken concrete actions to implement the principal recommendations in the most recent annual report on trafficking in persons."

[47] Ibid.

[48] These 15 countries include Algeria, Belize, Burundi, CAR, Comoros, Eritrea, The Gambia, Guinea-Bissau, Mauritania, Russia, South Sudan, Thailand, Venezuela, Yemen, Zimbabwe. See U.S. International Trade Commission (USITC), *Harmonized Tariff Schedule of the United States (2015) – Revision 1*, USITC Publication 4542, July 2015.

Malaysia and the 2015 TIP Report

Complaints about possible political motivations in the tier ranking system have featured prominently in the debate over Malaysia's Tier ranking in 2015 and the future of the Obama Administration's Trans-Pacific Partnership (TPP) trade negotiations, in which Malaysia is a participant. After four consecutive years on the Tier 2 Watch List, the 2014 Report downgraded Malaysia to Tier 3 for its lack of progress in combating human trafficking. A subsequent Tier 3 rating for Malaysia in the 2015 Trafficking in Persons Report could have jeopardized its status in the TPP negotiations because, pursuant to the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (Title I of P.L. 114-26), the authorities for fast-tracking the deal would not be applicable to Tier 3 countries. A Tier 3 ranking for Malaysia could have created negative ripple effects that would have slowed momentum on the TPP negotiations and cast doubt on the future of the trade agreement, according to some observers. News of Malaysia's upgrade in the 2015 Report, returning it to the Tier 2 Watch List category, has prompted broad speculation that the move was based on motivations other than anti-trafficking progress by the Malaysian government.

State Department officials rejected the notion that political considerations influenced Malaysia's ranking.[49] According to the report, Malaysia made significant efforts against human trafficking during the time period under review (April 1, 2014, through March 31, 2015). The 2015 TIP Report described an increase in 2014 in investigations (186), initiated prosecutions (54), and victims (303) identified, compared to 2013 (89, 34, and 270 respectively).[50] However, investigation, prosecution, and victim identification statistics from 2014 represented a decrease compared to 2012, when 190 investigations and 63 initiated prosecutions took place, as well as 444 victims identified.

A new development by the Malaysian government during the 2015 TIP Report reporting period included the issuance of an August 2014 written directive requiring prosecutors to engage with victims at least two weeks prior to trial. The 2015 Report noted that there was improved communication between prosecutors and victims, as well as law enforcement. The Malaysia government also convicted one defendant for passport retention in 2014; the previous TIP Report had criticized the Malaysian government for failing to investigate complaints related to such activity. The 2015 Report noted that Malaysian and Indonesian officials announced in February 2015 the creation of an "official channel" for domestic worker recruitment. It also reported that the Malaysian government consulted with civil society stakeholders on amending the existing anti-trafficking law and addressing concerns raised in previous TIP Reports.

Skeptics, however, remain, including many in Congress.[51] Nearly 180 Members of the 114th Congress joined to sign letters from the House and Senate to Secretary of State John Kerry, urging the State Department not to upgrade Malaysia's Tier ranking in the 2015 TIP Report. Numerous stakeholders and advocacy groups have publicly condemned the upgrade, including members of the Malaysia parliament, the Malaysian Trades Union Congress, the Malaysian Bar Council, and other Malaysian NGOs. In the United States, groups opposed to the upgrade have included the Alliance to End Slavery and Trafficking (ATEST), Human Rights Watch, Humanity United, Polaris, Free the Slaves, and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). Meanwhile, a September 2014 report by Verité, commissioned by the U.S. Department of Labor, documented widespread use of forced labor in Malaysia's electronics industry.[52] Less than two months after the reporting period ended for the 2015 Report, press accounts revealed the discovery in Malaysia of mass graves, purportedly containing the remains of migrants and human trafficking victims who had been detained by traffickers in remote camps. The mass graves were discovered amid growing international concern over the plight of Rohingya people from Burma and Bangladesh, stranded in the Andaman Sea by smugglers.

