Overview

This report focuses on a Nike contracted factory located in a free trade zone (FTZ) in Sri Lanka. The factory was the site of a highly-publicized dispute between workers and management regarding worker affiliation with Free Trade Zone Workers Union (FTZWU). The Fair Labor Association (FLA) became involved in October 2003 when the FTZWU and Nike Inc. filed two separate third party complaints with the FLA. In an effort to resolve the deadlock between workers and management, the FLA worked with a local NGO, the Centre for Policy Alternatives (CPA), to convene a roundtable discussion in October 2003. After two days of negotiation and consultations at the roundtable, a Memorandum of Understanding between the union and management was concluded. Since then, significant progress has been made in implementing the agreement. A meeting involving all parties in June 2004 marked the closure of the third party complaint by the FLA, since both parties demonstrated that they were implementing the Memorandum in good faith.

In Context: Freedom of Association in Sri Lankan Free Trade Zones

The first free trade zone (FTZ) was established in Sri Lanka in 1978. There are now three major FTZs in the country (Katunayake, Biyagama and Koggala), as well as many smaller industrial parks, estates, and zones. Combined, the three major FTZs employ over 100,000 workers, seventy-five percent of whom are unmarried women between 18-29 years of age.

Sri Lankan law recognizes the right of workers to organize and bargain collectively and does not prohibit unions from forming in FTZs. According to statistical information provided to the ILO by the Sri Lankan Government, however, trade unions have only been established in 37 of the 287 enterprises operating in FTZs, and only two collective agreements have been signed. Employees’ councils do exist in 149 enterprises in FTZs, although none have collective agreements in place.

In 1999, the Industrial Disputes Act in Sri Lanka was amended, prohibiting unfair labor practices by employers and strengthening the recognition of unions. Previously, the law did not require management to recognize or bargain with unions. The amended law requires employers to enter into negotiations with a trade union where the membership is more than forty percent of the total workforce.

53 The FTZWU amalgamated with another Sri Lankan trade union to become the Free trade Zones and General Services Employees Union (FTZGSEU) in 2004. For the purposes of this report, however, we will refer to it as FTZWU to avoid confusion.
Case History

In early April 2003, workers at a factory located in a free trade zone (FTZ) in Sri Lanka joined the FTZWU, seeking intervention in a dispute with management that focused on the payment of workers' annual festival bonus (equal to one month's salary). According to FTZWU, about 220 of the 400 workers in the factory joined the union and elected their office bearers. The FTZWU tried to gain recognition at the factory for several months but its attempts were not successful. Citing Sri Lanka's Industrial Disputes Act, management maintained that it would only recognize or negotiate with the union when it represented at least forty percent of the workforce. The union and management debated the point for months, and finally agreed to hold a referendum on July 9, 2003 to determine if the union had the requisite membership for recognition.

Turn-out for the referendum was extremely limited; only seventeen workers, or four percent of the workforce, participated in the ballot. All of the valid votes were votes for the union: sixteen voted for the union, whereas one ballot was spoilt. As a result, the FTZWU and the international observers from US and European labor groups that were present during the referendum contested the results, citing that intimidation had prevented workers from voting.

According to reports from the FTZWU at the time, workers had been intimidated by various parties, including factory management and Sri Lanka's Board of Investment (BOI) in the weeks preceding the election. Responding to complaints about this behaviour, the Department of Labour appointed a committee to investigate the charges against the factory management but found no evidence of misconduct by the company.

FLA Involvement

The Fair Labor Association (FLA) became involved in mediating the situation in October 2003 when the FTZWU and Nike Inc filed third party complaints with the FLA. VF Activewear, a Category B Licensee, supported the FLA's intervention. By that point, a complaint had also been filed with the Committee on Freedom of Association at the International Labor Organization (ILO), and petitions had been sent to both the US Government and European Union challenging Sri Lanka's trade benefits.

