



FAIR LABOR
ASSOCIATION™

**Fair Labor Association
Year Two
Annual Public Report
Part 4 of 4**

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This is the fourth of four parts of a printer-friendly version of the Fair Labor Association's Year Two report, which was designed for website use. Therefore, some of the website features (including links and layering) have been modified or removed from this print version. Please access the FLA's website, accessible at www.fairlabor.org/2004report, to utilize these features.

Please note also that the FLA publicly reports on all of its independent external monitoring visits on a factory-by-factory basis. Those reports, which are called FLA tracking charts, complement the FLA's annual public report by providing very detailed information about selected factories. The tracking charts can be found at <http://www.fairlabor.org/all/transparency/reports.html>

Please direct questions about the report to info@fairlabor.org.

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Freedom of association is the featured FLA Code provision in this year's FLA Public Report. We chose to focus on this Provision because it plays an essential part in efforts to ensure compliance with the labor standards in the FLA Workplace Code of Conduct. Where workers are able to exercise their rights freely, they are able to play a key role in ensuring that other FLA Workplace Standards are implemented. Freedom of association is also an especially challenging standard to implement, and therefore one that has been the subject of various FLA efforts to ensure an environment in which workers can exercise this right freely.

This report is divided into three sections. Together these sections serve to inform readers about some of the universal and country-specific challenges that arise with regard to freedom of association and efforts the FLA is making to overcome them.

Freedom of association sections:

- 2) A brief overview of the standard and the challenges to its implementation
- 3) A review of the FLA's efforts to improve its approach to freedom of association
- 4) Discussions of situations in four countries where the right to freedom of association is limited in law and practice:
 - China
 - Vietnam
 - Bangladesh
 - Mexico

The FLA Third Party Complaints section of this report provides case studies of three factories where freedom of association issues arose.

A. Freedom of Association: A Critical and Challenging FLA Code Provision

1. Freedom of Association: Essential to Compliance

Freedom of association is crucial to sustainable improvements in working conditions. The right to freely associate and bargain collectively is identified as a fundamental workplace right by the International Labor Organization (ILO), is protected under the Universal Declaration of Human Rights, and is a key provision of the FLA Code of Conduct. Freedom of association provides workers with the choice to form or join organizations. As such, it is a means through which workers can defend their rights and interests in the workplace and serves as a foundation upon which to build and ensure respect for other labor rights.

The rights to freely associate and to collectively bargain are essential to developing long-term compliance in factories covered by the FLA Code, because they provides workers with the tools to monitor and enforce their rights at work. Yet freedom of association is also one of most difficult Code elements to investigate and remediate. In Year Two of the FLA monitoring program, freedom of association continued to present challenges in monitoring and remediation, prompting the FLA to undertake initiatives to address some of these challenges at both the factory and national levels.

2. Freedom of Association: Challenging to Implement

The exercise of freedom of association is affected by various legal, political, and economic conditions. FLA monitors must therefore be familiar with local laws and regulations, labor market conditions, the degree of labor law enforcement, prevailing management practices, and the level of worker organization in the area where monitoring is to take place. The monitor must identify any discrepancies between the FLA Code and local law, highlight risk factors present in that the relevant labor market, and then assess the specific practices in the facility being monitored.

For each of the Code provisions, the FLA monitoring process requires monitors to gather information from various sources and then to cross-check and substantiate those findings before reporting on the factory's compliance status. For example, when assessing a "concrete" issue, such as a health and safety requirement, monitors can apply quantitative measurements to determine compliance status. However, for freedom of association, assessing the situation in a factory generally involves a qualitative assessment of the labor-management relationship in order to establish whether management restricts workers ability to associate freely. An analysis of the labor-management relationship at a given facility requires a comprehensive investigation of the various levels of interaction between labor and management – from hiring through termination – to identify any practices that may interfere with workers' rights to form and join organizations of their choice. Interviews with workers are a crucial source of information and insight into their freedom of association. This process can sometimes be hindered by the reluctance of workers to openly discuss abuses for fear of retaliation from management. Monitors need to be particularly sensitive to detect whether workers are being coached or intimidated by management. Training monitors in effective interviewing and listening techniques; ensuring that all

interviews are conducted in discreet manner, either off-site or in a factory location that is private; and developing the methodology used by monitors to research and cross-check information are among the actions taken by the FLA to enhance monitors' capacities to detect noncompliance relating to freedom of association.

The legal and political context in a country may also pose a challenge to implementation of freedom of association. In various countries, the right to freely associate has been limited, either across the entire country, as in China and Vietnam, or, as has become more common in recent years, in particular areas set aside by the government to attract foreign investment. Bangladesh, for example, has a history of limiting freedom of association in export processing zones, where a great deal of the country's apparel production takes place. In other countries, relatively high rates of reported union membership may mask limitations on freedom of association. For example, Mexico's legal system allows for clauses in collective bargaining agreements that essentially require workers in a given enterprise to join the union that signed the agreement there, regardless of whether the union actively represents the interests of workers at the enterprise. Particularly in cases where unions collude with management, workers' rights and interests often go unprotected in this context, despite union presence.

There are many other countries around the world that have not formally limited freedom of association in law, but nevertheless fail to protect the right in practice. Without adequate enforcement, the *de facto* situation for workers is the same as where legal limitations on freedom of association are on the books. In some cases, legal authorities actually participate in unlawful anti-union activities, including intimidation, harassment and abuse, illegal arrests, etc. In countries with poor enforcement of the right to freedom of association or official involvement in anti-union activity, workers are not able to choose to form or join unions. It is in these countries that companies committed to the principle of freedom of association can influence factory management to obey the law.

B. FLA's Efforts to Improve Its Approach to Freedom of Association

In Year Two, the FLA discussed issues relating to freedom of association at a number of meetings of the Board of Directors and the Monitoring Committee. The discussions revolved around four specific issues:

- The difficulties monitors face in identifying and "measuring" freedom of association compliance;
- The complex task facing FLA companies trying to remedy freedom of association violations;
- The problem of blacklisting of union supporters in Central America; and
- The problematic labor law contexts in certain countries.

1. Improving FLA Monitoring

In the first two years of FLA independent external monitoring, the FLA observed that monitors seemed to have underreported the incidence of noncompliance with the FLA Code provision for freedom of association. As a result, the FLA has provided additional guidance to monitors, which has included an explanation of the ILO Conventions and Recommendations, a review of the situation in export processing zones and countries like China and Vietnam, guidance on how to investigate cases at factory level, and a set of 'frequently asked questions'. The FLA also developed a new audit instrument for use in monitoring factories, and discussed effective monitoring for freedom of association during trainings for monitors regarding use of the instrument. The FLA foresees that such guidance will lead to improved detection of freedom of association noncompliance.

2. Improving Remediation

As with all Code provisions, however, the task of identifying issues is less than half the battle. The real challenge lies in effecting real change in the way workers experience those rights. In the case of freedom of association, that involves not only the creation of an environment in which workers and management understand workers' rights and how to exercise them, but also a set of policies and procedures to protect those rights and avoid abuse. In practice, it is often in the exercise of management functions, such as hiring, discipline, and termination, and in the processing of grievances that freedom of association is abused. If a company does not have sound policies and procedures covering those functions, there is a real risk of non-compliance. In addition, if the staff responsible for hiring, firing, and disciplining workers is not properly trained in the policies and procedures, the risk of non-compliance increases. Moreover, if there is not a solid grievance procedure and complaints mechanism available to workers, those violations may go unchallenged.

During the reporting period, the FLA faced cases where management asked job applicants about their support for unions (and did not hire workers if they expressed support) and other cases where known union members were forced to resign from their positions. When the FLA investigated those situations, it found that the factories concerned did not have the policies, procedures, trained staff, or complaints mechanisms necessary to prevent such abuses. The remedies open to FLA companies in such cases are very practical and include the installation of appropriate policies and

procedures and the training of the staff responsible for the relevant functions in factories. In other cases the remedies are far more complex and involve changing attitudes and even workplace culture. Such processes require a long-term, specialized effort. In many cases, FLA companies face a severe shortage of local organizations capable of providing consultancy and capacity-building services to effectively redress these serious issues. The third party complaints included in this report offer some interesting examples of ways in which companies addressed these kinds of issues.

Respect for freedom of association does not require companies to promote trade unions. Companies are expected to make workers and managers aware of the right to freedom of association and to ensure that any worker or manager can exercise that right in practice. To that end, it may be necessary for an FLA company to provide education and training and to strengthen policies, procedures, and structures within the factory (including structures of consultation and negotiation with workers). However, companies must avoid any action that could be construed as intervention in workers' organizational activities, since, according to ILO standards, management intervention in organizing may represent a different kind of infringement on workers' freedom of association.

3. Region- and Country- Specific Efforts

The Central American region has presented a very clear case of the risks and remedies discussed above. In 2003, a number of participating companies reported concern that free trade zones in the region were compiling blacklists of workers who zone authorities considered to be undesirable. Some of those lists contained as many as 15 categories of persons who were prevented from seeking employment in the zone. In many cases, factories located in the zones cooperate in the compilation of the lists by submitting to the zone authority details about workers they have dismissed. Authorities, in turn, circulate the names of the dismissed workers to all the factories in the zone, making it impossible for those workers to find other employment in the zone.

In response to this widespread practice, the FLA established the FLA Central American Project in 2004. To address the practice of blacklisting, the project works with governments, zone authorities, managers, and workers to ensure that equality of opportunity exists in zones and that associational rights are not violated in employment relationships in facilities where FLA companies produce. Best-practice policies and procedures for dealing with hiring, termination, discipline, and grievance handling will be installed at participating factories, and training will be provided. The practice of inducing union supporters to resign by offering them cash benefits will also be addressed. By involving FLA companies as well as non-FLA companies in the project, and by targeting entire zones or regions, the FLA hopes that the project will have a ripple effect in the region and elsewhere. The FLA Central America Project is ongoing, and outcomes and learning from the project will be reported in greater detail in the FLA's Year Three Public Report.

