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# **TRADE AND GENDER IN BANGLADESH: A LEGAL AND REGULATORY ANALYSIS**

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# TRADE AND GENDER IN BANGLADESH:

## A LEGAL AND REGULATORY ANALYSIS

Greater Access to Trade Expansion (GATE) Project  
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The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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# ABBREVIATIONS

ADB	- Asian Development Bank
AoA	- Agreement on Agriculture
ASEAN	- Association of Southeast Asian Nations
ATC	- Agreement on Textiles and Clothing
BEPZA	- Bangladesh Export Processing Zone Authority
BFTI	- Bangladesh Free Trade Institute
BGMEA	- Bangladesh Garment Manufacturers and Exporters Association
BIMSTEC	- Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
BSCIC	- Bangladesh Small and Cottage Industries Corporation
CEDAW	- Convention on the Elimination of All Forms of Discrimination Against Women
CIDA	- Canadian International Development Agency
DFID	- Department for International Development
DSC	- Development Support Credit
dTS	- Development & Training Services, Inc.
EPZ	- export processing zone
FAO	- Food and Agriculture Organization
GATE	- Greater Access to Trade Expansion [Project]
GATS	- General Agreement on Trade in Services
GATT	- General Agreement on Tariffs and Trade
GSP	- Generalized System of Preferences
HACCP	- Hazard Analysis Critical Control Point
HIV/AIDS	- human immunodeficiency virus/acquired immune deficiency syndrome
ICT	- information and communication technology
ICTSD	- International Centre for Trade and Sustainable Development
ILO	- International Labour Organization
LDC	- least-developed country
MDG	- Millennium Development Goal
MFA	- Multi Fibre Arrangement
MIDAS	- Micro Industries Development Assistance and Services
NAMA	- non-agricultural market access
NCID	- National Council for Industrial Development
NGO	- nongovernment organization
NSAPR	- National Strategy for Accelerated Poverty Reduction
PLAGE	- Policy Leadership and Advocacy for Gender Equality [Project]
RMG	- ready-made garment
SAARC	- South Asian Association for Regional Cooperation
SAFTA	- South Asian Free Trade Area
SAPTA	- SAARC Preferential Trade Arrangement
SDT	- special and differential treatment
SME	- small and medium-sized enterprise
SPS	- sanitary and phytosanitary measures

SSOQ	- Shrimp Seal of Quality
TBT	- technical barriers to trade
TIN	- taxpayer identification number
TIR	- Trade Impact Review
TPRM	- Trade Policy Review Mechanism
TPS-OIC	- Trade Preferential System for the Organization of the Islamic Conference
TRIMs	- trade-related investment measures
TRIPs	- trade-related aspects of intellectual property rights
UN	- United Nations
UNESCAP	- UN Economic and Social Commission for Asia and the Pacific
USAID	- United States Agency for International Development
VAT	- value-added tax
WEA	- Women Entrepreneurs' Association
WID	- women in development
WRWC	- workers representation and welfare committee
WTO	- World Trade Organization

# EXECUTIVE SUMMARY

The Greater Access to Trade Expansion (GATE) Project, funded by the Office of Women in Development of the United States Agency for International Development (USAID) and implemented by Development & Training Services, Inc. (dTS), supports USAID Missions in integrating the needs of the poor, especially poor women, into their trade and economic growth activities. Under the GATE Project, USAID/Bangladesh has commissioned dTS to carry out a trade impact review (TIR) to inform its new Country Strategic Statement (2006–2010) for Bangladesh. The Bangladesh TIR includes several complementary analyses, including this legal and regulatory analysis.

The report analyzes the coherence between (1) Bangladesh’s trade commitments and trade-related policies, laws, and regulations, and (2) the country’s international and national commitments to poverty reduction and gender equality.

## RATIONALE AND METHODOLOGY

As trade agreements expand into new sectors such as services and into “trade-related” areas such as intellectual property rights, and as greater attention is paid to “behind-the-border” issues such as sanitary and technical standards, the scope of trade concerns increasingly overlaps with domestic legal and regulatory systems. However, domestic laws and regulations are also critical tools for addressing important national objectives such as poverty reduction, racial and gender equality, full employment, public health, and environmental improvement.

This report analyzes Bangladesh’s major trade commitments and trade-related policies, laws, and institutions, on three levels: (1) the *content* of these trade commitments and related laws, policies, and institutions; (2) their possible *interactions* with Bangladesh’s other international commitments, national laws, and policies related to poverty reduction and gender equality, and with societal norms and practices that influence women’s status and opportunities; and (3) *law and policy changes* or other measures that could expand the benefits of trade liberalization more widely or better mitigate the adjustment costs of trade liberalization for vulnerable groups, especially poor women.

## BANGLADESH’S COMMITMENTS TO POVERTY REDUCTION AND GENDER EQUALITY

Bangladesh has made broad international and regional commitments to human rights (including gender equality and labor rights), poverty reduction, and sustainable development. It is a party to most of the major international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol, and is a party to more than 30 International Labour Organization (ILO) conventions. Through its membership in the South Asian Association for Regional Cooperation (SAARC), Bangladesh has also made regional commitments to broad-based social development.

At the national level, the Constitution of Bangladesh provides the broad legal framework for Government action to promote sustainable development and equality between women and men. The National Strategy for Accelerated Poverty Reduction (NSAPR),

approved by the Government in October 2005, also provides a comprehensive policy framework for reducing poverty and pursuing equitable development. The NSAPR's strategy for women's rights and advancement builds on Bangladesh's international commitments to gender equality, as well as the National Policy for the Advancement of Women adopted in 1997. Bangladesh's commitments to gender equality and women's empowerment are also reflected in a number of specific policies and laws, including land allocation policies, labor laws, laws to eliminate discriminatory practices in the areas of marriage, divorce, and child custody, and laws to discourage and punish acts of violence against women. Despite these progressive measures, gender discrimination persists in many areas and is reinforced by discriminatory personal laws, lax enforcement of gender-equitable laws, and traditional norms, practices, and biases.

## **BANGLADESH'S MAJOR COMMITMENTS TO TRADE EXPANSION**

Bangladesh is a party to an increasing number of international, regional, and bilateral trade agreements. As a founding member of the World Trade Organization (WTO), Bangladesh is a party to all of the multilateral trade agreements included in the Uruguay Round of trade negotiations (excluding the plurilateral agreements), and it has taken a number of steps to bring its trade laws and policies into compliance with these agreements. As a least-developed country (LDC), Bangladesh has been able to take advantage of the various provisions in the WTO agreements that accord special and differential treatment (SDT) to LDCs and other developing countries. This report reviews the status of Bangladesh's original commitments under the main WTO agreements, and also considers some of the implications for Bangladesh of the decisions taken at the recent WTO ministerial meeting in Hong Kong.

Bangladesh is a party to several regional trade arrangements, including the Asia-Pacific Trade Agreement (formerly the Bangkok Agreement), the Agreement on a South Asian Free Trade Area (SAFTA), the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), and the Framework Agreement for a Trade Preferential System for the Organization of the Islamic Conference (TPS-OIC). It has also entered into a large number of bilateral agreements related to trade, investment, development cooperation, avoidance of double taxation, and other matters.

Bangladesh's exports receive market access preferences in several countries—17 countries as of 2000—under the Generalized System of Preferences (GSP). However, the potential benefits to Bangladesh of the GSP are undercut by importing countries' exclusion of key Bangladeshi exports from their preference schemes and by complex rules of origin for GSP-eligible imports.

Many of Bangladesh's trade liberalization measures have been undertaken as conditions for loans from multilateral financial institutions such as the International Monetary Fund and the World Bank. Trade-related issues are also addressed in some of Bangladesh's development cooperation arrangements with bilateral donors. Some of these development loans and cooperation arrangements include undertakings that go beyond Bangladesh's WTO commitments.

Bangladesh's membership in the WTO entitles it to certain rights and flexibilities, especially as an LDC. However, WTO membership has also entailed substantial implementation costs, especially related to customs valuation. Regional and bilateral

trade agreements and GSP schemes can provide additional trade benefits to Bangladesh, especially when they accord preferential treatment to Bangladesh as an LDC. However, the negotiation and implementation of multiple agreements can also strain the capacity of the Government. Inconsistencies in rules of origin among importing countries are especially burdensome for small exporting businesses. Conditions in bilateral agreements which extend beyond those in the WTO can also undermine the SDT provisions already negotiated and accepted by all WTO members. To date, Bangladesh has received relatively little technical assistance to implement its WTO commitments, and the assistance provided has been fragmented among various donors. Few donor-supported programs related to trade include poverty or gender analysis, or measures to integrate poverty or gender concerns into program activities.

## **TRADE-RELATED POLICIES, LAWS, AND INSTITUTIONS**

Bangladesh's trade commitments are implemented through several national policies and laws. Key policy documents include the NSAPR, the Import Policy 2003–2006, the Export Policy 2003–2006, and the Industrial Policy 2005. The main laws governing cross-border trade and investment in Bangladesh include the Imports and Exports (Control) Act 1950, Customs Act 1969, Foreign Exchange Regulation Act 1947, Foreign Private Investment (Promotion and Protection) Act 1980, Bangladesh Export Processing Zone Authority Act 1980, and Bangladesh Private Export Processing Zone Act 1996, all as amended. These acts have been supplemented by various rules and regulations.

The NSAPR posits that increased trade can contribute to poverty reduction by generating substantial employment opportunities in export sectors such as the ready-made garment sector. On the other hand, the NSAPR notes that any liberalization of import tariffs could have a negative effect on the national budget, and must be offset by the increased collection of revenue from other sources. The policy matrix for the NSAPR includes a number of specific actions to be taken to diversify and promote exports, further liberalize imports, improve the procedures for remittances from overseas workers, and develop capacity for trade negotiations. The matrix also identifies several measures to address gender concerns related to trade expansion.

The Industrial Policy 2005 is the only trade-related policy that specifically identifies women entrepreneurs as a priority group for support, and it outlines a comprehensive program for promoting women-owned businesses (see Box 1 in the main report). It also provides for the participation of the Ministry of Women and Children Affairs and a representative of women-owned businesses in the National Council for Industrial Development (NCID).

Recent studies note that Bangladesh's trade-related laws, policies, and practices present a number of obstacles for small businesses. These include complex and nontransparent duties and other trade-related taxes, continuing delays in customs clearance, burdensome paperwork requirements, and demands for informal payments. A recent study under the Policy Leadership and Advocacy for Gender Equality (PLAGE) Project of the Ministry of Women and Children Affairs found that current trade policies and practices pose particular problems for women-owned businesses. For example, the study found that the requirement to obtain and renew import and export registration certificates is unnecessary and burdensome for women entrepreneurs, whose mobility

may be limited. At the same time, lower import tariffs and rampant smuggling have made it difficult for certain women-owned businesses to compete with cheaper imports. Based on this analysis, the PLAGÉ study made several recommendations for Government and private sector action (see Box 2 in the main report).

A large number of public and private institutions are involved in formulating and implementing trade laws and policies in Bangladesh. Within the Government these include the Ministry of Commerce (specifically the Chief Controller of Imports and Exports, the Export Promotion Bureau, the Bangladesh Tariff Commission, and the WTO Cell), the Ministry of Finance (mainly the National Bureau of Revenue and its customs and VAT departments), the Board of Investment, the Bangladesh Export Processing Zone Authority (BEPZA), and the Bangladesh Free Trade Institute (BFTI). Several advisory bodies also provide input to national trade policy, including the Import Advisory Committee, National Committee on Exports, Export Promotion Council, WTO Advisory Committee, and NCID. Registered trade organizations also have a voice in trade policy, especially the Federation of Bangladesh Chambers of Commerce and Industry, the Dhaka Chamber of Commerce and Industry, and trade associations for key export industries. Under the Industrial Policy 2005, business promotion councils are also being formed for certain “thrust” sectors.

Key trade policy units of the Government, including the Bangladesh Tariff Commission and WTO Cell within the Ministry of Commerce, and the newly established BFTI, have limited capacity and resources. It has therefore been suggested that trade policymakers and negotiators should make greater use of the trade economics and trade law expertise in the nongovernment and private sectors.

The interests of small farmers, small business owners, artisans, and workers, especially women, are not well represented in national trade-related institutions. For example, of the various trade advisory bodies, only the NCID includes a representative of women-owned businesses. In the main private sector trade organizations, small businesses and women-owned businesses also have little representation. In contrast, several women’s business associations that have been established recently are providing a variety of services to their members.

## **SELECTED SECTOR LAWS AND POLICIES**

Many other laws, policies, and regulations of Bangladesh are related directly or indirectly to particular trade-related issues (such as sanitary measures, technical standards, or intellectual property rights), to cross-cutting issues (such as labor conditions or land tenure), and to particular export sectors. Trade expansion can have different impacts on business owners, workers, and consumers in particular sectors, depending in part on their status and rights under relevant policies, laws, and regulations. With this in mind, the report reviews selected laws, policies, and regulations relevant to two key export sectors—ready-made garments and shrimp processing—and a third priority sector—small and medium-sized enterprises—with export potential. These sector discussions overlap to some extent. For example, the discussion of labor standards and social compliance issues in the ready-made garment sector is also relevant to shrimp processing firms and to small manufacturers in all sectors.

## **SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)**

Estimates of the number of small businesses in Bangladesh vary significantly, but it is widely recognized that SMEs play an important role in the economy, especially in generating employment. At the same time, SMEs face numerous obstacles, including lack of information about regulatory requirements, nontransparent regulations, and rent-seeking behavior of government officials, as well as limited access to finance, technology, and markets. The PLAGÉ Project and other studies have documented that small women-owned businesses are at a particular disadvantage because of the owners' lack of acceptable collateral for business loans; burdensome and nontransparent business regulations and tax rules; biased treatment by government officials, bank officers, and landlords; and restrictive social norms that limit their mobility and public activities. The NSAPR, the Industrial Policy 2005, and the new SME development policy include broad commitments to address the needs of SMEs, with particular attention to women-owned businesses. The PLAGÉ Project has also made a number of specific recommendations for law and policy changes to assist women entrepreneurs (see Boxes 2 and 3 in the main text). In addition, SMEs need technical support to improve their compliance with national labor, environmental, and product quality standards. (SMEs engaging in export activities also need support to ensure compliance with the various standards on imports imposed by overseas buyers and importing countries.)

## **READY-MADE GARMENTS (RMG)**

Although Bangladesh is taking steps to diversify its export base, the RMG sector still generates about 75 percent of export earnings. The sector is seen as critical to the Government's poverty reduction and gender equality goals because of its predominantly female workforce, drawn mainly from rural areas. Although the majority of workers in the RMG sector are women, there is significant gender segregation by sub-sector and occupation, with women working primarily in woven-wear factories and at lower skill and compensation levels. The dismantling of import quotas under the Multi Fibre Arrangement (MFA) has not yet had a dramatic impact on the RMG sector, but factories are under increasing price pressure, and there appears to be a trend toward employing more workers on a temporary or piece-rate basis. At the same time, overseas buyers are demanding that factories improve compensation and working conditions for their employees, particularly in the wake of a recent factory collapse and fires that resulted in large numbers of deaths and injuries. The RMG sector benefits from a wide range of incentives and other supports under the Import Policy 2003–2006, Export Policy 2003–2006, and Industrial Policy 2005. Additional measures are identified in the NSAPR and a Post-MFA Action Programme to improve the competitiveness and social and environmental compliance of RMG firms, and to provide support to any retrenched workers.

This report focuses in particular on Bangladesh's legal framework for labor standards and workplace safety, including provisions specifically related to women workers and the special labor rules that apply in export processing zones, as well as codes of conduct that have been introduced by some overseas buyers and buyer groups. Bangladesh's labor law framework is comprehensive and generally consistent with its international commitments under ILO conventions. However, the enforcement of labor

laws and rules is extremely weak, due in large part to the small number of labor inspectors (only 62 inspectors were responsible for 18,900 factories in 2000). Recent surveys have found that compliance with labor standards in the RMG sector is highest in EPZ factories. Among non-EPZ firms, compliance with labor standards appears highest in factories that have a direct relationship with overseas buyers, and lowest in the small factories that operate as subcontractors or sub-subcontractors for larger firms. Labor conditions also vary substantially by gender. The new Labour Code, which has been under consideration by the Government for more than 10 years, has the potential to simplify and strengthen the labor law framework in Bangladesh. Labor law experts have proposed a number of changes in the draft Labour Code to address the current needs of workers, especially women, and they have also recommended measures to strengthen the general enforcement of labor standards (see Box 4 in the main text). This report also recommends more public and private initiatives to address the needs of RMG workers for affordable and secure housing, safe transport, health care, savings mechanisms, and payment of accrued wages and benefits in the event of sudden factory closures.

### **SHRIMP FARMING AND PROCESSING**

With support from external agencies and generous incentives from the Government, the shrimp sector has expanded rapidly over the past two decades. More than 1 million workers and traders may be engaged in the entire shrimp production chain, and shrimp represent close to 5 percent of Bangladesh's exports. Despite its promise as an export sector, shrimp processing is vulnerable to food safety and quality issues, and shrimp farming is also associated with environmental damage, displacement of landless and land-poor farmers, and hazardous conditions for workers. As in the RMG sector, the labor market for shrimp farming and processing is highly segregated by gender, with women much more likely to be employed for lower wages and as temporary or casual workers.

The shrimp sector implicates a number of Government policies and strategies related to fisheries, water, the environment, land use, industry, imports, and exports. Several sets of laws and regulations also apply to the sector, including laws and rules related to fisheries, the environment, land allocation and use, business, and labor conditions. However, inconsistencies and gaps in the regulatory frameworks, and weak enforcement of existing laws and rules, undermine efforts to promote the shrimp sector as a viable export sector that is also socially and environmentally responsible. Legal and regulatory weaknesses are particularly noticeable in the areas of land use, environmental protection, and labor conditions in shrimp hatcheries, farms, and processing plants (including gender issues). To address these inadequacies, several industry codes of practice and certification systems have been piloted, including the "Shrimp Seal of Quality" certification standards developed with USAID support. The Government is also considering a number of regulatory, institutional, and other changes to be incorporated in a new shrimp strategy. This report suggests additional measures related to the participation of stakeholders in oversight of the shrimp industry, protection of vulnerable groups' access to *khas* (government) land, working conditions in the sector, and the feasibility of any new traceability or certification requirements for small shrimp farmers.

## CONCLUSIONS AND RECOMMENDATIONS

This report finds that (1) the interests of small farmers, small business owners, artisans, and workers, especially women, are generally not well represented in Bangladesh’s trade-related institutions, and (2) as a result, Bangladesh’s trade-related policies, laws, and regulations do not consistently reflect the interests and concerns of these groups. The policies, laws, and regulations that apply to key export sectors, such as RMG and shrimp processing, and more generally to small businesses involved in import and export activities, also suffer from gaps, inconsistencies, and lax or inequitable enforcement. These factors limit the benefits of trade expansion for small businesses, small farmers, artisans, and workers. Biases in some laws, rules, and business practices, as well as discriminatory social norms, further limit the opportunities of women to benefit from trade-related activities. To ensure more equitable distribution of the benefits of trade expansion, the report suggests that

- poverty and gender concerns should be addressed more consistently in the development of Bangladesh’s trade-related policies and laws, in their implementation, and in the negotiation of trade commitments;
- the Government’s recent policy commitments to poverty reduction, gender equality, and social compliance, particularly in the NSAPR, the Industrial Policy 2005 and the Post-MFA Action Programme, should be implemented promptly and with adequate resources; and
- greater attention should be paid to “behind-the-border” issues of inequality and gender discrimination in the implementation of key policies, laws, and regulations in trade-related sectors (including the simplification of regulations applicable to small businesses, and the equitable and effective implementation of land and labor laws).

The report identifies several specific measures that can be taken to maximize the benefits of trade for Bangladesh’s small farmers, small businesses, artisans, and workers, especially women. A number of these measures have already been endorsed by the Government or proposed by other stakeholders or researchers in Bangladesh. USAID and other development partners, private sector trade bodies, and civil society organizations can play important roles in supporting these endeavors. The main recommendations that emerge from this review are summarized in Table 1 below:

**Table 1: Law and Policy Measures to Promote More Equitable Trade**

Proposed Actions	Responsible Agencies
<b><i>Trade Negotiations and Trade Policymaking</i></b>	
Expand membership of trade advisory bodies to include representatives of small farmers, small businesses, artisans, and workers.	Government
Improve capacity of trade-related institutions to systematically collect and analyze trade-related data, disaggregated by sex and other relevant factors.	Government, Development Partners, Private Sector Trade Bodies, Research Institutions
Ensure that future trade-related development assistance to Bangladesh includes poverty and gender analysis, and that future support to national trade institutions strengthens their capacity to analyze trade policy issues from a poverty and gender perspective.	Development Partners

Analyze any future trade commitments, including regional commitments, in terms of their possible poverty reduction and gender impacts.	Government
In line with commitments made at the WTO Ministerial Meeting in Hong Kong, ensure that future trade agreements with Bangladesh, and future development assistance to the Government, do not impose conditions inconsistent with Bangladesh's rights and flexibilities under WTO agreements.	Development Partners
Analyze domestic impacts of trade liberalization measures (including poverty and gender analysis) in future Government reports under the WTO Trade Policy Review Mechanism, with participation from the private sector, civil society, and research institutions.	Government, Private Sector Trade Bodies, Civil Society Organizations, Research Institutions, Development Partners
<b>Non-Agricultural Market Access</b>	
Analyze the impact of any further tariff reductions on the national budget, and especially on poverty reduction and social sector expenditures.	Government
<b>Agriculture</b>	
Analyze the impact on small farmers and agricultural workers, disaggregated by sex, of any further liberalization of agricultural imports.	Government
Improve small farmers' access to critical inputs, credit, improved technology, and marketing services.	Government, Development Partners
<b>Standards</b>	
Include representatives of small businesses, including women-owned businesses, in the future development of national standards and certification systems, including procedures under the proposed accreditation law.	Government, Private Sector Trade Bodies
Ensure that small businesses, including women-owned businesses, have access to practical training on relevant standards and certification requirements for their sectors.	Government, Private Sector Trade Bodies, Development Partners
<b>Intellectual Property</b>	
Ensure that the new Patents and Designs Act and Plant Variety and Farmers' Rights Protection Act take full advantage of the transition periods and flexibilities provided in the TRIPs Agreement, especially related to the patenting and compulsory licensing of pharmaceuticals and protection of farmers' rights to save seeds.	Government, Development Partners
Consider legislation to provide simple, transparent and inexpensive procedures for establishing and protecting geographic indications for handicrafts and other artisanal products.	Government
If geographic indications receive protection, provide practical information and training on geographic indications to artisans, especially women.	Government, Private Sector Trade Bodies, Development Partners
<b>Procurement</b>	
In implementing the new Public Procurement Act, provide flexibility for Government assistance and/or preferences to small and women-owned businesses in connection with the award of Government contracts.	Government
<b>Small and Medium-Sized Businesses (SMEs)</b>	
Fully implement the measures outlined in the NSAPR, the Industrial Policy 2005, and the new SME development policy to address the major constraints on SMEs.	Government, Private Sector Trade Bodies, Development Partners
Require chambers of commerce and industry to serve as information resource centers for small entrepreneurs, whether or not they are members.	Government, Private Sector Trade Bodies

Fully implement the measures for promoting women-owned businesses outlined in Chapter 11 of the Industrial Policy.	Government, Private Sector Trade Bodies, Financial Institutions, Development Partners
Give prompt consideration to the PLAGI Project recommendations for other law and policy reforms to address constraints on women-owned businesses (see Boxes 2 and 3).	Government, Private Sector Trade Bodies, Financial Institutions, Development Partners
Ensure that financial institutions accessing credit lines for small businesses (1) work with women's business associations to identify potential women borrowers, (2) simplify their loan application procedures for small businesses, and (3) do not impose special guarantee or other requirements on women borrowers.	Government, Financial Institutions, Private Sector Trade Bodies, Development Partners
<b>Ready-Made Garments (RMG)</b>	
In finalizing the new Labour Code, incorporate the recommendations of labor experts to better address the needs of workers, especially women (see Box 4).	Government
Implement the recommendations of labor experts to improve enforcement of existing labor laws and rules (see Box 4).	Government
Expand existing public and private initiatives, and pilot new initiatives, to address the needs of RMG workers, especially related to safe and affordable housing, safe transport, savings, and payment of accrued wages and benefits in the event of sudden factory closures.	Government, Private Sector Trade Bodies, Labor Unions, NGOs, Development Partners
Support practical and comprehensive training for RMG owners/managers and workers, especially in small firms, on labor standards and workplace safety.	Government, Private Sector Trade Bodies, Labor Unions, NGOs, Development Partners
<b>Shrimp Farming and Processing</b>	
Incorporate Department of Fisheries proposals in the new shrimp policy to <ul style="list-style-type: none"> <li>• establish a high-level body with wide representation of stakeholder groups to oversee and regulate fisheries development;</li> <li>• establish environmental impact assessment requirements and environmental quality standards for all shrimp facilities; and</li> <li>• revise the Shrimp <i>Mohal</i> Management Policy 1992 to better align it with Government policies on allocation of <i>khas</i> (government) land and water bodies to landless and other vulnerable groups.</li> </ul>	Government
Include representatives of small farmers and fisherfolk, the landless, and fisheries workers (including women) in any coordination or oversight body for the fisheries or shrimp sector.	Government
Adopt recommendations from the ongoing review of the allocation of <i>khas</i> land being undertaken jointly by the Ministry of Land and the Association for Land Reform and Development, especially related to shrimp farming.	Government
Adopt recommendations of labor experts related to the new Labour Code and to more effective enforcement of existing labor laws and rules (see Box 4), especially as they relate to female and male workers in shrimp processing facilities.	Government
In the new Labour Code, consider extending labor law protections to agricultural workers, including fisheries workers.	Government
Develop initiatives to address the housing, transport, health care, and other concerns of shrimp processing workers.	Government, Private Sector Trade Bodies, NGOs, Development Partners

Ensure that any traceability or certification requirements applied to small shrimp farms are simple and workable, and that any certification fees for small shrimp farms are minimal.	Government, Private Sector Trade Bodies, NGOs, Development Partners
Develop strategies to ensure meaningful participation of women as well as men in any future training or capacity development programs for the shrimp sector.	Government, Private Sector Trade Bodies, NGOs, Development Partners

# INTRODUCTION

The Greater Access to Trade Expansion (GATE) Project, funded by the Office of Women in Development of the United States Agency for International Development (USAID/WID) and implemented by Development & Training Services, Inc. (dTS), supports USAID Missions in integrating the needs of the poor, especially poor women, into their trade and economic growth activities. Under the GATE Project, USAID/Bangladesh has commissioned a trade impact review (TIR) to inform its new Country Strategic Statement (2006–2010) for Bangladesh. The Bangladesh TIR includes several complementary analyses, including this legal and regulatory analysis.

The legal and regulatory analysis presented in this paper considers (1) Bangladesh's national and international commitments to poverty reduction and gender equality; (2) the country's major commitments to trade expansion, and their gender and poverty dimensions; (3) Bangladesh's trade-related laws and policies, and their interactions with other laws, norms, and practices that shape opportunities for poor women and men; and (4) gender and poverty issues in the law and policy frameworks for key trade-related sectors.

This analysis is based on a review of the relevant policies, laws, and regulations of Bangladesh; policy research and analysis by independent research institutes, development agencies, and nongovernment organizations (NGOs) in Bangladesh; and information and perspectives provided by government officials, development agency and NGO staff, private sector business persons and lawyers, and academics and independent researchers. A list of persons met during an information-gathering visit to Dhaka in October 2005 is provided in Annex 1. A list of laws, policies, and regulations reviewed in connection with this analysis is provided in Annex 2.

Based on this document review and interviews with law and policy experts in Bangladesh, the legal and regulatory analysis considers (1) the *content* of Bangladesh's major trade commitments, including national laws, policies, and institutions to implement and enforce them; (2) the possible *interactions* with Bangladesh's other international commitments, national laws, and policies related to poverty reduction and gender equality, and with societal norms and practices that influence women's status and opportunities; and (3) *law and policy changes* and other measures that could ensure that the intended benefits of trade liberalization are more equitably shared by small farmers, small business owners, artisans, and unskilled workers, especially women and other marginalized groups, or that could mitigate the dislocation or other adjustment costs to these groups. This methodology is discussed further in Section II below.

# TRADE, POVERTY, AND GENDER—LEGAL AND REGULATORY ISSUES

In the Doha Development Agenda,<sup>1</sup> WTO members committed themselves to ensuring that the international trading system would produce tangible benefits for developing country members and contribute to poverty reduction and other broad development goals. However, it is well recognized that changes in national trade policy and trading patterns can have very different impacts—positive or negative—on particular sectors, and on different groups of workers and consumers. It is therefore important to assess the poverty and social impacts of trade commitments and trade policies, especially within least-developed countries (LDCs)<sup>2</sup> such as Bangladesh. There is also growing recognition of the potentially different impacts of changes in trade policy and trading patterns on women and men, especially in countries where there are wide gender disparities in terms of access to education and technical training, employment, land, credit, and other productive resources.<sup>3</sup> Any poverty and social analysis of trade commitments or trade policies therefore should pay particular attention to different impacts on women and men, especially in poor or marginalized communities.

