



Asociación Servicios de Promoción Laboral - ASEPROLA

**ASOCIACIÓN SERVICIOS DE PROMOCIÓN LABORAL
-ASEPROLA-**

**ENHANCING SOCIAL PROTECTION IN THE APPAREL AND
FOOTWEAR INDUSTRY**

Study conducted in Central America for the Fair Labor Association

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Abbreviations

AMUCV	Asociación de Mujeres Empleadas y Desempleadas Unidas Contra la Violencia (Association of Employed and Unemployed Women United Against Violence)
ASEPROLA	Asociación Servicios de Promoción Laboral (Labor Promotion Services Association)
ATRADOM	Asociación de Trabajadoras Domésticas (Association of Domestic Employees)
CDL	Centro de Derechos Laborales de IDHUCA (IDHUCA Center for Labor Rights)
CDM	Centro de Derechos de la Mujer (Center for Women's Rights)
CGTG	Confederación Central General de Trabajadores de Guatemala (General Confederation of Workers of Guatemala)
COHEP	Consejo Hondureño de la Empresa Privada (Honduran National Business Council)
Comisión de la maquila	Comisión Nacional, Reguladora de la Actividad de las Zonas Francas de Nicaragua.(National Council to Regulate Activity in the Free Zones of Nicaragua)
COVERCO	Comisión de Verificación de Códigos de Conducta (Code of Conduct Verification Commission)
CST - JBE	Confederación Sindical de Trabajadores José Benito Escobar (José Benito Escobar Trade Union Confederation)
CUS	Confederación de Unidad Sindical - Nicaragua (Nicaragua Trade Union Confederation)
CUTH	Confederación Unitaria de Trabajadores de Honduras.(Honduras Trade Union Confederation)
EMIH	Equipo de Monitoreo Independiente de Honduras (Honduras Independent Monitoring Team)
FEASIES	Federación de Asociaciones Sindicales de la Industria de El Salvador (Federation of Industrial Sector Trade Unions of El Salvador)
FESPAD	Fundación de Estudios para la Aplicación del Derecho (Foundation for Studies of Applied Law)
FETRACUR	Federación de Trabajadores del Campo y Urbanos (Federation of Rural and Urban Workers)
FITH	Federación Independiente de Trabajadores de Honduras (Honduras Independent Workers' Federation)
FOS	Fondo de Cooperación al Desarrollo de Bélgica (Belgian Development Cooperation Fund)
GMIES	Grupo de Monitoreo Independiente de El Salvador (El Salvador Independent Monitoring Team)
GUA	Guatemala
HON	Honduras
IDHUCA	Instituto de Derechos Humanos de la Universidad Católica (Institute for Human Rights, Catholic University)
IRSTD	Iniciativa Regional por la Responsabilidad Social y Trabajo Digno (Regional Initiative for Social Responsibility and Decent Work)
INCAE	Instituto Centroamericano de Administración de Empresas (Central American Business Administration Institute)
MINTRAB	Ministerio del Trabajo de Nicaragua (Nicaragua Ministry of Labor)
NIC	Nicaragua
PASE	Profesionales para la Acción Social Empresarial (Professionals for Entrepreneurial Social Action)
SAL	El Salvador
SICA	Sistema de Integración Centroamericana (Central American Integration System)
Sind. Enrique Smith.	Sindicato de la Empresa del Calzado Saratoga - "Enrique Smith", Ciudad Sandino ("Enrique Smith" Saratoga Footwear Trade Union, Ciudad Sandino)
SITRASAE	Sindicato de Trabajadores de SAE (SAE Workers' Trade Union)
STSS	Secretaría del Trabajo y Seguridad Social de Honduras (Honduras Ministry of Labor and Social Security)
UGT	Unión General de Trabajadores de Guatemala (General Workers' Trade Union of Guatemala)
UNSI TRAGUA	Unión Sindical de Trabajadores de Guatemala (Guatemala Workers' Trade Union)



Introduction

It is an honor for our organization, Asociación Servicios de Promoción Laboral (ASEPROLA), to have been considered to conduct the investigation denominated IMPROVING SOCIAL PROTECTION IN THE APPAREL AND FOOTWEAR INDUSTRY, investigation conducted in Central America for the Fair Labor Association (FLA).

The investigation formulates, together with a series of critical opinions of the system that is behind the maquila industry in Central America, a series of proposals to improve the conditions of workers.

The work focuses on technical proposals for social protection originating from government sectors and from worker organizations -- including some proposals to which employers are sympathetic -- but goes beyond to investigate countries beyond the target area and even from other latitudes in order to consider ways to improve the practice of compliance with labor rights.

It is clear that a new global articulation in the manufacture of garments and clothing has taken a different direction from that when the Multi-Fibre Arrangement (MFA) existed, which assigned, so to speak, production quotas by region and by country. Today, 6 years after its end, we can observe more clearly what had been projected with regard to how global textile activity would change.

The expiry of the MFA would cause problems in countries where large companies decided to relocate and in those from which they withdrew, especially when global conditions for openness, made countries with depressed economies opt for public policies that attracted foreign direct investment, such was the case of Central America.

This investigation seeks to identify adequate social protection measures for workers, as it is likely that the MFA may be contributing, directly or indirectly, to the gradual loss of rights on the part of workers.

The first chapter provides a general context of the region in terms of employment structure and how public policy has incentivized the model of free zones and the effects of the zones. It also shows in tabular form the worker rights that are guaranteed in the region and who is responsible for providing such protection and tutelage. In addition, the wage structure is discussed, in order to compare the cost of termination with other world locations. Finally, it presents some options to compensate workers.

The second chapter presents **protection options arising from the private sector**. Unavoidably, at the issues at hand involve three parties, the State and workers also participate, but we have chosen to name them as such, since the crucial driving force for them comes from the private sector within the work triad.

For each initiative, constructed based on ASEPROLA's experience combined with consultation with the sectors and with country experiences, pros, cons and conditions for its operation, including some positions of the work team, are included.



Chapter three, which sets out the possible initiatives arising from the public sector, is perhaps the vital element in the report. These initiatives are likely to generate a great deal of discussion and, most probably counterproposals from persons and organizations that may publicly debate this document.

Chapters four and five reflect our ethical commitment, as during the interviews comments and criticisms of the production model arose, especially calls to global brands who produce in Central America and to Governments who promote a policy of attracting direct investment via free zones. While these are not technical comments and are more in the political realm, we believe that they could be part of a future discussion or of the current debate regarding the system underlying production of textiles and garments.

Were we to ignore this and leave it for discussion at a later time, we would not be reflecting the views presented by the individuals and the social and union organizations that provided us with logistical support and shared their knowledge with us.

Finally we present some conclusions to be considered during the discussion of the report, expecting that it generate many and positive reactions.



1. Context

1.1. General Context in Central America

Data for Central America and the Dominican Republic indicate that, as of 2007, employment in the maquila industry represented 500,000 direct jobs, with more than 808 companies involved (IRSTD 2007).

In the countries targeted for this research (Guatemala, El Salvador, Honduras and Nicaragua) a 20% decrease in employment is estimated in this sector during the last three years, caused by the financial crisis in the United States and an increased shift of this industry to Asian countries. However, the governments of the countries under investigation are continuing to struggle to preserve and promote this activity, given the very limited progress they have made in attracting other forms of capital investment that would absorb such high levels of the economically active population and contribute greater value added to gross domestic product.

The textile maquila contributes little to value added as – for example – its contribution in Honduras represents 6% of the value added to GDP, while in the other countries (Guatemala, El Salvador and Nicaragua) it represents in the order of between 1% and 3% (The State of the Region, UNDP, 2007).

Despite this, the textile maquila (and to a lesser degree the footwear maquila) are still important contributors to the economies of the countries being analyzed, which is troublesome due to the tendency of these governments to be permissive with investors in these areas, especially with regards to labor and environmental responsibilities.

In 2010, Honduras approved a law that allows a salary below the minimum wage, if companies locate in very economically depressed geographical zones.

This initiative motivates other countries to promote similar measures: for example, in El Salvador, manufacturers in free zones advocate for more flexible legislation with respect to labor for the maquila sector, focusing on changes to work shift hours that practically eliminate overtime payments. Likewise, in Guatemala, employers seek changes to the current free zone laws in favor of more permissive and lower fiscal requirements.

It is clear that globally there is a “*race to the bottom*”, as stated by the International Clean Clothes Campaign initiative (Merk, 2009) in its analysis of the textile maquila in Asia. That is, the international maquila industry is highly competitive, with capital coming and going where fiscal and labor conditions are lower, and this seems to justify some business attitudes, especially with regards to labor responsibilities, although this industry never in its history has been characterized for its good practices in this field. This challenge has transcended the national level. It is not only the attitude and policies of one country that tilts the balance – for example, the China factor; it is a value chain that flows internationally following a hegemonic logic of actors, in which the brands and retailers hold a privileged positions and impose their conditions.

Faced with this situation, we ask ourselves, *as the situation stands, is enforcing compliance with labor rights a way to drive away investment in the maquila industry within a country?*



The answer is: it is a risk, but the race to the bottom must be pushed in the opposite direction. Many efforts in Asia and Latin America are aimed at doing so. Merely applying existing labor rights is a method of achieving this. A political decision by the actors in the value chain would suffice for things to change for the better.

One of the ways to mitigate the “*race to the bottom*” would be for maquila-promoting countries to at least comply with labor obligations. In Guatemala, El Salvador, Honduras and Nicaragua, labor movements historically achieved legislation that protected labor and the state sided with workers in confronting employers.

1.2. Rights covered in the case of dismissal without just cause in Central America.

For the purpose of this study, the legal procedures that apply when a maquila enterprise shuts down are denominated “*contract termination without just cause.*” The legal jurisprudence has determined that the closing of an enterprise is not as a result of a cause attributable to the worker, Therefore, it is the employer that dissolves the labor contract, regardless of the cause that led to the company closure.

Even though, in principle, the employer has the freedom of contract, it is conditioned upon the obligation to indemnify workers, given that the right of the employer could result in harm to the interests of workers.

Legislation in all of the countries analyzed include a range of benefits for workers in the case of termination without just cause. Variations from country to country are not significant, as shown by the following table:

Table 1: Rights covered under *termination without just cause*
By country
By type of right¹

Rights	Guatemala	El Salvador	Honduras	Nicaragua
Christmas Bonus or Thirteenth month. (*) Legally a part of the company’s financial liability. It is a responsibility of the State to guard this worker entitlement.	Proportional to the date of dismissal, between January 1 st of the previous year and December 31 st of the current year.	Proportional to the date of dismissal, following these guidelines: - 1 to 3 years: 10 days of wages. - 3 to 10 years: 15 days. - More than 10 years: 18 days.	Proportional to the date of dismissal, between January 1 st of the previous year and December 31 st of the current year.	Proportional to the date of dismissal, between January 1 st of the previous year and November 30 th .

¹ Rights with (*) are inalienable rights.



