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February 15, 2011

Office of Child Labor, Forced Labor and Human Trafficking
Bureau of International Labor Affairs
U.S. Department of Labor
200 Constitution Avenue, NW – Room S-5317
Washington, D.C. 20210

Re: DOL-2010-0005; Request for Public Comment on Notice of Initial Determination Pursuant to Executive Order 13126; 75 Fed. Reg. 78755 (December 16, 2010)

Dear Madam Deputy Undersecretary:

The Apparel Export Promotion Council (Council or AEPC) of India, which was incorporated in 1978 and is the official body of apparel exporters in India, appreciates the opportunity to comment upon the U.S. Department of Labor's (Department) possible revision of the list of products requiring federal contractor certification as to forced or indentured child labor pursuant to Executive Order 13126.

With these comments, the Council respectfully urges the Department to update the List to remove India's garment and zari industries. This request is consistent with the Department's January 18, 2001 Procedural Guidelines for Maintenance of the List of Products, 66 Fed. Reg. 5351, because, as will be demonstrated below, 1) it provides "adequate information" and 2) a review and removal of these products is not inconsistent with the Executive Order or the relevant law and regulations.

Specifically, such a review and removal of these products is justified based upon 1) the information contained in the two U.S. Department of State cables made available to the Council and cited in the Department's bibliographies supporting the listing of these two products, 2) the AEPC's August 19, 2010 letter describing best practices and initiatives to reduce the likelihood of child labour or forced labour in the Indian garment industry, including the development of an advisory that has been and continues to be widely distributed and the creation, dissemination and implementation of a Common Code of Compliance that addresses the full range of ethical manufacturing responsibilities, including the prohibitions against child labour and forced labour, 3) the detailed survey and report presented to the Department by Sidley Austin LLP on December 14, 2010, including the supplementary explanation provided on January 5, 2011, and 4) the additional information contained in this letter, which together constitute "adequate information" that is recent, credible and appropriately corroborated to initiate a review and update the list with respect to Indian garments and zaris.

I. Background

The Department has requested public comment on two specific revisions to the List “as well as any other issue related to the fair and effective implementation of EO 13126.” The AEPC respectfully submits that the fair and effective implementation of EO 13126 compels prompt consideration of whether there is a reason for belief that Indian garments and zaris might have been produced by forced or indentured child labour and therefore whether these products should not be included on the final EO 13126 List.

Under the Procedural Guidelines, the Department has committed to:

Consider and weigh several factors including: the nature of the information describing the use of forced or indentured child labor; the source of the information; the date of the information; the extent of corroboration of the information by appropriate sources; whether the information involved more than an isolated incident; and whether recent and credible efforts are being made to address forced or indentured child labor in a particular country and industry.

Below, the AEPC reviews the information available to the Department with respect to Indian garments and zaris, which it believes is more than adequate to compel the Department to conclude that there is not a reasonable basis to believe that these products might be made with forced or indentured child labour, recognizing that the Guidelines specifically define “adequate information” as:

information relevant to the development of a reasonable basis for belief that a particular product included or not included on the List might have been mined, produced, or manufactured wholly or in part by forced or indentured child labor.

II. Review of the information available to the Department to date

There are multiple pieces of recent, credible and appropriately corroborated information that have been presented to or are already available to the Department to counter the view that there is a reasonable basis for belief that Indian garments or Indian zaris might have been produced with forced or indentured child labour.

A. The Views of U.S. Embassy Personnel

First, there are two State Department cables, issued from the U.S. Embassy in New Delhi, which were among six cables included in the Department’s bibliographies supporting its initial decisions to include the Indian garment and zari industries in its 2009 EO list. In fact, these two cables, the only two that have been made available to the Council, with information dating back to 2006, tell a relatively positive story in which forced or indentured child labour is exceptional and isolated while there is corroborated evidence of tangible progress in the elimination of such intolerable child labour for these products.

The January 11, 2007 cable reports on what are described as “two separate recent operations,” although no dates are provided, one of which was described as involving “zari factories doing embroidery work,” in Delhi. In that instance, the Embassy reports, Delhi police worked with the NGO Bachpan Bachao Andolan to rescue 50 boys between the ages of 8 and 14.

