

**Comisión para la Verificación de Códigos de Conducta
- COVERCO -**

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**FINAL REPORT
Independent Investigation
for the Fair Labor Association****Guatemala, July 24, 2007****BACKGROUND**

Based on the complaint filed by the trade unions SITRACIMA and SITRACHOI before the Commission for Verification of Corporate Codes of Conduct (COVERCO) and other national and international stakeholders and before the Fair Labor Association (FLA) under its Third Party Complaint procedure, about the possible shutdown of the factory Cimatextiles, S. A. ("Cimatextiles"), the FLA commissioned COVERCO to perform an independent investigation of the factory, which manufactures products for a number of companies, including Liz Claiborne, Inc. (LCI), an FLA-affiliated company, and other companies not affiliated with the FLA. The investigation began on May 21, 2007 and was expected to last 10 days. However, due to a number of extenuating circumstances described in this report, it was necessary to extend the investigation until June 28, 2007.

Cimatextiles, an apparel factory, is located 30 kilometers from Guatemala City. It shares its facilities with another apparel factory, Industria Textil Choishin, S. A. ("Choishin"). Both factories have the same legal representative, are Korean-owned, and have as part of this joint facility two big warehouses, one small warehouse, two cafeterias, a football area, dorms for Korean staff, and a small building housing the trade union office.

It is important to note the history behind these two factories. On July 9, 2001, the Ministry of Labor and Social Welfare (MOL) authorized the registration of the trade unions, SITRACIMA and SITRACHOI, and subsequently on July 9, 2003, recognized their Collective Bargaining Agreements. In the interim, workers faced an environment of constant anxiety due to the factory management's intention to create a group opposing the trade union. As COVERCO reported at the time, on July 26, 2001, "top management points out that the factory cannot guarantee that it is not going to shut down, because its economic feasibility depends upon the orders of foreign companies." Since then and until the present, there have been continuing public statements of a possible shutdown, creating within workers a sense of labor instability. Thus, on May 9, 2007, the trade unions presented a legal collective complaint. The Judge determined that neither party could take reprisals against the other, nor could the company terminate any employment contracts without his authorization.¹

In April 2007, Cimatextiles employed 429 workers, from whom COVERCO selected 10% or 43 workers to interview, half being affiliated with the trade union. In addition, COVERCO interviewed 15 local supervisors, two foreign supervisors, seven administrators, as well as eight institutions linked to the case. Due to an agreement between the factory and the union

¹ Labor Code. Articles 379 and 380.

regarding a vacation week from May 21 to May 26, 2007, COVERCO halted then resumed interviews when the factory re-initiated operations on May 28, 2007.

FINDINGS

Taking into consideration the urgency of the situation, COVERCO used a focused and direct approach to guide its fieldwork activities. It gathered evidentiary information to support its work. COVERCO identified the key stakeholders and designed a questionnaire for management personnel, workers, and supervisors, and conducted follow-up interviews outside the plant. COVERCO also cross-referenced information by means of third party interviews.

This Final Report describes in detail the situation found at Cimatextiles, providing pertinent details and support. COVERCO has prepared the following table with key issues detected during the investigation process.

Table 1 – Issues

ISSUE	VIEWS
1. Production and Quality	<p>Management. Stated that Auditors asked that production not go to Cimatextiles, because the factory does not comply with quality standards. Orders are delivered late and garments are rejected. This is the reason why production is not sent to Cimatextiles and instead goes to Choishin. The Personnel Chief confirmed that production is being transferred to Choishin. He also said that in January 2007, Miss Cristina, Lines Chief, asked for unattainable production goals without requiring quality. Also a factor in the high rejection rates was the work in the design of patterns or molds of Mr. Kevin, Chief of Cutting, and a Korean national.</p> <p>Brands. Mr. Pinsiri Fernando, General Manager of PBMS, quality auditors for LCI and Talbots, indicated that production of both brands has not been reduced. Nevertheless, in a May 24, 2007, meeting with the MOL, he said that LCI's production for Central America as a region had declined in the first four months of the year. The MOL asked him to validate the statement, but Mr. Pinsiri Fernando said that he was unable to show the exact percentage variation because he did not have the data available at that time. No clarification was provided at subsequent meetings.</p> <p>Trade Unions. SITRACIMA confirmed that a dramatic reduction in production started in April 2007. The factory blamed the trade union for the rejection of production due to poor quality and used that rationale to transfer production to Choishin. SITRACHOI confirmed the transfer of production from Cimatextiles to Choishin, which resulted in unemployment at Cimatextiles and extended working hours at Choishin.</p> <p>Workers and Supervisors. Reported that the Korean Chief of Cutting poorly cut the design pattern of one of LCI's styles, which brought about the rejection of the product. Nevertheless, the Korean staff instructed workers to continue with the production. According to workers and supervisors, another batch of product was rejected because of poor embroidery work done at other factories, not at Cimatextiles.</p>