Rights	Guatemala	El Salvador	Honduras	Nicaragua
<p>Bonuses Bonus 14 or Fourteenth month (*) Incentive bonus.</p> <p>Legally a part of the company's financial liability. It is a responsibility of the State to guard this worker entitlement.</p>	<p>Bonus 14: Additional payment of one ordinary salary (100%) for each year or fraction thereof, worked for a single employer, paid during the first half of July.</p> <p>Incentive bonus: Payment of Q.250 quetzals agreed upon by the parties to be paid along with the monthly wages.</p>	<p>Not applicable</p>	<p>Fourteenth: Social compensation paid during the month of June each year. It corresponds to a payment of 100% of the salary, without social contributions. A year of service is calculated between July 1st and June 30th of the following year.</p>	<p>Not applicable.</p>
<p>Vacation Pay (*).</p> <p>Legally a part of the company's financial liability. It is a responsibility of the State to guard this worker entitlement.</p>	<p>Corresponding to vacations not taken.</p>	<p>Vacation pay is the wages of 15 days, in addition to a 30% surcharge. Within a year, a proportional payment is made corresponding to vacations not taken at the time of dismissal. If the worker has not taken any vacations during the year, a complete payment is made.</p>	<p>Corresponding to vacations not taken.</p>	<p>Corresponding to vacations not taken.</p>
<p>Indemnity or severance (*)</p> <p>Legally a part of the company's financial liability. It is a responsibility of the State to guard this worker entitlement.</p>	<p>Equivalent to a month's salary for each year of continuous service. If a year of service is not completed, then the proportional amount. The reference monthly salary is based on the salaries for the last six months.</p>	<p>One monthly salary for each year of service plus an amount for any fraction of the incomplete last year. If less than a year of service, a proportional amount that cannot be less than 15 days is paid. The reference monthly salary is based on the salaries for the last six months.</p>	<p>Severance benefit: 10 days of wages, if worked 3 but less than 6 months; 20 days of wages, if worked 6 months to less than one year; 1 month for each year worked, and proportional for fraction of a year. The maximum for the severance benefit is 15 months.</p>	<p>Seniority compensation: For the first three years, one month's wages for each year or corresponding fraction worked. For 4 to 6 years, right to 20 days of wages for each year of service or fraction. From the 7th year of service forward, it does not continue, as the maximum compensation is 5 months of salary.</p>



Rights	Guatemala	El Salvador	Honduras	Nicaragua
<p>Notice It is the obligation of the parts to inform within reasonable time, the cessation of work. If a worker does not provide notice, jurisprudence interprets this as abandonment of work and the employer may apply justified termination.</p> <p>Where this entitlement exists, it is the responsibility of the State to guard its application.</p>	<p><i>Notice</i> is a right of the employer and its object is to provide the employer a period of time during which the worker hands over the position and/or trains a person to occupy the position.</p> <p>The worker must communicate the intent to resign in writing or verbally (if two witnesses are present) according to the following table: 6 months of continuous service, one week of advance notice. After six months of continuous service, but less than one year, ten days of advanced notice. After one year of continuous service, but less than five years, two weeks' notice. After five years of continuous service, at least one month's advance notice. If the worker does not comply with the advanced notice, the worker must compensate the employer.</p>	<p>The notice takes the form of a monetary indemnity only in the case of contracts for a determinate amount of time or by job.</p>	<p>Whether the employee or the employer decided to rescind the work contract, it must be communicated according to the following: 24 hours' notice for less than 3 months of service. 1 week for 6 months to one year of service. 1 month for 1 to 2 years. Two months for more than 2 years of service. When the worker is terminated and no advance notice is given, severance must be calculated according to seniority calculations.</p>	<p>Notice does not exist; it was replaced by seniority compensation.</p>

It is important to point out that in the case of “termination with just cause”, that is, when the reason for termination is among those included in the law as a cause attributable to the worker and punishable, the employer is not obligated to pay indemnity or severance, but must meet all benefits of Christmas bonuses, vacations, bonuses and wages owed at the time of dismissal.



The obligations are set out in **the Labor Code of each of the countries and it is the responsibility of the State, through its Labor Departments, to ensure that they are obeyed**. Faced with employer non-compliance, workers must turn to Labor Inspectorate to present a complaint; this entity will attempt to mediate with the employer to enforce the worker's rights. Otherwise there are other judicial means, like labor tribunals to present claims. This institutional framework does not work efficiently, as there are a series of obstacles to providing labor justice effectively, promptly and timely, in part because of the fear on the part of workers of repercussions for activating the judicial labor system, as well as for its economic costs. The institutional obstacles are possibly the most significant (IRSTD, 2007), ranging from lack of jurisdiction to corrupt behavior of authorities.

The sudden closure of an enterprise, particularly when this is done without meeting its obligations to provide benefits, is a complex situation, given that generally maquilas do not have assets to seize. The structures where the maquila operates often is leased from the free zone corporations; machinery is leased from a third party; and the goods being produced (manufactured) do not generally belong to the maquila employer but rather to the company requesting the service, generally a subcontractor or a brand if it is a direct contract. Under these circumstances, there is little to seize to meet the benefits owed to affected workers, although, the law establishes that in the case of closure or bankruptcy, worker claims have payment priority.

In addition, termination costs are internationally high compared to the average in Asia.

According to the World Bank (Doing Business Report 2010) the cost of termination calculated in weekly salaries is an average of 62.9 weekly salaries for Latin America and the Caribbean, compared with 44.2 weekly salaries for East Asia and the Pacific region it is 44.2 weekly salaries.

In the countries analyzed, the cost of termination is:

Guatemala	101 weekly salaries.
Honduras	95 weekly salaries.
El Salvador	86 weekly salaries.
Nicaragua	23.5 weekly salaries.

While in some Asian countries:

India	79 weekly salaries.
Singapore	4 weekly salaries.
Thailand	47 weekly salaries.
Vietnam	98 weekly salaries.
Malaysia	65.2 weekly salaries.

Taking into consideration minimum wages, in countries such as India, Sri Lanka, Vietnam, Pakistan and Cambodia, the minimum wage is below or in the vicinity of the poverty threshold established by the United Nations of 2 to 4 dollars a day (Merk, 2009), while the minimum wage in the analyzed Central America countries is between 7 and 8 dollars a day.

The above data are often used by businessmen, economists and politicians in Central America to argue for greater labor flexibility, not only in the maquila industry but also in the general production of goods and services. Other opinion groups in the region speak of



the diversification of the maquila industry (following the examples of Costa Rica and Panama), striving for greater efficiency and competitiveness. However, in Central America, as much as in Asia, the right thing to do is to halt the “race to the bottom” affecting the textile and footwear industries worldwide.

Finally, it should be noted that any proposal promoting a more effective access to worker benefits is likely to create a pool of funds that might be a significant² and could create economic benefits to the countries.

1.3. The structure of the labor market.

The population of Central America is approximately 39 million, divided almost evenly between men and women. Of the almost 26 million people of economically active age, only 14 million people work, 10 million men and 4 million women.

The economically active population in Central America consists of 51% women and 49% men; hence female employment is 33% while male employment is 67%.

The textile sector in Central America provides 425 thousand jobs, of which 75% are jobs filled by women.

The salary structure in Central America ranges from \$133 dollars to \$284³ dollars; the following table shows this structure for the countries analyzed:

Country	Average wage for maquila (in USD)	Approximate number of workers for the sector 2/
El Salvador	173.70	100,000
Guatemala	250.00	92,000
Honduras	215.00	110,000
Nicaragua	133.00	90,000

In general terms, workers in this sector can be characterized as follows: generally a young person, between the ages of 18 and 35 years, poorly educated, poorly trained for the job, required to perform multi-functions, living under conditions where salary is spent almost immediately, without the ability to save. Generally unaware -- due to a low educational level -- of worker rights, and in some cases, has no knowledge about the collective defense of these rights.

This explanation is important, as it describes the panorama, in addition to other points made earlier, through which any proposal for protection will have to go through in Central America.

² According to the newspaper “El Financiero” from Costa Rica, the Labor Capitalization Fund in Costa Rica in July of 2010 reached \$624,000,000.00. http://www.elfinanciero.cr/ef_archivo/2010/septiembre/05/finanzas2494992.html

³ Salary for this sector in Costa Rica.



1.4. Other options in addition to severance payment, to extend social protection for workers

a. Private unemployment insurance (paid for by the employer)

Unemployment insurance is a fund to which three parties contribute (workers, employers and the State). In Latin American countries such as Brazil and Uruguay, unemployment insurance systems are administered by the state, while in Chile they are operated by a mixed private and state system.

The worker generally has access to the fund for a period of six months, a reasonable time to find other employment. The amount received is no less than 50% to 60% of the wages earned prior to unemployment

In Mexico, the employer obtains an insurance policy from an insurance company in the name of each of its workers, in the form of individual accounts. It is also a temporary and limited system, as it does not replace the full wage (prior to unemployment), and therefore, it is a form of temporary subsidy. This is a characteristic of unemployment insurance systems.

Unemployment insurance systems do not exist in Central America. However, Severance Funds (in Costa Rica and Panama) are considered a type of worker insurance against unemployment.

In the countries analyzed, only in Guatemala was there a draft law identified to create a tripartite unemployment insurance system, Initiative Number 4036 “Regulatory Law for the National Program for Unemployment Insurance and Employment Promotion”, which would allow workers who lost their job without just cause, or who request a termination of contract for causes attributable to the employer, to receive for up to six months or until other employment is found the equivalent of 60% of the average salary for the last year (this benefit could never be lower than the minimum wage).

The ILO has pointed out that in Latin America, unemployment insurance systems are limited to a few countries and to formal employees, who are generally less than 35% of the Economically Active Population. However, the greatest concern regarding this form of insurance is its lack of solvency in the face of cyclical employment crisis and the low rate of return of the fund in these instances to cover future demand due to increasing numbers of eligible workers. This concern stems from the experiences in Europe and the United States, during prolonged periods of labor market crisis, when funds have become near bankrupt and unable to cover the population requesting it.

Some regional private banks offer a type of unemployment insurance, which workers can obtain individually and voluntarily, to cover payment of a worker's debts (mortgage, bank loans, payment of service such as education). This service is evidently aimed at the professional sector.

b. Private sector defined contributions (similar to 401K)

This type of insurance policy, used to build retirement funds and promoted by companies, is not seen in the region, particularly in the countries analyzed. Furthermore, we have not



identified any initiatives of this nature formulated by companies or by workers. The closest to this type of retirement fund in the region is found in Costa Rica, where the law – Solidarity Law – allowed employers to transfer severance funds to these structures for their administration and investment. However, the moneys came from severance funds and not from additional contributions or from an agreement with workers to deduct certain amounts from their salaries to create the aforesaid alternative retirement funds.

The administration of funds by solidarista associations was weakened by the approval of the Law for Worker Protection 7983, issued February 16, 2000, which created labor capitalization funds, that collect 3% of gross severance on behalf of workers.

An issue with 401 K type contributions is the level of worker salaries in Central America, which scarcely are sufficient to purchase the basic food basket. It would be beneficial to conduct in depth analysis to determine if, under such precarious conditions, it would be possible for workers to allocate funds for this purpose, which we find doubtful.

The closest example of what we could call unemployment benefit occurred in a maquiladora in Nicaragua where, not during a closure but during a temporary cessation of operations, the company, notwithstanding that the law allowed the company to stop payment of wages to maquila workers, “decided” to maintain payment of minimum wage during the shutdown – an isolated and responsible case – although the law indicates that during a shutdown, workers shall not receive wages.

c. Examples of any other models from other industries in any country

We have found few if any examples of this situation. What we find in cases of some closures – and there are not too many examples – are companies and brands that faced with great national and international pressure agree to a remediation process to address irresponsible closures, with brands assuming part of the responsibility. Examples such as those in Honduras (JERZEES) and Nicaragua (CALYPSO), demonstrate that that the remediation is conducted under pressure and not by free will.

In Costa Rica, we have found within the instruments developed by INCAE (Central American Institute for Business Administration) and the Business Development Association (AED)⁴, indicators related to dismissals and mass layoffs. These indicators are part of instruments developed in Costa Rica to evaluate enterprises with the objective of improving their corporate social responsibility. We are not aware of whether this same methodology is used in other Central American countries and if so, whether the same indicators are used.