However, the second cable, dated 18 months later, June 8, 2008, and specifically addressing “forced labor and child labor in the production of goods,” reports on skepticism about “widespread assumptions amongst NGOs and civil society,” with the Embassy stating:

While there are widespread assumptions amongst NGOs and civil society about the presence of and prevalence of forced/bonded labor in India, Post found it difficult to validate data or reports to support or substantiate these assumptions. For example, in May 2007, Mission officials traveled to Madhya Pradesh to research the presence of bonded labor in the state, but came across only a couple of stray instances of bonded labor in the agriculture and construction sector.

Based on available information from sources that have a reputation for accuracy and objectivity, we list below goods that might use child labor in their production . . .

Tirupur Garment Industry, Tamil Nadu and elsewhere

*-- NGOs have expressed concern over an apprenticeship program, known as “Sumangali,” used to hire young women in the garment industry in Tirupur, Tamil Nadu. Tirupur’s garment industry accounts for more than half of India’s knitwear exports to the United States and Europe. According to the NGOs, young women are hired at wages below those earned by other workers with the promise of a lump sum to be paid at the completion of the contract. The young women are generally housed on the factories’ premises, and their freedom of movement is restricted. NGOs estimate that 200,000 young women, aged 14-20, work under these conditions in Tamil Nadu. **Post, however, has not been able to independently corroborate this allegation.***

*...
-- The trend of employing children below the age of 14 in the garment industry is found in larger cities such as Delhi, Mumbai and Kolkata. Most children are engaged by sub-contractors of larger manufacturing firms. Typically children sew buttons, prepare collars, iron and pack the finished garments.*

-- Progress: the Tirupur Exporters Association has launched campaigns to educate its members against the use of child labor in the production process. In Delhi, a raid at a GAP sub-contractor’s manufacturing facility in October 2007 resulted in the rescue of 14 children. This has spurred the government and the industry to strengthen the enforcement of the child labor laws. GAP is also working with other international manufacturers to come up with a monitoring mechanism to prevent the recurrence of such incidents.

Zari Industry in Mumbai and New Delhi

-- The zari (golden embroidery) industry has been known to employ hundreds of children below the age of 14 in Mumbai and New Delhi. While exact numbers of children employed by the industry is not known, over the past 12 months, more than 700 children have been rescued from this industry in raids conducted in the two cities. NGOs in both cities claim that many of these children have been trafficked into the cities for cheap labor.

-- Progress: Pratham, a Mumbai-based NGO, worked with the state government, to identify industries where children were employed and to implement programs to get the children out of the workshops and into school. Pratham educated employers to stop using child labor and the consequences of violating the child labor laws. Pratham claims that this has helped employers voluntarily release and repatriate migrated and trafficked children back to their parents. As a result, Pratham opines that the zari industry in Mumbai is relatively free from child labor today.

(Emphasis added.) These cables do not tell a perfect story, but they do underscore an absence of a reason to believe that there might be forced or indentured child labour in the Indian garment and zari industries. The NGO allegation about the Sumangali program, and particularly that the freedom of movement of the young women is restricted, is expressly identified as not corroborated. As discussed below, that allegation is also contradicted by evidence collected during the survey conducted for the Council. It is also important to note that with respect to the Indian garment industry, the Department's bibliography supporting the inclusion of the garment industry on the EO 13126 List identifies only two documents: 1) the June 11, 2008, cable from the U.S. Embassy in New Delhi quoted above and 2) a Macro International study with only anecdotal information obtained from NGOs.¹ Those two sources may even overlap, as it may be the Macro study that is quoted in the Embassy cable on the subject of uncorroborated allegations regarding the Sumangali program. And, according to the Embassy, vis-à-vis the zari industry, an NGO working directly with government authorities provides a report of tangible progress toward the elimination of child labour – forced or indentured or not – in Mumbai's zari industry.

B. The Survey of Indian Garment and Zari Production and Enforcement Commissioned by AEPC

Second, the extensive and detailed survey presented to the Department in December by the Council and its Washington, D.C. legal advisor, which was conducted by an India-based research organization, the Northern India Textile Research Association (NITRA), and tabulated/analyzed by Sidley Austin LLP, identified no instances of forced or indentured child

¹ The AEPC notes that the Macro study includes interviews with families as well, although the report is otherwise a collection of interviews with NGOs. Only two interviews are identified with families involved in garment or zari production and neither provided evidence suggesting forced or indentured child labour.

labour even where it did identify child labour (in homes, as part of family zari workshops) and labour by young women. The study encompassed factories, workshops and homes in 49 clusters in Delhi, Lucknow and Tirupur. It included 36 factories and 59 subcontracting premises (which together employed more than 18,000 workers), 139 family heads, 125 children, 3 NGOs, and 4 labour inspectors.

