



Expectations in relation to Factory Closures and Mass-Dismissals Clean Clothes Campaign E-Bulletin, September 2007¹

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Introduction

1. Long neglected as an issue by brands and retailers, discussions about corporate behaviour in relation to factory closures have finally started to take place over the last year. Extensive discussion on the responsibility of brands and retailers regarding the closure of their supplier factories has most notably taken place in the context of the Multi Fibre Arrangement (MFA) Forum, a “network of brands and retailers, trade unions, NGOs and multi-lateral institutions which aims to promote social responsibility and competitiveness in national garment industries that are vulnerable in the new post-quota trading environment”. In 2005 the MFA forum published a collaborative framework which contains some guidance for actors when dealing with the MFA impacts related to factory closures. The MFA forum is now in the midst of developing a set of “guidelines for responsible transition”.

2. The CCC believes it is essential to examine corporate behaviour relating to closures in the context of current corporate sourcing strategies. Ultimately, sourcing strategies should ensure that workers have decent work, meaning labour standards are respected and that employment is stable and sustainable. This bulletin aims to address the key question of brand and supplier responsibility related to keeping workplaces open in the context of these supply chains. Meanwhile it is essential that buyers also take concrete measures to minimize the damage to workers and their communities when a workplace does close.

3. Responsible sourcing strategies should certainly include measures to control the damage done by factory closures. Frequent closures, however, are not the inevitable by-product of producing garments, but a direct consequence of a specific business model, using complicated contracting and subcontracting arrangements that span the globe. This model, which has become popular over the last 25 years is from a social and environmental and from a business logistic point of view, inefficient and ultimately unsustainable. This model of doing business can and should be changed, as part of a new framework of 21st century global accountability and regulation, to create and promote responsible sourcing strategies as well as responsible labour practices across supply chains.

¹ CCC Electronic Bulletins are published regularly on the CCC website to inform our network and encourage debate on key issues related to our work. We welcome comments and contributions via info@cleanclothes.org

² Thanks to Sam Maher from Labour behind the Label for editing.

4. The **aim** of this bulletin is to define the issues at stake to prevent closures. Secondly this bulletin looks into the issues at stake when garment factories close or significantly reduce their production and therefore drastically reduce the number of employees. This bulletin also seeks to provide an overview of the existing regulations and agreements regarding closure and workers' rights in the international labour rights context. The emphasis of this bulletin is on the role of the brand name companies and retailers that find themselves at the top of the supply chain. It should be clear that this bulletin deals primarily with company obligations when large groups of workers lose their jobs when the factory closes or downsizes. Different standards might apply when workers are fired for organizing or exercising their labour rights, constituting a violation of company codes and (international) law, cases which CCC takes up through its Urgent Appeal system.

Relocation and purchasing practices that prevent sustainable improvements

5. Constant relocation of production is a defining characteristic of the global garment industry. When in the 1970s subcontracting became the primary means of organizing production, workplaces started to close in Western Europe and moved production to Eastern Europe, Turkey and North Africa. Parallel to this 'horizontal' relocation a 'vertical' relocation towards home-based workers and illegal inner-city sweatshops developed, often employing undocumented workers. With increased transport possibilities, the so-called second shift saw production moving to countries like the Philippines, Korea, Taiwan and Hong Kong – then known as the 'tigers'. When labour costs started to increase, companies originally producing garments in the 'tigers' transformed themselves into multinational production or trading companies, bringing about a shift further into Asia to countries like Indonesia, Thailand, mainland China, Bangladesh, India and Sri Lanka. With the further opening up of the world economy, these same companies started sourcing in Central-America and Sub-Sahara Africa, mainly for export to the US market.

6. The patterns of the shifts are determined by many different factors that influence the decision of the retailer or brand on where to put their order. These include price, delivery times, transport costs, quality and, increasingly, compliance. Trade agreements also play a key role in determining choice of production location. The MFA essentially put a cap on the number of garments a certain country was allowed to produce for export to another country. Other regional and bilateral trade agreements influence the price structure by allowing (or not) for cross-border tariffs to go on the finished product.