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[49] In response to news reports in early July indicating that Malaysia would be upgraded to Tier 2 Watch List in the 2015 TIP Report, State Department Spokesperson John Kirby stated to the press that pragmatic considerations governed the Tier ranking decision process: "I've seen these press reports about the Trafficking in Persons Report. That report is not finalized.... What I can tell you is that the analysis that the report represents is based on a very pragmatic ... set of assessments in each case, and it's something we take very, very seriously." See U.S. Department of State, John Kirby, Spokesperson, Daily Press Briefing, July 9, 2015.

[50] DOS, "Malaysia," in *TIP Report*, July 27, 2015.

[51] See for example letter to Secretary of State John Kerry from 19 Senators, July 15, 2015, http://www.menendez.senate.gov/download/letter-to-kerry-re-malaysia?download=1; Patricia Zengerle and Sandra Maler, "U.S. House Members Concerned over Malaysia Trafficking Rating," *Reuters*, July 15, 2015.

Financial Sanctions Against Specially Designated Individuals

Policies intended to combat the use of child soldiers include targeted measures beyond the scope of other TIP-related measures. For example, the U.S. government maintains country-specific sanctions programs that identify the recruitment and use of child soldiers as a possible rationale, among others, for freezing and blocking the assets of specially designated individuals, and for prohibiting all U.S. persons from engaging in financial or commercial transactions with such individuals. These include sanctions programs concerning the Central African Republic (CAR), the Democratic Republic of Congo (DRC), Somalia, and South Sudan were triggered by Executive Orders (EOs). They also correspond to efforts by the U.N. Security Council (UNSC), of which the United States is a permanent member, to take action against armed groups seen as destabilizing these countries.

- On May 12, 2014, President Barack Obama issued EO 13667, determining that the conflict situation in the CAR constituted "an usual and extraordinary threat to the national security and foreign policy of the United States" and declared a national emergency to manage the threat.[53] The issuance of EO 13667 authorized the U.S. Department of Treasury to block all property and interests within U.S. jurisdiction that are connected to persons determined to be involved in the use or recruitment of children by armed groups or armed forces in the context of the CAR conflict.[54] As of August 2015, five individuals have been designated pursuant to EO 13667, but none have been described in official press releases as designated for their role in the recruitment or use of child soldiers.
- On July 8, 2014, President Barack Obama amended EO 13413 of October 2006, which had determined that the conflict situation in the DRC presented an "unusual and extraordinary threat to the foreign policy of the United States" and declared a national emergency to address the threat.[55] EO 13671 of July 2014 authorized the U.S. Department of Treasury to take additional steps to address the situation in the DRC through efforts such as blocking and freezing assets within U.S. jurisdiction linked with foreign individuals that recruit and use children in armed conflict in the DRC. EO 13671 and EO 13413 correspond to existing sanctions required by the UNSC.[56] As of August 2015, some 40 individuals and entities were designated pursuant to EO 13617 and EO 13413, some of whom were reportedly involved in the recruitment and use of child soldiers, including the armed groups March 23 Movement (M23) and the Democratic Forces for the Liberation of Rwanda (FDLR) and their leaders.[57]

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[52] Verite, *Forced Labor in the Production of Electronic Goods in Malaysia: A Comprehensive Study of Scope and Characteristics*, September 2014.

[53] White House (Barack Obama), Executive Order 13667 of May 12, 2014, Blocking Property of Certain Persons Contributing to the Conflict in the Central African Republic, *Federal Register*, Vol. 79, No, 94, May 15, 2014, pp. 28387-28391.

[54] See also UNSC Resolution 2134, S/RES/2134 (2014), January 28, 2014, which extended the U.N. sanctions regime imposed on CAR to apply to individuals and entities designated as recruiting or using children in armed conflict.

[55] White House (George W. Bush), Executive Order 13413 of October 27, 2006, Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo, *Federal Register*, Vol. 71, No. 210, October 31, 2006, pp. 64105-64108.

