GUIDANCE FOR APPAREL BRANDS

POLICIES AND ACTIONS TO ENSURE RESPECT FOR FREEDOM OF ASSOCIATION IN MEXICO

MEXICO COMMITTEE OF THE AMERICAS GROUP

INTRODUCTION

This document outlines policies and actions that, if adopted and implemented by apparel brands, will help ensure respect for freedom of association in their Mexican supplier factories. It is the product of a series of in-depth discussions among brands, trade union organizations and labour rights NGOs that participate in the Mexico Committee, as well as consultation with Mexican labour rights experts. It was developed to provide guidance to companies participating in the Mexico Committee, as well as other companies whose products are made in Mexico, on individual and collaborative policies and actions that will contribute to overcoming institutional barriers to freedom of association and collective bargaining in Mexico as well as prevent and remediate non-compliance with these fundamental human rights.

The Mexico Committee of the Americas Group is a multi-stakeholder forum made up of several international apparel brands that source products from Mexico, the Fair Labor Association (FLA), the Maquila Solidarity Network and the Global Union IndustriALL. Participating brands include: adidas Group, American Eagle Outfitters, Gap Inc., Levi Strauss & Co., New Balance, Nike, Patagonia, PUMA, PVH Corporation, and The Walt Disney Company.

WHAT IS A PROTECTION CONTRACT?

A major barrier to freedom of association and the right to bargain collectively in Mexico is the existence of "employer protection contracts." Protection contracts are simulated collective bargaining agreements (CBAs) signed by employers and unrepresentative unions or individuals that inhibit workers from joining or forming a union or other worker organization of their free choice. Some of the most common characteristics of a protection contract are:

- It is often signed before any worker is hired and/or without the knowledge or consent of the workers covered by the CBA.
- It either mirrors what is already provided for by law or provides no significant benefits or rights beyond what is legally required.
- Few, if any, improvements are made to the provisions of the CBA when bi-annual negotiations for revisions to the agreement take place, or no such negotiations take place.
- There is often a lack of transparency concerning the union or individual that signs the CBA and concerning the provisions of the agreement itself.
- Workers are often not informed of who represents them in bi-annual negotiations for revisions to the CBA, and/or are not given the opportunity to ratify the revised agreement.
- The CBA sometimes includes an "exclusion clause"[1] that requires the employer to dismiss any worker who is expelled from or resigns from the union.
- In some cases, no union dues are being deducted from workers' pay.

In June 2015, the International Labour Organization (ILO) Committee on Application of Standards made a series of recommendations to the Mexican government to bring it into compliance with ILO Convention 87, which has been ratified by Mexico. One of those recommendations was that legislative reforms be made "that would prevent the registration of trade unions that cannot demonstrate the support of the majority of the workers they intend to represent, by means of a democratic election process – so-called protection unions."

[1] While an exclusion clause for dismissal is now illegal, an "inclusion clause" requiring that only workers that are members of the union that holds title to the collective bargaining agreement be hired is still legal and is also common in protection contracts, as well as in legitimate collective bargaining agreements.

A PROACTIVE AND COLLABORATIVE APPROACH TO PROTECTION CONTRACTS

Whether the signing of a protection contract is legal under Mexico's Federal Labour Law is a subject of debate in Mexico and within the Mexico Committee. The fact that protection contracts are often recognized by Conciliation and Arbitration Boards as legal documents further complicates the issue. However, there is agreement among all members of the Mexico Committee that protection contracts are a major barrier to freedom of association (FOA) and the right to bargain collectively, and that individual and collaborative action is needed to prevent and mitigate their negative impacts.

Taken together, the preventive measures, transparency requirements and recommendations for corrective action outlined below will help apparel companies sourcing from Mexico to ensure that their suppliers are respecting workers' right to freedom of association and to bargain collectively.

Preventive measures:

- In addition to auditing for noncompliance with their global freedom of association (FOA) policies and transparency requirements, brands should also audit for the existence of protection contracts in their Mexican supplier factories.
- Training is needed for brand and third-party auditors on FOA in Mexico and how to identify protection contracts.
- Where there is no CBA, suppliers should be discouraged from signing a protection contract.
- Brands should communicate their FOA policies and their expectations regarding freedom of association to all their Mexican suppliers, including new suppliers when entering into a business relationship.
- Suppliers should adopt and effectively communicate their own freedom of association policies to all workers, including newly hired worker and management personnel (see "Supplier FOA Policy: Key Elements and Model Policy" on page 6).
- Brands should create secure mechanisms for workers to make anonymous complaints and advocate for and assist suppliers to create effective grievance procedures at the factory level. Such systems should be based on affordable communication methods and technologies most commonly used by the workers.
- Brands should consult with relevant Mexican civil society organizations and/or labour rights experts on FOA issues in Mexico and appropriate corrective action to address them.

Transparency:

- At the time of hire, workers should receive copies of their collective bargaining agreement (CBA), as well as the date of the signing and name of the union that signed it. All workers should also receive any revisions made to the CBA, and be made aware of all other agreements between the employer and the union that holds title to the CBA.
- Workers should be informed of the names of their union, the federation to which it is affiliated, and the union representatives and how to contact them.
- Whenever possible, workers should receive prior notice of negotiations of a first CBA, revisions to the CBA, and any other agreements between the employer and the union that affect their terms and conditions of employment, as well as the names of the worker representatives in such negotiations.
- Where the union or individual holding title to the CBA fails to provide workers the above information, the employer should provide it to all workers.

