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FLA Response to the MSN Report on Hermosa

June 21, 2007

At the request of the Fair Labor Association (FLA), the Maquila Solidarity Network (MSN) prepared a report on the sudden closure of the Hermosa factory in El Salvador in May 2005 and problems relating to its closure. The report is entitled “Emergency Assistance, Redress and Prevention in the Hermosa Manufacturing Case.” MSN’s report analyzes the complex set of issues surrounding the sudden closure of the subject factory in El Salvador and the extensive violations of workers’ rights that ensued and continue to this day. It also makes recommendations to the FLA and stakeholders to continue to address the injustices suffered by the former Hermosa workers and to prevent similar situations from occurring in the future.

The FLA appreciates the work of MSN in conducting the research and preparing this report and recommendations and takes these concerns very seriously. The FLA shares MSN’s view that the Hermosa workers have not been treated appropriately and that the local factory owners did not fulfill their obligations to provide severance pension and social security payments to their workers.

MSN’s report raises questions about the nature of brand obligations when monitoring fails to uncover fraud in a supplier’s system for making social security and other benefit payments on behalf of workers. The FLA is committed to strengthened monitoring to detect and prevent fraud and to an ongoing discussion with its constituents that focuses on practical, implementable procedures that brands should take.

At the FLA’s recent Board meeting in the Dominican Republic, members of the FLA Board and a wider range of stakeholders spent considerable time discussing the MSN report, including with its authors. One of the issues on which there was wide consensus was a shared concern that the government of El Salvador has failed to protect the rights of these workers or to give them work-related benefits to which they are entitled under Salvadoran law. The FLA will continue to put pressure on the government of El Salvador to meet its responsibilities in this case.

We appreciate MSN’s recognition of steps the FLA has already taken as well as actions some of its stakeholders have taken to address the concerns at Hermosa. The FLA remains committed to seeking a resolution to the complex issues surrounding Hermosa that recognizes that the affected workers have been treated poorly and that their rights need to be enforced and protected.

Recommendations Regarding Hermosa

The report documents the extensive outreach in which FLA-affiliated companies sourcing from Hermosa have engaged with the government of El Salvador to ensure that the rights of Hermosa workers embodied in domestic law are realized. Similarly, the report documents the establishment by the FLA in December 2006 of an emergency fund to benefit former Hermosa workers who remained unemployed and the distribution of the monies collected by the fund.

Consistent with the MSN recommendations, FLA-affiliated companies and the FLA have taken and continue to take actions to promote reemployment of former Hermosa workers and continue to press the government of El Salvador to meet its obligations to workers. As noted above, we do not believe that the government of El Salvador has fulfilled its legal obligations, and we will continue to press it to do so. FLA-affiliated companies and the FLA have met with U.S. government officials to request the use of their best offices with the government of El Salvador so that the rights of former Hermosa workers can be realized. We will continue to meet with them to seek a proper resolution of these issues.

In addition to conducting training on nondiscriminatory hiring practices for factories that supply FLA companies, the FLA is conducting an assessment of the policies and practices of the factories and is considering engaging an ombudsperson to investigate allegations of discrimination against former Hermosa workers. The FLA is also prepared to seek additional voluntary contributions to the emergency fund and make an additional distribution of funds to former Hermosa workers should such contributions become available.

Preventative Recommendations

Effective action on behalf of former Hermosa workers is critical. It is equally critical to prevent similar situations from arising in the context of future potential plant closures in El Salvador and elsewhere. The FLA has already begun to revise its audit instrument and monitoring benchmarks to ensure that factories that produce for FLA-affiliated companies not only deduct, and record in their books, social security and other legally-mandated contributions, but that such payments are actually received by the relevant agencies. The FLA has developed—and urged its affiliated companies to follow—retrenchment guidelines that are consistent with ILO conventions and recommendations. On some points these guidelines go beyond international best practices on the subject.

Some of the MSN's preventative recommendations require the consensus and participation of a broader set of actors than just FLA-affiliated companies. In this regard, the FLA supports the exploration of innovative mechanisms to make it possible for suppliers to meet severance pay obligations; these include the establishment of escrow accounts or contractual hold backs or of a system of annual severance payments that respects seniority rights and addresses the concern that workers will be in greatest need of severance payments when the jobs cease to exist. The FLA also supports the work of the MFA Forum group on Managing Responsible Transitions and will urge its affiliated companies to adopt the guidelines emerging from that work, including those dealing with facilitating alternative employment.