As discussed elsewhere in this report, the labor law environments of a number of countries complicate the enjoyment of associational rights. In this regard, the FLA has focused on Bangladesh, China, Mexico, and Vietnam, in particular, to think creatively about how to improve freedom of association in factories in these countries. The FLA Monitoring Committee has discussed specific strategies that companies may employ in

those countries to ensure that workers are able to choose their representatives and that workers' organizations function democratically.

The FLA was also directly involved in the resolution of a number of third-party complaints dealing with freedom of association (see the following section to read the third-party complaint case studies). One of the most interesting aspects of those cases is that once the initial situations of conflict were resolved and agreements were reached, the real work of implementing and abiding by the agreements began. Both workers' and managers' lack of experience in labor relations, however, complicated the process. The skills that were lacking ranged from how to negotiate to how to run a meeting to how to listen and problem-solve. Unfortunately the basic competencies required to make a labor-management relationship function are generally not taught at vocational and management schools. The parties involved in efforts to remediate freedom of association noncompliance invariably find themselves at odds over procedural and attitudinal problems as much as over the core issues of terms and conditions of work. Training in the basic skills of listening, negotiating, resolving disputes, and concluding agreements would go a long way toward ensuring respect for freedom of association.

The FLA will continue to improve the competencies of its staff and its partners to facilitate resolution of complex freedom of association issues in the coming year through ongoing training and innovation. Dealing with freedom of association in diverse situations will remain challenging for the FLA and the larger labor standards community for years to come. The FLA looks forward to cooperating with diverse actors to develop methods and share learning -- and to enhance workers' ability to exercise freedom of association around the world.

C. Countries in Focus

1. Freedom of Association in China

I. Background on China

China is the world's most populous nation and has had single-party, communist rule since the mid-twentieth century. Since the end of the 1970s, it has engaged in a wide range of economic reforms that are moving the country away from a centrally planned economy towards one that is market driven. Although the basic political structure of the country remains that of a one-party state, the political situation in China is characterized by an effort by the ruling Communist Party of China to redefine its role in a situation of rapid economic and social change.

With a US\$1.2 trillion gross domestic product (GDP) in 2002¹ and remarkably rapid economic growth over the last 20 years, China is the 6th largest economy in the world. Its potential for continued growth is great, given the size of its population and its leadership's push towards progress. Its total labor force is estimated to be more than 750 million workers. That said, China exhibits many of the characteristics of a developing country. Close to 50 percent of the country's population subsists on less than two dollars a day, and according to the 2003 United Nations Development Program's Human Development Report, China ranked 104th on the human development scale.²

Nonetheless, China's past development and potential for continued growth is nothing less than extraordinary. The country has attracted large amounts of foreign direct investment (FDI) and formally joined the WTO in December 2001, both of which accelerated structural transformation. By 2002, the government had approved more than 200,000 foreign-funded businesses, with about half of all FDI focused on the export sector. Foreign-funded businesses reportedly delivered more than 50 percent of China's exports and more than 25 percent of China's industrial output in 2002, and indicators show that their market share continues to increase.³

China's global trade totaled US\$616 billion in 2002, with a trade surplus of approximately US\$30 billion. The country's primary trading partners are the United States, Hong Kong, Japan, Korea, the European Union, and Singapore. While China dominates the international market for apparel (see sidebar), footwear, and toy production, recent export growth has been attributed to China's move into the technology sector where it produces a wide range of mechanical and electronic products. Such exports range from computers to televisions and DVDs to microwave ovens.

¹ According to World Bank figures, China's per capita GDP in 2001 was US\$ 1,159.0

² The HDI ranking includes a total of 175 countries. For more information and the rest of the HDI indicators see http://www.undp.org/hdr2003/indicator/cty_f_CHN.html,

³ See China, Promoting Growth with Equity, Country Economic Memorandum, October 15, 2003, Report No. 24169-CHA, World Bank.

In Focus: the Chinese textile and apparel sector

China is the world's largest producer and exporter of textiles and apparel. While no aggregate data on European and US importers' future plans relating to China is currently available, it is expected to be among the "winner countries" following the elimination of textile import quotas in 2005, when the Multi-Fibre Arrangements (MFA) end. This is due in large part to the country's ability to produce almost any type of textile and apparel article at almost any quality level -- and deliver them at extremely competitive prices.

Official Chinese statistics for 2001 show that the sector comprised about 21,000 enterprises with total output of US\$116 billion. Thirteen million people are employed in this industry. Most textile and apparel production is concentrated in the coastal areas of the country; Guangdong province is China's major producer of apparel for export, accounting for one-third of the country's apparel exports in recent years. According to China's National Textile Industry Council, in 2001, China's export of textile and apparel totaled over US\$53 billion, which amounted to 20 percent of the nation's commodity exports.

To learn more about China's growing strength in this sector, see USITC's Textiles and Apparel: Assessment of the Competitiveness of Certain Foreign Suppliers to the U.S. Market (Investigation No. 332-448, sent to USTR in June 2003) Publication 3671 January 2004, available at: <http://hotdocs.usitc.gov/pub3671/main.html>.

II. Freedom of Association and Chinese Labor Law

A. Trade-Union Monopoly

Under Chinese law, the All China Federation of Trade Unions (ACFTU) is the only trade union recognized in China. It exercises a legal and heavily protected monopoly over all subsidiary union organizations and trade union activities. It remains under the control of the Communist Party, which appoints its officials. This means that by law there is no possibility of truly independent unions forming in China, which compromises workers' freedom of association.

In October 2001, the National People's Congress passed amendments to the Trade Union Law, the leading law regulating freedom of association.⁴ The amendments give union organizing activities in the private sector the legal protection that they previously lacked -- including the provision of specific legal remedies against employers' attempts to interfere with organizing activities and punishment of union officials for failure to carry out official duties -- thus aligning some of China's labor law more closely with ILO

⁴ The Trade Union Law of the People's Republic of China was adopted at the Fifth Session of the Seventh National People's Congress on April 3, 1992, and amended in accordance with the Decision on Amending the Trade Union Law of the People's Republic of China made at the 24th Meeting of the Standing Committee of the Ninth National People's Congress on October 27, 2001.

labor standards. The amendments, though, did not include any change in the legal monopoly of the ACFTU.

Therefore, in its current form, the Trade Union Act imposes a trade-union monopoly, preventing the establishment of trade union organizations that are independent from the public authorities and the ruling party. Moreover, the Act requires that grassroots organizations be controlled by higher-level trade unions and that grassroots organizations' constitutions be established by the National Congress of Trade Unions, which is the governing body of the ACFTU. As discussed above, such limitations on independent unions contradict the principles of freedom association established in ILO conventions.

B. International Labor Standards and China's Labor Law

Although China has endorsed important international human rights conventions and United Nations (UN) resolutions, respect for human rights in China continues to be of major concern to the international community.⁵ With regard to workers' rights, China has ratified three of the eight fundamental conventions of the International Labor Organization (ILO):⁶ the Equal Remuneration Convention (No. 100), Minimum Age Convention (No. 138), and the Worst forms of Child Labor Convention (No. 182). China has not, however, ratified either of the two fundamental ILO conventions concerning freedom of association, the Freedom of Association and Protection of the Right to Organize Convention (No. 87) and the Right to Organize Convention (No. 98). Nevertheless, its membership in the ILO requires it to respect, promote, and realize the right to freedom of association and the right to collective bargaining, which are included among the fundamental rights enumerated in the ILO's 1998 Declaration on Fundamental Principles and Rights at Work.

When China ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2001, it entered a reservation on Section 1.a of Article 8, which guarantees the right of every individual to form a trade union and to join the trade union of his/her choice. The reservation states that the article would be applied within the parameters of "relevant provisions of the Constitution of the People's Republic of China, Trade Union Law of the People's Republic of China, and Labor Law of the People's Republic of China."⁷ For the most part, however, these laws do not coincide with the spirit of the ICESCR article.

Indeed, the Chinese Constitution and Chinese legislation provide that freedom of association can be exercised by workers at the levels of the enterprise, the sector/industry, or the nation. These provisions apply to export processing zones (EPZs) or enterprises/industries with EPZ status. Under Chinese law, workers in state-

⁵ China has signed the International Covenant on Civil and Political Rights and ratified the following international treaties: International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination Against Women; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child (available at: <http://www.unhchr.ch/tbs/doc.nsf> , accessed on Feb.2 2004).

⁶ To date, (April 2004) China has ratified a total of 23 ILO Conventions, 20 of which are still in force today. For more information on the conventions ratified by China, see <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>.

⁷ See the statement made by the Chinese Government upon signature and confirmed upon ratification of March 27, 2001, http://www.unhchr.ch/html/menu3/b/treaty4_asp.htm, accessed on Feb.2 2004).

owned and foreign-owned enterprises have the right to form and join organizations of their own choosing.

The effect of these legal guarantees is limited, however, by China's clear policy that such freedoms are subject to the interests of the State and the Communist Party. Most notably, China's Trade Union Act imposes general restrictions on trade unions' and members' political activities. The Act reiterates that trade unions shall assist the government in its work, and mandates that in the event of a clash of interests between workers and the government or the party, the trade union shall protect the overall interests of the entire Chinese people. In considering complaints against China, the ILO's Committee on Freedom of Association has concluded that many provisions of the Trade Union Act are contrary to the fundamental principles of freedom of association. The Committee found that they constituted major constraints on the right of unions to establish their own constitutions, organize their activities, and formulate programs. It noted that the mission of trade unions should be to defend and promote the interests of their constituents and not to reinforce the country's political and economic system.⁸

Current Chinese Law Dealing with Freedom of Association

- Trade Union Law of the People's Republic of China, adopted on April 3, 1992, and amended at the 24th Meeting of the Standing Committee of the Ninth National People's Congress of the People's Republic of China on October 27, 2001
- Decree 22 of the Ministry of Labor and Social Security of the People's Republic of China, Regulations on Collective Contracts, adopted by the Ministry of Labor and Social Security at its 7th Plenary Meeting on December 30, 2003.

