

# Maquila Solidarity Network

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## SPECIAL ISSUE ON CODE COMPLAINTS PROCESSES

In this issue of the Codes Memo, we examine the worker and third party complaint processes of two multi-stakeholder initiatives (MSIs) – the Fair Labor Association (FLA) and the Worker Rights Consortium (WRC) – and evaluate their effectiveness at a time when the garment industry is going through a major restructuring at the regional and global levels. The case study below focuses on two parallel third party complaint processes, in which the Maquila Solidarity Network (MSN) was directly involved, concerning alleged violations of freedom of association at a Honduran factory owned by Canadian T-shirt manufacturer Gildan Activewear.

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## A. An Insider’s Assessment of Complaint Processes: the Gildan Story

In October 2003, Canadian T-shirt manufacturer, Gildan Activewear, became the first Canadian company and the first apparel manufacturer to become a Participating Company in the Fair Labour Association (FLA). One year later, Gildan’s FLA membership was under review because of the company’s actions during a third party complaint process.

In December 2004, the FLA Board of Directors decided to reinstate Gildan as a Participating Company, based on the “substantial steps” taken by the company to

meet specific conditions set by the Board.

The Gildan story offers a concrete example of the application of third party complaint processes in multi-stakeholder code of conduct monitoring initiatives, and an opportunity to assess their effectiveness in addressing violations of workers’ rights.

### *Codes Memo*

**The *Codes Memo* is published three times a year in Spanish and English by the Maquila Solidarity Network (MSN). The *Memo* examines developments in voluntary codes of conduct, as well as government action on corporate social responsibility and labour rights. We welcome your comments. Write us at: [info@maquilasolidarity.org](mailto:info@maquilasolidarity.org). The *Memo* is available in PDF format at: [www.maquilasolidarity.org](http://www.maquilasolidarity.org).**

### **Independent Investigations**

In early 2004, Gildan's wholly owned El Progreso factory in Honduras was the subject of two independent investigations, the first by the FLA and the second by the Worker Rights Consortium (WRC). Both investigations were carried out in response to a third party complaint that was jointly filed by the Maquila Solidarity Network (MSN), the Canadian Labour Congress and the Independent Federation of Honduran Workers (FITH). In addition to being a FLA Participating Company, Gildan also produces T-shirts for a number of FLA- and WRC-affiliated universities that have ethical purchasing policies.

MSN and our co-complainants decided to file the complaint with both the FLA and WRC because of the advantages and limitations of these two very different, but complementary, complaint processes. We explore those advantages and limitations below.

### **Alleged Violations**

Filed in December 2003, the third party complaint alleged that Gildan Activewear had violated the FLA and WRC codes of conduct by firing approximately 100 workers at Gildan El Progreso in 2002 and 2003 because the workers supported unions. It also alleged that there was a pattern of violations of freedom of association at the factory.

The most recent round of firings of union supporters at the Gildan El Progreso factory took place in October/November 2003, around the time Gildan was seeking membership in the FLA. Two leaders of the union organizing drive were fired two days before Gildan was accepted as an FLA Participating Company. Thirty-seven additional union supporters were fired two weeks after Gildan became a member of the FLA.

The FLA Compliance Benchmarks on freedom of association explicitly state, "The employer will not dismiss, discipline, or otherwise coerce or threaten workers

seeking to form, join or participate in workers' organizations."

### **Investigative Findings**

In May 2004, the FLA and the WRC informed Gildan of the results of their separate investigations. While the FLA audit did not examine whether workers' associational rights had been violated in 2002, since Gildan was not yet a FLA Participating Company at that time, it found evidence of noncompliance with the FLA Freedom of Association Standard in November 2003, as alleged by the complainants.

The WRC investigative team found "overwhelming evidence supporting the conclusion that Gildan Activewear El Progreso management deliberately targeted union supporters for dismissal in violation of Honduran law"...in both 2002 and 2003. It also concluded there was "credible evidence that the company had a policy of firing union supporters, and that this policy had been communicated to workers by management personnel."

The parallel investigations also documented other areas of noncompliance with the FLA and WRC code standards and/or Honduran law, including hours of work violations, failure to pay legal overtime pay, off-clock work, failure to provide legal holidays and vacations, discrimination against pregnant workers, and sexual harassment.

### **Surprise Announcement**

On July 12, 2004, Gildan CEO Glenn Chamandy flew to Washington D.C. to attend a face-to-face meeting with representatives of the FLA and WRC. The purpose of the meeting was to attempt to gain agreement on a corrective action plan to address the worker rights violations documented in the two investigations.

According to the WRC investigative report, Gildan had indicated that it hoped to reach final agreement on a remediation plan at that meeting, "though in discussions prior

to the meeting Gildan [had] expressed strong opposition to key remedial actions in the areas of freedom of association and mandatory overtime.” The WRC report goes on to say that in the weeks prior to the July 12 meeting the main stumbling block in the way of an agreement was Gildan’s strong resistance to the monitoring organizations’ recommendation that fired union supporters be reinstated.

Rather than putting forward a proposal on how the company would address this outstanding issue, at the meeting Chamandy made the surprise announcement that his company had decided to close its El Progreso factory and that the workers would be given formal notice the following day.

According to the WRC report, Gildan representatives at the meeting argued that the company’s decision to close the factory was “absolutely unrelated” to the investigations of worker rights violations at the factory or to workers’ efforts to organize.

According to Gildan, a key element in its business rationale to relocate sewing operations to Haiti was the start up of its new textile facility in the Dominican Republic.

### **Reactions to Gildan’s Announcement**

On July 24, the FLA released a public statement, announcing that Gildan’s decision to close the factory “has jeopardized the prospects of remediating the main findings in the complaint and the FLA has therefore decided to suspend the Third Party Complaint process...” According to the statement, “FLA has specifically informed Gildan that a company’s decision to close a factory in which there has been a finding of noncompliance with regard to the FLA Workplace Standard on Freedom of Association is an indicator in and of itself of possible noncompliance, as specified in FLA’s Workplace Standards benchmarks.”

On July 26, one day before the FLA tracking charts on its audit findings were posted and three days before the WRC report was made public, Gildan posted its

“Response to the Fair Labor Association and Worker Rights Consortium Reports” on the company’s website. In that statement, Gildan failed to mention the FLA audit findings on noncompliance with its Freedom of Association Standard. It also dismissed the findings of the WRC investigation as being “based on rumours and hearsay.”

On July 27, the FLA posted tracking charts summarizing the auditor’s findings in the El Progreso case. In the corrective action sections of the tracking charts, Gildan contested the findings of the FLA audit, stating, “...[N]o actual violations were found... as confirmed by the Honduran Ministry of Labour.”

On that same day, the FLA announced it was taking the unprecedented step of placing Gildan Activewear on a 90-day Special Membership Review because the company had “failed to achieve or maintain compliance with the FLA’s standards.”

### **Precedent-setting Case**

The Gildan case has raised a number of serious issues and challenges, not only for the FLA, but also for other multi-stakeholder code of conduct monitoring initiatives. An underlying assumption of voluntary, non-governmental regulatory systems is that the companies involved in these initiatives are acting in good faith. A related assumption is that workers and interested third parties will not be negatively affected if and when they make use of these systems to seek remedies to workplace problems. The Gildan case points to some of the limitations of voluntary initiatives in dealing with companies when they don’t play by all the rules of the game.

The Gildan case also raises important issues about the responsibilities of companies during the quota phase-out transition period. Under the WTO Agreement on Textiles and Clothing (ATC), import quotas on textile and apparel products will be phased out at the end of 2004. In anticipation of the quota phase-out, companies like Gildan have been restructuring their global supply chains

and/or regional manufacturing networks to be competitive in the post-quota environment.

In a brief submitted to the FLA Board prior to its decision to place Gildan on a Special Membership Review, MSN asked “whether it was acceptable for an FLA Participating Company to close a plant while it is under investigation in response to a third party complaint merely because the company can get cheaper labour elsewhere.”

Gildan is not the only garment manufacturer that has used this transition period as an opportunity to rid itself of problem factories. One of its major competitors, Sara Lee, recently shut down one of its Hanes-brand sewing factories in Coahuila, Mexico that had been the subject of worker organizing attempts and a WRC investigation.

In 2003, another major US apparel manufacturer, Tarrant Apparel Group, refused access to one of its Mexican factories to a Verité audit team contracted by an important client, Levi Strauss. Rather than cooperate with a factory audit concerning alleged freedom of association violations, Tarrant was willing to sacrifice its business relationship with Levi’s. It later closed this and five other wholly owned factories in the Tehuacan Valley region of the Mexico’s Puebla state.

In addition to these broader issues, the Gildan case also raises a number of specific questions about the effectiveness of MSI third party complaint processes, including:

- What recourse do MSIs and complainants have when a company that is the subject of a complaint refuses to accept the audit findings and/or refuses to take corrective action on the central issue under investigation?
- What can and should the MSIs do if and when a company misrepresents the complaint process and/or the audit findings?
- What information should be provided to the complainant, the affected workers and the public on the status of a

complaint and remediation process before that process is completed?

