

December 23, 2009

TransFair USA
1500 Broadway, Suite 400
Oakland, CA 94612

Dear TransFair,

As a group of organizations concerned with labor rights, wages, and working conditions in the apparel industry, we have welcomed the opportunity to comment on and discuss TransFair USA's proposed draft standards for Fair Trade Certified Apparel & Home Goods products over the past several months. We are glad that you are now soliciting public comment on the latest draft standards and hope that the comments you receive will prove useful. We would like to take advantage of this opportunity to provide further comments in writing in order to add clarity to our previous telephone conversations and in-person meetings, and supplement our verbal comments with analysis and resources for further research. Our goal is to help establish the highest possible standards that committed apparel companies can implement within a reasonable period of time, and to help grow the fair trade apparel market to the benefit of growing numbers of workers worldwide.

We applaud several improvements in version five of *Obligation of CMT Facilities*. But we also retain serious concerns about some of the proposed standards. Many of these concerns we expressed previously in a letter of May 5, 2009. Most significantly, the proposed standards may allow fair trade certification of products made by workers who are paid poverty wages and perhaps denied meaningful freedom of association. It also appears that factories can be allowed to compel employees to work excessive overtime hours in unsafe conditions and commit other 'non-major' transgressions as long as they are in "substantial compliance." Finally, it is unclear to us whether or not buyers are required—or only encouraged—to maintain just and fair purchasing practices, and whether or not buyers can lose the right to use the fair trade label if they violate responsible sourcing principles.

Based on our analysis of the latest standards for Fair Trade Certified Apparel & Home Goods products and our knowledge of other initiatives towards high-road apparel production, we worry that the proposed standards for apparel to bear a fair trade label will fall short of today's best industry practices. We grant that—if there is a robust enforcement program—workers producing under these fair trade standards will enjoy working conditions better than the industry norm. But going just beyond the norm—sweatshop and, at times, near slave-labor conditions—should not be enough. To be the purveyor of a label that would claim to signify a high mark in terms of labor standards, wages, and working conditions, TransFair must truly push the envelope of reform, and only bestow its blessing on workplaces that provide an environment of dignity and respect, and ensure workers a meaningful voice and a decent standard of living, consistent with the very best industry practices. There is significant risk in a fair trade label that fails to meet this bar. It can mislead consumers, lower the aspirations of major companies, and, in effect, push down standards from the top. This program does not occur in a vacuum. Other efforts that are

attempting to implement good labor standards may face more obstacles if TransFair sets a low bar.

We understand that the challenge is great and the obstacles many. But we urge you not to fight ghosts—the implicit limits set by the Fair Labeling Organization, the invisible boundaries established by the larger apparel brands. The real life challenges are big enough, and if you meet those successfully the ghosts too will disappear. If you aim high, TransFair will be able to lead an industry into a new reality of dignity and justice for workers.

We would be proud to openly support real fair trade standards, and happy to promote the pioneering companies that seek to realize those standards for workers. But the present draft standards are not yet strong enough that we can offer our public endorsement.

The rest of this letter outlines our view of the positive steps TransFair has taken, especially in recent months, and develops our criticisms concerning areas where further improvement is needed. We believe that TransFair must continue to improve the standards and that the changes we propose will be both meaningful to workers and feasible for businesses.

Noteworthy Positive Aspects of the Draft Standards

Incorporating more than cut and sew in a supply chain

We appreciate the effort, and recognize the challenge, to develop a system of garment production in which the rights of workers are fully respected at the beginning and end of the supply chain.

Scope and depth

The proposed standards are both comprehensive and, with 92 separate provisions, detailed enough to be the basis for a credible monitoring program assuming the elements outlined below are addressed.

Freedom of association

This section in particular is significantly improved. We agree that management must not just affirm freedom of association in theory, but take proactive steps to ensure a democratically elected workers' organization. As discussed later, such organizations also must be independent of company management. Strict enforcement of provisions outlined in the section on Freedom of Association and Collective Bargaining (Section 7) can lead to very positive changes for workers.

Wages

We support the insertion of the concept of a “living wage” (Section 10.10) as defined by market basket analyses. Yet, as described below, TransFair must go much further in defining a credible methodology and time-bound benchmarks to ensure the concept indeed becomes a reality for workers.