As trade agreements expand into new sectors such as services and into “trade-related” areas such as intellectual property rights, and as greater attention is paid to “behind-the-border” issues such as sanitary and technical standards, the scope of trade concerns increasingly overlaps with domestic legal and regulatory systems.<sup>4</sup> However, domestic laws and regulations are also critical tools for addressing important national objectives such as poverty reduction, racial and gender equality, full employment, public health, and environmental improvement. Many countries have also enacted laws to fulfill international obligations under treaties (such as the Convention on the Elimination of All Forms of Discrimination Against Women) and other international commitments (such as the outcome documents of international gatherings like the recent World Summit and the Fourth World Conference on Women). Therefore, in any poverty or gender analysis of a trade agreement or policy it is also important to consider its possible legal and regulatory impacts.<sup>5</sup>

As noted in Section I, this report analyzes Bangladesh’s major trade commitments and trade-related policies, laws, and institutions on three levels: (1) the *content* of these trade commitments and related laws, policies, and institutions; (2) their possible *interactions* with Bangladesh’s other international commitments, its national laws and policies related to poverty reduction and gender equality, and with societal norms and practices that influence women’s status and opportunities; and (3) *law and policy changes* or other measures that could expand the benefits of trade liberalization more widely, or better mitigate the adjustment costs of trade liberalization for vulnerable groups, especially poor women.

In terms of *content* analysis, the report considers whether a trade commitment or trade law or policy reflects any overt “gender bias,” or whether an apparently “gender-neutral” provision might have a disparate effect on women and men (or on particular groups of women and men) in light of their different social and economic circumstances. Trade-

related institutions are also examined in terms of their composition—including representation of small producers and workers, especially women—and awareness of the concerns of these groups.

In analyzing the possible *interactions* between a trade commitment, law, or policy and other national commitments, laws, and policies, the report takes into account the laws and norms that influence women's and men's status and rights in Bangladesh, the different circumstances of women (for example, between rural and urban areas), and institutional and practical constraints on the enforcement of laws and access to justice. More specifically, the report considers whether Bangladesh's major trade commitments, policies, and laws support or conflict with any of the following:

- the Bangladesh constitution
- the country's international commitments and national policies related to poverty reduction and gender equality
- national policies, laws, and regulations that are intended to benefit small producers and workers, including women;
- gaps or biases in the implementation or enforcement of these policies, laws, and regulations
- religious and customary laws, and traditional norms and practices, including those related to the ownership of land and other assets

(The report also considers these interactions through case studies of three export-related sectors.)

Finally, based on the foregoing analysis, the report suggests *possible changes in trade-related laws and policies* and other measures that would address some of the gaps or conflicts that have been identified. In several areas, appropriate law or policy changes are already under consideration by the Government, or have already been identified by stakeholders or researchers in Bangladesh.

# BANGLADESH'S COMMITMENTS TO POVERTY REDUCTION AND GENDER EQUALITY

This section considers Bangladesh's main commitments to reduce poverty and promote gender equality, as reflected in international and regional treaties and declarations, in its Constitution, and in national laws and policies.

## A. INTERNATIONAL COMMITMENTS

Bangladesh is a party to most of the major international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol.<sup>6</sup> The Government of Bangladesh reported most recently in 2003 on its progress in implementing CEDAW. Bangladesh is also a member of the International Labour Organization (ILO), and is a party to more than 30 ILO conventions, including conventions supporting all four of the ILO's core labor standards.<sup>7</sup>

Since independence, Bangladesh has participated actively in the major international conferences and summits related to gender equality, poverty reduction, and sustainable development, including the Fourth World Conference on Women in Beijing in 1995, the Millennium Summit in 2000, and the World Summit in 2005, and it has endorsed the outcome documents from those conferences, including the Beijing Declaration and Platform for Action, the Millennium Declaration, and the World Summit Outcome.

At the World Summit in September 2005, for example, Bangladesh and other governments reaffirmed their commitments to the development goals agreed at previous world conferences, including commitments to reduce poverty and to promote gender equality and the empowerment of women. In early 2005, the Government of Bangladesh and the United Nations (UN) Country Team in Bangladesh had reported on the country's progress toward these development goals—referred to as the Millennium Development Goals (MDGs). The report noted progress in a number of areas, including reductions in the overall incidence of poverty, child mortality, and maternal mortality. There has been less success in other areas, such as access to clean water and sanitation, due to arsenic contamination of tube wells and unplanned urbanization. In terms of gender equality, Bangladesh has made great strides in enrolling girls in primary and secondary schools, but it has much more work to do to reduce gender disparities in access to health care, employment, and participation in public decision-making, and to address the serious problem of violence against women.<sup>8</sup>

## B. REGIONAL COMMITMENTS

Through its membership in the South Asian Association for Regional Cooperation (SAARC), Bangladesh has also made regional commitments to broad-based social development. In the SAARC Social Charter, for example, Bangladesh and other SAARC members agreed to pursue policies and strategies that promote poverty alleviation, public health, education and vocational training, gender equality and the empowerment of women, and the rights and well-being of children. Bangladesh and other SAARC members have also committed to work jointly to address the regional problem of

trafficking in women and girls under the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. At the Thirteenth SAARC Summit, held in Dhaka in November 2005, the heads of SAARC governments reaffirmed the broad commitments in the SAARC Social Charter and declared that the decade 2006–2015 would be the SAARC Decade of Poverty Alleviation. They also endorsed a set of SAARC Development Goals and called for a SAARC plan of action to promote cooperation in the areas of medical expertise and pharmaceuticals, including the production of affordable medicines and the promotion and protection of traditional medicines.<sup>9</sup>

### **C. NATIONAL LAW AND POLICY FRAMEWORKS**

The Constitution of Bangladesh provides the broad legal framework for Government action to promote sustainable development and equality between women and men. The Fundamental Principles of State Policy outlined in the Constitution include democracy and human rights, the provision of basic necessities, the right to employment at a reasonable wage, protection of workers and disadvantaged groups from all forms of exploitation, rural development (including development of cottage and other industries), free and compulsory education, improvement of public health, the participation of women in national life, and measures to ensure equality of opportunity for all citizens. The Fundamental Rights guaranteed in the Constitution include equality before the law (Article 27); freedom from discrimination on the basis of religion, race, caste, sex, or place of birth (Article 28); equality of opportunity and nondiscrimination in public employment (Article 29); the right of all citizens to protection under the law (Article 31); and the right to life and personal liberty (Article 32). Article 27 specifically provides that women have equal rights with men in all areas of public life, and that the Government may make special provisions in favor of women or any disadvantaged group of citizens. In relation to labor and employment, the Constitution also guarantees freedom to conduct any lawful trade or business (Article 40) and to form associations or unions (Article 38), and it prohibits any type of forced labor (Article 34).

The National Strategy for Accelerated Poverty Reduction (NSAPR), approved by the Government in October 2005, provides a comprehensive policy framework for reducing poverty and pursuing equitable development. The NSAPR, which synthesizes a wide range of law and policy initiatives, aims to reduce poverty through four strategic channels: (1) economic growth initiatives, including private sector investment, employment generation, and trade; (2) pro-poor sector initiatives, including agriculture and rural development, small and medium-sized enterprise (SME) development, infrastructure development, and development of information and communication technologies (ICT); (3) strengthening of social safety net programs; and (4) human development programs related to education and vocational training, health care and food safety, water, and sanitation. To ensure that these initiatives produce equitable and sustainable results, the NSAPR also includes several supporting strategies, including women's rights and advancement.

The NSAPR's strategy for women's rights and advancement builds on Bangladesh's international commitments to gender equality, as well as the National Policy for the Advancement of Women adopted in 1997. Recognizing that women's advancement and

rights are development goals in their own right, and also contribute to more efficient and sustainable development outcomes, the NSAPR endorses a multi-sectoral approach to gender equality. Specific targets and actions are identified to integrate gender concerns in the areas of government planning and budgeting, trade policy, employment (especially in export sectors), SME development, agriculture, infrastructure, technology, finance and banking, housing, social safety nets, political participation, and violence against women.

The multi-sectoral approach in the NSAPR mirrors the National Policy for the Advancement of Women adopted by the Government in 1997 after extensive consultations with women's groups and other stakeholders. The 1997 National Policy outlines actions to be taken in 14 areas: (1) women's human rights and basic freedoms; (2) elimination of discrimination against girls; (3) elimination of oppression against women; (4) women's experience of armed violence; (5) education and training; (6) sports and culture; (7) women's participation and rights in the national economy (including actions related to poverty reduction, food security, employment, support services, and technology); (8) political empowerment of women; (9) administrative empowerment of women; (10) health and nutrition; (11) housing and shelter; (12) women and the environment; (13) women and mass media; and (14) especially distressed women. The 1997 National Policy also identifies institutions and strategies to implement the policy.<sup>10</sup>

Bangladesh's commitments to gender equality and women's empowerment are also reflected in a number of specific laws and policies. For example, Government policies on the allocation of *khas* (government) land provide for preferential allocations to certain categories of disadvantaged women and men, and for the registration of land allocated to households in the name of both husband and wife. The Factories Act 1965 provides for separate, conveniently located toilets and washrooms for male and female workers, and for crèches for workers' children under six years old (in factories with more than 50 female workers). Maternity leave and benefits for female workers are also guaranteed under the Maternity Benefit Act 1939 and Maternity Benefit (Tea Estates) Act 1950. While not referring specifically to women and men, the Contract Act 1872 provides that "[e]very person is competent to contract who is of the age of majority...and who is of sound mind, and is not disqualified from contracting by any law..." (Section 11). The Fourteenth Amendment to the Constitution provides for 45 reserved seats for women in the national parliament, and the Upazilla Parishad Act 1998, Local Government (Union Parishad) Amendment Ordinance 1997, and Municipal Ordinance 1998 provide for women's representation in locally elected bodies.

Several laws have been enacted to eliminate discriminatory practices in the areas of marriage, divorce, and child custody, including the Child Marriage Restraint Act 1929, Muslim Marriages and Divorces Registration Act 1974, Dowry Prohibition Act 1980, Muslim Family Laws Ordinance 1961, and Family Courts Ordinance 1985. The Prevention of Violence Against Women and Children Act 2000 (amended in 2003), the Acid Control Act 2002, and the Acid Crime Prevention Act 2000 are also intended to discourage and punish acts of violence against women, including dowry-related murder, rape, trafficking, and acid burns.<sup>11</sup>

Despite these progressive measures, gender discrimination persists in many areas and is reinforced by discriminatory personal laws,<sup>12</sup> lax enforcement of gender-equitable laws, and traditional norms, practices, and biases:

- For example, although the Constitution guarantees to every citizen “the right to acquire, hold, transfer, or otherwise dispose of property” (Section 42.1), Muslim and Hindu personal laws discriminate against women in inheritance. Even where women inherit property, they are expected to waive their inheritance rights in favor of their brothers in order to ensure the brothers’ support and protection in the event of divorce or abandonment by their husbands. Due to corruption and the traditional biases of land administration officials, women also have difficulty asserting their rights in land disputes, and poor women are at a particular disadvantage.<sup>13</sup>
- As discussed further below, Bangladesh has enacted a comprehensive set of labor laws, including provisions for maternity benefits and childcare facilities. However, these laws are poorly enforced, especially in private sector businesses located outside of the Government-managed export processing zones.
- Recently, some commercial banks have earmarked funds for loans to women-owned businesses. Nevertheless, these funds can be difficult to access because of the banks’ onerous loan application procedures, including a requirement that a woman’s loan application must be co-signed by her husband or other male relatives.<sup>14</sup>
- Women’s lack of awareness of their rights, and of the administrative and judicial procedures for asserting these rights, is also a major impediment.

# BANGLADESH'S MAJOR COMMITMENTS TO TRADE EXPANSION

This section reviews Bangladesh's main trade-related commitments, including those linked to its membership in the World Trade Organization (WTO), SAARC, and other regional arrangements, as well as preferential trade arrangements with developed countries and trade-related policy conditions for its borrowings from multilateral financial institutions. The section also considers some of the gender and poverty dimensions of these commitments.

## A. WORLD TRADE ORGANIZATION AGREEMENTS

As a founding member of the WTO, Bangladesh is a party to all of the multilateral trade agreements included in the Uruguay Round of trade negotiations (but not the plurilateral agreements, such as the Agreement on Government Procurement), and it has taken a number of steps to bring its trade laws and policies into compliance with these agreements. As a least-developed country (LDC), Bangladesh has also been able to take advantage of the various provisions in the WTO agreements that accord special and differential treatment (SDT) to LDCs and other developing countries. At the same time, it should be kept in mind that Bangladesh, like many other countries, began to liberalize its import and export regimes before joining the WTO, and it has continued to liberalize these regimes independent of its WTO obligations. These "autonomous liberalization" measures are discussed further below. This subsection reviews the status of Bangladesh's original commitments under the main WTO agreements, and then considers some of the implications for Bangladesh of the decisions taken at the recent WTO ministerial meeting in Hong Kong.

### 1. ORIGINAL WTO COMMITMENTS

**General Agreement on Tariffs and Trade (GATT) 1994.** In the Uruguay Round, Bangladesh bound only 0.9 percent of its industrial tariff lines at 50 percent.<sup>15</sup> However, independent of the WTO, Bangladesh has been progressively simplifying its tariff structure and lowering its applied tariff rates since the 1980s. For example, the number of tariff slabs has dropped from 24 in the 1980s to 4 in 2005, while the unweighted average customs rate has dropped from 82 percent in 1991–92 to 36 percent in 2005–06.<sup>16</sup> (At the same time, the overall tax structure applicable to imports and exports has become more complex, due to the introduction of supplementary duties and other para-tariffs on the one hand, and duty drawbacks, tax exemptions for certain imported goods, and other measures to promote exports on the other hand.)

As discussed elsewhere, the GATT does not include any overtly gender-biased provisions. However, the flexibilities it allows for contracting parties to pursue domestic policy goals—for example, under Article XVIII—reflect a narrow understanding of "development," as essentially an economic process to be pursued through the promotion of particular industries, especially export industries. (This concept is far narrower than the approaches currently followed by most developing country governments and their development partners, which also emphasize the importance of human development, poverty reduction, gender equality, and other social goals. This

more broad-based, multi-sectoral approach to development is reflected, for example, in the Bangladesh NSAPR.) Article XX of the GATT, which sets out the non-trade policy areas that can provide a basis for exceptions from GATT disciplines, is similarly narrow, and does not expressly encompass government measures to ensure equal treatment and non-discrimination, to promote gender equality, or to redress historical disadvantages suffered by women or other social groups.<sup>17</sup>

The revenue effects of reduced tariff rates under the GATT can also have poverty and gender implications if the loss of tariff revenue is not offset by increases in government revenue from other sources. Historical experience has shown that social expenditures are especially vulnerable to budget cuts in the event of revenue shortfalls. The Bangladesh NSAPR notes that trade-related taxes comprise a large portion of government revenue, and that the loss of tariff revenue from further tariff liberalization would negatively affect the government budget.<sup>18</sup> Unless progress is made in increasing revenues from direct taxes or other sources, government expenditures for poverty reduction and social development programs could be jeopardized.

**Agreement on Agriculture (AoA).** LDCs were not required to commit to reduce their levels of support to agricultural exporters under the Uruguay Round. In the negotiations, Bangladesh agreed to bind all of its agricultural tariff lines, but at extremely high rates (200 percent in most cases).<sup>19</sup> The Government subsequently notified the WTO that between 1995/96 and 1999/2000 it provided no export subsidies that were subject to reduction commitments, but that it did provide various forms of domestic support to the agriculture sector, including concessional interest rates and interest rebates on loans to poor and marginal farmers.

At first glance, the AoA does not display overt bias against poor farmers or smallholders, including women. However, commercial farmers are considered more likely to benefit from liberalized trade in agricultural products because of their greater access to technology, credit, and market information. Small farmers are also less likely to be able to compete with cheap imports of agricultural products from countries that heavily subsidize their agricultural sectors. In Bangladesh, 75 percent of the population and 85 percent of the poor live in rural areas, and two-thirds of all jobs are in agriculture.<sup>20</sup> Women make up about 42 percent of the agricultural labor force, working mostly as unpaid family workers.<sup>21</sup> The combined effect of land erosion, population growth, and conversion of farmland to other uses has sharply reduced the average farm size, while the number of landless households has risen steadily. As Bangladesh is a net food-importing country, poor consumers in the country actually stand to benefit from cheaper imports of staple foods (although the beneficiaries are likely to be disproportionately urban).<sup>22</sup> However, small and landless farmers are unlikely to be able to compete with cheaper imports from countries such as India, or with the produce from larger domestic farms, unless they receive greater support in accessing inputs, credit, improved technology, and marketing services.<sup>23</sup>

**Agreements on the Application of Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT).** These agreements protect all WTO members including Bangladesh, and indirectly their exporters, from the imposition of sanitary measures and other standards by importing countries that go beyond the requirements

established in the agreements. For example, the SPS Agreement permits importing countries to impose sanitary and phytosanitary measures “only to the extent necessary to protect human, animal or plant life or health,...based on scientific principles and [with] sufficient scientific evidence...” (Article 2.2). At the same time, the agreements present two-fold challenges for LDCs such as Bangladesh: (1) to bring their own sanitary and technical standards into compliance with the agreements, and (2) to assist their exporters to comply with the sanitary and technical standards imposed by importing countries. In Bangladesh, there are basic legal and institutional frameworks in place to enforce these standards,<sup>24</sup> but the relevant institutions—such as the Ministries of Agriculture, Fisheries and Livestock, Food, and Health, and the Bangladesh Standards and Testing Institution—have limited capacity and resources to carry out these functions.<sup>25</sup> To date, donor support in these areas has been fragmented, but the recent needs assessment for trade-related assistance supported by the European Commission and others could provide the basis for more comprehensive and consistent support in the future.<sup>26</sup>

The SPS and TBT Agreements present particular challenges for small businesses, including small agroprocessors and artisans. They are less likely to have a voice in the producer associations that provide input to the development of national standards and industry certification systems, and they are also less likely to have the technical and financial capacity to implement these standards. It is therefore especially important to include representatives of small businesses, including women-owned businesses, in the development of national standards and certification systems, and to provide small businesses with appropriate training on relevant standards and certifications.

**Agreement on Trade-Related Investment Measures (TRIMs).** The TRIMs Agreement originally provided a seven-year transition period for LDCs to phase out any TRIMs prohibited by the agreement.<sup>27</sup> Since the early 1980s, Bangladesh has promoted foreign direct investment in an expanding range of sectors.<sup>28</sup> In the sectors open to foreign investment, Bangladesh has generally chosen not to impose local content requirements or other measures prohibited by the TRIMs Agreement.<sup>29</sup>

**Agreement on Textiles and Clothing (ATC).** As ready-made garments (RMGs) comprise such a large proportion of Bangladeshi exports, the phasing out of the Multi Fibre Arrangement under the ATC and its implications for the domestic RMG sector have dominated policy discussions in Bangladesh for several years. The gender and poverty implications of the ATC are well recognized, since the vast majority of workers in Bangladesh’s RMG sector are young women from poor households. As noted in Section VI.B., between 1.5 and 2 million workers are thought to be directly employed in the sector, with close to 1 million additional workers employed in accessory industries, and as many as 10 million additional people indirectly dependent on the sector. There has been concern that greater competition among garment-exporting countries following the dismantling of import quotas under the ATC could lead to factory closures and massive layoffs, which would disproportionately affect female workers and their households. The Government and other stakeholders therefore have been developing strategies to improve the competitiveness of local RMG firms and to develop social safety net programs for retrenched workers.

The ATC requires RMG-importing countries to give more favorable consideration to Bangladesh and other LDCs in applying any transitional safeguards to protect their domestic industries. However, the application of these safeguards by importing countries is outside Bangladesh's control. Thus far, it appears that the safeguard measures taken by the European Union and the United States against Chinese RMG exports have helped to maintain buyer demand for Bangladesh products. (However, the Bangladesh Garment Manufacturers and Exporters Association reports that profit margins on RMG exports are being squeezed.) Domestic law and policy issues related to the RMG sector in Bangladesh are discussed further in Section VI.B.

**Agreements on Antidumping, Safeguards, Subsidies, and Countervailing Measures.** Of interest to Bangladesh and its exporters, these agreements establish fairly elaborate procedures that importing countries must follow before applying antidumping, safeguard, or countervailing measures against Bangladeshi goods. All of these agreements also include SDT provisions to moderate the impact of the agreements on LDCs or all developing countries. The Agreement on Subsidies and Countervailing Measures (SCM), for example, exempts LDCs from the prohibition on export subsidies, and it originally gave LDCs a longer transition period to phase out subsidies contingent on local content. The Agreement on Implementation of Article VI of the GATT 1994 (Antidumping) requires WTO member countries to consider the special situation of developing countries in determining whether to apply antidumping measures, and to explore alternative remedies before applying antidumping duties that would affect the "essential interests" of a developing country member (Article 15). The Agreement on Safeguards and the SCM Agreement preclude safeguard and countervailing measures against a developing country's products where those products represent a marginal share of imports of the product.

Bangladesh has taken full advantage of its flexibility under the SCM Agreement to provide export subsidies, as reflected in the various incentives provided to exporters under the Export Policy 2003–06 (discussed further in Section V.B.). It has also established procedures for implementing antidumping, safeguard, and countervailing measures through amendments to the Customs Act 1969. However, the Tariff Commission under the Ministry of Commerce, which is responsible for conducting the relevant investigations related to these measures, has limited technical capacity and virtually no experience in these areas. Private sector firms also are unaware of the availability of these mechanisms. The situation is beginning to change, however. The Tariff Commission was recently successful in challenging India's imposition of antidumping duties on lead acid batteries exported by Bangladesh, with assistance from the Advisory Centre on WTO Law in Geneva.<sup>30</sup> The aggrieved private sector firm was extremely proactive, paying all of the costs involved. The Bangladesh mission to the WTO in Geneva also played an active and strongly supportive role.<sup>31</sup>

The flexibility provided to LDCs under the SCM Agreement to provide export subsidies also leaves space for Bangladesh and other LDCs to provide financial and other assistance to women-owned businesses and other small enterprises engaged in exports.<sup>32</sup> As the experience of the RMG sector demonstrates, the imposition of safeguards and similar measures by importing countries can have dramatic poverty and

gender impacts, depending on the income and gender profile of the workers in the affected industries.

**Agreements on Customs Valuation and Rules of Origin.** Although these WTO agreements have attracted relatively little attention, both pose significant administrative challenges for LDCs such as Bangladesh. The Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation) originally provided a five-year transition period for LDCs to bring their customs valuation rules into compliance. Bangladesh took advantage of this flexibility, revising the Customs Act 1969 and introducing new Customs Valuation Rules in 2000. However, the upgrading of Bangladesh's customs valuation system has also involved substantial investments in a pre-shipment inspection system and computerization of customs documents, which are still being implemented.<sup>33</sup> Complicated rules of origin maintained by importing countries also operate as a significant barrier to Bangladesh's exports, particularly RMG exports. Ironically, some of the most complicated rules of origin are found in the Generalized System of Preferences operated by the European Community, which is intended to promote duty-free imports of goods from LDCs.

**General Agreement on Trade in Services (GATS).** The GATS is perceived as more responsive to the circumstances of LDCs and other developing countries—compared to other trade agreements such as the GATT—because of the flexibility it provides to WTO members to choose the sectors and modes of service they wish to liberalize. The GATS includes provisions intended to increase the participation of developing countries in services trade, including an emphasis on the sectors and modes of supply that most interest them, and on providing developing countries with access to technology, distribution channels, and information networks. The GATS also provides for taking into account the difficulties of LDCs in negotiating specific commitments on services, given their economic situation and development needs. The agreement therefore allows flexibility to developing countries to liberalize fewer sectors and fewer types of transactions. Bangladesh has made use of this flexibility, originally committing to liberalize only two sub-sectors—telecommunications and five-star hotels.

Policy researchers have identified Mode 4 under the GATS—the temporary movement of natural persons for work—as holding the most promise for Bangladesh in terms of expanding overseas employment options for its citizens.<sup>34</sup> So far, however, the industrialized countries that would be the most likely “importers” of Mode 4 services from Bangladesh have shown little interest in expanding their Mode 4 commitments beyond limited transfers of managers and professionals employed by multinational firms. Such limited commitments under Mode 4 would contribute little to poverty reduction and gender equality, and would barely tap the large pool of poor, unskilled, and semi-skilled women and men in Bangladesh who are interested in overseas employment.

**Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).** The TRIPs Agreement remains one of the most controversial trade agreements included in the Uruguay Round, and has been subject to the most clarification and amendment. The agreement originally provided a 10-year transition period for LDCs to comply with its provisions (beyond the one-year transition period allowed for all WTO members),

which would have expired on January 1, 2006. The Doha ministerial meeting in 2001 provided an additional transition period—until January 1, 2016—for LDCs to amend their patent laws to cover pharmaceutical drugs. In November 2005, the Council on TRIPs agreed to further extend the general transition period for LDCs until July 1, 2013.

Despite these transition periods, Bangladesh has taken several steps to bring its intellectual property laws into compliance with the TRIPs Agreement, even ahead of its TRIPs obligations. For example, a new Copyright Act was enacted in 2000 to comply with TRIPs, well ahead of the original 2006 deadline. The new Copyright Act extends copyright protection for a period of 60 years, which is 10 years longer than the 50-year period required under TRIPs (and therefore a “TRIPs-plus” provision). A new draft Trade Marks Act, which would extend protection to service marks as well as trademarks, is currently being reviewed by the Ministry of Law, Justice and Parliamentary Affairs. A new draft Patents and Designs Act, which would replace the Patents and Designs Act 1911, is also being prepared by the Law Commission. Consistent with the TRIPs Agreement, the 2003 draft of the new Patents and Designs Act extends patentability to processes as well as products, and establishes a general patent term of 20 years. It also provides a number of exclusions, including for substances “capable of being used as food or medicine,” and for “any variety of animal or plant or any essentially biological process for the production of animals or plants, not being a micro-biological process or the product of such process” (Section 4[d] and [I]).<sup>35</sup> Whether the provisions of the final act will preserve Bangladesh’s rights under the TRIPs Agreement is not yet known.<sup>36</sup> Another draft act currently under review, the Plant Variety and Farmers’ Rights Protection Act, would provide *sui generis*<sup>37</sup> protection to plant varieties as permitted under Section 27.3(b) of the TRIPs Agreement. As discussed further below, the cooperation agreement between Bangladesh and the European Community commits Bangladesh to join several intellectual property conventions (another “TRIPs-plus” condition).

Implementation of the TRIPs Agreement could have a number of gender and poverty impacts in Bangladesh:

- The patenting of pharmaceutical products as well as processes—required to be implemented by January 2016—would likely increase the cost of new drugs in Bangladesh. Since drugs are typically an out-of-pocket expense for patients in Bangladesh, any increases in drug costs will disproportionately affect poor women, who are generally responsible for their family’s health care.
- Depending on the type of plant variety protection that Bangladesh ultimately adopts under Section 27.3(b) of the TRIPs Agreement, women farmers’ traditional practices related to saving seeds could also be undermined.<sup>38</sup> For example, for several years women’s groups in Tangail district have maintained community seed repositories supporting numerous varieties of rice, as well as vegetables, fruit, and bamboo. These successful seed-saving practices have spread to several other districts through the New Agricultural Movement (*Nayakrishi Andolon*) promoted by UBINIG.<sup>39</sup>

- On the other hand, the introduction of legal protection for geographical indications could benefit small producers of handicrafts (such as *jamdani*<sup>40</sup> or *nakshi kantha*<sup>41</sup>) that are identified with particular regions or with Bangladesh generally. Most handicraft producers are women, including many landless women in rural areas.<sup>42</sup> To benefit small producers, the procedures to establish a geographical indication would need to be simple, transparent, and inexpensive, and artisans would need to be informed about the procedure through an effective information campaign. (However, there do not appear to be any current legislative proposals to protect geographical indications.)

**Plurilateral Agreement on Government Procurement.** Bangladesh is not a party to this plurilateral agreement. However, as discussed below, the Government issued new Public Procurement Regulations in 2003 and a new Public Procurement Act in 2005 with the strong encouragement of the World Bank and other development partners. Press reports indicate that the new Public Procurement Act allows the Government some flexibility to use different procurement methods to further the public interest. This flexibility could be used, for example, to provide assistance or give preferences to small or women-owned businesses in connection with the award of government contracts.<sup>43</sup> Such preferences are authorized by Article 27 of the Constitution, and were specifically recommended in a recent report published by the Ministry of Women and Children Affairs.<sup>44</sup>

## 2. IMPLICATIONS OF THE HONG KONG MINISTERIAL MEETING

The recent WTO ministerial meeting in Hong Kong produced more limited outcomes than many participants had hoped. Nevertheless, some preliminary conclusions can be drawn about the implications of some of the Hong Kong decisions for Bangladesh.<sup>45</sup>

**Agriculture.** Under the negotiating framework for agriculture, Bangladesh and other LDCs are under no obligation to make commitments to reduce either export subsidies or domestic supports for agriculture. However, as a net food-importing country, Bangladesh may be adversely affected by the rise in world prices of certain agricultural products resulting from the Hong Kong agreement to eliminate export subsidies in agriculture by the end of 2013.