WHERE THE UNION OR INDIVIDUAL HOLDING TITLE TO THE CBA FAILS TO PROVIDE WORKERS THE ABOVE INFORMATION, THE EMPLOYER SHOULD PROVIDE IT TO ALL WORKERS.

FOA violations and corrective action:

- Workers should not be dismissed, blacklisted or otherwise penalized or discriminated against in hiring, promotions, demotions or transfers for present or past union activities or for ceasing to be a member of the union holding title to the CBA and/or for attempting to form or join another organization.
- Where there is more than one union or union in formation in a workplace, the employer should remain neutral and refrain from doing anything that would place one organization at an advantage or disadvantage in relation to the other(s), including in bargaining rights elections (recuentos), and should do nothing to delay, influence or prejudice the results of such elections.
- The employer should not interfere in the internal affairs of trade unions, for instance through bribes, inducements or other means to encourage workers to renounce their union affiliation, or the use of financial or other means to place a union under its control.
- Where freedom of association (FOA) violations are identified, brands should require that the supplier effectively communicate to all workers that the employer will respect their right to join or form a union of their free choice and to bargain collectively, and will not dismiss or discriminate against any worker for exercising that right.
- Beyond the initial statement to workers, the supplier must adopt an acceptable policy on FOA and effectively communicate that policy, verbally and in writing, to all workers and management personnel, including all new employees (see “Supplier FOA Policy: Key Elements and Model Policy” on page 6).

THE EMPLOYER SHOULD REMAIN NEUTRAL AND REFRAIN FROM DOING ANYTHING THAT WOULD PLACE ONE ORGANIZATION AT AN ADVANTAGE OR DISADVANTAGE IN RELATION TO THE OTHER.

- If workers have not yet received the most recent copy of their CBA, it should be distributed to all workers.
- Where there is an illegal exclusion clause for dismissal in the CBA, the employer must bring the CBA into compliance with the law at the earliest opportunity.
- If any worker is dismissed due to the existence of an exclusion clause in a CBA and/or for attempting to join or form another union or temporary coalition of workers, the worker should be immediately reinstated in their former position with full back pay.
- Where there are serious violations of freedom of association (FOA) and/or the right to bargain collectively, such as the dismissal of workers for attempting to join or form a union or temporary coalition of workers, and management exhibits a lack of understanding of the principle of freedom of association, corrective action should include participation of senior management and management personnel in freedom of association training. If feasible, separate FOA training should also be provided to workers. In cases where such face-to-face training for workers is not possible, other communication tools should be utilized to ensure workers are aware of their right to freedom of association and to bargain collectively.

WHERE THERE IS AN ILLEGAL EXCLUSION CLAUSE FOR DISMISSAL IN THE CBA, THE EMPLOYER MUST BRING THE CBA INTO COMPLIANCE WITH THE LAW AT THE EARLIEST OPPORTUNITY.

SUPPLIER FOA POLICY: KEY ELEMENTS AND MODEL POLICY

This list of key elements of a Supplier Freedom of Association (FOA) Policy is meant to provide guidance to Mexican suppliers of international apparel brands on what should be included in their own FOA policies. Some suppliers may prefer to adopt the Model Supplier FOA Policy below or use it as a reference, rather than developing their own policy.

A Supplier FOA Policy should include:

- A commitment to the principle of freedom of association and the right to bargain collectively, as expressed in international instruments and Mexican labour law.
- A clearly expressed commitment to the right of all workers employed by the company to join or form a union or other worker organization of their free choice.
- A commitment to transparency so that all workers employed by the company have sufficient information to understand and exercise their rights.
- A commitment to refrain from and not tolerate any acts of discrimination, intimidation, reprisal or threats of reprisal against workers for exercising their associational and collective bargaining rights.
- A commitment to respect the right of worker representatives to freely carry out their legitimate union functions.
- A commitment to remain neutral and to refrain from any acts that favour one union over another in cases where there is more than one union or union in formation in the factory.

A Supplier FOA Policy is meant to provide assurances to both brand buyers and workers employed in the supplier's factories that the employer and their management personnel will respect workers' right to freedom of association and to bargain collectively. Once developed and adopted, a Supplier FOA Policy should be effectively communicated to all workers, including newly hired workers, along with their employment contract and collective bargaining agreement (CBA), if there is a CBA, and be made available to all brand buyers and social compliance auditors at the time of factory audits.

MODEL SUPPLIER FOA POLICY

[Name of Supplier] supports the right of workers, under internationally recognized core labour standards and Mexico's Federal Labour Law, to freedom of association and collective bargaining. We respect the right of all workers employed by our company without distinction to join or form a union or other worker organization of their free choice and to bargain collectively, and we will ensure that they are provided sufficient information to understand and freely exercise their associational and collective bargaining rights. [Name of company] does not practice or tolerate threats, intimidation, reprisals or discrimination of any kind against workers or worker representatives because of their past or present union membership, sympathies or activities. We respect the right of union representatives to freely conduct their legitimate union activities. If there is more than one union established or in the process of formation in one of our workplaces, our company and management personnel will remain neutral and will not promote or favour one union over another.