[56] See UNSC Resolution 2316, S/RES/2136 (2014), January 30, 2014, which extended the U.N. sanctions regime imposed on DRC to apply to individuals and entities operating in the DRC and recruiting or using children in armed conflict.

[57] Other armed actors from the DRC have also been designated pursuant to EO 13413 and the UNSC sanctions regime

- On July 20, 2012, President Barack H. Obama amended EO 13536 of April 2010, which identified the conflict situation in Somalia as an unusual and extraordinary threat to the national security and foreign policy of the United States and declared a national emergency to address the threat. The amended Executive Order of July 2012 authorized the U.S. Department of the Treasury to take additional steps to address the national emergency with respect to Somalia, including freezing and blocking assets within U.S. jurisdiction of foreign individuals and entities who are involved in the recruitment and use of children in Somalia's armed conflict. Although public documents do not consistently identify the criteria used to justify designations, some on the Somalia sanctions list of 41 individuals and entities may have been involved in the use of children by armed groups in Somalia, including the U.S. State Department-designated Foreign Terrorist Organization (FTO) Al-Shabaab. EO 13536 corresponds to existing multilateral sanctions efforts mandated by the UNSC.[58]
- On April 3, 2014, President Barack Obama issued EO 13664, finding that the conflict situation in South Sudan posed "an unusual and extraordinary threat to the national security and foreign policy of the United States" and declared a national emergency to address the threat.[59] With the issuance of EO 13664, the President authorized the U.S. Department of the Treasury to block and freeze the assets within U.S. jurisdiction associated with foreign individuals and entities who are involved in the recruitment and use of children in armed conflict in South Sudan, among other violations. On March 3, 2015, the U.N. Security Council adopted resolution 2206 to also impose sanctions on individuals involved in the use or recruitment of children by armed groups or forces in the context of the South Sudan conflict.[60] As of August 2015, six individuals were designated pursuant to both EO 13664 and UNSC 2206 (2015). A U.S. Department of the Treasury press release indicates that at least one of the designated individuals has been implicated in arming and mobilizing youth to supplement traditional forces of the Sudanese People's Liberation Army.[61] Additionally, the UNSC sanctions committee designated another individual for his involvement in the recruitment of child soldiers, among other criteria.[62]

The lack of consistency in specifying the criteria used to designate targeted individuals for financial sanctions challenges evaluators in assessing the extent to which this policy tool is used to combat human trafficking, and in assessing its effectiveness in this regard. It is likely that some specially designated individuals and entities known to be involved in the recruitment or use of children in armed conflict may be subject to other U.S. targeted sanctions, for purposes unrelated

on DRC, potentially in part because of their alleged role in the recruitment of child soldiers. Several have been charged by the International Criminal Court with war crimes for the use of minors in hostilities, including Thomas Lubanga, Bosco Ntaganda (awaiting trial), and, Mathieu Cui Ngudjolo (acquitted). See also UNSC committee established pursuant to resolution 1533 (2004) concerning DEC, narrative summaries of reasons for listing, http://www.un.org/sc/committees/1533/Individuals.shtml.

[58] See UNSC resolution 2002, S/RES/2002 (2011), July 29, 2011.

[59] White House (Barack Obama), Executive Order 13664 of April 3, 2014, Blocking Property of Certain Persons with Respect to South Sudan, *Federal Register*, Vol. 79, No, 66, April 7, 2014, pp. 19283-19285.

[60] See U.N. Security Council, Resolution2206, S/RES/2206 (2015), March 3, 2015. See also UNSC committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, narrative summaries of reasons for listing, http://www.un.org/sc/committees/751/Individuals.shtml.

[61] U.S. Department of Treasury, "Treasury Sanctions Individuals Responsible for Continued Violence in South Sudan," press release, July 2, 2015.