**Cotton.** The Hong Kong agreement that developed countries would eliminate their export subsidies on cotton during 2006 could adversely affect Bangladesh's RMG sector, to the extent that it depends on subsidized cotton imports from developed countries. While Bangladesh's knitwear manufacturers can source more than 75 percent of their yarn and fabrics locally, woven garment manufacturers rely on imported material for about 85 percent of their production.<sup>46</sup> The United States is the largest developed-country supplier of raw cotton to Bangladesh, and provided about 30 percent of imports in 2004.<sup>47</sup> Other suppliers include Kazakhstan, Uzbekistan, and some West African countries.

**Non-agricultural market access (NAMA).** Under the NAMA negotiating framework, Bangladesh and other LDCs have the flexibility to decide the extent and level of tariff bindings that they wish to make. However, there is a concern that general tariff reductions under NAMA will further erode the trade preferences that some LDCs now

enjoy. WTO researchers have estimated that Bangladesh is among the countries most likely to be affected by preference erosion.<sup>48</sup>

**Services.** The Hong Kong Ministerial Declaration reinforces the flexibilities contained in the Modalities for the Special Treatment for LDC Members in the Negotiations on Trade in Services. In particular, WTO members agreed to give priority to the sectors and modes of service of particular interest to LDCs, including Mode 4. If this results in expanded commitments to Mode 4 liberalization by industrialized countries, this could benefit skilled and semi-skilled workers from Bangladesh (but probably not unskilled workers).<sup>49</sup>

**Rules.** The Hong Kong declaration encouraged WTO members to avoid any unwarranted use of antidumping measures, and to limit the cost and complexity of antidumping proceedings for interested parties. If WTO members follow this advice, and consider alternative remedies in the case of developing countries (as required by the Antidumping Agreement), this might spare Bangladesh and other developing countries (especially LDCs) the considerable expense of challenging antidumping duties.<sup>50</sup>

**Trade facilitation.** The impact of these negotiations on Bangladesh is still unclear, and will depend on whether the trade facilitation measures that are ultimately agreed upon represent a streamlining of existing procedures or additional requirements for WTO members. Bangladesh's capacity to implement its existing WTO commitments is already stretched quite thin.<sup>51</sup>

**Least-developed countries.**<sup>52</sup> The agreement of developed country members of the WTO to provide duty-free and quota-free market access to products originating from LDCs by 2008 represents a major step toward fulfillment of the Doha Development Agenda agreed at the WTO ministerial meeting in November 2001. Unfortunately, the flexibility allowed to developed countries—to provide such access to only 97 percent of products originating from LDCs—most likely means that Bangladesh will not benefit from this concession, at least with respect to its RMG exports. As Dr. Bhattacharya of the Centre for Policy Dialogue has pointed out, the 3 percent reservation could cover more than 300 US tariff lines, while only 20–25 tariff lines account for about two-thirds of Bangladesh's total exports.<sup>53</sup>

On the other hand, some of the other LDC-specific commitments made in Hong Kong could benefit Bangladesh if they are implemented fully. These include the commitments to (1) ensure that preferential rules of origin for imports from LDCs are transparent and simple to administer, (2) increase financial and technical assistance to help LDCs comply with the SPS and TBT Agreements, (3) coordinate with multilateral financial institutions to ensure that LDCs are not subject to conditionalities that are inconsistent with their WTO obligations, and (4) allow LDCs to introduce new trade-related investment measures for up to five years.

## **B. REGIONAL TRADE INITIATIVES**

Bangladesh is a party to several regional trade arrangements, including the Asia-Pacific Trade Agreement (formerly the Bangkok Agreement), the Agreement on a South Asian Free Trade Area (SAFTA), the Bay of Bengal Initiative for Multi-Sectoral Technical and

Economic Cooperation (BIMSTEC), and the Framework Agreement for a Trade Preferential System for the Organization of the Islamic Conference (TPS-OIC). These trade arrangements are generally consistent with the participating countries' WTO commitments, or provide additional trade concessions. In each of these trade initiatives, Bangladesh is entitled to certain concessions as an LDC. Further detail on these initiatives is provided in Annex 3.

### C. BILATERAL TRADE ARRANGEMENTS

Bangladesh has entered into a large number of bilateral agreements related to trade, investment, development cooperation, avoidance of double taxation, and other matters. As of 2000, for example, Bangladesh had trade agreements with more than 30 countries and investment agreements with more than 20 countries, including the United States.<sup>54</sup> Press reports indicate that the Government continues to explore other bilateral agreements, including a trade and investment framework agreement with the United States. Bangladesh's exports also receive market access preferences in several countries—17 countries as of 2000—under the Generalized System of Preferences (GSP). Four of these countries—Australia, Canada, New Zealand, and Norway—provide duty-free market access, with Canada importing the largest volume of duty-free products.<sup>55</sup> Bangladesh is negotiating for duty-free market access with several other countries such as India, Pakistan, and Turkey but agreements have not been finalized. In turn, Bangladesh grants tariff concessions to other developing countries—47 as of 2000—under the Global System of Trade Preferences among Developing Countries.<sup>56</sup> Table 2 shows Bangladesh's main trading partners and agreements.

**Table 2: Bangladesh's Main Trading Partners and Trade Agreements/Arrangements**

Country/Region	Exports (%)	Imports (%)	Main Trade Agreements/Arrangements (in addition to WTO Agreements)
United States	39.4	4.3	United States Generalized System of Preferences
European Community (EC)	43.0	12.3	Cooperation Agreement Between the EC and Bangladesh; EC Generalised System of Preferences (2006–15)
East Asia	7.0	49.6	Asia-Pacific Trade Agreement; BIMSTEC (under negotiation)
South Asia	--	16.3	South Asia Free Trade Area Agreement; BIMSTEC (under negotiation)
Middle East	2.1	3.9	Trade Preference System for the Organization of the Islamic Conference (under negotiation)
Other	8.5	13.6	Various
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	

Source: WTO, *Trade Policy Review: Bangladesh—Report by the Secretariat* (2000).

The potential benefits to Bangladesh of the GSP are undercut by importing countries' exclusion of key Bangladeshi exports from their preference scheme or by complex rules of origin for GSP-eligible imports. For example, Bangladesh's RMG exports to the United States continue to be subject to high tariffs, in some cases higher than 25 percent. Bangladesh's RMG exports to the European Union would be subject to zero tariffs under the "Everything But Arms" Initiative, but the European Community's complex rules of origin have prevented Bangladesh from taking full advantage of these trade preferences.<sup>57</sup> The European Community recently relaxed its rules of origin to

permit regional cumulation of value-added, for example, within the SAARC region. Thus far, however, the Government has not taken advantage of the regional cumulation rule, no doubt out of concern for the impact on domestic textile manufacturers.

In some cases, continued access to the GSP is also subject to trade-related conditions. Under the United States' GSP, for example, the selection criteria for beneficiary countries include the countries' actions to reduce trade-distorting investment practices and to reduce barriers to trade in services. Other criteria include the beneficiary countries' protection of intellectual property rights and promotion of internationally recognized workers' rights. In the case of Bangladesh, the AFL-CIO filed a petition in 1999 seeking withdrawal or suspension of GSP benefits to Bangladesh on the grounds that the country's export processing zones did not protect workers' freedom of association and right to bargain collectively. This petition and follow-up discussions eventually led to the enactment of the Bangladesh EPZ Workers Association and Industrial Relations Act in 2004.

Trade-related issues are also addressed in some of Bangladesh's development cooperation agreements with bilateral donors. The cooperation agreement between Bangladesh and the European Community, for example, covers a wide range of topics, including development, trade and commerce, environmental protection, SME development, human resource development, science and technology, illicit drugs, and money laundering. The provisions of the agreement on trade and commerce generally reinforce the two governments' commitments under WTO agreements. In some respects, however, the cooperation agreement goes beyond WTO commitments. For example, the agreement requires Bangladesh to accede to six international treaties related to intellectual property no later than January 1, 2006, and to "endeavor to accede" to five additional treaties (including the International Convention for the Protection of New Varieties of Plants [UPOV 1991] and the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure). These undertakings go well beyond Bangladesh's commitments under the TRIPs Agreement. In the cooperation agreement, the European Community also encourages Bangladesh to join the WTO Plurilateral Agreement on Government Procurement, which is an optional agreement for WTO members.

As noted earlier, Bangladesh's membership in the WTO has entailed substantial implementation costs, especially related to customs valuation, and these costs can be expected to increase as the transition periods for LDCs under other WTO agreements expire. Regional and bilateral trade agreements, and GSP schemes, can provide additional trade benefits to Bangladesh, especially when they accord preferential treatment to Bangladesh as an LDC. However, the negotiation and implementation of numerous trade agreements entail additional costs for the Government and for both importers and exporters. Inconsistencies in rules of origin among importing countries are especially burdensome for small exporting businesses. WTO-plus conditions in trade-related areas such as intellectual property protection can undermine the SDT provisions already negotiated and accepted by all WTO members. To date, Bangladesh has also received relatively little technical assistance to implement its WTO commitments, and the assistance provided has been fragmented among various donors.<sup>58</sup>

## **D. TRADE-RELATED POLICY CONDITIONS IN MULTILATERAL LOANS**

As noted earlier, Bangladesh began to liberalize its import and export regimes in the 1980s, well before joining the WTO, and has continued to implement trade liberalization measures independent of the WTO. Especially since the 1990s, many of these trade reforms have been undertaken as conditions for loans from multilateral financial institutions such as the International Monetary Fund and the World Bank. For example, under three successive Development Support Credits (DSCs) financed by the International Development Association (a member of the World Bank Group), Bangladesh has simplified its tariff structure, reduced its top tariff rates, eliminated import license fees, and removed most quantitative restrictions on imported goods. Under these DSCs, the Government also introduced the Public Procurement Regulations 2003 and Public Procurement Act of 2006. Further actions that are planned under the current DSC III include phasing out supplementary duties, further simplifying import requirements under a new Import Policy Order 2006–09, implementing the new public procurement law, drafting a social protection strategy and developing new social protection programs, and improving the leasing system for public water bodies to improve access by the poor to fisheries.

Other development agencies and banks are also actively involved in trade policy matters in Bangladesh. For example, the United Kingdom's Department for International Development (DFID) is currently working with the Ministry of Commerce to develop a national trade strategy. As noted earlier, the European Community recently commissioned a needs assessment for future trade-related technical assistance to Bangladesh. The Asian Development Bank (ADB) is supporting the development of the new national SME development policy, as well as agribusiness development and improvements in facilities and operations of the Chittagong Port. ADB's SME development program and agribusiness development program both include gender action plans, and provide for the involvement of women business leaders in program activities. However, not all donor-supported programs related to trade include gender analysis or measures to integrate gender concerns in program activities.

The multilateral financial institutions and bilateral donors can provide substantial help to Bangladesh in implementing its WTO and other trade commitments, for example, by financing infrastructure improvements and supporting trade policy analysis, legislative reform, and capacity development of government staff and private-sector actors. However, it is important that these external agencies coordinate their trade-related assistance as much as possible, and integrate poverty and gender analysis in all of their trade-related projects. Consistent with the recent decision of the WTO Ministerial Meeting in Hong Kong, these external agencies also need to ensure that their loan and grant assistance does not subject Bangladesh to conditionalities that are inconsistent with its rights under WTO agreements.<sup>59</sup>

# TRADE-RELATED LAWS, POLICIES, AND INSTITUTIONS

The previous section noted a number of law and policy changes that the Government has taken to comply with its international trade commitments and multilateral loan conditions. This section reviews Bangladesh's trade-related laws, policies, and institutions in greater detail, including their links to national development goals such as poverty reduction and gender equality.

## A. NATIONAL STRATEGY FOR ACCELERATED POVERTY REDUCTION

As mentioned earlier, the NSAPR identifies four strategic channels for reducing poverty and promoting equitable development, including economic growth initiatives such as increased trade. It posits that increased trade can contribute to poverty reduction by generating substantial employment opportunities in export sectors such as the RMG sector. The NSAPR outlines a three-part strategy for trade expansion, including (1) support for the RMG sector, (2) support for the primary textile sector, and (3) export diversification. Support for the RMG sector will include support for female workers who may be retrenched as a result of shifts in global demand following the dismantling of the Multi Fibre Agreement. Increased support for the primary textile sector, including sericulture and handloom weaving, is expected to contribute to poverty reduction because of the large proportion of poor rural people, including women, involved in these activities. The export diversification strand of the NSAPR generally follows the Export Policy 2003–06, and emphasizes opportunities in (a) software and ICT, (b) agricultural products and agroprocessing, (c) light engineering, (d) leather goods, and (e) high-value RMG. Other promising export products include pharmaceuticals, cosmetics, silk cloth, handicrafts, and herbal and medicinal plants. As noted in the following section, small businesses, including women-owned businesses, are active in agroprocessing, silk weaving, and handicrafts. On the other hand, the NSAPR notes that any liberalization of import tariffs could have a negative effect on the national budget, and must be offset by the increased collection of revenue from other sources.

The policy matrix for the NSAPR includes a number of specific actions to be taken to diversify and promote exports, further liberalize imports, improve the procedures for remittances from overseas workers, and develop capacity for trade negotiations. The matrix also identifies several measures to address gender concerns related to trade expansion. These include (1) providing all garment workers with identification cards; (2) providing one-stop service for women planning to migrate overseas for work; (3) providing more diverse training opportunities for women currently working in factories and as housemaids; (4) encouraging the participation of women's groups, including female entrepreneurs and trade unionists, in committees of the Ministry of Commerce and in trade negotiations; (5) ensuring the inclusion of gender concerns in the WTO's Trade Policy Review Mechanism; and (6) negotiating improved market access for Bangladeshi workers under Mode 4 of the GATS. Other gender-related measures in the matrix relate to (a) improving the employment terms and conditions for women workers;

(b) providing women entrepreneurs with preferential access to trade fairs, institutional credit, industrial plots, and marketing support; (c) providing women farmers with agricultural credit; and (d) distributing *khas* land to women, especially widows and separated or divorced women.

## **B. TRADE LAWS AND POLICIES**

The main laws governing cross-border trade and investment in Bangladesh include the Imports and Exports (Control) Act 1950, the Customs Act 1969, the Foreign Exchange Regulation Act 1947, the Foreign Private Investment (Promotion and Protection) Act 1980, the Bangladesh Export Processing Zone Authority Act 1980, and the Bangladesh Private Export Processing Zone Act 1996, all as amended. These acts have been supplemented by various rules and regulations, including the Standard Rules of Origin 1977 and the Customs Valuation Rules 2000.

As mentioned earlier, the Customs Act has been amended several times to bring it into conformity with WTO agreements related to customs valuation and antidumping, safeguard, and countervailing measures. It has also been amended to provide for pre-shipment inspection and bonded warehouses.

The Foreign Private Investment (Promotion and Protection) Act 1980 accords “fair and equitable treatment” and “full protection and security” to foreign private investors in Bangladesh (Section 4). The two export processing zone acts create a special authority or board to establish and manage these zones, and also empower the Government to exempt these zones from tax, labor, and other laws. The laws on foreign private investment and export processing zones all include the objective of increasing employment opportunities.

The main policy documents governing trade are the Import Policy 2003–06, the Export Policy 2003–06, and the Industrial Policy 2005. Since the 1980s, restrictions on imports have been progressively lifted. The current Import Policy, issued as an order under the Imports and Exports (Control) Act 1950, includes a control list of items that are either prohibited from import (such as literature deemed obscene or subversive, live pigs and pork products, and illegal drugs) or subject to import restrictions (such as salt, insecticides, cartons, and various types of cloth). Although import licenses are no longer required, importers must still be members of a recognized trade organization and obtain an import registration certificate. Other permits and certifications may also be required depending on the importer’s status and the type of imported goods. Special provisions apply to industrial importers, commercial importers, public sector importers, and export-oriented industries.

The current Export Policy aims to promote exports by providing assistance and incentives to current and potential exporters and by building the capacity of both public and private sector institutions involved with exports. In addition to general incentives such as duty-free import of capital machinery, bond facilities, a duty drawback scheme, and an income tax exemption for export earnings, the policy provides specific cash incentives to exporters in several “thrust sectors,” including frozen shrimp and fish, agricultural products, handloom and other local fabrics, and products made of straw, jute, and leather. Exporters can access these export subsidies through their banks.

Exporters must also be members of a recognized trade organization and obtain an export certificate.

The Export Policy refers to the expected social as well as economic benefits of increased exports, including employment opportunities and poverty reduction. The Industrial Policy 2005 identifies similar benefits, particularly from supporting agro-based industries, cottage industries, and SMEs more generally. The Industrial Policy is also the only trade-related policy that specifically identifies women entrepreneurs as a priority group for support. One of the objectives of the policy is to “[p]rovide women entrepreneurs with all necessary assistance in establishing industries in various sectors” (Chapter 2.9). Chapter 11 of the policy outlines a comprehensive program for promoting women-owned businesses (see Box 1).

#### **Box 1: Industrial Policy Support for Women Entrepreneurs**

Chapter 11 of Bangladesh’s Industrial Policy 2005, “Participation of Women Entrepreneurs in Industrialization and their Advancement,” includes commitments to

- identify promising women entrepreneurs;
- provide women entrepreneurs with pre-investment advice;
- consider various incentives and other types of financial support for women establishing small or cottage industries;
- provide technical training to women entrepreneurs through institutions such as the Bangladesh Industrial and Technical Assistance Centre, the Bangladesh Institute of Management, and the Small and Cottage Industries Training Institute;
- give preference to women entrepreneurs in service industries;
- in particular, provide technical and financial assistance to women entrepreneurs in “thrust” sectors such as agroprocessing, garments, electronics, ceramics, hosiery, frozen food, and cold storage, and to women establishing cottage industries to produce leather goods, embroidery, bamboo and cane handicrafts, and other decorative items and gifts;
- reserve plots for women entrepreneurs in industrial parks in all areas of the country;
- improve the standard of goods produced by women entrepreneurs, and provide marketing support in local and foreign markets;
- ensure the participation of women entrepreneurs in industrial policymaking; and
- establish a separate public or private bank to provide women entrepreneurs with easy access to equity capital and working capital, including collateral-free loans.

The Industrial Policy 2005 also provides for the participation of the Ministry of Women and Children Affairs and the Chairperson of the Women Entrepreneurs’ Association (WEA) in the National Council for Industrial Development, and for the participation of the WEA Chairperson on other committees and subcommittees. These provisions, and the overall program of support to women entrepreneurs, respond to several recommendations made in a recent report published by the Ministry of Women and Children Affairs.<sup>60</sup>

Although the Industrial Policy 2005 strongly supports cottage industries and small enterprises, especially those owned and managed by women, recent studies have noted that Bangladesh's other trade-related laws, policies, and practices present a number of obstacles for small businesses, especially women-owned businesses. The recent needs assessment of trade-related technical assistance carried out for the European Community notes that the current system of taxes applicable to imports—including supplementary duties, regulatory duties, and value-added tax (VAT), in addition to basic import tariffs—is extremely complex, and basic information on the system is not readily available to importers. Advance income taxes that are collected at the point of importation are also a constraint on imports, especially for small importers with limited liquidity. The duty drawback system and bonded warehouse system function relatively well for large RMG exporters, but non-RMG exporters experience significant delays in recouping duty paid on imports, and bonded facilities are not readily available to them. Trade finance is also geared primarily to RMG manufacturers, and smaller importers and exporters have difficulty meeting the collateral requirements of local banks. Despite efforts to streamline and computerize customs clearance procedures, importers still experience considerable delays, including burdensome paperwork requirements and numerous demands for informal payments. Similar obstacles apply to exports. These delays and rent-seeking behavior are especially burdensome for small businesses.<sup>61</sup>

A recent study under the Policy Leadership and Advocacy for Gender Equality (PLAGE) Project of the Ministry of Women and Children Affairs found that current trade policies and practices pose particular problems for women-owned businesses. For example, the study found that the requirement of import and export registration certificates is unnecessary and burdensome. Since the registration authority is not present in all districts, the small business owner may need to travel just to obtain a certificate. The renewal of these certificates is even more complicated. Pre-shipment inspection procedures and the related charges are also burdensome for small women-owned businesses. In general, women-owned businesses dread the customs clearance process, which invariably involves delays, demands for informal payments, or the taking of part of the import shipment by customs officials as “samples.”<sup>62</sup> Frequent changes in the tariff structure also complicate business planning for women entrepreneurs. At the same time, lower import tariffs and rampant smuggling have made it difficult for certain women-owned businesses to compete with cheaper imports, particularly textiles and food products.<sup>63</sup> Handicraft exporters also experience delays in obtaining GSP certification because both the Export Promotion Bureau and the Handloom Board are involved in the clearance process.<sup>64</sup> Based on this analysis, the PLAGE study made several recommendations (see Box 2).<sup>65</sup>

### **Box 2: Recommendations to Support Women's Import/Export Businesses**

Based on its study of laws, rules, and policies affecting women entrepreneurs involved in import and export activities, the Policy Leadership and Advocacy for Gender Equality (PLAGE) Project of the Ministry of Women and Children Affairs has made several recommendations, including that

- the system of import and export registration should be abolished;
- women importers should be allowed more flexibility to form import groups, including both industrial and commercial importers;
- an information window for women traders should be opened in the Department of Imports and Exports within the Ministry of Commerce, and a customs official should be designated in each port of clearance to handle women importers' cases as a priority;
- pre-shipment inspection should be waived as a requirement for women-owned businesses, which tend to import relatively small quantities of goods;
- the interests of women-owned businesses should be represented in the Import Trade Control Committees that adjudicate disputes between importers and the customs authorities; and
- measures should be taken to discourage smuggling, and the overall tax structure applicable to imports should be rationalized to meet the needs of women entrepreneurs (for example, with exemptions for small businesses).

Consistent with the NSAPR and the Industrial Policy 2005, similar policy changes could be introduced to benefit all small importers and exporters. However, since women-owned businesses are particularly subject to harassment and discriminatory treatment, it would also be appropriate to consider targeted measures such as an information window for women traders and representation of women-owned businesses on Import Trade Control Committees.

### **C. TRADE-RELATED INSTITUTIONS**

A large number of public and private institutions are involved in formulating and implementing trade laws and policies in Bangladesh. Within the Government, these include the Ministry of Commerce (specifically the Chief Controller of Imports and Exports, the Export Promotion Bureau, the Bangladesh Tariff Commission, and the WTO Cell), the Ministry of Finance (mainly the National Bureau of Revenue and its customs and VAT departments), the Board of Investment, the Bangladesh Export Processing Zone Authority, and the Bangladesh Free Trade Institute (BFTI). Several advisory bodies also provide input to national trade policy, including the Import Advisory Committee, National Committee on Exports, Export Promotion Council, WTO Advisory Committee, and National Council for Industrial Development (NCID). Registered trade organizations also have a voice in trade policy, especially the Federation of Bangladesh Chambers of Commerce and Industry, the Dhaka Chamber of Commerce and Industry, and trade associations for key export industries such as the Bangladesh Garment Manufacturers and Exporters Association, the Bangladesh Knitwear Manufacturers and Exporters Association, and the Bangladesh Textile Manufacturers Association. Under the Industrial Policy 2005, business promotion councils are also being formed for “thrust” sectors such as ICT, light engineering, herbal and medicinal plants, pharmaceuticals, and agroprocessing.<sup>66</sup>

Key trade policy units, including the Bangladesh Tariff Commission and WTO Cell within the Ministry of Commerce, and the newly established BFTI, have limited capacity and resources. It would therefore seem important for trade policymakers and negotiators to draw on the trade expertise in the nongovernment and private sectors. Substantial expertise in trade economics is already available and recognized, but there is less awareness of the importance of trade law expertise. To address this gap, BFTI is considering establishing an advisory group of lawyers interested in trade issues.<sup>67</sup>

The interests of small farmers, small business owners, artisans, and workers, especially women, are not well represented in these trade-related institutions. The interests of small businesses have historically been represented within the Government by the Bangladesh Small and Cottage Industries Corporation (BSCIC). While BSCIC falls under the authority of the Ministry of Industries, its links to the Ministry of Commerce and trade offices such as the Export Promotion Bureau are less clear. The BSCIC's effectiveness has also been undermined by weak management, a shortage of qualified staff, and chronic operating losses, and options for restructuring it are currently being considered.<sup>68</sup> Labor matters are generally the responsibility of the Ministry of Labour and Employment, except for labor issues within EPZs, which are handled by the relevant authority (the Bangladesh Export Processing Zone Authority, for all government-managed EPZs), and issues related to overseas workers, which are handled by the Ministry of Expatriate Welfare and Overseas Employment. The Ministry of Labour and Employment does not appear to have been actively engaged in trade policy discussions in the past. However, its level of involvement may increase as co-chair with the Ministry of Commerce of the new National Forum on Social Compliance, which was established to address worker safety and other issues in the RMG sector following the fatal collapse of the Spectrum-Shahriyar factory in 2005. Under the National Policy for the Advancement of Women, women-in-development (WID) focal points at the level of joint secretary or joint chief have been designated in the different ministries to ensure that gender concerns are addressed within the ministries' work programs. However, many of these WID focal points lack training in gender analysis or gender-related planning, and they tend to have limited time and capacity to address gender issues in their areas of work.<sup>69</sup> The Ministry of Women and Children Affairs has generally not been included in trade policy discussions, but under the PLAG Project it has commissioned gender analyses of trade-related laws and policies, specifically related to women entrepreneurs and women workers.<sup>70</sup>

Of the various trade advisory bodies, only the NCID includes representatives of BSCIC and women business owners (as well as representatives of the Ministries of Labour and Employment, Expatriate Welfare and Overseas Employment, and Women and Children Affairs).<sup>71</sup> In the private sector trade organizations, small businesses and women-owned businesses also have little representation. The two largest chambers of commerce, the Federation of Bangladesh Chambers of Commerce and Industry and the Dhaka Chamber of Commerce and Industry, have established standing committees on women's entrepreneurship development, but they are not terribly active. The National Association for Small and Cottage Industries in Bangladesh has central and district-level Women's Development Cells, but they are similarly inactive.<sup>72</sup> The Government is

establishing a National SME Women Entrepreneurs Forum, but its mandate is not yet clear.

In contrast, several women's trade bodies that have been established recently are providing a variety of services to their members. The oldest of these is the Women Entrepreneurs Association, founded in 1994. More recently, the Women Entrepreneurs Association of Bangladesh was established in 2000, followed by the Bangladesh Women's Chamber of Commerce and Industry in 2001. Smaller associations have also been founded in Chittagong and other areas. The services provided by these organizations include assistance to women entrepreneurs in obtaining trade licenses, bank loans, and training, and in attending trade fairs (both domestic and overseas). However, the official status of some of these women's trade bodies appears to be uncertain and subject to political or other factors. For example, the Women Entrepreneurs Association of Bangladesh has received full recognition as a registered trade body, while the Bangladesh Women's Chamber of Commerce and Industry has only been granted a provisional license.<sup>73</sup>

Since the current trade regime requires all importers and exporters to be members of a "recognized" trade organization, it would seem important for all qualified women's trade organizations to receive appropriate licenses and recognition, and for other chambers and trade bodies to open their membership to small businesses, especially women-owned businesses. Moreover, under the Trade Organization Rules 1994, recognized trade organizations have the right to provide the Government with advice and recommendations related to trade policy, and to send their representatives to meetings, workshops, and conferences on trade-related matters (Section 10).

The NCID sets a precedent for expanding the membership of other trade advisory bodies to include representatives of small business owners, artisans, and workers, especially women. Alternative trade networks such as the ECOTA Fair Trade Forum, which works predominantly with women artisans in Bangladesh, would also add valuable perspectives and recommendations on trade policy matters.

#### **D. OTHER RELEVANT LAWS**

Many other laws, policies, and regulations of Bangladesh are related directly or indirectly to particular trade-related issues (such as sanitary measures, technical standards, or intellectual property rights), to cross-cutting issues (such as labor conditions or land tenure), or to particular export sectors (such as the RMG or shrimp sectors). The following section reviews selected laws, policies, and regulations relevant to two key export sectors—ready-made garments and shrimp processing—and a third priority sector—SMEs—with export potential. These sector discussions overlap to some extent. For example, the discussion of labor standards and social compliance issues in the RMG sector is also relevant to shrimp processing firms and to small manufacturers in all sectors.

# SELECTED SECTOR LAWS AND POLICIES

Trade expansion can have different impacts on business owners, workers, and consumers in particular sectors, depending in part on their status and rights under relevant policies, laws, and regulations. This section considers the implications of trade expansion for the law and policy frameworks in three sectors in Bangladesh, especially in light of the national commitments to poverty reduction and gender equality outlined in Section III.

## A. SMALL AND MEDIUM-SIZED ENTERPRISES

The impact of Bangladesh's current trade policies and laws on small businesses, especially women-owned businesses, was examined in Section V. This subsection continues the analysis by considering the impact of other laws, regulations, and business practices on small businesses involved in export (or competing with imports). Again, particular attention is paid to the challenges for small, women-owned businesses.

