

**BEFORE THE UNITED STATES
TRADE REPRESENTATIVE**

POST HEARING BRIEF

FOR THE JANUARY 2012 HEARING ON THE PETITION TO REMOVE

BANGLADESH

**FROM THE LIST OF ELIGIBLE BENEFICIARY DEVELOPING COUNTRIES
PURSUANT TO SECTION 19 USC § 2462(d) OF THE GENERALIZED SYSTEM OF
PREFERENCES (GSP)**

filed by

**THE AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL
ORGANIZATIONS (AFL-CIO)**

FEBRUARY 2012

Background Information

A. Party Submitting Petition:

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B. Country Subject to Review:

Bangladesh

C. Section of Law Warranting Review

19 U.S.C. § 2462(c)(7)

D. Basis for Petition:

The Government of Bangladesh is not taking steps to afford internationally recognized worker rights, including the right of freedom of association and the right to organize and bargain collectively.

On June 22, 2007, the AFL-CIO filed a worker rights petition with the Office of the United States Trade Representative (USTR) to remove Bangladesh from the list of eligible beneficiary developing countries under the Generalized System of Preferences (GSP) pursuant to 19 U.S.C. § 2462(d). USTR subsequently placed Bangladesh under "continuing review," which has succeeded in pushing the Government of Bangladesh (GOB) and employers to make some changes.

However, progress has not been swift or steady, and workers continue to be denied the opportunity to exercise their fundamental rights to freely associate, organize, and collectively bargain. In addition, child labor remains a problem. In light of ongoing and serious violations of internationally recognized worker rights in Bangladesh, the AFL-CIO urges the United States Government (USG) to suspend Bangladesh's trade preferences under GSP unless the GOB takes immediate and substantial steps to address each of the concerns raised in this and prior submissions.

This post-hearing brief contains our responses to the questions raised during the hearing, as well as the additional questions submitted thereafter. We have also supplied additional information that we believe is relevant to determining whether Bangladesh should remain a designated beneficiary developing country under the Generalized System of Preferences (GSP). This information supplements the information set forth in the 1) initial and updated petitions; 2) pre-hearing brief; and 3) written and oral testimony.

I. INTRODUCTION

In light of ongoing and serious violations of internationally recognized worker rights, the AFL-CIO urges the USG to suspend Bangladesh's trade preferences under GSP unless the GOB takes immediate and substantial steps to address each of the concerns raised in the petition and pre- and post-hearing briefs.

II. FOLLOW UP QUESTIONS

1. Regarding the ability of worker associations in the Export Processing Zones (EPZs) to associate among themselves or with outside groups, please describe the extent to which this issue has been raised with the Bangladesh Export Processing Zones Authority (BEPZA) and its response to workers asserting the right to do this? (Written)

The Workers Welfare Associations (WWAs) and worker advocates have raised this issue with BEPZA on numerous occasions. In particular, the issue has been raised: at a meeting between WWA and BEPZA (in late 2010); during a round table meeting of stakeholders (on May 23, 2010) which BEPZA representatives also attended; and in writing on January 31, 2011 following a meeting with the BEPZA's Chairman. The BEPZA's general response was that all the factories within the EPZs should have WWAs before WWAs can be permitted to have a federation. The issue about associating with outside groups was not as high a priority for WWAs.

The BEPZA's position is untenable. The right to freedom of association includes not only the right to join an organization of the workers' choosing, but also the right of that organization "to establish and join federations and confederations of [its] own choosing."¹ In addition, the International Labor Organization (ILO) has made clear that "the requirement of an excessively high minimum number of trade unions to establish a higher-level organization conflicts with Article 5 of Convention No. 87 and with the principles of freedom of association."² The requirement that **every single factory** in the EPZs must have a WWA before any WWA will be allowed to federate clearly violates this principle. The "minimum number" of WWAs (the closest that Bangladeshi workers can get to a true union within the EPZs) is, in this case, *all*—an excessively high bar in any instance, but particularly so in the EPZs, in which the norm of "freedom of association" does not yet exist.

¹ Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, Geneva, International Labour Office, Fifth (revised) edition, 2006 (hereinafter "CFA Digest of Decisions"), ¶ 710.