- What changes could be made in MSI complaint processes to achieve timely remedies to problems that motivate complaints, in order that workers might benefit from the process?

### **FLA Complaint Process**

The FLA is a multi-stakeholder code of conduct monitoring initiative that includes among its members major US and European brands, such as Nike, Reebok, adidas-Salomon, Puma, Phillips-Van Heusen, Liz Claiborne, Eddie Bauer, Patagonia, etc. In addition to company representatives, the FLA Board of Directors also includes representatives of NGOs and universities.

Under the FLA’s Third Party Complaint process, anyone can make a complaint, and the complainant(s) may choose to be anonymous. If the FLA Executive Director determines that the complaint should go forward, the Participating Company is informed of the complaint and provided copies of the documentation submitted by the complainant(s). The company is then given up to 45 days to carry out its own internal assessment and report back as to whether the alleged noncompliance occurred and, if so, what corrective action has been taken.

The FLA’s procedures for addressing third party complaints were designed for brand merchandisers and retailers that do not directly own their production facilities and therefore might require considerable time to investigate a complaint and work with the supplier on a corrective action plan. In the Gildan case, MSN argued that because Gildan owned the factory that was the subject of the complaint and management personnel that were allegedly involved in the violations were directly responsible to the company, an internal assessment should not require 45 days.

MSN feared that Gildan might use the 45-day period as an opportunity to further delay dealing with issues that had been the subject

of public controversy for over a year, or worse still, to intimidate workers in order that they would not provide candid testimony to an FLA auditor. As well, given that the most recent firings of union supporters took place in October and November of 2003, an audit that took place four months after the firings would not result in a timely remedy to the very real problems facing the affected workers.

On January 30, 2004, five days before its annual shareholder meeting, Gildan announced that it would cooperate with an FLA audit of the El Progreso factory. At the February 4 annual meeting, Gildan President Greg Chamandy promised shareholders, "If the FLA concludes that we have ignored our commitments to it [FLA], I can assure you that we will do everything necessary to correct the situation."

Under the FLA Complaints Process, the FLA Executive Director chooses the auditing organization from among those organizations accredited by the FLA to carry out the audit of the factory that is the subject of the complaint. In the Gildan case, the FLA chose A&L Group Inc. (ALGI) to audit the El Progreso factory. ALGI is a US-based labour standards auditing company with a relatively good reputation.

The FLA has fairly strict guidelines on what should and should not be communicated to the public during the complaint process. The complainant and the company are asked not to comment on the process to the media, beyond providing factual information on what is taking place. The FLA Executive Director and staff are expected to follow similar guidelines.

However, as we will see below, these guidelines did not prevent Gildan from issuing a media release and posting on its website its response to the FLA findings, prior to those findings being made public by the FLA.

A major limitation of the FLA complaints process is that, while the detailed findings of an FLA audit are provided to the company shortly after the audit is completed, audit findings are not made available to the complainant until the company has

submitted an acceptable corrective action plan to the FLA. Even then, the complainant only has access to a summary of the audit findings and corrective action plan, and that limited information is not available to the complainant until it is posted on "tracking charts" on the FLA website.

While this two-step process has the advantage of giving a company an opportunity to digest the audit findings and an incentive to develop a credible corrective action plan before those findings are made public, this process broke down in the Gildan case. Rather than waiting for the tracking charts to be posted, the company released a detailed public response to the audit findings before agreement had been reached on a corrective action plan and before the FLA's summary of the findings had been shared with the complainants or the public.

According to Gildan, it had no choice but to publicly release information on the remediation process at that time because it was being pressured by the media and key stakeholders to provide updates and no recent information was available on the FLA website.

As well, because the FLA tracking charts only provide a summary of the audit findings and the company's corrective action plan, the information provided can be confusing to those less familiar with a particular case. Furthermore, while a summary of the company's corrective action plan is included on the tracking charts, the FLA's recommendations for corrective action are not.

The fact that Gildan's corrective action plan disputed the key audit findings made the information posted on the tracking charts even more confusing. For instance, the Gildan El Progreso tracking chart includes the following information:

- Under "Monitor's Findings": Gildan workers believe they were fired for union activity; Gildan claims the dismissals were for production reasons; the Honduran Ministry of Labour found that the law was not broken; and the

FLA auditor found “evidence to conclude there were violations of the FLA code in this area.”

- Under “PC Remediation Plan”: “[N]o actual violations were found, as confirmed by the Honduran Ministry of Labour....”
- Under “FLA Comments”: “[T]here was noncompliance with FLA workplace standard as alleged in the Third Party Complaint....”

As a result of these limitations in the FLA’s complaints and public reporting processes, detailed information on the FLA findings and Gildan’s corrective action plan could only be found on Gildan Activewear’s website. The fact that this information was often incorrect or misleading may have harmed the credibility of the FLA complaint process. At the very least, it caused confusion among interested observers less familiar with the case.

While the FLA tracking charts represent an important step forward in CSR reporting, more detailed public reports are needed on findings and corrective action of audits carried out in response to worker and third party complaints. As well, in cases in which a company fails to submit an acceptable corrective action plan, it would be less confusing and more transparent if the FLA posted its recommendations for corrective action, rather than the company’s inadequate response.

The FLA tracking charts are available at: [www.fairlabor.org](http://www.fairlabor.org).

### **WRC Complaint Process**

Unlike the FLA, which is primarily a monitoring organization, the WRC is a complaint-based initiative that carries out investigations in response to worker and third party complaints. The WRC was initially created as an alternative to the FLA, in order to assist its member universities in the enforcement of their ethical purchasing policies. Its Governing Board includes representatives of universities and United

Students Against Sweatshop (USAS) groups, and independent labour rights experts.

While both the WRC and the FLA have a significant number of US universities and colleges as members, the WRC explicitly excludes companies from joining it either as constituencies or affiliates. Nor does the WRC make use of the services of commercial auditors to assess complaints of worker rights violations.

When the WRC receives a complaint concerning alleged worker rights violations at a factory producing apparel and other related products for a member university, it assembles an investigative team made up of WRC staff or board members and local people with experience in labour or human rights organizations or with expertise on labour rights issues in the country where the violations allegedly took place.

The involvement of local experts in the WRC investigative process has definite advantages over the FLA’s general reliance on commercial social auditing firms, since local people with a human or labour rights background are more likely to have the trust of the workers who are being interviewed. It is worth noting, however, that FLA-accredited auditing organizations include two Central American NGO monitoring groups – GMIES and COVERCO – that are mandated to carry out FLA audits in El Salvador and Guatemala respectively. In the Gildan case, the FLA-accredited commercial auditing firm also used the services of local people with NGO experience in carrying out worker interviews.

According to Maritza Paredes of the Honduran Independent Monitoring Team (EMIH), the lead investigator for the WRC was able to develop “a significant degree of trust” with the workers interviewed by inserting herself in the community where the workers lived and by taking into account the knowledge and suggestions of the local people involved in the investigative process. She also noted that the WRC investigators took precautions to protect workers from potential retaliation for participating in interviews.

Paredes felt that in ALGI's first audit visit the FLA's audit process didn't allow for sufficient involvement of local people in order to ensure that members of the investigative team had more information and a greater understanding of the history of the industry in the region.

The major limitation of the WRC model is that, while the absence of companies on its governance bodies and the involvement of local people in its investigations makes it less threatening to workers, these same factors could make it more threatening to the companies that are being investigated.

As a FLA Participating Company, Gildan had little choice but to co-operate with the FLA audit. However, when contacted by the WRC about the complaint, the company refused the WRC investigative team access to the factory or to factory records.

Gildan argues that it denied the WRC investigative team access to the factory because the WRC refused the company's offer to work collaboratively with the FLA and WRC on a single audit of the El Progreso facility to avoid having two separate audits of the same issues at the same time.

Given their different approaches to factory investigations and the fact that the WRC does not involve commercial social auditing firms in its factory assessments, it is unlikely that the FLA and WRC could have collaborated on a single factory "audit" at Gildan El Progreso.

It is worth noting, however, that despite the WRC's lack of access to the factory, its investigative team was able to carry out a credible investigation based on interviews with workers, local unions and NGOs, Ministry of Labour officials, and Gildan El Progreso management.

Significantly, the findings of the WRC investigation were generally consistent with those of the FLA audit. While the FLA audit uncovered additional information on hours of work violations through its access to factory records, the WRC investigation obtained more detailed information from worker interviews on management

retaliation against union supporters.

Although Gildan initially attempted to dismiss the WRC's findings as being "based on rumours and hearsay," the fact that it agreed to the WRC's participation in discussions with the FLA on corrective action and that it responded to the WRC's proposals for corrective action indicates that it could not ignore the WRC or its findings.

Compared with the FLA tracking charts, WRC reports are more transparent and detailed and less likely to be misinterpreted. The WRC report on Gildan El Progreso includes information on the complaint and the investigative process, detailed findings, the WRC's proposals for corrective action, Gildan's response to those proposals, and the WRC's assessment of that response.

The report also includes an assessment of the implications of the plant closure and of the company's claim that the closure was unrelated to the investigations or workers' efforts to organize a union.