Estimates of the number of small businesses in Bangladesh vary widely, depending on the definition. A 1994 survey by BSCIC, for example, counted more than 38,000 small industries and more than 400,000 cottage industries as of 1991.<sup>74</sup> In contrast, a recent economic census counted close to 79,000 SMEs, of which 94 percent were small enterprises and 6 percent were medium sized.<sup>75</sup> Meanwhile, a 2003 private sector survey estimated a total of about 6 million micro-, small, and medium-sized enterprises in Bangladesh.<sup>76</sup> In any case, it is agreed that SMEs represent the majority of firms in Bangladesh, and that they are a major source of employment.<sup>77</sup> According to one estimate, small and cottage industries employ more than 80 percent of the total industrial workforce.<sup>78</sup> BSCIC's 1994 survey found that most small and cottage industries were involved in food processing; other sectors included (1) textiles, apparel, leather, and jute; (2) wood and wood products; (3) chemicals, coal, rubber, and plastics; (4) glass and ceramics; (5) metal and metal products; (6) paper and paper products; and (7) handicrafts.<sup>79</sup>

Unfortunately, the Government entities responsible for collecting information on business and industry—including BSCIC and the Board of Investment—do not disaggregate their data on the basis of sex. Banks also do not generally collect sex-disaggregated data on their commercial borrowers. Therefore, it is difficult to estimate the proportion of enterprises owned and managed by women. However, the PLAGÉ Project of the Ministry of Women and Children Affairs recently surveyed eight industrial estates managed by BSCIC and found that only about 4 percent of the enterprises in the estates were owned by women, and another 4 percent were jointly owned by women and men. Fewer than half of the women who owned these enterprises also managed them. The PLAGÉ Project also surveyed six banks and found that, in 1993–94, women represented 0.005 percent of borrowers and received 0.114 percent of all loan amounts advanced during those years.<sup>80</sup> In contrast, women are likely to own and manage a much larger proportion of “cottage industries” that are home based. Donor-supported projects that target both micro-enterprises and small enterprises are also

likely to have a larger percentage of women borrowers. For example, between 1982 and 1998, Micro Industries Development Assistance and Services (MIDAS), initially supported by USAID, extended more than 30 percent of its loans to small and micro-enterprises run by women.<sup>81</sup>

## **1. NATIONAL STRATEGY FOR ACCELERATED POVERTY REDUCTION**

The NSAPR recognizes the important role of SMEs in the Bangladeshi economy, especially in generating employment, but also notes the numerous obstacles they face. These include (1) the high transaction costs of business regulations, which larger enterprises can much more easily absorb; (2) the limited access of small businesses to information, finance, infrastructure, technology, skills, and markets; and (3) poor governance and weak delivery of public services, which disproportionately hurt small businesses. Moreover, because of their size and dispersion, SMEs do not have the organization and leverage to lobby for law and policy changes to address these constraints. The NSAPR outlines a number of actions to better support the development of SMEs in the country, including (a) adopting a consistent definition of SMEs, (b) strengthening BSCIC's capacity and improving its industrial estate program, (c) simplifying regulations, (d) providing a credit guarantee scheme for lending without land-based collateral, (e) expanding the conduit lending institutions for SMEs, (f) developing road networks and electricity/gas supply, (g) extending the Board of Investment's "One-Stop Service" to SMEs, (h) improving the indirect tax system for SMEs, and (i) adjusting trade policies to support SME development.<sup>82</sup>

The policy matrix for the NSAPR includes similar measures, and also identifies actions to address the particular needs of women entrepreneurs. These include (1) reviewing policies related to industry and SMEs from a gender perspective, (2) strengthening links between women's associations and credit institutions, (3) ensuring that women's businesses obtain industrial plots, (4) creating a Web portal for women entrepreneurs, and (5) creating mechanisms to assist women's businesses in marketing their products both locally and overseas.<sup>83</sup> The matrix notes that steps are already being taken to establish a permanent wing within BSCIC to support women entrepreneurs.<sup>84</sup> As noted in Section V.A., the matrix also includes steps to involve women entrepreneurs in committees of the Ministry of Commerce and in trade negotiations.

## **2. INDUSTRIAL AND SME DEVELOPMENT POLICIES**

The NSAPR generally reinforces the thrust of the Industrial Policy 2005 and the new SME development policy that is in the final stages of preparation. The Industrial Policy identifies SMEs as a "priority sector" and enumerates several sub-sectors in which SMEs are already operating, including most of the "thrust sectors" identified for policy support (Chapter 8 and Annex 1). As noted in Box 1, the Industrial Policy also includes an entire chapter on the promotion of women entrepreneurs, including a broad program of institutional and policy support for women-owned businesses.

The new SME development policy identifies the Government's primary role as a facilitator and its secondary role as a provider of promotional support to SMEs. Its definitions of small and medium-sized businesses are consistent with those in the Industrial Policy 2005.<sup>85</sup> The policy identifies eleven "booster sectors," but also confirms that SMEs in the longer list of "thrust sectors" identified in the Industrial Policy will

receive tax and other incentives specified in that policy.<sup>86</sup> Other features of the SME policy include (1) a general preference for small businesses in terms of the allocation of credit; (2) plans for an SME Web portal and Web-based “front office” to provide one-stop service to SMEs; (3) targeted packages of capacity building and training for entrepreneurs and their employees, involving private as well as public trainers; (4) support for research and development in selected niche areas; (5) reorientation and capacity building of institutions such as BSCIC to provide more effective support to SMEs; (6) greater accountability of the Bangladesh Standards and Testing Institution to SMEs, and the empowerment of SME-related industry associations to issue non-mandatory certifications; (7) development of dispute settlement procedures to shield small enterprises from high legal costs and harassment; and (8) a multi-stage sample survey of SMEs. The policy includes general references to according preference to women entrepreneurs “wherever appropriate,” and to accelerating efforts to retain and promote women entrepreneurs.<sup>87</sup> The list of “booster sectors” in the policy also includes “fashion-rich personal effects, wear and consumption goods,” which was intended to cover primarily women-owned businesses.<sup>88</sup> However, the references to women entrepreneurs are quite vague, in comparison to the robust program outlined in Chapter 11 of the Industrial Policy 2005 (see Box 1).

Building on commitments in the Industrial Policy 2005 and new SME development policy, the Government is establishing a National SME Women Entrepreneurs Forum, and is actively considering the creation of a separate bank to provide financial services to women entrepreneurs.

External agencies such as ADB, the World Bank, AusAID, and DFID are already supporting SMEs through various project and programs. For example, ADB and the World Bank have provided loans to the Government for onlending to SMEs through a Small Enterprise Fund. The SME Sector Development Program supported by ADB also includes a gender action plan, which provides for (a) representation of women entrepreneurs in the preparation and implementation of the SME policy, (b) inclusion of sex-disaggregated data in the SME information bank that is being established, (c) earmarking of at least 10 percent of the Small Enterprise Fund for women borrowers, and (d) targeted training programs designed to meet the specific needs of women entrepreneurs.<sup>89</sup> The South Asia Enterprise Development Facility, a multidonor-funded initiative managed by the International Finance Corporation, is also supporting the development of a toolkit to engender private sector development policies and programs.

### **3. BUSINESS LAWS AND REGULATIONS**

The legal framework that applies to small businesses in Bangladesh is comparable to that found in other countries. What appears to distinguish it is the lack of public information about relevant laws and regulations, the fragmentation of legal and regulatory requirements among different ministries and offices, and the delays and demands for informal payments that plague virtually every registration or certification requirement.<sup>90</sup>

To establish and operate, businesses may be required to obtain as many as 35 or more licenses, registrations, certificates, and other approvals, with periodic renewal requirements.<sup>91</sup> For example, all businesses need to obtain a trade license from the

relevant city or municipal corporation or other local authority. Depending on the circumstances, a small business may also need to register as a company with the Registrar of Joint Stock Companies, or as a cooperative society with the Directorate of Cooperatives. Businesses need to obtain a tax identification number from the National Board of Revenue, and to register with the Department of Inspection of the Ministry of Labour and Employment. Obtaining VAT registration and maintaining the necessary VAT records is especially difficult and potentially expensive. Industrial enterprises also need to obtain an environmental clearance certificate from the Department of Environment of the Ministry of Environment and Forests. To take advantage of certain industrial incentives, such as tax exemptions or access to land in an industrial estate, businesses need to register with the Board of Investment (or BSCIC, in the case of a small or cottage business). Manufacturers may also need to obtain certifications from the Bangladesh Standards and Testing Institution, which can be time consuming and expensive.<sup>92</sup> As noted in Section V.B., businesses engaged in any import or export activity also need to obtain the respective import or export registration certificate. Depending on the nature of the business, other regulatory requirements may also apply. The time and expense involved in complying with these multiple requirements place a special strain on small businesses, especially at the start-up phase. Various donors therefore are supporting projects to simplify and automate some of the regulatory requirements, and to publicize the requirements through brochures, toolkits, and websites.<sup>93</sup>

#### **4. CHALLENGES FOR WOMEN ENTREPRENEURS**

Several studies have been undertaken in recent years to understand the particular challenges facing women-owned businesses in Bangladesh. The PLAGÉ Project, for example, recently reviewed business policies, laws, and regulations in Bangladesh from the perspective of women entrepreneurs, and conducted surveys, focus group discussions, and interviews to better understand the impact of these and other factors on women-owned businesses.<sup>94</sup> The study is particularly relevant since it appears to have influenced the formulation of the latest Industrial Policy and portions of the NSAPR, as well as the SME Sector Development Program being supported by ADB.

**Registrations and permits.** As noted in Section V.B., the PLAGÉ study identified a number of trade-related policies, regulations, and practices that are particularly burdensome for women-owned businesses, such as the requirement to obtain and renew import and export registration certificates and the procedures for obtaining a GSP certificate for handloom products. In fact, the study found that virtually all regulatory requirements for small businesses entail frequent trips to the relevant government offices and either the use of influence or informal payments. These requirements include registration with the Registrar of Joint Stock Companies, BSCIC, or the Board of Investment; obtaining of a tax identification number, trade license, fire license, or other permit; and payment of taxes. Frequent trips to government offices, sometimes requiring travel to Dhaka or another urban center, are especially disruptive for small business owners with few employees, and more so for women who can be subject to harassment when traveling alone. Most of the women entrepreneurs surveyed reported that they needed the assistance of their husbands or male relatives to satisfy regulatory

formalities. However, those who were clients of specific projects supporting women faced many fewer problems.

**Access to credit.** The PLAGÉ study confirmed that limited access to formal credit continues to be a major constraint on women-owned businesses. As noted above, only a small fraction of commercial bank loans are extended to women. The vast majority of credit extended to women is in the form of microloans provided through NGOs. However, the credit ceilings on microloans are much too low for SMEs, and even for many cottage industries. The Government's new SME development policy recognizes the problem of the "missing middle"—the lack of adequate finance available for SMEs. However, the financing gap is even more severe for women-owned businesses.<sup>95</sup> Some of the factors identified in the PLAGÉ study include (1) women's limited ownership of land to use as collateral, due to discriminatory inheritance rules and practices; (2) lack of confidence of bank officers in women's business ventures; (3) lack of interest of bank officers in approving loans to women's businesses because of their smaller size; and (4) onerous loan application procedures, including additional guarantee requirements for women. The main women's business associations have signed memoranda of agreement with some banks and leasing companies to improve access to credit for their members, but bank documentation requirements still pose challenges for these potential borrowers.<sup>96</sup> Even the Women Entrepreneurship Development Project implemented by BSCIC beginning in the 1980s required the consent of a husband or male relative as a condition for lending to a woman-owned business. Although not a legal requirement, commercial banks in Bangladesh also typically require the guarantee of a husband or male relative on any loans to women.<sup>97</sup> The PLAGÉ study noted that guarantors sometimes expect a portion of the loan proceeds. Others involved in processing a loan may also expect compensation. As a result, the PLAGÉ Project found that only 13 percent of the women entrepreneurs surveyed had obtained bank credit. About a third of the women entrepreneurs had financed their businesses from their own savings, and more than half had relied on their husbands for capital.<sup>98</sup>

The PLAGÉ study identified other legal and regulatory issues for women-owned businesses. These include the following areas:

**Land.** In order to obtain a trade license or bank loan, a small business typically needs to have business premises that are identified as such. As noted earlier, women are unlikely to own land directly. Because of social disapproval of women in business, landlords are often unwilling to lease premises to women directly. If a woman entrepreneur with a home-based business posts a business sign, the premises will then be subject to higher commercial utility charges. Women entrepreneurs often find that they need to lease business premises through a male relative, or with a male relative as guarantor on the lease.<sup>99</sup>

**Utilities.** As noted above, home-based businesses are charged higher commercial utility rates, regardless of the size or revenue of the business. Telephone connections (land lines) are virtually impossible to obtain without substantial informal payments, which are difficult for a small business to absorb. Frequent changes in utility charges also disrupt the business plans of small entrepreneurs.<sup>100</sup>

**Taxes.** New businesses must have a tax identification number (TIN) in order to apply for a trade license. However, in order to get a TIN, a business must first submit an income tax return, even before any business income is earned. The issuance of TINs is also highly centralized; influence or informal payments are often needed to speed up the process. As noted in Section V.B., the customs clearance process—including assessment and payment of customs duty and other charges—is fraught with uncertainty, lengthy paperwork, delay, and rent-seeking behavior. The process is complicated further by the advance assessment of income tax on importing businesses at the time of import, which involves coordination between the customs authorities, the importer, the bank to which the advance tax is paid, and income tax officials. Certain tax rules may also disadvantage women entrepreneurs who finance their businesses through informal loans or gifts from relatives.<sup>101</sup>

**Social norms and constraints.** The PLAGÉ study also identified other constraints facing women entrepreneurs in Bangladesh, including their general lack of information about regulatory requirements and financial and market opportunities; the difficulty of buying raw materials in smaller quantities (and the higher prices charged for these smaller orders); the limited access to trade fairs, trade delegations, and other promotional activities;<sup>102</sup> and the difficulty of competing with cheaper consumer goods imported (and often smuggled) from neighboring countries. Another major constraint, which also underlies the discrimination and harassment that women entrepreneurs experience in dealing with regulatory authorities, banks, and landlords, is the strong social disapproval of women in business. A recent study of rural women entrepreneurs commissioned by CARE made similar findings, and identified social constraints at the family, business/market, and community levels.<sup>103</sup>

As noted above, women entrepreneurs often rely on their husbands and family members for financial and other assistance in establishing their businesses. However, family members may prefer that the women work from home and limit their travel and interaction with unrelated men. Family members will generally expect women to carry out childcare and other household duties in addition to their businesses, and they may criticize women who spend much time away from home. At the business/market level, women business owners may become dependent on middlemen because of their limited mobility and lack of information and connections. As noted earlier, women entrepreneurs often experience bias and harassment in dealing with banks, landlords, and regulatory authorities. At the community level, traditional norms favoring women's seclusion continue to dominate, especially in rural areas. Women entrepreneurs may therefore experience harassment when traveling or transacting business in public markets.

Both the PLAGÉ and CARE studies also mentioned that law and order problems pose substantial risks for women entrepreneurs, who are especially vulnerable to robbery and assault when traveling. For both social and security reasons, businesswomen often take an escort when traveling to pick up raw materials, make deliveries of orders, or visit public offices.

**Recommendations.** The PLAGÉ study makes a number of recommendations to address the regulatory, financial, and social constraints on women entrepreneurs.<sup>104</sup>

The main trade-related recommendations were mentioned in Box 2. Other relevant recommendations are summarized in Box 3.<sup>105</sup>

### **Box 3: Recommendations to Address Constraints on Women Entrepreneurs**

Based on its study of the law and policy environment affecting women entrepreneurs in Bangladesh, the Policy Leadership and Advocacy for Gender Equality (PLAGE) Project of the Ministry of Women and Children Affairs has made several recommendations to improve this environment:

#### **Industrial Policy**

- Revise the Industrial Policy to address the needs and concerns of women entrepreneurs (e.g., through special incentives and other measures).
- Include representatives of the Ministry of Women and Children Affairs and women-owned businesses in the National Council of Industrial Development.
- Restructure the Board of Investment to pay greater attention to the needs of women's enterprises (e.g., by setting up an exclusive desk to service women entrepreneurs, maintaining records on women-owned businesses, and exploring with BEPZA and BSCIC the possibility of designating industrial plots for women entrepreneurs).
- Conduct a nationwide survey to collect current information on women-owned businesses.

#### **Regulatory Requirements**

- Simplify requirements for registering with the Registrar of Joint Stock Companies, BSCIC, Board of Investment, and other entities, and for obtaining a TIN, trade license, and other licenses and permits.
- Eliminate any unnecessary requirements (e.g., import and export registration certificates).

#### **Credit Policies and Practices**

- Establish a coordination committee on credit for women entrepreneurs, chaired by a deputy governor of Bangladesh Bank, and a consortium of banks to lend to women-owned businesses.
- Through Bangladesh Bank circulars, specify a certain percentage of commercial lending to be channeled to women entrepreneurs.
- Establish special desks for women clients in public and private banks.
- Remove or replace the current guarantee requirements on commercial loans to women (e.g., by establishing a credit guarantee scheme through Bangladesh Bank to support women entrepreneurs, and/or arranging for chambers of commerce or other private trade bodies to act as guarantors).
- Restructure the boards of public sector banks to include at least 25 percent women, and consider appointing a female deputy governor of Bangladesh Bank.
- Consider establishing a separate bank to provide comprehensive financial services to women entrepreneurs.
- Require banks to monitor their lending operations on a sex-disaggregated basis.
- Arrange gender training for bank officers.

#### **Land and Utilities**

- Modify inheritance rules to remove gender discrimination (e.g., by enacting a uniform family code).

- Allocate BSCIC and BEPZA industrial plots to women entrepreneurs on a preferential basis.
- Assess lower utility charges for women's businesses, at least during the first five years of operation.

#### **Tax Rules and Procedures**

- Simplify the procedures for obtaining a TIN (e.g., eliminate the requirement to first file an income tax return, and decentralize the TIN-issuance process).
- Simplify the process for advance assessments of income tax against imports.
- Revise current income and gift tax rules that disadvantage women entrepreneurs who finance their businesses from informal loans and gifts.
- Provide tax holidays or other tax relief to women-owned businesses, or to industries in which women entrepreneurs are active.
- Establish taxpayer information units, launch taxpayer information programs, and employ women staff at all levels of tax offices, especially in positions where staff are likely to interact with women taxpayers.
- Harmonize tax structure with other policies and measures to support women entrepreneurs, and avoid frequent changes in tax rates and tax rules.

#### **Marketing**

- Establish a one-stop service center for women-owned businesses.
- Help small women-owned businesses form groups to import raw materials, and allow women's business groups to open joint letters of credit.
- Adopt a preferential government policy to procure local products from women-owned businesses.
- Conduct research to identify promising backward and forward linkages with women-owned businesses.
- Encourage the formation of more women's business associations and the participation of women entrepreneurs in existing associations.
- Establish more joint marketing outlets for women-owned businesses, such as the MIDAS-supported Mini Marts.<sup>106</sup>
- Allocate separate stalls for women's businesses (or groups of women's businesses) at domestic and overseas trade fairs.

Several of these recommendations have already been taken up in the Industrial Policy 2005, and hopefully more recommendations will be implemented under the new SME development policy. In addition, 10 percent of the Small Enterprise Fund managed by Bangladesh Bank is supposed to be earmarked for women-owned businesses, and a line of credit provided under the ADB-supported Agribusiness Development Project includes a similar 10 percent allocation.<sup>107</sup> However, there is a time limit on the 10 percent allocations in both credit lines: if the earmarked funds are not utilized within a stated period (1.5 years for the Small Enterprise Fund and 2.5 years for the Agribusiness Development Project), they will revert to the general pool of loan funds. It will therefore be important to ensure that the financial institutions participating in both programs take concrete steps to simplify their loan application procedures, do not

impose any special guarantee or other requirements for women borrowers, and work with participating NGOs and women's business associations to identify potential women borrowers.<sup>108</sup>

The NSAPR, the Industrial Policy 2005, and the new SME development policy provide a strong platform for addressing the current constraints on women-owned businesses. There is also keen interest among several development agencies—including USAID—in working with the Government, banking sector, and trade bodies to remove regulatory barriers and improve support to women entrepreneurs. The recommendations from the PLAGÉ study provide a useful guide to policymakers and development partners for future actions in this area. Other studies under way should provide additional guidance.<sup>109</sup>

SMEs, including women-owned businesses, also need technical support to improve their compliance with national labor, environmental, and product quality standards. In addition, SMEs engaging in export activities need support to ensure compliance with the various standards on imports imposed by overseas buyers and importing countries. The following subsections examine the social compliance and SPS standards that now apply to Bangladesh's exports of RMG and shrimp products, with attention to the needs of SMEs to develop capacity to meet these standards.

## **B. READY-MADE GARMENTS**

Although Bangladesh is taking steps to diversify its export base, the ready-made garment (RMG) sector still generates about 75 percent of export earnings. The sector is also seen as critical to the Government's poverty reduction and gender equality goals because of its predominantly female workforce, drawn mainly from rural areas. Estimates of direct employment in the sector vary between 1.5 and 2 million workers, of whom 80–90 percent are thought to be women. Close to 1 million additional workers are thought to be employed in accessory industries, with as many as 10 million additional people indirectly dependent on the sector. More than 4,000 factories are thought to be operating in the sector, ranging from large, modern factories operating in the country's EPZs to small, poorly equipped factories located in converted office or apartment buildings.<sup>110</sup> Since the sector had grown and thrived under the import quota regime established by the Multi Fibre Arrangement (MFA), it was widely assumed that the dismantling of the quota regime as of January 2005 under the WTO Agreement on Textiles and Clothing would shift RMG buyers to lower-cost countries and cause massive factory closings and layoffs of workers. However, more than 50 percent of RMG enterprises polled in a recent survey reported that buyers' orders had increased since January 2005, although close to 60 percent had to reduce their product prices. More than 70 percent of RMG managers included in the same survey also believed that some RMG enterprises might close in the near future.<sup>111</sup> NGOs that provide services and support to garment workers report that some smaller factories have already closed or been acquired by larger firms, but most laid-off workers appear to have found work at other factories. However, there seems to be a general trend toward employing more workers on a temporary or piece-rate basis.<sup>112</sup>

Although the majority of workers in the RMG sector are women, the gender composition of the workforce varies significantly depending on the sub-sector and occupation.

Women are a majority of workers in factories manufacturing woven wear, but a minority of workers in knitwear factories.<sup>113</sup> A recent survey found 88 percent of “helpers” and 85 percent of machine operators were women, while 82 percent of supervisors and 100 percent of managers were men.<sup>114</sup>

## **1. NATIONAL STRATEGY FOR ACCELERATED POVERTY REDUCTION**

As mentioned in Section V.A., the NSAPR highlights the continuing importance of the RMG sector to the Bangladesh economy, especially in terms of generating employment for poor women. The strategy and related policy matrix therefore identify a number of measures to support the RMG sector in the post-MFA environment. These include (1) continuation of incentives and other supports for the sector, such as bonded warehouse facilities, and replacement of the cumbersome duty-drawback system with a flat 5 percent cash assistance program for export-oriented domestic textile firms; (2) continuation of improvements in the customs clearance process, including streamlined approvals and further automation of the process through the Automated System for Customs Data (ASYCUDA); (3) improvements in port facilities and other infrastructure; (4) training for RMG managers and staff in various areas, including social compliance norms, quality and productivity management, and marketing; and (5) training and microcredit support for garment workers who may be retrenched as a result of shifts in global demand for RMG exports. The policy matrix for the NSAPR also provides for the issuance of identification cards to all garment workers and more diverse training opportunities for women currently working in factories. The policy matrix also notes that the Government’s Post-MFA Action Programme, which had been developed in anticipation of a large drop in RMG production orders following expiration of the MFA, is being revised to better reflect the actual situation in the sector. (The Post-MFA Action Programme is discussed further below.)

## **2. RMG-RELATED POLICIES AND STRATEGIES**

The Import Policy 2003–06, Export Policy 2003–06, and Industrial Policy 2005 (and previous versions of these policies), provide various incentives and other supports to the RMG sector. Under the Import Policy, RMG manufacturers can take advantage of special provisions for “export-oriented industrial units.” These include provisions for back-to-back letters of credit, use of bonded warehouses, and permitted imports of otherwise banned or restricted items (including certain fabrics, suiting material, cut pieces, and packing material). The Import Policy also provides protection to the domestic textile sector, mainly through its control on imports of certain types of cloth.<sup>115</sup> Under the Export Policy, RMG manufacturers can avail themselves of the general incentives and facilities provided to export industries (and noted in Section V.B.). The Export Policy also provides a cash subsidy for RMG exports that use domestic fabric, although the subsidy is being phased out because of apparent abuse.<sup>116</sup> In the Industrial Policy, the RMG and textile sectors are both “thrust” sectors that are entitled to various incentives and facilities, including lower income tax rates on export income (Section 7.2[h]). Under the policy, women-owned garment businesses are also entitled to special technical and financial assistance (Section 11.7).

In anticipation of the end of the MFA quota regime, the Ministry of Commerce had developed a Post-MFA Action Programme to mitigate the expected negative effects on RMG firms and workers. The original program included six components to be implemented over a five-year period:

1. A Skill and Quality Development Programme, including training for RMG factory managers and staff on social compliance norms; management of quality, production and inventory; marketing and merchandising; and customs and port procedures
2. A Displaced Workers Rehabilitation Programme, including skills and entrepreneurship training, microcredit, subsistence allowances, and job creation activities
3. A Small Enterprise Capacity Enhancement Programme, including training programs for small RMG subcontractors on quality assurance, social and environmental compliance; access to technology; and support in forming strategic partnerships
4. Support to the Primary Textile Sector, including upgrading of technology
5. Support to the Handloom Sector, which employs more than one million weavers, mainly in rural areas, through technical assistance to improve quality and overseas marketing of handloom products
6. Support to Forward Linkage Industries, including banks, insurers, transporters, and shippers, through simplification and automation of customs, tax, finance, and insurance facilities

The national budget for fiscal year 2006 included an allocation of Tk. 200 million for training and re-employment of retrenched garment workers. However, the overall Post-MFA Action Programme is currently being revised, since large plant closures and layoffs of workers have not yet occurred.<sup>117</sup>

The NSAPR and these policies and strategies reflect the Government's desire to support both the RMG and textile industries in Bangladesh in the challenging post-MFA environment. However, the World Bank and other development partners are encouraging the Government to remove protections on both sectors, for example, by allowing SAARC cumulation under the European Union's rules of origin, removing the recent ban on overland imports of yarn, reducing export subsidies, and raising income tax rates on RMG exports.<sup>118</sup> To analyze the poverty and gender impact of these proposed measures, it would be necessary to estimate the likely effects on production and employment (disaggregated by sex) in both sectors.

### **3. RMG-RELATED LAWS AND REGULATIONS**

RMG manufacturers in Bangladesh are subject to the trade and investment laws outlined in Section V.B., as well as the general business laws and regulations described in Section VI.A.3. As industrial enterprises, RMG factories must register with the Department of Inspection of the Ministry of Labour and Employment, obtain an

environmental clearance certificate from the Department of Environment of the Ministry of Environment and Forests, and comply with local land use, fire, and building safety regulations. (However, RMG factories located in EPZs are generally subject to EPZ regulations in these areas.) Both the NSAPR and the Post-MFA Action Programme recognize that one of the major regulatory challenges for the RMG sector is to respond to overseas buyers' demands for improvements in "social compliance"—including labor standards and workplace safety—while at the same time meeting buyers' demands for high-quality, competitively priced, and timely outputs. This subsection reviews Bangladesh's current legal framework for labor standards and workplace safety, including provisions specifically related to women workers, and compares these legal provisions with some of the codes of conduct that are being used by RMG buyers and buyer groups. The subsection then considers law reforms and other measures that have been proposed to address gaps in the labor law framework and improve social compliance in the RMG sector.

**Core labor standards.** As noted in Section III.A., Bangladesh is a party to more than 30 ILO conventions, including conventions that support all four of the core labor standards included in the ILO's Fundamental Principles and Rights at Work: (1) freedom of association and the right to organize and bargain collectively, (2) equal pay and non-discrimination in employment and occupations, (3) elimination of forced labor, and (4) elimination of child labor.<sup>119</sup> Most of these core labor standards are also reflected in the Bangladesh Constitution, which guarantees freedom of assembly and the right to form associations and unions (Articles 37–38), ensures equal rights between women and men (Article 28.2) and equal opportunity for all citizens in public employment (Article 29), and prohibits forced labor (Article 34). The Fundamental Principles of State Policy set forth in the Constitution also include "the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work," and "the right to social security," including "public assistance in cases of undeserved want arising from unemployment, illness or disablement" (Article 15).

**Labor laws and regulations.** The current system of labor laws and regulations in Bangladesh is a patchwork of (1) general laws and rules that apply to most workers (such as the Employment of Labour [Standing Orders] Act 1965); (2) laws and rules that apply to particular work sites, such as factories, shops and establishments, plantations, mines, or public sector enterprises; and (3) laws and rules that apply to specific categories of workers, such as apprentices, children, and women (for example, the Maternity Benefit Act 1939). Many of these laws were introduced during the colonial period or before independence from Pakistan. As noted in Section V.B., enterprises operating in EPZs have been exempted from most of the relevant labor laws and rules, but are subject to labor regulation and monitoring by the relevant EPZ authority (BEPZA, for the government-administered EPZs).<sup>120</sup> In 1992, the Government established a Labour Law Commission to review the existing labor law framework. In 1994, the commission proposed a new Labour Code to update and replace most of the existing labor laws. The proposed Labour Code has been the subject of extensive review and comment by employers, union representatives, NGOs, and other stakeholders, but is still under consideration by the Government. The following

discussion focuses mainly on the labor laws and rules that apply to workers in RMG factories and other industrial enterprises.<sup>121</sup>

Bangladesh's labor laws and rules are broad in coverage. The Factories Act 1965, for example, defines a worker as "a person employed directly or through any agency, whether for wages or not, in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to or connected with the manufacturing process or the subject of the manufacturing process [except for clerical personnel]" (Section 2[p]). Factories covered by the act include "any premises...whereon ten or more workers are working or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with or without the aid of power...." (Section 2[f]).