This effort is interesting and within the mechanisms of Corporate Social Responsibility. A study conducted by the Regional Initiative for Social Responsibility and Decent Work (IRSTD) in 2007 shows that companies that are applying Corporate Social Responsibility Systems are domestic and powerful international companies, established under the national legal regime, rather than those operating under the free zone regime (maquilas).

⁴ Costa Rica Social Business Responsibility Indicator Manual.



2. Social protection options offered by the private sector

2.1. Guarantee policy

This is a type of insurance; policies generally prevent a contingency such as losses (life insurance, accidents, health, theft, fire, etc.).

Pros	Cons	Position of the consulting team	Proposal conditions or considerations
It can be appealing if employers are convinced that payment of a policy would be beneficial to them, as brands would increasingly use their services and governments will consider this initiative in terms of fiscal incentives. Some employers indicate that these types of actions should be recognized as part of corporate social responsibility and therefore, governments and brands should accordingly, reciprocate these actions.	Because it deals with a productive sector known for poor worker rights practices by some employers, insurance companies might establish high premiums for this insurance. This would be an additional cost incurred by maquilas. Some employers maintain that requiring them to procure this insurance is tantamount to asserting that they will fail to comply with worker rights. This option is not functional because insurance is used to prevent a contingency such as covering losses (life insurance, accidents, health, theft, fire, etc.).	Covering worker rights in case of closure is not a contingency . It is a legal right. Promoting this approach could reaffirm the government's inability to protect labor rights. Insurance should not be used to legitimize an unlawful, fraudulent closure. The contingency would not be the possible closure of the company, but the company's failure to compensate workers (an illegal act). Insurance is not designed to cover illegality, but to cope with losses.	Each company should make the corresponding provisions, of an administrative and financial nature, to ensure the availability of funds to comply with labor-related obligations. A closure may, or may not occur, however, should it happen, the "loss" would be to defraud workers, an illegal act. Insurance is not designed to cover crimes. It should be applied in all Central American countries to avoid creating a competitive disadvantage for the country adopting this proposal.

2.2. Contingency fund agreed upon by the parties

It would be a "commitment" fund, agreed upon by the participants in the value chain.

This initiative arose from the investigation team's debate after observing the panorama and context under which this inquiry was conducted. It would be utilized only in the case of illegal business closures of companies in free zones, which would make it a "solidarity" fund to act against corporate irresponsibility.

It is based on three premises:

A – States have made the attraction of foreign direct investment into a public policy to mitigate unemployment through a policy of commercial openness upon which labor laws have been superimposed. However, there are gaps in labor laws in the light of very aggressive free trade policies. It seems to be the case that countries have not been able to improve or adapt labor laws and further that labor laws have not been enforced. This has led to a competitive environment based on lowering labor costs.

B – Companies not only take advantage of the fiscal benefits provided by the Free Trade Zone Laws for specific duration of time times, but also seek to improve their profits



through well-known methods, such as putting pressure to lower labor benefits environmental regulations, etc.

C – Brands, seeking to place orders for their apparel products, take advantage of these developments to lower their costs, knowing that at times that laws as well as business practices are permissive and detrimental to workers.

Therefore, each party forms a link, and in conjunction with the others, creates a value chain, where costs are subsumed and an adequate profit margin is sought for all parties.

Pros	Cons	Position of the consulting team	Proposal conditions or considerations
<p>In at least one country, government sectors were consulted, and they appeared to be “interested” in the proposal.</p> <p>It depends on the will of the participants of the value chain, given the demonstrated instability (widely acknowledged) of this type of production.</p> <p>It can provide increased peace of mind to workers and give parties an incentive to better inquire about the type of company an agreement is bargained with, given that the proposal aims to provide support against “illegal” or sudden closures of factories, evolving into a safety mechanism to counter the same corporations or societies in the same country or other countries..</p>	<p>Persuading the brand – or brands – buying from the factory may prove difficult since sometimes the production contracts are for far too short a time to consider this type of fund.</p> <p>The same may be with respect to companies, who may interpret it as an offense, since they may see it as based on perceptions that they break the law with impunity.</p> <p>Design of the “solidarity” fund within a logic that protects individual investment and not joint investments.</p> <p>Persuading the State to guarantee a part of the would mean getting it to admit that there are shortcomings in its public policy regarding foreign direct investment, which would be a challenge.</p> <p>The “what” and the “how” the State will contribute to this fund will have to be determined.</p>	<p>It is a “commitment” fund in which the three responsible parties, responding to adequate pressure and above all coordination with labor, can come to an agreement to create a contingency fund that supports workers and functions as a “responsible floor” to deal with the irresponsibility of a few.</p> <p>It does not guarantee compliance with rights; it only acts to address “illegal” contingency of some employers, but at least it protects with dignity the workers’ rights.</p> <p>We foresee tension with respect to how the fund is constructed, as the parties must agree on contributions based on forecast profits from the value chain, meaning a cost is to be incurred from the projected net profits after deducting inherent production costs.</p> <p>If agreed, the fund would be located in an organization inserted within the State (Labor Ministry or the social security system).</p>	<p>Related to the value chain concept.</p> <p>Must cover at least two months of minimum wage for workers and assumes payment of all labor obligations owed.</p> <p>The average prescribed amount would correspond to the average number of employees in the textile and garment plants existing in free zones working with the brands willing to support it.</p> <p>Labor issues paid during a whole year plus two monthly base salaries, multiplied by the average number of employees working in the factories willing to participate; this would be the required amount, prorated among all the factories used by each brand..</p> <p>The state would guarantee that, at least during two months, workers have complete social security coverage, for each unemployed workers and their family.</p> <p>Evidently, the state would incur the greatest share of the cost in this chain.</p>

Formula for the contingency fund. $ExL1 + (Xt * \mu SM)^5$

ExL1= payable labor benefits in a work year.

Xt= Average number of workers at factories involved in the process.

μ = number of months agreed to be kept as base salary (2 months?)

SM: monthly base salary

⁵ See attached Excel file containing an explanation of the creation of the Fund.



To calculate yearly labor benefits: $ExL1 = Xt * (C+A+V+\sum oe)^n$

C= Severance

A= Christmas bonus

V= Vacations

$\sum oe$ = sum of other labor benefits associated with the rights in the country, for example 14th bonus, education bonus, etc..

n= number of years proposed to be included in the fund – we suggest two years.

Contributions to the fund are divided into 50% for brands involved and 50% for businesses, prorated to brands and participating employers. The fund is created and funded directly with two years of owed labor obligations, according to the formula, and two months average worker base salaries for the average number of workers employed. Given the formula for calculating labor obligations owed, this will grow because of investment- this can be a trust opened with a public or private finance company. The State commits from one to three months full social security benefits for unemployed workers and their families, caused by the irresponsible business closure.

The State, brands and other participating employers would put pressure on bad companies to return to withdrawn amounts to the fund, under penalty of grievance or elimination of orders to other companies belonging to the same corporation or the same company in other countries.

2.3. Precautionary fund

It is a fund that every business must accrue, preferably in the form of an account outside of its operations, covering the costs stemming from the payment of labor obligations stemming from an eventual closure.

Pros	Cons	Position of the consulting team	Proposal conditions or considerations
<p>Would guarantee the existence of funds to cover labor rights, in the case of closure or layoffs.</p> <p>The fact that the fund would be in the hands of a financial entity would prevent the employer from physically leaving and depriving workers of their rights.</p>	<p>Employers would make the point that when becoming part of the free zone regime, they deposit a bond, which varies by country, of between 10 and 50 thousand dollars. However, this bond does not constitute a precautionary fund, despite the fact that when an employer illegally flees, this becomes part of the capital used to settle total debts.</p> <p>In countries such as El Salvador, there is a lack of trust in private financial services providers, caused by the negative experiences encountered with pension fund administrators.</p> <p>It is based on the premise that</p>	<p>A precautionary fund would necessarily have to be required of all companies, not only maquilas, under the principle of equality under the law.</p> <p>It would assume that the employer would defraud workers and the State. It deregulates the State's capacity and its institutions, responsible for enforcing laws.</p> <p>The tendency towards labor flexibility in the region threatens the sustainability of these types of long term funds.</p> <p>Legislating in this matter would involve a long and tedious process, encountering</p>	<p>The measures should be applied in all Central American countries, to avoid the possibility of this as a competitive disadvantage for the attraction of foreign investment by the country where it is applied.</p> <p>A study of financial services providers should be conducted in order to establish which are qualified to administer the funds, based on efficiency, security and protection criteria. In addition, the supervising entities of these financial services providers would need to be strengthened.</p>



	<p>the employer will defraud workers and the State. It deregulates the State's capacity and its institutions, responsible for enforcing laws.</p> <p>In the majority of countries, workers distrust private financial institutions and public providers are insignificant, with few exceptions.</p> <p>The tendency towards labor flexibility in the region threatens the sustainability of these types of long term funds, through subcontracting. Another problem is the reigning impunity of companies that deduct pension fund contributions from workers and do not deliver them to the corresponding entities.</p>	<p>innumerable obstacles from employers and their allies. The free zone regimes may be in contradiction with efforts to enforce a statutory fund. For any administered fund, efficiency, safety and protection criteria should be considered.</p> <p>If this proposal were adopted, it would merit a study of providers of financial services: private, public, foreign and cooperatives. Another condition would be the strengthening of supervising entities.</p>	<p>It requires the reversal of the impunity enjoyed by companies that violate labor legislation. Otherwise some companies would comply and others would not, without consequence, which would limit the effectiveness of the measure as some companies would be able to take advantage of the fund for their benefit.</p>
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2.4. Labor liabilities

Labor liabilities are a financial accrual to meet future employer obligations of a monetary nature (money) that have a financial impact on the company. Some of the persons consulted for this study believe that funds to cover this obligation should be deposited with a financial services provider, as has been suggested for the precautionary fund.

Pros	Cons	Position of the consulting team	Proposal conditions or considerations
<p>There are draft legislative bills regarding this liability in Honduras and Nicaragua. However, currently it is not being discussed by the legislatures.</p> <p>It is known that there are initiatives from civil society that are in their files as well as initiatives from political parties.</p> <p>A proposal in Nicaragua is trying to get Congressional attention.</p> <p>Such a proposal may be able to generate political will in some countries.</p> <p>Workers and their organizations support these measures, given the greater risk to workers associated with the evasion of these</p>	<p>Our inquiries and review of studies demonstrate that there is strong opposition by employers to hand over the accruals for labor liabilities to a third party. They state that turning it over in advance or funding the liability from year to year in an account administered by a third party would create financial stress, as they use this money as working capital. At most, they may be willing to hand over payment for some labor benefits, such as annual severance or indemnity (COHEP, Maquila Association, Honduras). Possible political will</p>	<p>An employer cannot be forced to deposit labor liabilities in an account, under the administration of a third party, because labor liabilities are a financial accrual for future employer obligations of a monetary nature and have a financial effect on the company.</p> <p>The employer decides how to safeguard or utilize labor liability funds; it is essential that the company complies with labor rights at the time payment is required.</p> <p>The State must insure that this liability is paid to workers.</p> <p>An accrual is an accounting measure for a definite obligation; it is set by law based on a combination of time and</p>	<p>These measures should be applied in all Central American countries to avoid their being considered as a competitive disadvantage in the country where it is applied for the attraction of foreign investment.</p> <p>It is not viable in political or legal terms.</p>



labor rights lies with the fact that the aforementioned liability is in the employer's hands and the employer decides if payment is to be made.	contrasts with national policies for attracting foreign direct investment and job generation should there be withdrawal of employers from its free zones.	work (Christmas bonus, etc.) An accrual is not made for uncertain labor obligations, for example indemnity, as its accrual depends on whether terminations are made without just cause.	
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2.5. Company's financial health indicator system

This system would monitor emerging problems, through leading indicators that would warn when a company is facing problems. It seeks to solve problems and prevent unexpected closures that leave workers unemployed and without access to their labor and social rights.