Purchasing practices

The idea that “buyers commit to sourcing plans that include longer-term business relationships and prices that help factories consistently uphold labor standards and provide lasting benefits to workers” (Introduction) is critical. Without such commitments from buyers sustainable improvements in working conditions are not likely. We also appreciate the Responsible Sourcing Principles that buyers must adopt. We suggest that TransFair creates benchmarks of progression towards responsible sourcing in order to measure progress and hold buyers accountable.

Concerns

Legal Minimum Wage Is Inadequate as the Only Binding Wage Floor

As TransFair itself recognizes, fair trade certified garments cannot be made by workers who are paid poverty wages; they must be paid living wages.

Yet, the only binding wage standard in the current proposal is the statutory minimum wage.¹ In virtually all apparel producing countries, the statutory minimum wage does not come close to meeting the basic needs of workers and their families: it is a poverty wage, and sometimes a stark poverty wage. According to an analysis by scholars in the United Kingdom, the legal minimum wage for garment workers is worth an average of about 30% of a living wage. For example, it is 22% of a living wage in Brazil, 34% in El Salvador, and 35% in Bangladesh.² Increases in the statutory minimum wage rarely match overall inflation or even the rate of increase in the cost of essential consumer goods. For example, in Bangladesh the legal minimum wage remained constant during 1994-2006 while prices increased significantly, cutting workers already dismal purchasing power by half. The recent worldwide food crisis has doubled the price of rice—a basic staple for many garment workers—but, in most countries, the minimum wage has not been raised accordingly.

TransFair has taken a positive first step by endorsing the concept of a living wage, and indicating, in principle, that CMT facilities will need to increase wages gradually to a living wage.³ However, TransFair must also establish detailed steps for implementation, including specific indicators and criteria of compliance, similar to the details TransFair provides for many other labor compliance areas.

We need to know how and by whom living wages will be calculated, how quickly factories will be required to pay living wages, and exactly how this will be achieved in different

¹ According to *Obligation of CMT Facilities*, Section 10.1, “Workers shall be paid at a minimum the legal wage, or the wage as determined by a Collective Bargaining Agreement, for all hours worked.”

² Miller, Doug and Peter Williams, “What price a living wage? Implementation issues in the quest for decent wages in the global apparel sector. *Global Social Policy* 2009; 9; 99. Abstract available here: <http://gsp.sagepub.com/cgi/content/abstract/9/1/99>

³ According to *Obligation of CMT Facilities*, Section 10.10, “Wages shall be gradually increased to ‘living wage’ levels above the regional average and official minimum.”

circumstances. Without such details there is no accountability, and without accountability the living wage requirement cannot be a meaningful and binding obligation on buyers and their suppliers. Instead, the fair trade label—which may advertise “additional funds” to workers who made the product—may in fact serve to conceal poverty wages from public scrutiny, creating an additional obstacle to achieving a true living wage.

Is a Living Wage Out of Reach?

We understand that as a rule major apparel brands are reluctant to commit to a living wage, and CMT facilities cannot pay a living wage without the commitment of brands to pay fair and adequate prices for products. This is a challenge, but it is one that TransFair can and must successfully meet.

The living wage concept has been universally accepted for decades. In 1948, the United Nations’ Universal Declaration of Human Rights established the principle that workers should be paid a wage sufficient to meet their and their family’s basic needs. It states: “Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.” Even earlier, both the Treaty of Versailles and the International Labor Organization Constitution endorsed “the provision of an adequate living wage” as a condition for global peace and harmony.⁴

Today, the payment of a living wage is a demand of virtually every significant labor rights organization campaigning to improve conditions in the apparel industry. For example, in October 2009, a coalition of more than fifty-five unions and NGOs from fourteen countries in Asia, Europe, and North America launched a campaign to establish an “Asia Floor Wage.” The Campaign proposes living wage levels for Bangladesh, Cambodia, China, India, Indonesia, Sri Lanka, and Thailand based on a system for calculating purchasing power parity for these countries. In each country, the formula yields wages at least twice as high as the legal minimum wage and, in some cases, far higher. For the many organizations involved in the Campaign, these are minimally acceptable wage levels for all apparel companies, not just for high road or fair trade companies.⁵

Fortunately, there is increasing empirical evidence that the goal of living wages for workers in the apparel industry can in fact be realized. Current industry best practices include the following examples:

- In the Dominican Republic, an apparel factory will be launched at the beginning of 2010 that will manufacture sportswear for U.S. universities while paying a living wage approximately 350% higher than the prevailing industry wage. Located in the town of Villa Altigracia, the factory is the product of an agreement between the Knights Apparel (a U.S. apparel firm that is a top university licensee), the Worker Rights Consortium, the Dominican labor federation, Fedotrazonas, and the apparel company JayJay Mills. The factory will pay a living wage of

⁴ Treaty of Versailles, Part XIII, sec. 1; ILO Constitution, Preamble.

