

BEFORE THE UNITED STATES
TRADE REPRESENTATIVE

UPDATE TO THE 2007-2011 PETITIONS TO REMOVE

BANGLADESH

FROM THE LIST OF ELIGIBLE BENEFICIARY DEVELOPING COUNTRIES
PURSUANT TO SECTION 19 U.S.C. § 2462(d) OF THE GENERALIZED SYSTEM OF
PREFERENCES (GSP)

filed by

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

OCTOBER 2012

I. INFORMATION REQUIRED PURSUANT TO 15 C.F.R. § 2007

A. Party Submitting Petition:

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B. Country Subject to Review:

Bangladesh

C. Basis for Petition:

As explained below, the Government of Bangladesh (GOB) continues to fail to take steps to afford internationally recognized worker rights, including the right to freedom of association and the rights to organize and bargain collectively, as is required by 19 U.S.C. § 2462(c)(7). As it has repeatedly failed to address this shortcoming, GSP benefits should be suspended pursuant to 19 U.S.C. § 2462(d).

II. INTRODUCTION

On June 22, 2007, the AFL-CIO filed a worker rights petition with the Office of the U.S. 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 accepted the petition for review on September 6, 2007. USTR subsequently placed Bangladesh under “continuing review” to monitor the progress of the Government of Bangladesh towards a set of worker rights benchmarks elaborated in a 2008 demarche. The decision to place Bangladesh under review, combined with the subsequent engagement of the U.S. Government (USG), has succeeded in pushing the GOB and employers to take some steps forward.

Not only has the GOB failed to take steps to afford internationally recognized worker rights since the last hearing in January 2012, the situation has deteriorated given the beating and murder of worker rights activist Aminul Islam—by report at the hand of GOB agents—and the failure to name, arrest, or prosecute any suspects in connection with the case. Unfortunately, given the GOB’s continued failure to make progress for workers, the AFL-CIO requests that the President take steps to suspend GSP benefits for Bangladesh and also halt negotiations on the proposed Trade and Investment Cooperation Framework Agreement (TICFA).

This petition provides an update covering events occurring since the January 2012 hearing and supplements, but does not supplant, all prior petitions and other submissions in the case.

III. READY-MADE GARMENT (RMG) SECTOR

There has been no significant improvement in the RMG sector since the AFL-CIO filed its initial GSP petition in 2007.

Aminul Islam was a trade union organizer and President of the Bangladesh Garment and Industrial Workers' Federation (BGIWF)'s Savar and Asulia regional committee. Aminul was found dead after being tortured on April 5, 2012. There is some evidence to the effect that the GOB's own security forces had a hand in his torture and murder. However, the ensuing investigation (despite interest by the international press and the personal attention of Secretary of State Hillary Clinton) seems to have completely stalled. The Committee for Justice for Aminul Islam, made up of trade unions, activists (including organizations like the Bangladesh Center for Worker Solidarity) and even Aminul's daughter, has been calling for the case to move up the ranks from the local or district police to the Criminal Investigation Department (CID), which is the highest and most independent investigation department in Bangladesh to handle such a case. In an article published on September 30, 2012 in the *Daily Prothom Alo*, a Home Ministry committee to investigate the murder has also recommended that the case be transferred to the CID. The AFL-CIO is not yet aware that any such transfer has been made, but supports such a move.

Worker rights advocates Kalpona Akter and Babul Akhter remain charged with several criminal violations stemming from incidents occurring on July 30 and 31 of 2010. To date, the government has still produced no evidence to support its allegations, nor made apparent efforts to either pursue the case or drop the charges. Simply letting the case languish without action may be an act of intimidation on the GOB's part. On a related note, the Bangladesh Center for Worker Solidarity has still not been able to re-register and operate freely.

At a July 2012 meeting of the Social Compliance Forum in the RMG sector, the Ministry of Labour and Employment (MoLE), BGMEA and BKMEA all gave reports of visits to RMG factories and examined the workers rights related issues. The MoLE's report found that only 88.09% of the factories comply with the minimum wage law and only 61.11% have formed workers' Participation Committees. Although no union was present at the Forum, one worker advocate questioned the process of constituting the Participation Committees—noting the workers' representatives to the committees had generally not been elected by the workers in accordance with the provisions of law—rather, they had been selected by the management of the various factories.¹

¹ Under Bangladesh Labour Act, 2006, employers of establishments, which have fifty or more workers are normally employed, shall constitute Participation Committees in their respective establishments. Such a committee shall be formed with representatives of the employer and the workers. The representatives of the workers in the committee shall be appointed on the basis of nomination given by the trade unions in the establishment and where there is no trade union, representatives of the workers shall be chosen/elected in the manner prescribed in the Industrial Relations Rules, 1977.

