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AND CONSUMER CREDIT

CONGRESS OF THE UNITED STATES  
HOUSE OF REPRESENTATIVES

August 6, 2015

President Barack Obama  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

The Honorable John F. Kerry, Secretary of State  
U.S. Department of State  
2201 C Street, NW  
Washington, DC

Dear President Obama and Secretary Kerry:

We write to request clarification on the “significant efforts” that Malaysia has made to merit the upgrading of its status as a Tier III country to the Tier II Watch List in the Department of State’s annual *Trafficking in Persons Report* released on July 27, 2015.<sup>i</sup> We are concerned about the upgrade of Malaysia’s status to the Tier II Watch List. Further, the conclusion that “the government of Malaysia does not fully comply with the minimum standards for the elimination of trafficking ... [but] making significant efforts to do so” is inconsistent with findings from other reports. Media reports also suggest that Malaysia’s rankings may have improved because of other policy considerations.<sup>ii</sup>

We agree with the Government Accountability Office (GAO) finding that the Secretary of State “should ensure that the report clearly documents the rationale and support for tier rankings.” Per GAO findings, it is possible that country narratives in the 2015 *Trafficking in Persons Report* (TIP Report) may be “incomplete” and exclude information on governments’ compliance with minimum standards and core criteria for the elimination of trafficking per the Trafficking Victims Protection Act (TVPA).<sup>iii</sup> Thus, we write to request a response to the following questions:

- 1) What standard does the Department of State use to determine “significant efforts”?
  - a. How is Malaysia’s attempt to pass anti-trafficking legislation consistent with “significant efforts”?
  - b. How does a decrease in convictions for traffickers, a number that is already “disproportionately” low, consistent with “significant efforts”?
  - c. How does State Department weigh one core criteria against another to come up with a final status determination?
- 2) Can you confirm the reporting period for assessing Malaysia’s status in the 2015 TIP Report? Was it in fact April 1, 2014 through March 31, 2015?
- 3) Can you explain the discrepancies between the 2015 TIP Report which upgraded Malaysia’s status, a December 2014 Department of Labor report that found new instances of both child labor and forced labor in Malaysia, and a 2014 State

Department-funded report that found rampant forced labor in the Malaysian electronics industry?

### **Clarifying the Department of State standard for “significant efforts”**

As you know, the TIP report ranks the status of foreign countries’ efforts to eliminate severe forms of human trafficking, as defined by the Trafficking Victims Protection Act (TVPA). There are four possible designations: Tier I (best), Tier II, Tier II Watch List, and Tier III (worst), for efforts towards addressing human trafficking. Countries on both the Tier II and Tier II Watch List “do not fully comply with the TVPA’s minimum standards, but are making significant efforts to bring themselves into compliance with those standards.”

In 2014, both Malaysia and Thailand were automatically demoted to Tier III status, meaning neither country was meeting minimum standards per the TVPA and “not making significant efforts” to comply. Both had previously been on the Tier II Watch List in 2012 and 2013 after receiving waivers from demotion because of plans with aspirations of coming into compliance with TVPA. In the 2015 TIP Report, Malaysia was upgraded to the Tier II Watch List while Thailand remained a Tier III country.

Malaysia’s upgrade to the Tier II Watch List, attributed in large part to increased investigations and prosecutions of trafficking cases does not add up. In 2014, the government of Malaysia began 186 investigations, which was double the 89 cases in 2013, but less than the 190 in 2012 when it received a waiver to remain on the Tier II Watch List. Further, the number of convictions of traffickers in Malaysia actually decreased from 9 in 2013 to 4 in 2014 during this past reporting period; in 2012, Malaysia convicted 21 traffickers. Sarah Sewall, Under Secretary of State for Civilian Security, Democracy, and Human Rights has acknowledged that 9 convictions is disproportionately low for Malaysia.<sup>iv</sup>

Malaysia’s upgraded status does not align with the status determinations of other neighboring countries. For example, Thailand passed various measures to combat trafficking including a new Fisheries Act to combat pervasive trafficking in the fishing industry. While amendments to Malaysia’s anti-trafficking laws were not passed until June 2015, Thailand passed new regulations and amendments within the reporting period include protections for whistleblowers and increased penalties for traffickers.

