



May 27, 2008

**SECOND INTERIM SUMMARY REPORT
THIRD PARTY COMPLAINT REGARDING
HERMOSA MANUFACTURING, EL SALVADOR**

This Second Interim Summary Report provides information on FLA activities since mid-2006 related to a Third Party Complaint filed on December 8, 2005 by Christliche Initiative Romero (CRI) regarding Hermosa Manufacturing, a factory located in Apopa, El Salvador. For detailed information on the allegations underlying the complaint and earlier activities undertaken by the FLA and affiliated companies pursuant to the complaint, please see the Interim Summary Report issued by the FLA on August 25, 2006.¹

Worker Emergency Fund

Pursuant to a decision made by the FLA Board of Directors in December 2006, the FLA created an emergency fund to benefit former Hermosa Manufacturing workers who remained unemployed.² The purpose of the fund was to provide immediate and direct assistance to these workers while efforts continued to hold the government of El Salvador and the factory owner responsible for carrying out their legal obligations to workers. The fund was administered for the FLA by the Fundación de Estudios para la Aplicación del Derecho (FESPAD), a non-governmental organization (NGO) based in El Salvador. FESPAD identified the workers who were eligible to receive distributions from the fund and made the distributions in December 2006 and January 2007. Through the fund, a total of \$36,000 was distributed, contributed by FLA and non-FLA affiliates.

On February 6, 2007, FESPAD reported to the FLA on the implementation of the fund.³ Briefly, FESPAD published a notice in two national newspapers on December 22, 2006, inviting former Hermosa workers to come to its offices on December 27-28 to determine their eligibility to receive a payment from the fund. FESPAD staff required identification and took an affidavit from each applicant documenting their previous employment at Hermosa Manufacturing. A total of 57 persons – 50 women and 7 men – came forward and were deemed eligible to receive cash payments. Of these workers, 49 indicated that they were members of the union at Hermosa Manufacturing, 4 indicated that they were

¹ The report is available here: http://www.fairlabor.org/docs/Hermosa_InterimReport_8.25.06.pdf.

² A December 2006 press release announcing the creation of the fund is available here: http://www.fairlabor.org/docs/HermosaPressRelease_12.22.06.pdf. The FLA consulted with the complainant and the affected workers in the design of the fund. See, for example, an exchange of letters between the workers and the FLA President here: <http://www.fairlabor.org/docs/Hermosaworkersletters.pdf> and <http://www.fairlabor.org/docs/Hermosaauretleter.pdf>.

³ <http://www.fairlabor.org/docs/HermosaFESPADFinalReport.pdf>.



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not members of the union but sympathized with the union, and the remaining 4 indicated that they were not union members or sympathizers. Equal payments were made on December 30 to each of the 57 workers. A portion of the funds (\$3,000) was held back to deal with the possibility that some eligible workers might have missed the December 27-28 window. As no additional workers came forward during the month of January, the \$3,000 reserve was distributed to the 57 workers – in equal parts – on February 2, 2007. This second payment exhausted the fund.

The FLA requested the Maquila Solidarity Network (MSN) to conduct an independent review of the emergency fund and the set of complex issues surrounding the closure of Hermosa Manufacturing. The report entitled “Emergency Assistance, Redress and Prevention in the Hermosa Manufacturing Case” was presented by MSN to the FLA Board of Directors at its June 2007 meeting and also released publicly by the organization.⁴ The FLA Board of Directors issued a public response to the MSN report and recommendations on June 21, 2007.⁵

Update on Course of Action Proposed in August 2006

In the August 2006 Interim Summary Report on the Third Party Complaint Regarding Hermosa Manufacturing, the FLA laid out a course of action that included six elements. Those elements and a summary of activities pursuant to each as of the date of this Second Interim Summary Report are presented below.

1. Encourage FLA companies involved in the Third Party Complaint to continue to urge the Government of El Salvador to: (a) address the immediate needs of the workers, particularly the provision of medical services to them and their families and re-employment opportunities; and (b) enforce its labor laws to obtain payment of wages and benefits (including severance) to former Hermosa workers.

