

### **Additional Comments on the TVPRA Bibliography**

1. The Export Promotion Council for Handicrafts (EPCH) hereby submits additional comments on certain specific cases cited in the bibliography provided by the US Department of Labor (DoL) for the TVPRA list. These submissions would also elaborate on measures adopted by the export industry and the Government of India to address the incidents of child labour so cited.
2. EPCH had previously submitted comments on December 10, 2009 and January 22, 2010 regarding the inclusion of Zari products from India on the EO and TVPRA Lists of 2009. These comments detailed measures adopted by the government and industry in India to completely eradicate the problem of child labour in the country. Substantial progress achieved over the last few years in tackling a serious socio-economic problem was also reported. Data on implementation of laws, compensation, rehabilitation and persuasion to curtail the social nuisance was also provided. As pointed out earlier, these efforts and the progress achieved have been acknowledged by international agencies like the UN agencies and other governments including the US Department of Labor in the 2009 report on "Findings on The Worst Forms of Child Labor".
3. These additional submissions may further help the US DoL to appreciate EPCH's position that the information provided in the bibliography for inclusion of Embroidered Textiles (Zari) in the TVPRA list lacks adequate appreciation of facts and law. We propose to deal specifically with the sources of information contained in the bibliography which form the basis for the present action.
4. The US Department of Labor's List of Goods Produced by Child Labor or Forced Labor 2009 is a report required by the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005 and 2008. The purpose of the Report as proclaimed is to present the Department of Labor's Bureau of International Labour Affairs' (ILAB) implementation

report and initial List of Goods Produced by Child Labor or Forced Labor (List) pursuant to the TVPRAs' of 2005 and 2008. The TVPRA called on ILAB to carry out additional activities to monitor and combat child labor and forced labor in foreign countries.

5. Notice of Procedural Guidelines (Guidelines) for the development and maintenance of a list of goods from countries produced by child labor or forced labor in violation of international standards was published in Federal Register / Vol. 72, No. 247 dated December 27, 2007.

These Guidelines require consultation with other departments and agencies of the United States Government to reduce forced and child labor internationally and ensure that products made by forced labor and child labor in violation of international standards are not imported into the United States.

6. It shall be noted that data from the INDUS, the Indo-US Child Labor Project (joint project of the Government of India's Ministry of Labor and the U.S. Department of Labor) 2001-2009 which was designed to perform functions to minimize instances of child labour throughout the country, would have been extremely helpful in reaching positive conclusions regarding the current status of constructive efforts in place to eliminate child labour in India.

The ILO's International Programme on Elimination of Child Labour's (IPEC) Subregional Information System has noted that with the INDUS Child Labor Project in place, around 115,000 children were withdrawn or prevented from entering child labour through the provision of educational services or training opportunities. Further 9,232 families received access to micro credit from the project income generating component. The IPEC thought it worth pointing out that 5,770 mothers have taken up supplementary economic activities in target districts and sectors as a result of project interventions on income generation and skill upgradation. Most notably, 31,214 children in the 9 - 13 age

group and 14,122 children in the 5-8 age group were enrolled in schools. Further, 21,250 adolescents completed vocational training programmes in all five subject states of Delhi, Madhya Pradesh, Maharashtra, Tamil Nadu and Uttar Pradesh.

7. The Government of India had not received any prior notice to inclusion of such goods from India on the TVPRA list. If prior intimation was provided to the Government of India and a consultation was afforded then EPCH would have been notified in time and could provide assistance to rest any apprehensions that the US DoL might have about instances of child labour. EPCH, the apex body for promotion and regulation of handicrafts from India was not notified and hence could not present evidence to exclude Indian zari products from the TVPRA list.
8. We would like to point out that the Guidelines list certain sources of information and factors which have to be considered in the development and maintenance of the TVPRA List. These compulsory factors are:
  - a. Nature of Information
  - b. Date of Information
  - c. Source of Information
  - d. Extent of Corroboration
  - e. Significant Incidence of Child Labour and Forced Labour
9. If we examine the Bibliography substantiating the inclusion of Zari on the TVPRA list, we find the following:
  - a. **Calcutta News. "62 Child Workers Rescued in Delhi." June 12, 2008; available from [http://www.thaindian.com/newsportal/uncategorized/62childworkersrescuedfromslaveryindelhilead\\_10059127.html](http://www.thaindian.com/newsportal/uncategorized/62childworkersrescuedfromslaveryindelhilead_10059127.html)**  
The news item reports the immediate action which was initiated by the enforcement and rehabilitation agencies after the rescue of the children

engaged in child labour activities. Rescued children were presented before the Children Welfare Commission and awarded compensation too. The website cited above also published the efforts and actions taken to remedy the child labour scenario.