ISSUE	VIEWS
2. Closure	<p>Management. Contradictory information was given to supervisors and workers regarding the closure of the factory. Management said that they did not inform workers and supervisors about a closure. Management requested from MOL authorization for a temporary suspension of three months for Cimatextiles because of lack of orders due to unfulfilled delivery dates, poor quality, and rejections.</p> <p>Brands. They consider a possible closure as odd given that their production orders had not decreased. Pinsiri Fernando clarified that he is the person who places orders with management and it is management's decision as to the distribution of production between the two factories. A representative from Talbots, who participated in a meeting at the MOL, expressed lack of knowledge about a drop in orders from his firm in these two factories.</p> <p>Trade Unions. Persistent accusations and rumors of closure started April 11, 2007, which impelled the trade union to carry out investigations and take steps to ensure the payment of benefits for the workforce.</p> <p>Workers and Supervisors. They confirmed the announcement of closure on April 11, 2007, after having received warnings of closure in March 2007 by Miss Cristina, Lines Chief, and Kevin, Chief of Cutting, both Korean nationals.</p>
3. Negotiations	<p>Meetings with representatives of the company, the trade union, and the MOL in order to discuss the following issues:</p> <p><u>Vacations</u>. Conversations began in 2006 when the company refused to provide vacation time as agreed in the Collective Bargaining Agreement. Ultimately, vacations were granted for the period from May 21 to May 26, 2007, and were properly paid.</p> <p><u>Closure Rumors</u>. The trade union asked for a Joint Meeting, which the MOL should have attended, in order to discuss the temporary suspension requested by the company and negotiation proposals.</p> <p>Agreements were reached May 30, 2007 and ratified on June 05, 2007. Temporary closure for three months, from June 01, 2007, with indemnity payment.</p>

ISSUE	VIEWS
4. Violence	<p>The disturbances of May 19, 2007, provoked the presence of officers from the Civilian National Police (PNC in Spanish) and from the Human Rights Ombudsman Office (PDH in Spanish); in addition, a group of female workers suffered distress, nervous shock and fainting attacks when listening to supervisors telling them that they had to accept the definitive or temporary suspension of work.</p> <p>Among them was a worker who was seven months pregnant, who requested anonymity. She indicated that after listening to the supervisors, she felt a strong headache and asked the factory nurse for medical attention. The nurse told the worker all she could provide was acetaminophen tablets. The worker explained that the next day she had a swollen face and went to a private medical clinic. She was diagnosed of having experienced a mini-stroke and was prescribed the proper medication. COVERCO had access to the medical record.</p> <p>The only reported incident of violence was regarding a Choishin worker who, while attempting to enter the facility, was pushed by a Korean manager. COVERCO investigate the allegation and the incident was confirmed through worker interviews. The worker that was pushed, however, refused to be interviewed, probably because the worker continues to work at Choishin and fears possible retaliation from management.</p> <p>The factory did not provide affected workers with immediate medical attention. Some of the male workers helped their female co-workers by transferring them on stretchers to the medical clinic to be attended to by the factory nurse. Firemen arrived to help workers, but the factory did not allow them in. The nurse confirmed these facts and assured that five female workers were attended to at the clinic.</p>
5. Opposition Groups	<p>The company has a history of creating opposition groups to pressure against the trade union. Workers confirmed that the Personnel Chief, Mr. Willard Sánchez, called a group of workers on Sunday, May 20, 2007, in order to encourage them to accompany him to the General Labor Inspectorate on Monday, May 21, 2007, and to negotiate an agreement regarding their departure from the factory separate from the trade union-factory agreement.</p>

ISSUE	VIEWS
6. Special Case	<p>The allegation that a Korean Manager carried a gun caused tension and major psychosis among Cimatextiles and Choishin workers.</p> <p><u>Chronology of events:</u></p> <p>On May 18, 2007 COVERCO received a telephone call from trade union members stating that tension existed in the factory because the company's Vice President, Mr. Yan, was displaying a gun to workers to intimidate them. This allegation was circulated widely within and outside the factory and repeated through international solidarity channels.</p> <p>While investigating, COVERCO interviewed Miss [name redacted by the FLA] who, in her own words, related the following: <i>"I saw Mr. Kim, Chief of Packing from Choishin, when he was inserting bullets into his gun and some of them fell near the containers. He saw that I also saw him; the gun is black, approximately 30 centimeters, miniusis-style. The Korean fellow was behind his car; his car is black with tinted windows. I do not know the plate number because it had no plates; a few days ago he put the plates on the car. After that, he went to check-in. Maybe [name redacted by the FLA] from Cimatextiles and [name redacted by the FLA] from Choishin also saw it because they are breastfeeding their children. Then I ran and warned the girls who were at the trade union office to be careful because Mr. Kim had a gun."</i> The worker said she had observed the gun at approximately 8 a.m. It is important to clarify that the factory's policy is that workers under maternity privileges who breastfeed their children must access the plant at 8:30 a.m., but regularly they arrive at 8:00 in order to eat breakfast at the factory.</p> <p>Upon consulting the workers mentioned by [name redacted by the FLA], Mrs. [name redacted by the FLA] explained that she did not see anything, but that when she was heading to register her attendance, [name redacted by the FLA] told her <i>"[name redacted by the FLA] come with me, accompany me to the trade union office."</i> [Name redacted by the FLA] accompanied her to the trade union office and it was there that she found out about the incident.</p> <p>The Choishin worker, [name redacted by the FLA], said that she arrived at the same time as [name redacted by the FLA], but she did not observe anything and her coworkers made no comment about seeing a gun when she arrived. She said she observed Mr. Kim behind his car but at no time did she see a gun or bullets.</p> <p>COVERCO asked other workers and interviewed other workers breastfeeding their children. None knew about the incident.</p> <p>Since the beginning of the investigation, COVERCO realized that Mr. Yan had not carried a gun. Since the in-depth investigation of Mr. Kim did not turn up any objective evidence, COVERCO's judgment is that there was no gun at the factory.</p>

Prepared by COVERCO based on evidentiary information and interviews.

COVERCO'S COMMENTS

1. Production and Quality

COVERCO notes that the auditor for the brands LCI and Talbots confirmed that production has not declined. Management explained the production quota by brands and the percentage distribution at the two factories.

Management provided valuable and useful information to determine quota percentages that each brand produces at the two factories.

Table 2 – Distribution of Production

YEAR	PRODUCTION QUOTA			
	LCI	TALBOTS	FEDERATED	POLO
2006	50 %	10 %	40 %	--
2007	40 %	10 %	40 %	10 %

Prepared by COVERCO based on interviews.