⁵ See Battacharjee et. al, “Raising the Floor: the Movement for a Living Wage in Asia,”: New Labor Forum 18(3): 72-81, Fall 2009.

at least 19,666 pesos per month, based on a market basket study conducted by the WRC.⁶

- In Sri Lanka, collegiate licensed apparel is being manufactured at a living wage for the U.S. apparel company, School House. The factory supplying School House pays workers a monthly wage of 16,750 rupees, or almost 250% of the prevailing wage according to the apparel industry labor rights organization, ALARM.⁷ This wage is slightly higher than the Asia Floor Wage for Sri Lanka.
- Dem Collective, a small Swedish brand, operates a factory in the city of Kadawatha, outside Colombo, Sri Lanka, producing T-shirts, jeans, and women's wear. After consulting with workers, Dem Collective agreed on a wage of 11,000 rupies per month in 2004 compared to the then 3,200 rupies legal minimum wage (6,700 rupies now). Since that time workers have negotiated raises several times, including four times in 2008 alone. The average work week is 37.5 hours. Dem Collective uses organic and FLO-certified fair trade cotton produced by Agrocel in India. Dem Collective is reportedly seeking to promote living wages also for Agrocel workers.⁸
- Stormberg AS is a midsized Norwegian outdoor apparel company producing in China. Living wage is a "primary goal" which contractors and subcontractors must meet "within a reasonable timeframe."⁹ Stormberg has increased the price it pays suppliers in order to make possible the payment of living wages and has adjusted its production scheduling to provide predictable orders in order to avoid excessive hours of overtime work.¹⁰ However, according to a recent publicly available audit report of four Stormberg contractors in the City of Ningbo, Zhejiang province, workers have not benefited from the higher purchase price, which factories have used to pay for other cost increases such as higher raw material prices. While workers earn more than the legal minimum wage, they earn a living wage only by working overtime, a 60-hour work week. The auditor proposes, and claims the suppliers would welcome, price increases that are dedicated exclusively to the workers. In a factory that produces exclusively for Stormberg, the auditor calculates, increasing the piece price of an average garment product by 1RMB (about \$0.15) and passing that 1 RMB to workers

⁶ Worker Rights Consortium, "Living Wage Estimate for Dominican Republic," October 2008. Available on request.

⁷ Riyad Riffa, "Asia Wage," Lanka Business Online, September 30, 2009, <http://www.lbo.lk/fullstory.php?nid=353071923>

⁸ Syr klær for lommerusk/Syr kläder för småpengar, 2009 report by Norwegian labor rights organization, Framtiden i våre hender, not yet available in English. More information is available at <http://www.demcollective.com/>, or from co-owner, Annika Axelsson, annika@demcollective.com.

⁹ Stormberg's Code of Conduct is available at <https://www.stormberg.no/Global/Dokument%20linker%20p%C3%A5%20nettsiden/Microsoft%20Word%20-%20Codes%20of%20Conduct%20for%20Stormberg%202009.pdf>. The company defines a living wage as follows: "Wages and benefits paid must enable workers and their dependents to meet their needs for nutritious food and clean water, shelter, clothes, education, health care and transport, as well as allowing for some discretionary income."

¹⁰ Syr klær for lommerusk/Syr kläder för småpengar, *ibid*.

would close the gap between workers' actual wages and a living wage.¹¹

- On a global level, the pharmaceutical company Novartis reports it has already implemented a living wage policy for all 93,000 of its direct employees around the world. Novartis contracted with Business for Social Responsibility to develop a system for estimating living wages in dozens of developing countries using a purchasing power parity model. They used an alternative system for OECD countries, starting with a market basket figure set by the U.S. Department of Agriculture.¹²
- We should not ignore U.S. apparel companies committed to paying a living wage to apparel workers in the United States. Despite many years of outsourcing, 200,000 sewing jobs remain in the United States, some of which provide for higher than the legal minimum wage as prescribed by collective bargaining contracts. Many of the apparel companies providing decent wages and working conditions to U.S. workers can be found in the *Shop with a Conscience* Consumer Guide.¹³
- Finally, the UK-based Ethical Trading Initiative (ETI), which includes Tesco, Asda, Gap, and Marks and Spencer, has indicated it will shortly be reporting on several different factories in Bangladesh where wages have been at least doubled thanks to member engagement with supplier factories. The ETI Base Code calls for wages “enough to meet basic needs and to provide some discretionary income.”¹⁴