7. With the phase-out of the MFA near completion ³ the geography of garment production has changed irrevocably. It has been suggested that a direct result of this is that we are now entering a phase of more permanent consolidation of production. This assumption is questionable. Some large retailers and buyers will consolidate a higher percentage of their production in fewer first-tier factories in fewer countries, primarily for efficiency reasons. However, vertical subcontracting will continue to feature in the supply chains of these companies. The growth of the Asian trading and production TNCs is continuing, creating an hourglass model where consolidation may

³ With the China safeguard still in place until 2008 the phase-out is still underway.

appear to take place in the middle section – but at the bottom we continue to see a pattern of global shifts. Another trend appears to be consolidation in specific countries or sourcing regions, but to regularly shift suppliers within those countries depending on their performance.

8. This constant shifting of production is directly at odds with attempts made by retailers and brands to create respect for labour standards throughout their supply chain. Together with low prices and unreasonable delivery schedules, this has become known as the ‘purchasing practices barrier’: if brands and retailers are unwilling to change their purchasing practices, they are unlikely to see real improvements in labour practices in the workplaces manufacturing their products. Irresponsible purchasing practices often relate to the abuse of power in balances in the relationships with suppliers, for example forcing down prices and lead times, transfer of risk to suppliers, and unilateral changes in the terms of contracts and all forms of agreements at short notice. Responsible purchasing is a prerequisite to achieving sustainable compliance – in other words it is necessary to ‘make trade fair’. It is against this backdrop that we wish to take a closer look at role of buyers when it comes to (preventing) closures.

Buyer policies to prevent company closures

9. In the context of closures, one of the key barriers against sustainable compliance at supplier level is the lack of long-term or direct relations with suppliers, demonstrated by switching frequently between suppliers, withdrawing from suppliers when labour-standard violations are discovered instead of working with the supplier to become compliant, and finally sourcing through agents and mid-chain suppliers who do not provide information on suppliers and workers down the chain. As part of addressing irresponsible purchasing practices, brand name companies and retailers should develop long-term and direct relationships with their suppliers.

10. The terms of trade (price, delivery schedules, contracts) should allow for the payment of living wages and a decent (48 hour) working week, with a maximum of 12 hours voluntary overtime. Where possible, buyers should place orders during the whole year and/or place orders longer in advance. This should prevent the need for suppliers to hire extra workforce on temporary contracts and/or lay off workers for lack of orders. Where products are seasonal, or where short term orders are unavoidable, buyers should consider other options to minimize the possible negative impact this may have at the supplier level, for example by pooling orders.

Only ten years ago, 42% of the retailers in the Netherlands were member of five ‘buying consortiums’ (inkoopverenigingen) basically allowing for collective sourcing. Most of them have now developed into so-called full service ‘retail combinations’.

11. Next to reconsidering its purchasing practices, buyers should prevent closures by providing **technical assistance** to increase productivity, technology, design, marketing and worker and management skills training⁴

⁴ See MFA Forum collaborative framework, responsibilities of clothing buyers, see www.mfa-forum.net

12. Thirdly, when selecting supplier factories, buyers should take the **supplier's history** of closures in consideration: when selecting new suppliers, the past actions of the company's owner should be assessed regarding closure and disposal of workforce. Companies with a bad track record of closing and relocating factories should not be accepted as a supplier. It often happens that supplier companies decide to close a factory to get rid of its unionised workforce and reopen again (often under another name or using a family member's name) or start their business in another country.

Recent examples concern a German textile factory in Fes, Morocco, and the Hermosa factory in El Salvador. Following the formation of a union at the factory in Fes workers were fired without receiving their legal compensation and the factory closed. The same owner opened a new factory one hundred km from Fes. There the same thing happened and for the second time the factory closed the workers were fired, and the owner moved to Tangiers. After more than a year the first group of workers got compensation but it was not possible to enforce the judgement because the factory was closed and the Moroccan courts claimed that they did not know where the owner was. After the closure workers from the Hermosa factory, which closed in 2005, are still seeking their legal entitlements. The owner also owes large sums of money to the government. Shortly before the closure the Hermosa owner re opened a second factory, called MB Knitting, and shortly after the closure transferred legal ownership to family members.

13. Buyers should also establish **direct business relationships** at the facility level: when using intermediaries or placing orders with a manufacturer with several facilities, they should make sure that orders / their business relationship is connected directly to the specific facility, and that the contract allows for monitoring and other steps necessary at the facility level. Therefore companies need to map and investigate their supply chains, and develop mechanisms to ensure they know where and under what circumstances products are being manufactured. Subcontracting should only be allowed when authorized, and brands need to actively monitor this, since so-called 'unauthorized subcontracting' is a widespread phenomenon.

