Response to the Federal Register Notice on Child Labor of the US Department of Labor (DOL)

1. On 15th December 2010, US Department of Labor (USDOL) issued a report titled, "List of goods produced by child labor or forced labor" in accordance to Trafficking victims protecting reauthorization Act (TVPRA) of 2005 and a Federal Register Notice of Initial Determination (hereinafter "Notice") revising the list of products requiring Federal Contractor Certification as of Forced/Indentured Child Labor Pursuit to Executive order 13126. Its intent is to make a "Final Determination" on the matter based on the responses received by it to the Notice.

2. One of the goods identified by DOL in the Notice is the rice sector in India.

3. The DOL has now requested comments on the TVPRA List and the current E.O. 13126 list. Specifically, the USDOL is seeking comments on or information to (a) the nature and extent of child labor, forced labor, and forced or indentured child labor in the production of rice (among other goods) in India; and (b) information on government, industry or third party actions and initiatives to address these issues.

4. The legal regime prevailing in India in the matter, and actions and initiatives taken by Government, industry and other third parties in the matter are outlined below:-

   4.1 By the Government:

   The principles relating to eradication of child labor, child education and welfare form part of the constitutional goals having been incorporated in the Constitution of India by Articles 21, 24A and 39(a) thereof. Upholding these principles also constitutes

a part of the country's international commitment by virtue of India having signed international Conventions dealing with the issue such as: the Forced Labor Convention, 1930 (ILO Convention no.29 ratified in 1954); the ILO Convention no.182 on Elimination of the Worst Forms of Child Labor (ratified in 1999) and the UN Convention on Rights of the Child, 1959 (ratified in 1992).

The constitutional and international obligations so undertaken by the Government of India have been implemented through appropriate domestic laws – some general and some specific to the issue of child/forced labor. The legal regime providing safeguards and other review and monitoring mechanisms put in place by the Government of India relevant to the matter are stated in the Annexure 1 to this response.

As regards the special legislations, *viz* The Bonded Labor System (Abolition) Act, 1976 and The Child Labor (Prohibition and Regulation) Act, 1986 enacted and brought into force by the Government, these have already been referred to in the Annexure 1 hereto. However, with regard to the Bonded Labour System (Abolition) Act, 1976, two other noteworthy features of the law deserve mention here. One, that while 'bonded labor' and the 'bonded labor system' were abolished at one stroke by the law, a breach thereof has been made a cognizable offence (meaning the State can initiate criminal action on its own without waiting for a private complaint) punishable with imprisonment up to three years and a fine. Second, the law also provides for Vigilance Committees with powers to decide complaints through summary trial and release 'bonded labor'.

In addition there are about 12 other statutes more generally dealing with the issue prohibiting the employment of children in hazardous activities/mines and regulating their conditions of employment and providing for their welfare. These include: the Factories Act, 1948; Mines Act, 1952; the Bombay Shop and Establishments Act, 1948 (and similar other State statutes); Plantations Labor Act, 1951; Merchant Shipping Act, 1958; Apprentice Act, 1961; Bidi and Cigar Workers (Conditions of Employment) Act, 1966. Further, the Notification dated May 26, 1993 regulates the working conditions of children in all employment not prohibited under the Child Labor (Prohibition and Regulation) Act; again, following up on a preliminary notification issued on October 5, 1993, the Government has also prohibited employment of children in occupations such as abattoirs/slaughter houses, printing, cashew de-scaling and processing, and soldering.

From the above sketch of the legal regime dealing with the issue of child labor/ bonded labor in India, it will be clear that it is not only extensive but also in consonance with the international conventions of ILO to which India is also a party. In fact, human rights watch groups like Human Rights Watch (see *www.hrw.org/legacy/reports/1996/India 3.htm]* *consider* the Indian legal regime as providing 'extensive legal safeguards' to address the problem of child labour.

4.2 Enforcement:

The available data on prosecutions and convictions shows enforcement record of the Child Labor (Prohibition & Regulation) Act, 1986 in States such as Andhra Pradesh, Bihar, Chattisgarh, Delhi, Gujarat, Karnataka, Madhya Pradesh, Rajasthan

and Tamil Nadu and Uttar Pradesh. Altogether the data shows that so far there have been 21481 convictions between 1998-2008.

4.3 Policy & Other Measures taken by the Government

Child labor eradication is possible only when other steps such as provision complement legal measures for Free and Compulsory education to children, creation of Social Awareness, provision of credit to the rural poor etc. The Government of India has been proactive on this front, as the measures taken by it outlined below will adequately demonstrate.