These stories of small, mid-sized, and large companies, producing different types of garments and other products in a variety of regions demonstrate that the payment of living wages is possible, and convince us that the fair trade label can and must require living wage implementation within a reasonable period of time.¹⁵

The Role of a Fair Trade Premium in Lifting Workers Out of Poverty

We agree that the Fair Trade Premium may be used to augment wages to living wages. The premium may be especially important in a worker-owned cooperative that produces exclusively

¹¹Wei, Chen, “Developing Long Term Partnership throughout the Crisis: Report of the Fifth Round of Labour Inspection in China for Stormberg,” July 2009, Oslo. Available at:

<https://www.stormberg.no/Documents/Inspection%20Report%20for%20Stormberg-2009.pdf>

Wei estimates a living wage in Ningbo to be 1400 RMB per month; the Asia Floor Wage for China is 1,600 RMB per month.

¹²Novartis Corporation, “Implementing a Living Wage Globally: The Novartis Approach,”

http://www.corporatecitizenship.novartis.com/downloads/cc-in-action/Living_Wage.pdf Novartis’ starting point for global living calculations in developing countries is a well respected living wage study for workers in Mexico by Mark Brenner of the University of Massachusetts at Amherst. See Mark Brenner, “Can We Define a Global Living Wage? The Example of Mexico” (Amherst, MA: Political Economy Research Institute, 2004).

¹³See <http://www.sweatfree.org/shoppingguide>

¹⁴The ETI Base Code can be found here: http://www.ethicaltrade.org/Z/lib/base/code_en.shtml

¹⁵This is not an exhaustive list of apparel factories paying living wages or approaching living wages. We would be happy to research additional examples if helpful to TransFair.

for fair trade buyers and where structures and processes for democratic decision making are established. But we have concerns about the proper implementation of the Fair Trade Premium for wage labor in an apparel factory.

According to *Obligation of CMT Facilities*, Section 5.1, brands will be required to pay 1% (if the wages are already at living wage levels) and up to 10% (if the wages are closer to the legal minimum wage) of the factory-door price (known as the “FOB” price) into a specially designated Fair Trade Premium fund. If we understand correctly, a Fair Trade Committee in which workers constitute the majority but managers also are present, will then decide on the allocation of the Premium. It could be distributed as a cash bonus to workers to augment their regular salaries, or it could be used for different kinds of social investment.

There appear to be two problems with this system (both of which are of less significance in worker-owned cooperatives as described above). The first problem is simply economics. Assuming the Premium is used to augment wages, workers will receive negligible increases unless the buyer represents all or almost all of the factory’s production since the benefits of the Premium will be spread out across the entire workforce. Since buyers are not mandated to pool purchasing power to participating CMT facilities in order to increase the volume and proportion of fair production, it is likely that these facilities will also produce for traditional buyers that do not offer a Premium. We can assume that they will continue to produce mostly for buyers that, consistent with normal industry practice, demand low prices and quick deliveries on last minute orders to the detriment of workers’ wages and working conditions.¹⁶

Moreover, even if a brand, or collection of brands, pays the 10% of the FOB value of the order on 100% of the factory’s production the resulting Premium might still not be enough to raise wages, set at the legal minimum, to a living wage level. At the factory level, labor typically accounts for about 10% of FOB costs.¹⁷ Thus, the payment of funds equivalent to an additional 10% of FOB for every order a factory receives could, in the best case scenario, double workers’ wages. However, workers’ wages typically must be tripled to move from the legal minimum to the living wage level.

Finally, we question whether managers should have any voice at all in determining the distribution of the Fair Trade Premium, a fund that is, after all, designed for the benefit of workers, not the owners and the managers. Even if managers constitute the minority of the Fair Trade Committee they will exercise undue influence in the committee as they hold power over workers in day-to-day work situations. It is not difficult to imagine that, under such circumstances, workers will decide “democratically” to allocate the Premium towards the uses

¹⁶ One case in point: A U.S. brand that markets what it calls “fair trade apparel” pays a fair trade premium to workers in a Bangladeshi factory, but has not committed to increasing wages or buying a majority of the products this factory makes. The brand reportedly represents less than 5% of the factory’s business and their Fair Trade Premium, by the company’s admission, has not resulted in any meaningful increase to workers’ average take home earnings.