14. It is equally important that buyers react adequately to **non-compliance** with labour standards/code of conduct. When faced with non-compliance, buyers should remediate, not terminate ("cut & run"), including for (authorized or unauthorized) subcontracted production. Although CCC casework is predicated upon the belief that buyers should not "cut and run" when faced with rights violations, long periods of inaction while brands are contemplating whether to follow through with threats should be avoided. This highlights the need for sound information-gathering at all levels (re buyer/employer policies and practices) and mechanisms for timely, thorough consultation with workers to strategize around this information. Buyers should be willing to engage directly with worker representatives, to consult on action plans with local stakeholders, and be prepared to actively work with other buyers and governments. If after a long time no progress is made because supplier management keeps refusing to redress violations, then in close consultation with local stakeholders, disengagement can be the right thing to do. The timing of this decision remains a challenge given that the original violations will continue *and* that even more workers may be affected by closure/layoffs resulting from disengagement. In

this scenario the buyer will continue to have a responsibility for the affected workers' (see section 3) loss of income and job-prospects

15. Finally, in order to prevent factory closures, buyers should do capacity reviews prior to placing orders, and monitor for **'early warning signals'** that may indicate closure or large dismissals. For example other key buyers may be withdrawing orders, or machinery may be moved out. As with all compliance aspects, a functioning structure for workers representation (either through a union or another form of representation in accordance with the relevant ILO conventions) and communication between the brand and worker representatives will be of great help. Workers' organizations can inform buyers in a timely manner about loss of orders and/or loss of production, time that may be crucial to develop alternatives to closure, or to take other remedial action that will allow for payments of outstanding wages and severance (ex freezing of assets, ex non-payment of outstanding orders).

*On August 29th 2006, management of the Thai factory 'Gina Form Bra' announced they were packing over 600 of the Thai factory's sewing machines for shipment to their other facility in China without a word of prior notice to the workers or the trade union. Suddenly more than a fifth of the workforce found themselves without a machine to use and just a vague promise that they would receive new "training". Only after representatives from GRWU demanded an explanation and contacted the Ministry of Labour about the situation were they given any information from management about the real plans of Gina's Hong Kong owner, Clover Group: to close down the facility by October 31. The Union organized a number of actions and took the case directly to the Minister of Labour in Thailand, who issued a Ministerial order to prevent management from shipping assets out of Thailand. Roughly half of the machines originally packed were sent to the harbour for shipment but were confined at the harbour. The order also specified that that sufficient funds should be made available to ensure all legal severance is paid.*⁵

Monitoring "social protection"

16. Having stated that prevention of closures through responsible sourcing is the priority, it remains the responsibility of international companies to monitor the social security provisions in place in case the closure of facilities does occur. Most countries will have national labour laws covering the obligations of the employer to pay for various premiums including those related to unemployment and social security (pension, health). However, non-compliance with these regulations is common in the garment industry, leaving workers in a precarious position if the facility does close.

17. Therefore it should also be the buyers' responsibility to include the monitoring for social protection in their regular monitoring work. Firstly buyers should determine if national laws and provisions cover *all* workers in the concerned facilities. Workers on temporary contracts, of a specific age, status, or working in a specific economic zone or area, might not be able to benefit. International buyers need to be well informed about the national laws and provisions, and about the rights of all the workers at their particular supplier within this context. If it turns out that workers are excluded from

⁵ See for more information on the Gina case: <http://www.cleanclothes.org/urgent/06-11-17.htm>

specific provisions, or that the legal minimum falls short of international standards⁶ they can discuss with the supplier (following consultation with local trade unions and labour NGOs) how to bring about alternative protection measures.

18. Secondly, buyers should regularly track the payment of social premiums including, but not limited to, those related to pension, health and unemployment insurance. Where the law calls for severance payments rather than for unemployment insurance (as is often the case) the capacity of the owner to pay the severance, and the provisions put in place to allow for this money to be made available, needs to be assessed. The methods best employed will differ per country, since payments methods (to whom, by whom, when) differ per country. Checking bank statements may be one option, checking directly with the institution collecting the premiums to see if the employer is on schedule is another. Establishment of an escrow account for severance monies has been suggested for countries or sub-sectors where closures are common. But there are many possibilities to effectuate this.