4.3.1 *Adoption of the National Policy on Children 1974*: -In the above background, the Government of India - probably the first among the developing countries – came out with such a significant and progressive policy declaring that: "it shall be the policy of the State to provide adequate services to children both before and after birth and through the period of growth to ensure their full physical, mental and social development. The State shall progressively increase the scope of such services so that within a reasonable time all children in the country enjoy optimum conditions for their balanced growth".

4.3.2 *The National Child Labor Policy 1987:* provided for the constitution of the Central Advisory Boards on Child Labor, and the launch of more than 80 National Child Labor Projects aimed to rehabilitate child labor for which the Indian Government allocated Rs. 2610 million in its Ninth Plan (1997-2002) and RS. 6210 million (USD 131 million) in the Tenth Plan (2002-07). These projects include door-to-door surveys, launching

awareness generation programs to sensitize employers, parents and children and imparting education, nutrition and vocational training to the children withdrawn from work. Industry specific projects have also been taken which are aimed at eradication of child labor and their rehabilitation.

4.3.3 *The National Authority for Elimination of Child Labor (NAECL):* was established in the year 1994-95 to frame policies and monitor programmes for controlling and eradication of child labour, particularly in hazardous industry and for their effective implementation to coordinate the same with various other Ministries/Departments of the Central Government [such as Ministry of Rural Development, Urban Affairs & Employment, Human Resource Development (Department of Education), Social Justice and Empowerment and the Department of Women and Child Development]. In furtherance of the said objective, various Committees have been set up, including State- level Monitoring Committees for performing various functions to monitor and assist the Government.

4.3.4 *The National Commission for the Protection of Child Rights (NCPCR):* has also been actively engaged in the vigilance and monitoring mechanism and has been holding Public hearings as part of this mechanism. State Commissions under NCPCR have been established and are functional. (www.ncpcr.gov.in)

4.3.5 *Free and Compulsory Education for Children up to 14 years*: Considerable effort has all

along been put in by the Government of India towards providing free primary education through setting up nearly 6,00,000 schools and initiating non-formal education programs with the involvement of NGOs (in order to enroll the girl child who could not be enrolled in the formal system and for the dropouts). Notwithstanding this the drop out rate from schools was high. Governments in States and Union Territories in India had been engaged under various Government schemes to impart free and compulsory education and enacted the Compulsory Education Acts. However, Education as an important mechanism to deal with the issue of child labor and removing poverty as reason for dropping out of school has now received a big boost when the national Government recently succeeded in enacting the historic 'Right to Free and Compulsory Education Act, 2009' making free and compulsory education a legal right of each child and an obligation of the State (see http://www.indg.in/primary-education/policiesandschemes/free%20and%20compulsory.pdf). This law, which came into effect on April 01, 2010, should go a long way in addressing the problem of child labor in India.

5. Rice Industry Good Practices

While rice plantation is part of the informal agricultural economy, the rice industry at the post harvest stage has taken pro-active measures and implemented robust programs in this regard in their manning and HR practices which are effectively monitored. These include: compliance with applicable laws, site visits, inspections and certifications processes; as well as site visits and inspection of records by overseas buyers.

India's modern rice mills follow a two tier process for ensuring compliance with Indian law on child labor and forced labor.

(a) Compliance with State and Union legislation followed by site visits /inspection and certification as required by law on aspects relating to child labour and forced labour.

(b) Audits and visits to premises and inspection of records by overseas buyers to ensure that safety, hygiene and human welfare aspects are taken care of before actual shipments take place.

Both above compliance processes are in place at all factories involved with exporting rice to U.S.A.

A critical examination of India's efforts to eliminate child labor and forced labor laws shows that the inclusion of Indian Rice in TVPRA list and in the EO 13126 is not warranted.

Before concluding, it is pertinent to refer to the Initial Determination made by DOL and specifically highlight the following points: *(a) that* two of the studies (*viz* that by Balaji Pandey and Subramanyam S.) cited earlier are still not available /accessible and could not be reviewed by us for comment; (b) while there is reference to rice mills in one study and a general reference to agriculture, but significantly there is no specific reference to use of 'forced child labor' in the cultivation of rice.

Apart from the above, it is to be further noted that: (a) the studies cited earlier and which forms a basis of the Initial Determination appear to be based on small sample surveys and are unsupported by empirical evidence critical in such matter. As such these lack credibility and

cannot be the basis for arriving at valid generalizations as has been done by the Initial Determination; (b) the accuracy of the data cited also needs some credible support.