¹⁷ Worker Rights Consortium, “The Impact of Substantial Labor Cost Increases on Apparel Retail Prices,” November 10, 2005; Pollin, Robert, James Heintz, and Justine Burns. 2002. “Global Apparel Production and Sweatshop Labor: Can Raising Retail Prices Finance Living Wages?” Political Economy Research Institute, University of Massachusetts at Amherst, Working Paper Series, Number 19.

managers think best. Indeed, according to the Latin American Coordinating Body of Banana Workers and Agro-Industrial Unions (COLSIBA) – whose members have extensive experience with FLO fair trade certification in plantation agriculture – this is exactly what happens on fair trade certified banana plantations in Colombia and elsewhere. COLSIBA describes the result of “employer influence in the decision-making process” as follows: “The premium is...spent on making improvements to plantation infrastructure rather than on benefits for workers... Housing, education, healthcare, community development and recreation programs all end up being a utopian dream that is not being fulfilled.”¹⁸

Purchasing Practices

As indicated above, buyers have an indispensable role in ensuring living wages and decent working conditions. Prices, production scheduling, and business commitments directly impact wages and working conditions. TransFair recognizes that buyers share responsibility for labor violations and that “inaccurate forecasting, last-minute product changes and short lead times can negatively impact working conditions.” Yet, in version four of *Obligation of Buyers*, TransFair’s language on purchasing practices is brief, general, and unenforceable: “Buyers and suppliers should make best efforts to work together to implement purchasing practices that will enable the supplier to meet the Standard...”¹⁹ By contrast, the requirements on CMT facilities are usually phrased in mandatory terms, not “should” and “best effort,” but “shall,” “must,” and “are prohibited from.” If buyers truly share responsibility for labor violations with their suppliers, the language should be appropriately parallel. The details of buyers’ obligations must be developed and the buyers must also agree to comply with certain specific requirements in order to implement fair purchasing practices.

Requiring buyers to adopt Responsible Sourcing Principles is a step in the right direction. Some of these principles are specific enough to evaluate compliance, for example: “avoid pulling business from factory where labor issues are found without...attempts to remediate;” and “repeat and/or increase Fair Trade orders at suppliers where Fair Trade products have been sourced in the past.” The “commitment to grow” the fair trade program over time is also measurable, yet buyers are only required to “increase” fair trade sales as a percentage of total sales without specifying by how much, and only if there is adequate consumer demand. It is easy to imagine a large apparel brand maintaining an infinitesimal share of fair trade production over an extended period of time, yet receiving disproportionate positive publicity. Importantly, key principles such as “fair pricing” are undefined and therefore not measurable.

Freedom of Association

Freedom of Association and the right to collective bargaining are enabling rights that help workers protect many other rights in the workplace. Enforcement of freedom of association and collective bargaining rights is critical to a fair trade system.

¹⁸ COLSIBA, “Recommendations from Workshop on Fair Trade Organized by COLSIBA in San Jose, Costa Rica, 11th-12th March, 2009,” March 25, 2009. Available on request.

¹⁹ See Pilot Program for Fair Trade Certified Apparel & Home Goods: Obligation of Buyers, Version 4.

We have two concerns. As previously discussed, the Fair Trade Committee appears to play a clear and useful role within democratic, cooperative workplaces where there is no management distinct from the workers. However, the role and impact of Fair Trade Committees in management-controlled workplaces need to be carefully considered. There is a risk that Fair Trade Committees with management involvement will undermine workers' efforts to balance management's power with independent worker organizations. As an alternative base of power within the workplace, the Fair Trade Committees may diminish the influence of genuine worker organizations and perhaps supplant their role.

Fair trade certified sports ball factories and stitching centers in Pakistan may be a case in point. According to initial International Labor Rights Forum research, most workers at both factories and stitching centers are unaware of the Fair Trade Committees and do not believe that they have a voice in the committee or in the workplace. Even in factories with unions, workers feared speaking against the management and believed they would be fired if they requested contract negotiations to begin. Though the balls carry the fair trade label workers seem not to be empowered in any meaningful sense.²⁰

Though not created for the same purpose, Fair Trade Committees are structurally similar to *solidarista* organizations—created by and controlled in whole or in part by management—which the International Labor Organization has criticized as impediments to freedom of association. *Solidarismo* is among the most potent strategies yet devised to prevent the emergence of democratic unions in Central America.²¹ There is a genuine risk in the present program that Fair Trade Committees, contrary to intentions, will also impede the freedom of association.