We understand that countries are not assessed against one another in the TIP Report, but on their own efforts to combat trafficking in persons. However, a comparison between the rankings for Thailand and Malaysia suggests we need to better understand the State Department standard for “significant effort.” We understand that Malaysia has increased the number of investigations of trafficking cases since the 2014 report, but these numbers are lower than the 2012 report. Can you clarify how decline in the number of investigations and convicted traffickers is consistent with “significant efforts”? Is there a difference as to how core criteria are weighed against each other in final status determinations? Can you clarify how the State Department weighs one core criteria against another to come up with a final status determination?

### **Clarifying the Reporting Period for the 2015 *Trafficking in Persons Report***

Under Secretary Sewell has reaffirmed the 2015 TIP Report country narrative which explains that Malaysia’s upgrade to the Tier II Watch List is attributed in large part to its efforts

*drafting* amendments to anti-trafficking laws – not *passage*. At a special briefing for the TIP Report, the Under Secretary clarified that these amendments were not adopted until June 2015, after the reporting period of April 1, 2014 through March 31, 2015.<sup>v</sup> Can you clarify the Under Secretary’s comments? If we are only assessing the drafting of legislation, can you explain how Malaysia’s attempt to amend anti-trafficking legislation is consistent with “significant efforts” whereas Thailand’s passage of legislation is not? Was the reporting period for Malaysia in fact April 1, 2014 through March 31, 2015, meaning it also excluded the discovery of mass grave of trafficked laborers in May 2015 in Wang Kelian?

### **Discrepancies Between Reports on Human Trafficking and Forced Labor in Malaysia**

The 2015 TIP Report notes that “the majority of trafficking victims are among the estimated 2 million documented and more than 2 million undocumented foreign workers in Malaysia.” This suggests that assessing Malaysia’s efforts to combat trafficking should include consideration of efforts, or lack thereof, to specifically address forced labor in Malaysia.<sup>vi</sup>

As you know, U.S. law requires a battery of regular reports from both the Departments of State and Labor to monitor and combat human trafficking and forced labor. The TVPA requires both the TIP Report from the Department of State and an annual *List of Goods Produced by Child Labor or Forced Labor* from the Department of Labor.<sup>vii</sup> We are concerned about the discrepancies between findings in both these reports, and others.

In contrast to findings from the 2015 TIP Report that Malaysia is making “significant efforts to combat trafficking,” a September 2014 study from Verité that was funded by the State Department, found that forced labor is used to produce goods in much of the Malaysian electronics industry. Further, despite laws criminalizing employers’ retention of employee passports, almost all study participants (94% of 501) reported that their passports were held by the facility or their broker/agent.<sup>viii</sup> In the past year, Malaysia only convicted one trafficker for passport retention.<sup>ix</sup>

In December 2014, the U.S. Department of Labor (DOL) listed Malaysia as one of seven countries in which new instances of both child and forced labor were found.<sup>x</sup> This is significant because these new instances of both child and forced labor were found within the reporting period for the 2015 TIP Report. Further, trafficking of forced laborers is a significant issue in Malaysia.

Based on the stated methodology for the TIP Report, findings from reports like the Verité study, and DOL list, which found new instances of both child labor and forced labor in Malaysia in 2014, should have been taken into account when assessing Malaysia’s status.<sup>xi</sup> Can you explain the discrepancies between the 2015 TIP Report which upgraded Malaysia’s status, and findings from the December 2014 report from the DOL and the 2014 State Department-funded report from Verité?