Pros	Cons	Position of the consulting team	Proposal conditions or considerations
<p>Companies participating in this type of program may gain advantages stemming from transparency.</p> <p>Brands should prioritize contracts with these manufacturers.</p> <p>It allows prevention of extreme situations that jeopardize workers' rights.</p> <p>Indicators exist that alert when companies face problems.</p> <p>Create an organization to develop and generate these indicators at a regional level.</p>	<p>As it would be a voluntary program, it would benefit only workers from companies that participate.</p> <p>It assumes an agreement among the parties to solve existing problems with the implementation of worker rights.</p> <p>It requires political will on the part of governments to enforce these measures and to prevent manufacturers from presenting altered records.</p>	<p>The idea is to anticipate closures, whether legal or illegal, by reviewing indicators such as timely payment of wages and social benefits.</p> <p>It can be achieved by a system of cross-check of information available to the institutions in the public sector.</p> <p>It could be combined with a requirement that in order to export, manufacturers present certification that payments to social security are up to date, for example.</p>	<p>These measures should be applied in all Central American countries to avoid the system from becoming a competitive disadvantage for the attraction of foreign investment by the country where it is applied.</p> <p>The primary source of information should be government institutions, conducting a <u>cross-check</u> of the different entities in the public sector.</p> <p>An additional source of information could be the existing verification programs in the sector.</p> <p>Trade unions should have complete access to financial health indicators from the companies.</p>

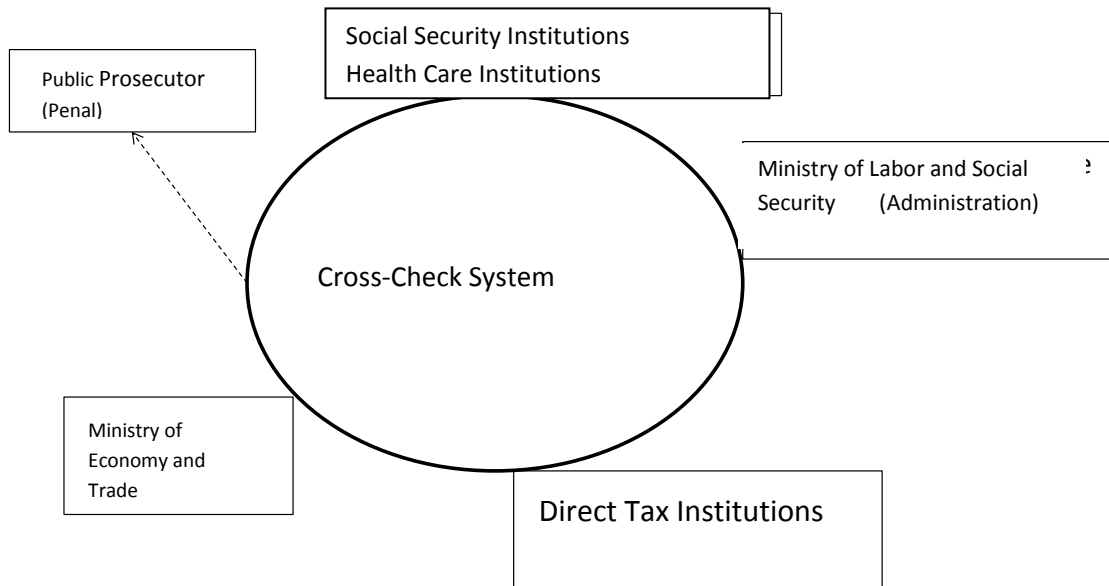


3. Social protection options offered by the public sector

3.1. Institutional cross-check system

Government institutions dealing with productive activities and the protection of labor and social rights establish a cross-check system regarding the status of the company's obligations.

Pros	Cons	Position of the consulting team	Proposal conditions or considerations
Promotes transparency and induces companies to be current in fulfilling their obligations. Brands should only source from firms that have the certification emitted by the government Cross-Check System.	It requires the political will of governments who have demonstrated complicity with and favored impunity of enterprises that have not complied with established laws.	We suggest that this system be implemented in conjunction with the Company's Health Indicator System	The following should be part of the cross-information system: - Social Security Institutions - Labor Ministry. - Tax Institutions. - Ministry of Economy and Trade. - Public Prosecutor Should deny right to export to companies that do not demonstrate they are current with their legal obligations





3.2. Worker rights defense

Defense of worker rights would be based on the model of defense of human rights through autonomous institutions that promote human rights and the rights of citizens in the face of failure or omissions by the State to implement such rights. In addition, the institutions perform the function of promoting dialogue between citizens and authorities for the resolution of conflict

Pros	Cons	Position of the consulting team	Proposal conditions or considerations
Could exercise better supervision of the State's obligations in order for workers and employers can adjust to the legal system regarding labor matters.	There are no documented experiences with worker rights defense. It is focused on the actions of the State with limited power to exercise supervision of enterprises, of employers and of trade unions (in the case of workers) because they are private entities. In Guatemala, El Salvador and Nicaragua the actions of institutions in defense of the people focus on the <i>Procuraduría de Derechos Humanos</i> and in Honduras on the National Commission for Human Rights	It is necessary to have an authorized institution to monitor transparency of the State's tutelage of worker rights. Furthermore, worker rights should be considered as part of human rights, as has been recognized internationally.	Human rights defense offices in the countries studied should undertake the establishment of an entity to perform the function of supervising the State's transparency with respect to protection of worker rights.

3.3. Labor capitalization fund⁶

It is a fund established with tripartite contributions (employer, employee, the State) that provides some percentage of unemployment benefits. It is usually an annual percentage, broken down into twelfths, sent by the employer to an administrator, private or state. Its objective is that every person should have savings that guarantees, in the event of dismissal or unemployment, access to a percentage amount or equal to a salary.

Pros	Cons	Position of the consulting team	Proposal conditions or considerations
Does not result in additional capital expenditures for the employer; a mere 4.17% of the severance fund. For the worker, it represents 2.08% of wages, for example, in Nicaragua, with an average base salary of \$133.00; it would be \$2.70 dollars per month. It has the advantage, as in the case of Costa Rica, that the worker-employer contributions turned over to	Distrust of financial institutions, based on previous negative experiences with the administration of Pension Funds (AFP) and Offshore accounts. Fragility of the financial systems and some elements of corruption not controlled by Central American States would need to be studied if these funds	In the opinion of the consulting team, this be the best alternative given the conditions in the region; it has shown usefulness in some countries. In consultations, this proposal was the best accepted by the sectors. It may not solve the problem of closures, but it does guarantee, when closure occurs, a better degree of protection for workers.	Full exercise of worker protection and supervision by the State. Penal sanctions to be imposed on employers that collect contributions from workers and do not deliver them to the financial entity. Participation of various financial entities to promote competition and higher profits generated by the fund.

⁶ See complete document of proposal at Annex B.



the state were not increased; there was an adjustment to the percentage rates. Employers who pay a yearly severance would only pay the yearly percentage, eliminating the contributions previously delivered to the Capitalization Fund.	are to be established so they do not become spoils for unscrupulous people.	In this proposal, the brands do not have direct participation; however, they should provide funds for the process and put pressure on their suppliers in the maquilas so that they do not oppose its creation.	Political will and willingness of the States to implement it. Projected contribution of 8.33%, which represent a twelfth of salary.
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Summary of the Model

Distributing the 8.33%, corresponding to each of the parties contributing to the fund, the following values are obtained.

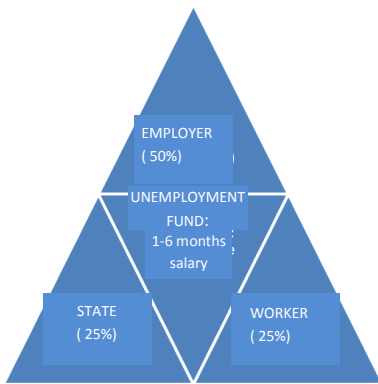


Table #1. Contributions of each party, with respect to the worker's salary

Company (employer)	4.17%
State	2.08%
Worker	2.08%
Total	8.33%

Table #2. Estimate of annual Budget for state contributions, for unemployment protection.

Country	Number of workers (textile, footwear industry) 2/	Average salary \$ approx. (monthly)	State Contribution	State Annual Budget \$ approx.
El Salvador	100,000	174	2.08%	4,348,260
Nicaragua	90,000	133	2.08%	2,991,303
Honduras	110,000	215	2.08%	5,910,135
Guatemala	92,000	250	2.08%	5,747,700

Table #3. Estimate of company contributions (employer), for unemployment protection

Country	% Company contribution (employer)	Average salary \$ approx. (monthly)	Cost \$ to employer per worker (monthly)	Cost \$ to employer per worker (annual)
El Salvador	4.17%	174	7.25	87
Nicaragua	4.17%	133	5.54	66
Honduras	4.17%	215	8.95	107
Guatemala	4.17%	250	10.41	125

Only 2.08% is withdrawn from worker's salary. The contribution of employer and State cannot be withdrawn from the worker's salary.



4. Social protection options offered by brands

Brands are part of a chain that is violating worker rights

The basic issues that influence rights of workers in this sector in Central America are the structures of exploitation and inequality generated by the value chain of textile and footwear maquilas. The difference between what is paid to a worker for sewing a piece of apparel and the final price by consumers is abysmal, as at every step of the value chain, the actors (manufacturer, brands, wholesaler) are applying their profit margin so that the smaller share of the garment's final price is received by the workers who sew it⁷. It is a matter of labor justice, of the distribution of wealth socially produced and of the appropriation of another person's labor. The colossal disproportion is evident and is the base of poverty cycles in Central American countries. A better distribution is possible and is in the hands of those holding the greatest power in the chain: the brands, which could pay more for production costs to the manufacturer and demand compliance with labor rights.

Verification systems, codes of conduct and social corporate responsibility

Two "principles" must be kept in mind:

- a. Voluntary verification systems do not appear to be sufficiently effective, if compliance depends on the manufacturers that produce the garment. This does not mean that improvements for workers do not occur upon intervention.
- b. The best code of conduct is to obey the law.

Without detriment to the self-check that brands apply, it must not be forgotten that they are part of the same productive chain in whose links the law is being broken and workers' rights are being violated. For the time being, the principle of cost reduction has prevailed, above all by exploiting workers more. However, when the brands intervene in a conflict, their effectiveness is greater than that of the governments, due to their capacity to exert economic pressure. Interviewees accused companies of having dual accounting records, which go undetected by the brands' audits.

The Corporate Social Responsibility departments of the brands do not appear to have real power; they intervene to appease conflict, but are powerless against the financial arm of the companies. Their role is perceived as of public relations, with little ability to resolve problems⁸; it is necessary to have an international scandal to have action. A task corporate social responsibility programs might assume is to establish **mitigation policies** to prevent the impact caused when production is relocated or orders suspended to manufacturers, and not only act once the violation has occurred or is occurring.

Commitment of brands with the right of association

⁷ Interview with Fausto Payés of IDHUCA, El Salvador.