Given that the employers are using the Participation Committees as an alternative to real trade unions, an approach the AFL-CIO has long criticized,² the employers should, at a minimum, follow the legal procedures required to allow the workers to elect their own representatives in the committee. Given the years-long efforts to introduce the exercise *true* freedom of association, organization, and collective bargaining for workers in the RMG sector, the MoLE's failure to require the factories to follow the law regarding Participation Committees represents a clear failure to take steps to afford internationally recognized worker rights.

Workers trying to register unions also report that their efforts continue to be thwarted. Since the January hearing, the following unions were denied registration: Raine Knitwear Ltd., Sramik Union; Maskot App. Ltd. Workers Union; Rastas Apparels Ltd. Workers Union; Tokyo Mood Ltd. Workers Union. In each case, the unions contend they met the requirements and filed an appeal, but have yet to receive a decision.

Workers also report that RMG factories continue to fail to pay profit sharing into a welfare benefit fund as required by Chapter 15 of the Bangladesh Labour Act, which requires all profitable employers to deposit 5% of profits into a welfare benefit fund. This fund represents the only "social security" for many workers; thus, the government's failure to enforce its own law in this area puts workers and their families at deep financial risk.

Fire safety efforts also appear to have been compromised. In September 2011, all RMG factories had been ordered to remove all temporary tin shades from the roof tops of their buildings by December 31, 2011. That deadline was later extended to June 30, 2012, and was apparently entirely rescinded with Memo No. 2012/251 (3) dated July 01, 2012, which allowed "25% of the tin shed's roof towards the road side should remain open. The rest of the areas can be used for miscellaneous purposes keeping easily-removable goods. The deadline to implement this decision is fixed at December 31, 2012." This latest memo seems to indicate that the prohibition on rooftop structures will not be enforced, and that exceptions will continue to be allowed, putting workers at grave risk of their lives.

Finally, the AFL-CIO was disturbed to learn in April 2012 of reports that the GOB was working to secure an agreement with the Government of Uzbekistan to purchase cotton to be used in Bangladesh's RMG sector.³ The U.S. Department of Labor has recognized that cotton in Uzbekistan is produced with forced child labor.⁴ As such, the efforts of the GOB in this regard are particularly telling: they do not indicate even a surface effort to display respect for internationally recognized worker rights.

² Attached as an APPENDIX to this brief is a letter dated June 14, 2012 from AFL-CIO President Richard Trumka to Bangladesh Minister of Labour and Employment Khandker Mosharraf Hossain regarding the misuse of participation committees as a substitute for true unions.

³ See, e.g., Refayet Ullah Mirdha, "Bangladesh Eyes More Cotton from Uzbekistan," *The Daily Star*, April 30, 2012 (available at: <http://www.thedailystar.net/newDesign/news-details.php?nid=232177>).

⁴ 2011 Findings on the Worst Forms of Child Labor by Country, International Labor Affairs Bureau, Department of Labor (available at: <http://www.dol.gov/ilab/programs/ocft/2011TDA/Uzbekistan.pdf>).

IV. EXPORT PROCESSING ZONES

All of the problems previously raised regarding failure of the GOB to allow full-fledged labor unions in the EPZs remain. Workers welfare associations continue to be denied the right to effectively collectively bargain, form a federation, or link with political parties, NGOs, or other organizations. Workers at Youngone, the largest employers in the EPZs, reportedly continue to be denied the right to hold an election to create a WWA, despite complying with the law. In addition, as previously reported, the EPZs continue to lack labor conciliators as promised.

Many WWA representatives have reported that WWA officers have been harassed, suspended, dismissed without cause, or subject to other forms of anti-WWA retaliation.

For example, the workers of Rosita Knitwears (Pvt.) Ltd. and M/S Megatex Knitters (Pvt.) Ltd. in Ishwardi EPZ demonstrated at the companies on January 30, 2012 as they had been deprived of their legal rights in a number of areas. As a result of the unrest, 291 workers, including the presidents of WWAs of Rosita and Megatex, were terminated. In negotiation with the buyers, South Ocean Group, the owner, and Rosita and Megatex agreed to reinstate WWA leaders Helal (Rosita) and Belal (Megatex) and the other 289 workers in their services and sought BEPZA's approval to remove them from the EPZ "blacklist." However, the BEPZA refused to give permission to reinstate the workers on the grounds that there is no prior practice, nor are there provisions in BEPZA rules and regulations to allow for the reinstatement of a terminated worker in his former job. Of course, there are no provisions (nor should there be) prohibiting the reinstatement of workers in law or regulation. Further, there is precedent for reinstatement. In 2006, the workers of Ringshine Textiles Ltd. of Dhaka EPZ were reinstated following a major campaign and negotiations between the management of Ringshine, ITGLWF, and the Solidarity Center.

V. SHRIMP

At the time of the January hearing, the AFL-CIO reported some hope that a memorandum of understanding (MOU) among shrimp employers, workers, and NGOs would be signed, creating progress for workers in this sector. Nine months later, despite the willingness of the Solidarity Center and the Bangladesh Frozen Fish Exporters Association to conclude an MOU, the GOB's approval of funding to support the process has been stalled and has yet to be issued.