6. Additional Information:

As a result of the Governments actions, the other more organized sectors affected by the child labor problem in India have come to adopt and follow compliance processes and it is not unusual to find contractual provisions in these sectors on the following lines:-

6.1 Clause prohibiting use of child labour in grower/seed organizers contracts and Penalty for its violation [e.g. deduction of 10% from the procurement price and black listing by non-grant of future production contracts].

6.2 Provisions of incentives for compliance with provisions of law.

6.3 Regular internal and external audit including offer of bonus to growers for such compliance.

6.4 Communication campaigns to continuously raise awareness of the legal and regulatory framework etc.

6.5 Comprehensive field monitoring programs with multiple unannounced visits per person to each production plot.

7. Third Parties Initiative (including the Judiciary) to eradicate child labor generally.

7.1. Many agencies/NGO's have also taken active initiatives towards monitoring and spreading awareness and conducting rehabilitation programs some of which are financially Government assisted.

7.2 At the behest of concerned citizens, the Indian judiciary has been proactive in contributing to

social engineering in this regard. Thus, for example, on 10th December 1996 in the MC Mehta vs State of Tamil Nadu & Ors case [CWP 465/1996] the Indian Supreme Court delivered the "ground breaking" decision when it issued directions to all State Governments to: -

(a) Survey and identify working children; (b) withdraw children from 'hazardous' industries/ occupations/processes and ensure their welfare including education in appropriate institutions; (c) offer employment to one able bodied adult member of such child's family, (d) impose (apart from statutory penalties/fines) a fine of Rs.20,000/- on offending employers which sum is to be deposited in the Child Labor Rehabilitation Fund.

Compliance with the above directives of the Supreme Court are being monitored though submission of affidavits of compliance by various State Governments at regular intervals in Court per its directions.

The Supreme Court also directed the National Human Rights Commission (NHRC) to be a part of the Vigilance and Monitoring mechanism by supervising the implementation of its directives by the States. Thereupon, the NHRC appointed Special Reporters tasked with the duty to make periodic visits to the villages identified as more seriously affected, to ascertain the ground reality there and to submit regular reports to the NHRC, which then initiates follow up action in consultation with the Ministry of Labor.

The Delhi High Court has also been active in the implementation of the NCPCR and has in a recent order directed that (a) the responsibility for lodging complaints regarding employment of child labor was

with the Police and not the labor department; (b) the fine on erring employers would be Rs.20,000/- which was to be paid immediately and not upon conviction; and (c) that the action taken report was to be filed with the Court. (See http://www.ncpcr.gov.in/Infocus/final_August_Infocus.pdf).

7.3 Considerable effort has also been made by other National level Institutions such as VV Giri National Labor Institute (VVGNLI) and the National Institute of Rural Development (NIRD) and some State level institutes which have played an important role in the areas of training and capacity building of government functionaries, factory inspectors, officials of Panchayati Raj institutions, NCLP project directors the heads of NGOs. These institutions and officials are also engaged in and have contributed to a great extent in furthering the object of rehabilitation of children and eradication of the child labor by way of public awareness and sensitization of the public about the said issue.

8. Conclusions:

Various interventions–legislative and otherwise – made by the Government to deal with the issue of Child labor have had a positive effect in dealing with the problem. Recent studies have taken note of this positive impact. For example, it has been noted that there has been "significant decline" and that "The present policy stand of the Government on child labor looks at the problem and its solution from the right perspective" and that "... the Government interventions have had a positive impact". The report of DOL itself issued in 2009 [see Section 5.3 thereof titled 'Exemplary Efforts"] states that " Some Governments have provided leadership and models of good practice in this area. For instance, the Government of India has invested in the National Child Labor Project... Skill Development Initiative Scheme...".

In view of all the above facts and submissions, it is our position that there is no credible basis to justify the Initial Determination that there exists forced child labor in the rice sector in India. As such, the Initial Determination must be reviewed and rice from India be deleted from the list.

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ANNEXURE 1

Agricultural and Processed Food Products Export Development Authority (APEDA), New Delhi

Response to the US Department of Labour in respect of inclusion of Rice from India in the list of goods produced by Child Labour or Force Labour

Legal Provisions in India:

Historically, removal of employment of child labour and forced labour has been a national priority in India. The first legal response in fact came as early as 1933 when the Children (Pledging of Labor) Act, 1933 was passed. This was followed by **the Employment of Children Act, 1938. With Independence in 1947** , the objective of eradication of child labor and child welfare found a constitutional mandate with certain provisions of the **Constitution of India** giving the matter due attention, for example :

Article 39(e) of the Directive Principles of the Constitution provides that: "The State shall in particular direct its policy towards securing .... That the health and strength of workers, men and women and the tender age of children are not forced by economic necessity to enter vocations unsuited to their age or strength

Article 24 specifically provides for prohibition of child labor when it states that **: "No child below the age of 14 years shall be employed to work in any factory or mine or employed in any hazardous employment".**

Article 21A which provides for the right to education states : " The State shall provide **free and compulsory education** to all children of the age of 6 to 14 years in such manner as the State by law determine" .

