

C.S.A. Guatemala S.A.

Investigation Report

Investigators: Francisco Chicas and Katya Castillo

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Requested by:
Fair Labor Association

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I. Background

In February 2019, the Fair Labor Association (hereinafter, the FLA) received a Third Party Complaint from former C.S.A. Guatemala S.A. workers (hereinafter, the complainants) requesting that the FLA investigate allegations regarding noncompliance with the FLA Workplace Code of Conduct and Benchmarks on issues related to Employment Relationship, Compensation, Non-discrimination, and Freedom of Association.

The FLA commissioned independent consultants Francisco Chicas and Katya Castillo (hereinafter, the investigators) to conduct an investigation around the allegations raised by the complainants. In particular the investigators examined the following claims:

- 1) Workers' dismissals without receiving complete severance payments. According to the complaint, in November 2018 the Factory illegally suspended employees' contracts for roughly one-third of the overall workforce without providing any payouts. In January 2019, the full factory workforce was terminated and requested to sign a settlement, receiving in cash amounts between 1,000 and 3,000 Quetzals (USD\$ 131.54 and USD\$ 394.63¹), as severance payments.
- 2) Dismissal of six workers in October 2018 allegedly tied to their intention to form a union.
- 3) Factory failure to pay social security contributions despite deductions from workers' pay, including not registering pregnant women workers at the social security institute.
- 4) Blacklisting of former C.S.A workers, who are reported to have been denied the opportunity to apply to positions in factories in the maquiladora sector in Guatemala with some type of former business relationship with the factory.

Between March 13 and 16, the investigators traveled to Guatemala to conduct a field investigation of the above-listed allegations pursuant to the FLA Third Party Complaint process.

¹ Currency exchange reference used is 7.602, consulted at <https://www.oanda.com>, on March 21, 2019.

C.S.A. Guatemala S.A. (hereinafter, C.S.A., or the factory) was registered in the Guatemalan Mercantile Registry in November 2010, as a facility dedicated to the manufacture of garments for children and male and female adults, and it was located at Calzada San Juan 39-69, Zona 7, Colonia El Rodeo, in Guatemala City².

By early November 2018, the factory was producing goods for FLA affiliated company Hanesbrands Inc., and also for the company Gap Inc. The Korean apparel manufacturer SAE-A Trading Company, Ltd. placed Gap Inc. production orders at C.S.A., which was one of the SAE-A authorized subcontractors in Guatemala.

Prior to the factory shut down on January 18, 2019, Hanesbrands Inc. was the only brand still sourcing at C.S.A. According to the factory owner, Hanesbrands' last order from the factory was shipped in mid-December 2018. However, some small portion of re-work was performed in January 2019 to complete that Hanesbrands' order. According to one interviewed worker, there were around three sewing production lines plus other workers from quality inspection and packing doing that re-work in January 2019.

² Business licensee registered under the registry number 90065 at the Mercantile Registry, dated November 12, 2010.

II. Methodology

The investigators spent time in the field gathering information relevant to the investigation; specifically, they interviewed different stakeholders, and reviewed documentation linked to the allegations presented by the complainants.

In detail, the investigators conducted the following interviews:

Date of Interview	Interviewee(s)
March 13	First group interview with 35 former C.S.A. workers.
March 13	Interview with Homero Fuentes and Augusto Aceytuno from the local civil society organization Commission for the Verification of Company Codes of Conduct (hereinafter, COVERCO).
March 14	Second group interview with 17 former C.S.A. workers.
March 14	Interview with Alejandro Caldera, Hanesbrands' Corporate Social Responsibility Manager for Honduras.
March 14	Interview with C.S.A. management: Wendy Lim (factory's owner), Mayra Cárdenas (factory's Administrative Manager), and Alma Carreto (factory's Human Resources Manager).
March 14	Interview with representatives of the Ministry of Labor and Social Welfare (hereinafter, MINTRAB for its initials in Spanish): Julio Velasquez (Director of Inspection), Pierce Samayoa (Assistance Director of Inspection), and Ricardo Grajeda (Delegate of Guatemala Province).
March 14	Interview with Edgar Balsells, Director of the Guatemalan Social Security Institute Board.
March 15	Interview with Christopher Kane (US Embassy Labor Attaché), and Carlos Quintana ³ (Senior International Labor Advisor for Trade Policy - US Department of Labor)

³ He joined the meeting remotely by phone from Washington, DC.

March 15	Interview with Luis Fuentes, Coordinator of Solidarity Center Guatemala.
March 15	Interview with Bosco Hong, SAE-A Senior Manager of Import/Export, Human Resources and General Affairs.
March 16	Third group interview with three former C.S.A. workers (each of whom also participated in the first group meeting), which provided additional documentation to the investigators.
March 16	Second interview with Homero Fuentes from COVERCO.
March 19	Phone interview with two former C.S.A. workers terminated in October 2018 (one of whom also participated in the March 13 group meeting).

