

AEPC's Additional Comments- EO List

1. The Apparel Export Promotion Council (AEPC) thanks the United States Department of Labor (DoL) for this opportunity to provide additional comments regarding the inclusion of garment exports from India, under the EO list due to an apprehension that such garments could be produced by forced or child labor.

Due Process of Law Not Followed

2. As submitted in our in our earlier comments and also during the meetings we have had with the senior officials of the US Government in December, AEPC would like to reiterate its deep disappointment that neither the Government of India nor the concerned export agencies like AEPC were even consulted before the release of the Executive Order and the TVPRA lists. In this connection, we draw your attention to the Final Procedural Guidelines dated December 27, 2007 which clearly mandates that *"Before publication of the initial List or subsequent versions of the List, the Office will inform the relevant foreign governments of their presence on the List and request their responses"*. It is a matter of record that the consultation with Government of India was limited to a phone call to the Embassy just one day before the release of the lists. While it is appreciated that the Guidelines envisage that the DoL will "inform" the relevant government, it is important to note that the information is coupled with an obligation to request for a response. Further, the guidelines mandate the DoL to review these responses and make a determination as to their relevance. Thus, it is apparent that the Guidelines do provide for a mandatory requirement of not merely an act of "information" but a proper and effective consultative procedure.
3. In this context, it may be recalled that the Minister (Com) from the Embassy of India at Washington and other delegates from the Government of India during their meetings with various officials of the US Government with emphasized that despite a clear provision for consultations in the Federal Register notice regarding the TVPRA

list. It was also pointed out that the Indian Embassy in Washington had an active dialogue with the DoL and it was surprising that the DoL did not consult the Embassy before finalizing the lists.

4. As explained above, it is unfortunate that the question of the DoL examining the relevance of the information from the Government of India or any of its concerned agencies did not arise as the due opportunity was never given to the Government of India to file its response. In this context, it is our respectful submission that India as a country and the products in the list ought to be removed solely on the ground of a major procedural lapse which has a significant and damaging effect on the lawful rights of the parties affected by the action under review. Needless to say that the failure to follow the mandated procedure and the resultant non-adherence to the due process of law has led to denial of a substantive right of defence of our interests.
5. We also understand that the DoL is also required to conduct “a public hearing to gather information to assist in the development of the List”. It may be seen that the mandatory requirement is to conduct a hearing even for the “development” of the list which has apparently not been done.
6. It is also clear that no serious or sincere effort was made by the DoL to refer to the several sources of information which would have established that the inclusion of “Garments” is not called for despite the fact that the Guidelines mandate that the DoL’s consults, inter alia, reports by governmental, non-governmental, and international organizations. No such effort seems to have been made by the DoL in the case of “Garments”.

Complete Lack of Evidence

7. AEPC would like to point out that there is a complete lack of depth or analysis in the documents relied upon by the DoL as indicated in the bibliography provided under the EO and TVPRA lists. The bibliography consists of either press reports on some stray incidents in the country. Without prejudice to our claim that even the so-called stray incidents referred to in the reports cannot be categorized as “significant” to

invite inclusion even in the initial list. Even as per the Guidelines, the DoL cannot take cognizance of stray incidents unless there is sufficient evidence with regard to certain other factors mentioned therein. It can be seen from a plain reading of the so-called evidence and the bibliography that none of the conditions mentioned in the Guidelines for inclusion in the initial list is present in the case of “Garments” in India.