Our second concern pertains to enforcement of the freedom of association. We would like to call TransFair's attention to recent criticism of FLO-Cert's record in protecting freedom of association on plantations in Central and South America. According to COLSIBA, the Latin American organization of unions in agro-export industries quoted above: "Even though FLO stresses the concept of 'freedom of association' as one of its generic criteria, in practice the right to organize in trade unions is not respected in many cases: since the mid-1990s not a single new trade union has been born as a result of FLO's initiative.... What is shameful about this situation is that plantation workers still have to put up with miserable conditions. Worse is the fact that we have had to make dozens of complaints about anti-union behavior in the farms of FLO-certified producers." COLSIBA has also pointed to violations of principles of freedom of association at FLO-certified plantations in Peru, Ecuador, Costa Rica, and Colombia.²²

Without a carefully developed independent monitoring system and meaningful and effective collaboration with global labor movement organizations, there is reason to believe that the problems in enforcement of workers' associational rights on plantations or in other fair trade

²⁰ Data is available on request to the International Labor Rights Forum.

²¹ "Solidarismo: Anti-Unionism in Sheep's Clothing," *Revista Envio* (Univ. Centroamericana), available at <http://www.envio.org.ni/articulo/2910>; Bananalink UK, '*Solidarismo*' or *Union-busting Costa Rica-style* (2003), available at http://www.banalink.org.uk/1.5/images/stories/resources/solidarismo_leaflet_final_english.pdf.

²² COLSIBA, "Recommendations from Workshop on Fair Trade Organized by COLSIBA in San Jose, Costa Rica, 11th-12th March, 2009," March 25, 2009. Available on request from SweatFree Communities.

certified supply chains will be replicated in the apparel industry. In the worst case scenario, these problems could be even more pronounced in the apparel industry where the unionization rate is even lower and where employers use more sophisticated strategies to conceal labor violations to monitors, such as falsifying books and coaching or intimidating employees to lie to monitors.

TransFair calls for “credible, independent organizations” to monitor compliance with fair trade standards. We understand that questions relating to monitoring standards and methodology, auditor transparency, and the role of local unions and NGOs in the monitoring process will be addressed in forthcoming documents on certification and auditor standards. Because of the prevalence of weak social auditing in the garment industry and the scarcity of monitoring organizations independent from the industry²³ we urge TransFair to carefully define the meaning of “independence” and the criteria for credible monitoring methodology.²⁴

Finally, public disclosure of factory names and locations is integral to a credible enforcement system. Public awareness of the factories that benefit from the fair trade label enables and encourages public scrutiny and corporate accountability and creates disincentives for the misuse of the label. Public disclosure creates the possibility of independent reports reaching the ear of TransFair. More sources of information about CMT facilities makes for more effective enforcement and better code compliance. Such transparency is now a routine element of the social responsibility programs of numerous major apparel corporations, including Nike and Adidas, and of the entire U.S. collegiate licensed apparel business. It is unclear, however, if public disclosure of participating factories is part of TransFair’s system of enforcement.

Labeling Criteria

As far as we understand, buyers may not use the fair trade label if they fail to meet select “Major Criteria” of certification. Such Major Criteria—we count twelve of them—include establishing a Fair Trade Committee with majority worker membership, no physical abuse of workers, payment of the legal minimum wage, and no use of slave labor. However, TransFair has established ninety-two fair trade standards, including both major and, by implication, minor ones. CMT facilities must be in “substantial compliance” with the eighty standards that are not defined as

²³ For a critique of social auditing in the garment industry, see Looking for a Quick Fix: How weak social auditing is keeping workers in sweatshops, Clean Clothes Campaign, November, 2005, available at: <http://www.cleanclothes.org/component/content/article/7-publications/1166-looking-for-a-quick-fix>

