



## Fair Labor Association – First Public Report

The first public report published by the FLA on the code compliance activities of its 7 members companies is an important first step. It is **important** only in the sense that FLA and its members have finally produced a report with a measure of explicit information after more than 3 years of its existence, and after more than 5+ years of continuous assertions made by the companies about their efforts in compliance with FLA standards and after more than a decade of their alleged compliance with their own codes supported by internal monitoring.

The voluminous report of 153 pages is more hype than substance. A large part of the report is devoted to the companies' own efforts, organization and staffing, training programs and remediation efforts. All these are designed to indicate the commitment and resource allocation of the companies in meeting their compliance with FLA codes and in general improving the working and living conditions of workers in overseas factories. However, the report is silent in providing company-specific (as opposed to factory-specific) analysis of individual companies' performance.

The Report is not above self-hype by calling it an "extremely detailed look" which is "unprecedented in any industry". It also claims that a description of companies' activities "shows not only how participating companies have **tried** [emphasis added] to uphold worker protections, but also where they need to undertake further measures.

None of this is strictly accurate, and some of it is untrue. The most detailed reports to date of overseas factories have been made by another U.S. based multinational corporation in the toy industry. FLA's report does not come even close by comparison to the level of comprehensives, specificity and transparency in reporting its findings. What is most disappointing in the FLA report is the absence of any type of **overall assessment** at to what each participating company has accomplished in terms of compliance with FLA principles. Instead, it has opted a posture of providing anecdotal details of the problems found in various factories and what the companies have done by way of corrective actions.

My specific observations of the report are divided in three parts:

1. Shortcomings of the audit procedures and protocols adopted by FLA and their impact on the quality of independent external audit.
2. Lack of specifics in the Report and their impact one's ability to assess the overall situation as to the companies' performance and compliance effort.
3. Effectiveness of the FLA's overall effort in addressing substantive issues of labor and human rights, and working and living conditions, for the workers impacted by these companies' overseas purchasing behavior and operational strategies.

### Shortcomings in the Audit Procedures

1. Factories selected for independent monitoring are suggested by member companies and are selected in consultation with FLA. This situation is highly problematical because there is no way to determine as to the representative character of the factories in a company's supply chain. The so-called "FLA consultation" is mere verbiage because FLA does not have sufficient independent resources to challenge a company's recommendation. I would be very surprised if FLA could provide us with any examples where it had rejected a company's recommendation and replaced it with its own.

2. Participating companies also select and hire external monitors who have been previously certified by the FLA. This process has the potential of giving the companies incentive to choose “friendly” external monitors. It is somewhat akin to “venue shopping” used by attorneys in filing lawsuits in jurisdictions felt more favorable to their case.

3. The report does not provide any specifics as to the composition of audit teams and their audit protocols. For example, one would like to know how many workdays a typical team uses in completing a factory audit of a certain size, say 5000 workers. Does the team contain a certified accountant knowledgeable in accounting practices (and accounting abuses) in a given country and also relevant labor laws and local practices (or abuses)? Does the audit team include an industrial hygiene and environment expert to check for the factory's adherence to health and safety standards, storage and handling of toxic materials, and, compliance with relevant regulations as to prevention of air, water, and ground contamination? And lastly, how rigorous is the process of randomization of workers selected for confidential interviews, and whether the workers so selected represent a statistically valid and representative sample of the factory's population. Finally, one would like to know the nature of questionnaire that is used, and the type of questions, that are included in the worker-interview questionnaires.

4. A fatal flaw of the report lies in its very conception, which deals with the selection of factories to be audited through independent external audits. The process is designed to make it impossible to draw any conclusions on the overall performance of individual companies. Furthermore, it makes it unnecessarily expensive. Rather than doing a highly intensive and extensive audit of a small group of factories that are scientifically selected to represent the entire universe of factories, it is largely influenced, if not totally determined, by the participating companies for their own particular reasons.

**Let's not forget that this entire effort is not about auditing individual factories, but verifying the compliance effort of an Individual Brand and the Participating Company.** And yet, this non-random, and company-influenced, system of factory selection cannot and will not deliver an overall, comprehensive performance of a **Brand or a Company**. As such, the process is reduced is an ad hoc agglomeration of individual factory reports which **relieves individual companies from being accountable for their global performance**.

### **Lack of Specifics in the FLA Report**

The Report indicates that the 7 participating companies 2976 factories in over 70 countries. However, there were only 20 countries included in the first report. There were 162 external monitoring factory visits, which represented 6.7% of all the factories in the 7-companies universe of supply chain<sup>1</sup> the percentage of factories audited from the supply-chain universe of different companies ranged between 4.7% to 10.8. The FLA requires a minimum of 5% of company's facilities to be monitored\*. The Report provides no explanation as to the rationale for such a large difference in terms of audited factories for different participating companies.<sup>2</sup> Even more important, it does not offer any justification as to why the selection process was not randomized, independent of participating company's influence, and thereby creating a credible and representative picture of the status of code compliance by all the companies as a group, and also as individual entities.