² *Id.* at ¶ 714.

The inability to link to unions and other organizations outside the EPZs also violates the principle of freedom of association.³ There is no clear reason why workers in the EPZs should not be able to cooperate and work closely together (through a formal alliance or other means) with workers' rights and social justice advocates outside the EPZs to advance the rights of workers. To impede such joining together is to limit the opportunities for workers to advocate in their own interests and to reduce the impact they can have.

2. You suggest in your testimony that BEPZA is not facilitating collective bargaining with employers in the EPZs. Would you elaborate on what types of actions you would like to see from BEPZA and the employers? (Written)

To date, there are still no collective bargaining agreements (CBAs) in the EPZs, despite the enactment of the EPZ Workers Welfare Association/Society and Industrial Relations Act (EWWAIRA) in 2010.

The following are specific improvements that would help facilitate collective bargaining within the EPZs:

- A. The BEPZA should not impose artificial limitations on negotiations. For example, the AFL-CIO understands that the BEPZA does not allow WWAs to negotiate on anything beyond the rights, benefits, and wages that have already been instructed by the BEPZA. Such a policy implies that employers cannot and should not agree to anything above the minimum standards already set—and leaves **no** room for WWAs to negotiate for improved rights, benefits, and wages for workers.

Events at M/s Geebee Garments Ltd. provide a cogent example of the problems this policy creates for workers. The WWA of Geebee Garments raised a “16 points charter of demand” to management and the DEPZ Authority conducted a meeting with both parties to conciliate the dispute and settle the issue as per law on December 27, 2010. In the meeting, the WWA were told that some of the demands they raised were illegal and were not covered by BEPZA Instructions 1 & 2. As a result of the inability to make progress, some of the WWA members of Geebee Garments instigated a work stoppage.

To be clear, EWWAIRA Section 37 provides a limitation on bargaining over starting salaries *only*.⁴ While this section does limit a WWAs' ability to negotiate “entry level” salaries, it clearly **does not** apply to “increments, promotions, or other enhanced benefits.” Thus, the current practice is inconsistent with the law and must cease if

³ Cf., *Id.* at ¶ 724 (“All workers should have the right to engage freely in the defence and promotion of their economic and social interests through the central organizations of their own choice.”); and ¶503 (“A general prohibition on trade unions from engaging in any political activities would not only be incompatible with the principles of freedom of association, but also unrealistic in practice. Trade union organizations may wish, for example, to express publicly their opinion regarding the government’s economic and social policy.”).

⁴ Section (4) provides: “In any Zone where under any employer or company there is a registered Workers Welfare Association, only the minimum starting wages, as are determined by law or other applicable legal orders for the workers there at entry level, shall apply. Other wage issues such as increments, promotions, or other enhanced benefits would be subject to negotiation between the Association and the employer.”

workers are to be able to exercise their internationally recognized right to collective bargaining.

- B. Management should be required, upon receipt of a formal request by a WWA to negotiate a CBA, to meet promptly and begin negotiating in good faith with the WWA.⁵
 - C. The BEPZA must address the lack of labor conciliators in the EPZs. The BEPZA, consistent with previous commitments, must hire conciliators as part of its dispute resolution efforts. After the enactment of EWWAIRA, the BEPZA recruited the required number of conciliators for the EPZs, and the conciliators actively performed their jobs. All of them are not still in service, however. Further recruitment of conciliators and arbitrators is under process, but the need for them to be hired and active is immediate.
 - D. In addition, the BEPZA should take affirmative steps to facilitate conciliation efforts promptly in the event of a management-WWA negotiations breakdown or a failure by a party to negotiate in good faith.
3. In your testimony, you cite problems that arose in the shrimp sector after workers formed unions, but also said there have been some recent positive signs from employers in this area. Would you please elaborate on these developments? (Written)

The recent positive sign was the stated commitment by the Bangladesh Frozen Foods Employers Association (BFFEA) to work with the Government of Bangladesh (GOB), Social Activities for Environment (SAFE), and the workers and their advocates to make improvements in the shrimp sector. Specifically, the AFL-CIO understands that the parties discussed working together to develop a plan; agree on some baseline measures; agree on priorities; and implement a plan to make clear improvements over the status quo in the areas of freedom of association; abolition of the worst forms of child labor; placing restrictions on the use of contractors to reduce wages or impede worker organization; and the like. This development occurred at a meeting held less than a week prior to the GSP hearing. However, to date, the AFL-CIO is unaware of any progress made on this particular commitment. The AFL-CIO is hopeful that the commitment is real, but strongly urges the USG to continue monitoring progress in this area rather than assume that the BFFEA will in fact follow through.