The information from the same website follows up the report within a month of the above publication with news that export councils and industry members were asked to keep strict check on employment of child labourers. It also reported how the High Court of Delhi initiated proceedings *suo moto* to look into child labor incidents and directed the National Commission for Protection of Child Rights (NCPRC) to formulate an Action Plan to eliminate child labour from Delhi. The Delhi Action Plan as it is called has since been formulated and all agencies involved in formulating the policy and enforcing the policy are part of the Action Plan making it a powerful instrument for resolving the issue of child labor.

**b. Gentleman, Amelia. "Letter from India: A Dismal Side of India, Where Child Labor Persists." *New York Times* October 10, 2007**

The news article emphasizes on how information regarding child labour has not percolated to everyone in India and as a result the problem continues to persist. While taking note of the conditions of work for such children and also commenting on the amendments in Indian laws against child labour, the article informs the reader of the ill-practice of child labour to invite attention and constructive action to curb the same. It is not clear whether the units for Zari work in Kotla Mubarakpur New Delhi, as reported, were export oriented or supplied only locally. EPCH regulates its members with strict candor about issues concerning child labour and such incidents would not go unnoticed. Moreover, The Delhi Action Plan, referred to earlier, for Elimination of Child Labour specifically concentrates on the Kotla Mubarakpur area in South Delhi for immediate actions.

- c. **ILOIPEC. *Child Labour Wages and Productivity: Results from Demand Side Surveys*. Geneva, May 2007; available from**

[http://www.ilo.org/global/What we do/Publications/ILOBookstore/Orderonline/Books/langen/docNameWCMS\\_091334/index.htm](http://www.ilo.org/global/What_we_do/Publications/ILOBookstore/Orderonline/Books/langen/docNameWCMS_091334/index.htm)

The cited ILOIPEC study is not available on the given hyperlink. EPCH requests the US DoL to kindly make a copy available for comments.

- d. **Macro International. (2008) Macro International InCountry Research in India**

The survey does not specify who the respondents were and what kind of incidents they reported. The credibility of these respondents cannot also be verified and therefore EPCH is not in a position to react to the allegations in the report. It is imperative that researchers indicate the source of the factual information as well as the details of any counter-views.

The report also does not take into account other material available even in the public domain. As is evident there seems to be some disconnect between what is provided in the Macro report and the actual facts on ground particularly in the garments sector.

- e. **McDougall, D. "Child Sweatshop Shame Threatens Gap's Ethical Image." The Observer. October 28, 2007**

In this case, it is an admitted fact that one of GAP's vendors was found to be violating their agreement and a full investigation is under way. The incident was reported more than two years ago, no such incident has been reported thereafter. This clearly establishes such an incident could at best be reflective of a stray incident which cannot possibly be construed as "existence" or "prevalence" of child or forced labor. Further, the report categorically states that even this incident involved only one of the vendors of GAP. Nevertheless,

the fact is that GAP took immediate corrective action by cancelling orders from the said vendor. GAP also followed up with a summit of its North Indian vendors on November 2, 2007 to reinforce its “zero tolerance” policy against child labor and the implications of non-compliance. An Indian child advocacy organization, BBA, and the Indian government also worked closely with GAP to ensure that the children found in the makeshift facility were cared for and reunited with their families.

GAP has also put additional procedures in place to ensure such acts are not repeated. As explained in the earlier comments on this issue, buyers exert pressure to ensure that such acts are not committed by the vendors in India. This was followed by a conference by GAP in the spring of 2008 in association with Ministry of Women and Child Development (Government of India), various United Nations organizations, other brands/retailers and suppliers on the issue of human trafficking and Child Labor in the garment supply chain helped launch a nationwide platform for public-private partnership between the government, civil society organizations, as well as the broader garment industry to jointly combat the issue of human trafficking and child labor in the garment supply chain.