III. Right to Bargain Collectively

Chinese legislation permits collective bargaining for workers in all types of enterprises. Under the law, collective contracts are to be developed through collaboration between the labor union and management. The law provides that workers may elect representatives to negotiate collective contracts with management in the absence of a union. The law states that collective contracts should specify working conditions, wages, and hours of work.

According to data provided by the Department of Labor Relations and Wages, in China's Ministry of Labor and Social Security, the number of collective contracts signed and registered with the Ministry exceeded 240,000 by the end of 2000 and covered more than 60 million workers. Most of these agreements, however, were products of an administrative process between the ACFTU and management rather than collective bargaining.

⁸ For more information on the cases and conclusions of the Committee of Freedom of Association on China, see Complaints against the Government of China: 286th Report (Case No. 1652) and 310th Report (Case No. 1930) 321st Report (Case No. 2031).

Democratically-Elected Trade Unions in China?

The Trade Union Act requires that members of trade union committees at various levels be democratically elected by trade union members. Furthermore, the Act provides that no close relatives of the chief members of an enterprise may become members of enterprise trade union committees.

Observers in China claim that these rules are often ignored, however. They report that union representatives are often appointed by local government authorities, factory management, or higher-level ACFTU officials. In some cases, factory management staff members occupy elected union positions, effectively fusing the positions of union chairman and senior manager into one.

Nonetheless, there are signs of progress in various enterprises in China. While various projects plant seeds for future union elections by educating workers about the Trade Union Act's requirements for democratically-elected representatives, other enterprises have already seen the free election of representative union officers. For example, in 2001, one of the first free elections by secret ballot was held at a foreign-owned factory in Guangdong that has an ACFTU-affiliated union. In October of the same year, a second free election was held at a foreign-owned factory in Fujian Province.

There are other ongoing initiatives that aim to bolster the Trade Union Act's requirement of democratically-elected unions. The FLA and its Participating Companies and Licensees are working to support these efforts.

IV. Right to Strike

Neither the Chinese Constitution nor Chinese law provides for the right to strike. In fact, the right to strike was removed from the Constitution in 1982 on the grounds that the political system had "eradicated problems between the proletariat and enterprise owners." Nevertheless, more than 100,000 strikes and work stoppages reportedly take place each year.

The ILO's Committee on Freedom of Association urged the Chinese government to take the necessary steps to amend its labor law to ensure that workers and their organizations are not punished for exercising the right to strike in defense of their social and economic interests.⁹ The government maintains that the National People's Congress has always tried to promote, establish, and explore labor relations that encourage the 'gradual' improvement of working conditions and working life.

Although the amended Trade Union Law does not provide for the right to strike, it acknowledges that work stoppages and work slowdowns may occur. In such an event, the Trade Union law stipulates that in the event of any work stoppages, the primary

⁹ Complaint against the Government of China presented by the International Confederation of Free Trade Unions (ICFTU), Report No. 316, Case(s) No(s). 1930

goal of the union is to "assist the enterprise or institution in making proper preparations for resuming work and restoring work order as soon as possible" -- regardless of whether or not the workers' demands have been met.

At present, Chinese law provides that the settlement of a collective dispute between the employing unit and its laborers shall take the following course:

1. The dispute shall be resolved by both parties through workplace conciliation.
2. If conciliation fails, the case can then be referred to the labor dispute arbitration committee for arbitration.
3. If one of the parties does not accept the awards of arbitration, it can file a lawsuit with the people's courts, which is a court system that starts at the local level and extends to the provincial and national levels.
4. The local people's government can also call the concerned parties together to coordinate and settle the dispute.

For More Information about Freedom Association in China:

See a) Observations submitted to the ILO by the International Confederation of Free Trade Unions (ICFTU), and b) Information submitted by the Chinese Government to the ILO, which are both published in the Review of Annual Reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2002.

<http://www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE>

See also *Country Reports on Human Rights Practices, 2003*, released by the US State Department, Bureau of Democracy, Human Rights, and Labor, February 2004.

<http://www.state.gov/g/drl/hr/c1470.htm>

2. Freedom of Association in Vietnam

I. Background on Vietnam

Vietnam is a socialist republic of about 80.5 million people. Although the number of people living in poverty has decreased significantly over the last ten years, 37 percent of the population still lives below the national poverty line, and around 25 million are unemployed or underemployed.¹⁰ In 2003 Vietnam was ranked 109th in the United Nations Development Program (UNDP) Human Development Indicator rankings.¹¹

Vietnam is in a transition from a centrally-planned to a market-oriented economy. Much of this shift has depended on an export-led growth strategy that emerged from the *doi moi* ('renovation') reforms of the late 1980s. Following implementation of the Enterprise Law in January 2000, the private sector has flourished in Vietnam, with more than 18,500 new businesses starting in 2001 alone. The domestic private and foreign-invested sectors currently produce almost 60 percent of industrial output.¹²

With a gross domestic product (GDP) of more than US\$35 billion in 2002, the Vietnam was the world's 56th-largest economy, according to the World Bank. During the period from 1998 to 2002, the Asian Development Bank estimates GDP growth at 5.5 percent a year,¹³ which is about the same as India, but much slower than the growth rate of China and Bangladesh during the same period. Exports rose from US\$9.1 billion in 1997 to US\$16.5 billion in 2002, which meant that exports were increasing by an average of more than 12 percent each year.¹⁴

Textiles and apparel production is an important element of Vietnam's export-led growth policy, currently accounting for more than half of the country's manufactured exports and approximately 16 percent of total exports. The industry employs 1.6 million workers, approximately 25 percent of all industrial workers in the country.¹⁵

There are approximately 187 state-owned enterprises, 800 private enterprises, and more than 180 foreign-invested enterprises in the textile and apparel sector. Foreign investment in the sector amounts to more than US\$1.8 billion.¹⁶ The industry is

¹⁰ Based on *World Development Indicators Database*, World Bank, July 2003; *European Commission's Vietnam Country Strategy Paper, 2002-2006*; and *Country Reports on Human Rights Practices, 2002*, released by the Bureau of Democracy, Human Rights and Labor, March 31, 2003; Available at: <http://www.state.gov/g/drl/rls/hrrpt/2002/18270pf.htm> (visited on 5 Feb. 2004).

¹¹ See UNDP Human Development Indicators 2003, available at: http://www.undp.org/hdr2003/indicator/cty_f_VNM.html (visited on 5 Feb. 2004).

¹² This data is based on the Comprehensive Poverty Reduction and Growth Strategy by the Government of Vietnam, Hanoi, May 2002.

¹³ The country's official data show more than 6 percent GDP growth although the IMF estimates less than 5 percent.

¹⁴ *Viet Nam's Economy: Success Story or Weird Dualism?* UNDP, June 2003

¹⁵ See *An Assessment of the Economic Impact of the United States-Vietnam Bilateral Trade Agreement: Annual Economic Report for 2002*, Hanoi: Support for Trade Acceleration (STAR) project, and Central Institute for Economic Management; and *Challenges to Vietnamese firms in the world garment and textile value chain, and the implications for alleviating poverty*, Khalid Nadvi and John Thoburn, EADI Workshop on Clusters and Global Value Chains in the North and the Third World Novara, Italy, October 2003

¹⁶ Figures from the Ministry of Industry, Vietnam Textile & Garment Corporation, Presentation at the WTO FORUM, May 2003

dominated, however, by VINATEX, a conglomerate of state-owned enterprises that accounts for more than one-third of all textile and garment exports.¹⁷

Beginning January 2005, the Multi-Fibre Arrangement¹⁸ will no longer be effective, and World Trade Organization (WTO) members will remove any remaining quota restrictions on textiles and apparel. If Vietnam has not yet become a WTO member, however, it will still be subject to quotas applied by the European Union (EU), Japan, and the United States, which are its most important export markets.

Key Facts: EPZs in Vietnam

- Vietnam's first export processing zone (EPZ) was established in 1991. In 2001, there were 10 EPZs in the country employing 107,000 workers.
- EPZs are covered by the same laws as the rest of the country.

Jean-Pierre Singa Boyenge, *ILO database on EPZ*, ILO, Geneva, 2003.

II. Freedom of Association

Vietnam has ratified three of the eight fundamental conventions of the International Labor Organization,¹⁹ namely the Equal Remuneration Convention (No. 100), Discrimination (Employment and Occupation) Convention (No. 111), and the Worst Forms of Child Labor Convention (No. 182). Vietnam has not ratified either of the two fundamental ILO conventions concerning freedom of association: the Freedom of Association and Protection of the Right to Organize Convention (No. 87) and the Right to Organize Convention (No. 98). Nevertheless, its membership in the ILO requires the government to respect, promote, and realize the right to freedom of association and the right to collective bargaining, which are included among the ILO's fundamental rights.

The Vietnamese Law on Trade Unions of 1990²⁰ defines a trade union as a large political and social organization of the working class, voluntarily established under the leadership of the Vietnamese Communist Party, that represents Vietnamese workers.

The Labor Code of 1994 provides that all workers are entitled to establish and join trade unions, within the framework of the trade union laws of Vietnam. Employers may not prejudice a worker because he/she has formed, joined, or participated in the

¹⁷ See *The Vietnam-U.S. Textile Agreement Debate: Trade Patterns, Interests, and Labor Rights*, Nicole J. Sayres, June 21, 2002

¹⁸ See http://publications.worldbank.org/catalog/content-download?revision_id=1526169 for more information about the MFA.

¹⁹ To date, (February 2004) Vietnam has ratified a total of 16 ILO Conventions, 15 of which are still in force today. For more information on the ILO Conventions ratified by Vietnam, see <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>

²⁰ This law was passed by Legislature VIII of the National Assembly of the Socialist Republic of Vietnam at its 7th Session, on 30 June 1990.

activities of a trade union organization, and may not apply economic pressure or other measures to interfere with the organization and activities of trade unions.

