



Joint position on Sri Lanka

Clean Clothes Campaign, IndustriALL Global Union and International Trade Union Confederation

Introduction

On June 12, 2016, Sri Lanka applied for inclusion on the list of eligible beneficiary developing countries for the EU's Generalised System of Preferences (GSP+), which provides enhanced market access on the basis that the applicant is not in serious violation of a number of human rights instruments, including the ILO core labour conventions. GSP+ preferences to Sri Lanka had been suspended in February 2010, following a lengthy investigation, due to serious breaches in the application of 3 UN human rights instruments – the International Covenant on Civil and Political Rights, the UN Covenant on the Rights of the Child and the UN Convention against Torture. These violations occurred in the context of the government's war waged on the Tamil Tigers.

On the 11th January 2017, the European Commission (EC) launched a Report on assessment of the application for GSP+ by Sri Lanka. While the GSP preferences were not withdrawn over labour violations, the Clean Clothes Campaign, IndustriALL Global Union and the International Trade Union Confederation believe that serious violations of the ICCPR and the core ILO Conventions must be addressed prior to reinstatement of trade preferences. These include violations to the right to freedom of association, gender-based discrimination and sexual harassment and unsafe work places. Although the EC report acknowledges this, it makes an incorrect factual and political analysis of Sri Lanka's compliance with core labour standards. Failure by the EU to make a correct analysis and seek agreement with Sri Lanka on a set of benchmarks to bring the country into compliance with core labour standards would be a tragic mistake.

General Labour rights issues

Sri Lanka has ratified ILO Convention 87 but there is insufficient legislation to adequately implement this. The Industrial Disputes Amendment Act 56 of 1999 is the only existing legislation that relates to ILO Convention 87. The ILO Committee of Experts have identified a number of shortcomings with ILO Conventions 87 and 98 including the provision that no employer shall refuse to bargain with an union which has in its membership more than 40 per cent, which is deemed excessive by the Committee.

In practice, the labour law is not regularly enforced, and the situation is even worse in the country's several export processing zones. The Board of Investment (BoI) administers the Export Processing Zones and although they do not have formal jurisdiction over labour conditions or industrial disputes, in reality they function as an intermediary between employers and the Department of Labour in order to exclude unions. As such, the BoI actively encourages employers to recognize "employees' councils" instead of trade unions.

Furthermore, the National Labour Advisory Council, a national tripartite body, does not have the capacity to address the unique labour issues within the Export Processing Zones and in spite of consistent calls from unions to establish separate EPZ level tripartite groups, the BoI and the Department of Labour have failed to institute such a group or mechanism.

Finally, when confronted with Unfair Labour Practices, unions do not have the right to file cases in the court as this right sits only with the Department of Labour. This Department has demonstrated a serious obstruction of justice by not moving forward with cases of unfair labour practices leaving the unions and workers with no recourse.

Specific violations of workers rights

1. Unfair labour practices at Polytex Garment Ltd.

The Polytex Garment Ltd. Operates five (5) factories in Sri Lanka. The Ceylon Mercantile Industrial and General Workers Union (CMU) represents the majority of the workers in the Kegalle factory. Following the formation of the union, in February 2016 the management started pressuring individual union members to resign from the union. This included forcing at least 125 workers to sign resignation letters. Furthermore, the factory suspended 38 union members who refused to sign the letters drafted by the management. The union filed several complaints with the Ministry of Labour but to no effect.

2. Blacklisting in the Katunayake Free Trade Zone

Within the Free Trade Zone of Katunayake, factory management shares a register of labour disputes and the union members involved. Many workers who are suspended or dismissed on the grounds of trade union related activities are blacklisted within the zone. This includes an effective ban of hiring Photographs of the blacklisted workers are posted openly in the zone.

On June 2016, two unionists were fired from the Hiramani factory. These employees were interrogated by management about union activities. Afterwards, management isolated the employees and attempted to physically assault them, but this was prevented by other workers. During their subsequent dismissal, management continued to make physical threats and committed that the workers would no longer be able to find a job in the Katunayake Zone. To date, the workers have not been able to find alternative employment within the Zone. Several complaints have been lodged to both the Commissioner of Labour and the BOI without any effect.

3. Anti union repression at Smart Shirts Ltd.

Workers at Smart Shirts Ltd. Phase 1, based in Katunayake FTZ, formed a union affiliated with the CIWU in October 2015. Following the establishment of the union, company management forced workers to resign from the union. Company management continued by dismissing the president of the local union, Sampath Bandara and one organiser, Gayan Senaratne. The union filed a complaint with the Department of Labour. Despite the request of the Commissioner of Labour, management refused to attend any meetings. The company continued its repression against the union by dismissing more union activists. To date, 9 union activists remain suspended and 3 have been dismissed.

4. Repression at ATG Ceylon (Pvt) and ATG Occupation Ltd.

The Free Trade Zone & General Services Union (FTZ&GSEU) established a union at these companies in 2013. Since then, however, management has dismissed union members through a

bogus “disciplinary committee”. The Assistant Commissioner of Labour Negambo urged the companies to suspend the disciplinary inquiries against the workers, including the union president and organizer, but to no avail. The company also dismissed a woman who filed a complaint of sexual harassment by a male colleague and sectional manager. The unsafe use of toxic chemicals which exposes workers to severe health risks, and the company refuses to disclose to workers the full list of chemicals used and to allow proper precautions to be taken.

The managers punished workers attempting to address toxic chemical use and dangerous working conditions. The employer used intimidation, suspensions, and offered promotions to workers in exchange for her lodging a police complaint against union leaders. A referendum to vote for the union was called among many cases of the employer threatening and bribing those suspected to vote in favour. This case was resolved after easily surpassing the 40% threshold to establish a union at the referendum on 7th February 2017.

Conclusion

It is clear that there are serious shortcomings against core labour standards, both in terms of legal framework and in concrete application. The EC states that there is no “serious failure” in absence of a “special paragraph” in the report of the ILO Committee on Application of Standards (CAS). However, there is no ground in the GSP Regulation for such an interpretation.

The process for the re-admission of Sri Lanka to the list of beneficiary countries under the EU GSP+ must duly characterise the so-called “certain issues” and agree with the Government of Sri Lanka a time-bound roadmap with concrete measures to place law and practice in line with the ILO Core Labour Standards (and in particular ILO C.87 & C.98).

Such a roadmap should include the following, but not limited to:

- set-up a permanent tri- partite national mechanism for monitoring and evaluation of conditions required under GSP+ that includes unions.
- the threshold for compulsory recognition of trade unions should be lowered from 40% and unions should either be able to make joint claims for recognition to enable collective bargaining or to bargain on behalf of their members.
- the minimum age for union membership should be the same as the minimum age for employment.
- the government should publicly instruct the Board of Investment to stop promoting employees’ councils and intervening in labour disputes.
- the Ministry of Labour needs to be recognised formally as the only government agency competent to address labour relations.
- trade unions should have direct access to the courts for complaints about unfair labour practices and/or anti-union discrimination. Workers should receive adequate remedies and the fines for violating these laws should be increased to provide a meaningful deterrent.

The Clean Clothes Campaign, IndustriALL Global Union and the International Trade Union Confederation therefore reiterate for the European Union to adopt a roadmap with time-bound measures to comply with the ILO core conventions *before* benefitting from GSP+. There is simply no credible argument that Sri Lanka is not currently in serious breach of those conventions.