8. It may also be pointed out that one of the studies – the report by the VV Giri National Labor Institute on “Child Labor in Knitwear Industry of Tirupur - dates back to 2002. Obviously, the report relates to a period which is which is more than seven years old. Yet again, consideration of such reports as material evidence by the DoL is against their own Guidelines inasmuch as the information pertains to a period which is admittedly more than seven years old. We submit that the date of the Report is of no consequence in reckoning the time period of seven years. In the event the DoL considers the date of a particular Report as the relevant date, it goes without saying that the conclusions will lead to absurdity as such an interpretation would permit the use of dated and obsolete information to arrive at desired results. We are sure that the DoL would appreciate the mistake and ignore the said Report for any purpose whatsoever. It is also important to take note of the plethora of evidence and information submitted by AEPC to establish the non-existence of child or forced labor in the Garment industry.
9. As regards the confidential reports by the US Embassy in India, we once again request you to kindly provide us with the copies of the same for us to enable our comments and defend our interests. It is submitted that the DoL is prohibited from taking cognizance of any information or documents which are classified and cannot be made available to the affected and other interested parties. In this connection, you may refer to the Guidelines which clearly state that **DoL will not accept classified information In the interest of maintaining a transparent process even in developing the List.** Under such circumstances, any reference or strength drawn from such reports are of no legal or factual consequence.

10. As regards the Macro International Report, it is a matter of record that it was made available in public domain only two days before the deadline of submission of responses to the EO list. Without prejudice to the procedural rights of the interested parties, it is submitted that the said report does not even qualify as “information”, let alone evidence. The report is based on a sample survey with complete lack of transparency. It is submitted that verbal interviews cannot meet the standard of any credible information or evidence particularly when no opportunity has been given to the other concerned persons, agencies or the concerned government. It may be appreciated that the basic principles of fair reporting would require a well-researched reportage after taking into consideration all aspects and views of the concerned parties. It appears that this is the main document relied upon for including India on the list of countries in the garments sector. In such a case, we would request the DoL to give us an opportunity to cross-examine the authors of the said Report particularly with regard to the methodology of survey and the credibility of the persons interviewed.

Credibility of the List:

11. With respect, it is submitted that the non-inclusion of India’s neighbors with similar socio-economic environment and a large export base of garments puts the credibility of the lists in question. The reality is that India’s record in the efforts to eliminate child or forced labour is unquestionably the best in the region as is apparent from the evidence submitted by us especially for the Garments sector. We urge the DoL to appreciate that inclusion of garments in the two lists itself could act as a non-tariff barrier for India’s exports to the US which would be extremely unfair and unfortunate particularly when there is enough evidence to prove that the apprehensions of the DoL are ill-founded.

Need to Revisit the Inclusion of India:

12. Given this background AEPC would like the US Department of Labor to revisit the inclusion of India on the EO and TVPRA list and would request for deeper consultations with all stakeholders before such NTBs are created.
13. While we are dismayed with the non-adherence to the procedure which has led to loss of substantial rights, we would like to provide below the strong measures adopted by the Government and industry in dealing with the child labor issue in India as also reports by International UN agencies which point to the huge progress made by India in this area. It is submitted that according to the Guidelines, even an effective reduction of child labor and forced labor should call for removal from the lists whereas the evidence submitted by us earlier and now would establish beyond an iota of doubt that there is virtually no incidence of child or forced labour insofar as the garment industry is concerned.

TWO-PRONGED STRATEGY TO DEAL WITH CHILD LABOR IN INDIA

14. While AEPC would like to reiterate its earlier submission that exporters of garments from India strictly adhere to the international norms and obligations in the production process of garments it would also like to share with the US Department of Labor the approach of the Government of India and industry in pushing for an elimination of child and forced labor in India.

BACKGROUND TO CHILD LABOR IN INDIA OVER THE DECADES:

15. There are a number of factors that could make children vulnerable to trafficking for labour. Some of these are at the family level and some others at the community or society level. While at the family level, the major push factors are poverty, illiteracy, dysfunctional family life, under-employment and a lack of income-generating opportunities for families, those at the community or society level are a general

apathy or tolerance towards exploitative forms of child labour, lack of community support and social vulnerabilities.

INDIAN RESPONSE TO THIS PROBLEM OVER YEARS:

16. Considering the complexity of the problem, the Indian government and Industry has worked out a comprehensive multi-pronged approach to this problem. This covers not only the educational rehabilitation of these children to prevent them from entering and re-entering such exploitative labour situations but also various socio-economic causal factors such as poverty, illiteracy, lack of awareness etc.

