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It was on 31st May this year, the US Administration, Department of Labour issued yet another Executive Order that bars the tainted countries to engage in trade with the US Federal Government in the notified sectors. India is included in this list under three categories, including apparel. With the US having issued a formal statement on child labour, brands would be made accountable for their trade with India. They would be given a cautious notice by the US specifying they must do due-diligence before engaging in trade with India. India has been blacklisted for the third consecutive year by the US Government for engaging child labour in its apparel export industry, raising doubts over future sourcing deals with global brands. The country has continuously been named in the Executive Order List for the last three years, despite several attempts by the exporters to convince the US authorities otherwise.

What is US Executive Order 13126?

US Executive Order 13126 on the "Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor," was signed on June 12, 1999. The EO is intended to ensure that federal agencies enforce laws relating to forced or indentured child labor in the procurement process. It requires the Department of Labor, in consultation with the Departments of State and Homeland Security, to publish and maintain a list of products, by country of origin, which the three Departments have a reasonable basis to believe, might have been mined, produced or manufactured by forced or indentured child labor. Under the procurement regulations implementing the Executive Order, federal contractors who supply products on a list published by the Department of Labor must certify that they have made a good faith effort to determine whether forced or indentured child labor was used to produce the items listed.

Current List of Products on EO 13126 List for India

The current list of products was published on May 31, 2011 Federal Register and includes the following references about Indian products. These products are cottonseed (hybrid), embroidered textiles (zari) and garments.

Earlier, in September 2009, US Department of Labour listed Indian garments under the Executive Order 13126 List (EOL) and Trafficking Victims Protection Re-authorization (TVPRA) list. These are perceived trade barriers that could emanate from the US. While US Federal Government does not procure anything from India currently, an EOL label could hamper India's chances of trade with the US in future.

Likewise, a TVPRA listing is a huge reputation risk for Indian apparel industry that supplies to global retailers and brands like Walmart, GAP, H&M, Diesel, M&S, Levi's, et al, all of who swear by strict policies on child labour. While trade linkage with labour issues is not immediately enforceable in the absence of a legislation, the likelihood of a legislation in the coming months could affect Indian apparel exports, fear those in know of things.

Garment Export Industry Fears

India is known to be employing second highest number of child labour in the world is concerned. (Africa accounts for the highest number of children employed and exploited. China is not way far behind; being the third highest number of child labour employer.) “Henceforth, whenever we engage in business with global brands, we will have to prove we are not guilty,” says Rajendra Hinduja, MD of Bangalore-headquartered Gokuldas Exports, whose clients include Nike, Reebok, Old Navy, Abercrombie & Fitch, Adidas, Diesel and Levi's. He expects “huge paperwork for Indian apparel exporters in days to come.” A mention in the Executive Order 13126 List would throw challenges for the \$11.16-billion Indian garment export industry as sensitive Western consumers are known to boycott goods that are produced in sweatshops. India contributes 3% to global apparel trade and gets 30% of its business from US consumers.

The Indian industry believes the whistle blowers are unable to differentiate between the domestic industry and exporters. While the saree and zari units catering to the Indian market employ child labour, it is the apparel export industry that gets a bad name, exporters say. The industry apex body, Apparel Export Promotion Council's defence before the US in the recent past was perhaps too late to salvage the situation.

“Forget engaging in trade with the US Government, being labeled as a child labour employing industry would cause serious impediment to our future business,” says Sudhir Dhingra, CMD of Orient Craft, an exporter who has 26,000 workers on roll across 23 facilities in NCR and Rajasthan. His clients include the likes of GAP, Banana Republic, Marks and Spencer, Next and Tommy Hilfiger. “I have seen my clients increasing their surveillance on my factories ever since Indian garment industry made news for wrong reasons. The brands have deployed independent agencies to monitor us. Every week at least three brands come and visit our factories and talk to my employees, taking stock of working conditions, overtime and forced labour,” says Dhingra who recorded a turnover of ₹1,000 crore last fiscal. “While our regular clients respect us for our compliance, it would be difficult for the Indian exporters to bag new orders after being labeled by the US,” he says.

No children in Indian Apparels Units, US told

On its part, India did not leave anything to chance. India did initiate a process to defend itself through a three-pronged strategy: diplomatic channel, lobbying firm and the Common Compliance Code. During a recent visit to Washington, an Indian delegation comprising Joint Secretary (Exports) at Textile Ministry V Srinivas, AEPC Chairperson Premal Udani and Secretary General, Vimal Kirti Singh met US law makers to present a case for exclusion of Indian garments from the two lists.

Further, AEPC also finalised upon Brenda Jacobs of Sidley Austin LLP to lobby for India in the US. Back home, AEPC has roped in Venugopal to represent the case of Indian garmenters. Ms Jacobs is expected to assist AEPC in the field of research besides sourcing information on US policy and labour laws.