The international core labor standards outlined above are incorporated to some extent in Bangladesh's labor laws and rules:

- **Freedom of association and right to collective bargaining:** In addition to the provisions in the Bangladesh Constitution (noted above), the Industrial Relations Ordinance 1969 guarantees the right of workers to establish and join trade associations or unions, subject to various conditions. The ordinance and the Industrial Relations Rules 1977 specify requirements for registering a trade union with the Registrar of Trade Unions, unfair labor practices of both employers and workers, the designation of collective bargaining agents and establishment of "participation committees" or "works councils", mediation of labor disputes, provisions for strikes and/or lockouts, and the role of labor courts in adjudicating labor disputes.<sup>122</sup>
- **Equal pay and nondiscrimination in employment:** In addition to the equality provisions in the Constitution (cited above), the Minimum Wages Rules 1961 provide that "in fixing minimum rates of wages, the principle of equal remuneration for men and women workers for work of equal value shall be applied" (Section 14). However, as discussed further below, the Factories Act 1965 includes restrictions on certain types of work, including night work, for women.
- **Forced labor:** In addition to the prohibition on forced labor in the Constitution (noted above), the Penal Code 1860 provides criminal penalties for slavery, forced labor, and wrongful confinement. The Factories Act 1965 also authorizes the appointment of labor inspectors with broad authority to examine factory premises and make any inquiries needed to determine whether the Factories Act and "other laws...relating to health and hygiene" are being complied with (Sections 9–10).
- **Child labor:** The Factories Act 1969 prohibits the employment of children younger than 14 years in any factory employing 10 or more workers (Section 66).<sup>123</sup> Children aged 14–16 and adolescents between 16 and 18 years can work in a factory provided they have an appropriate medical certificate (Section 67).

Children and adolescents cannot work more than five hours a day and are prohibited from doing night work (Section 70). Children and adolescents are also prohibited from using dangerous machines without training and adult supervision (Section 25). Under the Factories Rules 1979, children and adolescents are also prohibited from lifting or moving excessive weights (Section 48).

Bangladesh's labor laws and rules applicable to factory workers also cover a wide range of other labor and workplace issues:

- **Hiring and terms of employment:** Written contracts for factory workers are not required by law, but the Employment of Labour (Standing Orders) Act 1965 does require employers to establish service rules (Section 3), which must be approved by a labor inspector. The Employment of Labour (Standing Orders) Rules 1968 specify the matters to be covered in these rules, including the classification of workers, hours of work, holidays and leave days, medical facilities, insurance, housing, provident fund, and conditions for layoffs, retrenchments, suspensions, and dismissals (Appendix XI, Form "K"). The Factories Act 1965 also requires all factory workers to be registered, and to be issued identification cards (for adults) or "tokens" (for children and adolescents) (Sections 61, 67, and 72).
- **Layoffs, retrenchments, and dismissals:** The Employment of Labour (Standing Orders) Act 1965 specifies the procedures to be followed by an employer in the event of a layoff, retrenchment, suspension, or dismissal of workers, including notice and compensation requirements. The right to receive notice and compensation in the event of a layoff or retrenchment is generally limited to workers who have been employed continuously for a year or more.<sup>124</sup> The act also provides a grievance procedure for individual workers and penalties for noncompliance.
- **Working hours:** Under the Factories Act 1965, the working hours for adult factory workers are generally limited to nine hours a day and 48 hours a week (Sections 50 and 53). However, workers may work up to 10 hours a day or 60 hours a week (and an average of 56 hours a week over the year), subject to payment of overtime wages and provision for rest periods, meals, and weekly holidays (Sections 51–54 and 58). There are also restrictions on overlapping shifts and double employment (Sections 57 and 59). As noted above, children and adolescents cannot work more than five hours a day or at night (Section 70). The working hours of women are limited to nine hours a day, and night work (between 8 p.m. and 7 a.m.) is prohibited, although the Government may vary these limits under certain circumstances (Section 65).<sup>125</sup>
- **Wages:** Under the Minimum Wages Ordinance 1961, a Minimum Wages Board was established, including representatives of Government, employers, and workers, to recommend minimum wage rates to the Government for particular categories of workers within industries (Section 3). The Government may accept or modify the board's recommendations or send the recommendations back to the board for reconsideration. Minimum wage rates are declared by the Government through notification in the official Gazette (Section 6). The ordinance

requires the Minimum Wages Board to review and, if appropriate, revise its recommendations at least every three years (Section 7). However, in the case of the RMG sector, the minimum wage (Tk. 930 for helpers) was last set in 1994 and has not been revised.<sup>126</sup> The Payment of Wages Act 1936 specifies the timing of wage payments and the types of deductions that are permissible (or non-permissible). This act also provides a grievance mechanism for workers and penalties for noncompliance. Under the Factories Act 1965, factory owners must pay for overtime work at twice the ordinary wage rate (Section 58).

- **Holidays and leave:** The Factories Act 1965 provides for a weekly work holiday, usually on Friday or Sunday, but permits the substitution of holidays as long a worker does not work for more than 10 days consecutively (Section 51). The act also provides for annual leave after one year of continuous employment (Section 78), at least 10 days' festival holidays (Section 79), 14 days of sick leave, and 10 days of casual leave (Section 80). Maternity leave is discussed separately below.<sup>127</sup>
- **Working environment:** The Factories Act 1965 and Factories Rules 1979 set out detailed requirements related to workers' health and hygiene, safety, and welfare. These include provisions on factory sanitation, ventilation, lighting, supply of drinking water, latrines, fire safety, dangerous dust and fumes, unsafe machinery, first aid equipment and first aid facilities (for factories with 500 or more workers), rest rooms, a lunch room (for factories with more than 199 workers) and canteen (for factories with more than 250 workers), and facilities for women workers' children under six years old (for factories with more than 50 women employees).
- **Maternity leave and benefits:** The Maternity Benefit Act 1939 provides 12 weeks of mandatory maternity leave for women factory workers—six weeks before and six weeks after delivery (Section 3). In addition, women workers who have been employed for at least nine months prior to delivery are entitled to maternity benefits equal to their average daily wage over the 12-week leave period (Section 4). Employers are prohibited from dismissing women workers while they are on maternity leave, and employers cannot deprive pregnant workers of the maternity benefits to which they would otherwise be entitled by dismissing them without sufficient cause during the six months prior to delivery (Section 7).
- **Accident compensation:** The Workmen's Compensation Act 1923 and Workmen's Compensation Rules 1924 establish employers' liability for certain work-related injuries and illnesses, and outline procedures for calculating, claiming, and distributing compensation to workers or their dependents. The act and rules, which date from the colonial period, include several anachronisms from a gender perspective. For example, the act and rules refer to "workmen" rather than "workers". The definition of "dependent" in the act privileges a "minor legitimate son" and "unmarried legitimate daughter" over a "daughter legitimate or illegitimate if married and a minor" (Section 1[d]). The act also provides that any lump sum compensation payable to "a women or a person under a legal

disability” will not be paid directly, but will be deposited with the Commissioner for Workmen’s Compensation to “be invested, applied, or otherwise dealt with for the benefit of the woman, or of such person during his disability” (Section 8).

- **Retirement benefits:** Under the Companies Profits (Workers Participation) Act 1968 and related 1976 Rules, registered companies of a certain size<sup>128</sup> that are involved in manufacturing or other industrial undertakings are required to contribute 5 percent of their annual net profits to a workers’ participation fund and a workers’ welfare fund for the benefit of workers who have been employed for at least six months and who have monthly wages of Tk. 2,500 or less. (The amount is to be allocated to the participation and welfare funds in a ratio of 9:1.) There appear to be discrepancies between the act and related rules—for example, as to whether the amounts deposited in the participation fund are to be distributed to workers annually in cash or credited to each worker as units to be reinvested and redeemed upon resignation or retirement.<sup>129</sup> It is also unclear what authority is in charge of monitoring compliance with the act. There is no other mandatory scheme for profit sharing or retirement benefits in the private sector, although large companies commonly establish pension funds, provident funds, and/or gratuity schemes as trusts for the benefit of their permanent employees.

**EPZ labor regulations.** As discussed earlier, the government-administered EPZs have been exempted from several of the national labor laws. Instead, the factories operating in these EPZs are regulated by instructions issued by BEPZA, and by special legislation.

- In some cases, these regulations are **more favorable to workers** than the labor laws and rules applicable to non-EPZ factories. For example, BEPZA Instruction No. 1 of 1989 requires all EPZ employees except “casual employees” to be given appointment letters outlining the terms and conditions of work to be performed, and all EPZ firms must establish provident funds for their employees. The instruction also requires all EPZ firms to contribute to the operation of an EPZ medical center to provide medical services to the firms’ employees.
- In other cases, the regulations are **substantially similar** to the corresponding labor law provisions. For example, BEPZA Instruction No. 1 includes provisions on payment of wages, leave and holidays, and layoffs and retrenchments of workers, that are comparable to the relevant labor law provisions, though in more abbreviated form. It also provides that work-related injuries will be compensated according to the “relevant laws of the country,” presumably referring to the Workmen’s Compensation Act 1923.
- In other respects, the EPZ regulations are **less favorable to workers** than the corresponding labor laws. For example, worker misconduct that can be the basis for dismissal is defined more broadly in BEPZA Instruction No. 1 than in the Employment of Labour (Standing Orders) Act 1965, and includes the distribution of pamphlets and the holding of meetings without the employer’s permission. The maternity leave period—12 weeks—is the same as in the Maternity Benefit Act 1939, but a female worker can claim maternity benefits only twice from the same

employer, and there must be at least a three-year gap between the two leave periods. Instruction No. 1 includes general provisions on drinking water, toilet and washing facilities, a rest area and canteen, and protective clothing for workers, but it does not include provisions on sanitation, ventilation, lighting, fire safety, or other workplace safety matters comparable to the detailed provisions in the Factories Act 1965 and Factories Rules 1979. Instruction No. 1 provides a grievance procedure for EPZ employees, including possible appeal to BEPZA management, but there is no right of appeal to a labor court or other court. The BEPZA Instructions also provide no penalty for employers' noncompliance, in contrast to the main labor laws. (However, as discussed below, EPZ firms' compliance with the BEPZA Instructions is substantially higher than the compliance of non-EPZ firms with corresponding labor law requirements.)

A major difference between Bangladesh's labor law framework and EPZ labor regulations has been the exemption of the EPZs from the Industrial Relations Ordinance 1969. However, this gap has narrowed with the enactment of the EPZ Workers Association and Industrial Relations Act 2004, which was introduced in response to pressure from US labor unions and the temporary suspension of GSP privileges by the United States. Under this new act, freedom of association and collective bargaining are being introduced in EPZ firms in two phases. During the first phase, which continues through October 2006, workers in each EPZ firm have elected a "workers representation and welfare committee" (WRWC), which has the right to negotiate with the employer on "working conditions, remuneration or payment for productivity enhancements and worker education programs" (Section 8). During the second phase that begins November 1, 2006, workers in EPZ firms will have the option to form "workers associations." Once registered under the act, these associations will have the right to negotiate with employers on wages and other terms and conditions of employment, to represent their members in any proceedings, and to declare a strike as allowed under the act (Section 45). The act provides for conciliation, arbitration, and, if necessary, adjudication of industrial disputes within the EPZs, and specifies conditions for strikes and lockouts. It also provides for the appointment of conciliators and arbitrators, and the establishment of EPZ labor tribunals and an appellate tribunal, and specifies penalties for noncompliance with its requirements.

Both employers and workers have needed substantial orientations on their rights and obligations under the EPZ Workers Association and Industrial Relations Act. BEPZA therefore has organized several training sessions, with support from development partners and NGOs. Conciliators and arbitrators have been appointed, as well as 46 counselors (37 percent of them women) to work directly with EPZ managers and workers. As of October 2005, WRWC elections had been held in about 80 percent of all EPZ firms. While 61 percent of EPZ workers are women, the newly elected WRWCs include only 21 percent women. Although the new act represents a substantial movement toward freedom of association in the EPZs, the ILO's Committee on Freedom of Association has critiqued it for placing unnecessary restrictions on the formation of worker associations.<sup>130</sup> However, as noted below, EPZ workers now have more effective formal representation than workers in the vast majority of non-EPZ firms.

**RMG industry codes of conduct.** Bangladesh's export-oriented RMG sector is increasingly affected by the "self regulation" of major overseas buyers through industry codes of conduct on environmental and social compliance issues. Increasing numbers of European and US buyers have adopted their own codes of conduct, or have joined associations such as the Ethical Trade Initiative, the Fair Labor Association, or the Fair Wear Foundation. Although each is unique, these codes generally include (1) a statement of standards or principles and (2) an implementation or enforcement plan. The codes generally cover most of the SA 8000 standards—the social accountability standards developed by Social Accountability International (SAI). The SA 8000 standards, which are based on core ILO conventions, the Convention on the Rights of the Child, and CEDAW, include provisions on (a) child labor, (b) forced labor, (c) health and safety, (d) freedom of association and the right to collective bargaining, (e) discrimination, (f) disciplinary practices, (g) working hours, (h) remuneration, and (i) management systems, including control of suppliers, subcontractors, and sub-suppliers.<sup>131</sup> From a gender perspective, the industry codes of conduct generally prohibit discrimination on the basis of sex, as well as sexual harassment, but they do not typically include provisions on maternity leave and benefits, childcare facilities for workers with infants or small children, separate toilet and washing facilities for women and men, or transport facilities for workers on night shifts.

The implementation and enforcement mechanisms for the codes of conduct vary considerably. For example, the Business Social Compliance Initiative relies primarily on social audits of suppliers carried out every three years by an auditing company accredited by SAI.<sup>132</sup> In contrast, the Fair Labor Association requires its members to conduct both announced and unannounced visits to suppliers, to establish a mechanism for workers to report the supplier's noncompliance with the code of conduct, to consult with local civil society institutions in the countries where suppliers are located, and to work with suppliers to improve compliance with workplace standards.<sup>133</sup> The Fair Wear Foundation includes similar measures, and also requires members to "make certain that the terms of trade allow their suppliers to implement the Fair Wear labour standards."<sup>134</sup>

Despite the similarities among these industry codes, the need to comply with multiple codes and related implementation plans imposes a substantial cost on RMG factories, especially smaller firms. To address this problem, the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) is reportedly developing a common code of conduct for the RMG sector. This initiative holds great promise, but its success will depend on the confidence of stakeholders in the implementation and monitoring mechanisms that are included.

**Labor law enforcement and social compliance.** Although Bangladesh has a comprehensive set of labor laws and regulations in place, the enforcement of these laws and rules is extremely weak, owing in large part to the small number of labor inspectors in the Department of Inspection within the Ministry of Labour and Employment. In 2000, for example, there were only 62 labor inspectors responsible for inspecting more than 18,900 factories.<sup>135</sup> In the RMG sector, recent surveys have found that compliance with labor standards is highest in factories located in the EPZs. Among non-EPZ firms, the surveys have found higher levels of compliance in factories that

have direct relationships with overseas buyers—and that therefore are likely to be subject to the buyers' codes of conduct and periodic inspections. Compliance with labor laws is weakest in the many small factories that operate as subcontractors or sub-subcontractors for larger firms.<sup>136</sup> Many of these small firms operate out of converted residential and commercial buildings that are not equipped to support small manufacturing. As subcontractors (or sub-subcontractors), these firms are especially vulnerable to fluctuations in buyer orders, and more likely to employ workers on a temporary or piece-rate basis. Across all categories of RMG factories, labor conditions also vary substantially by gender.

Recent surveys document some of the variations in compliance with labor laws and standards:

- Outside the EPZs, RMG workers rarely receive appointment letters. Only about 19 percent of female workers are treated as permanent workers, compared with about 33 percent of male workers.<sup>137</sup> Without proof of continuous employment for at least a year, workers are not entitled to annual leave, severance pay, or other benefits.
- About 32 percent of female RMG workers receive less than the minimum wage (Tk. 930), compared with 5 percent of male workers. About 75 percent of RMG factories are late in paying wages, and overtime pay is commonly understated or not paid at all. On the other hand, RMG factories generally pay their workers Eid bonuses, as well as attendance and productivity bonuses.<sup>138</sup>
- On average, workers in RMG factories outside the EPZs work 12 hours a day, compared with about 10 hours in EPZ factories. Non-EPZ workers have an average of one day off in a month, compared with three days off for EPZ workers.<sup>139</sup> In non-EPZ factories, sick leave, casual leave, and annual leave are generally nonexistent.
- Working conditions in non-EPZ factories are generally substandard. On average, there is only one toilet for every 61 female workers, compared with one for every 31 male workers. Very few factories have rest rooms, lunch rooms, or children's rooms. Only 20 percent of women in non-EPZ factories have access to a medical doctor during working hours, compared with 90 percent of women in EPZ factories. Most non-EPZ factories are overcrowded and poorly ventilated, and do not have proper fire exits, fire alarms, or other fire protection measures.<sup>140</sup> Fire accidents in garment factories are commonplace, and often result in injury or death.<sup>141</sup> The collapse of the Spectrum-Shahriyar factory in April 2005, which left 65 workers dead and about 80 workers injured, also illustrated in graphic terms the lack of compliance with building construction and safety requirements.
- Outside the EPZs, very few female RMG workers are able to claim full maternity leave and benefits. About 50 percent claim six weeks of paid leave (half the time and amount stipulated in the Maternity Benefit Act 1939), while about 33 percent take unpaid leave, and the remaining 17 percent are not able to return to work following the birth of their child.<sup>142</sup>

- Outside the EPZs, only 3 percent of female RMG workers have access to a provident fund, compared with 18 percent of male workers.<sup>143</sup> In contrast, EPZ factories are required to maintain a provident fund for their workers.
- While EPZ firms generally provide transport and accommodation allowances to their workers, non-EPZ firms rarely provide these benefits. Transport and safe accommodation are especially important for female garment workers, most of whom report harassment on their commute to and from work.
- As noted earlier, workers in most of the EPZ factories recently elected representatives to the new WRWCs in their factories. Only about 21 percent of the committee members are women. While the legislation authorizing the WRWCs has been criticized by the ILO and others as restrictive, EPZ workers now have more freedom of association in practical terms than most non-EPZ workers. Outside the EPZs, only 3 percent of female RMG workers belong to a union, compared to 16 percent of male workers, and RMG factory owners strenuously resist efforts to organize workers.<sup>144</sup> Moreover, very few women hold leadership positions in unions (except for the Bangladesh Independent Garment Workers Union, which was founded in 1994 by female garment workers frustrated by the lack of attention to women's concerns by the established unions).<sup>145</sup>

**Labor law reforms and other proposals.** As noted earlier, a draft Labour Code, intended to consolidate and update many of Bangladesh's existing labor laws, has been under consideration for more than 10 years. During this period, the Ministry of Labour and Employment has received comments and recommendations on the proposed Labour Code from employers, trade union leaders, labor law experts, NGOs, and others. In recent years, civil society organizations such as Karmojibi Nari and labor law experts have proposed a number of changes in the draft Labour Code to address the needs of workers, especially women. Some changes were also recommended in a recent study commissioned by the Ministry of Women and Children Affairs under the PLAGE Project. These proposals, some of which may already be incorporated in the current draft code, are summarized in Box 4.<sup>146</sup>

#### **Box 4: Proposals for Labor Law Reforms**

Proposals that have been made by labor law experts and members of civil society to address weaknesses and gaps in Bangladesh's current labor laws and rules, and their implementation, include recommendations to

- require that all workers receive appointment letters, stating the worker's classification, work duties, working hours, wage and overtime rate, leave, and other benefits;
- require the prior consent of workers to any overtime work;
- remove the ban on women's night work, provided that (1) the worker consents, (2) the employer makes appropriate arrangements for providing food and transport, and (3) the employer ensures that there is a female supervisor on the night shift;<sup>147</sup>
- require an annual review of minimum wage scales;

- require equal pay for work of equivalent value;<sup>148</sup>
- extend maternity leave and benefits from 12 to 16 weeks;
- provide paternity leave and benefits;
- require factory owners to provide childcare facilities in any workplace where there are more than 10 female workers, and allow a one-hour break for workers who are breastfeeding;
- in women's toilets, supply sanitary napkins and bins for disposal;
- prohibit any form of sexual harassment in the workplace, and provide appropriate criminal penalties for violations;
- require the representation of women in the leadership of enterprise-level unions and federations of unions, and establish a cell within the Ministry of Labour and Employment to address the needs of women workers;
- expand the definition of worker to cover unorganized workers, including agricultural workers not already covered by the labor laws governing plantations;<sup>149</sup>
- increase the number of labor inspectors and labor court judges;
- simplify labor court procedures;
- add a conciliation and arbitration cell to each labor court and district labor office; and
- provide for independent review of labor inspectors' activities.

As discussed earlier, the fear of large shifts in demand for RMG products away from Bangladesh following the dismantling of the MFA quota system prompted the Government and its development partners to examine options for improving the competitiveness of the RMG sector, while also providing a viable social safety net for retrenched RMG workers. The Government's Post-MFA Action Programme, outlined above, therefore includes activities to strengthen the management and social compliance systems in RMG factories, especially small RMG subcontractors, and to provide skills training and other support services to retrenched workers. The Spectrum-Shahriyar factory collapse in April 2005 further heightened concern about working conditions and workplace safety, especially in smaller RMG factories, and about the lack of social safety nets for injured and displaced workers. The National Forum on Social Compliance established in summer 2005, and the social compliance cell set up in EPB to support the forum, now appear to be the focal points for future initiatives on labor standards and social compliance in the RMG sector.

The main focus of the original Post-MFA Action Programme related to RMG workers was on retraining, entrepreneurship development, and short-term financial assistance for retrenched workers. These types of support are likely to become more important after the current EU and US restrictions on Chinese exports expire. While massive dislocations in the RMG sector have not yet materialized, the evolving structure of the RMG sector in itself creates large risks, especially for RMG subcontractors and their employees. As larger RMG firms come under increasing pressure from overseas buyers to lower prices while at the same time improving their labor and workplace safety

conditions, there may be strong incentives to subcontract more of the production process to smaller firms.<sup>150</sup> However, these smaller firms are weaker financially and already have very poor compliance records in terms of labor standards and workplace safety. Without concerted action by the Government, BGMEA and other trade associations, overseas buyers, development partners, and local NGOs, there is the risk that further expansion of the RMG sector will worsen rather than improve the working conditions for the vast majority of workers in the sector, and primarily women.

In addition to the labor law reforms and enforcement measures outlined above, and programs already in place to assist retrenched RMG workers, other possible initiatives to address the needs of these workers include:

- **Affordable and secure housing:** Surveys indicate that about 30 percent of female RMG workers do not live with their immediate families. The few housing options for single women—including squatter houses or private boarding houses—are extremely insecure.<sup>151</sup> Some of the alternatives that have already been piloted and could be further expanded include factory dormitories, NGO-managed hostels such as those run by Nari Uddug Kendra, or housing allowances sufficient for single workers to rent an apartment alone or in groups.
- **Transport:** Outside of the EPZs, most RMG workers travel to work by foot, pedicab, or public bus, and are widely subject to harassment and possible attack. Possible alternatives include factory buses (which are common in the EPZs) or vans, or a transportation allowance sufficient for women to rent taxis or other safe transport.
- **Health care:** RMG workers are subject to a number of work-related health ailments, including exposure to toxic dyes and high levels of dust, headaches and eye strain, and back strain from prolonged sitting or standing. However, as noted earlier, workers in non-EPZ factories have very limited access to medical care.<sup>152</sup> Some of the alternative measures that could be introduced or expanded include a medical allowance, group health insurance, access to health services provided by an NGO (such as the Marie Stopes Clinic Society), or access to medical facilities managed by BGMEA or another trade association.
- **Sudden factory closures:** NGOs and trade unions report that small RMG factories are prone to close suddenly and lay off workers without paying the accumulated wages, severance, and other benefits that are due (including the “deposit” that workers often are required to pay at the time they are hired). One option to address this problem would be to require all RMG factories that are members of the BGMEA or other industry association to contribute to an RMG workers compensation fund, against which RMG workers could make a claim if their employer went out of business without paying the wages and benefits due to them. Such a fund could also be used to compensate survivors and victims of RMG factory disasters such as the Spectrum-Shahriyar collapse.<sup>153</sup> The fund could be administered by a Government authority such as the EPB, or by an industry association such as the BGMEA.

- **Savings and retirement benefits:** As noted earlier, relatively few RMG factories outside of the EPZs have established provident funds for their workers, and it is unclear how many large factories have set up workers participation and welfare funds as required under the Companies Profits (Workers Participation) Act 1968. Possible measures to address this gap include enhanced tax incentives to RMG owners to establish provident funds for their workers, or the establishment of a sector-wide provident fund financed through mandatory contributions by members of the BGMEA and other industry associations.

The Post-MFA Action Programme highlights the need for substantial training and capacity building of RMG factory owners, managers, and workers to help them adjust to the more competitive post-MFA environment. Rather than delivering this training in discrete “modules,” it would be helpful to integrate topics and demonstrate how labor standards, workplace safety, and other social compliance measures can enhance worker satisfaction and productivity, thereby contributing positively to the “bottom line.” NGOs with extensive experience in providing training and other support to women workers—such as Karmojibi Nari and Nari Uddug Kendra—should play a prominent role in future training programs for RMG workers.

### **C. SHRIMP FARMING AND PROCESSING**

With initial support from the World Bank and other external agencies, and generous incentives from the Government, Bangladesh’s shrimp sector has expanded rapidly over the past two decades. Between 1983 and 2003, the land area dedicated to shrimp and prawn production more than tripled in size, and the volume of shrimp and prawns increased more than 14 times.<sup>154</sup> It is estimated that more than 600,000 people are employed directly in shrimp aquaculture, and that more than 1 million may be engaged in the entire shrimp production chain, with close to 5 million household members dependent on the sector. By 2004, shrimp accounted for close to 5 percent of Bangladesh’s exports, second only to garments in foreign exchange earnings.<sup>155</sup>

Despite its promise as an export sector, shrimp production is a high-risk undertaking that also entails significant social and environmental costs. Shrimp are easily susceptible to viral contamination, which has prompted importing countries to establish stringent food safety standards for shrimp imports. Unsatisfied with the hygiene conditions in Bangladesh’s shrimp processing plants, the EU banned shrimp imports from Bangladesh in 1997, and only lifted the ban after Bangladesh’s larger shrimp processing plants upgraded their facilities and improved their hygiene practices. Food safety and quality issues continue to challenge the sector, which encompasses a vast and complex chain of actors, including shrimp fry collectors, hatcheries, nurseries, farms, depots, and processing plants, as well as numerous traders and agents. Shrimp farming in Bangladesh is also associated with environmental damage, displacement of landless and land-poor farmers, and hazardous conditions for workers in the sector.

As in the RMG sector, the labor market for shrimp farming and processing is highly segregated by gender. Women in some areas are active in collecting shrimp fry, and also work as wage laborers in shrimp hatcheries, farms, depots, and processing plants. However, the owners and managers of these shrimp facilities, as well as the traders and agents operating in the sector, are almost entirely men. Women receive about 70–80

percent of men's wages for similar work, and are much more likely to be employed as temporary or casual workers.<sup>156</sup>

## **1. NATIONAL STRATEGY FOR ACCELERATED POVERTY REDUCTION**

The fisheries sector, including aquaculture, is one of the Government's "critical sectors for pro-poor economic growth" under the NSAPR. The strategy notes that the sector employs about 10 percent of the total labor force and contributes more than 5 percent of Gross Domestic Product. While there has been a decline in open water fishing, with adverse effects on subsistence fisherfolk, aquaculture has grown rapidly. Home-based pond aquaculture and innovative approaches to polyculture—for example, growing both rice and shrimp in the same rice fields—present new livelihood and employment opportunities. However, the fisheries sector operates under a number of constraints, including a shortage of quality fish seed. The NSAPR therefore identifies several actions to be taken. These include (1) intensification of aquaculture, involving improvements in brood fish stock, quality fingerlings, and feed; (2) more productive inland capture fishing through community-based participation of fisherfolk and other stakeholders; (3) improvements in fisheries research to promote better technology; (4) an improved leasing policy for water bodies (*jalmahal*); and (5) better coordination among the relevant ministries to regulate use of water bodies under an appropriate legal framework. The implementation plan for the National Fisheries Policy 1998 will be finalized, with special emphasis on quality assurance in fish harvesting and processing. To promote exports, the NSAPR also notes that a "seal of quality organization" is being established to ensure quality and traceability in all stages of shrimp production and processing.<sup>157</sup>

The NSAPR also highlights the importance of better land use and land administration reform to the overall goal of poverty reduction, including ensuring better access of poor households to government-owned (*khas*) land. These goals will be furthered under the new Land Use Policy and a new system of issuing certificates of land ownership. Land administration reforms will include better identification of *khas* land for future use and better access to water bodies for poor fisherfolk.<sup>158</sup> The environmental goals under the NSAPR also include (1) efforts to halt the degradation of agricultural land (including increased salinity); (2) community-based solutions to protect ecologically critical areas such as the Sundarbans and Cox's Bazar; and (3) improved access for the rural poor to common property resources such as wetlands, forests, rivers and estuaries, and *khas* land.<sup>159</sup> As discussed further below, there are tensions between the Government's desire to intensify and expand aquaculture on the one hand, and its commitments to ensure poor people's access to *khas* land and prevent degradation of agricultural land and ecologically critical areas on the other hand.