Additionally, the investigators reviewed the following records:

- ✚ Court of Fourth Civil Instance, eviction process against C.S.A., reference number 01041-2018-00762. Of. Y No 4o - 1829, resolution from March 05, 2019.
- ✚ C.S.A. Request number 0101-11277-2018, presented to the MINTRAB on November 19, 2018 (request of collective suspension of employment contracts for the entire workforce).
- ✚ C.S.A. Request number 0101-11277-2018, presented to the MINTRAB on November 28, 2018 (request of collective suspension of employment contracts for around one third of the workforce).
- ✚ Guatemalan Mercantile Registry, C.S.A. Guatemala S.A. business licensee registered under the registry number 90065, dated November 12, 2010.
- ✚ Guatemala Social Security Institute, Revision Minute No 808/2019.
- ✚ IGSS personal account statements of nineteen workers.
- ✚ Ministry of Labor and Welfare, Guatemala Province Delegation of the General Labor Inspection Department, file reference number R-0101-00585-2019, minutes dated January 23, 2019.
- ✚ Mutually Agreed Enforcement Action Plan between the Government of the United States and the Government of Guatemala, dated April 2013.
- ✚ Public Ministry, Metropolitan District Prosecution, file number MP001-2018-100313.
- ✚ Sample of two settlements signed by workers when receiving partial payment of termination payouts.

- ✚ Sample of 186 settlement calculations issued by the MINTRAB to terminated workers.
- ✚ Consolidated sample of settlement calculations elaborated by COVERCO to 245 workers.
- ✚ Voluntary Fire Fighters of Guatemala, file reference number Const. 771.11.2018 JMCG.RR.PP.mjccf, Report number 4885, dated November 16, 2018.
- ✚ Voluntary Fire Fighters of Guatemala, file reference number Const. 771.11.2018 JMCG.RR.PP.mjccf, Report number 2947, dated November 16, 2018.
- ✚ Voluntary Fire Fighters of Guatemala, file reference number Const. 771.11.2018 JMCG.RR.PP.mjccf, Report number 002227, dated November 16, 2018.
- ✚ Voluntary Fire Fighters of Guatemala, file reference number Const. 771.11.2018 JMCG.RR.PP.mjccf, Report number 3218, dated November 16, 2018.
- ✚ Voluntary Fire Fighters of Guatemala, file reference number Const. 771.11.2018 JMCG.RR.PP.mjccf, Report number 2912, dated November 16, 2018.

The investigators would like to especially thank the COVERCO team for supporting the investigation process, by providing an office space to conduct the group interviews with workers, and for facilitating interviews with the Director of the Guatemalan Social Security Institute Board and the US Embassy Labor Attaché. Also, the investigators thank Hanesbrands for helping arrange the meeting with the C.S.A. owner and management team, and Gap Inc for facilitating the interview with SAE-A representatives.

III. Investigation Results

Challenges faced during the investigation process

Investigations around factory closures are challenging by themselves due to the inherent difficulty of gathering complete information about the shut down effects and consequences for workers. This one was not an exception. In this particular case, the investigators were not able to gather complete data to make accurate estimates of total amounts due to the workers.

Even when the owner of the factory and other two members of the management team met with the investigators, and showed some documentation on payments of termination payouts⁴, investigators did not have access to other relevant records, such as:

- Time records, payroll and paystubs of work performed after the fire and until the factory closure;
- Overtime records from the past six months to the factory closure -which should be considered when calculating severance-;
- Workers' personnel files or employment contracts, in order to calculate the termination payouts owed to them;
- Personnel files of pregnant and lactating workers, including IGSS files and documentation to calculate the severance until ten months after the date the workers returned to work, or should have returned to work, after giving birth.
- Social security payrolls to calculate the specific contributions that the factory did not pay to the Guatemalan Institute of Social Security (hereinafter, IGSS for its initials in Spanish).

Nevertheless, the investigators were able to corroborate noncompliance related to incomplete payment of termination payouts, as well as other noncompliance issues directly related to the allegations presented by the complainants to the FLA.

⁴ Specifically, C.S.A. management showed the list of workers who received partial termination payouts payments with indication of the amounts paid. The meeting with the factory owner and managers took place in an office rented by them; the investigators did not have access to the production facilities.

Facts related to the Third Party Complaint Allegations

In November 10, 2018, around 2:00 am, a fire broke out at C.S.A. facilities, which consumed most of the administrative offices, and the following production areas: Pressing, Packing, Shipping, and Second Quality Inspection. In total, the fire consumed an area of eighty by sixty meters, and it burned fabric, finished goods already packed from the two factory's buyers, and machinery⁵. The material loss resulting from the fire is estimated at around USD\$ 15 million⁶. According to the factory's owner, the building was not covered by an insurance policy, as it had expired in mid 2018.

The Voluntary Fire Fighters of Guatemala were not able to determine the cause of the fire. SAE-A Trading representatives explained they commissioned their own private investigation of the causes of the fire, and they were able to determine it was an accidental and spontaneous fire, as opposed to an intentionally caused incident. The Attorney General's Office, for its part, is following an investigation process in order to establish the cause of the fire⁷.

Before the fire, the factory was already facing financial issues; for example, management could not pay the rental fee of the premises since September 2018⁸, and also did not pay the social security contributions, as further detailed. After the fire, Gap ended its sourcing relationship with the factory, and the factory continued working on one additional production order for Hanesbrands until its shipment in mid December as mentioned before. However, this was not enough for the factory to overcome the financial crisis.

According to C.S.A. management, the pressing situation associated to the economic crisis, led them to suspend employment contracts of workers, without the MINTRAB's authorization. More details about the suspension of contracts are presented in the next section.

As previously mentioned, the factory owner claimed that, on December 15, 2018 C.S.A. shipped the last Hanesbrands' products; however, one worker said

⁵ Voluntary Fire Fighters of Guatemala, file reference number Const. 771.11.2018 JMCG.RR.PP.mjccf, Report number 002227, dated November 16, 2018.

