



***INDEPENDENT INVESTIGATION***

***OCEAN SKY APPAREL***

***Olocuilta, La Paz, El Salvador***

***June 23, 2011***

## INDEPENDENT INVESTIGATION OCEAN SKY APPAREL

### SCOPE OF THE INVESTIGATION

In accordance with the Terms of Reference provided by the FLA, Coverco designed a plan to investigate the concerns in a letter, dated June 22, 2011 by Mujeres Transformando, which contained allegations of verbal harassment and forced overtime at the Ocean Sky factory.

The investigation addressed the following topics:

1. **Forced Labor:** Review possible pressure and harassment to work overtime and hours worked that exceed local Salvadoran legislation and sourcing companies' codes of conduct.
2. **Verbal harassment:** Treatment of workers in the workplace, including grievance procedures.

### METHODOLOGY:

Coverco conducted the investigation in three phases:

- a) **Interviews:** 37 interviews were conducted with internal actors (workers, supervisors, administration) and external actors.
- b) **Labor Records Review:** Manuals and HR policies regarding non-discrimination, disciplinary measures, overtime procedures, internal grievance system and hours of work records from April – June 2011.
- c) **Sensorial Inspection:** To evaluate in the short time available the organization's internal climate.

#### a) Interviews

37 interviews were conducted on June 23 – 24, 2011 with workers, management, line leaders, supervisors and external representatives from Mujeres Transformando and the Institute for Global Labour and Human Rights.

The selection criteria for worker and supervisor interviews were based on the context of the letter sent by Mujeres Transformando. The sample was distributed by gender, seniority and production areas, giving priority to the potential findings regarding the two issues being investigated.

All 37 interviews were conducted in the factory, 35% with men and 65% with women, including 2 who had filed grievances using the factory's internal grievances system. In addition, 6 interviews were conducted with supervisors and 2 with management.

## **b) Review of Records**

Management was asked for the following documents:

### **1. Management policies**

- a. Internal disciplinary policy and procedures
- b. Harassment, abuse and/or sexual harassment policy and procedures
- c. Worker communication (open door) policy and procedures
- d. Overtime hours policy and procedures

### **2. Specific requirements**

- a. Personnel files of supervisors interviewed (including the labor contract)
- b. April – June 2011 payroll
- c. Manual records of overtime (May and June 2011)
- d. Minutes of labor inspections conducted by the Ministry of Labor

### **Sensorial inspection**

The investigation utilized a guide prepared by Coverco, prioritizing three areas of verification:

- a. Workplace environment/organizational climate
- b. Forced labor
- c. Harassment and abuse

## I. Findings

### 1. Forced Labor

The review of the time recording system confirmed that the factory continues using a voluntary acceptance form to perform overtime.

We reiterated the finding from the February 2011 investigation, as 100% of interviews confirmed that the mechanism used by management of going through supervisors with a form requesting overtime rather than individually asking workers if they voluntarily wish to work overtime, thus protecting the independence of workers to make their own decisions. This collective procedure is coercive regarding overtime work.

There is evidence that in May and June 2011 workers were requested through the system described above to work overtime, mainly to meet production orders from the following brands:

- Reebok
- Dallas Cowboys
- Puma
- Perry Ellis
- Lucky Brand

The investigation confirmed that mostly on Saturdays during those two months, the factory worked beyond the daily and weekly limits allowed by Salvadoran legislation, the FLA Code of Conduct and the brands' codes of conduct.

On Saturday, June 18, 184 workers began work at 6:45 AM and clocked out at 6:45 PM; and 25 out of the 184 workers left at 1:30 AM Sunday, June 19. Interviews confirmed that some workers work "lots of overtime"; a similar situation occurred in the month of May.

50% of workers' interviews confirmed that line leaders and supervisors pressure workers to stay and work overtime.

Due to time constraints on the investigation, overtime compensation was not verified in depth for May and June, except for some documents for the month of May 2011.

During payment records review for some workers in the month of May, it was verified that workers' overtime was properly calculated.

Because of time constraints and the date when the investigation was conducted, it was not possible to verify whether overtime was paid according to Salvadoran law during the month of June and particularly during June 18.

### 2. Verbal Abuse

35% of interviewed workers (20 interviews) confirmed that many supervisors and line leaders use vulgar words and offensive language that offend workers' dignity, raise their tone of voice, and pressure workers to work overtime.

The interviews reiterated some names [of supervisors] that were mentioned in the previous investigation conducted by Coverco February 7 – 9, 2011. Some of these names also appear in the inspection reports conducted by the Ministry of Labor, in the factory's grievances system and in the June 22 letter from Mujeres Transformando.

The table below uses as a reference the names cited in the letter from Mujeres Transformando; the dates are all for 2011.

