



May 2, 2011

**Final Report:
Third Party Complaint Regarding Choishin, Guatemala**

Complaint

On August 4, 2008, the Fair Labor Association (FLA) received a Third Party Complaint (3PC) from the Sindicato de Trabajadores de Industria Textil Choishin (SITRACHOI), a union representing workers at Industria Textil Choishin S.A. ("Choishin"), a factory located in Villa Nueva, Guatemala. In the complaint, SITRACHOI alleged a number of labor violations, among them the illegal termination of employment contracts and nonpayment of severance.

FLA notified Liz Claiborne, Inc., the FLA-affiliated company sourcing from Choishin, of the initiation of the Third Party Complaint. Liz Claiborne, Inc. opted to waive Step 2 of the FLA Third Party Complaint Process – which would have allowed the company a 45-day period to assess whether the alleged noncompliance occurred. Instead, Liz Claiborne, Inc. agreed for the case to move immediately to Step 3 of the Third Party Complaint Process.¹

Assessment by FLA

At Step 3 of the 3PC process, FLA commissioned A & L Group Inc. (ALGI), a labor compliance firm accredited by the FLA, to conduct an independent investigation at Choishin. Specifically, ALGI was to assess: 1) compliance with the Collective Bargaining Agreement with respect to closure of the factory and retrenchment; 2) business rationale for the closure of the factory and evaluation of closure procedures; 3) severance payment owed to workers; and 4) any Guatemalan laws that may have been violated by the factory.

ALGI conducted its independent investigation during September 8-10, 2008.² ALGI carried out a document review at the factory and in addition met with several stakeholders, among them officials of the Guatemalan Ministry of Labor, representatives of the trade union SITRACHOI, representatives of the union federation Federación Sindical de Trabajadores de la Alimentación, Agroindustria y Similares (FESTRAS),

¹ More information about the steps involved in a Third Party Complaint is given in the FLA Charter, available at: <http://www.fairlabor.org/about/charter>.

² See full independent investigation report by ALGI in [English](#) or [Spanish](#).

non-unionized workers at Choishin, Choishin management, and representatives of Guatemala's Apparel and Textile Industry Commission (VESTEX).

In summary form, the findings of ALGI's independent investigation are as follows:

1. Collective Bargaining Agreement (CBA). According to ALGI, the factory did not violate the CBA in closing the factory. ALGI stated that it had reviewed the CBA and determined that it did not have clauses or provisions regarding the possibility of the closure of the factory.³

2. Rationale for Closure. ALGI examined a document filed by the General Manager of Choishin with the Sixth Labor and Social Welfare Court on August 21, 2008, stating that the closure of the factory (on July 18, 2008) was the result of substantial losses incurred by the factory in the last few years, combined with the global economic crisis. The factory provided information showing substantial losses in 2007 and 2008. However, ALGI was unable to verify the accuracy of the information as the factory had not filed tax returns with the Government of Guatemala for those two years. ALGI could not substantiate the actual reason(s) for the closure of the factory based on the documentation provided by Choishin management; the factory did not provide documentation substantiating its claims regarding transportation costs, poor production quality, etc.

3. Severance Payments. According to ALGI's report, Choishin employed 667 workers on July 18, 2008, the day the factory closed. Between the date of the closure of the factory and the investigation by ALGI (September 8-10), 542 workers had accepted Choishin's offer of benefits at the rate of 100% payment of entitlements⁴ and 52% payment of severance. According to company officials, the payment of severance at 52% of the due amount was necessitated by the weak economic condition of the factory and limited available funds to make the benefit payments.

ALGI estimated that payment of benefits at the rate of 100% for both entitlements and severance to the remaining 125 workers (who had not negotiated with the company and demanded 100% payment of entitlements and severance) would amount to 1,609,319 Quetzales (Q) or US\$216,699.60. ALGI also concluded that Choishin's calculation of maternity and breastfeeding payments were incorrect and advised Choishin management.

4. Other Legal Requirements/Violations. ALGI noted that the closure of the factory ran counter to a warning issued by a Labor and Social Welfare Court Judge on February 1, 2008, to the effect that termination of contracts had to be authorized by that court.

Subsequent Developments

³ According to COVERCO, the CBA included a clause whereby the factory had to inform the union about its production plans. Therefore, COVERCO believes that the factory violated the CBA when the union was not informed of the pending closure of the factory.

⁴ Entitlements include vacation, Christmas bonus, 14th month bonus, and maternity and breastfeeding payments (if applicable).

After the factory closed, FLA-affiliated company Liz Claiborne, Inc. continued to press Choishin's owners to make payments of entitlements and severance to the former Choishin workers (125 workers, according to the ALGI report) who had not accepted management's settlement offer of July-September 2008. FLA was subsequently informed that Choishin management had engaged in negotiations with the affected workers and their claims had been settled.