On a related note, worker advocates this week requested a formal meeting with the head of the Bangladeshi mission to explore willingness on the part of the GOB to develop plans to address the areas of concerns laid out in the AFL-CIO's testimony and pre-hearing brief in the ready-made garment (RMG) sector, export processing zones (EPZs), and shrimp processing sector.

⁵ This request is consistent with Section 37 of the EWWAIRA, subsection (2), which provides WWAs "the right to negotiate with the employer on wages, working hours and other terms and conditions of employment. No reasonable request for information from the Association to the employer for negotiation purposes shall be denied."

4. The Government of Bangladesh in its testimony reports that it has set up a monitoring committee to ensure compliance on labor issues and the working environment. Have you heard of this committee, and if so, how would you evaluate its enforcement of Bangladesh labor law? (Oral)

In paragraph 35 (page 6) of its pre-hearing brief, the GOB writes that “[a] three-tier monitoring committee is now working at the national, regional and district levels to conduct physical inspections on a regular basis to ensure full compliance on labor issues and the working environment (holiday entitlements, overtime premium wages, maternity issues, etc.)”.

Workers report that they have little information on this “monitoring committee.” They have not reported seeing any visible activities of the committee. At this point, AFL-CIO recommends that the GOB and employers work with the workers and their unions to make public the existence of the committee. The GOB must make workers aware of how they may assist the committee in its work and report shortcomings within the committee’s purview in order to improve compliance by employers with labor rights and acceptable conditions of work.

5. The roadmap that you mentioned, could you elaborate on that from years past? Was that something the AFL-CIO put together, or was that something that was part of a collaborative process? (Oral)

The “roadmap” mentioned does not refer to any one specific document, but rather the understanding reached, through years of work by the USG, GOB, employers, the AFL-CIO, non-governmental organizations (NGOs), and workers themselves to allow the creation of WWAs (currently governed by the EWWAIRA) as a way-station on the way to granting full freedom of association, organization, and collective bargaining rights for Bangladeshi workers. It is that commitment that has stalled—leaving Bangladeshi workers, particularly in the EPZs, without the ability to exercise internationally recognized worker rights.

Pursuant to this understanding, the GOB and BEPZA should immediately make rules, or regulations, or both, governing full and proper implementation of the EWWAIRA.⁶

In addition, and as argued *supra*, the GOB should repeal Section 80 of the EWWAIRA, which prohibits the WWAs from maintaining linkages with NGOs.⁷ Not only is the prohibition inconsistent with internationally recognized worker rights, the removal of this restriction is necessary to help make the workers aware of their rights as well as to let them know the procedures for formation of the WWAs and their proper functioning under the law. The BEPZA should allow worker rights advocates to be present at any training organized by BEPZA or allow

⁶ The GOB and the BEPZA have the power to do so under EWWAIRA Section 90. (“Powers to make rules and regulations.- (1) The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. (2) The Authority may, with previous approval of the Government, by notification in the Official Gazette, make regulations for carrying out the purposes of this Act.”)

⁷ EWWAIRA Section 80: “Bar to linkage with political parties. - (1) No Workers Welfare Society or Federation of Workers Welfare Societies in a Zone shall maintain any linkage, overt or covert, with any political party or organization affiliated with any political party or Non-Governmental Organization (NGO).”

worker rights advocates to organize such trainings (either independently or jointly with the BEPZA and employers) for the workers and WWAs of EPZs.

6. And to your knowledge, have unions been brought into that process in trying to reduce some of those OSHA violations or dangers? (Oral)

Yes, the GOB has sought worker and union input regarding safety issues. There have been various programs, discussion meetings, workshops organized by different stakeholders on safety issues. Government and management representatives and WWA and union leaders are participating in those programs currently. This inclusion of worker input is valuable and necessary, but workers report that the safety situation is a work in progress—the job is not done. For example, workers report that there are still unauthorized structures on the roof-tops of many factories.