The WRC report is available on its website, in English and Spanish, at: [www.workersrights.org](http://www.workersrights.org).

### **FLA Special Membership Review**

The Gildan case was the first instance in which the FLA Board of Directors felt compelled to place a Participating Company on a Special Membership Review, and for that reason, the Special Review provisions of the FLA Charter had not yet been tested.

Under the FLA Charter, during a company's special review period, the company may not make public statements indicating that it is in compliance with the FLA Standards.

When the FLA Board made the decision to place Gildan's membership under review, it also set specific conditions for the company to be accepted back as a member in good standing. These included:

- Developing a satisfactory remediation plan for the non-compliance found by the FLA-accredited monitor, and implement that plan in a timely manner;

- Publicly acknowledging that there were restrictions in the El Progreso factory on workers' right to freedom of association;
- Publicly acknowledging that it accepts and agrees to adhere to the Freedom of Association standard in the FLA Workplace Code of Conduct in its business operations;
- Communicating to its Honduran employees its commitment to their associational rights; and
- Sending written notice to media that have misrepresented FLA's position, or have misrepresented Gildan's position relative to the FLA, during the recent Third Party Complaint Process.

Despite the final requirement that Gildan correct misrepresentations in the media, the Special Review process did not prevent Gildan from publishing updates on its website or making statements to the media that might have be interpreted as meaning the company had taken significant steps toward corrective action. At the same time, Gildan continued to assert, "no actual violations were found..." on freedom of association at the El Progreso factory "as confirmed by the Honduran Ministry of Labour."

On October 13, two weeks before the end of the 90-day special review period, Gildan posted on its website an "Updated Response to FLA and WRC reports." The update on corrective action regarding freedom of association includes the following statement: "In response to the original findings, recent interviews conducted by an external third party did not reveal any type of action by management that could indicate anti-union behavior."

While the third party that carried out the "recent interviews" was not identified in Gildan's Update, MSN later learned that the company was referring to a second FLA audit at Gildan El Progreso that was done prior to the closure of the factory on September 24. The purpose of that audit was to verify whether Gildan was fulfilling its commitments on corrective action, not to

reassess whether freedom of association violations had occurred in November 2003.

The findings of the second audit were not posted on the FLA tracking charts until after the completion of the 90-day Special Membership Review on October 26, 2004. The auditor's findings indicated that there was no "reoccurrence of anti-union behavior by management," but went on to say, "No employee reported to be actively pursuing union organization given imminent closing of Gildan El Progreso."

Once again, the fact that the FLA does not comment publicly or provide regular updates to complainants on the status of remediation, even during the 90-day Special Review period, had the unintended effect of making the company's interpretation of audit findings and corrective action the only publicly available information on progress in Gildan's or the FLA's efforts to achieve remediation. In contrast, the WRC provided regular updates to MSN on the status of remediation, though it did not release that information to the public.

The fact that Gildan continued to promote itself as a FLA member company throughout the 90-day Special Membership Review period, which gave added credibility to its claims of "very good progress," raises questions about the effectiveness of this form of sanction.

### **Timely Remedy for Workers**

One major weakness of both the FLA and WRC complaints processes is the length of time it takes to investigate alleged violations of workers' rights, negotiate with the company on corrective action, develop and release findings and information on corrective action to the complainants and the public, and achieve remediation.

The length of time between the filing of a complaint and the resolution to the problem is a particularly sensitive issue when the complaint is about unjust dismissals, since workers are often dispersed by the time corrective action is being discussed. In the Gildan case, the closure of the factory that



was the subject of the Third Party Complaint made the length of the process even more problematic.

Thirty-nine union supporters were fired at Gildan El Progreso in October/ November of 2003. The third party complaint concerning those firings was filed in December. The FLA and WRC accepted the complaint in early January 2004, and Gildan agreed to cooperate with the FLA audit on January 30. In May 2004, Gildan received the findings of the two investigations. On July 12, Gildan announced it was closing the factory. On September 24, Gildan El Progreso was closed and the workers received their severance pay. As of December 2004, remediation of the noncompliance issues identified at Gildan El Progreso has not yet been completed.

Approximately one year after the workers were unjustly fired, and two months after the factory was closed, there is still no final resolution to the central issue that prompted the complaint.

According to Paredes, by the time corrective action was under discussion in North America, most of the union supporters who had been fired had found other employment or had moved elsewhere, and the firings were no longer the most relevant issue for the remaining workers, since the imminent closure of their workplace had become their prime concern.

### **The Business Case for Cutting and Running**

In its public statement released prior to the publication of the FLA audit findings or the WRC investigative report, Gildan gave the following reasons for its decision to close the El Progreso factory at that time:

- Gildan El Progreso was “inefficient and more costly compared to other sewing facilities where only one product is made.”
- Gildan is transferring sewing production to Haiti and Nicaragua where production costs are half those in Honduras.

- Gildan lost on average 1-2 production days every month because militant worker protests that had nothing to do with Gildan blocked a bridge giving access to the free trade zone.

It is worth noting that neither the FLA nor the WRC accepted the company’s argument at face value. As noted above, the FLA informed Gildan, “[A] company’s decision to close a factory in which there has been a finding of noncompliance with regard to the FLA Workplace Standard on Freedom of Association is an indicator in and of itself of possible noncompliance, as specified in FLA’s Workplace Standards benchmarks.”

In its public report on its investigative findings, the WRC stated the following: “Regrettable as closures may be, university codes of conduct do not inhibit the numerous closures that occur in the normal course of business. However, there are some circumstances where closure is not appropriate and does violate university codes – specifically, where the decision to close is motivated by anti-union animus, or some other form of discrimination, or where the decision is motivated by a desire to avoid code compliance. A company may also be acting in conflict with code obligations when a decision to close a factory comes subsequent to the identification of serious code violations and before those violations have been addressed – unless the company has no viable alternatives to closure.”

According to the WRC report, Gildan failed to provide sufficient evidence “to establish that there was a clear causal link between the [business] issues it cites and the actual closure decision.” The report concludes, “On balance, ... the weight of evidence argues in favor of the view that anti-union animus played at least some significant role in the decision to close this factory at this time.”

### **FLA Board Meeting**

On October 26, the date of the completion of the 90-day Special Membership Review

period, the FLA Board of Directors assessed Gildan Activewear's progress in meeting the conditions it had set as part of the review process. It concluded that Gildan had not fully met those conditions and therefore was not in compliance with the FLA Standards.

The Board decided that Gildan's status as a Participating Company in the FLA would be terminated effective December 10, 2004 unless, by November 30, 2004, Gildan provided evidence satisfactory to the FLA that it had taken the following actions:

1. Issued a clearly worded public statement that acknowledges that there were restrictions in its El Progreso factory on workers' rights to freedom of association, including posting such statement on its website;
2. Corrected misrepresentations of Gildan's compliance with FLA Standards that appear on the Gildan website;
3. Corrected misrepresentations attributable to Gildan of the FLA's position or of Gildan's position relative to the FLA by sending written notices correcting the record to the specific media where any misrepresentations occurred;
4. Effectively communicated to Gildan Honduran employees Gildan's commitment to their associational rights;
5. Demonstrated the completion of a remediation plan, including:
  - Evidence of payment (or, if necessary, escrow) of back wages to the 39 dismissed workers on the list provided by Workers Rights Consortium, from the date of dismissal through September 30, 2004, as well as severance packages based on each worker's original date of hire at the factory.
  - Evidence of completion of initial training by Verité on freedom of association for workers and managers, and adoption of plans for subsequent trainings in Gildan Honduran facilities and a plan for evaluation of the effectiveness of the training.

6. Constructively engaged in discussions with Maquila Solidarity Network on issues related to Gildan's implementation of FLA Standards.

While MSN supported the FLA's decision to set "a clear deadline and strict conditions for Gildan to take corrective action or lose its status as a FLA Participating Company," it continued to assert that Gildan's decision to close the factory in the midst of a third party complaint process was totally unacceptable.

In a memo submitted to the FLA Board prior to the October 26 meeting, MSN had argued that Gildan had failed to submit an adequate corrective action plan to address the central focus of the third party complaint. "Gildan claims that it offered to reinstate the 39 workers fired for union activity in October/November 2003, and that only two workers chose to be reinstated," said the memo. "What Gildan fails to mention is that the workers were to be reinstated only for the less than two-month period the factory was to remain open. Nor, to MSN's knowledge, were these workers offered 'first hire' opportunities at other Gildan factories in Honduras."

It is worth noting that a decision to expel a FLA Participating Company must be made by a super majority vote of the FLA Board, which means that a majority of companies, as well as a majority of NGOs must vote in favour of the motion to expel the company. However, the FLA Board generally operates on the basis of consensus, and, like most FLA Board decisions, the resolution on Gildan's membership in the FLA was approved unanimously.

### **Constructive Engagement**

Following the October 26 FLA Board meeting, Gildan posted a brief statement on its website, promising to fully comply with the Board's six conditions by the November 30, 2004 deadline.