## **2. SHRIMP FARMING-RELATED POLICIES AND STRATEGIES**

Shrimp farming and processing implicate a number of Government policies and strategies, both current and proposed. These include the National Fisheries Policy 1998, the National Water Policy 1998, the Environment Policy 1992, several policies related to land use,<sup>160</sup> the Industrial Policy 2005, the Import Policy 2003–06, and the Export Policy 2003–06. As noted in the NSAPR, an implementation plan for the National

Fisheries Policy is being finalized. A draft Shrimp Strategy, Inland Capture Fisheries Strategy, and Coastal Development Strategy are also under review.

The National Fisheries Policy 1998 provides the general framework for development of the shrimp sector. It calls for several measures to improve productivity in the sector, including

1. use of improved traditional methods and semi-intensive shrimp culture systems;
2. training for shrimp fry catchers to minimize wastage during the collection of post-larvae shrimp and improve survival of shrimp fry during transport to shrimp farms;
3. promotion of commercial shrimp hatcheries to reduce dependency on wild shrimp fry;
4. banning of wild shrimp harvesting during the peak breeding season, and banning of shrimp harvesting by trawlers in shallow coastal areas;
5. promotion of locally produced shrimp feed;
6. conversion of large shrimp farms into smaller production units using improved technology;
7. training and upgrading of facilities to ensure hygienic conditions along the shrimp production chain, including expansion and modernization of laboratory facilities for quality control;
8. improved infrastructure facilities (including transport, ice, and cold storage facilities) and security measures in shrimp farming areas;
9. an insurance system for the shrimp sector; and
10. demarcation of other coastal areas for shrimp farming, in consultation with the Ministry of Environment and Forests.

Other provisions in the policy that are relevant to the shrimp sector include (a) encouraging and training women in fish culture; (b) leasing *khas* ponds and other water bodies on a long-term basis to poor marginal farmers, fisherfolk, and trained jobless youth (male and female), including leases to cooperative societies of fisherfolk; (c) providing extension services and wider access to credit for small-scale fisheries; and (d) promoting integrated prawn and fish culture with rice growing. The policy also calls for establishing a national committee to oversee implementation of the policy, and an inter-ministerial committee to ensure proper management of government-owned water bodies (*khas jalmahal*).

The various policies relevant to the allocation and use of land for shrimp culture present a confusing picture, especially with respect to *khas* land. Under the Land Reform Policy 1972 and its successors—including the Land Reform Action Program 1987 and Agricultural *Khas* Land Management and Settlement Policy 1997—procedures were established to allocate *khas* land to certain categories of landless households and individuals under 99-year leases. The Shrimp *Mohal* Management Policy 1992 then

introduced separate procedures under which the Ministry of Land could declare both *khas* and private land areas as shrimp *mohal*. In this case, any land within the shrimp *mohal* that had already been leased out as agricultural land would be deemed to have been leased for shrimp cultivation. (To prevent abuse, an area cannot be declared a shrimp *mohal* unless at least 85 percent of landowners or leaseholders within the area consent.) A third policy, the *Jalmahal* Policy 1997, authorizes any closed water bodies that are *khas* to be leased (1) if 20 acres or less, by the Ministry of Youth and Sport to cooperative societies of trained youth (men and/or women); or (2) if more than 20 acres, by the Ministry of Land to cooperative societies of fisherfolk. Each of these policies has established separate committee structures to oversee the allocation of the land (or water body). As discussed further below, the land administration system in Bangladesh is generally weak and subject to abuse, and *khas* land often has been leased to the wealthy or politically connected rather than to the intended landless beneficiaries. The declaration of *khas* land as shrimp *mohal* has been particularly subject to abuse, often resulting in the displacement of landless and small farmers.

As a “thrust sector,” shrimp processing receives a number of incentives and other support under the Industrial Policy 2005, the Import Policy 2003–06, and the Export Policy 2003–06. Under the Import Policy, for example, the general ban on imports of packing cartons does not apply to certain cartons used to export frozen foods, including specifically shrimp. The Export Policy provides a cash subsidy on frozen shrimp and other fish exports, in addition to the general incentives and facilities provided to export industries (noted in Section V.B.).

The Environment Policy 1992 includes a number of objectives that are at odds with the rapid expansion of the shrimp sector, including (1) preventing the spread of salinity and alkalinity in the soil, (2) conserving and developing forests and wetlands, (3) ensuring that fisheries activities do not have an adverse impact on the mangrove forests and other ecosystems, (4) ensuring environmentally sound conservation and development of coastal and marine resources, and (5) limiting coastal and marine fish catches to ensure regeneration of the species. As discussed below, environmental impact assessments clearly must be carried out for any new shrimp processing plants under the Environment Conservation Rules 1997, but the rules are silent with respect to shrimp hatcheries, farms, and depots.

### **3. SHRIMP FARMING-RELATED LAWS AND REGULATIONS**

Several sets of laws and regulations apply to the shrimp sector in Bangladesh, including laws and rules related to fisheries, the environment, land allocation and use, business, and labor.<sup>161</sup>

**Fish sector laws and rules.** The Protection and Conservation of Fish Act 1950 and Protection and Conservation of Fish Rules 1985 authorize the Government to take steps to prevent overfishing or destructive fishing practices in inland fisheries. For example, through a 2000 amendment to the Protection and Conservation of Fish Rules, the Government banned shrimp-fry catching in estuarial and coastal waters.<sup>162</sup> The Marine Fisheries Ordinance 1983 and Marine Fisheries Rules 1983 govern the licensing and regulation of fishing vessels and authorize the Government to protect fish and other aquatic life in open waters by declaring marine reserves and prohibiting destructive

fishing practices.<sup>163</sup> The Private Fisheries Protection Act 1889 establishes penalties for encroachment on private fishing waters (as opposed to *khas* land and water bodies). Under the Shrimp Cultivation Tax Act 1992 and Shrimp Cultivation Tax Rules 1993, the Government may impose a tax on any shrimp farming area that has benefited from Government-built embankments, canal cuts, or water-control structures. Shrimp processing is governed by the Fish and Fish Products (Inspection and Quality Control) Ordinance 1983 and the Fish and Fish Products (Inspection and Quality Control) Rules 1997. This ordinance and rules govern the licensing and regulation of shrimp processing and packing plants, including the establishment of quality and safety standards, inspections, and penalties for non-compliance. More specifically, the 1997 Rules incorporate the Hazard Analysis Critical Control Point (HACCP) approach to food hygiene that has been recommended as an international SPS standard by the Codex Alimentarius Commission.<sup>164</sup> These 1997 Rules therefore comply with Bangladesh's WTO commitments under the SPS Agreement.<sup>165</sup> As discussed further below, the HACCP approach is also a regulatory requirement of major shrimp importers such as the EU and United States.

**Environmental laws and rules.** The Environment Conservation Act 1995 and Environment Conservation Rules 1997 authorize the Government, through the Department of Environment of the Ministry of Environment and Forests, to restrict manufacturing processes and products that are harmful to the environment. Under the act, any "industrial unit or project" must obtain an environmental clearance from the Department of Environment, unless exempted (Section 12). The rules specify procedures for obtaining an environmental clearance certificate, and classify industrial units and projects in four categories with progressively more stringent clearance requirements. Shrimp processing is included in the "Orange-B" category, which requires (1) a feasibility study; (2) an initial environmental examination; (3) an environmental management plan, including an effluent treatment plant; (4) consent from the local government authority; (5) an emergency plan for mitigation of any adverse environmental impacts; and (6) a relocation and rehabilitation plan, if applicable (Section 7[6][c]). In contrast, shrimp hatcheries, farms, and depots are not specifically listed in the 1997 Rules, although comparable agricultural enterprises such as dairy and poultry farms are listed in either the Orange-A or Orange-B category, depending on their size. This appears to be simply an oversight on the part of the drafters of the rules. One public interest law firm recently challenged the declaration of a coastal area in Noakhali district as a shrimp *mohal*, in part on the basis that the interested parties had not obtained an environmental clearance certificate for shrimp farming in the area.<sup>166</sup>

**Land laws and rules.** Land transactions in Bangladesh are governed by a complex set of laws, regulations, policies, and practices that are beyond the scope of this report. In the shrimp sector, most of the land-related issues that have arisen relate to the designation of land areas for shrimp farming and the extension of lease rights for shrimp farming either on private or *khas* land or water bodies. These issues arise in the context of a general scarcity of land and weak systems of land administration that are easily manipulated by powerful political and economic interests. Some of the key laws relevant to rural land ownership and tenancy include the State Acquisition and Tenancy Act 1950, the Land Reforms Ordinance 1984, the Transfer of Property Act 1882, and the

Registration Act 1908, as well as related rules. (The latter two acts were amended in 2004 to address the serious problem of fraudulent land transactions by tightening the documentation requirements for land transfers and land registration.) Under the land laws and rules, the Ministry of Land plays the lead role in land administration issues, but several other ministries and levels of local government are also involved. As noted earlier, the designation of land for shrimp aquaculture, and the leasing of *khas* land and water bodies for shrimp aquaculture, are governed mainly by the Shrimp *Mohal* Management Policy 1992 and the *Jalmahal* Policy 1997.

**Business regulations.** Shrimp processing and packing plants, as well as smaller enterprises in the shrimp production chain, are subject to the general business laws and regulations described in Section VI.A.3. As noted above, shrimp processing and packing plants must obtain environmental clearance certificates from the Department of Environment of the Ministry of Environment and Forests, and licenses from the Department of Fisheries of the Ministry of Fisheries and Livestock. As industrial enterprises, they must also register with the Department of Inspection of the Ministry of Labour and Employment and comply with local land use, fire, and building safety regulations.

**Labor laws.** Shrimp processing and packing plants are subject to the same framework of labor laws and rules outlined in VI.B.3.<sup>167</sup> Given the broad scope of the labor laws, shrimp depots and sorting stations should also be subject to the main labor laws and rules.<sup>168</sup> However, agricultural workers—other than those working on plantation estates—are not currently covered by the national labor laws. Therefore, it appears that workers in shrimp hatcheries and farms may not be covered. As noted in Box 4, one of the reform proposals for the new Labour Code is to extend the coverage of the new code (and existing labor laws) to agricultural workers.

**Shrimp industry codes and certification systems.** Serious concerns about the environmental, social, and health safety risks associated with fisheries and fish processing, and about the inadequacy of current laws and regulations to address these risks, have led to the development of several codes of practice, standards, and industry certification systems. At the international level, these include the Code of Conduct for Responsible Fisheries endorsed by the Food and Agriculture Organization (FAO) in 1995, which stresses the need to protect livelihoods of local communities, promote the active participation of fisherfolk and their communities in responsible aquaculture management, encourage practices to protect broodstocks, minimize environmental pollution, and ensure food safety. The International Principles for Responsible Shrimp Farming, developed jointly by FAO, World Bank, World Wildlife Fund, and others, are intended to apply the FAO Code of Conduct to the shrimp sector and address environmental, food safety, and local community issues related to shrimp farming. The new Code of Practice for Fish and Fishery Products developed by the Committee on Fish and Fishery Products under the Codex Alimentarius Commission focuses on food safety and quality issues related to fish processing, and incorporates steps from both the HACCP system for minimizing food safety hazards and the Defect Action Point (DAP) system for ensuring quality.<sup>169</sup> As noted above, the HACCP approach has been incorporated in Bangladesh's regulatory framework through the Fish and Fish Products (Inspection and Quality Control) Rules.

There are also several private and donor-supported initiatives under way to establish certification systems for shrimp production facilities. The Global Aquaculture Alliance, for example, has developed sets of “best aquaculture practices” for hatcheries, farms, and processing plants, which can form the basis for certification of these facilities by private organizations such as the Aquaculture Certification Council, Inc (ACC).<sup>170</sup> These standards address community (including property rights and working conditions), environmental, food safety, and traceability issues. However, the standards are quite general compared with other international standards for social and environmental compliance (such as the SA 8000 standards for social accountability described in Section VI.B.3.). Moreover, the costs for certification by an entity such as ACC would be prohibitive for small shrimp farms in Bangladesh.

In contrast, the “Shrimp Seal of Quality” (SSOQ) certification standards that have recently been developed in Bangladesh with USAID support are much more detailed and tailored to the particulars of the shrimp production chain in Bangladesh. (For example, SSOQ guidelines have been developed for depots and transporters, as well as farms and processing plants, and additional guidelines are proposed for hatcheries, feed mills, and ice plants.) The SSOQ standards cover food safety and quality (including HACCP requirements), traceability, environmental sustainability, labor practices, and social responsibility. The labor practices standards are comparable in scope to SA 8000 standards, and include provisions on harassment and maternity leave, as well as the core labor standards, workplace safety, working hours, and leave. The social responsibility standards address some of the particular abuses associated with shrimp farming in Bangladesh, and require that (1) lease arrangements for shrimp farming be in writing and fully complied with; (2) land use for shrimp operations not be obtained through coercion; (3) shrimp operations not interfere with community access to fishing grounds or other common property resources, or with activities on neighboring farms; and (4) shrimp operators be responsible for the conduct of their workers. The SSOQ guidelines also provide for SSOQ certifiers to consult with grassroots organizations and community members, as well as with shrimp facility owners and employees. However, the financing arrangements for SSOQ certification are unclear. It would be advisable for the SSOQ organization to set up a progressive financing structure in which fees from the large hatcheries and shrimp processing plants would cross-subsidize the participation of small shrimp farms and other small actors in the production chain.<sup>171</sup>

The costs of compliance with these standards are substantial. The annual cost of HACCP compliance by shrimp processing plants alone has been estimated to be \$2.4 million.<sup>172</sup> Estimates of the cost of introducing an SSOQ scheme range from \$500,000 to \$2,000,000, with annual operating costs of \$300,000 to \$500,000.<sup>173</sup>

**Law enforcement and compliance.** Bangladesh has in place several sets of laws and regulations that, if fully implemented, would address many of the environmental and social risks linked to shrimp production. However, inconsistencies and gaps in the regulatory frameworks, and weak enforcement of existing laws and rules, undermine efforts to promote a shrimp sector that is productive, hygienic, and socially and environmentally responsible. Some of the problems include:

- **Land use:** Powerful economic and political interests have manipulated the Shrimp *Mohal* Management Policy 1992 and frequently resorted to strong-arm tactics to secure leases for shrimp farming. Many of these leases cover agricultural *khas* land that had been (or should have been) allocated to landless families. Some leases have been forged, and rent often is not paid by the shrimp farm owner to the lessor. Efforts by landless farmers to resist the intrusion of shrimp farms on *khas* land have been met with fierce and even violent resistance. Large numbers of landless households displaced from *khas* land have migrated to the cities for work or turned to shrimp fry collection or work on shrimp farms.<sup>174</sup>
- **Environment:** As noted above, the Environment Conservation Rules 1997 do not explicitly require environmental impact assessments of proposed shrimp hatcheries or farms. However, a number of negative environmental impacts of shrimp farming have been documented. These include the destruction of mangrove forests, damage to agricultural land from improper drainage from shrimp farms and increased salinity in the soil, and loss of grazing land for livestock.<sup>175</sup> Unchecked shrimp trawling in marine waters and aggressive collection of wild shrimp fry from the shoreline by poor households threaten the viability of Bangladesh's shrimp stock. However, as noted above, governmental efforts to curb shrimp trawling and fry collection have met with resistance from the trawling industry and individual fry collectors.
- **Indebtedness:** Shrimp fry collectors, small shrimp farmers, and other small players in the shrimp production chain are frequently compelled to take loans (*dadon*) from intermediaries higher up in the production chain. Repayment is typically in kind, and invariably forces the borrower to supply shrimp fry or other shrimp products to the lender on less favorable terms than prevailing market prices.<sup>176</sup>
- **Labor conditions:** Working conditions in shrimp hatcheries, farms, and processing plants are not as well documented as those in the RMG sector. Nevertheless, based on the data available, it appears that the working conditions are difficult, especially **in shrimp fry collection and on shrimp farms**. For example, during the peak collection period for shrimp fry, workers—including large numbers of women and children—can spend entire nights collecting fry, which involves standing in water for extended periods. During this period, women and young girls collecting fry are often harassed either physically or verbally. Female workers on shrimp farms also report physical assault and psychological harassment by the farm owner or farm security guards. As noted earlier, women on shrimp farms are generally paid less than men for similar work. Since shrimp farm work is seasonal, workers must cope during the lean period by finding day labor elsewhere or working as domestic servants.<sup>177</sup>
- Working conditions **in shrimp processing plants** vary depending on the size of the plant and other factors. Larger factories tend to have better facilities, such as toilets and rest rooms. However, reports indicate general non-compliance with labor law requirements on working hours, overtime, health care, maternity leave

and childcare, health and safety measures, and freedom of association.<sup>178</sup> One study also found that the majority of workers in the surveyed plants were considered “casual”, and were employed by contractors rather than the owner.<sup>179</sup> During the peak processing season, workers are employed 24 hours a day in three shifts. The same study confirmed that shrimp processing workers are prone to various types of work-related illnesses—including colds, muscle strain, back pain, eye irritation, stomach illnesses, and cuts and bruises—but do not receive adequate treatment from the local doctors assigned by factory managers. Sexual harassment in the plants also appears to be common, but is not addressed appropriately by the management.

- **Gender issues:** In addition to the wage differentials and sexual harassment issues noted above, women also appear to be particularly vulnerable to changes in the shrimp production chain that are being undertaken to accommodate food safety concerns of importing countries. For example, following the EU’s 1997 ban on shrimp imports from Bangladesh, many sorting depots were closed and the sorting process was shifted to the shrimp processing plants (in order to comply with HACCP standards). Women who previously sorted and de-headed shrimp in depots located close to their homes then had to choose whether to migrate to work in the shrimp processing plants or to find alternative work in their communities.<sup>180</sup> Women who migrated to work in the shrimp processing plants had to leave behind their livestock and gardens, and could no longer pursue the same diversified livelihood strategies. In addition, landless women who now depend on collection of shrimp fry for much of their livelihoods will be negatively affected as the shrimp industry relies more on hatchery shrimp and less on wild fry in order to ensure traceability of shrimp stock.

**Law reforms and other proposals.** The Government is considering a number of law and policy measures to address productivity, food safety, and environmental and social sustainability concerns in the shrimp sector. These measures are expected to be reflected in the new Shrimp Strategy that is now being finalized. Some of the proposed measures are summarized in Box 5.<sup>181</sup>

#### **Box 5: Proposals for the New Shrimp Strategy**

Some of the expected features of the Government’s new Shrimp Strategy include

- establishment of a Fisheries Management Executive Committee, with wide representation of stakeholder groups to oversee and regulate fisheries development;
- establishment of environmental impact assessment requirements and environmental quality standards for all shrimp facilities producing above a minimum effluent level;
- a requirement that all shrimp hatcheries and shrimp farms must be registered with the Department of Fisheries and subject to environmental standards, traceability rules, and industry certification requirements;
- consideration of procedures for licensing collectors of shrimp fry;
- revision of the Shrimp *Mohal* Management Policy 1992 to better align it with Government policies on the allocation of *khas* land and water bodies to landless and other vulnerable groups;

- support for private certification schemes, consistent with relevant laws and policies, to ensure quality control and social and environmental compliance;
- promulgation of rules by the Department of Fisheries for labeling, recordkeeping, and other steps to ensure traceability of inputs to the shrimp production chain; and
- provisions for extensive awareness raising and capacity development (including extension services), involving farmer groups, NGOs, and the private sector.

In light of the previous discussion of social and gender issues in the shrimp sector, it would also be useful to consider

- inclusion of representatives of small farmers and fisherfolk, the landless, and fisheries workers (including women) in any new coordination or independent oversight body for the shrimp sector;
- adoption of recommendations from the ongoing review of the allocation of *khas* land being undertaken jointly by the Ministry of Land and the Association for Land Reform and Development, especially as they relate to shrimp farming;
- adoption of the expert recommendations related to the new Labour Code, and more effective enforcement of labor laws and rules (see Box 4), especially as they relate to both female and male workers in shrimp processing facilities;
- incorporation in the new Labour Code of the expert recommendation to extend labor law protections to agricultural workers, including fisheries workers (see Box 4);
- development of initiatives, in collaboration with the Bangladesh Frozen Food Exporters Association, NGOs, and other stakeholders, to address the housing, transport, health care, and other concerns of shrimp processing workers (see Section VI.B.3);
- measures to ensure that any traceability or certification requirements applicable to small shrimp farms are simple and workable, and that any certification fees for small shrimp farms are minimal; and
- strategies to ensure meaningful participation of women as well as men in any future training or capacity development programs for the shrimp sector.

The previous discussion focused mainly on legal and regulatory issues in the shrimp sector. A separate report prepared under the GATE Project, which presents a gendered value chain analysis of the Bangladesh shrimp sector, includes similar recommendations related to the sector. These include proposals for (1) establishment of an independent oversight body for the sector, composed of representatives from the Government, private sector, labor movements, and other civil society groups; (2) establishment of a welfare fund, financed by revenues generated in the sector, to support the provision of health and other basic services to workers in the sector; (3) encouragement of ethical trading initiatives, including implementation of appropriate

standards and codes of conduct on food safety, labor practices, and environmental sustainability; and (4) initiatives to restrict shrimp farming on *khas* land, promote titling of household land in the name of both spouses, and undertake participatory analyses of optimal land management practices in shrimp farming areas.<sup>182</sup>

# CONCLUSIONS AND RECOMMENDATIONS

Bangladesh has made broad international, regional, and national commitments to equitable and sustainable development, poverty reduction, and gender equality. These commitments are reflected in national policy documents such as the NSAPR and National Policy for the Advancement of Women, the Constitution, and various laws and regulations. Trade expansion is expected to support these commitments, in particular through expanding employment opportunities in the export sectors, especially for poor women and men. At the same time, increased trade openness exposes Bangladesh and its export sectors to the vagaries of international markets, creating significant uncertainty for producers and workers. Small farmers, small businesses, and artisans also find it difficult to compete with cheaper imports, especially subsidized agricultural products and mass-produced goods.

Participation in the WTO and other trade arrangements entitles Bangladesh to certain rights and privileges, particularly as an LDC member, but trade-related expertise and resources are needed to fully exercise these rights. Regional and bilateral trade agreements and GSP schemes can provide additional trade benefits to Bangladesh. However, multiple trade commitments can also strain the Government's capacity and impose additional costs on importers and exporters, especially when they impose different rules of origin or other requirements. WTO-plus provisions in bilateral trade agreements or as conditions for development assistance can also undermine Bangladesh's rights as an LDC member of the WTO.

This review found that (1) the interests of small farmers, small business owners, artisans, and workers, especially women, are generally not well represented in Bangladesh's trade-related institutions, and (2) as a result, Bangladesh's trade-related policies, laws, and regulations do not consistently reflect the interests and constraints of these groups. The policies, laws, and regulations that apply to key export sectors, such as RMG and shrimp processing, and more generally to small businesses involved in import and export activities, also suffer from gaps, inconsistencies, and lax or inequitable enforcement. These factors limit the benefits of trade expansion for small businesses, small farmers, artisans, and workers. Biases in some laws, rules, and business practices, and discriminatory social norms, further limit the opportunities of women to benefit from trade-related activities. To ensure more equitable distribution of the benefits of trade expansion, this review suggests that

- poverty and gender concerns could be addressed more consistently in the development of Bangladesh's trade-related policies and laws, in their implementation, and in the negotiation of trade commitments;
- the Government's recent policy commitments to poverty reduction, gender equality, and social compliance, particularly in the NSAPR, the Industrial Policy 2005, and the Post-MFA Action Programme, could be implemented promptly and with adequate resources; and

- greater attention could be paid to “behind-the-border” issues of inequality and gender discrimination in the implementation of key policies, laws, and regulations in trade-related sectors (including the simplification of regulations applicable to small businesses, and the equitable and effective implementation of land and labor laws).

The review has identified a number of specific measures that can be taken to maximize the benefits of trade for Bangladesh’s small farmers, small businesses, artisans, and workers, especially women. A number of these measures have already been endorsed by the Government or proposed by other stakeholders or researchers in Bangladesh. USAID and other development partners, private sector trade bodies, and civil society organizations can play important roles in supporting these endeavors. The main recommendations that emerge from the review include:

## **A. TRADE NEGOTIATIONS AND TRADE POLICYMAKING**

**Representation on trade advisory bodies.** To better ensure that the benefits of trade expansion are equitably shared, it would be desirable for the Government to expand the membership of key trade advisory bodies to include representatives of small farmers, small business owners, artisans and workers, especially women. (The NSAPR matrix already includes a similar commitment.)

**Improved collection and analysis of trade-related data.** There is a well-recognized need to enhance the general capacity of trade-related institutions such as the Tariff Commission and the WTO Cell within the Ministry of Commerce, and the Bangladesh Free Trade Institute, to systematically collect and analyze trade-related data. This would enhance the ability of the Government to develop trade policies, negotiate new trade agreements, and exercise its rights under existing trade agreements. The collection of trade-related data, disaggregated by sex and other relevant factors, is also a prerequisite for sound gender and poverty analysis of trade policies and trends. USAID and other development partners, private sector trade bodies, universities and research institutions could all make important contributions to this endeavor.

**Enhanced capacity for poverty and gender analysis of trade policies and trends.** Past trade-related development assistance to Bangladesh has been criticized as fragmented and inadequate. However, the recent needs assessment supported by several donors should provide a platform for more coordinated and comprehensive support going forward. It will be important for USAID and Bangladesh’s other development partners to ensure that their future trade-related development assistance includes poverty and gender analysis, and that their future support to national trade institutions (such as EPB, the Tariff Commission and WTO Cell within the Ministry of Commerce, and the BFTI) strengthens the capacity of these institutions to analyze trade policy issues from a poverty and gender perspective. For example, development partners could support training in poverty and social impact analysis, including both qualitative and quantitative techniques.<sup>183</sup>

**Poverty and gender analysis of future trade commitments.** The NSAPR identifies trade expansion as a key channel for reducing poverty and promoting equitable

development, mainly through employment in export sectors. The NSAPR matrix also identifies measures to ensure that women as well as men benefit from trade-related activities. It will therefore be important for the Government to analyze any future trade commitments—including regional commitments under SAARC, BIMSTEC or TPS-OIC—in terms of their possible poverty reduction and gender impacts.

**Policy coherence.** Many of the significant changes in Bangladesh’s trade-related laws and policies in recent years have been undertaken as conditions for World Bank loans, for other development assistance or for preferential access to overseas markets under GSP schemes. In some cases, these law and policy changes go beyond Bangladesh’s obligations as an LDC member of the WTO. In line with the commitment made at the recent WTO Ministerial Meeting in Hong Kong, development partners should ensure that their future trade and development cooperation agreements with Bangladesh, and future development assistance to the Government, do not impose conditions that are inconsistent with Bangladesh’s rights and flexibilities under WTO agreements.

**Trade policy reviews.** Under the WTO’s Trade Policy Review Mechanism (TPRM), periodic assessments are carried out jointly by individual WTO members and the WTO secretariat to “examine the impact of a Member’s trade policies and practices on the multilateral trading system.”<sup>184</sup> Bangladesh’s last trade policy review was completed in 2000. There is growing recognition of the need to expand the scope of trade policy reviews, especially in the case of LDCs, to consider their capacity to implement their WTO commitments, their need for trade-related technical assistance, and the impact of trade liberalization on domestic producers, workers and consumers. Commentators have also recommended that these more “domestically oriented” trade policy reviews could include gender assessments.<sup>185</sup> In view of the links made in the NSAPR between trade expansion, poverty reduction and gender equality, it will be important for the Government to analyze the domestic impacts of its trade commitments, including poverty and gender analysis, in any future trade policy reviews. To enhance the quality and completeness of these reviews, the Government should invite input from a wide range of domestic stakeholders, including private sector trade bodies, trade unions, civil society organizations and research institutions. Development partners can contribute to these reviews by sharing their own research and supporting domestic research and consultations.

## **B. NON-AGRICULTURAL MARKET ACCESS**

**Analysis of proposed tariff reductions.** The NSAPR notes that any further liberalization of import tariffs could have a negative effect on the national budget, and would need to be offset by increased collection of revenue from other sources in order not to jeopardize expenditures in support of poverty reduction and other national development goals. Therefore, it will be important for the Government to analyze the impact of any proposed tariff reductions on the national budget, and especially on poverty reduction and social sector expenditures.

