

**DECOTEX INTERNATIONAL (EL SALVADOR)
REPORT ON THE STATUS OF REMEDIATION/CORRECTIVE ACTION
February 18, 2022**

In May 2021, the Fair Labor Association (“FLA”) conducted a Third Party Complaint (“TPC”) investigation to assess and report on the allegations filed by the union federation *Federación de Asociaciones y Sindicatos Independientes de El Salvador* (“FEASIES” or the Complainant”) concerning certain policies and practices at Decotex International LTA de CV (“Decotex” or “the factory”), a facility owned by Tegra LLC, a leading U.S.-based apparel manufacturing company.

FEASIES’ core allegation concerned the factory’s decision to change its work schedule and adopt what is known as a “4x4” work schedule¹ beginning on March 1, 2021, which FEASIES said was done without previous consultation with workers’ representatives and without timely communication of those plans to the workforce.

Decotex is a unionized facility with two trade unions, both affiliated with FEASIES: 1) *Sindicato de Trabajadoras y Trabajadores de la Industria Maquiladora, de Comercialización, Servicios y Afines de El Salvador – Branch Decotex* (SITRAIMES); and 2) *Sindicato de Trabajadores de la Industria del Vestir de El Salvador – Branch Decotex* (STIVES). (Both SITRAIMES and STIVES are identified below as the “union sectionals”.)

The TPC investigation was conducted by independent investigators Francisco Chicas and Ena Núñez, both experts on Salvadoran law who were retained by the FLA to: a) provide their analysis of the legality of the factory’s decision to implement a 4x4 work schedule based on the Salvadoran Constitution, Labor Code, and the Special Transitory Law to Contain the Covid-19 Pandemic (“Decree 757”) which came into force on January 21, 2021; and b) conduct an in-depth investigation and analysis of the process followed by the factory in the implementation of the 4x4 work schedule since March 2021 and determine whether that was in compliance with applicable laws and regulations as well as the FLA Workplace Code of Conduct and Compliance Benchmarks. The FLA published the TPC investigation report² prepared by the independent investigators on July 2, 2021.

FLA Participating Companies Fanatics, Hanesbrands Inc., Nike Inc., and Under Armour, and FLA-affiliated licensee Branded Custom Sportswear Inc. (“the FLA-affiliated companies”) were sourcing from the factory at the time of the TPC investigation and have remained engaged and taken the lead on remediation efforts consistent with the findings and recommendations of the TPC report, as outlined below.

¹At this factory, the 4x4 work schedule requires workers to **work four consecutive days shift followed by four consecutive days off**, with a daily work schedule from 6:00 am to 6:00 pm, including two breaks of 35 minutes each. It differs from a **regular work** shift that requires employees to work five consecutive days followed by two days off with a schedule from Monday to Thursday from 7:00 am to 4:30 and Friday from 7:00 am to 4:30 pm with a lunch break.

² See full report: https://www.fairlabor.org/sites/default/files/documents/reports/decotex_investigation_report_final_7_2_21.pdf

After the FLA published the TPC report, the FLA-affiliated companies prepared a corrective action plan (“CAP”) to address each of the issues identified by the independent investigators in their report. The CAP includes a description of each remediation item, based on the report’s recommendations; documentation of the steps taken by the factory to implement those recommendations; and the timeline for that implementation. The CAP covers a period of five months, from July 19, 2021 through December 20, 2021, at which time the latest updated version of the CAP report was submitted to the FLA by the FLA-affiliated companies.

During that five-month period, the FLA scheduled virtual meetings with the FLA-affiliated companies to track remediation and verify the progress reported by the factory. In each instance, the FLA-affiliated companies provided an updated status of the CAP. The FLA’s verification process included a review of the documentation provided by the factory, workers’ employment contracts and amendments, and the factory’s communication plan with the workforce concerning the planned transition from the 4x4 work schedule, and virtual interviews with FEASIES representatives. The FLA concluded that the factory fully cooperated with the FLA-affiliated companies throughout the remediation process.