Current Vietnamese Law Dealing with Freedom of Association

- Constitution of 1992
- Labor Code of the Socialist Republic of Vietnam of 23 June 1994 (as amended 2 April 2002)
- Law on Trade Unions of 7 July 1990.
- Decree No. 196-CP of 31 December 1994, detailing and guiding the implementation of a number of articles of the Labor Code providing for collective labor agreements

A. Trade Union Monopoly

Under Vietnamese labor law, the Vietnam General Confederation of Labor (VGCL) is the only legal trade union in Vietnam. The VGCL is required by law and by its articles of association to maintain close relations with the ruling Communist Party. All trade unions are required to join the VGCL. The law also stipulates that government authorities must give their approval before a trade union may be created.²¹

In 2000, there were a total of 79 VGCL affiliates -- 61 provincial/municipal and 18 industrial. These affiliates had membership consisting of 95 percent of the public-sector workers, 90 percent of state-enterprise workers, and 50 percent of private-sector workers.²² According to the Vietnamese government, there were 47,161 enterprises with trade unions in 2000 -- 41,517 in state-owned enterprises and 5,644 in private enterprises.²³

To further the reach of the VGCL, Vietnam's 1994 Labor Code directed the regional branches of the VGCL to establish unions at all new enterprises with more than 10 employees, as well as at existing enterprises that operated without trade unions. Despite the Labor Code, many enterprises in export processing zones (EPZs) still have no union presence. According to the International Confederation of Free Trade Unions (ICFTU), only about 10 percent of workers in EPZs have long-term employment contracts. The remaining workers are reportedly on contracts of between three months and a year, which helps employers avoid the legal requirement to set up unions in enterprises with more than 10 full-time employees.²⁴ For workers in EPZs, this means precarious contracts and limited opportunities to join a union.

²¹ For more information, see Observations submitted to the ILO by the International Confederation of Free Trade Unions (ICFTU) published in *the Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work – 2002*, (p.186).

²² Friedrich-Ebert-Stiftung, Trade Union Situation in Southeast Asia, August 2003.

²³ Information submitted by the Vietnamese Government to the ILO, and published in the *Review of Annual Reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2000* (Pg. 164).

²⁴ See ICFTU *Annual Survey of Violations of Trade Union Rights (2003)*, Vietnam (available at <http://www.icftu.org/displaydocument.asp?Index=991217733&Language=EN> , visited on 5 Feb. 2004)

B. Union Relations with Management

In Vietnam, it is fairly common to find that union representatives are directly appointed by management or that union officers hold management positions in the factory. Most labor experts believe that such intersection of duties compromises the independence of unions from management. In these situations, many workers may not even be aware that the union exist, or may not be familiar with the union's functions or duties.

Different enterprise ownership arrangements seem to result in differences in the performance of unions. A study prepared by the World Bank in 2002, which analyzed unions in different footwear factories, found that there were higher degrees of accountability to workers in the foreign-invested firms, less in the domestic private enterprises, and considerably less in state-owned enterprises. It also highlighted that there was considerable variance in the skills of enterprise-level union leaders to represent workers and bargain with management. The study also determined that communication between workers and management in Vietnamese shoe factories ranged from non-existent to highly-adversarial.²⁵

III. Right to Bargain Collectively

The Vietnamese Labor Code provides for union recognition and collective bargaining. Collective agreements have been signed at 56 percent of state-owned enterprises, 36 percent of foreign-invested enterprises, and 20 percent of private domestic enterprises.²⁶ It is reported, however, that these agreements are often drafted without a negotiation process or consultation with workers and their union representatives.

On April 2, 2002, amendments to 56 articles of the Labor Code of Vietnam were passed. The amended law clarifies a number of issues regarding collective agreements, including: who may sign the agreement; how many copies must be executed; and in what circumstances the collective labor agreement may be deemed void (e.g., if it is signed by unauthorized parties or the provisions are illegal).²⁷

The amended law also provides that labor disputes may be resolved via an internal labor dispute resolution panel formed by the trade union and representatives of the employer or via the courts. The courts are empowered to resolve all disputes that cannot be dealt with internally.

²⁵ See *Corporate Social Responsibility in Vietnam: The athletic shoe industry and labor issues*, World Bank, 2002

²⁶ Information submitted by the Vietnamese Government to the ILO, and published in the *Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work – 2000*, (Pg. 164)

²⁷ The amendments also include provisions restricting overtime and measures to increase the flexibility regarding hiring and firing practices; work permits; overtime payment; payment of bonuses; disciplinary measures; and consequences of illegal termination.

IV. Right to Strike

While Vietnamese labor law recognizes the right to strike, it permits the right to be exercised only after a lengthy pre-strike procedure that requires management and workers to take the case to the enterprise's own labor conciliation council or, in its absence, to the provincial labor arbitration council. This requirement can be problematic, since it is not uncommon to find that neither the enterprise does nor the province in which it is located has a labor conciliation council.

Despite these legal restrictions, strikes do take place – even without fulfilling all pre-strike legal requirements. They are generally tolerated by the authorities.²⁸ Between 1995 and 2000, there were 212 strikes in Ho Chi Minh City alone (177 in the private sector and 35 in state-owned enterprises).²⁹ At least 57 strikes were reported to have taken place during 2002 (37 in foreign-invested enterprises, 15 in domestic private enterprises, and 4 in state-owned firms).³⁰ Although neither the VGCL nor its affiliate unions sanctioned these strikes officially, the local and provincial levels of the VGCL reportedly supported many of them unofficially.³¹

²⁸ Observations submitted to the ILO Office by the International Confederation of Free Trade Unions (ICFTU) published in the *Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work – 2002*, (Pg.186). See *ICFTU Annual Survey of Violations of Trade Union Rights (2003)*, Vietnam (available at <http://www.icftu.org/displaydocument.asp?Index=991217733&Language=EN> , visited on 5 Feb. 2004)

²⁹ Press release, Bangkok ILO Office January 6, 2003: “ILO and Vietnam Launch New Initiative to Improve Industrial Relations and Promote Economic Development: Three-year project funded by US Department of Labor”

³⁰ Friedrich-Ebert-Stiftung, *Trade Union Situation in Southeast Asia*, August 2003

³¹ *Country Reports on Human Rights Practices – 2002* Released by the Bureau of Democracy, Human Rights, and Labor March 31, 2003 (available at: <http://www.state.gov/g/drl/rls/hrrpt/2002/18270pf.htm> visited on 5 Feb. 2004)

3. Freedom of Association in Bangladesh

I. Background on Bangladesh

Bangladesh is one of the poorest and most densely populated countries in the world. Poverty is widespread, affecting almost 50 percent of the population. Despite the government's commitment to eliminating poverty, the absolute number of people in poverty continues to rise. According to United Nations Development Program (UNDP) figures, more than 82 percent of the population was living below US\$2 a day in 2001. In the UNDP Human Development Indicators ranking, Bangladesh is ranked 139th.³² The International Monetary Fund (IMF) and World Bank predict that Bangladesh' gross domestic product (GDP) will grow over the next 5 years at about 4.5 percent each year. This growth rate is well below the 7-8 percent rate that is considered necessary to lift Bangladesh out of severe poverty.³³

Bangladesh has a large apparel industry, which, along with its smaller textile industry, generated 86 percent of total exports in 2001. Bangladesh's major trading partners in textiles and apparel are the European Union and the United States.³⁴ Its apparel industry is mainly privately owned and export oriented, while its textile industry is divided almost equally between state-owned and private enterprises. The textile and apparel sector consists of 3,600 firms with a total workforce of 1.6 to 1.8 million workers, 90 percent of whom are women.³⁵ There is a concentration of manufacturing activity in and around the capital city of Dhaka and a growing garment manufacturing presence in the country's two export processing zones (EPZs).

Between 1991 and 2001, the United States was the largest foreign direct investor in Bangladesh with US\$5.5 billion invested, followed by the United Kingdom at US\$1.6 billion, Malaysia at US\$1.3 billion, and Japan at US\$1.1 billion. Most foreign direct investment in Bangladesh's textile and apparel sector has come from investors attracted by its low labor costs and access to European and US markets. Despite the influence of foreign direct investment, most garment factories are owned by Bangladeshi companies or families.

³² For more information on the rest of HDI indicators, see <http://hdr.undp.org/reports/global/2003/indicator/index.html>

³³ Data from US Department of State, *Background note on Bangladesh*, January 2004, available at: <http://www.state.gov/r/pa/ei/bgn/3452pf.htm>

³⁴ The EU is Bangladesh's biggest trade partner. Bangladesh's principal exports to the EU are textile products (75 percent of the EU imports from Bangladesh). Its apparel exports to the EU enjoyed the competitive advantage of quota-free imports to the European market. All but a small part of Bangladesh's textile and apparel exports go to the EU (50 percent of the 2001 total, or \$2.7 billion) and the United States (42 percent, or \$2.4 billion) For more information, see *EU Strategy paper 2002-2006* available at: http://europa.eu.int/comm/external_relations/bangladesh/intro/index.htm, and USICT *Textiles and Apparel: Assessment of the Competitiveness of Certain Foreign Suppliers to the U.S. Market* (Investigation No. 332-448, sent to USTR in June 2003) Publication 3671 January 2004, available at: <http://hotdocs.usitc.gov/pub3671/profiles.html>

³⁵ All data and figures taken from USICT *Textiles and Apparel: Assessment of the Competitiveness of Certain Foreign Suppliers to the U.S. Market* (Investigation No. 332-448, sent to USTR in June 2003) Publication 3671 January 2004, available at: <http://hotdocs.usitc.gov/pub3671/profiles.html>

The ready-made-garment industry faces the loss of guaranteed markets in the United States and elsewhere when quotas are abolished in January 2005 with the end of the MFA. According to experts, Bangladesh will have to improve productivity and quality and cut lead times considerably if it is to remain competitive in the world market after 2005.³⁶

II. Freedom of Association in Bangladesh

Bangladesh has ratified seven of the eight fundamental International Labor Organization (ILO) conventions. In 1972 Bangladesh ratified both fundamental ILO Conventions concerning freedom of association: Freedom of Association and Protection of the Right to Organize (Convention No. 87, and Right to Organize and Collective Bargaining (Convention 98). When Bangladesh ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), it entered a reservation on articles 7 and 8, which guarantee the right of everyone to form trade unions and join the trade union of their choice.³⁷ The reservation indicated that there would be some limitations placed on workers' freedom of association.

