

DECOTEX INTERNATIONAL (EL SALVADOR)
SUMMARY REPORT
July 2, 2021

On April 18, 2021, the Fair Labor Association (“FLA”) received a Third Party Complaint (“TPC”) filed by the union federation *Federación de Asociaciones o Sindicatos Independientes de El Salvador* (“FEASIES” or “the Complainant”) alleging specified labor rights violations at Decotex International LTA de CV (hereinafter, “Decotex” or “the factory”), a facility owned and operated by Tegra LCC, a corporation based in Atlanta, Georgia. The TPC followed on communications between FLA staff and FEASIES representatives after the publication of an article in *El Independiente*¹, an online newspaper, reporting concerns about the implementation of major changes in the factory’s work schedule.

In its Complaint, FEASIES alleges that beginning on March 1, 2021, the factory changed its work schedule and adopted a so-called 4x4 work shift, in which workers are working twelve hours per day for four consecutive days, followed by four days off. According to the Complaint, the factory implemented these changes without previous consultation with workers’ representatives and without adequately communicating its plans to the workforce. The Complaint also alleges that this decision contravenes the constitutional and legal limits concerning daily maximum working hours in El Salvador.

At the time FEASIES filed the Complaint, FLA Participating Companies Fanatics, Hanesbrands Inc., Nike Inc., and Under Armour, and FLA-affiliated licensee Branded Custom Sportswear Inc. (“the FLA-affiliated companies”), were sourcing at the factory. To the best of the FLA’s knowledge, those sourcing relationships remain in place as of the time of this report.

The allegations described above concern practices at the factory that if substantiated, would not only violate Code elements and Compliance Benchmarks of the FLA Workplace Code of Conduct related primarily to Hours of Work and Employment Relationship, but also would infringe provisions of Salvadoran law.

The FLA-affiliated companies reached out to Tegra, which provided information concerning the implementation of the 4x4 work shift at the factory. Following a review of this information and that provided by FEASIES, the FLA on May 5, 2021 accepted the Complaint at Step 3 of the Third Party Complaint process. Under Step 3, the FLA-affiliated companies agreed to have the FLA identify a third-party monitor to conduct the assessment.

Shortly thereafter and with the agreement of the FLA-affiliated companies, the FLA commissioned independent investigators Francisco Chicas and Ena Núñez to investigate the Complaint allegations, pursuant to Terms of Reference which are summarized in the first section (“Background”) of the investigators’ report, which is being posted on the FLA website along with this summary report.

¹ <https://www.elindependiente.sv/2021/03/03/algo-huele-mal-en-la-fabrica-decotex-internacional/>

The investigation, conducted between May 17 and 28, 2021, included an onsite visit to the factory on May 19 and 20. The investigators held interviews with factory management and workers, as well as with union officials from the two trade unions with presence at the factory and affiliated with FEASIES: 1) Sindicato de Trabajadoras y Trabajadores de la Industria Maquiladora, de Comercialización, Servicios y Afines de El Salvador – Branch Decotex (“SITRAIMES”) and 2) Sindicato de Trabajadores de la Industria del Vestir de El Salvador – Branch Decotex (“STIVES”).

The investigators’ final report was submitted to the FLA on May 29, 2021, and it describes the background and methodology and then provides detailed information on the results and findings, before presenting a series of conclusions and recommendations for remediation.

The FLA recognizes the efforts made by factory management and Tegra officials and by FEASIES representatives to accommodate the investigators in a short time frame. This enabled a timely and complete investigation notwithstanding the challenges presented by a Salvadoran Ministry of Labor factory inquiry in the same timeframe.

As part of the scope of the investigation, the investigators’ report includes their analysis of the legality of the factory’s decision to implement a 4x4 work shift based on the Salvadoran Constitution, Labor Code, and the Special Transitory Law to Contain the Covid-19 Pandemic (“Decree 757”) which came into force on January 21, 2021. The investigators make clear in their report, and the FLA confirms, that their legal opinion does not create any binding legal obligation for the factory (nor for the FLA-affiliated companies); it is intended to reflect their legal knowledge and expertise.

Based on that, the investigators concluded that Article 14 of Decree 757 is unconstitutional with respect to how it extends the daily hours of work limit, as that is based on an excessively broad interpretation of the *‘force majeure’* standard, which is the only exception allowed by the Constitution to exceed hours of work limits.

The FLA recognizes that, even as the investigators’ legal analysis and conclusions are based upon the investigators’ expert analysis and interpretation of the applicable legal and policy framework with respect to the implementation of the 4x4 work shift by Decotex, it is possible for different parties to reach divergent conclusions concerning the interpretation of Article 14 of Decree 757.

The FLA further takes note of the Ministry of Labor ruling, dated May 27, 2021, that found that the new work schedule adopted by the factory was lawful under Decree 757 and valid while the Decree is in force (to September 2021).

As in other cases when the FLA initiates a TPC, it is possible that the results of a TPC investigation may diverge from the outcome of a local remedy, as has occurred in this case.

What cannot be disputed is that the investigators conducted a more in-depth and broader investigation and analysis of the process followed by the factory in the implementation of the

4x4 work shift since March 2021 and found relevant non-compliance with applicable laws and regulations, as well as the FLA Workplace Code of Conduct and Benchmarks.

The report's core findings and analysis have not been modified since its submission, including with respect to the investigators' legal analysis or the recommendations for remediation and corrective action. At the same time, the investigators have integrated feedback from both the factory and union to clarify certain factual findings. Meanwhile, as that process was underway, there has been no discernable progress between the factory and union through Ministry of Labor conciliation or other efforts to foster dialogue on the key issues.

The FLA is prepared to undertake the next step of the Third Party Complaint process and focus on the remediation of the non-compliance outlined in the investigators' final report – and in particular to work with the FLA-affiliated companies to develop a remediation action plan concerning the report recommendations. To that end, the FLA requests that Fanatics, Hanesbrands Inc., Nike Inc., Under Armour, and Branded Custom Sportswear Inc. ensure there is a suitable process to address the various recommendations for remediation, and engage with the factory so that the implementation of the 4x4 work shift ends in September 2021 once Decree 757 expires, if not sooner.