The FLA's decision received considerable media coverage in Quebec and elsewhere. It also contributed to the growing pressure on

institutional investors with shares in the company and institutional buyers that bulk purchased Gildan products to question their relationship with the company. Activists in United Students Against Sweatshops (USAS) and the Sweatfree Communities network in the US and the Clean Clothes Campaign in Europe joined with their Canadian counterparts in lobbying distributors and institutional buyers to stop placing orders with Gildan unless and until the company acknowledged the worker rights violations and took adequate corrective action.

In early November, a senior management person at Gildan Activewear contacted MSN and offered to resume dialogue. After an informal, but constructive, initial meeting, the Gildan representative raised the possibility that Gildan might be opening a new sewing facility in Honduras and that former Gildan El Progreso workers might be offered employment opportunities at that factory. A more formal meeting between MSN, EMIH and Gildan was scheduled for November 25 in Central America.

At that meeting, Gildan reported on the status of remediation and its compliance with the six conditions set by the FLA Board for the company's continued membership in the Association. While Gildan had taken a number of steps, and had committed to taking additional steps, to meet the six conditions set by the FLA Board, it was unwilling to make a firm commitment at that time on rehiring fired union supporters and other former Gildan El Progreso workers at a new facility and/or its existing facilities.

On December 10, the Fair Labor Association (FLA) Board of Directors announced it was reinstating Canadian T-shirt manufacturer Gildan Activewear as a FLA Participating Company. According to that statement, Gildan has taken "substantial steps... to meet the conditions specified by the FLA Board in its Resolution of October 26, 2004."

Significantly, the Board's statement goes on to say, "In the event of Gildan opening a new plant in Honduras, the Board is

particularly concerned that workers who lost their jobs at El Progreso should be granted first hire preference in order to fully restore their rights and complete remediation." The statement also quotes Aret van Heerden, President and CEO of the FLA, as saying, "We expect that Gildan will provide first hire preference at all of its plants in Honduras."

On December 13, Gildan announced its intention to open a new sewing plant in Honduras. According to that statement, Gildan will "attempt in good faith and where practical to preferentially reintegrate workers from its El Progreso sewing facility."

In its response to the FLA decision, which was also released on December 13, MSN urged Gildan to "enter into discussions with the FLA, the Worker Rights Consortium (WRC), MSN and local Honduran groups on how to effectively implement this new commitment in a manner that fully restores the rights of Gildan El Progreso workers, including unjustly fired union supporters, and completes remediation" and to "provide former Gildan El Progreso workers first hire preference at all Gildan manufacturing facilities in Honduras and makes public this commitment in Honduras as well as in North America."

Gildan has since clarified that its new sewing factory will employ between 1,000 and 1,200 workers and should be in operation by March 31, 2005. It has promised not to discriminate against union supporters in hiring at the new facility. However, the factory will likely be located in Choloma, rather than El Progreso, which will make it less accessible to former Gildan El Progreso workers. At the time of this writing, it is unclear whether Gildan will also offer first hire preference at other Gildan facilities closer to El Progreso.

## **Conclusion**

The Gildan case illustrates some of the dilemmas and challenges facing multi-stakeholder code of conduct monitoring initiatives in a period when retailers, brands and manufacturers are restructuring their

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global supply chains and regional manufacturing networks. The phase-out of import quotas on garment and textile products at the end of 2004 will make the issues highlighted in the Gildan case even more pressing.

As multi-stakeholder initiatives attempt to expand the coverage of their codes and monitoring programs by reaching out to involve apparel manufacturers, department stores and discount chains in their efforts, new challenges will emerge concerning the different interests, industrial relations histories, and market vulnerabilities of these important players in the industry.

It is also worth noting that while most of the multi-stakeholder initiatives have adopted standards that require respect for freedom of association and the right to bargain collectively, the vast majority of apparel manufacturers, second tier brands, department stores, and discount chains continue to resist adopting freedom of association standards that commit them to doing more than they are required to do by the laws of the country of manufacture.

The Gildan case also reveals some of the strengths and limitations of voluntary code of conduct initiatives in enforcing their standards. Unlike governmental regulatory bodies, the only penalties available to voluntary initiatives are public reports on a company's progress, or lack of progress, in meeting guidelines or standards and the threat of expulsion.

In the Gildan case, it is not yet clear whether either of these sanctions will be sufficient to motivate the company to abide by the FLA's Freedom of Association Standard over the long term. At the same time, the Honduran governmental regulatory institutions involved in this case have demonstrated a conspicuous lack of capacity or political will to monitor and enforce labour standards regulations. In this regulatory vacuum, the two voluntary initiatives involved played an important role in pressuring and encouraging the company to acknowledge and address labour rights violations.

While debate in the US on code of conduct monitoring initiatives tends to juxtapose the FLA and WRC as incompatible approaches to the promotion of labour standards compliance, the Gildan case would suggest that the different approaches of the FLA and WRC can be complementary and mutually reinforcing. This is not meant to suggest, however, that the best elements of each initiative should be incorporated into one institution, since it is the interaction between the two initiatives that often produces positive outcomes.

The Gildan case also illustrates some of the strengths and weaknesses of the third party complaint processes of these two very different initiatives.

Although the FLA tracking charts represent an important step toward more transparent reporting, they are not as transparent, detailed or useful as the investigative reports provided by the WRC.

When reporting on audit findings in third party complaints, the FLA should consider publishing audit reports that include more detailed information on audit findings, the FLA's proposals for corrective action, as well as the company's corrective action plan. As well, the FLA Third Party Complaint process would be more transparent if complainants and the affected workers were regularly updated on the status of remediation.

Changes are also needed in the FLA 90-day Special Membership Review process in order to provide incentives for companies under review to meet conditions for continued membership in a timely manner. In the Gildan case, the company delayed taking action to meet those conditions until the end of the 90-day period, and then failed to fully comply with those conditions.

To its credit, the FLA Board learned from its initial experience with the Special Membership Review process, and subsequently set a one-month deadline for Gildan to meet its conditions or face expulsion from the Association.

In the future, the FLA should consider setting specific deadlines for meeting specific

conditions during a 90-day Special Membership Review period, in order to prevent a company from treating the review period as an opportunity to further delay developing and implementing an acceptable corrective action plan. As well, a company under review should not be allowed to promote itself as a FLA Participating Company in good standing during the review period.

The length of time it takes to complete a third party complaints process remains a major problem for all the multi-stakeholder initiatives, and a major disincentive for workers to make use of these processes to achieve timely remedies for the problems they face. This is particularly the case when the complaint concerns unjust dismissals.

Both the WRC and FLA should consider developing a more streamlined process for investigating worker and third party complaints and achieving corrective action when the issue under investigation is unjust dismissal of workers. In that regard, the recent creation by the FLA and WRC of the new joint Regional Ombudsman project on freedom of association for Guatemala, Salvador and Honduras could potentially provide workers more timely resolutions to such complaints.

Most importantly, the FLA and other multi-stakeholder initiatives need to develop clear and transparent criteria concerning punitive actions by companies, such as factory closures or shifting orders to other facilities, during a third party complaint process.

The FLA complaint process did help to win financial compensation for fired union supporters and compelled the company to initiate training on freedom of association and communicate its commitment to that right to the public and to its Honduran employees. It also helped facilitate a resumption of dialogue between MSN and Gildan, and, more importantly between Gildan and Honduran organizations, including EMIH.

Under growing pressure from the FLA, the WRC and anti-sweatshop campaign

organizations in North America and Europe, Gildan offered to give first hire preference to former Gildan El Progreso workers at a new sewing factory in Honduras. In the coming months, both the FLA and WRC will undoubtedly play an important role negotiating and verifying compliance with the terms and conditions of first hire preference hiring.

Of the many lessons to be learned from the Gildan case, probably the most important lesson is that companies should not have the right to punish workers for attempting to organize or for speaking honestly to factory auditors, and in cases of factory closures or termination of orders, the onus should be on the company to prove that such actions were not taken in retaliation for workers' efforts to tell their story or to organize to improve their working conditions.

To its credit, Gildan did eventually take a number of steps to at least partially repair the damage caused by the firings of union supporters and the closure of the El Progreso factory. Gildan has also made a serious effort to constructively engage with MSN and other NGOs, which represents a major change in its previous practice. Rather than immediately responding to reports of worker rights violations by denying that any violations are taking place, Gildan now seems more willing to discuss the issues, investigate the situation and consult on possible corrective action.

While these positive steps are welcome, public statements on freedom of association, occasional worker rights training programs, and constructive engagement with NGOs are not sufficient to fundamentally change the anti-union culture in the maquila industry. According to Maritza Paredes, what is needed is a continuous education process involving local people with a common language and culture and experience in human and labour rights issues.

Left unanswered is the fundamental question posed by MSN in its July 2004 brief to the FLA Board of Directors: Is it acceptable for a company to close a plant in the midst of a third party complaint process?