⁶ Voluntary Fire Fighters of Guatemala, file reference number Const. 771.11.2018 JMCG.RR.PP.mjccf, Report number 3218, dated November 16, 2018.

⁷ Public Ministry, Metropolitan District Prosecution, file number MP001-2018-100313.

⁸ Court of Fourth Civil Instance, eviction process against C.S.A., reference number 01041-2018-00762. Of. Y No 4o - 1829, resolution from March 05, 2019.

she heard about a few group of workers still working in January 2019, before the factory closure.

November 2018 work suspension

On November 19, the management requested the MINTRAB to authorize the collective suspension of employment contracts for the entire workforce⁹. By this time, the factory employed 669 workers, and around sixty percent of them were women¹⁰.

However, as Hanesbrands placed new production orders at C.S.A. after the fire, the management asked 451 workers to return to work, and requested a second collective suspension of employment contracts, but this time, concerning 218 workers¹¹.

The MINTRAB denied both C.S.A. requests of authorization for suspending employment contracts, under the argument that the factory still had fabric and raw material on stock, and that the manufacturing production areas were in good condition¹². The factory however, proceeded with the suspension of employment contracts of the 218 workers, and appealed the MINTRAB decision of not authorizing the suspensions.

At the time of the field investigation, the MINTRAB had not resolved this appeal, which clearly represents a delay of labor justice (as discussed in further detail below).

It was the factory's practice to pay workers' salary fortnightly, every sixth and twentieth days of each month. C.S.A. management explained that, right after the fire, all workers were provided six days of paid vacation so their salaries were not affected due to the lack of work during the first fortnight period (corresponding to Nov 01-Nov 15). Although the investigators did not have

⁹ C.S.A. Request number 0101-11277-2018, presented to the MINTRAB on November 19, 2018.

¹⁰ Information provided by the factory owner and management team.

¹¹ C.S.A. Request number 0101-11277-2018, presented to the MINTRAB on November 28, 2018.

¹² Interview with Director of Inspection, Assistant Director of Inspection and Delegate of Guatemala Province, from March 14.

access to payroll or time records, all interviewed workers confirmed this information.

Among the 53 interviewed workers, the investigators found that twenty workers were suspended right after the fire, and two other workers worked two weeks more after the fire and then were suspended. All these suspended workers did not receive more salary payment once they stopped working after the fire. Considering that the MINTRAB did not authorize the collective suspension of employment contracts requested by C.S.A., the factory still owes suspended workers the salary from the date they stopped working, until the factory closure on January 18, 2019. The investigators did not have access to key documentation to calculate the specific amounts due to each worker affected by the suspension.

Moreover, some workers helped the management to clean the facilities and to guard and protect the facilities after the fire. They were not compensated for this work. The investigators could not compile specific information on the exact number of affected workers, or the number of hours worked by each of them.

Interviewed workers commented that, after the fire, the production goals were increased, but the production bonuses were not paid. Also, management asked workers to perform overtime, but it also was not paid. According to the workers, the management said to them that their collaboration was needed to achieve production targets, and if that happened they would be receiving full payment of the Christmas bonus and the pending vacation premium. The factory still owes these benefits to the workers.

Also, interviewed workers assured that most of the pregnant and lactating workers were suspended after the fire, and they never returned to work -- even when the MINTRAB had not authorized any suspension, and when the labor law prohibits terminating pregnant and lactating workers¹³. Among the workers who continued working after the fire, there was one lactating worker who claimed that the factory did not provide or pay the daily one-hour break required by law for nursing mothers.

The workers who continued working after the fire received salary payments until December 2018. Specifically, on December 21, the factory paid salaries

¹³ Article 151 section c) of Labor Code

corresponding to the first fortnight of that month (December 01-15). On January 06, 2019, the factory paid salaries corresponding to December 16-21.

Salaries from December 22 to January 18 are also owed to the workers who continued working after the fire, as they were not suspended or terminated, and the lack of work was a responsibility of the employer.

Despite the majority of workers confirmed this information a few workers claimed the factory did not pay them the salaries corresponding to December 16-21. As pointed out before, the investigators could not corroborate those payments through payroll review.

January 2019 factory shut down

December 21, 2018 was the last working day for C.S.A. workers. After that, all of them were just waiting for the factory to restart operations, without receiving salary. Unhappily, that day never came. On January 18, 2019 C.S.A. management notified the workers about the factory closure. That same day, the factory made partial payments of termination payouts to the workers (as set out in the chart below).

Workers did not receive explanations on how the calculations of these partial termination payouts were made, and the factory did not provide them with paystubs either. Management asked them to sign a settlement and to place their fingerprints on it, as a condition for receiving the partial termination payouts. The investigators reviewed two samples of settlements signed by workers and noticed that they do not specify the amounts paid to them. Moreover, settlements included a waiver for releasing the factory from any liability related to payment of full termination payouts, despite the partial payments of termination payouts, which violates the FLA Compliance Benchmarks (specific violations are set out below in the Conclusions section).

The C.S.A. owner explained that their bank accounts were frozen due to the multiple debts they have with creditors, and it was the reason for paying workers' partial termination payouts in cash. The factory obtained this money from the selling of some machinery. The management team also recognized that they did not fully pay termination payouts to the workers, as required by law. The factory set different scaled amounts -ranging from 500 to 3,900

Quetzales (USD\$ 65.78 to 513.02) – based on workers’ seniority, as detailed in the Chart 01 below.