The Constitution of Bangladesh provides for the right to form associations or unions, subject to any "reasonable" restrictions imposed by law in the interests of morality or public order. Bangladeshi labor law requires a workplace to have 30-percent union participation before a union can be registered, and a union may be dissolved if membership falls below this level. Prior to official registration, which signifies state recognition of the trade union, a union may not function. The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) considers that such requirements severely restrict workers' ability to form organizations of their own choosing and has requested that the government amend these provisions.³⁸

According to the International Confederation of Free Trade Unions (ICFTU), workers who try to establish a trade union are not protected by law before they have registered their union. In this environment, employers persecute organizers of fledgling unions, sometimes by violent means or with the help of the police. Moreover, the government takes measures to ensure that the number of participating workers does not increase to the 30-percent minimum level. In many cases, particularly in the textile sector, the government passes the names of workers who apply for union registration on to employers, who dismiss the workers.

In 2002, Bangladesh's total workforce consisted of approximately 58 million workers. Only 1.8 million belonged to unions, most of which were affiliated with political parties.

³⁶ See US Department of State, *Background note on Bangladesh*, January 2004, available at: <http://www.state.gov/r/pa/ei/bgn/3452pf.htm>

³⁷ "The Government of the People's Republic of Bangladesh will apply articles 7 and 8 under the conditions and in conformity with the procedures established in the Constitution and the relevant legislation of Bangladesh". For more information see <http://www.hri.ca/fortherecord1998/documentation/reservations/cescr.htm>

³⁸ See CEACR: Individual Observations concerning Convention No. 87, Published: 1999, 2001, 2002, 2003

There are no reliable labor statistics for the large informal sector, in which the vast majority (75 to 80 percent) of economically active people work.³⁹

Current Bangladeshi Labor Law Dealing with Freedom of Association

- Bangladesh Export Processing Zones Authority Act No. XXXVI of 1980, amended by Ordinance No. XLIX, of 1984 and Ordinance NO. LII of 1988.
- Bangladesh Private Export Processing Zones Act 1996 (Act No. XX of 1996)
- The Industrial Relations Ordinance, 1969 (XXIII of 1969)

III. Right to Bargain Collectively

In Bangladesh, collective bargaining by workers is legal on the condition that their unions are legally registered as collective bargaining agents. Collective bargaining occurs occasionally in large private enterprises, but in areas of high unemployment, workers often do not practice collective bargaining, due to concerns over job security. Collective bargaining in small private enterprises generally does not occur.⁴⁰

IV. Right to Strike

Strikes are common in Bangladesh and are recognized in the Industrial Relations Ordinance of 1969 as a legitimate avenue for addressing unresolved grievances.

Nevertheless, the ILO Committee of Experts has asked the government to amend several provisions of the Industrial Relations Ordinance that restrict workers' right to defend their economic interests through strikes. These provisions include:

- the necessity for three-quarters of the members of a workers' organization to consent to a strike;
- the government's power to prohibit a strike if it lasts more than 30 days or to prohibit a strike at any time if it is considered prejudicial to the national interest; and
- the penalties (which include imprisonment) that may be imposed if workers participate in an industrial action that is deemed by the government to be unlawful.

³⁹ ICFTU *Bangladesh: Annual Survey of Violations of Trade Union Rights (2003)*, available at: <http://www.icftu.org/displaydocument.asp?Index=991217710&Language=EN>

⁴⁰ US Department of State, *Country Reports on Human Rights Practices*, 2003, available at: <http://www.state.gov/g/drl/rls/hrrpt/2003/27944pf.htm>

V. Freedom of Association in Export Processing Zones in Bangladesh

A. *The BEPZA*

In 1980, the Bangladesh Export Processing Zones Authority Act⁴¹ was enacted. It provided for the establishment of the Bangladesh Export Processing Zones Authority, (BEPZA), which is the official arm of the government responsible for the creation, development, operation, management, and control of export processing zones (EPZs). In accordance with this act, the two EPZs operating in Bangladesh were established: Chittagong, which was established in 1983; and Dhaka, which was established in 1993. In response to the demand of local and foreign investors, three additional export processing zones, Comilla, Mongla, and Ishurdi, are under construction at the time of writing this report.

The BEPZA Act provides that the government may exempt an EPZ from as many as 16 laws,⁴² including the Industrial Relations Ordinance (IRO).⁴³ In 1986, the government declared, in accordance with the BEPZA Act, that the IRO was not applicable in the EPZs. The declaration effectively suspended the rights of workers in EPZs to freedom of association and collective bargaining.

The ILO supervisory bodies have reiterated⁴⁴ that workers may not be denied the fundamental right to organize, since it constitutes a serious violation of the Conventions. Therefore, the ILO has urged the government of Bangladesh to take measures to ensure that workers in EPZs are able to exercise their legal rights to organize and bargain collectively.

In turn, the Bangladeshi government claims that the restrictions on trade unions in EPZs "are temporary measures" that are necessary to protect investment and employment. The government justifies its policy by pointing out that workers in these zones enjoy better facilities and service conditions than workers in other industrial sectors.⁴⁵ Some Southeast Asian countries have argued that such temporary restrictions are part of a gradual process to develop conditions in which trade unions can operate freely, but the ILO's Committee of Experts has stated that the right to organize may not be denied even temporarily. Furthermore, in the case of Bangladesh, the ILO argues that the suspension of the right of association cannot be considered a "temporary measure" in view of the fact that it was adopted in 1980.

⁴¹ Bangladesh Export Processing Zones Authority Act No. XXXVI of 1980, amended by Ordinance No. XLIX, of 1984 and Ordinance NO. LII of 1988.

⁴² See section 11A of the Bangladesh Export Processing Zones Authority Act 1980.

⁴³ The Industrial Relations Ordinance, 1969 (XXIII of 1969).

⁴⁴ The Committee of Experts has been urging the Government since 1991 to amend the 1980 Act so as to bring it into conformity with the ILO Conventions.

⁴⁵ See CEACR: Individual Observations concerning Convention No. 87, Published: 1999, 2001, 2002, 2003; and Convention No. 98, Published: 2001, 2002.

Labor Relations in Bangladesh's EPZs

The suspension of Bangladeshi labor law in the country's EPZs created a vacuum in industrial relations in these zones. In an effort to fill that void, the BEPZA enacted two "Instructions," which deal with the terms and conditions of employment and the fixing of minimum wages and other related benefits. The law allows companies operating in the zones to create more favorable conditions for workers than those laid out in the Instructions, but companies must, at a minimum, maintain the standards of the Instructions. The second of these Instructions, which provided for wage increases, has never been implemented.

The Industrial Relations Department (IRD) in each EPZ supervises the Instructions' implementation, which includes the settlement of disputes and handling of grievances. The Bangladeshi government has introduced worker welfare committees to factories in an effort to find alternatives to unions in the EPZs. Many EPZ workers have reported that the IRD is not effective in its enforcement of standards and that worker welfare committees either do not function or are not effective mechanisms for meeting workers' needs or communicating issues to management. Since EPZ workers do not have legal recourse to courts of law regarding violations of workplace rights, they have little or no means by which to redress serious issues that arise in the EPZs.

B. International Influence on Freedom of Association in the Zones

Bangladesh and the United States signed a generalized system of preferences (GSP) agreement in 1991. After it ended in 2001, the United States extended it for another three years on the condition that Bangladesh allow trade unions to operate in the zones. The US government said that if Bangladesh did not end its suspension of labor laws in the EPZs and guarantee freedom of association, it would lose its eligibility for GSP benefits. The Bangladeshi government issued a declaration⁴⁶ in 2001 announcing the withdrawal, from January 1, 2004, of restrictions imposed on trade union rights in the EPZs.

The implementation of this policy has been delayed by the opposition of the largest foreign investors in the Bangladeshi EPZs, who declared that they will pull out if labor unions are allowed to operate in the zones. They voiced concerns about the potential for unions to be corrupt and or unable to adequately represent the interests of the workers in the zone. Some cited statements by EPZ workers who said that they were not interested in joining a union. This policy stalemate led to negotiations between the AFL-CIO and the zone investors that eventually produced a compromise that is currently pending in the Parliament, with strong indications that it will be adopted. That would provide some clarity as to what EPZ enterprises are required to do in the transition period to freedom of association.

⁴⁶ SRO No. 24, Law/2001

4. Freedom of Association in Mexico

I. Background on Mexico

With a Gross Domestic Product (GDP) of over US\$637 billion, Mexico is the world's tenth largest economy and the eighth largest exporter of goods and services. Mexico maintains one of the most open trade policies, exemplified by its Free Trade Agreements with Canada, the United States, and the European Union. The country's proximity to the US has also meant a close economic relationship between the two countries. Approximately 88% of Mexico's exports are bought by the US, accounting for almost a quarter of the country's GDP. Furthermore, Mexico relies heavily on the US for Foreign Direct Investment (FDI). According to official figures from the Mexican Secretariat of Economy, 57.4% of the FDI in the textile and apparel sector came from the US as at September 2003.⁴⁷

Despite the size of its economy, Mexico is currently ranked 55th of 177 countries in the United Nations Development Program's (UNDP) Human Development Indicators ranking.⁴⁸ With a population of over 100 million, 8% earn less than US\$1 a day, and over 24% earn below US\$2.