III. SPECIFIC RESPONSES TO GOB'S ASSERTIONS

1. The GOB asserted in its oral testimony that referendums on the formation of WWAs have been held in 76% of the factories in EPZs.

The AFL-CIO believes this statement is misleading and encourages the USG to approach the question in a different manner.

There is little to no debate about the fact that, until recently, workers in nearly every enterprise within the EPZs were not allowed to organize themselves to form WWAs. In each case, BEPZA authorities took the initiative to form WWAs in affected factories. The BEPZA, on its own accord and through management of the affected enterprises, circulated a document to the workers to “demand” formation of WWAs in these factories. The AFL-CIO understands that the entire procedure has been effectively dictated by the BEPZA in consultation with the respective employers. Such a process is not consistent with the right to establish and join organizations of the workers’ own choosing.⁸

To give a specific example, the AFL-CIO understands that on January 8, 2012, Bureau Veritas Consumer Products Services (BD) Ltd., (a company in the Dhaka Export Processing Zone (DEPZ), in Saver, Dhaka) held a referendum to form a Workers Welfare Association/Society in the company. The number of eligible workers was only 13. Of the thirteen workers eligible to vote, one worker was absent on the day of the election. The result was negative as 11 workers voted against the formation of the WWA. This outcome (11 no votes, or 91.7% of the total vote) is inconsistent with the fact that at least 30% of workers (our sources indicate that it was 12 of the 13 workers, or 92.3%) must have demanded formation of a WWA at the workplace.⁹

⁸ CFA Digest of Decisions ¶ 310 (“The Committee has emphasized the importance that it attaches to the fact that workers and employers should in practice be able to establish and join organizations of their own choosing in full freedom.”).

⁹ The relevant provision is EWWAIRA Section 6: “Requisition for formation of society. - (1) If the workers in an industrial unit situated within the territorial limits of a Zone intend to form a society, not less 30% (thirty percent) of the eligible workers of the industrial unit shall apply in a prescribed form to the Executive Chairman demanding formation of a Workers Welfare Society. (2) Upon receipt of an application under sub-section (1), the Executive Chairman shall verify and ascertain that not less than 30% (thirty percent) of the eligible workers have subscribed to

The AFL-CIO also understands that in the case of the employer Youngone, the BEPZA approached Youngone to request it to facilitate WWA formation in its factories, but Youngone refused to do so, correctly arguing that WWA formation is entirely a matter for the workers to decide and that the management should have nothing to do with it.

While it may be true that the BEPZA has conducted referendums in about 76% factories in EPZs, it is not clear that the results of the referendums are reliable. Given the apparently heavy-handed approach of the BEPZA, the AFL-CIO has questions about the legitimacy of the results and whether those results reflect a fully-informed vote on the part of the workers.

Accordingly, the AFL-CIO reiterates its recommendation that rules and regulations for the implementation of the EWWAIRA should be finalized immediately and circulated amongst the workers of EPZs so that workers, if they so desire, can organize themselves and take steps to form WWAs on their own, free from the influence of the BEPZA and the employers.

2. The GOB indicated in its oral testimony that some of its shortcomings are a result of limited capacity, implying that there is no lack of will. In fact the GOB stated in its opening remarks that it “has been continuously taking steps to improve the working condition of workers. The Government believes that both improvement of observance of rights of the workers is a prerequisite for sustainable economic growth.”

The AFL-CIO could not agree more that effective protection and vindication of the rights of workers is a prerequisite for sustainable growth in every country—as well as a step toward addressing the global crisis in demand. However, when we posed the question to our partners in Bangladesh about whether the prevailing treatment of workers in Bangladesh was a problem of will or of resources, the answer was both. The AFL-CIO believes that the question of will should be solved first, and then an improved allocation of resources will in all probability follow. Addressing the problem as solely an issue of resources will mean increasing capacity to protect rights without the will to properly use the newly allocated resources—and there is little evidence that such a condition will effectively improve the ability of workers to exercise their internationally recognized worker rights.