²⁴ The Commonwealth of Pennsylvania has defined “independent monitor” as follows: “Independent Monitor (IM)’ means a supplier with expertise in monitoring factory working conditions that is not owned or controlled in whole or in part by, nor obtains any revenue from, any Contractor, Subcontractor, Production Facility, or any other entity that derives its primary income from the sale of any product or service covered by the sweatfree code of conduct.” The Commonwealth further specifies the following principles of monitoring: “Unannounced factory visits; full access to factories; cooperation with local organizations that have the trust of workers to conduct worker interviews and other aspects of the investigation; confidential and thorough worker interviews in the local language without managers and supervisors present and in settings that allow free dialogue.” TransFair should consider defining similar criteria and principles of independent monitoring. See: Sweatfree Monitoring Services Contract, available at <http://www.emarketplace.state.pa.us/FileDownload.aspx?file=4400005735\ContractFile.pdf>

“Major Criteria.” It is not clear what “substantial” means. Can fair trade garments be made in factories that require pregnancy testing, impose excessive production quotas and forced overtime, and expose workers to glues and solvents that endanger their health? These are all non-major fair trade criteria according to TransFair’s definitions, but common violations in the apparel industry. How many of these minor criteria must be violated before a buyer loses its right to use the fair trade label? How long can factories take to correct such problems before they become decertified?

Recommendations

In view of the forgoing, we recommend that TransFair make the following changes to its proposed certification program:

- Include payment of a living wage as a binding requirement on participating companies. Such a requirement must be a Major Criteria for obtaining and maintaining fair trade certification. We suggest defining a process whereby factories are required to meet certain benchmarks in progression to a living wage where buyers cannot use the fair trade label until wages have approached a living wage level, and CMT facilities cannot remain certified unless they reach the living wage level within the specified time frame and maintain at least that wage level over time. Living wage levels should be calculated on the basis of a market basket study for the region in question carried out by academic or other experts with a credible track record of work in this field. The formula used for calculation should be consistent with accepted methodology regarding family size, number of dependents, and other assumptions required for the estimation.²⁵ We cannot support a fair trade apparel program that does not include a credible living wage standard and implementation plan.
- Define acceptable purchasing practices with the same level of specificity as other fair trade standards, and make compliance with acceptable purchasing standards mandatory on buyers. TransFair should assume an active role in a process where contractors and buyers negotiate fair prices that will pay for compliance, delivery schedules that allow for humane working hours, and production volumes that ensure that the Fair Trade Premium will be a meaningful contribution to workers.
- Revise the process for the management of the Fair Trade Premium to ensure it cannot supplant or undermine the role of legitimate labor unions. Legitimate labor unions representing workers at the factory should have a formal role vis-avis the Fair Trade Committees or so-called “joint bodies.” The worker side of the committee should be comprised of unionized workers elected by an assembly convened by the union(s). TransFair should collaborate with the global union federation with jurisdiction over the apparel sector, the International Textile, Garment, and Leather Workers Federation (ITGLWF), and seek input from other established labor organizations in developing

²⁵ The SA 8000 standard, which assumes two full time breadwinners in each family, is an example of a formula that lacks credibility. Other formulas and market basket analyses cited in this letter, for example those of the Asia Floor Wage Campaign, Mark Brenner, Worker Rights Consortium, and Miller and Williams appear credible to us.

further details of the management of the Fair Trade Premium. TransFair should take into account the recommendations of unions that have experience with FLO certification. For example, in communication with FLO, COLSIBA has proposed ways to structure the administration of the Fair Trade Premium so as not to undermine the exercise of freedom of association. COLSIBA's recommendations for plantation agriculture can also be of benefit to the development of fair trade in the apparel sector.

- In defining independent monitoring criteria and methodology, ensure monitor independence from the apparel industry and consider the definitions employed by the Commonwealth of Pennsylvania as a starting point.
- Further define the “substantial compliance” requirement for certification to ensure that buyers cannot be awarded a fair trade label while producing in virtual sweatshop conditions without rapid remediation of violations.

Given the dismal sweatshop reality that prevails in the global apparel industry, TransFair must be prepared to make significant interventions in the normal business practices of this sector. Firm living wage requirements, meaningful freedom of association rights for workers, a more active role for TransFair in facilitating price and volume negotiations between buyers and factories, and the highest levels of program transparency could make TransFair's Fair Trade Certified Apparel & Home Goods products program a genuinely credible standard among the many other initiatives that have unfortunately failed to solve the sweatshop problem. We would be proud to publicly support such a program. However, we do not support the present draft standards, and we could not publicly promote the program as it is currently conceived.

We look forward to your response and continued productive discussions.

Sincerely,

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