In short, the survey found a very low level of probability that garments made in India are made with child labour and no evidence of forced or indentured child labour in either garment or zari production. While the survey did indicate that children participate in zari production in the family setting, it also showed, in each and every instance, that such zari work was paid and voluntary. (And appropriate questions were asked to identify whether any of the families were in debt and might therefore be compelling their children to work for that reason – with not a single family indicating such indenture.) Moreover, the overwhelming majority of the children were primarily students, so their zari work was in conjunction with schooling. An isolated instance of illegal child labour – but not forced or indentured child labour -- was found in one subcontractor facility. This specific data, based on in-person interviews and supported by written survey forms (translated) confidentially shared with the Department, deserve significant weight, far beyond the general, uncorroborated and anecdotal allegations of some NGOs.

In addition, NITRA collected a wealth of enforcement data, through interviews with inspectors and through use of India's Right to Information Act, demonstrating that the Indian Government, at the national and local levels, is actively inspecting garment facilities and prosecuting factory owners for violations of child labour laws. This information is presented in full in the Report on the survey.

C. Best Practices, Codes of Conduct and Educational Initiatives By the Council and Others

Third, the Council has previously provided information to the Department regarding its best practices with respect to the prevention and elimination of all forms of child labour, including the extensive outreach activities of its Labour Task Force. This includes a series of seminars to ensure that all parties to the garment supply chain, regardless of whether garments are intended for the domestic or export markets, are educated about the codes of conduct applicable to the industry and about the laws against forced or indentured labour and against child labour.

The AEPC will not repeat or attach that extensive information here, but reiterates that it issued an “Advisory on Preventing & Combating Child Labour in the Garment Industry Supply Chain & Implementation of the Labour Compliance Standards in the Apparel Sector” which forcefully conveys to the trade in India the Council's zero tolerance policy on violations of child labor standards and other crucial labour codes. In seminars conducted around the country, the AEPC admonished the industry to immediately review their existing employment and work place practices, and initiate immediate steps to diagnose and rectify areas of non-conformity. The Council also compiled and is actively distributing and promoting a Code of Common

Compliance that is comprehensive, covering Indian legal requirements, forced labour, child labour, harassment or abuse, non-discrimination, health and safety, environmental requirements, freedom of association and collective bargaining, hours of work, wages and benefits, and subcontracting.

The Council respectfully requests that the Department once again review and take into consideration these submissions and attachments, which were provided and presented during meetings with the Department and other agencies in 2010.

III. Further Initiatives Being Undertaken to Prevent and Eliminate Child Labour

Further steps have been taken since the Council presented the Department with a review of its initiatives addressing labour concerns, including in response to the recommendations of the Council's Washington legal advisor following tabulation of the survey results. In particular, the Council is actively engaging in multi-stakeholder initiatives to promote a common understanding of the shared responsibilities to prevent and eliminate all forms of child labour and to expand monitoring of all facilities, including subcontractors, to ensure compliance.

Toward those ends, a roundtable/workshop on managing the risks of contract labour was held on 8th December, 2010 in Gurgaon and was organized by the AEPC, in association with GAP Inc and NEXT. It was attended by more than 150 participants, including manufacturers and stakeholders from across the globe, AEPC Executive Committee members, representatives from various brands, and specialists from the Government of India.

Contract labour accounts for a significant percentage of factory workforces in India, which entails various risks for the management and the workers. In recent years, the brands and other civil society stakeholders have increasingly raised the issue of practices by contractors. Recognizing this need, the one day workshop included discussions among brands and manufacturers on their perception of the problems attributable to contract labour and the need for consensual solutions. The speakers included professionals from the industry, brands, buying houses and policy makers.

The workshop was aimed at discussing and raising awareness on the social compliance issues related to contract labour and its associated risks in the garment industry. It provided a single platform for manufacturers and senior government officials to discuss issues impacting the manufacturers, the workers, retailers and buying agents sourcing from India.