17. The measures adopted include economically empowering the families by covering them under various schemes of the Government, community mobilization and attitudinal changes through awareness generation, creation of suitable rehabilitation infrastructure, backed by unambiguous legislative provisions against offenders and stronger enforcement.

GOVERNMENT EFFORTS OVER AND ABOVE THOSE LISTED IN THE FIRST SUBMISSION:

18. The National Policy on Child Labour enunciated in 1987 laid down the following action plan for tackling the problem of child labour:

- A legislative action plan
- Focusing and convergence of general development programmes for benefiting children wherever possible, and
- Project-based plan of action for launching of projects for the welfare of working children in areas of high concentration of child labour

19. Based on the above, Government had initiated the National Child Labour Project (NCLP) Scheme in 1988 to rehabilitate working children in 13 child labour endemic districts of the country. Its coverage has been increased progressively since then to

250 districts in the country in the 10th Five Year Plan (2002-2007). The five year plans prepared by the Planning Commission of India sets the agenda on various issues related to development and growth for the country. The Government plans to cover all the districts of the country in which there is an incidence of child labour during the 11th Five Year Plan (2007-2012).

20. Giving due consideration to the specific needs of the migrant child labour, one of the proposals given for the 11th Plan includes a provision of residential schools in the metropolises and other big cities under the NCLP Scheme, children are withdrawn from work and put into special schools, where they are provided with bridging education, vocational training, mid-day meals, a stipend of Rs. 100 per month, health-care facilities etc. Under the Scheme, funds are given to the District Collectors for running special schools for child labour.

21. To ensure greater reach combined with full accountability, many of these schools are run by NGOs in the district. Linking the child labour elimination efforts with the Scheme of Sarva Shiksha Abhiyan (SSA) of the Ministry of Human Resource Development, Government of India, efforts are made to ensure that children in the age group of 5-8 years get directly admitted to regular schools and that the older working children are mainstreamed to the formal education system through special schools functioning under the NCLP Scheme.

22. By 2008 there were 8,887 NCLP schools being run in the country with an enrolment of 3.4 lakhs children and 4.5 lakhs working children already been mainstreamed to regular education under the NCLP Scheme. It is a challenge to retain the rescued child laborers in such schools. Due to reasons ranging from economic and financial adversity some children do not always complete their stints at the NCLP schools.

23. The Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked & Migrant Child Labour (The Protocol) was issued by the Ministry of Labor and Employment in May 2008 to guide state and district-level authorities and NGOs, and expand the central government's list of occupations that are banned from employing children. The Protocol provides steps to be taken by designated agencies to collect information on instances of child labor and prepare for rescue operations. It also states the basic orientation required for preparation for such operations and immediate steps required post-rescue. The Rescue Team consists of a) The Department of Labour; b) The Police; c) The Municipal Corporation or the local self government like the Zilla Parishad, panchayats etc, as the case maybe; d) Social Welfare Officer/Probation Officer/DM's nominee/CWCs; and e) NGOs, social organizations, trade unions or other responsible citizens; f) Doctor with first aid kit, and g) Lady Police/volunteers when rescuing girls. The Protocol is sensitive to the conditions in which such child labor may be made to perform and assures that rescued children are not harmed during the operation.

24. After successful completion of the rescue operations the children undergo a medical examination and a fresh investigation commences to source their families and homes. These rescued children are produced before the Child Welfare Committee (CWC) and given temporary shelter before they are transported and restored to their families. Rehabilitation of such rescued children is the responsibility of the District Collector to ensure that they are not sent back to the exploitative employers. The Protocol lists how various agencies like the police, the department of labor and employment, education department and municipal authorities are jointly and severally responsible for the rehabilitation and restoration of the rescued children.