[62] See UNSC committee established pursuant to resolution 2206 (2015) concerning South Sudan, narrative summaries of reasons for listing, http://www.un.org/sc/committees/2206/SSi006.shtml.

to human trafficking. For example, Joseph Kony, leader of the Lord's Resistance Army in central Africa, has reportedly abducted tens of thousands of children and forced many to become child soldiers or sex slaves. He is designated pursuant to another executive order, EO 13224, which pertains to international terrorism and not specifically to human trafficking. The country-specific nature of existing sanctions related to human trafficking may also constrain their use at a global level.

Pursuant to the TVPA (22 U.S.C. 7108), Congress has authorized the President to develop a targeted sanctions program to block the assets of major human traffickers worldwide, including foreign persons who "play a significant role in a severe form of trafficking in persons, directly or indirectly in the United States" as well as those who "materially assist" or otherwise support the activities of significant foreign human traffickers. Moreover, Congress granted the President the authority to implement such a sanctions program even if the human trafficking threat does not constitute an unusual and extraordinary threat and does not require a national emergency to address it. To date, however, no such sanctions program has been developed by the Executive Branch.

Preventing U.S. Government Participation in Trafficking Overseas

A final dimension of foreign policy activity to combat human trafficking addressed in this report is efforts to prevent U.S.-facilitated trafficking from occurring abroad. U.S. government personnel, diplomats, peacekeepers, and contractors operate overseas and represent U.S. interests abroad at U.S. embassies, consulates, military bases, and other posts located in foreign countries where domestic anti-trafficking laws and the enforcement of such laws may vary significantly.

In recent decades, news reports have unearthed a range of international sex and labor trafficking schemes that have allegedly involved U.S. representatives overseas as the traffickers and exploiters and the end-user consumers of services provided by trafficking victims. Current focus has centered on allegations at U.S. installations in Iraq and Afghanistan, as well as at U.S. embassy missions, where third-country nationals (TCNs) are hired by subcontractors to perform low-skill, labor-intensive jobs.[63] Such schemes involving U.S. personnel apparently occur despite NSPD-22, discussed above, which established a "zero tolerance" policy toward all U.S. government employees and contractor personnel overseas who engage in human trafficking violations. Individual departments and agencies have bolstered federal statutes and guidance with internal policies. Examples include DOD's Instruction Number 2200.01 on Combating Trafficking in Persons, most recently updated in April 2015; USAID's Counter-Trafficking in Persons Code of Conduct, which went into effect in February 2011; and State Department Procurement Information Bulletins (PIBs).

Following several congressional and agency Inspectors General inquiries into press allegations of foreign worker abuses by U.S. federal contractors and subcontractors, policymakers have dedicated increased attention to preventing human trafficking in federal contracts.[64] In January

[63] Third-country nationals (TCNs) include non-local, non-U.S. citizen workers temporarily hired to work by federal contractors for the U.S. government overseas. There is concern that they are particularly susceptible to trafficking schemes, according to news and U.S. inspector general reports. As neither U.S. citizens nor citizens of the host nation where they are working, such TCNs are vulnerable due to distance and isolation from their home communities, the possibility of language barriers, and dependence on their employers to procure and maintain current visas and work permits. The U.S. government is often heavily reliant on such contractors for support in providing services at its overseas posts related to facilities maintenance, gardening, construction, cleaning, food, and local guard forces. Often, such TCNs are hired to perform labor for significantly lower cost than would be required to hire local staff.

[64] The TVPRA of 2008 mandated that the OIGs for the Departments of State and Defense and USAID investigate, over

2015, the Federal and Defense Acquisition Regulatory Councils, which coordinate government procurement policy and regulatory activities, announced completion of a final rule to implement Executive Order (E.O.) 13627 ("Strengthening Protections Against Trafficking in Persons in Federal Contracts") and Title XVII of the National Defense Authorization Act (NDAA) for Fiscal Year 2013 ("Ending Trafficking in Government Contracting").[65] The new rule builds on existing regulations required by the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA of 2003; P.L. 108-193), which prohibited federal contractors and subcontractors from engaging in severe forms of human trafficking and procuring commercial sex acts during the time period of performance of a contract, as well as using forced labor in the performance of a contract.[66]

