

**IS THERE EFFECTIVE ENFORCEMENT OF NATIONAL LABOUR LAWS?
THE CASE OF HERMOSA MANUFACTURING**

In May 2005, Hermosa Manufacturing, a garment factory located in Apopa, El Salvador, closed down suddenly, leaving some 250 workers without jobs. At the time the factory closed, workers were owed wages and overtime for work already performed. To date, workers have not received compensation for these wages and overtime owed them. Moreover, workers have not been paid legally due severance pay. Although it is now two years later, the plight of the former workers has not been resolved, nor the issues contributing to the regulatory failure of national labour laws. adidas Group was a customer of the Hermosa factory from 2000 until mid 2002 and while we were not a customer when the factory closed in 2005, we remain concerned about the workers and the consequences to the entire textile and apparel industry from this closure.

adidas Group is writing this open letter to the El Salvador government because officials from the ministries regulating labour law no longer communicate with us and other stakeholders concerned with a fair and equitable solution to this case. After an active dialogue between November 2005 and June 2006, the sudden shutdown in our communications is incomprehensible, and we hope that this open letter not only gains their attention, but reopens discussions that lead to real solutions. The adidas Group has contracted with El Salvadoran apparel factories since 1999, and we care about the employees who produce our products in those factories. Our apparel production programmes support the employment of more than 2,000 El Salvadoran workers. However, the Hermosa case has caused serious concern about regulatory safeguards for workers which we consider as the elementary foundation to continue business operations in this country.

After Hermosa's closure, companies sourcing from the plant and the workers learned that Hermosa management had taken deductions from workers pay checks for social security, and pension funding but had not transferred these payments to the appropriate agencies (deductions and employer contributions were not paid). As a result, the former Hermosa workers found themselves without access to medical services available to workers under the social security system.

Representatives of the adidas Group met with government agencies on numerous occasions between October 2005 and May 2006. At every meeting, the government representatives said they would not pay workers for their unpaid compensation outside the precedence of the labour tribunal. Additionally, the government could not definitively state the workers contractual and employment status unless they were re-employed or pressed a claim in the courts. However, the officials said that by March 2006, they assumed Hermosa was no longer legally viable so practically, the employment contracts for all workers were terminated. This was 10 months after the factory closed, and for many workers, the first news about their official employment termination.

On April 3, 2006, senior officials in the El Salvador government met with representatives of the adidas Group to offer a partial resolution for the workers. This included basic medical coverage through the Ministry of Health and extraordinary health care coverage through the Social Security Institute. Coverage would be for up to 12 months (or until reemployment). The government never fulfilled this commitment.

The government also scheduled a jobs fair on May 12-13 that would introduce x-Hermosa workers to potential new employers. The fair happened as scheduled although the engagement between former workers, government and Fair officials was poorly executed and ineffective.

During the weeks subsequent to the April 3 meeting, adidas attempted to contact government officials and monitor the progress of these commitments. There was no response to numerous calls and emails. As per the Government's directive in April 2006, adidas Group's main point of contact for the Hermosa case was reassigned to the Ministry of Economy. The lack of engagement has contributed to not only the diminished economic status of former workers, but an insufficient redress of gaps in the regulatory system.

With respect to the regulatory framework and the workers of Hermosa Manufacturing, the Government of El Salvador has not lived up to its commitments to protect, enhance, and enforce basic workers' rights. In particular, the Government of El Salvador has failed to effectively enforce its labour laws with respect to the workers of Hermosa Manufacturing at least in the following ways:

1. The Ministry of Labour granted Hermosa management permission to suspend commercial activities even after the factory was physically closed, keeping the workers' employment contracts active and therefore (1) preventing them from seeking or taking new employment (if the workers took employment elsewhere they would forfeit their claim for severance compensation); and (2) delaying the workers in formally claiming indemnisation due to them under Salvadoran law.
2. Government regulatory agencies were aware that Hermosa was not making retirement and social security contributions during the period 1996-2005, but did not take steps to demand payment of the shortfalls, and in fact, continued to issue Instituto Salvadoreño del Seguro Social certificates to workers without advising them of the limitations of those certificates. There are records showing that the agencies did negotiate rescheduled payments but ultimately, Hermosa paid little or nothing against the revised schedules.
3. Although the Constitution of El Salvador gives precedence to employee claims in bankruptcy situations, the rights of other Hermosa creditors such as a prominent local bank were recognized first and workers were not able to benefit from the liquidation of assets of Hermosa Manufacturing.

The adidas Group has contracted with El Salvadoran apparel factories since 1999 and we continue to regard the Salvadoran apparel sector as an important part of our sourcing plan. Our apparel production programmes support the employment of many El Salvadoran workers. However, the Hermosa case has caused serious concern about regulatory safeguards for workers, a fundamental point for continuing our business operations in this country. We feel that the Hermosa case is a clear sign of systemic issues in the regulatory mechanisms, with the recently reported case about Just Garment a current example. Since the government is not communicating with the adidas Group, this open letter to the government asks consideration of the following steps:

- To implement a commitment made in April 2006 for the basic and extraordinary health care coverage of unemployed Hermosa workers.
- To fund the former Hermosa workers Social Security accounts with the 145,000 USD penalty collected from Hermosa's owner in the Spring of 2007.
- To pursue the repatriation to the workers of Hermosa assets that were repossessed before their constitutional right of compensation precedence was executed.
- To resolve the regulatory gaps identified in this letter's points 1-3.