Finally, the C.S.A. owner explained that currently, there is no one from C.S.A. using the factory premises.

Chart 01: Amounts paid by C.S.A. on January 18, 2019 and number of workers covered

(Elaboration based on information provided by C.S.A. team)

Scaled amounts	Number of workers paid under this scaled amount
From 3,300 to 3,900 Quetzales (USD\$ 434.10 to 513.02)	9 workers
From 3,100 to 3,300 Quetzales (USD\$ 407.79 to 434.10)	21 workers
From 2,700 to 2,900 Quetzales (USD\$ 355.17 to 381.48)	40 workers
From 2,100 to 2,500 Quetzales (USD\$ 276.24 to 328.86)	152 workers
2,100 Quetzales (USD\$ 276.24)	14 workers
1,900 Quetzales (USD\$ 249.93)	72 workers
1,700 Quetzales (USD\$ 223.63)	50 workers
1,600 Quetzales (USD\$ 210.47)	16 workers
1,400 Quetzales (USD\$ 184.16)	118 workers
1,000 Quetzales (USD\$ 131.54)	88 workers
500 Quetzales (USD\$ 66.77)	21 workers with two months or less of seniority
From 1,000 to 3,500 Quetzales (USD\$ 131.54 to 460.41)	16 pregnant and lactating workers, whom also received the additional 500 Quetzales (USD\$ 66.77) due to lack of social security coverage
From 1,900 to 2,900 Quetzales (USD\$ 249.93 to 381.48)	5 workers under medical leave determined by the IGSS

The total amount paid to the workers on January 18 was 1,129,000 Quetzales (USD\$ 148,513.54), and 622 workers received payment of termination payouts¹⁴. Management explained that eight workers refused to accept the amounts offered by the factory, because they wanted to receive the legally required full payment. All those numbers only include production workers.

¹⁴ Information provided by the factory owner and management team.

Management also explained that around 20 workers formally resigned their jobs with the factory in January, before the shutdown. In total, the factory paid 35,000 Quetzales (USD\$ 4,604.05) to those 20 workers as termination payouts. The investigators have included these 20 workers in the final count of workers who C.S.A. might still owe payment of benefits because it was not possible to corroborate whether termination payouts paid to them were correctly calculated, or if payments provided to them included all salaries, overtime, or production bonuses.

The 622 workers who received partial payments on January 18, plus the eight workers who refused to accept partial payments, plus the approximately 20 who resigned in January before the shutdown, makes a total of 640; the management did not explain what happened with respect to the other 29 workers.

C.S.A. management also estimated that the amount still owed to the production workers for termination payouts is around 7,800,000 Quetzales (USD \$ 1,026,045.70). Management did not explain how many workers are included in this calculation.

As previously mentioned, the main challenge for investigators was the lack of access to documentation that allows calculating specific amounts owed to the workers as a result of the factory closure. However, the investigators gathered useful reference information from other sources.

From a sample reviewed of 186 severance calculations issued by the MINTRAB to C.S.A. workers (27.8% of total workforce, and considering that 669 is the 100%), the investigators found that the total amount owed to these 186 workers only is 4,897,794.64 Quetzales (USD \$ 644,277.12) (minus the partial payments made by the factory) Nevertheless, the investigators noted that the MINTRAB calculations have not considered salaries of suspended workers, and unpaid overtime and production bonuses for those workers who continued working after the fire.

Also, the MINTRAB refused to calculate termination payouts of pregnant and lactating workers, under the narrow interpretation that these workers by law cannot be terminated unless the employer proved cause before a judge; hence, -under the MINTRAB interpretation- if they were terminated, they should instead initiate a lawsuit before the labor courts, and not an

administrative procedure before the MINTRAB. Pregnant and lactating workers did not receive any type of assistance from the MINTRAB.

The COVERCO team has also made some calculations of amounts owed to C.S.A. workers. From a sample of 245 workers (36.62% of the workforce based on 669 as the 100%) they found that the factory owes 10,944,587.51 Quetzales (USD \$ 1,439,698.44) to these 245 workers, minus 97,650 Quetzales (USD \$ 12,845.30), which is the total amount paid by the factory to the same set of workers. In other words, the factory would still owe 10,846,937.51 Quetzales (USD \$ 1,426,853.14) to this sample set of 245 workers.

COVERCO calculations are higher than the ones made by the MINTRAB, because COVERCO has included 19 pregnant and lactating women, and because termination payouts of pregnant workers took as reference the expected date of delivery to include salaries owed to them until ten months after the date they would have returned to work after giving birth. Also, for lactating workers, COVERCO is including the one daily-paid hour for nursing, which should be provided to all lactating workers during the ten months, after they returned to work from giving birth.

COVERCO is also including an average of overtime hours worked over the past six months, which was considered in the severance calculations, and salaries owed to workers illegally suspended in November, when applicable.

All COVERCO calculations are based on the information verbally provided by workers. For example, the estimation of total overtime hours has been made based on workers they have interviewed. COVERCO consider that C.S.A. workers worked around 12 to 16 overtime hours per week during last year. These estimated calculations would need to be compared against factory records, which makes obtaining those records so important in this exercise.

The above estimated calculations still need to be compared against factory records, which makes obtaining those records so important. Unfortunately, thus far C.S.A. management has not provided access to such records, despite repeated request. Obtaining them remains important to ensuring the accurate final calculation of severance and other amounts owed to those who worked at the factory.