In Turkey workers can trace the payments made by the employer via the Internet, using their social security number. Many workers are not aware of this, or are unable to follow-up if it turns out their employer has failed to keep up. Compliance staff of buyers could check this, or develop a training programme for workers (preferably together with worker representatives and trade unions) so they can check themselves and have a means of effectively reporting and following-up failure to pay.

19. Monitoring for the payment of social premiums should go together with checking whether there are serious amounts of outstanding payments (wages or other). Detection of any failure to pay these claims should be immediately raised with the employer for remediation, while at the same time buyers should be alert to signs of closure and be ready to take contingency measures (ex. withhold payment of outstanding orders until all wages are paid, or until severance monies due are paid into an escrow account). While recognizing the final *legal* responsibility of the employer, buyers have a responsibility if they failed to undertake due diligence as part of their monitoring programs. A strong case can be made that the obligation of the brands extends to workers post-closure *if* buyers did not closely monitor workers claims (and it turns out that neither employer nor state will take care of the workers' claims). In this scenario, buyers need to take measures to ensure workers are compensated according to the legal levels or those determined by the ILO convention 173⁷, including making direct payments to the workers.

The Hermosa factory in El Salvador closed in 2005 leaving 190 workers jobless and without their legally due severance money, pension fund money, outstanding wages, and overtime payments (since 2004). The factory had a history of violations of labour standards, specifically concerning payment of wages and social security provisions. The closure followed shortly after the workers had registered a union. After the closure, it turned out the owner had failed to pay 353.000 USD of the legal premiums for social security and pension funds since 1996, building up a huge debt with various government agencies. Most of the brands sourcing from Hermosa had codes of conduct and monitoring programmes, all of which failed to identify and address

⁶ See below and section 5 for relevant ILO conventions

⁷ See section 5 for this and other relevant ILO conventions and recommendations

these violations. Given the long history and systemic character of the violations, the monitoring programmes should have picked them up, especially since labour groups have repeatedly reported violations at Hermosa to the brands concerned. To date, workers did not receive their legal entitlements, though brands have contributed some small sums into a fund for humanitarian assistance. Even though El Salvador does have a constitutional provision requiring that debts owed to workers take precedence, this in practice is not helpful as there is no enabling legislation. This demonstrates the need for governments to do more than ratify conventions: namely to embed these conventions in national legislation and provide effective means of enforcing them.

20. Finally, buyers should be supporting the lobbying and advocacy work of local labour NGOs and trade unions calling for improved legislation on this issue, actively communicate their support for ratification and implementation of ILO convention 173⁸. In many countries if a guaranteed institution, were to be set up, as outlined in part III of the ILO convention, this would benefit buyers since they could avoid being held ultimately responsible for supplier debts. Buyers can then monitor if the supplier meets its obligations to such an institution.

International standards related to closure and/or mass dismissal of workers

21. National legislation commonly specifies the obligation of employers related to mass dismissals or closures. These obligations roughly fall in two categories: process related (who and when to inform, consult or negotiate with) and financial obligations. Gaps can be found between national laws and international standards, and a gap between national law and actual practice. It is illuminating that the garment workers union in the recent closure of the Gina case in Thailand stated that this was in fact the first occasion in which workers actually received their full severance benefits in accordance to the law!

22. The **ILO convention on termination of employment (no 158)** covers both the termination of individual contracts and additional provisions in case of mass dismissals for economic reasons. The convention lays out a number of grounds that are considered not valid reasons for termination, such as union membership or participation in union activities, being a worker representative, having filed a complaint against the employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, and absence from work during maternity leave or due to sickness. Workers should be given the opportunity to defend themselves against allegations of misconduct or bad performance and always have the possibility to appeal. A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, and be entitled to protection of income, either by severance allowance or other separation benefits, or by benefits from unemployment insurance or assistance or other forms of social security, or both.

23. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, workers representatives have the right to:

⁸ See section 5 for this and other relevant ILO conventions and recommendations

Information. The employer shall provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;

Consultation. The employer shall give the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

24. The employer shall notify the authorities a certain period before terminations will be effective including reasons for termination, number and categories of workers affected and the period over which the terminations are intended to be carried out.

