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What Brands Can Do to Ensure Respect for Freedom of Association

MAQUILA SOLIDARITY NETWORK

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MSN IS ASKING BRANDS TO:

- Make a corporate commitment to prioritize strengthening compliance with Freedom of Association (FOA) in your Mexico supply chain;
- Develop a comprehensive understanding of, and map progress on, FOA in vendor and supplier facilities in Mexico, including the presence of “employer protection contracts” and the ways in which they impede FOA;
- Increase transparency regarding protection contracts and other issues related to FOA in your Mexico supply chain;
- Monitor effectively for FOA violations, including the existence of protection contracts, and take appropriate remedial action;
- Improve training of auditors on how to investigate, identify, report on, and remediate FOA violations in Mexico;
- Increase worker and supplier awareness of workers’ associational rights and the barriers to those rights created by protection contracts; and
- Ensure that workers are able to exercise their associational rights without fear of dismissal, discrimination or other forms of retaliation.

MSN IS NOT ASKING BRANDS TO:

- Facilitate the formation of or require unions in supplier factories;
- Interfere in the internal affairs of trade unions or in the collective bargaining process;
- Favour one union or trade union organization over another; or
- Leave a factory solely because of the existence of a protection contract.

The UN Guiding Principles on Business and Human Rights states that companies have an obligation to exercise due diligence to identify, prevent, mitigate, account for and remediate adverse impacts on human rights they have caused or contributed to, including the rights of workers in their global supply chains, whether or not governments are able or willing to fulfill their obligations.



A. TAKE PREVENTATIVE MEASURES

Map FOA in your Mexican supply chain

1. Screen for the existence of protection contracts, other barriers to freedom of association, and worker knowledge of their associational rights when carrying out pre-approval audits of potential supplier facilities in Mexico, and, prior to the placement of any orders, require corrective action where FOA violations are identified.
2. Do not enter into a sourcing relationship with a new supplier where there is evidence of a protection contract.
3. Based on factory audits and any external investigations, map the

existence of protection contracts in currently authorized supplier factories in Mexico, share that information with appropriate stakeholders, and take steps to achieve corrective action in those factories where the existence of a protection contract restricts workers' right to freely associate.

Communicate FOA policy and strengthen supplier capacity

1. Make potential and current suppliers aware of your policy in favour of freedom

of association, noting that the following are considered violations of freedom of association:

- Negotiating a collective bargaining agreement (CBA) without the knowledge and/or consent of the workers covered by the CBA;
- Discrimination, dismissal or other forms of retaliation, or inducement to resign because of a worker's organizing activities or membership in a union, whether or not there is an exclusion clause in the CBA; and
- Favouring one union over another and/or pressuring workers to

not support or affiliate with a particular union.

2. Require suppliers to put in place their own freedom of association policies affirming that they respect the right of workers to form or join unions of their own choice and to bargain collectively, and that they will not discriminate against any worker in hirings, promotions, dismissals or disciplinary actions based on their current or past support for or membership in a union or other worker organization. Suppliers should communicate this policy verbally and in writing to all workers, including at the time of hiring.
3. Ensure that all legally mandated mixed worker-management commissions are in place and functioning properly, and that workers democratically elect their representatives to such commissions.
4. Encourage suppliers and vendors to participate in FOA training that focuses on their obligations under the Federal Labour Law, ILO Conventions and buyer and MSI codes of conduct and benchmarks.

Promote transparency

1. Inform suppliers that all current and newly-hired workers at supplier factories are to be provided the following:
 - The full legal name of the union or individual that holds title to the CBA,

and the name(s) and contact information for the union representative(s).

- A copy of their current collective bargaining agreement (CBA), as well as any revisions to the CBA.
 - A copy of their individual employment contract.
 - Copies of any other agreements between the employer and the union concerning terms and conditions of employment.
2. Inform suppliers that all workers must also receive adequate prior notice of the following:
 - Negotiation of any revisions to the current collective agreement and who their worker representatives will be in those negotiations;
 - Any other negotiations between the union and management concerning terms and conditions of employment; and
 - Purpose and implications of any document they are requested to sign. (Workers should not be pressured to sign any document that they don't know the contents of or are not in agreement with those contents, or punished or discriminated against for refusing to do so.)
 3. Inform the supplier that under the revised (2012) Federal Labour Law and your company's code of conduct, it is

not permitted to dismiss an employee based on their expulsion from or decision to resign from the union that holds title to the CBA.

B. IMPROVE AUDITING

1. Strengthen factory audits by incorporating the factors highlighted in MSN's FOA audit check list.
2. Ensure that all in-house and third-party auditors carrying out factory audits in Mexico receive quality training on the barriers to FOA in Mexico and on how to investigate, identify, report on, and remediate violations of freedom of association in Mexico.