Non-payment of social security contributions

The C.S.A. owner and management recognized that, since August 2018, they were facing financial challenges affecting their ability to pay completely and on time the social security contributions to the IGSS. The investigators did not have access to the IGSS payrolls, and the management only showed an official document issued by the IGSS¹⁵ demonstrating that, in September 2018 the factory paid a total of 430,149.29 Quetzales (USD \$ 56,583.70) to the IGSS, corresponding to the August 2018 contributions.

However, COVERCO and some workers had informed the investigators that C.S.A. did not pay IGSS contributions for some workers, since the end of 2017. C.S.A. management recognized that, even before August 2018, not all deductions of IGSS contributions deducted from workers were paid to the IGSS. In other words, C.S.A did not include all workers in the IGSS payrolls, even when they were enrolled at the IGSS scheme.

By checking the IGSS accounts of nineteen workers, the investigators found that, the factory did not pay IGSS contributions of one worker since August 2017 until the factory closure, and in twelve cases, the factory did not pay the IGSS contributions since November 2017, up to the factory closure.

This demonstrates that the factory excluded some workers from the IGSS payrolls to avoid payment of all contributions deducted from workers' salary. C.S.A. management could not provide specific information on the number of workers whose IGSS contributions have not been paid, or the amounts owed to the IGSS, and the IGSS documentation mentioned before did not specify how many workers were included in the last IGSS payroll paid by C.S.A.

If the last amount paid to the IGSS - 430,149.29 Quetzales (USD \$ 56,583.70) - is used as a reference, it could be estimated that the factory owes IGSS at least, five times this amount - as the contributions not paid go from the third week of August 2018 to the January 18, 2019 shutdown date - plus all other previous social security contributions that the factory did not pay, and which could not be calculated by the investigators due to the lack of access to the relevant IGSS payrolls.

¹⁵ Guatemala Social Security Institute, Revision Minute No 808/2019.

The most immediate negative consequence on workers, derived from the lack of IGSS contributions payments, has to do with denial of medical services. Some workers confirmed that the IGSS medical centers have denied medical attention due to the employer not paying the corresponding social security contributions. This includes pregnant workers, new mothers and their newborns. Also, workers with diseases or those who have suffered accidents cannot receive medical attention at the IGSS medical centers. As previously mentioned, from the sample of 53 interviewed workers, there were eight pregnant workers, six lactating workers, and two workers under medical leave due to have suffered accidents. The investigators did not have access to documentation to determine the actual number of pregnant and lactating workers or workers under medical leave affected.

In the future, workers will also face troubles when trying to retire, as those contributions not paid by C.S.A. will be deducted from the minimum number of contributions required by the Guatemalan law to all applicants to retirement.

In the below chart, the investigators have consolidated all items owed to the workers and IGSS by C.S.A., with explanations of how to correctly make the calculations to get the full final amounts owed to them.

Chart 02: Breakdown of Categories owed by C.S.A. to workers and IGSS

Categories	Explanation	Documents/information needed to make correct and full calculations
	Applicable to workers who helped to clean and to guard and protect the factory after the fire (there is no specific information on the number of workers and hours worked).	List of workers with indication of hours of work performed by each of them.
	Applicable to around 218 workers illegally suspended after the fire. Their owed salaries should be calculated from	List of suspended workers and exact dates each of them were

Salary¹⁶	the date they were illegally suspended until the factory closure.	suspended.
	Applicable to around 451 workers who worked until December 21. Their owed salaries should be calculated from December 22, 2018 until the factory closure.	List of workers who worked until December 21, 2018.
Overtime¹⁷	Applicable to around 451 workers who worked after the fire and until December 21, and also those 20 who resigned in January 2019 before the factory shut down. They claimed that the factory did not paid overtime performed during that period. Based on their testimonies, they worked from 12 to 16 overtime hours per week.	Salary payrolls from November and December 2018. Hours of work records from November and December 2018.
Production bonus	Applicable to around 451 workers who worked after the fire and until December 21, and also those 20 who resigned in January 2019 before the factory shut down. They claimed that the factory did not paid production bonus for reaching production goals.	Salary payrolls and production records from November and December 2018.
Legal benefits	Bonus Fourteenth¹⁸: Applicable to all 669 workers. Factory owes a proportional amount of this benefit that should be calculated from July 01, 2018 to January 18, 2019.	Salary payroll from November 2018 (to have information on all active factory workers at the time of the fire, and to

¹⁶ Governmental Agreement No 242-2018, which established current legal minimum wage (LMW) in Guatemala. The applicable LMW for the exporting apparel sector is 82.46 Quetzales (USD\$ 10.85) daily, or 2,508.16 Quetzales (USD\$ 329.93) monthly, plus 250 Quetzales (USD\$ 32.87) of legally required "Incentive Bonus", for a total LMW of 2,758.16 (USD\$ 362.80) per month.

¹⁷ Overtime premium is, at least, an additional 50% of the value of ordinary salary, as per Article 121 of Labor Code. This means, that one overtime hour should be paid, at least, at 15.45 Quetzales (USD\$ 2.03).

¹⁸ According to the Legislative Decree No 42-92, all employers should paid workers with an annual bonus equivalent to one monthly salary. This payment should be made during the first fortnight of July, and in case of termination, the employer should be a proportional amount calculated from July 01 until the date of termination.