Mujeres Transformando June 22 letter	Coverco's Investigation February 7 - 9	Programmed Ministry of Labor Inspection MINTRAB February 14 - 17	Internal Grievance Procedure	Coverco's Investigation June 23
[Supervisor #1]	[Supervisor #1]	[Supervisor #1]		[Supervisor #1]
[Supervisor #2]	[Supervisor #2]			[Supervisor #2]
[Supervisor #3] <sup>[1]</sup>	[Supervisor #3]		[Supervisor #3]	
[Supervisor #4]			[Supervisor #4]	[Supervisor #4]
[Supervisor #5]				[Supervisor #5]
		[Supervisor #6]		
	Others			[Supervisor #7] <sup>[2]</sup>
				[Supervisor #8]

The interviews agree that supervisors [Supervisor #1], [Supervisor #5], [Supervisor #7] and [Supervisor #8] pressured workers to work overtime. In the case of [Supervisor #5], they indicated she made frequent threats to “send letters” [write up workers] for any reason.

20% of interviewed workers (4) mentioned fearing possible retaliation from their line leaders or supervisors; they had been told not to give negative interviews regarding the factory by their supervisors and Human Resources when external audits are conducted. 3 out of 4 workers interviewed identified their supervisors’ names and 1 referred to Human Resources personnel but the person interviewed did not want to identify the specific Human Resources person.

The **Ministry of Labor and Social Welfare** conducted a programmed **Inspection** February 14 – 17, 2011. They found 28 infractions to the Labor Code and the Workplace Health and Safety Regulations, 2 of which were complaints regarding harassment by supervisors involving yelling. With respect to infractions seventeen and eighteen, article 29, part 5, of the Labor Code, and the Labor Inspectors report “calls for the cease of that behavior” by supervisors [Supervisor #6] and [Supervisor #9], and on “management to take the necessary steps” against the 2 supervisors so that they “refrain from mistreatment of workers.”

The minutes of the **Programmed Re-inspection** of March 24 by the **MINTRAB** indicates that infractions seventeen and eighteen were **REMEDIATED**, but do not indicate how.

During review of workers’ files, it was found that on April 17 Human Resources issued a “verbal warning” to [Supervisor #1] and a record of this verbal warning is part of [Supervisor #1’s] record. On being consulted about this case, management they indicated that they proceeded to apply disciplinary measures on the basis of the programmed inspection by MINTRAB and following

<sup>1/</sup> Coverco's June 23 investigation assumes that references are for the same person although the cited names are slightly different.

<sup>2/</sup> Coverco is not certain about the last name of this supervisor and she did not appear in the records turned over the management.

their policies and procedures; however, this action contradicts the company’s remediation plan, which suggests a zero tolerance policy on harassment or abuse of the code of conduct.

## II. Conclusions

Considering the Terms of Reference stipulated for this investigation, Ocean Sky must ensure compliance with their policies and procedures on verbal abuse and overtime. In that sense, it is Coverco’s view that Ocean Sky must strengthen the role of its Compliance Officer (CSR and Legal Executive) by providing the necessary authority for the permanent supervision of compliance with Salvadoran Law, the FLA Code of Conduct, Ocean Sky Policies and Procedures, and the Remediation Plan agreed to by the FLA and Ocean Sky.

The research findings are described below in priority order, also including legal bases supporting each finding and some recommendations – it is not an exhaustive list – of actions that could be taken in the factory.

Findings	Legal Bases	Recommendations for a Corrective Plan
<b><i>Immediate Action</i></b>		
<p><b>Forced Labor</b></p> <p><b>More than 60 hours a week</b></p> <p><b>Procedure to authorize overtime</b></p>	<p><b>Labor Code:</b> Article 170  <b>OCEAN SKY APPAREL Internal Workplace Regulation:</b> 13  <b>FLA Code</b> HOW.1, 6, 7, 10, 11</p>	<p>The company should properly plan overtime in order to not exceed the daily and weekly limits.</p> <p>The company should modify the procedure to accept voluntary overtime work.</p>
<p><b>Supervisors case</b></p>	<p><b>Labor Code:</b> Article 29 (5)  <b>OCEAN SKY APPAREL Code:</b> 8  <b>OCEAN SKY APPAREL Internal Workplace Regulation:</b> 43 (5)  <b>FLA Code:</b> H&amp;A 1, 7,11,13</p>	<p>Improve communications with supervisors regarding their rights and obligations, and in particular, their responsibilities and functions.</p> <p>Initiate disciplinary proceedings consistent in the Labor Law, Policies and Procedures and Internal Work Regulations for Supervisors against supervisors who do not meet their responsibilities.</p> <p>Assess the level of knowledge as well as of commitment of participants in courses regarding leadership and effective communication.</p>