As shown in Table 1 below, the CAP developed by the FLA-affiliated companies and the factory consisted of 17 individual remediation actions:

TABLE 1: STATUS OF REMEDIATION AT DECOTEX

No.	ISSUE TYPE	ACTION TAKEN	STATUS
1	Hours of Work: transitioning plant from 4X4 to a regular work schedule	The factory instituted a plan to communicate to workers and union sectionals/federation when and how workers will return to the regular working hours and work week. : The factory held meetings to communicate when and it would return to regular shifts, Including working hours policy, grievance mechanisms (HR offices, suggestion boxes, hotline). By the beginning of October 2021, all workers under the 4x4 work schedule were shifted to a regular daily and weekly work schedule.	Completed
2	Employment relationship: returning to the regular work schedule/permanent workers	The factory has employment contracts setting out current schedules and regular working hours.	Completed
3	Employment relationship: communication	The factory communicated to employees that it would return to regular schedules by early October 2021.	Completed
4	Worker consultation	The factory provided options to workers who were not able to work a 4X4 work schedule until all workers transitioned to a regular work schedule.	Completed
5	Employment relationship/no interference	The factory conducted refresher trainings on internal policies such as non-discrimination and non-retaliation in October and November 2021, so managers do not interfere with workers’ ability to choose the work shift that better suits them and establish a confidential grievance channel for workers to report any form of interference or retaliation based on their decisions.	Completed
6	Labor relations/consultation with unions	The factory held meetings with union sectional and federation representatives to communicate the transition of regular working hours.	Completed

7	Worker consultation/communication	The factory held roundtable meetings with employees informing them that the factory would return to a regular work schedule by early October 2021.	Completed
8	Hours of Work/ legal compliance	The factory has stated that it fully complied with all statutory requirements for the implementation of the 4x4 schedule, including through an employee communication process and securing employee consent and with such voluntary consent and pursuant to the guidelines established by Decree 757, the factory has added that it incurred no overtime liability, nor does it need to make any retroactive payment. Despite this statement of legal compliance, the FLA-affiliated brands have requested the factory to send the certification of the 4x4 work shift from the Ministry of Labor.	Ongoing
9	Wages and Benefits / overtime payment	The factory has informed workers that once they returned to a regular work schedule, they are free to leave the premises during lunch and other breaks without having to have a permit slip on any type of authorization. The FLA- affiliated brands recommended that the factory engage the Salvadoran Ministry of Labor to review the 4x4 schedule to determine that the break periods are not to be counted as "worked time". The factory did so on December 12, 2021 and it is now waiting for a response. Having this legal interpretation by the labor authority will be the basis for whether or not the factory has to retroactively pay workers for overtime performed in excess of eleven hours per day under the 4x4 work schedule.	Ongoing
10	Employment relationship/contracts or amendments	All employees under the 4X4 work schedule signed an amendment to their employment contracts and the factory reported all of these workers received a copy. When the factory executed the return to the regular work schedule, the signed amendments ceased having effect and all employment contracts returned to the regular work schedule.	Completed
11	Wages and Benefits: wage calculation, payment, etc.	In the communication to workers on the transitional plan to return to a regular work schedule, the factory explained to the workers the method of payment and regular benefits under this schedule. However, it does not appear that the factory has informed the workforce of the legal grounds for implementing income tax deductions and the fiscal implications of such deductions.	Ongoing
12	Legal compliance/breaks	The factory has communicated that workers are free to leave the premises and also can freely move around during lunch and other breaks and also reported this has been fully communicated to workers. The FLA-affiliated brands have requested relevant supporting evidence that this will be permitted without requiring authorization.	Ongoing
13	Hours of Work / off- the clock work	The factory has reminded workers that they are not allowed to work during breaks, and management is monitoring this. However, the factory has not reviewed its Hours of Work policy, nor communicated on the policy updates. Moreover, the factory has not submitted evidence that workers are benefitting fully from the designated breaks and receiving their correct payments.	Ongoing