	<p>Christmas Bonus¹⁹: Applicable to all 669 workers. Factory owes 100% of this benefit.</p> <p>Vacations²⁰: Applicable to most workers (except for those with five months length of service or less). Factory still owes payment of nine vacation days to all eligible workers.</p> <p>The 20 workers who resigned in January 2019 prior to the shutdown are considered here, as the factory has not demonstrated that the calculation of the termination payouts paid to them was correct.</p>	<p>corroborate payment of six vacation days to all workers).</p> <p>Workers' personnel files, or employment contracts (to check workers' seniority).</p>
Maternity benefits²¹	<p>Applicable to all pregnant and lactating workers (unknown number). Owed salaries to them should be calculated up to ten months after the day they returned or the probable day they should have returned to work after giving birth. Additionally, the factory owes to them payment of one daily nursing hour, during the ten months after the day they returned or the probable day they should have returned to work after giving birth.</p>	<p>Personnel files of pregnant and lactating workers, including documentation on pre-natal and post-natal check-ups issued by IGSS doctors.</p>
Severance²²	<p>Applicable to all 669 workers. Factory made partial payments of severance. Severance is equivalent to one monthly salary for every year of service, or the proportional amount if the worker has less than one year of service. For</p>	<p>Workers' personnel files, or employment contracts (to check workers' seniority).</p> <p>Payroll records from July</p>

¹⁹ According to the Legislative Decree No 76-78, all employers should paid workers with an annual bonus equivalent to one monthly salary. 50% of this bonus should be paid during the first fortnight of December, and the other 50% should be paid during the second fortnight of January.

²⁰ Based on Articles 130 and 131 of Labor Code, workers who have credited, at least 150 work days in a year, have the right to 15 days of paid vacation per year.

²¹ Articles 151 section c), 152 and 153 of Labor Code.

²² Article 82 of Labor Code.

	<p>calculating the severance, it is important to consider the average salaries of the past six months to the termination, which includes, production bonuses and overtime.</p> <p>Again, the 20 workers who resigned in January 2019 are considered here, as the factory has not demonstrated that the calculation of the termination payouts paid to them was correct.</p>	<p>2018 to calculate monthly salary average.</p>
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October 2018 worker terminations allegedly tied to the exercise of the right to freedom of association

C.S.A. has a history of freedom of association violations. In May and July of 2016, and in May 2017, COVERCO produced reports on C.S.A. working conditions, and all three reports included violations to the workers’ right to freedom of association²³. Also, in August 2016, the FLA instituted a Third Party Complaint investigation around a range of labor violations that found violation to workers’ associational rights²⁴. The FLA published its Summary Report on that investigation in December 2017, which showed that the factory illegally terminated 20 workers attempting to form a union in the first quarter of 2016.

For the specific allegations addressed in this investigation, it was found that no C.S.A. workers had a real intent to form a union in October 2018²⁵. Specifically, the investigators found that six workers - willing to be terminated with payment of full termination payouts - did express an intention to form a union, not because they wanted to form a worker organization, but in order for the management to dismiss them with payment of termination payouts. The investigators gathered testimonial evidence from workers, indicating that this practice (workers expressing intention to form a union to be terminated with payment of termination payouts) also had occurred four times in the past.

²³ Investigators have copies of these reports, and they can be shared with FLA and brands involved in this Third Party Complaint.

²⁴ <http://www.fairlabor.org/report/csa-guatemala>

²⁵ Information confirmed through interviews with workers, COVERCO, and the Country Coordinator of the Solidarity Center in Guatemala, which has supported organizational efforts at C.S.A. in the past, but did not have information on any attempt to form a union in October 2018.

Nevertheless, regardless of the motivations behind the workers' actions, the subsequent terminations still demonstrate an anti-union attitude on the part of the C.S.A. management.

The investigators were able to talk with two of the six workers terminated in October 2018, and they expressed that the factory did not fully pay their termination payouts at that time. One of them only received 4,700 Quetzales (USD\$ 618.26), and she started to work at the factory in September 2013, which means that the severance should have been higher. The other one received 5,000 Quetzales (USD\$ 657.72), and she started to work at the factory in January 2008, accrediting even more seniority than the first worker. According to their testimonies, the factory only paid the proportional amounts of Fourteenth Bonus and Vacations, and committed to pay the severance in installments, but these payments were never made to them. The factory also owes these two workers the proportional amount of the Christmas Bonus.

C.S.A. management denied that they have ever heard about an attempt of union formation at the factory, or that they have terminated any worker in the past due to anti-union discrimination.

The investigators were not able to review personnel files of the workers terminated in October 2018, or any other documentation on the circumstances of their terminations, or amounts paid to them when terminated.

However, countering management's above-noted denials, the investigators gathered sufficient testimonial evidence from workers on the factory's practice of terminating workers who expressed an intention of forming a union. The investigators will also consider the workers claims on partial payment of termination payouts.

In sum, the investigators found that C.S.A. management terminated workers who appeared to have a relationship with union activities and based on their attempts (whatever the underlying motivations) to form a union. It is the investigators' view that, regardless of the reasons, the fact of firing workers because they expressed the intention to form a union is a violation of the right to freedom of association--including of FLA Compliance Benchmark FOA.9, which prohibits employers from offering or using severance pay as a mean of

contravening the right to freedom of association (including attempts to prevent or restrict union formation).