COVERCO consulted management and confirmed that the same total volume of orders is maintained at the company. According to the representatives of the brands, they continue placing the same level of orders to the company, composed of Cimatextiles and Choishin.

Nevertheless, when COVERCO prepared a comparative analysis of the production percentages at Cimatextiles for the period from January to May 2006 against the same period in 2007 at Cimatextiles, it found a drop in the number of units. Table 3 shows the drastic drop for the month of May 2007.

Table 3 – Production Quota of Cimatextiles

BRAND		PRODUCED UNITS		Percentage (%)
		2006	2007	
LCI	Jan.-April	455,671*	575,330*	26.26
	May	524,099	150,075	-71.37
Talbots	Jan-April	75,645**	125,508**	65.92
	May	14,039	1,072	-92.36

Prepared by COVERCO based on interviews.

* Corresponds to the sum of production for LCI for the months of January to April 2006, according to information from the factory, that is, 99,943+66,486+153,815+135,427=455,671, and for January to April 2007, 64,928+176,264+140,813+193,325=575,330. As can be readily

observed, over this period production at the factory rose by 26.26%, while comparing May 2007 and May 2006 results in a decline in production of 71.37%.

** Corresponds to the sum of production for Talbots for the months of January to April 2006, that is, $6,711+18,433+36,442+14,059=75,645$, and for January to April 2007, $19,245+4,744+83,931+17,588=125,508$. As can be readily observed, over this period production at the factory rose by 65.92%, while comparing May 2007 and May 2006 results in a decline in production of 92.36%.

COVERCO interviewed Mr. Yang, Vice President of the corporation, about transfers of production orders to the companies HANSOLL and C-Site. Mr. Yan said that the last production sent to a sub-contract factory was in March 2007, to El TEXCOM.

2. Closure

The statements from management, supervisors, workers and trade unions reveal a notice of closure on April 11, 2007. However, management delayed providing workers with accurate information, and finally on May 15, 2007, management submitted to the MOL the request for authorization for temporary closure, which was refused on May 21, 2007.

3. Negotiations

During the negotiation process, the parties have held several meetings, also attended by representatives from the Human Rights Ombudsman's Office (PDH), the brands, and COVERCO. It is important to highlight the proposals presented at different times by the company and the trade unions.

The trade unions did not accept either of the company's two alternative proposals (refer to Appendix I - Company Proposals) and, on March 2006, presented their own Proposal to Improve Productivity which was prepared upon the request of management. In turn, management did not accept it and asked the trade unions to present a new proposal at their next meeting. The trade unions presented verbally another proposal highlighting various issues and management reacted to some of them as shown in Appendix II - Trade Union Proposal.

The trade unions did not agree to contract a Public Accountant and Independent Auditor to verify the financial statements and decided to walk out of the meeting. Since several meetings failed to reach a consensus, the MOL determined that the administrative route had been exhausted and transferred the case to the Labor Courts.

COVERCO notes that the MOL's decision stopped the process of direct negotiations. However, on Tuesday, May 29, 2007 the Trade Unions' Labor Adviser was invited by management to meet again to seek a possible solution, leading to a final meeting to be held on Wednesday, May 30, 2007.

At this meeting, the company reiterated its position for a temporary closure. The trade union agreed, under certain conditions, among them guarantee of social security for pregnant

workers and those who were breastfeeding; guarantee of job tenure for the members of the Executive Committee and the Advisory Council of the union; renewal of collective bargaining negotiations; and incorporation of temporary suspension procedures into the collective bargaining agreement.

After the agreements of May 30, 2007, the company and the trade unions concluded on June 4, 2007, an official document that ensures the procedures for **“total collective suspension of contracts”** (please refer to Final Remarks). The parties signed the official document on June 5, 2007. The agreements are described in Table 4 – Agreements Subscribed between the Trade Union and the Company on June 4 and 5, 2007.

The parties agreed to compensate the entire workforce, with the exception of the Executive Committee and Advisory Council members. Workers on maternity or breast feeding will have their cases treated on an individual basis. The company agreed to liquidate all workers effective May 31, 2007, and to provide benefits five days after the trade union withdrew its complaint. The trade union accepted this, but first held a General Assembly on Saturday, June 2, 2007, to ratify this decision.

The Advisers of both parties agreed to draft agreement to be signed on Monday, June 4, 2007, at the trade union office.

It is important to point out that some of the agreements are partially fulfilled, as reflected in the following table.

Table 4 – Agreements Subscribed between the Trade Union and the Company
June 4 and 5, 2007

AGREEMENTS	VERIFICATION BY COVERCO
1. The legal representative of both companies and the Executive Committees of the two trade unions directly negotiated, requesting the General Labor Inspectorate to transcribe the agreements of June 4, 2007.	Fulfilled. On June 5, 2007, the General Labor Inspectorate transcribed the agreements. VESTEX, FESTRAS, and the Human Rights Ombudsman’s Office (PDH) acted as witnesses, and COVERCO as an observer.
2. Cimatextiles will pay the calculated benefits based on the period worked, from the time of hiring (according to the individual employment contract) until May 31, 2007, with presence of the General Labor Inspectorate.	Fulfilled.
3. The trade unions, SITRACIMA and SITRACHOI, will withdraw their legal complaints so that the company may make cash payments of benefits within five business days.	Fulfilled on June 12, 2007.
4. Cimatextiles workers and the company agree to	Not fulfilled.