A direct result of this initiative is the partnership between Gap Inc., Impulse (a Buying House in India), their common suppliers and a government-aided NGO called Society for Promotion of Youth and Masses (SPYM) in the Mewat region of North India, to ensure complete elimination of the possible use of child labor.

Such action and enforcement over even stray incidents is possible only when the government agencies and industry in India are clear that they would not tolerate any non-adherence to the laws of the land.

- f. **ORG Center for Social Research. *Child Labour and Education – Qualitative Formative Report for Developing Communication Strategy*. ILO, Geneva, ca. 2001**

The cited report is not available in public domain. EPCH requests the US DoL to kindly make a copy available for comments.

- g. **Seeds of Change: Impact of Intervention by Bayer and Monsanto on the Elimination of Child Labour on Farms Producing Hybrid Cottonseed in India. Study jointly commissioned by OECD Watch, et al. June 2007**

The cited report pertains to farms producing Hybrid Cottonseed and not Zari manufacturing. The report's nature of information does not provide evidence on instances of child labour in the Zari industry.

- h. ***The Hindu*. "78 Child Labourers Rescued." May 30, 2006; available from**

<http://www.hindu.com/2006/05/30/stories/2006053015890400.htm>

- i. **The Observer, "The Price of Sparkle is Child Slavery." April 30, 2006; available from**

<http://www.business-humanrights.org/Updates/Archive/Observer-Thepriceofsparkleischildslavery>

The two cited reports present certain locations in New Delhi as child-labour hubs and describe the conditions from which these children were rescued. The Kotla Mubarakpur area, in South Delhi has received special attention from media coverage and concerned NGO's and citizens. Such attention attracts constructive action to put a stop on child abuse. The Delhi Action Plan for Elimination of Child Labour has identified the area of Kotla Mubarakpur, South Delhi for special actions to dissuade manufacturers from employing children. Such special attention to the area by the enforcing authorities is evidence of proactive steps taken by the government to establish a strict rule of law against child labour.

- j. **The Statesman. "500 Child Labourers Rescued from Embroidery Units." November 22, 2005**
- k. **The Tribune. "200 Bonded Children Rescued." November 22, 2005**
- l. **The Times of India. "500 Kids Rescued from Zari Units." November 22, 2005; available from <http://www.articlearchives.com/laboremployment/workercategorieschildlabor/18485111.html>**

The above cited three reports were published on the same date and reported the same incident. Multiple references of the same instance cannot qualify as significant incidence of prevalence of child labour. The procedural guidelines require that *Information that relates only to an isolated incident of child labor or forced labor, will ordinarily not weigh in favor of a finding that a good is produced in violation of international standards.*

- m. **UNICEF Innocenti Research Centre. The Subterranean Child Labour Force: Subcontracted Home Base Manufacturing in Asia. November 2002; available from <http://www.unicefirc.org/publications/pdf/iwp96.pdf>**

The said UNICEF Report was published in 2002 and the same was based on data collected vide a survey in 2001. The ILAB US DoL TVPRA List 2008-2009 cannot consider this data as it does not meet the requirement of seven years standing. The Procedural Guidelines insist that *more current information will generally be given priority, and information older than 7 years will generally not be considered.*

Even if this Report was to be given due weight, it has to be noted that the surveys conducted for this purpose were run at the household levels. Women were surveyed and samples were extracted from the living conditions while examining the socio-economic output of these households. It shall further be noted that the Report acknowledges that Zardosi is *embroidery on garments, with gold thread, involving skills usually passed on from generation to*



generation. This confirms that such skills and craft are surviving in the country due to the traditional approach of family apprenticeship. However, with the governments' continuous efforts to eliminate child labour in any way or form at any level, the children of these traditional craftsmen do not actively participate in the economic activities of trade.