25. The **ILO Termination of employment Recommendation R119** basically states the same rights for workers when (foreseen to be) terminated. Additionally to the reference to a reasonable period of notice, it is also stated that during the period of notice the worker should, as far as practicable, be entitled to a reasonable amount of time off without loss in pay in order to seek other employment. Supplementary provisions concerning the reduction of the work force include the fact that positive steps should be taken by all parties concerned to avert or minimise as far as possible reductions of the work force by the adoption of appropriate measures, without prejudice to the efficient operation of the undertaking, establishment or service. Also the recommendation states that the employer when he again engages workers should give workers whose employment has been terminated owing to a reduction of the work force priority of re-engagement, to the extent possible. The rate of wages of re-engaged workers should not be adversely affected as a result of the interruption of their employment. Finally, there should be full utilisation of national employment agencies or other appropriate agencies to ensure, to the extent possible, that workers whose employment has been terminated as a result of a reduction of the work force are placed in alternative employment without delay. Contract workers can again be excluded from all the provisions outlined in this recommendation.

26. Decisions made on economic grounds involving mass dismissals or closures are commonly regarded to be of such importance to the workforce that in many countries unions and/or worker's representatives have to give their consent before such a decision can be made (e.g. in the Netherlands, Germany, Austria). The Renault closure in Vilvoorde, Belgium, started an intense debate about the nature of such consultation, and resulted in adapted legislation in which the obligation of employers to consult with workers' representatives in a meaningful and timely manner were further fleshed out and created an obligation on employers to analyse and formally respond to any proposals from workers' representatives⁹. At the heart of all these policies lies the notion that it has to be proven that it is financially impossible to keep the workers employed, and that workers have the means to negotiate transition measures (avoiding forced dismissals where possible) and a social package. In some countries a penalty is in force in case the employer fails to inform and consult the employees (e.g. in the UK ninety days pay). The final arbiter is commonly the government.

⁹ See also <http://www.ilo.org/public/english/dialogue/ifpdial/info/termination/countries/belgium.htm>

Under the Renault law, the employer who plans to carry out a collective redundancy is required to follow a 4-step informational procedure for the workers:

- 1. The employer must initially present to the works council, to the trade union delegation or otherwise to the workers' representatives, a written report on its **intention** to proceed to a collective redundancy and the context in which it will take place. This report must contain, inter alia, the reasons for the dismissal plan, the criteria under consideration for the choice of workers to be made redundant, and the number and the categories of workers to be made redundant.*
- 2. The employer must then assemble the works council and provide proof that it assembled it for the purpose of discussing this intention of proceeding to a collective redundancy.*
- 3. It must allow the works council members representing the personnel to raise questions concerning the planned collective redundancy and to formulate arguments or to make counter-proposals on this subject.*
- 4. The employer must have examined the questions, arguments, and counter-proposals, and it must have responded to them plus it must provide proof to this effect.*

It is only after these four steps that the employer may announce its collective redundancy plan. If the employer does not observe this procedure, then workers may individually dispute the way the employer's decision was made. Consequently, the advance notification period is suspended until the employer properly satisfies the four conditions listed above. During the suspension of the advance notification period, execution of the employment contract continues and the employer must thus pay wages.

27. Apart from international standards regarding the obligations of employers and governments in case of closures and mass dismissals of workers, there is also international guidance for application of workers' rights to information and consultation for multinational operations (i.e. across borders). At present this is limited to owned and operated facilities. For example, under Dutch law if the company concerned is a subsidiary of an MNC, the Dutch employer also has to provide information on the financial situation of the foreign owner to the Dutch works council if they request this information.

The **European works council's directive** (94/45/EC) applies to all companies with 1,000 or more workers, and at least 150 employees in each of two or more EU Member States. It obliges them to establish European Works Councils to bring together workers' representatives (usually trade unionists) from all the EU Member States the company operates in, to meet with management, receive information and give their views on current strategies and decisions affecting the enterprise and its workforce. Any decision "having a significant effect on the interests of employees" (providing it has trans-national consequences), must lead to information and consultation of the EWC. This has included situation of closures and mass dismissals, providing employees the chance to obtain information on the productivity and financial situation of other facilities owned by the same employer.