AGREEMENTS	VERIFICATION BY COVERCO
<p>end their labor relationship. Cimatextiles will pay workers 100% of their labor benefits, including compensation according to labor law.</p>	<p>On June 12, 2007, the company did not calculate benefits according to the law. More than 100 persons did not receive their payment due to miscalculation.</p> <p>The trade union asked the General Labor Inspectorate to review the calculations. The company agreed to make adjustments according to the law. (Please refer to Appendix III.)</p>
<p>5. Cimatextiles commits to provide work certificates to workers whose labor relationship ended so that they may go to the Social Security clinic for a period of three months beginning May 31, 2007.</p>	<p>Fulfilled.</p> <p>On June 1, 2007 SITRACIMA's General Secretary took the necessary steps to obtain six work certificates, which were delivered to workers the next day.</p> <p>COVERCO received information that additional work certificates have been delivered.</p>
<p>6. Pregnancy and Breastfeeding.</p> <p>The company committed to pay benefits according to the law to pregnant and those who are breastfeeding their children.</p>	<p>Not fulfilled.</p> <p>On June 12, 2007, the company did not calculate benefits according to the law.</p> <p>The trade union requested revision from the General Labor Inspectorate. Company agreed to make adjustments according to the law. (Please refer to Appendix III.)</p> <p>On June 13, 2007 COVERCO requested administrative records for verification of the agreements (compensation payment). Management indicated that they would deliver the documents to COVERCO after the General Labor Inspectorate reviews the calculations.</p> <p>As of June 28, 2007 the General Labor Inspectorate is continuing its review. The company has not given COVERCO access to the documents.</p>
<p>7. Cimatextiles guarantees that it will resume its production activity apace with the growth of its contracts (orders from the entities owned by the brands). When Cimatextiles resumes its production activity, it will rehire those workers who choose to be rehired and whose work relationship was terminated on May 31, 2007.</p>	<p>COVERCO recommends follow-up beginning September 2007.</p>
<p>8. To implement the previous point, Cimatextiles will provide SITRACIMA with the lists of persons whose labor contracts were terminated.</p>	<p>Fulfilled.</p> <p>The trade union was provided the lists on July 2, 2007.</p>
<p>9. Hiring will be done according to production needs; re-hired workers will not undergo a trial period. Only in cases where the workforce included in the lists provided to SITRACIMA</p>	<p>COVERCO recommends follow-up beginning September 2007.</p>

AGREEMENTS	VERIFICATION BY COVERCO
is insufficient to cover production needs, will Cimatextiles be able to hire new workers.	
10. During the time that Cimatextiles will not be operating, if Choishin has the need for workers, the workers that ended their work relationship with Cimatextiles will be considered first for hire at Choishin, unless the vacant post requires some qualification that no one on the list possesses.	<p>Not fulfilled. According to the trade union, on July 3, 2007, Choishin temporarily hired ten new workers to work at Cimatextiles.</p> <p>COVERCO recommends follow-up.</p>
11. Cimatextiles will respect freedom of association. Leaders of SITRACIMA will continue their work contracts: "their union functions will not be affected and the leaders shall perform their trade union functions as well as their activities within the company in a normal manner."	<p>Fulfilled. COVERCO notes that on June 22, 2007, the company paid compensation to trade union leaders who resigned.</p>
12. SITRACIMA and SITRACHOI, through their respective General Secretaries, commit to send the content of this official document or the content of this agreement to the persons to whom information has been sent.	<p>Fulfilled.</p>
13. Choishin and Cimatextiles commit themselves to discuss the pending articles of the collective bargaining agreement regarding work conditions and some others that may arise from these agreements. With respect to the time limit for the negotiation, both parties will make best efforts so that it will not take more than three months.	<p>Trade unions informed COVERCO that they begun conversations to negotiate the collective bargaining agreement.</p>
14. Cimatextiles and Choishin commit to the implementation and mandatory compliance with these agreements and to their application to any company that may replace them, provided that the company has the same economic activity and is located in the same place.	<p>Partially fulfilled. COVERCO recommends verification.</p>

Prepared by COVERCO based on information gathered during meetings.

Due to the lack of fulfillment of some of the agreements described above, it was necessary to hold various meetings. The most important are described in Appendix III.

4. Violence

COVERCO emphasizes the need to take into consideration the historical context of this factory. This case has generated a historical memory that remains present in workers and creates an environment of uncertainty.

During the final phase of negotiation, as well as during the dates scheduled for the payment of benefits, COVERCO received continuous complaints from workers from both trade unions to the effect that an organized group of workers would carry out violent actions chiefly against the General Secretary of SITRACIMA, blaming her for the factory's closure and for allowing the incorrect calculation of compensation payments. When consulted, the General Secretary confirmed that she received anonymous death threats via phone calls (please refer to Appendix III, June 14, 2007). The Labor Inspectors assigned to this case have also received anonymous death threats via phone calls (please also refer to Appendix III, June 14, 2007).

5. Opposition Groups

Along the same line of the previous point, the company has a history of creating groups to pressure the trade union. In repeated occasions within the final process of negotiations, the Personnel Chief organized and encouraged a group of workers to negotiate their own termination contracts, even after the agreements between the factory and the trade union were reached. This same group demanded the correct payment of compensation, independently from the demands made by the trade union. This group took part in various pressure activities at the factory and at the MOL offices.

Considering the action of a company employee in organizing the opposition group, COVERCO notes that this special circumstance has to be taken into consideration in order to prevent any possible action against the Trade Union.

6. Special Case

The initial accusation received by COVERCO was about Mr. Yang bearing a gun inside the Cimatextiles facilities. However, during the investigation, the name of Mr. Kim was brought up.

As mentioned previously by COVERCO, the prevailing climate of tension and psychosis generated a great deal of confusion. COVERCO cross-referenced this accusation with workers, the personnel manager, trade unions, and the accused person, and found no objective evidence.

7. Conclusions

COVERCO initiated its investigation on May 21, 2007, and, although it had a June 28, 2007 deadline, the reality and dynamics of the case require continuous monitoring until September 2007. It will be on that date that operations are to resume at Cimatextiles and that we will be able to verify whether management fulfills the June 5, 2007 agreement.