In response to the third party complaint and after investigating the situation, the FLA contacted the parties to the dispute with a proposal for an amicable, non-confrontational resolution of the issue. The FLA convened a roundtable discussion in coordination with the Centre for Policy Alternatives (CPA), a respected local NGO in Sri Lanka. The roundtable was held on October 14 and 16, 2003, and was attended by representatives of the FTZWU, factory management, Nike, Columbia Sportswear, the ILO, the American Centre International Labor Solidarity (ACILS), the CPA, and the FLA. After days of negotiation, the union and management reached an agreement in which both parties committed to a process of reconciliation and agreed to work towards creating an environment conducive to good labor practices and respect for freedom of association. At the request of both parties, the Commissioner General of Labour

54 VF Activewear university-licensed goods were not produced in this facility, so it technically was not an FLA applicable facility for the company.
appointed Dr. P. Saravanamuttu, Executive Director of CPA as an Authorized Officer in terms of section 3(I) (c) of the Industrial Disputes Act No 56 of 1999 to resolve any disputes between the parties to the settlement.

According to the Memorandum of Settlement, the factory management accepted the FTZWU as representing the concerns of its members at the factory, and agreed to respect the right of workers to choose to form and join organizations of their own choosing. Management also agreed that no workers or union members would be harassed, victimized, discriminated against, or otherwise subjected to any unfair labor practices for any reason. In return, the FTZWU agreed to call off the international solidarity campaign that had been waged against the factory, and to suspend the complaints lodged with the ILO pending the successful outcome of the review after eight months.

On October 22, 2003, CPA held a meeting at the factory to introduce the agreement to the management and employees. The meeting was also attended by representatives of the FTZWU; the Labor Commissioner; EPZ management; and Nike, Inc. At the meeting, the parties agreed to meet monthly to closely monitor the process.

CPA also worked to create awareness of the agreement among factory managers, who would be responsible for the day-to-day implementation of the agreement, by holding a series of discussions with over 45 members of the factory staff. CPA also held discussions with the branch union committee to ensure that they understood the agreement as well.

**Remediation**

In addition to training and capacity building for both parties, the agreement provided for a reformulation of the factory’s internal grievance procedures. Both parties accepted confidentiality as the guiding principle of the process, and agreed to refrain from any form of public declaration concerning cases under review.

A. Training and Capacity-building

In early December, the factory participated in the ILO Factory Improvement Programme. Twenty representatives from the trade union and Council on Standards and Industrial Relations, as well as some twenty floor-managers, were in attendance. The training addressed freedom of association and the rights of workers under Sri Lankan law; examples of non-union and unionized employees working together were also provided. After an evaluation of workers’ understanding following the trainings, CPA determined that further training programs were necessary. Training and capacity-building for workers and management were seen as essential to being able to resolve issues that may arise in the factory in the future.

B. Internal Grievance Procedure

The Agreement provided for a revision of the factory’s internal grievance procedure. Among other things, the new procedure was amended to allow trade union members to be represented by the branch union. It was also shortened; certain steps were made optional, and the aggrieved were empowered to access higher levels of authority directly.
The revised procedure went into effect on November 17, 2003. In January 2004, during a monitoring visit, human resources management assured CPA that the IGP was being used by the employees, although it was also apparent that some of the employees still enter the procedure informally, rather than filling out forms as required by the formal procedure.

C. Practical Arrangements for Union Activities

During the first eight months of the agreement, the following processes were agreed upon, with the understanding that they would not interfere with the factory's production and productivity: a set of procedures for branch union meetings; branch union-management meetings; union annual general meetings; and modalities of meetings. Branch union committee members began meeting with management on a monthly basis.

The first meeting was held on December 19, 2003. Respecting each individual's right to join or not join a trade union, the union has continued to recruit new members and collect membership fees.

**Moving Forward**

A few conflicts have arisen since the agreement was signed. One of the issues concerned a public communication by the FTZWU declaring that the union had prevailed over the factory management, which violated the spirit of the agreement. Another issue raised has been the continued harassment of union members by management. FTZWU pointed out that the workers who voted for the union during the union referendums were isolated and made to have lunch separately from the rest of the lines. These issues have all been resolved to the satisfaction of both parties.

There has been significant progress made in the reconciliation process and in improving labor-management relations at the factory, and the FLA and CPA believe that FTZWU and the factory will be able to continue this process independent of external interventions. At the review meeting in June 2004, all parties concerned confirmed that the agreement had been implemented in good faith and that the third party complaint could be closed. The FTZWU claims a membership of over 200 members at the factory and the branch union is able to function normally, holding monthly meetings with management.