The above constitutional provisions have been implemented by the Indian Government through the passage of various laws [such as **The Factories Act, 1948 , the** Mines Act, 1952 which prohibit and /or regulate the employment of children in **hazardous** activities/mines].

In the past few years, however, the statutory response has been **more direct** with the enactment and coming into effect of the following laws dealing specifically with child labor including forced child labor. The following two legislations are noteworthy.

1) **Child Labor (Prohibition and Regulation)Act,1986** ,which has an all India application is the major legislation that deals with the above problem.

Section 2(ii) defines the "child" as a person below **14 years**.

Section 3 thereof **prohibits** their employment in 13 occupations and 57 processes contained in Part A and B of the **Schedule** to the Act.

Section 14 of the Act provides that any Violation of Section 3 thereof will make one liable for punishment by imprisonment for a term of three months to 12 months or with fine between Rs.10,000/- to 20,000/- or both.

A **Technical Advisory Committee** has also been constituted whose job is to do a continuous review of the situation and recommend inclusion of further occupations and processes in the said Schedule.

The said Committee has certainly been proactive as will be evident from the fact that about **five years back , while the scheduled 'occupations' and 'processes' were 7 and 18 respectively ,this has since gone up to 13 and 57 respectively indicating thereby that the problem is being monitored, and the Act is accordingly being reviewed and implemented)**

Agriculture cultivation per *se* does not fall within the category of the scheduled 13 prohibited "occupations" under the Act **; however, item 43** of the Schedule relating to **prohibited "processes" covers the following processes involved in farming** "processes in agriculture where **tractors ,threshing and harvesting machines are used and chaff cutting".**

Accordingly, while a child as defined can engage in agricultural cultivation, he/she is prohibited from engaging in the aforesaid prohibited processes involving agriculture. However, here also the effect of the **Proviso to Section 3 ("with the aid of his family"**) is that if these "processes" are carried on by a child in the context of family farming person ,it will be permissible to engage in these activities too. This provision takes into cognizance the reality that children engaged in agriculture are essentially working in their family farming operations and not for outside parties.

2) The Bonded Labor System (Abolition) Act, 1976 abolished the bonded labor system in the country .

Section 2(g) defines the 'bonded labor system" broadly to cover both bondage due to debt incurred or due to "customary or social obligation" i.e. social structure or caste reasons.

By **section 4(2)(B)** ,the Act provides that no person can be compelled by any person "to render any bonded labor or other form of forced labor" and by Section 16 thereof any breach of section 4 is punishable with imprisonment up to three years AND a fine up to Rs.2000/-

Part III thereof even goes to the extent of extinguishing the liability to repay the bonded debt.

Apart from the enactment of laws ,the Indian Government has been engaged in continuously examining the problem through the adoption of National Policy on Children 1974 , adoption of the National Plan of Action for Children, the National Child Labor Policy 1987 affirming its commitment to the objective by being a signatory to international Conventions on Child Rights, constituting the Central Advisory Boards on Child Labor , initiating the National Child Labor Projects to rehabilitate child labor ; allocating funds to districts identified by surveys as having pervasive child labor in its industries, and funding child welfare projects etc.

Monitoring by Government of India and the Sates

Government of India and various State Governments are **continuously reviewing the situation** and trying to address the problem. The **National Commission for the Protection of Child Rights** is actively engaged in the task in conjunction with the Planning Commission and various **Monitoring Committees at State levels** .

At **State level,** one important step being taken by State Governments is to implement the mandate of providing free **and compulsory education** to the children under **various Government schemes** and to reduce the drop out rate of children from schools due to economic reasons. It is relevant to state here that more than 14 Indian States and 4 Union Territories have enacted laws –the **Compulsory Education Acts -**

As per a recent report received from the Labour Commissioner in the State of Punjab, the child labour survey is conducted in the state in all the establishments including agriculture and rice sellers. No case of child labour has been reported. The state has also constituted District Level Task Forces and the Monitoring Committees.

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