COVERCO points out that at the beginning of its work, the company was open to requests and facilitated access to carry out interviews and review documents. In the final phase, after June 12, 2007, the company did not provide information on the compensation payments. Proof of this is that even the request by the MOL, through the General Labor Inspectorate, was addressed on June 21, 2007, through partial delivery of the required documentation. The

company stated that COVERCO could have access to those documents after the General Labor Inspectorate carried out its review.

Consistent with the organization of this Final Report, COVERCO presents the conclusions following the same structure used for the Findings.

7.1 Production and Quality

- ✓ According to evidence compiled and interviews with management and auditors for LCI and Talbots, COVERCO confirmed that the company maintained its level of production.
- ✓ If production problems existed, the company should have utilized the procedures set out in the collective bargaining agreement, article 18, regarding Joint Meeting, "...in order to resolve any controversy...", and article 42 on production goals "The companies will explain weekly to the trade unions matters related to production goals."
- ✓ Interviews with workers and the Personnel Chief indicate that Korean employees, specifically Mr. Kevin Kim, Chief of Cutting, were responsible for production and quality problems. COVERCO did not interview him because he no longer works for the company.

It is evident that the company did not utilize the adequate channels to resolve production and quality problems.

7.2 Closure

Considering the repeated arguments of Cimertextiles regarding the lack of orders and its consequent proposal for a "temporary closure of three months", **COVERCO's legal interpretation of the national legislation currently in effect** is that it authorizes two modalities that need to be substantiated: **partial collective suspension or total collective suspension of employment contracts.**

- ✓ A **partial collective suspension** is authorized only when there is "lack of raw material to carry out work, provided that it is attributable to the employer, according to a determination by the court", article 70, clause c) of the Labor Code; and,
- ✓ A **total collective suspension** is authorized only when there is "lack of raw material to carry out work, which cannot be attributed to the employer" article 71, clause c) of the Labor Code. **The company argues that this is a case of total collective suspension.**

COVERCO's analysis is that the procedures utilized should have relied on the Collective Bargaining Agreement.

- ✓ Call a Joint Meeting to discuss the production problem of the factory, according to article 18, Joint Meeting. It will be the invariable norm between the companies and the trade unions to resolve every controversy that arises through the Joint Meeting ... a) It will meet regularly the last Friday of each month, except in urgent cases when it will meet at the time of the request to meet by either party; ... d) Agreements of the Joint Meeting will be

effective immediately after the signing of the official document, a copy of which will be sent to the General Labor Inspectorate;

- ✓ At that meeting the argument that had to be considered regarded **article 56. LABOR STABILITY, part a**: “In no case will massive dismissals of workers of the company be undertaken. It is understood that massive dismissal means when more than 10 workers are dismissed in the same calendar month”; and,
- ✓ **Article 42 Production Goals**. The companies will explain weekly to the trade unions matters related to production goals.

Based on COVERCO's legal interpretation of the collective bargaining agreement, Cimatextiles would first have to use the procedure of the Joint Meeting. If the Joint Meeting confirmed the request by the company for a total collective suspension, the process would have passed to the second phase: sending the resolution to the General Labor Inspectorate in order to request a total collective suspension of more than 400 workers. The General Labor Inspectorate would have agreed or disagreed with said request as it would have solicited a resolution from the Joint Meeting², or asked the trade union SITRACIMA for their opinion.

It is COVERCO's judgment that Cimatextiles did not act in accord with the collective bargaining procedure. The General Labor Inspectorate received the request without having taken into account three important norms:

- ✓ Labor Code, article 20. “The individual employment contract rules not only what is established in it, but: ... The labor conditions governing a labor contract or relationship cannot be fundamentally or permanently altered, except when there is expressed agreement between the parties or if the MOL authorizes it. The said exception should be understood to arise only with regard to labor contracts that, in whole or in part, imply conditions that are superior to the minimum protection this Code grants to workers”;
- ✓ Collective Bargaining Agreement, article 5. “Companies recognize the trade unions as the legitimate representatives of workers' rights and economic, social and cultural interests and commit to deal with their representatives with regard to the individual or collective matters that arise as consequence of work...”
- ✓ Labor Code, article 380. “Since the moment referred to in the previous article, all termination of employment contracts within the company... must be authorized by the Judge...”

It is COVERCO's judgment that neither the company nor the General Labor Inspectorate used the appropriate legal procedures for a total collective suspension of employment contracts. In the case of the company, if there was in fact a justified lack of raw material at Cimatextiles and, if the company had used the correct procedure, the current collective conflict could have been prevented. Meanwhile, in the case of the General Labor Inspectorate, it should not have received the request for authorization of a “total collective suspension” from Cimatextiles, because the company already had been summoned to court and the company had not exhausted internal procedures.

² Labor Code. Article 73, last paragraph.

It is quite clear that the Trade Union was legally constituted. However, the factory did not respect the following aspects of trade union rights: 1) Trade Unions legitimacy and legality to negotiate and establish a collective bargaining agreement; 2) The June 5, 2007 Agreement infringes on the rights established in the collective bargaining agreement according to Article 5 re: Trade Unions Acknowledgment. "The company acknowledges the Trade Unions as legitimate representatives of the workers in their economical, social, and cultural rights and interests and they are compelled to address with their representatives individual or collective issues which may occur in the workplace..." Taking into consideration these arguments, COVERCO's opinion is that there has been a violation of freedom of association and collective bargaining rights.

7.3 Negotiations

- ✓ According to points 2 and 4 of Table 4, the company agreed to payment all labor benefits for all workers, except those trade union representatives who wished not to receive them.
- ✓ The severance benefits paid by Cimatextiles establish in clause c) that they relate to the "...irrevocable resignation by one's own decision."