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<sup>1</sup> .<sup>1</sup> It should be noted that at another place in the Report, the number of external monitoring visits was listed as 207 (p, 80). We were unable to resolve this discrepancy.

<sup>2</sup> In determining the percent of factories audited, we have used the total number of factories used by each of the 7 companies throughout the world and not just the 20 countries covered in this Report since the FLA's report did not provide specific number of factories for each company in these 20 countries.

The report summarized external findings of all factories in terms of instances of non-compliance on 10 issues. These are: Code awareness, forced labor, child labor, harassment or abuse, non-discrimination, health and safety, freedom of association, wage and benefits, hours of work, and, overtime compensation. Each element is then segregated in a separate chapter and embellished with description of one or two events describing and interpreting the nature of these non-compliance categories. This data is further segregated in terms of different countries/regions, i.e., China, Southeast Asia, Latin America, Latin America, Europe/Middle East/Africa, South Asia, and the U.S.A.

At first glance, the data collection and analysis appears to be a prodigious effort designed to elicit information in a meaningful manner. However, on close examination the data and analysis appear to be superficial and largely ineffectual.

The entire basis of the analysis is a manual quantification of aggregation of individual auditor's factory reports. Therefore, one has to depend on the ability of collator or collators to be consistent and objective in assigning categories to individual incidents. It should also be mentioned in passing that the report implies that FLA received copies of all reports. One also gathers that FLA's staff undertakes in-house analysis of these reports to ensure their reliability and quality. This is clearly a very important function and underlies the quality of these reports and the confidence that public must place in FLA's ability and credibility in providing the public with accurate and meaningful information. At the same time, it is a very big and time-consuming assignment. It would be useful to have some idea as to how many professional staff and expert data analysts FLA has employed in analyzing the data for this report, examining various inconsistencies, and preparing the final report.

Individual percentages are meaningless unless they are waited by some attribute, i.e., number of workers covered in a factory. Thus a few instances of child labor may constitute 5% of all instances of code compliance, its relevance is not at all clear. It would have been better and more informative if we were given the information in terms such as the factories covered representing 50,000 workers and thus instances of 5% represented 2,500 workers. It would have been more important, if we were told as to which participating companies sourcing factories represented some or all of the workers covered in the figure of 5%. In the absence of a relevant context, this information - whose compilation procedures would raise serious question of reliability among good researchers - may be interesting to FLA but is of limited value to concerned observers who are trying to assess the magnitude of a give abuse and its potential relation with the participating company who is a signatory to the FLA charter.

Similarly, we are not certain what purpose, if any, is served by the sorting out this data according to regions. One should not lose sight of the fact that it is not the countries of regions that are the subject of FLA's inquiry and mandate. Nor is it the individual factories that constitute FLA's principal obligation. The factories are mere data, which must be collected and analyzed in the **context of FLA's basic mandate, which is the conduct and performance of the participating companies. Unfortunately, FLA's first report is conspicuously and completely silent in this context and has thus totally failed in meeting its expectations to the public.**

## **Effectiveness of FLA as a Cooperative Mechanism for Code Compliance**

The first FLA report does not provide an encouraging picture of large companies, voluntarily working together, in a cooperative effort to improve their commonly agreed upon goal, i.e., to provide a floor of minimum living and working conditions (defined largely as compliance with local minimum wage laws and working conditions) of the workers in factories from which they outsource products.

The picture presented in the Report is not encouraging and cites widespread abuse of workers rights, and even denial of locally mandated wages, working hours, and working conditions. This is so even one charitably ignores all the methodological flaws of the report that have the potential for loading the investigative dice in favor of the companies.

Regardless of the date of the formation of FLA, the companies who have been operating with the same vendors and in the same countries for years and decades have known all the abuses cited in the report. They

did not have to wait for FLA to start corrective<sup>3</sup> action. Moreover, the Report does not provide for any deadlines, nor the companies offer any commitment, as to when they expect to be in full compliance of the code – be it two years, three years, or even 10 years. It is a sad commentary, and a cruel joke, when we present a clear-cut picture of “indifference and neglect” of the past and present it as an encouraging sign of progress for the future.

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<sup>3</sup> I take exception to the term “remedial” action used in the FLA report, which I consider to be weak and has the connotation of absolving the companies of their responsibility of enforcing their own codes, which in most cases pre-date the FLA’s code.