Blacklisting of C.S.A. workers

From interviews with former C.S.A. workers the investigators found that they are facing challenges in trying to get new jobs in other garment factories in the country. Workers claimed that factories operated by SAE-A Trading in Guatemala, as well as other garment factories, are refusing to hire former C.S.A. workers, as they are considered responsible for provoking the November 2018 fire at the factory. The owner of C.S.A, also confirmed that workers are not given the opportunity for access to employment in some factories because they are associated with the fire or considered promoters of unions.

However, SAE-A representatives explained to the investigators that, since November 2018, SAE-A factories in Guatemala have hired 143 workers, and 52 of them (36.36%) are former C.S.A. workers. Although the investigators were not able to review any documentation to corroborate this information, interviewed workers and COVERCO confirmed that SAE-A factories have hired some former C.S.A. workers. SAE-A representatives also explained that they cannot only hire former C.S.A. workers as this would be seen as a form of discrimination and exclusion of other workers coming from other factories or seeking employment for the first time.

The C.S.A. owner expressed that she has never blacklisted workers. The investigators would like to highlight that gathering evidence of the existence of black lists is a huge challenge. For the particular case of former C.S.A. workers, the investigators would like to consider the testimonial evidence gathered from workers and factory owner, alleging that some factories in Guatemala are refusing to hire them because of their previous employment relationship with the factory.

Lack of State protection for workers

The Guatemalan State has failed to provide legal protection to C.S.A. workers. The role played by the MINTRAB and the IGSS in the C.S.A. case is highly problematic.

On January 21, 2019 a group of C.S.A. workers presented a complaint to the MINTRAB because of the sudden factory closure. That same day, one labor inspector showed up to C.S.A. facilities with the purpose of investigating the factory shut down; however, the inspector was not permitted access to the factory²⁶. Even though the labor inspectors have the legal capacity of using the police force to get in to worksites when employers do not allow them to access²⁷, the inspector did not request the police intervention.

The MINTRAB did not establish the Rapid Response Team (hereinafter GRI, for its initials in Spanish) either, neither after the fire or at the time of the factory closure²⁸. Also, the MINTRAB failed to follow basic procedures set in the Mutually Agreed Enforcement Action Plan Between the Government of the United States and the Government of Guatemala (hereinafter, the Enforcement Plan), in cases of potential factory closures²⁹.

Specifically, the MINTRAB failed: i) To review factory's accounting books; ii) To request to the Labor Court to seize the factory's assets to ensure payments owed to the workers; iii) To notify IGSS so that it could verify compliance with employers' social security obligations; and, iv) To order the employer to immediately pay all owed remuneration to the workers.

The MINTRAB representatives also confirmed that they had not requested C.S.A. payrolls, and the lack of this information refrains MINTRAB to prepare more accurate calculations of termination payouts owed to the workers; and as previously mentioned, the MINTRAB refused to calculate termination payouts of pregnant and lactating workers, using a wrong and limit interpretation of the law that hinders access to justice for these workers.

Moreover, the Office for the Promotion of Labor Law - created by the MINTRAB, with the purpose of providing legal assistance to low income

²⁶ Ministry of Labor and Welfare, Guatemala Province Delegation of the General Labor Inspection Department, file reference number R-0101-00585-2019, minute dated January 23, 2019.

²⁷ Article 4, Ministerial Accord No 106-2011.

²⁸ Based on Ministerial Accord No 160-2013, the General Inspector of Labor should establish the GRI in cases of potential closure of an exporting or manufacturing factory, with the purpose of assess the case, and to ask the employer payroll and accounting information on payments due to the workers.

²⁹ Articles 8.2(a)(iii) and 8.2(b) of Enforcement Plan.

workers - also refused to follow up the cases of around 200 C.S.A. workers, arguing that the total amount of the collective claim exceeded ten legal minimum wages, which is the limit set for the competency of this office. Instead, the representatives of this office sent workers to private lawyers, whom are asking workers to pay them from 15% to 20% of what workers receive if they win the cases in the labor courts.

In early March, the MINTRAB notified the C.S.A. workers that the case was closed and recommended that they present their claims before the labor courts to seek justice. Furthermore, the IGSS has also systematically failed to identify and address the lack of payment of social security contributions by C.S.A., even when they can, on their own initiative, initiate procedures against those employers who do not pay contributions as legally required³⁰.

³⁰ Article 9 of IGSS Regulations on Collection of Contributions to the Social Security Regime (IGSS Agreement 1118).

IV. Conclusions

The C.S.A. closure has negatively impacted the household economics of many Guatemalan families. Among the affected workers, there were pregnant and lactating workers, and workers under medical leave or requiring medical assistance by the IGSS.

The Guatemalan State, through the MINTRAB and the IGSS, has failed to provide legal protection to workers affected by a factory closure.