On 11th January 2011, a multi-stakeholder dialogue, involving seventeen stakeholders from the garment sector, was convened in Bangalore for the inaugural meeting of the Garment Sector Roundtable.² The breadth of participation is significant, heralding a sincere determination

² The dialogue was facilitated by an entity known as Meta-Culture. As noted in its website, "Meta-Culture is South Asia's first relationship and conflict management consulting firm." Based in Bangalore, India, Meta-Culture is committed to improving organizations' understanding and management of internal and external conflict. Their interventions and strategies are based on the field of Conflict Management and Alternative Dispute Resolution (ADR).

to open new avenues of collaboration in efforts to promote and enforce labour rules. Thus, the participants represented academia, brands, industry associations, manufacturers, NGOs, government and unions. More specifically, participating organizations included: AEPC, *Gurgaon*; CIVIDEP India, *Bangalore*; FLA, *New Delhi*; Gap Inc., *Bangalore/New Delhi*; GAWU, *Gurgao*; Gokaldas Exports Ltd, *Bangalore*; H&M India Pvt Ltd., *New Delhi*; HMKP, *Bangalore*; HMS, *Kanpur*; ISEC, *Bangalore*; ILO, *New Delhi*; Karnataka Government, *Hubli-Dharward*; Levi Strauss & Co., *Bangalore*; Mothercare, *Bangalore*; NETpem, *Nagpur*; NTUI, *Bangalore*; and SAVE, *Tirupur*.

The purpose of the meeting was to 1) introduce (or re-familiarize) participants to the initiative, its objectives, and potential outcomes; 2) initiate rapport building among participants; 3) initiate understanding of the Dialogue and Consensus-Building process; and 4) begin to identify topics/issues for deeper exploration in future meetings. The dialogue culminated in a determination to pursue the following topics/issues at the next meeting:

1. Freedom of association;
2. Wages; and
3. High labor turnover/labour shortage.

The next meeting of the highly promising Garment Sector Roundtable will be a two-day retreat in March.

Further, the Council is also actively collaborating with Global March on this year's program on eradication of child labour. In particular, AEPC will be among the active participants in an international multi-stakeholder consultation to be held in New Delhi on 11th May 2011, to ensure greater coherence and solidarity in combating child labour and ensuring decent working conditions in the garment sector. A consultation, "Roadmap 2016 and the Garment Sector," will be open to all stakeholder groups, from government to manufacturers to retailers to NGOs and international organizations.

Additionally, the Council notes, as shown below, there are increasing Indian Government budget allocations for programs to prevent child labour:

BUDGET ALLOCATIONS FOR PREVENTION OF CHILD LABOUR AND THEIR WELFARE DURING THE LAST 5 YEARS -- DETAILS OF GRANTS AND ESTABLISHMENT CHARGES INCURRED FROM THE STATE FUNDS FROM 2005-06 TO 2009-2010. (Rupee in lakhs)

Nature of Allocation	2005-06	2006-07	2007-08	2008-09	2009-10	Total
Grants	44.96	85.08	83.84	11.86	111.63	237.37
Establishment Charges	10.12	7.32	9.51	15.66	12.29	54.90
	55.08	92.40	93.35	27.52	123.92	392.27

Significantly, and in recognition of the importance of mandatory free education as a key ingredient toward eliminating child labour, the establishment charges are used for salaries and allowances paid to the teachers of Child Labor Rehabilitation Schools/Centers.

IV. Conclusions

The AEPC appreciates this opportunity to once again review for the Department of Labor the extensive recent, credible and appropriately corroborated information demonstrating that there is no reason for belief that Indian garments or Indian zaris might have been produced with forced or indentured child labour. The Department has now been presented with voluminous detailed information demonstrating that the garment and zari industries represent positive examples in which forced or indentured child labour are not practiced and in which education is valued.

The Council also appreciates the opportunity to reinforce and provide further evidence of the importance India's garment makers attach to compliance with all social standards, including most particularly the prohibition against child labour and especially forced or indentured child labour. It should be apparent to the Department that the industry and government are deeply engaged in ensuring compliance with the law. The expansion of multi-stakeholder initiatives through which the manufacturing community, the buying community and the government are now actively collaborating with the NGO community is especially significant. Moreover, that collaboration, as well as government enforcement and prosecution activities, encompass all production, regardless of whether it is intended for the domestic market or export markets.

The AEPC therefore respectfully urges the Department to closely consider the information contained in its own bibliographies (particularly with respect to Indian garments, which cites only two documents, both of which are discussed above) and the considerable information that has been provided by the Council, and conclude that based on recent, credible and appropriately corroborated information, there is no reason for belief that either Indian garments or Indian zaris might have been produced with forced or indentured child labour.

The AEPC looks forward to the Department's recognition of this reality by revising Executive Order 13126 to delete the references to India's garment and zari industries.

Respectfully submitted,

/s/

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Deputy Secretary General