Although the U.S. government reports that it continues to investigate alleged cases of trafficking involving U.S. officials and contractors, many experts have questioned why such cases rarely result in criminal prosecution or other enforcement measures. Regarding federal contractors, allegations are generally corrected internally by the contractor before more severe contracting penalties are imposed by the U.S. government, such as contract termination, or contractor disqualifications, suspensions, and debarments. Though there are anti-trafficking laws, regulations, and zero-tolerance policies in place, some question whether they are effectively enforced.[67] In war zones and overseas contingency operations, enforcement capacity is

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the course of three years from FY2010 through FY2012, a series of contracts and subcontracts at any tier under which contractors and subcontractors are at heightened risk of engaging in acts related to human trafficking. Specified high-risk activities include confiscation of employee passports, restriction on an employee's mobility, abrupt or evasive repatriation of an employee, and deception of an employee regarding the work destination.

Although the OIG reports submitted to Congress pursuant to the TVPRA of 2008 collectively documented few instances of likely contractor involvement in severe forms of human trafficking, solicitation of commercial sex acts, sex trafficking, or involuntary servitude, several of them identified contractor management practices that increased the risk of human trafficking and related violations. The State Department's OIG, for example, found instances of contractor coercion at recruitment and destination points and exploitative conditions at work, including frequent instances in which workers paid recruiters brokerage fees and employers regularly confiscated employee passports, withheld wages, used confusing calculations to determine earnings, provided unsafe or unsanitary living conditions for workers, and participated in deceptive recruitment practices that exploited workers' lack of language, education, and information. DOD's OIG evaluated selected contracts in the U.S. Pacific Command and U.S. Central Command areas of responsibility and revealed problems with ensuring that contracts had the appropriate anti-trafficking clauses.

See DOS and the BBG, OIG, *Performance Evaluation of Department of State Contracts to Assess the Risk of Trafficking in Persons Violations in the Levant*, report no. MERO-I-11-07, March 2011; *Summary of Calendar Year 2009 Trafficking in Persons (TIP) Activities and Findings*, report to the House Committee on Foreign Relations, January 15, 2010; *Embassy Riyadh and Constituent Posts, Saudi Arabia*, report no. ISP-I-10-19A, March 2010; *Performance Evaluation of Department of State Contracts to Assess the Risk of Trafficking in Persons Violations in Four States in the Cooperation Council for the Arab States of the Gulf*, report no. MERO-I-11-06, January 2011; and *The Bureau of Diplomatic Security Baghdad Embassy Security Force*, report no. MERO-A-10-05, March 2010; DOD, OIG, *Evaluation of DOD Contracts Regarding Combating Trafficking in Persons*, report no. IE-2010-001, January 2010; and *Evaluation of DOD Contracts Regarding Combating Trafficking in Persons: U.S. Central Command*, report no. IE-SPO-2011-002, January 18, 2011.

[65] 80 FR 4967, 80 FR 6908, 80 FR 4999.

[66] The January 2015 final rule additionally prohibits: destroying, concealing, confiscating, or otherwise denying access to identity documents; engaging in misleading or fraudulent recruitment practices; charging employees recruitment fees; failing to provide or pay for the cost of return transportation home for third-country nationals upon the end of employment; providing housing arrangements that do not meet local housing and safety standards; and failing to provide work documentation, as variously required, in writing, in a language understood by the employee, and, if applicable, prior to the employee's relocation to perform the work.

[67] See for example U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on Technology, Information Policy, Intergovernmental Relations, and Procurement Reform, *Are Government Contractors Exploiting Workers Overseas? Examining Enforcement of the Trafficking Victims Protection Act*, Serial no. 112-93, 112th Cong., 1st sess., November 2, 2011 (Washington, D.C.: U.S. Government Printing Office, 2012).

particularly challenged by factors such as the unreliability of host nation capacity to enforce its domestic rule of law, the need for low-cost and quickly recruited government contractors in large volumes, the prioritization of investigating human trafficking violations relative to other possible national security priorities in such operations, and the general absence of security, such that investigators and contracting officer representatives (CORs) are unable to travel to sites for inspection and audit.