For the most recent reporting on the state of work and labor rights in this sector, please refer to "The Plight of Shrimp-Processing Workers of Southwestern Bangladesh" (available at: http://www.solidaritycenter.org/Files/pubs_bangladesh_shrimpreport2012.pdf).

VI. CONCLUSION

The Government of Bangladesh has not yet taken sufficient steps to afford internationally recognized worker rights although it has been given more than ample time to make needed changes. In the months since the last hearing, it has failed to agree to a binding, comprehensive work-plan or to demonstrate that it is affording workers their internationally recognized worker

rights. It has in fact shown the opposite, a blatant disregard for worker safety and financial security, as well as the rights of freedom of association, organization, and collective bargaining.

As a result of this repeated and substantial failure to address the very serious issues raised in filings and hearings since 2007 and the GOB's apparent disregard for the lives and livelihoods of the very workers who create the country's wealth, the AFL-CIO respectfully requests the President to suspend GSP benefits for Bangladesh until such time as it demonstrates a commitment to securing fundamental labor rights for all of its workers.

In addition, the AFL-CIO recommends that the President cease all efforts to negotiate a TICFA with Bangladesh. Bangladesh's actions to date have demonstrated that it is unlikely in the extreme to fulfill any commitments to labor rights that would be included in such an agreement. To reward the Government of Bangladesh with any form of trade agreement would send the wrong message to workers—that their human rights are subservient to the right those who wish to profit from commerce.

APPENDIX

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June 13, 2012

By fax and e-mail

Eng. Khandker Mosharraf Hossain
Honorable Minister
Ministry of Labour and Employment
Govt. of the People's Republic of Bangladesh
Bangladesh Secretariat
Dhaka, Bangladesh

Dear Mr. Khandker Mosharraf Hossain:

As you know, the AFL-CIO has filed a petition under the Generalized System of Preferences (GSP) with the U.S. Trade Representative regarding the lack of enforcement and respect for internationally recognized labor rights in the Ready Made Garment (RMG) industry, as well as in the frozen seafood industry. The GSP petition raised two significant issues with respect to the RMG Sector. One was the "Failure to Allow Unions to Register" and the second was "Detainment, Arrests, and Torture of Bangladesh Center for Workers Solidarity Staff and Other Labor Leaders in the RMG." We stand by the conclusion that GSP benefits should be suspended unless the GoB agrees to a binding, comprehensive work plan to demonstrate evidence of immediate and substantial implementation regarding this complaint.

Although we agree with your recent statement that "...workers do not have any platform to hold talks with the owners to address their problems," we are greatly concerned about the use of "participatory committees" as a pre-requisite or replacement for worker-formed trade unions. Bangladeshi workers need unions, not just "participatory committees."

Making the "participatory committees" an end in and of themselves (in place of or as a requirement for unions) falls far short of the standard of full freedom of association.

Eng. Khandker Mosharraf Hossain
June 13, 2012
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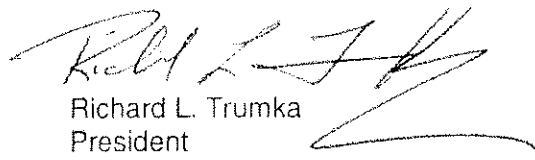
Like you, we are very concerned by the recent spate of worker unrest. We note the events in the Ashulia area sparked by the garment workers at the Hameen Factory compound, which led to closures of more than 35 factories for two days in early May. We are also deeply concerned by the beating of labor leaders by thugs near the Sinha Factory on May 26, that led to the Sinha workers' protests closing the factory the next day. At both incidents, police broke up demonstrations by using bullets and batons.

We draw different conclusions from these events than does the Government of Bangladesh. We believe that the unrest in the industry is due to workers not having any recourse to justice or a voice in their workplaces. Any scheme that management or the government sets up to replace a union, such as these "participatory committees," will always fall short of real freedom of association and be "suspect" to workers.

The AFL-CIO strongly objects to your call for gathering a "list of troublemakers." This call is likely to threaten the safety and reputations of legitimate trade union organizers and worker leaders, and it could lead to arrests whenever there are spontaneous actions of workers, similar to the bogus charges and arrests of labor activists in 2006 and 2010. These cases are still not resolved.

While the "participatory committees" may have a role in the workplace, the AFL-CIO urges the Labor Minister to promote freedom of association and to register legally organized unions so that workers can truly have a voice through their own organizations. Trade union leaders need the opportunity to lead local plant level factory unions in order to develop the skills needed for national leadership roles. Considering there are only 136 registered local plant level unions out of over 5,000 garment factories, there is little opportunity for training skilled trade union leaders in the practice of "healthy trade unionism."

Sincerely,


Richard L. Trumka
President

cc: William Taylor, U.S. Trade Representative
Ambassador Dan Mozena
Tom Melia, U.S. Department of State/DRL
Barbara Shailor, U.S. Department of State/DRL
President Shafiul Islam Mohiuddin, President, BGMEA