⁴⁷ In 2000, Mexico was the largest recipient of FDI (US\$22.5 billion) in Latin America. Net U.S. FDI in Mexico in 2002 was US\$7.4 billion. For more information see US Department of State, Background note: Mexico, November 2003

⁴⁸ UNDP Human Development Indicators 2003 (Available at: http://www.undp.org/hdr2003/indicator/cty_f_MEX.html)

In Focus: The Mexican Textile and Apparel Sector

Mexico is no longer achieving the growth in the garment export industry that it enjoyed during the 1990s. In 1996, Mexico became the US's leading textile and apparel supplier in terms of volume. In 2002, it lost that status as China regained its position as the number one supplier to the US in terms of both value and volume.

In 2002, the textile and garment sector accounted for 7.3% of the all manufactured exports, representing a slight decrease from 2001. Nevertheless, the textile and garment sector remained the third largest export sector in the country that year⁴⁹ and maquiladoras continued to be a significant source of employment.

In December 2003, there were close to 3,000 enterprises in Mexico's maquila sector, 22% of which were textile and apparel facilities. Textile and apparel maquilas employed close to 200,000 workers, over 60% of whom were female. Between 1994 and 2000, employment in the maquila sector grew by 120%, however, since then, there have been serious job losses in the sector, particularly among textile and apparel manufacturers.⁵⁰ Labor and trade specialists warn that jobs losses may continue with the end of the Multi-Fibre Arrangements (MFA) in January 2005, since some predict that Mexico will lose production to other textile and apparel producing countries at that point. Others maintain that Mexico's proximity to market and close trade relations with the US may cushion the impact of the MFA's expiry.

II. Freedom of Association in Mexico

A. Corporatist and Independent Unions in Mexico

Mexico's Constitution and its Federal Labor Law, the main labor law in Mexico, recognize workers' right to form and join the trade unions of their choice. Traditionally this has taken two forms: corporatist trade unions and independent trade unions.

Corporatist unions, which are often referred to as "white unions" or *charro* unions, by definition have strong ties to the government or a political party. Their objectives are primarily political; they work to increase the number of union members, and the number of collective bargaining agreements (CBAs) signed, in order to command greater political and economic power. It is common for white unions to have virtually no relationship with their members and to collude with management to improve enterprise profits. In such cases, workers rarely know their representatives and sometimes do not even know that a union exists in the factory.⁵¹ These unions are common in Mexico's legal environment, where "closed shops" and "exclusionary

⁴⁹ POSICION COMPETITIVA DE MEXICO EN EL MERCADO NORTEAMERICANO, 1993-2003: EL SECTOR TEXTIL-CONFECCION Y LA INDUSTRIA MAQUILADORA, CNIME, AC. (See <http://www.cnime.org.mx/>)

⁵⁰ Numbers adapted from statistics compiled by the Consejo Nacional de la Industria de la maquiladora, available at <http://www.cnime.org.mx>, and the INEGI: Instituto Nacional de Estadística, geografía e Informática, available at http://www.stps.gob.mx/01_oficina/05_cgpeet/302_0021.htm#Empleo

⁵¹ ICFTU, Annual Survey of Violations of Trade Union Rights (2003)

clauses” of CBAs (see sidebar) make it possible for white unions to maintain power in many enterprises.

By contrast, independent trade unions in Mexico are not affiliated with the government, and generally are seen as being more representative of their members’ interests. Independent unions tend to have fewer members, but they are often much more active than white unions. Because independent unions are known to push for considerable changes in the workplace, establishing a truly independent union has been difficult. In many cases, suspected leaders have been fired and blacklisted for trying to form a new union.

In Mexico, no prior authorization is required to form a trade union. However, in order to obtain the legal status that is required for collective bargaining or strikes, unions must be registered by *Juntas de Conciliación y Arbitraje* (Mexican conciliation and arbitration boards), which are tripartite committees comprised of representatives of the government, employers, and workers, and who often represent white unions. Independent unions have historically encountered difficulties in trying to register with local *Juntas*, which have been known to delay or even withhold recognition of independent trade unions if they are seen to threaten the status quo.

In Focus: "Closed Shops" and "Exclusionary Clauses"

Although Mexican labor law does not prohibit the existence of more than one union in the workplace, Article 395 of Mexico’s Federal Labor Law allows “closed shops” to be created through collective bargaining agreements. The “exclusionary clauses” of these agreements stipulate that an employer can only recruit workers who are members of a specific trade union, and that employees must remain members of that union to keep their jobs. In practice, this means that as a worker signs a contract to work in the factory, the worker simultaneously becomes a member of the union. This enables union leaders to veto new hires or to force the dismissal of any worker by expelling him/her from the union. These clauses are included in most of the collective bargaining agreements that are signed in Mexico, and help to explain why such a large percentage of workers in Mexican *maquilas* are unionized.

B. Mexico’s Ratification of International Labor Standards

Mexico has ratified six of the eight fundamental International Labor Conventions. It has not ratified the Right to Organize and Collective Bargaining Convention (No. 98), one of the two fundamental ILO Conventions concerning freedom of association. Nevertheless, membership in the International Labor Organization obliges Mexico to respect, promote, and realize in good faith the principles concerning workers’ fundamental rights. Among these are freedom of association and the effective recognition of the right to collective bargaining.

Although the right to form trade unions and the right to strike are preserved in the Mexican Constitution and in the corresponding regulatory laws, Mexico ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR) with a

reservation on Article 8.⁵² Article 8 guarantees everyone the right to form trade unions and join the trade union of his or her choice for the promotion and protection of his or her economic and social interests. In 1999, the UN Committee on Economic Social and Cultural Rights called on the Mexican Government to withdraw this reservation, since it did not correspond with the spirit of the ICESCR or Mexico's international obligations.

III. Right to Bargain Collectively

According to Mexican law, if a registered union exists in a facility, employers are obliged to negotiate and sign a collective bargaining agreement with that union. Article 387 of the Federal Labor Law provides that workers may exercise their right to strike if the employer refuses to negotiate.

White unions frequently sign a "protection contract" with employers, which ensures that neither the union nor management will stand in opposition to the other. As part of the agreement, the employer pays the union a monthly sum, and in turn employers are able to set employment conditions and wages in the facility unilaterally. According to Article 923 of the Federal Labor Law, as long as the negotiated agreement is in force, workers may not hold a strike to demand any conditions that are already regulated in the collective bargaining agreement.

A protection contract also serves to exclude other unions from a factory. The agreement guarantees that if workers try to form another union in the facility, the employer will refuse to have any dealings with that union. In the event that the new union actually manages to form and register with the *Junta*, it must demonstrate that it is more representative of the worker population at the enterprise before being able to obtain bargaining power. In these cases, elections are held. Elections are traditionally held in the open, and workers individually declare their vote orally in front of the official of the *Junta*, the unions, and the employer. As a result, it is not uncommon for management or white unions to use intimidation tactics to influence workers' votes. To prevent against intimidation, secret ballots may be used in accordance with law, but only when all parties agree to take this approach.

IV. Right to Strike

Mexico's Constitution and Federal Labor Law recognize the right to strike. However, striking workers must give five to six days' advance notice, and the *Juntas* have discretionary powers to declare a strike illegal. If deemed illegal, workers must return to work within 24 hours or face dismissal. If the strike is considered legal, the facility must shut down completely. Management officials may not enter the premises until the strike is over, and the company may not hire replacements for striking workers. The Government of Mexico reported that 8,282 strikes were called in 2000. They involved 60,015 workers, but only resulted in 26 legally recognized strikes. The other

⁵² The Government of Mexico accedes to the International Covenant on Economic, Social and Cultural Rights with the understanding that article 8 of the Covenant shall be applied in the Mexican Republic under the conditions and in conformity with the procedure established in the applicable provisions of the Political Constitution of the United Mexican States and the relevant implementing legislation. See <http://www.hri.ca/forthecord1998/documentation/reservations/cescr.htm>

strikes either took place but were ruled illegal under Mexican law, or were called off due in large part to *Junta* decisions or negotiated settlements.

V. Case Studies: Third Party Complaints in Year Two

The Third Party Complaint procedure was established to enable any person or organization to report to the FLA an instance of noncompliance with the FLA Workplace Code of Conduct in production facilities of FLA-affiliated companies. It functions as a safety valve to ensure that there is always recourse for workers in FLA applicable facilities to seek redress to noncompliance.

This section provides case studies of three third party complaints that were dealt with during FLA Year Two. Case studies provide readers with a more detailed understanding of particular factory situations, as well as the larger context in which noncompliance issues arise. They also demonstrate the FLA's approach to third party complaints, and the actions that FLA companies take to remediate various noncompliance issues.

- A. Facility Contracted by Nike in Sri Lanka
- B. Facility Contracted by Lands' End in El Salvador
- C. Facility Contracted by Liz Claiborne in Guatemala

Each of these cases relate to freedom of association, which is the featured Code provision in this year's Public Report. This is no coincidence. The fact that a majority of third party complaints received by the FLA to date have focused on noncompliance with freedom of association strongly indicates that this is a challenging Code provision to monitor and remediate. These and other third party complaints underscore the importance of improved systems for promoting freedom of association throughout the more than 3,000 factories where FLA Standards apply.

**Please note: due to FLA's policy regarding third party complaints, the names of FLA applicable factories are withheld in all third party complaints case studies. More information about the factories can be found in their factory tracking charts, which are posted on the FLA's website.*

A. Third Party Complaint Regarding a Facility Contracted by Nike in Sri Lanka

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).⁵³ 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,⁵⁴ 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 referendum 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.