28. The **ILO Tripartite declaration of principles concerning Multinational Enterprises and Social Policy** states that Multinationals should give reasonable notice to government authorities and workers' representatives of changes in operation, when this would entail major employment effects, in order to mitigate

adverse effects to the greatest possible extent. Also, MNEs are held responsible to provide, in cooperation with governments and national enterprises, some form of income protection for workers whose employment has been terminated.

29. Finally the **ILO convention 173 Protection of Workers' Claims in case of Employer's Insolvency** provides a standard in case mass dismissals or closures coincide with employers failing to pay workers' legal claims. According to the convention, it is preferred that countries found a guarantee institution at a national level that will pay workers what they are legally due if the employer is declared insolvent. Most EU countries have set up such an institution, and these institutions function effectively. For countries that fail to set up a guarantee institution, the convention essentially states that the government should agree that workers get their money *before* the state gets any money (by establishing a privilege). Usually there will be large list of creditors, one of who is the state itself (back taxes, social security taxes etc.). Governments who ratified this convention, will not take their claim until after the workers' claim is met. Figures are given in the convention for the minimum amounts that the workers' claim should cover: outstanding wages for no less than three months prior to insolvency (or termination due to insolvency), outstanding holiday payments over the year of insolvency and the preceding year, other types of paid leave for no less than three months, and full severance pay per the local law. 29. After convention 173 the ILO adopted the **ILO recommendation 180**¹⁰ which provides operating principles for guarantee institutions, extends the coverage of the privilege and extends the number of months that the privilege (if established) should cover to 12 (both for outstanding wages, overtime payments and for other types of paid absence).¹¹

Assessment of economic viability as a global exercise

29. Buyers today argue that, contrary to decisions regarding for example the minimum age of employment, it is not justified to expect them to actively influence employer decisions regarding mass dismissals or closures when based on economic grounds (though they will take responsibility when dismissals are directly linked to violation of Freedom of Association or other types of discrimination). However, buyers do have responsibilities vis-à-vis the workers producing their garments and shoes, and therefore cannot turn a blind eye at their supplier obligations towards their workforce including after closures or dismissals.

30. Obviously, employers have a responsibility to manage their operations so they remain economically healthy and viable. An employers' first job is to keep the factory open, and where the employer has multiple facilities (in one or in more countries) he has a responsibility to support those facilities that have decent labour standards (demonstrated for example by having concluded a CBA with an independent union). It is in the common interest of workers and the employer to keep the company alive

¹⁰ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R180>

¹¹ The original figures in 173 are most probably based on a survey conducted by the ILO of current legislation worldwide, and pegged slightly above the average in order to make ratification possible, while at the same time raising the standard. Recommendation 180 notes that "significant developments have taken place in the law and practice of many Members which have improved the protection of workers' claims in the event of the insolvency of their employer" and therefore decided to adopt new standards. The ILO continues to conduct and publish regular overviews, and to determine what the internationally recognized standard is.

and well, and produce good quality products. If management is unwilling or incapable to do so, it is eventually counter-productive, also for the workforce, for the buyer to maintain the relation. At the same time, we can expect action from buyers to make sure that the relevant ILO conventions and international standards for employer behaviour are complied with (and can be complied with, given the business conditions imposed on the suppliers by buyers). Given the great impact of the purchasing practices from the buyer on the economic situation of the supplier, and therefore on labour welfare, we should also expect a high degree of transparency and (collective) action from buyers in the process surrounding the closure, especially when it comes to determining whether alternatives to closure are possible, and to ensuring that negotiations take place in good faith. However, as various high-profile cases in the past years have demonstrated, in practice buyers are extremely reluctant to become involved in this area

31. In the context of global supply chains, the assessment of the economic viability of a facility by necessity needs to be undertaken as a global exercise. Current regulatory frameworks as outlined above, do not (yet) apply to supply chains. We've described above that the central notion of international standards (and national best practice) is that it has to be proven that it is financially impossible to keep the workers employed, and that workers have the means to negotiate transition measures (avoiding forced dismissals where possible) and a social package. The final arbiter commonly is the government. How to apply this in global supply chains, and to develop the necessary institutional architecture, is becoming an increasingly urgent question, given the closures in the garment and footwear industry today are leading to global conflicts that span the supply chain in for example Indonesia and Thailand.