C. REQUIRE CORRECTIVE ACTION

Where protection contracts exist

1. Where a protection contract exists, but there is a lawyer or law office signatory rather than a union, require that the supplier withdraw from that agreement at the earliest opportunity.
2. Where there is a union signatory, ensure that all workers – including new hires – receive copies of their collective bargaining agreement, any revisions to that agreement, as well as copies of any other agreement between the employer and

the union that affects the terms and conditions of their employment. Workers should also receive the name and contact information for the union and union representatives holding title to the collective agreement.





3. Whether or not there is a union signatory:

- If the supplier does not have an acceptable FOA policy, require them to issue a statement to the workforce, both verbally and in writing, clarifying that workers at the factory have the right to join or form a union of their free choice and to bargain collectively, and that management will not interfere in any way with the workers' decision on union representation nor take any punitive or discriminatory action against any worker because of that decision.

Follow-up: Future audits will need to ensure that workers have received and understood the message, and that the supplier has adopted a freedom of

sociational rights are violated.

- Facilitate freedom of association training for workers and management personnel.
4. Where there is an exclusion clause for dismissal in the CBA, require the supplier to achieve its removal from the CBA at the earliest opportunity.

Where other FOA violations are uncovered

1. Demand appropriate corrective action where there is evidence of discrimination, dismissals or pressure or inducements to resign because of workers' organizing activities, including an immediate cessation of such practices, reinstatement with full back pay for

association policy and is effectively communicating it to all workers and management personnel, including all new employees.

- Introduce an anonymous and secure complaint process allowing workers to file complaints with the buyer if their as-

workers unjustly dismissed or coerced or induced to resign, and FOA training.

2. Bring all appropriate pressure on the employer to negotiate in good faith where there is evidence that the employer is refusing to bargain collectively with a duly constituted union of the workers' free choice, or refusing to negotiate with a Temporary Coalition of Workers to resolve specific workplace issues.
3. Demand appropriate corrective action where there is evidence that an employer is engaging in blacklisting of workers based on their past or current union sympathies, membership or organizing activities, including an immediate cessation of the practice and the offering of employment opportunities to those workers negatively affected by the practice.

D. IDENTIFY AND REWARD BEST PRACTICE

1. Reward factories that respect freedom of association and the right to bargain collectively by favouring those factories in the placement of future orders and in the development of long-term business relationships.
2. In the event of a union representation election (*recuento*), strongly encourage the supplier to support and fully cooperate with a free and fair process,

including a secret ballot vote in a neutral location under conditions in which workers feel free to register their vote for the union of their choice in an atmosphere free of intimidation or coercion.

E. FACILITATE TRAINING

1. Help develop and make use of credible, high-quality and accessible training programs and materials on labour rights, including freedom of association, that address the Mexican context, in collaboration with appropriate labour rights experts and trade union and NGO stakeholders.
2. In addition to training for auditors, facilitate and contribute financially to FOA training for suppliers and vendors, management personnel and workers by credible and independent trade union organizations, labour rights NGOs, or academic institutions of higher learning.

F. PROMOTE BRAND AND MULTI-STAKEHOLDER COLLABORATION TO ADDRESS SYSTEMIC VIOLATIONS OF FOA

1. Share information with other brands and trade union and labour rights stakeholders on Mexican supplier factories in order to identify shared factories, the number and kinds of protection contracts and other common

FOA violations uncovered, corrective action requested and taken, best practice in supplier freedom of association policies, etc.

2. Collaborate with other brands and trade union and labour rights stakeholders on the development of model supplier FOA policies and/or minimum criteria for such policies, as well as training programs and educational materials on FOA in Mexico.
3. Collaborate with other brands and trade union and labour rights stakeholders on engagement with the Mexican government on possible actions the government could take to improve respect for freedom of association in Mexico and to remove institutional barriers to freedom of association and the right to bargain collectively.

G. ADDRESS CORRUPTION

Protection contracts are often associated with corruption, including payments to a union or individual lawyer that signs a CBA with the employer prior to any worker being hired and/or payments to the union or individual beyond normal union dues.

1. As part of factory audits prior to and after beginning a business relationship with a supplier audit for payments made to the union or individual that holds title to the CBA.
2. Communicate to your Mexican suppliers that all payments made to the union or individual that holds title to the CBA must be properly recorded and that any payments beyond normal union dues will be considered acts of corruption that will negatively affect your business relationship.

The **Freedom of Association in Mexico Toolkit** sets out how brands can strengthen their FOA policies, auditing procedures and corrective action plans, as well as communication with vendors, suppliers and licensees on those policies and expectations. The Toolkit includes four tools:

1. ***The Mexican Context***
2. ***What Brands Can Do to Ensure Respect for Freedom of Association***
3. ***Auditing Checklist***
4. ***FOA Progress Chart***

The Mexico Toolkit is available at www.en.maquilasolidarity.org/node/969