COVERCO believes that it remains the company's exclusive discretion to determine if there is production to justify reactivating operations in September 2007. The agreement did not establish a verification system to prove new orders and their corresponding distribution.

- ✓ Arguing an absence of orders, Cimatextiles could NOT initiate operations and would be protected before the law because it underwent a total collective suspension.
- ✓ The company would be able to adhere to **article 76 of the Labor Code**, "termination of work contracts arise when one or both parties to the labor relationship put an end to it, whether voluntarily by one of the parties, by mutual consent, cause attributable to the other party, or by law, in which circumstances the rights and obligations derived from those contracts are extinguished."

COVERCO opines that:

- ✓ In accord with this norm, it could be interpreted that there is no obligation to legally reactivate Cimatextiles.
- ✓ Arguably, in this circumstance, the factory will have a legal cover in spite of having signed an agreement to hire workers starting September 2007.
- ✓ The agreement does not clearly set out certain procedures, among them for the calculation of benefits. Because of this, the company and the trade union each followed different criteria to calculate the economic benefits. **As of today, July 12, the correct calculation has not been agreed, nor have the correct calculations been completed.**
- ✓ Although the agreements of June 5, 2007, were guaranteed by Cimatextiles and SITRACIMA, endorsed by the Labor General Inspectorate, and have external observers to verify their fulfillment, they are NOT an effective guarantee for the reactivation of operations.

- ✓ The agreements did not foresee continuity of employment. For that reason, there is no full guarantee of hiring of workers.

7.4 Violence

The only reported incident of violence was a Choishin worker who, while attempting to enter at the facilities of the company, was pushed by a Korean manager.

COVERCO approached the worker immediately after the incident and observed that the worker was upset. The next day, workers went on vacation and when they returned, the worker refused to be interviewed, probably because the worker continues to work at Choishin and feared retaliation from management. COVERCO investigated the situations and the action by the manager was confirmed by other workers.

7.5 Parallel groups directly or indirectly organized by the factory

- ✓ The factories have a history with these groups since the creation of the trade unions.
- ✓ There is evidence of a group organized by Willard Sánchez, Personnel Chief of Cimatextiles. Since May 21, 2007, Mr. Willard Sánchez using his position as an officer of the company, directly or indirectly used work time to organize and direct a group of workers.
- ✓ Given the evidence of interference by the Personnel Chief, through the creation of a parallel group, the representative of the General Labor Inspectorate verbally warned him about this practice.

COVERCO witnessed actions of this opposition group against the activities of the trade union SITRACIMA in the days prior to June 5, 2007. COVERCO has photo evidence of meetings of this group with the Personnel Chief.

COVERCO considers that this group could be used to blame the union if the factory does not reopen. If the factory does reopen, it will be an organized group within the company parallel to the trade union.

7.6 Special Case

COVERCO did not find objective evidence of a gun being carried by an employee.

8. Recommendations

In the interim until September 2007

- ✓ Provide follow-up and verify fulfillment of the correct payment of benefits.
- ✓ Ensure the resolution of pending cases (workers on maternity leave, breastfeeding, Social Security medical suspensions).
- ✓ Provide follow-up and verification of the collective bargaining negotiation process.
- ✓ Create a commission to oversee the process of negotiation of new production contracts for the factory.

During the operations' start-up

- ✓ Verify the fulfillment of the preferential hiring agreement of workers registered in the Cimatextiles' list.
- ✓ Deliver a joint training program on the fulfillment of labor rights.
- ✓ Verify that the right to freedom of association is being respected and allowed to be exercised.

Appendix I – Company’s Proposals

PROPOSAL	CONTENTS
A.	<p>Dismiss 30% of the workers in each of the factories. Both factories have a combined total of 18 production lines, but there are orders only for 12 production lines.</p> <p>The trade union did not accept this proposal because, according to the collective bargaining agreement, the company committed not to dismiss more than 10 workers in the same month.</p>
B.	<p>Lease the plant to workers, loaning them the funds to do so using as collateral the severance payments due workers.</p> <p>The trade union did not accept the proposal. A tripartite meeting was held at the MOL offices, where COVERCO participated as an observer. They were unable to reach an agreement. Another meeting was set for May 24, 2007.</p>

Prepared by COVERCO based on information gathered during meetings.

Appendix II – Trade Union Proposal and Company’s Response

TRADE UNION PROPOSAL May 25, 2007	COMPANY’S RESPONSE
<p>Company to make available to the union financial reports according to the guidelines of the Organization for Economic Cooperation and Development (OECD) for multi-national enterprises. Once the union has such information, the proposal is the following:</p>	<p>Proposed to the trade unions to contract a Public Accountant and Independent Auditor to verify the financial statements.</p>
<p>1) Create a High Level Commission composed of the following institutions: <i>Trade Union, Employer, FESTRAS, Human Rights Ombudsman’s Office, and General Labor Inspectorate.</i></p>	<p>Creation of a commission is not necessary.</p>
<p><i>The objective of the Commission will be to:</i></p> <p><i>a) present a proposal for voluntary retirement to workers from Cimatextiles and Choishin, based on the payment of 100% of the benefits established in the collective bargaining agreement and all other benefits provided by law, such as for workers breastfeeding their children, in maternity leave, etc.</i></p>	
<p><i>b) independently manage the list of Cimatextiles workers who want to opt for the voluntary retirement plan.</i></p>	
<p><i>c) present the final list of workers opting for voluntary retirement to the employer.</i></p>	
<p><i>d) through the brands, obtain information on orders and how they are allocated to the factories, with the objective of having the Commission suggest the end of the collective suspension of work contracts before the two months mentioned below.</i></p>	
<p>2) Propose that productivity be negotiated at the Joint Meeting established in the collective bargaining agreement, with the presence of only the Labor Inspectors as administrative authority.</p>	<p>Agreed.</p>
<p>3) Since there is a complaint filed before the Labor Court, that the employer be the party responsible for informing the Labor Judge about the end of the labor relationship through voluntary retirement.</p>	<p>Agreed.</p>
<p>4) For those workers who do not opt for voluntary retirement, that they be absorbed by absorbed by Choishin with no modification in the conditions of work.</p>	<p>Not necessary because the company will not close operations, it is just a reduction of staff.</p>
<p>5) Workers who do not opt for voluntary retirement and do not wish to be absorbed by Choishin accept the collective suspension of their individual employment contracts for a maximum of two months. As a special condition, the employer must provide each worker from Cimatextiles with an economic compensation of three thousand Quetzales (Q 3,000.00).</p>	<p>Does not accept, because the company has does not have the capacity to comply with this provision.</p>