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## **B. FLA Releases Second Annual Report**

The Fair Labor Association (FLA) has released its second Annual Public Report on its efforts, and those of its member companies, to achieve and maintain compliance with the FLA Workplace Code of Conduct. The 269-page report includes the following information:

- Reports on the labour standards compliance programs of 10 Participating Companies and 15 “Category B” university licensees;
- Findings of FLA external monitoring, both at the global level and by company;
- An assessment of challenges in implementing the FLA’s freedom of association standard in four countries – China, Vietnam, Bangladesh, and Mexico; and
- A review of three third-party complaint processes.

### **Internal Monitoring Reports**

In most cases, the company reports on their internal monitoring programs provide little new information that is not already publicly available in their separate annual CSR reports, though having these reports available in one package makes it much easier to compare and contrast how and what the major brands are reporting.

One common theme that emerges from most of the company reports is a growing recognition that factory monitoring, in and of itself, is not a sufficient tool to identify root causes of persistent labour standards violations or to achieve sustainable solutions to those problems. As a result, a number of FLA member companies are putting increased emphasis on training and capacity building for workers and management personnel, as well as attempting to address supply chain management issues that encourage excessive overtime and other workplace problems.

Among the FLA Participating Companies, Reebok stands out for its efforts to involve workers in monitoring labour standards compliance in its sports shoe supply factories. This includes helping to facilitate democratic elections of local union leaders in China, training workers to do worker interviews in Indonesia, training of workers on local labour law in Thailand, and training of local union leaders in China on wage calculation and how to check time recording devices.

In April 2004, Reebok became the first Participating Company to have its footwear compliance program accredited by the FLA. In granting the accreditation, the FLA pointed to Reebok’s “efforts to experiment with various approaches to improve labor-relations systems in factories...” The company’s emphasis on democratic worker representation as a key element in achieving sustainable compliance is virtually unique in the industry.

### **External Monitoring Reports**

The findings of the FLA external monitoring program are remarkably consistent in identifying areas of non-compliance at the global level and by company. Health and safety problems make up 48 percent of the total noncompliance issues, wages and benefits 16 percent, and hours of work and overtime compensation 13 percent.

Significantly, rights-based issues, such as freedom of association (4%), discrimination (2%) and harassment and abuse (5%) make up a much smaller percentage of noncompliance issues identified.

As the FLA admits, the high rate of health and safety issues identified “may in fact reflect monitors’ relative strength in monitoring for noncompliance in this area.” As MSN has noted in previous Codes Memos, the strength of commercial auditing firms is identifying and measuring problems that are easily quantifiable and/or more likely to appear in factory records. Commercial auditing firms have proven to be

much less qualified to carry out qualitative assessments of compliance with rights-based issues.

The report also acknowledges that “findings related to Code provisions, such as Freedom of Association, Harassment or Abuse, and Discrimination, do not mirror the realities on the ground.” One revealing piece of information is that 40 percent of the reported freedom of association violations were listed by auditors under the “Other” category, rather than under specific FOA benchmarks. As the report states, “These findings highlighted the need for a more sophisticated understanding of this standard among monitors.”

The report also notes, “Despite the high rate of noncompliance with Wages and Benefits,... it may still be underreported.”

Another major issue identified by the report is violations of hours of work provisions. The fact that the FLA Code provisions on hours of work are relatively weak compared to those of other major multi-stakeholder initiatives, such as the UK’s Ethical Trading Initiative (ETI) and US-based Social Accountability International (SAI), make this even more striking.

The report points to the problem of local governments in China granting waivers to factory managers, allowing them to exceed national legal overtime limits. According to the report, “the FLA does not consider local waivers to be valid if they do not comply with China’s national standards.”

Another related, and persistent, problem is double bookkeeping. “In 20 percent of the cases, overtime noncompliance was due to management’s failure to provide complete records of overtime work,” says the report.

Significantly, about half the reported incidents of discrimination were related to pregnancy – pregnancy testing, discrimination on the basis of pregnancy, workplace risks for pregnant workers, etc.

### **Freedom of Association**

The FLA’s Second Annual Public Report also includes a special report on the

challenges the FLA faces in implementing its Freedom of Association Standard.

The report highlights the difficulties auditors face in identifying freedom of association violations, the challenges the FLA faces in achieving remediation, the problem of blacklisting of union supporters in Central America, and the most difficult challenge – how to implement the Freedom of Association standard in countries where the right to freedom of association is restricted by law.

While the report includes candid descriptions of these problems and challenges, it provides less information on how the FLA and its member companies are tackling these difficult issues. Although auditor training and developing audit methodology on freedom of association are certainly welcome, they don’t address the more fundamental question of whether commercial auditing firms are the right organizations to assess compliance with worker rights issues.

One promising initiative that is given specific mention is the FLA/WRC Central America Project, which, among other questions, is attempting to address the issue of blacklisting in factories supplying FLA member companies in that region.

The report also includes profiles of the legal and administrative restrictions on freedom of association in four major garment-producing countries – China, Vietnam, Bangladesh and Mexico. Once again, the FLA’s assessment is candid and the information on the legal issues in each country is useful, but little information is provided on what steps FLA member companies are taking to achieve and maintain compliance with its Freedom of Association Standard in these countries.

This is particularly disappointing since some FLA Participating Companies – Reebok, Nike, adidas-Salomon – have been involved in projects in China that helped to facilitate forms of worker representation, including training and elections of worker representatives to health and safety

committees and in-plant elections of factory-level union representatives.

### **Third Party Complaints**

The FLA Second Annual Report also includes three case studies on third party complaints. While the report doesn't name the factories, they were each the subject of high-profile international campaigns. Significantly, all three complaints were filed in response to alleged violations of freedom of association, and in each case, remediation was a lengthy and difficult process.

The three case studies reinforce lessons learned in other third party complaints on freedom of association filed with the FLA and other multi-stakeholder initiatives – while assessing compliance with freedom of association standards may be difficult, achieving and maintaining compliance with those standards in a single factory is a much bigger challenge.

For sustainable progress to be made on freedom of association in countries where enforcement of labour legislation is weak or nonexistent, broader multi-stakeholder efforts involving suppliers, brands and governments are needed to promote industry-wide compliance.

### **Conclusion**

With the possible exception of the Worker Rights Consortium (WRC), which strictly speaking is not a code monitoring initiative, the FLA has gone further than other major multi-stakeholder initiatives in providing transparent public reports on its monitoring program, audit findings, and corrective action plans. In addition to its annual reports, the FLA also releases and updates tracking charts on audit findings and corrective action for particular factories, though the factories are not named. (See Gildan article above.)

However, these relatively transparent reports also reveal major weaknesses in the FLA's external monitoring system, such as the limited capacity of commercial auditing firms to assess compliance with rights-based issues, the lack of commitment of many

suppliers to implementing code standards, the lack of involvement of workers and local civil society organizations in the monitoring process, and the inability of this factory auditing model to address the root causes of noncompliance with key standards.

To its credit, the FLA Second Annual Report acknowledges these problems and discusses possible ways of addressing them. It is also worth noting that other multi-stakeholder initiatives, as well as individual companies, are confronting some of these same issues. (Possibly the most useful contribution of the FLA Report is its honest critique of the limitations of its own external monitoring program.)

The report points to the critical need for training and capacity building for auditors, suppliers and workers on freedom of association and other rights-based issues. However, while this increased emphasis on training in order to achieve supplier buy-in and increased worker awareness is a step in the right direction, it is doubtful that training alone will overcome the serious inadequacies of the commercial auditing model or address some of the underlying supply chain management issues that discourage sustainable improvements at the factory level.

Hopefully, the FLA's Third Annual Report will provide more information on new initiatives the FLA and its Participating Companies are taking to address some of the root causes of persistent labour standards violations in their global supply chains.

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## **C. Mattel Releases First CSR Report**

On October 13, 2004, Mattel, the world's largest toy company, released its first Corporate Social Responsibility (CSR) Report. According to the company, the report was prepared in accordance with Global Reporting Initiative (GRI) guidelines.



Unfortunately, the Mattel report gives much more attention to the company's philanthropic and community work than to its efforts to address labour standards compliance issues in its global supply chain. The 32-page report includes only seven pages on labour standards compliance issues.

Global statistics in the report indicate that Mattel toy products are made in nine owned or operated factories and 77 contract facilities in 42 countries employing approximately 25,000 employees. Seventy-six percent of the company's production takes place in China, 12 percent in Mexico, and 8 percent in Indonesia.

Although the report claims that Mattel's Global Manufacturing Principles (GMP) include 110 specific standards, "some of the most detailed and comprehensive standards in the consumer products industry," those detailed standards appear not to be available to the public. However, a quick review of the GMP standards that are available on the company's website, indicates that most provisions require little more than compliance with local law.

In addition to legal compliance, the GMP standards specify that overtime must be voluntary, that dormitories and canteens must be "safe, sanitary and meet employees' basic needs," that "first aid and medical treatment must be available," and that the facility must have policies and programs to address discrimination, workplace safety and emergencies. In addition, forced labour is prohibited.

According to the report, Mattel has also developed "country-specific standards..." for regions "where [legal] standards are either non-existent or insufficient." However, the report fails to provide information on those standards, except to say they are "dynamic and evolving."