While India insists that there are isolated cases of child labour (which is not reflective of the entire garmenting sector) and none of forced child labour in the Indian garment industry, it is trying to convince the US of its commitment towards eliminating child

labour wherever it exists in the value chain. India also insists that the situation in India is far better than the likes of Bangladesh or Pakistan where child labour is rampant. AEPC did issue an advisory to all its members against use of child labour. India has already conveyed to the US on its policies against use of forced child labour. AEPC Chairman Premal Udani maintained "AEPC is committed to not only guarantee non-usage of child labour in any factory in India but also to see that our factories follow the best labour practices. Currently, the onus is on us to prove that we are not guilty." With the US in no mood to relent, AEPC has issued a Common Compliance Code to guide the industry, SMEs in particular, with regard to environmental laws and regulations, labour reforms, wage differentiation and discrimination, overtime, flexible working hours, health and safety issues and working conditions. Tirupur Exporters Association, too, had made its members sign a self-declaration decree against use of child labour in their units.

AEPC had roped in the Northern India Textile Research Association (NITRA) to prepare a report on the sector. Some 8,000 exporters represented by AEPC banked upon the NITRA report card that was, however, viewed with skepticism by the US. The US has questioned the methodology of survey, says V Srinivas, Joint Secretary (Exports) in the Textile Ministry. "India needs to dialogue more with the US now," he said. Of the 95 units that NITRA surveyed last year across 49 garment export clusters in Delhi, Lucknow and Tirupur employing 18,000 workers, there was just one instance of child labour. Four child workers were working in a sub-contractor facility owing to the latter's lack of knowledge of child labour laws, the report claimed. Apart from children found in zari units, NITRA found no pattern or practice of child labour in formal garment factories. When the US authorities looked sceptical, AEPC insisted that the US is being "judgmental".

Indian garment industry defended itself against charges of child labour and said the report giving it a clean chit was prepared by a professional agency and not by the Government as believed by the US Labor Department. Northern India Textile Research Association (NITRA) is an autonomous body, and not a government agency, the US was told on May 20 in Washington-the day Indian textile industry officials asserted there were no instances of child labour in the garment sector.

"For brands, it does not matter if it is India or some other non-compliant nation. They will snap ties with us if we do not refurbish our image. We have to get out of the list," said Apparel Export Promotion Council Chief Premal Udani. The country exports apparels worth \$11.16 billion every year and runs the risk of losing clients like GAP, Reebok or Adidas if it does not get off a US blacklist on countries employing child labour.

US Remains Unconvinced

However, the US was not convinced and rejected the sector's health-card calling it biased. It had asked India to come clean on some counts on May 20, ahead of review of the Executive Order 13126 List.

India also defended its attorney-Sidley Austin LLP-before the US authorities who questioned the law firm's expertise in handling child labour cases. India said the law firm has been representing not just the Apparel Export Promotion Council, but also for the Indian carpet sector for child labour cases, where India won the case.

Apart from already having begun a process for lobbying for itself through law firm Sidley Austin LLP in the US, India did engage US secretary of state Hillary Clinton, during her visit recently, to present a case for exclusion of India from the list. However, isolated,

instances of use of child labour in Indian garmenting industry have not gone down well with the US. Child labour is a sensitive issue for American multinationals who source a considerable part of their global requirements from India. The brands can stop sourcing from India, if the country fails to establish that there are no children working in clothes-making units.

"The US is intrigued by the fact that just four children were found engaged in the Indian apparel industry during NITRA's nationwide survey," said a senior Ministry official.

Why Should US Paint Indian Garment Industry with Black Brush?

An unbiased view of the whole issue should lead anyone to draw a logical inference that there appears to have been unprofessional and unwarranted conclusion on the part of the US Administration, I mean, in this case, US Department of Labor in reaching out to the conclusion that India was a fit case for inclusion in the Executive Order 13126. I have personally gone through some available documents that formed the basis for the decision, which, to my mind, did not warrant the decision that was taken. There were hosts of other examples, where there has been more evident and open visibility of child labour being used elsewhere. I have specific cases of Bangladesh in view. Even in case of China, there have been reports suggesting that the child labour has been subjected to much more brazen misuse than probably in India. But then, the US agencies seemed to be looking at the other way. In case of Bangladesh, the US retailers were reportedly and rightly told that in the event of the child labour, mostly female, being thrown out of their jobs, they would resort to the oldest profession in the world. Since Bangladesh is considered to be the cheapest place in terms of wages, everyone preferred to turn their blind eye to them.

I am glad that the bias against Indian garment manufacturer-exporters came out very clearly recently when the BBC had to apologize to Bangalore-based supplier for fake child labour footage. Yes, I am referring to the case of Primark, a hugely successful retailer with 220 stores across Europe, who reviewed its decision to cancel contracts of its Bangalore-based suppliers after the BBC aired a documentary. The claim was found to be untrue. The BBC's 50-year-old flagship weekly current affairs programme, Panorama, had aired the documentary. The BBC has now apologized to Primark admitting it may have made a mistake. Responding to Primark's protest, the BBC conceded in a 49-page report that footage of three boys engaged in completing garments for Primark was "more likely than not" to have been "not genuine" after an internal inquiry. Indian business leaders have reacted with anger. Amit Mitra, Secretary General of the Federation of Indian Chambers of Commerce and Industry, said in a speech at New Delhi, "Do you think they can do this [media coverage] in China?"