C.S.A. has infringed the Guatemalan labor and social security laws, as well as the FLA Workplace Code of Conduct and Benchmarks, as follows:

- ✓ The suspension of employment contracts without official authorization from the MINTRAB, including the lack of salary payment during the period of the illegal suspension violates Articles 61 section g), and 73 of Labor Code, Article 1 of Legislative Decree 237-2001, as well as FLA Code provisions on Hours of Work and Compensation, and Compliance Benchmarks HOW.19.1, HOW.19.2, and C.1.
- ✓ The unpaid work performed by some workers to help clean the factory after the fire, and the lack of payment of overtime hours and production bonuses after the fire violate Articles 88, 93, and 121 of Labor Code, as well as FLA Code provision on Compensation, and Compliance Benchmarks C.5, C.6, and C.7.
- ✓ The lack of provision of one paid daily hour for lactating workers violates Article 153 of Labor Code, as well as FLA Code provisions on Employment Relationship, Nondiscrimination, and Compensation, and Compliance Benchmarks ER.22, ND.8.1, and C.5.
- ✓ The lack of complete vacation payments to the workers violates Article 130 of Labor Code, as well as FLA Code provisions on Employment Relationship, and Hours of Work, and Compliance Benchmarks ER.22 and HOW.11.
- ✓ The lack of complete payments of Christmas Bonus and Bonus Fourteenth violates Articles 1, 2, 3, and 4 of Legislative Decree 42-92, and Articles 1, 2, and 9 of Legislative Decree 76-78, as well as FLA Code

provisions on Employment Relationship and Compensation, and Compliance Benchmarks ER.22, C.1, and C.5.

- ✓ The lack of complete payment of severance violates Article 102 section p) of the Guatemalan Constitution, Article 82 of Labor Code, as well as FLA Code provision on Employment Relationship, and Compliance Benchmarks ER.19.1 and ER.22.
- ✓ The settlements that management asked workers to sign, as a condition for receiving partial termination payouts, include a waiver related to the employer responsibility of paying full termination payouts, which violates FLA Code provision on Employment Relationship, and Compliance Benchmark ER.19.3.
- ✓ The lack of payment of social security contributions violates Articles 4, 5 and 6 of the IGSS Regulations on Collection of Contributions to the Social Security Regime, as well as FLA Code provisions on Employment Relationship and Compensation, and Compliance Benchmarks ER.22, C.1, and C.10.1.
- ✓ The non-payment of social security contributions derives in other negative consequences for the workers, as detailed next: 1) lack of paid maternity leave to pregnant workers or new mothers, including the newborn; 2) lack of paid salary to workers under medical leave, or those who have suffered an accident; 3) lack of medical attention in all these cases. These violate Article 152 of Labor Code, Articles 5 and 22 of Regulations on Protection in case of Disease and Maternity, and Article 3 of Regulations on Protection in case of Accidents, as well as FLA Code provisions on Employment Relationship and Compensation, and Compliance Benchmarks ER.22 and C.1.

The termination of six workers in October 2018, for expressing an intention to form a union, and the evidence showing that this practice occurred in other occasions in the past, violate Article 102 section r) of the Guatemalan Constitution, Article 62 section c) and 209 of Labor Code, as well as FLA Code provisions on Employment Relationship and Freedom of Association and Collective Bargaining, and Compliance Benchmarks ER.26 and FOA.1, FOA.2, FOA.5.1, FOA.6, and FOA.9.

V. Recommendations for Remediation Actions

To the brands:

- 1) To request from C.S.A. management all documentation needed to make calculations of specific amounts owed to workers affected by the illegal suspensions and factory closure (as detailed above).
- 2) To designate one or more local and independent third parties, in consultation with workers and C.S.A. management, to be tasked as in charge of making all calculations of detailed amounts owed to the workers.
- 3) Although factory buyers are not legally obligated to assume the payment of amounts owed by C.S.A. to the workers, we recommend that the brands assume a subsidiary responsibility for those owed payments, and to consider donating money to pay amounts owed to workers, including payment of social contributions not paid to the IGSS. Payment of owed termination payouts should include, all six workers terminated in October 2018, for expressing intention to form a union.
- 4) To encourage other supplier factories in Guatemala, to consider former C.S.A. workers, in their recruitment and hiring processes, and to encourage them to avoid exclusion of these workers when seeking new candidates, highlighting that there is no evidence that those workers were responsible for the factory the fire.

To the FLA:

- 1) To follow up with its affiliated brand and non-affiliated brand involved in this case concerning the implementation of the above-mentioned recommendations.

Recommendations for sustainable remediation of systemic violations:

Beyond the specifics of this C.S.A closure case and the recommendations listed above, the investigators would like to provide recommendations aiming to avoid recurrence of similar noncompliance issues in Guatemala, in the future. Hence, the investigators also recommend:

- 1) To prevent similar closure cases with no payment of termination payouts in the future, brands to encourage their suppliers in Guatemala to consider paying in advance termination payouts to the workers (e.g., annually).

- 2) Brands to reinforce their monitoring programs of suppliers, to better identify and address practices that might violate basic workers' labor rights, including the right to freedom of association, payment of social security contributions, and payment of overtime, bonuses, and legal benefits. In addition, to reinforce monitoring techniques to identify with sufficient time in advance potential factory closures in which workers are due their legally mandated termination payouts.
- 3) The FLA to collaboratively work with affiliates sourcing in Guatemala, and with other stakeholders, such as labor rights organizations based in or working in Guatemala, on future advocacy initiatives to promote a framework more protective of workers in cases of factory closure; specifically: i) To promote legal reforms to prevent similar cases of factory closure with no payment of full termination payouts to workers³¹; ii) To call for improved enforcement of laws, regulations and protocols developed in cases of potential factory closure, by the Government of Guatemala and by employers.

³¹ Advocacy work might seek, for example, a legislative proposal to amend the Labor Code to include an obligation for garment exporting sector employers to post a bond, or alternatively, to obligate employers to annually pay severance in advance for all workers, or to deposit that money into special accounts managed by public institutions.