Rather than offering specific information on audit findings and corrective action by code provision, country or geographic region, the Mattel CSR report only provides global statistics under three generic

categories – Zero Tolerance Findings, Highly Critical Findings, and Open Highly Critical Findings. The Zero Tolerance category includes child labour and forced labour. Highly Critical category includes corrective payment of wages, voluntary overtime, holidays and days off, unlocked factory exits, and separate dormitory buildings. No explanation is given on the meaning of "Open Highly Critical Findings."

Rights-based issues, such as freedom of association, the right to bargain collectively, and discrimination, are conspicuously absent from the three categories. This is of particular concern because 76 percent of Mattel's production is in China where there are severe restrictions on freedom of association and the right to bargain collectively, and 12 percent is in Mexico where independent unions are routinely discriminated against by labour tribunals. In both countries, gender-based discrimination is a systemic problem.

The company's CSR report provides the following information:

- Number of factories that were the subject of internal monitoring and external audits;
- Name of the external auditing organization;
- Number of factories with "Zero Tolerance" findings;
- Number of factories with "Highly Critical" findings; and
- Number of factories with "Open Highly Critical" findings.

According to the report, all nine of Mattel's owned or operated factories and all 77 of its contract facilities were the subject of internal audits by company personnel. Seven of the nine Mattel factories had "highly critical" findings. Of the 77 contract factories monitored, 36 had "highly critical" findings and 20 had "open highly critical" findings.

In 1999-2002, 12 external audits were carried out in Mattel owned and operated plants by the International Center for Corporate Accountability (ICCA). According

to the report, there were 45 instances of noncompliance with the code, all of which have since been corrected. No information is provided in the CSR report on the corrective action taken.

In 2003, 12 external audits carried out by ICCA in Mattel contract facilities found 366 instances of noncompliance. According to the report, the company expects to “achieve closure on those findings” by the end of 2004.

### **Disclosing Audit Reports on Suppliers**

While Mattel’s CSR report is less detailed and transparent on labour standards issues than are recent CSR reports of leading apparel and sportswear companies, such as Gap or brands involved in the Fair Labor Association, the company has gone a step further than other toy companies and most apparel and sportswear brands by releasing separately the full, uncensored reports of its factory audits.

In December, the ICCA released a report on its follow-up audits of seven contract facilities producing for Mattel in China’s Guangdong Province. The audits were conducted in July-August 2004.

The report includes information on the ICCA’s original findings from audits of 12 Chinese contract factories carried out in August 2002 and January 2003, Mattel’s response to that report, and the findings of the follow-up audits of seven of the 12 factories.

According to the ICCA, the 12 plants that were the subject of the 2002/2003 audits constituted about 50 percent of Mattel’s total business with Chinese vendors and employed over 53,000 workers, about 43 percent of the workforce employed by Mattel vendors in that country. The follow-up audits were carried out in the plants with the most serious noncompliance issues.

The most striking, though not surprising, finding of the ICCA’s follow-up audits is the persistent problem of excessive working hours, and the seeming inability of Mattel to achieve compliance with a very “flexible”

standard on hours of work. According to the report, the original audits found that all 12 contract facilities were in violation of the hours of work standard of Mattel’s Global Manufacturing Principles (GMP), even though that standard was lower than the legal hours of work limit as defined in China’s national labour law.

According to the ICCA, “Vendors routinely resorted to the practice of seeking exemptions to the national law from their local labour bureaus, which were only too willing to provide such exceptions.” Although the ICCA advised Mattel that it views the legality of these exceptions from the national law as “highly questionable,” the company’s response was to further weaken its hours of work standard to allow for 72 hours of work per week during peak production periods.

Under Mattel’s revised hours of work standard, 60 hours is viewed as a “normal week,” 72 hours is acceptable for up to 17 weeks of the year, overtime must be voluntary, and workers must receive compensatory days off or double pay for work on Sundays or other rest days.

Despite the adoption of this extremely weak standard, which seriously undercuts China’s national legal requirements, the ICCA’s follow-up audits found that two of the seven factories audited were in violation of the revised hours of work standard.

“ICCA views this situation with considerable alarm,” says the report. It goes on to say, “Mattel’s revised GMP standard provides far more flexibility to its vendors both as to scheduling and maximum allowable overtime hours per week and the entire year than the original GMP standard. The revised standard also leaves additional room for manipulating GMP standards through creative interpretation of terms like ‘extraordinary situation.’”

On other code violations identified in the original audits, including abuses concerning the probationary period, maternity leave, and paid leave, the ICCA follow-up audits found the plants had “instituted policies and procedures to ensure that all eligible

workers receive such benefits.” According to the report, “rather than simply fixing existing problems,” Mattel took the approach of working with vendors to “create management systems that would greatly reduce, if not completely eliminate, occurrence of similar problems in the future.”

According to the report, the most significant advances were made in health and safety practices, though further improvements are needed in some plants concerning safe drinking water, noise levels, ventilation, and factory temperatures.

### Reports on Mattel-operated Factories

Earlier this year, the ICCA also released follow-up audit reports on Mattel-operated plants in China and Mexico.

The China report, released in March 2004, includes the findings of follow-up audits of four Mattel factories in that country. Significantly, the report includes the names of the factories, as well as information on the number of employees, average age, years of employment, gender makeup of the workforce, as well as number of employees entering the labour force for the first time.

The report seems to indicate that, in general, working conditions and labour practices in Mattel-operated factories in China are superior to those in its Chinese contract factories. It notes that unlike most vendor plants, Mattel-operated plants don't impose cash fines on workers as a disciplinary measure. The report goes on to say that workers interviewed “felt comfortable in expressing their views both about the positive as well as the negative aspects of their experiences.” It notes, “This is a far cry from the situation generally prevailing in Chinese manufacturing plants.”

Major improvements identified in the report include:

- Record keeping and management systems concerning worker rights, health and safety and environmental protection;
- Hiring and training procedures;

- Awareness of the Mattel code of conduct, though this was “somewhat spotty” in the two larger plants;
- Personnel practices concerning the handling of worker complaints, discipline, hiring and promotion, and protection from harassment;
- Dormitory facilities and living conditions; and
- Use of personal protective equipment.

Despite its relatively positive findings on working conditions and management systems, the ICCA report makes special mention of the fact that on the crucial issues of hours of work and wages, very similar illegal practices are prevalent in Mattel-operated plants as in its contract facilities and in most other foreign-owned manufacture-for-export factories in China's Special Economic Zones.

Common violations of China's national labour law in Mattel-operated facilities include:

- Use of Consolidated Work Hours, authorized by local governments, that allow the employer to consolidate overtime hours allowable over a one-year period into a shorter period to meet seasonal production needs;
- Extended Work Hours Permits, also authorized by local authorities, that allow the employer to exceed the maximum annual overtime hours allowable under the national labour law;
- Application of a reduced minimum wage, authorized by town authorities without the permission of the district government, which not only results in reduced regular wages, but also reduced overtime pay;
- Failure to pay the minimum wage for limited periods when production is down; and
- Failure to pay overtime premiums as required by law.

According to Chan Ka Wai, associate director of the Hong Kong Christian

Industrial Committee (HKCIC), the key difference between Mattel and most other toy companies is that it is directly running some of its factories, and, as a result, working conditions are better in those factories, even relatively better on hours of work. However, Chan sees the hours of work issue as a systemic problem in the toy industry. “The industry is highly seasonal, which creates a great deal of pressure on vendors to force workers to work long hours of overtime,” he says.

According to Chan the root cause of this problem is the buying practices of the brands, which he says are getting worse, not better, with increasing demands for cheaper prices and shorter order delivery.

Chan also notes that Mattel is no better than other toy companies in China regarding workers’ right to freedom of association and to bargain collectively.

### **Mexico Report**

In April 2004, the ICCA released a report on audits carried out one year earlier at two Mattel-operated toy factories in Mexico, the Escobedo plant in Monterrey and the Mabamex plant in Tijuana. Although the report suggests there has been “significant overall improvement in plant facilities and workplace management” since previous audits in 2001 and 1999, a number of serious worker rights abuses continued to take place in both factories.

On the key issues of hours of work and wages, the report notes that while both factories’ practices are in compliance with Mexican labour law and workers receive more than the legal minimum wage, Mattel’s revised hours of work standard allowing 72-hour work weeks during peak production periods is now being applied in Mexico. As well, worker interviews indicated that some workers at the Escobedo plant were required to work overtime on holidays and when they were feeling ill, despite Mattel’s policy against forced overtime.

Other key issues identified in the audits included:

- Worker reports of verbal abuse and sexual harassment by supervisors and co-workers;
- Reports by some workers at the Escobedo plant that they were given pregnancy tests at the time of hiring;
- Workers’ belief that if they report incidents of harassment or job injuries they will lose their jobs;
- Failure to pay legal overtime rates to workers on the afternoon shift; and
- Complaints by Mabamex workers of inadequate ventilation, exposure to safety hazards and to chemical smells and dust, high temperatures during summer months, and high noise levels.

According to the report, Mattel has agreed to investigate claims of harassment and abuse and to ensure payment of legal overtime premiums.