FLA engaged independent monitoring organization COVERCO, based in Guatemala, to verify whether in fact the workers who had not received entitlement and severance payments they were due at the time of the ALGI report had subsequently received such payments. In conducting its investigation, COVERCO relied on available documentation regarding payment of entitlement and severance as well as meetings with the Secretary General of SITRACHOI, a sub-Inspector from the Ministry of Labor, and several former Choishin workers.

In summary form, COVERCO's findings⁵ were:

1. Payment of Entitlements and Severance: The company and a group of 108 workers who had filed a successful suit embargoing the land where the factory was located entered into negotiations, with the company offering to pay 100% of entitlements and severance in return for workers agreeing to lift the embargo. The workers agreed to lift the embargo and entered into negotiations with the company on payment of entitlements and severance. Although a formal agreement was not reached, 102 of the workers went along with a settlement proposed by the factory and accepted checks issued by the company presumably paying in full for entitlements and severance. However, six of the workers – leaders of the union SITRACHOI – rejected the checks and sought to continue negotiations with the company. Subsequently, the six individuals claimed the checks from the government entity that was holding them in escrow. It is worth noting that the list of workers who had not received their payments provided by the union to COVERCO consisted of 108 individuals rather than the 125 mentioned in the ALGI report, putting into question the accuracy of the earlier number of workers.

2. Disagreements over the Amount of Entitlements and Severance Paid: COVERCO was informed by SITRACHOI officials that the 108 workers were dissatisfied with the amount of entitlements plus severance received from the company, as they deemed them to be too low. According to COVERCO, the workers filed a claim with the Ministry of Labor but the Ministry informed the workers in November 2008 that it was unable to process the case because the factory had been closed and there was no entity to be served with the legal papers. Further, according to a Ministry of Labor official, the negotiation between the factory and workers over entitlements and severance took place before the Labor Court and therefore the Ministry of Labor did not have the relevant documentation.

3. COVERCO's Assessment of Amount of Entitlements and Severance Paid: COVERCO attempted to assess how the amount of entitlements and severance paid to the 108 former SITRACHOI workers compared with those required by Guatemalan law.

⁵ View the COVERCO report and appendices in [English](#) or [Spanish](#).

COVERCO was not able to make the calculations, however, as it did not have the necessary information - such as the salary received by the workers and their tenure with the factory – to do so. Based on partial information (the pay calculation for one worker), COVERCO concluded that the factory did not calculate the entitlements and severance correctly, as it did not base the calculations of entitlements on the actual monthly salary received by workers; and did not consider in the calculation of severance the pro-rated amount of Christmas bonus and Bonus 14 due workers, but was unable to quantify the differences.

Based on information provided by SITRACHOI, COVERCO calculated that the group of 108 workers received from the factory entitlements and severance in the amount of 1,473,275 Q (USD\$193,584).

Settlement of Cases of Cimatextiles Union Leaders

Shortly after Choishin's sister factory Cimatextiles, S.A., ended its operations in Guatemala in early September 2007, the factory negotiated payment of entitlements and put in place – together with Liz Claiborne, Inc. – a remediation plan that included re-employment of former Cimatextiles workers at Choishin.⁶ In particular, three leaders of the SITRACIMA union were hired by Choishin pursuant to an agreement between the company and the trade unions SITRACIMA and SITRACHOI. With the closure of Choishin in July 2008, the employment of the three trade unionists at this factory was also terminated. FLA has received official copies of affidavits signed by the three SITRACIMA union leaders dated November 13, 2008, attesting to the fact that they had received all closure entitlement and severance payments owed by Cimatextiles.⁷ These three workers were not included in the group of 108 workers mentioned above.

Conclusion

The factory Choishin ended its operations in Guatemala in July 2008. By early September 2008, the company had negotiated entitlement closure benefits and severance payments with 542 of its workers, with some 125 workers (subsequently revised to 108 based on documents provided by SITRACHOI) not accepting the settlement and seeking full payment of severance pay. Between September 2008, and COVERCO's verification investigation on behalf of FLA, 108 workers had received payment for closure benefits and severance amounting to 1,473,275 Q (USD\$193,584). Independently of the COVERCO investigation, FLA has documentation demonstrating that three union leaders who were initially employed at Cimatextiles and subsequently transferred to Choishin also agreed to a settlement for closure benefits and severance in November 2008.

In its report, COVERCO suggested that the amount of entitlements and severance paid by the factory to the 108 workers who did not accept an earlier settlement may not have been

⁶ Issues surrounding the closure of Cimatextiles was also the subject of a 3PC processed by FLA. For a summary report, which includes the remediation plan, see

http://www.fairlabor.org/fla/_pub/SyncImg/cimatextiles_summary_report_jun08.pdf.

⁷ Copies of these documents are on file with FLA.

consistent with Guatemalan law. However, the lack of information on salaries earned by workers at the time of closure and of length of tenure (the factory has been closed since July 2008, and the necessary records are not available) did not allow COVERCO to make precise estimates. As FLA has verified that Liz Claiborne, Inc. has been diligent in remediating the issues raised – and the factory has been closed for a substantial period of time – FLA has closed the Third Party Complaint.