25. While such instances remain rare, NGO's and enforcement agencies remain vigilant, whenever bonded child labourers are rescued from forceful employers in the unorganized sectors, the provisions of the Bonded Labour (System) Abolition Act, 1976 entitle them to 'release certificates' alongwith Rs. 20,000 as rehabilitation

package. This step is taken after the Rescue Team produces them before the CWC or the Additional District Magistrate (ADM). Such prompt action certifies their previous status of bonded labour and assures that they are not forced into the same milieu.

ENFORCEMENT & FOLLOW UP:

26. Various NGO's keep track of the rescued children in schools and maintain reports on their progress. If any child goes missing and his or her absence in school is taken cognizance of and these NGO's track those to reinstate them 'back2school' in the rehabilitation schemes.

27. For example, in the State of Tamil Nadu, members of an NGO called the Village Volunteer Force go around villages and collect data about missing students from classrooms. The volunteers find out reasons from the school and families, and this information is keyed in at the taluk computer centres. Through the Tamil Nadu State Area Network the data is made available to the district administration. The Collector then takes action to solve the problem. The 'back2school' software links all departments concerned such as the tahsildar's office, the district police and administration. **Such efforts are recognized by the UNICEF Child Protection Programs in India.**

INTERNATIONAL AGENCIES RECOGNIZE INDIA'S PROGRESS:

28. The 2009 UNHCR Report¹ (prepared by the US Department of State) also recognizes these efforts by noting, "Indian government authorities made significant progress in law enforcement efforts against sex trafficking and forced child labor during the year..... India also prohibits bonded and forced labor through the

¹ Refer Bibliography

Bonded Labor (Abolition) Act of 1976, the Child Labor (Prohibition and Regulation) Act of 1986, and the Juvenile Justice Act of 1986."

29. Further, in its State of the World's Children Report 2009², UNICEF points out that the number of children enrolled in primary school, regardless of age, expressed as a percentage of the total number of children of official primary school age for males is 90% and for females is 87%.

INDUSTRY EFFORTS:

30. The garment export industry is an organized body of ethical traders. The National Policy for Child Labor is stringent and provides for clear guidelines prohibiting employment of children at any level. The policy is being implemented and the results are seen with higher enrollment rates in schools throughout the country.

31. Industry at three levels- at the apex national level like AEPC, at the regional level and at the company level takes adequate steps to ensure that child or forced labour is not used in any organized manufacturing activity. In case of export oriented organizations these rules are followed and adhered to in a stricter sense.

32. Apparel Export Promotion Council (AEPC) promotes garment exports and also enforces the national policies for fair and ethical trade. Regional bodies of exporters also form guidelines to ensure that no violations of legal and social norms hamper the supply sourced from them to international buyers.

² Refer Bibliography

33. Illustrative case in point being the Tirupur Exporters Association (TEA), who comply with WRAP and SA8000 principles to meet the social standard certifications required to ascertain ethical practices at the supply chains. Since Tirupur export industry has been a cause for concern to the media over issues of child labour we have attached as Annexure-I herein the legal and Social Compliance Statement of TEA. Further-still, individual manufacturer-exporters, who are members of both, the AEPC and TEA, formulate self-regulatory norms to comply with legal and social standards required of the industry to continue supply of garments without controversy. Annexure-II herein presents the Profiles of some TEA Members indicating their commitment to anti-child labour practices.

34. We would like the DoL to appreciate that there is no basis whatsoever to continue the inclusion of the Garment industry either in the TVPRA list or the EO list as has been clearly made out in the aforesaid submissions. We would also request the DoL to grant us an opportunity of a hearing in the matter.

ANNEXURE-I

The following are the Legal and Social Compliances the Members of the TEA have committed themselves to. These are available at, <http://www.tea-india.org/legal.aspx>

The International buyers (Customers) are demanding the Legal compliances on various aspects as per our land of laws.

The following compliances details been furnished for your ready references in case of any clarification contact Mr. R.Hari Bhaskaran (TEA).