⁸ Reference to interviews with Guillermo Matamoros from the Honduras Maquila Association, who indicates that on occasion the brands delay production, because the members of his association obey the law, and that should be enough. Brands should instead focus on controls and not on making visits to check, he says.



The self-organization of workers into their natural organizations is a condition for a democratic society, a counterbalance to the disproportionate power held by maquila employers and a mechanism for the enforceability of worker rights. International brands and contractors should not place orders from manufacturers that have demonstrated a practice of anti-union activities not only for ethical reasons but also because in so doing they are endorsing the violation of laws that establish this right. It is impossible for the brands to remain unaware of the bribery and threats suffered by workers. We recommend:

- a. Establishing respect for freedom of association as a condition for placement of production contracts.
- b. Contributing to eradicate undesirable practices such as dismissal of workers for attempting to form a union and “blacklists” by which no other company will hire them.

Other commitments that should be met by the brands

Brands should commit to ensuring obligations are met in the countries that manufacture for them. Some concrete mechanism could help:

- Publish on their websites the prices of their products in the different markets.
- Inform where and who manufactures their products.
- Participate as witnesses in institutional and legal proceedings in cases of fraud against workers and the State.
- Collaborate with authorities when their suppliers flee or elude responsibilities.
- Assume the responsibilities breached by their suppliers, including labor debt. If the manufacturer will not pay, the manufacturer should be turned in to the authorities.
- Support modification of federal laws in the United States of America in order to make it feasible to file judicial processes in that territory. The above is based on the Federal Law regarding Acts of Corruption committed by U.S. companies abroad.
- Comply with the “Duty to Report”; for example in Guatemala in 2005, the crime of labor discrimination by reason of gender, union persecution, etc., was established by law. The failure to report discriminatory acts is punishable by prison.
- Verification processes imply a **legal duty to report** of the person conducting the verification, in the country where the violation occurs, as well as in the country of origin. This must also apply to certification companies. It cannot be allowed that crimes against fundamental human rights and labor rights are known and nothing happens.

5. Political considerations (laws and regulations)

Central American countries must revise their policies for the attraction of foreign direct investment of textile and footwear maquilas, on the basis of tax exemptions, because it is stimulating a logic that is adverse to national and social interests, for various reasons:

- a. Foreign manufacturers that invoice millions do not pay taxes; however, national businesses, including the informal sector and SME - Small and Medium Enterprises - (PYMES) do pay a different type of tax.



- b. The real attractiveness for manufacturers to relocate to Central American countries is the low cost of labor and the current state of impunity regarding enforcement of labor obligations.
- c. Maquilas use public infrastructure but do not contribute to their construction and maintenance.
- d. The attraction of foreign investment should be based on the quality of human resources (education, technical training).

The research carried out for this investigation identified a series of proposals related to the revision, application and development of laws and regulations, including.

- a. Free Zone laws: Revise the method for regulating investment in maquilas and the State's control. Export should not be authorized unless obligations are currently being met. Fictional closures and reopening under a new registered company name to fraudulently extend the privileges given by the law should not be allowed.
- b. Policies and mechanisms to attract foreign investment: There are employers that prefer to pay a pitiful fine for firing unionized employees and for bad labor practices.
- c. Labor Code: Requires modernization in some countries with regard to indemnity, written dismissal notices, establishing causes for dismissal. Violations of the precepts established in these codes prevail.
- d. Commercial Code: Must be updated regarding company registered name; illegal closures; reopening under a different registered company name; hiring foreign labor; process of liquidation of a legal entity which leads to cancelling debts with workers. The very low amounts required to open a corporation are laughable (5,000 USD in Guatemala) as this is the social capital on which closures are based despite the fact that millions of dollars are invoiced.
- e. Minimum wage: Not revised periodically nor adjusted for cost of living. When there are general wage increases, at times maquila workers are excepted.
- f. Salaries Commission: They are tripartite organs for building consensus, but do not function for lack of interest on part of the governments.
- g. Social Security: Not making contributions or withholding payment of fees is a crime, but remains unpunished. Social Security Institutions must guarantee that workers receive proof that their fees are current.
- h. Production goals: There are gaps in regulations regarding production goals, leading to employer abuse. Some maquilas demand that goals be met on Saturdays and with unpaid overtime hours; there are even claims that workers are charged for energy consumption.
- i. Capital flight: There are gaps in the legislation that prevents leasing machinery, which is used to elude payment of labor rights at the time of closure. There even detachable installations.
- j. Right to unionize: It is not respected due to noncompliance by institutions protecting this right, during employment and in the case of closure.



- k. Conflict resolution: In El Salvador, within the framework of the Superior Council for Labor, there is a Commission for Conflict Resolution in the Maquila that is not functioning.
- l. Institutional coordination: All government institutions related in some form to labor and the maquila must be coordinated and intervene to improve the rights situation.
- m. Cross-check: Establish cross-checks between the Ministry of Labor, Tax Department, Social Security, Ministry of Economy, Public Prosecutor in each country so that exports will not be authorized unless the enterprise is current with its obligations and evasion and appropriation of social security fees is legally punished.
- n. Surety Bond: In some countries a bond is established which foreign companies must pay. In Guatemala it is \$ 50,000 USD (obsolete). To elude it, foreign companies register as national enterprises.
- o. ILO Conventions: Governments ratify them but fail to comply with them.
- p. Institutional strengthening: Provide the necessary resources to implement labor inspections; increase the salaries of inspectors; impose sanctions on officials and judges for failure to comply as an example to others.

Conclusions

From the commercial point of view, any social benefit will represent an additional cost to the value of the product, which will reduce the profit margin of either the manufacturer of the garment or of the retailer or the brand that purchases and distributes it. Or it may result in an increase in the final price that could diminish competitiveness of the product with regards to cost and price.

It is clear that precautionary funds, though currently they are not placed with third parties but rather are within the control of enterprises, imply relatively high costs at the time of settling accounts with the worker, be it with individual workers or with a large mass of workers. This is important to understand why some enterprises decide to end production evading such payments; this is the case in Central America as well as and in the rest of the planet where maquilas have been established⁹.

The funds for the protection of workers described in this investigation make it clear that the **financial mass that can be potentially attracted is significant**, and therefore who and how they will be administered is a critical point to be considered in assessing whether to support any alternative. While they are important for workers, they do not represent the complete solution to the labor problem.

Contingency funds are an interesting approach, but their creation would require persuading **employers, the State and brands to exercise corporate solidarity**, which is not common

⁹ In the interviews and analysis for this investigation, we repeatedly learned of efforts made by employers to find other forms to adjust this precautionary fund in order to reduce dismissal costs.



in business, as contributions might cover the illegal behavior of a competitor that decides to fraudulently close a work center.

Any proposal that is ultimately implemented must not elude the central problem, which is the need to **strengthen institutions** that guarantee compliance with the law by all actors in productive processes. In order for the proposals to impact the construction of democratic societies and a better distribution of wealth socially produced it is critical **to put the system, its regulations and institutions to work.**

Violation of labor and social rights of workers **is a political matter, with legal implications, that cannot be reduced to economic relations and transcends the productive sphere.** Manufacturers must comply with the law, officials have to enforce the law, contractors and brands have legal and ethical obligations. Failure to comply must be pursued as violations of civil, administrative or penal matters. For this reason, we believe that the cross-check system would be an important and merits consideration in Central America as a regional project.

In the case of maquilas, governments should **not allow the manufacturer not up-to-date in meeting its obligations to export.** Central America must direct its efforts towards **standardization of labor and social regulations** in order to break the vicious competition to lower rights as a competitive strategy and to attract foreign investment.

It is essential to **strengthen the ability of worker unions and of the NGO (Non-governmental organizations) working on this matter to act,** so that they may exercise their role of defense, public exposure, proposals and overall involvement regarding this reality.

Any proposal to enhance social protection **should be established in all countries in Central America, to prevent the argument that if only one country applied it, it would lose competitiveness.** This implies that it would necessary to influence politically the Central American Integration System (SICA). A limiting factor is that labor jurisdiction is not supranational, which facilitates illegal closures and the flight of manufacturers.

It would be interesting to involve the Department of Labor in the United States, to **coordinate with the project “Better Work”** which started a pilot in Nicaragua, in considering some of the proposals from this research in order to promote greater and more permanent oversight of working conditions and violation of rights¹⁰.

¹⁰ Expressed by Minister of Labor of El Salvador, Mme. Minister Victoria Velásquez.



Bibliography

- Abdallah A., Leda and Barillas, Byron (2009) Estudio regional acerca del marco legal en derecho laboral y el estado actual de los derechos laborales. Centroamérica y República Dominicana. IIDH, USAID, PACT. Costa Rica.
- Acuña, Guillermo (2006) Flexibilidad laboral en Maquilas de Costa Rica. ASEPROLA, IRSTD. Costa Rica.
- Argueta, Alejandro (2008) Asuntos laborales en el DR CAFTA, Capítulo XVI. CIIDH. Guatemala.
- Aseprola: La ley de protección al trabajador: lo que todo trabajador debe saber... año 2000
- ATRAHDOM (2011) “Las amenazas de despidos masivos genera terrorismo laboral, porque al pueblo también se le mata de hambre”. ATRAHDOM, comunicado. Guatemala.
- Banco Mundial. Doing Business, <http://espanol.doingbusiness.org/methodology/employing-workers>
- BID (2009) Políticas sociales y laborales para tiempos tumultuosos: cómo enfrentar la crisis global en América Latina y El Caribe. Banco Interamericano de Desarrollo. N.E.
- Campaña Regional contra la Flexibilidad Laboral (2010) Flexibilidad laboral violenta derechos laborales en Centroamérica. Tendencias y casos. Campaña Regional contra la Flexibilidad Laboral. Costa Rica.
- Campaña Regional contra la Flexibilidad Laboral y GMIES (2009) Situación de los derechos laborales en Centroamérica. Informe regional para la CIDH derechos laborales en Centroamérica. Centroamérica. Copia electrónica.
- CEPAL (2008) Anuario Estadístico de CEPAL. Chile.
- CEPAL (2009) Panorama Social de América. Chile.
- COVERCO (2010) “Fábricas textiles que cerraron operaciones confirmadas por COVERCO”. Comisión de Verificación de Códigos de Conducta. Fotocopias. Guatemala.
- COVERCO (2007) Informe de cierre de la fábrica Estofel. Comisión de Verificación de Códigos de Conducta. Guatemala.
- COVERCO (2010) Informe sobre sustitución patronal y pago de prestaciones laborales de una importante fábrica en Guatemala. Comisión de Verificación de Códigos de Conducta. Guatemala.
- Chávez, Sergio and otros (2011) A las trabajadoras les pagan solo ocho centavos por cada camiseta NFL de USD 25 que cosen para Ocean Sky en El Salvador. Instituto para los Derechos Globales Laborales y Humanos -IDGLH- (antes Comité Nacional Laboral) / Mujeres Transformando. El SALVADOR.
- Chicas, Francisco and Moreno Ledy (2009) Barómetro de RSE en El Salvador. Una radiografía de la cuestión. Red Puentes. El Salvador.
- El Financiero, CR, http://www.elfinancierocr.com/ef_archivo/2010/septiembre/05/finanzas2494992.html
- Estado de la Nación (2008) Estado de la región en desarrollo humano sostenible. Proyecto Estado de la Nación. Costa Rica.
- GMIES (2004) La inspección del Ministerio de Trabajo y Previsión Social en El Salvador. Grupo de Monitoreo Independiente de El Salvador. El Salvador.