An economist with Textiles Intelligence Robin Anson notes: "There are constant suspicions about many sourcing countries. Bangladesh is well known for such practices (employing child labour). But it is so cheap to source from that nation that US buyers would prefer not to know about them." Anson insists he would certainly not single out India as a culprit.

The whole issue of child labour use in Indian garment industry, I mean, more precisely Indian garment export industry, is mired with a number of confusions and lacks transparency. Let us have a close, hard look at the situation.

1. Presumptuous Estimates on Child Labour in India Go Wild

Child labor is an unregulated, grey area of the Indian economy; so statistics illustrating the scale of the phenomenon vary considerably. Different sources have come up with different figures. According to informal Government of India estimates, some 13 million of the country's children are employed in agriculture, as domestic helpers, in roadside restaurants and in factories making glass, textiles, and countless other goods. However, official sources such as the Office of the Registrar General and Census Commissioner, India, the social audit report puts the number of children employed in the domestic sector at 1.86 lakh and in the hospitality industry at 70, 934. In all, over 2.56 lakh children work in the domestic and hospitality sectors. However, many charities and nongovernmental organizations around the world believe that the figure is much higher.

Human Rights Watch, a New York-based organization that tracks more than a dozen issues, puts the number of child laborers in India at 60 million to 115 million.

The U.S. Department of Labor's 2006 international child labor report estimates that 4.1 percent of boys and 4 percent of girls ages 5 to 14 are forced to work in India. Most work in agriculture, but children are employed in many other, often hazardous, industries. Living conditions frequently are poor, and abuse is common.

These are all the estimates, the basis of which no one seems to have, save for Registrar General and Census Commissioner of India, who ALONE can provide authoritative figures and has actually done so.

Has anybody ever asked the agencies that are ferreting out some figure or the other and wants everybody else in the world to trust it as Bible gospel, as to what their basis of estimations? And are these estimations correct? The very fact that while putting out any figure as child labour, these very agencies have themselves kept themselves aloof from providing any basis for their estimation. Why? For fear of being exposed. I am personally against accepting any estimated figures, unless the basis on which these figures have been worked out is provided. Under the circumstances, I would question the basis of each estimate of child labour in India that is being thrown around - from 13 million provided even by an informal Government source to 60 million to 115 million by Human Rights Watch or the US Department of Labor placing it at 4.1 per cent of boys and 4 percent of girls aged 5 to 14. I would, for practical and rational reasons, accept the figure given by the Registrar General and Census Commissioner of India.

2. India Fails to Rise to the Occasion

Having enumerated the "numerous efforts" having made by the Indian Government and agencies, I feel that we have never done our homework well; perhaps we are never keen on it. Indian agencies, including the Government of India whether it is Ministry of Textiles and or Ministry of Commerce or even AEPC have therefore hardly been successful even in important issues like this. Further, they have not been functioning in a transparent manner, so as to keep the public, particularly media, informed of their efforts might have been well intentioned, but their inadequacy or irrelevance or both was clearly manifested in the total failure in getting our name removed from the Executive Order.

A case could have been better made out, to my mind, if:

- (i) Somebody should have had deeply and thoroughly studied the US case, on which their Executive Order 13126 had been based. Does anybody know that there been no incremental evidence to whatever was made available to the US Department of Labor way back in 2006 and 2007, on which the decision to include India in the EO was taken?
- (ii) NITRA could have adopted the methodology for the study, it was hired by AEPC to undertake, which should have been defensible, taking cue, if necessary, from the basis of reports on which US Department of Labor banked?
- (iii) AEPC had been forthcoming on all the steps that it had taken, from time to time, to meet the situation created by issue of EO including the contribution made by a High Powered Committee that went to plead with US authorities?
- (iv) The grounds on which the American Attorney, appointed by AEPC, were more directly related to the very basis on which the EO rested. I understand, from the unconfirmed reports that the American Attorney took the stand of questioning the authority of US Government to frame such rules. Perhaps, the American Attorney took the lead from Mike Lee, the Republican senator from Utah, who had, in a lecture on his You Tube channel, explained in great detail why he believes U.S. child labor laws are unconstitutional. In Lee's view, the Federal Government doesn't have authority to enact federal minimum wage laws, among others. Many may not agree with this.

And we lost out a battle despite what we profess we did for the cause that is so very important to the Indian garment export industry.

Who else in the world can do better than us in not doing the right things instead doing things right.

Here 'T' refers to author; he shares his views on US Executive Order 13126 and its effects on Indian Garment Industry