## C. AGRICULTURE

**Impact analysis of agricultural import liberalization.** Recent policy research studies indicate that domestic farmers, especially small farmers, have found it difficult to compete with agricultural imports, especially from countries that provide substantial agricultural subsidies. The Government therefore should analyze the impact on small farmers and agricultural workers, disaggregated by sex, of any further liberalization of agricultural imports.

**Support to small farmers.** These studies also indicate that the liberalization of agricultural inputs such as fertilizer, irrigation water and credit has had a disproportionately negative impact on small farmers. To ensure the viability of small farms in a liberalized environment, it will be important for the Government to improve small farmers' access to critical inputs, credit, improved technology and marketing services. USAID and other development partners could provide substantial expertise and other support in this area.

## D. STANDARDS

**Representation in developing industry standards.** Quality control and other standards, introduced to comply with import country requirements, can be especially costly and burdensome for small businesses. It would therefore be desirable for the Government to include representatives of small businesses, including women-owned businesses, in the future development of national standards and certification systems, including procedures under the proposed accreditation law.

**Capacity development related to standards.** Given the limited experience and capacity of small businesses to comply with international and industry standards, the Government should ensure that these businesses, including women-owned businesses, have access to practical training on relevant standards and certification requirements for their sectors. Development partners such as USAID and private sector trade bodies can play important roles in supporting this training and capacity development.

## E. INTELLECTUAL PROPERTY

**New legislation on patents and plant varieties.** The TRIPs Agreement and related decisions of WTO bodies provide important flexibilities to Bangladesh and other LDCs. The Government should ensure that the new Patents and Designs Act and Plant Variety and Farmers' Rights Protection Act take full advantage of the transition periods and flexibilities provided in the TRIPs Agreement, especially related to the patenting and compulsory licensing of pharmaceuticals and the protection of farmers' rights to save seeds. In line with the outcome of the recent WTO Ministerial Meeting in Hong Kong, development partners should ensure that their trade arrangements and development assistance programs support Bangladesh's rights under the TRIPs Agreement.

**Protection of geographic indications.** Handicrafts produced in particular regions of Bangladesh could benefit from legal protection, which would also enhance the internal and external marketing of these distinctive products. The Government therefore could consider legislation to provide simple, transparent and inexpensive procedures for

establishing and protecting geographic indications for handicrafts and other artisanal products.

**Capacity development on geographic indications.** In the event that geographic indications do receive protection, it would be important to provide practical information and training on geographic indications to artisans, especially women. Development partners and private sector trade bodies could assist the Government in providing this information and training.

## **F. PROCUREMENT**

**New law on public procurement.** The PLAGÉ Project of the Ministry of Women and Children Affairs has recommended that government bodies support women-owned businesses through their procurement activities. This type of preferential support is also authorized by Article 27 of the Constitution. In implementing the new Public Procurement Law, it would therefore be desirable to allow for Government assistance and/or preferences to small and women-owned businesses in connection with the award of Government contracts. This flexibility could be provided through a general exemption for small businesses (as defined in the Industrial Policy or the new SME development policy) and for businesses owned and managed by women. Alternatively, these categories of businesses could be allowed a percentage preference in bidding for government contracts, similar to the domestic preference given to domestic bidders in international competitive bidding under the Public Procurement Regulations 2003 (Reg. 41[1][g]).

## **G. SMALL AND MEDIUM-SIZED ENTERPRISES**

**Implementation of policy measures to support SMEs.** The NSAPR, the Industrial Policy 2005, and the new SME development policy recognize the important role of SMEs, especially in generating employment, but also note the numerous obstacles they face. It will be important for the Government, with support from development partners such as USAID and private sector trade bodies, to fully implement the measures outlined in these policy documents to address the main constraints on SMEs, including constraints on their import and export activities.

**Enhanced role of private sector trade bodies in supporting SMEs.** National and local chambers of commerce and industry and other industry associations can play a much larger role in providing information and other services to small businesses. They should be strongly encouraged to expand their membership and services to small businesses, especially women-owned businesses. Given the lack of information available to small businesses concerning regulatory and other matters, the Government should also require chambers of commerce and industry to serve as information resource centers for small entrepreneurs, whether or not they are members.

**Implementation of policy commitments related to women entrepreneurs.** The PLAGÉ Project and other studies have documented the additional barriers facing women-owned businesses, including export businesses. It will therefore be important for the Government, with assistance from development partners such as USAID, private

sector trade bodies and financial institutions, to implement the measures for promoting women-owned businesses outlined in Chapter 11 of the Industrial Policy 2005 (see Box 1). These measures are also reflected in the NSAPR matrix.

**Additional law and policy measures to assist women entrepreneurs.** The PLAGÉ Project identified a number of other law and policy changes that would address the needs and constraints of women-owned businesses, especially exporters and potential exporters (see Boxes 2 and 3). The Government should give prompt consideration to these recommendations, which would further the aims of the Industrial Policy 2005 and the NSAPR. Development partners such as USAID, private sector trade bodies and financial institutions could provide substantial technical and financial assistance in this area.

**Improved access to credit for women-owned businesses.** The PLAGÉ Project confirms the particular obstacles that women entrepreneurs face in obtaining commercial credit, due to their limited ownership of land that could be used as collateral, burdensome requirements of lending institutions, and the lack of interest or outright bias of loan officers in these institutions. The Government should therefore ensure that financial institutions accessing credit lines for small businesses (1) work with women's business associations to identify potential women borrowers, (2) take concrete steps to simplify their loan application procedures for small businesses, and (3) do not impose special guarantee or other requirements on women borrowers. Development partners that finance these credit lines should also support these measures, and monitor their implementation.

## **H. READY-MADE GARMENTS**

**Recommendations for the new Labour Code.** The drafting of a new Labour Code, which has been under way for several years, presents an opportunity to address inadequacies in current labor laws and rules, especially as they relate to female workers. In finalizing the new Labour Code, the Government should incorporate the recommendations of labor experts to better address the needs of workers, especially women (see Box 4).

**Improved enforcement of labor laws and rules.** Many of the problems related to unsafe and unfair working conditions in RMG factories can be linked to lax enforcement of existing labor laws and rules. The Government should implement the recommendations of labor experts to increase the number of labor inspectors and labor court judges, simplify labor court procedures, and take other measures to improve labor law enforcement (see Box 4).

**Needs of RMG workers.** In anticipation of possible factory closures and layoffs following the phasing out of the MFA, the Government established a Post-MFA Action Programme including plans to provide skills training and other support to retrenched workers, mainly women. While massive closures and layoffs have not yet materialized, consolidation in the RMG sector is still possible, and therefore these safety net programs should be maintained. Surveys also indicate that RMG workers need support in a number of other areas, especially related to safe and affordable housing, safe

transport, savings mechanisms, and payment of accrued wages and benefits in the event of sudden factory closures. The Government, working with its development partners, private sector trade bodies, labor unions and experienced NGOs, should expand existing initiatives and pilot new initiatives to address these needs of RMG workers.

**Training on labor standards and workplace safety.** To improve the compliance of RMG factories with national labor laws and rules as well as buyers' codes of conduct, practical and comprehensive training is needed for both RMG owners/managers and RMG workers on labor standards and workplace safety, especially in small firms. The new social compliance cell within the Ministry of Commerce, working with the Ministry of Labour and Employment, development partners, industry associations and experienced NGOs, should develop and implement these training programs for the RMG sector, with special emphasis on small RMG firms.

## I. SHRIMP FARMING AND PROCESSING

**Department of Fisheries proposals.** The Government is considering a number of law and policy measures to address the productivity, food safety, environmental and social sustainability concerns in the shrimp sector (see Box 5). Some of the measures proposed by the Department of Fisheries, which should be incorporated in the new Shrimp Policy, include

- establishment of a high-level executive body with wide representation of stakeholder groups to oversee and regulate fisheries development;
- establishment of environmental impact assessment requirements and environmental quality standards for all shrimp facilities producing above a minimum effluent level; and
- revision of the Shrimp *Mohal* Management Policy 1992 to better align it with Government policies on the allocation of *khas* land and water bodies to landless and other vulnerable groups.

**Other law and policy measures.** This review suggests that the Government, working together with USAID and other development partners, private sector trade bodies, labor unions and NGOs, should take the following additional measures to address gender and other social concerns in the shrimp sector:

- Include representatives of small farmers and fisherfolk, the landless, and fisheries workers (including women) in any new coordination or independent oversight body for the shrimp sector;
- Adopt recommendations from the ongoing review of the allocation of *khas* land, being undertaken jointly by the Ministry of Land and the Association for Land Reform and Development, especially related to shrimp farming;

- Adopt the expert recommendations related to provisions of the new Labour Code and more effective enforcement of labor laws and rules (see Box 4), especially as they relate to female and male workers in shrimp processing facilities;
- In the new Labor Code, incorporate the expert recommendation to extend labor law protections to agricultural workers, including fisheries workers (see Box 4);
- Develop initiatives, in collaboration with the Bangladesh Frozen Food Exporters Association, NGOs and other stakeholders, to address the housing, transport, health care and other concerns of shrimp processing workers;
- Ensure that any traceability or certification requirements applicable to small shrimp farms are simple and workable, and that any certification fees for small shrimp farms are minimal; and,
- Develop strategies to ensure meaningful participation of women as well as men in any future training and capacity development programs for the shrimp sector.

# ANNEX 1. PERSONS MET ON INFORMATION-GATHERING TRIP

(Dhaka, October 15–29, 2005)

## GOVERNMENT

Bangladesh Export Processing Zone Authority

Brig. Gen. Zakir Hossain, Executive Chairman

Mr. Md. Khorshed Alam, Member (Investment Promotion)

Mr. Md. Shahjahan, Member (Investment Promotion)

Ministry of Labour & Employment

Mr. A. B. M. Abdus Sattar, Joint Secretary

Mr. Md. Ibrahim Khalil, Deputy Secretary & Deputy Chief (Labour)

Tariff Commission

Mr. Molla Mansur Ahmed, Joint Secretary

Dr. Mostafa Abid Khan, Deputy Chief

## PRIVATE SECTOR

Syed Ishtiaq Ahmed & Associates

Ms. Nihad Kabir, Barrister

Dr. Kamal Hossain & Associates

Dr. Kamal Hossain, Barrister

Dr. Sharif Bhuiyan, Advocate

Mr. Amir Khosru Mahmud Chowdhury, Former Minister of Commerce

Women Chamber of Business and Industry

Ms. Selima Ahmad, President

Women Entrepreneurs Association

Ms. Rokeya A. Rahman, President (telephone interview)

Women Entrepreneurs Association of Bangladesh

Ms. Nasreen Awal Mintoo, President

Ms. Shahruk Rahman, Secretary Coordinator

## CIVIL SOCIETY

Ain o Salish Kendra

Ms. Sultana Kamal, Executive Director

Bangladesh Environmental Lawyers Association

Ms. Syeda Rizwana Hasan, Advocate and Director (Programmes)

Bangladesh Mahila Parishad

Ms. Ayesha Khanam, General Secretary

## BRAC

Ms. Sheepa Hafiza, Gender Coordinator and HR Director

## Karmojibi Nari

Ms. Shirin Akhter, President

Ms. Rokeya Rafique, Executive Director

## Oxfam

Mr. Palash Kanti Das, Livelihoods Programme Coordinator

## Nari Uddug Kendra

Ms. Mashuda Khatun Shefali, Executive Director

## Nijera Kori

Ms. Khushi Kabir, Coordinator

## Women for Women

Prof. Mahmuda Islam

## **RESEARCHERS**

Dr. Shahnaz Huda, Associate Professor, Faculty of Law, University of Dhaka

Dr. Md. Abdur Razzaque, Member Director (Crop), Bangladesh Agricultural Research Council

Dr. Salma Chaudhuri Zohir, Resident Fellow, Bangladesh Institute of Development Studies

## **MULTILATERAL AND BILATERAL DEVELOPMENT AGENCIES**

### ADB

Ms. Hua Du, Country Director

Ms. Ferdousi Sultana Begum, Social Development and Gender Officer

Dr. B. B. Patel, Team Leader, ADB TA on Social Protection for Poor Female Garment Workers

Dr. Steven R. Tabor, Consultant on ADB Country Strategy and Program

### CIDA (Policy Leadership and Advocacy for Gender Equality [PLAGE] Project, Phase II)

Ms. Debra Bucher, Field Manager (Technical)

Ms. Socorro Diaz, Field Manager (Operations)

### DFID

Dr. Eric Hanley, Senior Social Development Adviser

Mr. Frank Matsuert, Senior Private Sector Adviser, Growth Team

### FAO

Dr. Subash Dasgupta, Asst. Representative (Programme)

### ILO

Mr. T. I. M. Nurunnabi Khan, Programme Officer

UNDP

Ms. Majeda Huq, Programme Officer (Gender and Women's Advancement)  
Ms. Shaila Khan, Programme Manager (Poverty Alleviation)

USAID

Mr. MacDonald Homer, Enterprise Development Team Leader, EGFE  
Ms. Rowshan Akhter, Enterprise Development Team Member, EGFE  
Ms. Mahmuda Rahman Khan, Gender Advisor (telephone call)

# **ANNEX 2. POLICIES, LAWS, AND REGULATIONS REVIEWED**

## **GENERAL**

Constitution of the People's Republic of Bangladesh, as amended

National Strategy for Accelerated Poverty Reduction (2005)

Cooperative Societies Act 2001 (unofficial English translation)

Cooperative Societies Rules 2004 (unofficial English translation)

Public Procurement Regulations 2003

## **INTERNATIONAL TRADE**

Export Policy 2003–06

Import Policy 2003–06

Bangladesh Export Processing Zone Authority Act 1980, as amended

Bangladesh Private Export Processing Zone Act 1996 (unofficial English translation)

Customs Act 1969, as amended

Export Promotion Bureau Ordinance 1977, as amended

Foreign Private Investment (Promotion and Protection) Act 1980

Imports and Exports (Control) Act 1950, as amended

Trade Organizations Ordinance 1961, as amended

Customs Valuation Rules 2000 (unofficial English translation)

Standard Rules of Origin 1977

Trade Organization Rules 1994

## **AGRICULTURE**

National Agriculture Policy

New Agricultural Extension Policy 1996

Agricultural Produce Markets Regulation Act 1964

Agricultural and Sanitary Improvement Act 1920

Plant Variety and Farmers' Rights Protection Act (December 2005 draft)

Seeds Ordinance 1977, as amended

## **BUSINESS AND INDUSTRY**

Industrial Policy 2005

Bangladesh Small and Cottage Industries Corporation Act 1957, as amended

Bangladesh Standards and Testing Institution Ordinance 1985, as amended

Companies Act 1994

Contract Act 1872, as amended

Money Laundering Prevention Act 2002, as amended (unofficial English translations)

Privatization Act 2000 (unofficial English translation)

Standards of Weights and Measures Ordinance 1982, as amended

Prudential Regulations for Small Enterprises Financing 2004

## **CONSUMER PROTECTION AND FOOD SECURITY**

National Drug Policy 2005

Drugs Act 1940

Drugs (Control) Ordinance 1982

Essential Commodities Act 1957

Merchandise Marks Act 1889

Pure Food Ordinance 1959

Pure Food Rules 1967

## **ENVIRONMENT**

Environment Policy 1992

Environmental Action Plan 1992

Environment Conservation Act 1995

Environment Court Act 2000

Environment Conservation Rules 1997

## **FAMILY**

Child Marriage Restraint Act 1929

Dissolution of Muslim Marriages Act 1939

Dowry Prohibition Act 1980, as amended

Family Courts Ordinance 1985

Hindu Women's Rights to Property Act 1973

Muslim Family Laws Ordinance 1961, as amended

Muslim Marriages and Divorces (Registration) Act 1974

Muslim Personal Law (Shariat) Application Act 1937

Muslim Family Laws Rules 1961

Muslim Marriages and Divorces (Registration) Rules 1975

## **FISHERIES**

Jalmahal Leasing Policy 1997

National Fisheries Policy 1998

Bangladesh Fisheries Development Corporation Act 1973

Embankment and Drainage Act 1952

Fish and Fish Products (Inspection and Quality Control) Ordinance 1983

Fisheries Research Institute Ordinance 1984

Government Fisheries (Protection) Ordinance 1959

Marine Fisheries Ordinance 1983

Private Fisheries Protection Act 1889

Protection and Conservation of Fish Act 1950

Territorial Waters and Maritime Zones Act 1974

Marine Fisheries Rules 1983  
Protection and Conservation of Fish Rules 1985  
Territorial Waters and Maritime Zones Rules 1977

## **GENDER**

National Policy for the Advancement of Women 1997

Acid Control Act 2002 (unofficial English translation)  
Acid Crime Prevention Act 2000 (unofficial English translation)  
Prevention of Violence Against Women and Children Act 2000, as amended (unofficial English translation)

Acid (Import, Production, Stocking, Transportation, Sale, and Use) Control Rules 2004 (unofficial English translation)

## **INTELLECTUAL PROPERTY**

Copyright Act 2000 (unofficial English translation)  
Patents and Designs Act 1911, as amended  
Patents and Designs Act 200\_ (Bangladesh Law Commission draft)  
Plant Variety and Farmers' Rights Protection Act (December 2005 draft)  
Trade Marks Act 1940, as amended  
Trade Marks Act 200\_ (Bangladesh Law Commission draft)

## **LABOR**

Agricultural Labour (Minimum Wages) Ordinance 1984  
Apprenticeship Ordinance 1962  
BEPZA Instruction No. 1 of 1989  
BEPZA Instruction No. 2 of 1989  
Children (Pledging of Labour) Act 1933  
Companies Profits (Workers Participation) Act 1968  
Employment of Children Act 1938  
Employment of Labour (Standing Orders) Act 1965, as amended  
Employment (Record of Services) Act 1951  
EPZ Workers Association and Industrial Relations Act 2004  
Factories Act 1965  
Industrial Relations Ordinance 1969, as amended  
Maternity Benefit Act 1939  
Minimum Wages Ordinance 1961, as amended  
Payment of Wages Act 1936, as amended  
Workmen's Compensation Act 1923, as amended

Apprenticeship Rules 1967  
Companies Profits (Workers Participation) Rules 1976  
Employment of Children Rules 1955  
Employment of Labour (Standing Orders) Rules 1968  
Factories Rules 1979  
Industrial Relations Rules 1977  
Maternity Benefit Rules 1953

Minimum Wages Rules 1961  
Payment of Wages Rules 1937  
Workmen's Compensation Rules 1924

## **LAND**

National Land Use Policy 2001

Acquisition and Requisition of Immovable Property Ordinance 1982  
Acquisition of Waste Land Act 1950, as amended  
Culturable Waste Land (Utilization) Ordinance 1959  
Land Appeal Board Act 1989 (unofficial English translation)  
Land Holding Limitation Order 1972  
Land Reform Board Act 1989 (unofficial English translation)  
Land Reforms Ordinance 1984  
Non-Agricultural Tenancy Act 1949  
State Acquisition and Tenancy Act 1950, as amended  
Registration Act 1908, as amended (including unofficial English translation of 2004 amendment)  
Transfer of Property Act 1882, as amended (including unofficial English translation of 2004 amendment)

Acquisition of Immovable Property Rules 1982  
Land Reforms Rules 1984  
Non-Agricultural Tenancy Rules 1950  
Requisition of Immovable Property Rules 1982  
State Acquisition Rules 1951  
Tenancy Rules 1954

## **ANNEX 3. REGIONAL TRADE INITIATIVES**

This annex provides information on the various regional trade arrangements to which Bangladesh is a party:

### **ASIA-PACIFIC TRADE AGREEMENT**

The Asia-Pacific Trade Agreement, originally known as the Bangkok Agreement, is the oldest preferential trade agreement among developing countries in Asia. It was launched in 1975 under the auspices of the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), with Bangladesh as one of the founding members. Other members include China, India, Lao PDR, Republic of Korea, and Sri Lanka. All other developing country members of UNESCAP are eligible to join. Since 1975, three rounds of negotiations have been held on mutual trade concessions, with the latest ending in mid-2005. The tariff concessions agreed in the latest round came into effect in September 2006. The rules of origin under the agreement require at least 45 percent value added in the exporting state, or 60 percent cumulative value added in the exporting state and one or more additional participating states.

### **SOUTH ASIAN FREE TRADE AREA**

The SAFTA Agreement, which was signed in January 2004, is an initiative of the South Asian Association for Regional Cooperation (SAARC), and builds on the SAARC Preferential Trade Arrangement (SAPTA) that had been in place since 1997. The participating states are the members of SAARC, and include Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. (Of these, Bangladesh, Maldives, and Nepal are LDCs.) Four rounds of trade negotiations were held under SAPTA, eventually covering more than 5,000 commodities. Under the SAFTA Agreement, which came into force as of January 1, 2006, the parties have agreed to a schedule of tariff reductions, with non-LDC states committing to reduce tariff rates to 20 percent within the first two years, and to 0–5 percent within the next five years (six years for Sri Lanka). LDC states have committed to reduce tariff rates to 30 percent within the first two years, and to 0–5 percent within the next eight years. Non-LDC states also have committed to reduce their tariffs on LDC products to 0–5 percent within the first three years of the agreement.

Final negotiations on the agreement in early December 2005 resolved several outstanding issues. According to news reports, the parties agreed to restrict their sensitive lists to fewer than 20 percent of total tariff lines. The rules of origin were reportedly set at 40 percent value added (30 percent for LDCs), or 50 percent regional cumulative value added (with at least 20 percent value added in the exporting state). The parties also agreed to compensate LDC parties for the loss of tariff revenue over the first four years of the agreement. Technical assistance will be provided to LDC parties in several areas. News reports also indicate that India will provide limited market access to Bangladesh's RMG exports (initially limited to six million pieces, made with Indian fabric) under the agreement.

Building on SAPTA, the original SAFTA Agreement was limited to trade in goods. However, at the Thirteenth SAARC Summit held in Dhaka in November 2005, SAARC member states proposed to launch parallel negotiations on mutual recognition of

standards and testing, trade in services, promotion of investment, regional cooperation in ICT, a regional HIV/AIDS strategy, and a regional plan of action for cooperation on pharmaceuticals, traditional medicines and production of affordable medicines. India also proposed the establishment of a regional food bank. Taken together, these proposals reflect a broad, multi-sectoral approach to regional cooperation. In line with the SAARC Social Charter (mentioned earlier), it will also be important to integrate gender considerations in these initiatives.

### **BAY OF BENGAL INITIATIVE FOR MULTI-SECTORAL TECHNICAL AND ECONOMIC COOPERATION**

BIMSTEC was launched in 1997 as an inter-regional initiative linking SAARC and ASEAN countries. Its members currently include Bangladesh, Bhutan, India, Myanmar, Nepal, Sri Lanka, and Thailand. A framework agreement for a BIMSTEC free trade area has been developed, covering trade in services and investment as well as goods. The agreement contemplates tariff reductions for goods operating on two tracks (fast and normal). In both cases, Bangladesh and Myanmar as LDCs would have longer timeframes in which to reduce tariffs. News reports indicate that the parties were in negotiations through December 2006 to resolve final issues, including negative lists and rules of origin, with the expectation that the agreement would come into effect in 2007. Negotiations on services and investments would proceed on a slower track, following a positive list approach.

The Summit Declaration from the last BIMSTEC Summit in July 2004 indicates that the parties are interested in broadening their cooperation to also include areas such as culture, education, public health, protection of biodiversity and traditional knowledge, SME development, ICT, sustainable energy development, and tourism. As in the SAARC cooperation agenda, there is scope in each of these areas to integrate a gender perspective.

### **TRADE PREFERENTIAL SYSTEM FOR THE ORGANIZATION OF THE ISLAMIC CONFERENCE**

From available information, it appears that a Framework Agreement for a Trade Preferential System for the Organization of the Islamic Conference (TPS-OIC) was signed in June 2004 and that negotiations on tariff concessions and other terms of the agreement are currently under way. Bangladesh and 14 other countries are signatories. As in the other regional arrangements, Bangladesh would receive special consideration as an LDC in terms of the extent and timing of its tariff reductions and other issues.

# NOTES

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1. The outcome of the WTO Ministerial Meeting held in Doha in November 2001.
2. In this paper, “LDC” refers to a least-developed country as classified by the United Nations (UN).
3. Cagatay, *Trade, Gender and Poverty*; Gammage et al., *Framework for Gender Assessments*; Tran-Nguyen and Zampetti, *Trade and Gender*; Williams, *Gender Mainstreaming*.
4. For example, as discussed in this report, the Government of Bangladesh is in the process of revising its intellectual property laws to bring them into compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, and has amended its rules establishing quality controls for fish processing to comply with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.
5. Gammage et al., *Framework for Gender Assessments*, 23; McGill, “Trade and Gender,” 711–16.
6. Bangladesh originally registered reservations to four clauses of CEDAW, but subsequently withdrew two of them. It has maintained reservations to Article 2 (which condemns all forms of discrimination against women) and Article 16(1)(c) (concerning equal rights and responsibilities in marriage and divorce). Bangladesh also opted out of the inquiry procedure outlined in the Optional Protocol to CEDAW, which permits the CEDAW expert committee to conduct a confidential inquiry based on “reliable information indicating grave or systematic violations by a State Party of rights set forth in [CEDAW]” (Article 8.1). However, the CEDAW committee can still require the Government to respond to claims submitted to the committee by individuals or groups asserting violations of their rights by the Government under CEDAW.
7. These include conventions supporting freedom of association (No. 87), the right to organize and bargain collectively (No. 98), equal pay (No. 100) and nondiscrimination in employment (No. 111), and conventions prohibiting forced labor (No. 105) and the worst forms of child labor (No. 182).
8. Government of Bangladesh and UN Country Team, *Millennium Development Goals*.
9. South Asian Association for Regional Cooperation, *Dhaka Declaration*.
10. The 1997 National Policy was updated in 2004 without public consultation. Women’s organizations in Bangladesh have expressed serious concerns about some apparent modifications of the policy, such as the deletion of references to the promotion of women’s equal rights with respect to inheritance, land, and other assets, and the replacement of a 30 percent target for women’s participation in government decision-making with a commitment to “gradually increase the existing quota.” D’Costa, “Gender Inequality and Rights of Women,” 113–15. However, analysis by members of the Local Consultative Group on Women and Gender Equality (LCG-WAGE) suggests that the more recent NSAPR follows the spirit of the original 1997 National Policy rather than the 2004 version, especially with respect to promoting women’s economic rights. (Information on the LCG-WAGE analysis was provided by Ferdousi Sultana Begum, Social Development and Gender Officer, Asian Development Bank.)
11. Despite these legislative measures, reported incidents of violence against women and girls have not abated. In fact, both police reports and press reports show increases in most categories of violence (although this may also be due to greater willingness on the part of victims to report abuse, and better coverage of gender-based violence in the national press). For example, police reports for 1997–2001 show steady increases in reported cases of rape, acid throwing, serious injury, and other types of violence, totalling almost 13,000 cases in 2001 alone. Ain o Salish Kendra and Bangladesh Mahila Parishad, *Shadow Report to the Fifth Periodic Report*, 21.
12. “Personal laws” refer here to laws relating to family matters such as marriage, divorce, child custody, and inheritance. In Bangladesh, different personal laws apply depending on the religion or ethnicity of the parties. For Muslim, Hindu, and Christian citizens, these laws have been codified in several acts, and are interpreted and enforced by the family courts as well as local tribunals (*shalish*). The personal laws of ethnic minority groups are generally unwritten, and are administered by local tribunals within the minority communities. For several years, legal scholars and women’s organizations have been advocating for a common family code that would apply to all Bangladesh citizens, regardless of religion or ethnicity. Women for Women and UNESCO, *Marriage, Inheritance and Family Laws*.
13. Ain o Salish Kendra and Bangladesh Mahila Parishad, *Shadow Report to the Fifth Periodic Report*, 44–45.
14. Ministry of Women and Children Affairs, *Assessment of Women Entrepreneurship Development*, 35. These and other obstacles were mentioned in meetings with officials of the major women’s business associations in Bangladesh.
15. WTO Trade Policy Review Body, “Trade Policy Review: Bangladesh—Report,” 38.
16. Government of Bangladesh, *National Strategy for Accelerated Poverty Reduction*, 82.
17. McGill, “Trade and Gender,” 719. The specific domestic policy actions mentioned in Article XX include measures to protect “public morals,” to protect human, animal, or plant life or health, to ensure customs enforcement, to protect intellectual property and prevent deceptive practices, to protect national treasures, and to conserve natural resources, and measures related to the import or export of gold or silver or the products of prison labor. Article XX(d) also refers generally to measures “necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement,” which could arguably include laws and regulations to ensure equal treatment and non-discrimination, or to promote gender equality.” While this possible application of Article XX(d) has not yet been tested,

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GATT and WTO dispute panels and the WTO Appellate Body have generally interpreted Article XX(d) quite strictly, especially with respect to whether the measure in question is “necessary” to secure compliance with a particular law or regulation. See, e.g., WTO Appellate Body Report, *Dominican Republic—Measures Affecting the Importation and Internal Sale of Cigarettes*, WT/DS302/AB/R, adopted April 25, 2005, 22–29.

18. Government of Bangladesh, *National Strategy for Accelerated Poverty Reduction*, 86.

19. See note 15 above.

20. Government of Bangladesh, *National Strategy for Accelerated Poverty Reduction*, 87 & 97.

21. Ain o Salish Kendra and Bangladesh Mahila Parishad, *Shadow Report to the Fifth Periodic Report*, 35 (citing the Bangladesh Bureau of Statistics).