The Report evidences that out of all the children in the Zardosi household based workers, none contribute in the manufacturing activities. The Report also states that since these households are from the poorest classes of the society some 40%-50% of all children study and the rest work to assist in running the households. The Report also states that the children who did not attend school could not do so because of financial constraints. Lastly, it shall be borne in mind that these figures are more than a decade old and the statistics today are very different with work and efforts of governmental and non-governmental agencies producing results.

**The EPCH does not offer memberships to household based enterprises.** All its members are registered manufacturers and only such producers are permitted to export Zardosi from India. Therefore, the Report consists of information which does not corroborate facts of today and cannot be considered to prove a significant incidence of child labour in the Indian Zardosi Export Industry.

- n. U.S. Consulate Calcutta. reporting. March 21, 2007**
- o. U.S. Embassy New Delhi. reporting. June 11, 2008**
- p. U.S. Embassy New Delhi. reporting. January 11, 2007**

The above cited references are internal publications of the U.S. Embassy and Consulates in India. Such reports are classified and not available in the public domain. The procedural guidelines proclaim that *In the interest of maintaining a transparent process, the Office will not accept classified information in developing the List. The Office may request that any such information brought to its attention be declassified. If submissions contain confidential or personal*

information, the Office may redact such information in accordance with applicable laws and regulations before making the submission available to the public. The process of compiling such reports for the purposes of the U.S. Embassy could be transparent, but the Reports are not available for EPCH to study and comment. No reaction of the reports' information has been undertaken either. EPCH would request the US DoL to provide these reports so that appropriate reaction may be provided on these reports.

- q. U.S. Department of State. "India." In *Trafficking in Persons Report2007*. Washington, DC, June 12, 2007; available from <http://www.state.gov/g/tip/rls/tiprpt/2007/82806.htm>
- r. U.S. Department of State. "India." In *Trafficking in Persons Report2008*. Washington, DC, June 4, 2008; available from <http://www.state.gov/g/tip/rls/tiprpt/2008/105388.htm>
- s. U.S. Department of State. "India." In *Country Reports on Human Rights Practices2008*, March 11, 2008; available from <http://www.state.gov/g/drl/rls/hrrpt/2007/100614.htm>

The above cited three references comment on the general state of affairs for Trafficking Victims in India. As a consequence of such trafficking, issues of child labour are also discussed. The three reports base primary analysis on data available from the 2001 Census of India, which is the last Census, but for the purposes of the TVPRA it is beyond the requirement of a minimum seven year time range data. The comments on child labour situations vary from acknowledgements that certain sectors have reported significant decrease in incidents of child labour from actions of NGO's or Government Agencies or even due to completion from China. Although implementation of child labour regulation laws has not been very stringent on all aspects, the Zari Export Industry has been under constant vigilance of EPCH and none of its members can export their products if they employ child labour.

**10. OVERALL SHORTCOMINGS WITH SOURCES OF THE US DoL:** The above analysis clarifies that the US DoL may not have compiled the most reliable list of references to establish significant incidence of child labour in the Zari export industry. For each good that was reviewed, ILAB was to evaluate each data source against each of the five criteria. ILAB researchers were to apply the criteria consistently across goods and countries, so that ultimate findings of “reason to believe” were consistent worldwide. However, if the results of such analysis do not satisfy each criterion even in the examination of one good, the process becomes vulnerable to counter-countenance.

**11. EFFORTS BY INDIAN GOVERNMENT LAUDED:** It is of interest that in the TVPRA 2009 List, while noting *some exemplary efforts made by certain governments of the world, ILAB illustrates the achievements citing how the Government of India has invested in the National Child Labor Project, which operates at the district level to withdraw children from hazardous work and provide them education, stipends, meals, and health checkups. They further compliment how India has also invested in the Skill Development Initiative Scheme, which gives priority to children withdrawn from child labor and parents of child laborers to enter vocational training programs to improve their employability in safe occupations.* Such acknowledgement validates the efforts of the Indian Government and Industry to eliminate child labour at all levels.