Again, we understand country narratives in TIP Reports may be “incomplete” and exclude information on governments’ compliance with minimum standards and core criteria for the elimination of trafficking per the TVPA.<sup>xii</sup> We are concerned that the country narrative for Malaysia in the 2015 TIP report insufficiently explains the “significant efforts” that Malaysia is

making in eliminating trafficking. Thus, we are seeking further clarification and look forward to your reply.

Sincerely,

Keith Ellison  
Member of Congress

Rosa L. DeLauro  
Member of Congress

Mark Pocan  
Member of Congress

Encl: July 2015 *Trafficking in Persons Report*;  
December 2014 *List of Goods Produced by Child Labor or Forced Labor*  
September 2014 *Forced Labor in the Production of Electronic Goods in Malaysia: A Comprehensive Study of Scope and Characteristics Report*

Cc: The Honorable Thomas E. Perez, Secretary of Labor;  
Ms. Sarah Sewall, Undersecretary of State for Civilian Security, Democracy and Human Rights

<sup>i</sup> The TIP report ranks the status of foreign countries' efforts to eliminate severe forms of human trafficking, as defined by the Trafficking Victims Protection Act (TVPA). There are four possible designations: Tier 1 (best), Tier II, Tier II Watch List, and Tier 3 (worst), for efforts towards addressing human trafficking. Countries from Tier II and Tier II Watch List "do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards."

<sup>ii</sup> Szep, Jason and Matt Spetalnick. "Special Report: State Department watered down human trafficking report." *Reuters*. August 3, 2015. <http://www.reuters.com/article/2015/08/03/us-usa-humantrafficking-disputes-special-idUSKCN0Q821Y20150803>

<sup>iii</sup> GAO. Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad, GAO-06-825, July 2006. Available: <http://www.gao.gov/assets/260/250812.pdf>

<sup>iv</sup> See Office of the Under Secretary for Civilian Security, Democracy, and Human Rights. *Trafficking in Persons Report*. Washington, D.C.: U.S. Department of State, 2015. Available: <http://www.state.gov/j/tip/rls/tiprpt/countries/2015/243485.htm>

See comparison in Office of the Under Secretary for Civilian Security, Democracy, and Human Rights. *Trafficking in Persons Report*. Washington, D.C.: U.S. Department of State, 2014. Available:

<http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226770.htm>

You can also reference Office of the Under Secretary for Civilian Security, Democracy, and Human Rights. *Trafficking in Persons Report*. Washington, D.C.: U.S. Department of State, 2013. Available:

<http://www.state.gov/j/tip/rls/tiprpt/countries/2013/215511.htm>

See also, Sewall, Sarah. Remarks at Special Briefing: Under Secretary of State for Civilian Security, Democracy, and Human Rights Sarah Sewall on the 2015 Trafficking in Persons Report. Washington, D.C.: U.S. Department of State, July 27, 2015. Available: <http://www.state.gov/r/pa/prs/ps/2015/07/245294.htm>

<sup>v</sup> Ibid.

<sup>vi</sup> See 2015 TIP Report, page 234.

<sup>vii</sup> The Department of Labor's (DOL) List of Goods Produced by Child Labor or Forced Labor is a list of countries and products which DOL has reason to believe are produced by child labor or forced labor in violation of international standards.

<sup>viii</sup> Verité. *Forced Labor in the Production of Electronic Goods in Malaysia: A Comprehensive Study of Scope and Characteristics Report*, September 2014. Page 11.

<sup>ix</sup> 2015 TIP Report, page 234.

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<sup>x</sup> Bureau of International Labor Affairs (ILAB). List of Goods Produced by Child Labor or Forced Labor, U.S. Department of Labor, Dec 2014.

<sup>xi</sup> See 2015 TIP Report, page 45. “The Department of State prepared this Report using information from U.S. embassies, government officials, nongovernmental and international organizations, published reports, news articles, academic studies, research trips to every region of the world, and information submitted to [tipreport@state.gov](mailto:tipreport@state.gov).”

<sup>xii</sup> GAO Report GAO-06-825, July 2006.