FLA companies involved in the Third Party Complaint have continued to urge the Government of El Salvador – through different means – to address the immediate needs of former Hermosa workers and enforce their labor laws regarding payment of wages and benefits, including severance, to these workers.

- Some FLA companies involved in the Third Party Complaint and FLA staff have met with U.S. Government officials (of the U.S. Department of State, United States Trade Representative, U.S. Department of Labor) and with officials of the U.S. Embassy in San Salvador to encourage the U.S. Government to use government-to-government channels to urge the Government of El Salvador to address the immediate needs of former Hermosa workers and redress their rights.

⁴ http://en.maquilasolidarity.org/sites/maquilasolidarity.org/files/HermosaReportFinal_1.pdf

⁵ http://www.fairlabor.org/var/uploads/File/MSN%20Hermosa%20Report_FLA%20response.pdf



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- In October 2007, FLA-affiliated company, adidas Group, published an open letter to the Government of El Salvador in two leading newspapers in the country⁶ recalling the dialogue between the Government of El Salvador and adidas Group regarding Hermosa during 2005 and 2006 and the numerous actions promised by the Government of El Salvador on behalf of the workers that had not been realized. adidas Group called on the Government of El Salvador to: (1) implement a commitment made in April 2006 for the basic and extraordinary health care coverage of unemployed Hermosa workers; (2) fund the former Hermosa workers Social Security accounts with the \$145,000 penalty collected from Hermosa's owner in the Spring of 2007; (3) pursue the repatriation to the workers of Hermosa assets that were repossessed before their constitutional right of compensation precedence was executed; and (4) resolve several regulatory gaps identified in the adidas Group letter that were, in part, responsible for the problems faced by the Hermosa workers.⁷
- In response to the open letter, Government of El Salvador officials have reopened a dialogue with adidas Group. Several meetings were held in late 2007 and early 2008 between adidas Group representatives and high-level officials of the Government of El Salvador to discuss the full range of issues raised by the adidas Group. As a result of these meetings, some progress has been made with respect to the provision of health services to chronically ill workers and scheduling a job fair for former Hermosa workers. Conversations between the adidas Group and Government of El Salvador officials are continuing.

2. Encourage FLA and non-FLA companies operating in El Salvador to urge their suppliers to offer employment to workers from Hermosa Manufacturing. Brands should ensure that suppliers have hiring procedures that are non-discriminatory and root out the possibility of blacklisting.

The FLA has worked with affiliated and non-affiliated companies in El Salvador to put in place non-discriminatory hiring policies and procedures in their supplier factories and to seek to provide employment opportunities for former Hermosa workers.

- In May 2006, a group of FLA companies arranged for training on discriminatory practices at the workplace for their suppliers in El Salvador. The emphasis was on the development and implementation of policies and practices against

⁶ http://www.adidas-group.com/en/sustainability/downloads/statements/Open_Letter_to_El_Salvador_government_Oct2007_eng.pdf

⁷ In referring to the open letter by the adidas Group to the Government of El Salvador, the leader of the former Hermosa workers is quoted as saying: "Usually this kind of statement is made by the left. ... But in this case it was a transnational corporation saying that our labour and human rights were violated, something the Government had always denied." See *Maquila Solidarity Update*, vol. 13, No. 1 (October 2008), http://en.maquilasolidarity.org/sites/maquilasolidarity.org/files/MSN-Update-2008-02_0.pdf



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discrimination based on union affiliation. A total of 34 individuals participated in the training, representing 11 factories and the Ministry of Labor. The training was conducted by an FLA trainer, who had also conducted similar training for new labor inspectors of the Ministry of Labor of El Salvador.