Despite recent actions, some continue to question whether U.S. agencies, including the State Department, and contractors are capable of enforcing the new requirements. A potential upcoming issue may center on how to improve awareness both within the State Department and across the U.S. government on potential human trafficking in U.S. contracting practices. To this end, the July 2015 TIP Report focuses on trafficking in global supply chains, including fraudulent practices in the labor recruitment process. In November 2014, GAO released a report detailing ongoing concerns regarding the payment of recruitment fees and mixed efforts by U.S. agencies to monitor contractor labor practices.[68] GAO cites one example from 2014 in which foreign workers, employed by a U.S. contractor conducting work in Afghanistan, reported paying recruitment fees ranging from $500 to $5,000 for jobs that paid a monthly salary ranging from less than $400 to about $1,250. Such recruitment fees may increase worker vulnerability to trafficking-related abuses and E.O. 13627 of 2012 required the Federal Acquisition Regulatory (FAR) Council to expressly prohibit federal contractors from charging employees recruitment fees. The GAO report also confirms conclusions in an August 2014 inspection report by the State Department's Inspector General, which found that contract administration officials at U.S. Embassy Kabul were unaware of their responsibilities for monitoring grants and contracts for human trafficking violations.

Conclusion

Human trafficking is an inherently transnational and multi-dimensional issue that touches on a broad combination of foreign policy, human rights, criminal justice, and national security priorities. Despite U.S. and international efforts, perpetrators continue to persist in victimizing men, women, and children worldwide through commercial sexual exploitation, forced labor, debt bondage, domestic servitude, and the use of children in armed conflict. Although there remains widespread support among policy makers and outside observers for the continuation of U.S. and international anti-trafficking efforts, reports of ongoing exploitation of trafficking victims worldwide appear to fundamentally question the effectiveness and prioritization of current responses to the trafficking problem. In the face of persistent reports of human trafficking worldwide, policy makers remain challenged to evaluate whether goals to eradicate human trafficking worldwide are achievable and whether current international anti-trafficking programs are measured against realistic expectations.

This report has explored issues related to several U.S. foreign policy responses to human trafficking, including (1) foreign country reporting, (2) foreign product blacklisting, (3) foreign aid, (4) foreign aid restrictions, (5) conditions on trade preference program beneficiaries, (6) financial prohibitions against specially designated traffickers; and (7) preventing U.S. government participation in trafficking overseas. These U.S. approaches to international human trafficking highlight a series of initiatives, often implemented unilaterally as well as intended to meet international commitments. Issues discussed in this report have centered on challenges associated with how well these policy mandates connect with and reinforce each other, and

[68] GAO, *Human Trafficking: Oversight of Contractors' Use of Foreign Workers in High-Risk Environments Needs to Be Strengthened*, GAO-15-102, November 18, 2014.

whether resources devoted to combating human trafficking are allocated effectively and efficiently. Several generations of legislative activity address aspects of human trafficking as currently conceptualized by the U.N. Trafficking Protocol and TVPA, but they are neither necessarily or easily integrated in current anti-trafficking policy nor implemented smoothly across federal agencies. Given some reports suggesting that U.S. government personnel and contractors have been implicated in trafficking schemes overseas, some may also question the credibility of the United States as an international leader against trafficking in persons.