22. For example, a recent market survey found that the price of Indian Ratna and Sharna rice was much lower than locally produced high-yield Boro rice (at least Tk. 2–2.5 less per kilo). Titumir, Ahmed, and Sarwar, *Undercutting Small Farmers*, 16.

23. A recent policy research report notes that, with the liberalization of local markets for inputs such as seeds, fertilizer, irrigation water, and credit, imports of rice from India (which still provides substantial agricultural subsidies) have surged and demand for locally produced rice has declined. *Ibid.* See also Rahman and Deb, “Trade Liberalisation,” 114–15.

24. SPS for imports into Bangladesh are governed by several laws and regulations, including the Pure Food Ordinance 1959, the Destructive Insects and Pests (Plant Quarantine) Rules 1966, and the Fish and Fish Products (Inspection and Quality Control) Ordinance 1983. SPS issues for exporters are coordinated by the relevant ministry or agency, together with the relevant exporter associations and any independent certification bodies. Technical standards are currently the responsibility of the Bangladesh Standards and Testing Institution. Under a proposed accreditation law, a new accreditation board could also authorize other testing and certification bodies.

25. The Government has identified compliance with the SPS and TBT Agreements as a particular challenge, not only for the Government but also for exporting firms that are unfamiliar with international standards. Government of Bangladesh, *Trade Policy Review*, 9. For example, the Bangladesh Standards and Testing Institution is the country’s only national testing and certification organization for purposes of the TBT Agreement. Although it has adopted a number of International Standardisation Organization (ISO) standards as national standards, and has run seminars and training programs on these standards, thus far relatively few local companies have obtained ISO certificates for their products. WTO Trade Policy Review Body, “Trade Policy Review: Bangladesh—Report,” 53.

26. De Stoop et al., *Needs Assessment of Trade*.

27. The recent WTO ministerial meeting in Hong Kong approved additional extensions for both existing measures and new measures.

28. Foreign investments were concentrated initially in gas, power, and communications, but have been increasing steadily in the EPZs. Government of Bangladesh, *National Strategy for Accelerated Poverty Reduction*, 66. EPZ investments are heavily concentrated in the textile and garment manufacturing, but also include electronics, leather goods, metal and plastic products, and agroprocessing. Bangladesh Export Processing Zone Authority, *Investment Opportunities*.

29. The government’s intention is to encourage foreign direct investment, thereby stimulating job creation, as well as backward and forward linkages to local firms in the relevant sectors. However, it has also been argued that developing countries need flexibility to use local content requirements and other tools of industrial policy in order to ensure that these goals are achieved. Williams, *Gender Mainstreaming*, 126. Policy decisions related to foreign direct investment can affect both men and women as workers in foreign-owned firms, as owners or workers in input suppliers or other related firms, and as consumers.

30. As a result of consultations initiated by Bangladesh within the WTO, the Indian government terminated the antidumping measures against batteries imported from Bangladesh. WTO, Dispute DS306: India—Anti-Dumping Measure on Batteries from Bangladesh [[http://www.wto.org/English/tratop\\_e/dispu\\_e/cases\\_e/ds306\\_e.htm](http://www.wto.org/English/tratop_e/dispu_e/cases_e/ds306_e.htm)]. See also Taslim, “Barriers to Least-Developed Country Participation,” 21–22.

31. Communication from Nihad Kabir.

32. As discussed in Section V.B., the Export Policy 2003–06 provides a number of financial incentives and other supports to selected export industries. The Industrial Policy 2005 also endorses financial incentives and other measures to promote small and women-owned businesses.

33. As discussed further in Section V.B., the customs clearance process in Bangladesh continues to involve substantial delays, burdensome documentation requirements, and demands for informal payments.

34. Raihan, “Liberalising Trade in Services.”

35. Law Commission of Bangladesh, *Final Report on the Patents and Designs Act, 200\_*.

36. For example, the exclusion of substances “capable of being used as...medicine” is consistent with the flexibility provided to LDCs to not extend patents to pharmaceutical drugs until January 2016. It would be important to ensure that this exclusion extends to both pharmaceutical products and processes. Under the November 2005 decision of the Council on TRIPs, Bangladesh as an LDC also has the general flexibility to delay implementation of other provisions of the TRIPs Agreement (except for the provisions on national treatment and most-favored-nation treatment) until July 2013.

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37. A unique form or type.
  38. The draft Plant Variety and Farmers' Rights Protection Act 2005, which is currently being reviewed by the Government, protects farmers' rights to grow, save, use, and exchange farm-saved seeds, including protected varieties (Section 19.5). However, the International Convention for the Protection of New Varieties of Plants (UPOV 1991), which Bangladesh has committed to join under its cooperation agreement with the European Community, includes no comparable protection of farmers' rights.
  39. Jony, "Nayakrishi Andolon."
  40. A particular type of hand-woven sari, made of cotton or a silk/cotton blend, with a geometric pattern.
  41. Embroidered quilts.
  42. ECOTA Fair Trade Forum, *Craft Sector in Bangladesh*, 26.
  43. The Public Procurement Regulations 2003 do not include any explicit exceptions or procurement preferences for small or women-owned businesses. The draft Public Procurement Act that has been presented to the Cabinet provides certain flexibility to the Government in terms of implementation, but does not provide explicit exceptions or preferences for small or women-owned businesses (communication from Nihad Kabir).
  44. Ministry of Women and Children Affairs, *Assessment of Women Entrepreneurship Development*, 178.
  45. World Trade Organization, "Doha Work Programme."
  46. World Bank, *Bangladesh: Export Growth and Competitiveness*, 40.
  47. US and Foreign Commercial Service and US Department of State, *Doing Business in Bangladesh*, Chapter 4.
  48. Low, Piermartini, and Richtering, "Multilateral Solutions," 21.
  49. Of Bangladesh service providers working abroad, 5 percent are professionals, 45 percent are skilled, 12 percent are semi-skilled, and 38 percent are unskilled. Their main destinations are Europe, Asia, Africa, and the Middle East. As of March 2005, Bangladesh had received only a few requests for negotiation under Mode 4, including requests from the European Community, Hong Kong, Japan, Malaysia, Norway, Singapore, and the United States. Raihan, "Liberalising Trade in Services," 4–5, 30 & 37. The European Community subsequently narrowed its request. Bhattacharya et al., "Road to Hong Kong Ministerial of the WTO," 14.
  50. The Agreement on Implementation of Article VI of the GATT 1994 (Antidumping) provides detailed procedures that WTO members must follow before imposing antidumping duties on an imported product, including an antidumping investigation in which all interested parties can participate and submit evidence, and an opportunity for prompt independent review of any antidumping decision. The Agreement also permits exporting countries to challenge an antidumping action through the WTO's dispute settlement procedures, beginning with a request for consultations and, if necessary, a request to convene a dispute settlement panel. Ironically, the first antidumping action that Bangladesh challenged within the WTO had been taken by another developing country, India. The dispute was resolved at the consultation stage, but still required Government representatives and advisors to travel to Geneva and to seek the advice of international trade experts at the Advisory Centre on WTO Law. Taslim, "Barriers to Least-Developed Country Participation," 21–22.
  51. For example, the adoption of WTO requirements on customs valuation has necessitated the modernization and computerization of the Government's customs clearance procedures, an ongoing project that has been financed mainly through World Bank loans. A shortage of technical staff also limits the Government's ability to comply with the numerous notification requirements under WTO agreements. Government of Bangladesh, *Trade Policy Review*, 10.
  52. There is no WTO definition of "developing countries" or "LDCs." WTO members make their own designations. In practice, LDC designations generally adhere to the UN classification of LDCs. As of December 2005, there were 50 LDCs recognized by the UN, of which 32 were WTO members. These include five LDCs in Asia (Bangladesh, Cambodia, Maldives, Nepal, and Solomon Islands).
  53. International Centre for Trade and Sustainable Development, "Low Ambitions Met," 2.
  54. WTO Trade Policy Review Body, "Trade Policy Review: Bangladesh—Report," 10 & 12.
  55. Government of Bangladesh, *National Strategy for Accelerated Poverty Reduction*, 83.
  56. WTO Trade Policy Review Body, "Trade Policy Review: Bangladesh—Report," 10.
  57. See note 55 above.
  58. Interview with Amir Khosru Mahmud Chowdhury; communication from Nihad Kabir.
  59. World Trade Organization, "Doha Work Programme," Annex F, item 38.
  60. Ministry of Women and Children Affairs, *Assessment of Women Entrepreneurship Development*.
  61. De Stoop et al., *Needs Assessment of Trade*, paras. 2.4.8–15.
  62. One entrepreneur interviewed for the project, who owns a beauty and skin therapy center, had been required to turn over large quantities of imported herbal products to customs officials for "testing" in order to speed up the clearance process. Ministry of Women and Children Affairs, *Assessment of Women Entrepreneurship Development*, 157.
  63. A producer of jams and jellies who was interviewed for the project reported that similar fruit-based products were being imported and smuggled from neighboring countries, and sold in local markets for lower prices than the domestically produced items. She was therefore having difficulty marketing her products to local buyers. *Ibid.*, 164.
  64. *Ibid.*, 82.
  65. *Ibid.*, 84–86.

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66. See note 18 above.
67. Communication from Nihad Kabir.
68. Asian Development Bank, *Report and Recommendation for the Small and Medium Enterprise Sector Development Program*, 6.
69. NGO Coalition on Beijing Process, *Advancement of Women*, 43.
70. Ministry of Women and Children Affairs, *Assessment of Women Entrepreneurship Development and Women in Labour Market*.
71. However, the effectiveness of the NCID is hampered by its top-heavy structure (communication from Nihad Kabir).
72. Ministry of Women and Children Affairs, *Assessment of Women Entrepreneurship Development*, 87–89.
73. Information is based on interviews with the presidents of these organizations.
74. The Industrial Policy 2005 defines a “small industry” as one in which the value or replacement of cost of durable resources other than land and factory buildings is Tk. 15 million, and a “cottage industry” as one in which family members are engaged part-time or full-time in production and service-oriented activities (Section 4.4). Previous Industrial Policies (1999 and 1991) included somewhat different definitions. It is unclear what definitions BSCIC used for its 1994 survey.
75. In the census, small enterprises were defined as having 10 to 49 employees, while medium-sized enterprises were defined as having 50 to 99 employees. Asian Development Bank, *Report and Recommendation for the Small and Medium Enterprise Sector Development Program*, 4.
76. In the survey, micro-, small, and medium-sized enterprises were defined as having fewer than 100 employees. Ibid.
77. Government of Bangladesh, *National Strategy for Accelerated Poverty Reduction*, 105.
78. Ministry of Women and Children Affairs, *Assessment of Women Entrepreneurship Development*, 23.
79. Ibid., 25.
80. Ibid., 19–21.
81. Ibid., 92.
82. Government of Bangladesh, *National Strategy for Accelerated Poverty Reduction*, 105–06. The NSAPR does not specify the adjustments to be made in trade policies that assist SMEs. Possible examples, some of which are mentioned in Box 2, include elimination of import and export registration requirements, greater flexibility for small businesses to form import groups (including both industrial and commercial importers), waiver of pre-shipment inspection requirements for small quantities of imports, and financial incentives for small importers and exporters (including import tariff and other tax waivers, export subsidies, and trade finance).
83. The NSAPR matrix mentions preferential treatment for women exporters at domestic and overseas trade fairs. Other possible marketing mechanisms include greater use of the Internet (e.g., the Export Promotion Bureau’s website), more coordinated export promotion through the commercial attachés in Bangladesh’s embassies, reserved spaces for women-owned businesses in regional markets, and dedicated marketing advisors for women’s businesses in the Ministry of Industry, Export Promotion Bureau, chambers of commerce, and trade associations.
84. Government of Bangladesh, *National Strategy for Accelerated Poverty Reduction*, 253.
85. In manufacturing, small enterprises are defined as those with fixed investments of Tk. 15 million or less, and medium enterprises are those with fixed investments of between Tk. 15 million and Tk. 100 million. Outside manufacturing, small enterprises are those with fewer than 25 full-time employees, while medium enterprises are those with between 25 and 100 full-time employees. Ministry of Industries, *Policy Strategies*, 5–6.
86. The current draft policy appears to have dropped earlier proposals to exempt very small businesses from the VAT and to grant them a tax holiday for up to 10 years. Ministry of Industries, *Small & Medium Enterprises in Bangladesh*, 42.
87. Ministry of Industries, *Policy Strategies*, 7 & 11. The general criteria for identifying “deserving enterprises” for support, including “a successful track record,” “above-average insiders’ equity participation,” “certifiable professional specialization of top-management in relevant production skills,” and a “stamp of approval from globally-recognized quality-assurance bodies,” would seem to favor well-established businesses rather than start-ups, and could be difficult for many small businesses, especially women-owned businesses, to meet. Ibid., 6–7.
88. Ministry of Industries, *Small & Medium Enterprises in Bangladesh*, 36.
89. Asian Development Bank, *Report and Recommendation for the Small and Medium Enterprise Sector Development Program*, 17 & 73.
90. The regulatory agencies relevant to SMEs generally have no “help desk” or other service to provide entrepreneurs with information on regulatory requirements and procedures. There is also no general clearing house or other source of comprehensive information on these matters. This general “information gap” is a particular obstacle to small businesses. For example, the Dhaka City Corporation (DCC) is a relevant authority to issue trade licenses, but has not made entrepreneurs aware that the licenses are actually issued by ward offices of the DCC. The general orientation of government officials is also an obstacle, as they see themselves only as regulators and not as service providers or facilitators in relation to entrepreneurs. The tendency toward rent-seeking behavior compounds this problem. (Communication from Nihad Kabir.)

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91. Communication from Nihad Kabir.
92. Asian Development Bank, *Report and Recommendation for the Small and Medium Enterprise Sector Development Program*, 7; communication from Nihad Kabir.
93. For example, AusAID is supporting simplification of the Dhaka City Corporation's procedures for issuing trade licenses, and DFID is helping the National Bureau of Revenue streamline and computerize tax procedures and make tax information and forms available on its website. *Ibid.*, 10–11.
94. The study defined "women entrepreneurs" as women who not only are self-employed, but also generate employment and income for others. Ministry of Women and Children Affairs, *Assessment of Women Entrepreneurship Development*, 7.
95. There are exceptions. BRAC Bank, for example, has three loan facilities for SMEs. The Anonno facility is aimed at smaller businesses, and provides loans of between Tk. 200,000 and Tk. 800,000 without collateral. Women entrepreneurs are especially encouraged to apply. The basic requirements are (1) a profit-making concern in operation for at least one year, (2) a valid trade license, and (3) two personal guarantees. See <http://www.bracbank.com/anonno.asp>. Other BRAC Bank facilities provide loans to SMEs of up to Tk. 1.8 million without collateral. (Communication from Nihad Kabir).
96. Bangladesh Women's Chamber of Commerce and Industry (BWCCI) reports that in 2003–04, its members received more than Tk. 47 lakh (Tk. 4.7 million) in loans from a leasing company, guaranteed by BWCCI.
97. In interviews for this report, women business owners mentioned that some banks may require the husband's consent, as well as the guarantees of two "eminent" male persons.
98. Ministry of Women and Children Affairs, *Assessment of Women Entrepreneurship Development*, 111.
99. Women can also find it easier to rent business space as a group, as in the case of the joint marketing outlets—Mini Marts—established with support from MIDAS.
100. Lack of a reliable, affordable power supply is especially difficult for small businesses. Common problems include the lack of power in many areas of the country, chronic power outages, and high charges. (Communication from Nihad Kabir.)
101. Ministry of Women and Children Affairs, *Assessment of Women Entrepreneurship Development*, 66–72.
102. However, in interviews for this report, the heads of the three main women entrepreneurs' organizations noted that EPB has recently taken steps to include more women exporters in trade fairs, in some cases at a preferential rate.
103. Social Initiatives Ltd., *Women's Access to Markets*, 20–21.
104. Similar recommendations were also made in a recent study commissioned by the ILO. Karim, *Jobs, Gender and Small Enterprises*.
105. Ministry of Women and Children Affairs, *Assessment of Women Entrepreneurship Development*, 172–84.
106. Another model that has been introduced successfully in rural infrastructure projects implemented by the Local Government Engineering Department is the allocation of space for women's stalls or a women's trading area in rural market centers.
107. The latter project also includes a target of 30 percent female sub-borrowers. Asian Development Bank, *Report and Recommendation for the Agribusiness Development Project*, 56.
108. The Prudential Regulations for Small Enterprises Financing issued by Bangladesh Bank in 2004 give individual banks flexibility to determine the security requirements for small enterprise loans up to Tk. 5 lakh (Tk. 500,000). For larger loans, the regulations appear to require (1) hypothecation of inventory, receivables, advance payments, plant, and machinery; (2) an equitable mortgage over immovable property; and (3) personal guarantees of a spouse, parents, and/or other family members (Regulation 6). Additional documentation requirements for limited company borrowers are extensive, including audited financial statements for the previous three years, personal guarantees of all company directors, certificates of registration of charges over assets issued by the Registrar of Joint Stock Companies, and "wherever practical," an insurance policy for 110 percent of the "stock value" (presumably referring to the value of assets pledged as security for the loan) (Regulation 7). These security and documentation requirements would be burdensome and expensive for any small business, but especially for women-owned businesses.
109. The South Asian Enterprise Development Facility is currently working on a gender diagnosis and intervention strategy for Bangladesh, Bhutan, Nepal, and Northeast India, including a toolkit to integrate gender concerns in private sector development policies and programs. The United Nations Development Programme is also planning a review of law and policy constraints on women entrepreneurs under Phase II of its Entrepreneurship Development of Women Project.
110. World Bank, *Bangladesh: Growth and Export Competitiveness*, 39.
111. Majid and Hussain, *Final Report*, 18–22.
112. Information is based on author's interviews of officials at Karmojibi Nari and Nari Uddug Kendra.
113. Paul-Majumder and Begum, "Gender Imbalances," 4.
114. Majid and Hussain, *Final Report*, 3.
115. As noted in Section IV.C., by not taking advantage of the European Union's regional cumulation rules, the Government has also been encouraging RMG factories to use domestic textiles rather than textiles from neighboring

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countries such as India.

116. World Bank, *Bangladesh: Growth and Export Competitiveness*, 42.

117. Government of Bangladesh, *National Strategy for Accelerated Poverty Reduction*, 84–85 & 245.

118. World Bank, *Bangladesh PRSP Forum Economic Update*, 34–35.

119. These include (1) the Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention 1949 (No. 98), (2) the Equal Remuneration Convention 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention 1958 (No. 111), (3) the Forced Labour Convention 1930 (No. 29) and the Abolition of Forced Labour Convention 1957 (No. 100), and (4) the Worst Forms of Child Labour Convention 1999 (No. 182). Bangladesh is also a party to ILO conventions related to hours of work, minimum age for work, night work by women and young people, equality of treatment in accident compensation and social security, and rights of indigenous and tribal populations.

120. The EPZs were exempted in 1986 from the Employment of Labour (Standing Orders) Act 1965 and the Industrial Relations Ordinance 1969, and were exempted in 1989 from the Factories Act 1965.

121. References to a particular law by its original title and date—for example, the Factories Act 1965—include subsequent amendments to that law.

122. The Committee on Freedom of Association of the ILO has found some provisions of the Industrial Relations Ordinance—such as the requirement that a union demonstrate that it represents at least 30 percent of workers in a particular workplace in order to be registered—to unnecessarily restrict freedom of association, and has requested the Government to amend the ordinance to remove this requirement. International Labour Organization, “Case No. 2371.”

123. Unless otherwise specified, the Factories Act 1965 applies to all premises employing 10 or more persons and where manufacturing takes place.

124. For example, a retrenched worker who has been employed for a year or more is entitled to compensation of 30 days’ wages for every completed year of service (Section 12).

125. For example, through recent Gazette notifications, the Government temporarily lifted the restriction on women’s night work and also extended the maximum number of hours of overtime work for garment workers from 12 to 24 hours a week, provided in each case that the worker consents. International Labour Organization, *Bangladesh—Employers’ RMG Final Report*, 2.

126. Sarkar, “Labour Laws Befitting the Workers.”

127. Annual paid leave is calculated at a rate of one day for every 22 days of work performed during the previous 12 months, up to 20 total days of leave, and is inclusive of holidays occurring during the period. A worker can be required to work on a festival holiday, but must then be allowed to take two days’ paid holiday plus a substitute holiday. Casual leave is with full pay, while sick leave is with half average pay.

128. Companies subject to the act include those with (1) 100 or more workers, (2) paid-up capital of Tk. 50 lakh (Tk. 5 million) or more, or (3) fixed assets of Tk. 100 lakh (Tk. 10 million) or more (Schedule, Section 1).

129. In the English translation that was reviewed for this report, Section 5 of the Schedule to the Act provides that two-thirds of the total amount deposited in a participation fund each year will be distributed to workers as cash and the remaining one-third will be invested. In contrast, the model provided in Annexure 1 to the Rules specifies that the company’s annual contribution to the participation fund will be distributed to workers by crediting a certain number of “compulsory units” to their accounts. Workers can also participate in the fund by purchasing “contributory units.”

130. The committee recommended amendments to lift several restrictions on the formation of workers’ associations, including the requirement that at least 30 percent of workers must support an application to form an association. International Labour Organization, “Case No. 2327.” (As noted earlier, the Industrial Relations Ordinance 1969 includes a similar requirement, which the ILO Committee on Freedom of Association has also criticized.)

131. Social Accountability International, *Social Accountability 8000*.

132. Business Social Compliance Initiative, *Code of Conduct and System Description*.

133. Fair Labor Association, “Workplace Code of Conduct” and “Principles of Monitoring.”

134. Fair Wear Foundation, “Principles and Policies,” Section 3.1.

135. Mujeri, *Bangladesh Decent Work Statistical Indicators*, 42.

136. Paul-Majumder, “International Labour Standards,” 206–07; Shefali, *Compliance in Garment Factories*, 10.

137. Paul-Majumder, “Workers’ Rights in the Garment Industry,” 281.

138. *Ibid.*, 285–86 & 292.

139. Paul-Majumder and Begum, “Gender Imbalances,” 39.

140. *Ibid.*, 14–15 & 39.

141. One recent factory fire reportedly resulted in 68 deaths and left more than 100 workers injured. The same news report also mentioned large numbers of injuries as workers in other factories rushed to escape fires or nearby explosions. *Independent* (Bangladesh), “Fresh Tragic Incidents.”

142. Paul-Majumder, “Workers’ Rights in the Garment Industry,” 282–84.

143. Paul-Majumder, “Social Security Challenges,” 175.

144. Paul-Majumder, “Workers’ Rights in the Garment Industry,” 296.

145. Dannecker, *Between Conformity and Resistance*, 231–32.

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146. This summary is based mainly on translations of materials provided by Karmojibi Nari. See also Ministry of Women and Children Affairs, *Women in Labour Market*, 223–25; Afsar, “Internal Migration and the Development Nexus,” 10; Paul-Majumder, “Social Security Challenges in the Manufacturing Sector,” 185; and Stuart-Smith and Shefali, *Study Report on Post MFA Strategy*, 27.
147. As noted earlier, the Government has temporarily lifted the restriction on women’s night work through recent Gazette notifications.
148. The current labor law framework expressly requires equal pay between men and women only with respect to setting minimum wage rates.
149. Karmojibi Nari has also recommended that agricultural workers be registered and issued identification cards, that they be subject to a minimum wage scheme and an equal pay requirement, that their workplaces be subject to inspection, that they have the right to organize locally, and that they have access to a guaranteed employment scheme during periods when there is no agricultural work.
150. Firms located in the EPZs are also free to subcontract work to non-EPZ firms.
151. Absar, “Living Conditions of Women Workers,” 2–4.
152. Paul-Majumder and Begum, “Gender Imbalances,” 19–20.
153. An NGO reported that, as of December 2005, the compensation fund that was to have been set up by several of the factory’s overseas buyers—to compensate injured workers and families of workers who had died in the factory collapse—was still being negotiated. Clean Clothes Campaign, “Spectrum-Shahriyar Workers’ Demands Still Outstanding.”
154. About 36 varieties are currently cultivated in Bangladesh, with the main varieties being salt-water *bagda* (shrimp) and fresh-water *golda* (prawns). Development & Training Services, Inc., *Pro-Poor Analysis of the Shrimp Sector*, 24. Unless otherwise stated, references to “shrimp” include both shrimp and prawns.
155. *Ibid.*, 1.
156. *Ibid.*, 37–38; Halim, “Marginalization or Empowerment?” 3–5.
157. Government of Bangladesh, *National Strategy for Accelerated Poverty Reduction*, 86 & 91–93.
158. *Ibid.*, 55–56.
159. *Ibid.*, 177–81.
160. These include the Shrimp Mohal Management Policy 1992, the Jalmahal Policy 1997, the Land Use Policy 2001, and various policies and guidelines for allocating *khas* land to landless households and other disadvantaged groups. (The NSAPR also refers to a new Jalmahal Policy, but this could not be located during preparation of this report.)
161. See note 121 above.
162. This ban proved to be difficult to enforce, and imposed serious hardship on the landless, including women, who depend on fry catching for their livelihoods. The ban was placed in abeyance in 2002. Department of Fisheries, “Balancing Resource Conservation,” 1.
163. However, recent Government efforts to limit overfishing for wild shrimp by trawlers met with industry resistance, resulting in court injunctions against the proposed measures. *Ibid.*, 13.
164. This commission, created by the Food and Agriculture Organization and World Health Organization in 1963, develops food standards, guidelines, codes of practice, and other guidance on food safety. The HACCP approach was included initially in the Commission’s Recommended International Code of Practice—General Principles of Food Hygiene (CAC/RCP 1-1969, Rev. 3-1997), and has recently been incorporated in a new Code of Practice for Fish and Fishery Products (CAC/RCP 52-2003, Rev. 1-2004).
165. The SPS Agreement generally requires WTO members to base their SPS regulations on international standards, guidelines, or recommendations, and any SPS measures based on these international sources are deemed to be consistent with the SPS Agreement and the GATT 1994 (SPS Agreement, Article 3).
166. Interview with Syeda Rizwana Hasan, Director (Programmes), Bangladesh Environmental Lawyers Association.
167. These include the Employment of Labour (Standing Orders) Act 1965, Factories Act 1965, Minimum Wages Ordinance 1961, Payment of Wages Act 1936, Maternity Benefit Act 1939, Workmen’s Compensation Act 1923, and Industrial Relations Ordinance 1969.
168. For example, the Factories Act 1965 applies to any premises where 10 or more employees are working on any part of a “manufacturing process,” which includes “washing, finishing or packing, or otherwise treating any articles or substance with a view to its use, sale, transport, delivery, display or disposal” (Section 2[f] & [h]).
169. The HACCP system, for example, includes seven steps: (1) hazard analysis, (2) identification of “critical control points,” (3) setting of “critical limits,” (4) a monitoring system, (5) corrective action to be taken based on results of monitoring, (6) verification procedures, and (7) documentation. Codex Alimentarius Commission, *Code of Practice*, 17.
170. Further information is available on the websites of the Global Aquaculture Alliance (<http://www.gaalliance.org/resp.html>) and the Aquaculture Certification Council, Inc. (<http://www.aquaculturecertification.org>).
171. ATDB-Shrimp Seal of Quality, *Shrimp Seal of Quality (SSOQ) Certification Standards*.
172. Khatun, *Fish Trade Liberalization*, 45.

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173. Department of Fisheries, *Shrimp Aquaculture in Bangladesh*, 6. These estimates appear to cover the costs of establishing and running an SSOQ certifying organization, but not the internal compliance costs for shrimp farms, processing plants, and other facilities in the production chain.
174. Saha, "Commercial Shrimp Culture Violates Rights," 307–10.
175. McLachlan, "Export-Oriented Shrimping." The author notes that fresh-water prawn farming is more environmentally sustainable than salt-water shrimp farming, and supports more varied livelihood options, including greater participation of women.
176. Halim, "Marginalization or Empowerment?"
177. Ibid.
178. Development & Training Services, Inc., *Pro-Poor Analysis of the Shrimp Sector*, 43–45.
179. Halim, "Marginalization or Empowerment?" Halim assumes that workers employed through contractors are not covered by the national labor laws and are not subject to inspection by labor inspectors. However, the Factories Act 1965 defines "worker" as "a person employed directly or through any agency, whether for wages or not," and therefore would seem to cover such contracted workers.
180. Khatun, *Fish Trade Liberalization*, 54.
181. These proposals are drawn from two Department of Fisheries documents: *Shrimp Aquaculture in Bangladesh* and *Shrimp Strategy*.
182. Development & Training Services, Inc., *Pro-Poor Analysis of the Shrimp Sector*, 69–79.
183. McGill, "Poverty and Social Analysis of Trade Agreements." See also World Bank, "Poverty and Social Impact Analysis."  
<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPSIA/0,,menuPK:490139~pagePK:149018~piPK:149093~theSitePK:490130,00.html>
184. World Trade Organization, *Agreement Establishing the World Trade Organization*, Annex 3, para. A(ii).
185. See, e.g., Evers, "Linking Trade and Poverty;" McGill, "Trade and Gender," 740–41; Williams, *Gender Mainstreaming*, 172–74.

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