- In February 2007, the FLA repeated the workshop for a group of factories supplying FLA and non-FLA companies. A total of 16 individuals representing 10 factories were in attendance.
- In September 2007, the FLA engaged a well-known labor attorney in El Salvador to serve as Ombudsman with regard to the Hermosa Manufacturing case. The duties of the Ombudsman include: (1) establish a dialogue with former workers of Hermosa Manufacturing, with Salvadoran civil society organizations, and with the Government in El Salvador, with respect to the Hermosa case; (2) investigate any complaints regarding discrimination in hiring brought forward by any former Hermosa worker with respect to any facility of an FLA Participating Company or of a College or University licensee in El Salvador; and (3) make suggestions and recommendations to the FLA regarding potential ways to address the needs of former Hermosa workers.
- The Ombudsman has been effective in establishing a dialogue with the various stakeholders involved in the Hermosa Manufacturing case. The Ombudsman has continued to engage with Salvadoran government and civil society organizations to seek redress for the violations of workers rights affecting Hermosa workers, particularly those who remain unemployed to date. He has also established a dialogue with garment factories that could be the source of employment for former Hermosa workers and has observed the hiring process at one of the factories. Finally, the Ombudsman has been working with the Instituto Salvadoreño de Formación Profesional (Salvadoran Professional Training Institute, INSAFORP) and Albert Einstein University to create an opportunity for former Hermosa workers to refresh their skills, particularly with respect to operating sewing machinery, and gain familiarity with English as a second language and computer proficiency.⁸ The program began on March 30, 2008 with 40 workers in attendance. FLA companies are supporting the retraining in the form of financial contributions to cover costs of transportation, meals and basic food items for displaced workers attending the sessions.
- A job fair was organized for the former Hermosa workers on May 9 by the Ombudsman in collaboration with the Albert Einstein University and the

⁸ See “Highlights of Activities, El Salvador Ombudsman: September 2007-February 2008,” at <http://www.fairlabor.org/var/uploads/File/Hermosa%20Ombudsman%20Activities%20September07-February08.pdf>



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Salvadoran Ministry of Labor; thirteen factories participated in the event. Fifteen former Hermosa workers attended the job fair and some of them expressed interest in following up with two of the factories in attendance. Following the job fair, the Ombudsman met with a larger group of former workers to encourage them to seek employment at the factories that participated in the job fair.

3. Remind FLA companies to ensure that contract factories have actually *paid* social security and other contributions required by domestic law (rather than just show that the amounts have been deducted from paychecks).

Through its Monitoring Committee, the FLA has discussed with affiliated companies the imperative of having their internal auditors go beyond merely examining factory records indicating that payments for social security and other worker benefit programs have been made to getting confirmation from appropriate government agencies that their payments have been received and credited to the accounts of workers.

The relevant FLA Compliance Benchmark (under the heading of Wages, Benefits, and Overtime) reads as follows:

Deposit of Legally Mandated Deductions: All legally mandated deductions for taxes, social insurance, or other purposes shall be deposited each pay period in the legally defined account or transmitted to the legally defined agency. This includes any lawful garnishments for back taxes, etc. The employer shall not hold over any of these funds from one pay period to the other unless the law specifies that deposits are to be made less frequently than pay periods (e.g., monthly deposits, weekly pay). If the law does not specify, then deposits shall be made before the next pay period in all cases.

The portions of the FLA Audit Instrument – the instrument used by FLA-accredited independent external monitors in conducting audits – corresponding to the above Compliance Benchmark have been modified to include the following questions/instructions:

- Does factory make all required social insurance/security payments to the government?
- Is proper documentation on these benefits and their issuance being maintained?
- Please record the date that the last social insurance/security payment was made.
- Please record whether the payment was made in accordance with local law and whether it was received by the relevant authorities.
- Please ask to see evidentiary proof of payments. Options can be: (1) copy of check sent; (2) receipt acknowledgement; (3) cancelled check from bank; (4) other (please specify).



FLA-accredited monitors began to audit against the above questions effective in 2007 and are continuing to do so in 2008. FLA-accredited monitors are documenting that factories are actually fulfilling their legal social insurance/security obligations, recording the date of last social insurance/security payments were made to the relevant authorities, and demanding to see evidentiary proof of the payments.

4. Encourage FLA companies to be more vigilant with regard to the financial ability of contract factories to pay severance and other benefits should retrenchment occur.