32. Determining the boundaries between employer and buyer can be a complex effort given the global and diffuse character of supply chains and the shifting balance of power. The growth of (Asian) multinational production and trading companies, who often are the 'primary' supplier, has created production triangles where the direct employer (the facility) is often owned by a production TNC (often based in Hong Kong, China or Taiwan) while the orders come in from several buyers. Just like with child labour, or health and safety; the buyers will become involved in the employment policies of the facility, and when it comes to mass dismissals or closures (which will impact the labour situation) they also will need to take the economic policies of the owner, the production TNC, into consideration.

33. The economic viability of the facility however depends to a large extent on the price brands are willing to pay, and the kind of purchasing practices they are willing to offer the owner. Nobody will deny that it can be cheaper for a Taiwanese or Korean manufacturer to move production from a facility in Mexico or the Dominican Republic to a facility in a lower-cost country (for example Bangladesh or Vietnam). Assessing the economic viability however can and should also be undertaken from the buyer perspective. Buyers should make sure the assessment includes all the cost factors that we know play a role in bringing a product to the market.

34. What impact will it have on the buyers if they offer a price that would allow the facility to stay open? How much more expensive will the final product be, and what part of this can or needs to be transferred on to the consumer? The assessment should include the value-added that comes with a workplace in compliance with

decent labour standards, including freedom of association. If the buyers maintain their relationship with the owner, but allow the orders to be transferred to cheaper facilities in lower-cost countries, what are the costs that the buyers need to make to enhance the compliance situation? How is this to be offset to the costs that were made to make the original facility (now considered more expensive) compliant, an investment that is wasted? What are the long-term costs to the community of the facility in Mexico or the Dominican Republic, and once the scenario repeats itself to the community in Bangladesh or Vietnam? Ultimately, all these questions need to be factored in if we are to take seriously the notion of ‘responsible competitiveness’ as advocated by several brands.

35. Ideally the elected representatives of the workforce at the facility that is due to be closed would negotiate directly with their employer, and have the right to request all pertinent information from the owner. Buyers would also make available relevant information to assess the economic viability and particularly to develop alternatives to closure upon request, and would make a good faith effort to work with management of the facility, with the owner as well as with the workers to prevent closures. In case closure is inevitable, buyers would closely monitor the negotiations regarding social package and severance payments, making sure they meet relevant ILO standards.

Employer/owner obligations in case of closures or mass dismissals

36. Keeping in mind that the final employer can be a multinational owner, the employer obligations once closure or mass dismissal is foreseen are firstly to provide advance notice, to employee representatives where they exist and to individual employees, allowing sufficient time for consultation and negotiations to be effective, and at least within the legally-required minimums. They should also provide rationale and criteria for the redundancies. Secondly, they should negotiate alternatives to closure or layoffs with workers representatives and trade unions, and as part of the process provide evidence and cooperate fully in the investigation whether factory closure or termination of contracts is financially unavoidable.¹²

37. If there is no alternative to closure, the employer should negotiate a retrenchment plan that includes a “social package” with unions and/or worker representatives¹³ that includes payments of benefits and severance that meets the legal minimum. Where there is no trade union within the factory action should be taken to ensure workers are maximally involved and are empowered to represent their own interests in the development of any retrenchment plans. Where national law falls short of international standards and/or best practice, more can be expected, especially when international employers are involved. The OECD guidelines already cover expectations from multinational employers for subsidiaries in third countries. The retrenchment plan should be clearly communicated to all workers, and management should establish channels for workers to confidentially express any concerns or problems they may be experiencing, especially around legally owed payments.

¹² Sections 36 to 45 received substantial input from Kevin Thomas, Lynda Yanz and Bob Jeffcott at the Maquila Solidarity Network (MSN), for which we are very grateful. MSN regularly report on their website about these issues, www.maquilasolidarity.org

¹³ If freely elected in accordance with the relevant ILO standards, see also http://www.cleanclothes.org/codes/05-foa_primer.htm

38. The employer should take positive measures (as part of the social package) for reintegration and re-employment of workers, including training, and other measures to facilitate them to find new jobs such as access to job banks, and ensure these programmes are accessible and meet the need of all groups in the workforce, e.g. women and migrant workers. They should also provide workers with paid time off to look for new employment prior to closure, and provide first hire priority in other factories in the region owned by the same company. The employer should ensure that all workers have access to prompt and professional assessment of their health at the end of their employment, through appropriate national medical facilities to determine whether there are work related health problems, injuries or disabilities. When overseas migrant workers are concerned, the employer should see that these workers can be redeployed within the country, and if not see to it that they are repatriated with all costs covered, including recruitment fees.