**12. INFORMATION ESTABLISHING ABSENCE OF SIGNIFICANT INCIDENCE MOST RELEVANT:** In the Procedural Guidelines, the US DOL requests current information about the nature and extent of child labor and forced labor in the production of goods internationally, as well as information on government, industry, or third-party actions and initiatives to address these problems. Information submitted may include studies, reports, statistics, news articles, electronic media, or other sources. Information tending to establish the presence or absence of a significant incidence of child labor or forced labor in the production of a particular good in a country will be considered the most relevant and probative.

13. **HIGH COURT of DELHI's DIRECTIONS FOR FORMULATING AN ACTION PLAN:** To satisfy the request for such information, the EPCH would like to draw the attention of the US DoL towards the Order of the Delhi High Court dated 24.09.2008 to constitute a committee by the NCPCR comprising of various members, from the NCPCR and representatives from the departments of Government of National Capital territory (NCT) of Delhi, including the departments of Labour, Social Welfare, Education, Revenue and Health. The Commissioner of Police and the Commissioner of Municipal Corporation of Delhi was also part of the Committee. The directions given to this Committee were to formulate an action plan to eliminate all forms of child labour in New Delhi. The plan so formulated is called the Delhi Action Plan for Total Abolition of Child Labour. This is a pilot project to be mirrored in other states after review and first implementation reports are drawn.
14. **DELHI ACTION PLAN FOR TOTAL ABOLITION OF CHILD LABOUR:** According to the National Commission, the child labour profile in Delhi is of two types namely, out-of-school children living with their parents in Delhi and migrant children from other states who have left their family behind.
15. **STRATEGIES:** The Action Plan for Total Abolition of Child Labour is *based on two strategies*. The *first strategy* is an '*Area Based Approach*' for elimination of child labour, wherein all children in the age group of 6 to 14 years would be covered whether they are in school or out-of-school. The *second strategy* is an approach to be adopted in the *context of migrant child labour*. It involves a process of identification, rescue, repatriation and rehabilitation of child labour.
16. One of the objectives of the Area Based Approach is to mobilize and build consensus on the issue of total abolition of child labour by universalizing elementary education. The

plan attains to mobilize and build consensus by holding public meetings, rallies and by involving Municipal Councilors, RWA's etc. The Strategy for Unaccompanied Migrant Child Labourers in Delhi is based on "Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour" issued by Ministry of Labour and Employment, Government of India, 2008.

17. **TRANSITIONAL EDUCATION:** Transitional Education Centre under the National Child Labour Plan or the Non-Residential Bridge Course under the Sarv Siksha Abhiyan, functions for children in the 9-14 age group. These centers encourage child workers to quit their employment and enroll themselves in schools. The role of the centers will come to an end, once the children are motivated to withdraw themselves from work and get enrolled in schools.
  
18. **RESCUE TEAM AND ITS OPERATIONS:** The most important role is of the Rescue Team for Rescue Operations. The Task Force is constituted of various members, including:
  - The Representative of the Department of Labour in the District, not below the rank of Assistant Labour Commissioner;
  - Sub-Divisional Magistrate concerned;
  - The Head/Nodal Officer of Special Juvenile Police Unit (SJPU);
  - District Social Welfare Officer/District Child Welfare Officer;
  - Deputy Education Officer (Zonal) of MCD (wherever applicable);
  - The Senior-most Officer of the Factory Licensing Department of MCD (wherever applicable);
  - A Member of the concerned CWC (to be nominated by its Chairperson);
  - Centre Coordinator of CHILDLINE having jurisdiction over the area;
  - At least one NGO/VO actively involved in the rescue and rehabilitation of child labour.
  - The rescue team must keep in mind that the rescued children kept in the home are accompanied by few local youth from the respective state to comfort the children.

- Being the Nodal Officer, the concerned Deputy Labour Commissioner will be responsible for prompt initiation of pre-rescue planning and necessary coordination with others concerned in this regard.

19. The entire rescue operation is conducted in two parts. The first being the preparation, which includes receiving information and verifying the facts accordingly; debriefing the Task Force for the operation; assigning responsibilities and clarifying procedures to be followed during the Rescue Operation. The Action Plan provides for procedures post-rescue also. These include the interim care of the rescued children through a medical examination; organized legal proceedings before the Child Welfare Commissioner; collecting and evidence from the place of rescue and preparation of the charge-sheet. Special guidelines for the repatriation, rehabilitation and social reintegration of the children are also detailed in the Action Plan.