Possibly the weakest section of the ICCA audit report is that on the findings on freedom of association. The report notes that only 23 percent of workers interviewed at the Escobedo plant were aware they were represented by a union, but provides no explanation as to why this might be the case.

Given the prevalence of company-controlled unions (sindicatos blancos) in the Monterey area, auditors should be expected to raise questions concerning whether workers have been allowed to form or join a union of their choice, or whether the union was imposed by management. Instead, the report focuses on whether an effective system for management-worker communication was in place at the factory.

In assessing compliance with the freedom of association standard in the Mabamex plant, the auditors observe that management has written procedures in place concerning freedom of association and that information on these procedures is made available to workers. The report also notes that 75 percent of the workers interviewed feel free to talk with supervisors and other management personnel without fear. However, no evidence is provided as to whether workers feel free to join or form

a union of their choice without fear of harassment or discrimination by management.

Another issue that is raised in the report, but not addressed as a possible problem, is the high percentage of workers at both factories that are employed on temporary contracts. According to the report, only one third of the workers at each plant are permanent employees and the rest are on temporary contracts of 1-6 months duration. No questions are raised in the report as to whether the employer might be abusing short-term contracts to avoid providing legal benefits available to permanent employees. (This may indicate a weakness in the company's current code of conduct, rather than a failure of the ICCA, since the auditing organization must audit to the existing policy.)

### **Conclusion**

Mattel should be commended for its decision to make public full, uncensored audit reports on both its wholly owned and contract factories. These candid reports offer some disturbing evidence that while the company may have better-than-average working conditions in its owned and operated factories, persistent problems continue in those facilities and more serious worker rights violations are common in its numerous contract facilities.

Even more disturbing is the company's response to audit findings that hours of work and wage practices in both its wholly owned and contract facilities are in violation of China's national labour law. Not only has Mattel weakened its hours of work standard to accommodate and justify illegal practices in China, it has also exported this revised standard to Mexico.

According to Marie-Claude Hessler, a shareholder activist who has been monitoring Mattel audit reports for a number of years, "Words and transparency are only part of the process; real working conditions are even more important." We would add that while the establishment of good management systems is important, particularly in a country like China where

double bookkeeping is a common problem, management systems on their own do not guarantee that workers' rights are being respected in practice.

An important question that is not addressed by the ICCA's detailed audit reports is how the company's freedom of association standard is being interpreted and compliance with that standard assessed in China where there are severe restrictions on workers' associational rights, but where recent changes in the national law have sanctioned elections of factory-level worker representatives.

Mattel's Global Manufacturing Principles limit the right to associate to "legally sanctioned" organizations. In the case of China, the only legally sanctioned trade union organization is the state-affiliated All China Federation of Trade Unions (ACFTU). It is unclear how this provision would be interpreted if workers attempted to associate outside the structures of the ACFTU.

Nor does the most recent audit report on Mattel-operated factories in Mexico provide much information as to whether workers' right to freedom of association and to bargain collectively is being respected. It is unclear from the report if workers at the company's Escobedo plant, who were largely unaware that they were represented by a union, had any say in choosing that union or any role in collective bargaining, if collective bargaining indeed takes place at the factory.

Nor is it clear from the report whether worker interviews at either of Mattel's Mexican plants included questions as to whether workers have ever attempted to organize, and if so, what was management's response, or what they believe would happen if they attempted to organize. The reference to "legally sanctioned" organizations in Mattel's freedom of association standard could also be problematic in Mexico, where Local Conciliation and Arbitration Boards, in which the undemocratic "official" unions are represented, routinely deny legal registrations to independent unions, thereby

denying workers the right to be represented by independent, democratic unions.

Mattel's first CSR is a disappointment precisely because it does not incorporate the information contained in its very public audit reports or present that information in a manner that allows interested parties to monitor progress in particular countries. At the same time, the company's decision to make public its factory audit reports has raised the bar on transparency for other companies in the toy, apparel and sportswear sectors. The audit reports indicate that the company still has a long way to go before it can claim that workers' rights are respected in its wholly owned or contract factories.

According to Hessler, "Setting rules and zero- or low-tolerance for infractions, recognizing the violations and publishing corrective action plans when audits require them are but a first step. Workers, shareholders and NGOs wait for rapid, concrete, factual and above all verifiable improvement. The wait has already been too long."

*The Mattel CSR Report and audit reports are available at:*  
[www.mattel.com/about\\_us/Corp\\_Responsibility/cr\\_csreport.asp](http://www.mattel.com/about_us/Corp_Responsibility/cr_csreport.asp)

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## **D. Joint Initiative on Corporate Accountability and Worker Rights**

On November 2-4, representatives of the Joint Initiative on Corporate Accountability and Worker Rights met with Turkish unions, industry and trade associations, nongovernmental organizations, government departments, apparel suppliers, and the Turkish office of the ILO to discuss the possible participation of the Turkish organizations in a pilot project to test a

variety of approaches to the implementation of codes of conduct.

Organizations involved in the Joint Initiative include the Clean Clothes Campaign (CCC, Europe), the Ethical Trading Initiative (ETI, UK), the Fair Labor Association (FLA, US), the Fair Wear Foundation (FWF, Netherlands), Social Accountability International (SAI, international), and the Worker Rights Consortium (WRC, US).

The goals of the Joint Initiative are to:

- develop a common code of conduct based on internationally recognized standards;
- test different approaches to code implementation;
- develop an understanding and guidelines for supporting national and local efforts to use codes of conduct to improve working conditions, and
- share with others the learnings gained through the project.

According to ETI Executive Director Dan Rees, the Turkish pilot project will allow the six organizations, which have very similar or complementary aims and aspirations, but very different approaches to achieving them, the opportunity to explore best practice in codes standards and implementation in a specific garment producing country.

In collaboration with Turkish unions, nongovernmental organizations, industry associations and suppliers, the Joint Initiative will test best practice in the following areas:

- involving workers (including worker education and awareness raising);
- factory assessment;
- remediation and sustainable improvement (including sourcing companies' buying practices); and
- worker complaints systems.

According to newly hired International Project Manager Susan Hayter, the project will unfold during a critical period in Turkey's political and economic development. She points to the phase-out of the Multi-fibre

Arrangement (MFA) and changes to legislation in the context of future EU accession negotiations as “incentives to increase the competitiveness of the garment sector, while at the same time improving working conditions and respect for workers’ rights.”

According to Hayter, “the project in Turkey is a unique opportunity to examine the ways in which the implementation of codes of conduct can contribute to this end.”

*For more information, visit: [www.icawr.org](http://www.icawr.org), or contact: [hayter@icawr.org](mailto:hayter@icawr.org).*

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## E. New Resources

***Global Game for Cuffs and Collars, by Sabine Ferenschild and Ingeborg Wick, Clean Clothes Campaign, Aug 2004, 68 pp.***

This 68-page booklet examines the possible impact of the phase-out of import quotas in the garment and textile industry at the end of 2004 on garment producing countries and garment workers. The booklet includes a brief history of trade policies in the garment and textile sectors at the global level and case studies on developments, trends and working conditions in those sectors in China, Indonesia, Cambodia and the European Union. Some of the key conclusions of the study include:

- The quota phase-out will intensify competition and possibly contribute to a downward spiral in social and environmental standards.
- While the dominant reaction of industry and governments is promoting greater technological development and increased competitiveness, there are first signs of calls for implementation of social and environmental standards, even if their protectionist undertones are also apparent.
- The complete dismantling of the quota system will reduce the number of supplier countries to between a third

and a quarter. This “slimming down” of the number of suppliers will probably encourage the transfer of production to China and other major supplier countries.

- In this process, it is already possible to observe the “regionalization of globalization”, which, in the case of the EU, means growing significance for the Mediterranean region and Eastern Europe.
- Hundreds of thousands of jobs will be lost in countries that are the victims of this process, and the jobs gained in more competitive countries will not compensate for the number of jobs lost in other countries.
- The job losses will mainly affect women workers, and the move to higher technology levels in industries seeking to be globally competitive will lead to a reduction in the number of female workers.

The study also looks at strategic options for action. It concludes that while there is little likelihood of an extension of the quota system, calls for regulatory instruments that would guarantee temporary protection for threatened industries and jobs in developing countries, such as targeted restrictions on major exporters like China, would make sense.

While supporting increased market access to industrialized countries for Least Developed Countries (LDCs), the study notes that increased market access does not directly contribute to improved working conditions. It also points out that increasing productivity is only possible for a few, and that industrial diversification in developing countries is needed so that they are not entirely dependent on export production.

In regard to the particular role of trade unions, social movements, NGOs, and faith organizations, the study observes that there is a need for binding regulations for social protection and decent work at the international level, and that cooperation and

international alliances among the social sectors above will be needed to achieve such regulations.

It goes on to say that the achievement of decent work is only possible if we include the whole living environment of the predominantly female workforce, and not just the workplace.

It concludes that new social alliances involving trade unions and civil society organizations in industrialized, developing and transitional countries should also push for global social accountability of transnational corporations in multi-stakeholder initiatives.