39. The employer should pay any outstanding wages, overtime and leave payments, as well as other due social security, pension, and health or holiday payments, without restriction, and resolve any outstanding disputes with workers involving monetary entitlements. The employer should not demand that workers sign any declarations of good health, waivers or releases of other rights as a condition to receiving severance pay or other benefits from the company. Pregnant workers and workers with significant medical conditions should receive adequate compensation commensurate with their situation.

Buyer obligations in case of closure¹⁴

40. To ensure that international standards regarding (mass) dismissals and closure are lived up to, buyers' policies regarding closures/mass dismissals, when exiting a factory is unavoidable, should require an impact assessment regarding the effects on the workforce. Withdrawal of orders should be announced long time in advance to management and workers representatives, to prevent a negative impact on the workforce (the supplier may find other clients, the workers may not fight the dismissal if other job opportunities are offered). Brands should take care to prevent a knock-on effect where their announcement can lead to other brands leaving the supplier. In case of exits related to compliance, it might be essential for brands to announce the planned withdrawal collectively and publicly (in the hope that the supplier will choose to comply rather than to lose the orders, and the exit can be prevented).

41. Buyers should include a clause in the contracts allowing withholding any outstanding payments if closures or mass dismissals fail to be announced in a timely fashion, and/or if the employer fails to fulfil all outstanding social security, back wages and severance payments to the workers. When the factory is closed, the economic relationship between the buyer and the employer has ended, but goods still may be in transit, and if the brand creates the legal option to default on these payments in advance, this can provide a very good incentive to employers to settle outstanding payments to workers. For the same reason buyers should actively prevent assets from being shipped out of the country and/or sold off so that revenue can be used to pay debts to workers. Policies should be in place to ensure and

¹⁴ Note that different standards may apply when workers are fired for organizing or exercising their labour rights, which are violations of company codes and (international) law

facilitate the actual payment of severance and other debts in case the employer nevertheless fails to do so.

42. Buyers should participate actively in assessing whether the closure is economically necessary, whether alternatives are available, and make sure that this assessment is part of a transparent process, that directly involves the workers and their organisations. As outlined above, such an assessment needs to be undertaken from the perspective of the supply chain and not only from the perspective of the facility or the owner.

43. Buyers should monitor and play a constructive role to ensure the employer meets the obligations outlined above related to the development of a retrenchment plan and social package, and the payment of all legal entitlements (including severance). They should maintain direct communication with the union or other elected worker representatives throughout the process, and cooperate with other buyers to have maximum leverage including for provision of alternative employment opportunities, for lobbying the government re outstanding payments to workers, provision of health insurance, or government training and job assistance programs. If the employer as well as the authorities fail to pay the legal entitlements due to the workers, and when buyers have demonstrably failed to monitor and remediate for social security payments and have failed to ensure the establishment of mechanisms to ensure workers can receive severance due even if the employer goes bankrupt or defaults (see point 19), buyers should provide direct financial support to the workers. They should be open to credible local civil society groups being involved in the monitoring of agreements reached.

44. If a relation is maintained with a manufacturer who owns more than one factory in a region, the buyer should make sure that the manufacturer offers first hire opportunities to workers who lose their jobs when one of the factories is closed. If the manufacturer doesn't own more than one factory in the region, or otherwise transfer of workforce is not feasible (e.g. not enough orders), and the brand maintains an order base (as part of responsible sourcing) in the region with other suppliers, a condition for new contracts or for expansion of production could be to give preferential treatment to fired workers¹⁵. Buyers should work with other stakeholders to develop (re)training packages for workers if not other jobs can be found. Buyers should always actively monitor for blacklisting of workers and take concrete measures, including independent investigation and consultation with workers representatives and labour groups on remediation measures when reasonable suspicion of blacklisting is established.

45. Finally, in case workers wish to start their own cooperative buyers should support this by providing technical and economic assistance, including the placement of orders.

¹⁵ Note this relates to workers losing their job as part of mass dismissals or closures.