20. **STATE AND JUDICIARY- EFFORTS ON THEIR OWN MOTION:** Such an elaborate plan with step by step strategies is a big leap forward for government planning for elimination of child labour. The Delhi High Court on it's own motion invited NGO's and Government Agencies to submit reports and strategies examining the child labour situation in Delhi and observed as follows:

*"On a perusal of CLPRA, 1986, we are of the view that under the said Act, only child workers employed in scheduled occupation and processes can be liberated and children employed above the age of 14 years cannot be rescued.*

*However, in our view, the Juvenile Justice (Care and Protection of Children) Act, 2000, would apply to children between the age of 14 and 18 years as well as to those children employed below the age of 14 years in non-scheduled occupation and processes. Consequently, the said children would be governed by the Juvenile Justice (Care and*

*Protection of Children) Act, 2000 as well as Bonded Labour System (Abolition) Act, 1976, if applicable and not by CLPRA, 1986, as stipulated in the Delhi Action Plan prepared by the National Commission.*

*The responsibility of lodging a police complaint against an employer employing child labour would lie with the Delhi Police.*

*It is further clarified that the recovery of fine of Rs.20000/- as stipulated by the Supreme Court in M.C. Mehta's case will not have to await a conviction order of the offending employer. The said amount would be recovered as arrears of land revenue and the said amount would be utilized for the educational needs of the rescued child even if the child has subsequently crossed the age of 14 years.*

*We accept the Delhi Action Plan which provides a detailed procedure for interim care and protection of the rescued children to be followed by Labour Department as prepared by the NCPCR."*

21. Such a stance by the High Court of Delhi sets the trend for a strong jurisprudence against the practice of child labour in India. The acceptance of Delhi Action Plan for Total Abolition of Child Labour makes it mandatory for executive authorities to take compulsory steps as prescribed by the Action Plan.
22. **UNCLEAR OBJECTIVES OF THE US DoL:** Finally, EPCH would like to comment on contradictory objectives presented by the US DoL for preparing the TVPRA List. In the Procedural Guidelines, published in the Federal Register on 27 December 2007, it is stated that *ILAB should ensure that products made by forced labor and child labor in violation of international standards are not imported into the United States*. Whereas, upon publishing the 2009 TVPRA List, it is stated that *in conducting research, ILAB did*

*not distinguish between goods produced for domestic consumption and for export, due to data limitations and the fact that this was not part of the mandate of the TVPRA. It is further stated, that the primary purposes of the TVPRA List are to raise public awareness about the existence of child labor and forced labor in the production of goods in the countries listed and to promote efforts to eliminate such practices. The List is not intended to be punitive in nature.*

If the TVPRA's mandate is only to collect data regarding significant incidence of child labour in production of certain goods without distinct differentiation between goods produced for domestic consumption and those produced for export purposes, it is unfair to restrict entry of goods into the USA simply on a generalised investigation into the production of such goods. If the TVPRA List is meant only to raise awareness and is not intended to be punitive in nature, trade sanctions in form of restricted entry of exported goods cannot be so justified.

23. **CONCLUSION:** In conclusion, we would like to reiterate that the ILAB recognizes that India may not have the most serious problems of child labor or forced labor. It is recognized by the ILAB that *often, countries like India adopt a more open approach to acknowledgement of the problems, have better research and have allowed information on these issues to be disseminated.* Just as the number of goods on the TVPRA List from any particular country should not be interpreted as a definitive indicator that these countries have the most extensive problems of child labor and forced labor, the number of media accounts on an investigation and preventive or punitive action should also not be interpreted as an indicator of significant incidence of child labor. Wholesome reporting of such incidents help spread public awareness and encourage people to report such incidents to the regulating authorities.

24. Therefore, if exemplary efforts are most important for gradual elimination of child labour and the USA Government is concerned that goods produced by child labour in other countries might end up in their markets and the concerns are to raise awareness



and take remedial actions, India and the Zari export industry, are fulfilling all national and international obligations to continue fair and ethical trading with the best interests of the final consumers and the producing labourers.