B. Third Party Complaint Regarding a Facility Contracted by Lands' End in El Salvador

Overview

This report focuses on an apparel factory in an Export Processing Zone (EPZ) in El Salvador, which produces FLA university-licensed goods for Lands' End. The factory was the subject of a third party complaint about allegedly discriminatory practices, which excluded workers from a recently closed, unionized factory from being hired due to their previous union affiliation. In response to the third party complaint, the FLA worked with key actors including Lands' End and the Workers Rights Consortium (WRC), as well as a local union and other labor groups, to remediate the situation. The remediation plan that was finally implemented was the result of considerable collaboration, and aimed to reflect the desires of the workers, as expressed in interviews and through union leaders.

In Context: Freedom of Association in El Salvadoran EPZs

While the Constitution of El Salvador recognizes the right of employers and workers "to associate freely for the defense of their respective interests by establishing associations and trade unions," the unionization rate in maquilas is very low. Union leaders state that there is a general anti-union policy in EPZs, meaning that any attempt to organize is repressed. Tactics that are reportedly used by maquila management to keep unions out of their factories include "blacklists," which contain the names of workers who belong or have belonged to a union. Workers assert that those whose names appear on the lists are not hired by factories, because they are seen as a threat to the status quo.

Case History

In February 2002, union leaders from *Sindicato de Trabajadores de la Industria Textil* (STIT), a trade union for textile factory workers in El Salvador, initiated an organizing campaign in order to obtain enough representation to gain collective bargaining rights in Tainan, a factory that was located in the Salvadoran EPZ of San Bartolo, and owned by the parent company, Tainan Enterprises. Within a month of the union submitting an application to the Ministry of Labor to negotiate a collective bargaining agreement with factory management, it was announced that the factory would close. The closing had serious implications for the 600 workers who were employed there at the time.

According to available information, many of the dismissed Tainan workers tried to apply for jobs at different factories in the San Bartolo EPZ. However, they found that they were consistently asked if they had previously worked at the unionized facility of Tainan, or if they belonged to a union. If workers answered affirmatively, they were refused work. Union leaders, moreover, reported that they were not even able to pass through the gates to the EPZ, because zone guards were given their photos and instructions not to let them enter. Workers who entered the zone clandestinely through other entry points and succeeded in securing jobs were dismissed after several days. While employers alleged that these dismissals were due to low productivity, the workers believed that it was due to their union affiliation.

FLA Involvement

Late in 2002, after conducting an investigation of this situation, the Worker Rights Consortium (WRC) contacted the FLA about allegations of labor standards violations at a factory where Lands' End (an FLA Category B Licensee) sourced collegiate products. Consequently, the FLA reviewed the situation with local sources, and based on information collected, conducted an independent external monitoring (IEM) visit of the facility. The IEM was completed in April 2003 (see FLA factory report). Indeed, discrimination against union-affiliated workers from the closed factory was among the findings cited by the monitor. Following the visit, the FLA, the WRC, and Lands' End met to discuss remediation of the monitors' findings. During the meeting, Lands' End committed to a remediation plan that included the posting of a non-discriminatory hiring policy; efforts to encourage rejected union-affiliated applicants to re-apply for work at the factory; revision of the hiring manager's job description; supervisor and management training; and improvement of occupational health and safety.

Despite efforts to remediate noncompliance issues in the factory, the FLA received a third party complaint about the facility in May 2003 from an NGO in El Salvador that asked to remain anonymous (which is an option under the FLA's third party complaint process). The complaint focused on alleged violations of FLA Code provisions relating to freedom of association and non-discrimination. In response to the complaint, the FLA initiated a factory assessment, in accordance with the FLA's third party complaint procedure, to identify noncompliance issues and to assess management's understanding of the anti-discrimination policy and its implementation. During the assessment, the FLA found that there was a strong likelihood of noncompliance with the FLA Standards listed in the complaint and that such noncompliance had not been remediated following the first FLA monitoring visit in April.

The FLA worked with Lands' End, the contracted factory, local groups, the WRC and the workers to develop a remediation plan that was acceptable to all parties. Moreover, a preventive action plan focused on enabling workers to freely associate, and on ensuring that fair and objective criteria are used in the hiring process.

Remediation

A. Reinstatement of the Workers

Many of the former Tainan workers who had allegedly been subject to discrimination by factory management moved on to other occupations in the months following dismissal, including child care, buying and selling goods on the streets, or washing and cleaning houses. Others worked for several months in restaurants or in other factories, while still others were unemployed or could not be reached. During interviews with the FLA, however, several former Tainan workers reported that they would not be willing to return to the factory, even if policies there changed. They explained that they did not trust management, and/or were concerned that workers who feared that unionization would lead to the factory closing would harass them in the workplace.

Nonetheless, in January 2004, representatives of Lands' End hand-delivered letters to nine of the twenty-one former Tainan workers who had allegedly been subject to discrimination, inviting them to apply for positions at the factory. The letters explained

that they would be given preference over other applicants for available jobs. Lands' End was not able to contact the other workers, but made a second trip to the region in an attempt to find the remaining workers and deliver their invitation letters.

B. Collaboration with Just Garments

During the same period that this third party complaint was in process, representatives from STIT and Tainan Enterprises participated in discussions that led to a final agreement in November 2002. As part of the agreement, Tainan Enterprises provided the resources to open a facility that would employ the dismissed Tainan workers, and as a result, Just Garments was formed in April 2003.

During interviews and other exchanges, former Tainan workers claimed that they wanted to be able to work in a factory with a non-hostile environment where rights are respected and where they can freely associate. They wanted to work at Just Garments. Therefore, instead of reinstatement at the factory or other compensation, the workers requested through their union that Lands' End invest in Just Garments. In response, in May 2004, Lands' End committed to provide cloth and machinery to the factory. It also committed to provide technical assistance in product quality, identification of full-package production requirements, export/duty issues, and customs procedures.

Preventive Action Plan

In consultation with Lands' End, the factory management revised its non-discrimination policy, which highlights employees' right to freedom of association, including affiliation or non-affiliation to the association of their choosing. Lands' End also reviewed the factory application and hiring processes, and states that changes have been made to the procedures to ensure fairness for applicants.

Furthermore, during the month of April 2004, factory management staff and workers received training on the updated employee handbook, which included legal awareness training on workers' legal rights. Lands' End also met with the Labor Minister, the Maquila Association, and the EPZ Authority to communicate Lands' End's policy supporting freedom of association and non-discrimination, and called on them to respect these basic rights.

As of writing this report, Lands' End reports that it has completed the remediation and preventive action plans that are detailed in the factory tracking chart. While the FLA verified that portions of the remediation plan have been completed, it has still to verify completion of other remediation and preventive actions at the factory. The FLA will use the tracking chart to report its verification activities in coming months.

C. Third Party Complaint Regarding a Facility Contracted by Liz Claiborne in Guatemala

Overview

This report relates to two apparel factories in Guatemala, which are owned and managed by the same Korean company and have had a longstanding contract with Liz Claiborne. In July 2003, the first collective bargaining agreement in Guatemala's maquila sector was signed by management and union representatives from these factories, which had been the subject of interventions by various parties. The agreement is a unique product of collaboration among workers, a local monitoring group, local government, factory owners/management, international unions, a multinational corporation, and the Fair Labor Association. While the case remains open for the FLA due to the need for continued improvements at the factory, it is viewed internationally as an example of multi-stakeholder engagement leading to workplace change.

Legal and Economic Context

Guatemala's Constitution and Labor Code recognize workers' freedom of association and their right to organize free from discrimination or abuse. In addition, the Labor Code contains provisions that protect the right of workers to choose not to join or to withdraw from a union. Accordingly, the Labor Code of Guatemala provides that a union must have at least 20 members in order to be able to register, and at least represent 25 percent of the workforce to bargain collectively. In this context, it took the founding members of the two unions in this case over a year to organize and obtain their legal recognition.

In Guatemala, the apparel sector is the greatest generator of formal employment. There are currently an estimated 250 maquilas that employ approximately 120,000 workers. Apart from those involved in this case, there is another union that is currently in the process of registering in the maquila sector. Other than these isolated cases, however, there are no other active unions in Guatemala's maquila sector.

Background

This third party complaint actually focuses on two separate factory locations that are owned and managed by the same company. The factories are located in an industrial zone approximately 30 km from Guatemala City and are owned by a Korean company with Korean management, who oversee middle managers from Guatemala. Given seasonal variation, at any given point 30 to 70 percent of the production in these factories is for Liz Claiborne and the remaining percentage is for other American brands. As of April 2002, the first factory had a total of 709 workers, 605 women (85%) and 104 men (15%). Also as of April 2002, the other factory had a total of 382 workers, 315 women (82%) and 67 men (18%).

In July 2001, workers at both factory locations filed an application for official recognition of their unions to the Guatemalan Ministry of Labor,⁵⁵ and on the same day informed factory management of the union. By registering the union, they obtained a "job protection" court order, which protects against dismissal of union affiliates.

According to worker accounts, an anti-union campaign began almost immediately. Anti-union workers and factory management were reported to have circulated propaganda against the trade union, slandered officials, threatened to place trade union officials on blacklists, pressured workers to sign documents expressing opposition to the union, and alarmed the workforce that the company would close. In the following month, non-union workers reportedly assaulted and made death threats against union members which resulted in the resignation of some union members out of fear for their safety.

As reports of heightened tensions at the factories continued, COVERCO, a local monitoring group contracted by Liz Claiborne, made frequent visits to the facility. During a visit in July, a monitor witnessed an assault on union leaders and communicated concern about the conditions in the facility. Police and representatives from MINUGUA, the UN mission in Guatemala also visited the facilities, but had little success in assuaging tensions there. Both the managers and the police said they were unable to ensure union members' safety.

In an effort to influence a change in atmosphere at the factories, Liz Claiborne officials distributed a letter in Spanish to workers in both factories. The company declared that they would continue to source from the facilities if workers respected the right of all workers to join, or not join a union; and if the situation was resolved in a peaceful manner.