Social Standards Certifications

Social standards certifications ensure a factory's systematic and ongoing commitment to maintain, monitor, and enforce internationally recognized principles in labor and human rights. Increasingly, global brands and retailers are choosing work with factories that are certified in these standards.

Our social standards certification services included:

- Registration
- Independent assessment and verification of corrective actions
- Annual and periodic re-assessment
- Re-certification

(WRAP) Worldwide Responsible Apparel Production

Many North American brands and retailers recognize WRAP certification, which is granted to factories that exhibit a commitment to the 12 WRAP Principles.

Principles

These Worldwide Responsible Apparel Production Principles are core standards for production facilities participating in the Worldwide Responsible Apparel Production, Certification Program. The objective of the Apparel Certification Program is to independently monitor and certify compliance with the following standards, ensuring that a given factory produces sewn goods under lawful, humane and ethical conditions.

- 1. Compliance with Laws and Workplace Regulations** – Manufactures of Sewn Products will comply with laws and regulations in all locations where they conduct business.
- 2. Prohibition of Forced Labor** – Manufactures of Sewn Products will not use involuntary or forced labor – indentured, bonded or otherwise.
- 3. Prohibition of Child Labor** – Manufactures of Sewn Products will not hire any employee under the age of 14, or under the age interfering with compulsory schooling, or under the minimum age established by law, whichever is greater.
- 4. Prohibition of Harassment or Abuse** – Manufactures of Sewn Products will provide a work environment free of harassment, abuse or corporal punishment in any form.
- 5. Compensation and Benefits** – Manufactures of Sewn Products will pay at least the minimum total compensation required by local law, including all mandated wages, allowances and benefits.
- 6. Hours of Work** – Manufactures of Sewn Products will comply with hours worked each day, and days worked each week, shall not exceed the legal limitations of the countries in which sewn product is produced. Manufacturers of sewn product will provide at least one day off in every seven-day period, except as required to meet urgent business needs.

- 7. Prohibition of Discrimination** – Manufacturers of Sewn Products will employ, pay, promote, and terminate workers on the basis of their ability to do the job, rather than on the basis of personal characteristics or beliefs.
- 8. Health and Safety** – Manufacturers of Sewn Products will provide a safe and healthy work environment, where residential housing is provided for workers apparel manufacturers will provide safe and healthy housing.
- 9. Freedom of Association and Collective Bargaining** – Manufacturers of Sewn Products will recognize and respect the right of employees to exercise their lawful rights of free association and collective bargaining.
- 10. Environment** – Manufacturers of Sewn Products will comply with environmental rules regulations and standards applicable to their operation, and will observe environmentally conscious practices in all locations where they operate.
- 11. Customs Compliance** – Manufacturers of Sewn Products will comply with applicable customs law and, in particular, will establish and maintain programs to comply with customs laws regarding illegal transshipment of apparel products.
- 12. Security** – Manufacturers of Sewn Products will maintain facility security procedures to guard against the introduction of non-manifested cargo into outbound shipment (etc drugs explosives, biohazards and / or contraband).

Social Accountability 8000 (SA8000)

Numerous global brands and retailers recognize SA8000 certification, which ensures a factory's compliance to SA8000's nine fundamental standards.

Principles

These principles are core standards for production facilities participating in the SA8000 Certification Program. The objective of the SA 8000 Program is to independently monitor and certify compliance with the following standards, ensuring that a given factory produces sewn goods under lawful, humane and ethical conditions.