- GMIES (2009) Más allá de los discursos: Responsabilidad social de empresas estadounidenses en Honduras, Guatemala y El Salvador. Grupo de Monitoreo Independiente de El Salvador. El Salvador.
- Gobierno de Guatemala (1990) Acuerdo Gubernativo No. 242-90. Reglamento de la Ley de Zonas Francas. Guatemala.
- Gobierno de Guatemala (1994) Acuerdo Gubernativo No. 296-94. Fondo específico de desarrollo de zonas francas. Guatemala.
- Gobierno de Guatemala. Decreto No. 29-89. Ley de fomento y desarrollo de la actividad exportadora y de maquila. Guatemala.
- Gobierno de Guatemala (1989) Decreto No. 65-89. Ley de zonas francas. Guatemala.
- Hernández V., Manuel (2006) El capítulo laboral del TLC. ASEPROLA. Costa Rica.
- INCAE: Manual de Indicadores de Responsabilidad Social Empresarial Modelo Costa Rica. 2005
- IRSTD (2007) La responsabilidad social empresarial en Centroamérica y República Dominicana. Iniciativa Regional para la Responsabilidad Social y el Trabajo Digno. El Salvador.
- IRSTD (2007) Obstáculos a la justicia laboral en Centroamérica y El Caribe (análisis comparativo). Iniciativa Regional para la Responsabilidad Social y el Trabajo Digno. El Salvador.
- IRSTD (2007) Obstáculos a la justicia laboral en Centroamérica y El Caribe (estudio de casos). Iniciativa Regional para la Responsabilidad Social y el Trabajo Digno. El Salvador.
- IRSTD (2007) Un golpe más: Los efectos del fin del Acuerdo Multifibras en Centroamérica y República Dominicana. Iniciativa Regional para la Responsabilidad Social y el Trabajo Digno. Nicaragua.
- Katz, Claudio (2009) América Latina frente a la crisis global. Copia electrónica.
- La Prensa Gráfica (2011) “Sector textil resiente alzas en materias primas”. La Prensa Gráfica, 23 de enero de 2011. El Salvador.
- Mesa Permanente por la Justicia Laboral (2010) Breve evaluación del tema sindical y laboral. El Salvador.
- Mora, Henry (2005) 101 razones para oponernos al TLC entre Centroamérica y Estados Unidos. Escuela de Economía de la Universidad Nacional. Costa Rica.
- Morales, Abelardo (2005) La región centroamericana y los movimientos sociales. Ponencia presentada en el Encuentro Regional CEAL – Centroamérica. Costa Rica. Copia electrónica.
- Naranjo, Ana (2001) Apuntes sobre el mercado laboral en Centroamérica. ASEPROLA. Costa Rica.
- Obando, Juan Carlos and Rojas, Liliana (2007) Mercado laboral en Centroamérica y República Dominicana. OIT, CECC, AECI. Costa Rica.
- Payés, Fausto (2010) “Informe sobre investigación relativa a las propuestas actuales para mejorar los derechos laborales en la industria de la maquila”. Fotocopia. El Salvador.



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- Pérez Sáinz, Juan Pablo (Editor) (2002) Encadenamientos globales y pequeñas empresas en Centroamérica. FLACSO. Costa Rica.
- Quinteros, Carolina and Valencia, Astrid (2007) ¿Puede humanizarse el mercado? Globalización y sus efectos en las condiciones de trabajo en Centroamérica. Fundación Carolina y GMIES. El Salvador.
- Segovia, Alexander (2005) Integración real y grupos centroamericanos de poder económico. Implicaciones para la democracia y el desarrollo regional. Revista Estudios Centroamericanos (ECA), volumen 61, No. 691 – 692. El Salvador. Copia electrónica.
- Sojo, Carlos (Compilador) (2006) Pobreza, exclusión social y desarrollo. FLACSO. Costa Rica. Copia electrónica.
- Sojo, Carlos; Davis, Shelton and Gacitúa, Estanislao (Editores) (2004) Desafíos del desarrollo social en Centroamérica. FLACSO, Banco Mundial. Costa Rica.
- UNSITRAGUA (2006) La flexibilidad laboral: veneno oculto en agua azucarada. Campaña Regional contra la Flexibilidad Laboral. Guatemala.



Annexes

A - Methodology

This chapter presents the methodology used in the execution of this consultancy. It starts with description of the basic principles that guided team members during this consultancy.

Basic principles of the methodological focus

Based on our experience executing similar missions, the following basic principles necessary in order to involve the target groups and all other actors were formulated:

- Active involvement of relevant actors, in order to optimize the ownership process and the learning effect.
- Special attention to the participation and perceptions of interested parties and key informants, in order to guarantee results and motivate ownership.
- Combination of team experiences and perspectives – a team with broad experience at the international level in the matter of social and labor rights -- in such a way that complementarity was guaranteed.
- Accomplishment of the results of the mission applying the principles of **triangulation, monitoring and evaluation**. The members of the team combine diverse skills and access to sources of information, according to the requirements of the consultancy (document study, interviews with diverse actors, participatory workshops, focus groups, participatory action research, physical presence, etc.) in order to conduct **triangulated** tracking.
- The team shares the principles and values of anonymity and confidentiality, responsibility, integrity, independence, communication regarding impact and validation of information consistent with a high sense of work ethic.

Methodological phases

The Project was implemented in three large phases: a preparatory phase (office work and consulting key informants); execution phase in the field; and synthesis and preparation for dissemination of results phase. The key activities of each phase are described briefly below.

Phase 1: Preparatory phase

The preparatory phase included various activities, beginning with various initial meeting of the implementation team and with knowledgeable representatives of key sectors, and concluding with the organization of the field work. Some of the activities in this phase were: coordination meetings, document study, interviews to frame the object of study, operationalization of the methodological focus, planning, instrument design, and final development of the methodology. At the end of the preparatory phase, the following results were achieved:

- The research framework and the methodological proposal were finalized;
- Detailed instruments for meetings with different actors were developed;
- Data collection and analysis was initiated;
- Techniques for the collection of data were developed;
- The program and schedule for field work were finalized.



Phase 2: Field work

Team meeting

At the beginning of the fieldwork phase, the implementation team met to discuss methodology, the focus of the research, the results of the study of documentation and of consultations with relevant informants, in order to refine the program for field work.

Initial meeting with allies in the target countries

Prior to starting activities in the field, a meeting was coordinated with contacts in the countries in the region and with experts in the matter and representatives of institutions and organizations relevant to the study. This effort gained allies for the work. The objective of the research, the methodology and the work schedule were discussed. The meeting also helped to develop a list of persons to interview during the field work.

Field visits

Visits to each country included in the study were planned. The detailed program of field visits (calendar, actors, activities, etc.) was finalized after refining the methodology for intervention and reaching consensus with allies and local actors. Field work typically included the following activities:

- Meeting with leaders of social – labor organizations. Sufficient time was dedicated to this activity in each of the countries, because collaboration with these organizations in each of the countries was essential to the success of the study. It allowed the collection of opinions and perceptions of union leaders and persons working for NGOs on labor issues. **Methodology:** semi-structured interview, workshop type meeting.
- Visit to leading companies and employers in the sector. The team did not identify companies in the textile and footwear sector that could be considered as models with respect to the application of instruments for the protection of labor rights. An attempt was made to interview representatives from the textile and footwear employer sector, even though they did not have protective instruments, to understand the challenges they face. However, it was only possible to meet with one business representative. **Methodology:** direct observation and semi-structured meeting.
- Document analysis. Identification, selection, review, classification and analysis of secondary documents. **Methodology:** content analysis.
- Meeting with social and labor organizations. In each country, participatory meetings were organized with different social groups, primarily with unions and maquila workers. The meetings were planned in close collaboration with local allies. **Methodology:** group interview in combination with methods for participative analysis (workshop type and focus groups).
- Interviews with institutional actors. Representatives of the public sector whose opinions and experiences support the objective of the research (particularly the pertinence, coherence and design of protection mechanism for workers faced with dismissal or closure) were interviewed. The purpose of the interviews was to gather input from designers and executors of public policy, including those related to labor protection, enforceability of rights, private sector incentives, administration of financial services. A highlight was the interview granted by the Minister of Labor in El Salvador. **Methodology:** semi-structured interviews.



- Development of options and comparative analysis: As part of the field work, data processing and analysis was conducted, applying comparison criteria between countries with similar economies.

The first field visit tested the validity of the methodology and ensured that all members of the team worked with the same objectives in mind. After the first visit, which occurred in El Salvador, the team broke up into country teams to improve the efficiency of the mission.

Persons consulted by country and gender

Country	Total	Men	Women
El Salvador	10	5	5
Guatemala	26	17	9
Honduras	12	7	5
Nicaragua	21	16	5
Total	69	45	24

Discussion and dissemination of information

During the execution of the project, but above all at the end of the field work phase, the implementation team met to compare and analyze the collected information and to formulate as a group the initial results and recommendations. The initial results were presented to FLA by means of a preliminary report and through a telephone conference call. Ideally it would be best to conduct discussion workshops, but this is limited by the mission terms and the high cost of travel in Central America.

It is suggested to FLA that it circulate the Report to other highly qualified individuals, if deemed pertinent. The objectives of the discussion process would be: 1) present, validate and add to the preliminary results; 2) discuss and reflect upon possible outstanding issues; 3) create ownership by stakeholders and stimulate the learning process.

Phase 3: Synthesis and dissemination of products and results

Three activities are anticipated in the last phase of the process:

Draft the preliminary report

The final report is prepared according to the requirements established by FLA. This document synthesizes the results of the field work in the different countries and formulates conclusions and recommendations consistent with the objective of the consultancy. The principle of team work has been maintained throughout the development of the final report. A preliminary report was presented, for comments and reactions, as previously described.

Deliver the final project report

The final version of the report took into consideration the various comments and reactions formulated about the preliminary report.

Presentation to SAFI

We are anticipating an oral presentation of the results to a meeting of the Sustainable Apparel and Footwear Initiative (SAFI) taskforce, to be scheduled in mid-March, 2011.



B – Individual capitalization fund (for unemployment protection)¹¹

1. Context of unemployment protection in Costa Rica:

Costa Rica is the Central American country with the greatest social protection and labor legislation. Nevertheless, it is interesting to note that there have also been cases of well known companies in the textile industry that had been operating in country for years and suddenly left, leaving workers in a difficult economic situation and not complying with the payment of severance required by Costa Rican labor legislation.

Although the legal figure of severance in Costa Rica is very clear, its disadvantage is that the money to pay it is not separate and not managed by a third party, but must be provided by the employer at the time the worker is terminated. This creates the disadvantage that if the employer fails to comply, workers must file suit with the Ministry of Labor and/or the courts, a process that involves a period of time during which workers are without resources urgently needed due to unemployment. The contribution to severance is one month for each year of employment (8.33%), up to a maximum of 8 years.

In addition to severance, there is a Labor Capitalization Fund. This fund represents 3% of the worker's salary and the worker can dispose of this fund in case of unemployment or every 5 years if the worker so wishes. If the worker does not make use of this fund, it is added as a complementary pension.

In the case of Central American countries, which have lower levels of social protection, the proposal that is presented below would be an approach that combines the concepts previously explained into a single simple proposal, that is, an Individual Capitalization Fund (for unemployment protection).

The proposal can be seen as an indemnity for termination, severance or unemployment insurance.