TRADE UNION PROPOSAL May 25, 2007	COMPANY'S RESPONSE
<p>6) Commitment of the companies: Once the period of collective suspension of employment contracts is finished, the company must restart operations and will prioritize hiring of workers who opted for the voluntary retirement plan, without having them go through the trial period, because they are already considered qualified by the company.</p>	<p>Agreed. When production increases the company will hire retired staff without need to undergoing the trial period.</p>
<p>7) Because of the situation arising from this conflict, the company must promote a policy of respect for Freedom of Association, which has been affected in this process. The trade unions propose:</p>	<p>Agreed, but as follows:</p>
<p>a) Allow trade union leaders to interview each one of the new workers to be contracted by the company, without any reprisals or discrimination in hiring of workers.</p>	<p>Accepts trade union to interview workers, once they have been hired by the company.</p>
<p>b) Once all of the provisions of the agreement have been fulfilled and there is stability for the companies and for the workers, the process of negotiation of a collective bargaining agreement should begin; it should last no longer than 15 days.</p>	<p>Accepts to negotiate the process, but considers that both parties need more than 15 days to reach an agreement.</p>

Prepared by COVERCO, based on information gathered during meetings.

Appendix III – Meetings between the Trade Union and the Company at the MOL

DISCUSSION TOPICS	REACTIONS
MEETING ON JUNE 12, 2007	
<p>Trade Unions requested that the General Labor Inspectorate review the benefit calculations according to the June 5, 2007, agreement and labor law, because the following was observed:</p> <ol style="list-style-type: none"> 1. The company made calculations based on the minimum wage effective last year; 2. The employer did not make compensation payments for female workers entitled to pre-and post-natal period and for the period for breastfeeding; 3. Workers hired by Choishin and then reassigned to work at Cimatextiles have not had their compensation payment defined; and 4. Payment has also not been made in other special case. 	<p><u>Company</u></p> <ol style="list-style-type: none"> 1. Company to pay labor benefits to those workers who want to receive them, according to the commitment made. 2. Agrees to make adjustments to payments already made that are not in compliance with the law. 3. Documents backing up payments are available for verification. <p>The <u>General Labor Inspectorate</u> stated the following:</p> <ol style="list-style-type: none"> 1. That the Trade Unions fulfilled the agreement that had been referenced. 2. That the company informed that their record of workers lists 420 male and female workers. 3. Verified that compensation calculations made by the company contain errors with respect to average daily salaries, annual bonus, Christmas bonus, vacations, and severance pay. 4. The employer did not allow review of calculations prior to the company making payments, despite the MOL having requested it in order to avoid this kind of inconveniences.
<p><u>Agreements.</u> Based on the verified facts, the General Labor Inspectorate proceeded to instruct Cimatextiles, through a formal notification to its legal representative, that it should comply with the following:</p> <ol style="list-style-type: none"> 1- Provide to it the settlement documents for each worker in order to perform a review and determine possible compensation adjustments; 2- Provide to it payroll records from the past six months; 3- Provide to it the certifications of ordinary and extraordinary salaries from the past six months; 4- Provide payroll records of female workers who are pregnant or breastfeeding in order to establish the start date of those benefits since the company did not provide the MOL with the requested information as part of the agreement reached by the parties; 5- Provide to it information related to how many male and female workers are under medical leave by the Guatemalan Social Security Institute; 6- Provide to it individual employment contract of all workers properly registered by the MOL; 7- Provide to it certification of last year's vacation period. 	

The Labor Inspectors set a meeting for the employer to present the requested documentation for June 14, 2007, at the General Labor Inspectorate offices.

Once the verification is finalized by the Inspectors of the Conciliation Section, the employer will be required to carry out the adjustments identified by the Inspectors according to the law.

When the meeting ended, the employer delegation left the meeting and did not sign the record; nevertheless, they were provided with a copy of the document and are considered to have been notified.

COVERCO estimates that the factory did not pay compensation to the entire workforce and those who received payment received it based on incorrect calculations.

DISCUSSION TOPICS	REACTIONS
MEETING ON JUNE 14, 2007	
<p>Verification of documentation required by the General Labor Inspectorate to review the benefit calculations.</p> <p>Trade Unions condemned the anonymous threats and obscene telephone messages sent to their leaders.</p> <p>The Labor Inspector stated that he had also received anonymous telephone threats; he also recommended concluding the process as soon as possible.</p>	<p>The company did not provide the requested documentation, but ratified its commitment to fulfill the elements of the June 5, 2007, agreement. The company stated that revisions and corrections to the calculations will be carried out jointly with the General Labor Inspectorate.</p> <p>Regarding the threats, the company expressed its concern because the messages were received by several persons who are members of the trade union's Executive Committee. The company offered to provide any support that would be required in order to clarify the situation.</p> <p>The General Labor Inspectorate reminded the company about the warning they received regarding parallel groups.</p> <p>The delegate of the Human Rights Ombudsman's Office (PDH) expressed the following:</p> <ol style="list-style-type: none"> 1. He was concerned about the telephone threats and obscenities directed at the Labor Inspector appointed to the case. 2. He was concerned that those actions could influence and harm the ongoing negotiations between the parties.