- 1. Compliance with Laws and Workplace Regulations** - Manufacturers of Sewn Products will comply with laws and regulations in all locations where they conduct business.
- 2. Prohibition of Forced Labor** – Manufacturers of Sewn Products will not use involuntary or forced labor – indentured, bonded or otherwise.
- 3. Prohibition of Child Labor** – Manufacturers of Sewn Products will not hire any employee under the age of 14, or under the age interfering with compulsory schooling, or under the minimum age established by law, whichever is greater.
- 4. Prohibition of Harassment or Abuse** – Manufactures of Sewn Products will provide a work environment free of harassment, abuse or corporal punishment in any form.
- 5. Compensation and Benefits** – Manufacturers of Sewn Products will pay at least the minimum total compensation required by local law, including all mandated wages, allowances and benefits.
- 6. Hours of Work** – Manufacturers of Sewn Products will comply with hours worked each day, and days worked each week, shall not exceed the legal limitations of the countries in which sewn product is produced. Manufacturers of sewn product will provide at least one day off in every seven-day period, except as required to meet urgent business needs.

- 7. Prohibition of Discrimination** – Manufacturers of Sewn Products will employ, pay, promote, and terminate workers on the basis of their ability to do the job, rather than on the basis of personal characteristics or beliefs.

- 8. Health and Safety** – Manufacturers of Sewn Products will provide a safe and healthy work environment. Where residential housing is provided for workers, apparel manufacturers will provide safe and healthy housing.

- 9. Freedom of Association and Collective Bargaining** – Manufacturers of Sewn Products will recognize and respect the right of employees to exercise their lawful rights of free association and collective bargaining.

ANNEXURE-II

The following are Profile extracts from some of the Members of TEA. All members are similarly committed and profiles are available at the TEA website, <http://www.tea-india.org>

1. We, **Angel Zippel**, keeping in tradition with our Angel Group of Companies are dedicated to serve the garment retail and manufacturing industry all over the world by delivering zippel that are "best among the world" on all parameters of functionality, productivity, profitability and growth of all our business associates. Best manufacturing practices are adopted. We as a policy do not employ child labour. Available at, <http://www.tea-india.org/angellabelandzippel/default.htm>
2. **BP Overseas**, incepted in 1984, constant innovations and creative skills are the cornerstone of our success. We offer woven and readymade garments with colors, hues and textures crafted from the finest materials. Traditional to contemporary, each piece is an art of work that reflects fine craftsmanship. The company complies with all local labor law requirements voluntarily. The company is an equal opportunity employer and does not discriminate on the basis of sex, religion, caste or creed. We do not employ any child labor (below 18 years) and make every effort to comply with the established human rights standards. Available at, <http://www.tea-india.org/bpoverseas/default.htm>
3. Incorporated in the year 1991, **Gaurav Expotrades** is a market leader in the manufacture and export of knitted garments. Customer Service is the driving force behind our organisation. A unique combination of in house manufacturing and out sourcing offers our customers flexibility in order fulfillment. Specialists in providing high quality and low cost merchandise. We manufacture eco-friendly garments having associates printing and processing AZO-Free chemicals. As a policy we prohibit employment for child workers below the age of 18. Available at, <http://www.tea-india.org/gaurav/profile.html>

4. **Jommans Exim Pvt. Ltd.**, We take pleasure in introducing ourselves as a professionally managed manufacturer of complete range of garments based in the southern part of India, catering to the domestic and international markets. A decade of expertise in garmenting speaks for our quality and professionalism in our scope of operations. We specialize in complete range of garmenting Knit and Woven wear styles and sizes. We produce AZO free products which are environment friendly. We provide an amicable and safe working environment. We will not employ child and forced labour nor support any discriminatory business practices. Available at, <http://www.tea-india.org/jomannsexim/default.htm>

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3. Child Labour and Responses in South Asia, Overview Note, International Labor Organisation, available at <http://www.oit.org/public/english/region/asro/newdelhi/ipec/responses/index.htm>
4. Children in Difficult Circumstances, available at <http://www.planindia.org/childlabour.aspx>
5. Children in India, Smile for Child Health and Education, available at <http://smilefoundationindia.org/ourchildren.htm>
6. Happy to be back in school, Sangeetha Rajeesh, available at http://www.unicef.org/india/child_protection_3014.htm
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