2. Proposal for an individual capitalization fund (for unemployment)

The proposal consists of the following:

- Create an individual capitalization fund, administered by a third party, be it a bank or financial institution, authorized by the government to offer these services. The administrator would have to use for the individual capitalization funds a trust type structure similar to the ones used for pensions in Costa Rica.
- Establish an individual fund that includes one to six monthly salaries, to be provided to the worker at the time of termination.
- The individual fund is created during the first 6 years of work for each worker. The first year, the fund must include the equivalent to one month salary and so on until it results in a six-month fund. Once the 6-month fund is established for the worker, the state and the employer no longer incur any costs with respect to severance or unemployment. From that point forward, the individual fund grows as a function of the earned interest and profitability of the fund achieved by the administrator.

¹¹ Proposal developed by Lic. Carlos Pacheco Ramírez and Ing. Daniel Pacheco Arias, San José, February 2011,



- In order to create, in a time lapse of one year, the fund equivalent to a one month salary, the amount collected is equivalent to one twelfth of a worker's salary, that is 8.33%.
- The unemployment protection system is financed by the company (employer), the worker and the state. The following proportions are suggested:
 - Enterprise (employer): 50%
 - State: 25%
 - Worker: 25%

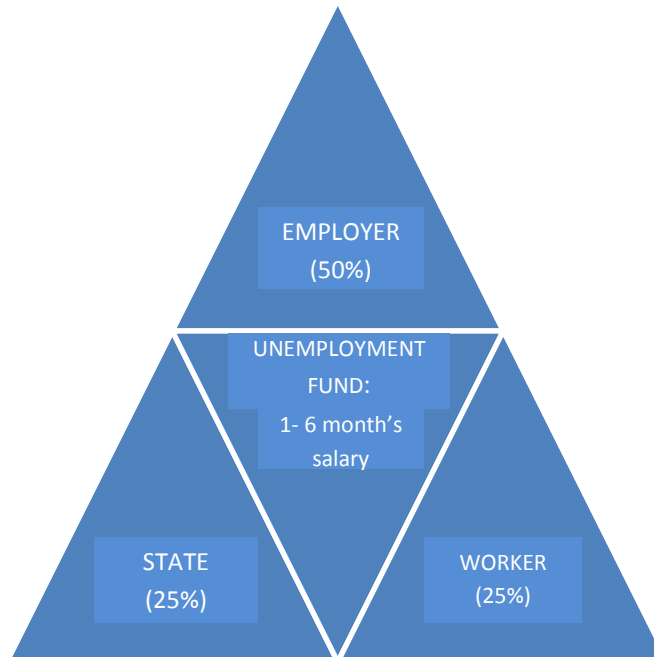


Figure 1. Contribution schematic, individual unemployment protection fund

Distributing the 8.33% among the three parties contributing to the fund yields the following values:.

Table #1. Contribution for each party, with respect to the worker's salary

Company(employer)	4.17%
State	2.08%
Worker	2.08%
Total	8.33%

3. Other considerations regarding the fund for dismissals

- Only 2.08% is withdrawn from the worker's salary. The contribution of the employer and state cannot be taken from the worker.



- The idea is that various banks and fund administrators will offer these services, in order to have a healthy competition for the service offered to the client, providing an adequate balance of security with respect to management and profitability. It would be up to each country to regulate whether a worker can choose the fund administrator or if workers, by an annual vote, decide on a single administrator, in order to simply payments for the employer and for fiscal control.
- The fund is managed by a third party. It is not recommended that the fund be administered by the health department in the social security system of the country to avoid conflicts in the management of the funds (given the needs in the matter of health) that would put in question the availability of the funds to the worker at risk at the time of unemployment.
- In Costa Rica, actions by employers to separate severance funds and transfer them to solidarity associations, a special regime of a legal entity operating independently from the company, has been successful. This provides another option, in addition to the banks, that could manage the funds.
- The fund would belong to the worker, regardless of the cause of termination. The Ministry of Labor (or similar entity) in each country would be responsible for assisting the terminated worker and providing the fund administrator the assurance (approval) for the bank or financial institution to proceed to pay the worker. The Ministry of Labor would have a maximum of 15 days to resolve the issue. In the case where, either due to incompetence or shortage of human resources the Ministry of Labor is unable to act on the requests, automatic approval would be granted. Otherwise, a cumbersome process would divert unemployment payment and leave the worker economically unprotected for many months, awaiting payments.
- If a worker defrauds the system and receives payments from the fund without employment termination, the state and the employer are under no obligation to reincorporate the employee into the fund. However, the worker can contribute to the fund based on his or her own contribution. This contribution can range from 2.08% to 8.33%. It is recommended that the worker contribute at least at the level of the minimum rate during 4 years, until a fund of one monthly salary to be used upon termination is built.
- If termination does not occur, the resources in the individual fund are added as a complement to the worker's pension.
- A company or business chamber or association may question why should a company have to contribute social costs for unemployment, if such company may never terminate a worker or group of workers? The reason is that when a company encounters financial problems, it will be vulnerable to inability to meet its payment obligations and at the time of bankruptcy or closure, it will not be able to meet obligations unless a fund has been previously created separate from other accounts and financed. Thus, the proposed system leads to one fewer headache for all, including the employer, at a time of company crisis or for an entire sector of the economy. Because it is impossible to know beforehand who or which companies will declare bankruptcy or move, it is best to put in place a practice of social responsibility, as proposed here, that covers worker termination of employment from a company, independent of the cause for termination.
- The primary reasons why the protection should be independent of the cause for termination are the following. Firstly, because the payments and contributions are made with the purpose of creating a fund for each worker (individual). Secondly, because if it is differentiated based on cause of termination, the motive for termination could be the subject of litigation (between employer and worker) before the Ministry of Labor or in a court, a



process that would delay payment, defeating the purpose of the unemployment fund, which is to protect financially the worker in case of unemployment during the time period immediately following the termination (1 – 6 months), while other employment or form of sustenance is found.

4. Estimation of cost to the State

The percentage of salary contributions were previously addressed for the parties that contribute to the unemployment fund (worker, state, and employer). In the case of the State, the contribution corresponds to 2.08%.

Given that the State undertakes the contribution for a large volume of workers, for fiscal and budgetary reasons it is necessary to limit the maximum salary base on which the State will contribute. The value of the maximum salary base on which the state will contribute can be set at one minimum wage plus 50% of the same. An employer can pay more than that amount to its workers, but the State will use this value as the maximum salary for purposes of contributions to the fund, in order to be able to budget responsibly and comply with its obligations.

Should a country not have a minimum wage, it is recommended that a “minimum reference wage” be used, which could be the average minimum wage of 3 other countries chosen by the authorities (Labor Ministry or similar entity), as could be the minimum wage of 3 Central American countries.

For the purpose of preliminary calculation of costs of the fund for the State budget, the following information is necessary:

- **Number of workers** subject to the proposal: number of workers in the textile or footwear industry in each country that would be covered under this scheme of unemployment protection.
- **Average salary** earned by the workers in the textile and footwear industry.

Table #2. Estimate for annual cost of the State’s contributions for unemployment protection

Country	Number of workers (textile, footwear industry) 2/	Average salary \$ approx. (monthly)	Contribution by the State	State annual budget \$ approx.
El Salvador	100,000	174	2.08%	4,348,260
Nicaragua	90,000	133	2.08%	2,991,303
Honduras	110,000	215	2.08%	5,910,135
Guatemala 1/	92,000	250	2.08%	5,747,700

Salaries and number of workers: according to the information and visits conducted by the consultants to Central American countries

1/ In Guatemala, in addition to the salary a Conditional Bonus (incentive) must be paid; however, it is not considered a part of the salary and is not used for the calculation of social benefits.

2/ It is difficult to determine this amount due to the existence of subcontractors and the tendency on the part of employers to conceal data. The employment figures appear excessive, considering the dismissals that have taken place in the face of the current crisis.



According to the above estimates, in countries such as Honduras and Guatemala, the annual contribution corresponding to the State would approach 6 million dollars a year, while in El Salvador and Nicaragua it would be 4 and 3 million dollars respectively. It is important to mention that these levels of contributions are high only at the beginning of the fund. Subsequently (after the sixth year) the system reaches a balance that requires contribution levels much lower than the initial values, because contributions for new hires (employee turnover) and new employers in the market (textile sector growth) would be limited.

Aid may be requested from cooperating countries (United States, Europe) at the start of the process to help with the contributions corresponding to the State.

5. Cost Estimate to the employer per worker

The total contribution for an employer to this fund depends on the number of workers employed and their level of salaries.

Table # 3. Estimate of company contributions (employer) for unemployment protection

Country	% contribution for the company (employer)	Average salary \$ approx. (monthly)	Cost \$ to company per worker (monthly)	Cost \$ to company per worker (annual)
El Salvador	4.17%	174	7.25	87
Nicaragua	4.17%	133	5.54	66
Honduras	4.17%	215	8.95	107
Guatemala	4.17%	250	10.41	125

It should be clarified, that once the company reaches maturity and has operated for more than 6 years with a stable workforce, the annual costs for the unemployment fund fall to minimum values, especially if there has been low employee turnover.

If we use as an example the number of workers in companies of different sizes (small, medium and large) the following approximate values are obtained.

Table #4. Budget estimate of company contributions (employer), for unemployment protection

Company Type	Number of workers (textile, footwear industry)	Average monthly salary \$ approx. in C.A.*	Company contribution (employer)	Budget \$ monthly approx.
Small	10	193	4.17%	80
Medium	50	193	4.17%	402
Large	500	193	4.17%	4,019

*Except CR



6. Costs and benefits of the proposal in the framework of corporate social responsibility

Relating the general practices of social corporate responsibility in the apparel industry to the costs and benefits of the proposal, the following observations can be made:

- From a commercial standpoint, any social charge will be an additional cost to the value of the product, which will reduce the profit margin of the manufacturer of the garment or of the retailer or brand that purchases and distributes the same. Or it might result in an increase in the final price that could diminish the competitiveness of the product with respect to price.
- Only to the extent that good social practices are sold as part of the brand, will there be an economic incentive for the brands that promote them.
- This can be illustrated with an example. Suppose a middle or upper class person from a developed country goes shopping to a shopping center. Suppose he observes two stores with a similar profile, one offers *Nautica* products and the other *Tommy Hilfiger*. Suppose one of the stores has a sign in the window or on its garments indicating that the brand sells and purchases from own plants and/or third-party plants that comply with corporate social responsibility that benefit its workers and gives its website, which has a link describing its practices and those of its suppliers¹². If the garments are perceived by the purchaser to be similar in aesthetics and quality, it is possible for the client to make a differentiation of the brands on the basis of increased sense of social responsibility on the part of one of them.
- Certifications and codes of conduct may be applied. Organizations like the FLA could create a scoring system (1 to 100) or classification or ranking of brands based on corporate social responsibility practices (A, B or C). Clearly, the above would be done on the basis of a score obtained by the brand or company in comparison against established practices and benchmarked to a standard (checklist), such as ISO norms or other norms that could be self-created. The extent to which the consumer is educated and has been made aware (through advertising) of these issues, the possibility that they will prefer socially responsible brands increases, above all, if we consider the fact that developed countries are synonymous with increased levels of education (school attendance) of its citizens and increased exposure to the media (newspapers, television, radio and internet), that expose the labor problems of workers in third world countries.
- Related to the above, social charges can turn from being costs to becoming benefits and commercial assets (social responsibility), becoming as important as the quality reputation of a garment.

C – Flexibility and worker rights in Central America

ASEPROLA and its allied organizations have been collecting, organizing, and reporting on the forms in which work flexibility has been adopted and on violations of labor rights in Central America. Flexibility strategies have as their purpose to avoid compliance with labor rights, in the framework of the prevailing openness model, as a competitive advantage of enterprises based on the reduction of social and labor benefits for the working class.