There are many specific examples that provide evidence for the conclusion that the lack of will is a critical factor, including the continued arbitrary denial of union registration, the failure to fully implement EWWAIRA, and the continuing unaddressed intimidation that workers face when attempting to exercise their rights. In three years, Bangladesh has changed Secretaries in the labor ministry six times. Such a turnover rate implies that the Secretaries are not holding the position in order to make the long-term changes needed. In addition, the AFL-CIO understands that workers believe, given the use of the Industrial Police, the GOB’s priority in the RMG sector is “law and order,” not worker rights. Furthermore, the AFL-CIO is unaware of punitive actions taken against various employers who have violated the law (for example, after fire incidents at Hameem and Garib and Garib).

the application by signature or thumb impression. (3) A form signed by a worker under this section shall remain valid up to six months from the date of its signature.”

3. The GOB argued that it had made significant progress in the shrimp sector and that the worst forms of child labor had been effectively eliminated (see, for example, the pre-hearing brief, pages 23-29, and the hearing transcript on pages 259-268).

The AFL-CIO disagrees. While there has been some progress in the shrimp sector in recent years, it has frequently been of a “one-step forward, two-steps back” nature.

With regard to inspections, the inspection department in Khulna Division provides a relevant example. This inspection department has indicated it inspects shrimp plants regularly. However, our understanding is that the Khulna Division has a limited workforce in its inspection department. Moreover, workers have consistently reported that if such inspections are taking place, the inspectors **do not** meet and interview workers while inspecting the factories. Workers simply cannot confirm that the purported inspections are happening.

The AFL-CIO recommends that the inspection departments create, publicize, and implement specific rules of procedure for the conduct of inspections that includes a procedure for promptly gathering information about and resolving complaints and grievances related to the violation of workers’ rights. The rules should include clear timelines and specific provisions regarding the participation of the workers and unions/WWAs concerned in settling those grievances and other disputes.

With regard to the GOB’s assertion that union leaders in the shrimp sector who were fired were fired for misconduct and that many of them were hired back, the AFL-CIO has received reports that this assertion is false. We understand that the affected workers believe that they were targeted due to their leadership roles and general trade union activities, rather than any on-the-job misconduct.

Our latest reports also indicate that child labor continues in the shrimp sector, despite the GOB’s assertion to the contrary.

4. The GOB, in its oral testimony, indicated that the AFL-CIO had only cited “one issue” (Pastel Apparels Limited) with respect to unions being arbitrarily denied the right to register unions in the RMG sector. Further, the GOB argues (on pages 251-253 of the hearing transcript) that the rejection of the Pastel Apparels union was justified and consistent with the registration requirement.

The AFL-CIO urges the USG to reject this assertion in its entirety. A cursory reading of the AFL-CIO’s pre-hearing brief and written testimony will reveal that the AFL-CIO cited a number of unions that we believe have been arbitrarily denied registration (see, e.g., pages 1-2 of the AFL-CIO’s written testimony).

More importantly, the GOB admitted that it had imposed requirements on the application that simply do not exist either in the Bangladesh Labour Act of 2006 or the Industrial Relations Rules of 1977 (both are attached to this brief as an Annex, with relevant portions highlighted in blue). Nowhere in these documents are unions attempting to register required to attach attendance

sheets, include copies of ID cards for every proposed member, or obtain a certificate for factory management regarding the total number of workers in the factory.¹⁰

IV. CONCLUSION

When read in conjunction with the AFL-CIO's pre-hearing brief, written testimony, and oral testimony, the facts and analysis make clear that Bangladesh has not yet taken sufficient steps to afford internationally recognized worker rights though it has been given more than ample time to make needed changes. GSP benefits should be suspended unless the GOB agrees to a binding, comprehensive work-plan and demonstrates evidence of immediate and substantial implementation.

¹⁰ If in fact the requirements the government detailed in its oral testimony and in its denial of registration for a union Pastel Apparels are set down elsewhere in Bangladeshi law, we ask the USG to facilitate a meeting as soon as can be practicably arranged between the GOB, workers, and their advocates to clarify the requirements for union registration to avoid future misunderstandings.