In light of ongoing tensions and international attention, the Guatemalan government actively sought a resolution of the situation. On July 25, 2001, it hosted a meeting between the union and factory management which sought to "improve observance of national law and international labor standards in the country." At the meeting, factory management was instructed to resolve the situation, with a warning that it could lose its export license if problems persisted. The factories' parent company and the Ministry of Labour signed an agreement which included the company's commitment to:

1. respect the right to freedom of association;
2. reinstate all union members in their posts, preserving their seniority in the company, and allow them to carry out their union activities without interference;
3. allow representatives from the MINUGUA, the UN mission in Guatemala to enter plant premises to ensure that the agreement was being observed; and
4. apply disciplinary measures against persons responsible for labor rights violations.

The parent company also made a public statement clarifying that it would not close the factories as a result of the union's establishment.

⁵⁵ Both unions were affiliated with the Trade Union Federation of Food, Agricultural and Allied Workers (FESTRAS), which has been assisting and advising them. Currently the unions are not part of the Federation.

Unfortunately, this agreement did not resolve the issues at the Guatemalan factories. Over the course of the next year, problems continued to arise. The factories became well-known in the international labor context and activists often referred to them to exemplify the need for improvements in the promotion of labor rights in Guatemala more broadly. These groups included the International Textile, Garment and Leather Workers' Federation (ITGLWF), which filed a complaint with the International Labor Organization (ILO) in early 2002 alleging numerous anti-trade union actions in Guatemala. The AFL-CIO, in December 2002, filed a petition before the United States Trade Representative requesting that Guatemala be excluded from the GSP for continuing to "systematically violate workers' rights to freedom of association and collective bargaining." In 2003, international activists sought to use negotiations around the Central American Free Trade Agreement (CAFTA) as a vehicle for improvements in labor rights in Guatemala.

In this context, the Ministries of Labor and of Economic Affairs worked to exhibit the government's enforcement of labor standards. One approach they took was declaring that, regardless of the economic and social consequences, a number of maquilas would have their export licenses withdrawn due to their repeated violations of the Labor Code. A list of 37 noncompliant factories was released and circulated among factories, and the two sister Guatemalan facilities were the first to be targeted. Observers speculate that this was due in large part to the factories' high international profile.

The Third Party Complaint in Process

In June 2003, the FLA received a third party complaint from union members alleging violations of the Code of Conduct. After investigating the situation, FLA President Aurret van Heerden met with the Minister of Labor to determine ways in which 1) the fourteen-year-old business could remain open; 2) 1,000 workers could retain their jobs; and 3) the only two maquila unions in Guatemala could freely exist. It became clear that the only way that the factory could avoid losing its export license was to sign a collective agreement with the union before the end of June.

Several rounds of meetings and negotiations were held between the union and factory management. Given the magnitude of the situation, the president of the company that owned the facilities traveled from Korea to participate in the meetings and had a considerable impact on the outcome of negotiations. The FLA played an active role in facilitating the discussions, which were also attended by representatives from Liz Claiborne, the Guatemalan government, the monitoring group COVERCO, local unions, the US Embassy, the Minister of Labor, and the General Secretary of the ITGLWF.

On July 3, 2003, the negotiations started in an atmosphere of mutual respect. Discussions over the course of the next week were intense, but with continuous mediation and advice, management and the union completed negotiations on July 10. On that day, they signed a Collective Bargaining Agreement (CBA) and a Declaration of Principles, which was a commitment by the factory to respect freedom of association and the collective bargaining agreement. It states that "the companies and the unions will rely on the FLA as a communication channel in the short term to help establish mutual trust between the companies and the unions, and to promote mutual respect for the parties." The group also discussed a Plan of Action for the Declaration of Principles, as required by the Ministry of Labor.

Beginning July 15 2003, COVERCO began to monitor compliance with the Declaration of Principles and the collective bargaining agreement on behalf of the FLA. Union leaders indicated that the climate in the factory improved significantly after they signed the collective bargaining agreement, and that the threats and antagonism they had experienced had stopped. At the beginning, there was a sense of greater trust and good faith, and the communication channels operated more effectively than they had before negotiations. The workers also saw positive outcomes of the collective bargaining process when they started to receive the benefits that the union had negotiated.

Despite initial positive results, the situation became increasingly tense. Both sides felt that the CBA was not being respected. Ongoing monitoring of the situation was also interrupted this past year when factory management denied access to COVERCO, complaining that the monitoring group was only listening to union leaders. In May of 2004, the FLA received another Third Party Complaint from the unions stating that factory management was violating the CBA.

Ongoing Remediation

Since the first complaint was received, Liz Claiborne worked with union representatives and factory management based in Korea and Guatemala to remediate the ongoing challenges that exist in the factory. During the past year, serious concerns arose regarding adherence to the CBA, resolution of previous problems, and productivity of workers. For instance, union leaders reported that no disciplinary measures were taken against workers that committed the abuses against them in July 2001. In addition, both management and union members have reported inappropriate language and disrespectful responses to complaints filed through the factory's internal system.

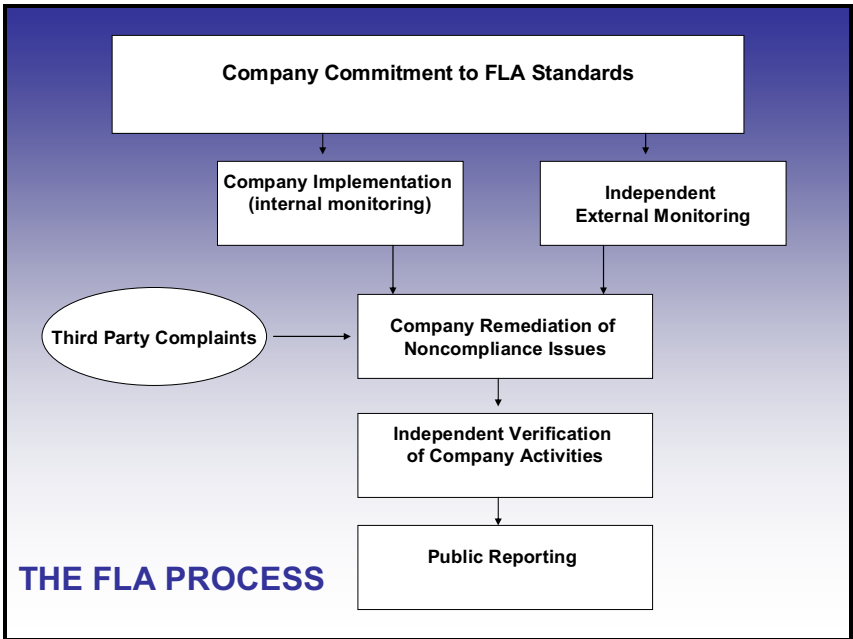
Despite these challenges, there have been changes that indicate progress in recent months. In July of 2004, there were management changes both in Korea and Guatemala. Restructuring in Guatemala included the creation of a position solely responsible for labor/management relations and, as of August 18, 2004, management and unions had reportedly been meeting almost everyday since July 5, 2004 to review and resolve issues. These meetings indicate an atmosphere of increased collaboration between management and unions. Liz Claiborne's compliance team has pledged to support continued engagement that is positive and productive.

The FLA will continue to monitor the situation and report publicly on actions taken in response to these complaints.

VI. FLA PROCESS

The Fair Labor Association combines the efforts of participating companies, licensees, universities, and consumer, labor and human rights groups to promote adherence to international labor standards and improve working conditions worldwide. The FLA works to increase and sustain factory compliance with its Workplace Code of Conduct, which is based on the core labor standards of the International Labor Organization (ILO).

The FLA Process is a system that enables companies to effectively implement the Code, and includes the means by which to verify and report on compliance.



Commitment to FLA Standards

The FLA process begins with companies making a formal commitment to the FLA’s standards and system. Companies agree to adopt the FLA Workplace Code of Conduct in the manufacture of their products. This marks the first step. The “continuous-improvement approach” of the FLA program then requires companies to **put principle into practice**.

Monitoring and Verification

Participation in the FLA requires companies to establish an internal compliance program throughout their supply chains. This includes internal monitoring and remediation of instances of non-compliance, and various activities to ensure that the Code is implemented. The FLA staff conducts onsite visits to company headquarters and field offices to evaluate a company’s progress in establishing systems to uphold its FLA commitments.

The FLA relies on independent external monitoring (IEM) to verify companies' activities to comply with their obligations. The FLA selects independent external monitors, accredited by the FLA, to perform unannounced inspection visits of companies' supplier factories around the world. The FLA does not give companies or factories advance notice of the time or location of these monitoring visits.

Remediation and Follow-up

When an IEM visit uncovers Code noncompliance, the FLA process requires companies to work with their suppliers to remediate the issue within 60 days, at which point the company must report the correction of the issue back to the FLA.

The FLA then evaluates the company's remediation plan, advises it on necessary actions, collects evidence, and, when deemed necessary by FLA staff, conducts a follow-up visit to verify that the company has taken the necessary steps to remediate the noncompliance issue.

Public Reporting

Finally, the FLA publishes both a Public Report that describes FLA companies' compliance efforts as well as tracking charts, which contain detailed information about the IEM findings from each monitored factory, its remediation plan, and the status of actions called for in the plan. The annual Public Report and the tracking charts can be found on the FLA website.

Third Party Complaints

The FLA has also established a third party complaint mechanism. It provides an additional reporting channel and a further check on systematic monitoring efforts. Any person or group that uncovers instances of noncompliance in a company's supplier facility can file a third-party complaint with the FLA.

Special Projects

To help address systemic noncompliance issues that have proven particularly difficult to remediate on a factory-by-factory basis, the FLA has developed a number of special projects to complement the regular FLA compliance program. The goal of these projects is to involve a wide range of interested parties in testing and innovating new strategies to improve Code compliance. Current special efforts include: a pilot project focusing on hours of work in China; a project exploring strategic monitoring and the relationship between improved labor-relations systems and Code compliance; and the Central America project, which addresses blacklisting and anti-union activities in the maquiladora sector.

END