In February 2006, the FLA made available to its stakeholders a document entitled “Retrenchment: Guidelines for FLA-Affiliated Companies.”⁹ This document provides guidance for FLA-affiliated companies whose suppliers or facilities may be involved in retrenchment and closures for operational reasons. Observance by factories that supply FLA-affiliated companies of the guidance provided in the document would ensure they operate in a manner consistent with international labor standards, domestic law, and the practices of company leaders in the labor compliance field.

The document sets out that, in situations where a high risk of retrenchment exists, companies should ensure that factories from whom they source comply with domestic law with regard to contributions to unemployment insurance funds, provident funds, or any other programs designed to assist workers at the time of loss of employment; and also that such factories have the financial capacity to meet severance payments. FLA-affiliated companies should also maintain a dialogue with local stakeholders to keep abreast of local conditions and assess potential retrenchment plans of factory operators that may not be communicated to brands. These points have been reinforced at meetings of the Monitoring Committee.

5. Perhaps through the MFA Forum or similar multilateral engagement, explore the possibility of establishing a financial or some other mechanism that would be available to cover all or part of the severance payments due retrenched workers.

The MFA Forum created a Responsible Transition Group that was charged with developing guidelines for retrenchment and plant closures that identifies the roles and responsibilities of various stakeholders, including brands, factories, trade unions, and exporting governments. The FLA participated in the sub-group that drafted the guidelines. Currently, the guidelines are the subject of consultations by stakeholders, a process in which FLA-affiliated companies are participating.

One of the issues that has been discussed within the drafting group has been the possibility of creating a fund or some other financing scheme that would be available to cover all or part of the severance benefits due workers affected by reductions in

⁹ http://www.fairlabor.org/var/uploads/File/RetrenchmentGuidelines_Feb2006.pdf



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employment or retrenchment. This topic, which clearly goes beyond the apparel industry and has implications for the economies of exporting countries, continues to be discussed within the Responsible Transition Group.

6. Continue to monitor the situation at Hermosa Manufacturing and issue a final summary report on the case as soon as it is feasible to do so.

The FLA and affiliated companies are continuing to devote time, effort, and resources to address the problems faced by the former Hermosa workers. The FLA will issue a final summary report on the case as soon as it is feasible to do so.

Interim Status

Nearly three years after Hermosa Manufacturing was closed by its owner, the former workers of this factory have still not been compensated for wages, overtime and severance due to them, and have also been hindered by lack of medical services, pension, housing benefits, and loss of income while being unemployed. The FLA understands that 64 of the 264 former workers remain unemployed. Linger concerns remain that their failure to find employment is related to discrimination against them because of their union affiliation.

According to the U.S. Department of State's 2007 *Country Reports on Human Rights Practices* for El Salvador, "[i]n November 2006, the Third Sentencing Court of San Salvador sentenced the company's [Hermosa Manufacturing's] owner, Joaquin Salvador Montalvo Machado, to two years in prison for illegally retaining workers' social security and pension payments and assessed a fine of \$144,724."¹⁰ If the fine is upheld and collected, it could be used to compensate workers for some of their losses.

The FLA El Salvador Ombudsman has been effective in establishing a dialogue with the various stakeholders involved in the Hermosa Manufacturing case. In addition to establishing a dialogue with the former Hermosa workers, the Ombudsman has also established communications with garment factories that could employ former Hermosa workers and has observed the hiring process at one of the factories to prevent discrimination against former Hermosa workers. Finally, he has been instrumental in the creation of a training program through which former Hermosa workers can refresh their skills in operating sewing machinery and gain familiarity with English as a second language and computer proficiency as well as in organizing a job fair to assist workers participating in the training to find employment.

¹⁰ <http://www.state.gov/g/drl/rls/hrrpt/2007/100639.htm>.



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Communications between FLA-affiliated companies and Government of El Salvador officials, which broke down in early 2006, were restarted in late 2007 after the adidas Group published an open letter to the Government of El Salvador in two of the country's leading newspapers. The dialogue between adidas Group representatives and Government of El Salvador officials, which has also included the FLA Ombudsman, has the potential for serving as a vehicle for raising some of the law and practice issues that contributed to the debacle at Hermosa Manufacturing.