As Congress considers action on international human trafficking issues related to potential legislation, the annual budget and appropriations cycle, and upcoming executive branch report submissions to Congress, illustrative questions of congressional interest may include the following:

- **National Action Plan or U.S. Strategy to Combat Trafficking in Persons.** Although the U.S. government regularly issues reports on the status and progress of its efforts to combat human trafficking, some observers have urged the Obama Administration to develop an explicit anti-trafficking strategy that outlines the full scope of local, federal, and international efforts to combat human trafficking and ensures that all guidelines, laws, and regulations are properly coordinated among implementing agencies.[69] Would such strategic directives from the Executive Branch diminish or reinforce the central role that the TVPA and its reauthorizations has played in developing U.S. anti-trafficking policy? Does the lack of such an action plan or strategy undermine the U.S. government's diplomatic credibility?
- **Congressionally Mandated Reports: Redundancies and Resource Costs.** In October 2010, the State Department's OIG released a report that singled out the *TIP Report* as among the most cost-intensive in terms of personnel resources both at U.S. diplomatic posts abroad and at headquarters in Washington, DC. It also pointed to redundancies among other congressionally mandated reports that reference human trafficking-related concerns, including the Labor Department's annual *Worst Forms of Child Labor Report*. Is there value in requiring the executive branch to submit multiple reports to Congress with similar information? To what extent have these reports provided Congress with relevant information needed to make policy decisions?
- **U.S. Military Aid to Countries with Child Soldiers.** Beginning with the 2010 *TIP Report*, the State Department has been mandated by Congress to identify countries that recruit or harbor child soldiers. Yet, some of the listed countries continue to receive various types of U.S. military assistance, pursuant to presidential national interest waivers. Other countries that receive U.S. military assistance, such as Afghanistan, have also been variously reported by the Department of Labor and non-governmental groups as having recruited and harbored minors in their armed forces. What factors are taken into consideration when balancing the priorities of providing U.S. military assistance to key partner countries and combating the practice of child soldiers? Are current U.S. restrictions on military aid effective in preventing and deterring countries from recruiting child soldiers? What policy options might exist to further induce foreign countries to halt such practices?

[69] Alliance to End Slavery and Trafficking (ATEST), *The Path to Freedom: A Presidential Agenda for Abolishing Modern Slavery and Human Trafficking*, December 2012.

- **Effectiveness of U.S. Aid Restrictions to "Tier 3" Countries.** For FY2015, President Obama authorized the full force of anti-human trafficking aid restrictions to be applied to only three Tier 3 countries listed in the 2014 *TIP Report*: Iran, North Korea, and Russia. Have congressionally authorized anti-trafficking aid restrictions been effectively used by the executive branch? What additional policy options might exist to reach poor-performing countries that do not receive much U.S. foreign aid?
- **Interagency Consistency in the Implementation of Anti-Trafficking Policy.** Through the TVPA, Congress mandated the creation of two senior-level interagency coordinating bodies, including the SPOG and the PITF, to de-conflict and ensure consistency among international anti-trafficking initiatives. Yet, some interagency inconsistencies persist. For example, U.S. trade preference programs continue to list as among its beneficiaries countries designated as Tier 3 in the *TIP Report* and identified by the Department of Labor as producing goods with a combination of both forced and child labor. Although there are no specific requirements to ensure consistency among U.S. trade policies and anti-trafficking policies, how do such discrepancies affect the effectiveness of efforts to combat human trafficking?
- **Enforcement of Anti-Trafficking Policies Among U.S. Contractors Overseas.** In January 2015, the civilian and defense acquisition councils approved a final rule requiring federal contracts to include an updated anti-trafficking clause and increasing contractor responsibilities to prevent trafficking. What are the challenges associated with enforcing the new contracting requirements, particularly with respect to the prohibition on recruitment fees? What efforts are being taken to improve awareness of contractor responsibilities to combat human trafficking?
- **Multilateral Policy Options: Potential for Redundancy or Efficiency Gains?** As discussed in this report, the U.S. government implements a series of unilateral policy responses to combat international human trafficking. The United States is also an active participant in multilateral anti-trafficking initiatives. To what extent do such multilateral initiatives enhance or render redundant existing U.S. efforts? Do other countries and international organizations consider U.S. foreign policy responses to combat human trafficking an effective model? Given the common goal of eliminating trafficking in persons, what can or should the U.S. government do, if anything, to enhance its support of multilateral anti-trafficking initiatives?

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