14	Hours of Work: breaks/communication	The factory communicated that employees are free to leave the industrial park during lunch breaks and also freely move around the park if they desire. In addition, HR is monitoring that employees are enjoying all designated breaks and not working during lunch break	Completed
15	Employment Relationship / resignation letters	All employment-related documents have been or are being forwarded to appropriate counsel for authentication and filing before the Minister of Labor. As required by law, the factory is working with past employees to sign new letters to comply with local Notarial Law requirements. In any case, all workers are being provided said documents upon their request. The factory should complete this process within the next 30 to 45 days. However, the Ministry of Labor has recently implemented an electronic filing tool whereby Notarial authentication of any employment-related document can be legally waived if the company's labor representative fulfills the filing. The factory is exploring the retroactive implementation of the new rule to expedite the overall process.	Ongoing
16	Hours of Work / policy and procedures review/update	The factory may consider revising its current Hours of Work Policies and Procedures that may include: i) recognition of breaks as effective working time; and ii) prohibition of performing off-the-clock work -- pending the legal interpretation from the Ministry of Labor to determine if the break periods are to be counted as effective work time.	Ongoing
17	Wages and Benefits / wage payment to specific worker	The factory states that the unidentified worker's accident was non-occupational in nature and the worker also did not incur medical expenses due to the lack of adequate notification to the ISSS by the factory. As stated by the investigators in their report, the employee was duly registered with the ISSS from his previous employment and was properly included in the company's payroll ("planilla") and ISSS report per his hiring date. However, the factory states that it is not responsible for any omissions, negligence or delays on the part of the ISSS and it has no record of any disability certificate or a claim for unpaid medical expenses.	Ongoing

During the review of the CAP the FLA confirmed that:

1. The factory ended the 4x4 work schedule progressively after the FLA published the TPC report. By October 2021 all workers under that schedule had transitioned to a regular working schedule with a daily maximum of eight work hours.
2. The factory communicated to the workforce the plan to return to regular working hours and work week, including through a dialogue with FEASIES and with union sectionals about the transition process.
3. The factory did not terminate any worker assigned in 2021 to a 4x4 work schedule. The factory invested in a new production facility to allocate all workers who shifted from a 4x4 work schedule and is expanding its sourcing capacity in El Salvador.
4. Workers' employment contract amendments are without legal effect as all workers under a 4x4 work schedule have transitioned to a regular work schedule.

As noted, and as confirmed through the FLA's engagement with FEASIES, the factory communicated with the workers' representatives concerning the plan to transition from a 4x4 work schedule to a regular daily and weekly work schedule and kept them apprised on the implementation process. However, FEASIES claims the factory has not responded concerning remediation of certain other report recommendations, including the recommendation to retroactively pay workers the overtime performed in excess of eleven hours per day following the implementation of the 4x4 work schedule.

Remediation Highlights

The most significant commitment made by the factory was to cease the implementation of the 4x4 work schedule consistent with the report's recommendation to end that once de Decree 757 expired, if not sooner. The deadlines for complying with workers' transition to a regular work schedule have been met. Despite the factory's disagreement with the independent investigators' analysis of the legality of the decision to implement a 4x4 work schedule based on the Salvadoran Constitution, Labor Code, and Decree 757, the factory has implemented changes to ensure compliance with El Salvador's legal framework concerning daily maximum working hours

The factory held meetings with workers' representatives to communicate its plan to transition back to a regular work schedule. In addition, it is in the process of setting up a permanent space of dialogue with FEASIES and the union sectionals at the factory. The factory is planning to meet on a monthly basis with workers' representatives to improve labor and employment relations and keep the FEASIES and union sectional representative involved in the follow-up on pending remediation items that have not yet been completed.

In addition, the factory retained all workers under the 4x4 work schedule and also extended its production capacity in the country, which will translate into additional job opportunities for Salvadorean workers.

Nevertheless, there are other remediation items that have not yet been implemented in full. In some cases, the factory has taken steps toward fulfilling these commitments and will keep the FLA and the FLA-affiliated companies informed of the progress made to comply. The FLA also recognizes the factory's engagement with the Ministry of Labor and Social Welfare to seek legal interpretation regarding breaks and overtime payment during the time the 4x4 schedule was implemented. This Ministry of Labor interpretation is a critical remaining element of implementation of the TPC investigation recommendations.

Conclusions and Next Steps

The FLA-affiliated companies have made significant efforts to carry out the CAP developed following the investigation report's recommendations. Over the past several months, steady progress has been made as workers transitioned from a 4x4 work schedule to a regular work schedule in compliance with national law and the FLA's Code of Conduct and Compliance

Benchmarks concerning Hours of Work. The FLA will continue to engage with the FLA-affiliated companies concerning those CAP items that still need to be completed.

More broadly, the remediation process made evident the importance of healthy and strong industrial relations between factory management and workers' representatives. The FLA recognizes the factory's efforts to set up new dialogue and consultation spaces with workers and their representatives.

While the FLA will now consider this investigation as Closed based on the factory's focused and unambiguous response on the core work schedule issue, it will look to the affiliated companies to continue to track progress on the remaining matters listed as Ongoing in the detailed Table 1 above.