Agreements.

The General Labor Inspectorate postponed the meeting until the next day. The procedure to review

payments was established. Workers, the employer, and the trade unions are required to attend the meeting. In addition, special cases will also be considered.	
DISCUSSION TOPICS	REACTIONS
MEETING ON JUNE 15, 2007	
<p>Payment of compensation and review of calculation of compensation payments; verification of documentation by Inspectors from the Conciliation Section.</p> <p>Trade union organizations asked to put on the record the following:</p> <ol style="list-style-type: none"> 1. That the factory should proceed to pay compensation to five workers who have left their duties as members of the Executive Committee of the company's trade union. 2. Express their concern that the employer violated the agreements by not providing the correct information to make the compensation calculations. The company has not allowed the Labor Inspector to carry out the proper task of the General Labor Inspectorate, harming workers who sympathize with the trade union, who were present from 4:00 a.m. at the MOL headquarters. It was not possible to make the calculations without real data. Because of workers' desperation, management was asked to explain the reason for the delay. According to the company, they did not provide the documentation. 3. In calculating compensation, the employer says that one does not need to take into account the established Guatemala Congressional Decree 37-2001 or ILO Convention no. 95. 4. The trade union asks that the employer be made to understand that it has to fulfill the commitment made on this day to make compensation adjustments by Friday of next week. 5. It is also on the record that since they had no other alternative, workers received erroneous compensation payments, expecting that they will be corrected in the future. Payments were made until 15:00 	<p>Workers waited from 4:00 a.m. for their compensation payments. The General Labor Inspectorate stated the company did not provide the necessary information for the review and recommended to resolve the conflict as soon as possible. The Labor General Inspectorate reminded the company that previous warnings are still relevant.</p> <p>On June 22, 2007, the company paid compensation to five workers who voluntarily resigned from the trade union.</p>

p.m.	
<p><u>Agreements.</u></p> <p>The Labor General Inspectorate called for a meeting for June 18, 2007.</p> <p>COVERCO verified that calculations were not made. Nevertheless, until 15:00 pm the company paid compensation to workers who requested it, with the understanding that they were advance payments, and adjustments remain pending.</p>	
DISCUSSION TOPICS	REACTIONS
MEETING ON JUNE 18, 2007	
<p>Verification of documents and review of calculations by the Labor Inspectors.</p> <p>Trade unions asked the employer to address the following issues:</p> <ol style="list-style-type: none"> 1. That in the readjustment of benefits, the incentive bonus of Q300.00 be included; 2. That pregnant workers should be paid pre- and post-natal period, equivalent to 84 days plus the 300 hours of breastfeeding; 3. That workers be provided with the Social Security certifications to attend the medical clinic; 4. That workers who voluntarily resigned from their duties as Executive Committee members be paid the benefits due them, including indemnity; 5. For the workers hired by Choishin but working at Cimatextiles who wish to opt for early retirement, that the General Labor Inspectorate verifies such choice. 6. The special cases of [name redacted by the FLA], [name redacted by the FLA], and [name redacted by the FLA] remain under review. 	<p>The company did not provide the requested documentation.</p> <p>Regarding the issues raised by the Trade Union, the company indicated:</p> <ol style="list-style-type: none"> 1. That it is analyzing point 1 before it responds; 2. Compensation for pre- and post-natal benefits was paid until August 31, 2007; they will be covered by the Social Security system. The company commits itself to issue the corresponding certifications; 3. Regarding the suspended staff, the delivery of social security certifications is guaranteed; 4. Dialogue with the workers and verification by Labor Inspectors is still pending; 5. The case of the worker [name redacted by the FLA] is under review by the company's internal controls.
<p><u>Agreements.</u> Compensations for trade union leaders who resigned will be paid on Friday June 22, 2007.</p> <p>The factory committed to investigate and analyze the special cases of [name redacted by the FLA] and [name redacted by the FLA]. The Labor Inspector called the parties for a meeting on June 20, 2007.</p>	
DISCUSSION TOPICS	REACTIONS
MEETING ON JUNE 20,2007	

Verification of documents and review of calculations by the Inspectors of the Conciliation Section.	<p>The employer did not show up at the meeting, sending the message by means of the legal adviser that salaries were being paid at Choishin that day.</p> <p>The trade unions expressed their annoyance because of the employer not showing up.</p> <p>The Labor Inspector recorded that the employer has not shown up and recommended to continue the dialogue between the parties.</p>
<u>Agreements.</u> The General Labor Inspectorate called for another meeting on June 21, 2007.	
DISCUSSION TOPICS	REACTIONS
MEETING ON JUNE 21, 2007	
Verification of documents and review of calculations by the Inspectors of the Conciliation Section.	<p>The company provided the General Labor Inspectorate with:</p> <ol style="list-style-type: none"> 1. Original payrolls properly signed by workers from December 2006 and from January to May 2007; 2. Copies of 274 checks paying compensation and photocopy of employment contracts, as well as the detailed calculation for each worker in order to make comparisons; 3. Information regarding the process for special cases of workers [name redacted by the FLA] and [name redacted by the FLA] and interviews with them; 4. The case of [name redacted by the FLA] is pending awaiting a report from the bank; 5. Reported that there are 19 pregnant workers and 30 workers breastfeeding their children, subject to changes in the figures.
<u>Agreements.</u> The company accepts the Joint Meeting requested by the trade unions.	

Prepared by COVERCO based on information gathered at meetings.