*Global Game for Cuffs and Collars is available at: [www.cleanclothes.org/pub.htm](http://www.cleanclothes.org/pub.htm).*

***Tae Hwa Indonesia – a case study of labour conditions in the sportswear industry, Play Fair at the Olympics campaign (Oxfam, Global Unions, Clean Clothes Campaign), Aug 2004, 22 pp.***

This brief case study provides a useful reminder that, despite increasing attention to labour practices in the global sportswear industry, conditions faced by most workers in the industry have not improved significantly over the past ten years.

Based on in-depth interviews with workers employed at the PT Tae Hwa Indonesia sports shoe factory in West Java, Indonesia, which produces for FILA, the case study highlights persistent labour standards violations that continue to plague the industry as a whole, including:

- excessively long working hours in heavy production periods;
- compulsory overtime, including for pregnant workers;
- failure to pay legal overtime premiums;
- unrealistic production targets and demands that employees work unpaid overtime to complete those targets;
- wages that don't meet basic needs, making workers dependent on overtime earnings;

- sexual harassment and verbal abuse; and
- harassment and discrimination against workers who engage in job actions and/or support independent unions.

The case study cites the Play Fair at the Olympics report, released by the same organizations in March 2004, which points to the purchasing policies of major sportswear brands as a major factor in encouraging the continuation of these practices. Workers interviewed for the case study point to short lead times of anywhere from one to two weeks for orders to be completed. "Orders are also very insecure and inconsistent," says one worker. "They can be cancelled on a sudden basis even after production starts."

The study concludes that such policies "place undue pressure on the workforce, leading to abuses such as forced overtime and impossibly high [production] quotas."

*The Tae Hwa Indonesia Case Study is available at: [www.cleanclothes.org/pub.htm](http://www.cleanclothes.org/pub.htm).*

***Disaster Looms with the Ending of the Quota System, Samuel Grumiau, International Confederation of Free Trade Unions (ICFTU), November 2004, 54 pp.***

Unlike most recent studies on the phase-out of garment and textile import quotas at the end of 2004, which focus on the consequences for countries and companies, this ICFTU report looks at the likely impacts on garment workers, as well as garment producing countries.

The report gives a brief history of the Multi-Fibre Arrangement (MFA), which established the quota system, and the Agreement on Textiles and Clothing (ATC), which set the terms for the gradual phasing out of the system over a ten-year period. It notes that the negotiation of the elimination of the quota system was linked to parallel negotiations on TRIPS (Trade-Related Aspects of Intellectual Property Rights) and TRIMS (Trade-Related Investment



Measures), and therefore represented a tradeoff between industrialized and developing countries.

It notes that many developing countries that originally supported the ATC are now increasingly concerned that the MFA phase-out will have serious negative consequences for their garment industries that came into existence largely because of the quota system.

The report looks at a number of factors that will determine where garment production is relocated in the post-quota world, including cost, ability to meet production deadlines, quality, customs tariffs and rules of origin, exchange rates, and respect for workers' rights. It suggests that while production wages in developing countries "represent a mere fraction of the cost of a garment sold on Western markets," suppliers' profit margins are so low that any increase in production costs may represent a substantial loss of income. For that reason, labour costs will be an important factor in companies' investment and sourcing decisions.

While pointing to the current rush to China as evidence that labour standards criteria is being given little importance as companies restructure their global supply chains, the report highlights some positive emerging trends, including the emergence of codes of conduct ("although barely applied") and framework agreements, sensitivity about brand image, a link between decent conditions and productivity, a few countries viewing labour standards compliance as a selling point, and use of the Generalized System of Preferences (GSP) as an instrument to promote labour standards compliance.

The report includes an assessment of the outlook for five key garment-producing countries – Bangladesh, Cambodia, Mauritius, Guatemala, and the Dominican Republic – and a review of the labour rights issues in each country.

The report concludes that exploitation of workers in China "is contributing to the downward pressure on prices throughout

the world and pushing global suppliers to reduce their workers' rights in a bid to stay competitive." It also points to negative actions by governments to limit workers' rights in order to remain competitive in the post-quota environment, including moves by the government of the Philippines to exempt the clothing industry from the minimum wage law, and statements by the Bangladeshi government that it would raise the ceiling on overtime hours and weaken restrictions on night work for women.

The report calls for a number of measures to confront the negative consequences of the quota phase-out, including:

- If necessary, some restrictions on exports from countries that violate basic workers' rights;
- Discussions at the international level involving the major international institutions and organizations, as well as garment workers and clothing multinationals, to look at the problem and identify possible solutions;
- Financial support from international financial institutions for countries negatively affected by the quota phase-out "to strengthen domestic economies, their competitiveness and their application of fundamental labour standards;" and
- Increased support by national governments for unemployment assistance, retraining and investment.

While the ICFTU report provides a much-needed assessment of the possible negative impacts of the quota phase-out on garment workers and garment producing countries, the report's conclusions are a bit disappointing in their lack of specific recommendations to put labour standards compliance and worker rights on the agenda of companies, governments and multi-lateral institutions through the transition period.

*The ICFTU report is available at:*  
[www.icftu.org/www/PDF/rapporttextilEOK.pdf](http://www.icftu.org/www/PDF/rapporttextilEOK.pdf)

***The Path to Corporate Responsibility, Simon Zadek, Harvard Business Review, December 2004, 8 pp, US\$6.00***

In this brief article, which is written primarily for companies, but is also useful for activist groups, Zadek reviews Nike's "organizational learning" experience in responding to accusations of sweatshop abuses in its global supply chain, and attempts to draw lessons for other companies.

According to the author, companies typically go through the following five stages as they move through the corporate social responsibility learning curve:

- Defensive: Deny practices, outcomes or responsibilities – "It's not our job to fix that."
- Compliance: Adopt a policy-based compliance approach as a cost of doing business – "We'll do as much as we have to."
- Managerial: Embed the societal issue in their core management processes – "It's the business stupid."
- Strategic: Embed the societal issue in their core business strategies – "It gives us a competitive edge."
- Civil: Promote industry participation in corporate responsibility – "We need to make sure everybody does it."

According to Zadek, Nike's original response to accusations of sweatshop abuses was typically defensive, but it soon realized that denial simply "raised the volume higher" on accusations. The company then followed Levi's example and adopted a code of conduct.

After facing additional pressure, it began to hire high-profile firms or individuals "with little actual auditing experience or credibility in labour circles" to carry out external audits of supply factories and to release glossy public reports.

When the veracity and credibility of these "flawed or overly simplistic" reports were challenged by anti-sweatshop groups, Nike

"went professional" and established a corporate responsibility department to manage its labour standards compliance program.

When stories of worker rights violations in Nike supply factories persisted, the company was forced to reexamine its whole approach. A six-month assessment carried out by a team of senior managers and outsiders concluded that, "the root of the problem was not so much the quality of the company's programs to improve worker conditions as Nike's (and the industry's) approach to doing business."

According to the author, some common business practices that discouraged code compliance included:

- Performance incentives to procurement teams based on price, quality and delivery times, but not on code compliance; and
- Tight inventory management, which often led to shortages of particular products and increased pressure on suppliers to demand overtime to meet unrealistic delivery deadlines.

According to Zadek, the realization that these were systemic, industry-wide problems pushed Nike to join multi-stakeholder initiatives, such as the Fair Labor Association (FLA), and to begin to speak out on public policy issues. He points approvingly to CEO Phil Knight's announcement at the launch of the UN's Global Compact of his company's support for global standards for social auditing and mandatory reporting on social performance.

The article goes on to describe how the end of import quotas is encouraging brand merchandisers like Nike to restructure their global supply chains, using fewer factories and consolidating production in fewer countries. While the author admits this could have "potentially disastrous social and economic fallout if the transition to a post-MFA world is botched," he is generally optimistic about the longer-term impact of the quota phase-out on labour practices. He

notes that Nike has joined with other companies, NGOs, labour organizations, and multi-stakeholder code monitoring initiatives in a forum to explore how to address these challenges.

According to Zadek, the consolidation of supply chains will result in longer-term and more stable relationships with the remaining suppliers, and intensified competition will encourage the move to lean manufacturing. While both trends will reduce the number of workers employed, Zadek also believes they could result in improved wages and working conditions.

Although the article provides useful lessons for companies and the anti-sweatshop movement on how a major brand has grappled with accusations of sweatshop abuses and challenges in implementing its code of conduct in its global supply chain, it may offer an overly optimistic picture of the potential of voluntary initiatives and market-based mechanisms to achieve improved labour practices in the post-MFA apparel industry.

While consolidated supply chains and the move to lean manufacturing will undoubtedly benefit the suppliers and countries that survive the transition, there is little evidence to date that these trends will automatically lead to improved wages and working conditions or to greater respect for workers' rights, particularly in the few "competitive" countries where most production is being consolidated.

*The article is available for US\$6.00 at:*  
[www.hbsp.harvard.edu/b02/en/common/item\\_detail.jhtml?id=R0412J](http://www.hbsp.harvard.edu/b02/en/common/item_detail.jhtml?id=R0412J)