¹² Example: The label could say: “Our garment is produced under social responsibility practices, to the benefit for the workers that produce them, visit our website (www.websitename.com).”



Following this same logic, it aims to reduce or eliminate all types of regulations considered barriers to a free market and to minimize or eliminate the regulations created for the protection of worker rights, because they are considered to be barriers to the economic development of Central America. Flexibility follows two approaches: one based on legal reform and the other, the most common and widely spread in the region, is flexibility in fact. This violation of the rights of the working class applies to domestic and international regulations.

The investigations conducted by ASEPROLA and by the Regional Campaign against Labor Flexibility makes evident six flexibility strategies:

1. **Flexibility of Labor Contracts**, principal strategy for violating labor rights. Applied through subcontracting, outsourcing, procurement of professional services (masking the employment relationship) and home work.
2. **Flexibility strategies that threaten workers' right to a stable job**. Adopted by changing the company's registered name, annual payment of indemnity to the workforce, reducing the seniority of workers, sudden company closures that open under a new registered name, temporary contracts, dismissal at end of trial period, simultaneous registration of various firms within a single work center, massive unjustified terminations arguing economic problems, absence of written contracts.
3. **Flexibility strategies that threaten workers' right to a limited work shift**. Consists of the illegal extension of work to all days of the week, on occasion without overtime pay. Equal treatment for mixed and night shifts and day shifts. Accounting for hours not on a daily basis, but weekly (3.5X3.5, 4X3 o 4X4), without overtime pay. Elimination of rest periods. Contracts based on production goals rather than on work shifts. High production goals and not hiring replacements to account for workers with disabilities, vacations and dismissals. Multi-functionality of workers.
4. **Flexibility strategies that threaten workers' right to a decent wage**. Implemented through the extension of the work shift without overtime pay. Payment is based on production goals. Weekly, biweekly or monthly bonuses are conditioned on achieving daily goals. Even late payment of wages without paying interest. Outsourcing, through which the outsourcing company keeps a part of the wages.
5. **Flexibility strategies that threaten workers' right to social security**. Late payment or non-payment of social security contributions. Change in registered name of the enterprise to avoid claims. In outsourcing companies, non-payment of social security contributions is common. Illegal deductions are made to workers on disability or maternity leave. Company medical personnel on occasion covers up the non-payment of social security contributions by limiting the access of workers to Social Security facilities.
6. **Flexibility strategies that threaten workers' rights to form unions**. Applied through direct violation of the right to organize unions or through persecution of union leaders. Dismissal of union leaders, harassment of leaders and affiliated members.

All these practices violate social and labor rights; additionally they threaten the legal system and human rights established in various international conventions. In spite of these clear violations, the institutions charged with protecting these rights favor impunity to the benefit of the business sector.

While flexibility strategies extend through Central America, they are seldom sanctioned by the authorities, reflecting their complacency. The extreme case has been the selective murder of union leaders in various countries.



Company closures and the violation of workers' rights

The apparent closure of maquiladora enterprises has turned into a mechanism by which many factories avoid compliance with their labor responsibilities. In general, Central American Governments have demonstrated weakness and a lack of political will to revert these abuses and the violation of their own laws.

Government institutions are weak, permissive and corrupt which facilitate impunity of offenders. The core of the case lies in the strategy of decentralization of the productive processes in order to reduce production costs, for which it is essential that production costs in southern countries or in Asia be cheaper. Underdeveloped countries are in ruthless competition to attract this type of foreign investment, which punishes the weakest link in the chain, the working class. This rationale causes an insurmountable contradiction: there can be no social development on the basis that it is cheaper to produce in the country.

The lack of protection of maquila workers **cannot be corrected with mere technical measures**. It is a matter of political economy at the heart of the prevalent accumulation model. Weak institutions and impunity are inherent to the accumulation model of the local oligarchy in alliance with transnational corporations; flexibility and deregulation (legal or illegal) are instruments of this model. Thus, in spite of the fact that each country has a series of social guarantees and institutions, regulations are not implemented and impunity prevails.

Within the rationale of this value chain, there exist different levels of empowerment; each link has a certain amount of power and, therefore, some responsibility for the status quo of rights violations. The manufacturer located in Central America, while not having the same degree of power as those controlling the markets, is not at the mercy of the brands. The brands do have oversight over the entire value chain and therefore their responsibility with regard to workers is enormous.

Far from being victims (because they depend on work orders), manufacturers operate and compete within the logic of the value chain. They collaborate, participate in the determination of prices based on an analysis of production costs, productivity, efficiency, installed capacity, transportation, labor force and other factors.

The buyer sets the level of demand and establishes a maximum price for each garment. The clothing transnationals offer a price to get orders and compete with other with regard to price and timeliness of delivery. There are manufacturers that accuse the brands of pressuring them every year to lower prices. Once the price per garment is negotiated, they communicate with their factories abroad and propose to the national producer or its subsidiaries that they would pay a certain price. These enterprises, in turn, figure out their profits and calculate what they will pay workers. The competition generated by this model results in ever increasing pressure to lower wages and living conditions of workers.

The maximization of profit margins is transferred to workers in the form of increased exploitation and rights violations.

Once the contract has been signed, manufacturers must meet the design requested by the brand and lower costs to increase profits. Workers end up paying for the pressure applied from above -- from the brands -- and are subject to production relationships and living conditions characteristic of slavery and feudalism occurring in the middle of the 21st Century. The current crisis of global capitalism aggravates the situation, especially for working women who are more vulnerable and must accept the worst working conditions.



D. Investigation schedule

Date	Location	Activity	Name	Organization
Dec. 14, 23; 2010	SJO	Coordination meetings	Omar Salazar Giovanni Beluche V Carlos Pacheco Víctor Quesada	ASEPROLA Director and Mission Leader Consultant Consultant ASEPROLA Expert
Dec.28- 29, 2010	SJO	Planning and Instrument Design	Omar Salazar Giovanni Beluche	Investigation Team
January 3 to 20	SJO	Contacts and appointments with informants in Central America	Omar Salazar	ASEPROLA Director and Mission Leader
January 10	SJO	Develop interview guide	Giovanni Beluche	Consultant
January 11	SJO	Team Meeting	Omar Salazar Giovanni Beluche V Víctor Quesada	Team Leader Consultant ASEPROLA Expert
January 17	SJO	Team Meeting	Omar Salazar Giovanni Beluche V Carlos Pacheco Daniel Pacheco	Team Leader Consultant Consultant Consultant
January 21	SAL	Travel to El Salvador	Giovanni Beluche V.	Consultant
January 21	SAL	Interview	Vinicio Sandoval Francisco Chicas	Director GMIES GMIES Social Auditor
Jan. 22	SAL	Interview	Sergio Chávez	National Labor Committee
January 23	SAL	Process Information	Giovanni Beluche	Consultant
January 24	SAL	Interview	Fausto Payés	IDHUCA Center for Labor Rights (CDL)
Jan. 24	SAL	Interview	Saúl Baños	FESPAD
January 24	SAL	Focus Group	Martha Saldaña Aracely Martínez Norma Martínez Ana Cecilia Molina	Director FEASIES Mesa de la Maquila General Seamstress Union Garment Industry Union
Jan. 25	SAL	Interview	Victoria Velásquez	Labor Minister of El Salvador
January 26	GUA	Travel to Guatemala	Giovanni Beluche	Consultant
January 26	GUA	Coordination Work Plan	Ana Lucía Fuentes	COVERCO Administrator
January 26	GUA	Focus Group	Maritza Velásquez Susana Vásquez Floralma Contreras Miriam González	ATRAHDOM Coordinator Technical Facilitator Board of Directors Board of Directors
Jan. 27	GUA	Interview	Rosa Galicia	AMUCV & Former maquila union member
January 27	GUA	Interview	Jorge Estrada Evelyn García Julio Coj	Consulting coordinator UNSITRAGUA Consulting Sub-coordinator Coordinating Board
January 27	GUA	Interview	Rigoberto Dueñas César López	FETRACUR Secretary General SITRASAE Secretary General
January 27	GUA	Interview	Homero Fuentes Claudia Contreras	COVERCO Director Monitoring Coordinator



Date	Location	Activity	Name	Organization
			Augusto Aceytuno	Monitoring
Jan. 27	GUA	Interview	Alejandro Argueta	Labor Lawyer and Activist
Jan. 28	GUA	Interview	Adolfo Lacs	UGT
January 28	GUA	Focus Group	Victorino Zacarías Olinda Bolaños Odilya Xi Verónica Tuj María Pérez Bárbara Suculun Ana Palma Carmelita Carrillo Juana Molina Ana María Beteta	CGTG Secretary General Women's Commission of the CGTG Former Security officer in a Maquila Former maquila worker Former maquila worker Former maquila worker Former maquila worker Former maquila worker Former maquila worker
January 24	HOND	Travel to Honduras	Name	Organization
			Matusala Orellana Maritza Paredes Carla Yadira	MINTRAB - conciliations EMIH EMIH EMIH
January 25	Hond	San Pedro Sula	Yadira Minero Julio Reyes Armando Villatoro	CDM FITH CUTH – FITH
January 26	Hond	San Pedro Sula	René Guevara Norman Portillo	MINTRAB MINTRAB Regional Director
January 27	Hond	Tegucigalpa	Ayax Irías Marlon Ochoa	Universidad Autónoma - investigator Investigator
January 28	Hond	Tegucigalpa	Guillermo Matamoros	COHEP and Regional Director for the Honduras Maquila Association
January 29	Nic.	Coordination	Coordination meeting of logistics impact	ASEPROLA partners, regional campaign.
January 31	Managua	Group Session	Miguel Ruiz Luis Barboza Roger Barrantes	Secretary General, President and International Relations Secretary of the Sandinista Union Confederation
	Managua	Interview	Alberto Legal Torres	Executive Director of Professionals for Corporate Social Action. – PASE.
February 1	Managua	Interview	Marie Van Hacker, Frank Lensik	Director and Regional Coordinator for FOS maquila programs- Belgium.
February 2	Ciudad Sandino	Focus Group	René Barrantes - Edwin Sánchez Francisco Estrada Karla Gutiérrez Salguero Edgardo Díaz Bermúdez Edwin Díaz Bermúdez Arellys Silva Espino Pedro Mendoza Guillermo Rodríguez	Union Promoter in maquila zones CST – JBE Board of Director of the Enrique Smith Union, footwear industry, SARATOGA, Brazilian capital, Ciudad Sandino free zone.
February 2	Tipitapa -	Interview - group	Enrique Espinoza	Work team from the Commission for Free



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Date	Location	Activity	Name	Organization
	Managua		Ramiro Blanco Norma Aburto	Zones in Nicaragua.
February 3	Managua	Interview	Fernando Malespín	Expert on labor issues in the maquila, UCA – Nicaragua Professor and Advisor to the Labor Minister of Nicaragua.
February 3	Managua	Interview	José Espinoza Navas	President of the Confederation of Union Unity– CUS - of Nicaragua. Secretary General of the Permanent Council of Workers of Nicaragua.
Feb. 3	Managua	Material Review	Omar Salazar Alvarado	ASEPROLA
Feb.4 to 8	San José	Write interim report	Omar Salazar, Giovanni Beluche, Víctor Quesada	ASEPROLA
Feb.10	San José	Coordination with FLA	Omar Salazar Jorge Pérez	ASEPROLA FLA
Feb.14 to 22	San José	Develop Final Report	Omar Salazar Giovanni Beluche V Carlos Pacheco Víctor Quesada Daniel Pacheco	Investigation Team